

## 4.7

**ERF 1299, 31 FRONT STREET, DE KELDERS: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS: MESSRS WRAP PROJECT OFFICE ON BEHALF OF DR V BUSER**

1299 GDK (4712/2024)

SW van der Merwe  
19 February 2026

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Hermanus Administration

**1. EXECUTIVE SUMMARY**

An application has been received on 03 February 2025 from Messrs WRAP Project Office on behalf of Dr V Buser in terms of the Overstrand Municipality Amendment By-law on Municipal Land Use Planning, 2020 for the following:

- ❖ **Removal of restrictive title deed condition** in terms of Section 16(2)(f) of the By-law for the removal of restrictive title deed condition E.I(c) contained in title deed T42238/2021 applicable to applicable to Erf 1299, De Kelders.

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 property is located at 31 Front Street, De Kelders. The property is zoned Residential Zone 1: Single Residential and measures 699m<sup>2</sup> in extent. The property is currently vacant. The application property had been subdivided and has a 3m right of way along the northern lateral property boundary in favour of the owner of Erf 717 at the rear.

The proposal comprises the removal of restrictive title deed condition E.I(c) that reads as follows:

*“Dat nie meer as een woonhuis tesame met die nodige buitegeboue en toebehore, gebou sal word op hierdie erf.”*

**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.**

- Removal will enable the owner to develop the property in accordance with the Overstrand Land Use Scheme, i.e. a primary dwelling and a second dwelling unit.
- Proposal complies with the Overstrand Land Use Scheme, 2020.

- 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.
- Municipal services are available.
- Proposed additional dwelling is not considered to have an additional impact on surrounding service networks.
- Access and egress are gained from Front Street.
- Proposal is not predicted to have a long-term socio-economic impact.
- Proposal fits in with the surrounding area.
- Proposal will not impact the safety, health and wellbeing of the community.
- Property is not listed on the Heritage register.
- Proposal will not impact the biophysical environment.
- Proposal will not impact traffic.
- Proposal will not impact the character of the area.
- No additional rights are being applied for beyond that permitted in terms of the land use scheme.
- Views (not views due to slope of the property) might be impacted as the property is currently vacant.
- Proposal will have a short-term economic impact whilst the dwelling(s) is built.
- Construction will require approval of building plans, which will be scrutinised for compliance with the Overstrand Land Use Scheme.
- Proposal is not predicated 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.
- The application for removal of restrictive title conditions is motivated as follows:

#### **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 as intended.

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

This 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	17 April 2025
Gazette	Yes	14 March 2025	17 April 2025
Notices ( <i>possibly affected property owners</i> )	Yes	10 March 2025	17 April 2025
Notices ( <i>persons mentioned in title deed</i> )	Yes	10 March 2025	17 April 2025
Internal Departments	Yes	14 March 2025	17 April 2025
Ward councillor	Yes	14 March 2025	17 April 2025
Total comments	<b>Four (4) letters of objection</b>		
Total letters of support	<b>None</b>		
Was public participation undertaken in accordance with Section 46 - 50 of the By-Law on Municipal Land Use Planning?			<b>Yes</b>
Was the application processed correctly?			<b>Yes</b>
Is the proposal consistent with the principles referred to in Chapter 2 of SPLUMA and Chapter VI of LUPA?			<b>Yes</b>
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?			<b>Yes</b>

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

Name	Date received	Summary of comments
<b>Fire Services</b>	18/03/2025	No objection, subject to compliance with the provision of SANS 10400-A, 10400-T:2024 and the By-law relating to community fire safety.
<b>Building Control</b>	18/03/2025	No objection.
<b>Local Heritage</b>	19/03/2025	No objection.
<b>Waste Management</b>	19/03/2025	No objection.
<b>Development Control</b>	14/04/2025	Attached as Annexure G.
<b>Environmental Management and Conservation Division</b>	23/04/2025	Attached as Annexure H.

## 7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION

Four 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. 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 E.I(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.
- 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 clarify the response of the height restriction as referred to in the title deed below.
- 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**

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

#### **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, 717, De Kelders. Also, further to the north along Ingang Street, similar subdivisions occurred on Erven 475, 476, 481 & 482, De Kelders (refer to the Gis extract, as per Annexure I).

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.

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 units' 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 a complaint history pertaining to the operation of self-catering units. 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 purposes 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**

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 affected 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

**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 Section 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 objector 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. The proposal does not entail an increase or upgrade of development rights in terms of size, scale and bulk, as the height restriction, building lines a coverage of buildings whether a primary dwelling or a primary dwelling and second dwelling units is to be developed remains the same. Also, the title deed condition imposes a height restriction on development, in favour of the owner of Erf 717 to the rear, which condition is more restrictive than the 8m height restriction above base level in terms of the Overstrand Land Use Scheme. Compliance with this condition will be evaluated during building plan submission phase.

#### **POINT OF OBJECTION**

##### **Overlay Zones**

#### **RESPONSE FROM APPLICANT**

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.

#### **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.

**POINT OF OBJECTION****Additional title deed conditions and development parameters****RESPONSE FROM APPLICANT**

It is noted that Clause F of Title Deed T42238/2021 includes a height restriction applicable to Erf 1299, De Kelders, which stipulates that *“No dwelling or structure may be erected on Erf 1299 (portion of Erf 717) De Kelders higher than the floor level of the existing house on Erf 717 as it stands now.”* This restriction originates from a condition imposed during the subdivision of Erf 717, De Kelders.

The current application seeks only the removal of Condition E(1)(c) from the title deed to permit the erection of a second dwelling on the property. The height restriction in Clause F is not being amended or removed as part of this application and remains fully applicable and enforceable. Accordingly, any future development on Erf 1299, De Kelders must adhere to this height limitation, irrespective of the general height parameters provided under the Overstrand Municipal Zoning Scheme.

The reference in Section 7 of the motivation to the zoning scheme’s maximum permissible building height of 8,0m is simply a reflection of the zoning parameters and does not override any applicable title deed conditions. The title deed restriction takes precedence unless formally removed through a separate application process, which is not being pursued in this instance.

It is also noted that the existing ground levels and the actual elevation of the house on Erf 717, De Kelders will determine the permissible building envelope on Erf 1299, De Kelders in terms of the height limitation. At this stage, detailed architectural design work and a professional land survey have not yet been undertaken, as this level of technical detail is premature for a land use application focused solely on the removal of a restrictive condition unrelated to height.

The applicant nevertheless acknowledges the enforceability of the height restriction and confirms that any future building plans submitted to the municipality for approval will need to comply with all remaining title deed conditions, including the height limitation. A land surveyor and architectural professional will be appointed to ensure full compliance.

Lastly, the concern expressed by the owner of Erf 717, De Kelders regarding potential adverse impact is noted. However, given that the height restriction remains in force and binding, any structure erected on Erf 1299, De Kelders will need to respect the floor level of the existing dwelling on Erf 717, De Kelders as the maximum height, thereby safeguarding the legitimate expectation of adjacent property owners.

**RESPONSE FROM MUNICIPAL TOWN PLANNER**

Applicants comment is noted and agreed with.

**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 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 T42238/2021 applicable to Erf 1299, 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:*

*E.I(c) “Dat nie meer as een woonhuis tesame met die nodige buitegeboue en toebehore, gebou sal word op hierdie erf.”*

The removal of the above restrictive conditions will enable the owner to develop the property 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 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.

Although the applicant motivates that no person is personally benefitting, the property owner will benefit from the proposed removal as it will enable development of the property 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 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?

Restrictive title deed conditions limiting the use of the property to residential purposes only, coverage, title deed building lines, as well as the height restriction in favour of the owner of Erf 717 will remain.

## **12.THE DESIRABILITY OF THE PROPOSAL**

### **REMOVAL OF RESTRICTIVE TITLE DEED CONDITION**

The proposal 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. through permitting a second dwelling.

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

The application property falls more than 7m between the eastern rear and western street boundary. Further, the development of the property is subject to title deed condition limiting the height of development in favour of the owner of Erf 717 to the rear and effectively other adjoining properties as well. The relevant condition reads as follows:

*“F. Subject further to the following condition contained in Deed of Transfer No. T57651/2004 imposed by the owner of the Remainder of Erf 717, De Kelders, reading as follows:*

*No dwelling or structure may be erected on Erf 1299 (portion of Erf 717) De Kelders, higher than the floor level of the existing house on Erf 717 as it stands now.”*

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 based on the impact on views and privacy of adjoining properties. It must also be borne in mind that the property can be developed in line with the development parameters applicable, and that these remains the same regardless of whether the second dwelling restriction remain or is removed.

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 and in the vicinity of the application property.

