

**4.2****ERF 708, 9 FRONT STREET, DE KELDERS: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITION, SUBDIVISION AND EXEMPTION OF SUBDIVISION (SERVITUDE RIGHT-OF-WAY) : MESSRS PLAN ACTIVE TOWN AND REGIONAL PLANNERS ON BEHALF OF R STEYN & Y BITTMANN-STEYN****708 GDK****P Roux****15 December 2020****(028) 313 8900****Hermanus Administration****1. EXECUTIVE SUMMARY**

An application has been received on 1 June 2020 from Messrs Plan Active Town- and Regional Planners on behalf of R Steyn and Y Bittmann-Steyn applicable to Erf 708, De Kelders for the following:

- ❖ removal of restrictive title deed condition D.(e) as contained in Title Deed T60347/2018 applicable to Erf 708, De Kelders in terms of Section 16(2)(f) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 (By-Law); and
- ❖ application for subdivision in terms of Section 16(2)(d) of the By-Law in order to subdivide the property into two (2) portions, namely Portion A (±735m<sup>2</sup> in extent) and a Remainder (±664m<sup>2</sup> in extent).

The Locality Plan of the property concerned is attached as Annexure A. The Motivation Report from the applicant in support of the application is attached as Annexure B and the Subdivisional Plan is attached as Annexure C. Title Deed T60347/2018 is attached as Annexure D.

**2. DECISION AUTHORITY**

Municipal Planning Tribunal

**3. BACKGROUND / SITE HISTORY**

The subject property is currently vacant, and it is zoned for residential use. The applicant proposes to subdivide the subject property into two (2) portions. Further, the property's Title Deed is encumbered with a restrictive condition which the applicant seeks to remove.

It should be noted that the applicant also seeks to register a servitude right of way over the Remainder of Erf 708 in order to allow for access to the proposed Portion A. The proposed servitude is exempt from the normal land use application process in terms of Section 26. (1)(g)(v). Should the application be considered favourably then the Subdivision Plan will be endorsed to certify that the access servitude is exempted.

**4. SUMMARY OF APPLICANT'S MOTIVATION**

The motivation for the application is summarised as follows:

- The subject property is situated at 9 Front Street, De Kelders.

- The subject property, as well as the surrounding properties, is zoned for residential use. The proposed application will not change the zoning of the property and therefore any future development will be compliant with the character of the area and the existing zoning parameters.
- The subject property is of such a size that it can be subdivided in order to create two (2) properties, namely Portion A ( $\pm 735\text{m}^2$  in extent) and Remainder ( $\pm 664\text{m}^2$  in extent), while still remaining compliant with the adjacent property sizes. Adjacent property sizes range between  $500\text{m}^2$  to  $700\text{m}^2$ .
- The grid shape pattern as developed in the area will be maintained.
- A 3m wide servitude right of way will be registered over the Remainder of Erf 708 in order to allow for access to the proposed Portion A. Similar servitudes were developed in the area. The proposed servitude is exempt from the land use application, but it is required to discuss as it is required in order to indicate where the proposed Portion A will obtain access.
- It is motivated to remove the restrictive condition as contained in the Title Deed of Erf 708 as the restrictive condition hinders the subdivision of the property. A Conveyancer's Certificate was submitted with the application which indicates that condition D.(e) in Title Deed No. T60347/2018 must be removed. The application is motivated in terms of Section 39(5) of LUPA, 2014.
- The application is further motivated to be in line with the relevant forward planning documentation, including the Overstrand Municipality's Growth Management Strategy, 2010 (OMGMS).
- The application is further motivated to be in line with the Planning Principles of SPLUMA.

#### 5. ADMINISTRATIVE COMPLIANCE

Methods of advertising		Date published	Closing date for comments
Local Newspaper	Yes	12 August 2020	18 September 2019
Gazette	Yes	14 August 2020	18 September 2020
Notices	Yes	17 August 2020	18 September 2019
Ward councillor	Yes	13 August 2020	18 September 2019
Total comments	<b>ONE (1)</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
Traffic	20/08/2020	Will assist when needed.
Engineering Services	14/09/2020	Annexure G.
Environmental Section	18/09/2020	No objection.

## 7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION

One (1) letter was received from A Joubert on Erf 707, De Kelders. The letter only states that the owner objects to the subdivision of Erf 708, De Kelders and that they wish to keep the erven in the area as a whole.

### Response from Applicant

The proposed two (2) portions will be in similar extent than those of the surrounding erven namely:

- Erf 1239 (700m<sup>2</sup>)
- Erf 717 (500m<sup>2</sup>)
- Erf 1299 (700m<sup>2</sup>)
- Erf 715 (689m<sup>2</sup>)
- Erf 1310 (500m<sup>2</sup>)
- Erf 700 (550m<sup>2</sup>)
- Erf 1243 (641m<sup>2</sup>)

The street frontage width of the existing erven with similar sizes, the conformity with the existing grid layout and similar subdivision applications proof that the subdivision into two (2) portions is compatible with the existing context and immediate vicinity.

The subject property forms part of Planning Unit No. 1 in terms of the OMGMS and increase in density is permitted from 11,3 to 14,7 units per hectare. The subject property allows for the proposed subdivision as exact same type of subdivisions have been allowed in the past. Only one (1) additional property will be created which is sensitive to the densification policies and overall density of the area.

The proposed sizes do not deviate from the 10% size rule. The property will be developed in line with the current land use and zoning.

### Response from Town Planner

It is noted that the objector did not provide any reasons for the objection as stipulated in the notice which was sent to the objector. In terms of Section 52 of the Overstrand Municipality By-Law on Land Use Planning, 2015 the objection must contain the following:

- “(4) The reasons for any objection, comment or representation must be set out in sufficient detail in order to—*
- (a) indicate the facts and circumstances which explains the objection, comment or representation;*
  - (b) demonstrate the undesirable effect which the application will have on the area;*
  - (c) demonstrate any aspect of the application which is not considered consistent with applicable policy.”*

The objection letter clearly did not adhere to the requirements of the said By-Law and therefore the objection cannot be evaluated and discussed. The opinion is held that the objection is flawed and should be dismissed.

## **8. SUMMARY OF APPLICANT’S REPLY TO COMMENTS**

N/A

## **9. MUNICIPAL ASSESSMENT OF COMMENTS**

All relevant departments provided positive comments.

## **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 can be motivated in terms of the principles in the following manner:

#### Spatial Justice

The application is on an existing property in De Kelders and therefore it does not apply to this principle.

#### Spatial sustainability

The application will have no impact on the conservation status of the subject property or the area. The impact on the biophysical environment will also be kept to a minimum. The new property will be developed in line with the relevant Zoning Scheme. The impact will therefore be the same as the development of any other single residential property and the densification will be in line with the forward planning framework of the area. Erf sizes and layout pattern will be the same as the applicable area. The location of the proposed application will not lead to urban sprawl.

#### Efficiency

The property would address the need for additional residential properties in the area. The application discourages urban sprawl and encourages densification. The subdivision will have a low impact on the surrounding property owners.

#### Spatial Resilience

Not applicable

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 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 10.2 above.

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

The application is in line with the SDF as the planning unit is indicated for residential use and the proposed application will not change the use.

The Overstrand Spatial Development Framework, 2006 (SDF), in line with Provincial and National Government Planning Policies, encourage densification within the urban edge thereby making more efficient use of brownfield land within the confines of the urban edge. Following the SDF, the OMGMS encourage residential densification in appropriate locations.

