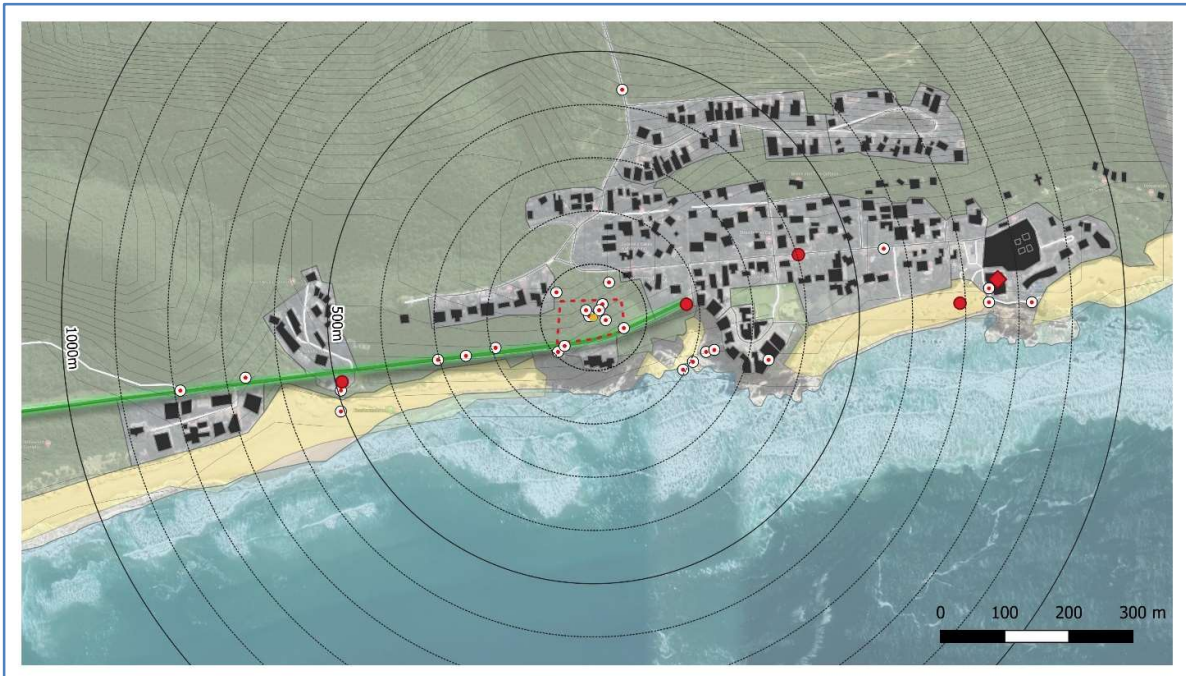


MOTIVATION IN SUPPORT OF LAND DEVELOPMENT APPLICATION FOR:

ERF 155, KEURBOOMSTRAND



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ANNEXURE

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EXECUTIVE SUMMARY

MOTIVATION IN SUPPORT OF LAND DEVELOPMENT APPLICATION FOR:	
ERF 155, KEURBOOMSTRAND	
SG Code: C03900040000015500000 / Location: Lat: 34° 0' 13.7844" S Lon: 23° 27' 16.5276" E	
<u>Applicant / Prospective Owner of portion</u>	<u>Project Consultant:</u>
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<u>Owner Erf 155, Keurboomstrand:</u>	
Mare Nostrum (Pty) Ltd Reg. no. 1977/003530/07 Represented by: Mr Eugéne Schoeman Address: 53 Van der Merwe Crescent, Blomvlei, 7530, Bellville, Western Cape E-mail: csms@mweb.co.za Phone: +27 82 228 8303	

Erf 155, Keurboomstrand (56 615,4m² in extent) is located abutting the Keurboomstrand residential area and zoned for various urban related uses. The relevant portion of the property located on the northern side of the main road is zoned as Open Space Zone II (private open space), while the remainder is zoned Residential Zone II. The proposal is to subdivide a portion of roughly 5 000m² located directly abutting and between Keurboomstrand residential erven (15, 20 and 565) and public place (Erf 391) off the private open space and to use approximately 3 250m² for the construction of three dwelling houses in a sectional title development, zoned Residential Zone II.

This is an application in keeping with Section 15 of the Bitou Municipal Land Use Planning Bylaw, 2015. The application covers the following aspects:

- (1) Application in terms of Section 15 (2)(a) for a rezoning; and
- (2) Application in terms of Section 15 (2)(d) for subdivision, with an existing registered servitude right of way access over public place Erf 391.

There are no title deed restrictions preventing the proposed land developments or use. A servitude pipeline (890/1988001) is registered across the relevant portion of the property and must be moved to accommodate the proposed development.

The application does not trigger any activity listed in terms of Section 38 of the National Heritage Resources Act, 1999, Act 25 of 1999 (NHRA) and thus no authorisation application is required.

The application triggers activities listed in the Environmental Impact Assessment Regulations made in terms of the National Environmental Management Act, 1998, Act 107 of 1998 (NEMA) and related legislation, therefore authorisation applications are required and are being prepared for consideration by the competent authority.

1. BACKGROUND

1.1 Introduction

Erf 155, owned by Mare Nostrum (Pty) Ltd, was developed as a share block resort abutting the western end of the Keurboomstrand residential neighbourhood. A portion of the resort houses were located on Erf 151, Keurboomstrand. The property, with an area of 56 615,4m², straddles the Keurboomstrand Main Road MR 394 (major / primary) entrance from the N2. A portion of the property is registered as a servitude and used as a public parking area and contains facilities for the public, e.g., ablution block and life-saving service facility.

The relevant portion of the property (shown in green in Figure 1 below) located on the northern side of the main road is zoned as Open Space Zone II (private open space in terms of the Zoning Scheme Regulations made in terms of Section 8 of the Land Use Planning Ordinance, 1985, Ordinance 15 of 1985 (LUPO)). The proposed portion to be subdivided is roughly 5 000m². It is located directly abutting and between Keurboomstrand residential properties (Erven 15, 20 and 565) and public place (Erf 391). Approximately 3 250m² of the proposed site is planned for the construction of three dwelling houses in a sectional title development, to be zoned Residential Zone II.

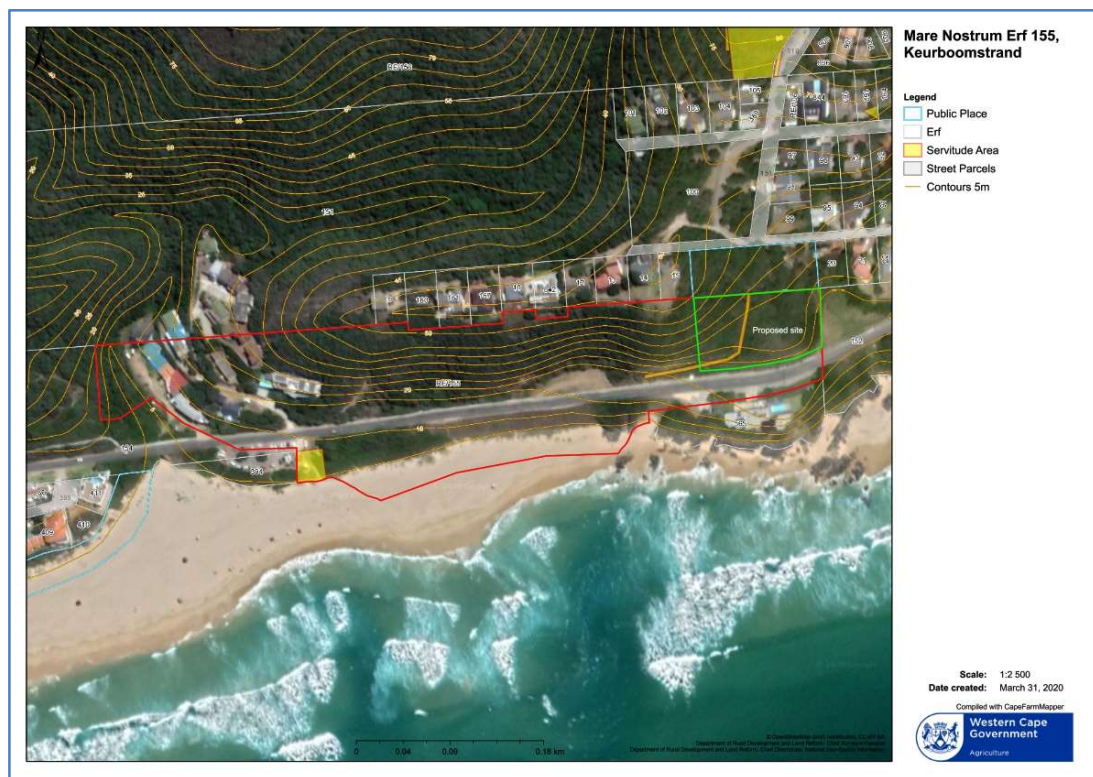


Figure 1: Erf 155 Keurboomstrand locality

1.2 Site context

The site is located approximately 750m from the highwater mark of the sea on an elevated promontory with an average slope of approximately 1:5 (20%). The portion of Erf 155 zoned as Open Space Zone II (and thus the proposed development site) is an inherent part of the Mare Nostrum resort development. Initially the entire property was zoned as Resort Zone

II, with the houses being constructed on the western portion of the site, due to its accessibility.