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 removal of the 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 condition E.I(c)** as contained in title deed T42238/2021 applicable to Erf 1299, 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 subject to the following conditions;
  - (a) 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;
  - (b) that the conditions in the Services Report (attached as Annexure G), be complied with
  - (c) that the conditions from Overstrand Environmental Management and Conservation Division (attached as Annexure H), 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;
3. 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 proposal 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: Site Plan  
Annexure D: Title deed T42238/2021  
Annexure E: Objections received  
Annexure F: Response on objections  
Annexure G: Services Report  
Annexure H: Comment: Environmental Management and Conservation Division  
Annexure I: 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  
Erf 1299 - De Kelders

Plan prepared by: Thian Jansen

Tel: 028 313 1411

Email: admin@wrapgroup.co.za

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



**Project Office**  
Team Planning & Project Management



FRONT STREET

1033E02001

1465E01001

712

RE/713

1239

716

1299

721

717

1184

NTS



## MOTIVATION

### 1. ABBREVIATIONS

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

### 2. PROPERTY DETAILS

<b>Erf Number</b>	Erf 1299
<b>Extent</b>	688m <sup>2</sup>
<b>Zoning</b>	Residential Zone 1: Single Residential

### 3. BACKGROUND AND INTENT

Erf 1299 De Kelders, hereafter referred to as the subject property, is located at 31 Front Street, De Kelders (refer to **Plan 1 - Locality Plan**). The property owner appointed WRAP Project Office to submit a land use application on her behalf (refer to **Annexure A - Power of Attorney**). The owner acquired the property in late 2021 with the intent to develop the property.

The intention is to build a main dwelling as well as a second dwelling on the property that aligns with the existing zoning uses. However, the vision is being restricted by a condition contained within the title deed. As a result, this application serves as motivation to remove the restrictive condition to allow the owner to develop the property as she intends. Refer to **Annexure C: Architect Draft Building Plan**

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

- Removal of restrictive title deed conditions E(l)(c);

### 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 E(l)(c) of Erf 1299 De Kelders to allow the proposed second dwelling.

The title deed condition that prohibits the land use rights necessary for the intended development and the rationale for the removal of this condition are discussed below:



## MOTIVATION

### Restrictive Title Deed Conditions

Condition E(l)(c) – “Dat nie meer as een woonhuis tesame met die nodige buitegeboue en toebehore, gebou sal word op hierdie erf.”

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 of the property, although the second dwelling of this residential property is consistent with the planning policies. The reasoning for the removal of the restrictive title deed condition will be discussed in detail in Section 7 of this report.

## 5. LAND USE ENVIRONMENT

The subject property is 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 T42238/2002 of the Erf 1299 De Kelders (refer **Annexure B**) was perused and as discussed in Section 3 of the report, a restrictive condition was found which requires removal to allow the owner to utilise the property to its full potential.

### Title deed restrictive conditions

Condition E(l)(c) – “Dat nie meer as een woonhuis tesame met die nodige buitegeboue en toebehore, gebou sal word op hierdie erf.”

### Motivation

#### The rationale for the proposed removal

Erf 1299 De Kelders is currently a vacant erf. The property owner wishes to construct two dwellings thereon, one main dwelling and a second dwelling ('granny flat').

Considering the intent behind the restrictive title conditions aimed at preserving the character of the De Kelders Township, it is believed that the proposed 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 a second dwelling clause as per paragraph E(l)(c) 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.



## MOTIVATION

### 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 even but 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):

<b>LUPA, Section 39(5) (a-f)</b>	
<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.
<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.
<i>(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.</i>	There is no specific beneficiary of this condition, and no person or entity will be affected if this is removed.



## MOTIVATION

## 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:

<b>RESIDENTIAL ZONE 1: SINGLE RESIDENTIAL</b>			
	<b>Parameters</b>	<b>Proposal</b>	<b>Comply/ deviate</b>
<b>Primary use</b>	Crèche, <b>Dwelling House</b> , Guest Rooms, Home Occupation, <b>Second Dwelling Unit</b> and Self-Catering.	Dwelling House Second Dwelling Unit	Comply Will comply once restrictive Title Deed Condition is removed.
<b>Consent use</b>	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
<b>Development parameters</b>			
<b>Coverage</b>	The maximum coverage for all buildings on the land unit is determined in accordance with the net erf area: 400m <sup>2</sup> and greater = 50%	This is noted and will be complied with.	Comply
<b>Building lines</b>	(i) The street building line is determined in accordance with the net erf area: <ul style="list-style-type: none"> <li>• 400 m<sup>2</sup> and greater = 4m</li> </ul> (ii) The side and rear building lines are determined in accordance with the net erf area: <ul style="list-style-type: none"> <li>• Greater than 400 m<sup>2</sup> = 2m</li> </ul>	This is noted and will be complied with.	Comply
<b>Height</b>	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
<b>Garages and carports</b>	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 property can be 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 a second dwelling is not expected to have any additional impact on the surrounding existing networks. No additional connection will be created, meaning no significant 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 property at present is gained from Front Street. Both dwellings will utilise the same access.

### 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 is not predicted to have a long-term socio-economic impact.
Compatibility with surrounding uses	It is not predicted that the proposal is out of line with the surrounding area as second dwelling are a primary right in terms of the OMLUS.
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 property is located in a residential setting and is currently vacant. No additional rights are being applied for beyond what is allowed within the zoning parameters for 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 the property is vacant. It is important to note any construction will need approved building plans, which will be scrutinised for compliance with the OMLUS.

### **Economic impact**

The proposal is expected to have a short-term economic impact while the dwellings are being built, however, no long-term economic impact is expected.

### **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 property is not located within an environmentally important area.

## 10. POLICIES AND REGULATIONS

### 10.1 Overstrand Municipality Environmental Protection Overlay Zone (EMOZ)

The property 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
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

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ERF 1299 DE KELDERS

**MOTIVATION**

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

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



## MOTIVATION

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>B) Permit Upon Approval By Delegated Authority and / Receipt of Tariff</b>	<b>Applicable Environmental Management Overlay Zone (EMOZ)</b>	<b>Applicable to the application or not</b>
	<b>Coastal</b>	
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
<b>C) Council Authorisation Pending Consent Use Application / Lease Agreement / Applicable Tariffs as applicable</b>	<b>Applicable Environmental Management Overlay Zone (EMOZ)</b>	<b>Applicable to the application or not</b>
	<b>Coastal</b>	
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
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.



## MOTIVATION

The proposed development of the property will be done in alignment with the development parameters of the OMLUS. It is not expected that the second dwelling will have a negative impact on the EMOZ.

### 10.2 Overstrand Municipality Heritage Protection Overlay Zone (HPOZ)

The subject property 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 dwelling units being consistent with the development parameters of the current zoning.

### 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 develop and add a second dwelling unit 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 develop and add a second dwelling unit intends to ensure the maximum potential of the subject property is unlocked.

### **Spatial resilience**

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



## MOTIVATION

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### **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.



## EVALUATION & RECOMMENDATION

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### 12. EVALUATION

The proposal needs to be evaluated on the basis that no additional land use rights are being sought. The restriction is currently due to a condition in the title deed. The proposal aims to remove this restrictive condition to allow for the construction of a second dwelling on the property.

The proposed second dwelling will be used for single residential purposes and will not introduce any new land use rights. This proposal is in harmony with all relevant spatial planning policies, demonstrating that the applicant has carefully considered these policies and has not arbitrarily created this application. The alignment with spatial planning policies ensures that the proposed development is appropriate for the area and adheres to established guidelines and regulations.

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### 13. RECOMMENDATION

Based on the abovementioned motivation, it is recommended that the following be approved:

- 13.1 Removal of a restrictive title deed condition** E(1)(c) of Erf 1299 De Kelders to allow the proposed second dwelling in terms of Section 16(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.

**GENERAL NOTE**  
 THE DESIGN OF THIS DRAWING IS CONSIDERED TO BE THE PROPERTY OF THE ARCHITECT. IT IS NOT TO BE REPRODUCED, COPIED, OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF THE ARCHITECT.