The subject property is located within Planning Unit 1 which is earmarked as a densification zone varying between ten (10) – twenty (20) dwelling units per ha (du/ha). The aforementioned is to be achieved via subdivision.

From the aforementioned it is clear that the proposed subdivision constituting brownfield development on land within the demarcated urban edge is in line with the existing forward planning policies applicable to the area.

**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. The property owner will have to contribute to the bulk service levy for the additional property.

The new property and Remainder will have road access as indicated on the subdivision plan.

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

N/A

**10.8 Existing and proposed zoning comparisons and considerations**

The zoning of the proposed subdivided properties will remain for single residential use.

**11. ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS**

Title Deed T60347/2018 applicable to Erf 708, De Kelders contains a restrictive condition D.(e) which states the following: *“That this erf shall not be subdivided except with the consent in writing of the administrator.”*

A Conveyancer's Certificate was submitted with the application instructing the applicant to remove the abovementioned condition.

In view of the above being stated the following directly relates to Section 39(5) of LUPA, 2014 (Act 3 of 2014):

**Will 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?**

The retention of the current condition does not hold a value for the property owner, adjacent property owner or to the Municipality as the removal of similar conditions and land use applications have been approved in the past. By allowing the subdivision, 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.

**The personal benefits which accrue to the holder of rights in terms of the restrictive condition:**

The Municipality gains no benefits in keeping the restrictive condition. Further, the Municipality has the mandate to consider land use applications in terms of SPLUMA, 2013 and LUPA, 2015 and therefore the retention of the condition is superfluous.

**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 enabled to subdivide the property and to sell the property in future, if so desired.

**The social benefit of the restrictive condition remaining in place in its existing form and the social benefit of the removal, suspension or amendment of the restrictive condition:**

Considering the fact that similar applications have been approved in the past and due to the OMGMS which promote densification through subdivision in the De Kelders suburb, there will be no social benefit should the condition remains in place.

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

It is proposed to remove only one (1) condition which provides the Municipality the right to consider the proposed subdivision, and as stated earlier in terms of other legislation the Municipality already has the right to consider the proposed subdivision, therefore the rights enjoyed by the beneficiary (the Municipality) will remain in place. The erf will remain residential and the right obtained will be subservient to the zoning and other legislation applicable in the Overstrand municipal area. Considering the aforementioned, the residential rights of the adjacent property owners will not be affected.

Given the abovementioned evaluation the opinion is held that if the restrictive condition is removed as proposed, 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. The opinion is further held that the proposal is sufficiently evaluated in terms of Section 39 (5) of LUPA, 2014 (Act 3 of 2014).

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

It is proposed that Erf 708, De Kelders be subdivided in order to create two (2) relative equal properties namely Portion A ( $\pm 735\text{m}^2$  in extent) and a Remainder ( $\pm 664\text{m}^2$  in extent). The proposed erf sizes are in line with the property sizes in the residential block and the proposed densification as determined in the OMGMS will be maintained. No change of the land use is proposed and therefore should the erven be developed in the future then the erven will be developed in line with the character of the area and the title deed restrictions.

The proposed development will utilise existing municipal services that is available in the area. The Engineering Services Department did not object to the proposal from an engineering services' point of view, subject to adherence to conditions, which amongst other include the payment of a bulk services levy. Access to Portion A will be obtained via a servitude right of way over the Remainder of Erf 708, De Kelders. Although the registration of a right of way servitude is exempt from a formal land use application process, the proposed subdivision plan indicates that sufficient space will be provided for Portion A to gain access to the road network.

Considering the abovementioned the proposed application can be considered desirable.

## **13. RECOMMENDATION**

1. that the objector be notified of the decision and that the objection submitted is not compliant in terms of Section 52 of the with the Overstrand Municipality By-Law on Land Use Planning, 2015 and that the objection is therefore dismissed;
2. that the application received from Messrs Plan Active Town- and Regional Planners on behalf of R Steyn and Y Bittmann-Steyn applicable to Erf 708, De Kelders for the following:
  - removal of restrictive title deed condition D.(e) as contained in Title Deed T60347/2018 applicable to Erf 708, De Kelders in terms of Section 16(2)(f)

of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 (By-Law), and

- application for subdivision in terms of Section 16(2)(d) of the By-Law in order to subdivide the property into two (2) portions, namely Portion A ( $\pm 735\text{m}^2$  in extent) and a Remainder ( $\pm 664\text{m}^2$  in extent),

**be approved** in terms of the provisions of Section 61 of the By-Law, subject to the following conditions:

- (a) that the approval is only for the subdivision as indicated on *Subdivision Plan No. deKeld708.drw* as submitted with the application;
  - (b) that the conditions in the Services Report (attached as Annexure G), be complied with;
  - (c) that this approval does not absolve the owner/applicant from compliance with any other relevant legislation, and
  - (d) that all other development parameters as prescribed in the relevant Zoning Scheme be complied with.
3. that the applicant be notified of its right of appeal in terms of Section 78 of the Overstrand Municipality By-Law on Land Use Planning, 2015 with regard to the above conditions of approval.

#### 14. REASONS FOR RECOMMENDATION

- ❖ The application has followed due procedure.
- ❖ None of the relevant departments have any objection.
- ❖ The proposed subdivision is in line with the applicable municipal and provincial planning policy and will make more efficient use of brownfield land within the urban edge.
- ❖ The proposal will not negatively impact on existing/vested rights of adjoining property owners.
- ❖ The proposed application fits in with the character of the surrounding area, and is desirable.

#### 15. ANNEXURES

- Annexure A: Locality Plan
- Annexure B: Motivation Report
- Annexure C: Subdivisional Plan
- Annexure D: Title Deed T60347/2018
- Annexure E: Objection
- Annexure F: Comment on objection
- Annexure G: Services Report

**SIGNATURES****AUTHOR**

Name : **P ROUX**

SACPLAN Reg No: **A/2246/2015**

Signature : \_\_\_\_\_

Date: \_\_\_\_\_

**REGISTERED PLANNER**

Name: **H VAN DER STOEP**

SACPLAN Reg No: **A/1708/2013**

Signature: \_\_\_\_\_

Date: \_\_\_\_\_



**PROPOSED SUBDIVISION, EXEMPTED SUBDIVISION  
(REGISTRATION OF SERVITUDE RIGHT-OF-WAY) &  
REMOVAL OF A RESTRICTIVE TITLE DEED CONDITION**

**ERF 708 DE KELDERS**

**DIVISION: CALEDON**

**OVERSTRAND MUNICIPALITY**

**MOTIVATION REPORT**

**1. BACKGROUND**

Plan Active Town & Regional Planners has been appointed by Y. Bittmann-Steyn and R. Steyn, the owners of erf 708 De Kelders, to apply for the subdivision, exempted subdivision and removal of a restrictive title deed condition of the subject property.

Erf 708 De Kelders is 1399m<sup>2</sup> in extent and held by Title Deed No T60347/2018.

The subject property is currently vacant. The owners intend to subdivide erf 708 De Kelders into two portions.

