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**ERF 715, 52 STEYN STREET AND ERF 716, 25 FRONT STREET, DE KELDERS:
APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS,
SUBDIVISION AND CONSOLIDATION: MESSRS WRAP PROJECT OFFICE ON BEHALF
OF DR V BUSER AND NOVEL IDEA TRADING 113 CC**

715 & 716 GDK (4604/2024)

SW van der Merwe

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Hermanus Administration

09 February 2026

1. EXECUTIVE SUMMARY

An application has been received on 01 July 2024 from Messrs WRAP Project Office on behalf of Dr V Buser and Novel Idea Trading 113 CC in terms of the Overstrand Municipality Amendment By-law on Municipal Land Use Planning, 2020 for the following:

- ❖ **Removal of restrictive title deed conditions** in terms of Section 16(2)(f) of the By-law for the removal of restrictive title deed conditions D.A(c) and D.B(e) contained in title deed T51851/2023 applicable to Erf 716, De Kelders;
- ❖ **Subdivision** in terms of Section 16(2)(d) of the By-law for the subdivision of Erf 716, De Kelders in two portions, namely a Remainder approximately 699m² and Portion A approximately 699m² in extent, and
- ❖ **Consolidation** in terms of Section 16(2)(e) of the By-law of Portion A with Erf 715, De Kelders to create a consolidated property of 1387m².

A Locality Plan of the property concerned is attached as Annexure A. The Motivation Report from the applicant in support of the proposal is attached as Annexure B, the proposed Subdivision and Consolidation Plan is attached as Annexure C and the Title Deed as Annexure D.

2. DECISION AUTHORITY

Municipal Planning Tribunal

3. BACKGROUND / SITE HISTORY

The application properties are situated at 25 Front and 52 Steyn Street, De Kelders and zoned Residential Zone 1: Single Residential Purposes. The properties are undeveloped.

The proposal comprises the removal of restrictive title deed conditions and subdivision of Erf 716 in two equal portions and consolidation of one of the subdivided portions with Erf 715. Access to the consolidated property remain as existing from Steyn Street. Access to Erf 716 will be obtained from Front Street.

4. SUMMARY OF APPLICANT'S MOTIVATION

A BRIEF SUMMARY OF THE MOTIVATION IS PRESENTED BELOW; HOWEVER, THE FULL MOTIVATION MUST BE CONSIDERED WITH THE EVALUATION AND IS ATTACHED AS ANNEXURE B TO THIS REPORT.

SUBDIVISION AND CONSOLIDATION

- The proposal needs to be evaluated on the basis that no additional impact will be created.
- The proposal is to increase the extent of the Remainder of Erf 715, De Kelders.
- After the subdivision and consolidation, both properties will still have more than sufficient space to accommodate residential dwellings thereon, and the proposal is aligned with the existing urban morphology in the area.
- The proposal will not add any new land use rights as the proposed subdivision is set to be utilised for single residential purposes.
- This proposal is in harmony with all relevant spatial planning policies, illustrating that the applicant did not arbitrarily invent this application but had due consideration for relevant spatial planning policies.
- Proposed subdivision is not considered out of the ordinary as various erven in the area have been subdivided with erf sizes varying between 664m² to 700m².
- Proposal fits in with the surrounding area.
- Subject properties already connected to services.
- Access and egress to both properties remains the same from Front and Steyn Street.
- Proposal is not predicted to have a long-term socio-economic impact.
- Proposal will not impact the safety and wellbeing of the community.
- No additional rights are applied for, other than that what are already permitted in terms of the Overstrand Land Use Scheme.
- Proposal will not impact the biophysical environment.
- Proposal will not impact traffic.
- Proposal will not impact the character of the area.
- Views capes (no views due to slope of the property) might be impacted as the properties are currently vacant.
- Proposal will have a short-term economic impact in that it will enable the owner to sell one portion.
- Proposal is not predicted to have a negative impact on surrounding properties.
- The proposal is not expected to negatively impact upon the EMOZ: Coastal Protection Zone and the HPOZ in which it is situated.
- Proposal is not in conflict with the Overstrand SDF and the PSDF.
- Proposal is consistent with the planning principles in terms of LUPA and SPLUMA.

REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS

- (a) Financial the financial or other value of the rights in terms of the restrictive condition enjoyed by a person or entity, irrespective of whether these rights are personal or vest in the person as the owner of a dominant tenement

No person or entity will be affected financially by the removal of this restrictive title deed condition.

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

No person is benefitting personally from this condition as this condition is only restricting the property owner to subdivide and development the property.

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

The property owner will be gaining from the removal of the restrictive condition as it will allow her to and development the property, sell one portion and in return accrue financial benefit.

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

There is no specific benefits restrictive condition does not have a social benefit.

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

This restrictive condition does not have a social benefit.

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

There is no specific beneficiary of this condition, and no person or entity will be affected if this is removed.

5. ADMINISTRATIVE COMPLIANCE

Methods of advertising		Date published	Closing date for comments
Local Newspaper	Yes	14 March 2025	25 April 2025
Gazette	Yes	14 March 2025	25 April 2025
Notices (<i>possibly affected property owners</i>)	Yes	10 March 2025	25 April 2025
Notices (<i>persons mentioned in title deed</i>)	Yes	10 March 2025	25 April 2025
Internal Departments	Yes	14 March 2025	25 April 2025
Ward councillor	Yes	14 March 2025	25 April 2025
Total comments	Five (5) letters of objection		
Total letters of support	None		
Was public participation undertaken in accordance with Section 46 - 50 of the By-Law on Municipal Land Use Planning?			Yes

Was the application processed correctly?	Yes
Is the proposal consistent with the principles referred to in Chapter 2 of SPLUMA and Chapter VI of LUPA?	Yes
In case of application for removal, amendment or suspension of restrictive title conditions if notices in accordance with Section 35(3)(d) of the By-Law on Municipal Land Use Planning was served on all persons mentioned in the title deed for whose benefit the restriction applies?	Yes

6. SUMMARY OF COMMENTS FROM ORGANS OF STATE AND/OR MUNICIPAL DEPARTMENTS

Name	Date received	Summary of comments
Waste Management	18/03/2025	No objection.
Fire Services	18/03/2025	No objection, subject to compliance with the provision of SANS 10400-A:2016, 10400-T:2020 and the By-law relating to community fire safety.
Building Control	19/03/2025	No objection.
Local Heritage	19/03/2025	No objection.
Environmental Management Services	25/04/2022	No objection.
Development Control	17/04/2025	Attached as Annexure G.

7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION

Five letters of objection were received from interested and affected parties. The objections are attached as Annexure E and the applicant's response thereto as Annexure F. The main grounds of objection are summarised as follows:

POINT OF OBJECTION

Public participation and notification procedures

RESPONSE FROM APPLICANT

The application for the removal of restrictive title deed conditions was submitted in terms of the Overstrand Municipality By-law on Municipal Land Use Planning, 2020. In line with the provisions of this By-law, the following steps were undertaken:

Notice of application

The application was advertised in the prescribed manner through emails and/or registered letters sent to the owners of affected and adjacent parties and was also published in the local press and Provincial Gazette. A notice board was also erected on the subject property. This ensures that all affected parties were informed and given the statutory 30-day period to submit comments or objections.

Documentation accessibility

The full application, including the motivation report, plans, and supporting documentation, was made available for public inspection at the municipal planning office during the objection period. This is standard procedure for ensuring transparency and accessibility.

RESPONSE FROM MUNICIPAL TOWN PLANNER

The applicant's comment is noted and agreed with. In addition, since condition D.A(c) of the title deed is in favour of the registered owner of each erf in the township, registered notices and email notifications had been served onto all the registered property owners in the De Kelders township.

POINT OF OBJECTION**Scope and content of the application****RESPONSE FROM APPLICANT**

The application motivation document clearly addressed the following matters:

- The **intent** of the application: Removal of the restrictive title deed condition to allow a second dwelling and that the property may be subdivided, subdivision of the property into two portions and consolidation of the subdivided portion with Erf 715 De Kelders.
- The **zoning parameters** applicable to the property and how the proposed development would comply with the Overstrand Municipality Land Use Scheme, 2020.
- A **detailed motivation** demonstrating that the application is consistent with the principles of spatial planning, does not deviate from the zoning scheme, and will not have a detrimental impact on the surrounding area.
- The application did not propose to exceed height or coverage restrictions as set out in the land use scheme, but a separate response has been provided to address the development parameters, refer to objection point 4.
- It is also important to note no creche is being proposed, but it is however allowed in terms of the OMLUS as a primary right.

RESPONSE FROM MUNICIPAL TOWN PLANNER

It is agreed with the applicant that the intent of the application was clear having had regard to the notice and advertisement in the media and the motivation report.

POINT OF OBJECTION**Transparency in respect of use of the dwellings****RESPONSE FROM APPLICANT**

The application is for the removal of a restrictive title deed condition that limits development on the property to a single dwelling. The use of either the primary- or second dwelling for short-term letting is permitted as a primary right in terms of the Overstrand Municipality Land Use Scheme (OMLUS) and cannot be restricted.

Should the owners, however, wish to operate a guest house, additional municipal approvals would be required in accordance with the applicable by-laws and policies. These uses cannot be presumed or automatically granted and would necessitate:

- a separate land use application, if required by the municipality, and
- full compliance with the relevant policy frameworks and conditions applicable to short-term letting or guest accommodation.

It is therefore inaccurate to suggest that there was any intentional withholding of information or that the application sought to obscure future intentions. The proposal has been clearly defined within the scope of the current application, and all legislative procedures for transparency and public participation have been adhered to.

It is important to note that the submission of building plans is not a requirement for an application to remove a restrictive title deed condition. It should however be emphasised that sketch plans were in fact submitted as part of the application documentation.

RESPONSE FROM MUNICIPAL TOWN PLANNER

The applicant's motivation report on page 8 under heading "*rational for removal*" states: "*The property owner wishes to subdivide the property into two portions in order to develop the one portion and sell the other portion once approval is received. Her intention is to construct two dwellings thereon, one for her and a second 'granny flat'.*"

The applicant's response although technically correct did not address the aforementioned. The objectors are aware of the fact that the applicant bought several properties in the area, i.e. Erf 953, 13 Killarney Street, De Kelders. In fact, this property was bought from the objector / owner of Erf 717, adjoining to the application property to the south-west as well as the adjoining Erf 1299, De Kelders, for which an application for removal of the one dwelling unit restriction is currently in process.

Although the applicants did not clarify the owner's intention in the response to the objection, the owner can develop the property and use it as she see fit, provided that it is in line with the land use scheme and title deed provisions, regardless of if the owner will be the occupant of the dwelling or not.

The applicant is correct that self-catering is a primary right. However, in terms of the Overstrand Land Use Scheme self-catering is limited to either the primary dwelling or second dwelling unit, but not both.

POINT OF OBJECTION

No deviation or exemption from land use parameters should be permitted

RESPONSE FROM APPLICANT

No deviation from zoning scheme development parameters (such as height, coverage, or building lines) was applied for in this application. The application solely pertains to the removal of a restrictive title deed condition. All future development must comply with the development parameters of the Land Use Scheme or be subject to further application where required.

The application was submitted in accordance with the relevant legislation, and all necessary procedures for transparency, notification, and public participation were followed. There was no omission of information, and the documentation made available was sufficient to inform affected parties of the nature and implications of the proposed development.

Any future land use activities, not currently permitted under the zoning, or requiring further consideration will be subject to their own application processes, with additional public participation if prescribed.

RESPONSE FROM MUNICIPAL TOWN PLANNER

Applicants comment is noted and agreed with.

POINT OF OBJECTION

Traffic related concerns

RESPONSE FROM APPLICANT

The objections raise concerns about traffic impacts arising from the proposed removal of a restrictive title deed condition. It is important to clarify that the application seeks only to allow a second dwelling on the property, a right already accommodated in terms of the Overstrand Municipality Land Use Scheme (OMLUS) as a primary right on properties zoned for single residential purposes. The development of two dwelling units on a residential erf is considered low-impact and does not pose a threat of excessive traffic generation. Traffic associated with two households, whether for permanent occupation or short-term letting, remains within acceptable limits for a low-density residential area.

The owners are aware of the existing road conditions and street network in the area. It is noted that the road is a public road, and it is the responsibility of the municipality to ensure the provision and maintenance of adequate access infrastructure. It is further hoped that continued development in the area, including the proposed improvements to the subject property, will serve as a catalyst for the continuing upkeep of the road surface. This aligns with broader municipal infrastructure planning objectives.

Considering the above, the proposed development is not expected to result in undue traffic impacts or place an unreasonable burden on the local road network.

RESPONSE FROM MUNICIPAL TOWN PLANNER

The applicant's comment is noted and agreed with.

POINT OF OBJECTION**The proposal will create a precedent****RESPONSE FROM APPLICANT**

The objections suggest that the approval of this application may create an undesirable precedent for further densification in the area. It is important to note that the right to erect a second dwelling is already provided for in terms of the Overstrand Municipality Land Use Scheme, 2020 (OMLUS), which serves as the overarching regulatory framework for land use in the municipality.

The only factor currently preventing the property from being developed in accordance with the provisions of the OMLUS is the restrictive title deed condition, which this application seeks to remove. This application therefore does not introduce a new or extraordinary right but merely seeks alignment with the zoning rights already applicable to similar properties in the area that do not have the same historic title conditions.

As such, the removal of this condition will not set a precedent, as the allowance for a second dwelling is already a normative and permitted land use under the existing planning scheme. Each application to remove such restrictions is assessed on its individual merits, in accordance with statutory procedures and policy frameworks.

RESPONSE FROM MUNICIPAL TOWN PLANNER

Having had regard to the point of objection and applicant's comment, each application is to be considered on merit. Creation of a precedent is not a valid consideration to support refusal. Fact of the matter is that several properties in the immediate vicinity between Front and Steyn Streets had been subdivided over time, namely Erven 700, 708, 709, 713, 715 and 717, De Kelders. Also, further to the north along Ingang Street, similar subdivisions occurred on Erven 475, 476, 481 and 482, De Kelders (refer to the Gis extract, as per Annexure H).

The application for subdivision has further been motivated having had regard to the provisions of Section 35(4) of the By-Law, namely:

- (a) *the financial or other value of the rights in terms of the restrictive condition enjoyed by a person or entity, irrespective of whether these rights are personal or vest in the person as the owner of a dominant tenement;*
- (b) *the personal benefits which accrue to the holder of rights in terms of the restrictive condition;*
- (c) *the personal benefit which will accrue to the person seeking the removal of the restrictive condition, if it is removed;*
- (d) *the social benefit of the restrictive condition remaining in place in its existing form;*
- (e) *the social benefit of the removal or amendment of the restrictive condition, and*
- (f) *whether removal, suspension or amendment of the restrictive condition will completely remove all rights enjoyed by the beneficiary or only some of those rights."*

The merit of the application for removal of restrictive title conditions will be further discussed in paragraph 11 below.

POINT OF OBJECTION

Impact on density

RESPONSE FROM APPLICANT

Objections received express concern that the proposal will lead to increased density and a change in the character of the neighbourhood. It must be clarified that the application does not involve a rezoning to increase the allowable density beyond what is already permitted in terms of the Overstrand Municipality Land Use Scheme, 2020 (OMLUS). The zoning of the property remains Single Residential Zone 1, which allows for a primary dwelling and one second dwelling as a primary right, subject to compliance with applicable development parameters.

The removal of the restrictive title deed condition is required only to bring the property in line with the rights already granted by the OMLUS. This does not constitute an intensification of land use beyond what is already legally and commonly allowed on similar erven in the area.

The resulting development will remain consistent with the single residential character of the neighbourhood and does not enable subdivision, group housing, or multi-storey apartment development. The intent is to utilise the land in a manner already contemplated and supported by the existing municipal spatial planning framework, including the OMLUS and the applicable spatial development framework (SDF).

In addition, development parameters, including building lines, coverage, height, and parking requirements, remain in force and ensure that the development fits appropriately within the existing urban fabric. The rights being sought are not extraordinary or out of scale with surrounding properties and are in fact in line with the broader strategic direction of the municipality to make more efficient use of serviced land within the urban edge.

RESPONSE FROM MUNICIPAL TOWN PLANNER

The applicant's comment is agreed with. The proposal will entail subdivision and consolidation and will not create additional cadastral units. The Overstrand Land Use Scheme permits second dwellings as a primary right, the principle of which had buy inn from the Overstrand public at large and was subject to due public notification / participation prior to the promulgation of the Overstrand Land Use Scheme, 2020.

In accordance with the Land Use Scheme, a second dwelling on Residential Zone 1, cannot be alienated. Thus, it remains part of the cadastral unit as not seen as densification per se.

Some of the removal and subdivision applications referred to above, entailed removal of both the one dwelling unit and second dwelling unit's restrictions from the title deed.

Also, the title deed permits outbuildings, which under the former land use scheme also permitted servants quarters, most of which over time had been converted into

second dwelling units, which is also evident in various De Kelders properties, especially along Cliff Street where these are rented out as second dwelling units.

In accordance with the scheme regulations self-catering is permitted as a primary right. To date, the De Kelders area although self-catering occurs, do not have complaint history. This is presumably due to the fact that in terms of the parameters applicable to self-catering only one of the primary or second dwelling unit may be utilised for self-catering and not both. Further, the area character it not purely single residential as several properties, also in the vicinity of the application property is being rented out under the applicable primary rights that permits a maximum of two guest rooms.

POINT OF OBJECTION

Impact on property value

RESPONSE FROM APPLICANT

It is important to note that this concern related to property values are speculative and not supported by objective evidence.

The proposed development will remain within the parameters of the **Single Residential Zone 1** as set out in the Overstrand Municipality Land Use Scheme, 2020 (OMLUS), which already permits a second dwelling as a **primary right**. The removal of the title deed condition simply aligns the property's title with the current, prevailing planning policy and municipal land use rights. It does not introduce a use that is foreign or incompatible with the surrounding residential context.

There is no indication in the Overstrand Municipality's policy documents or strategic frameworks that the implementation of second dwellings, where appropriately designed and compliant with development parameters, has a detrimental impact on property values. On the contrary, reinvestment in properties and the improvement of underutilised erven may contribute positively to the neighbourhood, particularly where developments are compliant with the planning scheme and visually in keeping with the area's character.

Concerns about market value are not generally considered valid planning grounds unless supported by empirical studies or municipal valuation data. In the absence of such evidence, these concerns remain subjective and cannot reasonably justify refusal of the application.

RESPONSE FROM MUNICIPAL TOWN PLANNER

The applicant's comment is noted and agreed with.

POINT OF OBJECTION

Legal perspective

RESPONSE FROM APPLICANT

The objector's reference to the title deed condition, specifically the restriction limiting development to a single dwelling, serves to confirm the very basis and necessity of this application.

South African case law has consistently supported the principle that where a restriction in a title deed unreasonably limits the rights afforded by zoning legislation, removal may be justified, particularly when it aligns with current planning policy, municipal approval processes, and the surrounding context. Notably, courts have found that title deed conditions should not be used to perpetuate outdated or unnecessary limitations where a planning authority has already determined appropriate land use rights through its zoning scheme.

In this instance, the objector has acknowledged the existence and effect of the title condition, thereby supporting the factual basis of the application. The objection however fails to consider that the title condition is outdated in relation to the current planning framework and that its removal is entirely in line with the principles of good planning, legislative alignment, and municipal policy. The objection, therefore, does not introduce a valid legal impediment but instead reaffirms the justification for the application.

