



**MEETING OF THE
MUNICIPAL PLANNING TRIBUNAL
(MPT)**

A G E N D A

DATE:	28 JANUARY 2021
VENUE:	VIRTUAL
TIME:	10:00

OVERSTRAND MUNICIPALITY

Office of the Chairperson: MPT
Civic Centre
HERMANUS
7200

22 January 2021

TO : MEMBERS OF THE MUNICIPAL PLANNING TRIBUNAL

CONVENING NOTICE : SESSION OF THE MUNICIPAL PLANNING TRIBUNAL (MPT)

NOTICE IS HEREBY GIVEN that, due to the Covid-19 lockdown period, a meeting of the **Municipal Planning Tribunal (MPT)** will go into session by means of a virtual platform on **Thursday, 28 January 2021 at 10:00** to consider the attached agenda.

S MÜLLER

CHAIRPERSON : MUNICIPAL PLANNING TRIBUNAL

Distribution:

1. Mr S Müller (Chairperson)
2. Mr R Williams (Vice Chairperson)
3. Mr S Madikane (Member)
4. Ms D Arrison (Member)
5. Ms H Janser (Member)
6. Mr R Kuchar (Authorised Official)
7. Mr S van der Merwe (Senior Town Planner)
8. Ms H van der Stoep (Senior Town Planner)
9. Mr P Roux (Town Planner)
10. Secretariat

1. OPENING

2. APPLICATIONS FOR LEAVE OF ABSENCE

3. CONFIRMATION OF MINUTES

3.1 Minutes of a Municipal Planning Tribunal Meeting held on 26 November 2020

4. ITEMS FOR CONSIDERATION

4.1 ERF 787, 15 COVE STREET, DE KELDERS: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS: MESSRS WRAP PROJECT OFFICE ON BEHALF OF HIPPOMANIA (PTY) LTD

Report attached.

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

Report attached.

4.3 ERF 13, 22 HOOP STREET, GANSBAAI, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR REZONING, CONSENT USE AND DEPARTURE : MESSRS ME PLANNERS ON BEHALF OF MC FRANKEN

Report attached.

4.4 ERF 852, 23 ANGELIER STREET, GANSBAAI (BLOMPARK), OVERSTRAND MUNICIPAL AREA: APPLICATION FOR REZONING, CONSENT USE AND DEPARTURE: MESSRS ME PLANNERS ON BEHALF OF LD MARTHINUS

Report attached.

- 4.5 ERF 418, 30 FLOWER STREET, WESTCLIFF, HERMANUS:
APPLICATION FOR REMOVAL OF A RESTRICTIVE TITLE DEED
CONDITION, REZONING, CONSENT USE AND DEPARTURE: MESSRS
PLAN ACTIVE TOWN AND REGIONAL PLANNERS ON BEHALF OF THE
DOMEIN TRUST**

Report attached.

- 4.6 PORTION 47 OF FARM HANGKLIP NO.559, HANGKLIP, OVERSTRAND
MUNICIPAL AREA: PROPOSED REMOVAL OF RESTRICTIVE
CONDITIONS: MESSRS PLAN ACTIVE TOWN AND REGIONAL
PLANNERS ON BEHALF OF MR J DE JAGER ON BEHALF OF THE TRIO
DATA SECURITY SERVICES BK**

Report attached.

MUNICIPAL PLANNING TRIBUNAL (MPT)

28 January 2021

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4.1**ERF 787, 15 COVE STREET, DE KELDERS: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS: MESSRS WRAP PROJECT OFFICE ON BEHALF OF HIPPOMANIA (PTY) LTD****787 GDK****P Roux****9 December 2020****(028) 313 8900****Hermanus Administration****1. EXECUTIVE SUMMARY**

An application has been received on 3 June 2020 from Messrs WRAP Project Office on behalf of Hippomania (Pty) Ltd in terms of Section 16(2)(f) of the Overstrand By-Law on Municipal Land Use Planning, 2015 applicable to Erf 787, De Kelders for the removal of restrictive title deed conditions with reference to Clauses E, E.A, E.A.(a), E.A.(b), E.A.(c), E.A.(d), E.B and E.B.(e) as contained in Title Deed T11906/2020.

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 Site Development Plan is attached as Annexure C. Title Deed T11906/2020 is attached as Annexure D.

2. DECISION AUTHORITY

Municipal Planning Tribunal

3. BACKGROUND / SITE HISTORY

The subject property is currently vacant and is zoned as Business Zone 3: Local Business. The property is encumbered with various restrictive conditions and the property owner proposes to utilise the property for business purposes and therefore seeks to remove the restrictive conditions.

4. SUMMARY OF APPLICANT'S MOTIVATION

The motivation for the application is summarised as follows:

- The subject property is situated at 15 Cove Street, De Kelders.
- The property owner seeks to develop the property in line with the primary uses as defined under the zoning of the property. There are however restrictive conditions which prohibit the property owner from being able to exercise land use rights in a flexible manner in the future.
- The property owner does envisage to develop the property in future which may include a shop, flats (above ground floor), restaurant and offices as provided for in the draft Land Use Scheme, 2019 which was advertised at the time of preparing the application. If required in future the property owner will apply for consent uses. However, the applicant does not want to apply for the removal of restrictive conditions at that stage as it will be an additional administrative strain on the Overstrand Municipality and expense on the property owner.
- The applicant proposes the removal of restrictive title deed conditions with reference to Clauses E, E.A, E.A.(a), E.A.(b), E.A.(c), E.A.(d), E.B and E.B.(e) of Title Deed T11906/2020 in terms of Section 16(2)(f) of the aforementioned By-Law.

- The applicant motivates why the restrictive conditions should be removed:
“Clause E “SUBJECT FURTHER to the conditions contained in said Deed of Transfer No T13215/1946 imposed by the Administrator pursuant to the provisions of Ordinance 33 of 1934 relating, inter alia, to future alteration in terms of Section 18 and the duty of the Local Authority to enforce observance thereof under Section 61 and legally enforceable also by De Kelders Syndicate, Limited and the owner of any erf in the Township and their successors in title, and imposed in the following form, namely.”

“E.A As in favour of the registered owner of any erf in the township.”

The mentioned points are the headings under which the restrictive conditions are listed. Should all the restrictive conditions be removed then the heading is nullified.

“E.A (a) that his erf be used for shop purpose or residential purposes only.”

The property owner seeks flexibility to establish commercial development on the property which do not conform to the definition of shop and residential purposes.

The restrictive condition was inserted into the Title Deed in 1946. The prevailing settlement pattern at the time was of small towns with separated monofunctional land uses which allowed for very limited land use rights. This form of planning is considered inefficient as it created distance between the different monofunctional land uses which increased transportation costs and contributed to congestion in networks of traffic and movement.

The draft Land Use Scheme allows for primary such as offices, restaurant, and self-catering, which are multifunctional and mixed use. The removal of the title deed condition is therefore bringing the land use rights of the property in line with the prevailing development trends and pressures which are experienced in De Kelders, whilst allowing the property owner to be responsive to the current development trend and pressures.

“E.A (b) that not more than 2/3rds of the area of this erf be built upon.”

The restrictive condition contradicts the coverage permitted under the Zoning Scheme (Business Zone 3: Local Business) which allows for 75%.

The prevailing settlement pattern at the time was of small towns, suburban sprawls with low density development. The current planning trends are compaction, coupled with densification in response to urbanisation and the growing population. The removal of the restrictive condition will allow the property owner to increase the coverage on the property which will allow the property owner to be responsive to the current development trend and pressures.

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

The restrictive condition contradicts the coverage permitted under the Zoning Scheme (Business Zone 3: Local Business) which allows a street- and lateral building line of 0m and rear building line of 3m. Removing the restrictive condition will bring the land use rights in line with the Zoning Scheme Regulations.

The offset of building lines where inserted in line with the prevailing suburban form and model used in at the time.

Commercial zoned properties have higher parking requirements and therefore requires less onerous building line restrictions in order to better position the building on site.

“E.A (d) that no more than one dwelling together with the necessary outbuildings and appurtenances shall be erected on this erf. This condition shall not apply when the erf is used for shop purposes.”

The Zoning Scheme and draft Land Use Scheme allows for more than one (1) flat above ground floor as a primary right. This restrictive title deed condition is proposed for removal as it conflicts with the zoning of the property (Business Zone 3: Local Business).

The restrictive condition was inserted when the suburban model of development entitled a dwelling which accommodated a single family and where commercial and residential land uses were separated. This was in response to low density development promoted at the time.

The model used is unfeasible due to the increased rate of urbanisation coupled with the growing population which require more residential units within the urban edge. The removal of the restrictive condition will allow the property owner to develop more than one (1) flat/dwelling unit on the first floor.

“E.B As in favour of the administrator”

“E.B (e) That his erf shall not subdivided except with the consent in writing of the Administrator.”

