

6.3. I have also been advised that it is trite law that registered praedial servitudal rights such as the ones covered by title deed consitions B.(e) and E(A).(c) fall within the concept of and are part and parcel on one's property, which is to be safeguarded in terms of Section 25 of the Constitution of the Republic of South Africa. As such the removal of the restrictions (or either one of them) will bring about the extinction of registered praedial servitudal rights and will amount to a total deprivation of property in the hands of each of the dominant tenements (being each of the properties situated in De Kelders Extension 1 Township).

7. The applicant's contention that the removal of title deed restriction B.(e) and the subdivision of Erf 713 will not result "*in negative impacts on existing land use rights*" amounts to nothing but a bald assertion – which happens to be wrong. As a matter of fact the existing land use rights of each and every landowner in De Kelders Extension 1 Township is being impacted upon.

7.1. The applicant's failure to provide any factual basis for his aforesaid assertion is absolutely fatal to his application.

7.2. I am advised that reciprocal praedial servitudal rights of the nature of title conditions B.(e) and E(A).(c) are inserted into title deeds for the benefit of all owners and in order to preserve the essential character and amenities of the erven, the low-density single residential nature of a township and (with reference to erven such as the one belonging to us) to maintain the single residential sea-side suburb character of the area. As such they are afforded protection by our Courts.

7.3. The applicant's application, if successful, will jeopardise the essential character and amenities of De Kelders. This specific area where Erf 713 is located is characterised by spacious erven (almost twice the size of the erven located to the east of Steyn Street) with panoramic sea views and vistas upon which only a single dwelling can be built. The ambience of the development as safeguarded by te restrictive conditions will be adversely affected by the creation of a new erf –

with a dwelling of unknown proportions to be sandwiched in between the existing house and the house on the neighbouring property directly behind it.

7.4. We are not prepared to relinquish our servitudal rights which form part of our property and which had been imposed on the applicant's property with the view to safeguard the character and ambience of the area where our property is situated. There are various vacant erven for sale in the immediate vicinity of Erf 713 and there is therefore no need to create a new erf. The removal of the title deed restriction in question can clearly not be in the interest of landowners of De Kelders Extension 1 Township or its development and only serves the need of the applicant at the exclusion of the others (including ourselves).

8. In terms of section 2(1)(a) of the Removal of Restrictions Act restrictive conditions or servitudes may be removed, conditionally or unconditionally, only once the Member of the Executive Council: Department of Environmental Affairs and Development Planning, Western Cape – "MEC", is satisfied that it is *"desirable to do so in the interest of the establishment or development of any township or in the interest of any area, whether it is situate in an urban area or not, or in the public interest ..."*.

9. The high water mark of the applicant's application is to be found in his repeated references to the provisions of the Overstrand Municipal Growth Management Strategy and his eventual bald statement (in paragraph 19 of the application) that there is a *"definite need for development such as this"* to be approved.

9.1. The applicant failed to disclose what the development plan for the newly created erf is. It, however, is to be gleaned from the application that the intention is to create yet another erf upon which a single residential dwelling – in all probability another holiday house or retirement house - is to be erected.

- 9.2. It has been pointed out to me that planning policies and regulations do not override title deed conditions and that it would be unacceptable for a Municipality and/or an MEC to adopt the position that the Municipality's policies, town planning schemes and zoning regulations trump the rights of owners derived from their title deeds.
- 9.3. We, as objectors, are seriously prejudiced by the applicant's failure to make out a case for and give substance to the bald contention that the existing spatial planning initiatives show that there is a "*definite need for development such as this*" to be approved.
- 9.4. It should be noted that as far as De Kelders is concerned, the Overstrand Municipal Growth Management Strategy expressly states that "*It is important to note that prior to any further densification of the area, the provision of the civil services need to be updated.*" To date the provision of such services has not been updated and any removal of title deed restrictions under the guise of further densification of the De Kelders area would therefore be precluded by and fall foul of the very conclusions reached in the policy document.
- 9.5. When regard is had to the six objectives (or points of motivation) for densification raised in the Overstrand Municipal Growth Management Strategy, it is quite clear that not a single one finds application in this instance:

- 9.5.1. "*Densification helps prevent urban sprawl and reduces the consumption of valuable / non renewable resources.*" (Item 4.2.1).

The impact, which the subdivision of Erf 713 will have on urban sprawl, if any, will be very, very low – to the extent that it will be negligible. The property is located in a rural area where (according to the Overstrand Municipal Growth Management Strategy document itself) some 30% of the

available erven are still vacant and therefore available for future development.

There are numerous erven in the immediate vicinity of Erf 713 that have not yet been developed. Many of these are currently on the market. It can therefore not be argued that De Kelders is bursting at the seams.

