BUFFALO BAY ERF 81

APPLICATION FOR

DEPARTURE

CLIENT: NF MARAIS & M MARAIS

PREPARED BY: MARIKE VREKEN URBAN AND ENVIRONMENTAL PLANNERS

Marike Vreken
Urban & Environmental Planners
Stads & Omgewingsbeplanners

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SECTION A : BACKGROUND

1. BACKGROUND

The owner of the property envisions to construct a new deck area to capitalise on the location presented with scenic views of the Indian Ocean and Goukamma Nature Reserve. The property is currently zoned as 'Residential Zone I' according to the section 8 Zoning Scheme Regulations which prescribes a street building line of 4m. The proposed deck located on the street building line will encroach the prescribed 4m building line therefore it is necessary to apply for a departure to accommodate the deck to comply with the land use management regulations.

2. THE APPLICATION

Marike Vreken Urban and Environmental Planners has been appointed by Nicolaas Floris Marais & Mariette Marais, to prepare and submit the required application documentation (refer to ANNEXURE B: Application Form) for:

- A departure in terms of Section 15(1)(a)(i) of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985) for a departure to allow, 0m street building lines in order to accommodate a deck;
- Permission from the Administrator to deviate / depart from restrictive title deed conditions.

Note:

The Minister for Rural Development and Land Reform has requested that the President bring the Spatial Land Use and Management Act, 2013 (Act 16 of 2013) (SPLUMA) into operation.

The proposed commencement date for SPLUMA is 1 September 2014. SPLUMA stipulates that municipalities are responsible for the implementation of legislation regulating land use and development of land on a municipal scale and promotes the preparation, adoption and implementation of a by-law to facilitate spatial planning and the development or use of land.

As a Result of SPLUMA, The Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985) will be repealed and no longer be applicable to spatial planning and land use management.

Applications as of September 1st 2014 relating to spatial planning, land use management and development of land must therefore comply with the development principles, norms and standards as set out in Chapter 2 of SPLUMA. It should therefore be noted that this application has taken into consideration the applicable (Draft) Planning by- law of the Knysna Municipality and the development principles of SPLUMA in anticipation of the proposed commencement date.

If the Draft Planning By-Law is brought into effect in its current form the application will be made in terms of the following:

- Departure from the Knysna Zoning By-law (2014) in terms of Section 13(2)(b) of the Knysna Municipal Planning By-Law (2014) from a 4.5m street building line to 0m to accommodate a deck;

3. PROPERTY DESCRIPTION SIZE AND OWNERSHIP

A copy of the Title Deed for Buffalo Bay Erf 81, which includes all the information outlined below, is contained in *ANNEXURE C*.

Buffalo Bay Erf 81	
Title Deed Number	T21165/2014
Title Deed Description:	Erf 81 Buffelsbaai, In Die Munisipaliteit en Afdeling van Knysna, Provinsie Wes-Kaap
Property Owner	Nicolaas Floris Marais & Mariette Marais
Bonds:	No bond is registered against the property.
Property Size:	549m² (Five Hundred and Forty Nine) square metres
Title Deed Restrictions:	The title deed contain the following restrictions that prevent the proposed deck: • *Condition C 5 (b)*: No building or structure or any part thereof except boundary walls and fences, shall *except with the consent of the Administrator* closer than 5 metres from the street line a boundary of the plot together, and within 3 meters from the rear boundary of 1.5 meters from the side boundary common to any adjoining property be erected, provided that with the consent of the local authority.
Servitudes:	There are no servitudes registered on the subject property. A copy of the Surveyor General Diagram for the property is contained in *Annexure D*.

SECTION B : CONTEXTUAL INFORMANTS

4. LOCALITY

(Plan 1: Locality Plan)

Buffalo Bay Erf 81 is located at 81 Galjoen Street on the peninsula of buffalo bay. The subject property is accessed of Walker Drive which is the main feeder route within Buffalo Bay. The property is in close proximity to the Buffalo Bay Waterfront located north of the subject property. The Buffalo Bay Caravan Park is located to the east of the application area.