The property owner has no intension to subdivide the property in the future, however there are modern town planning policies which govern minimum erf sizes and densities.

The Title Deed was the primary tool which govern the regulation of densities in residential areas. This subdivision prescript which has an impact on densities was also inserted in the Title Deed in response to prevailing growth and development pressures of the time which were informed by low density and urban sprawl.

The current development trends are densification which are in response to urbanisation and population growth. Therefore, spatial policies are the most appropriate tools to regulate subdivisions and densities on the subject property.

- The applicant motivated the application in terms of Section 35(4) of Overstrand By-law on Municipal Land Use Planning, 2015 and Section 42(c) of Spatial Planning and Land Use Management Act 2013.
- The zoning of the property will remain unchanged which is Business Zone 3: Local Business, and the removal of the title deed restrictions will not exempt the owner of the property from having to comply with the zoning parameters.
- The property is vacant, and the removal of the title deed conditions will incentives the property owner to develop the property. This will also lead to job opportunities and nearby facilities for the community members of De Kelders.
- The application is further motivated to be in line with the relevant forward planning documentation.
- 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	14 August 2020	18 September 2020
Gazette	Yes	14 August 2020	18 September 2020
Notices	Yes	13 August 2020	18 September 2019
Ward councillor	Yes	13 August 2020	18 September 2019
Total comments	ONE (1)		
Total letters of support	NONE		
Was public participation undertaken in accordance with Section 46 - 50 of the By-Law on Municipal Land Use Planning?			Yes
Was the application processed correctly?			Yes
Is the proposal consistent with the principles referred to in Chapter 2 of SPLUMA and Chapter VI of LUPA?			Yes
In case of application for removal, amendment or suspension of restrictive title conditions if notices in accordance with Section 35(3)(d) of the By-Law on Municipal Land Use Planning was served on all persons mentioned in the title deed for whose benefit the restriction applies?			Yes

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

Name	Date received	Summary of comments
Building Department	24/08/2020	No objection.
Engineering Services	14/09/2020	Annexure G.
Fire Services	23/10/2020	No objection.

7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION

It should be noted that the applicant for Erf 787, De Kelders has submitted a similar application on Erf 790, De Kelders. One (1) letter of comment was received from Judith Barnard, the owner of Erf 606, De Kelders.

The objection is summarised in **bold** below:

- 1. We have only recently received notice to provide comments, after the building is standing at roof height. The notice is dated 14 August 2020 and we received it only on 8 September 2020.**

Response from Applicant

The subject property has not been developed. The application was sent by registered mail to the objector however, due to the delay of the postage service the postage was delayed.

Response from Town Planner

Comment from applicant is noted. Affidavit was provided from the applicant stating that the site notice was on display from 13 August 2020 to 20 September 2020. Further, an advertisement was placed in the local newspaper. This comment is further in reference to the building work which has occurred on Erf 790 De Kelders.

- 2. De Kelders is a peaceful suburb. The development of a restaurant with a liquor licence will automatically cause noise. Persons on holiday have no respect for permanent residences especially with alcohol nearby it will be worst.**

Response from Applicant

The current application was for the removal of the title deed restrictions and not for the establishment of a restaurant.

The removing of the restrictive condition will allow the property owner to develop the property in line with the primary land use rights. The subject property is surrounded by erven which are zoned B3 which have the potential to collectively function as a commercial node. The commercial node itself is surrounded by streets and a utility zoned property which together create a buffer to reduce the likelihood of surrounding property owners being exposed to nuisance activities as cited by the objector. It is a generalisation that all guests behave badly and lack respect when under the influence of alcohol.

Response from Town Planner

The objector's statement is a generalisation. Further, the operation of any development (shop or restaurant) on the property will have to remain compliant with the noise regulations and business act. Should the property owner not adhere to this then the surrounding property owners may submit a complaint to the Municipality or other relevant authority.

- 3. *The are no business hours mentioned, can it be made known, there is a rule that no noise may take place after midnight.***

Response from Applicant

The property owner has no immediate intention to establish a restaurant on the subject property.

Response from Town Planner

The objector's statement is noted. As stated above the operation of any development (shop or restaurant) on the property will have to remain compliant with the noise regulations and business act. Should the property owner not adhere to this then the surrounding property owners may submit a complaint to the Municipality or other relevant authority.

- 4. *There is no speed calming measures in Jubilee Street. All other nearby streets do have them, and this causes additional traffic in Jubilee Street. The restaurant will just cause this to worsen.***

Response from Applicant

The property owner has no immediate intention to establish a restaurant on the subject property, the traffic related concerns which are highlighted by the objector are unlikely to materialise.

Response from Town Planner

The comment from the applicant is agreed with regards to the concern regarding traffic. Should additional speed calming measures be required in future then the objector may bring it to the attention of the Ward Councillor.

- 5. *With regards to Erf 787, De Kelders no mention is made why the restriction must be removed.***

Response from Applicant

The applicant did not directly provide comment on this statement but in the summary the applicant maintains that the entire objection is based on the assertion that the application is for the establishment of a restaurant on the property which is not the case. The other objection relates to the construction of a building on the subject property which has not occurred. The objection pertains to the application which was submitted for the establishment of a restaurant on Erf 790, De Kelders and not the subject property.

Response from Town Planner

As noted earlier the applicant for Erf 787, De Kelders has submitted a similar application on Erf 790, De Kelders. The letter of objection, which was received from Judith Barnard, the owner of Erf 606, De Kelders, largely pertains to the development and application on Erf 790, De Kelders.

The applicant did state in the motivation that the property owner intends to, in future, develop the property in line with the primary rights as provided for in the Zoning Scheme, 2013 and the Land Use Scheme, 2020 (which was advertised at the time). This would mean that the property owner could develop shop(s), flats (above ground floor) and a restaurant on the property.

8. SUMMARY OF APPLICANT'S REPLY TO COMMENTS

See above.

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 subject property was established with the development of De Kelders Extension No 1 Township in 1946. The application is therefore 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 property will be utilised in line with the zoning as established with the development of the township.

Efficiency

The removal of the title deed conditions will allow the property owner to develop commercial and mixed-use facilities closer to the existing De Kelders suburb which will allow the property owners to travel shorter distances in order to gain access to the facilities. Further, the property owner will be able to develop a higher density which will allow for the optimal use of the existing property.

Spatial Resilience

The development of the property will be in synchrony with the relevant spatial planning policies.

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 property is situated in a commercial node indicated for commercial 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 erven and mixed-use developments. The Title Deed originally allowed for mixed use development on the property. The applicant seeks to remove the restrictions which will enable the property owner to intensify the use of the property while adhering the spirit of the Title Deed and acting in line with the vision of the SDF and spatial planning policies.

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

See afore mentioned.

10.6 Impact on Municipal engineering services

The existing services are available.

The subject property will have road access from Cove Street.

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

The subject property was established with the development of De Kelders Extension No 1 Township in 1946. The development of the property will therefore be in line with the original land use and settlement pattern as originally demarcated. No new erven or zoning will be created.

10.8 Existing and proposed zoning comparisons and considerations

The zoning of the subject property will remain Business Zone 3: Local Business. The application is purely to remove restrictive conditions which are inserted in the Title Deed which restricts use of the property more strictly than the Zoning Scheme.

11. ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS

As stated in the motivation and earlier in this report the subject property and the surrounding commercial erven were established with the development of the original township establishment of De Kelders in 1947. In the total township of De Kelders there are only seventeen (17) erven zoned for commercial use, most of the developed commercial erven are developed with restaurants, flats, offices and shops. Given the development pattern and spatial planning policies there is a finite of available commercial erven and it is in the best interest of the community and Municipality that the available commercial erven are developed efficiently and in line

with the SDF which promotes mixed use development with higher densities and intensity. To this end the applicant seeks to remove the title deed restriction which restricts that the property be developed in line with the spatial planning policies and the Land Use Scheme.

Title Deed T11906/2020 applicable to Erf 787, De Kelders contains the following restrictive conditions:”

- *Clause E SUBJECT FURTHER to the conditions contained in said Deed of Transfer No T13215/1946 imposed by the Administrator pursuant to the provisions of Ordinance 33 of 1934 relating, inter alia, to future alteration in terms of Section 18 and the duty of the Local Authority to enforce observance thereof under Section 61 and legally enforceable also by De Kelders Syndicate Limited and the owner of any erf in the Township and their successors in title, and imposed in the following form, namely.”*
- *E.A “As in favour of the registered owner of any erf in the township.”*
- *E.A “(a) that his erf be used for shop purpose or residential purposes only.”*
- *E.A “(b) that not more than 2/3rds of the area of this erf be built upon.”*
- *E.A “(c) that no building shall be erected within 4,72m of any street line which forms a boundary of this erf or within 1,57m of the boundary on any adjoining erf provided that this latter restriction shall not apply to the common boundary or erven held as one under consolidated title.”*
- *E.A “(d) that no more than one dwelling together with the necessary outbuildings and appurtenances shall be erected on this erf. This condition shall not apply when the erf is used for shop purposes.”*
- *E.B “As in favour of the administrator”*
- *E.B “(e) That his erf shall not subdivided except with the consent in writing of the Administrator.”*

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 restrictive conditions as listed under E.A (a-e) are enforceable also by De Kelders Syndicate Limited and the owner of any erf in the township and their successors in title. The De Kelders Syndicate does no longer exist, and the Municipality has acquired its functions in terms of the Title Deed. The retention of the current condition does not hold a value to the Municipality as the Land Use Scheme and the spatial policies of the Municipality determine the development parameters of the property and the other properties in the suburb. Further, removal of similar conditions was supported by the Municipality in the past.

