ERF 3953 KNYSNA
(Amended Application)



Application for:

Permanent Departure for a Portion of the Main Dwelling and As-built Building Line Relaxation

and

Administrator's Consent to Permit a Portion of the As-built Main Dwelling and Retaining Structures

Prepared by:

Seretse Mthembu Urban and Regional Planners

On behalf of:

Ms E. N. Pepler (the property owner)

Date: **June 2026**

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1. APPLICATION OVERVIEW

1.1. APPLICATION BACKGROUND

- Erf 3953 Knysna (hereinafter referred to as "the subject property" or simply "the property") is located in Heuwelkruin at No 16 Vygie Street, approximately 1,2km north-west of the Knysna Commercial Centre (i.e. Knysna Mall) by car. A locality Map is Attached as **Annexure A – Locality Map**. Mrs Evelyn Nunes Pepler, the current owner, acquired the property in 2016, a year before the beginning of the July 2017 fires. As is common knowledge, those fires consumed a substantial amount of real estate within the Knysna municipal area. The dwelling house on the subject property sadly became one of the many dwelling houses that were subjected to the conflagrations, so much that a substantial portion had to be reconstructed so that it could once again be habitable.



Figure 1: Main Dwelling Affected By July 1017 Fires

- It is common cause that the July 2017 fires brought about a substantial amount of suffering to those who were at the receiving end of the tragic incident. However it would not be appropriate to dismiss the fact that the incident conversely (in some instances) presented a rare opportunity for some victims to re-examine and to effect some alterations, as the case would be, which would not have been justifiable had the fires not occurred. Some of the alterations that have been implemented on the existing dwelling house are a result of the opportunities brought about by the fire damage.

- Following the fires, the subject property owner, in the process of undertaking the alterations that seemed appropriate at the time had building plans approved in

May 2018 (**Annexure I – Approved Building Plans**). This was followed shortly by construction activities some of which are still under way.

- During the re-construction of the main dwelling, the property owners realised that they could have additional flat areas on the site that could be used for outdoor living spaces including outdoor entertainment. With that in mind, the idea to incorporate retaining structures into the construction activities took root and this resulted in the construction of the as-built retaining structures. These retaining structures are indicated on the proposed building plans attached as **Annexure C – Proposed Building Plans**.

- Furthermore, during the re-construction, several deviations were made on the main dwelling. These deviations were in variance with the 2018 approved building plans. Preparations were, incidentally, made for the preparation and submission of rider plans. This approach necessitated the survey of the entire site to establish the status of the all as-built structure in relation to the permissible height and site boundaries. The findings of the land surveyor are depicted in the plan attached as **Annexure B – Contour / Site Plan**. It will be noted that none of the retaining structures are indicated on **Annexure B**. This is based on the fact that, when the land surveyor was appointed, there existed some confusion in terms of whether the retaining structures formed part of the appointment. Due to the confusion at the time these structures ended up being omitted and as a result did not reflect in the final Contour / Site Plan. This advertently led to the structures not appearing on the rider plans which were submitted with the original application (**Annexure C – As-built Architectural Drawings**).

- With the exception of the original survey's key deficiencies (**Annexure B**) i.e. omission of retaining structures and some paving, the survey exercise revealed the following issues:

    - That the south western corner of the garage on the basement floor falls within 3,63m of the street boundary in lieu of 4,5m prescribed by the zoning scheme. This is also in variance with the title deed restrictions which govern the distance between the building and the street boundary at 5m.
    - The south-western corner of the balcony (on the ground floor) sits at 2,917m from the street boundary in lieu of 4,5m. This is also in variance with the title deed street building line restrictions which require the building to be at least 5m away.