It is to be noted that the applicant himself failed to furnish any information which can be of any assistance to ascertain on what basis he alleges the proposed subdivision of an up-market erf can alleviate urban sprawl or "*reduce the consumption of non-renewable fuels by lessening car dependency*" – which, according to the Overstrand Municipal Growth Management Strategy is central to this requirement.

- 9.5.2. *"Densification supports the development of a viable public transport system by promoting the integration and intensification of land uses."* (Item 4.2.2).

This motivation or requirement is irrelevant as it does not apply to Erf 713 or the area in which the property is located. It is simply not located on or near an activity street or development route and there are no residents that make use of a transport system. Given the make-up of the residents (and bearing in mind that the area is generally utilised as a holiday retreat and place to retire) it is highly unlikely that such a transport system will ever see the light of day.

- 9.5.3. *"Densification facilitates economic opportunities and access to facilities within the urban system."* (Item 4.2.3).

This requirement refers to high density development and is not applicable to De Kelders Extension 1 Township. There in any event simply is no urban system within which economic opportunities are available in this township. Whatever job opportunities there are will entail travelling to Gansbaai and the addition of a new erf or dwelling in De Kelders Extension 1 Township will increase traffic to and from Gansbaai rather than alleviate same.

The De Kelders Extension 1 Township is in any event situated in the greater Gansbaai area where (according to the strategy document) approximately 25% of all existing dwellings are not permanently occupied.

In our specific area existing dwellings are predominantly used as holiday / week-end retreats by city dwellers or owners with primary residences situated elsewhere. All of them exploit economic opportunities elsewhere.

It also has to be borne in mind that according to the statistical data contained in the Overstrand Municipal Growth Management Strategy documentation the majority (56%) of the permanent residents of the De Kelders suburb are of retirement age. According to this data 23.6% of all residents are between ages 50 to 59 whilst 32.1% of the residents fall in the age range of 60 to 80+.

9.5.4. *"Densification supports efficient service provision". (Item 4.2.4).*

I again refer to the fact that the Overstrand Municipal Growth Management Strategy document states that the provision of the civil services needs to be updated prior to any further densification of the area. This has not been

done. The applicant does not say – and can hardly be heard to say – that the densification initiative should be fast tracked in order to attain efficient service provision in the area. To do so would be to put the cart before the horse – the policy in so many words acknowledges that the service provision in the De Kelders area does not support densification.

- 9.5.5. *"Densification improves the variety in housing mix and a choice of housing type."* (Item 4.2.5).

The applicant's application was not accompanied by a development plan and he failed to disclose what type of dwelling is envisaged to be erected on the newly created erf. One can only surmise that it would be a development in terms whereof the erf is utilised to its fullest extent subject only to the provisions of the Overstrand Zoning Scheme and the provisions of the National Building Regulations and Building Standards Act.

A mere visit to the area will confirm that there are already an abundance of dwellings of this nature. The applicant has in any event not said that he intends contributing something towards the variation of the housing mix or providing a choice of the type of housing. The reason for him not doing so is clear: he simply does not intend to provide any variation of the housing mix or provide a choice of housing (other than that already available in the area).

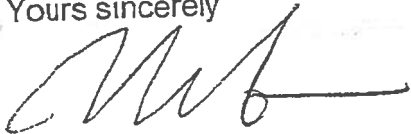
- 9.5.6. *"Densification contributes to urban place making and improves safety"*. (Item 4.2.6).

The proposed development (which detracts from the ambience and character of the area) will result in a

negative urban environment (being a high-density node within a surrounding low density environment) rather than an attractive and desirable sea-side retreat.

10. It is submitted that the removal of the restrictive title deed condition is undesirable as it is detrimental to the interests of the De Kelders Extension 1 Township, the area and the public. No positive advantage to the community which will be served by granting the application has been shown (or even alleged) to exist. We therefore request that the application for the removal of the restrictive title deed condition be refused.

Yours sincerely



ALBERT JOHANNES MALAN



ESTELLE HESTER MALAN

TP - A Theat  
(Siddhartha)

FILE NO:	EL 713 DK
SCAN NO:	36
COLLABORATOR NO:	765464

MARLO TRUST

P/a Mr Louis Gerrit Meyer

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9 March 2015

DIRECTOR: INTEGRATED ENVIRONMENTAL MANAGEMENT

Provincial Government of the Western Cape

Private Bag X9086

CAPE TOWN

Ref: 15/3/1/4/E2/5/Erf 713, De Kelders (G Cambell))

**REMOVAL OF RESTRICTIONS ACT, 67 (ACT 84 OF 1967): ERF 713 DE  
KELDERS (OVERSTRAND MUNICIPALITY)**

The notice by registered mail dated 29 January 2015, as prepared by Messrs WRAP on behalf of Mr JV Meintjies, refers.