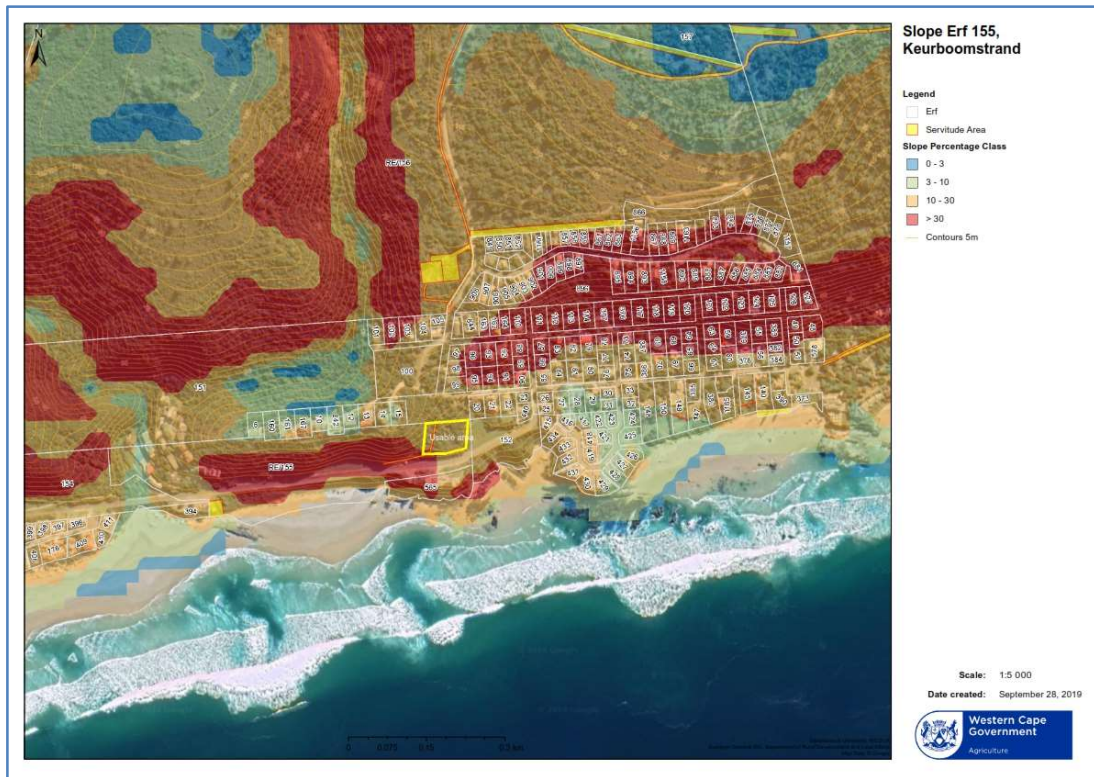


Figure 2: Slope analysis of Erf 155 and Keurboomstrand township area

The property is located in the Keurboomstrand township area (registered as an erf), albeit outside of (but abutting) the urban edge of the town. As it is a part of the approved residential development (Bitou file ref: 18/151&155), the entire property should have been included in the urban edge and not only that portion containing the houses.

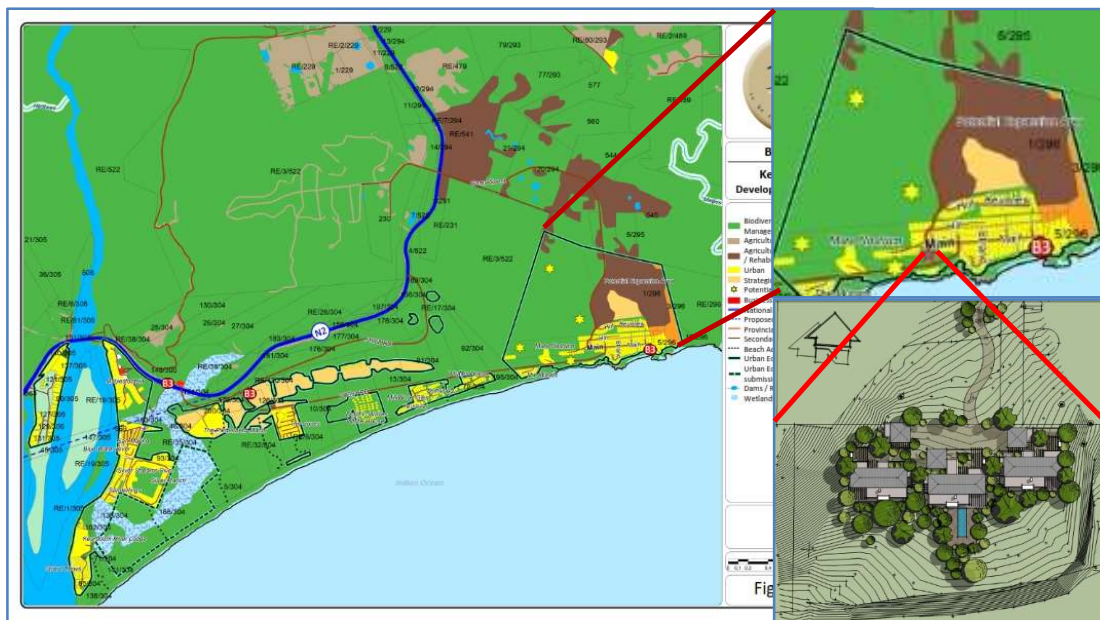


Figure 3: Locational context of proposed houses on Erf 155, Keurboomstrand

However, given the zoning of the relevant portion of the site as private open space (*any land which has been set aside in this scheme for utilization primarily as a private site for sports, play, rest or recreational facilities or as an ornamental garden or a pleasure garden and includes public land which is or will be leased on a long-term basis and a cemetery, whether public or private* – Section 8 Scheme Regulations made in terms of LUPO) related to an estate development, it falls within the category of “urban development” as defined in the Bitou Spatial Development Framework (BSDF), 2017.

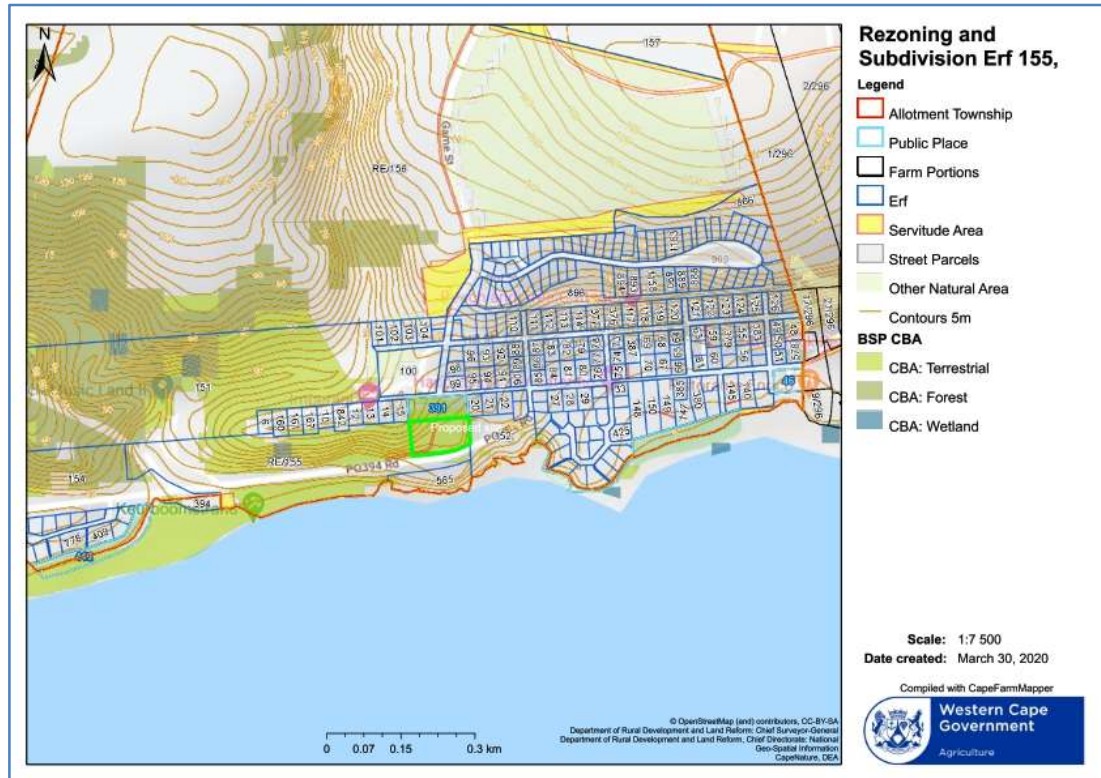


Figure 4: Erf 155, Keurboomstrand relative to the CBA, showing facilities for beach use servitude area.

Most of the property is identified as part of the critical biodiversity area of the Western Cape. Although it does contain elements of critical biodiversity, a site-specific assessment by an ecologist has found it to be partially degraded and partially developable, subject to the protection of specific elements of the vegetation (see Annexure G).

The relevant eastern portion of the property is covered with trees, many of which are milk woods and therefore protected. The ecological assessment of the proposed development site indicated that the primary constraint is the presence of patches of protected scrub forest on the property. It indicated that: *“These are pristine forest habitats that should not be impacted by the development. Another constraint is the degree of slope, the steeper slopes presumably being less desirable for development. The scrub forest is associated with steeper slopes so both these sensitivities can be avoided by restricting development to the flattest part of the property”*.