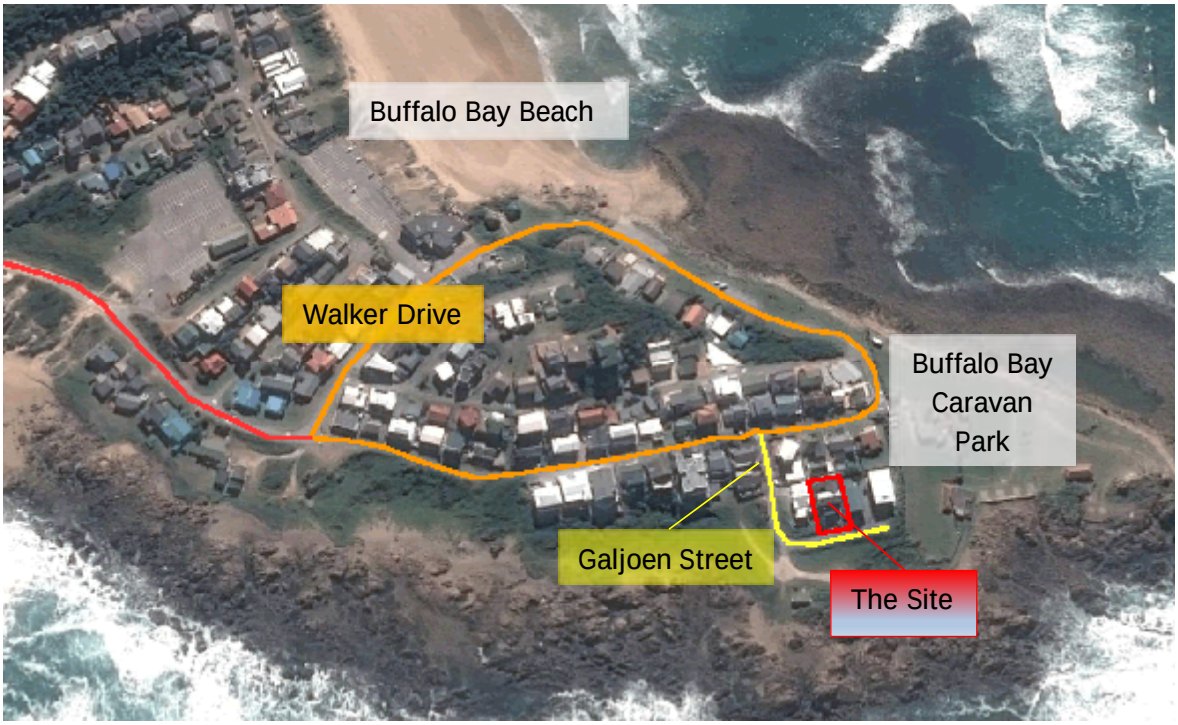

FIGURE 1: LOCALITY

4.1. Land Use

(Plan 2: Land Use Plan)

The subject property is currently used for single residential purposes.

FIGURE 2: THE APPLICATION AREA

4.2. Zoning

Buffalo Bay Erf 81 is currently zoned 'Residential Zone I' in terms of the Section 8 Zoning Scheme Regulations as promulgated under P.N 1048/1988.The following development parameters are applicable to the application area:

Building Lines:	Street:	4m minimum to dwellings
	Lateral:	2,0m
	Rear:	2,0m for dwellings
Coverage:		Maximum 50%
Height:		2storeys

5. CHARACTER OF THE SURROUNDING AREA

The Buffalo Bay area can be regarded as small holiday village with pristine views presented by the surrounding environment and sought after coastline. This has resulted to the intensification of developments within the regulatory allotted area. The prevailing land use of erven in the subject area is "single residential". The majority of residential dwellings are two to three storeys in height to capitalise on the breath taking views of the Peninsula, Indian Ocean and The Goukamma Nature Reserve.

The application area is located within an area that is characterised by a mix of residential, holiday accommodation and tourist orientated land uses.