The Marlo Trust ("the Trust") is the registered owner of Erf 712, De Kelders (situated at Front Street, De Kelders). I, Louis Gerrit Meyer, in my capacity as duly authorised trustee of the Trust, hereby note an objection by the Trust to the application for the removal of the title deed restriction concerned and the application for subdivision of Erf 713, as set forth in the notice referred to above. The basis of this objection will be made clear hereinbelow.

1. The information contained in the applicant's application is, apart from being repetitive, extremely terse.

13 MAR 2015

*[Handwritten signature]*

17 MAR 2015




2. The applicant's motive, however, is made clear: he aims to create a second erf on the back-portion of the existing Erf 713 (behind the existing dwelling thereon) in order to have an additional dwelling constructed thereon. Where precisely on this new erf this dwelling is to be erected and what the dimensions thereof would be he does not say – one would therefore have to assume that the applicant intends to procure rights which will allow him or his successor in title to develop the erf to its fullest extent subject only to the provisions of the Overstrand Zoning Scheme and the provisions of the National Building Regulations and Building Standards Act, 1977.
3. Upon a proper reading of the application documents as a whole, it is evident that the applicant, in applying for the removal of title deed condition B(e) (which incorporated the following condition, which is described as being in favour of the Administrator, in the title deed: "*(e) That this erf shall not be subdivided except with the consent in writing of the Administrator*"), apart from mentioning in passing that the erf is located in an area that has experienced similar subdivisions in the past, in reality relies exclusively on the provisions of the spatial planning initiative of the Overstrand Municipality, as contained in the document titled Overstrand Municipal Growth Management Strategy.
4. What is also clear from the documents is that the applicant contends, and proceeds from the premise, that the approval of the removal of the title deed restriction and subsequent subdivision of Erf 713 will not result "*in negative impacts on existing land use rights*". As will be explained in due course, this is patently wrong.
5. It is significant to note that the applicant restricted his application for removal of a title deed restriction to condition B.(e). No mention, however, is made therein to title deed condition E(A)(c), which imposed the following restrictive condition:



*"A. As being in favour of the registered owner of each erf in the Township:*

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

- 5.1. It needs to be pointed out that the notice that was sent to the Trust was not accompanied by the applicant's title deed wherein this condition is expressly taken up.
- 5.2. As no application was made for the removal of this condition, the attention of registered owners of properties in the township was not drawn to this condition and the majority of them in all probability are still ignorant about the fact that this material proprietary / servitudal right (which like condition B.(e), also attaches to each and every one their properties) is also at stake.
6. According to information at hand it is clear that title deed conditions B.(e) and E(A)(c) which appear in the applicant's title deed (although the numbering thereof may differ from property to property) were taken up in the registered title deeds of each and every property which forms part of De Kelders Extension 1 Township.
- 6.1. I have been advised and verily believe that both these restrictive conditions are registered praedial servitudes that enure for the benefit of all other erven in (at least) the whole of the area depicted on the General Plan of De Kelders Extension No 1 Township as approved by the Surveyor-General on 28 July 1939.
- 6.2. Each erf in the De Kelders Extension No 1 Township therefore is simultaneously both a servient tenement and a dominant tenement. It is servient in the sense of being encumbered by the title deed condition in favour of all the other similar erven, and dominant in the sense of being favoured by the title deed condition in respect of the other similar erven.
- 


6.3. I have also been advised that it is trite law that registered praedial servitudal rights such as the ones covered by title deed conditions B.(e) and E(A).(c) fall within the concept of and are part and parcel of one's property, which is to be safeguarded in terms of Section 25 of the Constitution of the Republic of South Africa. As such the removal of the restrictions (or either one of them) will bring about the extinction of registered praedial servitudal rights and will amount to a total deprivation of property in the hands of each of the dominant tenements (being each of the properties situated in De Kelders Extension 1 Township).

7. The applicant's contention that the removal of title deed restriction B.(e) and the subdivision of Erf 713 will not result "*in negative impacts on existing land use rights*" amounts to nothing but a bald assertion – which happens to be wrong. As a matter of fact the existing land use rights of each and every landowner in De Kelders Extension 1 Township is being impacted upon.

7.1. The applicant's failure to provide any factual basis for his aforesaid assertion is absolutely fatal to his application.

7.2. I am advised that reciprocal praedial servitudal rights of the nature of title conditions B.(e) and E(A).(c) are inserted into title deeds for the benefit of all owners and in order to preserve the essential character and amenities of the erven, the low-density single residential nature of a township and (with reference to erven such as the one belonging to the Trust) to maintain the single residential sea-side suburb character of the area. As such they are afforded protection by our Courts.