- Following the discovery of the building line contraventions outlined above, applications for **building line relaxation**, **administrator's consent** and **administrative penalty** were submitted to the municipality in April 2024. The April 2024 application descriptions were as follows:

    a) *Application is made in terms of terms of Section 15(2)(b) of the Knysna Municipality's Spatial Planning and Land Use Management By-law (2021), for a departure from the building line parameters applicable in respect of dwelling houses to allow the following:*

        - *a 3,63m street building line in lieu of 4,5m for a portion of the garage on the basement floor of the dwelling,*

- *a 2,917m street building line in lieu of 4,5m for a portion of the balcony on the ground floor of the dwelling.*

b) *Application is also made in terms of Clause C.I.6(b) set forth in Deed of Transfer No. T27620/2017 for the Consent of the Administrator to allow a 3,63m street building line in lieu of 5m the following:*

- *a 3,63m street building line in lieu of 5m for a portion of the garage on the basement floor of the dwelling,*
- *a 2,917m street building line in lieu of 5m for a portion of the balcony on the ground floor of the dwelling.*

- The application for Administrative Penalty has since been finalised whilst the Permanent Departure and Administrator's Consent are still being processed. Our request is for the April 2024 application to be withdrawn and be replaced by the current amended application. The current application description is set out under Paragraph 1.2 below.

- It will be noted that, when the first instalment of the application for building line relaxation the survey plan, attached as **Annexure B**, did not indicate the retaining structures. The matter of the retaining structures came to light following the comments made on the original application by the Infrastructure Services Directorate in December 2024. These comments are attached as **Annexure J**. In summary, the Infrastructure Services Directorate noted that the site plan did not reflect the totality of the structures – notably dimensions, building lines, boundaries, access points, as-built retaining structures and the as-built paving along the southern and western boundaries on site. As a consequence of the Infrastructure Services Directorate a supplementary re-survey of the site was undertaken and the resultant site plan produced by the professional land surveyor is attached as **Annexure K**. As can be deduced from the latest survey plan, there is a series of retaining structures that flank the main dwelling on the property that have stormwater management implications. These also require the relaxation of building lines for their continued existence. It is noted that, following the supplementary survey work, the site plan on the architectural drawings was revised as indicated on **Annexures L – Revised Architectural Drawings** and **Annexure M – Revised Site Plan**. The site plan indicates the following structures that are furthermore in variance with the zoning scheme and title deed building line parameters:

  - As-built retaining structures (11,81m²) which are within 0m of the southern street boundary line in lieu of 4,5m contemplated in the zoning scheme by-law.
  - As-built retaining structures (11,81m²) which are within 0m of the southern street boundary line in lieu of 5m contemplated in the title deed.
  - As-built retaining structures (901m², 4,44m² and 1,16m²) which are within 0m of the western street boundary line in lieu of 4,5m contemplated in the zoning scheme by-law.
  - As-built retaining structures (901m², 4,44m² and 1,16m²) which are within 0m of the western street boundary line in lieu of 5m contemplated in the title deed.
  - As-built retaining structures (23,27m²) which are within 0m of the northern lateral boundary line in lieu of 2m contemplated in the zoning scheme by-law.
  - As-built retaining structures (23,27m²) which are within 0m of the northern lateral boundary line in lieu of 1,5m contemplated in the title deed.

- Admittedly, the above information was completely unknown prior to the Infrastructure Services Directorate's comments (**Annexure J**) which led to the subsequent initiation of a supplementary tache survey.
- This exercise can thus be considered as the property owners' effort to address the deficiencies in the original departure application (2024) and comply with the requirements of the zoning scheme and those set forth in the respective title deed relating to the as-built structures.

1.2. THE APPLICATION

- As outlined in Paragraph 1.1 above, apart from the approval of the building plans, it is the property owner's desire to be able to obtain the requisite certificate in order to proceed with the occupation and use of the existing dwelling.
- In order to realise this objective, the property owner has sought the services of an architectural professionals, X-Cube Designs, to prepare new plans which take into account the newly discovered retaining walls which fall within the building restriction areas demarcated in terms of the building lines.
- Such structures are expressly referred to in Paragraph 1.1 above and graphically presented under **Annexures L** and **M**.
-
- The portions of the existing dwelling mentioned in the above paragraph require land use approvals by virtue of being discordant with:

    - The provision of the zoning scheme by-law (i.e. the 4,5m street and 2m lateral building line), and
    - Title deed restrictions (the 5m street and 1,5m lateral building lines).