Although the conditions are enforceable by the owner of any erf in the township, it will be more desirable for the owners of the specific township that the property is developed which in turn will add value and facilities for the suburb, which will stimulate the economy of the area and property values to increase.

- ***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 neither does the property owners of the suburb. Further, the Municipality has the mandate to consider land use applications and development in terms of SPLUMA, 2013 and LUPA, 2015 and its By-law.

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 develop the property in line with the relevant Zoning Scheme which allows for additional primary uses such as a restaurant, more than one (1) dwelling unit/flat on first floor and offices. The development parameters will change as tabled below:

Building lines	Title deed	Land Use Scheme
Street	4,72m	0m
Side	1,75m	0m
Rear	1,75m	3m
Coverage	2/3rds (66,66%)	75%

From the above it is evident that the property owner will receive additional benefits which will allow the property to be developed in line with the Zoning Scheme which is less restrictive than the Title Deed.

➤ ***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 Overstrand Municipality's SDF which promote mixed use development and intensification of land uses in the Gansbaai (De Kelders suburb) area, there will be no social benefit should the conditions remain in place.

The social benefit that will be retained is employment for the local community, additional commercial rates and services charges be applicable, thereby ensuring improving service delivery.

➤ ***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 all conditions which relate to the development of the property and therefore includes five (5) restrictive conditions. The Municipality retains its rights in terms of the relevant Zoning Scheme and other legislation. Further, the rights enjoyed by the adjacent property owners and the suburb is retained in terms of the relevant Zoning Scheme and other legislation. The zoning of the property will remain unchanged and the rights obtained will be subservient to the zoning and other legislation applicable in the Overstrand municipal area. Considering the aforementioned, the 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

The application is for removal of restrictive title deed conditions. The title deed conditions were created in 1947 with Township Establishment. The De Kelders Township Extension area did not have a Zoning Scheme, and title deed restrictions were used to ensure control of the development in the area.

The restrictions being applied for to be removed restrict subdivision, limit land uses, limit coverage and stipulate strict building lines for the street and lateral boundaries.

The subject property is situated within an identified commercial node as per the OMGMS and Spatial Development Framework. In addition, the SDF promotes a balanced land use mix. The zoning of the property will be retained as Business Zone 3: Local Business and developed as such. The removal of the title deed restrictions is to allow the property owner to develop the property with less restrictive development parameters and to allow for a greater variety of land uses.

In the current commercial node, there are already the following commercial uses approved which are indicative of the mixed use character of the area, in addition to single residential land use also comprises guest house(s), a shop, offices, self-catering apartments, restaurant and various tourism businesses. The removal of title deed restrictions and subsequent development of the property in line with the zoning will not detract from the character and appearance of the surrounding area. Given the location of the property in a commercial node in an area with a mixed character, the proposal is considered desirable and not to unacceptably detract from the character of the area or the amenity of the adjoining properties. Further, several applications have allowed the removal of the development parameters in order to allow the respective developers to make utmost utilisation of the property.

What is ambiguous in the motivation is the need to remove the restrictive condition which relates to the removal of the clause which restricts the subdivision of the property. The conditions limiting subdivision is not relevant to the proposed application as the property owner seeks to develop the property in line with the Zoning Scheme parameters and to allow for mix use development. The removal of the aforementioned clause will not enable nor hinder the development of the property. The lack of clear proposals regarding the clause which restricts subdivision of the property, therefore makes it impossible to evaluate such part of the application.

The Overstrand Municipality Zoning Scheme Regulations, 2014 specifies a coverage restriction of 75%, 3m rear building line and 0m street- and lateral building line.

It stands to reason that should a development be done on the property that the developer will seek to be maximise the development in line with the development parameters. It should be noted that due to the size and parking requirements the property developer will be hard pressed to fully develop the property to the maximum of 75% with conventional designs.

The 3m rear building line in the Zoning Scheme is more restrictive than the 1,75m lateral building line in the Title Deed. The Zoning Scheme will allow for 0m street-

and lateral building lines this which is less restrictive than the 4,75m street- and 1,75m lateral building lines in the Title Deed. As stated earlier similar restrictions have been removed from Title Deeds in the area and several properties have been allowed to develop onto the lateral- and street building lines, therefore the character of the area in the specific node has changed over the years. Other legislative requirements (such as fire safety) will influence the design and planning on the property. It should be noted that the Title Deed does allow for a 0m lateral building line where two (2) adjoining erven are held in consolidated title, which the property may do in future, as the property owner owns both Erf 787 and the adjoining property Erf 790, De Kelders.

Considering the aforementioned it is supported that the restrictive conditions in the Title Deed relating to coverage and building lines be removed, to enable the property owner to develop in line with the zoning parameters.

The application however did not motivate or include sufficient reasons to include the subdivision of the erf, and the removal of D.4.(e) cannot be supported, as there is not sufficient information to measure the impact of the removal of such restrictions.

It is noted that none of the directly affected property owners objected to the application at hand.

13. RECOMMENDATION

1. that the comments received be noted;
2. that the application received from Messrs WRAP Project Office on behalf of Hippomania (Pty) Ltd applicable to Erf 787, De Kelders for the removal of restrictive title deed conditions with reference to Clauses E, E.A, E.A.(a), E.A.(b), E.A.(c) and E.A.(d) of Title Deed T11906/2020 in terms of Section 16(2)(f) of the aforementioned By-Law, **be approved** in terms of the provisions of Section 61 of the By-Law;
3. that the application received from Messrs WRAP Project Office on behalf of Hippomania (Pty) Ltd applicable to Erf 787, De Kelders for the removal of restrictive title deed condition with reference to Clauses E, E.B and E.B.(e) (which relate to the subdivision of the property) of Title Deed T11906/2020 in terms of Section 16(2)(f) of the aforementioned By-Law, **not be approved** in terms of the provisions of Section 61 of the By-Law;
4. that the decisions in paragraph 2. be subject to the following conditions:
 - (a) that building plans be submitted to the Building Branch for approval, and that all conditions of the Building- and the Fire Department, be complied with at that stage;
 - (b) that all other development parameters as prescribed in the relevant Zoning Scheme, be complied with;
 - (c) that this approval does not absolve the owner/applicant from compliance with any other relevant legislation, and

- (d) that all the conditions in the Services Report (attached as Annexure G), be complied with.
5. that the applicant and person who commented be notified of their 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

Reasons for approval

- ❖ The application has followed due procedure.
- ❖ None of the relevant departments have any objection.
- ❖ There are other properties in the commercial node which are developed with mixed use land uses and which are developed onto boundaries, and the removal of these restrictions would therefore not impact on the character of the area.
- ❖ The Overstrand Zoning Scheme Regulations have sufficient control measures when it comes to land use, coverage and building line controls.
- ❖ The removal of the restrictions will be beneficial to the De Kelders Community.
- ❖ The proposal will not negatively impact on existing/vested rights of adjoining property owners.
- ❖ Given the development pattern and spatial planning policies there is a finite of available commercial erven and it is in the best interest of the community and Municipality that the available commercial erven are developed efficiently and in line with the SDF which promotes mixed use development with higher densities and intensity.
- ❖ The proposal is considered in line with the Municipality's SDF.

Reasons for non-approval

- ❖ The application does not include the motivation for the subdivision of the property, and therefore the benefit of removing the restrictive condition cannot be measured, nor the value of the restriction.