7.3. The applicant's application, if successful, will jeopardise the essential character and amenities of De Kelders. This specific area where Erf 713 is located is characterised by spacious erven (almost twice the size of the erven located to the east of Steyn Street) with panoramic sea views and vistas upon which only a single dwelling can be built.



The ambience of the development as safeguarded by the restrictive conditions will be adversely affected by the creation of a new erf – with a dwelling of unknown proportions to be sandwiched in between the existing house and the house on the neighbouring property directly behind it.


- 7.4. The Trust is not prepared to relinquish its servitudal rights which form part of its property and which had been imposed on the applicant's property with the view to safeguard the character and ambience of the area where the Trust's property is situated. There are various vacant erven for sale in the immediate vicinity of Erf 713 and there is therefore no need to create a new erf. The removal of the title deed restriction in question can clearly not be in the interest of landowners of De Kelders Extension 1 Township or its development and only serves the need of the applicant at the exclusion of the others (including the Trust).
8. In terms of section 2(1)(a) of the Removal of Restrictions Act restrictive conditions or servitudes may be removed, conditionally or unconditionally, only once the Member of the Executive Council: Department of Environmental Affairs and Development Planning, Western Cape – "MEC"), is satisfied that it is *"desirable to do so in the interest of the establishment or development of any township or in the interest of any area, whether it is situate in an urban area or not, or in the public interest ..."*.
9. The high water mark of the applicant's application is to be found in his repeated references to the provisions of the Overstrand Municipal Growth Management Strategy and his eventual bald statement (in paragraph 19 of the application) that there is a *"definite need for development such as this"* to be approved.
- 9.1. The applicant failed to disclose what the development plan for the newly created erf is. It, however, is to be gleaned from the application that the intention is to create yet another erf upon which a single



residential dwelling – in all probability another holiday house or retirement house - is to be erected.

- 9.2. It has been pointed out to me that planning policies and regulations do not override title deed conditions and that it would unacceptable for a Municipality and/or an MEC to adopt the position that the Municipality's policies, town planning schemes and zoning regulations trump the rights of owners derived from their title deeds.
- 9.3. The Trust, as objector, is seriously prejudiced by the applicant's failure to make out a case for and give substance to the bald contention that the existing spatial planning initiatives show that there is a "*definite need for development such as this*" to be approved.
- 9.4. It should be noted that as far as De Kelders is concerned, the Overstrand Municipal Growth Management Strategy expressly states that "*It is important to note that prior to any further densification of the area, the provision of the civil services need to be updated.*" To date the provision of such services has not been updated and any removal of title deed restrictions under the guise of further densification of the De Kelders area would therefore be precluded by and fall foul of the very conclusions reached in the policy document.
- 9.5. When regard is had to the six objectives (or points of motivation) for densification raised in the Overstrand Municipal Growth Management Strategy, it is quite clear that not a single one find application in this instance:
- 9.5.1. "*Densification helps prevent urban sprawl and reduces the consumption of valuable / non renewable resources.*" (Item 4.2.1).

The impact, which the subdivision of Erf 713 will have on urban sprawl, if any, will be very, very low – to the extent that it will be negligible. The property is located in a rural




area where (according to the Overstrand Municipal Growth Management Strategy document itself) some 30% of the available erven are still vacant and therefore available for future development.

There are numerous erven in the immediate vicinity of Erf 713 that have not yet been developed. Many of these are currently on the market. It can therefore not be argued that De Kelders is bursting at the seams.

It is to be noted that the applicant himself failed to furnish any information which can be of any assistance to ascertain on what basis he alleges the proposed subdivision of an up-market erf can alleviate urban sprawl or "*reduce the consumption of non-renewable fuels by lessening car dependency*" – which, according to the Overstrand Municipal Growth Management Strategy is central to this requirement.

- 9.5.2. *"Densification supports the development of a viable public transport system by promoting the integration and intensification of land uses."* (Item 4.2.2).

This motivation or requirement is irrelevant as it does not apply to Erf 713 or the area in which the property is located. It is simply not located on or near an activity street or development route and there are no residents that make use of a transport-system. Given the make-up of the residents (and bearing in mind that the area is generally utilised as a holiday retreat and place to retire) it is highly unlikely that such a transport system will ever see the light of day.



- 9.5.3. *"Densification facilitates economic opportunities and access to facilities within the urban system."* (Item 4.2.3).

This requirement refers to high density urban development and is not applicable to De Kelders Extension 1 Township. There in any event simply is no urban system within which economic opportunities are available in this township. Whatever job opportunities there are will entail travelling to Gansbaai and the addition of a new erf or dwelling in De Kelders Extension 1 Township will increase traffic to and from Gansbaai rather than alleviate same.