FIGURE 3: STRUCTURE ON ERF 141

FIGURE 4: ERF 80 NEIGHBOURING SUBJECT PROPERTY TO EAST

Due to picture rest surrounding natural environment the majority of properties constructed balconies, patios or decks to make full use of the pristine views presented to properties in the area.

FIGURE 5: PATIO AND DECK ON NEIGHBOURING ERF 74

FIGURE 6: DECK AREA LOCATED ABOVE CAR PORT AREA ON ERF 148

Tourist associated facilities in the surrounding area includes the Buffalo Bay Caravan Park located east of the property. The Buffalo Bay Main Beach located north-west of the subject property which serves as the main tourist attraction for the area that includes: the Buffalo Bay main beach, a restaurant, a supermarket and luxury apartments for holiday accommodation.

FIGURE 7: BUFFALO BAY CARAVAN PARK

FIGURE 8: BUFFALO BAY WATERFRONT

6. SITE CHARACTERISTICS

The site currently accommodates a single residential dwelling. The existing structure on the property consists of two storeys and a basement that is used as a garage.

The topography of the application area consists of very moderate southern sloping topography that gradually slopes towards the Indian Ocean.

The property currently contains a wooden deck that is not practical to be used as area to enjoy the views to the surrounding areas. The owners of the property envisage extending the wooden deck area into a more functional and integrated space that will complement the design of the covered veranda.

FIGURE 9: DECK SOUTH OF COVERED VERANDA

FIGURE 10: DECK EAST OF COVERED VERANDA

7. EXISTING POLICY FRAMEWORKS

7.1. Knysna SDF (2008)

The Knysna SDF has been adopted by Knysna Municipality. The Knysna SDF indicates that the property is within the urban edge, meaning that it is suitable for urban development.