The assessment further indicated that: *“Both the former Shale fynbos and the scrub forest are threatened vegetation types and the entire area is classified as a Critical Biodiversity Area. This means that any proposal to develop the site must be done in the most sensitive manner possible”*.

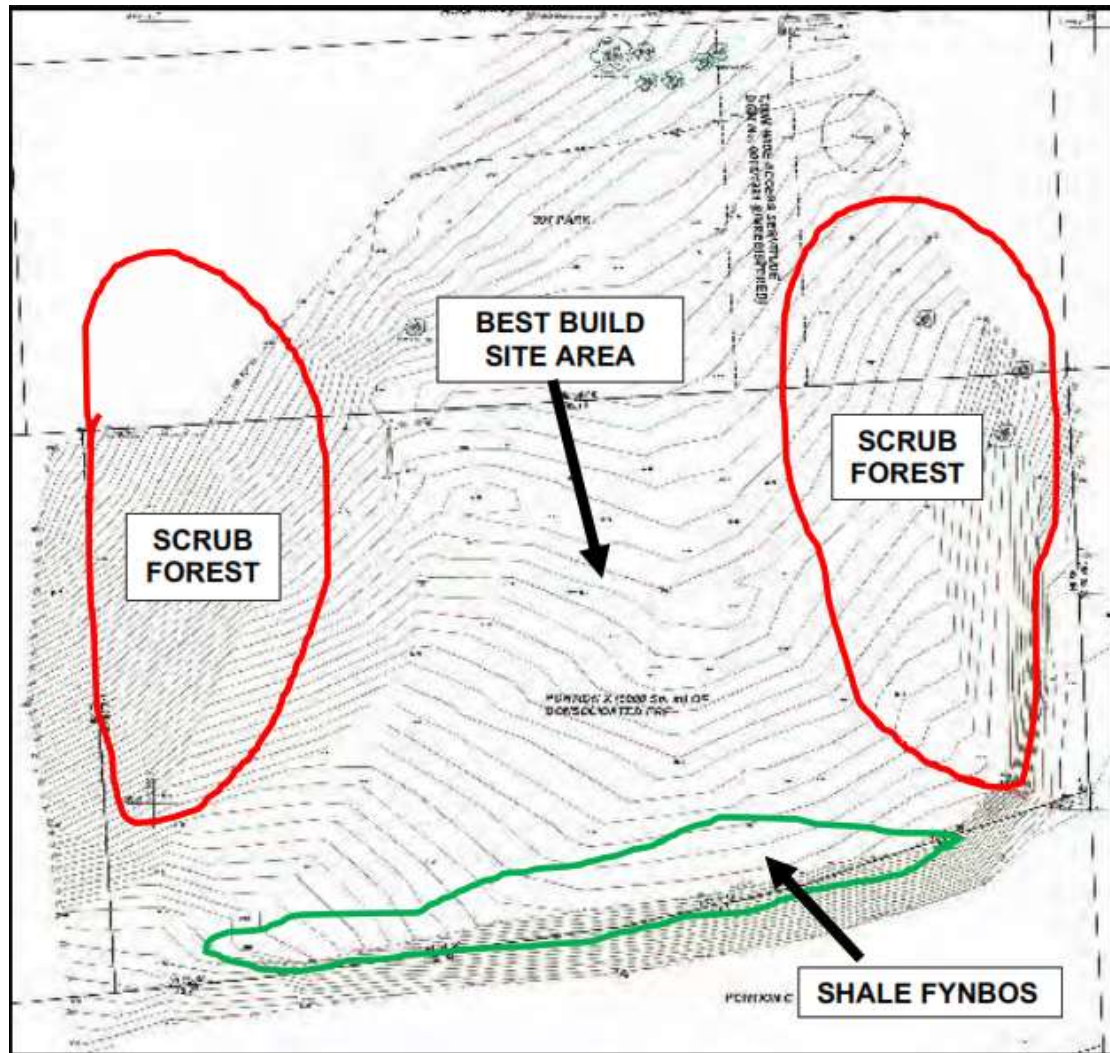


Figure 5: Erf 155 proposed development site showing outcome of ecological assessment.

2. LAND DEVELOPMENT APPLICATION

2.1 Proposed development

The proposed development is in keeping with the land development parameters of Residential Zone II as determined in the Zoning Scheme Regulations made in terms of Section 8 of the Land Use Planning Ordinance, 1985, Ordinance 15 of 1985. The proposal is for a rezoning and subdivision of a portion of Erf 155, Keurboomstrand, approximately 5 000m² in extent, to permit a residential development of three group houses abutting the existing residential erven in the Keurboomstrand residential neighbourhood on approximately 3 250m² of the site. The proposed development can be described as follows:

2.1.1 Site development plan.

The attached site development plan (Slee Architects, Project No. J319, Dwg No. D_100, Rev. no. 1, dated 2016-07-25) is submitted as indication of the

possible development, together with the above applications, in keeping with the requirements of the Section 8 Zoning Scheme Regulations.

Density: Due to physical and bio-physical limitations, only three units are proposed on the site, i.e., a density of roughly 6 units per gross hectare, where council could approve up to a maximum of twenty units per gross hectare (or 12 units / ha in terms of the Keurbooms LSDF), or a 3:1 ratio with regard to the gross density of surrounding dwelling units, whichever permits the smaller number of units. The proposed development equates a density ratio of 1:1 for the surrounding dwelling units.



Figure 6: Erf 155 proposed site development plan for Portion A to be subdivided.

Communal open space is provided for at a ratio of more than 80m² per dwelling unit.

Private outdoor space of more than 40% of the gross floor space of each of the units concerned, in a form that does not exceed the prescribed ratio of 2:1 (length to width) is provided.

In addition to the, combined open space of more than 130m² per dwelling unit is provided, the majority of which in the form of conserved natural vegetation, which is to be rehabilitated and maintained to ensure a green buffer around the development.

The maximum height of any part of the buildings, given the slope to be considered, will be at most two storeys.

Street building lines are irrelevant, as the buildings are set in the middle of the knoll, approximately 30m from the nearest street.

The side building lines where the site abuts neighbouring erven, for the closest dwelling and/or outbuilding, excluding fences, boundary walls and gatehouse structures, will be more than 7,5m from any common boundary and at least 1,5m from the public place (Erf 391).

Parking is proposed at more than two functional parking bays per house, together with some provision of communal parking to accommodate visitors.

There are no internal streets. The proposed driveway width into the development is 4m, curved around mature trees of conservation value and significantly less impactful than the existing servitude right of way access. An application has been submitted for the establishment of an alternative access servitude over Erf 391, however, until such is approved, access will be over the existing seven metre wide servitude.

2.1.2 Title deeds.

There are no title deed restrictions preventing the proposed land developments, rezoning, subdivision, or use.

2.2 Land development application

The application is in keeping with Section 15 of the Bitou Municipal Land Use Planning Bylaw, 2015, for a rezoning and subdivision of a portion of Erf 155, Keurboomstrand, approximately 5 000m² in extent, to permit a residential development of three group houses abutting the existing residential erven in the Keurboomstrand residential neighbourhood taking access over public place Erf 391, using the existing seven-metre wide access servitude, or by the creation of a new four-metre wide access servitude and cancellation of the existing servitude. The application covers the following aspects:

2.2.1 Rezoning.

Application is made in terms of Section 15 (2)(a) for a rezoning of a portion of approximately 5 000m² of Erf 155, shown on the plan of subdivision, Annexure H, from Open Space Zone II (private open space) to Residential Zone II for the development of three freestanding residential units / group houses, to be registered under a sectional title scheme on approximately 3 250m² of the subdivided Erf.

The open space is a part of the Mare Nostrum resort development, the residential component of which is zoned Residential Zone II (see Annexure L).

2.2.2 Subdivision (of Erf 155).

Application is made in terms of Section 15 (2)(d) for subdivision of a portion of approximately 5 000m² of Erf 155, shown on the plan of

subdivision, Annexure H, together with the cancellation of the pipeline servitude over the property (Diagram 890-88).

The proposed subdivision allows for a road reserve of 25m wide for MR 394, which is the proclaimed reserve width, along the southern boundary, between it and Erf 565, to the south.



Figure 7: Erf 155 initially proposed development – 3D image.

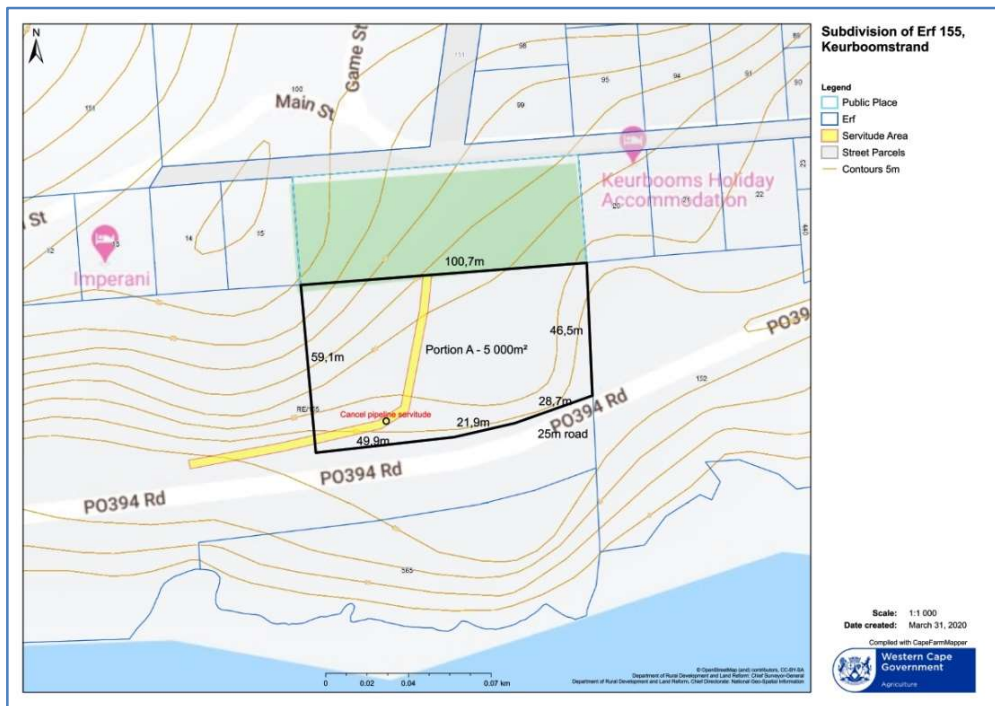


Figure 8: Erf 155 proposed subdivision.