RESPONSE FROM MUNICIPAL TOWN PLANNER

In order to remove a restrictive condition of title the process described in **sections 47(1) and (2) of SPLUMA** must be followed which state the following:

“47(1) A restrictive condition of title may, with the approval of the Municipal Planning Tribunal (MPT) and in the prescribed manner, be **removed**, amended or suspended.

(2) A **removal**, amendment or suspension of a restrictive condition contemplated in subsection (1) must, in the absence of the contemplated written consent, be effected-

- (a) in accordance with section 25 of the Constitution and this Act;
- (b) with due regard to the respective rights of all those affected, and to the public interest; and,
- (c) in the prescribed manner, if such **removal**, amendment or suspension will **deprive** any person of property as contemplated in section 25 of the Constitution.”

Section 25, and more specifically only section 25(1) of the Constitution determines the following:

“25(1) No one may be deprived of property except in terms of a law of general application, and no law may permit arbitrary deprivation of property.”

As far as the Overstrand Municipality is concerned the following points need to be emphasised:

- a) The municipality has never disputed the fact that restrictive conditions of title constitute real rights, and that they are enforceable against other property owners.
- b) The municipality has never disputed the fact that restrictive conditions of title may only be removed or amended through lawful processes such as is evidenced and intended by the application under consideration.

- c) The objector's considerations contained in **section 39(5) of LUPA** are correct but the conclusion that "...decisions must not be driven solely by financial gain or short-term convenience but must align with long-term community well-being and sustainability" do not take cognisance of the fact that De Kelders is already a very well-developed neighbourhood, with long term community well-being and sustainability. The objector furthermore concludes and makes the unsubstantiated statement that the applicant's reason for the application for the construction of a second dwelling on Portion B is driven solely for financial gain or short-term convenience and also fails to offer empirical proof of what impact the removal of the title deed **condition D.(A)(c)**, will have on neighbouring landowners, on the spatial character of the area, and the community's expectations. These statements are without sufficient justification.
- d) In the same vein as in (c) above the objector argues that:

"The removal of this condition would not merely affect a single property but could potentially compromise the carefully planned and legally protected spatial integrity of the broader neighbourhood."

- e) and

This condition is not a mere administrative formality but a deliberate planning instrument that operates as a bulwark against overdevelopment, densification, and the gradual erosion of the area's unique identity. De Kelders is defined by its serene ambience, visual openness, limited vehicular and human activity and the privacy enjoyed by its residents. The construction of a second dwelling on the subject erf would substantially disrupt this delicate equilibrium and trigger multiple negative consequences, which according to the objector relates to case law, the concomitant responsibilities of municipalities, the problem being that merely quoting from case law without indicating how said case law's principles apply to the application in question does not assist him.

Planning applications are considered on merit. Also, in simple terms, binding "precedent" applies to High Court, Supreme Court of Appeal and Constitutional Court judgements only.

The application was submitted, processed following public participation in accordance with the applicable legal framework, i.e. Section 35 of the Municipal Planning By-Law, also having had regard to the provisions of Section 39 of the Western Cape Land Use Planning Act, 2014 and Section 47 of the Spatial Planning Land Use Management Act, 2013. The proposal does not constitute arbitrary deprivation of property rights, since due process had been followed, also allowing interested and affect parties to submit comment / objections. Although it is correct that the municipal land use scheme do not override restrictive conditions of title, it is not impossible given the present as demonstrated, which will be further discussed in the evaluation below.

Applicants comment is noted and agreed with.

POINT OF OBJECTION

Legal arguments under Section 39(5) of LUPA

RESPONSE FROM APPLICANT

The motivation report did contain a motivation in terms of Section 39(5) of LUPA.

While the objector relies on the provisions of Section 39(5) of the Western Cape Land Use Planning Act, 2014 (LUPA), the objection notably fails to demonstrate how the removal of the restrictive condition will materially or adversely affect the objector or any other party.

LUPA requires that the decision-maker considers whether rights currently held by others under the restrictive condition will be undermined, particularly in relation to financial value, personal benefit, or social impact. The objection, however, does not identify any party who currently derives a financial, legal, or practical benefit from the existence of the condition in question. Nor does it provide evidence of how the objector's rights or use and enjoyment of their property will be negatively impacted should the condition be removed.

The objection is based on generalised concerns regarding density, neighbourhood character, and speculation about potential future use, without substantiating how any of these issues amount to a loss of rights or interests protected under the condition. Importantly, the restrictive condition does not serve any reciprocal or enforceable purpose in favour of the objector's property, nor does it constitute a servitude or other form of real right that would trigger protection under Section 39(5)(a) or (b).

In the absence of demonstrated prejudice or loss of legitimate rights, the objection fails to meet the legal threshold required to justify the retention of a condition that clearly inhibits the use of the subject property in line with existing zoning rights and municipal planning policy.

RESPONSE FROM MUNICIPAL TOWN PLANNER

The applicants' comment is agreed with save for the statement:

"the restrictive condition does not serve any reciprocal or enforceable purpose in favour of the objector's property, nor does it constitute a servitude or other form of real right that would trigger protection under Section 39(5)(a) or (b)."

The applicant's motivation report did contain a discussion on page 9 of the requirements of Section 39(5) of LUPO. The town planner's assessment in paragraph 11 below, will also discuss the relevant criteria, which is also a requirement in terms of the By-law.

POINT OF OBJECTION**Character of the area****RESPONSE FROM APPLICANT**

The objector has expressed concerns that the proposed removal of the restrictive condition will negatively affect the low-density character of the De Kelders area. Specifically, the objectors suggests that this could lead to a disruption in the peaceful and tranquil nature of the neighbourhood. This argument does not hold when examined in the context of the applicable zoning scheme, the objectives of

sustainable development, and the careful controls already in place to maintain the area's character.

1. The character of De Kelders will not be undermined

The character of De Kelders, as a low-density residential area, is not solely defined by the number of dwellings on individual erven but by compliance with zoning parameters, such as building height, coverage, and the maintenance of open spaces. While the objector raises concerns about potential overcrowding and loss of privacy, the zoning scheme itself maintains strict development controls, which will continue to apply even with the removal of the restrictive condition.

The current application does not propose any changes that would result in excessive site coverage or an over-densification of the area. The design and siting of the second dwelling will be subject to all existing development parameters set by the municipality to ensure the property remains in character with the surrounding area. The removal of the restrictive condition simply allows for the exercise of an existing land use right that is available under the zoning regulations.

2. No significant increase in densification or traffic

The objector suggests that the introduction of a second dwelling will lead to increased densification and disruption in the neighbourhood. It is however important to note that second dwellings are already permissible under the zoning scheme as a primary right. This application only seeks to remove a restrictive title deed condition, which is no longer in line with current planning practices.

In terms of traffic impact, it is unlikely that the proposed development will lead to significant congestion or overuse of the local road network. The property is located on a public road, and any increase in traffic will be marginal compared to the road's capacity. Additionally, as mentioned previously the hope is that the development of the property will serve as a catalyst for the improvement of the road, leading to its upkeep, benefiting the entire street.

3. Preserving privacy and open space

The objector expresses concern that a second dwelling would result in a loss of privacy for neighbouring properties. The objector's properties are however further away from the subject property, and it is important to note that the proposed development will adhere to all municipal building regulations, which require the appropriate positioning of structures to respect neighbouring properties' privacy and spatial enjoyment. The distance between the new dwelling and neighbouring properties, combined with the requirement to maintain certain setbacks, will ensure that the second dwelling is positioned in a way that does not infringe upon the privacy of adjacent properties.

Additionally, the design of the property will include open space and green areas that contribute to maintaining the visual and spatial qualities of the neighbourhood. The overall density of development will not exceed the thresholds allowed by the zoning scheme, and the introduction of a second dwelling will not lead to a significant reduction in the amount of open space or the overall sense of spaciousness in the area.

Moreover, De Kelders, as a dynamic area, is naturally evolving. The objective is to balance the long-term interests of the community by facilitating appropriate densification in line with sustainable development principles. The second dwelling proposed is not a radical shift in the character of the area but rather an example of responsible development that respects both the built form and the needs of the community.

RESPONSE FROM MUNICIPAL TOWN PLANNER

The applicant's comment is noted and agreed with. It must also be borne in mind that the subdivided portion will be consolidated, thus no additional cadastral units will be created, nor is it considered to densify the area to such an extent that it will adversely impact the area character. The proposal does not entail an increase or upgrade of development rights as the coverage would be the same, i.e. 50% of the erf, before and after consolidation. Development will also need to comply with the applicable height and building line parameters as contained in the Overstrand Land Use Scheme.

POINT OF OBJECTION

Overlay zones

RESPONSE FROM APPLICANT

The subject property is located within the designated urban edge, as demarcated in the Overstrand Municipality spatial planning frameworks. This urban edge is specifically intended to delineate areas suitable for urban development, including residential expansion, and to prevent urban sprawl into rural or environmentally sensitive areas. The presence of the property within this boundary confirms that it is appropriate for development of the nature proposed in the application.

Both the Heritage Protection Overlay Zone (HPOZ) and the Environmental Management Overlay Zone (EMOZ) were taken into account during the application process. It was found that the proposed development, the removal of a restrictive title deed condition to allow the erection of a second dwelling, is of a scale and character that will not have a negative impact on the objectives of either overlay zone. The property does not contain any formally protected heritage structures, nor is it situated within a visually or culturally sensitive heritage context. Similarly, no environmentally sensitive features, critical biodiversity areas, or ecological corridors are present on the erf that would be affected by the proposed development.

As such, no further environmental or heritage studies were required, and the development proposal is fully compliant with the municipal land use scheme and spatial development frameworks. It is important to note that the objector's property is similarly located within the urban edge and subject to the same planning regulations, and it would be unreasonable to suggest that unnecessary or unjustified studies should be imposed on the applicant when the property is zoned and situated specifically for residential use within the municipality's planned development footprint.

RESPONSE FROM MUNICIPAL TOWN PLANNER

Applicants comment is noted and agreed with.

POINT OF OBJECTION**Public benefit****RESPONSE FROM APPLICANT**

The assertion made by the objector that the proposed second dwelling constitutes speculative "beneficial densification" is not supported by the facts or by the application. The removal of the restrictive condition is not being sought for the benefit of the applicant alone but for the appropriate development of the property within the context of the existing zoning regulations and the designated urban edge.

Regarding the potential public benefit, the proposed development aligns with the municipal planning framework, which encourages sustainable development within the urban edge. Densification within areas already designated for urban growth is a fundamental principle of the municipality's spatial planning objectives, which aim to promote the efficient use of land and services, without leading to uncontrolled urban sprawl. The argument that the densification benefits the broader community lies in its contribution to sustainable residential growth, allowing for housing opportunities that are properly serviced and integrated into the existing urban fabric.

The objections concerning traffic congestion, noise, loss of privacy, and changes to the character of the neighbourhood are considered but are not substantiated by the nature of the proposed development and have been addressed throughout the document. The scale and character of the second dwelling is in line with the existing residential zoning and will not result in over-densification. The application is a minor increase in residential capacity that will be in keeping with the established character of the area.

In response to the specific concerns raised:

Traffic congestion and noise

As stated previously, the proposed development will not result in any significant increase in traffic congestion or noise levels. The location of the second dwelling is within an area that already accommodates residential activity. The municipality is also responsible for maintaining and upgrading roads and infrastructure in line with the increased development, and it is expected that the overall development within the urban edge will encourage improvements to the road network.

Diminished residential privacy and open space

The proposed second dwelling will not infringe upon the privacy or open space of surrounding properties. The layout of the development ensures that the second dwelling will be positioned in a manner that respects the existing character of the area and the privacy of neighbouring properties. Moreover, the site coverage remains well within allowable limits and ensures that there is no overdevelopment of the site.

Shift in architectural and visual identity of the area

The applicant has submitted proposed sketch plans together with the application that will ensure the second dwelling will be consistent with the visual identity of the area.

The development will not significantly alter the appearance of the area but will rather complement the existing residential structures.

Destabilisation of existing planning frameworks

The argument that the proposal will destabilise the planning framework is misplaced. The property is located within the urban edge, and the application seeks to remove a restrictive title deed condition that limits development, thereby allowing the property to be developed in line with the existing zoning's development parameters and the overall planning intentions for the area. The urban edge is specifically intended to accommodate sustainable growth and development, including the introduction of additional residential units.

The case law references cited by the objector, including *Trustees of the Simcha Trust v Da Cruz* and *Malan v City of Cape Town*, primarily relate to cases where development would result in adverse impacts on neighbouring properties or community rights. In this case, the proposed development complies with the zoning and municipal planning frameworks, which consider the overall benefit to the community. The argument that individual gain cannot outweigh the collective interests of the community is acknowledged, but this application does not undermine those interests, but it rather supports the broader planning objectives of sustainable urban growth within the urban edge.

The proposed development represents an appropriate and well-considered densification within the urban edge that aligns with broader municipal goals of sustainable growth and efficient land use. The concerns raised about the impact on the community and neighbourhood character have been addressed thoroughly in the application, and the proposal will not result in the negative outcomes described by the objector.

RESPONSE FROM MUNICIPAL TOWN PLANNER

Applicants comment is noted and agreed with.

To conclude, three of the five objections are specifically against the removal of the one dwelling unit restriction as per clause D.A(c) in the title deed of Erf 716, De Kelders and not the removal of the no subdivision clause D.B(e) in the title deed of Erf 716 De Kelders. The opinion is held that the one dwelling unit clause contributes to the low density, tranquil and purely residential character of De Kelders.

8. SUMMARY OF APPLICANT'S REPLY TO COMMENTS

N/A

9. MUNICIPAL ASSESSMENT OF COMMENTS

N/A

10. MUNICIPAL PLANNING EVALUATION (REFER TO RELEVANT CONSIDERATIONS GUIDELINE)

10.1 Background

N/A

10.2 (In)consistency with the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013)

The application is in line with the planning objectives applicable to this application.

Spatial Justice

Spatial justice refers to planning proposals that do not contribute towards the perpetuation of apartheid spatial development imbalances. The proposal is not considered to impact past spatial injustices.

Spatial Sustainability

Spatial sustainability refers to planning proposals that result in communities that are viable. This proposal to subdivide and consolidate intends to ensure the maximum potential of the subject property is unlocked.

Efficiency

The development maximizes the potential of the existing urban area, utilizing established infrastructure and minimizing the need for new construction, thus optimizing the use of space and resources, while maintaining the character and functionality of the area, ensuring that the development will not place additional strain on municipal resources.

Spatial Resilience

The proposal is not in conflict with any spatial planning policies or other OM regulations which is a hallmark of resilience.

Good Administration

The application followed the required planning procedures to ensure that land use activity is in line with municipal by-laws and the public participation process has been followed.

10.3 (In)consistency with the principles referred to in Chapter VI of the Land Use Planning Act, 2014 (Act 3 of 2014)

Same as Point 10.2 above.

10.4 (In)consistency with the IDP/Various levels of SDF's/Applicable policies

The property is situated within De Kelders, inside the urban edge in an area earmarked for urban development. The proposal is considered consistent with the SDF in that it contributes to optimum use of the property within service capacity constraints.

10.5 (In)consistency with guidelines prepared by the Provincial Minister

N/A

10.6 Impact on Municipal Engineering Services

The existing services are available and have been viewed positively by the Engineering Services Department, subject to conditions (see attached Annexure G).

10.7 Outcomes of investigations/applications i.t.o other legislation

The proposal does not trigger the provisions of NEMA.

The proposal does not trigger the provision of the National Heritage Resources Act.

The property is situated within the Heritage Protection Overlay Zone which will not be adversely impacted by the proposal. The proposal was referred to the Overstrand Heritage Committee who did not raise any objections.

The property is also situated within the Environmental Management Protection Overlay Zone, which will not be adversely impacted by the proposal. The application was referred to the Environmental Services Department, who did not raise any objections.

10.8 Existing and proposed zoning comparisons and considerations

The zoning of the application property is Residential Zone 1: Single Residential and will not be affected by the proposal. No departures from the normal development parameters are being applied for.

11. ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS

The title deed T51851/2023 applicable to Erf 716, De Kelders contains the following restrictions proposed for removal namely:

“D.A As being in favour of the registered owner of each erf in the Township:

(c) That not more than one dwelling, together with the necessary outbuildings and appurtenances be erected on this erf;

D.B As being in favour of the Administrator:

(e) That this erf shall not be subdivided except with the consent in writing of the Administrator.”

The removal of the above restrictive conditions will enable the proposed subdivision and subsequent consolidation and development of the properties in accordance with the provisions of the Land Use Scheme.

In terms of Section 39 (5) of LUPA the application for removal is motivated as follows:

The financial or other value of the rights

The retention of the current condition does not hold a value for the property owner, adjacent property owners or to the municipality as the removal of similar conditions and land use applications have been approved in the past. By allowing the subdivision and second dwelling unit, value is added to the area as more rates can be charged, more people can live in the area which in turn stimulates the economy of the area which allow for the housing demand to be stimulated and property values to increase.

Other factors which add value to the property market is the size, location and orientation (north, east, south and west) of the property.

Further, in terms of land use applications the municipality has to consider various other aspects with regard to forward planning.

The personal benefits which will accrue to the holder of rights and/or to the person seeking the removal

The one dwelling unit restriction was imposed in favour of all property owners within De Kelders, whilst the no subdivision condition was imposed in favour of the Administrator, i.e. Overstrand Municipality.

Although the applicant motivates that no person is personally benefitting, the property owner will benefit the proposed removal will enable subdivision and consolidation as well as the subsequent development of the properties in accordance with the provisions of the scheme regulations with a primary dwelling and second dwelling unit.

The social benefit of the restrictive condition remaining in place, and/or being removed/amended

Considering the fact that similar applications have been approved in the past and due to the Overstrand Municipality's Growth Management Strategy which promote densification through subdivision in the De Kelders suburb, there will be no social benefit should the conditions proposed for removal remain in place.

Will the removal, suspension or amendment completely remove all rights enjoyed by the beneficiary or only some of those rights?

Restive title deed conditions limiting the use of the properties to residential purposes only, as well as the coverage restriction will remain.

12.THE DESIRABILITY OF THE PROPOSAL**SUBDIVISION**

Both the adjoining properties had been subdivided in equal portions, similar to the application property. The proposal will create a remainder of 699m², which is in keeping with the character of the area.

As per the original township layout the 22 of 24 erven in the block between Front Street, Barnard Street and Steyn Street had an average erf size of ±1400m². Seven

of these erven had been subdivided in in equal portions. The erf size of the remainder as well as the consolidated property will thus be in keeping character of the area and not considered to impact upon vested rights. Most of the erven to the west of Steyn Street has an area of 595m², which is well below that of the proposal.

Having had regard to the letters of objection, most of the objectors did not object to the proposed subdivision and consolidation or the removal of the no subdivision clause from the title deed.

REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS

The proposed subdivision and removal of restrictive title deed conditions is consistent with the SDF that seeks to contain development within the urban edge, thereby making better / more efficient use of existing land in the urban edge, i.e. densification through subdivision and the construction of second dwellings.

The Overstrand Municipal Growth Management Strategy approved by Council gives effect to the SDF vision in that it promotes densification through subdivision, albeit at a scale which is not inconsistent with the character of the area.

