

PROPOSED REZONING, CONSOLIDATION AND DEPARTURE (BUILDING LINE RELAXATION) IN TERMS OF SECTIONS 15(2)(a), 15(2)(e) and 15(2)(b) OF THE BITOU MUNICIPALITY LAND USE PLANNING BYLAW, 2015

REMAINDER OF ERF 141 & ERF 390 (61 MAIN STREET, KEURBOOMSTRAND), KNYSNA DISTRICT AND BITOU MUNICIPALITY



ON BEHALF OF: Cava Mola Mining (Pty) Ltd

NOVEMBER 2021

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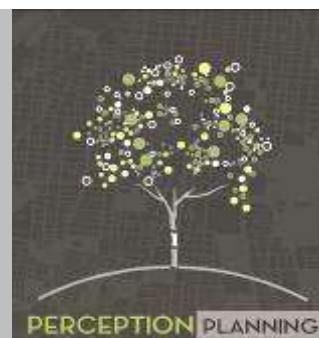
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PERCEPTION Planning

URBAN & REGIONAL PLANNING - ENVIRONMENTAL PLANNING - HERITAGE IMPACT ASSESSMENT - URBAN DESIGN

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1. Cape Town Archives
2. Cape Town Deeds Office
3. Coastal Management Lines for Eden District Coastal Processes and Risk Modelling Final, Western Cape Government, July 2017
4. Department of Rural Development and Land Reform, Mowbray (NGSI)
5. House Maritz Erf 390 and Remainder Erf 141 Keurboomstrand Coastal Engineer's Report, WML Coast (Pty) Ltd, November 2021
6. Services Report: Roads, Stormwater, Water & Sewer, Tuiniqua Consulting Engineers, August 2021
7. Surveyor General Office

ABBREVIATIONS

BMSDF – Bitou Municipality Spatial Development Framework
 CFM – Cape Farm Mapper (<https://gis.elsenburg.com/apps/cfm/>)
 CML – Coastal Management Line
 DEADP – Department of Environmental Affairs & Development Planning (Western Cape Government)
 DEFF – Department of Environment, Forestry and Fisheries (National Government)
 DSL – Development Setback Line
 EA – Environmental Authorisation (in terms of NEMA)
 HWC – Heritage Western Cape
 LUPA – Western Cape Land Use Planning Act, 2014 (Act 3 of 2014)
 LUPO – Land Use Planning Ordinance, 1985 (Ord. 15 of 1985)
 NEM:BA – National Environmental Management: Biodiversity Act, 2004 (Act 10 of 2004)
 NEMA – National Environmental Management Act
 NEMA – National Environmental Management Act, 1998 (Act 107 of 1998), as amended
 NHRA – National Heritage Resources Act, 1999 (Act 25 of 1999)
 PPP – Public Participation Process
 SPLUMA - Spatial Planning and Land Use Management Act, 2013 (Act 3 of 2013)

COVER: Extract from Bitou GIS Viewer (2016), accessed 9th November 2021

PROJECT SUMMARY		
Objective	Proposed Rezoning, Consolidation, Departure	
Property	Remainder Erf 141 (Keurboomstrand)	Erf 390 (Keurboomstrand)
	Knysna District and Bitou Municipality	
Surveyor General Diagram	3486/69	2803/91
Registered Owner	Cava Mola Mining (Pty) Ltd	
Title Deed	T 19582/2021	T 5209/2021
Extent	747m ²	859m ²
Restrictive Title Deed Condition(s)	Yes, but none that would be affected through the proposals outlined herein	
Bond Holder	None	
Servitudes	No	No
Zoning Scheme Legislation	Section 8 LUPO	
Current Zoning	Bitou Municipality: Land Use Planning Bylaw, 2015	
Current Zoning	Residential Zone I	Open Space Zone II
Current Land Use	Residential Dwelling	Private Garden
Proposed Development	Rezoning, Consolidation	
Proposed Land Use	Rezone Erf 390 from Open Space Zone III to Single Residential Zone I, Consolidate Remainder Erf 141 and Erf 390 and Departure (Building line relaxation)	
NEMA Required	Yes	Yes
NHRA Required	Yes	Yes
Act 70 of 1970	No	No

1. INTRODUCTION

PERCEPTION Planning was appointed by Gerhard Maritz (SA ID 8302185166081) (person holding proxy) on behalf of Cava Mola Mining (Pty) Ltd (the registered property owner of both properties), to compile and submit to Bitou Municipality a land use planning application for rezoning, consolidation as well as departure (building line relaxation) pertaining to the Remainder of Erf 141 & Erf 390 (Keurboomstrand), Knysna District and Bitou Municipality, in terms of Sections 15(2)(a), 15(2)(e) and 15(2)(b) of the Bitou Municipality Land Use Planning Bylaw (P.N. 273/2015). Copies of the Powers of Attorney and Proxy, appointing the *Perception Planning* to lodge this application, is attached as part of **Annexure 1** hereto, together with copies of the relevant SG Diagrams and current title deeds. There is no bond registered over the property and neither of the two title deeds contain any restrictive conditions that may be an impediment to the proposal as outlined in this application.

The cadastral land units subject to this application are as follows:

- Remaining extent of Erf 141 (Keurboomstrand), Knysna District and Bitou Municipality, measuring 747m², registered to Cava Mola Mining (Pty) Ltd and held under title deed T 19582/2021;
- Erf 390 (Keurboomstrand), Knysna District and Bitou Municipality, measuring 859m², registered to Cava Mola Mining (Pty) Ltd and held under title deed T 5209/2021.

1.1 The Application

This land use application pertaining to the Remainder of Erf 141 and Erf 390 (Keurboomstrand), Knysna District and Bitou Municipality submitted in terms of Sections 15(2)(a) and 15(2)(e) of the Bitou Municipality Land Use Planning Bylaw (P.N. 273/2015) incorporate the components below. The locality-, proposed rezoning and consolidation- as well as the site development plans are attached as part of **Annexure 2** to this report. The Land Use Planning Application form, duly completed and signed, is attached as **Annexure 3**.

- Rezoning of Erf 390, Keurboomstrand from Open Space Zone II to Residential Zone I in terms of Section 15(2)(a) of the Bitou Municipality Land Use Planning Bylaw (P.N. 273/2015);
- Consolidation of the Remainder of Erf 141, Keurboomstrand and Erf 390, Keurboomstrand in terms of Section 15(2)(e) of the Bitou Municipality Land Use Planning Bylaw (P.N. 273/2015);
- Departure for relaxation of the following building lines in terms of Section 15(2)(b) of the Bitou Municipality Land Use Planning Bylaw (P.N. 273/2015):
 - Eastern building line bounding onto Read Street from 4m to 1.68m, 2.51m and 2.6m, respectively to accommodate the proposed dwelling;
 - Eastern building line bounding onto Erf 373 from 2m to 0.33m for proposed timber deck;
 - Western building line bounding onto Erf 140 from 2m to 0m for proposed timber deck;
 - Southern building line bounding onto Erf 152 from 2m to 0m for proposed timber deck.

1.2 Description of Study Area

The subject properties (hereafter collectively referred to as "the site") are situated within the coastal hamlet of Keurboomstrand, ±10km¹ northeast of the Plettenberg Bay central business area and ±9,4km west of the neighbouring coastal hamlet Nature's Valley (**Figure 1**). The site is located at the eastern end of Main Street and

¹ Direct line of sight

adjoins the primary public parking and main beach area. It is bound to the east by Read Street, an unbuilt public road (Figure 2).