OWNERS SIGNATURE

ARCHITECTS SIGNATURE

REVISIONS



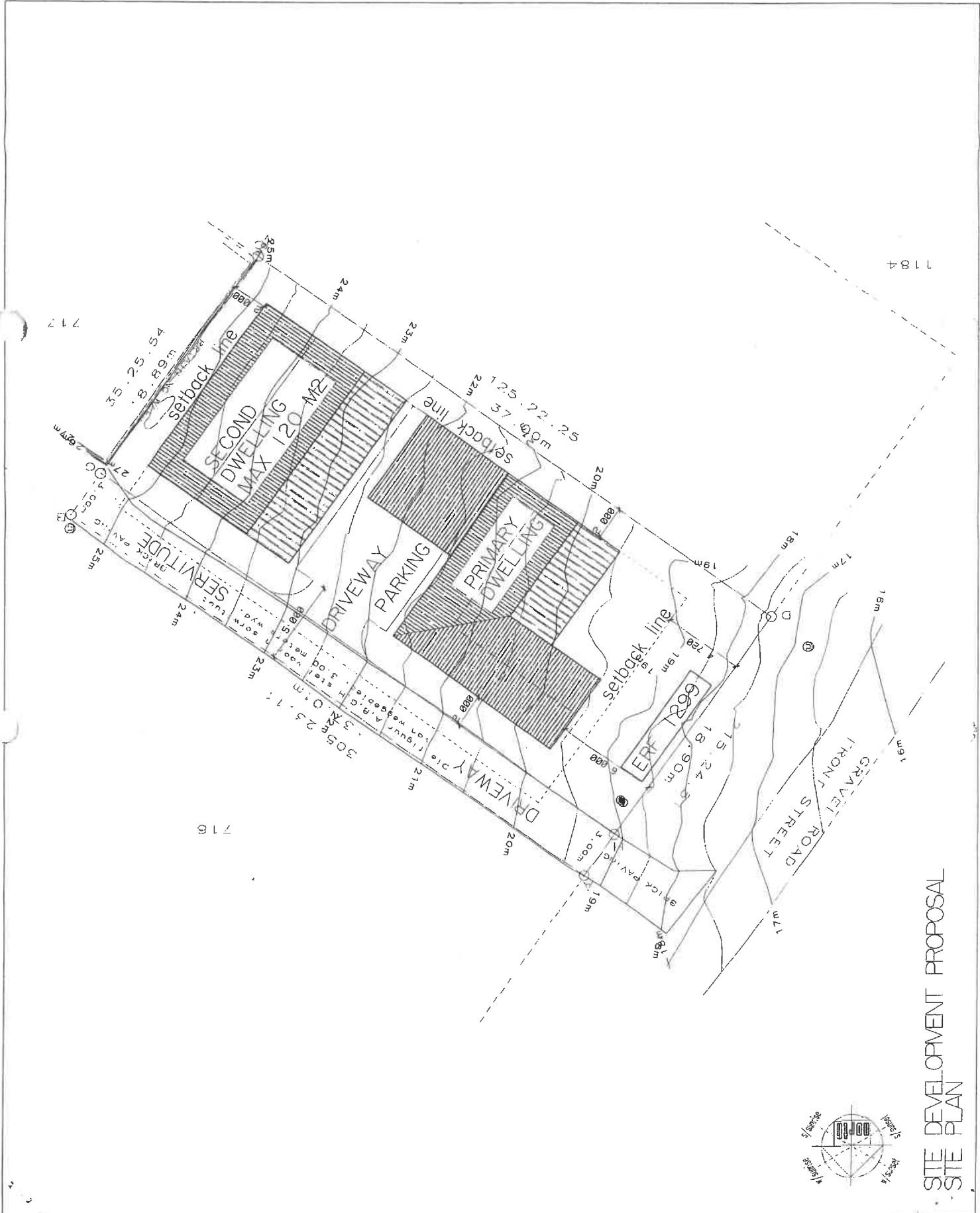
**ANDERSON**  
 @rchitecture  
 G.R. ANDERSON DIRECTOR  
 in association with  
**E-VISIONS**  
 architectural design studio  
 N.L. LILJEMAN B.TECH PSAT  
 SACAP: PEA130776  
 14 VICTORIA STREET  
 STANFORD

**CLIENT**  
 MRS Y BLISER  
 EBFT299  
 DE KELDERS

**PROJECT DESCRIPTION**  
 LANDSLAVEY PROPOSAL  
 FRONT STREET  
 EBFT 1299  
 DE KELDERS  
 GANSBAAI

**DRAWING DESCRIPTION**  
 MUNICIPAL APPLICATION  
 SITE PLAN

SCALE 1:200  
 DATE 26/06/24  
 DRAW : NLE  
 PROJECT NO: 10-24  
 DRAWING NO: LS-MS-100  
 VERSION 1



SITE DEVELOPMENT PROPOSAL  
 SITE PLAN

Pohl & Stuhlinger  
 12th Floor Reserve Bank Building  
 St Georges Mall  
 Cape Town  
 8001ce endorsement

Purchase Price/Value	R 1720 000,00	Office fee	R 1283,00
Reason for exemption	Exempt i.t.o		

Prepared by me,

CONVEYANCER  
**SOPHIA WESSELS**  
 LPCM Number: 12335

DATA / VERIFY  
 21-09-2021  
 DIPONTSHENG LEEUW

DATA / CAPTURE  
 22-09-2021  
 ATHI DAMOYI

T 000049238 / 2021

## DEED OF TRANSFER

BE IT HEREBY MADE KNOWN:

THAT SOPHIA WESSELS

appeared before me, REGISTRAR OF DEEDS at CAPE TOWN, she, the said Appearer, being duly authorised thereto by a Power of Attorney dated 6<sup>th</sup> August 2021 and signed at Cape Town and granted to her by Jürgen Werner Stuhlinger, acting on behalf of and duly authorised thereto by General Power of Attorney signed at Edinburgh on 5 July 2021 (No PA 000000829 / 2021 ) on behalf of:

- COLIN HECTOR TENNANT**  
 Born on 30 December 1961  
 Married, the marriage being governed by the laws of Scotland and duly assisted by his spouse, **CAITRONA MAIRI TENNANT**, Born on 27 April 1963, Married, the marriage being governed by the laws of Scotland, as needs be

and
- CAITRIONA MAIRI TENNANT**  
 Born on 27 April 1963  
 Married, the marriage being governed by the laws of Scotland and duly assisted by her spouse, **COLIN HECTOR TENNANT**, Born on 30 December 1961, Married, the marriage being governed by the laws of Scotland, as needs be

AND the said Appearer declared that her principal the said **COLIN HECTOR TENNANT** duly assisted by **CAITRONA MAIRI TENNANT** and **CAITRIONA MAIRI TENNANT** duly assisted by **COLIN HECTOR TENNANT** had on **18 June 2021** truly and legally sold and that she, the said Appearer in her capacity aforesaid, did, by 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.1299 DE KELDERS, in the Overstrand Municipality,  
 Division of Caledon,  
 Western Cape Province.

IN EXTENT: 699 (six hundred and ninety nine) square metres

FIRST TRANSFERRED by Deed of Transfer No T 45811/2000 with Diagram No 640/2000 relating thereto and held by Deed of Transfer No T 57651/2004.

- A. SUBJECT to the conditions referred to in Certificate of Township Title No T 1067/1940.
- B. ....
- C. SUBJECT FURTHER to and with the benefit of the Servitude referred to in the endorsement dated 12 June 1939 made on Deed of Transfer No T 3733/1920:

"Remainder

Registration of Servitude

By Deeds of Transfer No 5993 dd 12.6.1939, No 12705 dd 17.11.1939, No 13657 dd 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 Deeds of Transfer."

- D. SUBJECT FURTHER to and to the benefit of the following special conditions contained in Deed of Transfer No T 10959/1940 imposed by and in favour of the

5-2

h.

Transferor (De Kelders Syndicate Limited, as owners of the Remainder of the land described in Deed of Transfer No T 1255/1935, Deed of Transfer No T 3733/1920 and Certificate of Township Title No T 1067/1940 and for the benefit of the future owners thereof or 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 when approving the establishment of the Township and as contained in Deed of Transfer No T 7030/1926:

1. "Geen vure sal aangesteek word binne die grense van die persele hierdeur verkoop, behalwe deur of met die skriftelike toestemming van die transportgewer.
2. Die transportgewer behou die reg voor om te enige tyd hierna elektriese-telegraaf of telefoondrade oor en op enige deel van die bogenoemde erf of erwe te span, met die verdere reg om dit aan enige gebou of opstal vas te heg op 'n hoogte van minstens 3,05 meter van die grond af, en reg van toegang te enige tyd om dit te verwyder of in orde te hou.
3. Die transportgewer behou vir sigself as eienaar van enige onverkoopte persele in die dorpsgebied en as eienaar van enige ander grond gehou deur hom volgens akte van Transport Nr 3733 gedateer 20 Maart 1920 die uitsluitlike reg voor tot die gebruik van al die water wat ontstaan op of vloei oor die gesegde persele of erwe, en ook tot enige water waarop sulke persele of erwe geregtig is as oewergrond, of kragtens serwituut of ooreenkoms; en die transportnemer en sy opvolgers in titel sal nie geregtig wees op enige sodanige water nie, en die transportnemer as eienaar van oewergrond aan enige waterstroom wat oor of onder die grond vloei, word hiermee alle waterregte ontnem.
4. Die transportgewer behou vir sigself en sy opvolgers in titel die reg van toegang op alle redelike tye na hierdie erf vir die doeleindes van instandhouding en reparasie van pype onder enige deel van voorgenoemde erf of ander erwe, tesame met die reg om al sulke take of dade te doen op die gesegde grond as wat nodig of wenslik mag wees vir die gerief van die bewoners van hierdie of ander erwe in die dorpsgebied, en om so 'n voorraad te beheer totdat 'n plaaslike bestuur vir die dorpsgebied gestig is, tesame met die reg om voorraad van water na

bogenoemde erwe af te sny ingeval die transportnemer of enige opvolgers van hom weier om sodanige fooi opgelê deur die transportgewer aan hom vir die verskaffing van water te betaal, met die goedkeuring van die Administrateur, of om onnodige verspilling van water te verhoed.

