

KNYSNA LOCAL MUNICIPALITY

Notice is hereby given of an

APPEAL HEARING

to be held by the

APPEAL AUTHORITY

on

Monday, 12 October 2026

at

09h00

in the Council Chambers

MUNICIPAL OFFICES
KNYSNA

ADMINISTRATOR

A G E N D A

Appeal Authority: Acting Executive Mayor

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AGENDA

1. Opening of the Hearing
2. Attendance
3. Order of Proceedings
4. Items for Discussion
5. Closure

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,

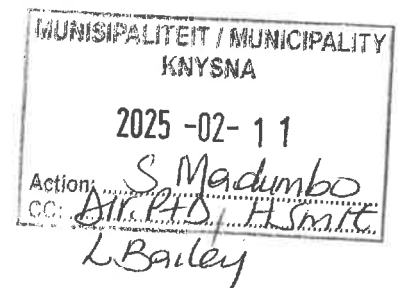
Trust you are well.
 Attached please find:

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

Via Electronic Mail

2025-01-21

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.

Please address all correspondence to the Municipal Manager and quote the above reference
P O Box 21 • Knysna • 6570 • Tell: 044 302 6300 • Fax: 044 302 6333 • E-mail: knysna@knysna.gov.za

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'.

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 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

ANNEXURE 1 (CONTINUED)

[Back to main document](#)

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- JUL 2005 15:45 FROM: PEZULA CLUB TEL: 0341741
 +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 (+27443841741)
 +27443841741
 28.AUG.2002 12:28 CONCOR ENGINEERING 2711 6377617

NO. 665 P. 4
 TO: 0115377617 P: 4/23
 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: 0115311617 NO. 665 P.5 P:5/23

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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 1", 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:

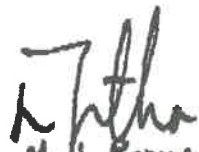

 for Mr Elon Brown
 Chairman

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: 27443841741
+27443841741

NO. 665
TD: 0118377617

P. 7

P: 7/23

1028. AUG. 2002 12:21 FROM: RECONCOR ENGINEERING 2711 8377617
+27443841741

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 R188 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.

CHITTENDEN NIGEL PARTNERSHIP
Urban planning and environmental design

REP: 03/08/2005
2005

THB

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3. 7.FEB.2005 16:04 FROM: MARINE & MINERAL
 35:154 FROM: PELWASH CLUB TEL: 773341741
 +27443341741

NO. 665
 TO: 0119377617

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* 1428. AUG. 2002 12:21 FROM: RECONCOR ENGINEERING 27.11 8377617
 +27443341741

TO: 0119377617

P. 8/24

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 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.

[Handwritten signatures and initials]

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TO: 011637/617 P: 9/23

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+27443841741

TO: 011637/617 P. 10/24: 9/21

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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+27443841741

TO: 0116377617 P. 11/24 P: 10/21

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

Notations	Zoning	Colour notation
LT 666	Resort Zone I	Pink
LT 240	Resort Zone II	Pink/black hatching
LT 124	Transport Zone I	Dark brown
LT 020	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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1. 5. 29. AUG. 2005, 12:23, CONCOR ENGINEERING, 2711 8977617
FROM: PEZULU CLUB +27443841741
+27443841741

TO: 0118377617 NO. 159 P. 14/24 P: 13/21

- (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)

Back to main document

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TO: 011637/617 P: 14/23

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NO. 188 P. 15/24
TO: 011637/617 P: 14/21

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.

3. 7.FEB.2005:15:08 FROM: MARINE & MINERAL
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TO:0118377617 P:15/23

15.28.AUG.2002:12:23 FROM: RECONCOR ENGINEERING 2711 8377617
+27443841741

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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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TO: 0115317517 P. 16/23

16-28 AUG 2022 12:24 FROM: CONCOR ENGINEERING 2711 8377617
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+27443841741

TO: 0115317517 P. 17/24 P. 16/21

- 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

3. 7. FEB. 2005: 16:09:00 FROM: PELOMARINE & MINERAL 341741A
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+27443841741

NO. 188 P. 18/24 P: 17/23

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:

3-7 FEB 2005 16:09 MARINE & MINERAL
 3-7 FEB 2005 16:09 FROM: PEZULU CLUB TEL: +27443841741
 +27443841741
 19-28 AUG 2002 12:24 PM: PEZCONCOR ENGINEERING 2711 8377617
 +27443841741

NO. 665 P. 18
 TO: 0116377617 P: 18/23
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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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+27443841741

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TO: 0118377617
TO: 0118377617 P.20/24 P:19/21

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 Knosala. 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 or the utilisation of 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.

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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:

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ANNEXURE 1 (CONTINUED)

[Back to main document](#)

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1.3.6 AUTHORITY ZONE

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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.

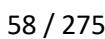
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P. 24/24





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:

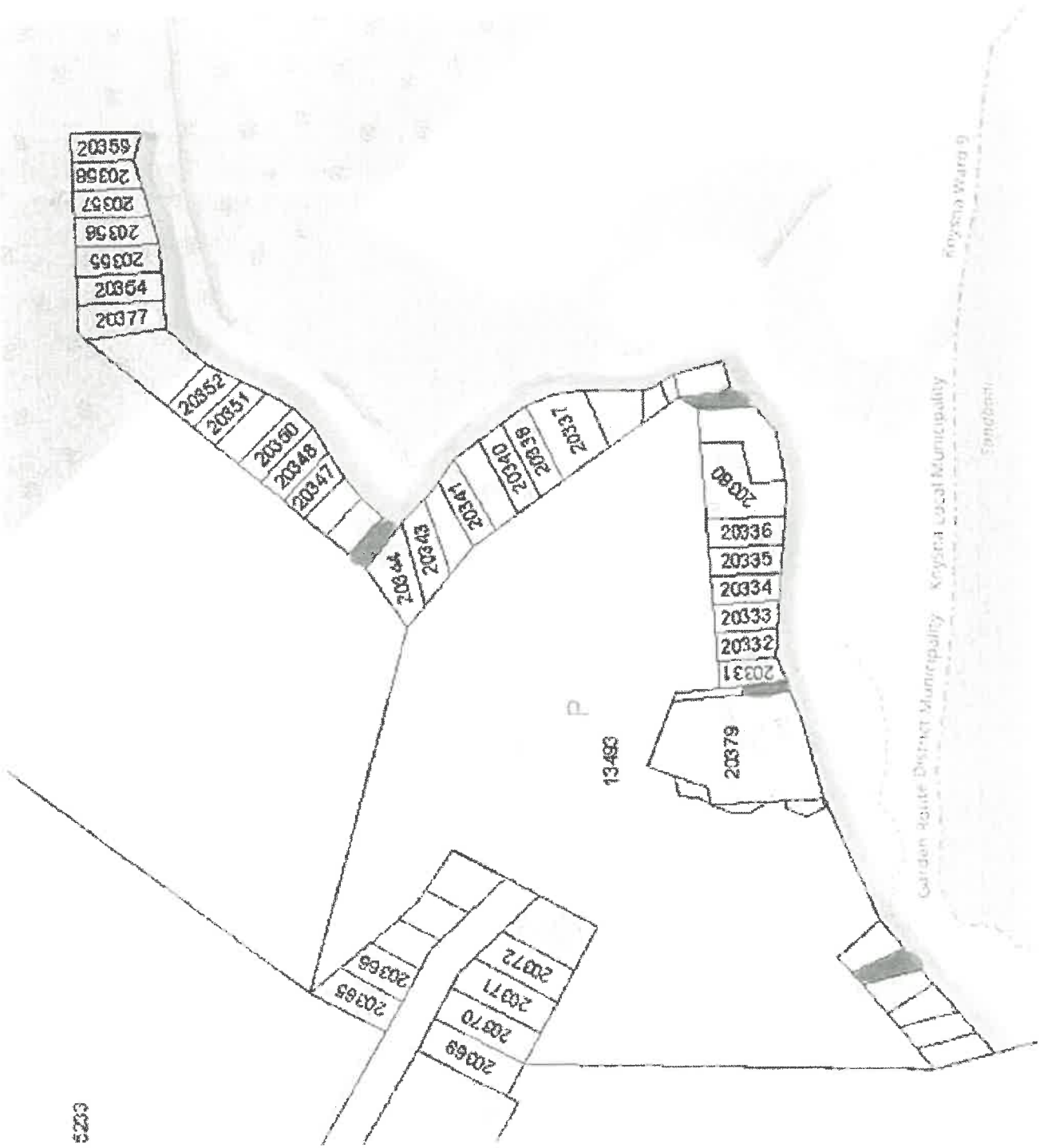
- Remainder Farm 394, Knysna as shown on **General Plan No. N19 (3031)**

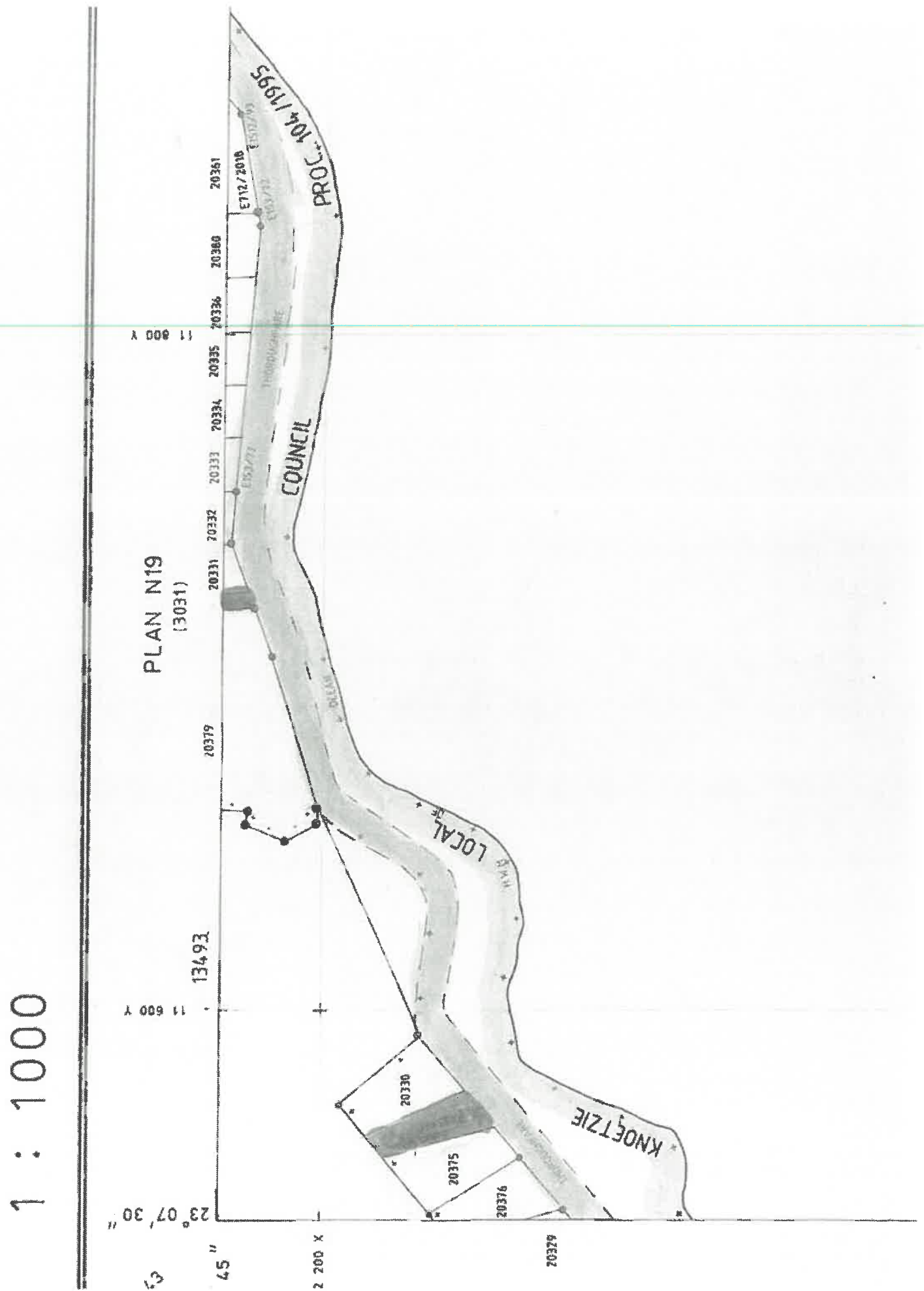
It is shown as **PUBLIC STREET** in our records.

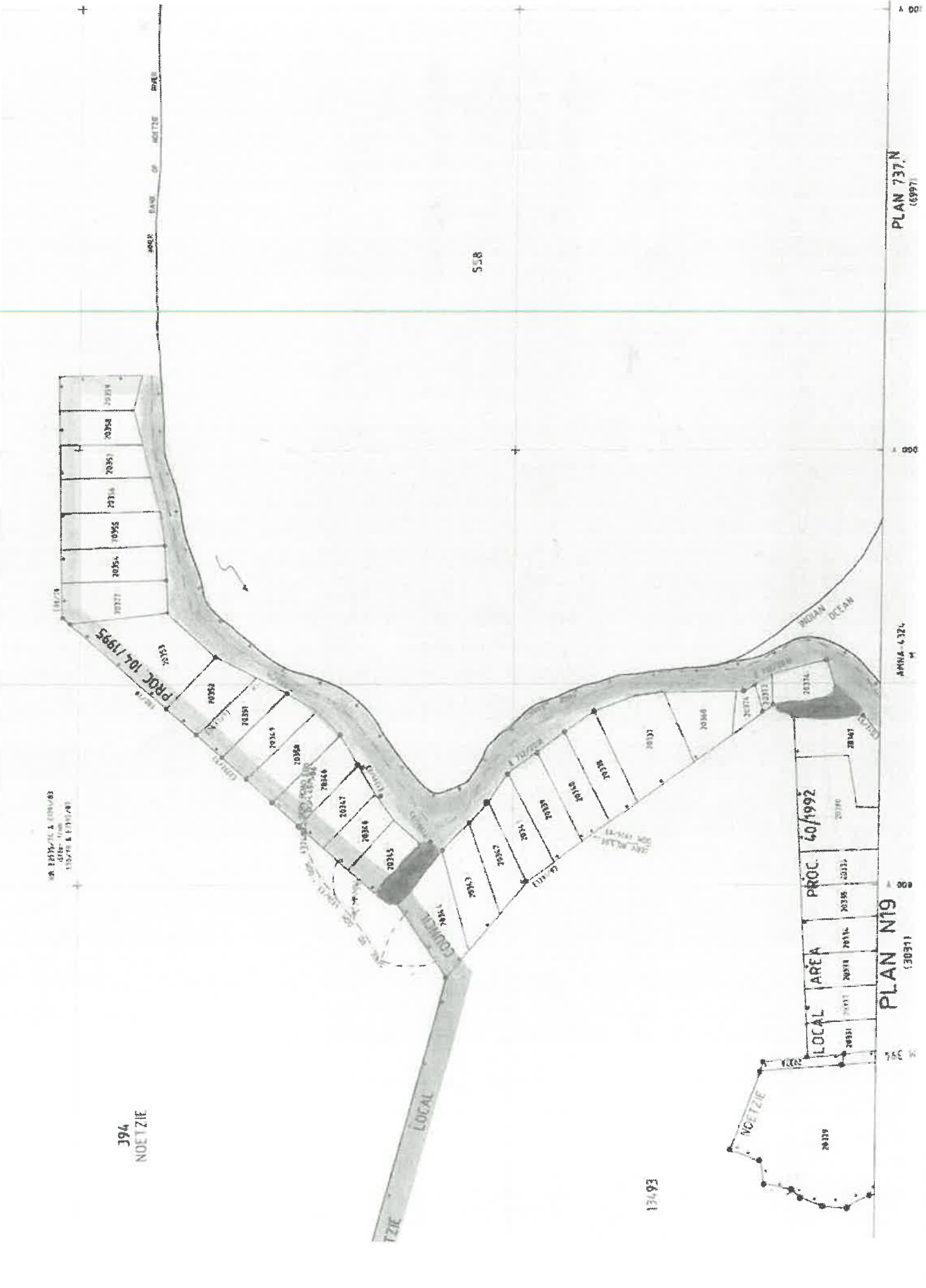
Note: A passage and thoroughfare is described as a public street in the Land Use Planning Ordinance 15 of 1985, should you wish to permanently close the above mentioned property, a normal closure procedure will have to be followed.

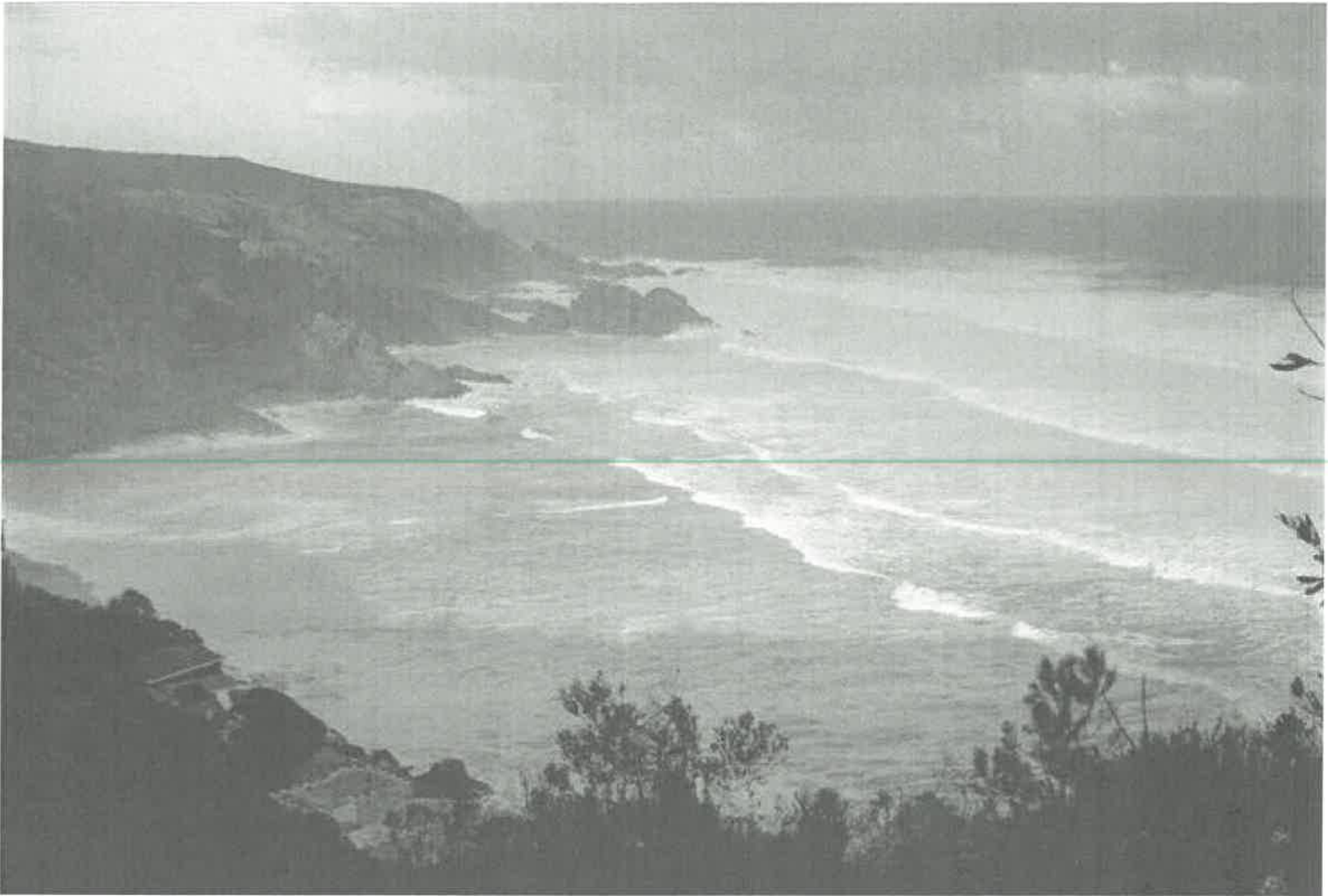
Yours faithfully

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









ANNEXURE 4

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ANNEXURE 6

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ANNEXURE 8

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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. Chiddy
Surveyor-General
1997-03-04

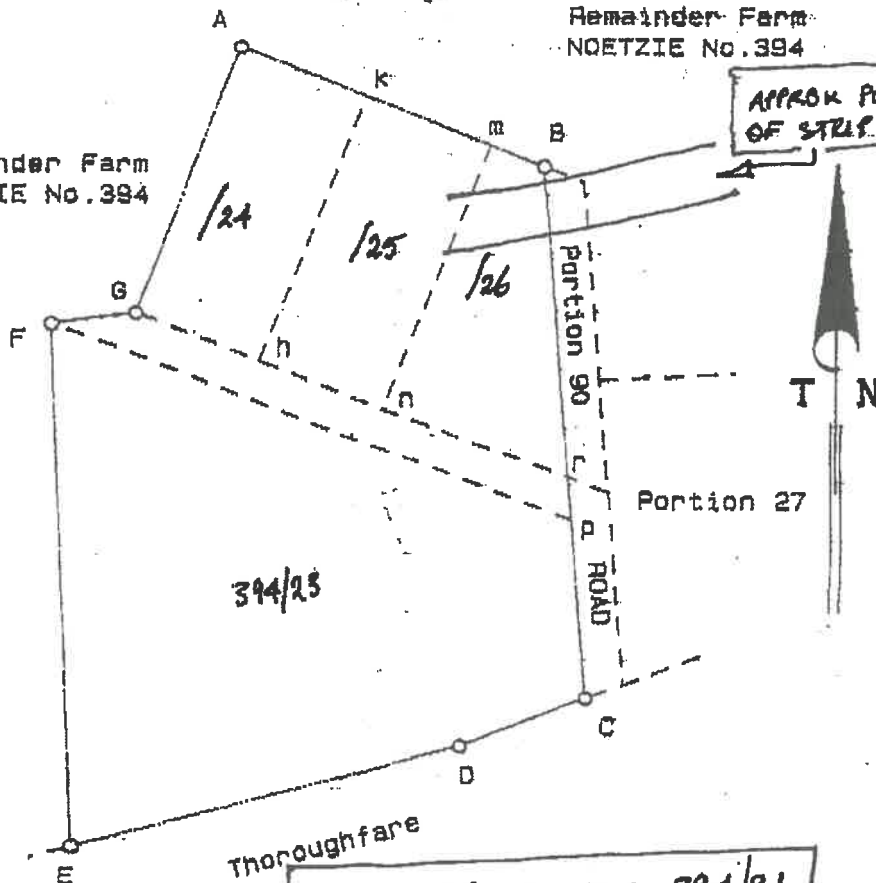
SHEET 2 of
2 SHEETS

MIKE DAVE
TO SCAN &
DISTRIBUTE
PLEASE
REGARD
CR & GOSLING

Remainder Farm
NOETZIE No.394

Remainder Farm
NOETZIE No.394

APPROX POSITION
OF STRIP ROAD



Surveyed in April 1993
by me

T. Chiddy
T.J. Chiddy
Professional Land Surveyor

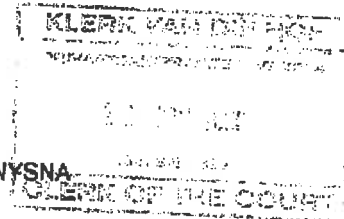
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20 May 09 10:33

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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:

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.

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- 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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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

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

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

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.

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

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 within a light gray rectangular box.

Lizemarie Botha.

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

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

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

RE: Progress report please? Re: To Appeal Authority: NCOA appeal application re subdivision of Farm 394 Noetzie

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Hennie Smit <hsmit@knysna.gov.za>

Tue, Apr 8, 2025, 8:16 AM
reactic
Rep
Moi

to me, Lulamile, chairperson@noetzie.co.za, Anita, Shaun, Liesl, Municipal

Good day Melanie

I am currently busy finalising the Appeal Assessment Report and the date for the Appeal Authority to consider your appeal will be communicated shortly.

Kind Regards

Hennie Smit **Manager: Land Use Management**

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

Tel +27 (0)44 302 6319 (switchboard) or +27 (0)60 998 7124 (Mobile)

e-mail hsmit@knysna.gov.za

From: melanie gosling <melanie.gosling@gmail.com>

Sent: Monday, 07 April 2025 20:11

To: Hennie Smit <hsmit@knysna.gov.za>

Cc: Lulamile Mapholoba <lmapholoba@knysna.gov.za>; chairperson@noetzie.co.za; Anita Strydom <astrydom@knysna.gov.za>; Shaun Madumbo <smadumbo@knysna.gov.za>; Liesl Bailey <lbailey@knysna.gov.za>; Municipal NCOA <municipal@noetzie.co.za>

Subject: Progress report please? Re: To Appeal Authority: NCOA appeal application re subdivision of Farm 394 Noetzie

Good day Hennie,

Please can you let us know how the Noetzie Conservancy Owners' Association (NCOA) appeal in the matter below is progressing?

When can we expect a decision?

Regards,

Melanie Gosling

NCOA member

On Mon, Mar 3, 2025 at 12:52 PM Hennie Smit <hsmit@knysna.gov.za> wrote:

Hello Melanie

Just to confirm that your appeal is valid and that the closing date for comments is tomorrow. The assessment of your Appeal application will commence thereafter.

Kind Regards

Hennie Smit **Manager: Land Use Management**

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

Tel +27 (0)44 302 6319 (switchboard) or +27 (0)60 998 7124 (Mobile)

e-mail hsmit@knysna.gov.za

From: melanie gosling <melanie.gosling@gmail.com>

Sent: Monday, 03 March 2025 11:29

To: Lulamile Mapholoba <lmapholoba@knysna.gov.za>; Hennie Smit <hsmit@knysna.gov.za>

Cc: chairperson@noetzie.co.za; Anita Strydom <astrydom@knysna.gov.za>; Lulamile Mapholoba <lmapholoba@knysna.gov.za>; Shaun Madumbo <smadumbo@knysna.gov.za>; Liesl Bailey <lbailey@knysna.gov.za>; Municipal NCOA <municipal@noetzie.co.za>

Subject: Update please? Re: To Appeal Authority: NCOA appeal application re subdivision of Farm 394 Noetzie

REQUEST FOR UPDATE: NCOA's application to appeal KMPT decision: subdivision remainder of Portion A of farm 394 Noetzie

Dear MM,

Attention Mr Hennie Smit

The Noetzie Conservancy Owners' Association (NCOA) submitted an application on February 11th to appeal the above decision.

Mr Hennie Smit replied that his department would "confirm the validity status" of this appeal shortly. (See email below.)

It is three weeks since NCOA submitted the appeal, and we have not heard anything further. The NCOA would like to know what is happening with the NCOA application to appeal?

Regards,
Melanie Gosling
NCOA member
072 863 1425

On Tue, Feb 11, 2025 at 2:36 PM Hennie Smit <hsmit@knysna.gov.za> wrote:
Hello Melanie

Kindly note that the appeal application of the Noetzie Conservancy Owners' Association (NCOA) has been captured onto our system. The Land Use Management Department will confirm the validity status of the appeal shortly.

Kind Regards

Hennie Smit **Manager: Land Use Management**

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

Tel +27 (0)44 302 6319 (switchboard) or +27 (0)60 998 7124 (Mobile)

e-mail hsmit@knysna.gov.za

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 (m²)	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	Y	N	If Yes, explain	Not applicable			
PART D: SUMMARY OF PUBLIC PARTICIPATION							
Total valid comments	12			Total valid comments and petitions	12		
Valid petitions	Y	N	If yes, number of signatures		None		
Community organisation(s) response	Y	N	N/A	Ward Councillor Response	Y	N	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					Y	N	
If the Provincial Minister commented on the application, was he/she afforded the opportunity to comment on the appeal?					Y	N	
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?					Y	N	

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

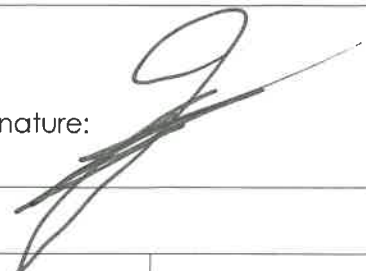
ANNEXURE A – *Appeal application by the Noetzie Conservancy Owners' Association (NCOA).*

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

Collab. Ref.: 2691094
File Ref.: Re/394 Kny
Application No.: 2534
JH Smit
Tel: 044-302 6318



Via Electronic Mail

2025-10-15

Pezula Private Estate (Pty) Ltd
c/o Planning Space (Pty) Ltd
PO Box 2029
KNYSNA
6570
Email: lundi@planningspace.co.za

Dear Sir/Madam,

DECISION: SUBDIVISION & CLOSURE OF PUBLIC PLACE: REMAINDER OF THE FARM NOETZIE ERF 394, KNYSNA

1. The appeal submission dated 10 February 2025, refers.
2. Kindly note that in terms of Section 80(1)(b) of the Knysna Municipality By-Law on Spatial Planning and Land Use Management (2021), the letter of appeal is invalid since it did not set out the grounds to prove the decision-maker erred in coming to the conclusion it did.
3. The matter is now finalized.

Yours faithfully,

JH SMIT
MANAGER: LAND USE MANAGEMENT
Delegations: P.78
/lb

Collab. Ref.: **20A0755**
File Ref.: Re394 Kny
Application No.: 2534
JH Smit
Tel: 044-302 6318



Via Electronic Mail

2025-10-15

Noetzie Conservancy Owners' Association (NCOA)
c/o Melanie Gosling
KNYSNA
6570
Email: melanie.gosling@gmail.com

Dear Sir/Madam,

**APPEAL AGAINST THE DECISION OF THE APPLICATION FOR THE
SUBDIVISION & CLOSURE OF PUBLIC PLACE: REMAINDER OF THE FARM
NOETZIE 394, KNYNSNA**

1. Your appeal submission dated 10 February 2025, refers.
2. Kindly note that in terms of Section 80(1)(b) of the Knysna Municipality By-Law on Spatial Planning and Land Use Management (2021), your letter of appeal is invalid since you did not set out the grounds to prove the decision-maker erred in coming to the conclusion it did, or state that the decision-maker failed to make a decision.
3. The matter is now finalized.

Yours faithfully,

JH SMIT
MANAGER: LAND USE MANAGEMENT
Delegations: P.78
/lb



REGISTER OF DELEGATED POWERS OF DECISION MAKING

KNYSNA MUNICIPALITY

As amended by Council – 31 August 2022: Structuring of Municipal Council & Appointment of Members to Committees

Whereas section 59 of the Local Government: Municipal Systems Act, 2000 requires that a Municipal Council must develop a system of delegation that will maximize administrative and operational efficiency and provide for adequate checks and balances, and that a Municipal Council then, in accordance with that system, may delegate certain powers, subject to legislative restrictions, and

This document contains statutory delegations of the Municipal Manager, statutory delegations by Council and the Executive Mayor, other delegations which were delegable by virtue of Council mandate and authorizations. The statutory delegations of the Municipal Manager are not delegations of Council and are contained in this document for reference and record purposes only.

The Municipal Manager is not divested of the powers to execute any delegated or sub delegated power, him /herself and remains accountable for the execution thereof.

STATEMENT OF ADMINISTRATIVE INTENT

The council, speaker, executive mayor, political structures, councilors and staff members shall:

- (a) adhere to the principles of just administrative action as contemplated in section 33 of the Constitution of the Republic of South Africa, 1996 and the Promotion of Administration Justice Act, Act 3 of 2000; and
- (b) observe the codes of conduct applicable to both councilors and officials; and
- (c) embrace a system of ethic governance.

STATEMENT OF TRANSPARENT GOVERNANCE

Meetings of the Council, **the executive mayor when he/ she is in session** and all its committees are open to the public, including the media, and the Council shall only exclude the public, including the media, in terms of section 160(7) of the Constitution of South Africa, 1996, from a meeting when dealing with staff matters, legal matters, or when it is reasonable to do so having regard to the nature of the business being transacted and a resolution to that effect is passed by Council, the Executive Mayor when he/she is in session or a committee. The Council, the Executive Mayor when he/she is in session or a committee shall not exclude the public, including the media, when considering or voting on any of the following matters:

- (a) a draft by-law tabled of the council;
- (b) a budget for the council;
- (c) the municipality's draft integrated development plan, or any amendment of the plan;
- (d) the municipality's draft performance management system, or any amendment of the system;

P.135	Functions of Administrator	Tribunal Administrator to undertake administration, arrangements, and the keeping of diaries and records of the Tribunal	MPB s77(2)	Director: Corporate Services	Committee Section	
P.136	Appeals	Municipal Manager to receive appeals	MPB s79(7) MPB s80	Manager: Land Use Management	Senior Town Planner	
P.137	Written notice of appeal	Municipal Manager to give written notice to applicant of appeal	MPB s80(8) LUPA s51(2)	Manager: Land Use Management	Senior Town Planner	
P.138	Refusal of comments after appeal closure date	Municipality to refuse comment on appeal if received after closing date	MPB s80(10)	Manager: Land Use Management	Senior Town Planner	
P.139	Provincial Minister to comment on appeal	Municipal manager to request the Provincial Minister to comment on the appeal or notify of appeal where applicable	MPB s80(11)(a) & (b) LUPA s52	Manager: Land Use Management	Senior Town Planner	
P.140	Notifying the appellant	Municipal Manager to notify the applicant whether or not the operation of the approval of the application is suspended on receipt of appeal	MPB s80(11)(c) LUPA s51(3)	Manager: Land Use Management	Senior Town Planner	
P.141	Assessment and recommendation on appeal	Authorised Employee as contemplated in section 80(12) to make an assessment and recommendation on appeal to be submitted for consideration to the Appeal Authority	MBP s80(12)	Manager: Land Use Management	Senior Town Planner	
P.142	Appeal submissions	Municipal Manager to submit appeal to Appeal Authority	MPB s80(13) SPLUMA s51(2)	Manager: Land Use Management	Senior Town Planner	
P.143	Recordkeeping of appeal authority	Municipal Manager to undertake administration, arrangements, and the keeping of diaries and records of the Appeal Authority	MPB s80(14)	Director: Corporate Services	Committee Section	
P.144	Consideration of Appeal	Appeal Authority to consider appeal, confirm, vary or revoke	MPB s 81(1) – (9)	Executive Mayor		

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

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.