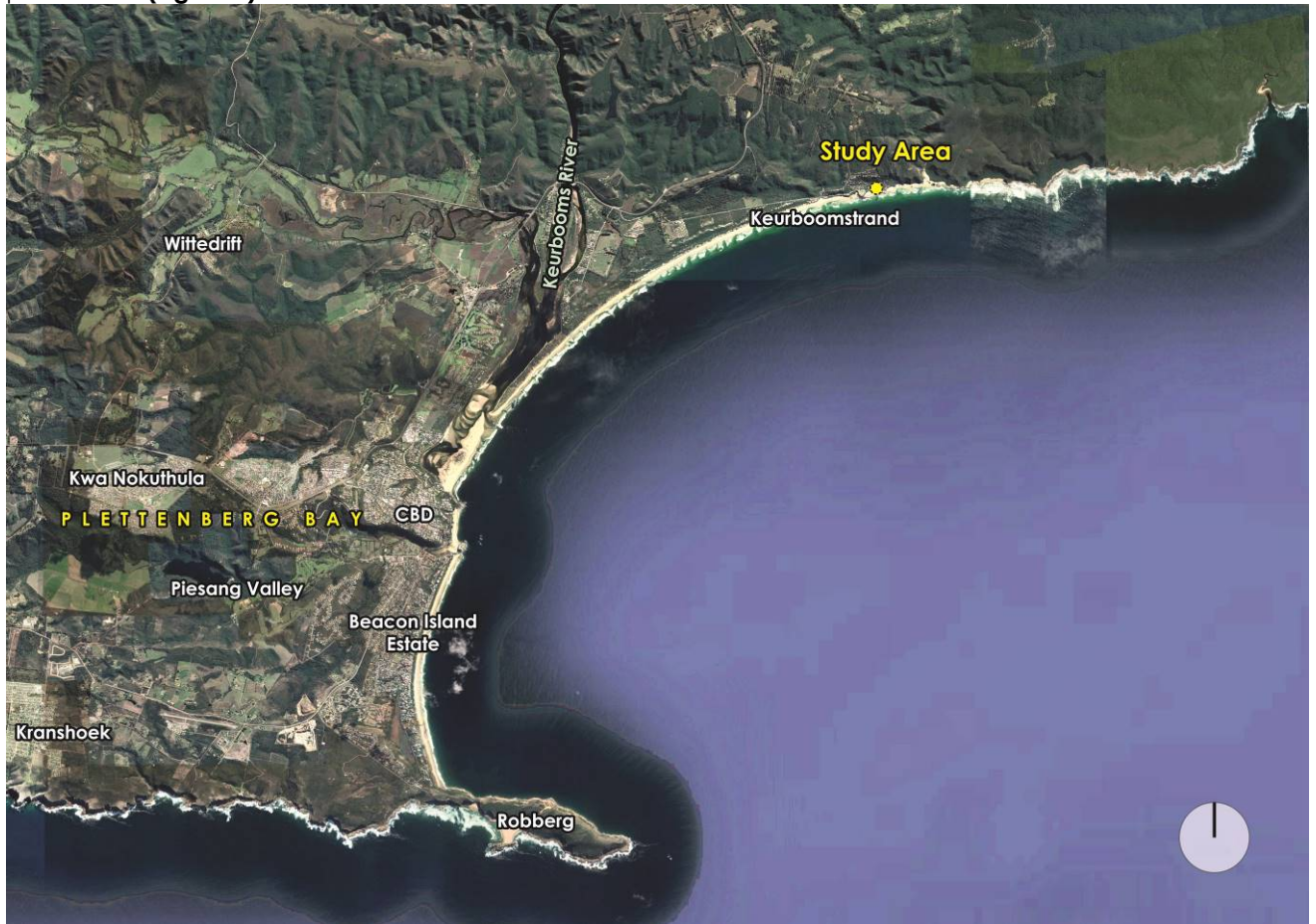


Figure 1: Location of the Remainder of Erf 141 and Erf 390 ("the site") within regional context (CFM, 2021 as edited)



Figure 2: Location of site in relation to historic core of coastal hamlet Keurboomstrand (CFM, 2021, as edited)

The **Remainder of Erf 141** presently contains a modern two-storeyed dwelling, the building envelope and is zoned "Single Residential Zone I". Several semi-mature indigenous (including milkwood) trees occur along the northernmost (street) as well as the western (side) boundaries. Access to the Remainder of Erf 141 is via a narrow gateway directly off Main Street. The northern (street) boundary is lined by a stonewall structure older than 60 years, the typology of which occurs elsewhere within the proximity of the site – notably directly across the site as well as directly west along Main Street as illustrated with **Figure 4**. Similar stonewalling – albeit less ornate in design – presently defines the eastern site boundary.

The southern portion of the site (or **Erf 390**) is zoned Open Space II, primarily serves as a private garden and remains largely vacant save for a small support wall, section of boundary walling and narrow staircase leading to the beach (parts of which are older than 60 years). It is mostly overgrown by grass but contains other vegetation, including three visually prominent Norfolk pines, planted in 1945. The primary vehicular access to Erf 390 via Read Street presently also serves as a secondary entrance to the site. Erf 390 is bound to the south by Erf 152, a historic servitude-right-of-way (**Figure 3**).



Figure 3: Subject site shown within context of direct environs. (CFM, 2011 as edited).

The public space directly east of this Read Street (Erf 46) consists of a public parking area and contains two timber structures (an ablution block and small office), informative signage, public furniture, waste bins and associated infrastructure. The main beach access as well as a public boardwalk is located along the southern boundary of said parking area. A number of mature trees occur within and along the periphery of this public space. Photographs of the site, together with contextual imagery of its direct environs are attached as part of **Annexure 4** to this report.

1.2.1 Topography and Vegetation

While part of a generally south-facing coastal landscape, the northern portion of the site (i.e. Remainder Erf 141) was levelled when the original dwelling was constructed here well before the 1940's². In present day the surface area of the Remainder Erf 141 as well as the northern portion of Erf 390 is therefore level though the southern portion of Erf 390 forms part of steep sloping embankment bounding onto adjoining Erf 152 and the natural coastline beyond. Mapping of 5m and slope classification (Cape Farm Mapper, 2021) are shown in Figure 4. There are no natural water courses or drainage line traversing the site.

Cape Farm Mapper described vegetation prevalent on the site as Goukamma Dune Thicket (VegeMap, 2018)³ and confirms that it does not fall within Critical Biodiversity or Ecological Support Areas. Actual vegetation cover is however as described in Section 1.2 of this report.