The De Kelders Extension 1 Township is in any event situated in the greater Gansbaai area where (according to the strategy document) approximately 25% of all existing dwellings are not permanently occupied.

In our specific area existing dwellings are predominantly used as holiday / week-end retreats by city dwellers or owners with primary residences situated elsewhere. All of them exploit economic opportunities elsewhere.

It also has to be borne in mind that according to the statistical data contained in the Overstrand Municipal Growth Management Strategy documentation the majority (56%) of the permanent residents of the De Kelders suburb are of retirement age. According to this data 23.6% of all residents are between ages 50 to 59 whilst 32.1% of the residents fall in the age range of 60 to 80+.

- 9.5.4. *"Densification supports efficient service provision".* (Item 4.2.4).




I again refer to the fact that the Overstrand Municipal Growth Management Strategy document states that the provision of the civil services needs to be updated prior to any further densification of the area. This has not been done. The applicant does not say – and can hardly be heard to say – that the densification initiative should be fast tracked in order to attain efficient service provision in the area. To do so would be to put the cart before the horse – the policy in so many words acknowledges that the service provision in the De Kelders area does not support densification.

- 9.5.5. *"Densification improves the variety in housing mix and a choice of housing type."* (Item 4.2.5).

The applicant's application was not accompanied by a development plan and he failed to disclose what type of dwelling is envisaged to be erected on the newly created erf. One can only surmise that it would be a development in terms whereof the erf is utilised to its fullest extent subject only to the provisions of the Overstrand Zoning Scheme and the provisions of the National Building Regulations and Building Standards Act.

A mere visit to the area will confirm that there are already an abundance of dwellings of this nature. The applicant has in any event not said that he intends contributing something towards the variation of the housing mix or providing a choice of the type of housing. The reason for him not doing so is clear: he simply does not intend to provide any variation of the housing mix or provide a choice of housing (other than that already available in the area).





- 9.5.6. *"Densification contributes to urban place making and improves safety". (Item 4.2.6).*

The proposed development (which detracts from the ambience and character of the area) will result in a negative urban environment (being a high-density node within a surrounding low density environment) rather than an attractive and desirable sea-side retreat.

10. It is submitted that the removal of the restrictive title deed condition is undesirable as it is detrimental to the interests of the De Kelders Extension 1 Township, the area and the public. No positive advantage to the community which will be served by granting the application has been shown (or even alleged) to exist. The Trust therefore requests that the application for the removal of the restrictive title deed condition be refused.

Yours sincerely



LOUIS GERRIT MEYER



Trustee of the MarloTrust

FILE NO:	EL 713-DK
SCAN NO:	41
COLLABORATOR NO:	765478

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(S old merwe)

JACOBUS CHRISTIAAN CALITZ

31 Steyn Street

De Kelders

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7220

Tel: 028 384 0750



7 March 2015

DIRECTOR: INTEGRATED ENVIRONMENTAL MANAGEMENT

Provincial Government of the Western Cape

Private Bag X9086

CAPE TOWN

Ref: 15/3/1/4/E2/5/Erf 713, De Kelders (G Cambell))

**REMOVAL OF RESTRICTIONS ACT, 67 (ACT 84 OF 1967): ERF 713 DE  
KELDERS (OVERSTRAND MUNICIPALITY)**

The notice by registered mail dated 29 January 2015, as prepared by Messrs WRAP on behalf of Mr JV Meintjies refers.

I am the registered owner of Erf 665, De Kelders (situated at 31 Steyn Street, De Kelders). I hereby note an objection to the application for the removal of the title deed restriction concerned and the application for subdivision of Erf 713, as set forth in the notice referred to above. The basis of this objection will be made clear hereinbelow.

1. The information contained in the applicant's application is, apart from being repetitive, extremely terse.
2. The applicant's motive, however, is made clear: he aims to create a second erf on the back-portion of the existing Erf 713 (behind the existing dwelling thereon) in order to have an additional dwelling constructed thereon. Where

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precisely on this new erf this dwelling is to be erected and what the dimensions thereof would be he does not say – one would therefore have to assume that the applicant intends to procure rights which will allow him or his successor in title to develop the erf to its fullest extent subject only to the provisions of the Overstrand Zoning Scheme and the provisions of the National Building Regulations and Building Standards Act, 1977.