Marius Hendrik Botha (B.Proc. PG Dip – Financial Management)

335 Watsonia Avenue
Boschenmeer Estate, Paarl
P O Box 3144, Paarl, 7620

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E-mail: marius@mhblaw.co.za

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

Marius Hendrik Botha (B.Proc. PG Dip – Financial Management)

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

Email: lbailey@knysna.gov.za

19 January 2026

Dear Sirs

SUBJECT: PURPORTED APPEAL HEARING – 29 JANUARY 2026 AT 14H00: REMAINDER OF FARM NOETZIE 394 – OBJECTION TO ULTRA VIRES PROCEEDINGS

We refer to our correspondence of 5 December 2025, the contents of which are well known to the Municipality and are incorporated herein by reference.

Notwithstanding the Municipality having been expressly advised, including by its own Land Use Manager, that the appeal in respect of Farm Noetzie 394 had been finalised and that the Appeal Authority is *functus officio*, we note that the Municipality nonetheless intends to persist with the appeal hearing set down for 29 January 2026.

We reiterate, briefly, that any further appeal process is *ultra vires*, unlawful, and procedurally unfair. The applicable legislative framework provides for a single appeal only, which has already been exercised and concluded. There exists no lawful basis to reconvene or rehear the matter.

In the circumstances, and to avoid any doubt, we place on record that we hold firm instructions to institute review proceedings in terms of the Promotion of Administrative Justice Act, 2000, should the Municipality proceed with the second unlawful appeal. Such review will be accompanied by an application for punitive costs, given that the Municipality has been repeatedly alerted to the absence of jurisdiction and nonetheless elects to persist.

This letter is sent in a final attempt to avoid unnecessary litigation. All our client's rights remain strictly reserved.

Be guided accordingly.

Marius Hendrik Botha (B.Proc. PG Dip – Financial Management)

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P O Box 3144, Paarl, 7620

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E-mail: marius@mhblaw.co.za

Yours sincerely



Marius Botha

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

12 February 2026

Email: lbailey@knysna.gov.za
planning@knysna.gov.za

Dear Sirs

SUBJECT: PURPORTED APPEAL HEARING FARM NOETZIE 394 – OBJECTION TO UNFAIR PROCEEDINGS

1. We address you in our capacity as previously recorded in this matter and with reference to the prior correspondence exchanged between the parties, which is incorporated herein by reference.
2. We record that only yesterday, 11 February 2026, the Municipality communicated its view that the previous dismissal of the appeal was incorrect due to an unlawful delegation arising from an administrative error on its part.
3. We record that this alleged administrative error and the Municipality's revised position were not previously disclosed to our client, nor were they foreshadowed in any prior communication.
4. Notwithstanding the late disclosure of the above, the Municipality has now proceeded to re-enrol and/or set down the appeal for hearing today and has indicated that oral representations are to be made.
5. The effect of this is that our client has been afforded no reasonable opportunity to:
 - 5.1. Consider the Municipality's recent revised position;
 - 5.2. Obtain and consider the relevant record;
 - 5.3. Prepare written and/or oral submissions;
 - 5.4. Arrange legal representation; and
 - 5.5. Make the necessary logistical arrangements to attend and properly participate in the proceedings.

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6. This course of conduct constitutes a clear breach of the *audi alteram partem* principle and renders the proposed proceedings procedurally unfair as contemplated in section 3 of the Promotion of Administrative Justice Act 3 of 2000 ("PAJA").
7. In terms of section 3(2)(b) of PAJA, an administrator must give a person whose rights or legitimate expectations are materially and adversely affected by administrative action adequate notice of the nature and purpose of the proposed administrative action and a reasonable opportunity to make representations.
8. The Municipality's conduct, in communicating a material shift in its position yesterday and proceeding with oral representations today, falls manifestly short of the standard of procedural fairness required by PAJA and the Constitution.
9. It is particularly concerning that the Municipality seeks to cure its own administrative error, namely the unlawful delegation, by engaging in a process which itself is procedurally defective.
10. Our client's rights and legitimate expectations are directly implicated in these proceedings. The failure to afford a reasonable opportunity to consider the Municipality's latest revised position as conveyed yesterday, prepare and to secure representation materially prejudices our client and taints the entire process.
11. In the circumstances, we formally demand that the appeal proceedings scheduled for today be postponed to a mutually convenient date, upon reasonable notice, to enable our client to properly consider the Municipality's latest revised position, prepare and to be represented.
12. Should the Municipality elect to proceed today notwithstanding this objection, we hold clear instructions to institute review proceedings in terms of section 6 of PAJA on the basis, inter alia, that:
- 12.1. The process is procedurally unfair;
- 12.2. Relevant considerations have not been properly taken into account;
- 12.3. The decision is taken in a manner inconsistent with the empowering provision and the Constitution; and
- 12.4. The Municipality has acted arbitrarily and in breach of the audi principle.

13. We trust that the Municipality will act prudently and in accordance with its constitutional and statutory obligations, and that it will not persist with a procedurally irregular process which will inevitably result in further litigation and unnecessary costs.

14. Kindly confirm, as a matter of urgency, that the proceedings scheduled for today are withdrawn or postponed pending proper notice and compliance with PAJA.

Yours sincerely



Marius Botha

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

Email: lbailey@knysna.gov.za
planning@knysna.gov.za

24 February 2026

Dear Sirs

RE: PROCEDURAL STATUS OF APPEAL – REMAINDER OF FARM 394 NOETZIE, VALIDITY OF DELEGATED DECISION AND LACK OF JURISDICTION TO RECONVENE APPEAL

1. We refer to your letter dated 11 February 2026 under the hand of the Executive Mayor acting as Appeal Authority and to the earlier appeal decision communicated by Mr J.H. Smit, Manager: Land Use Management, dated 15 October 2025.

Ad Validity of Delegation

2. Your letter under reply asserts that the determination by Smit declaring the appeal invalid was issued outside the scope of delegated powers and that the authority to determine the validity of an appeal is vested exclusively in the designated Appeal Authority.

3. That assertion is incorrect in law for the following reasons:

3.1. The Register of Delegated Powers of Decision Making, as amended by Council on 31 August 2022, expressly delegates appeal-related powers under item P.136 (“Appeals”) to the Director: Planning & Economic Development, together with associated appeal functions under P.137, P.141, P.144 and P.146.

3.2. The Register is adopted pursuant to section 59 of the Local Government: Municipal Systems Act 32 of 2000 (“MSA”):

3.2.1. Section 59(1) empowers Council to delegate powers to officials;

3.2.2. Section 59(3) provides that a delegation remains valid until withdrawn;

Marius Hendrik Botha (B.Proc. PG Dip – Financial Management)

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3.2.3. Section 59(2)(f) provides that delegations must be reviewed upon election of a new Council, which confirms their continuing force unless expressly amended or revoked.

3.3. There is no indication that delegation P.136 was withdrawn, revoked or limited at any relevant time.

3.4. Accordingly, the appeal-related powers exercised by Mr Smit fell squarely within a valid and operative system of delegation lawfully adopted by Council.

Ad scope of Mr Smit's authority

4. In coming to his decision dated 15 October 2025, Mr Smit acted squarely within the Directorate of Planning & Economic Development and within the operative system of delegation lawfully adopted by Council in terms of section 59 of the Local Government: Municipal Systems Act 32 of 2000.

5. The delegation is conferred upon the office within the Directorate and is exercised by virtue of that office, not personal incumbency. At the time Mr Smit acted, that delegation was valid, extant, and had not been withdrawn or limited. Accordingly, he possessed full legal authority to determine whether an appeal complied with the statutory requirements prescribed by section 80(1)(b) of the Knysna Spatial Planning and Land Use Management By-law (2021).

6. The Conditions of Delegation contained in the Register expressly require that any delegated decision affecting the rights of a person must be reduced to writing and that reasons must be recorded. The Register further provides that all delegated powers must be exercised subject to compliance with applicable legislation and within the parameters of the empowering provisions.

7. Mr Smit's decision of 15 October 2025 complies with each of these requirements. The decision was formally reduced to writing; it expressly identified the applicable legislative provision, namely section 80(1)(b) of the By-law; it recorded the jurisdictional basis upon which the appeal was found to be invalid; and it unequivocally communicated that "the matter is now finalized."

8. In doing so, Mr Smit did not purport to create a new procedural mechanism but applied the statutory threshold requirements governing the lodging of appeals. A determination that an appeal fails to meet the prescribed statutory requirements is itself a lawful exercise of appeal jurisdiction and constitutes the disposal of the appeal envisaged in the legislative framework.

9. Neither the Knysna Spatial Planning and Land Use Management By-law nor SPLUMA contains any provision reserving to the Executive Mayor, or to any political office bearer exclusively, the power to determine the validity of an appeal at the threshold stage.

10. The By-law prescribes the requirements for a valid appeal and contemplates that appeals must comply with those requirements in order to trigger substantive reconsideration. The Council, acting in terms of section 59 of the Municipal Systems Act, has lawfully delegated the appeal-related functions under P.136.

11. In the absence of any statutory prohibition on such delegation, and in light of the express delegation adopted by Council, the exercise of that power by Mr Smit was entirely intra vires. The decision was therefore taken by a properly authorised official, under a valid and operative delegation, in strict compliance with the governing legislation. It disposed of the appeal as contemplated by the By-law and exhausted the appeal mechanism created by that legislative framework.

12. It follows that the appeal process created by the By-law was invoked, adjudicated, and concluded through a lawful and properly delegated administrative act. There is no statutory basis for revisiting, rehearing or reconsidering that finalised determination. Any contrary suggestion would amount to an impermissible collateral attack on a valid administrative decision and an unlawful attempt at internal self-review absent express legislative authority.

The Appeal authority is functus officio

13. The legislative framework provides for one appeal only. That appeal was exercised, considered, and finalised.

14. Once a delegated authority lawfully exercises a power and communicates its decision, the doctrine of functus officio applies. The Appeal Authority has exhausted its jurisdiction and cannot lawfully reconvene, rehear, or reconsider an appeal already determined.

15. The relevant By-law, as communicated to you on numerous previous occasions, contains no empowering provision for a second appeal or rehearing mechanism.

16. Any attempt to hold a further “appeal hearing” would therefore be ultra vires, inconsistent with both the By-law and SPLUMA, and invalid from inception.

-
17. We have on multiple prior occasions alerted the Municipality to this jurisdictional bar. Mr Smit, acting under lawful delegation, confirmed in writing that the matter had been finalised.
18. The Municipality is therefore fully aware that it lacks lawful authority to reconvene or rehear the appeal.
19. For the reasons set out above:
- 19.1. The delegation under P.136 was valid and enforceable in law.
- 19.2. Mr Smit acted within the scope of lawful delegated authority.
- 19.3. The appeal was lawfully determined and finalised on 15 October 2025.
20. The Municipality is functus officio.
21. Any further attempt to convene or rehear the appeal would constitute ultra vires conduct.
22. We therefore require written confirmation **within 5 days** that the Municipality will not proceed with any further purported appeal process in respect of this matter.
23. Failing receipt of the aforesaid written confirmation within the stipulated period, our client has instructed us, without further notice, to approach the Western Cape Division of the High Court on an urgent basis in terms of the Promotion of Administrative Justice Act 3 of 2000 ("PAJA") for declaratory and interdictory relief restraining any further ultra vires conduct, alternatively for review relief setting aside any unlawful reconsideration of the finalised appeal, together with a costs order on the scale as between attorney and client.
24. Be guided accordingly.

Yours sincerely



Marius Botha



Collab Ref: 2836280
File ref:

11 February 2026

Marius Botha Attorneys
335 Watsonia Avenue
Boschenmeer Estate
Paarl
7620

Email: marius@mhblaw.co.za

PROCEDURAL CLARIFICATION: APPEAL VALIDITY DETERMINATION REGARDING THE STATUS OF THE ADMINISTRATIVE DECISION TAKEN ON THE APPEAL APPLICATION BY THE NOETZIE CONSERVANCY ON FARM 394 NOETZIE

This letter serves to formally address the procedural status of the decision declaring the appeal lodged by the Noetzie Conservancy invalid.

Upon review of the applicable legislative framework, including the Knysna Municipality Spatial Planning and Land Use Management By-law and the Municipality's delegation system, it has been established that the authority to determine the validity of an appeal is vested exclusively in the designated Appeal Authority. The decision communicated by the Manager: Land Use Management was therefore issued outside the scope of delegated powers.

Consequently, the determination of invalidity constitutes a procedurally irregular administrative act and cannot stand as a lawful decision. This irregularity arose from an administrative oversight and not from an intention to contravene prescribed governance procedures.

In order to ensure compliance with principles of administrative justice, legality, and due process, the matter will be referred to the properly delegated Appeal Authority for consideration and determination in accordance with the governing legal framework.

The Municipality remains committed to maintaining procedural integrity and lawful decision-making and regrets any uncertainty that may have resulted from this irregularity.

Yours faithfully

Cllr Thando Matika
EXECUTIVE MAYOR
APPEAL AUTHORITY: KNYSNA MUNICIPALITY



Mosdell, Pama & Cox

Attorneys • Notaries • Conveyancers

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Your ref: Marius Botha

Our ref: PP/PP4819

04 March 2026

EMAIL TRANSMISSION

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TO: Marius Botha Attorneys

EMAIL ADDRESS: marius@mhblaw.co.za

NUMBER OF PAGES: 2 (Including this one)

Dear Sir,

RE KNYSNA MUNICIPALITY // PROCEDURAL STATUS OF APPEAL – REMAINDER OF FARM 394 NOETZIE, VALIDITY OF DELEGATED DECISION AND LACK OF JURISDICTION TO RECONVENE APPEAL

1. We refer to your letter dated the 24th of February 2026 and advise that we have received an instruction from the Acting Municipal Manager to provide assistance and advice to the appeal authority in the above matter.
2. We attach hereto for ease of reference, a letter by the Executive Mayor to you dated the 11th of February 2026 which sets out the Executive Mayor's position as well as the two relevant pages of the delegation authority to which you refer.

Mosdell Pama and Cox Inc (Registration Number: 2010/016500/21)

Directors: Perino Pama, BA LLB LLM • Andrew Cox, BA LLB • Melony Palse, LLB
Stacey Bartlett, LLB (Non-Executive Director)

Associates: Julie Maynard B Com LLB (cum laude) H. Dip (Tax) • Kiana Venter LLB • Sonja Oelofse LLB

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3. You will note that the Executive Mayor is firmly of the view that the validity of the appeal is vested exclusively in the designated Appeal Authority as per P144 of the register of delegated powers to which you refer.
4. The only power delegated to the Manager of Land Use Development is in relation to the receipt of appeals. Our instructions are that Mr Smit had no authority, delegated or otherwise to dismiss the appeal. Mr Smit is not the Appeal Authority. His ruling should therefore be regarded as *pro non scripto* and the Appeal Authority is therefore *not functus officio*.
5. It is important to note that Mr Hennie Smit confirmed the appeal was valid via email to Melanie Gosling on the 3rd of March 2025.
6. In the circumstances, the Appellant will be given adequate notice of the sitting of the Appeal Authority and will be permitted to attend and make representations.
7. We trust you will be guided accordingly.
8. Kindly acknowledge receipt.

Yours faithfully,

MOSDELL PAMA AND COX
PERINO PAMA

Sent electronically, so not signed.
A signed copy will be sent on request.

Mosdell Pama & Cox Attorneys
Attention: Perino Pama
Email address: perinopa@MPC.LAW.ZA

23 March 2026

Dear Sirs

**RE: KNYSNA MUNICIPALITY / PROCEDURAL STATUS OF APPEAL – REMAINDER OF FARM
394 NOETZIE, VALIDITY OF DELEGATED DECISION AND LACK OF JURISDICTION TO
RECONVENE APPEAL**

We refer to your email of 4 March 2026 and respond as follows:

1. The register of delegated powers, and in particular item P136, deals with two aspects arising under the Knysna Municipal Spatial Planning and Land Use Management By-Law, 2021, namely the lodging and serving of appeals as contemplated in section 79(7), and the procedure relating to appeals as governed by section 80, including the requirements for the validity of an appeal in terms of section 80(1) and 80(2).
2. Authority in respect of both of these aspects has been delegated to the Manager: Land Use Management, being in this instance Mr J.H. Smit. He accordingly had the necessary authority to determine whether the appeal lodged complied with the requirements prescribed by the By-Law and was validly before the Municipality. That is precisely what he did in the present matter. It is furthermore our instructions that this has also been the position and practice adopted by the Municipality in previous matters.
3. In the circumstances, and for the reasons already set out in our previous correspondence, Mr Smit's determination of 15 October 2025 constituted a decision taken by a duly authorised official acting within the scope of a valid delegation. That decision disposed of the appeal and rendered the matter finalised.
4. Should the Municipality nevertheless elect to proceed with any further purported hearing or reconsideration of the appeal, despite this correspondence and our earlier correspondence in which the legal position has been clearly set out, our client will persist in its contention that any such conduct is unlawful, *ultra vires* and susceptible to review. In that event, the Municipality's

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decision to proceed despite having been expressly alerted to the jurisdictional difficulty will be placed before the Court in any review proceedings instituted on behalf of our client.

5. If, notwithstanding the foregoing, the Municipality's position is that it intends to proceed with the appeal, then we call upon it to make that position plain without delay and to furnish us with proposed dates for the hearing, allowing for not less than three weeks' notice in order to enable our client and counsel to make the necessary arrangements to attend.

6. We await your urgent response in this regard.

Yours sincerely



Marius Botha

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Knysna Municipality
Attention: Liesl Bailey
Chief Clerk: Land Use Management
Email: lbailey@knysna.gov.za

12 June 2026

Dear Sirs

RE: APPEAL – 23 JUNE 2026 - REMAINDER OF FARM 394 NOETZIE

1. We refer to above appeal set down for 23 June 2026
2. We request that the following documentation be inserted in the Agenda:
 - 2.1 Letter from JH Smit – Manager: Land Use Management of Knysna Municipality to Noetzie Conservancy Owners' Association dated 15 October 2025.
 - 2.2 Letter from Planning Space Town and Regional Planners to H Smit – Knysna Municipality dated 04 November 2025, with Subdivision Plan NOET394SUB6Rev 1 attached.
 - 2.3 Letters from Marius Botha Attorneys to Knysna Municipality dated 05 December 2025; 19 January 2026; 12 February 2026 and 24 February 2026 respectively.
 - 2.4 Letter from Mosdell, Pama & Cox Attorneys to Marius Botha Attorneys, dated 04 March 2026.
 - 2.5 Letter from Marius Botha Attorneys to Mosdell, Pama & Cox Attorneys, dated 23 March 2026.
3. We attach hereto copies of the abovementioned documentation.
4. We furthermore request your confirmation that the proceedings will be electronically recorded and that your offices will provide the parties with transcribed minutes of the proceedings after conclusion thereof.

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Yours sincerely



Marius Botha

TRANSCRIPTION OF
1 x RECORDING

APPEAL HEARING OF THE FARM NOETZIE 394, KNYSNA-20260623.mp4

Date
23 June 2026

Counsel
Advocate G Potgieter

Instructed By
Ms Botha

Attorney
Mr Perino Pama

Pages
23

Case Number
Unknown

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1 **TYPIST NOTE: Where no clear annotations were furnished names were**
2 **spelt phonetically. No grammar corrected. Parties speaking**
3 **softly/fast/mumbling and over-talking resulted in inaudible words.**

4 **START TRACK: APPEAL HEARING THE REMAINING EXTENT OF THE**
5 **FARM NOETZIE 394, KNYSNA.mp4**

6 **MR PAMA**: Alright so my name is Perino Pama. This is the, the appeal
7 hearing has started everybody's got plans to catch up so if you don't mind I'm
8 going to just jump straight into it. Mrs Gosling (?) with your permission I would
9 like to ask the advocate to just explain the sequence of events that would take
10 place and what exactly will be registered and you then will have an opportunity
11 to respond and object if you're not comfortable. Would that be acceptable?
12 Normally you would start but with your permission if they, if the advocates
13 could just explain the, what they propose doing and then we'll take it from
14 there. If you could just introduce yourself (inaudible).

15 **MR POTGIETER**: Certainly. Thank you Mr Pama. I'm Advocate Potgieter.
16 My initial is G. I'm a member from the Cape Bar and I'm instructed by Ms
17 Botha. We act for the landowner Pezula Private Estate (Pty) Ltd.

18 **MR PAMA**: You may continue.

19 **MR POTGIETER**: Thank you. Mr Pama I believe we've made some headway
20 with regards to the appeal. If I can perhaps then refer the panel first to the
21 actual appeal that was filed by the appellant that's at page 29. There was a
22 record circulated by email and I'm referring to that bundle. The condition which
23 is the subject of this appeal is the subdivision condition approved by council
24 condition 2C. And it has regards to the Knysna municipality which requires
25 that the landowner must secure public access to the beach and public parking

1 by way of servitudes. The appeal that was lodged and I read is we submit that
2 the servitudes must be registered prior to the subdivision to ensure they are
3 legally binding and enforceable against current and future owners of the
4 property. After discussion submissions were made to the appellant which I
5 understand and I accept that they have accepted and they can correct me if
6 I'm wrong. But the sequence of these events is subject to the legislative
7 framework i.e. section 20 of the bylaw which means that the servitudes cannot
8 be registered prior to the subdivision but the conditions i.e. the servitudes will
9 have to be registered with the subdivision and cannot be ignored because that
10 is what the legislator provided for. So as far as the timing of the registration of
11 the servitudes is concerned I believe that issue has been resolved to a certain
12 extent. The other issue that was raised is whether these public, whether these
13 servitudes will be registered in favour of the public. Condition 2C doesn't
14 necessarily provide in so many words that it has to be a public servitude.
15 However the subdivision plan and I will ask Ms Botha to just explain those
16 servitudes, the subdivision plan clearly reflect that those servitudes will be
17 registered in favour of the public so it is a public servitude. Although the
18 condition doesn't provide for it what one has to look at is the implementation
19 of that conditions and that implementation manifests in the subdivision plan.
20 Ms Botha if you can just refer them to the actual servitudes I think if we place
21 that on record.

22 **MS BOTHA**: Thank you Advocate Potgieter.

23 **MR PAMA**: Before you continue Mrs Botha the, that actual plan that you are
24 going to refer us to is it part of our agenda?

25 **MS BOTHA**: I think that is part of the agenda ja.

1 **MR POTGIETER**: Just give us a, Mr Pama if you can maybe assist with this.

2 **MR PAMA**: It is part of the bundle that I requested Ms Bailey to include last
3 week and it was included I think from page 94 onwards or something like that.

4 **MR POTGIETER**: Could I ask maybe if we could have six copies made of that
5 plan? Is it possible? One for everybody in the room so that we just all look at,
6 because that's a very good copy, I don't, do you have a colour copier? Is there
7 a, do you have a colour copier that you could make?

8 **MS BOTHA**: Ja.

9 **MR POTGIETER**: How many copies do we need? We need two there, one
10 for myself anybody else want a copy? Mrs (inaudible)? Six copies please and
11 then we all know we're talking about the same. So that, I'm sorry to interrupt
12 you but I think it's just going to be better for us all to have a good copy of the
13 plan in front of us. Because some of the writing on the plan is quite small.
14 Alright and then while we're waiting if you can just explain what the plan says.
15 Or you can wait, we can wait for the plan and just get one so long unless we
16 can project it on screen I don't know if that's possible.

17 **MS BOTHA**: I think that's also possible but let me continue. So the next step
18 for us is to submit this plan. So this is still a proposed plan that is our proposal
19 on how to deal with the vagueness of public access and parking and all of that.
20 So we have actually provided for nine servitudes on this plan of which three
21 are public. The rest, I don't know if you want me to read all of them because
22 most of them are private as existing accesses to private properties for example
23 to the east there's a few houses that needs extra roads and things which is
24 already built which we're protecting. There's the river, people that have several
25 servitudes over the property that's on this plan as well. There is the, I'm going

1 to just read the public ones or do you want me to read all of them?

2 **MR POTGIETER**: No, no just the public ones please.

3 **MS BOTHA**: Okay so ...(intervenes).

4 **MR POTGIETER**: And just describe ...(intervenes).

5 **MS BOTHA**: Because there's water pipelines, there's a whole lot of things
6 that we need to protect.

7 **MR POTGIETER**: The public ones are the ones.

8 **MS BOTHA**: Okay so the one that I think is most important is the public access
9 servitude which allow, aligns with the existing public road that leads from the
10 boundary of the properties. This is now in the north to the beach which
11 includes the wagon route going all the way down. So it's from from this where
12 Noetzie township basically starts until you get to the beach where that small
13 parking lot is and including that parking lot. Feedback from the survey general
14 regarding the status of the road as depicted on GP 19 confirmed that this is a
15 topographical feature rather than an actual road reserve. So we are putting
16 the exact road in the road reserve. So that whole road which is your main
17 access is predicted by public access servitude. The wagon road and the road
18 up to where the Noetzie township basically starts. You'll see you in a minute
19 on your plan. So ...(intervenes).

20 **MR PAMA**: You don't, I know you feel like you're in a rush but you're talking
21 very quickly. If you can just talk loudly and you can slow down a bit because
22 what you're saying now is critical this part ja.

23 **MR POTGIETER**: The plan is at page 96.

24 **MS BOTHA**: Okay ja the proposed plan is on page 96 if you want to. It's a
25 black and white copy but it will give you some understanding. So the bottom

1 line is the exact, the position of the existing tar road that leads to the parking
2 and then all the way down, down the wagon road to the small parking at the
3 bottom which that reserve was I think done like 20 years ago or something by
4 you and the municipality. So that remains in place. That will become, no that's
5 not number 7 so that would be number, that is number, sorry they took my plan
6 away.

7 **MR PAMA**: Number 3.

8 **MS BOTHA**: Number 3 and also number 1. (inaudible) Okay.

9 **MR PAMA**: All my fault for taking your plan away. There we go.

10 **MS BOTHA**: So that is number 3.

11 **MR PAMA**: Is it (inaudible) to it.

12 **MS BOTHA**: Oh sorry (inaudible) if you can just pass on. Dankie. So
13 everybody has a plan in front of them. There's Portion number 3.

14 **MR PAMA**: Okay.

15 **MS BOTHA**: Which is the wagon road. And then there's annotation number
16 9 which presents the, a public road as well. So we can put this actually in
17 servitudes or we can put it in erven that will be transferred to the municipality.
18 So either way it will be public road.

19 **MR PAMA**: So you don't mind doing a vesting transfer or a servitude?

20 **MS BOTHA**: No those roads vests in any way so.

21 **MR PAMA**: Ja it vests anyway.

22 **MS BOTHA**: It vests anyway. So we can do it with a servitude. If they prefer
23 a servitude or they prefer a road it's not really.

24 **MR PAMA**: Ja.

25 **MS BOTHA**: We just do a servitude because it's easier from us. Otherwise

1 we cut the property into two. Then we have to create two different areas of
2 the same.

3 **MR PAMA**: The only thing is and once again I'm not a conveyancer but a
4 vesting transfer would you have to do a, would you have to change your
5 subdivision diagram to survey the actual area?

6 **MS BOTHA**: Yes and unfortunately this road bisects the property into two so
7 then I have to do a subdivision for another section. So I don't really want to
8 do that. That's not what we applied for initially so I would prefer public
9 servitude which is I think fine. It comes to exactly the same point.

10 **MR PAMA**: Okay is that, was that I was trying to understand the reason okay.

11 **MS BOTHA**: Ja so I think we can leave that, that is the public. The second
12 one we've discussed where the current road that leads to the public stairs that
13 is a private right-of-way in favour of Erf 20379 which is one of the castles. But
14 simultaneously it's also a public right-of-way or access by pedestrian. We call
15 it a walkway so that the public can walk down from the parking area to the
16 beach down the stairs. That's number 4. Then so that's the three public and
17 then the parking lot, the existing parking lot which is we define that as a
18 temporary servitude in favour of the general public providing access to and
19 use of the existing 18 parking bays currently located on the property with the
20 provision that should the registered owner of the subdivided erf number, this
21 is the future Erf 13493 at any time in the future wish to relocate or realign the
22 position of the parking, provision must be made to the satisfaction of the
23 municipality for access to and use of adequate alternative parking facilities for
24 18 bays.

25 **MR PAMA**: I can't read the text there in number 4. Can I just go back to

1 number 4 because I see the word private and I can't , it says (inaudible) just
2 read the text.

3 **MS BOTHA**: Okay so number 4 I'm sorry it is red and black, it's not very good.
4 It's a private way of servitude over Portion A on registered Erf 13493 in favour
5 of Erf 20379 Knysna and a public walkway following the same route to the
6 public stairs.

7 **MR PAMA**: Okay. Right.

8 **MS DUNWA**: The public will only walk down. They won't no vehicular access
9 on that road?

10 **MS BOTHA**: Ja there's no turning facility at the bottom. So it's impossible for,
11 they can't reverse up. So there's only pedestrian.

12 **MR PAMA**: Please continue. I'm interrupting you. Sorry.

13 **MS BOTHA**: No it's fine. That is actually, there's the other six servitudes are
14 all private servitudes that we have negotiated with private owners through the
15 years really which will now be on the plan and registered as part of the
16 subdivision.

17 **MR PAMA**: Advocate Potgieter do you want to add to that or are you finished
18 Mrs Botha?

19 **MS BOTHA**: Thank you.

20 **MR POTGIETER**: Thanks.

21 **MR PAMA**: Marius Botha do you want to say anything?

22 **MR BOTHA**: No.

23 **MR PAMA**: Alright Mrs Golsing, Melanie do you want to (inaudible)?

24 **MS GOSLING**: Well if I understand correctly that there will be a public
25 servitude down the wagon road registered in favour of the public and there

1 would be a public servitude or pedestrians, a public pedestrian servitude down
2 the access road to the castle Erf 20379 I think it is, and then down the public
3 steps.

4 **MS BOTHA**: Correct.

5 **MS GOSLING**: So those are going to be public, public, public and it's going
6 to be registered and on the title deeds does that?

7 **MS BOTHA**: Yes correct ja.

8 **MS GOSLING**: Okay.

9 **MR PAMA**: And it will be on the subdivision diagram which will be registered
10 with the SG's office provided the conditions are met.

11 **MS GOSLING**: There is one small passageway that we also said should be
12 registered as a public servitude and that is to the west in between two erven.
13 I think you'll know what they are. I haven't got all my documents now, which
14 Lisa Marie you said didn't need to be registered because that means, or put
15 on the subdivision plan because just because it's not registered doesn't mean
16 it's going to go away. Well in our experience if things aren't written down and
17 put on plans they will go away.

18 **MR PAMA**: If you could maybe just explain where that is.

19 **MS BOTHA**: It's got such a small, this little one ja.

20 **MS GOSLING**: But this is (inaudible) the thoroughfare.

21 **MS BOTHA**: Ja but it's very public. (inaudible)

22 **MS GOSLING**: So is it a public?

23 **MS BOTHA**: Yes.

24 **MS GOSLING**: Okay cool. (inaudible).

25 **MS BOTHA**: (inaudible) This is all already public and (inaudible).

1 **MS GOSLING**: So then thank you. What we are, what we don't, what the
2 NCOA doesn't accept that it's a temporary servitude or a temporary
3 ...(intervenes).

4 **MS BOTHA**: The parking area.

5 **MS GOSLING**: The parking area.

6 **MR PAMA**: But I don't think there's a suggestion that it would be temporary or
7 not?

8 **MS GOSLING**: It is definitely a suggestion. She's just read it out that it could
9 be moved.

10 **MR PAMA**: Could you comment on that please?

11 **MR POTGIETER**: The parking area which servitude is that? Which number?

12 **MS BOTHA**: Number 8.

13 **MR POTGIETER**: Number 8 is indeed a temporary servitude.

14 **MR PAMA**: What does that mean?

15 **MS BOTHA**: The reason why we decided to put it up as a temporary servitude
16 is because it gives us an opportunity to in the future, we're not talking about
17 now, but if there is a road alignment or a better place for the parking or
18 whatever the future holds it is not a, it's not public land but we are giving it to
19 be used.

20 **MR PAMA**: So you're reserving your rights to ...(intervenes).

21 **MS BOTHA**: Ja we're not denying the ...(intervenes).

22 **MR PAMA**: Apply for an amendment?