² Pers comm Mr. Charles Carr (former land owner) dated 7th July 2021

³ <https://gis.elsenburg.com/apps/cfm/> accessed 7th September 2021

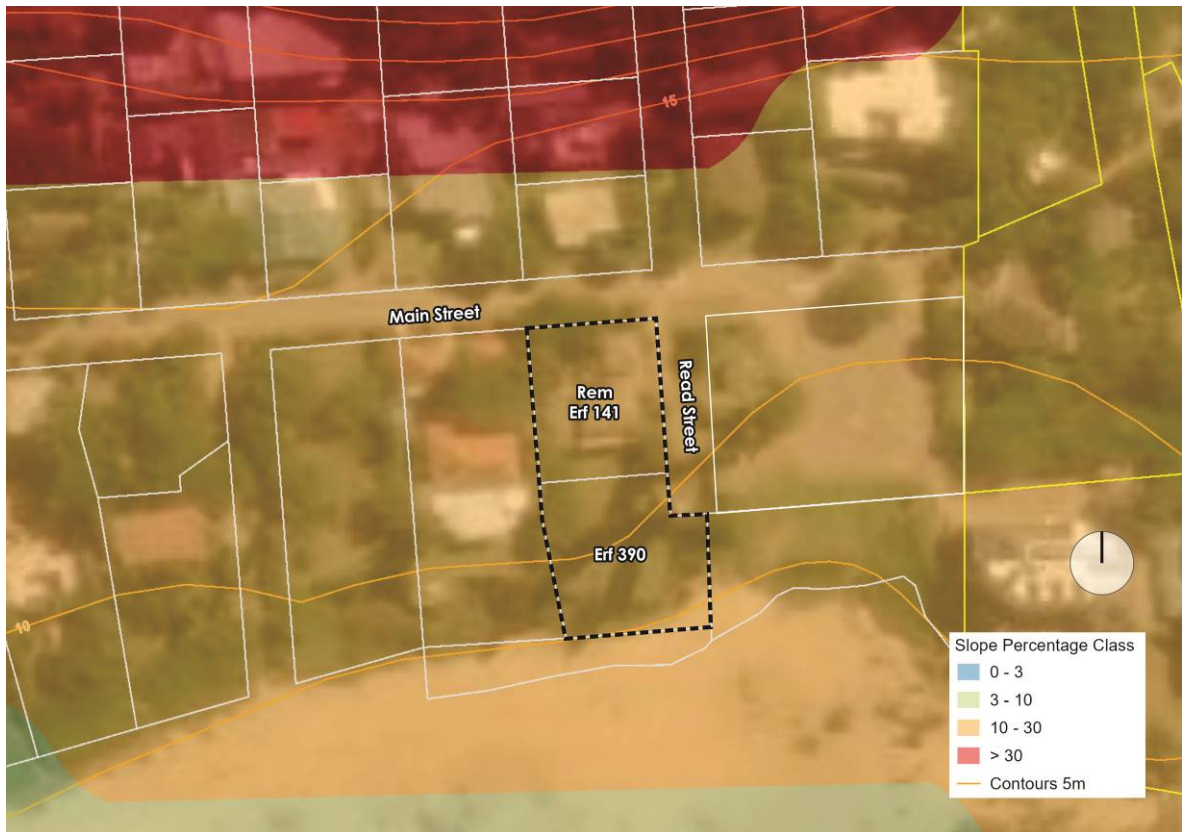


Figure 4: Topography of site along stated average $\pm 12\%$ slopes though 5m contours accurately present actual slope character. (Cape Farm Mapper, 2021 as edited)

1.2.2 Coastal Management Lines

During 2018 the WCG: DEADP published the findings and recommendations of a study which determined Coastal Management Lines (CML) and for the Eden District through the interrogation of Coastal Processes and Risk Modelling. The CML demarcates a zone along the shore seawards of which intensification of development should not be allowed and therefore effectively serves as a 'development set-back line' (DSL). The report generally discourages development below the DSL though some exemptions exist, namely those activities within the coastal zone that warrant scrutiny and potentially regulation or those activities that do not (DEADP, 2018:22).



Figure 5: Coastal Management Lines as transposed onto the subject site boundaries (WCG: DEADP, 2018)

As illustrated through **Figure 5**, the southern portion of Erf 390 is situated below the 20 year erosion line whilst the 50 year erosion line traverses the Remainder of Erf 141. The footprint of the design proposal encroaches onto the 20 year erosion line. A coastal engineering report was commissioned as part of the NEMA process. The specialised recommendations following from this study are discussed in further detail in Section 2.4 below.

1.2.3 Land Use and Zoning

The site is situated within a coastal hamlet characterised predominantly by single residential land use as evidenced through an extract from the Bitou GIS Viewer (2021)⁴ shown as **Figure 6**. Existing zonings within the direct proximity also include Open Space Zone II (Erf 390 and public parking area directly to the east), Business Zone II (Restaurant/ Accommodation), Agriculture Zone I (to the northeast) and Resort Zone (Accommodation). Kindly note that the GIS Viewer incorrectly depicts the zoning of Erf 390 is indicated as "Single Residential Zone" – the property was in fact rezoned to "Open Space Zone II" in terms of a Bitou Municipality land use planning approval dated 4th August 2015 (attached as **Annexure 5**). The zonings shown in Figure 6 include this approval.

1.2.4 Access

Vehicular access to the site is either via a narrow gateway directly off Main Street (i.e. the primary access to the Remainder of Erf 141) or alternatively via the unbuilt southern section of Read Street (intended as primary access to Erf 390), the respective positions of which are highlighted in Figure 3 above. Implementing the proposal would include widening of the existing entrance onto Main Street and therefore demolition of a ±1m section of the existing boundary wall older than 60 years. A permit application has been submitted to HWC (also refer to Section 4.1 in this regard).



Figure 6: The site shown within context of existing zonings/ Bitou GIS Viewer (Bitou Municipality, 2021 as edited)

2. PROPOSED DEVELOPMENT

2.1 Pre – Application Consultation

As required in terms of Section 37(1) of the Bitou Municipality Land Use Planning Bylaw, 2015, the proposal was discussed with Bitou Municipality officials during a pre-application consultation meeting held on 25th September 2021, the outcomes of which are summarised below as confirmed/ accepted by an e-mail from the Bitou Municipality Planning Section dated 22nd September 2021. Officials in attendance (virtual meeting):

- Senior Manager (Planning) - Chris Schliemann
- Environmental Management Officer - Anje Taljaard
- Town Planner - Marius Buskes

⁴ <https://bitou.maps.arcgis.com/apps/webappviewer/index.html?id=7fa5349b01b345ac816ad5f21a7a2cd4> accessed 20th September 2021

Aspects raised by officials in relation to the proposal:

- Would prefer application to propose rezoning of entire Erf 390 (as opposed to split zoning to accommodate proposed dwelling);
- Consolidation of two properties would need to be motivated within context of surrounding subdivision pattern and land use;
- Ensure that current title deeds were in fact endorsed as per previous (2015) council decision which pertained to removal of restrictive title conditions;
- Proposal likely to trigger an EIA process in terms of NEMA – suggest that “Applicability Checklist” be submitted to DEADP by environmental consultant;
- Property situated within Outeniqua Sensitive Coastal Area and compilation of OSCA permit, compiled by an environmental consultant, would be required prior to approval of building plans, albeit said application may be fast tracked should an EIA process be undertaken;
- Prefer that the development be set back behind the 20m coastal risk line;
- No new access to the beach/ coastline will be permitted.

2.2 Development description

The current landowner took transfer of both properties during early 2021 and wishes to replace the existing dwelling with a modern two-storey single residential dwelling the building footprint of which would extend over the cadastral boundary currently separating said erven thus prompting the need for consolidation and rezoning of Erf 390 from Open Space Zone II to Residential Zone I. The site development plan together with architectural drawings (floor plans, sections and elevations) compiled by CLD Architects are attached as part of **Annexure 6** to this report.