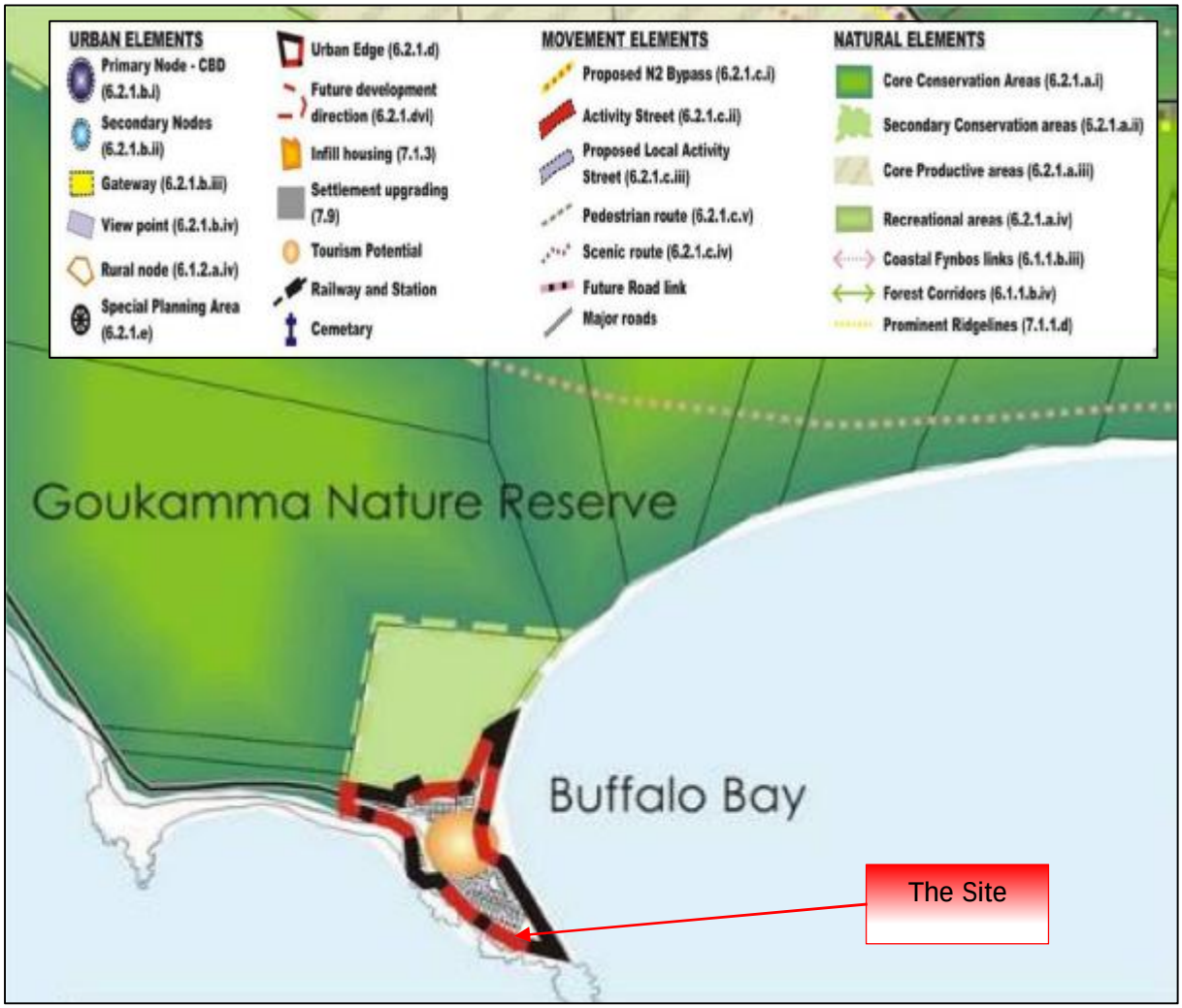

FIGURE 11: EXTRACT FROM THE KNYSNA SDF 2008

SECTION C :	PROPOSAL

8. THE APPLICATION

(Refer to **Error! Reference source not found.**: **Error! Reference source not found.**)

8.1. Removal of Title Deed restrictions

The Title Deed of Erf 81 contains a restrictive condition that prevents the proposed development.

Condition C 5 (b): No building or structure or any part thereof except boundary walls and fences, shall *except with the consent of the Administrator* closer than 5 metres from the street line a boundary of the plot together, and within 3 meters from the rear boundary of 1.5 meters from the side boundary common to any adjoining property be erected, provided that with the consent of the local authority.

Given the fact that the Administrator (Provincial Government) may permit permission for the proposed building line relaxation, there is no need to apply for the formal removal of the title deed condition.

Once the application was processed by the local authority, the application will be forwarded to the Administrator for approval.

According to Section 2 of the Removal of Restrictions Act 84 of 1967, an application for removal of title deed restrictions must be motivated on the basis that the removal of the restriction will benefit the township, community as well as the neighbourhood. The proposed development of a deck south of the proposed Erf will contribute to character of the area and will have no negative impact on the existing rights of the surrounding properties

8.2. Building Line Relaxation

The owners of Erf 81 envisions to extent the existing deck area by 55 square metres to create a more integrated and functional deck area to enjoy the surrounding natural environment.

The owners envisage extending the current, narrow, deck area to the south of the building to the street boundary line. Therefore, the proposed deck will encroach the prescribed building line as prescribed by the Section 8 zoning schemes regulated as promulgated under P.N 1048/1988.

The Section 8 Zoning Scheme Regulations define a 'building line' as "*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*".

The Section 8 Zoning Scheme Regulations for Residential Zone I Units have the following parameters associated with building lines to be adhered to

Road frontages: 4.0m minimum to dwellings

Lateral boundary: 2.0m minimum

Therefore, the 4.0m street building line restriction is applicable to Erf 81.Although by referring to condition *C (5)(b)* in the title deed, the current structure on the property was constructed according to a 5m building line In order for the proposed structure to legally comply with the zoning regulations the current street building line of 4m has to be relaxed to 0m.