23 **MS BOTHA**: When it's ready and there will be conditions relating to if there is
24 in the future say another proposal this will become a condition of the proposal
25 that they have to provide the access. But if it's maybe moved to 2 metres as

1 well that means that it just gives us a bit of leeway.

2 **MR PAMA**: I'm just going to give the mayor an opportunity to take it from here.

3 **MR MATIKA**: No, no you've been holding it quite well. Good afternoon
4 everyone. My name is Thando Matika so that it's on the record. Number 8
5 because I see it says that temporary parking servitude. And I think it's one of
6 the bone contestation in terms of the public that is there no way we can remove
7 temporarily then you know that it's a public parking space servitude. Because
8 the parking will always be needed. There's no way that the parking will not be
9 needed. As much as the access go to the, there is an access but parking is
10 always going to be needed. So I think the parking cannot be temporarily
11 because the parking would always be needed as long as there is an access to
12 the sea. So the parking is always going to be needed.

13 **MR POTGIETER**: We know that parking is required, it has to be provided. It
14 is provided now in terms of the current parking area. What this says is if, if in
15 future there is a development plan a servitude is now registered in favour of
16 the public and if the developer or an owner in future wishes to relocate that
17 parking he must make provision for a relocation to the satisfaction of the
18 Knysna municipality.

19 **MR PAMA**: So what ...(intervenes)..

20 **MR POTGIETER**: If they don't give that approval for a relocation it cannot
21 happen.

22 **MR PAMA**: May I suggest that you just slight change the diagram slightly then
23 instead of calling it a temporary just put a little note here somewhere in the
24 plan say that you reserve your rights to make an application in the future to do
25 that. Would that be acceptable or wouldn't it work for you?

1 **MR POTGIETER**: But you would have to follow ...(intervenes).

2 **MS BOTHA**: It's very difficult to change the public servitudes once it's
3 permanent and that's what we don't want.

4 **MR PAMA**: Okay but what I suggest is then you just put a note on the plan
5 just to say that, to explain what you're saying you know that you reserve the
6 right to apply in the future. Would that be acceptable mayor? Because they
7 would have to follow a process.

8 **MR MATIKA**: Ja.

9 **MR PAMA**: Sorry I must apologise for not introducing you properly but
10 everybody gives me such a fright that they've got to leave by quarter past and
11 he's got to, everybody seems to have planes to catch.

12 **MR MATIKA**: Fine no problem.

13 **MR PAMA**: Please forgive me for not introducing you properly.

14 **MR MATIKA**: I also have a plane to catch to Joburg.

15 **MR PAMA**: Ja.

16 **MR MATIKA**: Ja thank you.

17 **MR PAMA**: Maurius what do you suggest would be a workable solution there?

18 **MS BOTHA**: We can add an annotation to the plan, the plan actually comes
19 with an explanatory letter that we will submit to the municipality.

20 **MR PAMA**: Okay.

21 **MS BOTHA**: Once we can proceed after this appeal is resolved.

22 **MR PAMA**: If you can, I mean that I mean whichever way you go you'd have
23 to go through a process but at least then you, you've overcome the, you know
24 showing that you would like to apply in future but you'd have to, but you accept
25 that you'd have to follow a process to do that.

1 **MS BOTHA**: I accept that ja.

2 **MR PAMA**: Something like that. Look I think sometimes you know sometimes
3 one can't solve all of your problems but I think we've come pretty close unless
4 I'm seeing things incorrectly here.

5 **MS GOSLING**: It's Melanie Gosling. We're not happy with that because a
6 new development could come as there was already a development proposal
7 and they had uses for that area already. Now if you look at that see the reason
8 that that started becoming a public parking place 100 years ago or more was
9 when ox wagons used to park their (inaudible) it's about the only level area
10 that's close to the beach. And already people have to walk far because that's
11 just the nature of the topography. But I think that this could mean that it could
12 be moved to a place that was entirely unsuitable. And what we're trying to do
13 here is to ensure that we don't have to as the public go to court and spend a
14 lot of money trying to secure what is in, that what is already the public. And I
15 just want to say that I do want to bring this point forward is that Chair the
16 tribunal we say committed a fatal error of fact and law that treated this private
17 land portion A to be subdivided as entirely unencumbered. But it ignored the
18 fact that the parking area and the public pedestrian path to the municipal steps
19 on this side have been used continuously without requiring permission from
20 time immemorial. And under South African common law doctrine of the Tustas
21 (?) this immemorial public use establishes a finding public servitude and these
22 servitudes run with the land, they can't be unilaterally raised by a subdivision
23 application and Pezula brought, bought the land knowing because they're
24 visible that these rights were there. And the public servitude created through
25 immemorial users the Tustas is a legal encumbrance that binds the land

1 automatically and it exists independently of the deeds office. And the applicant
2 and the municipality are aware of these existing rights because of the
3 continuous visible public use. So we want to secure that now that it's a public
4 parking area.

5 **MR PAMA**: Ja but you must remember and I'm unfortunately going to refer to
6 what we were discussing outside the room. You know we're trying to avoid
7 bogging this tribunal down in technical arguments about whether appeals are
8 valid or not and trying to achieve what's in the best interest of the town, of the
9 people that use that land that's also fair to the private developers in the area.
10 But Maurius is there any merit in you guys caucusing on this point?

11 **MR BOTHA**: Mr Pama maybe I can just adjust the history a little bit.

12 **MR PAMA**: Okay.

13 **MR BOTHA**: This parking area was leased by the owners of the land to the
14 Eden municipality years ago.

15 **MR PAMA**: Okay.

16 **MR BOTHA**: The Eden municipality did not pay the lease as they were
17 supposed to. The lease were terminated etcetera. The landowner allowed
18 parking to continue.

19 **MR PAMA**: Okay.

20 **MR BOTHA**: The land, this is private land. So the landowner acknowledges
21 that parking is an issue. And we say we will leave it there for the moment.
22 Nobody has any plans for development. We understand that parking has been
23 there and we must provide for it. So we say let's do a temporary servitude in
24 favour of the public. If at any time anybody that owns that subdivided piece of
25 land wants to develop it, it is recognised that that 18 parking bays is there.

1 And it has, if they want to relocate it, it must be relocated to a place which is
2 to the satisfaction of the Knysna municipality. And I believe we are protecting
3 the rights of the owner, we are protecting the rights of the public and we're
4 protecting the rights of the Noetzie Owners Association.

5 **MR PAMA**: If I may just ask it's been there longer than 30 years. So the rights
6 have prescribed? During that time.

7 **MR BOTHA**: Yes.

8 **MS BOTHA**: Ja.

9 **MR PAMA**: Within the 30-year period?

10 **MR BOTHA**: Yes.

11 **MS BOTHA**: Ja because it's been leased and then they didn't pay and then
12 we actually approached the municipality to lease it again and they didn't want
13 to.

14 **MR PAMA**: But do you feel very strongly about this point?

15 **MR BOTHA**: Well I think it's, where it's located will be acknowledged. It will
16 be continued as it has been.

17 **MR PAMA**: Ja.

18 **MR BOTHA**: And if somebody wants to change it in the future it's not for them
19 to decide it's for the municipality to decide what they will accept.

20 **MR PAMA**: And they would have to make an application and ...(intervenes).

21 **MR BOTHA**: Exactly (inaudible).

22 **MR PAMA**: And neighbours would have to be notified and this whole process
23 would come again.

24 **MR BOTHA**: As part of a development proposal.

25 **MR PAMA**: How do you feel about that Mrs Gosling?

1 **MS GOSLING**: Why do that when you can sort it out now?

2 **MR PAMA**: Well he's just explained why.

3 **MS GOSLING**: Well the thing is this goes back far further than 30 years, far
4 further than that lease agreement. I mean we've got photographs of cars that
5 were from the 1930s, 1940s on that land. Yes it was private land but it never
6 ever was contested that we couldn't use it, that the public couldn't use it. And
7 therefore prescriptive rights and the Tustas rights and all of that says that this
8 actually belongs to the public.

9 **MR PAMA**: I'm just going to ask somebody else on my board to just contribute.
10 Maybe Mr Schmidt do you want to come in here or (inaudible)?

11 **MR SCHMIDT**: Ja I just would like to say should there be any development
12 proposal in future it needs to go through a legal process and provide everyone
13 with the opportunity to comment and object. And then if there's objections it
14 will have to go to the tribunal again.

15 **MR PAMA**: Mmm.

16 **MR SCHMIDT**: And then the other thing is the the running scheme is bylaws
17 quite clear you need to provide parking. So what if, if should there be a future
18 development there needs to be provided parking as required by the zoning
19 scheme bylaw.

20 **MR PAMA**: And they're going to struggle to get past that.

21 **MR SCHMIDT**: So I think the public interest is protected here by the bylaw
22 requirements. For any future plans if there is any.

23 **MR PAMA**: (inaudible) am I pronouncing your name correctly Mrs Dutwa?

24 **MRS DUNWA**: (inaudible).

25 **MR PAMA**: Dunwa. Sorry I've got it here.

1 **MRS DUNWA**: Ja I get what Miss Gosling is saying but as has the
2 presentations been given that the municipality will still have a say in terms of
3 the applications should there be any development that is taking place. So I'm
4 comfortable.

5 **MR PAMA**: Mayor has already expressed and asked a question. Do you want
6 to add anything further?

7 **MR MATIKA**: No I think I've just, I've already expressed and asked my
8 question.

9 **MR PAMA**: And the municipal acting (inaudible). So this issue is not, is this
10 issue before us Advocate Potgieter? It's not really before us on appeal?

11 **MR POTGIETER**: Mr Pama so yes thank you. So as a departure point no it
12 is certainly not before this panel as an appeal. But in any event what the
13 appellant is asking of this panel to do is to deal with a possible hypothesis in
14 future saying that there might be a scenario where they are not satisfied with
15 public parking should the public parking be moved. With the greatest respect
16 we can, we, the panel and the applicant to the subdivision application cannot
17 be expected to deal with every possible permutation that the appellant can be
18 unsatisfied for in the future. Currently they have done what they can to protect
19 the public interest and 100% this whole process if there is an amendment to
20 the servitude in future it will be subject to the local authority and the
21 participation process which we know again is provided for by the legislator.
22 And Ms Gosling or the association will be full within their rights to then object
23 if they are dissatisfied. They might just as be the situation where they are not
24 dissatisfied in future when the amendment to the servitude manifests. They
25 might very well be very happy with that.

1 **MR PAMA**: But they have to some extent achieved what they want which is a
2 public servitude which on its own you're going to have to persuade, you're
3 going to have to a very good reason why you want to change that. And it'll be
4 subject to review by a high court. So I mean it's almost like your default zone
5 now is it's a public servitude.

6 **MR POTGIETER**: You're 100 correct Mr Pama. They have achieved 100%.

7 **MR PAMA**: What they want.

8 **MR POTGIETER**: What they want on the facts that are actually alive before
9 us.

10 **MR PAMA**: Ja.

11 **MR POTGIETER**: On a possible permutation which we don't know ever will
12 exist then perhaps they have a reservation. But my suggestion is let's get
13 there and then when we get there there will be a process to deal with them.

14 **MR PAMA**: Are there any other issues in relation to the appeal that we need
15 to discuss from a procedural point of view or a cost point of view?

16 **MR POTGIETER**: We we won't persist with any cost argument Mr Pama but
17 if the appeal is proceeding in any way then certainly we reserve our right to
18 deal with the fact that we say this is not a valid appeal first of all. And second
19 of all a decision was made and that decision stands in terms of Oudekraal and
20 needs to be reviewed and set aside before an appeal can proceed. But that's
21 just for the record purposes.

22 **MS GOSLING**: If I understand correctly a temporary servitude is, it's not
23 registered anyway.

24 **MR PAMA**: It will be registered.

25 **MS GOSLING**: It will be registered.

1 **MR PAMA**: Exactly the same as all the others.

2 **MS GOSLING**: With (inaudible).

3 **MR PAMA**: It'll be a public, it'll be a public servitude. Any future hypothetical
4 scenario where somebody wants to change it, they've got to go to the
5 municipality, they've got to follow the town's laws, that you can object. If you're
6 still not happy you can take it on review. So you basically have achieved
7 everything you've wanted to achieve. I honestly think we're 99% on the same
8 page here and that's why I asked for a meeting before the hearing. Well but I
9 mean you know I mean.

10 **MS GOSLING**: So temporary, if this is sold in two months then and somebody
11 puts in an application and they want to use that for a helicopter pad or whatever
12 then ...(intervenes).

13 **MR PAMA**: Or whenever it's gone before this board and it's been accepted
14 that it's a public right of way. And their onus is very very high and very difficult.
15 Right now the way I understand what Ms Botha is saying is that it was private
16 land, they tried to lease it. They're accepting, they're willing to treat it right now
17 as a public right-of-way registered over the temporary public right-of-way over
18 the title deed. I think you've done a good service to your community. I think
19 you can be very happy with what you've achieved.

20 **MS GOSLING**: Can I then ask that this is written down so that, because we've
21 got to report back so that ...(intervenes).

22 **MR PAMA**: You will get minutes of this meeting. Excuse me for talking on
23 behalf of everybody but you'll get minutes of this meeting. Every word will be
24 recorded. There's like 12 of us that have got minutes of the meeting. And
25 you've got the actual plan which records it.

1 **MS GOSLING**: Okay.

2 **MR PAMA**: You just confirm the tape is working there are no problems with
3 the recording?

4 **MS DUNWA**: Ja it's on.

5 **MR PAMA**: Standard procedure you'll get it verbatim.

6 **MR SCHMIDT**: Sorry Mayor I think for the record we must just make reference
7 to the plan number so we, you know what plan we're referring to.

8 **MR PAMA**: Ja that's a good. So the plan number that will be submitted for for
9 approval is plan number, it's at that, which one is it, 394 SUB 7? You might,
10 but you might make a note there if you wish in relation to the interpretation of
11 the temporary servitude.

12 **MS BOTHA**: I'm just going to add an annotation to number 8.

13 **MR PAMA**: To numb er 8 ja.

14 **MS BOTHA**: Ja.

15 **MR PAMA**: Just explain what is discussed here.

16 **MS BOTHA**: I will.

17 **MR PAMA**: I want to thank everybody for the way in which this meeting has
18 been handled. Is there anything further we need to discuss?

19 **MS GOSLING**: I just hope that I've understood it correctly.

20 **MR PAMA**: You don't, Julie is very clear. I can see she's crystal clear as to
21 what's going on here. And I can understand why you don't trust things because
22 of the history of litigation. But I think we've achieved something today. Is that
23 it?

24 **MR POTGIETER**: Thank you Mr Pama. Nothing from our side. Just so that
25 we also understand the status of this appeal then.

1 **MR PAMA**: Well that's a very difficult question that you're asking.

2 **MR POTGIETER**: But a very necessary one.

3 **MR PAMA**: Well what is, I think the parties have agreed on the, the parties
4 have entered into an agreement to submit plan number 394 SUB 7 with the
5 annotation as described and have resolved all disputes between them that you
6 are not seeking an order of costs in view of the agreement entered into. I don't
7 think it's a question of upholding the appeal or dismissing the appeal. I think
8 the parties have just reached, but, but I think you need to address (inaudible)
9 on that because I'm actually not clear my mind how to address that. Maybe
10 you can give us some ideas as to what you think would be appropriate.

11 **MR POTGIETER**: Certainly so we obviously remain with the position that it
12 was an invalid appeal and it's an appeal that is not supposed to proceed. But
13 be that as it may with the greater picture we accept the agreement that was
14 reached. What is important for the applicant is for Mr Smit now to go ahead
15 and actually endorse this plan so that the applicant has already been tasked
16 to wait for more than a year with the subdivision plan, it needs to proceed, it
17 cannot longer wait with the process. So that is the why I pose this question.
18 We from the applicant's perspective, there is no valid appeal in any event, the
19 agreement we accept, we will keep to our end of the agreement. But then at
20 least if we can place on record and confirm that the process or the subdivision
21 can now proceed.

22 **MR PAMA**: Was this plan before the, was this particular plan before the
23 previous, before the previous decision making authority? So it's a plan that's
24 now been introduced now on appeal am I right?

25 **MS BOTHA**: The plan essentially was like this but we have changed it to

1 accommodate more of what the conditions requires of us.

2 **MR POTGIETER**: So I think the answer is no it was not before but it did now.

3 **MR PAMA**: So we're not basically dismissing the appeal. We're just, we're
4 going to have to record it as an agreement. Everybody's got a copy of the
5 plan. Nobody can dispute. Everybody's going to go home with the same plan.
6 Nobody can dispute it. So if this plan gets endorsed subject to the conditions
7 then we've got an agreement am I correct Mr Botha? You're satisfied with
8 that?

9 **MR BOTHA**: Yes.

10 **MR PAMA**: Ja so it's not ...(intervenes).

11 **MR POTGIETER**: Thank you Mr Pama.

12 **MR PAMA**: It's technically not either a dismissal of the appeal or a holding of
13 the appeal the parties have reached an agreement on the way forward and
14 the parties are on, once, and the objection will then be withdrawn once, if this
15 plan is approved in its current condition. Is that the understanding, is that
16 correct?

17 **MS BOTHA**: We cannot really get a plan endorsed if there's an appeal
18 hanging.

19 **MR PAMA**: So so may I suggest ...(intervenes).

20 **MS BOTHA**: So it has to be (inaudible).

21 **MR PAMA**: If you could just send us via email all of us the, so that we're all
22 copied in, the electronic copy with a notation and then the appellant can then
23 just confirm that that's in order and that the appeal is withdrawn on the
24 understanding that this particular plan is then put forward to the municipality
25 for approval. Is that, does that make sense?

1 **MR POTGIETER**: So it does make sense Mr Pama. I am however concerned
2 that we circulate an email and then we get an email back to say they are now
3 not satisfied with this agreement. So if we can perhaps then record that we
4 agree that this subdivision plan as it stands with the one annotation is the one
5 that will be put forward. In those circumstances the appeal is disposed of at
6 least.

7 **MR PAMA**: Oh no we're in agreement on that.

8 **MR POTGIETER**: Thanks.

9 **MR PAMA**: I think it would be in bad faith for either party to deviate from this
10 agreement and we're all very clear as to what the agreement is.

11 **MR POTGIETER**: Thank you Mr Pama then I'm satisfied.

12 **MR PAMA**: Ja.

13 **MS GOSLING**: Sorry Lisa Marie can I just say with the annotation what was
14 the annotation?

15 **MR POTGIETER**: The one you requested.

16 **MR PAMA**: The one you requested.

17 **MS BOTHA**: The one (inaudible) servitude (inaudible) understanding of it.

18 **MR PAMA**: But I just want to tidy it up nicely Lisa Marie just by distributing the
19 plan to everybody. Everybody's got a record of it so that the, but I mean if you
20 could just keep it exactly as is with that slight annotation please. And then I
21 will then, and then we'll just record that on. And then you just simply need to
22 say well that you accept that plan and as agreed at the hearing. And then Mr
23 Schmidt can endorse the plan. Alright? Thanks everybody. Have a good
24 weekend. And don't do anything I wouldn't do.

25 **MR POTGIETER**: Thank you.

- 1 (inaudible)
- 2 **MR PAMA**: I thought we were going to be here the whole day. (inaudible)
- 3 technical issues about whether an appeal is valid or not? (inaudible)
- 4 **END TRACK: APPEAL HEARING THE REMAINING EXTENT OF THE**
- 5 **FARM NOETZIE 394, KNYSNA.mp4**
- 6 **END OF RECORDING**



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Liesl Bailey

From: melanie gosling <melanie.gosling@gmail.com>
Sent: Thursday, 02 July 2026 09:48
To: Lizemarie
Cc: Liesl Bailey; Thando Matika; Director Planning; Hennie Smit; Perino Pama; Marius Botha; Kirsty Hofhuis; Anita Strydom; Perino PA
Subject: [inbox]Re: Addendum to Appeal Agenda: Correspondence

Good day,
We acknowledge receipt of the plan and will respond formally in due course.

Regards,
Melanie Gosling
NCOA

On Mon, Jun 29, 2026 at 1:14 PM Lizemarie <lizemarie@planningspace.co.za> wrote:

Hi all,

Please see the final subdivision and servitude plan as agreed to in the appeal hearing.

Kind Regards

From: Liesl Bailey <lbailey@knysna.gov.za>
Sent: Tuesday, June 23, 2026 10:06 AM
To: melanie gosling <melanie.gosling@gmail.com>
Cc: Thando Matika <tmatika@knysna.gov.za>; Director Planning <directorplanning@knysna.gov.za>; lizemarie@planningspace.co.za; Hennie Smit <hsmit@knysna.gov.za>; Marilyn Botha <mbotha@knysna.gov.za>; Zita Stevens <zstevens@knysna.gov.za>; Perino Pama <ppama@mpc.law.za>; Marius Botha <marius@mhblaw.co.za>; Kirsty Hofhuis <khofhuis@knysna.gov.za>; Genevieve van Briesies <gvanbriesies@knysna.gov.za>; Buziwe Mjamba <bmjamba@knysna.gov.za>; Anita Strydom <astrydom@knysna.gov.za>; Verlene Cloete <vcloete@knysna.gov.za>; Perino PA <perinopa@mpc.law.za>; Liziwe Dabula <ldabula@knysna.gov.za>; Gerthram Adams <gadams@knysna.gov.za>
Subject: Addendum to Appeal Agenda: Correspondence

Good day,

Kindly note that the attached document will form part as an addendum to the Appeal Agenda.

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



Liesl Bailey

From: melanie gosling <melanie.gosling@gmail.com>
Sent: Friday, 10 July 2026 10:59
To: Lizemarie
Cc: Liesl Bailey; Thando Matika; Director Planning; Hennie Smit; Perino Pama; Marius Botha; Kirsty Hofhuis; Anita Strydom; Perino PA; NCOA Committee Members
Subject: [inbox]Re: Addendum to Appeal Agenda: Correspondence

Good Morning Lizemarie,

We had hoped to send our response to you today, but will send it on Monday morning. As this is a new document, not tabled before by the KMPT, we circulated it to the NCOA committee and to those members who were invited to make oral submissions to the Tribunal, for their input. Trust this is in order.
Thanks so much!

Regards,
Melanie Gosling
NCOA 072 863 1425

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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



Liesl Bailey

From: lizemarie@planningspace.co.za
Sent: Friday, 10 July 2026 11:03
To: melanie.gosling
Cc: 'Marius Botha'; Hennie Smit; Perino Pama
Subject: RE: Addendum to Appeal Agenda: Correspondence

Hi Melanie,

It was my understanding that we all agreed during the appeal meeting that the plan presented and discussed was the final plan. As such, I do not believe there is any further need for comments.

Kind regards,

Kind Regards

Lizemarie Botha B.TRP - Pr. Pln 1234	 Planning Space Town and Regional Planners
C 082 855 1125	
E lizemarie@planningspace.co.za	
W www.planningspace.co.za	

From: melanie gosling <melanie.gosling@gmail.com>
Sent: Friday, July 10, 2026 10:59 AM
To: Lizemarie <lizemarie@planningspace.co.za>
Cc: Liesl Bailey <lbailey@knysna.gov.za>; Thando Matika <tmatika@knysna.gov.za>; Director Planning <directorplanning@knysna.gov.za>; Hennie Smit <hsmit@knysna.gov.za>; Perino Pama <ppama@mpc.law.za>; Marius Botha <marius@mhblaw.co.za>; Kirsty Hofhuis <khofhuis@knysna.gov.za>; Anita Strydom <astridom@knysna.gov.za>; Perino PA <perinopa@mpc.law.za>; NCOA Committee Members <committee@noetzie.co.za>
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Sent: Tuesday, June 23, 2026 10:06 AM

To: melanie gosling <melanie.gosling@gmail.com>

Cc: Thando Matika <tmatika@knysna.gov.za>; Director Planning <directorplanning@knysna.gov.za>; lizemarie@planningspace.co.za; Hennie Smit <hsmit@knysna.gov.za>; Marilyn Botha <mbotha@knysna.gov.za>; Zita Stevens <zstevens@knysna.gov.za>; Perino Pama <ppama@mpc.law.za>; Marius Botha <marius@mhblaw.co.za>; Kirsty Hofhuis <khofhuis@knysna.gov.za>; Genevieve van Briesies <gvanbriesies@knysna.gov.za>; Buziwe Mjamba <bmjamba@knysna.gov.za>; Anita Strydom <astrydom@knysna.gov.za>; Verlene Cloete <vcloete@knysna.gov.za>; Perino PA <perinopa@mpc.law.za>; Liziwe Dabula <ldabula@knysna.gov.za>; Gerthram Adams <gadams@knysna.gov.za>

Subject: Addendum to Appeal Agenda: Correspondence

Good day,

Kindly note that the attached document will form part as an addendum to the Appeal Agenda.

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



BE KNYS, SAVE WATER.
Every Drop Counts



 WATER LEAKS & MISUSE TO 060 998 7032    

Liesl Bailey

From: melanie gosling <melanie.gosling@gmail.com>
Sent: Friday, 10 July 2026 12:22
To: Lizemarie; Marius Botha; Perino PA; Thando Matika; Lulamile Mapholoba; Director Planning; Hennie Smit
Cc: Julian Gosling; Liesl Bailey; NCOA Chairperson; NCOA Committee Members; Robbie Robertson
Subject: [inbox]Some inaccuracies/errors in plan.

Hello Lizemarie,

Yes, we agreed to the proposals on the plan, but not that it was the final plan. We agreed that amendments needed to be made and that the amended plan would be sent to all parties before going to the Municipality. Unfortunately we were not able to read the details on the plan at the meeting because of the small print, but have been able to do so on the amended emailed version.

NCOA members have picked up some inconsistencies and inaccuracies on the amended plan, which we list in our response.

Some of these are basic errors like the incorrect erf number and date on the plan.

Our response will help you to correct the plan.

None of this will make any difference to the agreement reached in the meeting.

Once KM approved and registered with the Deeds Office, this plan will become a legal document and an historical record, so it is essential that it is accurate and historically correct.

KM cannot approve it as it stands now with errors and inaccuracies.

I did send all of you an email on 2nd July, acknowledging receipt of the amended plan, and saying that NCOA would respond shortly.

We had hoped that would be quicker. Sorry about the delay. It will be with you on Monday morning.

Warm regards,
Melanie Gosling
NCOA

On Fri, Jul 10, 2026 at 11:03 AM <lizemarie@planningspace.co.za> wrote:

Hi Melanie,

It was my understanding that we all agreed during the appeal meeting that the plan presented and discussed was the final plan. As such, I do not believe there is any further need for comments.

Kind regards,

Kind Regards

Lizemarie Botha
B.TRP - Pr. Pln 1234

C | 082 855 1125
E | lizemarie@planningspace.co.za
W | www.planningspace.co.za

Planning  Space
Town and Regional Planners

From: melanie gosling <melanie.gosling@gmail.com>

Sent: Friday, July 10, 2026 10:59 AM

To: Lizemarie <lizemarie@planningspace.co.za>

Cc: Liesl Bailey <lbailey@knysna.gov.za>; Thando Matika <tmatika@knysna.gov.za>; Director Planning <directorplanning@knysna.gov.za>; Hennie Smit <hsmit@knysna.gov.za>; Perino Pama <ppama@mpc.law.za>; Marius Botha <marius@mhblaw.co.za>; Kirsty Hofhuis <khofhuis@knysna.gov.za>; Anita Strydom <astrydom@knysna.gov.za>; Perino PA <perinopa@mpc.law.za>; NCOA Committee Members <committee@noetzie.co.za>

Subject: Re: Addendum to Appeal Agenda: Correspondence

Good Morning Lizemarie,

We had hoped to send our response to you today, but will send it on Monday morning.

As this is a new document, not tabled before by the KMPT, we circulated it to the NCOA committee and to those members who were invited to make oral submissions to the Tribunal, for their input.

Trust this is in order.

Thanks so much!

Regards,

Melanie Gosling

NCOA 072 863 1425

On Mon, Jun 29, 2026 at 1:14 PM Lizemarie <lizemarie@planningspace.co.za> wrote:

Hi all,

Please see the final subdivision and servitude plan as agreed to in the appeal hearing.

Kind Regards

From: Liesl Bailey <lbailey@knysna.gov.za>

Sent: Tuesday, June 23, 2026 10:06 AM

To: melanie gosling <melanie.gosling@gmail.com>

Cc: Thando Matika <tmatika@knysna.gov.za>; Director Planning <directorplanning@knysna.gov.za>; lizemarie@planningspace.co.za; Hennie Smit <hsmit@knysna.gov.za>; Marilyn Botha <mbotha@knysna.gov.za>; Zita Stevens <zstevens@knysna.gov.za>; Perino Pama <ppama@mpc.law.za>; Marius Botha <marius@mhblaw.co.za>; Kirsty Hofhuis <khofhuis@knysna.gov.za>; Genevieve van Briesies <gvanbriesies@knysna.gov.za>; Buziwe Mjamba <bmjamba@knysna.gov.za>; Anita Strydom <astrydom@knysna.gov.za>; Verlene Cloete <vcloete@knysna.gov.za>; Perino PA <perinopa@mpc.law.za>; Liziwe Dabula <ldabula@knysna.gov.za>; Gerthram Adams <gadams@knysna.gov.za>

Subject: Addendum to Appeal Agenda: Correspondence

Good day,

Kindly note that the attached document will form part as an addendum to the Appeal Agenda.

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



BE KNYS, SAVE WATER.
Every Drop Counts



 WATER LEAKS & MISUSE TO 060 998 7032

Liesl Bailey

From: melanie gosling <melanie.gosling@gmail.com>
Sent: Monday, 13 July 2026 14:50
To: Lizemarie; Thando Matika; Perino PA; Marius Botha; Director Planning; Lulamile Mapholoba; Hennie Smit
Cc: NCOA Chairperson; NCOA Committee Members; Robbie Robertson; Julian Gosling; Richard Moultrie; Eion BROWN; Buziwe Mjamba; Anita Strydom; Liesl Bailey
Subject: [inbox]NCOA response to new subdivision plan Portion A Erf 394
Attachments: Noetzie 31 Dec 2009.jpg; 1 GP N19 3031 commonage.TIF; NCOA response to new subdivision plan.docx; C3 1983 servitude NCOA comment.pdf; Noetzie Beach Caring Capacity Draft Report (1).pdf

Dear Lizemarie,

Here is the NCOA response to the amended plan, with attachments.

Melanie Gosling
NCOA
0728631425
melanie.gosling@gmail.com



NOETZIE CONSERVANCY OWNERS' ASSOCIATION

P.O. Box 336, Knysna, 6570

committee@noetzie.co.za

Comments and Corrections from the Noetzie Conservancy Owners' Association (NCOA) on Map: NOET394Sub7

Proposed Subdivision of the Remainder of the Farm Noetzie 394

13th July 2026

Dear Lizemarie

Thank you for the second plan emailed to the NCOA on 29/6/2026.

When the finalised diagrams and plans of the above matter are approved and registered they become legally binding documents and an historical record, so it is important to ensure they are accurate and historically correct.

The plan tabled at the meeting between the Appeal Authority, PPE and the NCOA on 23/6/2026 and the revised plan emailed to us both have the same number: NOET394SUB7.

To avoid confusion we shall refer to the plan tabled at the meeting as "the first plan" and the later emailed plan as "the second plan".

It was difficult to read the small print of the first plan at the meeting, but we have been able to read the second, amended plan more clearly on our screens, and have picked up some inaccuracies.

Because this plan was not tabled before the Knysna Municipal Planning Tribunal, and was seen for the first time by the NCOA representatives at the meeting on 23/6/26 in council chambers, we circulated it to the NCOA committee and to NCOA members who had made oral submissions to the Tribunal, for their input.

It would be appreciated if the revised version of this plan could be made available to the NCOA for final checking and for our confirmation that it is accurate.

NCOA COMMENTS and CORRECTIONS

1. **The heading** on both the first and second plans refers incorrectly to Farm Noetzie No 396 instead of No 394.

2. **The drawing date** on both plans should be 2026 to better match when it was tabled at the meeting referred to above. The date 1st March 2024 suggests the

drawing was ready for consideration over two years ago. If so, why was it not presented to the Knysna Municipal Planning Tribunal?

3. Point 2(a) reads: "Public road as depicted on GP no 19 and original zoning map for Noetzie."

Surely this should refer to the 1915 Township Plan rather than the Zoning Map?

4. Point 2(b): Please check the SG Diagram number. We have it as 1391/83 (see attached).

Missing is portion jk which is within the subject erf.

Also, the arrow from the information box is incorrectly positioned.

5. Point 3 :

- a) • Missing from the information box are rH, rM, rN, rP, rQ
• rG is repeated in information box
• rU is not marked on the plan.

b) Please check the numbers we have included below, taken from the plan, and please add the underlined section to the information box to read:

Fig M3 rB rC rD rE rF rG rH rL rM rN rP rQ rR rS rT rU rV rW rX A2 D3 represents a Public Access Servitude, previously Minor road 3(e)K (Wagon Road) now deproclaimed No 54/1999 and intended to remain a public street.

c) Please add onto the plan what was confirmed by PPE at the 23/6/26 meeting, that the four parking bays at the bottom of the Wagon Road shall remain.

6. Point 4: the public walkway servitude to the municipal steps

a) • the numbers in the information box are not in the order that they are on the plan. Is there a reason for this?