**2. APPLICATION DETAILS**

Application is made in terms of:

- Chapter 4, Section 16(2)(d) of the Overstrand Municipality's By-law on Municipal Land Use Planning, 2015, for the subdivision of erf 708 De Kelders;

- Chapter 4, Section Section 26(1)(g)(v) of the Overstrand Municipality's By-law on Municipal Land Use Planning, 2015, for the exempted subdivision to register a servitude right-of-way on erf 708 De Kelders;
- Chapter 4, Section 16(2)(f) of the Overstrand Municipality's By-law on Municipal Land Use Planning, 2015, for the removal of a restrictive title deed condition of erf 708 De Kelders.

### **3. NEED AND DESIRABILITY**

#### **3.1 PROPERTY DESCRIPTION**

Erf 708 De Kelders is a seafront property situated at 9 / 11 Front Street, De Kelders. Refer to the locality plan attached.

The property is currently an undeveloped portion of land. The subject property slopes from the south-eastern to the north-western boundary as depicted on the topographical survey map for the subject property. Erf 708 De Kelders enjoys spectacular sea views over Walker Bay in a south-western, western, north-western, northern and north-eastern direction and mountain views in an eastern, south-eastern and southern direction.

#### **3.2 ZONING**

Erf 708 De Kelders has the following land use rights:

ERF NUMBER	ZONING
Erf 708 De Kelders	Residential Zone 1: Single Residential (SR1)

Surrounding properties are zoned for single residential, public road and public open space purposes.

### 3.3 LAND USE

The subject property is currently a vacant portion of land.

Land uses that surround the subject property are single and double storey dwellings (permanent residences and holiday homes), vacant erven and public open spaces.

### 3.4 THE POTENTIAL OF THE PROPERTY

Erf 708 De Kelders is currently a larger portion of land situated in the existing residential area of De Kelders. The zoning and land use of the subject property will remain unchanged. The location of the subject property within an existing established single residential area allows the property to be developed for low impact land uses only in future. The proposed subdivision, exempted subdivision and removal of a restrictive title deed condition will not hinder any future land use applications on either of the portions after subdivision.

When evaluating the proposed subdivision, exempted subdivision and removal of a restrictive title deed condition against surrounding erf sizes, minimum erf sizes, minimum street frontage widths, the proposed layout, similar subdivision applications approved in Front Street in the past, etc. it is evident that the subject property has the potential to be subdivided into two portions with similar erf sizes than the erven in the immediate vicinity. Two portions of  $\pm 664\text{m}^2$  and  $\pm 735\text{m}^2$  respectively are proposed. Erven adjacent to and in the immediate vicinity of erf 708 De Kelders with similar erf sizes are Remainder erf 713 ( $\pm 700\text{m}^2$ ), erf 1239 ( $\pm 700\text{m}^2$ ), Remainder erf 717 ( $\pm 700\text{m}^2$ ), erf 1299 ( $\pm 700\text{m}^2$ ), Remainder erf 715 ( $\pm 689\text{m}^2$ ), erf 1310 ( $\pm 500\text{m}^2$ ), Remainder erf 700 ( $\pm 550\text{m}^2$ ) and erf 1243 ( $\pm 641\text{m}^2$ ). The subdivision of the adjacent erf 709 De Kelders is also pending the municipal decision.

The proposed erf shapes follow the existing grid pattern of this specific residential block. Access to Portion A, a portion of erf 708 De Kelders, will be obtained by means of a proposed 3m wide servitude right-of-way to be registered over Remainder erf 708 De Kelders. Subdivisions with similar servitude right-of-way

accesses have been granted in Front Street in the past. It is therefore submitted that the proposed erf sizes, erf shapes and accesses for the two newly created portions after subdivision, exempted subdivision and removal of the restrictive title deed condition are compatible with the character of the area and therefore has the potential to be subdivided.

### 3.5 PROPOSAL

The following are proposed:

- The subdivision of erf 708 De Kelders into two portions in terms of Chapter 4, Section 16(2)(d) of the Overstrand Municipality's By-law on Municipal Land Use Planning, 2015, as follows:
  - Portion A:  $\pm 735\text{m}^2$
  - Remainder:  $\pm 664\text{m}^2$ .
- The exempted subdivision of erf 708 De Kelders in terms of Chapter 4, Section Section 26(1)(g)(v) of the Overstrand Municipality's By-law on Municipal Land Use Planning, 2015, to register a 3m wide servitude right-of-way ( $\pm 105\text{m}^2$  in extent) over Remainder erf 708 De Kelders in favour of Portion A, a portion of erf 708 De Kelders;
- The removal of a restrictive title deed condition in terms of Chapter 4, Section 16(2)(f) of the Overstrand Municipality's By-law on Municipal Land Use Planning, 2015, to remove condition D.(e) on page 4 of title deed no. T60347/2018 that prohibits the subdivision and exempted subdivision (servitude right-of-way) of erf 708 De Kelders.

The potential of the subject property is discussed in detail in *Section 3.4 Potential of the property.*

When the proposed subdivision, exempted subdivision and removal of the restrictive title deed condition of erf 708 De Kelders were considered cognisance was taken of the following criteria:

- physical characteristics of the subject property;
- surrounding and minimum erf sizes;
- accessibility to the subject properties;

- o impact on the character of the area;
- o grid pattern and proposed erf shapes;
- o applicable spatial planning policies and densification guidelines.

Erf 708 De Kelders is currently a vacant portion of land. The owners intend to subdivide erf 708 De Kelders into two portions.

It is proposed to subdivide erf 708 De Kelders as follows:

<b>TOTAL AREA</b>	1399m <sup>2</sup>
<b>AREAS FOR SUBDIVISION</b>	Portion A: ±735m <sup>2</sup> Remainder: ±664m <sup>2</sup>
<b>OWNERS</b>	R. Steyn Y. Bittmann-Steyn
<b>TITLE DEED</b>	T60347/2018

To keep the developable area of Remainder erf 708 De Kelders to a maximum, it is proposed to simultaneously register a 3m wide servitude right-of-way (±105m<sup>2</sup>) over Remainder erf 708 De Kelders in favour of Portion A, a portion of erf 708 De Kelders, to give access to Portion A. To create a panhandle property instead of access via a servitude right-of-way would infringe on the width of the developable area of the Remainder portion by at least 2m. This application proposal is not different from similar subdivisions with servitude right-of-way accesses that have been granted in Front Street in the past and the layout and servitude access can therefore be favourably considered. Refer to the subdivision plan attached.

The Overstrand Municipality's densification policy establishes the principle of incremental densification in an established residential area if it does not have a detrimental impact on its character. It is important to enhance and protect the character of the existing low-density residential area, while still sensitively densifying where appropriate. This ensures that a wide range of erf sizes and types of development are available, not only within this precinct, but also within the entire greater Gansbaai area.

The subdivision line was determined to create two portions with similar erf sizes than surrounding properties in the area (±664m<sup>2</sup> and ±735m<sup>2</sup> respectively). Minimum common boundary building lines of 2m (from the proposed subdivision line / new erf

5

boundary) and street building lines of 4m will apply to both the newly created portions. Where applicable the stricter title deed building lines will apply to both the portions after subdivision.

It was attempted to keep the subdivision line as simple and practical as possible to avoid creating asymmetrical erf shapes that would have an impact on the future development of the subject properties as well as the character of the area. This residential area is characterised by grid (rectangular) shaped erven and as a result the proposed erf shapes after subdivision are still compatible with the area.

The zoning of the respective portions after subdivision will remain unchanged (SR1).