The proposal complies with the current subdivision pattern that already occurred in the area the adjoining properties, nor is it considered to adversely affect vested rights of adjoining property owners, especially as the future development of the properties will be consistent with the Land Use Scheme development parameters in terms of building lines, coverage and height.

The application property has a 12m fall from the eastern rear boundary to the western street boundary. Thus, the opinion is held that the proposal will not have a significant impact upon vested rights of adjoining property owners, sufficient to warrant refusal of the application.

The removal of the second dwelling restriction from the title deed is not considered out of keeping with the character of the area, or De Kelders at large. Similar removals had been approved in the past in De Kelders. The one dwelling unit restriction of Erf 715 to the rear had also been removed.

The title deed conditions served to protect the character of the original township as per the applicant's motivation. These conditions did not keep track with current development patters / trends, planning policies and planning legislation. Continue urban sprawl is no longer the desired development pattern. Thus, densification in keeping with the area character in accordance with the SDF and OMGMS is considered acceptable as it has less impact on the natural environment and makes better / more efficient use of existing resources, land, services etc.

It must also be pointed out a second dwellings in accordance with the land use scheme cannot be alienated. Second dwellings are therefore not considered densification, although it serves to increase housing stock in the area that is more affordable. Also, the title deed permits outbuildings, that per definition includes staff accommodation or former servants' quarters. The latter do not qualify as a dwelling unit as a kitchen was not allowed (i.e. it is not self-contained dwelling unit). Over time, these servant's quarters were converted into self-contained dwelling units, also with several examples in De Kelders. The proposed second dwelling is therefore not considered to create an undesirable precedent.

The proposal is not to develop a guest house or bed and breakfast establishment as pointed out by the objectors. In accordance with the land use scheme provisions self-catering is a primary right, limited either to the primary dwelling or second dwelling unit, but not both. Thus, the opinion is held that the second dwelling if used for self-catering purposes will give rise to noise and disturbance, overlooking and loss of privacy to adjoining property owners is subjective. Also, several properties in the area are rented out on a self-catering basis without any known complaints.

The application was submitted, processed following public participation in accordance with the applicable legal framework, i.e. Section 35 of the Municipal Planning By-Law, also having had regard to the provisions of Section 39 of the Western Cape Land Use Planning Act, 2014 and Section 47 of the Spatial Planning Land Use Management Act, 2013. The proposal does not constitute arbitrary deprivation of property rights, since due process had been followed, also allowing interested and affect parties to submit comment / objections. Although it is correct that the municipal land use scheme does not override restrictive conditions of title, it is not impossible given the present as demonstrated, which will be further discussed in the evaluation below.

Given the above evaluation the opinion is held that if the proposed subdivision, consolidation and removal of restrictive conditions as proposed is desirable as it will allow the property owner to in future develop his property in line with the densification strategy of the Overstrand Municipality and the Zoning Scheme parameters.

13. RECOMMENDATION

1. that the objections **be noted**;
2. that the application for **removal of restrictive title deed conditions** D.A(c) and D.B(e) contained in title deed T51851/2023 applicable to Erf 716, De Kelders in terms of Section 16(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law), **be approved** in terms of the provisions of Section 61 of the By-law;
3. that the application for **subdivision** in terms of Section 16(2)(d) of the By-Law in order to subdivide the property into two portions, namely Portion A, approximately 699m² and a Remainder approximately 699m² in extent, **be approved** in terms of the provisions of Section 61 of the By-law;
4. that the application for **consolidation** in terms of Section 16(2)(e) of the By-Law of Portion A with Erf 715, De Kelders to create a consolidated property of approximately 1387m², **be approved** in terms of the provisions of Section 61 of the By-law;
5. that the decisions in paragraphs 2. to 4. above above be subject to the following conditions:
 - (a) that the approval is only for the subdivision and consolidation as indicated on the Subdivisional and Consolidation Plan as submitted with the application;

- (b) that building plans be submitted to the Building Department for approval, and that all conditions of the Building – and the Fire Department be complied with at that stage;
 - (c) that the conditions in the Services Report (attached as Annexure G), be complied with
 - (d) that this approval does not absolve the applicant from compliance with any other relevant legislation, and
 - (e) that all other development parameters as prescribed in the relevant Zoning Scheme be complied with;
6. that the applicant and objectors be notified of their right of appeal in terms of Section 78 of the Overstrand Municipality Amendment By-law on Land Use Planning, 2020 with regard to the above conditions of approval.

14. REASONS FOR RECOMMENDATION

- ❖ Proposal is consistent with the SDF and Overstrand Municipal Growth Management Strategy.
- ❖ The proposed subdivision is in line with the applicable municipal and provincial planning policy and will make more efficient use of brownfield land within the urban edge.
- ❖ The public at large bought into the SDF, Overstrand Growth Management Strategy and Overstrand Land Use Scheme.
- ❖ Proposal is consistent with the Overstrand Land Use Scheme.
- ❖ Proposal is consistent with the Planning Principles in terms of LUPA and SPLUMA.
- ❖ The proposal is not considered to unacceptably detract from vested rights of adjoining property owners, nor the character of the area.
- ❖ The application was processed having had regard to the requirement of the By-Law, Lupa and SPLUMA.

15. ANNEXURES

Annexure A:	Locality Plan
Annexure B:	Motivation Report
Annexure C:	Subdivision and Consolidation Plan
Annexure D:	Title deed T51851/2023
Annexure E:	Objections received
Annexure F:	Comment on objections
Annexure G:	Services Report
Annexure H:	GIS extract of subdivisions in De Kelders

SIGNATURES**AUTHOR**

Name:

SW VAN DER MERWE

SACPLAN registration number:

A/1850/2014

Signature:

Date:

1. Locality Plan Remainder of Erf 715 & Erf 716 - De Kelders

Plan prepared by: Thian Jansen

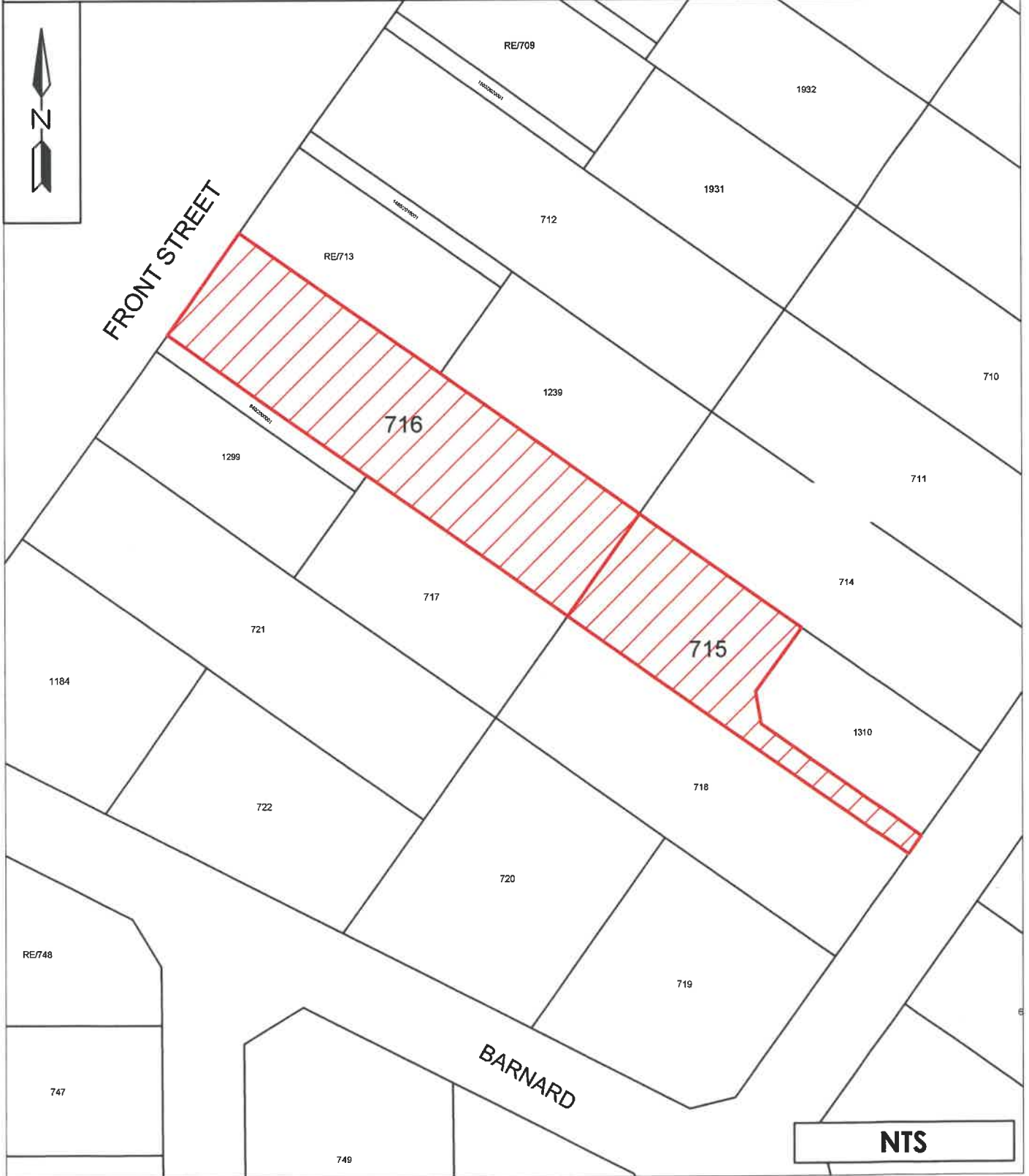
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Project Office
Town Planning & Project Management





MOTIVATION

1. ABBREVIATIONS

OM	Overstrand Municipality
OMLUS	Overstrand Municipality Land Use Scheme, 2020
BY-LAW	Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020
PSDF	Western Cape Provincial Spatial Development Framework, 2014
MSDF	Overstrand Spatial Development Framework, 2020
SR1	Residential Zone 1: Single Residential

2. PROPERTY DETAILS

Erf Number	Remainder of Erf 715	Erf 716
Extent	688m ²	1398m ²
Zoning	Residential Zone 1: Single Residential	

3. BACKGROUND AND INTENT

Remainder of Erf 715 & Erf 716 De Kelders, hereafter referred to as the subject properties, is located at 52 Steyn Street & 25 Front Street, De Kelders (refer to **Plan 1 - Locality Plan**). The property owners appointed WRAP Project Office to submit a land use application on their behalf, refer to **Annexure A - Powers of Attorney**. The owner acquired Erf 716 De Kelders in 2023 with the intent to subdivide and develop the portion closest to the ocean. The owners of the Remainder of Erf 715 De Kelders, located behind Erf 716 De Kelders will be purchasing the subdivided portion.

Both properties are zoned Residential Zone 1: Single Residential (SR1). Erf 716 De Kelders measures 1 398m² in extent and the Remainder of Erf 715 De Kelders measures 688m² both properties are undeveloped. The properties are bounded by single residential erven.

As the title deed restricts the intention of the owner, the proposal is to remove the restrictive conditions from the title deed of Erf 716 De Kelders.

As a result, approval of the following applications is required:

- Removal of restrictive title deed conditions D(A)(c) & D(B)(e);
- Subdivision of Erf 716 De Kelders into two equal portions; and
- Consolidation of the subdivided portion with the Remainder of Erf 715 De Kelders.



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4. PROCEDURE TO ACHIEVE THE OWNER'S INTENT

WRAP compiled this report to ensure that the owner's requirements are met.

The following is proposed:

4.1 Removal of a restrictive title deed condition D(A)(c) & D(B)(e) of Erf 716 De Kelders to allow the proposed subdivision and second dwelling;

There are two title deed conditions that prohibits the land use rights necessary for the purposes of subdividing the property and the rationale for the removal of this condition is discussed below:

Restrictive Title Deed Conditions
Condition D(A)(c) – <i>"That not more than one dwelling, together with the necessary outbuilding and appurtenances be erected on this erf."</i>
Condition D(B)(e) – <i>"That this erf shall not be subdivided except with the consent in writing of the Administrator."</i>

The rationale for the removal of the restrictive title deed condition is to enable the owner to achieve her intent highlighted in Section 3 of this report. The relevant title deed condition is restricting the intended use for the of the property, although the subdivision of this residential property is consistent with the planning policies and the average size and density of the surrounding residential properties are being considered. The reasoning for the removal of these restrictive title deed conditions will be discussed in detail in Section 7 of this report.

4.2 Subdivision of Erf 716, De Kelders into Portion A, $\pm 699\text{m}^2$ and the Remainder, $\pm 699\text{m}^2$;

Erf 716 De Kelders is proposed to be subdivided into two (2) portions of approximate equal size. The owner has a vision to develop an oceanfront dwelling on the Remainder and wants to sell the proposed subdivided portion (Portion A) to generate a revenue and subsequently fund the future oceanfront dwelling unit. The two portions will therefore have the following approximate extents:

Erf 716 De Kelders	1398m ²
Proposed Remainder of Erf 716 De Kelders	$\pm 699\text{m}^2$
Proposed Portion A (A portion of Erf 716 De Kelders)	$\pm 699\text{m}^2$

The proposed subdivision is not expected to be out of the ordinary as various erven in the surrounding area have already been subdivided varying in size from $\pm 664\text{m}^2$ to 700m^2 . Properties directly surrounding Erf 716 De Kelders have been subdivided, namely Erf 713, Erf 1239, Erf 1299, Erf 717, Remainder of Erf 715 and Erf 1210 De Kelders. Therefore, this proposal fits in with the surrounding area. The zoning of both properties will remain Residential Zone 1: Single Residential Zone. No access for Portion A is being proposed as Access to Portion A will be provided as later discussed in Section 4.3 below.



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4.3 Consolidation of Portion A (a Portion of Erf 716 De Kelders) & the Remainder of Erf 715 De Kelders;

The owners of the subject properties have come to an agreement, and the proposal is to consolidate the subdivided portion (Portion A) with the Remainder of Erf 715, De Kelders. Located at the rear of Erf 716 De Kelders, the Remainder of Erf 715 De Kelders is the ideal property to acquire the subdivided portion as it allows the owners to eventually construct a dwelling closer to the ocean and maximize the views.

Remainder of Erf 715 De Kelders	688m ²
Portion A (A portion of Erf 716 De Kelders)	±699m ²
Consolidated Erf (Portion A & Remainder of Erf 715 De Kelders)	±1387m ²

As the Remainder of Erf 715 De Kelders has an existing access via Steyn Street, there is no need for a new access to the proposed consolidated erf.

5. LAND USE ENVIRONMENT

The subject properties are located in De Kelders, an established residential area in Gansbaai. The property is surrounded by other Residential Zone 1: Single Residential properties and Public Streets. The surrounding area's zonings are illustrated in **Plan 2** (zoning plan).

6. TITLE DEED

Title deed T78248/2002 of the Remainder of Erf 715 De Kelders (refer **Annexure B**) was perused and there are no restrictive conditions that prevent the proposal to consolidate the properties.

Title deed T51851/2023 of Erf 716 De Kelders (refer **Annexure B**) was also perused, and as discussed in Section 4.1 of the report, two restrictive conditions were found which requires removal to allow the owner to utilise the property to its full potential.

Title deed restrictive conditions

Condition D(A)(c) – "That not more than one dwelling, together with the necessary outbuilding and appurtenances be erected on this erf."

Condition D(B)(e) – "That this erf shall not be subdivided except with the consent in writing of the Administrator."

Motivation

The rationale for the proposed removal

Erf 716 De Kelders is currently a vacant erf. The property owner wishes to subdivide the property into two portions in order to develop the one portion and sell the other portion once approval is received. Her intention is to construct two dwellings thereon, one for her and a second 'granny flat'.



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The proposed subdivision will create an additional erf momentarily and will subsequently be consolidated with the property at the rear of Erf 716 De Kelders. Considering the intent behind the restrictive title conditions aimed at preserving the character of the De Kelders Township, it is believed that the proposed subdivision and intention to develop a second dwelling would not significantly diminish this objective, but rather, seen as a means to enhance the area by introducing densification in a beneficial manner, adding another property within a high-quality and sustainable environment.

Title deed condition background

The restrictive title deed condition was registered in favour of all property owners in De Kelders. The prohibition of subdivision clause as per paragraph D(A)(c) & D(B)(e) is a historic establishment condition that was originally intended to preserve the character of the area and bounds all the property owners in De Kelders and also overrides the Land Use Scheme Regulations. Any amendment or removal of this condition requires the consent of the Administrator. This authority now vests with the Overstrand Municipality.

Status quo

The property is currently vacant. Therefore, it is evident that the proposal will not have any adverse impact on the present state of erven, but development would enhance the subject properties and the surrounding area, once developed.

In terms of the requirements of LUPA, the following is addressed in terms of Section 39(5)(a-f):

LUPA, Section 39(5) (a-f)	
<i>(a) the financial or other value of the rights in terms of the restrictive condition enjoyed by a person or entity, irrespective of whether these rights are personal or vest in the person as the owner of a dominant tenement;</i>	No person or entity will be affected financially by the removal of this restrictive title deed condition.
<i>(b) the personal benefits which accrue to the holder of rights in terms of the restrictive condition;</i>	No person is benefitting personally from this condition as this condition is only restricting the property owner to subdivide and development the property.
<i>(c) the personal benefits which will accrue to the person seeking the removal, suspension or amendment of the restrictive condition if it is removed, suspended or amended;</i>	The property owner will be gaining from the removal of the restrictive condition as it will allow her to and development the property, sell one portion and in return accrue financial benefit.
<i>(d) the social benefit of the restrictive condition remaining in place in its existing form;</i> <i>(e) the social benefit of the removal, suspension or amendment of the restrictive condition; and</i>	This restrictive condition does not have a social benefit.



MOTIVATION

(f) whether the removal, suspension or amendment of the restrictive condition will completely remove all rights enjoyed by the beneficiary or only some of those rights.	There is no specific beneficiary of this condition, and no person or entity will be affected if this is removed.
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7. ZONING

The following zoning parameters were assessed in conjunction with the SR1 OMLUS zoning as this is a relevant consideration in terms of Section 66 (1) (q) of the OM By-Law:

RESIDENTIAL ZONE 1: SINGLE RESIDENTIAL			
REMAINDER OF ERF 715 DE KELDERS & ERF 716 DE KELDERS			
	Parameters	Proposal	Comply/ deviate
Primary use	Crèche, Dwelling House , Guest Rooms, Home Occupation, Second Dwelling Unit and Self-Catering.	Dwelling House Second dwelling Unit	Comply Will comply once restrictive title deed conditions is removed.
Consent use	Day Care Centre, Green House, Guest House, House Shop, Institution, Place of Instruction, Place of Worship, Residential Building, and Intensive Horticulture.	N/A	N/A
Development parameters			
Coverage	The maximum coverage for all buildings on the land unit is determined in accordance with the net erf area: 400m ² and greater = 50%	This is noted and will be complied with.	Comply
Building lines	(i) The street building line is determined in accordance with the net erf area: <ul style="list-style-type: none"> • 400 m² and greater = 4m (ii) The side and rear building lines are determined in accordance with the net erf area: <ul style="list-style-type: none"> • Greater than 400 m² = 2m 	This is noted and will be complied with.	Comply
Height	The maximum height of a building, measured from the base level to the top of the structure, is 8,0 m.	This is noted and will be complied with.	Comply
Garages and carports	Garages and carports may be constructed within building lines in accordance with Chapter 16.1.2.	This is noted and will be complied with.	Comply



MOTIVATION

8. SERVICES

The availability of services is a relevant consideration in terms of Section 42(1)(c)(v) of SPLUMA and is herewith illustrated.