- In order to address the matter of the structures that are in variance with applicable regulations, the property owner appointed Seretse Mthembu Urban and Regional Planners (**see Annexure D – Power of Attorney**).

- To address the building line issues, it is necessary to make the following applications in order to obtain local authority approval. In this regard applications are made for the following:

  a) Application is made in terms of terms of Section 15(2)(b) of the Knysna Municipality's Spatial Planning and Land Use Management By-law (2021), for a departure from the building line parameters applicable in respect of dwelling houses to allow the following:

      - a 3,63m street building line in lieu of 4,5m for a portion of the garage on the basement floor of the dwelling,
      - a 2,917m street building line in lieu of 4,5m for a portion of the balcony on the ground floor of the dwelling.

  b) Application is also made in terms of Clause C.I.6(b) set forth in Deed of Transfer No. T27620/2017 for the Consent of the Administrator to allow a 3,63m street building line in lieu of 5m the following:
      - a 3,63m street building line in lieu of 5m for a portion of the garage on the basement floor of the dwelling,

- a 2,917m street building line in lieu of 5m for a portion of the balcony on the ground floor of the dwelling.

c) Application is made on Erf 3953 Knysna in terms of Section 15(2)(b) of the Knysna Municipality's Spatial Planning and Land Use Management By-law (2021), for a permanent departure from the building line parameters applicable in respect of dwelling houses to allow the following:

- As-built retaining structures (11,81m²) which are within 0m of the southern street boundary line in lieu of 4,5m contemplated in the zoning scheme by-law.
- As-built retaining structures (901m², 4,44m² and 1,16m²) which are within 0m of the western street boundary line in lieu of 4,5m contemplated in the zoning scheme by-law.
- As-built retaining structures (portions of the retaining wall adjacent to the northern lateral and southern street boundaries) which are within 0m of the eastern lateral boundary line in lieu of 2m contemplated in the zoning scheme by-law.
- As-built retaining structures (23,27m²) which are within 0m of the northern lateral boundary line in lieu of 2m contemplated in the zoning scheme by-law.

d) Application is also made on Erf 3953 Knysna in terms of Clause C.I.6(b) set forth in Deed of Transfer No. T27620/2017 for the Consent of the Administrator to allow the following:

- As-built retaining structures (23,27m²) which are within 0m of the northern lateral boundary line in lieu of 1,5m contemplated in the title deed.
- As-built retaining structures (901m², 4,44m² and 1,16m²) which are within 0m of the western street boundary line in lieu of 5m contemplated in the title deed.
- As-built retaining structures (portions of the retaining wall adjacent to the northern lateral and southern street boundaries) which are within 0m of the eastern lateral boundary line in lieu of 1,5m contemplated in the title deed.
- As-built retaining structures (11,81m²) which are within 0m of the southern street boundary line in lieu of 5m contemplated in the title deed.

- A copy of the completed application form is attached as **Annexure E**.

- An application for the determination of an administrative penalty has preceded this application.

1.3. THE APPLICANT

- As already mentioned, this application is submitted by Seretse Mthembu Urban and Regional Planners on behalf of Ms Evelyn Nunes Pepler (the "registered owner") as per Power of Attorney attached as **Annexure D**.

1.4. PURPOSE OF THE APPLICATION

- This report serves as an explanatory memorandum and motivation for the approval of building line relaxations for portions of the main dwelling and retaining structures that are in variance with the zoning scheme and title deed building line restrictions.