The proposed subdivision adheres to all other land use restrictions in the Overstrand Zoning Scheme Regulations (2013). Subdivision applications into similar sized erf portions were already favourably considered in the past in this residential area. Changes in the area since similar land use approvals were issued in this area were minimal and consequently this application has merit to create similar sized single residential erven. The impact of the proposed subdivision into two portions of  $\pm 664\text{m}^2$  and  $\pm 735\text{m}^2$  in extent respectively is regarded as a low impact land use application.

The coverage for the respective portions after subdivision will be 0% since the proposed portions will be vacant. A maximum coverage of 50% must be adhered to once the respective portions are developed in future. Since the newly created portions will be transferred to prospective buyers in future, any future development of Portion A, a portion of erf 708 De Kelders, and Remainder erf 708 De Kelders will be done in accordance with the land use restrictions applicable to the relevant zoning.

Refer to Section 3.15 of this report for further motivation in terms of the relevant spatial planning policies.

The proposed subdivision will not have a negative impact on the surrounding erven as the zoning of the subject properties will remain Single Residential Zone I, the proposed portion sizes are compatible with similar surrounding property sizes and no deviations from the applicable zoning parameters are proposed.

There is a restrictive title deed condition that prohibits the subdivision of the subject property. The removal of the title deed condition application is addressed in Section 3.14 *Title Deed* of this report.

The proposed subdivision, exempted subdivision and the removal of the restrictive title deed condition of erf 708 De Kelders are not in contrast to the existing land use tendencies in the surrounding environment and we therefore do not foresee any problems with the proposed application.

### **3.6 ECONOMIC IMPACT**

The proposed subdivision, exempted subdivision and removal of the restrictive title deed condition will have a positive impact on the economy of the area. By allowing the subdivision of the subject property, it creates one additional residential portion from which the municipality can attain bulk service levies as well as monthly rates and taxes. Furthermore, the two portions after subdivision will be vacant portions of land and this implies that the future construction of a dwelling with outbuilding on each of the respective properties will create temporary employment opportunities. The new portions will be occupied by new families who will invest and spend in the immediate local business area.

The proposed subdivision, exempted subdivision and the removal of the restrictive title deed condition will allow for the provision of increased residential accommodation in a well-located area.

### **3.7 SOCIAL IMPACT**

The proposal will have a positive social impact as the proposed subdivision, exempted subdivision and removal of the restrictive title deed condition will facilitate additional ownership of property. The impact that a new family to the area will have, will be beneficial and no negative impacts are anticipated.

7

The impact on the social wellbeing and social coherence of the adjacent community will be minimal given the extent of the proposed portions after subdivision as well as the fact that the zoning and land use of the newly created portions will be in line with the zoning and land uses associated with the immediate area.

### **3.8 COMPATIBILITY WITH SURROUNDING LAND USES**

The subject property is a seafront property situated in an existing low-density residential area. The application does not propose to change the zoning or land use of the subject property and therefore the proposed subdivision, exempted subdivision and removal of the restrictive title deed condition are compatible with the surrounding land uses.

As mentioned in Sections 3.4 and 3.5 of this report the surrounding erf sizes, the street frontage widths of existing erven with similar sizes, the conformity with the existing grid layout, the approval of similar subdivision applications in Front Street, etc. proof that the subdivision into two portions is compatible with the existing context and character of the area. Smaller properties of between  $\pm 500\text{m}^2$  and  $\pm 700\text{m}^2$  in extent exist in the immediate vicinity of erf 708 De Kelders. The extent of the newly created portions is compatible with the existing low-density residential area.

According to the development rules of the Overstrand Municipal Zoning Scheme Regulations (2013) the subdivision will allow for the development rules for erven  $>400\text{m}^2$  to apply to the two newly created portions. The proposed subdivision will therefore maintain the existing development parameters applicable to the subject property:

RESIDENTIAL ZONES RESIDENTIAL ZONE 1: SINGLE RESIDENTIAL (SRI)	FLOOR FACTOR	COVERAGE	MAXIMUM HEIGHT MEASURED FROM THE BASE LEVEL	BUILDING LINES			OTHER PROVISIONS
			To top of roof	Street building line	Side and rear building lines	Rear building lines	
<b>PRIMARY USES</b> day care centre, dwelling house, guest rooms, home occupation, second dwelling unit  <b>CONSENT USES</b> crèche, green house, guest house, house shop, habitation, place of instruction, place of worship, residential building, tourist accommodation	N/A	<400m <sup>2</sup> : 65% ≥400m <sup>2</sup> : 50%	8,0m  Earth banks and retaining structures shall comply with 15.6	<400m <sup>2</sup> : 2,0m ≥400m <sup>2</sup> : 4,0m  Refer to 6.1.2(b)	≤400m <sup>2</sup> : 1,0m >400m <sup>2</sup> : 2,0m	≤400m <sup>2</sup> : 1,0m >400m <sup>2</sup> : 2,0m	Garages and carports, parking, minimum subdivision area, maximum density, second dwelling unit, guest rooms, day care centre, home occupation, house shop

*Overstrand Zoning Scheme Regulations, 2013*

For the purposes of this application the title deed conditions referencing the land use, coverage, number of dwellings and the building lines for erf 708 De Kelders will remain intact.

### 3.9 IMPACT ON EXTERNAL ENGINEERING SERVICES

Erf 708 De Kelders is currently a vacant portion of land. Services for both the portions after subdivision will be provided in line with the Overstrand Municipality's regulations for installing services infrastructure.

Since only one new erf is created, bulk services levies will only be payable for one newly created portion.

### 3.10 IMPACT ON SAFETY, HEALTH AND WELLBEING OF SURROUNDING COMMUNITY

The proposed subdivision, exempted subdivision and removal of the restrictive title deed condition will have no impact on the general safety and wellbeing of the surrounding community. It is anticipated that two families will potentially occupy the two respective erven after the proposed subdivision of erf 708 De Kelders as

opposed to a vacant portion of land currently open to vagrants and unwanted elements in the area.

Furthermore, the construction of the new dwellings on the respective portions will conform to the relevant land use, building and construction guidelines of the municipality. The latter will ensure the safe construction of the dwellings and guarantee the safety and minimal noise pollution during construction to the immediate community.

Since the proposed subdivision, exempted subdivision and removal of the restrictive title deed condition are not associated with a noxious trade with polluting air emissions the impact on the health of the community will be kept to a minimum.

### **3.11 IMPACT ON HERITAGE**

The application does not involve changing the character of a site larger than 5 000m<sup>2</sup>. Consequently, the proposed application for the subdivision, exempted subdivision and removal of the restrictive title deed condition do not trigger Section 38 of the National Heritage Resources Act, 1999 (Act No. 25 of 1999).

Erf 708 De Kelders is not situated within the Heritage Overlay Zone as determined by the Overstrand Heritage Report (2009). The subject property does not fall within the Heritage Overlay Zone demarcated in the Overstrand Municipal Growth Management Strategy (2010).

The impact on the visual landscape of the area will be kept to a minimum since the future dwellings on Portion A, a portion of erf 708 De Kelders, and Remainder erf 708 De Kelders will be developed in line with the development parameters stipulated in the subject properties title deed as well as the development parameters specified in the Overstrand Municipal Zoning Scheme Regulations, 2013, for SR1 zoned properties (development parameters table included in Section 3.8 of this report).

From the above it is evident that the proposed application does not encompass any heritage significance and therefore the impact on the heritage value of the area will be kept to a minimum.