15. ANNEXURES

Annexure A:	Locality Plan
Annexure B:	Motivation Report
Annexure C:	Subdivisional Plan
Annexure D:	Title Deed T11906/2020
Annexure E:	Letter of objection
Annexure F:	Response from applicant
Annexure G:	Services Report

SIGNATURES**AUTHOR**

Name :

P ROUX

SACPLAN Reg No:

A/2246/2015

Signature :

Date:

REGISTERED PLANNER:

Name :

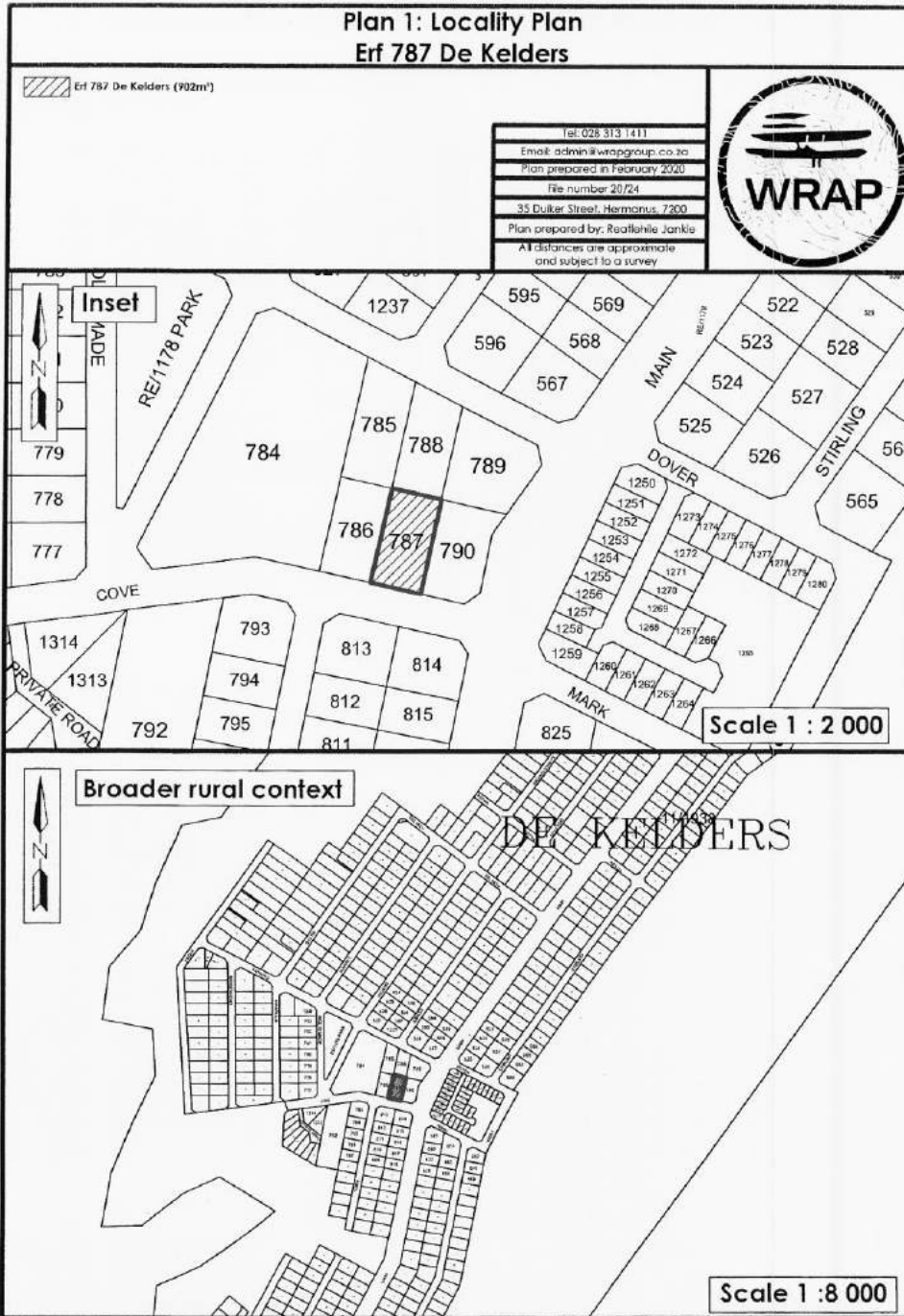
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SACPLAN Reg No:

A/1708/2013

Signature :

Date:





1. ABBREVIATIONS

OMZS	Overstrand Municipality Zoning Scheme, 2013
SDF	Overstrand Municipality Spatial Development Framework, 2006
OM	Overstrand Municipality
OM By-Law	Overstrand Municipality By-Law on Municipal Land Use Planning, 2015
SDF	Overstrand Spatial Development Framework, 2006
OMGMS	Overstrand Municipal Growth Management Strategy, 2010
LUPA	Land Use Planning Act, 2014
DEADP	Western Cape Department of Environmental Affairs and Development Planning
SDP	Site Development Plan
B3	Business Zone 3: Local Business

2. SUMMARY OF STATUS QUO PROPERTY DETAILS

Property description	Erf 787 De Kelders (refer Plan 1)
Registered owner	Hippomania (Pty) Ltd
Consultant	WRAP Project Office
Restrictive title deed conditions	E, E.A, E.A.(a), E.A.(b), E.A.(c), E.A.(d), E.B and E.B.(e)
Property extent	902m ²
Current zoning	B3

3. BACKGROUND

3.1 Rationale for the submission of the proposal

The property owner envisages establishing land uses in the future on the subject property which are aligned with the primary rights in the B3 zoning of the current and draft OMZS and may also be applying for some consent uses. There are however restrictive title deed conditions which are proposed for removal which prohibit the property owner from being able to exercise land use rights in a flexible manner in the future.

4. DEVELOPERS INTENT

- 4.1** The property owner envisages the right to act upon the primary rights under the B3 zoning in the current OMZS without having to apply for a removal of restrictive title deed conditions at that stage, which include shops, flats (above ground floor) and offices.
- 4.2** The draft Overstrand Municipality Land Use Scheme, 2019 which is currently in the public participation process confers the following primary rights in the B3 zoning which the property owner would like to act upon without applying for the removal of restrictive title deed conditions, which include dwelling unit (above ground floor) in accordance with 6.3.2, flats (above ground floor), offices, restaurant, self-catering.
- 4.3** There are however restrictive title deed conditions which prohibit exercising some of the primary rights under the current and draft OMZS that is in public participation. The property owner also envisages applying for consent uses in the future if deemed necessary without also applying for the removal of restrictive as this would be an administrative burden on the OM and cause the property owner to incur additional application expenses. This proposal is therefore intended to provide the property owner with the land use flexibility which other



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property owners who are conferred with in the current and/or proposed B3 zoning in the OMZS.

4.4 The following restrictive title deed conditions are therefore proposed for removal:

- 4.4.1 **E** "SUBJECT FURTHER to the conditions contained in said Deed of Transfer No T13215/1946 imposed by the Administrator pursuant to the provisions of Ordinance 33 of 1934 relating, *inter alia*, to future alterations in terms of Section 18 and the duty of the Local Authority to enforce observance thereof under Section 61 and legally enforceable also by DE KELDERS SYNDICATE, LIMITED and the owner of any erf in the Township and their successors in title, and imposed in the following form, namely."
- 4.4.2 **E.A** "AS IN FAVOUR OF the registered owner of any erf in the township."
- 4.4.3 **E.A.(a)** "That this erf be used for shop purposes or residential purposes only."
- 4.4.4 **E.A.(b)** "That not more than 2/3rds of the area of this erf be built upon."
- 4.4.5 **E.A.(c)** "That no building shall be erected within 4,72 meters of any street line which forms a boundary of this erf or within 1,57 meters of the boundary on any adjoining erf provided that this latter restriction shall not apply to the common boundary or even held as one under consolidated title."
- 4.4.6 **E.A.(d)** "That not more than one dwelling together with the necessary outbuildings and appurtenances shall be erected on this erf. This condition shall not apply when the erf is used for shop purposes."
- 4.4.7 **E.B** "AS IN FAVOUR of the administrator"
- 4.4.8 **E.B.(e)** "That this erf shall not be subdivided except with the consent in writing of the township."

The restrictive title deed conditions listed above do not provide the owner of the subject property with the flexibility which is sought or the enjoyment of the primary rights in the same manner as other properties which are conferred with the current or proposed B3 zoning.

These restrictive title deed conditions were inserted in 1946 when the commercial land use rights which were prevalent in small towns were shops and areas of residence. Commercial land uses in small towns have evolved from 1946 to date to accommodate a greater variety of options which creates a peculiar mixed-use environment. This affords residents and visitors a greater degree of choice which was not the prevailing development pattern in 1946. Considering the shift in development patterns and allocation of land uses which have occurred in this period in De Kelders, the removal of these restrictive title deed conditions is justified. This is to bring this proposal in harmony with prevailing and accepted land use patterns which are confirmed with the proposed amendments in the B3 zoning in the draft OMZS which is currently in the public participation period.

4.5 Considering the above, application is made for the following:

- 4.5.1 **Removal of the restrictive title deed conditions** E, E.A, E.A.(a), E.A.(b), E.A.(c), E.A.(d), E.B and E.B.(e) in terms of Section 16(2)(f) of the Overstrand Municipality By-Law on Municipal Land Use Planning Act, 2015.