- Certain portions of these structures indicated as such in **Annexures L** and **M** encroach the building line along Vygie Street and lateral building lines adjacent to Erven 3951, 3952 and 3954;
- These additions and alterations trigger applications for departures, the administrator's consent and the determination of an administrative penalty.
- The application also aims to demonstrate that the proposed additions and alterations do not lack desirability and that they actually warrant to be viewed favourably by the local authority.

1.5. THE SUBJECT PROPERTY

- Erf 3953 Knysna is a Single Residential I zoned property situated at No. 16 Vygie Street, Heuwelkruin, Knysna (see **Annexure A – Locality Map**).
- Pedestrian and vehicular access is obtained via the same access road.



Figure 2: Site Locality

- The table below provides a snapshot of the basic particulars of the subject property.

Cadastral Description	Erf 3953 KNYSNA situate in the Municipality and Division of Knysna, Western Cape Province
Location	No. 16 Vygie Street, Heuwelkruin, Knysna (**Annexure A – Locality Map**)
Vehicular & pedestrian access	From Vygie Street, Heuwelkruin
Property size	763 m²
Ownership	Evelyn Nunes Pepler (720723 0019 08 9)
Title deed number	T27620/2016 (**Annexure F**)

Title deed restrictions	Condition B.I.6(b) which relates to the street and lateral building lines
Bondholder	Investec (**Annexure G – Bondholders Consent**)
General Plan No.	G. P. No. 8265 of Knysna Township Extension No. 9 (**Annexure H – General Plan**)
S. G. Diagram No.	N/A
Zoning	Single Residential Zone I
Land use	Residential

Table 1: Property particulars

1.6. EXISTING DEVELOPMENT ON SITE

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- Existing development consists of a three storey dwelling house consisting of a double garage on the basement and some habitable rooms on the first and second storeys. A copy of approved building plans in attached as **Annexure I**.
- In July 2017, a large portion of the main dwelling was gutted by the Knysna July 2017 fires.
- **Figure 1** under **Paragraph 1.1** provides a picture of the devastation that the main dwelling was subjected to as a result of the fires.
- Following the fires, the subject property owner, in the process of undertaking the alterations that seemed appropriate to address the damage caused by the fire had building plans approved in May 2018.
- Subsequent to the approval of the building plans construction activities soon commenced and during the construction process, additional structural and non-structural additions were made which did not form part of the scope of the approved building plans.
- The structures in question include retaining structures and some of these structures can be seen in **Figures 3** and **4** below.



Figure 3: Retaining Structures underneath the main dwelling and along the eastern boundary