Access to the proposed site is by way of a seven-metre wide servitude right of way over public place Erf 391, as reflected on the diagrams in Annexure E hereto. It can be cancelled if a new seven-metre wide access servitude with a four metre roadway is created over Erf 391.

The existing pipeline servitude over Erf 155 (diagram 890/1988) must be cancelled and if required, amended. The water pipeline is no longer in use and has been replaced by a line along MR 394.

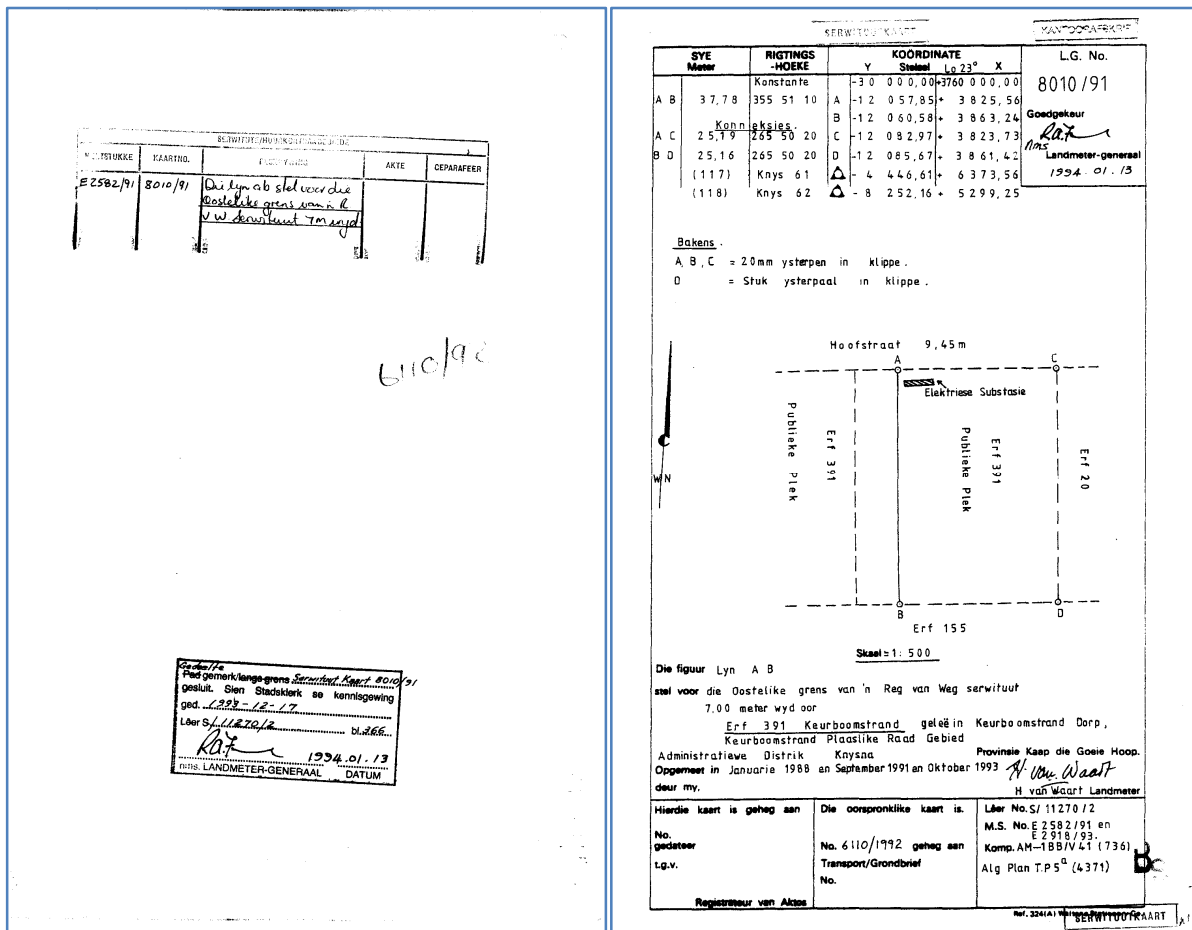


Figure 9: Access servitude over Erf 391

3. MOTIVATION

3.1 Consistency with SDF

The Bitou Municipal Spatial Development Framework (draft 2019) makes specific provision for the consideration of development proposals for properties along the urban edge with any prior urban related use as consistent with the Draft BSDF. The application could thus be considered as consistent with the Draft BSDF and evaluated accordingly. However, the Draft BSDF has not been approved.

The approved (2017) SDF nonetheless includes the following definition of urban development: "Urban development includes all development of land where the primary use of the land is for the erection of structures. Residential estates on farms

and golf estates would for this purpose, if located outside the Urban Edge, be defined as urban uses, albeit that the "primary use" is "agriculture" or "private open space" and the "secondary use" is residential." Yet, in conflict with this definition, it excludes the entire Erf 155, including the existing (23) dwelling houses from the urban edge in Figure 5.12.3 Keurbooms River SDF, a map illustrating the spatial proposals.

Before approval of the Bitou SDF (2017), a local area spatial development framework was approved for the Keurbooms area in 2013. This LSDF clearly states that "A local spatial development framework guides and informs decisions made by the Municipality relating to land development, but it does not confer or take away rights." In terms of the zoning of the property in 2013, it could rightfully be used for Resort Zone II purposes (see Annexure L). Moreover, prior to the 2013 LSDF being approved, the entire property was indicated as part of the urban area, based on the Knysna-Wildernis-Plettenberg Bay Guide Plan, i.e., the site has a long history of being deemed part of the urban area of Keurboomstrand.

The Keurbooms LSDF determines a few "no go" development areas, based on bio-physical constraints and "Habitat Mapping and Sensitivity Analysis map units" indicated as:

- below the 1:50 and 100: year floodlines;
- on any slopes with a gradient steeper than 1:4;
- below the 4,5m coastal setback line;
- within the 100m high water mark setback; and
- within the Tshokwane Wetland system.
- Map Unit 3: Fynbos
- Map Unit 4: Forest
- Map Unit 5: Dune Thicket/Dune Fynbos Mosaic
- Map Unit 6: Coastal fore dune & seashore
- Map Unit 7: Wetlands (in general in addition to specific delineation of Tshokwane Wetland)
- Map Unit 8: Fynbos invaded with aliens."

None of these "no go" development areas apply to the part of the site that is proposed for the construction of the houses.

On the other hand, the "areas to be considered for potential development are defined as and include:

- areas not subject to any of the identified bio-physical constraints;
- areas identified as transformed in accordance with the Habitat Mapping and Sensitivity Analysis and as a consequence are defined as no remaining natural or ecological support areas in terms of the biodiversity categorisation;
- areas previously included within the Keurbooms Local Council Area and therefore by proclamation excluded from the provisions of Act 70 of 1970 which regulates the subdivision of Agricultural Land."

As indicated above, the site was previously included as an area identified for urban development in the Guide Plan, or 1996 Regional Structure Plan, thus it is excluded from the provisions of the Subdivision of Agricultural Land Act, 1970, Act 70 of 1970. As it is not a "no-go" area and identified as an area to be considered for

development, albeit not indicated as such in the SDF maps (for whatever reason), it confirms the consistency with the LSDF as a potential development area.

The objectives of the identification of the "no-go" and development areas in the LSDF is stated as being important for the establishment of a system of ecological corridors. *"To establish and consolidate a network of bio-diversity corridors protecting the sensitive slopes, coastal and aquatic (rivers, wetlands and estuary) assets of the Bitou Municipality that provides both ecological and economic (minimum impact eco-tourism) services so as to protect and enhance the Municipality's natural capital so that it can continue to provide the necessary ecological, agriculture, fishing and forestry resources for continuing and enhancing life in both the rural and urban areas of the Municipality."* These objectives are shared and supported by the applicant. As will be obvious from the environmental assessment of the proposed rezoning, subdivision and use of the site, the proposed development does not have any significant negative impact on the achievement of the objectives as stated in the LSDF. Same applies to the identification of Main Road M394 as a scenic route where *"views and scenic quality is protected from inappropriate development."* The visual impact assessment has indicated that with appropriate mitigation, the proposed use of the site for three dwelling units will have no negative effect on the scenic route or on the scenic value of the area in general.