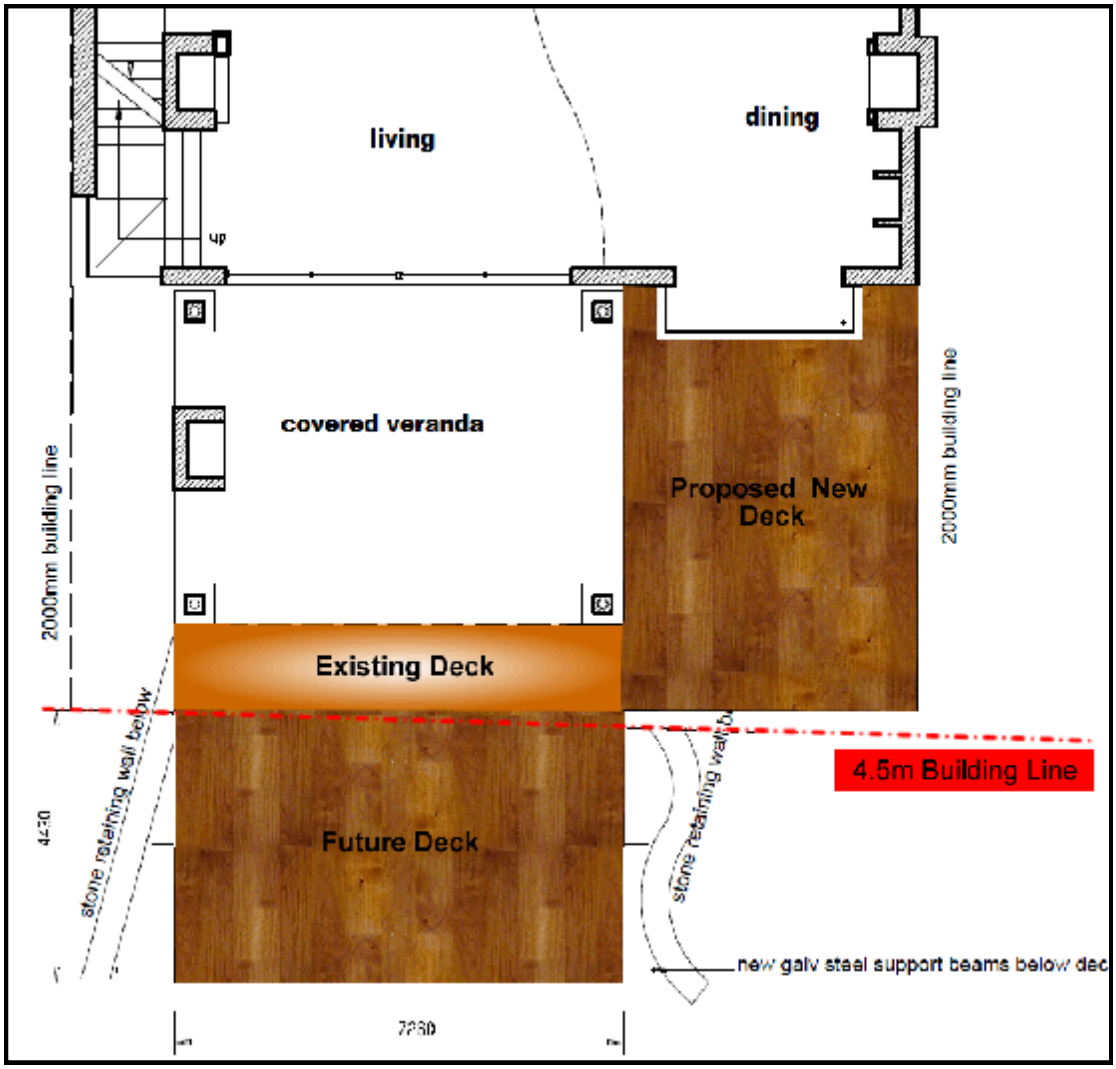

FIGURE 12: PROPOSED DECK DEVELOPMENT ENCROACHES 4.M BUILDING LINE

The figure below illustrates that the proposerd structure will comply with a 0m building line.