- 5. Daar mag nie op enige deel van die bogenoemde erf of erwe enige gebou opgerig word as die kaarte en spesifikasies nie vooraf aan die transportgewer voorgelê en deur hom skriftelik goedgekeur is nie."

E. SUBJECT FURTHER to the following condition contained in Deed of Transfer No T 10959/1940 imposed by the Administrator in terms of the provisions of Ordinance 33/1934, when approving the establishment of De Kelders Township:

I. "SYNDE TEN GUNSTE VAN DIE GEREGISTREERDE EIENAAR VAN ELKE ERF IN DIE DORP:

- (a) Dat hierdie erf gebruik word alleen vir bewoningsdoeleindes.
- (b) Dat nie meer as die helfte van die oppervlakte van hierdie erf bebou sal word.
- (c) Dat nie meer as een woonhuis tesame met die nodige buitegeboue en toebehore, gebou sal word op hierdie erf.
- (d) Dat geen gebou opgetrek sal word binne 4,72 meter van enige straatlyn wat die grens is van hierdie erf of binne 1,57 meter van die grens van enige aangrensende erf, met dien verstande dat laasgenoemde beperking nie van toepassing sal wees op die gemeenskaplike grens of erwe wat gehou word as een erf onder gekonsolideerde titel.

II. SYNDE TEN GUNSTE VAN DIE ADMINISTRATEUR:

- (e) .....

III. SYNDE TEN GUNSTE VAN ENIGE PLAASLIKE BESTUUR WAT HIERNA GESTIG MAG WORD VIR DIE DOPSGEBIED.



- (f) Dat die eienaar van hierdie erf, hetsy die transportnemer of enige toekomstige eienaar, verplig sal wees om toe te laat dat die dreinerings- en rioleerings van enige ander erf of erwe geneem sal word oor die erf indien nodig geag deur die plaaslike bestuur wat hierna gestig mag word vir die dorpsgebied en op sulke wyse en op sulke posisie soos van tyd tot tyd redelik benodig mag word deur die bestuur.
- (g) Dat die eienaar van hierdie erf, hetsy die transportnemer of enige toekomstige eienaar, verplig sal wees om sonder vergoeding enige "septic tank" te verwyder wat daarop gebou is nadat 'n maand kennisgewing gegee is deur die plaaslike bestuur wat hierna gestig mag word vir die dorpsgebied."

F. SUBJECT FURTHER to the following condition contained in Deed of Transfer No T 57651/2004 imposed by the owner of the remainder of Erf 717 De Kelders, reading as follows:

No dwelling or structure may be erected on Erf 1299 (portion of Erf 717) De Kelders higher than the floor level of the existing house on ERF 717 as it stands now.

G. SUBJECT FURTHER to a Servitude Right of Way of 3 metres contained in Deed of Transfer No T 45811/2000 as shown on Diagram SG No 640/2000 denoted by the figure A.B.G.H. in favour of:

The Remainder of Erf 717 De Kelders in the Municipality for the Area of Gansbaai, Division of Caldeon, Western Cape Province.

Measuring as such – 699 (six hundred and ninety nine) square metres.


Held by Deed of Transfer No T 38120/1990.

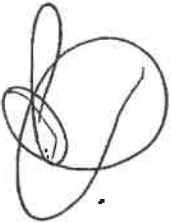
WHEREFORE the Appearer, renouncing all the right, title and interest which the said **COLIN HECTOR TENNANT** assisted by **CAITRONA MAIRI TENNANT** and **CAITRIONA MAIRI TENNANT** assisted by **COLIN HECTOR TENNANT** heretofore had to the premises, did, in consequence also acknowledge them, to be entirely 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 of the property hereby transferred to be the sum of **R1 720 000,00 (ONE MILLION SEVEN HUNDRED AND TWENTY THOUSAND RAND)**.

IN WITNESS WHEREOF I, the said Registrar of Deeds 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 *31 August 2021*

  
 \_\_\_\_\_  
 d.q. Signature of Appearer

In my presence:   
 \_\_\_\_\_  
 Registrar of Deeds







659  
TP A. Theart

1299 GOK

Annexure E/17  
OVERSTRAND MUNICIPALITEIT  
REKORDBEHEER  
22 APR 2025  
DOCUMENT CONTROL  
OVERSTRAND MUNICIPALITY

1 | Page

**PROFESSOR FELIX C.V. POTOCNIK & CARON POTOCNIK**

Legacy Sport Horse Stud

P.O. Box 740, Wellington, 7654

17 April 2025

TO:

1. [alida@overstrand.gov.za](mailto:alida@overstrand.gov.za)
2. Veronica Jansen : Professional Town Planner [admin@wrapgroup.co.za](mailto: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](mailto: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. ERF 1299
De Kelders Gansbaai
SCAN NO.
COLLABORATOR NO.
2648108

7/2

**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.

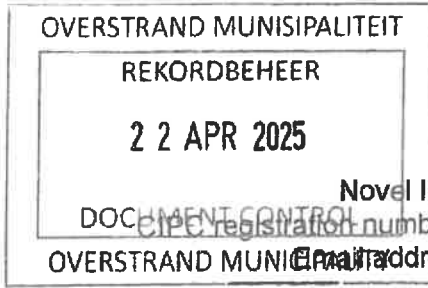
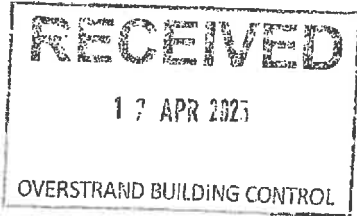
5.1 **Please supply relevant information** per paragraph 2.2 and subsections at your earliest convenience.



**PROFESSOR FELIX CV POTOCNIK**



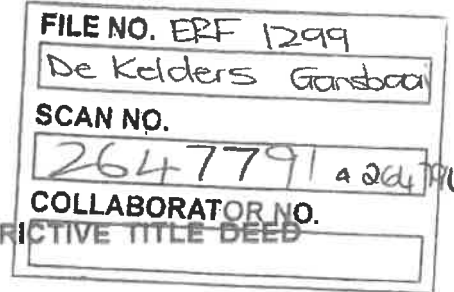
**CARON POTOCNIK**



Novel Idea Trading 113 CC  
DOCUMENT registration number: 2002/010139/23  
OVERSTRAND MUNICIPALITEIT address:

Date: April 6, 2025

Mr. SW van der Merwe  
Senior Town Planner  
Hermanus  
Email address: [alida@overstrand.gov.za](mailto:alida@overstrand.gov.za)



Dear Sir,

**RE: FORMAL OBJECTION TO THE REMOVAL OF RESTRICTIVE TITLE DEED CONDITION E(l)(c) OF ERF 1299, DE KELDERS**

**1. Introduction**

We, the undersigned residents and stakeholders of the De Kelders residential area, hereby lodge this formal objection to the proposed removal of the restrictive title deed condition E(l)(c) pertaining to Erf 1299, De Kelders, as set out in the Title Deed T42238/2021.

The purpose of our objection is to protect the integrity, character, environmental context, and socio-economic stability of the area, which would be significantly impacted by the removal of the said condition. The restrictive condition prohibits the construction of more than one dwelling house on the erf and was historically imposed to preserve the low-density residential character of the area.