5. LAND USE FABRIC

The subject property is located in one of two small commercial nodes in De Kelders which have a zoning of B3. The commercial zoning conferred on the subject property by the town planners who initially planned the settlement illustrates that the subject property and the commercial node has always been intended to dominantly be used for commercial purposes. This proposal for the removal of restrictive title deed conditions is aimed at providing the property owner with the flexibility of slightly intensifying the commercial land uses on the subject property without applying for the removal of restrictive title deed conditions which is in harmony with the commercial node designation/land use fabric of where the subject property is located.

6. RESTRICTIVE TITLE DEED CONDITIONS PROPOSED FOR REMOVAL

The removal of the restrictive title deed conditions which is a relevant consideration in terms of Section 35 of the OM By-Law, is motivated as follows:

6.1 Restrictive title deed condition

6.1.1 E "SUBJECT FURTHER to the conditions contained in said Deed of Transfer No T13215/1946 imposed by the Administrator pursuant to the provisions of Ordinance 33 of 1934 relating, *inter alia*, to future alterations in terms of Section 18 and the duty of the Local Authority to enforce observance thereof under Section 61 and legally enforceable also by DE KELDERS SYNDICATE, LIMITED and the owner of any erf in the Township and their successors in title, and imposed in the following form, namely."

6.1.2 E.A "AS IN FAVOUR OF the registered owner of any erf in the township."

6.1.3 E.B "AS IN FAVOUR of the administrator"

6.1.4 Rationale for the removal

These title deed conditions are a heading of the conditions which are proposed for removal. This therefore nullifies the need for this condition to remain in the title deed.

6.2 Restrictive title deed condition

6.2.1 "E.A.(a) That this erf be used for shop purposes or residential purposes only."

6.2.2 Rationale for the removal

The property owner envisages being conferred with the flexibility of establishing commercial land uses on the subject property which do not conform to the definition of shop and residential purposes. The rationale for the removal of this restrictive title deed condition is to confer the property owner with the flexibility which is sought.

6.2.3 Background

This restrictive title deed condition was inserted into the title deed in 1946 when the prevailing settlement pattern of small towns was separated monofunctional land uses which allowed very limited land use rights. This form of planning has widely been accepted as being inefficient as it created distance between the different monofunctional land uses which increased transportation costs and contributed to congestion in networks of traffic and movement.

6.2.4 Current development trends

The monofunctional and separated land uses as upheld by the title deed restriction are no longer the prevailing method of settlement planning due to the inefficiencies highlighted in Section 5.2.3 which was prevalent in 1946. The draft modern OMZS

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proposes commercial primary rights such as a restaurant, self-catering and offices on the subject property which are multifunctional and mixed use with a slightly higher intensity. The removal of this restrictive title deed condition is to therefore bring the land use rights on the subject property in harmony with the prevailing development trends and pressures which are experienced in De Kelders. The removal of this restrictive title deed condition would also enable the property owner to be more responsive to the current development trends and pressures.

6.3 Restrictive title deed condition

6.3.1 "E.A.(b) That not more than 2/3rds of the area of this erf be built upon."

6.3.2 Rationale for the removal

This title deed condition is proposed for removal as it contradicts 75% permissible coverage under the zoning of B3.

6.3.3 Background

This restriction on the coverage of buildings was inserted in 1946 when the prevailing model of development was suburban sprawl characterised by low density development.

6.3.4 Current development trends

The current development trends are compaction, coupled with densification in response to urbanisation and the growing population. This development trend therefore necessitates the relaxation of the of tight coverage restrictions as enabled in the modern OMZS. The removal of the coverage restrictive title deed condition will enable the property owner to increase coverage on the subject property in the future in response to changing conditions and pressures as enabled by the OMZS.

6.4 Restrictive title deed condition

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

6.4.2 Rationale for the removal

This restrictive title deed condition conflicts with the building lines conferred on the subject property by the B3 zoning.

- Street building line 0m;
- Side building line 0m; and
- Rear building line 3m.

The removal of these restrictive title deed conditions is proposed to bring this proposal in harmony with the building lines in the B3 zoning of the subject property.

6.4.3 Background

This restrictive title deed condition was inserted when the prevailing development model was for buildings to be offset from the street and side boundary as that created a peculiar suburban form.



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6.4.4 Current development trends

Considering that the subject property is zoned for commercial purposes, the prevailing development trend is for commercial land uses to sometimes be located close to the street boundary. This is due to commercial land uses having higher parking requirements which reduces space available for buildings and requires less onerous building line restrictions for the commercial land uses to be viable. The removal of this restrictive title deed condition will therefore enable the property owner to respond to the current development trends in the future when a final decision is made regarding the nature of commercial land use rights which are sought.

6.5 Restrictive title deed condition

6.5.1 "E.A.(d) That not more than one dwelling together with the necessary outbuildings and appurtenances shall be erected on this erf. This condition shall not apply when the erf is used for shop purposes."

6.5.2 Rationale for the removal

The land use rights in the current B3 zoning and the draft B3 zoning which is in the public participation process permit more than 1 flat on the first floor as a primary right. This restrictive title deed condition is proposed for removal as it is in conflict with the B3 zoning of the subject property.

6.5.3 Background

This restrictive title deed condition was inserted in the title deed when the suburban model of development entailed a dwelling which accommodated a single family and where commercial and residential land uses were separated. This was in response to low density development promoted at the time.

6.5.4 Current development trends

The increased rate of urbanisation coupled with the growing population does not make this model of development feasible due to the need for additional residential units within the urban edge. The removal of this restrictive title deed condition will provide the property owner with the flexibility to establish more than 1 dwelling unit on the first floor as conferred by the B3.

6.6 Restrictive title deed condition

6.6.1 "E.B.(e) that this erf shall not be subdivided except with the consent in writing of the township."

6.6.2 Rationale for the removal

The property owner has no intension of subdividing the subject property in the future, but this title deed condition is proposed for removal as there are modern town planning policies which govern minimum erf sizes and densities.

6.6.3 Background

This restrictive title deed condition was inserted in 1946 in the context where title conditions were the primary tool which governed the regulation of densities in residential areas. This subdivision prescript which has an impact on densities was also inserted in the title deed in response to prevailing growth and development pressures of the time which were informed by low density and urban sprawl.



6.6.4 Current development trends

The current development trends are densification which are in response to urbanisation and population growth in De Kelders. The spatial planning policies which are compiled in response to current development pressures are therefore the most appropriate tools to regulate subdivisions and densities on the subject property. The removal of this restrictive title deed condition is proposed for removal as the density regulations pertaining to the subject property in current spatial planning policy is the most appropriate tool to regulate densities and minimum erf sizes in De Kelders.

7. REQUIREMENTS FOR THE AMENDMENT, SUSPENSION OR REMOVAL OF RESTRICTIVE CONDITIONS

Section 35(4) of the Overstrand By-Law on Municipal Land Use Planning, 2015, highlights the relevant Municipal considerations for the removal, suspension or amendment of restrictive title deed conditions. The following relevant considerations were assessed in conjunction with this proposal:

- 7.1 The financial or other value of the rights in terms of the restrictive condition enjoyed by a person or entity, irrespective of whether these rights are personal or vests in the person or the owner of a dominant tenement.**
This restrictive condition does not have a beneficial financial or other value for the property owner or anyone else.
- 7.2 The personal benefits which accrue to the holder of rights in terms of the restrictive condition.**
There are no personal benefits which accrue to the holder of these restrictive title deed conditions.
- 7.3 The personal benefits which will accrue to the person seeking the removal of the restrictive conditions, if removed.**
- 7.3.1** The property owner will be provided with a flexibility to exercising more intensive commercial land uses in harmony with the B3 zoning in the Draft OMZS.
- 7.4 The social benefit of the restrictive condition remaining in place.**
There is no social benefit if the restrictive conditions remain in place.
- 7.5 The social benefit of the removal of the restrictive condition.**
The approval of this proposal will afford the property owner the flexibility to act upon the commercial land uses which are of a slightly higher intensity compared to what is permissible in the title deed conditions. This will subsequently increase the potential of the subject property to unlock more employment opportunities than what is currently permissible under the zoning of the subject property which is a positive social benefit.
- 7.6 Whether the removal, suspension or amendment of the restrictive condition will completely remove all rights enjoyed by the beneficiary or only some of those rights.**
There are no rights which are enjoyed by any member of the society and the removal of these restrictive conditions do not constitute a deprivation of rights.



8. ZONING

The zoning of the subject property is B3. The removal of the restrictive title deed conditions will not exempt the owner of the subject property from having to comply with the prescribed primary rights and title deed conditions. Should the property owner seek to exceed the permissible coverage, building lines or seek a consent use, the appropriate land use departure application will be submitted.

9. SERVICES

The availability of services is a relevant consideration in terms of Section 42(1)(c)(v) of SPLUMA and can be illustrated as follows:

9.1 Solid waste

Solid waste is collected by the OM on a weekly basis in De Kelders and any future buildings to be constructed on the subject property will derive the same benefit.

9.2 Electricity

Any future building will connect to the existing electricity network in De Kelders.