Electricity, Water, Sewage and Solid Waste

The subject properties are connected to the existing networks in the area, which include electricity, water, and sewage. The proposal of this application is not anticipated to have an impact on existing services, as no additional properties will be created, meaning no additional impact on the existing networks is expected.

Solid waste is collected every week by the OM.

Access and Egress

Access and egress to the properties at present are gained from Front Street & Steyn Street. Should the application be approved, both properties' access and egress will remain unchanged.

9. NEED AND DESIRABILITY

The need and desirability of the approval and implementation of this proposal in accordance with Section 66(1)(c) of the OM By-Law can be illustrated as follow:

Need and desirability.

The need for the land use application is a result of addressing all the land use requirements and ensuring the property meets the needs of the owner. To achieve this, the proposed applications are required.

Socio-economic impact	The removal of the restrictive title deed condition, subdivision and consolidation is not predicted to have a long-term socio-economic impact.
Compatibility with surrounding uses	It is not predicted that the proposal of the subdivision and consolidation is out of line with the surrounding area as there have been previous subdivisions of the same merit approved in the immediate vicinity.
Impact on the external engineering services	Refer to Section 9.
Impact on safety, health and wellbeing of the surrounding community	It is not predicted that the proposal will have an impact on safety, health, and wellbeing of the surrounding community.
Impact on heritage	The subject properties are not listed in the OM Heritage Register.
Impact on the biophysical environment	It is not predicted that the proposal will have an impact on the biophysical environment.
Traffic impacts, parking, access and other transport related considerations	The proposal will not have an impact on traffic, parking or access.



MOTIVATION

Impact on views, sunlight and character of the area

The subject properties are located in a residential setting and the properties are vacant at present. However, no additional rights are applied for than what is allowed within the zoning parameters for the Residential Zone 1: Single Residential zoning within the OMLUS.

The current views (and not views due to the slope of the properties) might be impacted once development takes place as these properties are vacant. As previously mentioned, there are several subdivisions approved within the immediate vicinity with the same merit which includes right of way servitudes. Therefore, the proposal will not have an impact on the character of the area.

Economic impact

The proposal is expected to have a short-term economic impact enabling the property owner to sell the one portion, but no long-term economic impact.

Opportunity cost

An opportunity cost in the context of land use planning refers to a development proposal that leads to the devaluation or foregoing of valued land use rights of interested and affected parties when an application is approved. The proposal is not predicted to have a negative impact on surrounding properties.

Environmental impact

The subject properties are located within an environmentally important area. Refer to Section 10 below.

10. POLICIES AND REGULATIONS

10.1 Overstrand Municipality Environmental Protection Overlay Zone (EMOZ)

Erf 716 is located within the Coastal Protection Zone and to ensure compliance with the guidelines set out in the EMOZ, the application was evaluated in terms of the provisions of Schedule A & B of the Environmental Management Overlay Zone 2020:

SCHEDULE A PROHIBITED ACTIVITIES IN OVERSTRAND ENVIRONMENTAL MANAGEMENT OVERLAY ZONES		
Prohibited Activity	Applicable Environmental Management Overlay Zone (EMOZ)	Applicable to the application or not
	Coastal	
Agricultural practices within this EMOZ which may cause water logging and siltation.	X	N/A
Planting or harbouring of declared emerging weeds on properties within and adjacent to this EMOZ.	X	N/A
Development or agriculture on slopes steeper than 1:4.	X	N/A
Establishment of Informal settlements or Temporary Relocation Areas.	X	N/A

File 22/141
REMAINDER OF ERF 715 & 716 DE KELDERS



MOTIVATION

No land user within this EMOZ may utilise the vegetation in a vlei, marsh or within the flood area of watercourse in a manner that may cause the deterioration or damage to the natural agricultural resources.	X	N/A
Placement of religious symbols or memorabilia.	X	N/A
Harvesting /collection of kelp / seaweed in municipal designated "no-take" zones.	X	N/A
Harvesting, collection, moving, loading drying of kelp /seaweed, with a valid Seaweed Harvesting Permit or an exemption in terms of Section 81 or the MLRRA issued by the DAFF.	X	N/A
Stockpiling, drying, processing or loading of marine resources beyond areas designated, demarcated and signposted by the Municipal Council for such purposes.	X	N/A
Modification of the littoral active zone / functional dune systems in absence of approved management plans.	X	N/A
Feeding, disturbing / pursuit of fauna.	X	N/A
Disturbance, modification or destruction of the environment or species within special management areas designated, demarcated and signposted by the Municipal Council from time to time.	X	N/A
Defacing/damaging / removing of any notice, sign, barrier building or other infrastructure.	X	N/A
Playing or tampering with any rope, float, buoy, vessel, shelter or similar life - saving device.		N/A
Staying overnight.	X	It is a residential property.
The discharging of domestic effluent / grey water into all natural systems.	X	N/A
Tampering with security / surveillance infrastructure.	X	N/A
Defacing of rocky outcrops and placement of memorial plaques, religious symbols or structures on natural features.	X	N/A
Graffiti, vandalism or damaging of municipal infrastructure.	X	N/A
Littering	X	N/A
Disposal of cigarette butts, ash or other hazardous materials in any place or manner other than a receptacle designated for such items	X	N/A
Dog walking / exercising of dogs in non- designated zones.	X	N/A

SCHEDULE B ACTIVITIES ONLY PERMITTED WITH COUNCIL CONSENT IN OVERSTRAND ENVIRONMENTAL OVERLAY ZONES		
A) Activities Only Permitted With Council Consent	Applicable Environmental Management Overlay Zone (EMOZ)	Applicable to the application or not
		Coastal



MOTIVATION

Permission for the utilization of access routes to permitted kelp / seaweed harvesting sites.	X	N/A
Removal or destruction of vegetation which is protected and/or of conservation concern.	X	N/A
Dune maintenance on private land as per approved dune maintenance management plans.	X	N/A
Excavation and destruction or removal of substrate (soil, substrate, rock, shellgrit, dune sediment, mineral deposits).	X	N/A
Discharging of pool backwashing or untreated grey water or the channelling of storm water into open spaces without the necessary approval from the Municipality.	X	N/A
B) Permit Upon Approval By Delegated Authority and / Receipt of Tariff	Applicable Environmental Management Overlay Zone (EMOZ)	Applicable to the application or not
	Coastal	
Installation of conservancy tanks or biological treatment plants within 50 metres from the edge of a watercourse / wetland.	X	N/A
Access from private properties to open spaces, including the removal of vegetation and the establishment of paths, structures and infrastructure.	X	N/A
Commercial filming.	X	N/A
Construction or placement of any temporary object, building, shelter, path or structure.	X	N/A
Use of engine or motor driven vehicles, remotely piloted aircraft or any other means of transport or other conveyances beyond designated, demarcated and signposted areas.	X	N/A
Launching of vessels at registered launch sites.		N/A
C) Council Authorisation Pending Consent Use Application / Lease Agreement / Applicable Tariffs as applicable	Applicable Environmental Management Overlay Zone (EMOZ)	Applicable to the application or not
	Coastal	
Buildings / Structures associated with: Taking of water, storing of water, impeding or diverting flow, stream flow reduction, altering the bed, banks, course characteristics, outflow structures or discharge pipes.	X	N/A
Buildings / Structures associated with: Taking of water, storing of water, impeding or diverting flow, stream flow reduction, altering the bed, banks, course characteristics, outflow structures or discharge pipes.	X	N/A
Application for the designation of industrial sites and activities associated with the seaweed harvesting, collection, drying, transport and processing fishery.	X	N/A

File 22/141
REMAINDER OF ERF 715 & 716 DE KELDERS



MOTIVATION

Encroachment of private buildings, structures, infrastructure, access routes.	X	N/A
Commercial Harvesting/collection and removal of any natural resource.	X	N/A
Construction or placement of any permanent object, building, shelter, pathway or structure.	X	The properties will be developed.

10.2 Overstrand Municipality Heritage Protection Overlay Zone (HPOZ)

Erf 716 De Kelders is located within the Coastal Strip HPOZ, the purpose of which is to ensure that any land use application complies with the existing character and contextual significance:

- To protect the natural, environmental and scenic qualities along the coastal strip;
- To protect lateral views between the mountain and coastline by ensuring the continuation of existing view lines and by controlling the massing and form of buildings adjacent to the coastal strip;
- To protect and enhance the nature of the transition zone between the built fabric along the coastal strip, including the first line of erven facing the coast, the coastal walkway and the coastline.

The proposal is not expected to have a negative effect on the HPOZ due to the proposed subdivided erven still having the same zoning as before the subdivision and the subject properties being vacant.

10.3 Spatial Planning Policies

This proposal is not in conflict with any provisions of the Western Cape Provincial Spatial Development Framework, 2014 or the Overstrand Spatial Development Framework, 2020.

11. PLANNING PRINCIPLES

Chapter 2 of SPLUMA contains 5 uncompromisable planning principles by which each development application must be guided by. Policy proposals in SPLUMA which are pertinent to this proposal are recorded below:

Spatial justice

Spatial justice refers to planning proposals that do not contribute towards the perpetuation of apartheid spatial development imbalances. This proposal to subdivide and consolidate is not predicted to influence past spatial injustices.

Spatial sustainability and Efficiency

Spatial sustainability refers to planning proposals that result in communities that are viable. This proposal to subdivide and consolidate intends to ensure the maximum potential of the subject property is unlocked.



MOTIVATION

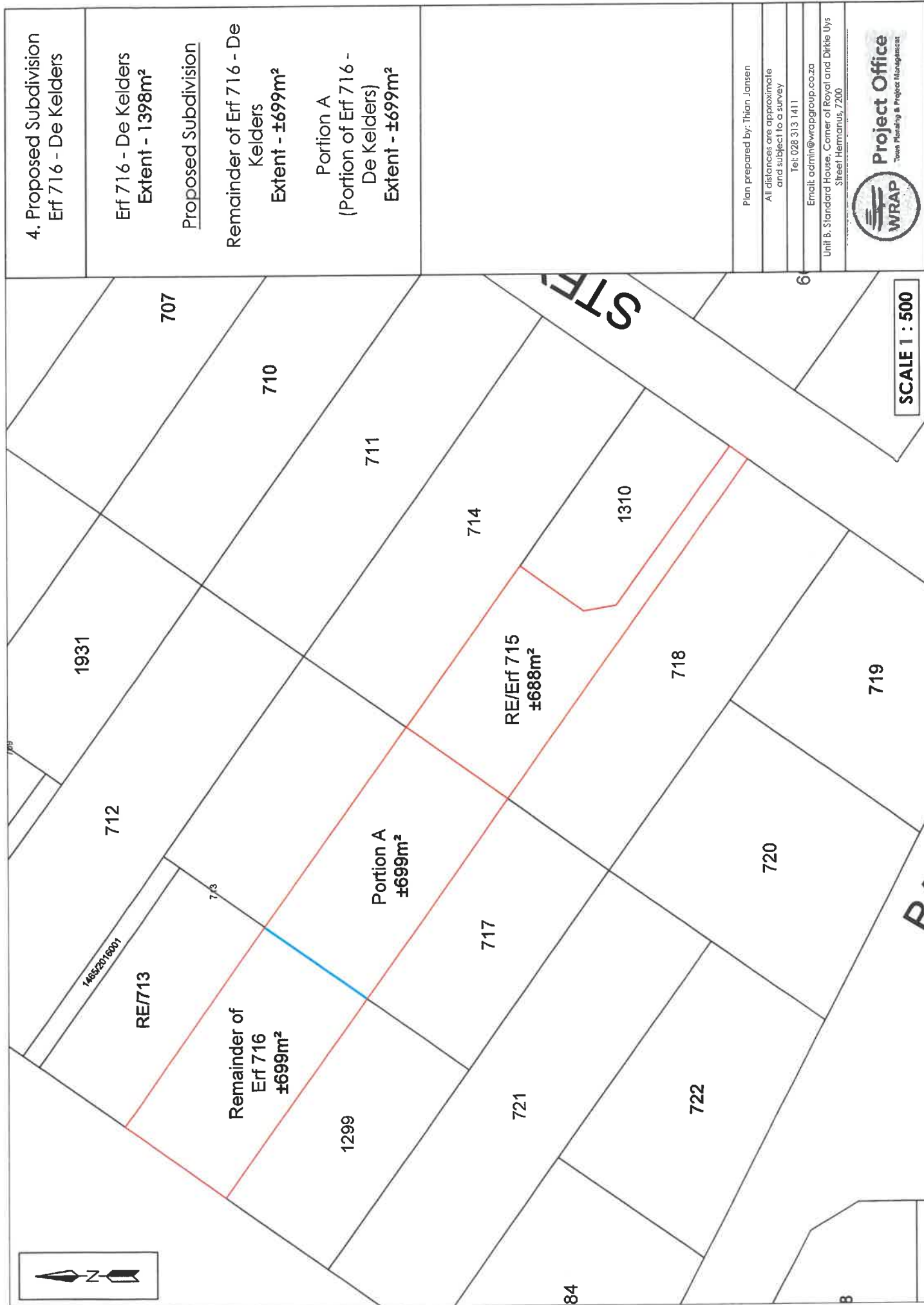
Spatial resilience

This proposal is not in conflict with any spatial planning policies or other OM regulations which is a hallmark of resilience.

Good administration

The OM has a credible track record of good administration regarding the method of public participation. Public participation forms an integral part of the land use planning process.

The public participation process provides people who may be affected by the proposal with an opportunity to provide comment and to raise issues of concern about the proposal or make possible suggestions that may result in an enhanced outcome of which both parties benefit. Comments will be reviewed and considered after which it will be addressed accordingly.



4. Proposed Subdivision
Erf 716 - De Kelders

Erf 716 - De Kelders
Extent - 1398m²

Proposed Subdivision

Remainder of Erf 716 - De
Kelders
Extent - ±699m²

Portion A
(Portion of Erf 716 -
De Kelders)
Extent - ±699m²

Plan prepared by: Thian Jansen

All distances are approximate
and subject to a survey

Tel: 028 313 1411

Email: admin@wrapgroup.co.za

Unit B, Standard House, Corner of Royal and Dittie Uys
Street, Hermanus, 7200



Project Office
Town Planning & Project Management

SCALE 1 : 500

320

Van Wyk Van Heerden Attorneys
296 Main Road
Paarl
7646

Prepared by me

CONVEYANCER
CARLA GELDENHUYS (86546)

Deeds Office Registration fees as per Act 47 of 1937		
	Amount	Office Fee
Purchase Price	R. 3 500 000,00	20/4,00
Reason for exemption	Category Exemption	Exemption i.t.o. Sec/Reg Act/Proc

VERBIND		MORTGAGED	
R. 2 100 000,00			
000026107 / 2023			
2023-11-30			

DATA / VERIFY
04 DEC 2023
Nomzamo Siyoko

7000051851 / 2023

DEED OF TRANSFER

BE IT HEREBY MADE KNOWN THAT

ANTON LUTHER POSTHUMUS (LPCM No. 89715)

appeared before me, REGISTRAR OF DEEDS at CAPE TOWN, the said appearer being duly authorised thereto by Powers of Attorney granted to him/her by

- The Executor in the Estate Late HEINRICH CHARL LINGENFELDER, Estate Number 21091/2022 and HESTER ELIZABETH HAVENGA, Identity Number 560530 0101 08 7, Unmarried, as surviving spouse of Late HEINRICH CHARL LINGENFELDER

which said Powers of Attorney were signed at Worcester on 10 August 2023 and at Crowley, England on 10 August 2023 respectively

DATA / CAPTURE
04-12-2023
VUYELWA LAMANI

FL

Page 2

2. **HERCULES JOHANNES NAUDE**
Identity Number 610807 5075 08 0
Married, which marriage is governed by the laws of ENGLAND and duly
assisted herein by his spouse, KELLIE ANN NAUDE, born on
23 June 1970, as far as needs be

which said Power of Attorney was signed at Port Orange, Florida on 6 September 2023

And the appearer declared that his/her said principal had, on 18 May 2023, truly and legally sold by Private Treaty, and that he/she, the said Appearer, in his/her capacity aforesaid, did, by virtue of these presents, cede and transfer to and on behalf of:

VIRGINIA BUSER
Identity Number 710621 0084 08 1
Unmarried

her Heirs, Executors, Administrators or Assigns, in full and free property

ERF 716 DE KELDERS
 IN THE OVERSTRAND MUNICIPALITY
 DIVISION CALEDON
 PROVINCE OF THE WESTERN CAPE

IN EXTENT 1398 (ONE THOUSAND THREE HUNDRED AND NINETY EIGHT) Square metres

FIRST TRANSFERRED by Deed of Transfer Number T17576/1945 with Diagram Number 4026/1945 relating thereto and held by Deed of Transfer Number T29763/1995 and Deed of Transfer Number T3829/2015

- A. **SUBJECT** to the conditions as referred to in Certificate of Township Title Number T1067/1940.
- B. **SUBJECT FURTHER** to and with the benefit of the Servitude referred to in the endorsement dated 12th June 1939 made on Deed of Transfer Number T3733/1920, which reads as follows:

"Remainder. Registration of Servitude. By Deeds of Transfer Number 5993 dated 12.6.39, 12705 dated 17.11.1939, Number 13657 dated 14.12.1939 certain restrictions over the land thereby conveyed including grazing, water rights, trading and fishing have been imposed in favour of and against the remainder held hereunder, as will more fully appear on reference to the said Deed of transfer."

Page 3

C. SUBJECT FURTHER to and with the benefit of the following special conditions contained in said Deed of Transfer Number T17576/1945, imposed and enforceable by the DE KELDERS SYNDICATE LIMITED for its own benefit as owner of the remainder of the land described in Deeds of Transfer Numbers T1255/1935 and T3733/1920, and said Certificate of Townships Title Number T1067/1940 and for the benefit of the future owners thereof of any part thereof all of whom either jointly or singly shall be entitled to enforce such conditions together with the conditions imposed by the Administrator in terms of his approval of the application to establish the said Township, namely:

1. No fires shall be lighted on unoccupied spaces within the boundary of the lots hereby sold, save by or with the written sanction of the Transferor.
2. The Transferor reserves to itself the right at any time hereafter to the free and undisturbed passage of electric, telegraph or telephone wire over and upon any portion of the above lots with further right of causing them to be affixed to any building or erection not less than ten (10) feet from the ground, with access at any time to such wires for the purpose of removal or maintenance.
3. The Transferor reserves to itself as owner of any unsold lots in the Township and as owner of any other land held by it by Deed of Transfer Number T3733/1920, the sole and exclusive right to use of all water arising on or flowing over the said lots or erven, and also to any water to which such lots or erven may be entitled as riparian property or by servitude or agreement and the Transferee and his successors in title shall not be entitled to any such water, and the transferee is hereby deprived of any rights to water as owner of land riparian to any stream flowing over or under the land.
4.
5. That there shall not be erected on any portion of the above lot or lots any building, the plans and specification of which have not, prior to the commencement of building operations, been submitted to and approved by the Transferor in writing."