**2. LEGAL AND REGULATORY FRAMEWORK**

**2.1. Enforceability and Binding Nature of Title Deed Conditions**

Restrictive title deed conditions, such as condition E(l)(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] ZAECPHC 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 E(l)(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. Detriment to the Character of the Area**

The primary purpose of restrictive condition E(l)(c) is to safeguard the peaceful, low-density residential character that defines the neighbourhood of De Kelders. This condition forms a critical component of the area's spatial planning framework and serves to preserve its distinct sense of tranquillity, privacy, and open space. Permitting the construction of a second dwelling on the subject erf would have a range of adverse consequences that directly contravene the purpose and intent of this restriction:

##### **3.1.1. Undermining of Low-Density Planning Intentions:**

The introduction of an additional dwelling would result in increased residential densification on a plot that is expressly intended for single-residence occupation. This densification would be inconsistent with the prevailing zoning objectives and

with the protective purpose of the restrictive title deed condition. The established spatial layout of De Kelders relies on generous erf sizes and low site coverage, which collectively ensure a sense of openness and a high quality of residential amenity.

### **3.1.2. Erosion of Privacy, Spatial Enjoyment, and Residential Amenity:**

The existing residents place substantial value on the privacy and spatial freedom afforded by the area's low-density form. The addition of a second dwelling would introduce additional human activity, vehicle movement, and noise, substantially impacting the rights and enjoyment of neighbouring property owners. Such changes are likely to disrupt the settled residential rhythm of the neighbourhood and diminish its established amenity.

### **3.1.3. Gradual Transformation and Loss of Neighbourhood Character:**

The introduction of a second dwelling would not be an isolated event but could set a precedent for similar applications. Over time, this would result in a cumulative shift away from the low-density, quiet character that defines De Kelders. The restrictive condition was designed precisely to prevent this kind of piecemeal transformation that, while incremental, can ultimately lead to the loss of a community's unique identity.

It must be emphasised that zoning permissions granted under municipal planning frameworks do not in themselves override restrictive title deed conditions. While zoning provides a general regulatory envelope, restrictive conditions function as tailored legal instruments that protect the specific needs and character of individual communities. Accordingly, it would be inappropriate to contend that compliance with the zoning scheme alone justifies the removal or circumvention of condition E(l)(c).

Judicial authority supports this interpretation. In **Trustees of the Simcha Trust v Da Cruz and Others 2018 (1) SA 514 (WCC)**, the Western Cape High Court underscored the importance of considering the rights and expectations of affected neighbouring owners when evaluating applications to remove or alter restrictive title conditions. The Court made clear that such decisions must be approached holistically, with due regard to their broader spatial, social, and legal implications.

Similarly, in **Minister of Local Government, Environmental Affairs and Development Planning, Western Cape v The Habitat Council and Others [2014] ZACC 9**, the Constitutional Court reaffirmed the role of restrictive title deed conditions as legitimate planning tools that support sustainable development and the autonomy of local government in land use management. The Court stressed that these conditions contribute meaningfully to the achievement of orderly development and must be respected unless lawfully removed through a fair and consultative process.

## **3.2. Environmental and Coastal Overlay Considerations**

The subject property is located within two critical spatial planning overlays: the Coastal Management Overlay Zone (CMOZ), also referred to as the Coastal Strip

Heritage Protection Overlay Zone (HPOZ), and the Environmental Management Overlay Zone (EMOZ), as designated in the Overstrand Municipality Land Use Scheme (OMLUS). These overlay zones are specifically designed to ensure the protection of natural, scenic, and heritage assets in sensitive coastal environments. Their core objectives include:

**3.2.1. Preservation of Public View Corridors and Scenic Vistas:**

The uninterrupted views of the coastline and natural landscape form part of the cultural and environmental value of De Kelders. The overlays aim to protect these vistas from obstruction or degradation through inappropriate development.

**3.2.2. Conservation of Coastal Ecological Transitions:**

The natural interface between land and sea is ecologically delicate and visually significant. These overlays seek to prevent disruptive developments that could compromise the seamless and sustainable transition between the built environment and the coastline.

**3.2.3. Protection of Biodiversity and Natural Habitat:**

The coastal area is home to a range of plant and animal species, some of which may be endemic or vulnerable. Increased densification and built form can encroach upon or fragment habitats, leading to irreversible ecological damage.

**3.2.4. Retention of the Coastal Zone's Visual and Environmental Integrity:**

The overlays aim to preserve the character, beauty, and ecological functioning of the area, which are vital not only to its residents but also to tourism and long-term environmental sustainability.

While the applicant contends that the proposed development will conform to the parameters of the OMLUS, this claim is significantly weakened by the absence of an Environmental Impact Assessment (EIA) or equivalent environmental study. In areas covered by sensitive overlay zones, an EIA constitutes an essential planning and risk assessment tool. It enables decision-makers to evaluate the cumulative and site-specific environmental impacts of a proposed development and to assess whether mitigation measures are adequate or feasible.

Absent such a study, decision-makers are left without the information necessary to determine whether the development will have a detrimental effect on the environment, particularly in a context as sensitive as the coastal belt of De Kelders. This omission is at odds with both statutory requirements and the precautionary principle, a cornerstone of environmental law.

In **Minister of Environmental Affairs and Tourism v Phambili Fisheries (Pty) Ltd 2003 (6) SA 407 (SCA)**, the Supreme Court of Appeal affirmed the necessity of cautious and informed decision-making in environmental matters. The court held that authorities are obligated to adopt a precautionary approach in the face of uncertainty or incomplete information, particularly when irreversible harm may occur. This principle is further embedded in the National Environmental Management Act 107 of

1998 (NEMA), which mandates an integrated, equitable, and environmentally responsible approach to decision-making.

In light of the property's location within HPOZ and EMOZ, and the lack of an independent environmental assessment, the proposed development raises serious concerns about non-compliance with fundamental environmental principles and planning obligations. Any approval granted in such circumstances would not only undermine the environmental integrity of the area but would also be procedurally flawed and potentially unlawful.

#### **4. SOCIO-ECONOMIC AND PLANNING CONCERNS**

##### **4.1. Precedent and Incremental Erosion of Spatial Integrity**

The approval of this application would set a precedent that could have far-reaching implications for the broader neighbourhood. If one property owner is permitted to remove a restrictive title deed condition such as E(l)(c), other owners may be encouraged to submit similar applications, thereby initiating a pattern of incremental densification. Over time, such cumulative approvals would undermine the original planning intentions and result in the systematic erosion of the low-density residential character that currently defines the area. This "domino effect" not only threatens the peaceful and cohesive nature of the neighbourhood but also weakens the legal integrity of the title deed restriction itself, which was intended to protect the area from precisely this type of development pressure.

##### **4.2. Impact on Property Values and Neighbourhood Desirability**

The market value of properties within this suburb is intrinsically linked to the area's low-density, quiet, and aesthetically consistent character. These features contribute significantly to the desirability of living in the neighbourhood. Allowing the proposed densification could trigger several adverse effects that are likely to diminish property values, including:

###### **4.2.1. Increased Traffic and Noise Pollution:**

Higher residential density typically brings with it more vehicles and pedestrian activity, disturbing the tranquil environment that existing residents value and expect.

###### **4.2.2. Loss of Privacy:**

The introduction of additional dwellings reduces spacing between structures, leading to a more congested and overlooked living experience. This loss of privacy is particularly problematic in areas historically developed with a focus on space and seclusion.

###### **4.2.3. Degradation of Visual and Spatial Aesthetics:**

The addition of new structures, especially if not in harmony with the surrounding architecture and layout, could alter the visual appeal of the area. The unique charm and character that attract residents and buyers alike may be compromised.

Collectively, these factors can negatively affect the perceived and actual value of properties. The legal importance of protecting such interests is well established in South African jurisprudence. For instance:

In **Malan v City of Cape Town and Others 2014 (6) SA 315 (CC)**, the Constitutional Court affirmed the importance of protecting the rights of property owners to enjoy the use of their property without unjustified interference. While the context involved lease agreements, the overarching principle applies equally in zoning and land use matters.

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 held that changes in zoning and land use must be evaluated for their impact on property values, underscoring the need for careful, evidence-based decision-making.

Academic research and case studies from comparable urban settings, such as Stellenbosch and Sydney, further reinforce the conclusion that increased residential density in previously low-density areas often correlates with reduced property values due to disruption of established neighbourhood character.

Thus, any proposal that significantly alters the planning DNA of the area must be approached with caution, ensuring that it does not unjustifiably prejudice existing property owners and the collective community interest.

#### **4.3. Absence of Tangible Public Benefit**

The applicant argues that the proposed second dwelling will constitute "*beneficial densification*," suggesting that the development will deliver advantages to the broader community. However, this assertion is speculative and lacks any empirical or substantive evidence demonstrating actual public benefit. On the contrary, the proposal appears to serve predominantly the applicant's private interests, while potentially inflicting widespread and lasting detriment on the surrounding neighbourhood.