- G2 is in the box but not on the plan.

b) At the meeting of the 23/6/26 we queried whether a "public walkway servitude" would restrict pedestrians to part of the road only, and were told by PPE that it would not, and PPE agreed that the public could walk 10 abreast if they wanted.

We request it be recorded that the pedestrian access servitude includes the whole of the private servitude up to the municipal steps.

c) We request that a notice is attached to the gates to erf 20379 saying "public footpath to beach" with an arrow indicating the direction and that a sign is also erected in the parking area.

There used to be a road traffic sign indicating pedestrian access.

7. Point 6: refers to the water and electrical servitude in favour of Erf 20379.

There is a further utilities agreement in place that extends services to erf 20331 erf 20361 and erf 20380 that should be noted on the plan.

8. Point 7: The portion of road from the Wagon Road serving erf 20338 (marked in purple) needs to be separated from note 7 and included as a servitude within the subject erf.

9. Point 8: Parking Servitude

- a) • L2 is omitted from the information box
 - E3 is written twice in the information box
 - there are two L3s on plan – one on the parking boundary and another on the road for public walkway.

b) Please note that the number of existing marked parking bays is 22 not 18. Note too that these 22 bays are insufficient during peak season when cars have to park in the road reserve (see attached photograph).

c) In 2011 the KM requested a beach carrying capacity report compiled by Lizemarie Botha of VPM (attached), because of condition 3.28 of the approval of the Pezula Private Estate development, that says should the KM deem it necessary to improve parking and access to Noetzie beach as a result of the PPE development, the applicant is obliged to finance these improvements.

The report's conclusion was that although PPE's impact on parking and access at that stage was negligible, "it is recommended that Pezula Private Estate provide space for an additional 8 – 10 parking bays and that they assist the municipality in repairing the municipal stairs to the beach". This has not happened.

Our understanding is that conditions of approval for a development attach to the land rather than the developer. Under SPLUMA and municipal bylaws, unfulfilled conditions run with the property and are legally binding on any successor-in-title.

d) The Tribunal's condition of approval 2(c) for this subdivision draws PPE's attention to this point (vii) of the 2008 approval (the 3.28 condition of approval for the PPE development) that "provides for access to the beach area and parking and that the landowner must secure by way of servitudes".

Because of (c) and (d) above we request this condition of approval is recorded on the title deeds registered with the Deeds Office.

e) The NCOA comment on the Beach Carrying Capacity Report at the time (2011) was that the extra 8 to 10 parking bays would not be sufficient if the needs of Noetzie residents and their visitors were added to those of the public.

f) What is critical at this stage is that the area set aside for parking should be that which exists now. Any additional parking spaces requiring additional land area will have to be negotiated between the KM and the owner, with public participation, at some later stage.

10. Conditions for altering, suspending or cancelling Temporary Parking Servitude

It is our understanding that the Appeal Authority and KM are not legally bound to accept the agreement automatically, but will review the plan and proposed conditions to ensure they are lawful, reasonable, and enforceable under the [Spatial Planning and Land Use Management Act \(SPLUMA\)](#)

a) Should the registered owner of the subdivided erf 13493 formally apply to change the temporary parking servitude, we request that it be made a condition of approval that the parking servitude remain fully operational until the completion of the required municipal and public participation process.

b) We request that the following be made a condition of approval, binding on all future successors-in-title of the subdivided portion, that the Temporary Public Parking Servitude cannot be amended, cancelled or suspended without written notice to the Noetzie Conservancy Owners' Association at least 30 days prior to any municipal assessment.

We ask this because the required publication in two local newspapers is unlikely to be seen by the majority of Noetzie residents who live outside Knysna.

c) We request that in terms of the Knysna Spatial Planning and Land Use Bylaw 45 2(c) that a notice, with the contents specified in terms section 47, be posted on the land concerned for at least the duration of the notice period for any proposed changes, amendments, suspension or cancellation of the temporary parking servitude.

d) The above requests are in line with Section 3 of the Promotion of Administrative Justice Act, which mandates that any decision materially or adversely affecting a person's rights or legitimate expectations must grant adequate notice, a reasonable opportunity to make representations, and clear notice of any review or appeal rights.

11. Point 9: please add the underlined section:

"Fig M3 N3 P3 Q3 R3 S3 T3 E3 Represents public access servitude road that replaces Divisional Road 1771 now deproclaimed and intended to remain a public street."

12. Private parking agreement negotiated between PPE and River property owners:

- the forest roads appear incompletely drawn.
- the road marked in red as "existing servitude" is not an existing servitude, and should perhaps become another servitude.

13. Seaward boundary: The southern seaward boundary of the subdivided portion on the plan goes beyond the public thoroughfare. On the General Noetzie Plan no 19 (attached) the area on the seaward side is marked "commonage". The plan should reflect that.

14. Western Passage. This public passage between erf 20330 and 20375 should be shown on the plan with the beacon numbers in an information box.

15. Crossing Municipal Property: The private road to erf 20379 is depicted on the plan as ending at the municipal property where the steps are located. In fact this private road continues down to erf 20379 and crosses the municipal property. We request the KM records this on the municipal asset register.

For the Record:

- When NCOA representatives went to the KM Council Chambers on 23/6/26 for our appeal to be heard, the Appeal Authority's attorney Mr Perino Pama asked that we first try to "find common ground". PPE's legal team and planner then presented a new subdivision plan.

The NCOA appeal was not heard. Instead PPE, NCOA, the Appeal Authority and KM officials discussed the new plan.

* Although the NCOA objected in the meeting to the “temporary” public parking servitude, asking for a public servitude instead, we were assured by the KM officials present and PPE that there would be a public participation process if an application were made to remove, suspend or alter this servitude in any way, and that the KM would call for public comment and we could object. Given this assurance, we agreed.

• PPE’s advocate Mr Guan Potgieter asked if the NCOA appeal could then be dismissed, but Mr Pama replied as the new plan had not been tabled before the KM Planning Tribunal, the appeal could neither be dismissed nor upheld.

It would be appreciated if the revised version of this plan could be made available to the NCOA for final checking and for our confirmation that it is accurate.



Nick Taylor, Chairman NCOA

Emailed to:

Lizemarie Botha: PPE Planner
Marius Botha: PPE lawyer
Mayor Thando Matika: Appeal Authority
Perino Pama: KM appointed attorney
Municipal Manager
Director Planning
Hennie Smit: manager land use planning

Copied to:

NCOA chair
NCOA committee
Julian Gosling: NCOA
Robby Robertson: NCOA
Richard Moultrie: NCOA
Eion Brown: NCOA
Liesl Bailey: Appeal Authority administrator

NCOA Committee 2026: Nick Taylor (Chairman), Richard Robinson (Treasurer), Alice Fabian-Williams (Secretary); Carel van Gend (IT), Alan Blem (Security), Sabrina Gosling (Municipal liaison), Simon van Gend (Newsletter), Wendy Dewberry (Conservation)

SECTION 100 DCM.

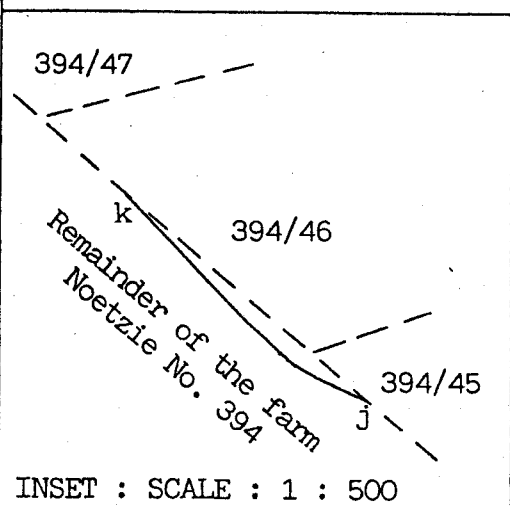
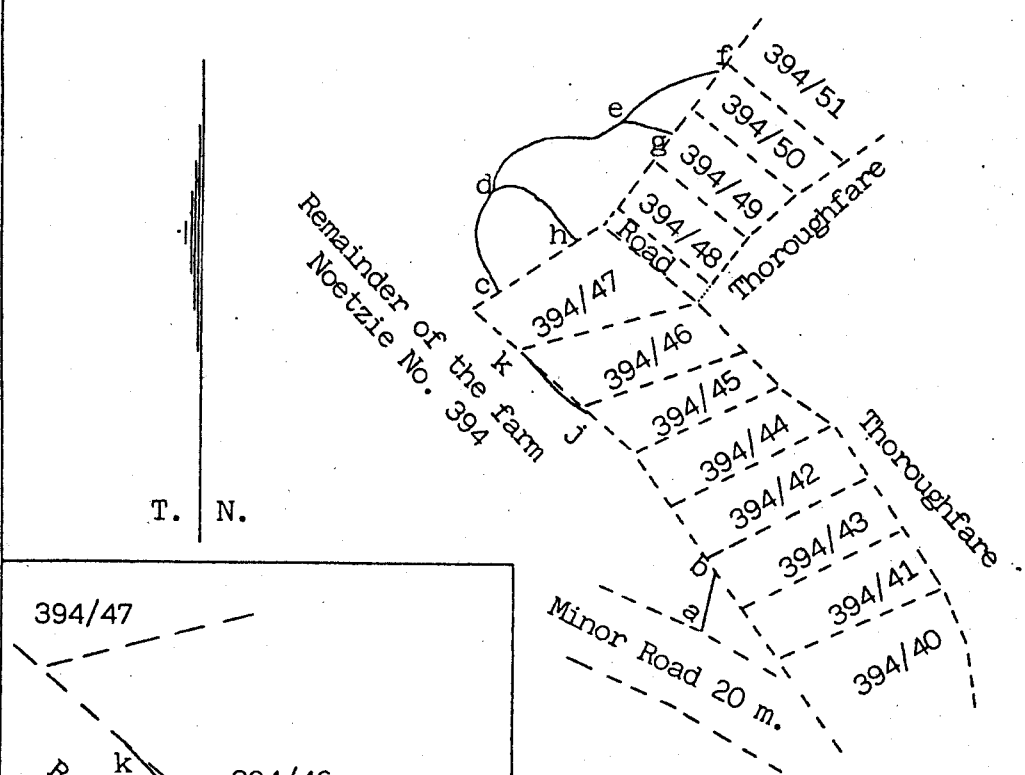
SIDES Metres		ANGLES OF DIRECTION	CO-ORDINATES System		
			Y		X

S.G. No.

4926-83

Approved

Denius
for Surveyor-General
1983-08-05.



NOTE : The line b a extends to the boundary of the Minor Road.

Scale 1:2000

The figure curved lines a b, c d, d e, e f, e g and d h represents the centre lines of servitude roads 5 metres wide of land, being and the curved line j k represents the south-western boundary of a servitude road 5 metres wide over THE REMAINDER of the farm the NOETZIE No. 394 Administrative District of Knysna Province of Cape of Good Hope

Surveyed in March 1983 by me, *WduB* Land Surveyor

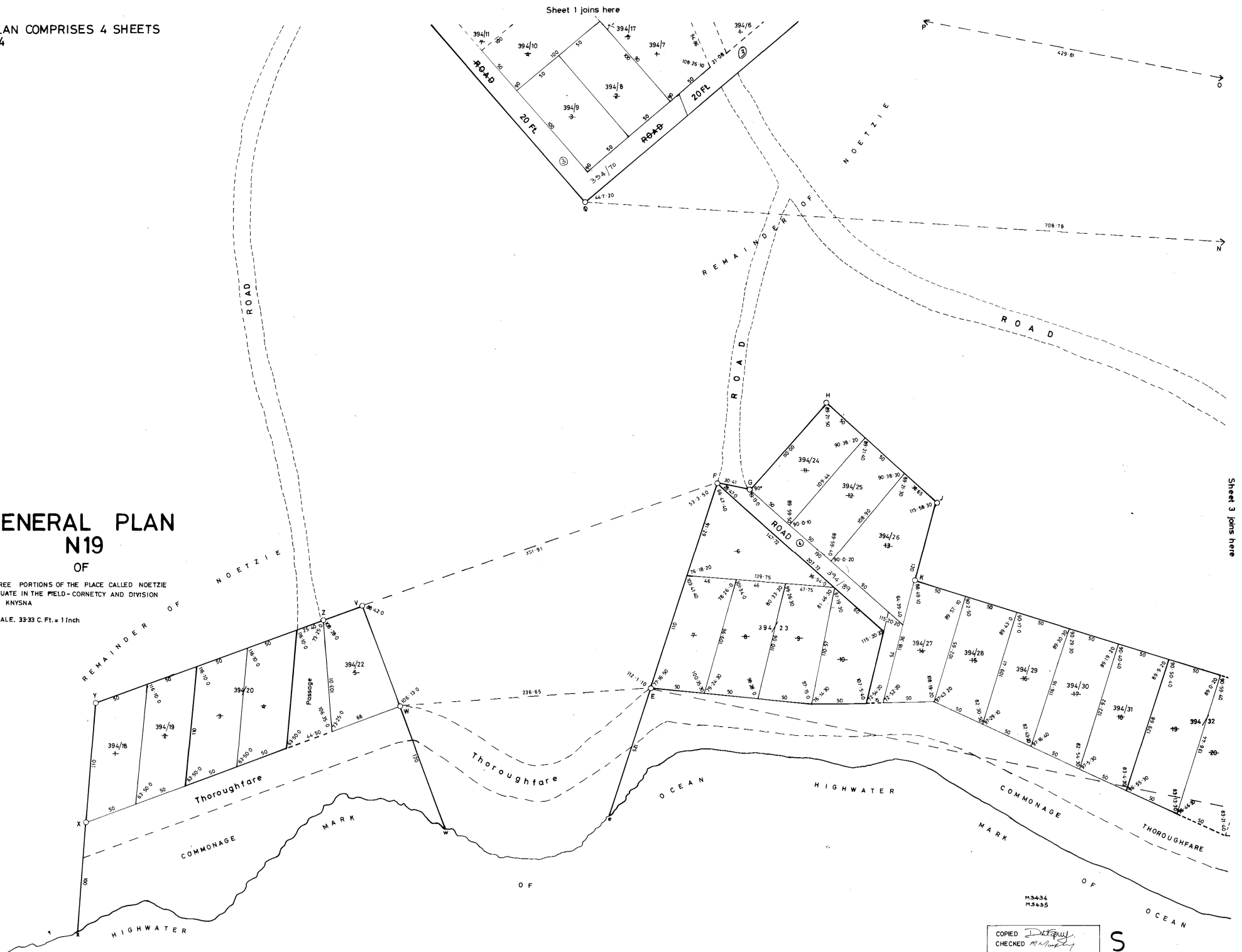
This diagram is annexed to No. dated i.f.o.	The original diagram is No. 5197/1914 annexed to Transfer/Grant No. Kn. Q 11-23	File No. Knys. 394 S.R. No. E 1391/83 Comp. AM-1AD(3603)
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GENERAL PLAN N19 OF

THREE PORTIONS OF THE PLACE CALLED NOETZIE
SITUATE IN THE FIELD-CORNETCY AND DIVISION
OF KNYSNA

SCALE. 39.33 C. Ft. = 1 Inch



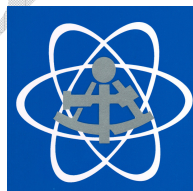
COPIED *[Signature]*
CHECKED *[Signature]*

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NOETZIE BEACH CARRYING CAPACITY



Prepared by



VPM
PLANNING

On behalf of Knysna Municipality

July 2011

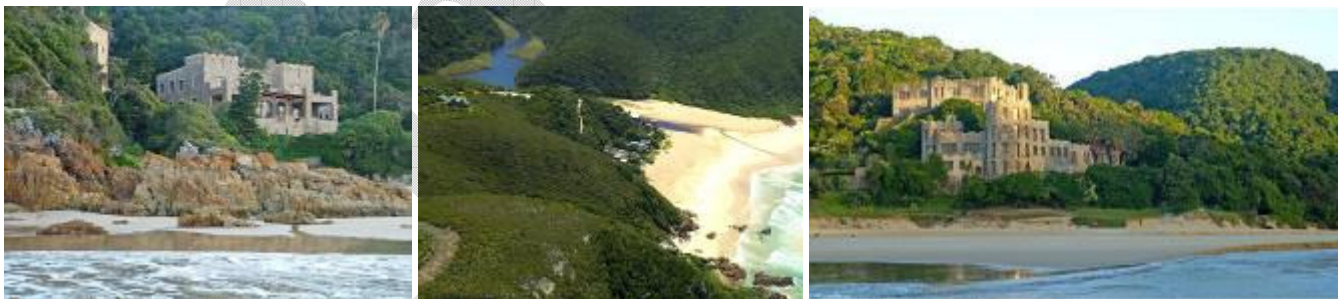
NOETZIE BEACH CARRYING CAPACITY

1. INTRODUCTION

Noetzie is a charming beach near Knysna that is surrounded by several castles. The beach is tucked away into a secluded section of the Knysna coastline. The surrounding area was declared a conservancy in 1991 and is surrounded by natural forest and borders on the Noetzie River. The Noetzie village consist of ± 50 holiday homes. The village borders onto the Pezula Private Estate which consists of 255 residential properties situated in a nature area.

When the Pezula Private Estate was established in 2003, one of the Conditions of approval (Condition 3.28) stated that should it be deemed necessary, in the view of the Municipality, to improve access to Noetzie beach and the related parking area as a result of the Pezula development, the applicant being obliged to finance these improvements, as required by the Municipality.

The concern is that the Pezula development may cause over utilisation /overcrowding of the existing beach area and limited parking facilities. In order to make an informed decision about the necessity of upgrading the parking area and the access to the beach, the Municipality has requested that a beach carrying capacity for the Noetzie beach be determined.



Noetzie Beach

2. CARRYING CAPACITY CONCEPT

The municipality has identified the need to understand the carrying capacity of the Noetzie beach to avoid saturation levels that put both the natural system at risk and disturb the user's quality of enjoyment. Carrying capacity is evaluated by physical carrying capacity, where the limits are set by available space and supportive infrastructure, as well as by the social capacity, which is more qualitative in nature and based on user's perceptions and expectations.

3. METHODOLOGY

3.1 PHYSICAL CARRYING CAPACITY

- Define the available sandy area of the beach by means of existing survey and analysis of available aerial photography.
- Evaluate existing infrastructure and beach equipment.
- Identify the type of beach in terms of the internationally acceptable standards for beach typology developed by Silva et al. (2007).
- Calculate the theoretical carrying capacity using m^2 per person as determined in the aforementioned typology model.
- Evaluate the existing constraint and opportunities such as the surroundings, the character of the beach, and external factors that may impact on the popularity of the beach.
- Adapt the theoretical carrying capacity to accommodate site specific constraints and opportunities.

3.2 SOCIAL CARRYING CAPACITY

- Social Carrying capacity is based on perceptions and expectations of residents and tourists using the beach. This will be obtained by engaging with the Noetzie and Pezula residents.
- Ideally, tourists should also be interviewed, but this study has a limited completion time and cannot be extended to December when holiday makers descend to the coast.

3.3 PROPOSING BEACH INTERVENTIONS THAT COULD BE CARRIED OUT TO INCREASE THE CARRYING CAPACITY

- Based on physical observation of available infrastructure and information obtained from the Pezula and Noetzie residents as well as the Municipality.

4.1 CALCULATING AREA OF SAND

- The first step in determining the beach carrying capacity is the beach delimitation. The Noetzie beach is a secluded cove with steep rocky outcrops and cliffs acting as natural barriers to the east and west.
- The Noetzie river mouth divides the beach and forms the western boundary of the Sinclair Nature Reserve. The position of the river mouth fluctuates substantially and is a clear indication of the dynamic nature of coastal areas.
- International standards for measuring the area of sand available for beach users consist of the area measured above the high-water mark, and excludes sensitive zones and hazardous areas.
- The High Water Mark has been determined by using the available 2009 aerial photography of the area. This position of the river is straight and central in relation to the other positions that the river has previously occupied.
- The width of the beach is in most cases the distance from the access point to the high-water mark. An average beach depth of 50m from the high water mark of the sea has been determined through international research, as the acceptable distance from the water. The northern section of the beach closer to the river falls out side this 50m demarcation, but a portion of this area has been included as “beach area” as it is within 50 of the river, which is also occasionally enjoyed by beach users.
- Further more, a maximum distance of 250m from entry point to the beach is a criteria generally used in the field of carrying capacity calculation, as the maximum distance that beach users are willing to walk on the beach to find a suitable spot.
- The northern section of the Noetzie beach, in front of the beachfront properties, forms part of the Remainder of the Farm 394 and is demarcated on the General Plan as a “Thoroughfare”. The beach front properties do not have vehicular access and the only way these properties can be accessed is by driving on the beach, using the “thoroughfare”. The area demarcated as “Thoroughfare” has been excluded from the beach delimitation as the presence of motor cars makes it a hazardous area.
- The area east of the River Mouth has been excluded from the calculation as this forms part of a national park and theoretically one would need to obtain a permit to be on the property. It is also a breeding ground for threatened bird species.



- By applying the above criteria the Noetzie beach has been demarcated on the attached plan. The area of the Noetzie beach that could be used by beach users measures approximately 7400m².



Noetzie Beach 2000



Noetzie Beach 2006



Noetzie Beach 2009



Noetzie Beach 2011

4.2 ADDITIONAL CONSTRAINTS AND OPPORTUNITIES

Beach Conditions:

- In general Noetzie beach is not the most popular beach in the area for swimming and sunbathing, mainly because of the difficult access to the beach and extremely unsafe swimming conditions due to prevalence of strong currents.
- Other more accessible beaches in the area, such as Buffalo Bay, Brenton and the Sedgefield and the blue flag beaches of Plettenberg Bay are more accessible, better equipped and have safer swimming conditions. As a result, the Noetzie beach is sparsely occupied at best of times.

- Notwithstanding, Noetzie Beach is an important resource for tourists and is also used by locals for fishing and picnicking. Its scenic beauty and historical value makes this beach a place of interest that is visited by many tourists mostly for sight seeing and a short stroll on the beach to admire the castles, than to actually spend the day on the beach.
- Apart from the residents, the majority of visitors are tourist who visits for 1 to 2 hours.

Surroundings:

- Noetzie Beach is an isolated beach situated in a Natural area. It is not close to any urban centers. There is also no other public attractions in the close vicinity.

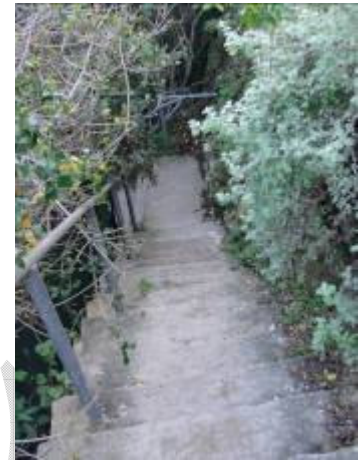
Accessibility:

- From the N2 the access road to Noetzie beach is a ± 5 km gravel road, ending in a tarred parking lot with 20 demarcated parking bays.
- The parking area is situated at an elevation of 60m above sea level.
- From the parking lot, the beach is accessed via 2 pedestrian foot paths. Both access ways are well signposted.



Signposts at the parking area

- There is also vehicular access to the beach for residents with beach permits as many of the beach front properties gain access directly from the beach.
- The first pedestrian access is along a paved road with a steep decline (± 175 m long) that also provides private vehicular access to one of the privately owned castles. From there, a steep set of stairs (± 60 m long with a 30m vertical decline, give access to the beach. This access requires a certain level of fitness and physical strength. It is not suitable for the elderly, or people with disability or fitness and health issues. The stairs are situated on municipal land and is not well maintained.



Condition of municipal stairs going to the beach

- The private access road has recently been paved and is well maintained. There is space next to the paved area that could be used by pedestrians should a car approach. Since this road only gives access to one castle, vehicular movement is few and far between.
- The access road is situated on private land.



Condition of private access road leading to the municipal stairs

- The second access is along an old wagon trail ($\pm 250\text{m}$ long) with a steep descent. This road is even more strenuous and steep than the first one. Pedestrians walk along a very narrow road that is shared with vehicles. This is relatively unsafe, as there is very limited space for pedestrians or vehicles to get out of each others way. This road is also frequently used by cars as it gives access to all the properties along the beach and the river front.
- The Road is situated in a Municipal Road Reserve



Wagon road situated in a municipal road reserve.

Parking:

- There is presently a tarred parking lot with 20 parking bays that are used by the General Public. The Parking area is situated on the Remainder of the Farm No 394 that belongs to the Pezula Private Estate.
- GEO Parks and Sons entered onto a Lease Agreement with the then Divisional Council of Outeniqua in 1981 in terms of which this parking area was leased to the Divisional Council. The lease agreement was later transferred to the Knysna Municipality.
- Pezula Private Estate (Pty) Ltd acquired the farm in 2000 and the rights and obligations were then transferred to Pezula Private Estate (Pty) Ltd. In September 2006 this lease agreement was terminated by the Pezula Private Estate (Pty) Ltd, mainly because at that time the lease had not been paid for a period of 6 years.
- Regardless of the above, the parking area is still used by the public.



Supporting Infrastructure:

Type	Number	State
Access point	2	Bad state of repair and inconvenient
Security	1	At parking lot

Environmental Information and education	2	There is an Information board at the Parking area
Toilets	1	Maintained
Drinking water	1	Rain water tanks at the bath room
Bins and waste collection	2	Available
Parking	20	Good
Life Guards,	0	Only in December
Safety Equipment	0	Only in December
Emergency plans and safety measures	0	none
Wheelchair access	0	none
Other amenities)restaurants, shops, other entertainment	0	none

4.3 BEACH CLASSIFICATION

A typology developed by Silva et al. (2007) is used to classify different type of beached and the density suitable to each. The following beach categories exist:

- Type 1: Urban Beach with intensive use: Available sand under commercial concession / $7,5\text{m}^2$ + other available sand not under commercial concession/ 15m^2
- Type 2: Non Urban Beach : Available area under commercial concession / 15m^2
Available area of sand not under commercial concession / 30m^2
- Type 3: Non Infrastructure Beach with Conditional Use: Available area of sand/ 15m^2
- Type 4: Restricted use beach
- Type 5: Prohibited use beach

For each classification there are different criteria associated for measuring carrying capacity of the beach. In terms of the typology and location, Noetzie beach can be considered as “Non-urban beach” not under commercial concession”. The theoretical beach carrying capacity held for this type is the available beach area divided by 30m^2 .

4.4 CALCULATION OF CARRYING CAPACITY

Theoretical Carrying Capacity:

The theoretical carrying Capacity is calculated by dividing the available space by the m² per person required according to the Beach Typology.

We have previously calculated the available beach area as ±7400m² and in terms of the beach classification of 30m² per person the carrying capacity is $7400/30 = \pm 247$ people on the beach at any time.

Real Carrying Capacity:

The real carrying capacity is the maximum number of permissible users once the corrective factors derived from the particular characteristics have been applied to the theoretical Capacity. These characteristics would include the beach conditions, the surroundings, the accessibility and availability of parking. The specific conditions of the Noetzie beach could result in an even lower carrying capacity.

Social Carrying Capacity:



Fig: Expected Crowds at Lookout beach in Plett



Fig: Expected solitude at Noetzie

Social carrying capacity has to do with how many persons per m² users are prepared to tolerate. There exist various theoretical and practical references as to how to determine the social carrying capacity. All of these however involve interviews with beach users over an extended period of time. This study included interviews with a number of Noetzie and Pezula residents. It appears that the social carrying capacity of the Noetzie Beach will be much lower than the physical carrying capacity.

For the purpose of this study we have accepted the norm for non urban beaches and accepted the figure of 247 people on the beach at any time. Because of external factors previously mentioned, this carrying capacity is seldom (if ever) met.

5. MANAGEMENT ACTIONS

5.1 PARKING REQUIREMENT

A beach capacity of 247 people would require a ± 70 parking bays at a ration of 3.5 persons per car.

Noetzie consists of approximately 51 beach houses. Not all the properties have been developed at this stage.

If the assumption is made that each home consists of an average residential house hold of 3.5 persons, the maximum amount of stay over guests and residents are calculated at :

$$51 \times 3.5 = \pm 179 \text{ residents}$$

It is unlikely that all the properties will be fully occupied at a given time. Taken in to account that $\pm 40\%$ of the stands are not developed at present, one can make an assumption that a maximum of 60% will occupy their homes over December. From this 60% we make other assumptions that only half would frequent the beach on a regular basis.

$$179 \times 0.6 \times 0.5 = \pm 54$$

These potential users will not require parking spaces as the have parking available at their homes which is close enough to the beach to walk.

Parking for the remainder of the potential beach users will need to be provided at a ration of 1 parking bay per 3.5 people:

$$247 - 54 = 193 / 3.5 = 55 \text{ parking bays}$$

It should also be considered that tourist buses as well as the occasional local public bus bring people to the beach. Presently there is not a dedicated bus parking bay available.

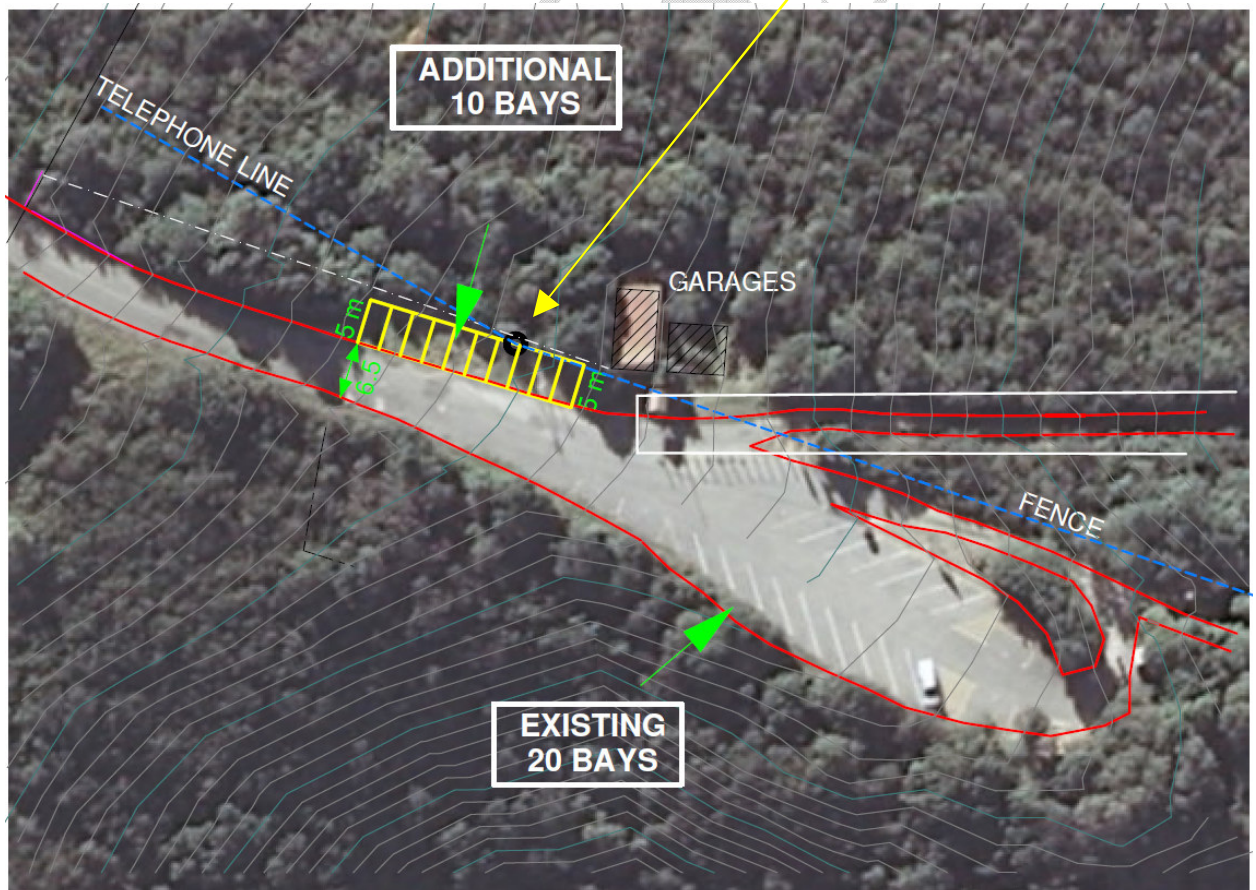
Currently there are 20 parking bays available on the existing parking lot.

There are several problems that prohibit the increase of the parking area to accommodate another 35 parking bays.

- The parking area is situated on private property and the extension on to private land will have to be negotiated with the land owner, who is currently the Pezula Private Estate.
- The surrounding area is mostly covered in indigenous forest and fynbos and has unsuitable gradients.

- 35 parking bay would require $\pm 875\text{m}^2$ of cleared area. The clearance of more than 300m^2 or more of vegetation, where 75% or more of the vegetation cover constitutes indigenous vegetation, is a listed activity in terms of the National Environmental Management Act, and will require authorization from the relevant Environmental Authority.

There is limited area near the existing parking lot that could be used to extend the parking area. The attached diagram and photos show that a maximum of 10 parking bays could be realized without causing extensive degrading to the surrounding natural area. This area has previously been cleared and does not contain any sensitive or protected vegetation. The slope is even and access can be obtained from the existing road. This proposal will only require a small area of land ($\pm 150\text{m}^2$) and will not triggering any listed activities in terms of NEMA and Environmental authorization from DEAT will therefore not be required.