D. SUBJECT FURTHER to the conditions contained in said Deed of Transfer Number T17576/1945 imposed by the Administrator in pursuance of the provisions of Ordinance Number 33 of 1934 relating inter alia to future amendments in pursuance of Section 18 and the duty of the Local Authority to enforce observance of these conditions in pursuance of Section 61 and which is also enforceable in lay be the owner of any erf in the Township and their respective successors in title, and which have been imposed as follows:

- A. As being in favour of the registered owner of each erf in the Township:
 - (a) That this erf be used for residential purposes only.
 - (b) That not more than one half the area of this erf be built upon.
 - (c) That not more than one dwelling, together with the necessary outbuildings and appurtenances be erected on this erf.

Page 4

(d) That no building shall be erected within 4,72m of any street line which forms a boundary of this erf or within 1,57m of the boundary of any adjoining erf, provided that this latter restriction shall not apply to the common boundary or erven held as one erf under consolidated title.

B. As being in favour of the Administrator:

(e) That this erf shall not be subdivided except with the consent in writing of the Administrator.

(f) That the owner of this Erf – whether the Transferor or any future owner – shall be obliged to allow the drainage and sewerage of any other erf or erven to be conveyed over such erf if deemed necessary by the local authority that may hereafter be constituted for the township and in such manner and in such position as may from time to time be reasonably required by that authority.

(g) That the owner of this erf – whether the Transferor or any future owner – shall be obliged without compensation to remove any septic tank installed thereon after one month's notice has been given by the local authority that may hereafter be constituted for the township."

TS



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

- 1. Estate Late HEINRICH CHARL LINGENFELDER
- 2. HERCULES JOHANNES NAUDE, Married as aforesaid

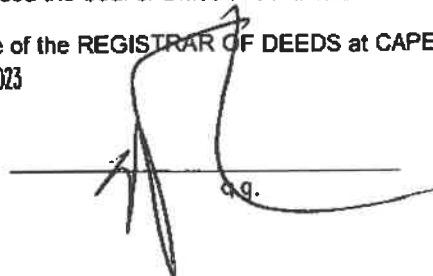
heretofore had to the premises, did in consequence also acknowledge them to be entirely dispossessed of, and disentitled to the same, and that by virtue of these presents, the said

VIRGINIA BUSER, Unmarried

her Heirs, Executors, Administrators or Assigns, now is and henceforth shall be entitled thereto, conformably to local custom, the State, however reserving its rights, and finally acknowledging the purchase price to be the sum of R3 500 000,00 (THREE MILLION FIVE HUNDRED THOUSAND RAND).

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

THUS DONE and EXECUTED at the Office of the REGISTRAR OF DEEDS at CAPE TOWN on 30 NOV 2023



Handwritten signature of the Registrar, appearing as a stylized 'R' with a long horizontal stroke extending to the right.

In my presence



Handwritten signature of the Registrar, appearing as a stylized 'R' with a long horizontal stroke extending to the right.

REGISTRAR OF DEEDS

Handwritten mark or signature in the bottom left corner.

Zenobia Moolman-Campbell & Jeffrey Allen Campbell
 Erf 717
 29 Front Street
 De Kelders
 7230

27 March 2025

The Town Planner
 Mr. SW van der Merwe
 Overstrand Municipality
 16 Paterson Street,
 Hermanus

Email: alida@overstrand.gov.za



TP - A Theart
 (S vld merke)

Dear Mr van der Merwe,

**ERF 715, 25 FRONT STREET & ERF 716, 54 STEYN STREET, DE KELDERS:
 APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS, SUBDIVISION AND
 CONSOLIDATION**

The above application brought by Messrs Wrap Project Office on behalf of Dr Virginia Buser and Novel Idea Trading 113 Cc refers.

We are the owners of the dwelling erected on stand 717, 29 Front Street, De Kelders, which is adjacent to stand 716. Our contact details are:

As far as the said application is concerned, we respond as follows:

Subdivision: No objection to amending Condition D(B)(e) contained in Title Deed T51851/2023 to allow the subdivision of stand 716;

Consolidation: No objection to the proposed consolidation of Portion A (a Portion of Erf 716 De Kelders) and the remainder of Erf 715 De Kelders;

Erection of a second dwelling: Removal of Condition D(A)(c) contained in Title Deed T51851/2023 – "That not more than one dwelling, together with the necessary outbuildings and appurtenances be erected on this erf." is opposed.

FILE NO. Eryen 7156 ✓
716 - GDK
SCAN NO.
COLLABORATOR NO.
2633820

The Applicant recently acquired our property in De Kelders (13 Killarney Street), which is to become her permanent residence as from May 2025. The first and second dwellings to be erected on Erf 716 are not to be occupied by the owner, but are to be rented out, either to two sets of tenants, or the dwellings could be rented out as guest houses on a short-term basis (AirBnB model), which will be very disruptive to the neighbourhood. Erecting two dwellings on the property could also result in the maximum coverage for all buildings on the property as per regulations being exceeded. The same model is to be applied to Erf 1299 De Kelders, which application we are also opposing.

We look forward to receiving a formal acknowledgement of this objection to an amendment of Condition D(A)(c) contained in Title Deed T51851/2023, i.e. erection of a second dwelling, as well as being informed of any approvals granted to the applicant.

Your sincerely



Zenobia Moolman-Campbell & Jeffrey Allen Campbell
Owners of Erf 717, De Kelders





Neil Rossouw
33 Steyn Street
De Kelders, 7220

8 April 2025

The Municipal Manager
Overstrand Municipality
Planning Department
16 Paterson Street, Hermanus

Email: alida@overstrand.gov.za

FILE NO. Erven 715 + 716 GDK + ERF 1299 GDK
SCAN NO.
COLLABORATOR NO. 2641070

Subject: FORMAL OBJECTION – Subdivision & Removal of Title Conditions (Erven 715, 716 & 1299)

Dear Municipal Manager,

I write to formally object to the proposed subdivision of Erven 715, 716, and 1299, and the removal of their title conditions. This development threatens the legal integrity, environmental sustainability, and communal harmony of De Kelders. My concerns are as follows:

1. Breach of Title Conditions

The restrictive covenants on Erf 1299 - (E(l))(c), and on Erven 715 and 716 - D(A)(c), and D(B)(e) exist to protect low-density living. Their removal would:

- Violate the original intent of these legally binding agreements.
- Set a dangerous precedent, encouraging further erosion of protections across De Kelders.

2. Overdevelopment Risks

Approving four dwellings instead of two would:

- Increase noise, traffic, and parking congestion, degrading residents' quality of life.
- Compromise privacy through overcrowding and incompatible land use.

3. Environmental Negligence

The absence of an Environmental Impact Assessment (EIA) for properties in the CMOZ/EMOZ is unacceptable. This disregards:

- NEMA (1998) and municipal coastal protection policies.
- The precautionary principle, which mandates caution in ecologically sensitive zones.

TP

4. Misuse of "Granny Flats" as Holiday Rentals

The applicant's claim that secondary dwellings will serve as "granny flats" is unverifiable. Without enforceable safeguards, these units will likely operate as short-term rentals (e.g., Airbnb), leading to:

- Disruptive tourist turnover, undermining neighborhood tranquility.
- Commercial exploitation of a residential area, contrary to title deed intentions.

I urge the Municipality to:

1. Uphold all title conditions and reject the subdivision application.
2. Require a full EIA for any development in this coastal zone.
3. If approved, impose legally binding prohibitions on short-term rentals to preserve residential character.

De Kelders' charm is not renewable. Once destroyed, it cannot be reclaimed. I trust you will prioritize long-term community welfare over short-term profit.

Yours sincerely,

Neil Rossouw
33 Steyn Street, De Kelders

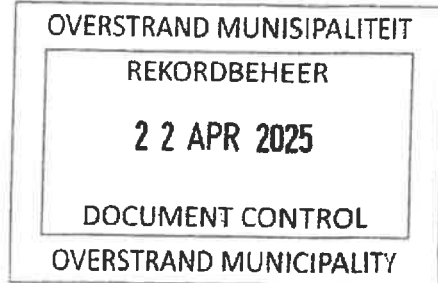
P.S. Kindly confirm receipt of this objection via email.

FILE NO. ERF 716 Gansbaai
SCAN NO.
COLLABORATOR NO. 2647960

Novel Idea Trading 113 CC
CIPC registration number: 2002/010139/23

Date: April 6, 2025

Mr. SW van der Merwe
Senior Town Planner
Hermanus
Email address: alida@overstrand.gov.za



Dear Sir,

**RE: FORMAL OBJECTION TO THE REMOVAL OF RESTRICTIVE TITLE DEED
CONDITION D(A)(c) OF ERF 716, DE KELDERS**

1. Introduction

We, the undersigned residents and stakeholders of the De Kelders residential area, hereby submit this formal objection to the proposed removal of restrictive title deed condition D(A)(c) as it pertains to Erf 716, De Kelders, as recorded in Title Deed T51851/2023. While we do not object to the removal of restrictive title deed condition D(B)(e) solely for the purposes of enabling the proposed subdivision of Erf 716, and we further raise no objection to the subdivision of Erf 716 into Erf 716 and Portion A of Erf 716, nor to the subsequent consolidation of Portion A with the remainder of Erf 715, we must emphasize our firm opposition to the removal of condition D(A)(c), which currently prohibits the erection of more than one dwelling house on Erf 716.

Our objection is grounded in the need to safeguard the residential integrity, environmental context, spatial planning objectives, and socio-economic fabric of De Kelders. Restrictive condition D(A)(c) was imposed as a core protective measure intended to preserve the low-density, tranquil, and cohesive residential character of the neighbourhood. Its removal would introduce a level of densification that is incompatible with the area's historical development pattern and would materially alter the expectations and quality of life of neighbouring property owners who have relied on the continued enforcement of this condition.

We believe that permitting a second dwelling on Erf 716 would undermine the original zoning intentions and subdivision controls, create a precedent for further densification, strain existing infrastructure, and negatively impact the environmentally sensitive setting of De Kelders, which lies within key conservation and heritage overlay zones. Moreover, this proposal provides no demonstrable public benefit and appears to prioritise private financial interest at the expense of the broader community interest.

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2. LEGAL AND REGULATORY FRAMEWORK

2.1. Enforceability and Binding Nature of Title Deed Conditions

Restrictive title deed conditions, such as condition D(A)(c), are not merely contractual obligations between parties; they constitute *real rights (or limited real rights)* in property that are duly recorded in the Deeds Registry in terms of the Deeds Registries Act 47 of 1937. As such, they are legally enforceable against all successive owners of the property, regardless of changes in ownership. These conditions are generally inserted to benefit a group of landowners within a defined area or township and often serve to preserve the character, density, and intended use of the land.

Because they are classified as real burdens running with the land, restrictive conditions can only be removed or amended through lawful processes, including statutory procedures such as an application in terms of section 3(1)(c) of the Removal of Restrictions Act 84 of 1967 (where applicable) or under corresponding provincial planning legislation such as LUPA in the Western Cape. They cannot be overridden by mere municipal zoning approvals or changes in land use permissions alone.

South African courts have consistently affirmed the legal force of such restrictive conditions. In **Lorentz v Melle 1978 (3) SA 1044 (T)**, the court made it clear that title deed restrictions form part of the land's real rights and cannot be disregarded by an owner's personal wishes or aspirations, nor can they be displaced by a municipality's planning decision in the absence of lawful removal procedures.

This principle was reaffirmed in **Fisher v Unlawful Occupiers of Erf 1501 (2021) ZAWCHC 150**, where the Western Cape High Court stressed the "dual compliance" requirement in land development matters, both planning legislation and title deed conditions must be adhered to. The court cautioned that even where planning approval has been granted, it does not obviate the need to formally remove or amend any conflicting title deed conditions through appropriate legal channels.

The Constitutional Court further reinforced these principles in **Trustees for the Time Being of the Legacy Body Corporate v BAE Estates and Escapes (Pty) Ltd and Another 2021 (3) SA 1 (CC)**. The Court held that restrictive conditions, where clearly recorded and not contrary to public policy, create enforceable rights and obligations capable of legal protection. The case confirmed that third parties, including neighbouring landowners, may enforce such conditions where they have a legal interest.

Additionally, in **Equus v City of Port Elizabeth and Others [2012] ZAECPEHC 82**, the Eastern Cape High Court rejected the removal of a title deed restriction that limited use to residential purposes only. The court held that such conditions serve to protect the integrity and character of established neighbourhoods and that a developer's or landowner's personal or commercial interest cannot prevail over the collective rights of the community unless lawful removal is effected.

In conclusion, South African jurisprudence is settled that restrictive title deed conditions are legally binding real rights. Any contravention or circumvention of these conditions without following the proper legal process, typically involving both municipal and community participation, may be interdicted and reversed. Landowners, developers, and municipalities must ensure that the removal or amendment of such conditions is pursued in accordance with applicable statutory procedures, including notice to and consultation with affected parties.

2.2. The Western Cape LUPA and the Role of Municipal Law in Removing Title Deed Conditions

The Western Cape Land Use Planning Act 3 of 2014 (LUPA) governs the removal, amendment, or suspension of restrictive title deed conditions within the province. Specifically, Section 39(5) of LUPA mandates that an application for such removal must be assessed with reference to a range of public interest and planning-related considerations.

In terms of section 39(5)(a)–(f), the decision-maker (usually the municipal planning tribunal or council) must consider, among other things:

- 2.2.1. The financial or other benefit to the applicant (section 39(5)(c));
- 2.2.2. Whether such benefit outweighs or undermines the public interest and the rights of other affected parties (sections 39(5)(d)–(f));
- 2.2.3. The impact on neighbouring properties, the environment, and the overall planning framework;
- 2.2.4. And whether the change aligns with principles of sustainable development and forward-looking spatial planning.

These considerations are intended to strike a fair balance between an individual applicant's interests and the broader rights of affected landowners and the community at large. Importantly, decisions must not be driven solely by financial gain or short-term convenience but must align with long-term community wellbeing and sustainability.

The social and planning importance of restrictive conditions is further highlighted in *Trustees of the Simcha Trust v Da Cruz and Others 2018 (1) SA 514 (WCC)*. In that case, the Western Cape High Court emphasized that any application for the removal or alteration of title deed conditions must be evaluated against the backdrop of its potential impact on neighbouring landowners, the spatial character of the area, and the community's expectations based on long-standing planning frameworks.

The court stressed that municipalities are under a duty to ensure that development does not undermine the values and structure of residential areas that are protected by such conditions. Furthermore, decisions must reflect integrated development planning objectives and the guiding principles of spatial justice, spatial sustainability, and good governance, as envisioned in the Spatial Planning and Land Use Management Act 16 of 2013 (SPLUMA) and mirrored in LUPA.

It is therefore submitted that restrictive condition D(A)(c) plays a vital role in maintaining the low-density residential character of the area, such as in De Kelders. The removal of this condition would not merely affect a single property but could potentially compromise the carefully planned and legally protected spatial integrity of the broader neighbourhood. Any removal should therefore be approached with caution, ensuring full compliance with section 39 of LUPA, and with the participation and rights of all affected property owners fully considered.

3. COMMUNITY AND ENVIRONMENTAL IMPACT

3.1. Adverse Impact on the Character of the Area

Restrictive condition D(A)(c) exists primarily to safeguard and maintain the low-density, tranquil, and purely residential character of De Kelders. This condition is not a mere administrative formality but a deliberate planning instrument that operates as a bulwark against overdevelopment, densification, and the gradual erosion of the area's unique identity. De Kelders is defined by its serene ambience, visual openness, limited vehicular and human activity, and the privacy enjoyed by its residents. The construction of a second dwelling on the subject erf would substantially disrupt this delicate equilibrium and trigger multiple negative consequences, including but not limited to:

3.1.1. Unwarranted Densification:

The erection of a second dwelling would introduce a denser built form on a property where only a single dwelling was envisaged and legally permitted. This would directly contradict the intent and purpose of the restrictive condition, which exists precisely to preserve spatial openness and prevent the creeping intensification of land use. The resulting densification would diminish the very attributes, such as space, quietude, and exclusivity, that define De Kelders and attract residents and visitors alike.

3.1.2. Loss of Privacy and Spatial Enjoyment:

The hallmark of residential living in De Kelders is the generous spatial separation between dwellings, which provides residents with privacy, unobstructed views, and minimal disturbances. The presence of an additional dwelling would introduce more occupants, vehicles, and infrastructure, generating increased noise, light pollution, and visual intrusion. These changes would not only reduce the quality of life for neighbouring property owners but also infringe upon their legitimate and legally protected expectations.

3.1.3. Incremental Transformation of the Neighbourhood's Character:

The approval of this application would set a dangerous precedent. Once the door is opened to the circumvention or weakening of restrictive condition D(A)(c), other landowners may follow suit, leading to a piecemeal and cumulative transformation of De Kelders into a more urbanised and congested residential environment. This

would fundamentally alter the spatial and social character of the area and undermine the very planning protections intended to prevent such outcomes.

The courts have repeatedly confirmed that restrictive title conditions such as D(A)(c) are not subordinate to municipal zoning schemes and cannot be overridden merely because planning approval has been obtained. As held in **Lorentz v Melle 1978 (3) SA 1044 (T)** and **Fisher v Unlawful Occupiers of Erf 1501 (2021) ZAWCHC 150**, these restrictions constitute binding real rights and must be formally removed through appropriate legal procedures, with due regard for the rights of all affected parties.

In **Trustees of the Simcha Trust v Da Cruz and Others 2018 (1) SA 514 (WCC)**, the Western Cape High Court emphasised the importance of evaluating the impact of any proposed removal of a restrictive condition not only on the applicant but also on the surrounding community. The court stressed that municipalities must ensure that any development proposal aligns with long-term spatial planning goals and serves the public interest, rather than being driven by the short-term commercial interests of individual landowners.

This principle was reaffirmed by the Constitutional Court in **Minister of Local Government, Environmental Affairs and Development Planning, Western Cape v The Habitat Council and Others [2014] ZACC 9**, where the Court underscored the critical role of municipalities in preserving the sustainability, integrity, and liveability of residential areas through faithful adherence to title conditions and responsible spatial planning.

3.2. Environmental and Coastal Overlay Considerations

The property in question is situated within two environmentally sensitive and legally significant zoning overlays: the Coastal Strip Heritage Protection Overlay Zone (HPOZ) and the Environmental Management Overlay Zone (EMOZ). These overlays are not cosmetic designations—they are protective legal mechanisms specifically enacted to conserve natural, scenic, and cultural resources in areas of heightened ecological, aesthetic, and heritage significance such as De Kelders.

The primary objectives of the HPOZ and EMOZ include:

3.2.1. Preservation of Scenic View Corridors:

These overlays aim to protect the uninterrupted visual quality of the landscape, including panoramic views of the coastline and natural terrain, which are vital to the area's residential and touristic value.

3.2.2. Protection of Coastal Interface Zones:

The overlays serve to manage the transition between developed areas and sensitive coastal ecosystems, ensuring that any built form remains compatible with the natural environment and does not create abrupt or jarring spatial discontinuities.

3.2.3. Conservation of Biodiversity and Ecological Integrity:

The region is home to diverse and often endangered flora and fauna. Incremental development without careful environmental assessment threatens to fragment habitats, introduce pollutants, and create long-term ecological harm.