In a low-density residential area such as De Kelders, densification must be carefully evaluated against the backdrop of its potential social and spatial impacts. Unchecked densification can lead to several negative outcomes, including:

- 4.3.1. Increased traffic congestion and noise levels;
- 4.3.2. Diminished residential privacy and open space;
- 4.3.3. A shift in the architectural and visual identity of the area;
- 4.3.4. The destabilisation of existing planning frameworks developed in consultation with the community.

These consequences undermine the principles of sustainable and integrated development as envisaged under Section 7 of the Spatial Planning and Land Use Management Act 16 of 2013 (SPLUMA), particularly the principles of spatial justice, spatial sustainability, and good governance. Section 7(b) of SPLUMA specifically

mandates that planning decisions must promote equitable and sustainable outcomes, which includes respecting the existing character of neighbourhoods and avoiding decisions that disproportionately affect affected parties.

Case law supports this cautious approach:

In **Trustees of the Simcha Trust v Da Cruz and Others 2018 (1) SA 514 (WCC)**, the High Court emphasized that applications for the removal of restrictive title deed conditions must consider the legitimate expectations and rights of surrounding landowners. Individual gain cannot outweigh the collective interests of the community.

In **Malan v City of Cape Town and Others**, the Constitutional Court reiterated the constitutional significance of secure property rights and the importance of protecting them against arbitrary interference.

Moreover, the Supreme Court of Appeal in **City of Johannesburg Metropolitan Municipality v Chairman of the Valuation Appeal Board** cautioned against decisions that impact the valuation and use of land without due regard for broader planning considerations and community rights.

In light of the above, the applicant's claim of "*beneficial densification*" fails to meet the threshold of demonstrating any actual, measurable benefit to the public. Instead, the proposed removal of the restriction risks setting in motion a series of developments that may cumulatively undermine the carefully curated, legally protected, and widely valued residential environment.

## 5. Procedural and Substantive Deficiencies in the Application

The application for the removal of restrictive title deed condition E(l)(c) is materially deficient on both procedural and substantive grounds, rendering it non-compliant with applicable legal, planning, and environmental requirements. The failure to adhere to statutory obligations under LUPA, SPLUMA, and related legislative frameworks compromises the integrity of the application and undermines its legal validity. Key deficiencies include the following:

### 5.1. Absence of Meaningful Consultation and Consent from Affected Parties

The applicant has not submitted any evidence of meaningful consultation with or consent from directly affected neighbours or the wider community. In terms of section 39(5)(d) and (e) of the Western Cape Land Use Planning Act 3 of 2014 (LUPA), the decision-maker is obliged to take into account the legitimate expectations, rights, and objections of property owners and residents who may be adversely affected by the proposed removal. These provisions codify the participatory and rights-based ethos central to SPLUMA and LUPA.

In **Fisher v Unlawful Occupiers of Erf 1501 (2021) ZAWCHC 150**, the court reinforced the dual compliance requirement: planning permissions cannot override restrictive conditions without proper legal procedures and stakeholder involvement. The applicant's omission of such engagement raises serious concerns regarding procedural fairness and undermines the transparency of the application process.

## **5.2. Non-Alignment with the Original Township Design and Planning Frameworks**

The application fails to address whether and how the proposed removal aligns with the original township design, the zoning scheme, and overarching spatial development frameworks. Section 7(b) of the Spatial Planning and Land Use Management Act 16 of 2013 (SPLUMA) mandates that land use decisions must promote spatial justice, sustainability, and alignment with established planning instruments.

The removal of condition E(l)(c), which restricts the land use to low-density, single residential purposes, risks undermining the coherent spatial character that has been preserved by this restriction over time. In **Equus v City of Port Elizabeth and Others [2012] ZAECPEHC 82**, the court held that the removal of restrictive conditions protecting low-density residential areas should not proceed in disregard of their original planning intent, which is often designed to promote long-term neighbourhood stability.

## **5.3. Lack of Critical Expert Assessments to Inform Decision-Making**

The application is notably silent on several expert reports and studies essential for an informed and lawful decision, including but not limited to:

- 5.3.1. A Heritage Impact Assessment (HIA) in terms of the National Heritage Resources Act 25 of 1999, particularly relevant in light of the area's location within a coastal strip heritage protection overlay zone.
- 5.3.2. An Environmental Impact or Sensitivity Assessment, required under the National Environmental Management Act 107 of 1998 (NEMA), especially considering the property's location within an Environmental Management Overlay Zone (EMOZ). This failure breaches the precautionary principle, as affirmed in **Minister of Environmental Affairs and Tourism v Phambili Fisheries (Pty) Ltd 2003 (6) SA 407 (SCA)**, where the court emphasised that decision-makers must err on the side of caution in the absence of sufficient environmental data.
- 5.3.3. A Social and Community Impact Analysis, which is critical to evaluate the broader social implications of densification, including possible degradation of quality of life, visual amenity, and increased pressure on infrastructure and resources.

In the absence of these reports, the application is speculative and lacks the evidentiary basis required by both LUPA and municipal by-laws to enable the competent authority to properly weigh the public interest against private gain.

## **6. Conclusion: Request for Refusal Based on Legal, Environmental, and Planning Principles**

In light of the above, we respectfully submit that the application for the removal of restrictive condition E(l)(c) is legally untenable and substantively flawed, warranting refusal by the Overstrand Municipality. The proposed removal is incompatible with

established legal precedent, planning principles, and environmental safeguards for the following reasons:

**6.1. It Undermines the Historical and Protective Purpose of the Restriction**

Condition E(l)(c) was inserted to ensure the preservation of the low-density, residential character of the area and to protect the legitimate expectations of neighbouring landowners. As confirmed in **Lorentz v Melle 1978 (3) SA 1044 (T)**, such conditions create binding real rights that cannot be displaced without lawful removal processes and valid justification. The removal of this restriction would dilute the character of the area and open the door to piecemeal densification, contrary to long-standing planning objectives.

**6.2. It Disregards the Rights of Affected Landowners and Community Expectations**

The application does not demonstrate adequate engagement with, or consideration of, affected neighbours. In **Trustees of the Simcha Trust v Da Cruz and Others 2018 (1) SA 514 (WCC)**, the court emphasised the need to balance private interests with the broader community's reliance on longstanding planning protections. The failure to obtain or address objections from the community offends this balance and undermines the legitimacy of the process.

**6.3. It Ignores the Environmental Sensitivity of the Site**

The application fails to acknowledge or address the ecological and visual sensitivity of the site within a designated Coastal Overlay Zone and EMOZ. The absence of an Environmental Impact Assessment (EIA) or equivalent study violates the principles of responsible environmental stewardship and fails to meet the legal standards required under NEMA and applicable municipal overlays.

**6.4. It Fails to Demonstrate Any Tangible Public Benefit**

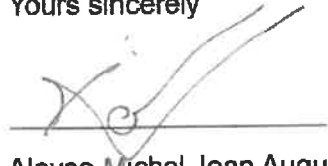
In terms of section 39(5)(c)–(f) of LUPA, an application for the removal of a restrictive condition must demonstrate a broader public benefit or at least ensure that private benefit does not unjustifiably override the rights of others. The current application is driven by private commercial interest and offers no compensating social, environmental, or planning advantage to the community. This fails the proportionality and public interest tests embedded in both SPLUMA and LUPA.

**6.5. Non-Compliance with Procedural and Substantive Planning Requirements**

The cumulative effect of the procedural deficiencies, lack of expert assessments, failure to align with planning frameworks, and absence of public benefit renders the application incapable of approval in terms of section 39(5) of LUPA and section 16(2) (f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.

We accordingly request that the Overstrand Municipality decline the application in full and uphold its legal and constitutional obligations to protect the integrity of its planning frameworks, environmental resources, and community interests.

Yours sincerely



Aloyse Michel Jean Auguste Zeimen

7, um Letzerknaeppchen

L-9660 Bonnal

Luxembourg

|

**Attachment:** Copy of resolution of Novel Idea Trading 113 CC, dated 31 July 2024

**Resolution by the Close Corporation**

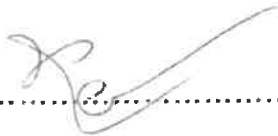
At a meeting of the 3 (three) Members of Novel Idea Trading 113 CC, CIPC Registration Number: 2002/010139/23, held at Bonnal on July 31, 2024, the following resolution is passed:

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

.....  .....

Zenobia Moolman-Campbell & Jeffrey Allen Campbell  
Erf 717  
29 Front Street  
De Kelders  
7320

27 March 2025

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

Email: [alida@overstrand.gov.za](mailto:alida@overstrand.gov.za)

OVERSTRAND MUNISIPALITEIT
REKORDBEHEER
27 MAR 2025
DOCUMENT CONTROL
OVERSTRAND MUNICIPALITY

TP - A Theart  
(S vld Merkle)

Dear Mr van der Merwe,

**ERF 1299, 31 FRONT STREET, DE KELDERS:  
APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS**

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 1299. Our contact details are:

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

**Erection of a second dwelling:** Removal of Condition E(l)(c) contained in Title Deed T42238/2002 – “That not more than one dwelling, together with the necessary outbuildings and appurtenances be erected on this erf.” is opposed.