At ground floor level the proposal would incorporate domestic staff quarters, three en-suite bedrooms, kitchen, dining area-lounge, an office, gym, garage with parking for three vehicles, laundry, informal lounge, a staircase and associated circulation space. Outdoor spaces would include a driveway with parking for two vehicles, covered front door entrance, laundry yard, private courtyard, entertainment deck and swimming pool. Use areas proposed to be accommodated at first floor level would include a staircase landing, lounge/ bar area, two en-suite bedrooms, an office and small balcony.

Primary vehicular access to the property would still be from Main Street though the proposal implies demolition of a section of the historic street boundary wall to widen this entrance. The proposal also includes demolition of the historic (damaged) stonewalls along the eastern cadastral site boundary. An application in terms of Section 34 of the NHRA addressing the aforementioned was submitted to HWC – please refer to Section 4.1 below. The current secondary entrance to the site via Read Street is proposed to be retained as a service entrance.

Schedule of Areas (*)	
Description	Area (m ²)
Ground Floor Level (incl. Nanny Bedroom, Covered Stoep)	750
First Floor Level (incl. Covered Balcony)	215
Total Covered Area	956
Size of Consolidated Property	1,606
Coverage (495m ² +215m ² +40m ² =750m ²)	47%

(*) Excludes open decking, swimming pool

Implementation of the proposal implies removal of one milkwood tree along the northern (street) site boundary to accommodate the proposed wider entrance as well as removal of the three mature Norfolk pines presently located on Erf 390. The proposal may also prompt pruning of mature milkwood trees along the western cadastral boundary. These actions would require permission from the Department of Forestry, Fisheries and the Environment (DFFE).

2.3 Engineering Services and Infrastructure

The development proposed on the site would still be for a single residential dwelling, albeit with larger building footprint and total floor area than that of the existing modern residence, the latter of which is proposed to be demolished. As such the proposal is unlikely to significantly increase the demand on existing engineering services and infrastructure including water supply, sewer drainage, roads, storm water drainage or solid waste. Run-off water from gutters and downpipes will be collected in rainwater tanks and used for irrigation purposes where possible (also refer to Section 2.4). All new engineering services and infrastructure will be installed in accordance with the detailed requirements of Bitou Municipality. An engineering services report (roads, stormwater, water and sewer) compiled by Tuiniqua Consulting Engineers is attached as **Annexure 7**.

2.4 Coastal protection

WML Coast Engineering was commissioned to undertake a (desktop) coastal engineering report (**Annexure 8**) as part of the NEMA process and focussed on the potential impact of the proposal within the context of the Coastal Management Lines for Eden District Coastal Processes and Risk Modelling Final, Western Cape Government (2017). The report, *inter alia*, finds that the existing retaining wall along the southern (coastal) boundary of Erf 390 is at risk to coastal erosion and furthermore:

“The gabion wall below the toe of the interlocking concrete block wall (see Figure 5 [Annexure 7]) offers some protection from undermining but this is not considered sufficient for extreme wave run-up events, which are expected to occur more and more frequently in the future due to the effects of climate change (WML, 2021:10);

Notwithstanding the risk of retaining wall failure, the risk of coastal flooding and damage to the new dwelling is low. The proposed floor levels are above the predicted 1:100-year wave run-up level (RHDHV, 2018).”

Following from the above key findings, the report recommends three options aimed at mitigating the potential failure of the existing interlocking concrete block retaining wall along the southern (coastal) boundary of the site by, *“(a) replacing / reinforcing the retaining wall or (b) designing the foundations of the new structure to remain stable in the event of retaining wall failure (WML, 2021:11). The three options proposed are as follows (please refer to drawings attached as part of Annexure 8):*

Option 01: Gabion Wall (Drawing 210518/11)

Low cost, labour intensive and well-established method allowing for covering with topsoil/ vegetation able to re-establish. Integrity of the gabion structure is however reliant on the wire mesh cages. A double layer of gabions is therefore considered the minimum possible protection within the wave run-up zone, and inspections and maintenance are required throughout the life of the structure.

Option 02: Sheetpile Wall (Drawing 210518/21)/ **Option 03: Piled Support** (Drawing 210518/31)

These options would need to be integrated into the structural design of the proposed dwelling and associated structures (e.g. swimming pool). With these options the existing retaining wall would remain in place and maintenance of the existing gabions just outside the beachfront Erf boundary would be recommended to reduce the risk of undermining. In the event of retaining wall failure the building itself would remain stable but the front terrace / beach access stairway would need to be repaired.

Preferred option

In conclusion, the report recommends that the following preferred mitigation measures be incorporated into the architectural design and be taken forward in the EIA process for adjudication by DEADP:

“After consultation with the client and the architect, replacement of the existing interlocking concrete block retaining wall with a gabion wall (option 1 above) was selected as the preferred risk mitigation solution (see Drawing 210518/11). This solution protects the full embankment and swimming pool as well as the building and also reduces the potential risks to the public property associated with failure of the existing wall. The gabion wall with timber decking and stairs is deemed fitting with the new dwelling design. The exposed gabion wall structure can be fit within the boundary of Erf 390 (set back from the toe of the existing wall). However, a buried toe mattress which extends over the seaward boundary line (to the existing half buried gabions) will be required for scour protection. This may trigger an additional listed activity in terms of Environmental Regulations and will be included in the environmental assessment.

It is acknowledged that the gabion wall structure may require maintenance. Additional long term structural protection in the form of piled supports (option 3 above, see Drawing 210518/31) together with the gabion wall may be considered for peace of mind (WML, 2021:11)”

With relation to management of storm water run-off the report states that:

“No stormwater runoff should be allowed to concentrate onto the gabion wall or the beachfront area in front of the property, where it can contribute to erosion problems. Runoff from the roof of the new building could be fed into an existing formal stormwater drainage system (if present) or directly infiltrate into soft landscaped areas surrounding the building (in such a way that it is not likely to form an erosion channel) (WML, 2021:11)”.

3. REGULATORY CONTEXT

3.1 Section 8 Zoning Scheme Regulations

The Section 8 Zoning Scheme Regulations, promulgated in terms of the former Land Use Planning Ordinance, 1985 (Ord. 15 of 1985), remains applicable to the subject property and surrounding area.

3.1.1 Rezoning: Residential Zone I/ Open Space Zone II

While the zoning of the Remainder of Erf 141 is Residential Zone I, a land use application by the previous landowner to rezone Erf 390 to Open Space Zone II was approved by Bitou Municipality (see Section 1.2.3/ letter of approval dated 4th August 2015, Annexure 5). Primary use associated with Residential Zone I and Open Space Zone II are for a “dwelling house” and “private open space”, respectively.

In terms of the Zoning Scheme Regulations a "Dwelling house" is defined as, "a detached building containing only one dwelling units" while "Private open space" is defined as, "any land which has been set aside in this scheme for utilisation 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". Existing use of the two erven forming part of the site is therefore consistent with said zoning definitions while similarly, the proposed use would also be consistent with the definition of "dwelling house".

Table 1 below provides a summary of the proposal's compliance to development parameters applicable to Residential Zone I in terms of the Section 8 Zoning Scheme Regulations.