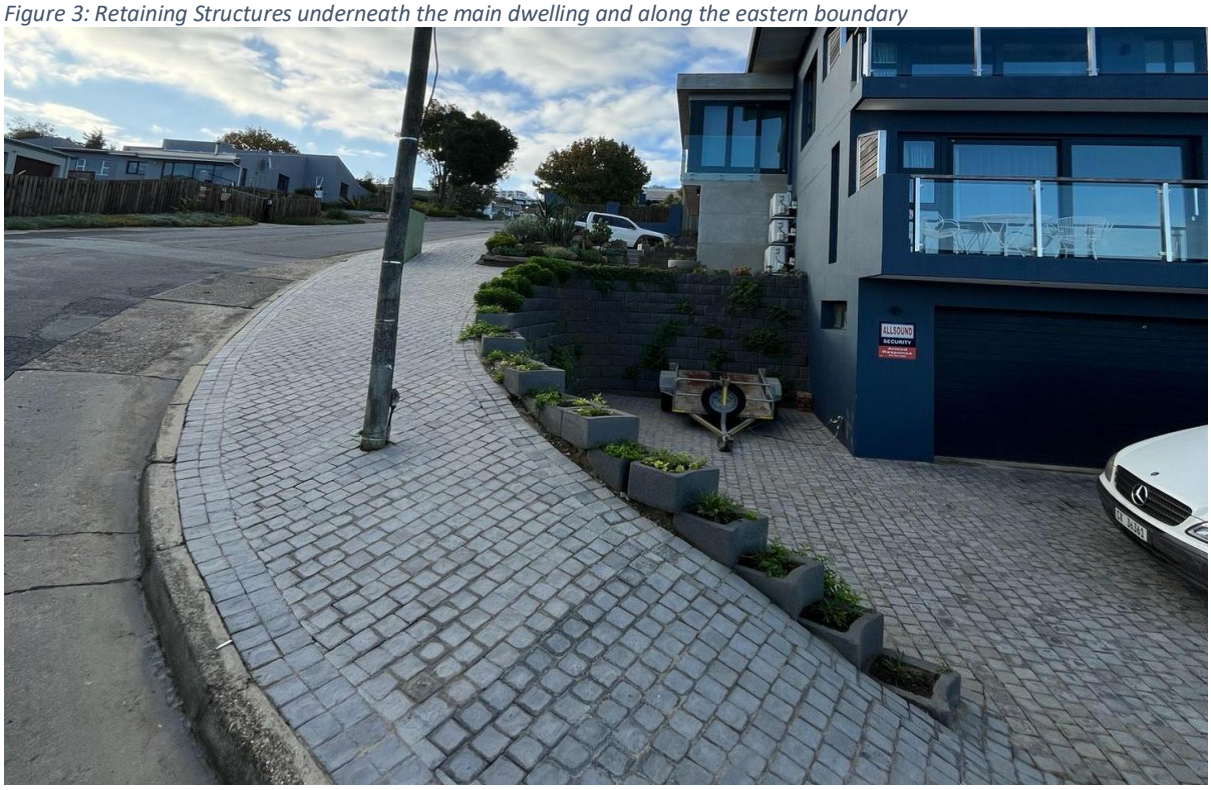


Figure 4: Retaining wall along the western street boundary

2. THE DEVELOPMENT PROPOSAL

2.1. Proposal Particulars

- The proposal is fairly straightforward as it only deals with a portion of the building over the street building line and retaining structures which serve to stabilise the ground on the subject property.
- The retaining structures are mostly on the cut side of the cut-and-fill banks are barely (less than 1m) above the natural ground level.



Figure 5: Basement garage and ground floor balcony (perspective)

- A scaled drawing of the retaining structures is attached as **Annexure L**.

2.2. Current and proposed zoning

- The property is currently zoned "Single Residential Zone I" and there is no proposal for zoning change at this stage.
- The "single residential zone I" land use details are as per the following table (extracted from the Knysna Zoning Scheme Regulations - 2021):

SINGLE RESIDENTIAL ZONES		
Zoning	**Primary Use**	**Consent Use**
The objective of this zone is to provide for residential development where the predominant type of accommodation is a dwelling house for a single family, where each dwelling has its own land unit, and adequate outdoor space. Limited employment and additional accommodation opportunities are possible as primary or consent uses, provided that the dominant use of the property remains residential, and impacts of employment and additional accommodation uses do not adversely affect the quality and character of the surrounding residential environment.	Dwelling house	Crèche Guest house (>2 rooms) Home care facility House shop Second dwelling unit >60m²

Table 2: Zoning table

- Given that the property is currently developed as per the primary rights being that of a dwelling house, the applicable building lines are as follows:

Erf size		**Building lines**	
	Street	**Side**	**Rear**

Greater than 500 m2	4,5m	2m	2m

Table 3: Building line table

- As could be observed from the site plan, all building lines on the property are affected in varying intensities.
- It is noted that there are title deed street and lateral building line restrictions of 5m and 1,5m respectively that have a bearing on this application. The object of this application in relation to the title deed building line is to obtain the consent of the municipality to relax these.
- Whilst the affected title deed conditions prohibits the construction of buildings or structures over the building lines concerned, the restriction does make an exception to this rule subject the granting of consent by the Administrator (i.e. the local authority).
- It is our view that the proposed relaxations do not have a negative impact from an aesthetic, safety or privacy perspective and could thus be supported.