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 1299 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 716 De Kelders, which application we are also opposing.

FILE NO. Erf 1299-GSK ✓
SCAN NO.
COLLABORATOR NO. 2633850

TP

27 MAR 2025

**Height restriction on dwelling to be erected of Erf 1299:** The applicant conveniently omitted to refer to a further restriction contained in Clause F on page 5 of Title Deed T42238/2002, which states:

"Subject further to the following condition contained in Deed of Transfer No T57651/2004 imposed by the owner of the remainder of Erf 717 De Kelders, reading as follows:

No dwelling or structure may be erected on Erf 1299 (portion of Erf 717) De Kelders higher than the floor level of the existing house on Erf 717 as it stands now."

**Clause 7. ZONING** of the motivation of the application in respect of Erf 1299 states that, as far as height is concerned:

"The maximum height of a building, measured from the base level to the top of the structure, is 8,0m."

This will be a contravention of the height restriction as contained in clause F of Title Deed T42238/2002 as explained above.

We look forward to receiving a formal acknowledgement of the objection to an amendment of Condition E(I)(c) contained in Title Deed T42238/2002, i.e. erection of a second dwelling, as well as being informed of any approvals granted to the applicant.

We also request a formal response to our concern raised regarding the height restriction condition as contained in the title deed of Erf 1299, De Kelders, which must be adhered to. We, as the owners of Erf 717, shall be adversely affected should the applicant erect a dwelling in contravention of the existing height restriction as per the said title deed.

Your sincerely,

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





Our Reference: 22/141a  
Your Reference: 1299 GDK & 4712/2024

26 May 2025

The Municipal Manager  
Overstrand Municipality  
P O Box 20  
**HERMANUS**  
7200

Sir

**ERF 1299 DE KELDERS: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS.**

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

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

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**20** YEARS  
EST 2002

## 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 Erf 1299, 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 affected and adjacent parties, a notice board was erected on site and was also published in the local press. 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 enough evidence that all the 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.
- 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 clarify the height restriction as recorded in the title deed, refer below.
- It is also important to note no Creche is being proposed, as it is allowed as a primary right in terms of the OMLUS.

### **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 dwellings 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 proposed 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 zoning or requiring further consideration will be subject to their own application processes, with additional public participation if prescribed.

#### TRAFFIC

The objections raised concerns about traffic impacts arising from the proposed removal of a restrictive title deed condition. It is important to clarify that the application only seeks to allow a second dwelling on the property, a right already accommodated in terms of the Overstrand Municipality Land Use Scheme (OMLUS). 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 development 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.

<b>LUPA, Section 39(5) (a-f)</b>	
<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.
<i>(d) the social benefit of the restrictive condition remaining in place in its existing form;</i>	This restrictive condition does not have a social benefit.

<i>(e) the social benefit of the removal, suspension or amendment of the restrictive condition; and</i>	
<i>(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.</i>	There is no specific beneficiary of this condition, and no person or entity will be affected if this is removed.

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 impact on the low-density character of the De Kelders area. The objectors specifically 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 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 are 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 that 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 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.

#### **ADDITIONAL TITLE DEED CONDITIONS AND DEVELOPMENT PARAMETERS**

It is noted that Clause F of Title Deed T42238/2002 includes a height restriction applicable to Erf 1299, De Kelders, which stipulates that "No dwelling or structure may be erected on Erf 1299 (portion of Erf 717) De Kelders higher than the floor level of the existing house on Erf 717 as it stands now." This restriction originates from a condition imposed during the subdivision of Erf 717 De Kelders.

The current application seeks only the removal of Condition E(1)(c) from the title deed to permit the erection of a second dwelling on the property. The height restriction in Clause F is not being amended or removed as part of this application and remains fully applicable and enforceable. Accordingly, any future development on Erf 1299 De Kelders must adhere to this height limitation, irrespective of the general height parameters provided under the Overstrand Municipal Zoning Scheme.

The reference in Section 7 of the motivation to the zoning scheme's maximum permissible building height of 8,0m is simply a reflection of the zoning parameters and does not override any applicable title deed conditions. The title deed restriction takes precedence unless formally removed through a separate application process, which is not being pursued in this instance.

It is also noted that the existing ground levels and the actual elevation of the house on Erf 717 De Kelders will determine the permissible building envelope on Erf 1299 De Kelders in terms of the height limitation. At this stage, detailed architectural design work and a professional land survey have not yet been undertaken, as this level of technical detail is premature for a land use application focused solely on the removal of a restrictive condition unrelated to height.

The applicant nevertheless acknowledges the enforceability of the height restriction and confirms that any future building plans submitted to the municipality for approval will need to comply with all remaining title deed conditions, including the height limitation. A land surveyor and architectural professional will be appointed to ensure full compliance.

Lastly, the concern expressed by the owner of Erf 717 De Kelders regarding potential adverse impact is noted. However, given that the height restriction remains in force and binding, any structure erected on Erf 1299 De Kelders will need to respect the floor level of the existing dwelling on Erf 717 De Kelders as the maximum height, thereby safeguarding the legitimate expectation of adjacent property owners.

In conclusion, the objections received have been duly considered and comprehensively addressed. The proposed development has been conceived with due regard for 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 A RESTRICTIVE TITLE DEED CONDITION: ERF 1299, DE KELDERS (4712/2024)**

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 water connection to- and sewer conservancy tank on Erf 1336 shall be used to service Erf 1336;
2. 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 developer's cost;
3. that the developer must investigate and determine the limitations of the site in terms of sewer drainage, subject to the minimum requirements of SANS 140400 – P: 2010: Drainage;
4. 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: Gansbaai for written approval;
5. that the on-site parking facilities are provided as per the Planning Schedule, and to the satisfaction of the Department: Operational Services;
6. that any additional and / or extended vehicle entrances will be for the developer's account;
7. that stormwater discharged from higher lying properties and generated in the catchment area of the property be allowed to drain freely through the property;

- 8. that stormwater reticulation and connection(s) to the municipal system be provided at the owners cost, if required.

  
\_\_\_\_\_  
**RICARDO ANDREW**  
**PRINCIPAL TECHNOLOGIST:**  
**DEVELOPMENT CONTROL**

  
\_\_\_\_\_  
**DATE**

## TPA-EMS-250423-01

Town Planning Application on 23-04-2025

Generated on Unifi by Chester Arendse on 23-04-2025



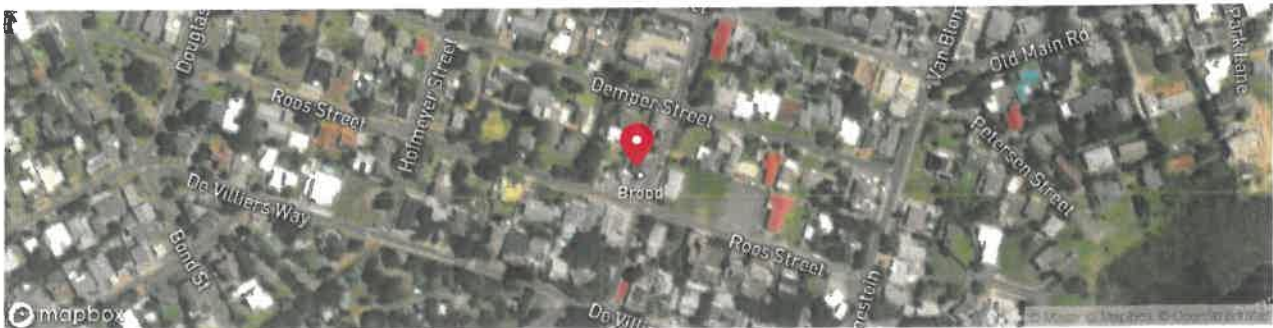
## Basic Information

<b>Captured Reference</b>	23-04-2025 11:55 TPA-EMS-250423-01	<b>Call Time</b>	23-04-2025 11:55	<b>Captured By Office</b>	Chester Arendse EMS
<b>District</b>	Overberg	<b>Status</b>			Open
<b>Municipality</b>	Overstrand				

## Description

APPLICATION TO REMOVAL OF A RESTRICTIVE TITLE DEED CONDITION

## Geographical Information



Erf 1299, 31 Front Street, De Kelders (-34.4135; 19.1723)

## Application Details

<b>File Reference</b>	1299 GDK MESSRS WRAP
<b>Applicant</b>	PROJECT OFFICE ON BEHALF OF DR VIRGINIA BUSER
<b>Property Details</b>	ERF 1299, 31 FRONT STREET, DE KELDERS

## Application Comments

Please find comments from the Environmental Management & Conservation Division, no objection towards the application on ERF 1299.