3. Upon a proper reading of the application documents as a whole, it is evident that the applicant, in applying for the removal of title deed condition B(e) (which incorporated the following condition, which is described as being in favour of the Administrator, in the title deed: "*(e) That this erf shall not be subdivided except with the consent in writing of the Administrator*"), apart from mentioning in passing that the erf is located in an area that has experienced similar subdivisions in the past, in reality relies exclusively on the provisions of the spatial planning initiative of the Overstrand Municipality, as contained in the document titled Overstrand Municipal Growth Management Strategy.
4. What is also clear from the documents is that the applicant contends, and proceeds from the premise, that the approval of the removal of the title deed restriction and subsequent subdivision of Erf 713 will not result "*in negative impacts on existing land use rights*". As will be explained in due course, this is patently wrong.
5. It is significant to note that the applicant restricted his application for removal of a title deed restriction to condition B.(e). No mention, however, is made therein to title deed condition E(A)(c), which imposed the following restrictive condition:

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

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

- 5.1. It needs to be pointed out that the notice that was sent to me was not accompanied by the applicant's title deed wherein this condition is expressly taken up.
- 5.2. As no application was made for the removal of this condition, the attention of registered owners of properties in the township was not drawn to this condition and the majority of them in all probability are still ignorant about the fact that this material proprietary / servitudal right (which like condition B.(e), also attaches to each and every one their properties) is also at stake.
6. According to information at hand it is clear that title deed conditions B.(e) and E(A)(c) which appear in the applicant's title deed (although the numbering thereof may differ from property to property) were taken up in the registered title deeds of each and every property which forms part of De Kelders Extension 1 Township.
- 6.1. I have been advised and verily believe that both these restrictive conditions are registered praedial servitudes that enure for the benefit of all other erven in (at least) the whole of the area depicted on the General Plan of De Kelders Extension No 1 Township as approved by the Surveyor-General on 28 July 1939.
- 6.2. Each erf in the De Kelders Extension No 1 Township therefore is simultaneously both a servient tenement and a dominant tenement. It is servient in the sense of being encumbered by the title deed condition in favour of all the other similar erven, and dominant in the sense of being favoured by the title deed condition in respect of the other similar erven.
- 6.3. I have also been advised that it is trite law that registered praedial servitudal rights such as the ones covered by title deed conditions B.(e) and E(A).(c) fall within the concept of and are part and parcel of one's property, which is to be safeguarded in terms of Section 25 of

the Constitution of the Republic of South Africa. As such the removal of the restrictions (or either one of them) will bring about the extinction of registered praedial servitudal rights and will amount to a total deprivation of property in the hands of each of the dominant tenements (being each of the properties situated in De Kelders Extension 1 Township).

7. The applicant's contention that the removal of title deed restriction B.(e) and the subdivision of Erf 713 will not result "*in negative impacts on existing land use rights*" amounts to nothing but a bald assertion – which happens to be wrong. As a matter of fact the existing land use rights of each and every landowner in De Kelders Extension 1 Township is being impacted upon.
  - 7.1. The applicant's failure to provide any factual basis for his aforesaid assertion is absolutely fatal to his application.
  - 7.2. I am advised that reciprocal praedial servitudal rights of the nature of title conditions B.(e) and E(A).(c) are inserted into title deeds for the benefit of all owners and in order to preserve the essential character and amenities of the erven, the low-density single residential nature of a township and (with reference to erven such as the one belonging to me) to maintain the single residential sea-side suburb character of the area. As such they are afforded protection by our Courts.
  - 7.3. The applicant's application, if successful, will jeopardise the essential character and amenities of De Kelders. This specific area where Erf 713 is located is characterised by spacious erven (almost twice the size of the erven located to the east of Steyn Street) with panoramic sea views and vistas upon which only a single dwelling can be built. The ambience of the development as safeguarded by the restrictive conditions will be adversely affected by the creation of a new erf – with a dwelling of unknown proportions to be sandwiched in between the existing house and the house on the neighbouring property directly behind it.

- 7.4. I am not prepared to relinquish my servitodal rights which form part of my property and which had been imposed on the applicant's property with the view to safeguard the character and ambience of the area where my property is situated. There are various vacant erven for sale in the immediate vicinity of Erf 713 and there is therefore no need to create a new erf. The removal of the title deed restriction in question can clearly not be in the interest of landowners of De Kelders Extension 1 Township or its development and only serves the need of the applicant at the exclusion of the others (including myself).
8. In terms of section 2(1)(a) of the Removal of Restrictions Act restrictive conditions or servitudes may be removed, conditionally or unconditionally, only once the Member of the Executive Council: Department of Environmental Affairs and Development Planning, Western Cape – "MEC", is satisfied that it is *"desirable to do so in the interest of the establishment or development of any township or in the interest of any area, whether it is situate in an urban area or not, or in the public interest ..."*.
9. The high water mark of the applicant's application is to be found in his repeated references to the provisions of the Overstrand Municipal Growth Management Strategy and his eventual bald statement (in paragraph 19 of the application) that there is a *"definite need for development such as this"* to be approved.
- 9.1. The applicant failed to disclose what the development plan for the newly created erf is. It, however, is to be gleaned from the application that the intention is to create yet another erf upon which a single residential dwelling – in all probability another holiday house or retirement house - is to be erected.
- 9.2. It has been pointed out to me that planning policies and regulations do not override title deed conditions and that it would be unacceptable for a Municipality and/or an MEC to adopt the position that the

Municipality's policies, town planning schemes and zoning regulations trump the rights of owners derived from their title deeds.