Development parameter	Requirement	Proposed
Coverage	50%	47%
Height	2 storeys	2 storeys
Street Building line	4m (depth exceeds 20m)	Departure: eastern boundary (Read St) – 1.68m/ 2.51m/ 2.6m respectively
Side Building line	2m	Departure: eastern boundary (Erf 373) – 0.33m Departure: western boundary (Erf 140) – 0m Departure: southern boundary (Erf 152) – 0m
Parking	1 per land unit	5

Table 1: Summary outlining compliance with applicable development parameters, Section 8 Zoning Scheme Regulations

3.2 Draft Bitou Zoning Bylaw, 2020

Once formally approved and gazetted the new Bitou Zoning Scheme Bylaw will replace all other zoning schemes applicable, including the Section 8 Zoning Scheme Regulations (3.1 above). It would therefore be prudent to ensure that components to the proposal align with the development parameters outlined in the new bylaw.

3.2.1 Single Residential Zone I

According to the Bitou Zoning Scheme Bylaw (Final Draft, 20th January 2020) a Main house/ Dwelling unit means, "a self-contained, inter-leading group of rooms with not more than one kitchen used for the living accommodation of a single household (and its bona fide non-paying guests) together with ancillary outbuilding (unless otherwise stated), provided that a designated official may grant exemption from any of the aforementioned requirements."

Table 2 below provides a summary of the proposal's compliance to development parameters applicable to Single Residential Zone I in terms of the Draft Bitou Zoning Bylaw, 2020

Development parameter	Requirement	Proposed
Boundary wall max height	2.1m	2.0m
Coverage (>1500m ²)	45%	47%
Max Height Outbuilding	8.5m above ngl (Not exceed main bldg)	Max. 2.7m above ngl
Max Height Building	8,5m above ngl	6.5m above ngl
Parking (4-6 bedrooms)	2	5
Floor factor	0.6 - 0.1 (x - 1000/500) x = land unit size	0.6
Building lines (>700m ²) (single storey or single storey with roof used as a balcony)	Common – 3m	As per Table 1 above
	Street – 4.5m	As per Table 1 above
Domestic staff quarters	30m ² max	40m ²

Table 2: Summary outlining compliance with applicable development parameters, Draft Bitou Zoning Bylaw, 2020

With the exception of total permissible coverage and building lines the proposal is consistent with the development parameters applicable to properties that will be zoned Single Residential Zone I once the new Bitou Zoning Bylaw is promulgated.

4. OTHER LEGISLATION

4.1 National Heritage Resources Act, 1999 (Act 25 of 1999)

While this land use application does not trigger development activities listed in terms of Section 38(1) of the NHRA the proposal includes part-demolition of a section of historic stone walling along the northern boundary of the Remainder of Erf 141, demolition of remaining historic stone walling along the eastern site boundary and removal of remnants of former stone walling close to the southern boundary of Erf 390 as illustrated in **Figure 7**.

Historic stonewalling of similar design and typology line both sides of the easternmost end of Main Street prior to entering the public parking/ main beach, thus aesthetically functioning as a gateway as illustrated through **Image 1** below. The stonewalling consists of sandstone plinths interspersed by columns spaced at regular intervals. Spaces between the columns are topped by decorative precast balustrades and capped by concrete bars as evident in **Image 2**.

A permit application (**Annexure 9**) to undertake the proposed works was submitted to HWC in terms of Section 34 of the NHRA during August 2021 and the outcome will be circulated to Bitou Municipality upon receipt.



Figure 7: Location, orientation of historic stonewalling on and within proximity of the site (GoogleEarth, 2011, as edited).



Image 1: East-facing view along Main Street illustrating aesthetic "gateway" created through historic stonewalling prior to entering public parking to the main beach area.



Image 2: South-facing view illustrating section of stonewalling proposed to be demolished as viewed within context of site curilage onto Main Street.

4.2 National Environmental Management Act, 1998 (Act 107 of 1998)

The proposed development triggers development activities listed in terms of NEMA and will involve a full Basic Assessment as well as a comprehensive public consultation process. This application is currently underway and will be adjudicated by the DEADP. This report will form part of the NEMA application (Basic Assessment), as managed by Cape Environmental Assessment Practitioners (Pty) Ltd. Given this process it is accepted that exemption from a subsequent OSCA permitting process after conclusion of the NEMA process would be

permitted. The proposal would require removal and pruning of indigenous trees that would require permission in terms of the National Forests Act, 1998 (Act 84 of 1998). Permission will be sought following conclusion of the NEMA process.

5. SPATIAL PLANNING POLICY AND FRAMEWORKS

5.1 Bitou Municipal Spatial Development Framework, 2017 (BMSDF)

The BMSDF, adopted during 2017, included a comprehensive contextual analysis of bio-physical, economic and social elements of Bitou Municipality and provides the policy framework taken into consideration with the formulation of the spatial proposals for Bitou. The BMSDF follows on and refines policy guidelines emanating from the Western Cape Provincial Spatial Development Framework, 2014 and the Eden District Spatial Development Framework, 2017.

The BMSDF (Keurbooms River Draft SDF) does not contain site-specific spatial proposals for the two subject properties other than highlighting its location within an existing urban area and inside the urban edge. General notes relating to urban development within this area include (BMSDF, 2017:276):

- "All development in this area would have to be subject to strict urban design, architectural and land use guidelines;
- High income housing/market housing to be promoted."



Figure 8: Location of site in relation to BMSDF (BM, 2017)

Planning statement:

The proposal would be consistent with the overall intention of the BMSDF particularly insofar as these relate to urban development within the existing suburb of Keurboomstrand, which was established in 1926.

5.2 Draft Bitou Municipal Spatial Development Framework, 2020 (Draft BMSDF)

While not yet formally adopted, the Draft BMSDF will eventually replace the current BMSDF (2017), together with specific spatial policies and objectives for Bitou Municipality. The draft document therefore has a bearing on future spatial planning and should be acknowledged as part of this application.

The Draft BMSDF does not contain specific spatial proposals pertaining to site other than highlighting the Remainder of Erf 141 as "residential" and Erf 390 as "vacant" (Figure 9). The Draft BMSDF refers to the Keurbooms Local Area Structure Plan (refer to 5.3 below) and defines the development rationale as follows:

"A strong holiday/resort character predominates the area. It is fairly homogenously developed with residential and resort uses, wedged between sea and coastal plateau slopes. Altering its character by permitting commercial and other non-residential development could detract from the area's attraction. The theme should thus be a low density residential one."
(Draft BMSDF, 2020:127)

A lower order business node ("B3") is proposed at the far eastern end of Main Street, directly east of the site, where some business and tourism orientated uses already exist.



Figure 9: Site location transposed onto extract from Draft BMSDF (BM, 2020)

Planning statement:

The proposal would not militate against the spatial objective to retain the low density residential/ resort character of Keurboomstrand. As such the proposal is considered consistent with the overall spatial proposals for the subject site.

5.3 Keurbooms & Environs Local Area Structure Plan, 2013 (KLASP)

The KLASP earmarks the site as “existing development” and furthermore identifies a “mixed use development node” at the easternmost end of Main Street, directly east of the subject site (Figure 10).

Planning statement:

The KLASP does not contain specific spatial planning proposals that would have a bearing on the proposed development as outlined in this land use application.