If the physical conditions around the beach limit an increase of an organised parking area, it exerts a strong influence on carrying capacity of the beach (Carlos Da Silva, 2002). In this instance, the existing parking facilities and access is not sufficient to meet the theoretical demand. In such cases, the carrying capacity is reduced, based on an assumed index of 3,5 individuals per vehicle (Silva , et al 2007).

The real carrying capacity of the beach is therefore: 20 bay +10 bays = 30 X 3.5 = 105people

This figure is probably more inline with the social carrying capacity of the beach as well.

For all practical purposes the existing parking area is sufficient. The parking area is seldom full, expect for certain days in December. Limited parking is in our opinion an effective way to ensure that the capacity of the beach is not extended. It is never-the-less proposed that the Pezula Development be requested in terms of Condition 3.28 of the original conditions of approval, to **provide space for ± 8 - 10 additional parking bays**, in accordance with the assumed amount of bays that the Pezula Development would require for their use of the beach. (See Par 5.3 below). The parking area will have to be cleared and leveled in an environmentally acceptable way. It is recommended that grass blocks or a similar surface be considered. It is also recommended that the Municipality re-establish the lease agreement with the landowner.

5.2 ACCESS TO THE BEACH

The accesses to the beach are difficult and not safe. This has however been the status quo for many years. Just from a pedestrian safety point of view, it is recommended that the municipality **improve the conditions of the stairs** by securing the hand rails and by improving the uneven surface of the stairs.

5.3 THE PEZULA CONTRIBUTION

Pezula consists of 255 properties of which ±200 have been sold and 63 of these have, or are being built on and only 15 of these are permanently occupied. The Pezula Private Estate will theoretically contribute 893 persons (based on 3,5 persons per house hold) once all the houses are built and they are all occupied at the same time, which in practice is most unlikely as approximately 40% of all the owners resides in other countries. We have assumed that in peak holiday times, a maximum of 60% of homes in Pezula will be occupied, once fully completed. When all the homes are built, we estimate that 535 persons could potentially reside in the Pezula development of which less that 5% is estimated to frequent the beach area on a regular basis.

The 5% is an assumption made by interviewing some of the Pezula Residents and considering the general socio economic profile of the home owners. The beach is not assessable directly from the Estate, and it would take as much effort for them to get to the beach as any other residents in other nearby suburbs like Sparrebosh and Rexford. The people who made Pezula their property of choice did so for the unique natural setting, privacy, security and magnificent views, and not so much due to the proximity of the Noetzie beach. If the proximity to a beach was a major consideration, they would probably have invested somewhere else.

$$\begin{array}{rclclcl}
 255 & \times & 3.5 & = & 893 & \\
 893 & \times & 0.6 & \times & 0.05 & = 27 \text{ people} \\
 27 & / & 3.5 & = & 8 \text{ parking bays} &
 \end{array}$$

This requirement translates into a requirement for 8 parking bays. Currently only 59 houses are complete, using the same calculation method as above, only 1.7 additional parking bays are required at this stage.

In our opinion, the impact of the Pezula Development on the use of the Noetzie beach and the associated parking area is at this stage negligible.

It is proposed that Pezula Private Estate agree to provide space on their land for additional 8 parking bays.

6. CONCLUSION

Defining the carrying capacity of a beach is undoubtedly a complex issue, where consensus is hard to achieve. From all that has been said, it is clear that carrying capacity cannot only be calculated according to the capacity of the sand area of the beach, as carrying capacity can be determined by other factors, such as access, available parking, supportive infrastructure and user's perception. Carrying capacity can also change as the beach conditions change or if the supportive infrastructure is improved.

The assessment of the Noetzie beach concluded that due to the unique natural setting and scenic value, the beach is, and should remain, a low intensity beach that could only tolerate a low density of users. The theoretic carrying capacity of ± 247 people was calculated based on international models of calculating beach capacity. Although this amount of people will seldom be realized on the beach, the access and parking area cannot support this amount of people.

It is recommended that the capacity of the parking area only be increased to address the additional requirement of the Pezula development, without impacting on the natural surroundings. Limited available parking is a very affective way to

ensure that the beach is enjoyed within the real carrying capacity. It is recommended that consideration be given to improve the pedestrian safety along the access ways to the beach by improving the quality of the stairs.

Although the Pezula Private Estate 's impact on the parking and access to Noetzie beach is at this stage, and possible in the future, negligible, it is recommended that Pezula Private Estate provide space for an additional 8 – 10 parking bays and that they assist the municipality in repairing the municipal stairs to the beach.

7. LITERATURE CITED

1. Management of Beach Carrying Capacity: The Case of Northern Portugal: Journal of Coastal Research Issue 50 of 2007 Australia ISSN 0749.0208
2. Methods for elaboration of a Beach Plan: Case study Rainha Beach: Journal of Coastal Research Issue 56 of 2009 Portugal ISSN 0749.0258
3. Beach Carrying Capacity Assessment: How important is it? : Journal of Coastal Research Issue 36 of 2002 Ireland ISSN 0749.0208
4. Coastal Zone Management: Tools for establishing a set of indicators to assess beach carrying Capacity (Costa Del Sol – Spain) : Journal of Coastal Research Issue 56 of 2009 Portugal ISSN 0749.0258

Messrs Mosdell Pama & Cox
Plettenberg Bay
By Email: ppama@mpc.law.za

27 July 2026

Dear Mr Pama

Re: SUBDIVISION OF FARM NOETZIE 394: APPEAL HEARING AND RELATED ISSUES

1. We refer to the oral hearing convened before the Appeal Authority and, in particular, to the further comments and proposed conditions subsequently submitted by the Noetzie Conservancy Owners' Association ("NCOA") in relation to subdivision plan NOET394SUB7.
2. You attended the appeal hearing on 23 June 2026 as the Municipality's legal representative and, in practice, directed the proceedings on behalf of the Municipality and the Appeal Authority.
3. At your request, and instead of the appeal proceeding in the ordinary course, the representatives of Pezula and the NCOA were afforded an opportunity to attempt to identify and resolve the issues between them.
4. During that process:
 - 4.1. Pezula's legal representatives and planner presented the approved subdivision plan;
 - 4.2. the plan and the matters raised by the NCOA were discussed in detail in the presence of the Appeal Authority, municipal officials and yourself;
 - 4.3. minor amendments and corrections were discussed and agreed upon;
 - 4.4. Ms Lizemarie Botha was requested to incorporate the agreed amendments into the plan; and
 - 4.5. it was expressly confirmed that the agreement reached between the parties disposed of the issues raised in the appeal.

-
5. The question was specifically put on behalf of Pezula whether, in the light of the agreement reached, the appeal could be dismissed or otherwise brought to an end.
 6. You responded that, although the appeal would not at that stage formally be dismissed, it was recorded that the agreement reached disposed of the appeal.
 7. The NCOA's own subsequent document records that the appeal was not argued on its merits, that the parties were instead requested to find common ground, and that an agreement was reached following assurances given by the Municipality and Pezula. It also records that Pezula expressly requested that the appeal be dismissed.
 8. Pezula thereafter acted in accordance with the agreement and caused the agreed amendments to be incorporated into the revised plan.
 9. The NCOA has now purported to introduce a range of further requests, amendments and conditions which:
 - 9.1. were not agreed upon at the hearing;
 - 9.2. did not form part of the appeal as originally lodged;
 - 9.3. extend beyond the subject matter of the subdivision application;
 - 9.4. seek to introduce new obligations relating, amongst other things, to signage, utility arrangements, title-deed conditions, notice requirements and future municipal processes; and
 - 9.5. in several instances concern matters which would have to be dealt with, if at all, under separate statutory processes and after the prescribed public participation procedures.
 10. By way of example, the NCOA now seeks:
 - 10.1. the erection of signs at gates and in the parking area, which does not fall within the ambit of the subdivision application and is not the responsibility of the landowner;
 - 10.2. the inclusion of an alleged further utilities agreement which did not form part of the subdivision application and of which Pezula's professional team was unaware;
 - 10.3. the recording of additional obligations against the title deeds;

- 10.4. special advance notice to the NCOA should any future application be made concerning the temporary parking servitude; and
- 10.5. additional procedural conditions governing hypothetical future applications, despite it having already been explained that any such application would be considered under the applicable by-law and public participation process at the appropriate time.
11. The agreement reached at the hearing cannot now be treated as the commencement of an indefinite process during which the NCOA is entitled repeatedly to reconsider its position, circulate plans to its members, introduce new issues and demand further concessions.
12. Nor did Pezula agree that the finalisation of the appeal or the approval of the revised plan would be subject to the NCOA's further approval, "final checking" or confirmation. The NCOA has no veto over the plan and cannot arrogate to itself a decision-making function which vests in the Municipality. Moreover, the issues raised by the NCOA of late never formed part of its appeal which served before the Appeal Authority on 23 June 2026 in any event and cannot be introduced belatedly.
13. The continued failure to determine the appeal has caused, and continues to cause, material prejudice to Pezula. The original approval of the subdivision emanates as far back as 2008 and a further application was submitted in May 2021 with a decision to approve the subdivision taken in December 2024. Pezula was forced to expend substantially on legal fees for the hearing on 23 June 2026, where the issues were canvassed, and subsequent the agreed amendments have been effected.
14. There is no proper basis for the Municipality or the Appeal Authority to reopen the hearing, receive further oral evidence, permit the appeal to expand beyond its original grounds, or entertain further conditions which were not part of the appeal and were not agreed upon.
15. We confirm that Planning Space has, inasmuch as it was required to do so, incorporated certain of the technical amendments raised by the NCOA in their latest correspondence and we attach hereto the final plan.
16. In the circumstances, we request that the Municipality urgently confirm that:

- 16.1. the Appeal Authority will issue its final written decision that the matter has been disposed of by the agreement reached.
- 16.2. That the relevant department and official in the Municipality will be instructed to endorse the attached plan forthwith in order for the matter to proceed.
- 17. We request the Municipality's written response confirming the above by no later than close of business on Wednesday, 5 August 2026.
- 18. Should the Municipality fail to provide the requested confirmation and thereby procuring the prompt finalisation of the appeal, we hold instructions to approach the High Court for the appropriate relief, including, as may be advised:
 - 18.1. the review of the procedure adopted in the appeal;
 - 18.2. relief arising from the unlawful expansion or reopening of the appeal process; and
 - 18.3. an appropriate order as to costs.
- 19. Our client's rights are fully reserved, including its right to place this correspondence before the Court in support of the relief sought and on the question of costs.

Yours sincerely



Marius Botha

Liesl Bailey

From: melanie gosling <melanie.gosling@gmail.com>
Sent: Monday, 03 August 2026 10:14
To: Perino PA
Cc: Thando Matika; Lulamile Mapholoba; Lizemarie; Director Planning; Marius Botha; Hennie Smit; Liesl Bailey; Buziwe Mjamba; Anita Strydom; NCOA Chairperson; NCOA Committee Members; Julian Gosling
Subject: [inbox]NCOA letter responding to applicant's lawyer on plan NOET394SUB7rev1
Attachments: To Mr Pama 3Aug26.pdf

Dear Mr Pama,

We attach the NCOA response to the letter of 27th July from the applicant's lawyer Mr Marius Botha. We hope this will be helpful.

As the applicant rejected the request that the NCOA be informed directly about any proposed changes to the temporary servitude for public parking, can we ask that the KM makes it a condition that the KM notifies the NCOA directly.

As we said, notices in two Knysna publications would not be seen by most Noetzie residents who live elsewhere.

We have copied it to those Mr Botha sent the letter to, and included the MM and the NCOA committee.

Regards,
Melanie Gosling
NCOA
072 863 1425



committee@noetzie.co.za

Mosdell Pama & Cox

Attention Mr Perino Pama: attorney appointed to represent the KM Appeal Authority.

3rd August 2026

Re: Subdivision of Farm Noetzie 394: Appeal hearing and matters relating to Subdivision Plan NOET394SUB7rev1

Dear Mr Pama,

The Noetzie Conservancy Owners' Association (NCOA) is responding to the letter sent to you, and copied to us, by Mr Marius Botha on 27 July 2026, lawyer for the applicant Pezula Private Estate Pty Ltd.

With that email we received the updated plan, number NOET394SUB7rev1 dated 17 July 2026.

We trust our comments will be helpful.

1. The NCOA is not deviating from the agreement reached about the public servitudes at the meeting of 23rd June 2026.

2. However, the agreement reached does not automatically dispose of the appeal. The appellant has to formally withdraw its appeal in writing before the Appeal Authority can instruct its officials to endorse the plan.

3. It was agreed that the amended plan would be emailed to all parties, to which you added: "And then the appellant can just confirm that that's in order and that the appeal is withdrawn on the understanding that the particular plan is then put forward to the municipality for approval". This first step has not been completed.

4. The NCOA expected in good faith that the proposed subdivision plan shown at the meeting would be accurate. It was not. As you remember, the details on the plan were not legible. Once we were sent the emailed amended plan we were able to enlarge it and found several inaccuracies and errors, which we raised in our responding letter sent to all parties on 13th July 2026 – *as per the agreement to confirm that the plan was in order.*

5. The applicant's planner has rectified many of these and incorporated them into the revised plan NOET394SUB7rev1.

We are concerned about those that were not included.

Perhaps if we speak directly to the applicant's planner we can find out the reasons.

We list these below in point 10.

6. Under the Knysna Bylaw on Spatial Planning and Land Use Management the municipality may place additional conditions on an approval - even if the private parties reach an agreement. Private settlements cannot strip the Appeal Authority of its statutory powers or its duty to protect the public interest.

7. For the record, the NCOA played no part in the delays in the appeal process. We were ready for it to be finalised on 3rd June 2025 when it was first placed on the agenda.

The applicant itself was responsible for the appeal not being heard on multiple occasions subsequently, either by requesting postponements or by challenging the municipality's right to hold the appeal.

The NCOA has been materially prejudiced by having to travel from Cape Town to attend several scheduled appeal hearings that never happened.

8. Although dated 1st March 2024, the proposed subdivision plan presented at the meeting had not been presented to the Knysna Municipal Planning Tribunal, nor had it been seen by the NCOA.

So it was entirely reasonable and right that this new plan be circulated to NCOA committee and members - and it was because of this checking that the many inaccuracies and errors came to light.

When other changes are made to NOET394SUB7rev1, please send it to us so that we can confirm these as soon as possible.

(We asked in our earlier letter, but got no answer, why this plan was not presented to the Planning Tribunal in March 2024. That would have saved a lot of time and effort.)

9. Note that the meeting recording states that the plan number is NOET394SUB7. This has been superseded by the revised plan which is now NOET394SUB7rev1 dated 17 July 2026.

10. Corrections etc not included in revised plan NOET394SUB7rev1 that we requested be included in our earlier letter of 13th July.

- a) **Point 2(a)** reads: "Public road as depicted on GP no 19 and original zoning map for Noetzie." Should this not refer to the 1915 Township Plan rather than the Zoning Map?
- b) **Point 2(b):** Was the SG Diagram number checked? We have it as 1391/83 which we attached to the 13th July letter. Missing is portion jk which is within the subject erf.
- c) There is a further utilities agreement in place that extends services to erf 20331 erf 20361 and erf 20380 that should be noted on the plan.
- d) **Point 3:** Numbers rM, rN, rP are still missing from the information box.
- e) There is a further utilities agreement in place that extends services from erf 20379 to erf 20331 and erf 20380 that should be noted on the plan. This is an existing electricity connection.
- f) Crossing Municipal property: We requested that the private road to erf 20379, that ends on the plan at the municipal steps, is shown that it crosses the section of municipal property at the top of the steps as it continues into erf 20379. We request that the KM includes this on the municipal asset register.



The NCOA is ready to withdraw its appeal once the above matters have been settled.

Yours faithfully,

Nick Taylor, NCOA Chairman

Liesl Bailey

From: melanie gosling <melanie.gosling@gmail.com>
Sent: Tuesday, 04 August 2026 08:49
To: Perino PA
Cc: Thando Matika; Lulamile Mapholoba; Lizemarie; Director Planning; Marius Botha; Hennie Smit; Liesl Bailey; Buziwe Mjamba; Anita Strydom; NCOA Chairperson; NCOA Committee Members; Julian Gosling
Subject: [inbox]Error: Re: NCOA letter responding to applicant's lawyer on plan NOET394SUB7rev1

Dear Mr Pama,

Apologies for an error in my previous email.

Point 10 (e) regarding the utilities servitude should read that there is an existing electricity connection running from erf 20379 to supply erf 20331 and erf 20361.

Erf 20361 is Montrose Castle, owned by Andre and Nicolette Steyn.

They confirmed the connection exists and request that the servitude be extended to allow this to continue.

Andre can be contacted on: andre@capitalmanagement.com

Nicolette on: 082 839 6134

Apologies again.

Melanie Gosling
NCOA

On Mon, 03 Aug 2026 at 10:13, melanie gosling <melanie.gosling@gmail.com> wrote:

Dear Mr Pama,

We attach the NCOA response to the letter of 27th July from the applicant's lawyer Mr Marius Botha. We hope this will be helpful.

As the applicant rejected the request that the NCOA be informed directly about any proposed changes to the temporary servitude for public parking, can we ask that the KM makes it a condition that the KM notifies the NCOA directly.

As we said, notices in two Knysna publications would not be seen by most Noetzie residents who live elsewhere.

We have copied it to those Mr Botha sent the letter to, and included the MM and the NCOA committee.

Regards,
Melanie Gosling
NCOA

Messrs Mosdell Pama & Cox
Plettenberg Bay
By Email: ppama@mpc.law.za

10 August 2026

Dear Mr Pama

Re: SUBDIVISION OF FARM NOETZIE 394: APPEAL HEARING AND RELATED ISSUES

We refer to the emails from Ms Gosling on behalf of the NCOA, dated 04 August 2026.

We note that the NCOA states that upon settlement of the points raised in paragraph 10 of their letter, they are ready to withdraw the appeal.

We have discussed this with Planning Space and obtained their input on the points raised.

Without prejudice to the Applicant's right insofar as the Appeal process and ancillary matters raised in our email of 27 July 2026 is concerned, we provide herewith the necessary clarity and response on the points raised in a final effort of having the matter resolved in order for the NCOA to withdraw its appeal.

We respond as follows:

- a. **Point 2(a):** The General Plan Number is indeed correct. See attached General Plan which is the Township plan.
- b. **Point 2(b):** The Arrow is indeed correct and the reference to Diagram 4926/83 is also correct. The NCOA is referring to the File Number on the Diagram which is not the correct reference. Attached find the SG Diagram and marked are the two numbers that is causing the confusion. Regarding *jk* - Upon survey of the road it was confirmed that the section referred to as *jk* is not actually on the remainder of farm 394 but on private property, the servitude road has been protected via private servitude arrangements between the owners – see approved Servitude Plan attached.
- c. The contents of paragraphs c) and e) in the NCOA Letter is a duplication and we shall respond in sub-paragraph e) below.

- d. **Point 3:** The area relating to the numbers referred to does not form part of the subdivided property which this application relates to. However, it will be included in the final plan to be submitted for endorsement. The General Plan sheet 3 indicates this demarcated as "ROAD". The attached Subdivision plan has been amended to show this section of the remainder as road.
- e. **Utilities Agreement:** The Professional team appointed by the applicant, Planning Space, is not aware of this purported agreement. The agreement never formed part of the subdivision application and it has never been raised before. Furthermore, the parties to the agreement presumably have rights and obligations emanating from the contents of such agreement that can be relied on by the parties. The contents of the agreement cannot now be incorporated as a servitude which has never been included as such on any application diagram.
- f. **Crossing Municipal Property:** The Surveyor General Diagram of Erf 20378 (Municipal Property) does not reflect a servitude but does indicate the entire property as road. The servitude road to Erf 20379 cannot be extended over the aforementioned Municipal Road as a road servitude cannot be registered over an existing road.

Our client's rights remain reserved.

Yours sincerely



Marius Botha

It is hereby certified that this subdivision / consolidation plan
(Plan no. **SER/394/NTZ**) is exempted in terms
of Sections 24 (1) of the Knysna Municipality By-law on Spatial
Planning and Land Use Management (2021).

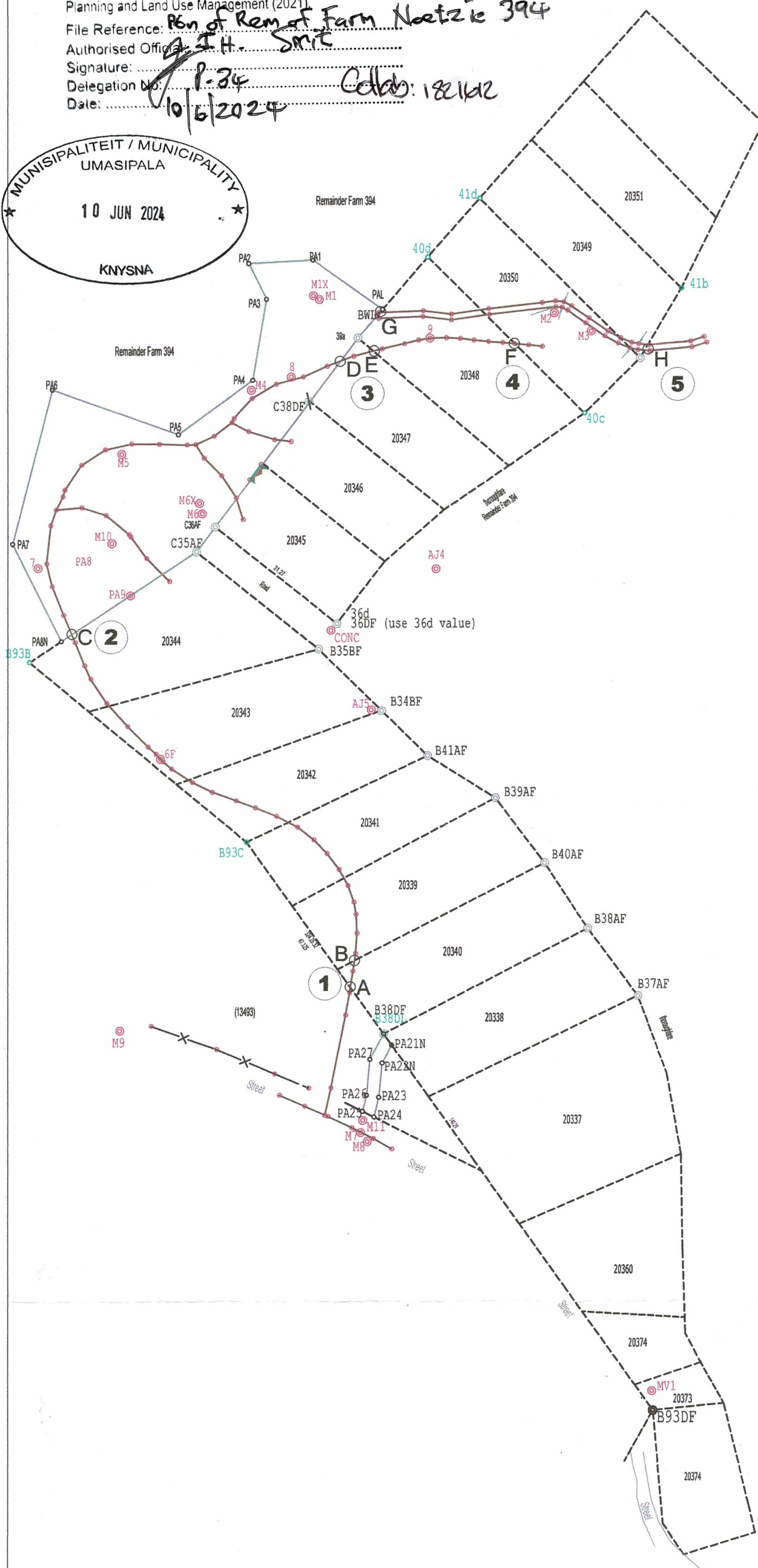
File Reference: **R6n of Rem of Farm Noetzie 394**
Authorised Officer: **I.H. Spritz**
Signature: **P.34**
Delegation No: **Cellb: 182142**
Date: **10/6/2024**



SCALE 1:900

LEGEND

EXISTING APPROVED SERVITUDES OVER
REMAINDER OF FARM 394



NOTES:

1. Line AB presents a center line of a Private Access servitude 3 m wide over Erf 20340 in favour of the other Noetzie River Properties.
2. Curved line BC presents a center line of a Private Access servitude 3 m wide over of Erven 20339, 20341, 20342, 20343 and 20344 Knysna in favour of the other Noetzie River Properties (with the exception of erf 20339 Knysna).
3. Line DE presents a center line of a Private Access servitude 5 m wide over Erf 20347 in favour of erven 20348 and 20350 Knysna.
4. Curved line EF presents a center line of a Private Access servitude 5 m wide over Erf 20348 in favour of Erf 20350 Knysna.
5. Curved line GH presents a center line of a Private Access servitude 1.40 m wide over Erven 20348, 20349 and 20350 in favour of 20349, 20351, 20352, 20353, 20377, 20354, 2055, 2056, 20357, 20358 and 20359 Knysna.

COPY RIGHT:

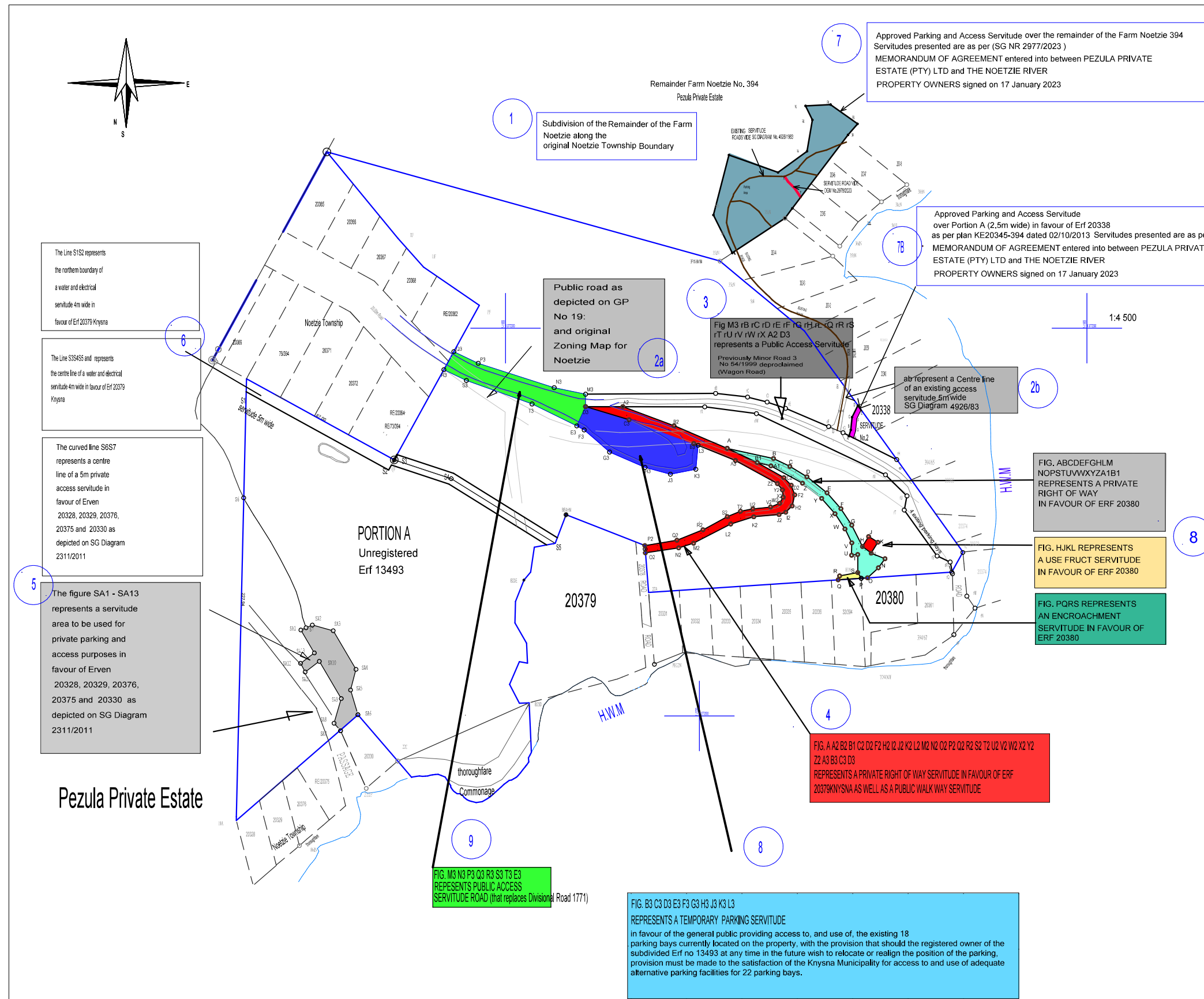
This plan must not be copied or amended
without the written consent of Planning
Space.

REMAINDER OF FARM 394 NOETZIE

DRW. NO.: SER/394/NTZ

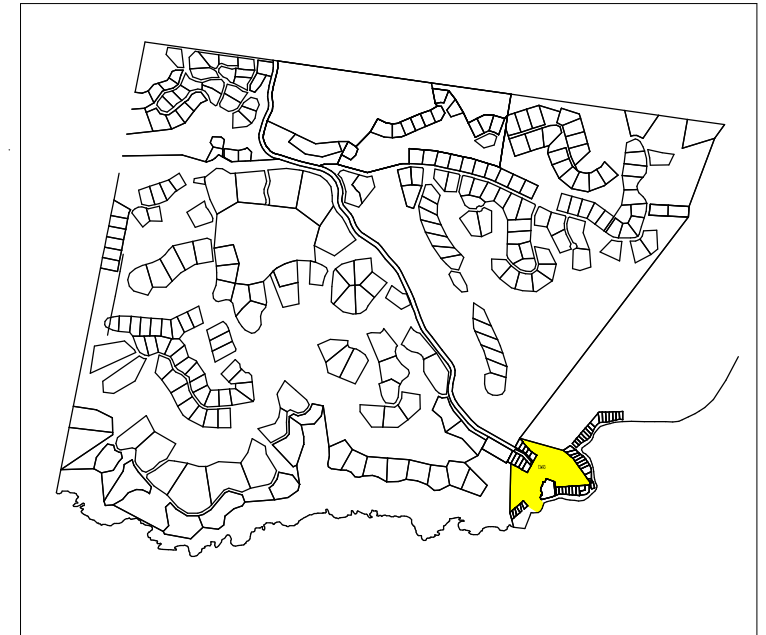
KNYSNA MUNICIPAL AREA

DATE: 2 MAY 2024



PROPOSED SUBDIVISION

of the Remainder of Farm Noetzie No. 394



SERVITUDE		
PROPERTY NUMBER	AREA	ZONING
Portion A UNREGISTERED ERF 13493	±6.14ha	UNDETERMINED

NOTE:

ERF13493 is an unregistered portion of the Remainder of the Farm Noetzie 394 (SG 1315/2006).

The property was never registered and the subdivision approval dated 2008/09/11 has lapsed.

New Servitude and Road Areas are subject to final survey.

PROPOSED SUBDIVISION PLAN

RE FARM NOETZIE 394
SUBDIVISION PLAN
NOET394SUB7rev1
DATE:17 July 2026

Liesl Bailey

From: melanie gosling <melanie.gosling@gmail.com>
Sent: Wednesday, 12 August 2026 10:17
To: Perino PA; Thando Matika; Marius Botha; Lizemarie; NCOA Chairperson
Cc: Director Planning; Hennie Smit; Anita Strydom; Buziwe Mjamba; Liesl Bailey; NCOA Committee Members; Robbie Robertson; Richard Moultrie; Richard Moultrie
Subject: [inbox]a few days please- Fwd: [inbox]APPEAL HEARING: THE REMAINING EXTENT OF THE FARM NOETZIE 394, KNYSNA - 23 JUNE 2026
Attachments: 10239584.TIF; SG Diagram 4926.83.jpg; Pezula Private Estate - Sub-Division Application - Letter to Mosdell Pama & Cox - 10-08-26.pdf; Endorsed Plan (Remiander of Farm Noetzie No. 394).pdf; Noetzie Final SubDivision Plan NOETSUB7.pdf; To Mr Pama 3Aug26 (1).pdf

Dear Mr Pama,

Please would you give the NCOA a few days to respond.

I have forwarded Pezula's response to the NCOA members who made several oral submissions to the Tribunal and who are au fait with the matter, the plan, and have been part of the process.

Grateful.

Regards,
Melanie Gosling
072 863 1425

----- Forwarded message -----

From: **Marius Botha** <marius@mhblaw.co.za>
Date: Tue, Aug 11, 2026 at 9:06 AM
Subject: RE: [inbox]APPEAL HEARING: THE REMAINING EXTENT OF THE FARM NOETZIE 394, KNYSNA - 23 JUNE 2026
To: Perino Pama <ppama@mpc.law.za>, MELANIE GOSLING (melanie.gosling@inl.co.za) <melanie.gosling@gmail.com>
Cc: Lizemarie <lizemarie@planningspace.co.za>, Thando Matika <tmatika@knysna.gov.za>, Director Planning <directorplanning@knysna.gov.za>, Hennie Smit <hsmit@knysna.gov.za>, NCOA Chairperson <chairperson@noetzie.co.za>, Liesl Bailey <lbailey@knysna.gov.za>, Buziwe Mjamba <bmjamba@knysna.gov.za>, Anita Strydom <astrydom@knysna.gov.za>

Dear Mr Pama

Please see correspondence and annexures attached.