2.3. Current and proposed land uses

- The property is currently used for single residential purposes and shall continue being utilised as such even if the proposed retaining structures are allowed.
- No other land uses are proposed as part of this proposal.

2.4. Parking and access

- Parking is available in the form of a double garage on the basement level of the existing dwelling.
- No additional requirements in respect of parking are expected as part of this proposal.
- The paving along the western portion of Vygie Street which is utilised as informal parking is to be removed and cultivated with grass.

2.5. Engineering services

- The property is sufficiently provisioned with water and electricity for the extent and intensity of the existing uses on site.
- These services are provided by the Knysna Municipality.
- Stormwater runoff is disposed of directly into an existing on-street management system with disposes run-off into a series of carefully designed stormwater culverts.
- Other than the existing improvements discussed in the above paragraphs, there is no additional physical development being presented that would require the upgrading of or relocations of existing outline engineering services.
- Since no change of use is also proposed, there are no new requirements in terms of services that are triggered.

2.6. Environmental and Heritage Considerations

- The site falls within the Garden Route Critical Biodiversity Area.
- However, the site is already developed and heavily disturbed and thus has no longer any fauna or flora of conservation value. No protected animal or plant species have been observed on the property.
- It has no historical buildings or artefacts of any historical or heritage value.

- The building lines and height relaxation does not trigger any listed activities in terms of the current NEMA EIA Regulations.
- The Erf is not located within a 100-year flood line.
- If there should be any environmental aspects that should be taken into account, it is our view that the responsible departments and state agencies shall highlight such so that they could be addressed as part of the next stage of the application process.

3. THE MOTIVATION

3.1. NEED AND DESIRABILITY OF THE PROPOSAL

- The proposed building line departures are required in order to allow the existing portions of the main dwelling and retaining structures that are located within the building restriction areas along the street and lateral boundaries of the site.
- These improvements allow the property owner to optimise the current investment on the property in a manner that does not negatively affect the surrounding property owners or the general public – neither from the privacy, safety, aesthetic or visual intrusion point of view.
- It is noted that the current owner as well as any other future potential owners are likely to derive maximum value from the beneficial use and enjoyment of the existing improvements on the property.
- The improvements on the property have radically modernised the external appearance of the property in a manner that brings about great improvement in the general character of the surrounding area.
- With regard to surrounding properties, it is noted that these are orientated southwards towards the Knysna to take full advantage of the views. This serves as a mitigation measure against any potential visual intrusion that may be as a result of the as-built dwelling and retaining structures.
- Therefore the impact on the surrounding property owners can readily be considered minimal.
- It is common cause that the most attractive feature from a property orientation point of view is the lagoon and the The Heads. For instance, the photo below provides an example of what the main focus is with regard to properties that are located on the vicinity part of Heuwelkruin.



Figure 6: Southwards views of The Heads across the Knysna Lagoon

- It is common cause that the bulk of living and entertainment space in the surrounding properties, especially south of the subject erf, would be orientated southwards.
- All the properties that would potentially have their privacy compromised are orientated towards and have their swimming pools (and entertainment areas) towards the south of their properties. In this case they are less likely to be bothered by the presence of the main dwelling and retaining walls – if at all.
- The amount of thick vegetation for which the Heuwelkruin Section of Knysna is renowned also add a layer of privacy that makes it less likely that the surrounding property owners will be affected by the proposed building line relaxations.
- We are therefore of the view that the proposal does not lack desirability and, in fact, should be supported.

3.2. UNIQUE FACTS AND CIRCUMSTANCES OF THE PROPOSAL

- A summary look at the slope of the property and the position of the existing building will reveal that the location of the property (being on the corner of major collector street), despite its size, is quiet limiting in terms of the percentage of the outdoor space that could be used in beneficial manner.
- The retaining structures are therefore employed in this case as a method to reclaim some of the outdoor so that the flattened portions could serve a beneficial function e.g. parking, swimming pool, etc.
- In other words, the property owner, with very limited alternatives, has to work within whatever constraints are presented by the shape, location and slope of the site.
- It will furthermore be noted that the portions of the retaining structures that are over the building restriction area fall below the natural ground level making them even less obtrusive from an aesthetic point of view.
- From a safety perspective it is to be noted that structures are to be lined with ClearVu fence to prevent pedestrians and animals from potentially falling over – as the case may be.