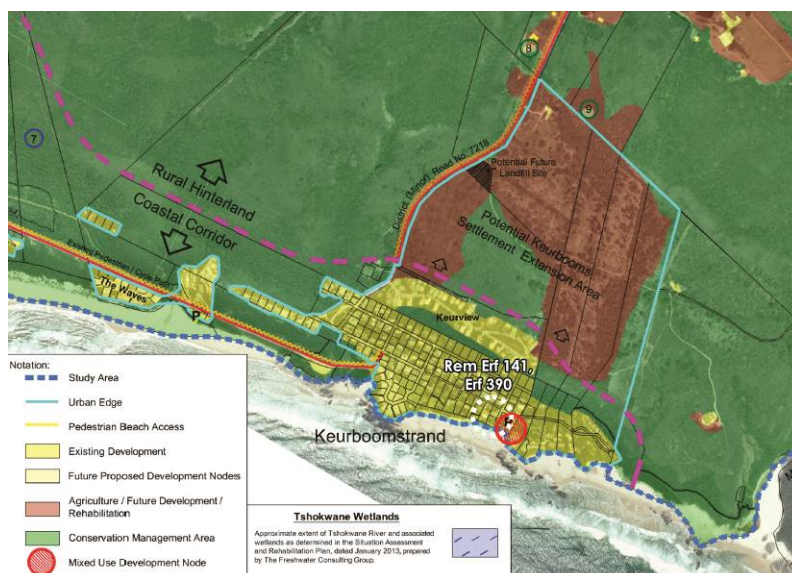


Figure 10: Site location transposed onto extract from KLASP (BM, 2013)

6. PLANNING MOTIVATION

6.1 Statutory Context

Following recent legislative and procedural changes that directly impact on land use planning in South Africa and consequently, the Western Cape Province, it is considered necessary to summarise the implications of this land use planning application within the context of the current statutory framework. Outlined below therefore are sets of principles and ethical conventions pertaining to this application.

6.1.1 SPLUMA [The Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013)]

Section 7 of this Act sets out five development principles that are applicable to spatial planning, land development and land use management, as outlined below together with respective planning responses insofar as these are applicable to the proposed development.

- **Spatial justice** refers to the need for improved access and use of land in order to readdress past spatial and development imbalances as well as the need for SDF's and relevant planning policies, spatial planning mechanisms, land use management systems and land development procedures to address these imbalances.

Planning statement:

While from a broader perspective the proposal might not by itself necessarily readdress past spatial and development imbalances it would create additional work opportunities within the local economy during the construction phase and be consistent with the requirements of relevant spatial planning policy and frameworks as discussed throughout Section 5 of this report.

- **Spatial sustainability** refers to, inter alia, the need for spatial planning and land use management systems to promote land development that is viable and feasible within a South African context, to ensure protection of agricultural land and maintain environmental management mechanisms. It furthermore relates to the need to promote effective/ equitable land markets, whilst considering the cost implications of future development on infrastructure and social services as well as the need to limit urban sprawl and ensure viable communities.

Planning statement:

Excepting the current zoning of Erf 390 (discussed in Section 6 below) the proposal would translate to efficient use of a vacant property within an established township as opposed to contributing to urban sprawl through the development of formerly undeveloped land outside of existing urban areas.

- **Efficiency** relates to the need for optimal use of existing resources and infrastructure, decision- making that minimises negative financial, social, economic or environmental impacts and development application procedures that are efficient and streamlined.

Planning statement:

The proposed development of this site will tie into existing engineering services and infrastructure with available capacity (see Section 2.3 of this report) thus efficiently making use of available resources.

- **Spatial resilience** refers to the extent to which spatial plans, policies and land use management systems are flexible and accommodating to ensure sustainable livelihoods in communities most likely to suffer the impacts of economic and environmental shocks.

Planning statement:

The proposal does not militate against the spatial planning objectives or proposals outlined in the Bitou Municipal SDF (2017), the Draft Bitou Municipal SDF (2020) or the Keurbooms Local Area Structure Plan (2013) all of which relate to the site as being part of an existing urban area. While from a development perspective, the coastal protection works proposed (Section 2.4) would add to resilience from future impacts associated with coastal erosion.

- **Good administration** refers, inter alia, to the obligation on all spheres of government to ensure implementation of the above efficiently, responsibly and transparently.

Section 42 of SPLUMA refers to the factors that must be considered by a municipal tribunal when adjudicating a land use planning application, which include (but are not limited to):

- Five SPLUMA development principles as listed above;
- Public interest;
- Constitutional transformation;
- Respective rights and obligations of all those affected;
- State and impact of engineering services, social infrastructure and open space requirements;
- Compliance with environmental legislation.

The degree to which the proposal would contribute to broader public interest within the context of pertinent spatial planning policies and frameworks is articulated throughout Sections 5 as well as 6.9 of this report.

6.1.2 LUPA (Land Use Planning Act, 2014 (Act 3 of 2014))

The development objectives entrenched in SPLUMA have been assimilated into the Western Cape Land Use Planning Act, 2014 (Act 3 of 2014) and sets out a basis for the adjudication of land use planning applications in the province. It requires that local municipalities have due regard to at least the following when doing so:

- Applicable spatial development frameworks;
- Applicable structure plans;
- Land use planning principles referred to in Chapter VI (Section 59);
- Desirability of the proposed land use; and
- Guidelines that may be issued by the Provincial Minister regarding the desirability of proposed land use.

The land use planning principles of LUPA (Section 59) is in essence the expansion of the five development principles of SPLUMA listed above. With regards to this application, no further assertions are to be added.

Consistency and Compliance with LUPA, 2014 (Act 3 of 2014)

Section 19(1) and (2) of LUPA states that the following:

*"(1) If a spatial development framework or structure plan specifically provides for the utilisation or development of land as proposed in a land use application or a land development application, the proposed utilisation or development is regarded as **complying** with that spatial development framework or structure plan;
(2) If a spatial development framework or structure plan does not specifically provide for the utilisation or development of land as proposed in a land use application or a land development application, but the proposed utilisation or development is not conflict with the purpose of the relevant designation in the spatial development framework or structure plan, the utilisation or development is regarded as being **consistent** with that spatial development framework or structure plan."*

The proposal would be consistent with the spatial planning objectives and proposals outlined in the Bitou Municipal SDF (2017), the Draft Bitou Municipal SDF (2020) and the Keurbooms Local Area Structure Plan (2013).

6.1.3 Bitou Municipality Land Use Planning Bylaw, 2015

Section 65 of the said Bylaw outlines general criteria for the consideration of land use planning applications to Bitou Municipality. The municipality must, inter alia, consider the following criteria when evaluating the desirability of land use planning applications submitted in terms of Section 15(2) of this Bylaw:

- Desirability of the proposed utilisation of land and any guidelines issued by the Provincial Minister regarding the desirability of proposed land uses;
- Impact of the proposed land development on municipal engineering services;
- The relevant integrated development plan, including the municipal spatial development framework;
- The integrated development plan and spatial development framework of the district municipality, where applicable;
- Applicable local spatial development frameworks adopted by the Municipality;
- The provincial spatial development framework;
- Policies, principles and the planning and development norms and criteria set by the national and provincial government;
- Aspects referred to in section 42 of the Spatial Planning and Land Use Management Act;
- Principles referred to in Chapter VI of the Land Use Planning Act;
- Provisions of the relevant zoning scheme.