FIGURE 13: PROPOSED DECK WITH 0M BUILDING LINE

SECTION D :	MOTIVATION

9. CRITERIA FOR ASSESSMENT

9.1. Western Cape Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985)

The Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985) states in Section 36 that the reasons for refusing an application may only be considered on the basis of the "lack of desirability" of the proposed land use. The following points must be taken into account when evaluating the desirability of this application:

- Consistency with spatial planning policies
- Character of the area
- Locality and accessibility
- Impact on Existing Rights
- Availability of Services

9.2. Spatial Planning and Land Use Management Act, 2013 (Act 16 OF 2013)

The Spatial Planning and Land Use Management Act (SPLUMA) will in fully in effect on 1 September 2014. One of the main objectives of this act is to provide a framework for spatial planning and land use management to address past spatial and regulatory imbalances.

Section 42 of SPLUMA prescribe certain aspects that have to be taken into consideration when deciding on an application. These are:

- development principles set out in Chapter 2 of SPLUMA
- protect and promote the sustainable use of agricultural land
- national and provincial government policies
- the municipal spatial development framework; and
- take into account—
  - (i) the public interest;
  - (ii) the constitutional transformation imperatives and the related duties of the State;
  - (iii) the facts and circumstances relevant to the application;
  - (iv) the respective rights and obligations of all those affected;
  - (v) the state and impact of engineering services, social infrastructure and open space requirements; and
  - (vi) any factors that may be prescribed, including timeframes for making decisions.

SPLUMA sets out the following **5 main development principles** applicable to spatial planning, land use management and land development:

1. Spatial sustainability:
   - past spatial and other development imbalances must be redressed through improved access to and use of land;
   - spatial development frameworks and policies at all spheres of government must address the inclusion of persons and areas that were previously excluded;
   - spatial planning mechanisms, including land use schemes, must incorporate provisions that enable redress in access to land;
2. Spatial justice:
   - promote land development that is within the fiscal, institutional and administrative means of the Republic
   - ensure that special consideration is given to the protection of prime and unique agricultural land
   - uphold consistency of land use measures in accordance with environmental management instruments
   - promote and stimulate the effective and equitable functioning of land markets

- Ø consider all current and future costs to all parties for the provision of infrastructure and social services in land developments
- Ø promote land development in locations that are sustainable and limit urban sprawl; and
- Ø result in communities that are viable

3. Efficiency (optimising the use of existing resources and infrastructure)
   - Ø land development optimises the use of existing resources and infrastructure
   - Ø decision-making procedures are designed to minimise negative financial, social, economic or environmental impacts; and
   - Ø development application procedures are efficient and streamlined and timeframes are adhered to by all parties.
4. Spatial resilience (allow for flexibility in spatial plans)
   - Ø flexibility in spatial plans, policies and land use management systems are accommodated to ensure sustainable livelihoods in communities most likely to suffer the impacts of economic and environmental shocks.
5. Good administration:
   - Ø all spheres of government ensure an integrated approach to land use and land development that is guided by the spatial planning and land use management systems as embodied in this Act
   - Ø all government departments must provide their sector inputs and comply with any other prescribed requirements during the preparation or amendment of spatial development frameworks
   - Ø the requirements of any law relating to land development and land use are met timeously
   - Ø the preparation and amendment of spatial plans, policies, land use schemes as well as procedures for development applications, include transparent processes of public participation that afford all parties the opportunity to provide inputs on matters affecting them
   - Ø policies, legislation and procedures must be clearly set in order to inform and empower members of the public

The motivation in this Section will also indicate how the proposed development will be consistent with the SPLUMA principles.

10. CONSISTENCY WITH SPATIAL POLICY DIRECTIVES

This development application is consistent with the approved statutory spatial policy framework for the area. The application is consistent with the policies laid down within the Provincial Spatial Development Framework that advocates development within the urban edge.

11. CONSISTENCY WITH THE CHARACTER OF THE AREA

The proposal can be regarded as being consistent with other buildings in the surrounding area. The majority of properties in the surrounding area is characterised by imposing two storey dwellings with a deck or patio area to make full use of views presented to the property from the Indian Ocean and surrounding Goukamma Nature Reserve. The proposed deck development will contribute to the already established trend of patios and deck accustomed to residential dwellings and will therefore be consistent with this character of the surrounding area.