- On a positive note, there is a substantial amount of vegetation and roadway between the proposed encroaching structures and any potentially affected property owner.

3.3. COMPLIANCE WITH SECTION 38 THE SPATIAL PLANNIG AND LAND USE MANAGEMENT BY-LAW, 2021

- The above section deals with the list of required documentation without which the application cannot be considered complete.
- Every effort has been expended in ensuring compliance with the above section and assurance is hereby given that the application is complete and therefore could be processed for a decision.

3.4. COMPLIANCE THE CHAPTER 2 PRINCIPLES OF SPLUMA (Spatial Planning and Land Use Management Act, No.16 of 2013)

- The principles referred to in this paragraph are basically Spatial justice, Spatial Sustainability, Efficiency, Spatial Resilience and Good Governance.
- On multiple occasions it has come to light to a substantial number of planning practitioners that the application of the above broad principles on small scale residential proposals is not the simplest of tasks.
- That being the case, it is regarded to be extremely important that these principles are applied, challenging as the task may be, to remind all development practitioners of the planning focus of the past which led to fragmentation, segregation and sprawl and to appreciate the new paradigm which focuses on principles, norms and standards.
- Without denigrating the importance of the rest of the principles it is our view that the principle of efficiency has a direct bearing on the subject proposal e.g. the proposal allows the property owner to utilise the existing space to its full potential thus improving its value and contributing positively to the sustainability of the residential markets.
- Our overall view therefore is that the proposal is aligned with the SPLUMA principles and should thus be supported.

3.5. COMPLIANCE WITH THE KNYSNA SPATIAL DEVELOPMENT FRAMEWORK, 2020

- SPLUMA makes it mandatory that future development within, for example, the Knysna Municipal area be consistent with the Knysna Spatial Development Framework (2020) and be, by extension, aligned with its policy guidelines.
- The scale of the current proposal means it poses a challenge to pin-point the exact areas where the needs of the property owner and the broader policy proposals of the spatial development framework intersect.
- However, with the broader objective of the SDF being the improvement of the general quality life within and beyond the boundaries of the Knysna Municipality it could be concluded that the current proposal and the objectives of the SDF are in alignment.

3.6. IMPLICATIONS OF SECTION 33(4) OF THE KNYSNA PLANNING BY-LAW

- According the planning by-law, when the municipality considers the removal, suspension or amendment of a restrictive condition, the municipality must have regard to the following:

a) The financial or other value of the rights in terms of the restrictive condition enjoyed by a person or entity, irrespective of whether these rights are personal or vests in the person as the owner of a dominant tenement.

- The restriction for which the administrator's consent is requested in respect of its relaxation does not constitute a right as it does not confer on the owner of the subject property (or any other property) any financial or other value of rights to be enjoyed.
- There are neither real nor personal rights conferred on any surrounding property owner or members of the public which stand to be affected if the restriction in question is relaxed. In other words, the subject property is not subservient to any other hence the absence of a dominant tenement.
- Therefore, demonstrably, there exists no financial or other value right in favour of a third party which stands to be affected by the relaxation of the 5m street building line.

b) The personal benefits which accrue to the holder of rights in terms of the restrictive condition

- There are no personal benefits per se that accrue to the holder any right given that the restriction in question confers no such upon any third parties. The restriction for which the relaxation is requested applies to street and lateral building lines which fall within the boundaries of the subject property.
- To the extent that the retaining walls serve the common interest of both the subject property and the surrounding property owners in respect of the insurance of the structural integrity of boundary walls and related structures on these properties, the structures are deemed to be beneficial to all the affected property owners.
- Therefore, there are neither real nor personal rights that are negatively affected nor none of the adjoining property owners stand to forfeit any benefits due to the relaxation of the building lines in question.