The proposed development nodes in the LSDF, even though they excluded the site, are described as being *"located within areas that have been identified as being transformed with no natural remnants remaining. The nodes are predominantly located to the north of Main Road 394, but also include a number of properties with existing established development footprint which properties maybe subject to redevelopment in future. Should redevelopment of such properties be considered, it is proposed that it be developed in accordance with the proposed 12 units / ha density profile."* The proposed use of the site is consistent with this locational principle and with the development density, given that no more than approximately 3 250m² will be transformed and developed.

The Draft BSDF also indicates a need for housing in the area, primarily for lower income, subsidised households. Such households and housing require cross-subsidisation by higher income households and non-residential uses, to ensure the financial sustainability of the Municipality. The land use budget for the Municipality bears this out.

According to the approved SDF and the Draft BSDF, future development must *"facilitate the increase of tourism attractions that attract tourists and wealthy residents"*, for the reasons set out above (cross-subsidisation of residential areas) and to create additional employment opportunities. This must be done without redirecting public resources to development.

This application achieves this goal, by creating additional residential and employment opportunities in a primarily tourist destination without the need for additional public resources, through upgrading of infrastructure or additional community facilities.

3.2 Motivation

- 3.2.1 There are no restrictions which would prevent the proposed development in the title deed of the property.
- 3.2.2 There are no heritage concerns relating to the site or the area. The proposed land development does not trigger any application in terms of Section 38 of the National Heritage Resources Act, 1999, Act 25 of 1999.
- 3.2.3 The site is in an environmentally sensitive area, within 1km of the highwater mark of the sea and in a registered critical biodiversity area. Thus, its proposed development is also subject to an environmental impact assessment and authorisation process as set out in Annexure G. This process has commenced, and its outcome will determine whether the site may be developed and if so, in what form. The outcome will also, if approved, determine how the site must be maintained and rehabilitated.

Regardless of the environmental authorisation process, the Bitou Municipality must exercise its constitutional competence relating to land use planning matters and consider the land development application in terms of the Bitou Bylaw, with due consideration of the relevant matters raised in an environmental authorisation application and impact assessment. All other authorities, e.g., the Road Authority, must exercise their competencies in response to this land development application.

- 3.2.4 The proposed development is in a shape and form in character with the surrounding development in Keurboomstrand. Erven and houses in the immediate surrounding area are representative of various time periods, mostly from the period 1960 – 1975, with a modern house to its south, dating from around 2010. Many of the adjacent properties have encroached onto Erf 155 and owners have acquired portions of the property for extensions to their erven.

Immediately to the east, at the entrance to the neighbourhood, the old hotel site was developed as a residential estate in the early 1990's, with a clustered housing development on erven of average 600m².

Erven in the area are primarily zoned for residential use. The majority of the land is however zoned and / or used for recreational activities, i.e., some form of open space, given the proximity to the sea to the south on the one hand and the steep slopes and terrain to the north and west, on the other.

The use of the proposed site for the development of three new dwellings offers a unique opportunity, which cannot be repeated elsewhere on Erf 155, or in the immediate vicinity. A positive consideration will thus not set a precedent for the use of private open space or vacant land abutting the urban edge for residential development in the area.

- The slope of the relevant portion of the property is below 1:4 (see Annexure I), which is the limit set in the Western Cape Provincial

Spatial Development Framework (PSDF) and other planning guidelines and policies as the limit for development, inclusive of the guidelines for environmental impact assessments, inclusive of the Bitou SDF. Most of the surrounding areas abutting the urban edge have steeper slopes.

- The relevant portion of the site contains a significant alien vegetation component on the flat area, which allows for its development and residential use in relation to the urban nature of the original zoning, without significant effect on the bio-physical environment. This combined with the flat terrain makes the site unique along the urban edge of the neighbourhood.
- The relevant portion of the site contains a significant component of indigenous and conservation worthy vegetation, primarily on the slopes, as indicated in Figure 5 above and in the environmental assessment report (Annexure G). This allows for a positive consideration of the development proposal and residential use, which is in keeping with the urban zoning assigned to the property in 2011 and 2018 and is consistent with the LSDF and Bitou SDF.
- The site can gain access over an existing right of way over a public place, without having any new or additional impact on the neighbouring residential properties. A new access does not have to be created, albeit that a new right of way servitude with a four metre wide roadway as indicated in Annexure H will lead to the retention of existing mature trees and have a lesser effect on the conservation of the natural assets.
- Due to the elevation of the site, it will have minimal direct visual effect on the users of the main road, as the views of users will only be focussed on it from a distance, against an urban backdrop, while from closer proximity the view is in any event primarily of a built environment. The visual impact assessment of the proposed development on the site (see Annexure K) indicated no negative effects with appropriate mitigation.
- The surrounding areas further away from the current development edge to the west are indicated as appropriate future development areas in the BSDF, i.e., the site is considered to be within the area appropriate for development, as it is surrounded by urban development and residential erven.
- There are municipal infrastructure services abutting the site, which do not require extension or upgrading to permit connections for the proposed development.

3.2.5 The traffic generation of the proposed development is in keeping with the character of the area and it is unlikely to cause any negative impact on the existing road and walkway use.

3.2.6 The matters referred to in Section 42 of the Spatial Planning and Land Use Management Act, 2013 (SPLUMA) have all been considered.

The development principles set out in Chapter 2 of SPLUMA are addressed below.

The proposed rezoning, subdivision and use of the land is "*consistent with norms and standards, measures designed to protect and promote the sustainable use of agricultural land, national and provincial government policies and the municipal spatial development framework*", as indicated above.

The public interest in the application and the proposals will be tested during the public participation process.

"The constitutional transformation imperatives and the related duties of the State" do not apply to the site.

"The facts and circumstances relevant to the application" indicate that its use and development of three dwelling units will have no detrimental impact on the surrounding environment and in fact contribute to the achievement of the development objectives of the Municipality, by adding additional revenue generating property to balance the growing demand for non-revenue generating development. Moreover, as indicated in the approved 2017 Bitou SDF, "*development in this area would have to be subject to strict urban design, architectural and land use guidelines*", as proposed in this report, in the visual impact assessment report and in the basic environmental assessment report. According to the SDF, "*high income housing / market housing to be promoted*" in the area.

It is obvious that the delegated decision-maker will consider "*the respective rights and obligations of all those affected.*"

The state of and impact of the proposed development on engineering services, social infrastructure and open space requirements have been addressed, not the least of which in the engineering services report (Annexure F) and in the assessment in paragraph 2 above.

Section 22 (1) and (2) of SPLUMA stipulate that a Municipal Planning Tribunal or any other authority required to make a land development decision may not make a decision which is inconsistent with a municipal SDF and that such authorities may only depart from the provisions of a SDF if there are site specific circumstances that justify a departure. Although it has been shown that the proposal is consistent with the existing SDF's, even if not shown appropriately on the relevant maps, and with the draft SDF, site specific conditions are also addressed in 3.3 below.

- 3.2.7 The principles referred to in Chapter VI of the Western Cape Land Use Planning Act, 2014 (LUPA), with specific reference to spatial justice, spatial sustainability, efficiency, and good administration have all been considered, and are elaborated on below.

The Western Cape Provincial Spatial Development Framework (PSDF) focuses strongly on densification of urban areas as a means to achieve its desired outcomes. The average gross residential density of urban areas

should increase to 25 units / ha before extensions to an urban edge are considered. In this instance the urban edge is not relevant to the argument, the proposal being consistent with the BSDF, as indicated above.

The density requirement further requires consideration of bio-physical environmental, cultural heritage, municipal infrastructure services and social infrastructure situation as well. With these in mind, the density targets should be achieved by allowing a variety of development methodologies, including, but not limited to demolition and redevelopment of existing properties; utilisation of vacant and under-utilised land and changing of permitted land use of existing developments. The purpose of densification is primarily to maintain sustainable supplies of natural resources, for food production and ecological functioning, to achieve more economical use of municipal services infrastructure and community facilities, provide for efficient public transport services and reduce traveling distances.

The proposed development of a portion of Erf 155 for three dwellings contributes to densification by infill development and improvement of the efficiencies in service provision as set out above, on under-utilised land with an urban function. It does not diminish the supply of ecological or agricultural resources, while being surrounded by urban uses and tourist attractions. It will contribute to the higher income housing supply as stated in the BSDF without diminishing scarce resources.

The LUPA considerations and development principles of SPLUMA require:

- The protection and promotion of the sustainable use of agricultural land, which is not affected by the proposal. It requires adherence to national and provincial government policies, as illustrated above, inclusive of the municipal spatial development framework.
- Consideration of the public interest, which is done through the compliance with the aforementioned policies and guidelines.
- Promotion of constitutional transformation imperatives and the related duties of the State. No comment.
- Proper consideration of the facts and circumstances relevant to the application, as have been set out above, indicating grounds for a positive land development consideration and decision.
- The respective rights and obligations of all those potentially affected, primarily the existing residents and property owners, public and private service providers and the wider community have been considered and there are no identified issues.
- The impact of the proposed development on engineering services infrastructure, social infrastructure, and open space requirements. The impact is minimal and there are no negative effects on the social infrastructure or open space requirements. The proposal contributes to the more efficient use of municipal services infrastructure, by infill development in proximity of the core of the neighbourhood, as opposed to development further westwards as indicated in the BSDF.