9.3 Water

Any future building will connect to the existing reliable potable network operated by the OM in De Kelders.

9.4 Sewage

Any sewage on the subject property will be disposed of by means of a conservancy tank.

9.5 Access and egress

Access and egress are gained from Cove Street.

10. NEED AND DESIRABILITY

The need and desirability for the approval and implementation of this proposal will be illustrated in accordance with Section 66 (1) (c) of the OM By-Law and DEADP Provincial Support Document on Relevant Considerations, 2015. The purpose of addressing the desirability of this proposal is to place the decision maker in a position to consider whether any positive advantages will accrue to the area or community by approving this application.

10.1 Need and desirability

Desirability also refers to two components where need refers to "time" and desirability refers to "place". In other words, is it the right time and is it the right place to apply for the removal of restrictive title deed conditions which would unlock additional primary rights if the draft OMZS is approved? The draft OMZS permits a restaurant and a self-catering unit which the restrictive title deed conditions prohibits. Providing the owner of the subject property with the leeway to establish these land uses as a primary right and the ability to apply for a consent use without applying for a removal of restrictive title deed conditions is proposed at the right "time" as it allows future flexibility. It is also proposed at the right place as there are limited land uses which are of a higher intensity than shops in De Kelders as restricted by the title deed. This results in De Kelders residents having to travel to Gansbaai to access



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land uses which are of a higher intensity than shops and places pressure on networks of transport and movement.

10.2 Impact on the character of the area

The subject property is currently vacant. The removal of the restrictive title deed conditions will place the property owner in a position to construct a building and act upon land uses in accordance with any future primary rights or consent uses without having to apply for a removal of restrictive title deed conditions which is generally more costly and places an administrative burden on the property owner and the OM. The removal of these restrictive title deed conditions is therefore intended to incentivise the property owner to contribute towards the enhancement of the subject property and the character of the De Kelders area.

10.3 Economic impact

The removal of the restrictive title deed conditions has the potential to enable the property owner to act upon the land uses which are of a slightly higher intensity which can potentially unlock more employment opportunities compared to what the restrictive title deed permits.

10.4 Impact on heritage

None of the provisions in the National Heritage Resources Act, 1999 are triggered by this proposal.

10.5 Environmental impact

No listed activities in terms of the National Environmental Management Act are triggered by this proposal.

11. SPLUMA MOTIVATION REQUIREMENTS

This application as a relevant consideration in terms of Section 42 (c) of SPLUMA is motivated as follows:

11.1 Public interest

The approval and implementation of this proposal has the potential to enable the property owner to unlock additional land use rights which can lead to higher rates and taxes being paid to the OM and SARS. The approval and implementation of this proposal is therefore in the public interest.

11.2 Constitutional transformation imperatives of the state

The constitutional transformation imperative of the state includes creating an enabling environment for the private sector to establish and expand commercial enterprises and contribute to economic growth in De Kelders. The approval of this proposal would enable the owner of the subject property to be able to exercise additional land use rights within a less onerous legislative environment to implement the constitutional transformation imperative prescribed by the state.

11.3 Impact on safety, health and wellbeing of the surrounding community

The higher intensity of land uses which are projected to be unlocked with the approval and implementation of this proposal and if the draft B3 zoning in the OMZS is approved would lead to additional people entering and egressing the subject property. This will be



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additional surveillance which would contribute to the enhancement of safety and security in the area which is a positive impact.

All the primary- and consent uses in the current B3 zoning in the OMZS and in the draft OMZS do not permit any noxious land uses which will ensure that any future land uses do not interfere with the ability of neighbouring property owners to occupy respective properties in comfort.

11.4 Opportunity costs

The approval and implementation of this proposal will not result in an unacceptable opportunity cost for other property owners in De Kelders.

11.5 Respective rights and obligations of all those affected

The land use rights and obligations of all those affected will be maintained if this proposal is approved. This proposal also acknowledges the mutual rights of neighbours to freely use and enjoy respective properties for commercial purposes on the one hand and for any future land uses which the property owner might opt for to not infringe on the rights which neighbours enjoy. The removal of the restrictive title deed conditions will unlock additional land use rights if the B3 zoning in the draft OMZS is approved which all neighbouring property owners will enjoy if a removal of restrictive title deed conditions is applied for. This proposal can therefore not be regarded as unlocking development rights which would infringe on mutual rights which are enjoyed by all surrounding property owners. This proposal is also intended to enable the property owner to optimise on the commercial development potential of the subject site which other property owners can also do without interfering with the mutual rights which are enjoyed by the neighbours.

12. SPATIAL PLANNING POLICIES

The consistency of this proposal with all relevant spatial planning policies was investigated. This is a relevant consideration in terms of Section 66 (1) (h), (i) (u) (k) and (l) of the OM By-Law:

12.1 PSDF

The aim of the PSDF is to communicate the governments' sound spatial development intentions to the private sector and civil society. Policy proposal in the PSDF which are pertinent to this proposal are recorded below.

12.1.1 The PSDF promotes the protection and enhancement of the prevailing sense of place and settlement patterns.

The prevailing sense of place within proximity of the subject property are residential and commercial land uses/zonings which makes the location of the subject property characterised by a high degree of mixed land uses in De Kelders. The removal of the restrictive title deed conditions which is sought would enable the property owner to enhance the mixed-use character of the area if the B3 zoning in the draft OMZS is approved.

12.1.2 Accessibility at all scales is promoted.

The subject property enjoys vehicular access from Cove Street. Any future commercial land uses will be accessible to all and will be aligned with the PSDF principles of promoting accessibility at all scales.



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12.1.3 The promotion of an appropriate land use mix in a settlement is highlighted as integral.

The approval and implementation of this proposal will enable a greater degree of mixed land uses on the subject property if this draft B3 zoning the OMZS is approved. This will subsequently lead to enhancing the mixed-use character of De Kelders.

12.2 SDF

The SDF identifies areas where growth and changes are projected and contains policy proposals which ensure that this occurs to the benefit of the inhabitants of the area. Policy proposal in the SDF which are pertinent to this proposal are recorded below.

12.2.1 Restrict development within the well-defined urban edge

The subject property is located within the well-defined urban edge as prescribed by the SDF.

12.2.2 Maintain the unique character of the village

Any future buildings will be constructed within the development rules of the B3 zoning which ensures that the scale of the buildings is harmony with the unique and prevailing village character of the area.

12.2.3 Spatial proposal plan

The subject property is designated for commercial purposes. The B3 zoning which the property owner intends to act upon in the future is aligned with the spatial proposal on the subject property.

12.3 OMGMS

The OMGMS aims to guide a process which would institute the enhancement of the quality and efficiency of the built environment. Policy proposal in the SDF which are pertinent to this proposal are recorded below:

12.3.1 Support the development of integrated living environments

The removal of the restrictive title deed conditions and the approval of the B3 zoning in the draft OMZS has the potential to unlock additional land use rights which would enable the property owner to contribute to a more integrated living environment in De Kelders.

12.3.2 Ensure that development proposals are in harmony with the immediate surrounding scale and character.

Any future buildings will be in harmony with the prescribed development rules of the subject property and subsequently safeguard the scale and character of De Kelders.

12.3.3 Spatial proposal plan

The subject property is designated as a local economic opportunity area in the spatial proposal plan. The B3 zoning of the subject property will enable the property owner to exercise the commercial land use rights applicable on the subject property as prescribed.



13. PLANNING PRINCIPLES

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

13.1 Spatial justice

The approval this proposal will create an enabling environment for the property owner to unlock additional primary land use rights which will benefit the historically marginalised through employment creation and skills development. Commercial enterprises are generally characterised by socio-cultural integration which is a corner stone of spatial justice. The approval of this proposal will therefore play a pivotal role towards enabling the property owner to address the spatial development imbalances of segregation caused by apartheid spatial and land use planning.

13.2 Spatial sustainability

This proposal does not entail the encroachment on agricultural land, environmentally sensitive areas or biodiversity rich areas and can therefore be regarded as spatially sustainable.

13.3 Efficiency

The approval of this proposal will confer the property owner with higher intensity commercial land uses which will enable the property owner to optimally and efficiently use the subject property within the services capacity limits.

13.4 Spatial resilience

The subject development proposal is in synchrony with the all relevant spatial planning policies. The spatial planning policies all contain policy proposals pertinent to this site which enables all future land uses which the property owner may act upon to absorb environmental and economic shock in a timely and efficient manner. The approval of this proposal will therefore promote spatial resilience.

13.5 Good administration

The OM has a credible track record of good administration regarding the method of public participation which accepts comments from the public to make an informed decision as well as complying with the prescribed time frames pertaining to the processing of applications.