c) The personal benefits which will accrue to the person seeking the removal, suspension or amendment of the restrictive condition if it is amended, suspended or removed

- Apart from the effect of the relaxation of the building lines in question - being the continued existence of a portion of the main dwelling and retaining structures over the building line, there are no other rights which will accrue to the owner (being the party seeking the relaxation of the condition in question).

d) The social benefit of the restrictive condition remaining in place in its existing form

- As indicated in the preceding paragraphs, the condition for which relaxation is required governs the distance within which a building or structures can be erected from the street boundary. Whilst there may be some social benefits that maybe derived from keeping buildings within a certain distance from the street or lateral boundaries, in this case there is none.
- For example, the portion of land between the existing building and the street maybe use for the installation of services in instances where outline infrastructure services do not exist – and need to be retrofitted. The space may sometimes be used for the widening of a road in instances where such requirement is deemed inevitable due to an upward change in the existing class of road. In this particular case, however, engineering services are already place and there seems to be no indication that the class or road will change in the foreseeable future.
- No information could found to that effect. In other words, the prospects of the strip of land between the main dwelling and Vygie Street being subject to expropriation in the foreseeable future remain grim.
- The same applies to the lateral building lines. There are no services that run parallel to these and, since there are no habitable structures that are to be erected adjacent to the affected boundaries, no neighbouring property owner is likely to be affected.

e) The social benefit of the removal, suspension or amendment of the restrictive condition

- There is no social benefit that will be realised due to the rationale advanced in paragraph (e) above. The relaxation of the building lines in question stands to benefit only the property owner as the only party whose real rights are affected by the condition.

f) Whether the removal, suspension or amendment of the restrictive condition will completely remove all rights enjoyed by the beneficiary or only some of those rights

- In the absence of any beneficiary who would derive direct benefit to the condition being kept in its original form, our position is that that relaxation will have no impact or any other potential holder of rights in the surrounding area.
- The restriction also does not specify concern the manner in which any real or personal rights shall be handled when the property owner wishes to bequeath the property, as the case may be.
- Therefore, the relaxation will have no impact with regard to the observation of the above statement.

g) Whether the removal would be in the public interest

- Given that the condition in question does not demonstrably have a direct impact on what might be considered public interest, our view is that it relaxation will invariably have no impact on the public's enjoyment of the surrounding area. This is due to the fact that the condition only affects the property owner by virtue it not being in a boundary shared by another property owner.

- It is noted that, whilst this application is neither for removal, suspension or amendment of the title deed restriction in question, the Administrator is urged to take the above factors into account. This is due to the fact that there appears to be no specific guidelines that need to be observed when conducting an assessment of an application that arises from a title deed condition. We are therefore confident that the as-built structures, when assessed in terms of the above guidelines, do not lack desirability and can be viewed favourably.

4. OVERVIEW / CONCLUSION

The portion of the main dwelling over the street building line and as-built retaining structures are regarded as logical improvements to the subject property in order to maximise the investment and to derive sufficient value from the beneficial use and enjoyment of the property. As such it has become quite common for property owners to undertake such improvements on their properties as they would improve the aesthetic and the utility value of their properties. The owner of the property is not immune from this natural instinct.

Our view with regard to the desirability of the structures in question is that these will contribute to the overall improvement of Knysna in general (and Heuwelkruin in particular) as a place of residence and for investment purposes. This will happen without the associated negative impacts in terms of the general aesthetic appeal of the area. The improvements are designed to be in line with the design elements of the existing housing and cannot be considered to be objectionable or have a negative impact on the safety, welfare and rights of the surrounding property owners.

Any impact that there may be on the environment is regarded as miniscule and could be regarded in that fashion.

We are therefore of the view that the proposal does not lack desirability and should be supported.