3.2.4. Maintenance of Cultural and Heritage Significance:

The coastal landscape of De Kelders forms part of a shared cultural heritage and public environmental asset. The overlays ensure its preservation not only for current residents but also for future generations and broader society.

Although the applicant has asserted that the proposed development aligns with the Overstrand Municipality Land Use Scheme (OMLUS), no evidence has been presented of an Environmental Impact Assessment (EIA) or equivalent environmental study having been conducted. This omission is material and deeply concerning. An EIA is not a procedural luxury, it is a critical safeguard that enables decision-makers to assess the potential environmental, heritage, and visual impacts of development in sensitive zones such as the HPOZ and EMOZ.

South African environmental law recognises the precautionary principle, which requires decision-makers to act conservatively and with foresight in the face of environmental uncertainty. In **Minister of Environmental Affairs and Tourism v Phambili Fisheries (Pty) Ltd 2003 (6) SA 407 (SCA)**, the Supreme Court of Appeal cautioned that the absence of full information must not be used to justify development that may result in irreversible environmental harm. This principle is enshrined in the National Environmental Management Act 107 of 1998 (NEMA), which mandates that environmental decisions must promote sustainability, safeguard ecological processes, and give effect to intergenerational equity.

Authorising development within these sensitive overlays without first conducting an EIA would not only undermine these legal obligations but could also expose the municipality to review proceedings on the grounds of irrationality or procedural unfairness. Without the benefit of a robust environmental study, the Overstrand Municipality cannot credibly claim to have discharged its duties under NEMA, LUPA, or SPLUMA.

Accordingly, the proposed development should not proceed in the absence of a comprehensive EIA, proper public consultation, and a detailed environmental management framework. To do otherwise would be to risk long-term environmental degradation, erode the scenic and cultural value of De Kelders, and contravene the principles of responsible governance, sustainability, and lawful spatial planning.

4. SOCIO-ECONOMIC AND PLANNING CONCERNS

4.1. Precedent and Erosion of Spatial Integrity

Approval of the application to remove restrictive condition D(A)(c) would set a dangerous precedent, inviting similar applications that could cumulatively dismantle the very fabric of the neighbourhood's carefully regulated land use pattern. Such a precedent risks incrementally eroding the legally protected low-density character of the area, which is central to its spatial identity and community expectations.

South African jurisprudence consistently warns against the piecemeal undermining of established planning frameworks. In **Trustees of the Simcha Trust v Da Cruz and Others 2018 (1) SA 514 (WCC)**, the Western Cape High Court emphasised the need for municipal authorities to uphold the structural integrity and spatial coherence of residential neighbourhoods. Allowing departures from restrictive conditions without compelling justification risks unravelling the planning objectives intended to safeguard community welfare and spatial order.

4.2. Adverse Impact on Property Values and Neighbourhood Amenity

The market value and desirability of properties in De Kelders are inherently tied to its low-density zoning, privacy, tranquillity, and aesthetic cohesion. The removal of title deed conditions enabling densification would have several deleterious effects that extend beyond a single erf, including:

4.2.1. Increased Traffic and Noise:

Higher density inevitably brings more vehicular and pedestrian activity, disrupting the calm and quiet that form part of the neighbourhood's appeal.

4.2.2. Loss of Privacy:

Additional dwellings reduce spacing between properties and intensify human activity, diminishing the secluded atmosphere that current homeowners rely on.

4.2.3. Visual and Aesthetic Degradation:

New construction inconsistent with the existing built environment may compromise the visual integrity and charm of the area.

These impacts are not speculative. In **City of Johannesburg Metropolitan Municipality v Chairman of the Valuation Appeal Board for the City of Johannesburg [2014] ZASCA 5**, the Supreme Court of Appeal affirmed that changes in land use and zoning directly influence property valuations and market perception, underscoring the need for a careful balancing of development objectives with property owners' legitimate expectations.

Similarly, in **Malan v City of Cape Town and Others 2014 (6) SA 315 (CC)**, the Constitutional Court reinforced the principle that owners are entitled to the undisturbed enjoyment of their property. Even though the facts in Malan pertained to leasehold matters, the underlying constitutional value of protecting property rights against arbitrary or unjustifiable interference remains apposite in this context.

Empirical studies, including those conducted in Stellenbosch and international jurisdictions like Sydney, further substantiate that increased density in formerly low-density areas often results in reduced property values due to diminished neighbourhood character.

4.3. Lack of Demonstrable Public Benefit

The applicant's reliance on the concept of "*beneficial densification*" as a justification for the proposed removal of the restrictive condition is unconvincing and unsupported by evidence of tangible community advantage. While the term invokes language from contemporary planning discourse, its application must be context-sensitive and weighed against the established character of the area and the expectations of the broader community.

In low-density environments like De Kelders, densification often results in demonstrable harm rather than public gain, through congestion, noise, diminished privacy, and a shift in the spatial and social fabric of the area. These outcomes are antithetical to sustainable, equitable land use management and contradict the principle of spatial justice embedded in section 7 of SPLUMA.

The Constitutional Court in **Malan** reaffirmed the need to protect the interests of existing property owners, while in **Trustees of the Simcha Trust**, the court stressed that municipalities are not merely administrative rubber stamps but have a duty to protect spatial frameworks and community values from erosion due to individual preferences.

Moreover, as recognised in **Equus v City of Port Elizabeth and Others [2012] ZAECPEHC 82**, a landowner's or developer's private or commercial interests cannot be allowed to override the community's rights entrenched in a legally sanctioned spatial vision unless full procedural compliance, including meaningful community participation, is achieved.

In the present case, no clear evidence has been provided that the proposed second dwelling will serve a broader public good or enhance the neighbourhood in a manner that outweighs its adverse effects. To the contrary, the risk is that it will irreversibly alter the carefully curated character of De Kelders, to the detriment of residents who have relied on the enforceability of condition D(A)(c).

5. Procedural and Substantive Deficiencies In the Application for Removal of Restrictive Title Deed Condition D(A)(c)

The application to remove restrictive title deed condition D(A)(c) is materially flawed in both procedural execution and substantive content. These deficiencies significantly undermine the application's legitimacy and render it incompatible with the principles of responsible, sustainable, and lawful land use planning. The most notable shortcomings are as follows:

5.1. Absence of Proper Consultation with Affected Neighbours and the Wider Community

The applicant has not submitted any credible evidence demonstrating that meaningful consultation has taken place with directly affected neighbouring landowners or the broader community. Section 39(5)(d) of the Western Cape Land Use Planning Act 3 of 2014 ("LUPA") explicitly requires that the decision-maker assess whether the proposed removal of a restrictive condition adversely affects the rights of others and whether sufficient steps have been taken to notify and involve them. This requirement stems from the principle that land use decisions must balance private benefit with public interest.

The lack of documented consent or even recorded objections from neighbours raises legitimate concerns about whether the application respects the legally protected interests, expectations, and reliance interests of the surrounding property owners. The removal of condition D(A)(c) could have significant ripple effects on the broader spatial and residential integrity of the area, and such a decision cannot be made in the absence of transparent community engagement.

5.2. Inconsistency with Township Layout and Statutory Town Planning Policy

The application fails to demonstrate how the removal of the restrictive condition aligns with the original township layout, including its intended low-density residential character. Furthermore, it does not adequately engage with applicable statutory and policy frameworks governing spatial planning. In particular, the application is silent on the planning principles set out in section 7(b) of the Spatial Planning and Land Use Management Act 16 of 2013 ("SPLUMA"), which include spatial justice, spatial sustainability, and the equitable distribution of land use benefits.

Township design frameworks and planning policies are crafted to preserve the long-term integrity and character of a locality. Removing a restriction such as D(A)(c), which was intentionally included to uphold a specific form of land use, without demonstrating a compelling public interest and policy-aligned rationale, threatens to destabilise carefully developed planning frameworks and set a precedent for piecemeal densification or ad hoc development.

5.3. Absence of Critical Expert Assessments and Impact Studies

The application lacks objective expert reports and supporting documentation necessary to allow for informed and responsible decision-making by the relevant municipal authority. In particular, the following critical assessments have not been included:

5.3.1. Heritage Impact Assessment:

Given the area's longstanding residential character and potential cultural or architectural significance, a Heritage Impact Assessment is required under the National Heritage Resources Act 25 of 1999. This is particularly relevant where

changes in land use or built form could alter the historical or aesthetic value of the neighbourhood.

5.3.2. Environmental Sensitivity Report:

The property is located within an environmentally sensitive coastal zone. In terms of the National Environmental Management Act 107 of 1998 ("NEMA"), any proposed development in such areas must be subject to an environmental impact assessment or equivalent sensitivity study. The failure to provide such a report makes it impossible to evaluate the ecological consequences of the proposed change.

5.3.3. Community Impact Analysis:

No evidence has been presented of a community impact study assessing the social, economic, or infrastructural effects of the proposed development. Such an analysis is essential to determine whether the proposed removal of the restriction would contribute to or undermine the broader community's welfare, cohesion, and spatial expectations.

The absence of these expert-driven assessments leaves the municipal decision-making body with insufficient information to assess the full implications of the proposed removal. As a result, the application does not meet the threshold of procedural fairness, environmental compliance, or responsible planning.

6. Conclusion

Having regard to the legal, environmental, planning, and socio-economic considerations outlined above, we respectfully submit that the application for the removal of restrictive title deed condition D(A)(c) in respect of Erf 716, De Kelders ought to be declined. We do, however, confirm that no objection is raised to the proposed removal of condition D(B)(e) for the purposes of subdivision, nor to the subdivision of Erf 716 into Erf 716 and Portion A of Erf 716, and the subsequent consolidation of Portion A with the remainder of Erf 715.

Our objection is specifically and exclusively directed at the proposed removal of condition D(A)(c), which seeks to facilitate the construction of a second dwelling on Erf 716. We submit that this aspect of the application is materially flawed and should not be supported for the following reasons:

6.1. Undermining of the Original Protective Purpose of the Restriction

Condition D(A)(c) was purposefully inserted into the title deed as a mechanism to preserve the low-density residential character and tranquil environment of the area. It forms part of a broader planning framework intended to maintain the integrity of the spatial development pattern of De Kelders. The removal of this condition would set a precedent for increased densification, contrary to the original and lawfully recorded land use intentions and would erode the legal rights and amenities currently enjoyed by neighbouring landowners.

6.2. Infringement on the Legitimate Expectations of Existing Landowners

Current property owners in the area purchased and developed their properties in reliance on the restrictive conditions recorded in the title deeds, including the single-dwelling limitation imposed by D(A)(c). These owners have legitimate expectations that such legally binding restrictions would be upheld. As confirmed in **Trustees of the Simcha Trust v Da Cruz and Others 2018 (1) SA 514 (WCC)**, these expectations form a critical part of the legal and planning matrix that ensures a fair balance between individual development rights and broader community interests. The arbitrary removal of D(A)(c), without regard for these expectations and without meaningful engagement with affected parties, would infringe upon such rights and compromise public trust in the integrity of the planning system.

6.3. Environmental and Planning Concerns Within Protected Overlay Zones

The subject property lies within the Coastal Strip Heritage Protection Overlay Zone (HPOZ) and the Environmental Management Overlay Zone (EMOZ), both of which are designated to safeguard areas of ecological, scenic, and heritage significance. Permitting the development of a second dwelling on Erf 716 without any form of Environmental Impact Assessment (EIA) or appropriate environmental scrutiny contradicts the precautionary principle established in **Minister of Environmental Affairs and Tourism v Phambili Fisheries (Pty) Ltd 2003 (6) SA 407 (SCA)**. That principle mandates that authorities act cautiously where the potential environmental impact is unknown or inadequately assessed. In the absence of comprehensive environmental review, the proposed removal of D(A)(c) may pose undue risks to the sensitive coastal environment.

6.4. Lack of Demonstrable Public Benefit

The primary motivation for the removal of condition D(A)(c) appears to be private in nature, aimed at enhancing the commercial or residential value of a single property. There is no evident public benefit or broader community gain resulting from this aspect of the application. In terms of Section 39(5)(c) to (f) of the Western Cape Land Use Planning Act 3 of 2014 (LUPA), any application for removal of title deed restrictions must be evaluated against its impact on existing rights, the public interest, and alignment with sustainable development principles. In this case, the removal offers no discernible advancement of the public interest and instead threatens to undermine the well-being and cohesion of the residential community.

7. Request for Relief

In light of the considerations set out above, we respectfully request that the Overstrand Municipality:

- 7.1. Refuse the application for the removal of restrictive condition D(A)(c) from the title deed of Erf 716, De Kelders;
- 7.2. Uphold and preserve the existing restrictive title deed conditions that protect the low-density residential character, environmental integrity, and established expectations of the local community;
- 7.3. Confirm its acceptance of the proposed removal of condition D(B)(e), the subdivision of Erf 716, and the consolidation of Portion A with the remainder of Erf 715, to which there is no objection;
- 7.4. Apply the guiding principles of sustainable, equitable, and community-centred development as mandated by Section 39(5) of LUPA and Section 16(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.

We trust that the Municipality will discharge its constitutional and statutory responsibilities by acting in a manner that protects the long-term environmental, residential, and spatial character of De Kelders, in accordance with established legal principles and community values.

Yours sincerely



Aloyse Michel Jean Auguste Zeimen

7, um Leizerknaeppchen

L-9660 Bonnai

Luxembourg

Attachment: Copy of resolution of Novel Idea Trading CC, dated 31 July 2024

Subject: Fwd: ERF 715, DE KELDERS: INSUFFICIENT DISCLOSURE REGARDING IMPLICATIONS OF SUBDIVISION AND CONSOLIDATION RELATING TO ERF 716
Date: 17 April 2025 at 11:38



Von meinem iPhone gesendet

Anfang der weitergeleiteten Nachricht:

Betreff: FW: RE: ERF 715, DE KELDERS: INSUFFICIENT DISCLOSURE REGARDING IMPLICATIONS OF SUBDIVISION AND CONSOLIDATION RELATING TO ERF 716

Hi Aly,

I refer to our telephone conversation.

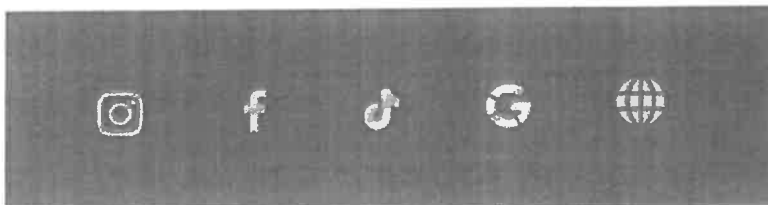
Kindly take note that the letter that was sent to the conveyancer and WRAP was signed and is attached hereto.

I have received no response from any of the parties to this regard.

Kind regards / Vriendelike groete,

Joos Engelbrecht
DIRECTOR / ATTORNEY AT LAW

Please note: We will never change our banking details by phone or email notification. Any advice of amended bank details that appear to come from our office should be treated as suspicious.



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CAPE GORDONIA 38 - 157 BEACH ROAD - GORDON'S BAY - 7140

From: Joos Engelbrecht <joos@je-attorneys.com>
Sent: Wednesday, 09 April 2025 13:05
To: 'Carla Geldenhuys' <carla@vvh.co.za>; 'admin@wrapgroup.co.za' <admin@wrapgroup.co.za>
Subject: RE: ERF 715, DE KELDERS: INSUFFICIENT DISCLOSURE REGARDING IMPLICATIONS OF SUBDIVISIC

Dear Sir/Madam,

I refer to the above matter.

Kindly find attached hereto a letter for your attention.

Kind regards / Vriendelike groete,

Joos Engelbrecht
DIRECTOR / ATTORNEY AT LAW

Please note: We will never change our banking details by phone or email notification. Any advice of amended bank details that appear to come from our office shi

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JE ATTORNEYS INC

Veritas Et Aequitas

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 157 Beach Road
 Gordon's Bay
 7140

CHRISTEL VAN DYK
 Senior Associate / Attorney at Law
 084 701 5582
 christel@je-attorneys.com

Date: 09/04/2025
 Our Ref: JE/ZE0001

Carla Geldenhuys
 Van Wyk Van Heerden Attorneys
 Email Address: carla@vvh.co.za

and

WRAP Project Office
 Thian Jansen
 Email Address: admin@wrapgroup.co.za

Dear Sirs/Mesdames

RE: ERF 715, DE KELDERS: INSUFFICIENT DISCLOSURE REGARDING IMPLICATIONS OF SUBDIVISION AND CONSOLIDATION RELATING TO ERF 716

1. We act on behalf of the registered owner of Erf 715, De Kelders, and address you herein on their instructions.
2. Our client was aware that an application had been submitted for the removal of certain restrictive title deed conditions relating to Erf 716, De Kelders, and did not object to the removal of condition D(B)(e) for the purposes of enabling the subdivision of Erf 716. Nor did our client object to the proposed subdivision of Erf 716 into Erf 716 and Portion A, or to the subsequent consolidation of Portion A of Erf 716 with Erf 715.
3. However, it has only recently come to our client's attention, during a meeting with the appointed town planner on 7 April 2025, that the subdivision and consolidation application may have the effect of altering the current title deed conditions applicable to Erf 715, either through the introduction of new or more restrictive conditions, or by removing existing ones.
4. Our client was not informed by the conveyancer or WRAP that the proposed consolidation may potentially impact the favourable and limited title deed restrictions currently applicable to Erf 715. To date, Erf 715 benefits from a title deed with relatively few and non-onerous conditions, a point acknowledged and confirmed by the town planner. Any change to these conditions, whether through the imposition of conditions applicable to Erf 716 or through the substitution of new

SENIOR ASSOCIATE / ATTORNEY AT LAW: C VAN DYK • LLB (UNISA)

DIRECTOR / ATTORNEY AT LAW: JAI ENGELBRECHT • LLB (UNISA) • NATIONAL DIPLOMA POLICE (TECHNIKON RSA)

conditions as part of the consolidation process, would materially affect our client's rights and expectations in relation to their property.

5. Accordingly, we are instructed to request the following:
 - 5.1. A clear explanation as to why our client was not informed of the potential impact of the subdivision and consolidation on the existing title deed conditions of Erf 715;
 - 5.2. Written confirmation of the exact title deed conditions that are intended to apply to Erf 715 following the proposed consolidation with Portion A of Erf 716;
 - 5.3. A formal undertaking that no additional or substituted conditions will be imposed on Erf 715 (including the consolidated property) without the written knowledge and express consent of our clients;
 - 5.4. Assurance that the current title deed conditions of Erf 715 will remain intact and continue to apply, in their existing form, to the consolidated property.
6. Our clients reserve all rights, including the right to submit formal objections should any amended or additional conditions be introduced without their full knowledge and opportunity to respond.
7. We await your urgent written response.

Kind regards



Joos Engelbrecht
JE ATTORNEYS INC
Direct email: joos@je.attorneys.com

Resolution by the Close Corporation

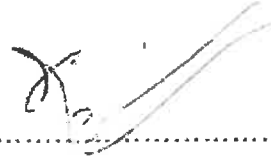
As requested by the Members of Novel Idea Trading 113 CC, CIPC
Meeting Number: 2002/010139/23, held at Bonnai on July 31, 2024, the
following resolution is passed:

The close corporation hereby authorizes Aloyse Michel Jean Auguste Zeimen in his
capacity as authorized signatory to sign all documents on behalf of the Close
Corporation:

The following individuals are appointed as authorized signatories:

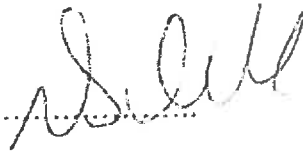
Aloyse Michel Jean Auguste Zeimen in his capacity as authorized signatory.