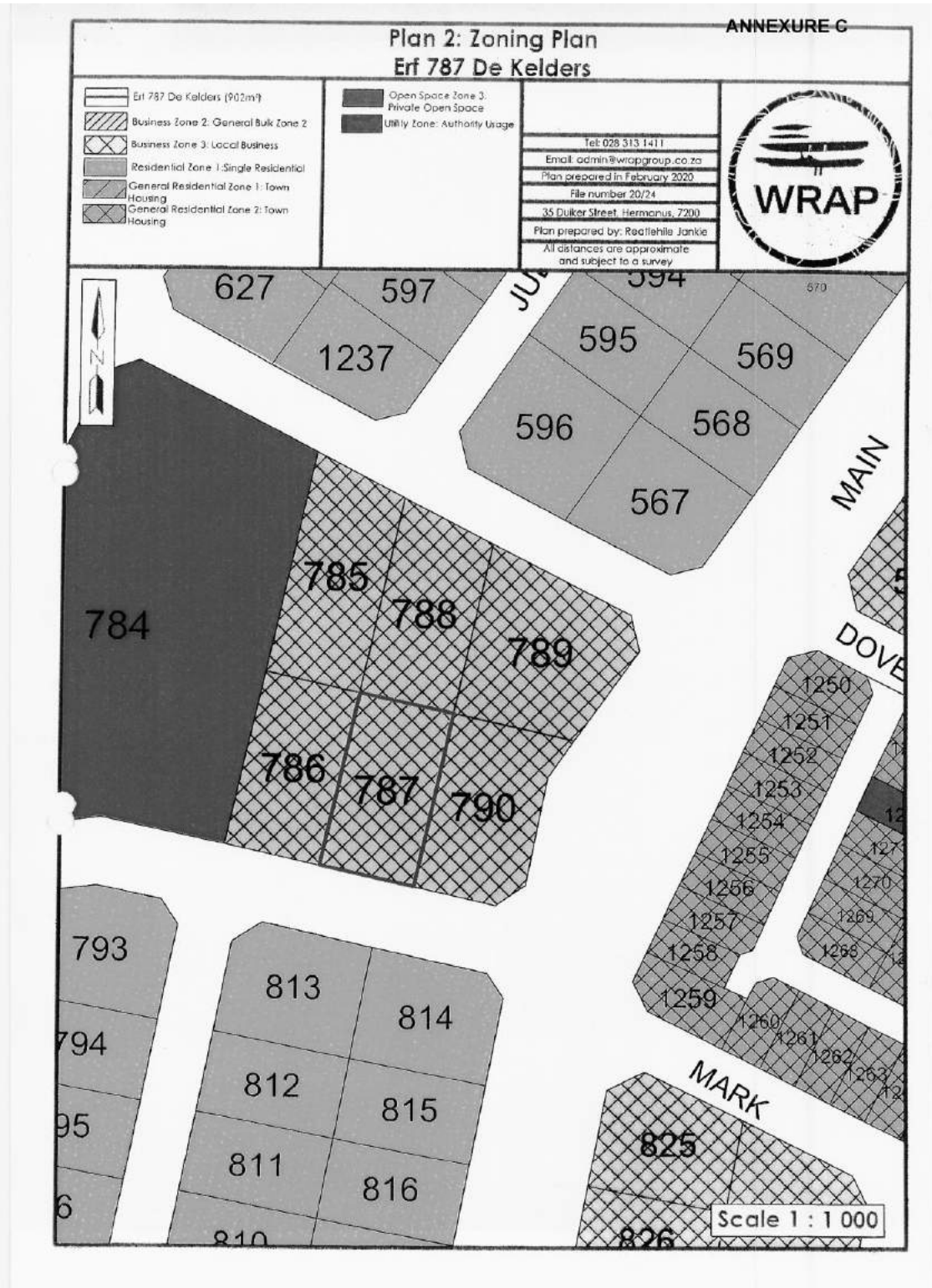
EVALUATION AND RECOMMENDATION

14. EVALUATION

- 14.1** The approval of this proposal will not unlock additional zoning rights and will be in conformity with zoning rights enjoyed by surrounding commercial property owners. The approval of this proposal can therefore not be considered as detracting from the character of the surrounding.
- 14.2** This proposal is in synchrony with all spatial planning policies and planning principles. This illustrates that the property owner did not arbitrarily invent this proposal but was informed by relevant policies before concluding to forge ahead with this proposal.

15. RECOMMENDATION

- 15.1** The following is recommended for approval:
- 15.1.1** **Removal of the restrictive title deed conditions** E, E.A, E.A.(a), E.A.(b), E.A.(c), E.A.(d), E.B and E.B.(e) from title deed number in terms of Section 16(2)(f) of the Overstrand Municipality By-Law on Municipal Land Use Planning Act, 2015.



ANTON POSTHUMUS

PROKUREURS & AKTEBESORGERS
ATTORNEYS & CONVEYANCERS

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DOCEX 101 CAPE TOWN

E-pos/E-mail: marlisha@antonposthumus.co.za

Ons Verw/Our Ref: ALP/Marlisha/MA397
U Verw/Your Ref:

1 JUNE 2020

**The Director
HIPPOMANIA (PTY) LTD
By email: admin@wrapgroup.co.za**

Sir / Madam

re: **TRANSFER: MEA CASA PROP 2 (PTY) LTD / HIPPOMANIA (PTY) LTD
ERF 787 DE KELDERS**

We confirm that the above transfer was registered on 26 March 2020.

We undertake to furnish you with the original Title Deed as soon as we receive delivery thereof from the Deeds Office.

Yours faithfully

ANTON POSTHUMUS PROKUREURS

Albie De Waalstraat 14A Albie De Waal Street
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320

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Prepared by me

 CONVEYANCER
ANTON LUTHER POSTHUMUS

Deeds Office Registration fees as per Act 47 of 1937		
	Amount	Office Fee
Purchase Price	R.....	R.....
Reason for Exemption	Category Exemption.....	Exemption i to. Sec/Reg..... Act/Proc.....

T

DEED OF TRANSFER

BE IT HEREBY MADE KNOWN THAT

ANTON LUTHER POSTHUMUS

appeared before me, the Registrar of Deeds at Cape Town, the said appearer, being duly authorised thereto by a power of attorney granted to him by

MEA CASA PROPERTIES 2 PROPRIETARY LIMITED
Registration Number 2012/076042/07

signed at **BRACKENFELL** on **12 DECEMBER 2019**

And the appearer declared that:

Whereas the Transferor had truly and legally sold the undermentioned property on 17 October 2019 by Private Treaty

Now therefore the Appearer on behalf of the Transferor, did by these presents, cede and transfer to and on behalf of

HIPPOMANIA PROPRIETARY LIMITED
Registration Number 2014/057069/07

its successors in title or assigns, in full and free property

ERF 787 DE KELDERS,
SITUATE IN THE OVERSTRAND MUNICIPALITY
DIVISION CALEDON, WESTERN CAPE PROVINCE

IN EXTENT 902 (NINE HUNDRED AND TWO) SQUARE METRES

FIRST TRANSFERRED by Deed of Transfer Number T10880/1994 with diagram relating thereto and held by Deed of Transfer Number T97490/2007

- A. **SUBJECT** to the conditions referred to in Certificate of Township Title Dated 9 February 1940, No. 1067.
- B. **SUBJECT FURTHER** to the reservation in favour of the State of the rights to mines of gold, silver and precious stones set out in Section 4 of the proclamation of Sir John Cradock dated 6 August 1813, as defined in Section 19 of Act 47 of 1937, contained in Deed of Transfer No. T74908/2004.

- C. **SUBJECT FURHTER** to and with the benefit of the servitude referred to in an endorsement dated 12 June 1939 and contained in Deed of Transfer No. T3733/1920, which endorsement reads as follows:

"REMAINDER

Registration of Servitude.

By Deeds of Transfer No. 5993 dd 12.6.39

12705 dd 17.11.1939; No. 13657 dd14.12.1939

Certain restrictions over the land hereby conveyed including grazing, water rights, trading and fishing, having been imposed in favor of and against the remainder held hereunder, as will more fully appear on reference to the said Deeds of Transfer."

- D. **SUBJECT FURTHER** to and with the benefit of the following special conditions contained in the said Deed of Transfer No. T13215/1946, imposed and enforceable by DE KELDERS SYNDICATE, LIMITED, for its own benefit as owner of the remainder of the land described in Deeds of Transfer No. T1255/1933 dated 25th February 1933, and No. T3733/1920 dated 20th March, 1920, and said Certificate of Township Title No. T1067/1940 dated 9th February, 1940, and for the benefit of future owners thereof or any portion thereof, all of whom jointly or severally will be entitled to enforce observe of the said conditions, together with the conditions imposed by the Administrator in terms of his approval of the establishment of the said Township, namely:
- a. No fires shall be lighted on unoccupied spaces within the boundary of the lots hereby sold, save by of with the written sanction of the Transferor.
 - b. 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 3,05 metres from the ground, with access at any time to such wires for the purpose of removal or maintenance.