- 9.3. I as objector, am seriously prejudiced by the applicant's failure to make out a case for and give substance to the bald contention that the existing spatial planning initiatives show that there is a "*definite need for development such as this*" to be approved.
- 9.4. It should be noted that as far as De Kelders is concerned, the Overstrand Municipal Growth Management Strategy expressly states that "*It is important to note that prior to any further densification of the area, the provision of the civil services need to be updated.*" To date the provision of such services has not been updated and any removal of title deed restrictions under the guise of further densification of the De Kelders area would therefore be precluded by and fall foul of the very conclusions reached in the policy document.
- 9.5. When regard is had to the six objectives (or points of motivation) for densification raised in the Overstrand Municipal Growth Management Strategy, it is quite clear that not a single one find application in this instance:
- 9.5.1. "*Densification helps prevent urban sprawl and reduces the consumption of valuable / non renewable resources.*" (Item 4.2.1).

The impact, which the subdivision of Erf 713 will have on urban sprawl, if any, will be very, very low – to the extent that it will be negligible. The property is located in a rural area where (according to the Overstrand Municipal Growth Management Strategy document itself) some 30% of the available erven are still vacant and therefore available for future development.

There are numerous erven in the immediate vicinity of Erf 713 that have not yet been developed. Many of these are currently on the market. It can therefore not be argued that De Kelders is bursting at the seams.

It is to be noted that the applicant himself failed to furnish any information which can be of any assistance to ascertain on what basis he alleges the proposed subdivision of an up-market erf can alleviate urban sprawl or "*reduce the consumption of non-renewable fuels by lessening car dependency*" – which, according to the Overstrand Municipal Growth Management Strategy is central to this requirement.

- 9.5.2. "*Densification supports the development of a viable public transport system by promoting the integration and intensification of land uses.*" (Item 4.2.2).

This motivation or requirement is irrelevant as it does not apply to Erf 713 or the area in which the property is located. It is simply not located on or near an activity street or development route and there are no residents that make use of a transport system. Given the make-up of the residents (and bearing in mind that the area is generally utilised as a holiday retreat and place to retire) it is highly unlikely that such a transport system will ever see the light of day.

- 9.5.3. "*Densification facilitates economic opportunities and access to facilities within the urban system.*" (Item 4.2.3).

This requirement refers to high density urban development and is not applicable to De Kelders Extension 1 Township. There in any event simply is no urban system within which



economic opportunities are available in this township. Whatever job opportunities there are will entail travelling to Gansbaai and the addition of a new erf or dwelling in De Kelders Extension 1 Township will increase traffic to and from Gansbaai rather than alleviate same.

The De Kelders Extension 1 Township is in any event situated in the greater Gansbaai area where (according to the strategy document) approximately 25% of all existing dwellings are not permanently occupied.

In our specific area existing dwellings are predominantly used as holiday / week-end retreats by city dwellers or owners with primary residences situated elsewhere. All of them exploit economic opportunities elsewhere.

It also has to be borne in mind that according to the statistical data contained in the Overstrand Municipal Growth Management Strategy documentation the majority (56%) of the permanent residents of the De Kelders suburb are of retirement age. According to this data 23.6% of all residents are between ages 50 to 59 whilst 32.1% of the residents fall in the age range of 60 to 80+.

9.5.4. *"Densification supports efficient service provision". (Item 4.2.4).*

I again refer to the fact that the Overstrand Municipal Growth Management Strategy document states that the provision of the civil services needs to be updated prior to any further densification of the area. This has not been done. The applicant does not say – and can hardly be heard to say – that the densification initiative should be fast tracked in order to attain efficient service provision in the

area. To do so would be to put the cart before the horse – the policy in so many words acknowledges that the service provision in the De Kelders area does not support densification.

- 9.5.5. *"Densification improves the variety in housing mix and a choice of housing type."* (Item 4.2.5).

The applicant's application was not accompanied by a development plan and he failed to disclose what type of dwelling is envisaged to be erected on the newly created erf. One can only surmise that it would be a development in terms whereof the erf is utilised to its fullest extent subject only to the provisions of the Overstrand Zoning Scheme and the provisions of the National Building Regulations and Building Standards Act.

A mere visit to the area will confirm that there are already an abundance of dwellings of this nature. The applicant has in any event not said that he intends contributing something towards the variation of the housing mix or providing a choice of the type of housing. The reason for him not doing so is clear: he simply does not intend to provide any variation of the housing mix or provide a choice of housing (other than that already available in the area).