The above criteria have been addressed throughout this land use planning application.

6.2 Background to current zoning

During 2014 the former landowners commissioned Perception Planning to initiate a land use planning application for the rezoning of Erf 390, Keurboomstrand from Single Residential Zone I to its present zoning being Open Space Zone II. The application included removal from the title deed a restrictive condition (former "A(II)(3)) which read, "That the lots shall be used for residential purposes only", thus limiting use of Erf 390 solely for residential purposes.

The primary reasoning and justification for initiating the 2014 application was because the former landowners initially used the property for holiday purposes (and later as retirement home) and (as presently) used Erf 390 solely as a private garden. The former landowners therefore argued that Erf 390's former single residential zoning resulted in a higher municipal valuation and therefore higher property tax, which they were intent to reduce through rezoning of Erf 390 to a zoning consistent with its actual use. Further justification presented as part of the 2014 application referred to geotechnical subsoil conditions which was perceived to result in cracking and subsequent removal in 2012 of a swimming pool formerly situated on Erf 390.

In hindsight, analysis of older (2011) Google Earth® aerial imagery for the property (see Figure 7 above) shows the location of the former pool along the very southern boundary of Erf 390, within very close proximity to the unstable south-facing coastal embankment, which may not have been the most appropriate siting of a swimming pool without the benefit of structural support measures.

6.3 Character of the area

The subject development site forms part of the historic core of the village, which as evident from the zoning map (Figure 6), is characterised by single residential land use. Exceptions to the predominant land use includes the coastal strip (Erven 152 and 135 both of which are zoned as open space) directly contiguous to beachfront properties, Erven 46 and 373 (parking area, ablution and associated public facilities) directly east of the site, the restaurant/ accommodation (Business Zone II) on the property Arch Rock 296/9, Resort Zone I & II on Arch Rock 296/5,7 & 10 and Agriculture Zone I beyond. The proposed land use – essentially a reinstatement of the former context – will therefore be consistent with the predominant pattern of single residential land use within the proximity of the site.

From a settlement morphological perspective, the earliest (1926) layout for the village made provision for a purely grid pattern (Figure 11), which over time was extended through southward expansion onto the small headland known as "Bloubankies" (Strand Street) and northward by ways of erven strung along the south-facing hillside (Hof Street) overlooking the village and adjoining coastline. Save for two other exceptions where properties had been subdivided, the current subdivision pattern along the seaward side of Main Street between Strand and Reed Streets comprise of long single residential erven stretching between Main Street and the coastline. The proposal to consolidate the Remainder of Erf 141 and Erf 390 would therefore be consistent with the predominant settlement pattern south of Main Street.

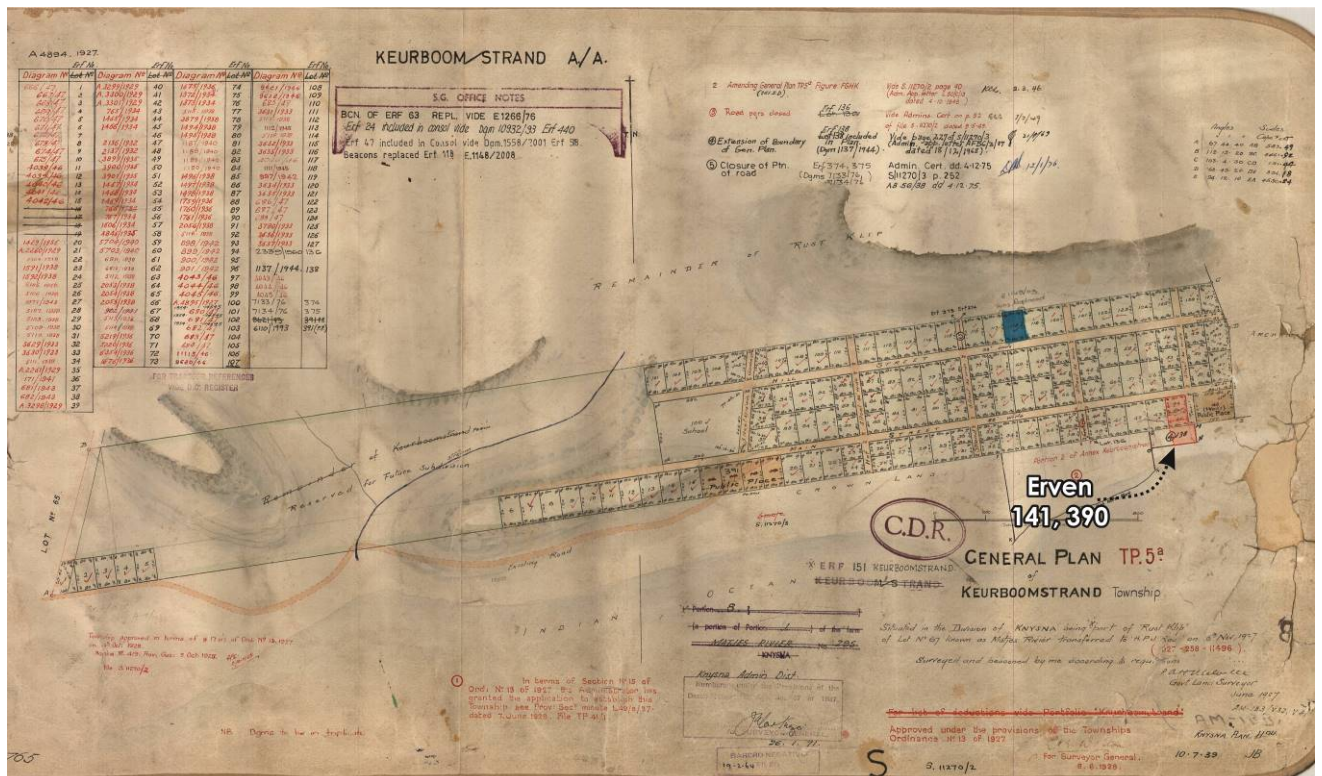


Figure 11: Location of the site in relation to the earliest (1926) layout of the "township" of Keurboomstrand (SGO as edited).

As such we would submit that the proposal for rezoning and subdivision would not militate against the character of the area from land use or settlement morphological perspectives and it would effectively revert to the original intended use of the two properties, namely for single residential purposes.

As illustrated in the Site Development Plan (Annexure 2.3) the proposal would allow for adequate setback from all site boundaries in accordance with the Section 8 Zoning Scheme Regulation, the exception being the proposed relaxation of the following building lines:

- i. Eastern building line bounding onto Read Street from 4m to 1.68m, 2.51m and 2.6m, respectively to accommodate the proposed dwelling;
- ii. Eastern building line bounding onto Erf 373 from 2m to 0.33m for proposed timber deck;
- iii. Western building line bounding onto Erf 140 from 2m to 0m for proposed timber deck;
- iv. Southern building line bounding onto Erf 150 from 2m to 0m for proposed timber deck.

The east-facing façade of the proposed dwelling would project onto Read Street, which while technically a 9.45m wide public road, is unlikely to be built. Existing indigenous trees line this boundary and therefore visually screen the site from the adjoining public parking area and other public facilities situated on Erven 46 and 373. Given the above it is considered that the proposal to relax the eastern building line as described would not detract or negatively impact on the existing character or enjoyment of adjoining properties or public amenities within the proximity of the site.