### **3.12 IMPACT ON THE BIOPHYSICAL ENVIRONMENT**

The proposed subdivision, exempted subdivision and the removal of the restrictive title deed condition (land use application) to create one additional single residential erf with servitude access way do not trigger any listed activities in terms of the National Environmental Management Act (NEMA), 1998 (Act no. 107 of 1998). In addition, the subject property does not fall within the coastal management zone.

Should the future development of the respective portions after subdivision trigger a NEMA application, due process will be followed prior to the commencement of the construction on site.

### **3.13 TRAFFIC IMPACT, PARKING AND ACCESS**

Erf 708 De Kelders currently takes access from Front Street (gravel road). Both Portion A, a portion of erf 708 De Kelders, and Remainder erf 708 De Kelders will take access from Front Street after subdivision. As described in *Section 3.5 Proposal* it is proposed to register a 3m wide servitude right-of-way ( $\pm 105\text{m}^2$ ) over Remainder erf 708 De Kelders in favour of Portion A, a portion of erf 708 De Kelders, to give access to Portion A while simultaneously keeping the developable area of Remainder erf 708 De Kelders to a maximum. To create a panhandle property instead of access via a servitude right-of-way would infringe on the width of the developable area of the Remainder portion by at least 2m. This application proposal is not different from similar subdivisions with servitude right-of-way accesses that have been granted in Front Street in the past and the layout and servitude access can therefore be favourably considered. Refer to the subdivision plan attached.

The exact position of the access points / gates will only be determined once building plans are available and submitted in future for the respective portions.

The impact on the traffic of De Kelders and the immediate area will be kept to a minimum since the proposal is in line with the status quo of the area and only one additional residential property is created.

The development of the respective portions after subdivision will have to comply with the relevant scheme regulations' parking requirements – i.e. at least two parking bays / garages must be provided for on site for each new portion created.

### 3.14 TITLE DEED

Title deed no. T60347/2018 and pivot title deed no. T1067/1940 have a title deed condition that prohibits the subdivision of erf 708 De Kelders. Refer to a copy of the conveyancer's certificate compiled by H.L. van Zyl of Van Zyl Kruger Attorneys dated 27 May 2020. Application is therefore made for the removal of a restrictive title deed condition.

It is proposed to remove the following restrictive title deed condition registered in favour of the Administrator (now the Overstrand Municipality) to accommodate the proposed subdivision of erf 708 De Kelders into two portions and exempted subdivision to register a 3m wide servitude right-of-way:

**Title deed no. T60347/2018, page 4, paragraph D.(e):**

*D. SUBJECT FURTHER to the following conditions created in Deed of Transfer no. 648/1943 and imposed by the Administrator in terms of the provisions of Ordinance 33 of 1934 when approving De Kelders Extension No. 1, namely:-*

*As being in favour of and enforceable by the Administrator:*

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

12

Section 39(5) of the Land Use Planning Act (LUPA), 2014, stipulates that a Municipality should have regard to the following factors when considering the "removal, suspension or amendment of a restrictive condition":

- ***The financial or other value of the rights in terms of the restrictive conditions 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***

It is our opinion that the "no subdivision" restriction neither has value to the owners of property within the Township nor the municipality (who now fulfils the role of the Administrator). Similar restrictive title deed conditions have been removed from the title deeds of properties in De Kelders to enable subdivisions which have proven to have significantly increased property values in the area. Conditions have been removed from the title deeds of numerous properties within the De Kelders Extension No. 1, (including the properties previously subdivided in Front Street, Steyn Street and Baard Street) to enable subdivision into smaller erven.

This, together with the expectation of property owners in the area to enhance the value of their properties (since conditions have been removed from the title deeds of other erven in the De Kelders area and the fact that densification is promoted in the relevant spatial planning policies), it is evident that the title deed restriction rather has a negative impact on the area and that the removal of the restriction will have a positive impact on property values.

Some factors which impact the value of a property and the surrounding area include the location of a property, the slope of a property, the slope of the area and views from the property. The extent of a subject property is regarded a lesser factor when considering the impact on the value of a property. As a result, subdivision with the simultaneous removal of the restrictive title deed condition will increase the value of properties in the area.

The proposed subdivision will economically benefit the area while simultaneously achieving the municipality's economic and social objectives of providing a variety of accommodation offerings. In addition, the proposed subdivision will strengthen the municipality's ("administrator's") rate base.

- ***The personal benefits which accrue to the holder of rights in terms of the restrictive conditions***

The conditions were imposed by the Administrator for its own benefit. The condition was imposed by the Administrator in terms of Ordinance 33 of 1934 and does not result in a "personal benefit" to the holder of the rights. No real rights will be impacted on following the deletion of the condition.

- ***The personal benefits which will accrue to the person seeking the removal of the restrictive conditions, if they are removed***

The removal of a restrictive title deed condition will bring about personal benefits to the landowners since it will allow them to subdivide the subject property into two portions. The personal benefit will therefore be that of ownership. If the property is not subdivided and developed with a second dwelling unit only (the other densification alternative), the owners will not be able to sell the respective units as separate title units. However, the subdivision will enable the owners to sell the subdivided erven and afford each new property owner the opportunity to develop the respective portions.

- ***The social benefit of the restrictive conditions remaining in place in its existing form***

There will be an insignificant social benefit if the title deed condition was to remain unchanged since this will merely imply that the character of Front Street and the density of the area will remain unchanged. The title deed restriction limits the opportunity to exercise choice and inhibits the adaption of the area.

- ***The social benefit of the removal or amendment of the restrictive conditions***

The deletion of the restriction will have a positive social benefit since it will result in sensitive residential densification within an existing urban area, near the many amenities that the Greater Gansbaai and Hermanus areas have to offer. The proposed subdivision will also broaden the variety of opportunities available to prospective buyers who want to reside in De Kelders and enjoy the amenities and the natural environment. The proposal is in line with the

provincial and municipal spatial development planning policies. In addition, the subdivision will benefit the area as described in the previous paragraphs.

- ***Whether the removal, suspension or amendment of the restrictive conditions will completely remove all rights enjoyed by the beneficiary or only some of those rights***

The removal of the restrictive condition will not remove all rights enjoyed by the beneficiary, but only one right and will instead expand the value of these rights to enable sensitive and appropriate densification in line with the municipality's densification policy without impacting negatively on any existing rights. In this regard it is relevant to note that the restrictions referring to building lines, the amount of dwellings to be developed on site, the coverage (area to be built upon) and use of the subject property will remain in the title deed to ensure the rights of the surrounding property owners with regard to the building envelope will not be negatively impacted on. Furthermore, the municipality will still be able to regulate the development of the respective erven in line with the development parameters set out in the Overstrand Zoning Scheme Regulations (2013) and to impose conditions of approval with the granting of the subdivision application.

There is no bond registered against erf 708 De Kelders.

### **3.15 FORWARD PLANNING AND LAND USE DOCUMENTS**

#### **3.15.1 WESTERN CAPE PROVINCIAL SPATIAL DEVELOPMENT FRAMEWORK (PSDF, 2014)**

The Provincial Spatial Development Framework (PSDF, 2014) supports densification. The PSDF (2014) regards subdivisions as one of the options of urban development tools available to achieve appropriate densification in the Western Cape.