- Spatial justice must be considered, and past spatial and other development imbalances must be redressed through improved access to and use of land. At the scale of the proposed development and the location of the site, it does not offer any opportunity for redress. The proposed development does not have any negative effect on the spatial development framework and policies for such redress, while the future revenue derived from the development could contribute to the achievement of same in more appropriate locations.
- Spatial sustainability has been considered and the proposed land development is within the fiscal, institutional, and administrative means of the state, given that the development will contribute to the municipal revenue base, without requiring public expenditure to occur. As stated before, prime, and unique agricultural land is not affected, and environmental management will be considered in the environmental authorisation process. The proposed development could contribute to the improved maintenance of the scrub forest on the slopes of the site. Current and future costs for the provision of infrastructure and social services have been considered and it is more efficient and sustainable to use this site for the three units, than to develop further westwards in the designated future development areas, given that the site is surrounded by urban uses and services infrastructure.
- Efficiency (optimising the use of existing resources and infrastructure) has been addressed and the use of the site will contribute to increased efficiencies, also due to its location in proximity of a tourist attraction (beach opposite the road). The location of the proposed development would allow for pedestrian access to the beach.
- Spatial resilience has been addressed, as the BSDF allows for flexibility to ensure sustainable development, amongst others by determining policy to assess the consistency of applications for land development abutting the urban edge.
- Good administration is a function of the authorities, not affected by the proposed development.

3.3 Site-specific circumstances

No definition is provided for site-specific conditions in the relevant Bitou statutes or policy documents. The SDF refers to site-specific conditions, as does SPLUMA, but no definition exists for it. Thus, the following general definition is used: "site specific circumstances" means circumstances, including prior land use management decisions, unique to the specific land unit, which have insignificant effect on the adjacent land and immediate surrounding environment, and which do not change the desired land development objectives and strategies of a municipal or local spatial development framework.

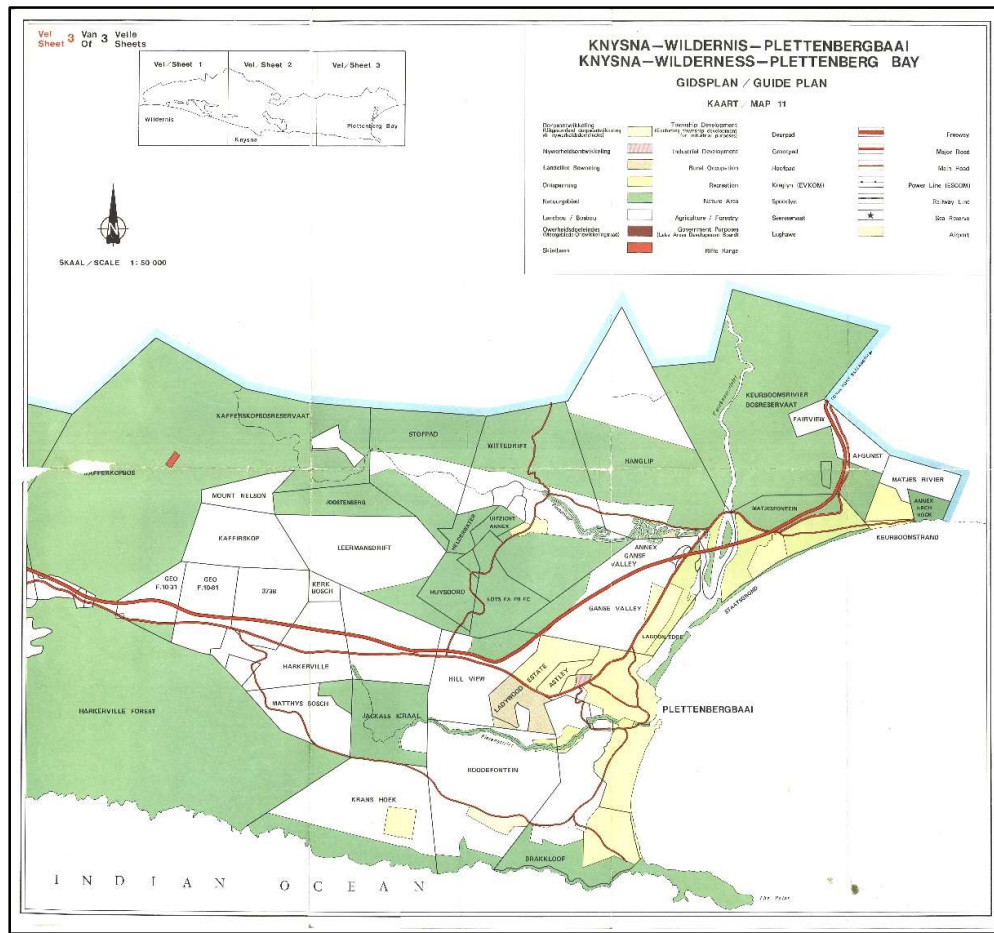


Figure 10: Guide Plan Map showing site as urban.

As indicated above, the property and the relevant portion to be subdivided and rezoned, is exempt from the Subdivision of Agricultural Land Act, 1970, Act 70 of 1970, as it was indicated as an urban area in the Guide Plan of the region. It is surrounded by urban uses and residential erven on three sides, it has direct access to existing municipal infrastructure services with sufficient capacity to accommodate the proposed dwellings and there are no negative environmental impacts associated with the proposed subdivision and rezoning of the relevant portion of Erf 155. The site has been granted access by way of a registered seven-metre wide servitude over the abutting municipal Erf 391 since 1988, clearly indicating its interconnectedness and relationship to the urban area abutting it to the north. The existing access servitude of seven metres wide is proposed to be replaced by a seven metre wide access servitude with a roadway of four metres that has a lower environmental impact.

Its use for urban purposes is consistent with the relevant spatial planning policies of the Municipality as indicated above and its development and residential use will not have any significant negative effect on the surrounding environment, while having a positive effect on the socio-economic environment. Moreover, the use is consistent with the previous resort zone use and the subsequent zoning thereof as private open space (Open Space Zone II) in 2018, and confirmed in 2019, while the residential component was zoned Residential Zone II. The previous rezoning of the property for urban related uses indicates its acceptability for inclusion in the urban

area. Open Space Zone II and Residential Zone II are not rural use zonings typically given to properties in rural areas, but rather urban use zonings.

3.4 Engineering services

- 3.4.1 The proposed subdivision and development of the site will not generate such additional volumes of traffic to warrant further assessment or to refuse the access proposals. Less than 10 daily peak period trips will be generated by the proposed development and the surrounding roads have a low usage, which can accommodate the insignificant increase.
- 3.4.2 The local electricity network has enough capacity to provide for the three houses, albeit that some upgrading could be required to the network and a new connection is required.
- 3.4.3 Water and sewerage capacity are sufficient, as the average daily demand for the proposed houses will be in line with the existing infrastructure and supply capacities. Some external infrastructure upgrading is however required.

The Matjiesfontein sewerage pump station requires upgrading, towards which this development would have to contribute.

New connections to municipal services would be required, amongst others to create a fire hydrant on the boundary of the property and for a new 75mm bulk water connection, to be supplemented on-site with rainwater harvesting for non-potable use.

- 3.4.4 Solid waste is removed by the Municipality, which service will continue with minimal increase in volume along an existing route.

3.5 Heritage

The proposed development does not trigger any of the listed activities in the National Heritage Resources Act, 1999, Act 25 of 1999 (NHRA) as set out in Section 38: "*Subject to the provisions of subsections (7), (8) and (9), any person who intends to undertake a development categorised as —*

- (a) the construction of a road, wall, powerline, pipeline, canal or other similar form of linear development or barrier exceeding 300m in length;*
- (b) the construction of a bridge or similar structure exceeding 50 m in length;*
- (c) any development or other activity which will change the character of a site –*
 - (i) exceeding 5 000 m² in extent; or*
 - (ii) involving three or more existing erven or subdivisions thereof; or*
 - (iii) involving three or more erven or divisions thereof which have been consolidated within the past five years; or*
 - (iv) the costs of which will exceed a sum set in terms of regulations by SAHRA or a provincial heritage resources authority;*
- (d) the re-zoning of a site exceeding 10 000 m² in extent; or*
- (e) any other category of development provided for in regulations by SAHRA or a provincial heritage resources authority."*

3.6 Environmental management

The proposed development triggers several activities for which a basic assessment would be required in terms of the Environmental Impact Assessment Regulations, made in terms of Sections 24 and 44 of the National Environmental Management Act, 1998, Act 107 of 1998 (NEMA). The primary activity is the clearing of more than 300m² of vegetation in a protected environment, being the designated critical biodiversity area. However, it appears from the assessment of the ecological situation by an appropriately skilled specialist that the site does offer an opportunity for development as set out above, and that the development outcome could be a better protected, albeit slightly smaller naturally vegetated site, subject to a rehabilitation and management programme.

3.7 Slope analysis

The slope analysis as also considered in the visual impact assessment, indicates a significant portion of the site as being suitable for urban development, with a slope of less than 1:4. The full slope analysis survey is contained in Annexure I.

The proposed new road access servitude over Erf 391 also does not run through a steep slope area. It too runs over a slope of less than 1:4.

3.8 Visual impact assessment

The proposed development and alternatives were assessed by Filia Visual (Pty) Ltd, an appropriately qualified and experienced visual impact assessment specialist (see Annexure K).

According to the visual impact assessment (VIA), the indicators suggesting the need for visual input based on the nature of the proposed project include the following. The project proposes:

- A change in land use from the prevailing use;
- A use that is in conflict with an adopted plan or vision for the area;
- Possible visual intrusion in the landscape.