Yours sincerely

Marius Botha



335 Watsonia Avenue

PO Box 3144

Boschenmeer Estate

Paarl

Paarl

7620

Tel: (021) 8634443

Cell: 0827740027

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From: Perino Pama <ppama@mpc.law.za>

Sent: Wednesday, 05 August 2026 08:43

To: Marius Botha <marius@mhblaw.co.za>; MELANIE GOSLING (<melanie.gosling@inl.co.za>
<melanie.gosling@gmail.com>)

Cc: Lizemarie <lizemarie@planningspace.co.za>; Thando Matika <tmatika@knysna.gov.za>; Director Planning <directorplanning@knysna.gov.za>; Hennie Smit <hsmit@knysna.gov.za>; NCOA Chairperson <chairperson@noetzie.co.za>; Liesl Bailey <lbailey@knysna.gov.za>; Buziwe Mjamba <bmjamba@knysna.gov.za>; Anita Strydom <astrydom@knysna.gov.za>

Subject: RE: [inbox]APPEAL HEARING: THE REMAINING EXTENT OF THE FARM NOETZIE 394, KNYSNA - 23 JUNE 2026



Dear Marius Botha and Melanie Gosling,

We confirm that our client's instructions are to have the minutes typed up by a court transcriber.

We do not intend to reply to recent correspondence or WhatsApps received at this stage and any failure on our part to do so must not be construed as an admission of any of the statements or opinions expressed in your correspondence.

In this regard, our client's rights are hereby expressly reserved.

We note that there has been some correspondence received more recently which indicates that it may be worthwhile for Melanie Gosling and Lizemarie Botha to meet to discuss the Subdivision Plan.

We would encourage that meeting to take place as it seems to the writer that would be a worthwhile exercise.

We will revert to you as soon as we receive the typed up minutes.

Kind regards,



Perino Pama
Director - Commercial and Litigation

T: 044 533 1101

C: 072 381 9738

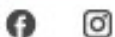
E: ppama@mpc.law.za

6 High Street, Plettenberg Bay



MEMBER OF THE P

PH Group 2024/25 Platinum Achiever



Disclaimer

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BANKING DETAILS: We will never inform you of a change to our banking details via e-mail. Any communication of this nature is fraudulent and we will not accept responsibility for incorrect payments made into a banking account that does not belong to us. If you are in any doubt, you are advised to verify our banking details with our bookkeepers telephonically. We do not accept any email notifications of change of banking details from clients. We will not amend your banking details on our system without contacting you personally, verifying such banking details and obtaining your written confirmation. Cyber fraud is a significant risk. We are pre-approved bank beneficiaries on all the major banks. Contact us if you need guidance.

From: Marius Botha <marius@mhblaw.co.za>

Sent: Monday, 27 July 2026 17:32

To: Perino PA <perinopa@MPC.LAW.ZA>

Cc: Lizemarie <lizemarie@planningspace.co.za>; Thando Matika <tmatika@knysna.gov.za>; Director Planning <directorplanning@knysna.gov.za>; Hennie Smit <hsmit@knysna.gov.za>; melanie gosling <melanie.gosling@gmail.com>; NCOA Chairperson <chairperson@noetzie.co.za>; Liesl Bailey <lbailey@knysna.gov.za>; Buziwe Mjamba <bmjamba@knysna.gov.za>; Anita Strydom <astrydome@knysna.gov.za>

Subject: [inbox]APPEAL HEARING: THE REMAINING EXTENT OF THE FARM NOETZIE 394, KNYSNA - 23 JUNE 2026

Dear Mr Pama

See attached correspondence, with Annexure, for your attention.

Yours sincerely

Marius Botha



335 Watsonia Avenue

PO Box 3144

Boschenmeer Estate

Paarl

Paarl

7620

Tel: (021) 8634443

Cell: 0827740027

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Liesl Bailey

From: melanie gosling <melanie.gosling@gmail.com>
Sent: Friday, 21 August 2026 13:06
To: Perino PA
Cc: Thando Matika; Lizemarie; Marius Botha; Director Planning; Hennie Smit; NCOA Chairperson; NCOA Committee Members; Buziwe Mjamba; Anita Strydom; Liesl Bailey; Julian Gosling
Subject: [inbox]NCOA response to PPE letter 10th August 2026 APPEAL HEARING: THE REMAINING EXTENT OF THE FARM NOETZIE 394, KNYSNA - 23 JUNE 2026
Attachments: To Mr Pama 21Aug26.pdf; Private Parking at Noetzie River.docx

Dear Mr Pama,

Attached please find the NCOA's response to PPE's letter of 10th August 2026 and two requests to the KM.

Also attached is the comment from Mr Richard Moultrie regarding the Noetzie river properties' parking and access arrangements with PPE.

The NCOA will send our formal withdrawal of our objection next week.

Regards,
Melanie Gosling
NCOA
072 863 1425
melanie.gosling@gmail.com



Mosdell Pama & Cox

Attention Mr Perino Pama: attorney appointed to represent the KM Appeal Authority.

21st August 2026

Re: Subdivision of Farm Noetzie 394: Appeal hearing and matters relating to Subdivision Plan NOET394SUB7rev1

Dear Mr Pama,

The Noetzie Conservancy Owners' Association (NCOA) is responding to the letter sent to you, and copied to us, by Mr Marius Botha, lawyer for the applicant Pezula Private Estate Pty Ltd, on 10th August 2026.

We include two requests to the KM.

1. The NCOA will send our formal withdrawal of objection letter next week.

2. Utilities Servitude

(a) We wish to correct Mr Botha's statement of 10th August regarding our request that the electricity servitude be extended from erf 20379 to erf 20361 to include an existing electricity connection. He said: "The agreement never formed part of the subdivision application and has never been raised before."

That is not correct.

The NCOA raised this in our objection in September 2021, which is on page 47 of the bundle submitted to the Appeal Authority on 23 June 2026.

The owner of erf 20361, André Steyn, raised this in his own objection in September 2021, and attached a Google map where he marked the existing electricity connection running from erf 20379 to his property erf 20361.

The KM records Mr Steyn's objection on page 5 of the bundle submitted to the Appeal Authority.

(b) It is our understanding that KM must issue a Section 53 Compliance Certificate before registration with the Deeds Office, which cannot be done if there is an unresolved, unprotected, encroaching service line in the subdivided parcel.

(c) The NCOA confirms that the electricity connection from erf 20379 to erf 20361 has been in place at least since 2006, when Pezula Private Estate was running a B&B from Montrose Castle on erf 20361.

This electricity connection was in place when Mr Steyn bought erf 20361 in 2017.

(d) Note that the entire bundle of documents relating to this matter was before the Municipal Appeals Authority, which is clear from the agenda for the appeal hearing of 23rd June 2026, and as such, the authority is not restricted to considering matters only raised in the appeal.

(e) Section 51 of the Spatial Planning and Land use Management Act (SPLUMA) gives the Municipal Appeal Authority the power to impose binding conditions of approval -



even if the appellant and applicant have reached a private settlement agreement – as land use planning is a statutory public law process not a private civil matter. A private agreement does not take away this authority.

3. SIGNAGE

We ask that the KM instruct the relevant department that signs indicating access to the public pedestrian servitude to the Municipal Steps be erected both in the car park and next to the locked gate across this access route.

Municipal signage indicating beach access is required by the Integrated Coastal Management Act and the by the Municipality's 2024 draft bylaw on coastal management.

4. Recording:

We request a copy for our records of the transcript by the court official of the meeting of the parties on 23rd June 2026.

Kind regards

A handwritten signature in black ink, which appears to read "N. Taylor". The signature is fluid and cursive, written on a white background.

Nick Taylor

Chairman NCOA

Below is comment from NOCA member Richard Moultrie regarding the private parking access arrangements negotiated between Noetize river properties owners and Pezula Private Estate Pty Lts (PPE).

i) Paragraph (b) of Mr Botha's letter dated 10 August 2026 (responding to para 2(b) of NCOA's letter of 3 August) is uncontroversial (though it should, of course, be noted for the sake of accuracy that Diagram 4926/83 stipulates that line jk "represents the south-western boundary" of the existing road servitude); and

(ii) The draft subdivision plan "NOET394SUBrev1" dated 17 July 2026 and the "Endorsed Plan" stamped by KM on 10 June 2024 both appear to accurately reflect the parking and access arrangements for the river properties as agreed with PPE.

21st August 2026

Liesl Bailey

From: melanie gosling <melanie.gosling@gmail.com>
Sent: Monday, 31 August 2026 08:40
To: Perino PA; Thando Matika; Marius Botha
Cc: Director Planning; Lizemarie; Hennie Smit; NCOA Committee Members; NCOA Chairperson; Buziwe Mjamba; Anita Strydom; Lulamile Mapholoba; Liesl Bailey
Subject: [inbox]NOCA letter
Attachments: To Mr Pama 30Aug26.pdf

Dear Mr Pama, Mr Mayor and Mr Botha,

Please see the attached correspondence from the Noetzie Conservancy Owners' Association (NCOA).

Kind regards,

Melanie Gosling
NCOA
072 863 1425



30 August 2026

Mosdell Pama & Cox

Attention Mr Perino Pama: attorney appointed to represent the KM Appeal Authority.

Dear Mr Pama

Re: Subdivision of Farm Noetzie 394: Appeal hearing and matters relating to Subdivision Plan NOET394SUB7rev1

This is to inform you that the Noetzie Conservancy Owners' Association (NCOA) is taking legal advice about the correct steps to take when withdrawing our appeal, to ensure that the agreement reached is legally binding on all parties and on any future owners of the subdivided Portion A.

We will do this as quickly as possible.

Kind regards,

Nick Taylor

Chairperson: NCOA

Liesl Bailey

From: Marius Botha <marius@mhblaw.co.za>
Sent: Wednesday, 09 September 2026 15:55
To: Perino Pama
Cc: Hennie Smit; Guan Potgieter; Lizemarie
Subject: APPEAL HEARING: THE REMAINING EXTENT OF THE FARM NOETZIE 394, KNYSNA

Dear Mr Pama

We refer to our telephone conversation of yesterday, 08 September 2026.

We confirm that we requested that we have a virtual meeting with you and Mr Hennie Smit of the Knysna Municipality to discuss certain aspects raised by Mr Smit with Ms Lizemarie Botha of Planning Space pertaining to the above application.

We further confirm that you suggested that a "Without Prejudice" meeting be convened which includes yourself, Mr Smit, as well as the Legal Advisor of the Knysna Municipality.

We confirm that this is in order and we request that you kindly provide us with three alternative dates and times in order to convene such virtual meeting. From the Applicant's side it will be the writer, adv Potgieter and Ms Botha.

As this matter has been delayed for a considerable period of time we request that the meeting take place as soon as possible.

We look forward to hearing from you.

Yours sincerely

Marius Botha



335 Watsonia Avenue
Boschenmeer Estate
Paarl
Tel: (021) 8634443
Cell: 0827740027

PO Box 3144
Paarl
7620

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Liesl Bailey

From: melanie gosling <melanie.gosling@gmail.com>
Sent: Monday, 31 August 2026 11:50
To: Perino PA; Thando Matika; Marius Botha
Subject: [inbox]Re: NOCA letter

Further to the email below:

\Would the KM or the applicant be willing to record the details of the agreement in a legally-binding document on current and future owners that both parties can sign?

On Mon, Aug 31, 2026 at 8:39 AM melanie gosling <melanie.gosling@gmail.com> wrote:

Dear Mr Pama, Mr Mayor and Mr Botha,

Please see the attached correspondence from the Noetzie Conservancy Owners' Association (NCOA).

Kind regards,

Melanie Gosling
NCOA
072 863 1425

Liesl Bailey

From: melanie gosling <melanie.gosling@gmail.com>
Sent: Friday, 11 September 2026 08:57
To: Perino PA; Thando Matika; Marius Botha; Lizemarie; Director Planning; Hennie Smit; Lulamile Mapholoba; Collab@knysna.gov.za
Cc: bjamba@knysna.gov.za; Anita Strydom; NCOA Chairperson; NCOA Committee Members
Subject: [inbox]NCOA legal advice: Noetzie Conservancy Owners' Association Letter
Attachments: DOC026.pdf

Good day all,

Please see the attached legal advice obtained by the Noetzie Conservancy Owners' Association.

Regards,
Melanie Gosling
for NCOA chair

0728631425
melanie.gosling@gmail.com



Our Ref: Mr N Van Der Mescht/AB/
Your Ref:

09 September 2026

NOETZIE CONSERVANCY OWNERS' ASSOCIATION
c/o Melanie Gosling

ATTENTION: Melanie Gosling
EMAIL: melanie.gosling@gmail.com

Dear Melanie,

**PUBLIC PARKING CONDITION FOR SUBDIVISION OF THE REMAINING EXTENT
OF THE FARM NOETZIE NO 394 IN THE DIVISION OF KNYSNA, WESTERN CAPE
PROVINCE**

1. Further to our discussion of the above and the documents sent to me, I have now had the opportunity to consider the matter and advise as follows.
2. I enclose a copy of the Title Deed for the farm Noetzie for the purpose of orientating my advice. Regarding this Title Deed there is already servitude roads registered over the property in favour of the general public. This servitude is endorsed by the Registrar of Deeds to provide as follows:

*"By Notarial Deed of Servitude no. K 315/2006 S, dated 30 January 2006, the within property is subject to servitude roads, the curved lines **a b, c d, d e, e f, e g** and **d h** represent the centre lines of the servitude roads 5 metres wide and the curved line **j k** represents the south western boundary of a servitude road 5 metres wide as depicted on diagram no. 4926/1983 in favour of the general public.*

As will more fully appear from the said Notarial Deed."
(Own emphasis)

3. As will be evident from the wording of the existing public servitudes, the crux is that these servitudes are in favor of the general public and indicate the servitude entitlement of the public in no uncertain terms. These servitude roads are precisely indicated on Servitude Diagram and are permanent and not temporary.



4. In law the general rule is that only a court of law and not a Municipality, acting in terms of planning legislation, can amend a public servitude in any manner or form. The reason for this legal requirement is that the Municipality cannot agree to the amendment of the servitude rights of the general public.
5. What the Municipality did in the approval of the subdivision application for the property is to give effect to the existing legal position concerning the existing rights of the public of free and unhindered use rights by imposing a public servitude condition in respect of a public road and public parking. In doing so the Municipality consolidated the legal position with the rights of the owner of the property. The condition now imposed in the granting of the subdivision therefore has a dual purpose. To protect the rights of use of the public and confirm the custodianship of the Municipality as the protector of the use rights of the public. The condition imposed is therefore no ordinary condition that can be amended at the discretion of the Municipality. It is a similar servitude than the existing servitudes that already exist in the property and is quoted above in paragraph 2.
6. From the minutes of the meeting of 23 June 2026, it appears that attempts were made during the meeting by the representatives of the Applicant for the subdivision to circumvent the condition imposed by the Municipality. These attempts relate to the location of the public parking servitude on the subdivided portion of the Noetzie farm. This despite the condition by then already being imposed by the Knysna Municipality.
7. Although I do not have a copy of the approval itself which contain the servitude condition (condition 2C), it appears that the Advocate who appeared on behalf of Pezula at the hearing already appreciated that the servitudes in the condition can be nothing else but servitudes in favour of the general public. In this regard, Advocate Potgieter appearing for Pezula says the following:

"The condition which is the subject of this appeal is the subdivision condition approved by council condition 2C. And it has regard to the Knysna Municipality, which requires that the landowner must secure public access to the beach and public parking by way of servitudes."
8. If one has to secure public access, then this can only be done by way of a servitude in favour of the general public. I don't think this can be debated at all, a servitude in favour of the general public is required and nothing less. This servitude stands to be created in terms section 65 (1) of the Deeds Registries Act, 1937 when the tile deed for the subdivided portion is prepared for registration in the Deeds Office in Cape Town.



9. The expert evidence that Pezula presented at the meeting was that of its professional Town Planner Lize Marie Botha. From her evidence it is clear that it is the exact same parking lot that is currently used as such that is in issue. In this regard, her expert evidence is as follows:

"The existing parking lot, which is... we define that as 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 number, this is the future erf 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 Municipality for access to and use of adequate alternative parking facilities for 18 bays."

10. The legal nature of the condition imposed by a local authority when granting a subdivision is that the condition has the power of law of general application. As such, unless and until a condition is amended in terms of an application for such amendment in terms of the Knysna Planning Bylaw, the condition stands and can be enforced by any person or Association with a legal interest, such as the Noetzie Conservancy Owners Association. In this regard an agreement reached between parties at a meeting, regardless or not whether the meeting is termed the hearing of an appeal in terms of the by-law or a meeting to settle the appeal ("find common ground") is not a proper manner in which to amend a condition of approval, regardless of the intension of the parties.
11. As already mentioned, and explained, condition 2C is not an ordinary condition that can be amended in the discretion of the Municipality. It is and remain a condition to give effect to the vested rights of the public, and as such can only be amended by a Court of law. The rights that the public have to free and unhindered access to the beach and the use of the existing public parking facility is not temporary, it is permanent. As such, the public rights vests and for servitude purposes must be described in the servitude diagram in the same uncertain terms as the right of way servitude in the current title deed quoted above in paragraph 2.
12. Although I do not see the exact words that it was eventually proposed should be annotated on the Subdivision Plan before the parties present at the meeting should sign it, consistent with the discussions and the quotation in paragraph 9 above, these words will be aimed at providing the Knysna Municipality with the power to on behalf of the general public, accept a different parking area, should the landowner so elect. The safeguard that is offered to induce the respectfully unlawful settlement, is that the Municipality would before the amendment of the "temporary" parking servitude or area thereof follow a public participation



HDRS

ATTORNEYS INC
Attorneys • Notaries • Conveyancers

procedure/process. In other words, the power to amend is usurped from a Court of law and "by agreement" given to the Municipality. This is unlawful and cannot be done or agreed to, especially not between the parties presented at the meeting.

13. By no stretch of the imagination can it be said that either the Municipality or the Noetzie Conservancy Owners' Association is the general public or represent the general public.
14. Against the background of this opinion, I deal now with what is considered the last outstanding issue in respect of the "settlement" reached at the meeting. Neither any or all of the parties can settle the public servitude condition by agreeing to a parking servitude that is temporary and at the behest of Knysna Municipality. I therefore strongly advice the Association not to sign off on the purported settlement in any manner or form.
15. I trust that it will not be necessary to litigate the matter, as the law and the facts herein is relatively uncomplicated and the legal position should be accepted and respected by all concerned. You are welcome to share this opinion with other parties present at the meeting, if you so elect.

Yours Sincerely,

HDRS ATTORNEYS INC.

Per: NEWTON VAN DER MESCHT

VIR ENDOSSEMENTE KYK BLADSY
FOR ENDORSEMENTS SEE PAGE

ET 583

128

293

Logan - Martin Inc
20 Woodmill Lane Centre
Main Street
Knysna
6570

Prepared by me

CONVEYANCER
MARTIN PB

500,00

00

106352 + 2000

DEED OF TRANSFER

BE IT HEREBY MADE KNOWN THAT:

DAVID FIALKOV

appeared before me, Registrar of Deeds, at Cape Town; the said appearer being duly authorised thereto by a Power of Attorney granted to him by

GEO PARKES AND SONS (PROPRIETARY) LIMITED
No. 64/01459/07 1904/CC 1137/07

which said Power of Attorney was signed at KNYSNA on 09 October 2000

And the said appearer declared that his principal had, on 07 September 2000, truly and legally sold by Private Treaty, and that he, the said Appearer, in his capacity aforesaid, did, by these presents, cede and transfer to and on behalf of:

FASTPULSE TRADING 72 (PROPRIETARY) LIMITED
No. 2000/019673/07

its Successors in Title or Assigns, in full and free property

THE REMAINING EXTENT OF THE FARM NOETZIE NO. 394 IN THE
DIVISION KNYSNA, WESTERN CAPE PROVINCE;

IN EXTENT : 612,4771 (SIX ONE TWO COMMA FOUR SEVEN, SEVEN
ONE) Hectares

FIRST REGISTERED by Certificate of Amended Title with Diagram No.
5197/1914 annexed granted under the Provisions of Act No. 9 of 1870 on the
19th April 1915 (Knysna Quitrent's Book II Folio 23) and held by Deed of Transfer
No. 1200/1921.

A. **SUBJECT** to such conditions as are mentioned or referred to in the said
Certificate of Amended Title dated the 19th April 1915 with Diagram No.
5197/1914 annexed and to the condition specially mentioned in Deed of Transfer
No. T1200/1921 namely:

"The said land being subject moreover to all such duties and regulations as either
or already or shall in future be established respecting lands held on similar
tenure."

3. **SUBJECT FURTHER** to Expropriation No. EX 136/98, in extent
approximately 15,400 square metres in favour of The Municipality
of Knysna.

WHEREFORE the said Appearer, renouncing all right and title which the said

GEO PARKES AND SONS (PROPRIETARY) LIMITED
(No. 04/01159/07)

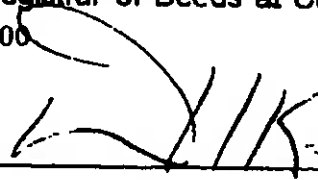
heretofore had to the premises, did in consequence also acknowledge it to be entirely dispossessed of, and disentitled to the same, and that by these presents, the said

FASTPULSE TRADING 72 (PROPRIETARY) LIMITED
(No. 2000/019673/07)

its Successors in Title or Assigns, now is and henceforth shall be entitled thereto, conformably to local custom, the State, however reserving its rights, and finally acknowledging the purchase price to be the sum of R4 213 660,65 (FOUR MILLION TWO HUNDRED AND THIRTEEN THOUSAND SIX HUNDRED AND SIXTY RANDS AND SIXTY FIVE CENTS).

IN WITNESS WHEREOF, I the said Registrar, together with the Appearer, have subscribed to these presents, and have caused the Seal of Office to be affixed thereto.

THUS DONE and EXECUTED at the Office of the Registrar of Deeds at Cape Town on 15th December 2000



q.q.

In my presence



REGISTRAR OF DEEDS

- 4 -

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T-FEREE.	
IS VERANDER NA	HAS BEEN CHANGED TO
PEZULA PRIVATE ESTATE (PTY) LTD	
BC	072700/2001
2001-12-14	
REGISTRATEUR/REGISTRAR	

VERBIND MORTGAGED		000023396-2001
VIR FOR R 8 000 000,00		BC 2003-01-24
B 071342/2001		GEKANSSELEER CANCELLED
2001-12-14		REGISTRATEUR/REGISTRAR
2003-01-24		2003/04/24
REGISTRATEUR/REGISTRAR		

for
release
off
bond

VERBIND MORTGAGED	
VIR FOR R 3 000 000,00	
B	020624/2003
2003-01-24	
REGISTRATEUR/REGISTRAR	

substitute
no. Gf 13271.

SUBSTITUTED
no. EF 13326

SERTIFKAAT VAN GEREISTREERDE TITEL INTGEREIN CERTIFICATE OF REGISTERED TITLE ISSUED	
OP OPSIGTE VAN RESPECT OF	Gf 13271 = 90,0130 HA.
	RESTANT 522,464 HA.
27 OCT 2003	
REGISTRATEUR/REGISTRAR	

for further and P 5

SERTIFIKAAT VAN GEREISTREERDE TITEL UITGEREIK
 CERTIFICATE OF REGISTERED TITLE ISSUED

TEN OPSIGTE VAN
 IN RESPECT OF Erf 13326 knysna = 34,6159 ha

RESTANT
 REMAINDER 487,8482 ha

T 113824/03.

3/12/03.

[Signature]

REGISTRAR

SERTIFIKAAT VAN GEREISTREERDE TITEL UITGEREIK
 CERTIFICATE OF REGISTERED TITLE ISSUED

TEN OPSIGTE VAN
 IN RESPECT OF Erf 13348 = 110,3938 Jxu.

RESTANT
 REMAINDER 377,4544 Jxu.

T 73921/04

30/7/04

[Signature]

REGISTRAR

Remainder

VERBOD MORTGAGED

VIA
 FOR R. 69 000 000,00

000106717/2004

15 Dec 2004

[Signature]

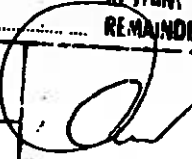
REGISTRAR

for
 release
 of the
 bond

For further End. Pp.

10

①

SERTIFKAAT VAN GEREISTREERDE TITEL UITGEREIK CERTIFICATE OF REGISTERED TITLE ISSUED	
TEN OPSIGTE VAN Erf 13397 Knysna IN RESPECT OF = 195,2870 HA	
RESTANT REMAINDER 182,1674 ha	
T 53192 / OS	
04 JUL 2005	REGISTRAR/REGISTRAR

For further End. p. 7

T106352/2000

By Notarial Deed of Servitude no. K 315/2006 S, dated 30 January 2006, the within property is subject to servitude roads, the curved lines a b, c d, d e, e f, e g and d h represent the centre lines of the servitude roads 5 metres wide and the curved line j k represents the south western boundary of a servitude road 5 metres wide as depicted on diagram no. 4926/1983 in favour of the general public.

As will more fully appear from the said Notarial Deed.

Deeds Registry
Cape Town
Date: 2006-03-30


.....
Registrar of Deeds

For endorsements see pg. 8

VA 000004086/2006

Certified a true copy of the duplicate original
Gesertifiseer 'n ware afskrif van die duplikaat-

ed of record in this Registry, issued to serve in
oorspronklike in bewaring gegee op hierdie Regi-

place of the original thereof under the provisions
strasiekantoor, uitgereik om te diens die plek van

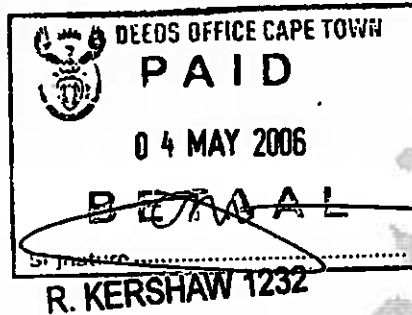
of Deeds Registrasies Regulation No. 68 (//
die oorspronklike daarvan onder die bepalings van
die Registrasiekantoor Registrasie No. 68 (//

Deeds Registry / Registrasiekantoor
Cape Town / Kaapstad

31 MAY 2006

Asst. Registrar of Deeds

Asst. Registrasie van Aans



CERTIFICATE OF REGISTERED TITLE ISSUED	
TEN OPSIGTE VAN ERF 15233 KNYSNA	
IN RESPECT OF MEAS: 109,6702 HA RESTANT REMAINDER 82,1674 HA	
T 000037881/2006	
31 MAY 2006	REGISTRATEUR/REGISTRAR

82,1674
30 2492
51,9182

CERTIFICATE OF REGISTERED TITLE ISSUED	
TEN OPSIGTE VAN ERF 13514 = 30,2492	
IN RESPECT OF RESTANT REMAINDER 51,9182	
T 19597/2007	
14 MAR 2008	REGISTRATEUR/REGISTRAR

VIR ENDOSSEMENTE RIX BLAD
FOR ENDORSEMENTS SEE PAGE

Condition A is amended

GENESIS CHAPTERS ART. 4 (1) (a) AND AMENDED IN TERMS OF SECTION 4 (1) (a) OF ACT 47 OF 1997 TO READ:

NET 47 VAN 1997 ON TE LIES:

BC 00078060/2018

20 JUL 2018

REGISTRAR/REGISTRAR

Elf 20381 meas 14.9 m²
 Elf 20382 meas 113 m²
 Elf 20383 meas 150 m²

51, 9182
 412
 18770

GETRANSPORTEREN AAN TRANSPORTED TO
 PEZULA PRIVATE CASTLE PROPRIETARY
 LIMITED

RESTANT/REMAINDER 51,8770 Ln

T 00033855/2018

20 JUL 2018

REGISTRAR/REGISTRAR

WAT ENDOORSSEMENTE KAN BLADEN/ 10
 FOR ENDORSEMENTS SEE PAGE 10

*

A. **SUBJECT** to such conditions as are mentioned or referred to in the said Certificate of Amended Title dated the 19 April 1915 (Knysna Quitrents Volume 11 Folio 23).

B. **SUBJECT FURTHER** to the condition specially mentioned in Deed of Transfer No.T1200/1921 namely:

"The said land being subject moreover to all such duties and regulations as either or already or shall in future be established respecting lands held on similar tenure."

REGISTRAR OF DEEDS
CAPE TOWN

Handwritten signature

KNYSNA MUNICIPALITY:

SUGGESTED WAY FORWARD FOR THE APPEAL IN RELATION TO THE APPLICATION FOR SUBDIVISION AND CLOSURE OF PUBLIC OPEN SPACES: THE REMAINING EXTENT OF THE FARM NOETZIE NUMBER 394

Applicant: VPM Planning CC (Ms. L Botha/Lundikazi Khupiso)

Advocate G Potgieter

Attorney M Botha

Appellant: M and J Gosling – Noetzie Conservancy

Application Property Details: The Remaining Extent of the Farm Noetzie 394

Title deed: T106352/2000

BACKGROUND AND CHRONOLOGY OF THE MATTER

Remainder of the Farm Noetzie No. 394, Knysna

Subdivision, Appeal and Appeal Authority Hearing

INTRODUCTION

1. This matter concerns the subdivision of the Remainder of the Farm Noetzie No. 394, Knysna ("the property"), owned by Pezula Private Estate (Pty) Ltd ("Pezula" or "PPE"), the conditions of approval imposed by the Knysna Municipality relating to public access to the beach, public parking, river management and fire risk management, and the appeal lodged against those conditions by the Noetzie Conservancy Owners' Association ("NCOA"). The background below is set out chronologically with reference to the contemporaneous documents, including the 2002 agreement between NCOA and Pezula, the Planning Tribunal's decision letter of 21 January 2025, the correspondence chronology compiled by the Municipality's attorneys (Mosdell Pama & Cox Inc) dated 19 February 2026 and the Minutes of the Appeal Authority's oral hearing of 23 June 2026.

BACKGROUND PRIOR TO THE 2024 SUBDIVISION DECISION (2002–2021)

2. The relationship between NCOA and Pezula in respect of the development of the property is longstanding. On 28 August / 3 September 2002 (NCOA signing at Johannesburg, PPE signing at

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6 High street, Plettenberg Bay
Reference : Perino Pama PP4819



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Knysna), NCOA and Pezula concluded a written agreement in terms of which NCOA withdrew its objections to Pezula's then-proposed rezoning and subdivision of the property, in exchange for various undertakings by Pezula. These included, in clause 6, an undertaking to resolve outstanding access, encroachment, easement and other infringement issues with Noetzie property owners; that any future development of the "Noetzie Infill" area would proceed only in accordance with the scheme regulations annexed to the agreement; and that open space areas would not be sold, alienated, further subdivided or rezoned for a period of 20 years without the required process.

3. Pursuant to that agreement, the Regional Structure Plan amendment, rezoning and subdivision of the Farm Noetzie No. 394 (the "Pezula approvals") were granted on 19 November 2002 and 10 April 2003 respectively.
4. In 2006, PPE terminated the 1981 parking lease and closed the pedestrian "strip road". A member of the public brought a successful urgent application against PPE (case number 03670/06), and the Court ordered that free and unfettered public access across the municipal steps and the strip road be immediately restored — an early judicial confirmation of the public's access rights over this part of the property.
5. On 11 September 2008, the Municipality approved a subdivision of a portion of the Remainder of Farm Noetzie 394, subject to conditions including the protection of beach and parking access. That approval subsequently lapsed.
6. On 6 May 2011, approval was granted for the registration of access servitudes over Portion 78 of the Farm Noetzie No. 394, Erf 13493, Knysna, and Erf 13494, Knysna.
7. On 18 May 2021, VPM Planning CC (Ms. Lundikazi Khupiso), on behalf of Pezula, lodged the application for subdivision and closure of public open spaces, and for the registration of servitudes, in relation to the Remaining Extent of the Farm Noetzie No. 394 (Application No. 2534) — essentially seeking to reinstate the lapsed 2008 subdivision approval. A pre-application meeting had been held on 29 October 2020, at which the Municipality recommended, among other things,



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that the road closure and subdivision applications be submitted separately, that servitudes exempted under section 24 of the By-Law be indicated on the subdivision plan rather than form part of the formal application, and that an aerial photograph reflecting the applications and exempted servitudes be provided.