The specimen signatures of the authorized signatories are as follows:

Specimen Signature 

Aloyse Michel Jean Auguste Zeimen, authorized signatory.

This resolution is certified as a true copy by the Chairman of the meeting.

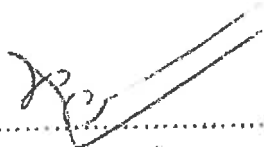
Signature: 

Nicole Marie Louise Schmitz

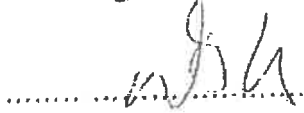
Chairman of the Meeting

Members:

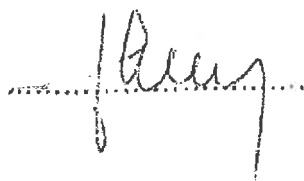
Aloyse Michel Jean Auguste ZEIMEN



Nicole Marie Louise SCHMITZ



Marco Henri HERMES



Von: Virginia Buser virginia.buser@gmail.com
 Betreff: Re: plot Front Street
 Datum: 7. Apr 2024 um 16:49

Hi Aly and Nicole

Lovely surprise to hear from you, and I am grateful to the Calitz's for passing on my message to you, the owners of no 54 Steyn Street

Thank you for your introduction, and in the same spirit let me give you some background of us too.

My partner, Rod, and myself made a decision that in approximately 1 to 2 years time we want to move away from busy Cape Town to beautiful, quieter De Kelders . so no hard timeline.

We were then fortunate to be able to purchase no 25 Front street, a double plot of 1398sqm. In Dec 2023 we initiated the process through a local Town Planner, of subdividing this plot into 2 portions of 699sqm each. Most (if all) of the erf's on Front street were originally double plots and many have now been subdivided in the same way we are currently subdividing, so there is a precedent, and we don't foresee any hassles to subdivide. The process we have been told takes anything between 6 to 12 months.

As you already know we plan to build our home on the front portion, and sell off the back portion which abuts your empty plot. We do have a good idea of our house design in our heads, and have just engaged the services of a wonderful local architect, Grant Anderson.

So to answer your questions more directly, the plot we plan to sell will in the next few months become a separate erf with its own title deed, and it will measure 699sqm. I have attached a diagram to illustrate just for further clarity the position of the land we will be selling.

We hope that in the next few weeks our architect will have engaged a land surveyor for the plot we wish to build on, and that we may thereafter soon have a very rough draft of a house plan. Architect-permitting, we would be happy to share this with you if you are still interested.

I don't think that we will start building before the start of 2025. If all goes well hopefully early 2025 :-). So I think that it will be wonderful to meet you both when you are here towards the end of this year. And then we can discuss further possibilities. Nothing is urgent from our side before that. But we did want to give you first option once we are ready to sell. I can explain my thinking when we meet in Oct-Dec. By then the plot should be separate erf's, and we will also hopefully be finalizing plans for our house. It will then be easier for you to decide if the plot is for you or not 😊.

Regarding the important issue... the price... we have enquired with a local agent and it seems that currently the suggested selling price including agents fee is 2.2M. I do however think that selling price will eventually depend on various factors including views past/over our future home, what the De Kelders market is doing when the plot does go on the market, whether or not an agent is involved (we are keen to try to cut out agents fees especially because it is a plot sale, so no 'indoor viewing' necessary).

I am glad that I went with my instinct to try to make contact with the owners of no 54 Steyn Street plus plot. It was a long shot writing that letter. Maybe one day we will be direct neighbours 😊.

We look forward to meeting you in Oct- Dec 2024 when we visit De Kelders.

Kind regards,
Virginia and Rod

On Sat, 06 Apr 2024, 10:46 Aly Zeimen

- >
- > Hello Mrs Buser,
- > I got your letter by mail from my neighbour Mrs Calitz from De Kelders.
- >
- > We are the owners of the house 54 in Steynstreet.
- >
- > First I would like to introduce ourselves.
- >
- > My name is Aloyse Zeimen and together with my wife Nicole we own the house and plot behind you.
- >
- > We are from Luxembourg Europe and bought the house in 2002 with a friend of mine.
- >
- > I will retire in June so that we intend to come longer to South Africa in future.
- >
- > As you wrote in your letter you want to sell the back part of your plot.
- >
- > Will this be a separate erf. What will be the size of that erf?
- >
- > May I ask you what type of house you will build. I ask this question to see if there will remain a view on the sea and the whales from the back plot.
- >
- > When do you intend to start to build? We will come to South Africa mid October to mid December.
- >
- > A last but important question: how much is the selling price?
- >
- > Kind regards
- >
- > Aly
- >
- >

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TP A: Theart

23/27

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715 a 716 GOK

PROFESSOR FELIX C.V. POTOCNIK & CARON POTOCNIK

Legacy Sport Horse Stud

P.O. Box 740, Wellington, 7654

OVERSTRAND MUNISIPALITEIT
REKORDBEHEER
22 APR 2025
DOCUMENT CONTROL
OVERSTRAND MUNICIPALITY

17 April 2025

TO:

1. alida@overstrand.gov.za
2. Veronica Jansen : Professional Town Planner admin@wrapgroup.co.za
3. Messrs WRAP Project Office on behalf of Dr Virginia Buser and NOVEL ADEA Trading 113 CC
4. Natasha: Planactive: natasha@planactive.co.za

1. NOTICE OF AN APPLICATION RE POTENTIALLY AFFECTED PROPERTY OWNERS INCORPORATING GOVERNMENT OF THE WESTERN CAPE GOVERNMENT GAZETTE 9042 Friday, 14 March 2025. The following applies:

- 1.1 ERF 1299 FRONT STREET, DE KELDERS: APPLICATION FOR REMOVAL OF A RESTRICTIVE TITLE DEED CONDITION
- 1.2 ERF 715 NO 25 FRONT ST & ERF 716 NO 54 STEYN STREET, DE KELDERS, APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS, SUBDIVISION AND CONSOLIDATION

2. COMMENT AS A POTENTIALLY AFFECTED PROPERTY OWNER RELATING TO REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS, ZONING, USE, SUBDIVISION AND CONSOLIDATION OF THE PROPERTIES DESCRIBED IN 1.1 AND 1.2, OWNED AND/OR OPERATED BY DR VIRGINIA BUSER:

2.1 When considering this application, it became clear that Dr V. Buser has purchased multiple properties in close proximity in De Kelders. The collective scope of use of ERF 1299 Front Street, ERF 715 (No 25) and ERF 716 (No 54 Steyn Street) as a larger scale B & B could be far more expansive, and impact the region in ways not considered by the current environmental and planning evaluations and motivation. The scope of existing buildings and plans suggests that a larger scale B & B has the potential to expand to small "hotel" proportions utilizing parking on ERF 1299. The application for the latter bears reference to carports and garages. This full potential collective scope of use is as yet unknown, and requires transparent clarification.

FILE NO. Erven 715 + 716
De Kelders
SCAN NO.
COLLABORATOR NO.
2648377

TP

2.2 Insufficient information has been supplied, on the basis of which we object to removal of any restrictive title deed conditions for properties De Kelders ERF 1299, ERF 715/ ERF 716 ie Residential Zone 1 with no zoning concessions remain in place until we have been fully and fairly informed of all potential impact, and on which basis it is possible to render a valid decision.

2.2.1 The Spatial Planning and Land Use Management Act (SPLUMA) requires good administration, emphasizing principles of transparency, fairness and public participation in land use decisions. In this regard, this application as it stands lacks transparency and the full scope of information regarding the potential collective/ interrelated use of all properties together (ERF 1299 Front Street and ERF 715 and ERF 716 and any other property possibly owned by Dr V. Buser). Composite use of the properties can considerably expand their scope of operation, and by extension the impact on the De Kelders area. Accordingly, transparent supply of all information in terms of SPLUMA legislation is required to fully and fairly inform valid stakeholder participation and decision making in this matter.

2.2.2 This being the case, please supply the following information at your earliest convenience :

2.2.2.1 The intended individual scope of use of these properties for B & B and other possible use/s.

2.2.2.2 The manner and extent to which the owner plans to use these properties for B & B and other use in collective relation to each other both in the immediate and longer term. This information should incorporate available B & B accommodation and related potential B & B client numbers and increased traffic to the area.

2.2.2.3 Information requested in Par 2.2.2 and subsections requires specific detail including;

2.2.2.3.1 building plans for ERF 1299 and

2.2.2.3.2 Building plans for ERF 715 and ERF 716,

2.2.2.3.3 Specifications and location for carports and garages on all properties, as well as within-property vehicle access and movement plans.

2.2.2.3.4 Disclosure of any other property/ies which may be owned by Ms Buser, and/or business associates, which could potentially be considered as a collective component of an interrelated operating system with the current properties, either now or in the future.

3. Other points of objection: In addition, we object to other aspects of this application on the following basis:

3.1 The De Kelder Front Street coastal road is untarred gravel, and bordered by fynbos. It is so narrow that two cars are not readily able to pass each other going in opposite directions. It is further a cul du sac with no turning circle.

3.2 Markedly increased traffic, therefore, would inevitably effect progressive damage to the road. By extension this potentially impacts the biophysical and fauna and flora eco systems related to this road and its border, in terms of raised combustion emissions, structural damage, noise and traffic interference, and increased security risks. These potential risks have not been adequately assessed within par 66 (1) (c) of the Overberg Municipality bylaws in this application, incorporating but not confined to: Need and desirability, socioeconomic impact, compatibility with surrounding use, impact of

external and engineering services, impact on safety health and well being of surrounding community.

3.3 The application relating to both De Kelders ERF 1299 and ERFS 715 and 716 bears reference to a authorization for use as a crèche. We object to such authorization, as this is not in keeping with the current use of adjacent properties, and other problems relating to access, traffic and parking per 3.1 and 3.2 above again apply.

4. Summary and rationale for this interim comment:

4.1 More time and information is required to fully and fairly inform both public participation and final decision making in this matter. This is required by legislation to ensure sound planning principles, as well as ensure the rights of all.

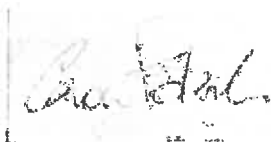
4.2 In the event that broader use of multiple interconnected properties is intended, this will require a more rigorous environmental impact assessment. To the extent that this potentially impacts the region, its immediate infrastructure, character, aesthetics and biophysical status, the broader community of De Kelders can be considered as interested and affected parties and entitled to a public participation process.

5. **In closure**, at this point we object to the removal of the restrictive property restrictions per E(l) (c) relating to ERF 1299 and ERF 715 and 716 De Kelders , until further information is supplied per SPLUMA legislation requirements to adequately inform the application and public participation. More time is thus required to effect this information processing.

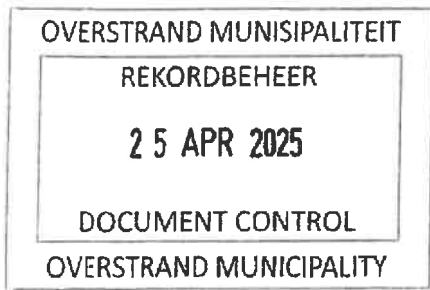
5.1 **Please supply relevant information** per paragraph 2.2 and subsections at your earliest convenience.



PROFESSOR FELIX CV POTOCNIK



CARON POTOCNIK



9 Smuts Street
De Kelders
Gansbaai
7220

24 April 2025

Overstrand Municipality
16 Paterson Street
Hermanus
(e) alida@overstrand.gov.za

FILE NO. Erven 715 + 716
De Kelders
SCAN NO.
COLLABORATOR NO.
2650079

Dear Sir/Madam

RE: Erf 715, 52 Steyn Street and Erf 716, 25 Front Street, De Kelders – OPPOSITION to removal of title deed conditions, subdivision and consolidation

I live in De Kelders and refer to the latest communication in this regard (copied below).

OVERSTRAND MUNICIPALITY
OVERSTRAND MUNISIPALITEIT
UMASIPALA WASE-OVERSTRAND
ERRATUM

ERF 715, 52 STEYN STREET AND ERF 716, 25 FRONT STREET, DE KELDERS:
APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS,
SUBDIVISION AND CONSOLIDATION: MESSRS WRAP PROJECT OFFICE ON
BEHALF OF DR VIRGINIA BUSER AND NOVEL IDEA TRADING 113 CC

Notice is hereby given in terms of Section 47 of the Overstrand Municipality
Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law) that
Municipal Notice 44/2025, dated 13 & 14 March 2025 is hereby amended to
reflect the correct property details as detailed below:

Erf 715, 52 Steyn Street and Erf 716, 25 Front Street, De Kelders

The closing date for comment is extended (sic) to Friday, 25 April 2025.

TP

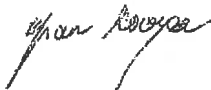
I offer as reasons for my opposition the following comments:

1. The erratum which is included in part above, contains a language error (highlighted). The **apparent lack of attention to detail** casts doubt on the thoroughness of the process.
2. I focus on an aspect of the applicant's motivation for this application (as found in the document, 2. ADVERT Annexures - 715 & 716 DE KELDERS), notably "her intention...to construct two dwellings thereon, one for her (sic) and a second 'granny flat'". **This phrasing is ungrammatical and ambiguous** as it suggests that the applicant intends to live in a granny flat and plans to build a second one. Is that the case? Either way this statement is not clear and indicates a lack of clarity in this document.
3. The **second aspect in the motivation that is unclear** is the statement regarding the two dwelling erf development "... as a means **to introduce densification in a beneficial manner**, adding another property within a high-quality and sustainable environment". What data, requirements or regulations have been used or will be used to quantify these claims? Are there other erven in De Kelders with two dwellings and, if so, do they meet these criteria?

Based on the above, I submit that approving this problematic application process is unacceptable and could set a precedent for other poorly substantiated applications and approvals.

Thank you for this opportunity to comment and to contribute in a positive way to the suburb in which I live.

Yours sincerely



E.J. van Rooyen



Our Reference: 22/141

Your Reference: 715&716 GDK & 4604/2024

26 May 2025

The Municipal Manager
Overstrand Municipality
P O Box 20
HERMANUS
7200

Sir

ERF 715 & 716 DE KELDERS: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS, SUBDIVISION AND CONSOLIDATION.

Several letters of objection and comments were received that will be addressed within this response.

Project Planning | Project Feasibility | Land Use Applications | Project Execution Management | Liquor Licensing

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TRANSPARENCY AND PUBLIC PARTICIPATION

Concerns have been raised by certain objectors regarding the perceived lack of transparency and insufficient information in the land use application for Erven 715 & 716, De Kelders. The following response seeks to clarify these matters and demonstrate that all statutory processes have been correctly followed, and that the application has been submitted and advertised in accordance with the applicable legislation.

1. Public Participation and Notification Procedures

The application for the removal of restrictive title deed conditions was submitted in terms of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2020. In line with the provisions of this by-law, the following steps were undertaken:

- **Notice of Application:** The application was advertised in the prescribed manner through emails and/or registered letters sent to the owners of affected and adjacent parties and was also published in the local press. A notice board was also erected on the subject property. This ensures that all affected parties were informed and given the statutory 30-day period to submit comments or objections.
- **Documentation Accessibility:** The full application, including the motivation report, plans, and supporting documentation, was made available for public inspection at the municipal planning office during the objection period. This is standard procedure for ensuring transparency and accessibility.

By submitting comments relating to the application and stating reasons why the application should not be allowed provides sufficient evidence that interested and affected parties were notified.

2. Scope and Content of the Application

The application motivation document clearly addressed the following matters:

- The **intent** of the application: Removal of the restrictive title deed condition to allow a second dwelling and that the property may be subdivided, subdivision of the property into two portions and consolidation of the subdivided portion with Erf 716 De Kelders.
- The **zoning parameters** applicable to the property and how the proposed development would comply with the Overstrand Municipality Land Use Scheme, 2020.
- A detailed motivation demonstrating that the application is consistent with the principles of spatial planning, does not deviate from the zoning scheme, and will not have a detrimental impact on the surrounding area.
- The application did not propose to exceed height or coverage restrictions as set out in the land use scheme, but a separate response has been provided to address the development parameters, refer to point 4.
- It is also important to note no Creche is being proposed, but it is however allowed in terms of the OMLUS as a primary right.

3. Transparency in Respect of Use of the Dwellings

The application is for the removal of a restrictive title deed condition that limits development on the property to a single dwelling. The use of either the primary- or second dwelling for short-term letting is permitted as a primary right in terms of the Overstrand Municipality Land Use Scheme (OMLUS) and cannot be restricted.

Should the owners, however, wish to operate a guest house, additional municipal approvals would be required in accordance with the applicable by-laws and policies. These uses cannot be presumed or automatically granted and would necessitate:

- A separate land use application, if required by the municipality; and
- Full compliance with the relevant policy frameworks and conditions applicable to short-term letting or guest accommodation.

It is therefore inaccurate to suggest that there was any intentional withholding of information or that the application sought to obscure future intentions. The proposal has been clearly defined within the scope of the current application, and all legislative procedures for transparency and public participation have been adhered to.

- It is important to note that the submission of building plans is not a requirement for an application to remove a restrictive title deed condition. It should however be emphasised that sketch plans were in fact submitted as part of the application documentation.

4. No Deviation or Exemption from Land Use Parameters

No deviation from zoning scheme development parameters (such as height, coverage, or building lines) was applied for in this application. The application solely pertains to the removal of a restrictive title deed condition. All future development must comply with the development parameters of the Land Use Scheme or be subject to further application where required.

The application was submitted in accordance with the relevant legislation, and all necessary procedures for transparency, notification, and public participation were followed. There was no omission of information, and the documentation made available was sufficient to inform affected parties of the nature and implications of the proposed development.

Any future land use activities, not currently permitted under the zoning, or requiring further consideration will be subject to their own application processes, with additional public participation if prescribed.

TRAFFIC

The objections raise concerns about traffic impacts arising from the proposed removal of a restrictive title deed condition. It is important to clarify that the application seeks only to allow a second dwelling on the property, a right already accommodated in terms of the Overstrand Municipality Land Use Scheme (OMLUS) as a primary right on properties zoned for single residential purposes. The development of two dwelling units on a residential erf is considered low-impact and does not pose a threat of excessive traffic generation. Traffic associated with two households, whether for permanent occupation or short-term letting, remains within acceptable limits for a low-density residential area.

The owners are aware of the existing road conditions and street network in the area. It is noted that the road is a public road, and it is the responsibility of the municipality to ensure the provision and maintenance of adequate access infrastructure. It is further hoped that continued development in the area, including the proposed improvements to the subject property, will serve as a catalyst for the continuing upkeep of the road surface. This aligns with broader municipal infrastructure planning objectives.

In light of the above, the proposed development is not expected to result in undue traffic impacts or place an unreasonable burden on the local road network.

PRECEDENT

The objections suggest that the approval of this application may create an undesirable precedent for further densification in the area. It is important to note that the right to erect a second dwelling is already provided for in terms of the Overstrand Municipality Land Use Scheme, 2020 (OMLUS), which serves as the overarching regulatory framework for land use in the municipality.