FIGURE 14: DECK ON NEIGHBOURING ERF 74

The development of a deck or patio area on the ground floor above the garage is evident in the surrounding area due to the small sizes of the Erf and the topography of the area the patios have to be located on an elevated level to enjoy views to the surrounding area.

FIGURE 15: PATIO LOCATED ABOVE GARAGE ON ERF 79

FIGURE 16: PATIO BEING CONSTRUCTED ABOVE GARAGE ON ERF 75

FIGURE 17: LARGE PATIO SURROUNDING THE NORTH AND EAST OF PROPERTY ON ERF 78

Properties in the surrounding area make use of patio and deck as places to relax and enjoy views of the surrounding areas. This is also used as a tool to redefine the space unique to every property therefore the proposed development can be regarded as in line with the consistency of the surrounding area.

12. ZONING SCHEME REGULATIONS

The entire legal framework of the South African Planning fraternity is in a transitional period. As from 1 September 2014, the SPLUMA will be in full effect. SPLUMA will also result in new zoning bylaws (zoning schemes) for all local municipalities. The Knysna Municipality is currently in a public participation process with the proposed new zoning bylaws for the Knysna Municipal area. Currently, the application area is zoned Residential zone I in term of the Section 8 Zoning Scheme Regulations. With the proposed new Knysna Zoning bylaws, the application area will be zoned Single Residential zone. This paragraph sets out how the Section 8 Zoning Scheme Zoning scheme relates to the new proposed Knysna Zoning Bylaws.

Building Line	Section 8 Zoning Scheme Regulations	Draft Knysna Zoning Bylaw
Street Building Line	4m	4,5m
Lateral Building Line	2m	2m
Coverage	50%	50%

The proposed deck will be constructed on the southern boundary of the Erf. It should be noted that no other private or developed properties exist to the south of the application area. Even though the proposed deck will encroach the prescribed building line, it will not have any impact whatsoever on existing land use rights.