8. Public participation on the application ran from 5 August 2021 to 13 September 2021 (by press notice, gazette, site notice, ward councillor notices and notices to community organisations), and drew a total of 13 comments. NCOA's written objection, lodged on 13 September 2021, raised eight specific requirements: (i) compliance with condition 6 of the 2003 record of decision (at least 500 HA to be retained as private open space); (ii) revision of the plan to show the public thoroughfare extending the full length reflected on the 1915 General Plan for Noetzie, from Erf 20328 to Erf 20359, rather than only from Erf 20330; (iii) clarification of the 152 HA figure in the applicant's memorandum and confirmation that the existing public parking area was properly reflected; (iv) provision for the free movement of animals through the Eastern Heads Noetzie Coastal Corridor; (v) a fire management plan, including controlled burns and membership of the Southern Cape Fire Association, following the 2017 fires; (vi) refusal of any private (as opposed to public) right of way, together with a proposed land swap to avoid loss of public land, referencing the 2006 court order (case 03670/06) requiring the road and steps to be reopened; (vii) provision for CCTV access infrastructure; and (viii) a condition prohibiting structures on the area zoned "Open Space III".
9. Other objections and comments were received from, among others: Councillor C Croutz (Chief Whip of the ANC and Chairperson of the Governance portfolio), opposing restriction of beach/fishing access; Mr E Brown, supporting NCOA's position and raising the absence of parking provision for river properties; the Oosthuizen's (Erven 20358–20359); the beneficiaries of Erf 20351 (represented by Mr A Sandberg); Mr C Spies, raising concerns about an unlawful gate at Grane Way and compliance with section 14 of the Municipal Finance Management Act; Mr A Steyn (Erf 20361), objecting to closure of the public place, asserting that Portion A was in current use as a parking area, and seeking extension of the water/electricity servitude serving Erf 20379 to Erf 20361 based on an existing connection; Mr J Metelerkamp, concerned that the municipal steps would come to a dead end; Cardona Investments 397 (Pty) Ltd (Erven 20354–20356), supporting the principle but noting unresolved river-property parking



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arrangements under clause 6 of the 2002 Agreement; Mr H Otto (Erf 20349), seconding NCOA and Cardona and proposing a future site-development-plan condition; and Ms. A Nicolson and Mr T Jones (Erf 20339), questioning the need for the application absent any development proposal. Support was received from Mr J Lubbe of Danistan Investments (Pty) Ltd (Erf 20376).

10. Internal and external department comments included: Environmental Services (2 September 2021), no objection provided no construction was involved; the Technical Services Directorate (27 August 2021), requiring unrestricted two-way access and a vehicle turning space, and recording that no parking needed to be accommodated; SANParks, seeking clarity on management of the open space, objecting to fencing, and requesting a site visit to confirm long-term conservation outcomes; and the (Provincial) Department of Environmental Affairs and Development Planning, raising no objection from a provincial regulatory land-use planning perspective.
11. The applicant responded to these comments, among other things declining to accept the Technical Services Directorate's road-upgrade requirement (not the landowner's responsibility), declining most of NCOA's requests (on the basis that the 500 ha open-space requirement did not apply to this portion, that the public thoroughfare's absence from the plan did not extinguish it, that the stream servitude and river-property parking were not matters for this application, and that the road was a municipal responsibility), while agreeing to pursue Southern Cape Fire Association membership and a fire management plan, to amend the plan to include Erf 20330 among the servitude beneficiaries, and to reflect a recently-agreed resolution of access to Erf 20380.
12. A Land Use Planning Report on the application (Application No. 2534), authored by Ms. LV Mniki, Town Planner, and dated 27 May 2022, was submitted to the Knysna Municipal Planning Tribunal. The report recommended that the proposed subdivision to create Portion B ($\pm$ 0.2753 ha, associated with the road realignment) be refused, and that the associated closure of the public place (the unmade road) also be refused, on the basis that the road-closure component was technically deficient — the applicant not having engaged the Municipality's Property Department under section 14 of the Municipal Finance Management Act, and no formal application having been made for amendment of the General Plan under section 15(2)(k) of



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the then-applicable By-Law. The report recommended, however, that approval be granted, under section 60 of the By-Law then in force, for the subdivision of the Remainder of Farm 394, Noetzie, into Portion A (5.8654 HA) and the Remainder, generally in accordance with subdivision plan "NOET394SUB5" (VPM Planning, dated 19 November 2021), subject to conditions including that the applicant not obstruct formal access arrangements or restrict public access to roads, ways and amenities (beach and parking), which were to be linked at all times.

13. The Tribunal's eventual decision of 3 December 2024 approved only the Portion A subdivision (5.8654 HA) — consistent with the narrower approval recommended in the 27 May 2022 report — by reference to a further-revised plan, "NOET394SUB6", also dated 19 November 2021. The road closure and Portion B elements do not feature in the December 2024 decision or the subsequent appeal. The gap of some two and a half years between the May 2022 report and the December 2024 decision, and the reasons for the revision from plan SUB5 to plan SUB6 (both bearing the same date 19 November 2021), are not explained in the documents available and may warrant clarification.
14. This history forms part of the factual matrix against which the current dispute over public access, parking, river management and fire risk servitudes and conditions falls to be understood: it reflects a pattern of negotiated agreement (2002), subsequent lapse or non-implementation of protective conditions (2008), a public objection process (2021) that anticipated most of the issues later raised on appeal, at least one instance of public access rights being vindicated only through litigation (2006), and a planning recommendation (2022) that already declined to countenance the road-closure and Portion B elements ultimately excluded from the final approval.

THE 2024/2025 SUBDIVISION DECISION AND NOTIFICATION

15. The Knysna Municipality Planning Tribunal ("KMPT") considered Pezula's application for subdivision of the property at a meeting held on 3 December 2024, and unanimously resolved to grant approval, in terms of section 60 of the Knysna Municipality By-Law on Spatial Planning and Land Use Management, 2021 ("the By-Law"), for the subdivision of



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the Remainder of Farm 394, Noetzie, into Portion A (5.8654 ha) and the Remainder.

16. The approval was granted subject to conditions imposed in terms of section 66 of the By-Law. Of particular relevance: condition 2(c) recorded that the applicant's attention was specifically drawn to the conditions of approval in Annexure C of 2008 (v) and (vii), which provide for access to the beach area and parking, and require that the landowner secure such access by way of servitudes; and additional information items required a River Management Plan (item 4(a)), an Invasive Plant Management Plan (item 4(b)) and a Fire Risk Management Plan (item 4(c)), each to be approved and implemented to the satisfaction of the relevant authority.
17. The Tribunal's decision was communicated to NCOA (c/o Ms Melanie Gosling) by way of a written decision letter dated 21 January 2025 (received 23 January 2025), issued by Mr JH Smit, Manager: Land Use Management. The letter recorded the rationale for the approval — including that it would not compromise public access to amenities such as the beach, parking and related open spaces, provided suitable access arrangements were in place — and advised NCOA of its right, in terms of section 79(2) of the By-Law, to appeal the decision to the Appeal Authority within 21 days.

NCOA'S APPEAL AND ITS GROUNDS

18. On 10/11 February 2025, NCOA, represented by its chairperson Mr Nick Taylor, lodged an appeal against three specific elements of the Tribunal's decision — condition 2(c), item 4(a) and item 4(c) — while not appealing the approval of the subdivision itself. The grounds of appeal, as recorded in the draft Appeal Authority decision document, were as follows.
 - 18.1. Ground 1 (condition 2(c) — public access and public parking servitudes): NCOA contended that servitudes are only legally enforceable once registered and a servitude certificate issued, that no evidence had been provided that the required servitudes had in fact been registered, and that they must be registered prior to subdivision to bind current and future owners. The servitudes identified by NCOA as outstanding included pedestrian and vehicular access down the Old



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Wagon Road (Minor Road 3); pedestrian access down the private road (to Erf 20379) to the municipal steps; road access to Erf 20380 (the historic Pezula Castle); a servitude to the western beachfront properties, including Erf 20330, said to have been omitted from the application; the public passage at the beach between Erf 20330 and Erf 20375; and the existing public parking area, said to have been in continuous public use since the early twentieth century.

- 18.2. Ground 2 (item 4(a) — river management): NCOA submitted that the condition was inadequate, contending that the river crossing the western section of the property had previously been unlawfully diverted, causing erosion and land loss to Erf 20330, that unauthorised weirs had been constructed on it, and that abstraction and other upstream activities affected downstream owners. NCOA submitted that the condition failed to provide for an integrated River Management Plan to maintain the river in an ecologically sound condition, to secure the participation of all riparian owners in preparing and implementing such a plan, or to secure registered access rights for riparian landowners by way of a stream servitude.
- 18.3. Ground 3 (item 4(c) — fire risk management): NCOA submitted that the condition was inadequate given that Noetzie is in a high wildfire-risk zone, that four of the then thirty houses at Noetzie were destroyed in the June 2017 fires, that there is no municipal water supply or fire hydrants at Noetzie, and that the land proposed for subdivision constitutes the largest portion of the Noetzie Conservancy. NCOA submitted that an integrated Fire Risk Management Plan should be a condition of approval, developed in consultation with the Municipality, the Southern Cape Fire Association ("SCFA") and NCOA, compliant with the Conservation of Agricultural Resources Act, with the landowner and successors in title required to become members of the SCFA.
19. It is noted that the oral hearing that ultimately took place on 23 June 2026 addressed, on the documentary record available, only the Ground 1 servitude and parking dispute.

E. THE DISPUTE OVER THE APPEAL'S VALIDITY (FEBRUARY 2025 – FEBRUARY 2026)



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20. What followed the lodging of the appeal was a protracted and, on the documentary record, contested process, marked by (i) conflicting municipal positions on the validity of the appeal, starting with the applicant's planner's objection to validity (3 March 2025) and the municipal Appeal Report's recommendation that it be deemed invalid without an oral hearing (15 March 2025); (ii) repeated rescheduling of the oral hearing of the appeal (from 4 June 2025, to 15 August 2025, to 25 September 2025, to 20 October 2025, to 12 February 2026, before the appeal was in fact heard on 23 June 2026); and (iii) an internal dispute within the Municipality as to whether, and by whom, a decision had been taken that NCOA's appeal was invalid. This is addressed in detail in the chronology at Section F below.
21. That internal dispute culminated in a letter from the Executive Mayor to Pezula's attorney, Mr Marius Botha, dated 11 February 2026, confirming that the determination by Mr Smit that NCOA's appeal was invalid had been made outside the scope of his delegated authority, that it was accordingly a procedurally irregular and unlawful administrative act, and that the appeal would therefore be referred to the delegated Appeal Authority for consideration on the merits. An oral hearing was then convened for 12 February 2026, which did not proceed to a substantive determination; the appeal was ultimately heard on 23 June 2026.

DETAILED CHRONOLOGY

22. The table below sets out the detailed chronology of events, compiled with reference to the contemporaneous correspondence and documents identified above, including the background recorded in the draft Appeal Authority decision of 8 September 2026.

Date	Event
28 August / 3 September 2002	The Noetzie Conservancy Owners' Association ("NCOA") and Pezula Private Estate (Pty) Ltd ("PPE"), the registered owner of the Remainder of the Farm Noetzie No. 394, signed an agreement (NCOA signing at Johannesburg, PPE signing at Knysna) in terms of which NCOA withdrew its objections to PPE's proposed rezoning and subdivision of the property, subject to undertakings by PPE, including (clause 6) an undertaking to resolve outstanding access, encroachment,



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	easement and other infringement issues with Noetzie property owners, that the "Noetzie Infill" area would be developed only in accordance with an annexed scheme, and that open space areas would not be sold, alienated, subdivided or rezoned for 20 years.
19 November 2002 / 10 April 2003	The Regional Structure Plan amendment, rezoning and subdivision of the Farm Noetzie No. 394 (the "Pezula approvals") were granted.
2006	PPE terminated the 1981 parking lease and closed the pedestrian "strip road". A member of the public brought a successful urgent application against PPE (case number 03670/06), and the court ordered that free and unfettered public access across the municipal steps and the strip road be immediately restored.
11 September 2008	The Municipality approved a subdivision of a portion of the Remainder of Farm Noetzie 394, subject to conditions including the protection of beach and parking access. This approval subsequently lapsed.
6 May 2011	Approval was granted for the registration of access servitudes over Portion 78 of the Farm Noetzie No. 394, Erf 13493, Knysna, and Erf 13494, Knysna.
29 October 2020	A pre-application meeting was held at which the Municipality recommended, among other things, that the road closure and subdivision applications be submitted separately, and that servitudes to be exempted under section 24 of the then-applicable By-Law be indicated on the subdivision plan rather than form part of the formal application.
18 May 2021	VPM Planning CC (Ms. Lundikazi Khupiso), on behalf of Pezula Private Estate (Pty) Ltd, lodged the application (No. 2534) for subdivision and closure of public open spaces, and for the registration of servitudes, in relation to the Remaining Extent of the Farm Noetzie No. 394, essentially seeking to reinstate the lapsed 2008 subdivision approval.
5 August – 13 September 2021	Public participation on the application was undertaken (press, gazette, site notice, ward councillor and community organisation notices), drawing 13 valid comments. NCOA's written objection, lodged on 13 September 2021, raised

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	eight specific requirements concerning open space retention, the extent of the public thoroughfare, clarification of area calculations, wildlife corridor access, fire management, refusal of a private (as opposed to public) right of way, CCTV infrastructure, and a no-structures condition on "Open Space III". Further comments/objections were received from Councillor C Croutz, Mr E Brown, the Oosthuizens, the beneficiaries of Erf 20351, Mr C Spies, Mr A Steyn (Erf 20361), Mr J Metelerkamp, Cardona Investments 397 (Pty) Ltd, Mr H Otto, and Ms. A Nicolson and Mr T Jones (the latter group raising concerns broadly anticipating the grounds later raised on appeal); support was received from Mr J Lubbe (Danistan Investments (Pty) Ltd).
27 August – 2 September 2021	Internal and external department comments were received: the Technical Services Directorate (27 August 2021) required unrestricted two-way access and a turning space, and recorded that no parking needed to be accommodated; Environmental Services (2 September 2021) raised no objection provided no construction was involved; SANParks queried management of the open space and objected to fencing; and the Department of Environmental Affairs and Development Planning raised no provincial regulatory objection.
27 May 2022	A Land Use Planning Report on Application No. 2534, authored by Ms. LV Mniki, Town Planner, was submitted to the Knysna Municipal Planning Tribunal. It recommended refusal of the proposed subdivision to create Portion B ($\pm$ 0.2753 ha) and of the associated closure of the public place (unmade road), as technically deficient, but recommended approval, under section 60 of the then-applicable By-Law, of the subdivision of the Remainder of Farm 394, Noetzie, into Portion A (5.8654 ha) and the Remainder, generally in accordance with subdivision plan "NOET394SUB5" (VPM Planning, dated 19 November 2021).
3 December 2024	The Knysna Municipality Planning Tribunal ("KMPT"), at a meeting held on this date, unanimously resolved to grant approval, 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. The



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	approval was granted subject to conditions imposed under section 66 of the By-Law, including that the subdivision plan be generally in accordance with plan "NOET394SUB6" (VPM Planning, dated 19 November 2021), that the landowner's attention was drawn to the conditions of approval in Annexure C of 2008 (v) and (vii) requiring the landowner to secure, by way of servitudes, public access to the beach and public parking (condition 2(c)), and additional information items requiring a River Management Plan (item 4(a)), an Invasive Plant Management Plan (item 4(b)) and a Fire Risk Management Plan (item 4(c)).
21 January 2025 (received 23 January 2025)	The Manager: Land Use Management, Mr JH Smit, issued the Municipality's written decision and conditions of approval to NCOA (c/o Ms. Melanie Gosling), together with notification of the right of appeal to the Appeal Authority under section 79(2) of the By-Law, to be lodged within 21 days of notification.
10/11 February 2025	NCOA, represented by its chairperson Mr Nick Taylor, lodged an appeal against three specific elements of the decision: condition 2(c) (public access and parking servitudes), item 4(a) (river management) and item 4(c) (fire risk management). NCOA's central contentions were that the required servitudes must be registered prior to subdivision to be legally binding and enforceable, and that the river management and fire risk management provisions were inadequate. NCOA did not appeal the approval of the subdivision itself.
11 February 2025	Mr Hennie Smit advised Ms. Gosling by email that the appeal had been captured on the municipal system and that its validity would be confirmed shortly.
3 March 2025	Two things occurred on this date: (i) Mr Smit confirmed by email to Ms. Gosling that the appeal was valid; and (ii) the applicant's planner, Planning Space, responded to the appeal on behalf of Pezula, submitting that it was procedurally invalid under section 80(2) of the By-Law for failing to set out valid grounds, a factual or legal basis, or new issues for consideration, and, on the merits, that servitude registration occurs simultaneously with subdivision registration as a matter of standard legal process, and that



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	the river and fire risk management provisions fell outside the Municipality's jurisdiction or were pre-existing obligations of the landowner.
15 March 2025	Mr H Smit, Manager: Land Use Management, completed and submitted to the Appeal Authority a formal Appeal Report on NCOA's appeal (Application No. 2534). The report recorded NCOA's appellant as Mr Nick Taylor; noted that the original application had drawn 12 valid comments (including three letters of support) during public participation; summarised the three grounds of appeal (condition 2(c), item 4(a), item 4(c)) and the specific servitudes NCOA identified as outstanding; recorded Planning Space's comment of 3 March 2025 that the appeal lacked merit and did not comply with section 80(2); and recommended, for the Appeal Authority's decision, (i) that the appeal fell within the Appeal Authority's jurisdiction under section 81(7)(f), (ii) that the report and supporting documents were adequate to determine the appeal without an oral hearing under section 81(1)(b)/(2), and (iii) that the appeal be deemed invalid under section 80(1) for non-compliance with section 80(2).
22 May 2025	Mr Enrico Campher informed NCOA and other interested parties that an oral hearing of the appeal would take place on 4 June 2025.
26 May – 2 June 2025	Ms. Gosling confirmed NCOA's attendance at the oral hearing (26 May) and thereafter advised that Mr Robby Robertson would represent NCOA's interests (2 June). Mr Campher advised the same day that he was no longer attached to the Planning Tribunal/Appeal Authority and that further enquiries should be directed to Ms. Liesl Bailey.
2 – 3 June 2025	Mr Smit circulated a draft email (endorsed by the Acting Municipal Manager) stating that the hearing scheduled for 4 June 2025 would be an internal hearing and not an oral hearing. Ms. Gosling responded that NCOA had received no formal communication precluding public submissions and queried the position; she had by then already travelled from Cape Town to Knysna to attend. The Municipal Manager maintained that the hearing would be internal, this being a matter for the Appeal Authority.



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4 June 2025	NCOA and the Welbedacht Homeowners' Association attended at the municipal offices for the scheduled hearing. An official (Ms. Kirsty Hofhuis) advised that the Executive Mayor had postponed the meeting and that no new date had been given. Later that day, the Director: Planning confirmed by email that the meeting had been postponed on the Executive Mayor's directive, with an alternative date to follow.
10 July 2025	An (internal) meeting was held at which the appeal was considered.
11 July 2025	Ms. Gosling emailed the Mayor enquiring when the appeal would be heard, noting no communication since 4 June. The Mayor asked Mr Smit to respond, and Mr Smit advised Ms. Gosling that the appeal had been presented to the Appeal Authority at the meeting the previous day and that a decision would follow shortly.
6 August 2025	Ms. Bailey invited the parties, including NCOA and Mr Smit, to an oral hearing set down for 15 August 2025.
8 August 2025	NCOA confirmed in writing that the appeal had the support of its committee. The same day, Ms. Lizemarie Botha, for Pezula Private Estate, requested a postponement of the hearing.
14 August 2025	Ms. Bailey confirmed to Ms. Gosling that the hearing had been postponed.
9 September 2025	Ms. Bailey advised that a new hearing date of 25 September 2025 had been set, with the agenda to follow.
23 September 2025	Ms. Buhlebenkosi Koti advised that the hearing had again been postponed, owing to the unavailability of key municipal officials.
30 September – 10 October 2025	Ms. Bailey advised that the hearing had been re-set for 20 October 2025 (30 September); Ms. Gosling confirmed NCOA's attendance (10 October).
14 – 17 October 2025	Mr Smit advised Ms. Gosling that the validity of the NCOA appeal first had to be clarified administratively, describing this as an administrative act (14 October). A series of emails followed in which Mr Smit initially stated that the matter was "finalised" and the appeal invalid for failing to identify the

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	grounds on which the decision-maker was said to have erred (15 October, 16:16), then stated that the Appeal Authority had not in fact decided the question of validity, characterising it instead as an administrative decision (16 October, 16:31). Ms. Bailey's transmission of the minutes of the 10 July 2025 meeting (16 October, 09:40) recorded no decision that the appeal was invalid. On 17 October 2025, Mr Smit informed Ms. Gosling that he held delegated authority to determine the validity of the appeal, that his decision (that the appeal was invalid) was functus officio, and that it could be set aside only by a court.
20 October 2025	Ms. Gosling wrote to the Mayor setting out the chronology of events and recording that NCOA would lodge a formal complaint if the appeal was not restored to the agenda.
4 – 8 December 2025	The Municipality gave notice inviting Mr Marius Botha (for Pezula) to an oral hearing set down for 8 December 2025. Mr Botha responded (5 December) objecting that the proceedings were ultra vires.
19 January 2026	Mr Botha again wrote to the Municipality objecting to the ultra vires nature of a further proposed oral hearing set down for 29 January 2026.
11 February 2026	The Executive Mayor wrote to Mr Botha confirming that Mr Smit's determination that the NCOA appeal was invalid had been taken outside his delegated powers, that the determination was accordingly a procedurally irregular and unlawful administrative act, and that the matter would be referred to the delegated Appeal Authority for consideration.
12 February 2026	An oral hearing before the Appeal Authority (the Executive Mayor) was convened for this date, with the appeal listed as the sole substantive item on the agenda, notwithstanding the 15 March 2025 Appeal Report's recommendation that it be decided without an oral hearing. Mr Botha responded on this date, objecting to the fairness of the proceedings. The hearing convened for 12 February 2026 did not proceed to a substantive determination; the appeal was ultimately heard on 23 June 2026 (see below).



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23 June 2026	The appeal was heard on an oral basis by the Knysna Municipal Appeal Authority in the Council Chambers, Knysna Municipal Offices, commencing at 14:00, before the Executive Mayor, Mr TC Matika, as Chairperson, together with the Acting Municipal Manager (Mr BM Ngubo), the Director: Planning & Development (Ms. A Dunywa) and the Manager: Land Use Management (Mr H Smit), with Ms. L Bailey as administrator. NCOA was represented by Ms. M Gosling and Mr JB Gosling; the Municipality by its legal representative, Mr P Pama; and Pezula Private Estate by Mr M Botha and Adv G Potgieter.
29 June 2026	L Botha of Planning Space sent a final and amended subdivision and servitude plan (Plan number NOETSUB7)
2 July 2026	Ms. Gosling acknowledged receipt, on NCOA's behalf, of the final subdivision and servitude plan that Pezula's planner (Ms. Lizemarie, of Planning Space) had circulated on 29 June 2026 as the plan agreed at the appeal hearing, and confirmed that NCOA would respond formally in due course.
10 July 2026	Ms. Gosling explained (10:59) that, because the circulated document was a new plan that had not previously been tabled before the Tribunal, NCOA had circulated it to its committee and to those members who had made oral submissions to the Tribunal, for their input, and that a formal response would follow. Later the same day (12:22), in an email headed "Some inaccuracies/errors in plan", she clarified that NCOA had agreed to the proposals discussed at the hearing but not that the circulated document was the final plan, that amendments were needed and that an amended plan would be circulated before submission to the Municipality, and that NCOA had identified inconsistencies and inaccuracies (including an incorrect erf number and date), stating that "KM cannot approve it as it stands now with errors and inaccuracies".
3 August 2026	Ms. Gosling transmitted NCOA's written response to a letter of 27 July 2026 from Pezula's attorney, Mr Marius Botha, concerning plan NOET394SUB7rev1, recording that Pezula had rejected NCOA's request to be notified directly of any future proposed changes to the temporary parking



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	servitude, and asking that the Municipality instead make direct notification to NCOA a condition.
4 August 2026	Ms. Gosling corrected an error in that response: point 10(e), concerning a utilities servitude, should have recorded an existing electricity connection running from Erf 20379 to supply Erf 20331 and Erf 20361 (Montrose Castle, owned by Mr Andre and Ms. Nicolette Steyn), who had confirmed the connection's existence and asked that the relevant servitude be extended to allow it to continue.
12 August 2026	Ms. Gosling asked Mr Pama to allow NCOA a few further days to respond to a response received from Pezula, noting that she had forwarded it to NCOA members who had made oral submissions to the Tribunal and were familiar with the matter.
21 August 2026	Ms. Gosling transmitted NCOA's response to a letter from Pezula dated 10 August 2026, together with two further requests to the Municipality and a comment from Mr Richard Moultrie concerning parking and access arrangements between the Noetzie river properties and Pezula. She recorded that NCOA would send its formal withdrawal of its objection "next week".
31 August 2026	Ms. Gosling forwarded further correspondence from NCOA to Mr Pama, the Executive Mayor and Mr Botha (08:40); the content of that correspondence is not otherwise detailed in the record available. Later the same day (11:50), she followed up to ask whether the Municipality or Pezula would be willing to record the terms of the agreement reached in a legally binding document, signed by both parties and binding on current and future owners of the property.
9 September 2026	HDRS sent the attached letter on behalf of the Noetzie Conservancy Owner's Association

THE ORAL HEARING OF 23 JUNE 2026 AND ITS OUTCOME

23. The appeal was ultimately heard on an oral basis by the Knysna Municipal Appeal Authority on 23 June 2026, in the Council Chambers at the Knysna Municipal Offices, commencing at 14:00. The Appeal Authority was chaired by the Executive Mayor, Mr TC Matika, and included the Acting Municipal Manager (Mr BM Ngubo), the Director:

Mosdell Pama & Cox
 6 High street, Plettenberg Bay
 Reference : P Pama –PP4819



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Planning & Development (Ms. A Dunywa) and the Manager: Land Use Management (Mr H Smit), with Ms. L Bailey acting as administrator. NCOA was represented by Ms. Melanie Gosling and Mr JB Gosling; the Municipality was represented by its legal representative, Mr Perino Pama; and Pezula was represented by Mr Marius Botha and Adv G Potgieter.

24. At the hearing, Adv Potgieter, for Pezula, referred the Appeal Authority to the appeal as lodged and to condition 2(c) of the subdivision approval, and submitted that, on a proper reading of the applicable legislative framework (including section 20 of the By-Law), the servitudes securing public beach access and parking could not be registered prior to subdivision, but had to be, and would be, registered simultaneously with it. He submitted further that although condition 2(c) did not in terms require the servitudes to be public, this was achieved through the subdivision plan itself.
25. Ms Botha, for Pezula, took the Appeal Authority through the subdivision plan (plan "394-SUB-7"), explaining that nine servitudes were reflected on the plan, of which three were public: (i) a public access servitude following the existing "Wagon Road" route from the start of the Noetzie township to the beach and parking area; (ii) a servitude serving as both a private right of way in favour of Erf 20379 and a public pedestrian walkway from the parking area to the public stairs and beach; and (iii) the parking area itself (annotation #8), which was recorded on the plan as a temporary servitude in favour of the public, providing access to and use of the existing 18 parking bays, subject to a condition that, should the owner of the subdivided portion wish in future to relocate or realign the parking, equivalent alternative parking would have to be provided to the satisfaction of the Municipality.
26. Ms. Gosling, for NCOA, objected to the parking servitude (#8) being recorded as "temporary" rather than permanent, and placed on record NCOA's contention that the area had been used by the public, without interruption and without requiring permission, since at least the 1930s/1940s, giving rise, she submitted, to a public servitude by immemorial user (vetustas) under the common law, which bound the land automatically and independently of registration, and which the Planning Tribunal had, in her submission, failed properly to consider.



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27. Following discussion — including a caucus between the legal representatives and the Chairperson's intervention — the parties reached agreement that: (a) the subdivision plan "394-SUB-7" would be submitted for approval and endorsement with an added annotation to servitude #8 recording that the landowner reserved the right to apply, through the ordinary statutory process (including public participation and, if necessary, review), to relocate the parking area in future, and that any such relocation required prior municipal approval; and (b) on that basis, the appeal was resolved by agreement, without any order as to costs. The Appeal Authority recorded that this outcome achieved a public servitude over the parking area as the default position, with any future change subject to due process and objection.
28. The parties' agreement, and the resolution of the appeal on this basis (rather than by way of a substantive determination upholding or dismissing it), is recorded in the Minutes of the Appeal Authority hearing of 23 June 2026, which record, at paragraph 3, that (i) the parties agreed the appeal would be treated as resolved without an order as to costs; (ii) the annotation to servitude #8 would be added to plan 394-SUB-7 for approval and endorsement; and (iii) the meeting was adjourned at 15:10.
29. The proceedings and outcome of the hearing are recorded in the Minutes of the Appeal Authority (23 June 2026) and are corroborated by the transcription of the audio recording of the hearing.
30. It is noted that the Minutes of the 23 June 2026 hearing, and the transcription of the audio recording of that hearing, address and resolve only Ground 1 of NCOA's appeal (condition 2(c) — public access and public parking servitudes), as set out in Section D above. Neither document records any discussion, resolution, withdrawal or reservation of Ground 2 (item 4(a) — river management) or Ground 3 (item 4(c) — fire risk management). The Minutes record the appeal as a whole as having been resolved by agreement without an order as to costs, but do not indicate whether that resolution was intended to dispose of Grounds 2 and 3 as well, or whether those grounds remain outstanding. This is a gap in the documentary record which should be clarified, including whether Grounds 2 and 3 were dealt with separately, abandoned, or omitted from the hearing in error.



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NCOA'S (MS GOSLING'S) CORRESPONDENCE FOLLOWING THE 23 JUNE 2026 HEARING

31. Correspondence from Ms. Melanie Gosling, on behalf of NCOA, in the period following the 23 June 2026 hearing shows that the agreement recorded in the Minutes did not bring the matter to an immediate close. Rather, it was followed by more than two months of further engagement over the detail and status of the settlement, summarised chronologically below.

32. On 24 June 2026, the day after the hearing, Ms. Gosling forwarded to Mr Pama (copied to the Executive Mayor) a research note setting out her view that NCOA "should not agree" to the parking area being registered as a temporary, rather than permanent, public servitude. The note contended, among other things, that: registering the servitude as temporary would reset any "prescriptive" claim the public might have; a Knysna Council resolution (referenced as "SF&G03/03/24") required public access, parking and ablution facilities at Noetzie to be secured by a permanent public servitude, failing which the land should be expropriated, such that a temporary settlement would be inconsistent with Council's mandate and could constitute an unauthorised (*ultra vires*) act by municipal officials; and that the public risked being left without parking once a temporary arrangement expired. Ms. Gosling recommended that NCOA instead demand a permanent, registered praedial or public servitude, coupled with a no-development restrictive condition confining the subdivided parking portion to public parking and municipal ablution use, and asked what exact duration was being proposed for the "temporary" servitude and whether the Municipality's legal team was actively driving the settlement negotiation.

33. This research note appears to have been Ms. Gosling's own work product rather than settled legal authority, and it has not been independently verified against the By-Law or the Council resolution it cites. It is also, on its face, in some tension with the *vetustas*/prescription analysis set out in Section N below: the established authorities treat a public servitude as arising (if at all) by *vetustas* — immemorial user — rather than by acquisitive prescription, so that the framing of a temporary arrangement as "resetting the prescriptive clock" does not straightforwardly track that body of law. The point remains relevant, however, as a statement of NCOA's own



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understanding of its position, and as the likely source of NCOA's continued resistance to treating servitude #8 as finally settled.

34. On 29 June 2026, L Botha of Planning Space presented the final subdivision and servitude plan (Plan Number NOET SUB7).
35. On 2 July 2026, Ms. Gosling acknowledged receipt, on NCOA's behalf, of the final subdivision and servitude plan that Pezula's planner (Ms. Lizemarie, of Planning Space) had circulated on 29 June 2026 as the plan agreed at the appeal hearing, and confirmed that NCOA would respond formally in due course.
36. On 10 July 2026 (10:59), Ms. Gosling explained that, because the circulated document was a new plan that had not previously been tabled before the Tribunal, NCOA had circulated it to its committee and to those members who had made oral submissions to the Tribunal, for their input, and that a formal response would follow on the Monday.
37. Later the same day (12:22), in an email headed "Some inaccuracies/errors in plan", Ms. Gosling clarified NCOA's position on the status of the plan: NCOA had agreed to the proposals discussed at the hearing, but not that the circulated document was the final plan; the parties had agreed that amendments were needed and that an amended plan would be circulated to all parties before submission to the Municipality; NCOA had not been able to read the plan's small print at the hearing itself, but had since identified inconsistencies and inaccuracies on the emailed version — including, she noted, basic errors such as an incorrect erf number and date — which NCOA's forthcoming written response would set out. She stated that, once approved and registered, the plan would become a legal and historical record and needed to be accurate, and that "KM cannot approve it as it stands now with errors and inaccuracies".
38. On 3 August 2026, Ms. Gosling transmitted NCOA's written response to a letter of 27 July 2026 from Pezula's attorney, Mr Marius Botha, concerning plan NOET394SUB7rev1. She recorded that Pezula had rejected NCOA's request to be notified directly of any future proposed changes to the temporary parking servitude, and asked that the Municipality instead make direct notification to NCOA a condition, on



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the basis that notices published in two Knysna newspapers would not reach most Noetzie residents, who live elsewhere.