The proposal according to the VIA is for a Category 2 development within an area (or route) of high scenic, cultural, historical significance. The purpose of the VIA is to ensure that the visual & aesthetic consequences of the proposed project are understood and adequately considered in the environmental and land use planning process through a Level 3 Visual Impact Assessment. This includes the potential impacts on scenic routes, other protected resources, and local receptors.

The VIA informs the environmental authorisation and land use planning application processes based on the nature of the receiving environment and in response to the Planning Department request for such study. The VIA indicates the following aspects of the receiving environment as significant in the assessment. The subject site is located:

- (De facto) within the urban edge;
- Inside the 100m Urban Coastal Setback Line;

- On an elevated promontory with an average slope of approximately 1:4;
- Within a Critical Biodiversity Area containing protected tree species;
- Alongside a scenic route;
- Within an area with a recognized special character, sense of place and importance in terms of tourism and recreation value;
- Within an area with visually prominent ridgelines or skylines; and
- Near to areas with protection status (nature reserves), areas with proclaimed heritage status, sites of cultural significance and areas with intact wilderness qualities.

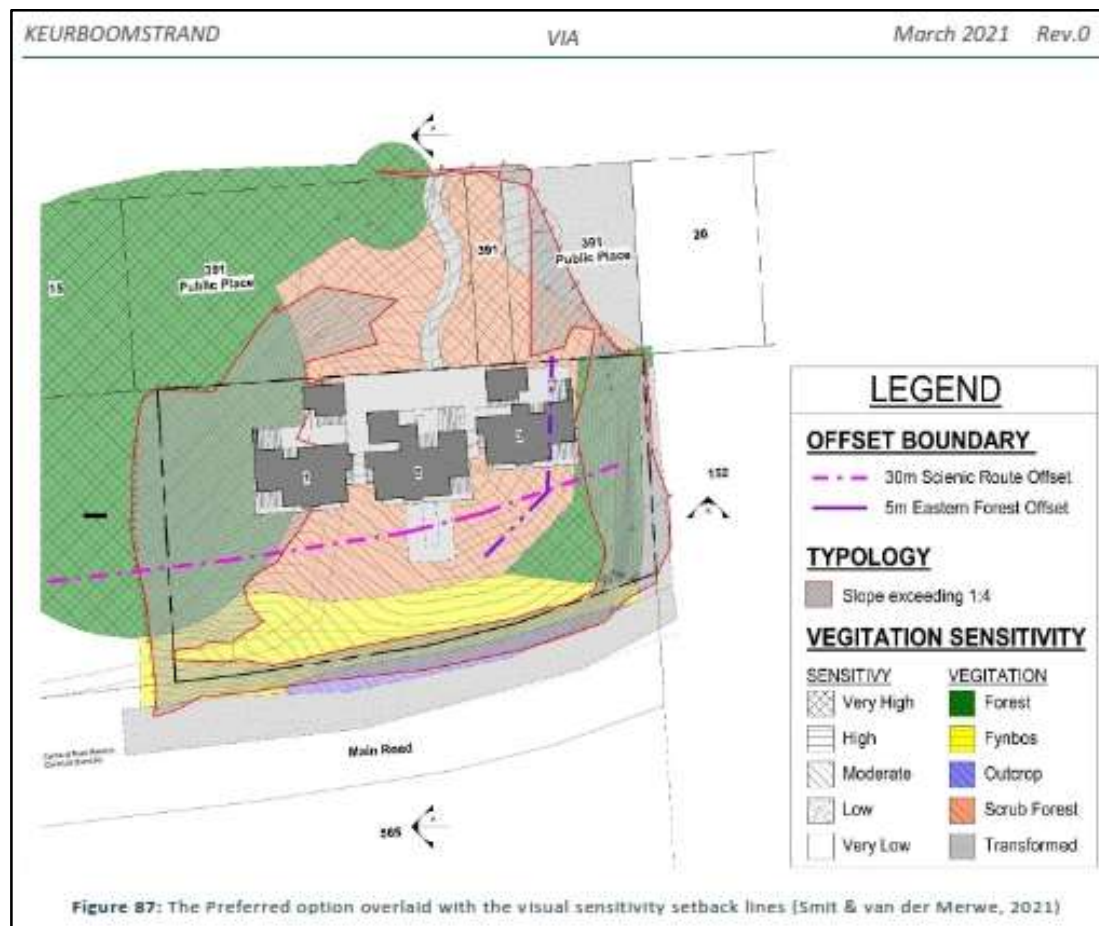


Figure 11: Visual impact assessment synthesis.

The VIA makes the following finding: "Due to the high value and sensitivity of the receiving environment, landscape character and the visual receptors, it is extremely important that a responsible and enforceable design approach be taken for the planning, construction and operational phases of each dwelling unit and the development as a whole, taking care to minimize the visual impact wherever possible. The following visual sensitivity parameters are recommended to augment the botanical and geotechnical sensitivity offsets. Adherence to these limitations must be demonstrated in further detailed design for approval by the local authority at SDP and Building plan level:

- a) A 35m scenic route setback line measured from the centre line of the MR394 road reserve;
- b) Additional 5m offset from the eastern botanical and slope sensitivity no-go area;

As a condition of approval for the Rezoning and Subdivision Land use planning approval (this approval), this VIA recommends that the following documents and plans be submitted along with SDP and building plans to the local municipality for approval:

- *i. A Landscape Plan and Landscape Guidelines (including vegetation protection methodology) by a suitably experienced and qualified professional, registered with SACLAP (refer to Section 6.8.2 b. for detailed requirements);*
- *ii. An Environmental Management Programme (EMPr) by a suitably experienced and qualified professional (refer to Section 6.8.2 c. for detailed requirements)."*

The recommended conditions for imposition in a land use planning decision are reflected in paragraph 1.7 of the VIA Executive Summary, as will be included in the conclusion below.

3.9 Geotechnical assessment

The geotechnical condition of the site was assessed by Outeniqua Geotechnical Services, an appropriately qualified and experienced geotechnical specialist (see Annexure J). The investigations were carried out by the geotechnical professionals in accordance with SANS 10400-H.

The assessment indicates the presence of a general soil profile consisting of silty sandy gravel and cobbles of colluvial origin, overlying bedrock shale and feldspathic sandstone of the Baviaanskloof Formation. Two test pits refused on this rock at a depth of 0,5m below NGL, and one test pits refused on very dense colluvial cobbles at a depth of 0,8m BNGL. In situ penetration tests (DCP) refused on this rock or very dense cobbles at a maximum depth of 0,45m BNGL. No clay or any other highly problematic soils were encountered in the test pits and the general subsurface conditions were found to be highly favourable for structural loading. No laboratory tests were necessary due to the presence of shallow hard rock which provides a highly suitable founding medium.

The assessment concluded the existence of generally favourable geotechnical conditions for the proposed development and that the site is considered generally suitable in terms of these conditions but there are some constraints that may require consideration from the designers, namely the limited ability to undertake earthworks and the need to design for strip foundations that span the irregular rock and soil conditions.

3.10 Chapter V evaluation

In Section 65 of the LUPB, the following criteria for deciding applications are prescribed. While all of the matters referred to in Section 65 have been addressed in broad above, this section summarises and highlights the relevant matters which the Municipality must consider.

Criterion in Section 65	Applicability	Compliance of application
<i>(a) the application submitted in terms of this By-law;</i>	Application must comply with the processes of the LUPB.	Application covers all the relevant aspects, i.e., servitude access, rezoning and subdivision and it is supported by the required documents and reports.
<i>(b) the procedure followed in processing the application;</i>	Application must be consistent with the LUPB.	Process still has to be concluded. Preparation and submission followed prescribed process.
<i>(c) the desirability of the proposed utilisation of land and any guidelines issued by the Provincial Minister regarding the desirability of proposed land uses;</i>	Desirability test according to Bylaw, read with the provincial Rural Development Guidelines and previous Guide Plan.	See paragraph 3.1 and 3.2 above. <ul style="list-style-type: none"> • Use is not likely to cause nuisance or negative effect on the surrounding environment and therefore desirable. • Guide Plan indicated land as appropriate for urban uses. • Rural guidelines require least impact on agricultural capacity, which is not affected by the proposed development.
<i>(d) the comments in response to the notice of the application, including comments received from organs of state, municipal departments and the Provincial Minister in terms of section 45 of the Land Use Planning Act;</i>	Notices still to be circulated.	Compliance can only be monitored after conclusion of the public participation process.
<i>(e) the response by the applicant, if any, to the comments referred to in paragraph (d);</i>	Notices still to be circulated.	Compliance can only be monitored after conclusion of the public participation process.
<i>(f) investigations carried out in terms of other laws that are relevant to the consideration of the application;</i>	NEMA Act 107/1998 NHRA Act 25/1999	See paragraphs 3.5 to 3.9 above. Do not preclude planning decision and recommends approval under certain conditions. <ul style="list-style-type: none"> • Environmental authorisation being sought to NEMA. No negative effect reported. • Section 38 NHRA application for heritage submitted. No negative effect envisaged.
<i>(h) the impact of the proposed land development on municipal engineering services;</i>	Assessments and reports done.	See paragraph 3.4 above. <ul style="list-style-type: none"> • Road access improvements not required. • Existing (and proposed new) servitude access sufficient. • Electricity supply network has capacity. • Water supply from municipal system is sufficient. • Sewerage capacity exists in the municipal system.