- 9.5.6. *"Densification contributes to urban place making and improves safety"*. (Item 4.2.6).

The proposed development (which detracts from the ambience and character of the area) will result in a negative urban environment (being a high-density node within a surrounding low density environment) rather than an attractive and desirable sea-side retreat.

10. It is submitted that the removal of the restrictive title deed condition is undesirable as it is detrimental to the interests of the De Kelders Extension 1 Township, the area and the public. No positive advantage to the community which will be served by granting the application has been shown (or even alleged) to exist. I therefore request that the application for the removal of the restrictive title deed condition be refused.

Yours sincerely



JACOBUS CHRISTIAAN CALITZ

FILE NO: **E2713-DK**  
 SCAN NO: **37**  
 COLLABORATOR NO: **765467**



236

ANNEXURE D 68/124

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(S vld memo)

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7 March 2015

DIRECTOR: INTEGRATED ENVIRONMENTAL MANAGEMENT

Provincial Government of the Western Cape

Private Bag X9086

CAPE TOWN

Ref: 15/3/1/4/E2/5/Erf 713, De Kelders (G Cambell))

**REMOVAL OF RESTRICTIONS ACT, 67 (ACT 84 OF 1967): ERF 713 DE  
 KELDERS (OVERSTRAND MUNICIPALITY)**

The notice by registered mail dated 29 January 2015, as prepared by Messrs WRAP on behalf of Mr JV Meintjies, refers.

The Steynstraat Trust ("the Trust") is the registered owner of three erven, being Erf 706, Erf 707 and Erf 710, De Kelders (situated at Steyn Street, De Kelders).

I, Roelof Joubert, in my capacity as duly authorised trustee of the Trust, hereby note an objection by the Trust to the application for the removal of the title deed restriction concerned and the application for subdivision of Erf 713, as set forth in the notice referred to above. The basis of this objection will be made clear hereinbelow.

1. The information contained in the applicant's application is, apart from being repetitive, extremely terse.

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2. The applicant's motive, however, is made clear: he aims to create a second erf on the back-portion of the existing Erf 713 (behind the existing dwelling thereon) in order to have an additional dwelling constructed thereon. Where precisely on this new erf this dwelling is to be erected and what the dimensions thereof would be he does not say – one would therefore have to assume that the applicant intends to procure rights which will allow him or his successor in title to develop the erf to its fullest extent subject only to the provisions of the Overstrand Zoning Scheme and the provisions of the National Building Regulations and Building Standards Act, 1977.
3. Upon a proper reading of the application documents as a whole, it is evident that the applicant, in applying for the removal of title deed condition B(e) (which incorporated the following condition, which is described as being in favour of the Administrator, in the title deed: "*(e) That this erf shall not be subdivided except with the consent in writing of the Administrator*"), apart from mentioning in passing that the erf is located in an area that has experienced similar subdivisions in the past, in reality relies exclusively on the provisions of the spatial planning initiative of the Overstrand Municipality, as contained in the document titled Overstrand Municipal Growth Management Strategy.
4. What is also clear from the documents is that the applicant contends, and proceeds from the premise, that the approval of the removal of the title deed restriction and subsequent subdivision of Erf 713 will not result "*in negative impacts on existing land use rights*". As will be explained in due course, this is patently wrong.
5. It is significant to note that the applicant restricted his application for removal of a title deed restriction to condition B.(e). No mention, however, is made therein to title deed condition E(A)(c), which imposed the following restrictive condition:

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

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

- 5.1. It needs to be pointed out that the notice that was sent to the Trust was not accompanied by the applicant's title deed wherein this condition is expressly taken up.
  - 5.2. As no application was made for the removal of this condition, the attention of registered owners of properties in the township was not drawn to this condition and the majority of them in all probability are still ignorant about the fact that this material proprietary / servitudal right (which like condition B.(e), also attaches to each and every one their properties) is also at stake.
6. According to information at hand it is clear that title deed conditions B.(e) and E(A)(c) which appear in the applicant's title deed (although the numbering thereof may differ from property to property) were taken up in the registered title deeds of each and every property which forms part of De Kelders Extension 1 Township.
- 6.1. I have been advised and verily believe that both these restrictive conditions are registered praedial servitudes that enure for the benefit of all other erven in (at least) the whole of the area depicted on the General Plan of De Kelders Extension No 1 Township as approved by the Surveyor-General on 28 July 1939.
  - 6.2. Each erf in the De Kelders Extension No 1 Township therefore is simultaneously both a servient tenement and a dominant tenement. It is servient in the sense of being encumbered by the title deed condition in favour of all the other similar erven, and dominant in the sense of being favoured by the title deed condition in respect of the other similar erven.