39. On 4 August 2026, Ms. Gosling corrected an error in that response: point 10(e), concerning an utilities servitude, should have recorded an existing electricity connection running from Erf 20379 to supply Erf 20331 and Erf 20361 (Montrose Castle, owned by Mr Andre and Ms. Nicolette Steyn), who had confirmed the connection's existence and asked that the relevant servitude be extended to allow it to continue.
40. On 12 August 2026, Ms. Gosling asked Mr Pama to allow NCOA a few further days to respond to a response received from Pezula, noting that she had forwarded it to NCOA members who had made oral submissions to the Tribunal and were familiar with the matter.
41. On 21 August 2026, Ms. Gosling transmitted NCOA's response to a letter from Pezula dated 10 August 2026, together with two further requests to the Municipality and a comment from Mr Richard Moultrie concerning parking and access arrangements between the Noetzie river properties and Pezula. She recorded that NCOA would send its formal withdrawal of its objection "next week".
42. On 31 August 2026 (08:40), Ms. Gosling forwarded further correspondence from NCOA to Mr Pama, the Executive Mayor and Mr Botha; the content of that correspondence is not otherwise detailed in the record available. Later the same day (11:50), she followed up to ask whether the Municipality or Pezula would be willing to record the terms of the agreement reached in a legally binding document, signed by both parties and binding on current and future owners of the property.
43. On the 9 September 2026, HDRS sent the attached letter to all the parties involved in this matter. They point out, *inter alia*, that:
 - 43.1. They enclose Title Deed T106352/2000 for the remaining extent of the Farm Noetzie no 394;
 - 43.2. They point out that there is already a servitude road registered over the property in favour of the general public;



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- 43.3. The existing servitudes are in favour of the general public and are permanent and not temporary;
- 43.4. As a general rule only a court of law and not a Municipality acting in terms of planning legislation, can amend a public servitude in any manner or form; and
- 43.5. an Agreement reached between parties at a meeting is not the proper manner to amend a condition of approval.

LEGAL POSITION: THE TRIBUNAL AND APPEAL SYSTEM

- 44. This Section summarises, at a general level, how the municipal planning decision-making and appeal system works under the Knysna Municipality Spatial Planning and Land Use Management By-Law, 2021 ("the By-Law"), and how that system applies specifically to an appeal of the kind lodged by NCOA — namely, an appeal against particular conditions of an approved subdivision, rather than against the subdivision approval itself.
- 45. The Municipal Planning Tribunal ("the Tribunal") is established under section 70 of the By-Law. Certain categories of application are decided by an authorised employee under delegated power (section 69(1)); all applications in that same category that have not been so delegated are decided by the Tribunal (section 69(2)); and an authorised employee may in any event refer a matter to the Tribunal (section 69(3)). The Tribunal is composed of appointed members with relevant planning and legal knowledge and experience (sections 71–74), meets in public (section 78(1)), and is supported by an Administrator appointed by the Municipal Manager (section 77). A decision under the By-Law is valid only if it is in writing (section 69(4)).
- 46. The Executive Mayor is the Appeal Authority in respect of decisions made by an authorised employee or the Tribunal (section 79(1)). The persons who may appeal within 21 days of notification of a decision, include the applicant, the owner, the Municipal Manager, an intervener, and a person who submitted a qualifying comment or objection on the application (section 79(5)). An appeal is lodged by service on the Municipal Manager (section 79(7)).



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47. Section 80 governs the procedure for, and validity of, an appeal. An appeal must set out, among other things: the grounds of appeal (which may include procedural unfairness or that the decision-maker erred on the merits); whether the appeal is against the whole or only part of the decision; if against a condition of approval, a description of that condition; the factual or legal findings relied on; and the relief sought (section 80(2)). An applicant-appellant must pay the prescribed appeal tariff (section 80(3)) and, generally, notice of the appeal must be served on persons who commented on the application, with proof of service furnished to the Municipal Manager (section 80(4)–(7)). An authorised employee must prepare a written assessment report on the appeal, generally within 30 days, which the Municipal Manager must submit to the Appeal Authority within 14 days of receipt (section 80(12)–(13)).
48. The Appeal Authority may consider an appeal on the papers or by way of an oral hearing (section 81(1)–(4)); every party is entitled to an opportunity to present its case (section 81(6)); and the Appeal Authority must consider and determine all appeals lawfully before it, confirm, vary or revoke the underlying decision, give reasons, and — critically for present purposes — determine whether the appeal falls within its jurisdiction (section 81(7)). The Appeal Authority must decide on an appeal within 60 days of receiving the assessment report (section 81(8)), and, if it revokes a decision, may either remit the matter with instructions or substitute its own decision (section 81(9)).
49. NCOA's appeal is, by its own terms, an appeal against specific conditions of an already-approved subdivision (condition 2(c) and items 4(a) and 4(c)) rather than against the approval of the subdivision itself — the kind of appeal contemplated by section 80(2)(c)–(d) (appeal against part of a decision / against a condition of approval), which is narrower in scope than a full merits appeal against refusal or approval as such.
50. As to delegations: the Delegation Register records that the Manager: Land Use Management (a role held by Mr Smit) is delegated to receive appeals on behalf of the Municipal Manager (item P.136, sections 79(7)/80) and to prepare the assessment and recommendation report on an appeal (item P.141, section 80(12)). The power to consider and determine an appeal, including to confirm, vary or revoke the underlying decision and to determine whether the appeal falls within the Appeal Authority's jurisdiction, is



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separately delegated — to the Executive Mayor, as Appeal Authority (item P.144, section 81(1)–(9)). On the face of the By-Law and the Delegation Register, the determination of an appeal's validity/jurisdictional status under section 81(7)(f) accordingly appears to be a power reserved to the Appeal Authority, and not one delegated to the Manager: Land Use Management — consistent with the Executive Mayor's finding, in the letter of 11 February 2026, that Mr Smit's earlier determination of invalidity had been taken outside his delegated authority.

VALIDITY OF THE APPEAL

51. This section draws together, and comments on, the question of the appeal's validity, which has been raised repeatedly and inconsistently over the course of this matter.
52. Section 80(1) of the By-Law provides that an appeal is valid unless (a) it was not lodged within the 21-day period referred to in section 79(5), or (b) it does not comply with the requirements of section 80(2)–(7) (grounds, payment of tariff, service of notice, and proof of service, as set out in Section K above).
53. The validity of NCOA's appeal has been asserted and denied, by different municipal role-players, at least five separate times: (i) on 3 March 2025, Mr Smit confirmed by email that the appeal was valid, while, on the same date, Pezula's planner, Planning Space, submitted that the appeal was procedurally invalid under section 80(2) for failing to set out valid grounds; (ii) on 15 March 2025, the municipal Appeal Report, compiled by Mr Smit, recommended that the appeal be deemed invalid under section 80(1), for non-compliance with section 80(2); (iii) between 15 and 17 October 2025, Mr Smit's position shifted from the appeal being "finalised" as invalid, to the Appeal Authority not having decided validity at all (characterising it instead as an unspecified "administrative decision"), to Mr Smit asserting that he personally held delegated authority to decide validity and that his decision was *functus officio*; (iv) on 11 February 2026, the Executive Mayor found that Mr Smit's determination of invalidity had been taken outside his delegated powers and was accordingly a procedurally irregular and unlawful administrative act, referring the matter to the Appeal Authority;.



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54. The completed 15 March 2025 Appeal Report, authored by Mr Smit on the Municipality's standard pro forma (Form T24), has since been obtained and confirms the position summarised above, in the paragraph beginning "The validity of NCOA's appeal has been asserted and denied...". Of note, the report itself is addressed and directed to the Appeal Authority (recorded as the intended recipient, "Item to: Appeal Authority"), and its formal recommendation is not that Mr Smit himself had decided the appeal was invalid, but rather that the Appeal Authority should decide: (i) that the appeal fell within the Appeal Authority's jurisdiction under section 81(7)(f); (ii) that the report and supporting documents were adequate to determine the appeal without an oral hearing, under section 81(1)(b)/(2); and (iii) that the appeal be deemed invalid under section 80(1), for non-compliance with section 80(2). On its face, this framing is procedurally consistent with the analysis at Section K above — the report does not purport itself to finally determine validity, but recommends a determination by the properly empowered decision-maker.
55. These nuances do not, however, fully resolve the tension identified above, in the paragraph beginning "The validity of NCOA's appeal has been asserted and denied...". Mr Smit's subsequent conduct in October 2025 — asserting that he personally held delegated authority to decide validity and that his own decision was *functus officio* — went considerably further than the position taken in the 15 March 2025 report itself, which had correctly deferred the validity question to the Appeal Authority. It is this later conduct, rather than the report as such, that the Executive Mayor's letter of 11 February 2026 appears principally to have been addressing.
56. The report also records that Planning Space's comment of 3 March 2025 went beyond a bare procedural objection: it characterised NCOA's substantive objections — on the timing of servitude registration, the River Management Plan, and the Fire Risk Management Plan — as based on an ignorance of planning regulations and legal procedures, and concluded that the appeal should be found invalid or, alternatively, dismissed. Mr Smit's Municipal Assessment of Comments in the report adopted this position, stating that Planning Space was "correct" both that the appeal was invalid under section 80(1) and that the Tribunal's conditions complied with section 66 of the By-Law — the latter being, strictly, a comment on the merits rather than on validity, and one which sits awkwardly beside a



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report that otherwise declined, on jurisdictional grounds, to engage with the merits of NCOA's appeal at all.

57. A further complication arises from the Minutes of the 23 June 2026 hearing, which record, at paragraph 3.1, that "[a]ll parties entered into an agreement that it was an invalid appeal and that the appeal would be dismissed". This sits uneasily with the fact that the hearing proceeded, on the record, to a substantive discussion and resolution of Ground 1 of the appeal (the servitude and parking dispute), resulting in a negotiated annotation to the subdivision plan — a step that would ordinarily be otiose if the appeal were, and always had been, invalid and therefore never properly before the Appeal Authority at all.
58. On a plain reading of the By-Law, the validity of an appeal under section 80(1) is a jurisdictional threshold question for the Appeal Authority to determine under section 81(7)(f) — logically prior to, and separate from, the Appeal Authority's consideration of the merits under section 81(7)(a)–(b). It is not obviously a matter the parties can resolve between themselves "by agreement", in the way a private dispute might be settled: either the appeal complies with section 80(2)–(7) and was timeously lodged (in which case the Appeal Authority must determine it on the merits and give reasons), or it does not (in which case, on the wording of section 80(1), there would appear to be no valid appeal for the Appeal Authority to consider, vary, revoke or dismiss). The Minutes' formulation — treating the appeal as simultaneously "invalid" and "dismissed" pursuant to an "agreement", after a substantive hearing of Ground 1 on the merits — does not sit easily within this statutory scheme and is a matter that should be clarified, ideally in the final Appeal Authority decision (see Section J above).

PUBLIC SERVITUDES

59. This section summarises the legal position on public servitudes generally, and applies it to the servitude issues raised in this matter.
60. A "so-called public servitude", in the technical sense used in the South African law of property, is a right historically reserved (most commonly in a state grant) in favour of the public in general, or a portion of it — for example, a right of way, of outspan, or to gather firewood.



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Because it is not constituted in favour of a dominant tenement, it is not a praedial servitude; and because it is not constituted in favour of specific persons, it is not a personal servitude either. Properly analysed, it is a public power granted to the public at large, rather than a private real right.

61. Public servitudes may be constituted in one of four ways: (i) by grant of ownership of land by the state, subject to reservation of the servitude; (ii) by registration against the title deeds of private land (section 65(1) of the Deeds Registries Act 47 of 1937); (iii) by will; or (iv) by legislation.
62. In addition to these modes of constitution, the existence of a public servitude may be established evidentially by proving vetustas, or immemorial user: a rebuttable presumption that, where a public servitude has been exercised by the public from time immemorial, it arose from a valid title, even absent documentary proof of that title. Vetustas is not to be confused with acquisitive prescription; unlike private servitudes, public servitudes cannot be acquired by prescription, because prescription rests on the actions of individuals, whereas vetustas rests on presumed lawful origin. The leading authorities include *Peacock v Hodges* (1876) 6 Buch 65, which held that clear proof of uninterrupted public use of a via vicinalis (neighbour's road) for 30 years or more, without objection from the affected landowners, was sufficient to establish user from time immemorial; *South African Mutual Life Assurance Society v Durban City Council* 1948 (1) SA 1 (D), which confirmed that a public right of way is created by immemorial user, not prescription; and the more recent decision in *Langebaan Ratepayers' and Residents' Association v Dormell Properties 391 (Pty) Ltd* 2013 (1) SA 37 (WCC), which restated the test as requiring proof of (a) continuous, uninterrupted public use; (b) no interference by the affected owner(s); and (c) use of such duration that its origin can no longer be established — a standard which, per *Berg v Gossyn* (2) 1965 (3) SA 707 (O), requires more than simply showing that no living person recalls when the use began; it must be shown that even those who might be expected to know of the right's origin have no knowledge of it, and did not hear of it from the generation before them.
63. Once established, a public servitude is not extinguished merely by non-use or by ordinary extinctive prescription. It may, however, be lost if the public, without objection, permits an obstruction of the servitude



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to persist for the prescriptive period — for example, where a road is built over or ploughed up without protest.

64. At the 23 June 2026 hearing, Ms Gosling, for NCOA, invoked precisely this vetustas doctrine, contending that the parking area had been used by the public without interruption or need for permission since at least the 1930s/1940s, and that this gave rise to a public servitude binding the land automatically, independently of the deeds office and of the subdivision process. Two observations may be made about this submission. First, it was not tested against the evidentiary requirements set out in *Peacock v Hodges and Langebaan Ratepayers* — no evidence was led, and no finding was made, on whether the origin of the use was genuinely beyond living memory (as opposed to merely long-standing), nor on whether 30 years or more of uninterrupted, unobjected-to use had been established on the facts. Second, the underlying legal question — whether a public servitude already existed over the parking area by vetustas, independently of and prior to the subdivision process — was not decided; it was, in effect, overtaken by the parties' pragmatic agreement to record a servitude (subject to the temporary/relocation annotation) as part of the subdivision itself. Whether NCOA's vetustas claim remains open to be pursued, notwithstanding the 23 June 2026 agreement, is accordingly a live question.
65. A related conceptual point concerns the "temporary" nature of servitude #8 (the parking servitude) as agreed at the hearing. Ordinary praedial servitudes may lawfully be created for a limited period under the Deeds Registries Act, and lapse by effluxion of time on application to the Registrar. However, if the parking servitude is properly characterised — per NCOA's own submission — as a public servitude (rather than an ordinary personal or praedial servitude), its termination is governed by the extinction principles summarised earlier in this Section, which are considerably more restrictive than an ordinary time-limited servitude or a routine future planning application: a public servitude is not lost merely because the landowner wishes to relocate it, or because a fixed period has expired, but only through disuse-with-obstruction over the prescriptive period, or by a process that the law recognises as capable of extinguishing a public right. This distinction does not appear to have been addressed at the 23 June 2026 hearing, and may be relevant to whether servitude #8, as annotated, can in due course be relocated simply by a future planning application to the Municipality (as



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recorded in the Minutes), or whether — if it is truly a public servitude — a materially higher threshold applies.

66. On the timing of registration, section 20(5)–(6) and section 28(3)(c)–(d) of the By-Law support Adv Potgieter's submission at the hearing that proof of compliance with servitude-related conditions of approval must accompany, rather than precede, the submission of the subdivision diagram to the Surveyor-General and the registration of transfer — that is, registration is simultaneous with, not prior to, subdivision. This is consistent with ordinary conveyancing practice: a right of way in favour of the general public, created simultaneously with the registration of the subdivision it serves, may be created in the power of attorney for the transfer of the subdivision, without the need for a separate notarial deed (Deeds Registries Act, section 65(1), second proviso).

67. I have also made reference to the email by HDRS dated 9 September 2026. On the face of it they present arguments that should be dealt with on Appeal and considered.

68. **GROUND'S OF APPEAL**

68.1. The appeal is lodged by the NCOA against three discrete elements of the KMPT's decision of 3 December 2024, namely condition 2(c) (public access and public parking), item 4(a) (river management) and item 4(c) (fire risk management). The NCOA does not appeal the approval of the subdivision itself.

68.2. **Ground 1 – Condition 2(c): Public access and public parking servitudes**

Condition 2(c) requires the landowner to secure public access to the beach and public parking by way of servitudes. The NCOA contends that servitudes in South African law are only legally enforceable once registered and a servitude certificate issued, and that no evidence has been provided that the required servitudes have in fact been registered. The NCOA submits that the servitudes must be registered prior to subdivision to ensure they are binding on current and future owners. The servitudes identified by the NCOA as outstanding 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;



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road access to Erf 20380 (the historic Pezula Castle); a servitude to the western beachfront properties, including Erf 20330, said to have been omitted from the application; the public passage at the beach between Erf 20330 and Erf 20375; and the existing public parking area, said to have been in continuous public use since the early twentieth century.

68.3. **Ground 2 – Item 4(a): River management**

The NCOA submits that item 4(a), which requires the landowner to ensure that a River Management Plan is approved and implemented to the satisfaction of the relevant authority, is inadequate. The NCOA contends that the river crossing the western section of the land has previously been unlawfully diverted, causing erosion and land loss to Erf 20330, that unauthorised weirs have been constructed on it, and that abstraction and other activities by upstream landowners affect those downstream. The NCOA submits that the condition fails to: provide for an integrated River Management Plan to maintain the river in an ecologically sound condition; secure the participation of all riparian property owners in preparing and implementing such a plan; and secure registered access rights for all riparian landowners by way of a stream servitude.

68.4. **Ground 3 – Item 4(c): Fire risk management**

The NCOA submits that item 4(c), which requires the landowner to ensure that a Fire Risk Management Plan is approved and implemented to the satisfaction of the relevant authority, is inadequate given that Noetzie is situated in a high wildfire risk zone; that four of the then thirty houses at Noetzie were destroyed in the June 2017 fires; that there is no municipal water supply or fire hydrants at Noetzie; and that the land proposed for subdivision constitutes the largest portion of the Noetzie Conservancy. The NCOA submits that the establishment of an integrated Fire Risk Management Plan should be made a condition of approval, developed in consultation with the Municipality, the Southern Cape Fire Association ("SCFA") and the NCOA, that the plan comply with the Conservation of Agricultural Resources Act, and that the landowner and successors in title be required to become members of the SCFA.

69. **STATUS OF THE APPEAL: CONSIDERATION BY THE APPEAL AUTHORITY**

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6 High street, Plettenberg Bay
Reference : P Pama –PP4819



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- 69.1. NCOA's appeal was lodged on 10/11 February 2025 against three discrete elements of the Tribunal's decision of 3 December 2024: condition 2(c) (servitudes), item 4(a) (river management) and item 4(c) (fire risk management).
- 69.2. A Municipal Appeal Report dated 15 March 2025, properly addressed to the Appeal Authority, recommended that the appeal be found invalid, and that it be decided without an oral hearing — a recommendation which, on the documentary record, does not appear ever to have been formally adopted by the Appeal Authority as such. It was Mr Smit's later, less carefully framed communications (October 2025), rather than this report, that purported to treat the validity question as one he was personally empowered to decide.
- 69.3. The internal dispute as to who had, or had not, decided the question of validity was dealt with in the Executive Mayor's letter of 11 February 2026, which did not accept Mr Smit's earlier determination and referred the appeal to the Appeal Authority for consideration.
- 69.4. An oral hearing was convened for 12 February 2026, the day after that referral, which did not proceed to a substantive determination; Pezula's attorney objected to the fairness of the process on that occasion. The appeal was ultimately heard on 23 June 2026.
- 69.5. At the 23 June 2026 hearing, only Ground 1 (the servitude and parking dispute) was addressed and a bona fide attempt was made by the parties to resolve same by agreement between the parties by way of a negotiated annotation to subdivision plan 394-SUB-7.
- 69.6. At the Appeal Hearing the parties did not address Grounds 2 (river management) and 3 (fire risk management) at all, and did not indicate whether they were withdrawn, resolved separately, or remain outstanding. Nor is it clear from the Minutes whether the Appeal Authority in fact made a formal determination on the validity/jurisdictional question under



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section 81(7)(f), as opposed to recording an agreement between the parties on that question.

- 69.7. It is clear from the chronology attached that the parties were unable to reach agreement and that the entire process is being dragged out unnecessarily.
- 69.8. On 29 June 2026, a new Subdivision Plan was presented by L Botha of Planning Space (NOET SUB7).
- 69.9. The question arises whether that requires an entirely new process to be started. The decision by the Municipal Tribunal did contemplate the following:
- (ii) *the Subdivision Plan NOET394SUB7 adheres to condition 2(b) of the Tribunal's approval, being generally in accordance with the approved Subdivision Plan NOET394SUB6;*
 - (iii) *the servitudes reflected on Subdivision Plan NOET394SUB7 are exempt from registration /advertisement requirements in terms of section 24 of the By-Law; and*
 - (iv) *there is no legal provision, nor any delegation, requiring Subdivision Plan NOET394SUB7 to be advertised for public comment.*
- 69.10. I will deal with each of these conditions:
- (ii) ***the Subdivision Plan NOET394SUB7 adheres to condition 2(b) of the Tribunal's approval, being generally in accordance with the approved Subdivision Plan NOET394SUB6;***
- 69.11. The question is whether new Subdivision Plan presented by L Botha Planning Space (NOET SUB7) is generally in accordance with the approved Subdivision Plan NOET394SUB6? That is quite a subjective question. There are clearly a number of changes and an objector that has not been part of these proceedings could argue that the process should start again.



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(iii) the servitudes reflected on Subdivision Plan NOET394SUB7 are exempt from registration /advertisement requirements in terms of section 24 of the By-Law;

69.12. section 24(1)(f) exempts the registration of a servitude from the full subdivision-application process (sections 15 and 20–23) only where that servitude is for one of four specified purposes — (i) utility infrastructure (water, electricity, sewer, stormwater, gas or petroleum pipelines) installed by or on behalf of an organ of state or service provider; (ii) telecommunications infrastructure; (iii) height restrictions; or (iv) the granting of a right of habitation, a private right of way, or a usufruct. On a plain reading, none of these categories extends to a servitude created in favour of the general public — indeed, category (iv) is expressly confined to a private right of way.

69.13. Because NCOA's entire appeal on Ground 1 is premised on securing public (not private) servitudes over the beach access and parking areas, the reliance on section 24 to characterise those servitudes as exempt from registration and advertisement appears, on the face of the By-Law, to require further justification, and is a matter that should be tested rather than accepted at face value.

(iv) there is no legal provision, nor any delegation, requiring Subdivision Plan NOET394SUB7 to be advertised for public comment.

69.14. The difficulty with this is that we are dealing with the public servitudes and a member of the public, who did not take part in the Appeal hearing, may object on the basis that they were not permitted to participate and/or comment with regard to the new Subdivision Plan.

69.15. Section 81(7) says that the Appeal Authority must:

- a) consider and determine all appeals lawfully submitted to it;
- b) confirm, vary or revoke the decision of the Tribunal or authorized employee;
- c) provide reasons for any decision made by it;
- d) give directions relevant to its functions to the municipality;



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- e) keep a record of all its proceedings; and
- f) determine whether the appeal falls within its jurisdiction.

69.16. On the documentary record available, then, the period between the 23 June 2026 hearing and early September 2026 was one of continued negotiation over the accuracy of the plan, the terms of notification, and a possible binding settlement document — rather than one in which NCOA's withdrawal, or a final concluded settlement, was actually delivered. This reinforces the conclusion as to the unresolved status of the matter.

70. **INTERIM DECISION**

70.1. A further complication arises from the Minutes of the 23 June 2026 hearing, which record, at paragraph 3.1, that "[a]ll parties entered into an agreement that it was an invalid appeal and that the appeal would be dismissed". This sits uneasily with the fact that the hearing proceeded, on the record, to a substantive discussion and resolution of Ground 1 of the appeal (the servitude and parking dispute), resulting in a negotiated annotation to the subdivision plan — a step that would ordinarily be otiose if the appeal were, and always had been, invalid and therefore never properly before the Appeal Authority at all.

70.2. In summary, as matters presently stand: (i) no final, reasoned, written decision of the Appeal Authority determining the appeal (as required by section 81(7)(b)–(c) and section 69(4)) appears to have been issued; (ii) Grounds 2 and 3 of the appeal appear unaddressed on the documentary record; (iii) the Municipality's own position on the threshold question of validity has been inconsistent and (iv) the status of the appeal should accordingly be treated as unresolved pending a final, reasoned Appeal Authority decision that squarely addresses validity, Grounds 2 and 3.

70.3. I am of the view that the Appeal hearing should be set down for argument again to consider these issues.



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DATED AT PLETTENBERG BAY THIS 11th DAY OF September 2026

MOSDELL PAMA & COX INC

Per: **P. PAMA**

Appeal authority's Attorneys

15 Tide street, Knysna

email; ppama@mpc.law.za

Telephone: 044- 533 1101

Cell: 0723819738

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SOURCES

1. Agreement between NCOA and Pezula Private Estate (Pty) Ltd, signed 28 August / 3 September 2002.
2. Knysna Municipality, Decision Letter: Subdivision, Closure of Public Place — Remainder of the Farm 394, Noetzie No. 394, Knysna, dated 21 January 2025 (Ref: Kny 394 / Application No. 2534).
3. Minutes of the Proceedings of the Knysna Municipal Appeal Authority, 23 June 2026.
4. Transcription of the audio recording of the Appeal Hearing of the Farm Noetzie 394, Knysna, 23 June 2026 (Malcolm Dee Transcription & Proofreading Services, completed 13 August 2026).
5. Draft Appeal Authority decision, "Outcome of Appeal in relation to Application for Subdivision and Closure of Public Open Spaces: the Remaining Extent of the Farm Noetzie Number 394", undated.

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6. Correspondence from Ms Melanie Gosling (NCOA) to Mr Perino Pama and others, 24 June 2026 – 31 August 2026 (compiled as "NB emails from M Gosling").
 7. Knysna Municipality, Land Use Planning Report on Application No. 2534 (Subdivision and Closure of Public Open Spaces: the Remaining Extent of the Farm Noetzie No. 394), authored by LV Mniki, Town Planner, dated 27 May 2022.
 8. Knysna Municipality, Appeal Report (Form T24) on Application No. 2534, authored by H Smit, Manager: Land Use Management, dated 15 March 2025.
 9. Knysna Municipality Spatial Planning & Land Use Management By-Law, 2021 (Provincial Gazette Extraordinary 8492, 17 September 2021), sections 20, 24, 27–28, 60, 66, 68–81.
 10. Knysna Municipality, Delegation Register (as amended 31 August 2022), items P.86, P.136–P.146.
 11. The Practitioner's Guide to Conveyancing and Notarial Practice, Chapter 11 (Personal and Praedial Servitudes in terms of the Deeds Registries Act 47 of 1937), paragraphs 11.1–11.9.
 12. LAWSA, Servitudes (vol 24, 2 ed, 2010), "So-Called Public Servitudes", paragraphs 624–627.
 13. Peacock v Hodges (1876) 6 Buch 65.
 14. South African Mutual Life Assurance Society v Durban City Council 1948 (1) SA 1 (D).
 15. Langebaan Ratepayers' and Residents' Association v Dormell Properties 391 (Pty) Ltd and Others 2013 (1) SA 37 (WCC).
-

Liesl Bailey

From: Marius Botha <marius@mhblaw.co.za>
Sent: Friday, 18 September 2026 13:52
To: Perino Pama
Cc: Hennie Smit; Guan Potgieter; Lizemarie
Subject: RE: APPEAL HEARING: THE REMAINING EXTENT OF THE FARM NOETZIE 394, KNYSNA

Dear Mr Pama

We refer to our recent telephone conversation during which you informed us that you have recommended to your client, the Knysna Municipality, that this matter is to be enrolled again for adjudication of the appeal filed by the Noetzie Conservancy Association.

Our instructions are as follows:

1. We again record, as we have done on numerous occasions, that the appeal was considered by an authorised delegate in accordance with the applicable Knysna municipal by-law and was found to be invalid on the grounds proffered by the appellant. That determination constituted a decision disposing of the appeal. The grounds remain unchanged. Allowing the appeal to proceed would therefore amount to entertaining a second appeal, for which the relevant legislative framework makes no provision. Any decision by the Municipality to proceed on that basis would accordingly be ultra vires.
2. We request that the Municipality take the following decisions and communicate them in writing to all parties concerned:
 - 2.1 Whether the appeal can be enrolled for hearing.
 - 2.2 If the decision is made that it can be, provide the reasons for this, as well as what the format of the proceedings will be, to enable our client to consider participation in such proceedings or not.
3. The only way the matter can be finalized is for the Municipality to now make a decision as the appeal authority in order for the parties to consider the position and proceed with such further steps as they deem appropriate in the circumstances.

We look forward to hearing from you in order to finalize this long outstanding matter.

Yours sincerely

Marius Botha



**335 Watsonia Avenue
Boschenmeer Estate
Paarl
Tel: (021) 8634443
Cell: 0827740027**

**PO Box 3144
Paarl
7620**

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From: Perino Pama <ppama@mpc.law.za>
Sent: Wednesday, 09 September 2026 16:11
To: Marius Botha <marius@mhblaw.co.za>
Cc: Hennie Smit <hsmit@knysna.gov.za>; Guan Potgieter <gpotgieter@capebar.co.za>; Lizemarie <lizemarie@planningspace.co.za>
Subject: RE: APPEAL HEARING: THE REMAINING EXTENT OF THE FARM NOETZIE 394, KNYSNA



Without prejudice,

Dear Mr Botha,

We acknowledge receipt and advise that we will take instructions and will revert.

I have prepared a chronology of what has transpired in this matter and it has assisted me to obtain clarity with regard to the status of the Appeal and the way forward.

We agree that this matter should not be delayed much longer.

I wish to stress however that we cannot be seen to be taking sides in this matter, so I trust you are asking for a meeting in good faith to try and resolve this matter expeditiously.

Kind regards,



Perino Pama
Director - Commercial and Litigation
T: 044 533 1101
C: 072 381 9738
E: ppama@mpc.law.za
6 High Street, Plettenberg Bay



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From: Marius Botha <marius@mhblaw.co.za>
Sent: Wednesday, 09 September 2026 15:55
To: Perino Pama <ppama@mpc.law.za>

Cc: Hennie Smit <hsmit@knysna.gov.za>; Guan Potgieter <gpotgieter@capebar.co.za>; Lizemarie <lizemarie@planningspace.co.za>

Subject: APPEAL HEARING: THE REMAINING EXTENT OF THE FARM NOETZIE 394, KNYSNA

Dear Mr Pama

We refer to our telephone conversation of yesterday, 08 September 2026.

We confirm that we requested that we have a virtual meeting with you and Mr Hennie Smit of the Knysna Municipality to discuss certain aspects raised by Mr Smit with Ms Lizemarie Botha of Planning Space pertaining to the above application.

We further confirm that you suggested that a "Without Prejudice" meeting be convened which includes yourself, Mr Smit, as well as the Legal Advisor of the Knysna Municipality.

We confirm that this is in order and we request that you kindly provide us with three alternative dates and times in order to convene such virtual meeting. From the Applicant's side it will be the writer, adv Potgieter and Ms Botha.

As this matter has been delayed for a considerable period of time we request that the meeting take place as soon as possible.

We look forward to hearing from you.

Yours sincerely

Marius Botha

MARIUSBOTH
ATTORNEYS • PROKUREURS

**335 Watsonia Avenue
Boschenmeer Estate
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Liesl Bailey

From: melanie gosling <melanie.gosling@gmail.com>
Sent: Sunday, 20 September 2026 13:42
To: Lulamile Mapholoba
Cc: Enrico Campher; Thando Matika; Director Planning; Hennie Smit; Lizemarie; Marius Botha; Liesl Bailey; Anita Strydom; Buziwe Mjamba; NCOA Chairperson; NCOA Committee Members; Perino PA; Collab@knysna.gov.za
Subject: [inbox]Resending: Legal Opinion re Public Parking Condition for Subdivision of Erf 394 Noetzie
Attachments: DOC026.pdf

To: Acting Municipal Manager: Mr Boy Manqoba Ngubo
20th September 2026

Dear My Ngubo,

For Attention: Mr Enrico Campher: Acting Manager Legal Services

RE: Public Parking Condition for Subdivision of the Remaining Extent of the Farm Noetzie no 394 Knysna.

Please acknowledge receipt of the attached legal opinion obtained on behalf of the Noetzie Conservancy Owners' Association which we originally sent on 11th September 2026.

Warm regards,
Melanie Gosling
Noetzie Conservancy Owners' Association
072 863 1425
melane.gosling@gmail.com

----- Forwarded message -----

From: melanie gosling <melanie.gosling@gmail.com>
Date: Fri, Sep 11, 2026 at 8:57 AM
Subject: NCOA legal advice: Noetzie Conservancy Owners' Association Letter
To: Perino PA <perinopa@mpc.law.za>, Thando Matika <tmatika@knysna.gov.za>, Marius Botha <marius@mhblaw.co.za>, Lizemarie <lizemarie@planningspace.co.za>, Director Planning <directorplanning@knysna.gov.za>, Hennie Smit <hsmit@knysna.gov.za>, MM <mm@knysna.gov.za>, <Collab@knysna.gov.za>
Cc: <bjamba@knysna.gov.za>, Anita Strydom <astridom@knysna.gov.za>, NCOA Chairperson <chairperson@noetzie.co.za>, NCOA Committee Members <committee@noetzie.co.za>

Good day all,

Please see the attached legal advice obtained by the Noetzie Conservancy Owners' Association.

Regards,

Melanie Gosling
for NCOA chair

0728631425

melanie.gosling@gmail.com