Conditions: The proposed property (ERF 129) falls within the Coastal EMOZ, certain conditions will apply:

- Planting or harboring of declared alien invasive vegetation is prohibited.
- The discharge of grey water or domestic effluent into all/natural systems is prohibited.
- Feeding of fauna prohibited.

## Closing Comments

CHESTER ARENDSE

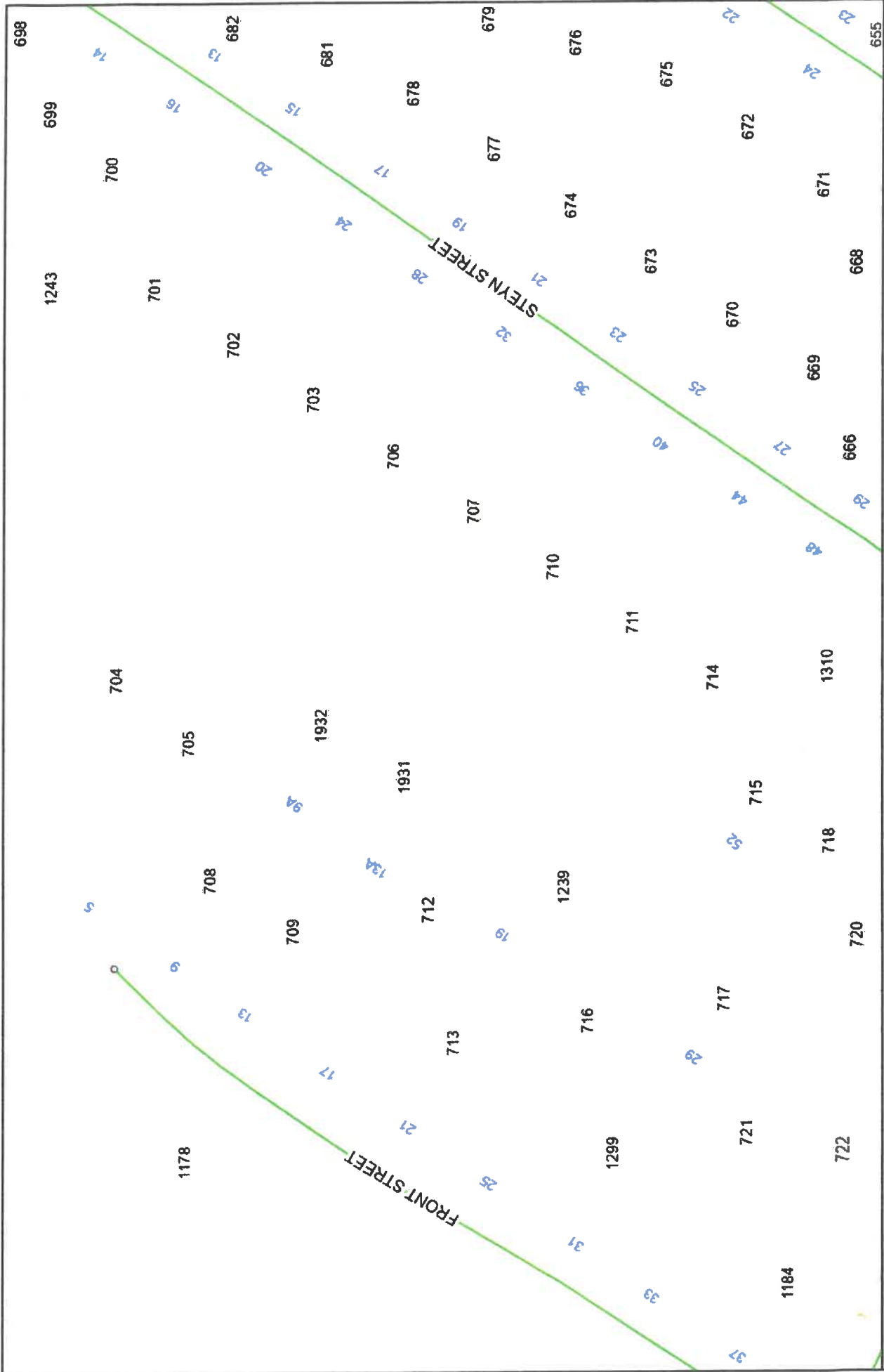
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23/04/2025

Name and Surname

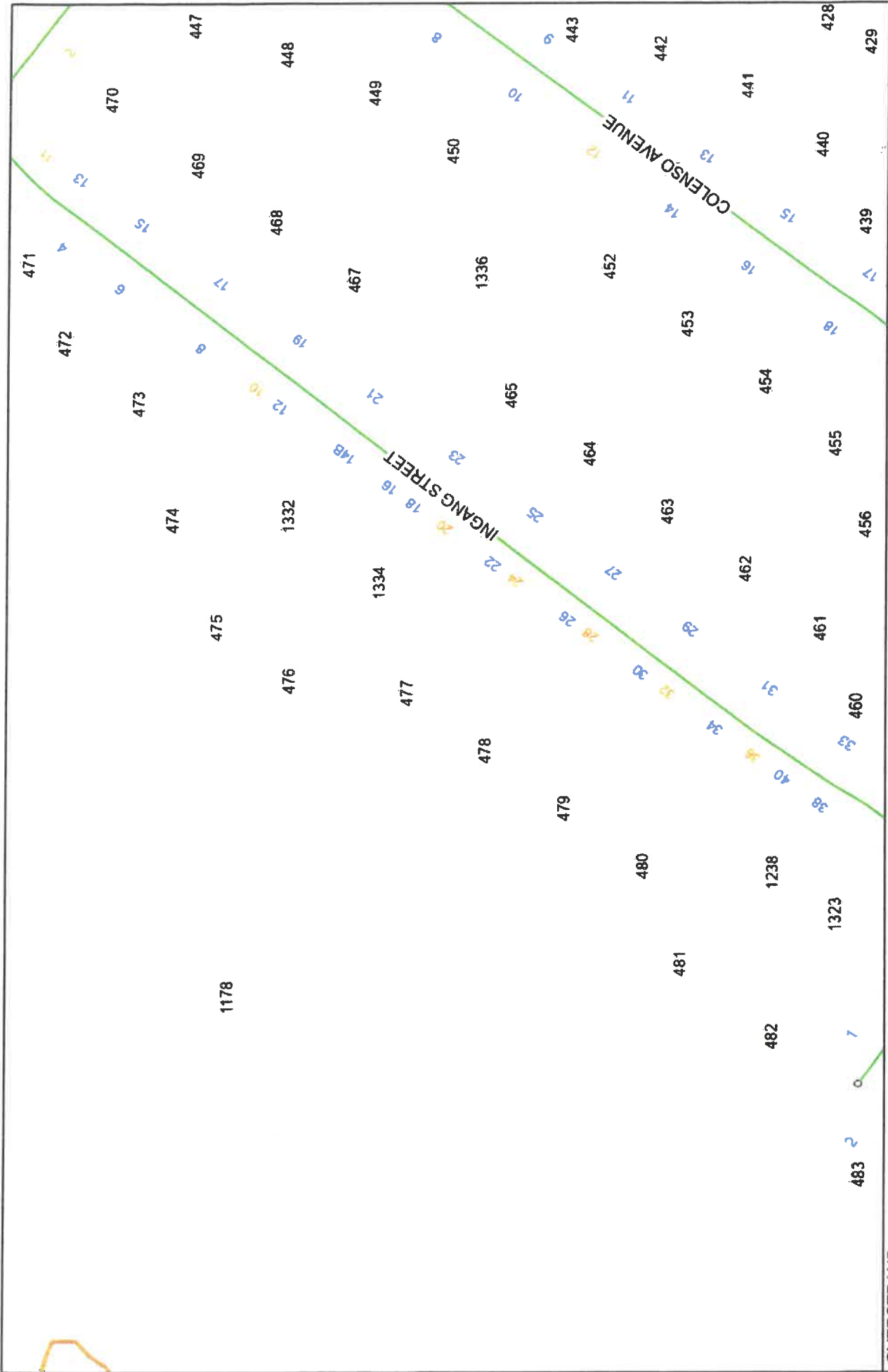
Signature

Date



GIS extract of subdivision of Erven 700, 708, 709, 713, 715 and 717, De Kelders





Date: 2026/02/16

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