6.4 Access and Parking

Vehicular access to the site is either via a narrow gateway directly off Main Street (i.e. the primary access to the Remainder of Erf 141) or alternatively via the unbuilt southern section of Read Street (intended as primary access to Erf 390), the respective positions of which are highlighted in Figure 3 above. Implementing the proposal would include widening of the existing entrance onto Main Street and therefore demolition of a ±1m section of the existing boundary wall older than 60 years.

6.5 Environmental impact

The proposed development triggers development activities listed in terms of NEMA and will involve a full Basic Assessment as well as a comprehensive public consultation process. This application is currently underway and will be adjudicated by the DEADP. The NEMA process will also consider alternative proposals put forward for coastal protection works that would be required to implement the proposed (refer Section 2.4 above). This report will form part of the NEMA application (Basic Assessment), as managed by Cape Environmental Assessment Practitioners (Pty) Ltd.

Implementing the proposal would require three mature exotic Norfolk pine trees currently situated on Erf 390 as well as removal and pruning of indigenous trees that would require permission in terms of the National Forests Act, 1998 (Act 84 of 1998).

6.6 Heritage resources

While the proposal would not trigger development activities listed in terms of Section 38(1) of the National Heritage Resources Act (Act 25 of 1999) the proposed demolition of a section of the northern (street) boundary wall to the Remainder of Erf 141 as well as the shared boundary wall along the eastern site boundary (onto Read Street) triggers a permit application in terms of Section 34 of the NHRA. This was submitted to HWC during August 2021 and the outcome will be communicated to Bitou Municipality. Also refer to Section 4.1 above.

6.7 Municipal services

The proposal would not imply additional land use right other than a single residential dwelling, albeit with larger building footprint and total floor area than that of the existing modern residence. As such the proposal is unlikely to significantly increase the demand on existing engineering services and infrastructure including water supply, sewer drainage, roads, storm water drainage or solid waste. Run-off water from gutters and downpipes will be collected in rainwater tanks and used for irrigation purposes where possible. All new engineering services and infrastructure will be installed in accordance with the detailed requirements of Bitou Municipality.

6.8 Need and Desirability

From a planning perspective the statutory context for the principle of "need and desirability" may be found within legislation such as the former Land Use Planning Ordinance, 1985 (Ord 15 of 1985) though it is also entrenched with for example the more recent Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000) as well as the National Environmental Management Act, 1998 (Act 107 of 1998).

"Need and Desirability" refer to, inter alia, the nature, scale and location of a development being proposed as well as the sensible use of land. Essentially "need" refers to "time" whereas "desirability" to "place" (i.e. is this the opportune time and right place for locating the type of land use/ activity being proposed?)(DoE, 2017: 9). Desirability therefore relates to the degree to which a proposal may be considered acceptable on a specific property having regard to factors such as physical characteristics, surrounding planning character and context, economic considerations, sense of place, streetscape, potential impacts on adjoining residents and property, accessibility, and provision of engineering services.

Need:

The proposal implies a form of densification and intensified use of land forming part of a residential suburb traditionally characterised by low density urban development. The proposal would effectively transform a "private residential garden" to a "private residential dwelling" and associated private space – upon land situated within the urban edge within an area where there is a high demand (i.e. need) for residential properties.

Physical characteristics:

Alternative options with relation to proposed coastal protection works are addressed in Section 2.4 and will be considered by the DEADP as part of the EIA process currently underway. Implementation of the proposal would require removal of at least one milkwood tree which action would require permission in terms of the National Forests Act, 1998 (Act 80 of 1998) be required. As stated, three mature Norfolk pine trees would be removed. These (very high) exotic trees currently can be observed protruding well above indigenous coastal vegetation prevalent within the settlement (**Figure 12**) and have been noted to cast significant shadows onto the main beach as evident from aerial imagery (e.g. frontpage, Figure 5).

Existing planning context:

As outlined elsewhere in this report the proposal is not inconsistent with spatial policies and objectives in relation to densification pertinent within existing urban areas of Keurboomstrand (i.e. inside the urban edge).

Economic perspective:

The proposal would maximise land used for residential purposes within a residential area characterised by high demand and low supply. The consolidated property is likely to attract further investment and therefore contribute to the long-term development of the area.

6.9 Public Interest

The principle of public interest refers to the welfare or well-being of the general public and society and has a statutory basis within, inter alia, the Constitution and SPLUMA. Potential visual impacts associated with the proposal as may be perceived from Main and Read Streets as well as the adjoining public parking area (Erf 46) would be partly screened through existing vegetation along the eastern site boundary. While the proposed dwelling would be visible from the beach adjoining to the south the proposal the architectural typology is not incongruent with that already permitted by the planning authority within the village and should therefore not detract from the overall residential character of the area.

Proposed deviation from 4m building lines along the eastern site boundary would border onto Read Street, an unbuilt public road, which was originally intended to serve as an access to Erf 390. With creation of the newly consolidated erf the likelihood of formal construction of Read Street is very low. It is therefore submitted that the proposed encroachments along the eastern site boundary would not impact on the public and therefore not militate against public interest.



Figure 12: East-facing view along Main Street noting location of three exotic Norfolk pines situated on Erf 390 protruding above canopy line of remaining indigenous coastal vegetation within Keurboomstrand (Author, 19th September 2021)

Erf 390, currently zoned Open Space II, is not visible from Main or Read Streets and has been used as a private garden by residents of the existing dwelling situated on the Remainder of Erf 141 for several decades and has not been accessible to the public. The proposal implies continuation of this context with the difference that a single dwelling would occupy the newly created consolidated property.

7. CONCLUSION

Following from the above it is considered that the following land use planning application, as discussed herein, meets, and complies with statutory policies and requirements outlined in the Spatial Planning Land Use Management Act, 2013, Western Cape Land Use Planning Act, 2014, Bitou Municipality Land Use Planning Bylaw, 2015 as well as other regulatory requirements discussed and that the proposal may therefore be supported by Bitou Municipality:

- a.) Rezoning of Erf 390, Keurboomstrand from Open Space Zone II to Residential Zone I in terms of Section 15(2)(a) of the Bitou Municipality Land Use Planning Bylaw (P.N. 273/2015);
- b.) Consolidation of the Remainder of Erf 141, Keurboomstrand and Erf 390, Keurboomstrand in terms of Section 15(2)(e) of the Bitou Municipality Land Use Planning Bylaw (P.N. 273/2015);
- c.) Departure for relaxation of the following building lines in terms of Section 15(2)(b) of the Bitou Municipality Land Use Planning Bylaw (P.N. 273/2015):
 - i. Relaxation of eastern building line bounding onto Read Street from 4m to 1.68m, 2.51m and 2.6m, respectively to accommodate the proposed dwelling;
 - ii. Relaxation of eastern building line bounding onto Erf 373 from 2m to 0.33m to accommodate a proposed timber deck;
 - iii. Relaxation of western building line bounding onto Erf 140 from 2m to 0m to accommodate a proposed timber deck;
 - v. Relaxation of southern building line bounding onto Erf 152 from 2m to 0m to accommodate proposed timber deck.

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18th November 2021



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