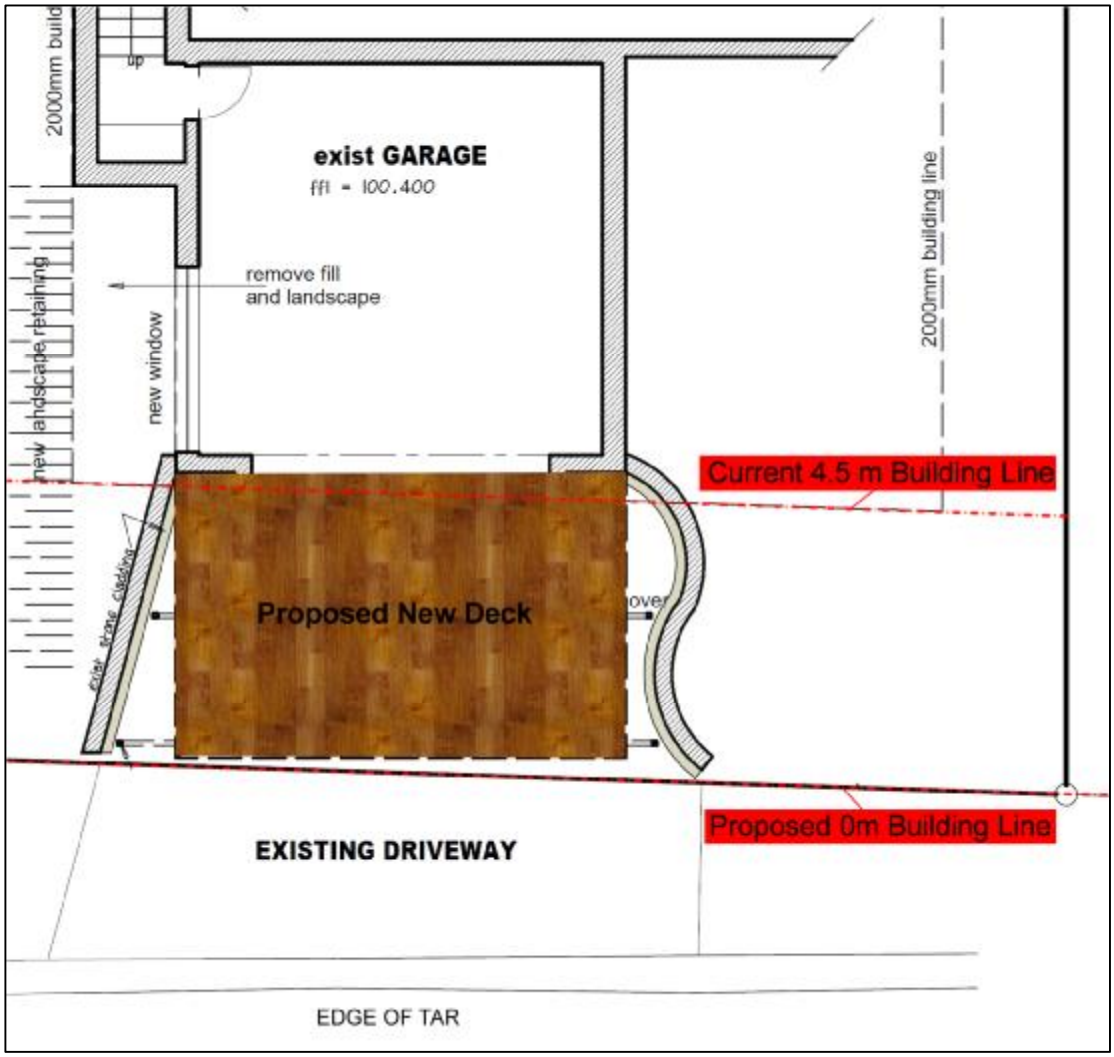

FIGURE 18: PROPOSED BUILDING LINE

13. NO IMPACT ON EXISTING RIGHTS

The proposal will have no negative impacts on the rights of the surrounding property owners. Due to the fact that no residential erven can be constructed south of Galjoen Street as it is designated as core conservation are and form part of the Goukamma Nature Reserve.

FIGURE 19: VIEW TO SURROUNDING AREAS FROM GROUND FLOOR

The approval of the proposed deck on the southern boundary on Erf 81 will have no impact whatsoever on the access to surrounding properties views, light, privacy or air afforded by surrounding properties.

14. CONSISTENCY WITH SPLUMA PRINCIPLES

The development is consistent with the SPLUMA Principles for the following reasons:

Spatial Sustainability:	• Development complies with Knysna Spatial development framework (2008) as a spatial tool to guide future development on a Local Municipal Level. • Development complies with Knysna Zoning Scheme regulations that serves as a spatial land use management tool to guide land use developments on a urban scale.
Spatial Justice:	• The proposed Development does not trigger any environmental listed activities according to the National Environmental Management Act (1998). • The proposed development is within a established residential area within the Knysna Municipality. • The proposed development will not contain any expantion of the urban area therfore Urban sprawl is irrelivant to the application • The proposed development will contribute to the caracter of the surrounding area

Spatial Efficiency:	• Development will make use of existing local resources to construct the deck thus contributing to economic development. • The proposed development of a deck area will contribute to the character of the surrounding area whilst promoting the aesthetic appearcance to the surrounding area.
Spatial Resilience:	The development complies with the following spatial development frameworks. • Western Cape Provincial Development Framework • Bitou Spatial Development Framework
Good Administration:	• This principle has no direct bearing on the application, however, the municipality is obligated to consider the application fairly and within the prescribed timeframes.

15. CONCLUSION

In light of this motivation, and the information contained within the foregoing report, it is clear that the application for:

- A departure in terms of Section 15(1)(a)(i) of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985) for a departure to allow, 0m street building lines in order to accommodate a deck;
- Permission from the Administrator to deviate / depart from restrictive title deed conditions

Is desirable and it is therefore recommended that the application be supported by the relevant authorities and approved by Council.

Marike Vreken Urban and Environmental Planners
July 2014