The only factor currently preventing the property from being developed in accordance with the provisions of the OMLUS is the restrictive title deed condition, which this application seeks to remove. This application therefore does not introduce a new or extraordinary right but merely seeks alignment with the zoning rights already applicable to similar properties in the area that do not have the same historic title conditions.

As such, the removal of this condition will not set a precedent, as the allowance for a second dwelling is already a normative and permitted land use under the existing planning scheme. Each application to remove such restrictions is assessed on its individual merits, in accordance with statutory procedures and policy frameworks.

DENSITY

Objections received express concern that the proposal will lead to increased density and a change in the character of the neighbourhood. It must be clarified that the application does not involve a rezoning to increase the allowable density beyond what is already permitted in terms of the Overstrand Municipality Land Use Scheme, 2020 (OMLUS). The zoning of the property remains Single Residential Zone 1, which allows for a primary dwelling and one second dwelling as a primary right, subject to compliance with applicable development parameters.

The removal of the restrictive title deed condition is required only to bring the property in line with the rights already granted by the OMLUS. This does not constitute an intensification of land use beyond what is already legally and commonly allowed on similar erven in the area.

The resulting development will remain consistent with the single residential character of the neighbourhood and does not enable subdivision, group housing, or multi-storey apartment development. The intent is to utilise the land in a manner already contemplated and supported by the existing municipal spatial planning framework, including the OMLUS and the applicable spatial development framework (SDF).

In addition, development parameters, including building lines, coverage, height, and parking requirements, remain in force and ensure that the development fits appropriately within the existing urban fabric. The rights being sought are not extraordinary or out of scale with surrounding properties and are in fact in line with the broader strategic direction of the municipality to make more efficient use of serviced land within the urban edge.

PROPERTY VALUES

It is important to note that this concern related to property values are speculative and not supported by objective evidence.

The proposed development will remain within the parameters of the **Single Residential Zone 1** as set out in the Overstrand Municipality Land Use Scheme, 2020 (OMLUS), which already permits a second dwelling as a **primary right**. The removal of the title deed condition simply aligns the property's title with the current, prevailing planning policy and municipal land use rights. It does not introduce a use that is foreign or incompatible with the surrounding residential context.

There is no indication in the Overstrand Municipality's policy documents or strategic frameworks that the implementation of second dwellings, where appropriately designed and compliant with development parameters, has a detrimental impact on property values. On the contrary, reinvestment in properties and the improvement of underutilised erven may contribute positively to the neighbourhood, particularly where developments are compliant with the planning scheme and visually in keeping with the area's character.

Concerns about market value are not generally considered valid planning grounds unless supported by empirical studies or municipal valuation data. In the

absence of such evidence, these concerns remain subjective and cannot reasonably justify refusal of the application.

LEGAL PERSPECTIVE

The objector's reference to the title deed condition, specifically the restriction limiting development to a single dwelling, serves to confirm the very basis and necessity of this application.

South African case law has consistently supported the principle that where a restriction in a title deed unreasonably limits the rights afforded by zoning legislation, removal may be justified, particularly when it aligns with current planning policy, municipal approval processes, and the surrounding context. Notably, courts have found that title deed conditions should not be used to perpetuate outdated or unnecessary limitations where a planning authority has already determined appropriate land use rights through its zoning scheme.

In this instance, the objector has acknowledged the existence and effect of the title condition, thereby supporting the factual basis of the application. The objection however fails to consider that the title condition is outdated in relation to the current planning framework and that its removal is entirely in line with the principles of good planning, legislative alignment, and municipal policy. The objection, therefore, does not introduce a valid legal impediment but instead reaffirms the justification for the application.

LEGAL ARGUMENTS RAISED UNDER SECTION 39(5) OF LUPA

The WCLUPA was addressed in the motivational report:

Extracted from the motivational report.

LUPA, Section 39(5) (a-f)	
<i>(a) the financial or other value of the rights in terms of the restrictive condition enjoyed by a person or entity, irrespective of whether these rights are personal or vest in the person as the owner of a dominant tenement;</i>	No person or entity will be affected financially by the removal of this restrictive title deed condition.
<i>(b) the personal benefits which accrue to the holder of rights in terms of the restrictive condition;</i>	No person is benefitting personally from this condition as this condition is only restricting the property owner to development the property.
<i>(c) the personal benefits which will accrue to the person seeking the removal, suspension or amendment of the restrictive condition if it is removed, suspended or amended;</i>	The property owner will be gaining from the removal of the restrictive condition as it will allow her to development the property as intended.

<p>(d) the social benefit of the restrictive condition remaining in place in its existing form;</p> <p>(e) the social benefit of the removal, suspension or amendment of the restrictive condition; and</p>	<p>This restrictive condition does not have a social benefit.</p>
<p>(f) whether the removal, suspension or amendment of the restrictive condition will completely remove all rights enjoyed by the beneficiary or only some of those rights.</p>	<p>There is no specific beneficiary of this condition, and no person or entity will be affected if this is removed.</p>

While the objector relies on the provisions of Section 39(5) of the Western Cape Land Use Planning Act, 2014 (LUPA), the objection notably fails to demonstrate how the removal of the restrictive condition will materially or adversely affect the objector or any other party.

LUPA requires that the decision-maker considers whether rights currently held by others under the restrictive condition will be undermined, particularly in relation to financial value, personal benefit, or social impact. The objection, however, does not identify any party who currently derives a financial, legal, or practical benefit from the existence of the condition in question. Nor does it provide evidence of how the objector's rights or use and enjoyment of their property will be negatively impacted should the condition be removed.

The objection is based on generalised concerns regarding density, neighbourhood character, and speculation about potential future use, without substantiating how any of these issues amount to a loss of rights or interests protected under the condition. Importantly, the restrictive condition does not serve any reciprocal or enforceable purpose in favour of the objector's property, nor does it constitute a servitude or other form of real right that would trigger protection under Section 39(5)(a) or (b).

In the absence of demonstrated prejudice or loss of legitimate rights, the objection fails to meet the legal threshold required to justify the retention of a condition that clearly inhibits the use of the subject property in line with existing zoning rights and municipal planning policy.

CHARACTER OF THE AREA

The objector has expressed concerns that the proposed removal of the restrictive condition will negatively affect the low-density character of the De Kelders area. Specifically, the objectors suggests that this could lead to a disruption in the peaceful and tranquil nature of the neighbourhood. This argument does not hold when examined in the context of the applicable zoning scheme, the objectives of sustainable development, and the careful controls already in place to maintain the area's character.

1. The Character of De Kelders Will Not Be Undermined

The character of De Kelders, as a low-density residential area, is not solely defined by the number of dwellings on individual erven but by compliance with zoning parameters, such as building height, coverage, and the maintenance of open spaces. While the objector raises concerns about potential overcrowding and loss of privacy, the zoning scheme itself maintains strict development controls, which will continue to apply even with the removal of the restrictive condition.

The current application does not propose any changes that would result in excessive site coverage or an over-densification of the area. The design and siting of the second dwelling will be subject to all existing development parameters set by the municipality to ensure the property remains in character with the surrounding area. The removal of the restrictive condition simply allows for the exercise of an existing land use right that is available under the zoning regulations.

2. No Significant Increase in Densification or Traffic

The objector suggests that the introduction of a second dwelling will lead to increased densification and disruption in the neighbourhood. It is however important to note that second dwellings are already permissible under the zoning scheme as a primary right. This application only seeks to remove a restrictive title deed condition, which is no longer in line with current planning practices.

In terms of traffic impact, it is unlikely that the proposed development will lead to significant congestion or overuse of the local road network. The property is located on a public road, and any increase in traffic will be marginal compared to the road's capacity. Additionally, as mentioned previously the hope is that the development of the property will serve as a catalyst for the improvement of the road, leading to its upkeep, benefiting the entire street.

3. Preserving Privacy and Open Space

The objector expresses concern that a second dwelling would result in a loss of privacy for neighbouring properties. The objector's properties are however further away from the subject property, and it is important to note that the proposed development will adhere to all municipal building regulations, which require the appropriate positioning of structures to respect neighbouring properties' privacy and spatial enjoyment. The distance between the new dwelling and neighbouring properties, combined with the requirement to maintain certain setbacks, will ensure that the second dwelling is positioned in a way that does not infringe upon the privacy of adjacent properties.

Additionally, the design of the property will include open space and green areas that contribute to maintaining the visual and spatial qualities of the neighbourhood. The overall density of development will not exceed the thresholds allowed by the zoning scheme, and the introduction of a second dwelling will not lead to a significant reduction in the amount of open space or the overall sense of spaciousness in the area.

Moreover, De Kelders, as a dynamic area, is naturally evolving. The objective is to balance the long-term interests of the community by facilitating appropriate densification in line with sustainable development principles. The second dwelling proposed is not a radical shift in the character of the area but rather an example of responsible development that respects both the built form and the needs of the community.

OVERLAY ZONES

The subject property is located within the designated urban edge, as demarcated in the Overstrand Municipality's spatial planning frameworks. This urban edge is specifically intended to delineate areas suitable for urban development, including residential expansion, and to prevent urban sprawl into rural or environmentally sensitive areas. The presence of the property within this boundary confirms that it is appropriate for development of the nature proposed in the application.

Both the Heritage Protection Overlay Zone (HPOZ) and the Environmental Management Overlay Zone (EMOZ) were taken into account during the application process. It was found that the proposed development, the removal of a restrictive title deed condition to allow the erection of a second dwelling, is of a scale and character that will not have a negative impact on the objectives of either overlay zone. The property does not contain any formally protected heritage structures, nor is it situated within a visually or culturally sensitive heritage context. Similarly, no environmentally sensitive features, critical biodiversity areas, or ecological corridors are present on the erf that would be affected by the proposed development.

As such, no further environmental or heritage studies were required, and the development proposal is fully compliant with the municipal land use scheme and spatial development frameworks. It is important to note that the objector's property is similarly located within the urban edge and subject to the same planning regulations, and it would be unreasonable to suggest that unnecessary or unjustified studies should be imposed on the applicant when the property is zoned and situated specifically for residential use within the municipality's planned development footprint.

PUBLIC BENEFIT

The assertion made by the objector that the proposed second dwelling constitutes speculative "beneficial densification" is not supported by the facts or by the application. The removal of the restrictive condition is not being sought for the benefit of the applicant alone but for the appropriate development of the property within the context of the existing zoning regulations and the designated urban edge.

Regarding the potential public benefit, the proposed development aligns with the municipal planning framework, which encourages sustainable development within the urban edge. Densification within areas already designated for urban growth is a fundamental principle of the municipality's spatial planning objectives, which aim to promote the efficient use of land and services, without leading to uncontrolled urban sprawl. The argument that the densification benefits the

broader community lies in its contribution to sustainable residential growth, allowing for housing opportunities that are properly serviced and integrated into the existing urban fabric.

The objections concerning traffic congestion, noise, loss of privacy, and changes to the character of the neighbourhood are considered but are not substantiated by the nature of the proposed development and have been addressed throughout the document. The scale and character of the second dwelling is in line with the existing residential zoning and will not result in over-densification. The application is a minor increase in residential capacity that will be in keeping with the established character of the area.

In response to the specific concerns raised:

Traffic Congestion and Noise:

As stated previously, the proposed development will not result in any significant increase in traffic congestion or noise levels. The location of the second dwelling is within an area that already accommodates residential activity. The municipality is also responsible for maintaining and upgrading roads and infrastructure in line with the increased development, and it is expected that the overall development within the urban edge will encourage improvements to the road network.

Diminished Residential Privacy and Open Space:

The proposed second dwelling will not infringe upon the privacy or open space of surrounding properties. The layout of the development ensures that the second dwelling will be positioned in a manner that respects the existing character of the area and the privacy of neighbouring properties. Moreover, the site coverage remains well within allowable limits and ensures that there is no overdevelopment of the site.

Shift in Architectural and Visual Identity of the Area:

The applicant has submitted proposed sketch plans together with the application that will ensure the second dwelling will be consistent with the visual identity of the area. The development will not significantly alter the appearance of the area but will rather complement the existing residential structures.

Destabilisation of Existing Planning Frameworks:

The argument that the proposal will destabilise the planning framework is misplaced. The property is located within the urban edge, and the application seeks to remove a restrictive title deed condition that limits development, thereby allowing the property to be developed in line with the existing zoning's development parameters and the overall planning intentions for the area. The urban edge is specifically intended to accommodate sustainable growth and development, including the introduction of additional residential units.

The case law references cited by the objector, including *Trustees of the Simcha Trust v Da Cruz* and *Malan v City of Cape Town*, primarily relate to cases where development would result in adverse impacts on neighbouring properties or community rights. In this case, the proposed development complies with the zoning and municipal planning frameworks, which consider the overall benefit to the community. The argument that individual gain cannot outweigh the collective

interests of the community is acknowledged, but this application does not undermine those interests, but it rather supports the broader planning objectives of sustainable urban growth within the urban edge.

The proposed development represents an appropriate and well-considered densification within the urban edge that aligns with broader municipal goals of sustainable growth and efficient land use. The concerns raised about the impact on the community and neighbourhood character have been addressed thoroughly in the application, and the proposal will not result in the negative outcomes described by the objector.

In conclusion, the objections received have been duly considered and comprehensively addressed. The proposed development has been conceived with due regard to the environmental sensitivities, heritage context, and the established character of the area. It complies with the applicable spatial planning policies, falls within the urban edge, and does not undermine any planning principle or enforceable restriction not specifically addressed by the application.

The proposal represents an appropriate and sustainable form of development and does not negatively impact the rights or amenities of surrounding property owners. It is therefore respectfully submitted that the application be approved as proposed.

Yours faithfully



T JANSEN

PROFESSIONAL TOWN PLANNER (A/2858/2019)

**COMMENTS FROM THE PROJECT MANAGEMENT DIVISION FOR:
APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED
CONDITIONS, SUBDIVISION & CONSOLIDATION: ERF 715 & 716, DE
KELDERS (4604/2024)**

Electricity	:	Refer to Conditions
Water	:	Refer to Conditions
Sewer	:	Refer to Conditions
Stormwater	:	Refer to Conditions
Roads and traffic	:	Refer to Conditions

Conditions:

1. that the existing sewer connection(s) be used to service the proposed consolidated development;
2. that the water connections to the erven must be consolidated to one connection and that one water meter be allowed/ registered;
3. that only the existing electricity connection will be available for the development and that, should additional capacity be required, an investigation be conducted, with regard to the capacity required and that available, at the owner's cost;
4. that the electricity connections to the erven must be consolidated to one connection and that one electricity meter be allowed/ registered;
5. that electrical submetering for second/additional dwelling(s) remains the responsibility of the developer/owner;
6. that the developer investigate and determine the limitations of the site in terms of sewer drainage, subject to the minimum requirements of *SANS 10400 – P: 2010: Drainage*;
7. that, should any upgrading and / or development of the relevant sidewalks adjacent to the property be required as part of the development, application for such development be made to the office of the Principal Technologist: Engineering Services - Gansbaai for written approval;
8. that any additional and / or extended vehicle entrances will be for the owner's account;
9. that no reservation of on-street parking be allowed;
10. that stormwater discharged from higher lying properties and generated in the catchment area of the property be allowed to drain freely through the property;

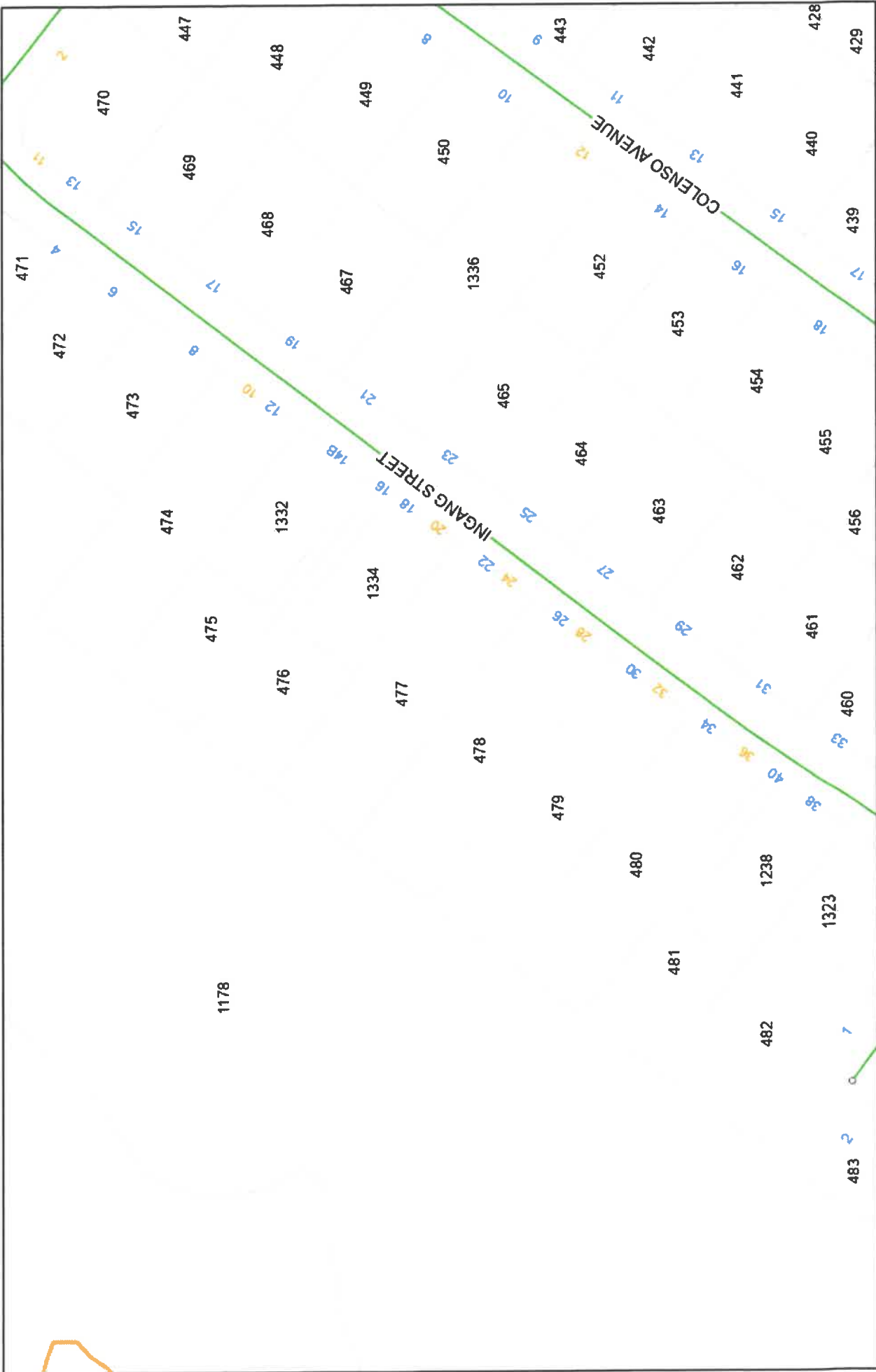
11. that stormwater reticulation and connection(s) to the municipal system be provided at the owner's cost, if required.



RICARDO ANDREW
PRINCIPAL TECHNOLOGIST:
DEVELOPMENT CONTROL



DATE



GIS extract of subdivision of Erven 475, 476, 481 and 482, De Kelders

Date: 2026/02/16