- c. 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 No. T3733/1920, 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.
- d. That the Transferor reserves to itself and its successors in title the right of free access at all times to this erf for the purpose of maintaining and repairing piping under any portion of the above erf or other, 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 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 to 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.
- e. That there shall not be erected on any portion of the above lot or lots any building, the plans and specifications of which have not, prior to the commencement of building operations been submitted to and approved by the Transferor in writing.
- E. **SUBJECT FURTHER** to the conditions contained in Deed of Transfer No. T13215/1946 imposed by the Administrator pursuant to the provisions of Ordinance 33 of 1934 relating thereto, inter alia to future alterations in terms of Section 18 and the duty of the Local Authority to enforce observance thereof under Section 61 and legally enforceable also by DE KELDERS SYNDICATE, LIMITED and the owner of any erf in the Township and their successors in title, and imposed in the following form, namely
- "A. AS IN FAVOUR OF the registered owner of any erf in the township:
- a. that this erf be used for shop or retail purposes only.
 - b. that more than 2/3rds of the area of this erf be built on.
 - c. that no building shall be erected within 4.72 metres of any street line which forms a boundary of this erf or within 1.75 metres of the boundary on any adjoining erf provided that this latter restriction shall not apply at the common boundary or erven held as one under consolidated title.

d. that not more than one dwelling together with the necessary outbuildings and appurtenances shall be erected on this erf. This condition shall not apply when the erf is used for ship purposes.

B. AS IN FAVOUR of the Administrator:

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

C. AS IN FAVOUR of any of the 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 other erf or erven to be conveyed over such erf if deemed necessary by the local authority that hereafter may 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.

WHEREFORE the appearer, renouncing all the right and title the said

MEA CASA PROPERTIES 2 PROPRIETARY LIMITED

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

HIPPOMANIA PROPRIETARY LIMITED

its successors in title or assigns, now is and henceforth shall be entitled thereto, conformably to local customs; the State, however, reserving its rights, and finally acknowledging that the purchase price is the amount of R575 000,00 (Five Hundred and Seventy Five Thousand Rand).

IN WITNESS WHEREOF I, the said Registrar, together with the appearer, have subscribed to these presents, and have caused the seal of office to be affixed thereto.

THUS DONE AND EXECUTED at the Office of the Registrar of Deeds at Cape Town on

Signature of appearer q.q.

In my presence

Registrar of Deeds

Alida Conradie - KOMMENTAAR OP ERF 790 & 787 GDK

From: "Judith Barnard" <jb.dekelders@gmail.com>
To: <aconradie@overstrand.gov.za>
Date: 2020/09/14 08:04 AM
Subject: KOMMENTAAR OP ERF 790 & 787 GDK

Mun Verw: Erf 790 GDK & Erf 787 GDK

Geagte Mnr/Dame

Ons vind dit verbasend dat ons kommentaar ten opsigte van bogenoemde nou eers aangevra word, nadat die gebou alreeds dakhoogte is. WRAP se skrywes is gedateer 14 Augustus 2020 en ons het dit eers op 8 September 2020 ontvang – 'n week voor sperdatum.

KOMMENTAAR:

1. De Kelders was en is nog altyd 'n rustige woongebied. Die opening van 'n restaurant met 'n dranklisensie gaan outomaties meebring van 'n lawaai wat gaan ontstaan. Ondervinding het ons geleer dat vakansiegangers het geen respek vir die permanente inwoners met alkohol hier naby beskikbaar sal dit nog erger gaan.
2. Daar word geensins genoem van besigheidsure vir genoemde restaurant nie. Kan u asseblief dit ook bekend maak?, aangesien daar wel 'n reël is vir enige lawaai na midderdag in 'n woongebied. Of gaan dit nie van toepassing wees op die restaurant nie?
3. Jubileestraat is die enigste straat wat nie spoedbrekers het nie. Stirling, Hoofweg, Ingang, Barnard en meeste ander strate in die omgewing het spoedbrekers. Heelwat verkeer gebruik alreeds Jubileestraat om die spoedbrekers te vermy en sommige ry asof dit 'n renbaan is. Met die restaurant in die area gaan dit net vererger word.
4. Met betrekking tot erf 787 word daar geen melding gemaak hoekom beperkings gelig moet word nie.
5. Ons het geen persoonlike belang in hierdie aansoeke nie.

Die uwe

S.S. & J.D. BARNARD
JUBILEESTRAAT 14
DE KELDERS
SEL NR.: 084 586 9084



MM

Project Office

Town Planning & Project Management



J.P. A. Inoor
(S. J. D. Barnard)
P. Roux

Our Reference: 20/024
Your reference: 787 GDK

28 September 2020

The Municipal Manager
Overstrand Municipality
P O Box 20
HERMANUS
7200

FILE NO: <u>GL 787</u>
<u>De Kelders</u>
SCAN NO: <u>37</u>
COLLABORATOR NO: <u>1465154</u>

Attention: Mr Petrus Roux

ERF 787 DE KELDERS: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS

Your letter dated 23 September 2020, refers.

An objection was received from S.S and J.D Barnard. The objection was submitted in Afrikaans but is responded to in English.

Comment	Response to comment
"Ons vind dit verbasend dat ons kommentaar ten opsigte van bogenoemde nou eers aangevra word, nadat die gebou alreeds dakhoogte is. WRAP se skrywes is gedateer 14 Augustus 2020 en ons het dit eers op 8 September 2020 ontvang — 'n week voor sperdatum."	No building has been constructed on the subject property as alleged by the objector. The application was posted by WRAP to the objector in compliance with the time frames which are prescribed by the OM. The delay in the delivery of the postage is not related to the actions of WRAP.
"De Kelders was en is nog altyd 'n rustige woongebied. Die opening van 'n restaurant met 'n dranklisensie gaan outomaties meebring van 'n lawaai wat gaan ontstaan. Ondervinding het ons geleer dat vakansiegangers het geen respek vir die permanente inwoners met alkohol hier naby beskikbaar sal dit nog erger gaan."	The submitted application was for the removal of restrictive title deed conditions and not the establishment of a restaurant. The removal of the restrictive title deed conditions will permit the property owner to act upon any of the primary rights if it is deemed necessary in the future. The subject property is surrounded by erven which are zoned B3 which have the potential to collectively function as a commercial node should primary commercial

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 (Reg No. 2002/060745/23) Hermanus, 7200

Established 2002

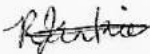
TP - 5 OCT 2020

	land use rights be acted upon. The location of the subject property which will become a commercial node in the future is surrounded by a road on the north, east and west and abutted by an erf which is zoned Utility Zone: Utility Services which creates a buffer with the surrounding residential area. This will reduce the likelihood of surrounding property owners being exposed to nuisance activities as cited by the objector. The generalisation by the objector that all guests lack respect and behave badly when under the influence of alcohol is unfounded.
"Daar word geensins genoem van besigheidsure vir genoemde restaurant nie. Kan u asseblief dit ook bekend maak, aangesien daar wel 'n reël is vir enige lawaai na midderdag in 'n woongebied. Of gaan dit nie van toepassing wees op die restaurant nie?"	The property owner has no immediate intention to establish a restaurant on the subject property.
"Jubileestraat is die enigste straat wat nie spoedbrekers het nie. Stirling, Hoofweg, Ingang, Barnard en meeste ander strate in die omgewing het spoedbrekers. Heelwat verkeer gebruik alreeds Jubileestraat om die spoedbrekers te vermy en sommige ry asof dit 'n renbaan is. Met die restaurant in die area gaan dit net vererger word."	Considering that the property owner has no immediate intention to establish a restaurant on the subject property, the traffic related concerns which are highlighted by the objector are unlikely to materialise.

Conclusion

The entire objection is based on the assertion by the objector that an application is for the establishment of a restaurant on the subject property which is not the case. The other objection relates to the construction of a building on the subject property which has not occurred. The entire objection pertains to an application which was submitted for the establishment of a restaurant on Erf 790 De Kelders and not the subject property. Considering that the objection is not related to the submitted planning application, it is recommended that the MPT set aside the objection and approve the submitted planning application.

Yours faithfully



R JANKIE

TOWN PLANNER (B/8392/2017)

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:
APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED: ERF 787,
DE KELDERS**

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

Conditions:

1. That, should Erf 787 be developed, Erf 787 must be provided with a municipal water meter as per detail and requirements stipulated;
2. That, should Erf 787 be developed, Erf 787 be provided with adequate sewer conservancy tanks;
3. 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;
4. 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;
5. that on-site parking facilities are provided as per the Planning Schedule, and to the satisfaction of the Department: Operational Services;
6. that any additional and / or extended vehicle entrances will be for the developer's account;
7. that stormwater be allowed to discharge through Erf 787, De Kelders, unobstructed.

p.p. R. Cloete
DENNIS HENDRIKS
SENIOR MANAGER:
ENGINEERING SERVICES

14/09/2020
DATE