### 3.15.2 OVERSTRAND SPATIAL DEVELOPMENT FRAMEWORK (2006)

The Overstrand Spatial Development Framework (2006) earmarks the area where erf 708 De Kelders is situated, for residential purposes. Refer to the Spatial Development Framework Plan (2006) attached. The zoning and use of the subject property will remain unchanged (Residential Zone I: Single Residential for single residential use). As a result, the impact of the proposed subdivision, exempted subdivision and removal of the restrictive title deed condition on the spatial integrity of the area will be minimal and is therefore consistent with the Overstrand SDF (2006).

### 3.15.3 OVERSTRAND MUNICIPAL GROWTH MANAGEMENT STRATEGY (2010)

The Overstrand Municipality's densification policy establishes the principle of incremental densification in an established residential area if it does not have a detrimental impact on its character. It is important to enhance and protect the character of the existing low-density residential area such as De Kelders, while still sensitively densifying where appropriate. This ensures that a wide range of erf sizes and types of development are available, not only in the De Kelders area, but also within the greater Gansbaai area.

The Overstrand Municipal Growth Management Strategy (OMGMS, 2010) specifies that erf 708 De Kelders is part of Planning Unit no. 1. This planning unit specifies an increase in density from 11,3 to 14,7 density units per hectare. The subject property allows itself to be developed with one additional portion since the exact same subdivision applications have been considered and approved in the past in the immediate area. Only one additional portion will be created after subdivision and thus the proposal contributes towards sensitive densification in De Kelders. The impact on the overall density of this area will therefore be kept to a minimum while still achieving the densification strategies for the area.

16

With this application incremental development is proposed. The proposed erf sizes of  $\pm 664\text{m}^2$  and  $\pm 735\text{m}^2$  are not smaller than the smallest erf in the immediate vicinity

(which is a mere  $\pm 500\text{m}^2$ ). In addition, the proposed erf sizes of  $\pm 664\text{m}^2$  and  $\pm 735\text{m}^2$  do not deviate more than 10% from the smallest erf size in this area. The subject property also allows itself to be developed for single residential purposes since the merit for similar subdivisions in this area has been considered and approved in the past. Since the area has not changed significantly, there is merit for the positive consideration of subdividing erf 708 De Kelders. The proposal will therefore slightly impact on the density of the area while still retaining the status quo.

There is no specified minimum erf size in this area. The subdivided portions will however be in keeping with the sizes and erf shapes of the properties in the immediate vicinity. The newly created portions will be practical with respect to access, developable areas, connecting to bulk services and the installation of services.

The proposal will promote land development in a location that is sustainable. The proposed subdivision, exempted subdivision and removal of a restrictive title deed condition are to an improved erf within an established residential area and therefore will not impact on urban sprawl or upon a sensitive environment.

### 3.16 PLANNING PRINCIPLES

The planning principle of spatial resilience does not apply to this application.

Spatial justice: This principle addresses the need to address the past imbalances regarding opportunity. This application is for an erf as per the establishment of the existing De Kelders Township and this principle does therefore not apply to this application.

Spatial sustainability: The proposed subdivision, exempted subdivision and removal of a restrictive title deed condition are to create one new single residential erf. As contemplated in *Section 3.15 Forward Planning and Land Use Documents* the proposed land use application is in line with the spatial planning policies for the area.

The layout of the proposed single residential erven is practical with respect to access, developable areas, connecting to bulk services and the installation of services. The visual impact will be kept to a minimum since the portions will be developed in line with the relevant zoning scheme regulations and title deed's development parameters. Since the status quo of the area will be maintained while contributing towards sensitive densification, it is submitted that the proposed future dwellings with outbuildings / garages on Portion A, a portion of erf 708 De Kelders, and Remainder erf 708 De Kelders will be compatible with the character of the area and will not impact negatively on the existing rights of anyone else. As a result, the proposed subdivision, exempted subdivision and removal of a restrictive title deed condition will have no adverse impact on the spatial sustainability of the area.

Efficiency: The subject property is easily accessible and conveniently located close to the Gansbaai CBD area and major routes. The subdivision, exempted subdivision and removal of the restrictive title deed condition of erf 708 De Kelders will have a low impact on the character and ambiance of the existing residential area as motivated in this report. It proves to be efficient to allow the subdivision and removal of a restrictive title deed condition since the impact will be kept to a minimum, while a new portion is created for a family to obtain and develop. As motivated in the above sections of the report the proposal is compatible with surrounding properties in the immediate area.

The proposed subdivision, exempted subdivision and removal of a restrictive title deed condition prove to be efficient since it discourages the phenomenon of urban sprawl, encourages densification and more compact towns and cities, all of which relate to more responsible resource and infrastructure use and sustainable development. Moreover, the proposal is efficient in that it optimizes existing resources and infrastructure and continues the existing suburban development typology.

Good administration: Our firm is committed to the principle of good administration and will cooperate with the Overstrand Municipality to ensure a time efficient, uncomplicated land use planning process. The land use application will follow due process as stipulated in the relevant municipality's bylaw and related provincial and national land use planning legislation. All measures will be taken to ensure an

efficient and streamlined process within the applicable timeframes as stipulated by the Overstrand Municipality's By-law on Municipal Land Use Planning, 2015.

#### **4. RECOMMENDATION**

When this application is evaluated it is important to take note of the following:

- The proposed application will not have a negative impact on the existing land use rights of the subject property or those of surrounding properties;
- The proposal to create one additional portion is compatible with the existing character and erf sizes of the immediate area;
- The zoning of Residential Zone I: Single Residential and land use (single residential) is compatible with the surrounding zonings of the area;
- Impact on the traffic and services will be kept to a minimum;
- The proposed subdivision, exempted subdivision and removal of a restrictive title deed condition comply with the spatial planning policies for the area;
- The proposed land use application does not trigger any listed activities in terms of NEMA (Act 107 of 1998) and Section 38 of the National Heritage Resources Act, 1999 (Act No. 25 of 1999);
- The application is fully compliant with the applicable planning principles described in the LUPA (2014) and SPLUMA (2013).

With regards to the above mentioned it would be appreciated if the application for the subdivision, exempted subdivision and removal of the restrictive title deed condition of erf 708 De Kelders be approved.









## ANNEXURE D 1/5

4  
 SANET RAS ATTORNEYS  
 101 PETER MOKABA STREET  
 POTCHEFSTROOM

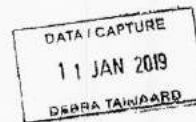
Prepared by me

*B. Grunder*  
 CONVEYANCER  
 BEATRIX PETRONELLA GRUNDER

Deeds Office Registration fees as per Act 47 of 1997		
	Amount	Office Fee
Purchase Price	R 1750 000,00	R 1098,00
All other		
Reason for exemption	Category	Exemption (1 to 4)
	Exemption	Sec/Reg Act/Prot

T 000060347/2018

## DEED OF TRANSFER



BE IT HEREBY MADE KNOWN THAT

JOLINE NORMAN

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

1. The Executors in the Estate Late  
 JOHANNES JACOBUS COMBRINCK  
 Number 5207/2013
2. ELIZABETH CATHERINA COMBRINCK  
 Identity Number 620518 0018 08 6  
 Unmarried



which said Power of Attorney was signed at POTCHEFSTROOM on 29<sup>th</sup> August 2018, RICHARDS BAY on 20<sup>th</sup> July 2018 and BLOEMFONTEIN on 2<sup>nd</sup> August 2018 respectively

Page 2

And the appearer declared that his/her said principal had, on 4 July 2018, truly and legally sold by Private Treaty, and that he/she, the said Appearer, in his/her capacity aforesaid, did, by virtue of these presents, cede and transfer to and on behalf of:

**RUAN STEYN**  
 Identity Number 841211 5098 08 8  
 and  
**YVONNE BITTMANN-STEYN**  
 Born on 21 August 1976  
 Married in community of property to each other

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

ERF 708 DE KELDERS, SITUATE IN THE OVERSTRAND MUNICIPALITY,  
 DIVISION CALEDON, PROVINCE WESTERN CAPE

IN EXTENT 1399 (ONE THOUSAND THREE HUNDRED AND NINETY NINE)  
 Square metres

ORIGINALLY TRANSFERRED under Deed of Transfer T648/1943 with  
 Diagram No 4086/1942 relating thereto and HELD by Deed of Transfer  
 T45755/2001

**SUBJECT TO THE FOLLOWING CONDITIONS:**

- A. SUBJECT to the conditions referred to in Certificate of Township Title No 1067/1940.
- B. SUBJECT FURTHER to and with the benefit of the servitude referred to in the endorsement dated 12<sup>th</sup> June 1939 made on Deed of Transfer T3373/1920, which endorsement reads:

"Remainder  
 Registration of Servitude  
 By Deeds of Transfer T5993/1939 dd 12/6/1939, T12705/1939 dd 17/11/1939,  
 T13657/1939 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."

- C. SUBJECT FURTHER to the following conditions set out in the said Deed of Transfer No. T 648/1943 similar to those imposed by the restrictions referred to in the endorsement dated 20<sup>th</sup> February, 1941 on Certificate of Township Title No. 1067/1940 which conditions are enforceable by the transferee and his

Page 3

successors in title and the owners of all erven in De Kelders Extension No.1 Township, namely:-

- (1) No fires shall be lighted on unoccupied spaces within the boundary of the lots hereby sold, save by or with the written sanction of the Transferor.
- (2) The Transferor reserves to itself the right at any time hereafter to the free and undisturbed passage of electric, telegraph or telephone wires over and upon any portion of the above lot or lots with further right of causing them to be affixed to any building or erection not less than ten (10) feet from the ground, with access at any time to such wires for the purpose of removal or maintenance.
- (3) The Transferor reserves to itself as owner of any unsold lots in the township and as owner of any other land held by it by Deed of Transfer 3733 dated 20th March, 1920, the sole and exclusive right to the use of all water rising on or flowing over the said lots or erven, and also to any water to which such lots or erven may be entitled as riparian property or by servitude or agreement, and the Transferee and his successors in title shall not be entitled to any such water, and the Transferee is hereby deprived of any rights to water as owner of land riparian to any stream flowing over or under the land.
- (4) That the Transferor reserves to itself and its successors in title the right of free access at all reasonable times to this erf for the purpose of maintaining and repairing piping under any portion of the above erf or other erven, together with the right to do all such acts and things on the said land as may be necessary or desirable for the convenience of the inhabitants of this and other erven in the township and to administer such supply until a local authority is established for the township, together with the right to discontinue the supply of water to the abovementioned erven in the event of the refusal of the Transferee or any successor of his to pay such charges for the supply of water as the transferor shall levy with the approval of the Administrator, or to prevent unnecessary waste of water.
- (5) .....
- (6) That there shall not be erected on any portion of the above lot or lots any building, the plans and specification of which have not, prior to the commencement of building operations, been submitted to and approved by the Transferor in writing.

The "Transferor" being De Kelders Syndicated Limited.

Page 4

- D. SUBJECT FURTHER to the following conditions created in Deed of Transfer No. 648/1943 and imposed by the Administrator in terms of the provisions of Ordinance 33 of 1934 when approving De Kelders Extension No. 1, namely -

As being in favour of and enforceable by the registered owner of each erf in the Township:

- (a) That this erf be used for residential purposes only.
- (b) That not more than half the area of this erf be built upon.
- (c) That not more than one dwelling, together with the necessary outbuilding and appurtenances be erected on this erf.
- (d) That no building shall be erected within 15 feet of any street line which forms a boundary of this erf or within 5 feet of the boundary of any adjoining erf provided that this latter restriction shall not apply to the common boundary of erven held as one erf under consolidated title.

As being in favour of and enforceable by the Administrator:

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

As being in favour of and enforceable by any local authority that may hereafter be constituted for the Township:

- (f) That the owner of this erf - whether the Transferor or any future owner - shall be obliged to allow the drainage and sewerage of any erf or erven to be conveyed over such erf if deemed necessary by the Local Authority that may hereafter be constituted for the township and in such manner and in such position as may from time to time be reasonably required by that authority.
- (g) That the owner of this erf - whether the Transferor or any future owner - shall be obliged without compensation to remove any septic tank installed thereon after one month's notice has been given by the local authority that may hereafter be constituted for the Township.

BY

Page 5

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

1. Estate Late JOHANNES JACOBUS COMBRINCK
2. ELIZABETH CATHERINA COMBRINCK, Unmarried

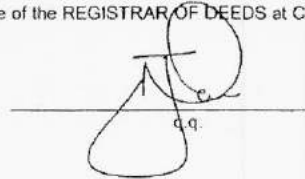
heretofore had to the premises, did in consequence also acknowledge them to be entirely dispossessed of, and disentitled to the same, and that by virtue of these presents, the said

**RUAN STEYN and YVONNE BITTMANN-STEYN, Married as aforesaid**

their Heirs, Executors, Administrators or Assigns, now are and henceforth shall be entitled thereto, conformably to local custom, the State, however reserving its rights, and finally acknowledging the purchase price to be the sum of R1 700 000,00 (ONE MILLION SEVEN HUNDRED THOUSAND RAND) , but that transfer duty was paid on R1 750 000,00 (ONE MILLION SEVEN HUNDRED AND FIFTY THOUSAND RAND), being the market value of the property.

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

THUS DONE and EXECUTED at the Office of the REGISTRAR OF DEEDS at CAPE TOWN on 20 DEC 2010



In my presence

  
 \_\_\_\_\_  
 REGISTRAR OF DEEDS



## ANNEXURE E

Ingrid Hanekom - COLLAB INCOMING Onderverdeling Erf 708 De Kelders

**From:** Alida Conradie  
**To:** Ingrid Hanekom; Daphnie adams  
**Date:** 2020/09/17 11:32 AM  
**Subject:** COLLAB INCOMING Onderverdeling Erf 708 De Kelders



TP. A. Joubert  
 (S. Joubert)

**Alida Conradie**

Administrator, Town & Spatial Planning Department  
 Overstrand Municipality  
 A: 16 Paterson Street, Hermanus, 7200 P: P O Box 20  
 T: 028 313 8900 | F: 028 313 2093 | E: [alida@overstrand.gov.za](mailto:alida@overstrand.gov.za)

>>> Altus Joubert <[altusjoubert@gmail.com](mailto:altusjoubert@gmail.com)> 09/17/20 11:24 AM >>>  
 Hiermee is ons gekant teen die onderverdeling van Erf708 de Kelders.  
 Ons wil graag die erwe as geheel hou in die area.

Dankie.  
 Altus Joubert  
 0846644597  
 Steynstraat Trust  
 Erf 707  
 De Kelders

Sent from my iPhone

FILE NO:	CF 708
	De Kelders
SCAN NO:	GDK 708
COLLABORATOR NO:	1458397

ANNEXURE F 1/2



TP. N. Alhoort  
(S. ud n. n. d.)