Criterion in Section 65	Applicability	Compliance of application
		<ul style="list-style-type: none"> • Solid waste removed by Municipality
<i>(i) the integrated development plan, including the municipal spatial development framework;</i>	Aligned to: Keurbooms LSDF, Bitou SDF and Draft Bitou SDF.	See paragraphs 3.1 and 3.2 above. <ul style="list-style-type: none"> • Consistent with the LSDF, albeit maps erroneously exclude site – does not fall in any “no-go” area. • Bitou SDF defines site as urban. • Draft Bitou SDF allows for site-specific consideration.
<i>(j) the integrated development plan and spatial development framework of the district municipality, where applicable;</i>	Compliant with Rural Area Plan.	See paragraph 3.2 above. <ul style="list-style-type: none"> • Does not cause a loss of agricultural or natural assets that have economic value.
<i>(k) the applicable local spatial development frameworks adopted by the Municipality;</i>	Keurbooms LSDF.	See paragraph 3.1 above. <ul style="list-style-type: none"> • Consistent with the LSDF, albeit maps erroneously exclude site – does not fall in any “no-go” area.
<i>(l) the applicable structure plans;</i>	Old Guide Plan.	See paragraph 3.3 above. <ul style="list-style-type: none"> • Guide Plan indicated site as being in the urban area.
<i>(m) the applicable policies of the Municipality that guide decision-making;</i>	Bitou SDF.	See paragraph 3.1 above. <ul style="list-style-type: none"> • Bitou SDF defines site as urban.
<i>(n) the provincial spatial development framework;</i>	Compliant with PSDF.	See paragraph 3.2 above. <ul style="list-style-type: none"> • Existing use of site is urban in nature and rezoning will not change it. • The proposed development does not reduce natural or agricultural resources. • Scenic route not affected.
<i>(o) where applicable, a regional spatial development framework contemplated in section 18 of the Spatial Planning and Land Use Management Act or provincial regional spatial development framework;</i>	Compliant with Rural Area Plan.	See paragraph 3.2 above. <ul style="list-style-type: none"> • The proposed development does not reduce natural or agricultural resources.
<i>(p) the policies, principles and the planning and development norms and criteria set by the national and provincial government;</i>	Compliant with principles and criteria.	See paragraph 3.2 above. <ul style="list-style-type: none"> • Assessed against spatial justice, spatial sustainability, efficiency, and good administration.
<i>(q) the matters referred to in section 42 of the Spatial Planning and Land Use Management Act;</i>	Compliant with principles and criteria.	See paragraph 3.2 above. <ul style="list-style-type: none"> • Assessed against spatial justice, spatial sustainability, efficiency, and good administration.

Criterion in Section 65	Applicability	Compliance of application
<i>(r) the principles referred to in Chapter VI of the Land Use Planning Act; and</i>	Compliant with principles and criteria.	See paragraph 3.2 above. <ul style="list-style-type: none"> Assessed against spatial justice, spatial sustainability, efficiency, and good administration.
<i>(s) the applicable provisions of the zoning scheme.</i>	Section 8 Zoning Scheme	See paragraph 2 above. <ul style="list-style-type: none"> Evaluated against Sec 8 uses, and rezoning granted in 2018.

4. CONCLUSION

The above application for the consideration of the:

- rezoning of a portion of Erf 155 in terms of Section 15 (2)(a) of the subdivided portion to Residential Zone II;
 - subdivision of a portion of Erf 155 in terms of Section 15 (2)(d) to create a residential erf of approximately 5 000m²; and
 - approval of the site development conditions,
- can be considered favourably, as the proposed sectional title residential development will contribute to the local economy, while it will have no detrimental effect on the surrounding area, natural or cultural environment or municipal services infrastructure. It is aligned to the spatial policies and development principles, and it is a unique use of land for infill development that will not set a precedent or burden the municipal infrastructure services.

The proposal is consistent with the Keurbooms Local Spatial Development Framework, albeit that the site is not indicated as such in the relevant maps. The site does not fit into any of the defined "no-go" categories, while the old Guide Plan already indicated the site as being suitable for urban development and the Bitou SDF (2017) gives a clear definition of urban uses, indicating the site as being urban in nature, even if the KLSDF does not include it in the delineated urban edge.

None of the specialist assessments indicated any risk or negative effect due to the proposed development. The proposed development footprint is located on a slope of less than 1:4 and the proposed access servitude over Erf 391 is also on a slope of less than 1:4.

According to the specialist assessments (visual and geotechnical), the following conditions need to be imposed on the proposed development as conditions of rezoning in terms of Section 66 of the Bitou By-Law on Municipal Land Use Planning, 2015:

- The proposal must be limited to the developable area indicated by the ecological, geotechnical, and visual sensitivities as illustrated on the Sensitivity map (including the 35m scenic route offset and the additional 5m screening vegetation buffer);
- The building envelope, including chimneys, must not protrude above the 8m height restriction (the existing ground level (NGL) is the base level from which maximum height permitted is measured so that the height restriction slopes parallel to the existing ground level);
- The colour palette for materiality and finishes must draw on the colouring of the natural environment, preferencing mid-tone to darker colouring to blend with forest vegetation. If natural material such as stone is used, the stone must be locally sourced and match the colouring (and, if possible, the geological origins) of the site and

receiving environment. Materials and finishes may not consist of bright colours, highly reflective surfaces, or gratuitous use of glass. Curtain walls, windows, skylights, and other glazing features must be shaded/set back under overhangs or similar to prevent glare, especially in the direction of sensitive receptors identified. The use of exposed metal must be kept to a bare minimum, and any potentially shiny or reflective surfaces must be avoided altogether, or covered with matte, non-reflective finishes.

- All construction activities must be limited to the approved building footprint and a 2m offset buffer zone all around. Limited and appropriate soft landscaping may extend further than the 2m offset around the buildings within the Moderate and Low sensitivity areas (refer to the Sensitivity map) but should avoid the protected forest and fynbos vegetation areas (High and Very high sensitivity).
- The Landscape Plan must include a Vegetation protection methodology to manage Construction phase impacts on vegetation (before, during and after), including guidelines on the re-establishment, replacement and/or rehabilitation of vegetation per vegetation type in the case of disturbance.
- No fence or wall should be permitted adjacent to and/or within view of the Scenic route, or within the 35m setback area as indicated on the Visual Sensitivity map. All fencing must be visually permeable and no post top lighting, flood lights, peripheral/boundary security lights or uncovered luminaires of any kind should be allowed.
- All exterior lighting shall be located and controlled so as to avoid direct illumination, glare or reflection onto any adjoining property or the scenic drive; provide precisely directed illumination to reduce light "spillage" beyond the immediate surrounds of the light source and should preferably be movement activated.
- The Landscape plan must show screening and softening of the edge on the southern side of the buildings.
- The aim is to visually screen the first storey of the proposed development from the Scenic route views up the slope (the expectation is not that the building will be hidden, but rather that the screening vegetation allows the buildings to blend into the visual context more easily by reducing the starkness of new built features; especially where these meet the surrounding landscape).
- Prior to the beginning of the Construction phase, sensitive vegetation must be marked clearly and the rootzones of protected species and areas must be demarcated and made off limits to prevent compaction of soil and damage to the root zones.
- The proposed dwellings are designed and positioned in a manner which will take into account the terrain and underlying geotechnical conditions, such that minimal earthworks or terracing will be necessary (i.e., split levels or suspended structures).
- No earthworks or development is recommended on slopes steeper than 1:4, unless special engineering solutions are developed, and no development is recommended within a buffer zone of 5m from the top of slopes which exceed a gradient of 1:2 (most notably along the southern boundary).
- Light reinforcement of strip footings is recommended to span across irregular rock/ soil ground conditions that may occur in linear trenches. A safe design bearing pressure on very soft, highly weathered bedrock is 250kPa. But since foundations may span across rock and soil, bearing pressures should be kept to max 150kPa. The engineer should inspect foundations before casting to ensure suitable founding conditions and no undetected problems or areas where no rock was encountered in trenches. Specialist geotechnical advice should be sought in cases where the conditions encountered in foundation trenches differ vastly from that reported in the investigations. Fill material supporting ground floor concrete surface beds must be minimum G7 quality,

compacted to 95% MDD and tested for approval by the engineer. Suspended floor slabs should be considered where fill heights are excessive to minimise importation of fill.

- The access road should be cut with adequate camber for side drains to a roadbed level of approximately NGL-350mm, compacted to 93%MDD, and an imported G5 subbase layer of 150mm thick placed and compacted to 95%MDD. Cement/clay brick pavers can be placed on 20mm bedding sand.
- Effective stormwater drainage systems are recommended to collect, handle and discharge stormwater across the site such that it does not cause erosion on slopes or undermining of structures. Subsoil drains are required behind any retaining walls as standard practice.

ANNEXURE A: LOCALITY

ANNEXURE B: APPLICATION AUTHORISATION AND FORM

ANNEXURE C: SITE ASSESSMENT OF SUBJECT PROPERTY

ANNEXURE D: SITE DEVELOPMENT PLAN

ANNEXURE E: CONVEYANCER'S CERTIFICATE, TITLE DEED AND DIAGRAMS

ANNEXURE F: ENGINEERING SERVICES REPORT

ANNEXURE G: ENVIRONMENTAL AUTHORISATION APPLICATION

ANNEXURE H: PROPOSED SUBDIVISION

ANNEXURE I: SITE SLOPE ANALYSIS

ANNEXURE J: SITE GEOTECHNICAL ASSESSMENT

ANNEXURE K: VISUAL IMPACT ASSESSMENT

ANNEXURE L: PREVIOUS APPROVALS