6 Magnolia St / Str  
PO Box / Posbus 296  
HERMANUS  
7200  
Tel: (028) 313 1673  
Fax / Faks: (028) 312 1351  
Email:

TOWN & REGIONAL PLANNERS  
STADS-EN STREEKSBEPLANNERS

planactive@hermanus.co.za  
Website: www.planactive.co.za

Our reference: PA20018/ML  
Your reference: 708 GDK

30 SEPTEMBER 2020

THE MUNICIPAL MANAGER  
OVERSTRAND MUNICIPALITY  
P.O. BOX 20  
HERMANUS  
7200

FILE NO:	CF 708
	De Kelders
SCAN NO:	GDK 708
COLLABORATOR NO:	1462757

FOR ATTENTION: MR SCHALK VAN DER MERWE

Sir

**PROPOSED SUBDIVISION, EXEMPTED SUBDIVISION AND REMOVAL OF A RESTRICTIVE TITLE DEED CONDITION: ERF 708 DE KELDERS**

- R. STEYN & Y. BITTMANN-STEYN

Reference is made to our application dated 10 September 2019 as well as your letter dated 10 December 2019 with objection attached thereto.

One objection was received from Mr Altus Joubert (erf 707 De Kelders). The objection from Mr Joubert only states that they want the extent of the larger erven in the area (and in turn the character of the area) to remain unchanged.

Two portions of  $\pm 664\text{m}^2$  and  $\pm 735\text{m}^2$  respectively are proposed. Erven adjacent to and in the immediate vicinity of erf 708 De Kelders with similar erf sizes are Remainder erf 713 ( $\pm 700\text{m}^2$ ), erf 1239 ( $\pm 700\text{m}^2$ ), Remainder erf 717 ( $\pm 700\text{m}^2$ ), erf 1299 ( $\pm 700\text{m}^2$ ), Remainder erf 715 ( $\pm 689\text{m}^2$ ), erf 1310 ( $\pm 500\text{m}^2$ ), Remainder erf 700 ( $\pm 550\text{m}^2$ ) and erf 1243 ( $\pm 641\text{m}^2$ ). The subdivision of the adjacent erf 709 De Kelders was also recently approved (creating two portions of  $700\text{m}^2$  and  $699\text{m}^2$  respectively).

The surrounding erf sizes, the street frontage widths of existing erven with similar sizes, the conformity with the existing grid layout, the approval of similar subdivision applications in Front Street, etc. proof that the subdivision into two portions is compatible with the existing context and character of the area. Smaller properties of between  $\pm 500\text{m}^2$  and  $\pm 700\text{m}^2$  in extent exist in the immediate vicinity of erf 708 De Kelders. The extent of the newly created portions is compatible with the existing low-density residential area.

The Overstrand Municipal Growth Management Strategy (OMGMS, 2010) specifies that erf 708 De Kelders is part of Planning Unit no. 1. This planning unit specifies an increase in density from 11,3 to 14,7 density units per hectare. The subject property allows itself to be developed with one

Divine Inspiration Trading 329 (Pty) Ltd. trading as Plan Active  
Reg. No. 2006/030921/07  
Vat. No. 4770250340

John Mc Lachlan: N&P (Town Planning) Tech Witwatersrand; MSAPI Nr. 10908; SACPLAN Tch. Pln 19/8250/2014  
Pauline Sprunk: B (Soc. Sc) US BA Hon (UNISA)  
Mericé Lertz: B. Art et Scien; Cum Laude (Town Planning) UNW; SACPLAN Pr. Pln A/158/2009

TP 30 SEP 2020

additional portion since the exact same subdivision applications have been considered and approved in the past in the immediate area. Only one additional portion will be created after subdivision and thus the proposal contributes towards sensitive densification in De Kelders. The impact on the overall density of this area will therefore be kept to a minimum while still achieving the densification strategies for the area.

The proposed erf sizes of  $\pm 664\text{m}^2$  and  $\pm 735\text{m}^2$  are not smaller than the smallest erf in the immediate vicinity (which is a mere  $\pm 500\text{m}^2$ ). In addition, the proposed erf sizes of  $\pm 664\text{m}^2$  and  $\pm 735\text{m}^2$  do not deviate more than 10% from the smallest erf size in this area. The subject property also allows itself to be developed for single residential purposes since the merit for similar subdivisions in this area has been considered and approved in the past. Since the area has not changed significantly, there is merit for the positive consideration of subdividing erf 708 De Kelders. The proposal will therefore slightly impact on the density of the area while still retaining the status quo.

We trust that you will now be able to proceed with the finalization of the application.

Yours faithfully



**M. LERM Pr. Pin. (A/158/2009)**  
**PLAN ACTIVE**

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:  
APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED &  
SUBDIVISION / EXEMPTION: ERF 708, DE KELDERS**

Electricity	:	In order
Water	:	In order
Sewer	:	In order
Stormwater	:	In order
Roads and traffic	:	In order

**Conditions:**

1. That a Bulk Services Contribution Levy (BICL) be paid by the developer to supplement municipal services and amenities in accordance with the relevant legislation and as determined by the Council. The BICL tariff is adjusted by Council annually. The total BICL payable will be the amount as determined by the BICL Policy and tariff at the date of **actual payment**. BICL amounts quoted in any document will normally be applicable to the particular year in which the document was compiled and Council will not be bound by the quoted amounts.

- 1.1 Developments containing Sectional Title Units/ Commercial Buildings** (non-free standing properties – property is not to be subdivided)

The BICLs are to be paid in full **prior** to submission of the building plans. Building Plans will not be accepted unless the BICL is paid in full.

- 1.2 Developments with free standing properties** (property that is subdivided and plots to be sold individually).

The BICLs are payable **prior** to clearance being issued by the Income Department of the Municipality.

The contribution according to the current policy (**2020/2021**) is as follows:

**Freehold erven:**

Water	R 23 957.00 x 1	=	R 23 957.00
Sewerage	R 16 153.00 x 1	=	R 16 153.00
Roads	R 7 243.00 x 1	=	R 7 243.00
Stormwater	R 8 357.00 x 1	=	R 8 357.00
Solid Waste	R 1 448.00 x 1	=	R 1 448.00
Electricity	R 33 586.00 x 1	=	<u>R 33 586.00</u>
<b>TOTAL (inclusive of VAT)</b>		=	<b><u>R 90 744.00</u></b>

Note:

- 1.3 The above figures are estimates**  
**1.4 The above figures do not include connection fees**

2. that, should the owner require water, Portion A/Remainder of Erf 708 be provided with a municipal water meter as per detail and requirements stipulated;
3. that Portion A of Erf 708 and Remainder of Erf 708 must each be provided with individual and separate water connections which must comply with the standards of the Department: Operational Services, as well as sewer conservancy tanks;
4. that application for municipal connections of Portion A and Remainder of Erf 708 must be made at least prior to requirements. A job card will be opened, and the owner will be responsible for all costs;
5. that only the existing, standard 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;
6. 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;
7. that on-site parking facilities are provided as per the Planning Schedule, and to the satisfaction of the Department: Operational Services;
8. that any additional and / or extended vehicle entrances will be for the developer's account;
9. that stormwater be allowed to discharge through Erf 708, De Kelders, unobstructed.

  
DENNIS HENDRIKS  
SENIOR MANAGER:  
ENGINEERING SERVICES

  
DATE