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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

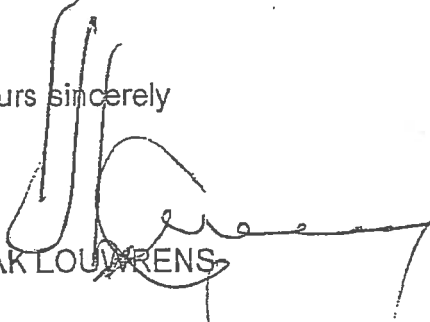
- 9.5.6. *“Densification contributes to urban place making and improves safety”.* (Item 4.2.6).

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

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

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

Yours sincerely



IZAK LOUWRENS



MARIA FRANCINA ELIZABETH LOUWRENS

FILE NO:	EL 713DK
SCAN NO:	42
COLLABORATOR NO:	765482

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7 March 2015

DIRECTOR: INTEGRATED ENVIRONMENTAL MANAGEMENT

Provincial Government of the Western Cape

Private Bag X9086

CAPE TOWN

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

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

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

I am the registered owner of Erf 662, De Kelders (situated at 33 Steyn Street, De Kelders). I hereby note an objection to the application for the removal of the title deed restriction concerned and the application for subdivision of Erf 713, as set forth in the notice referred to above. The basis of this objection will be made clear hereinbelow.

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

13 MAR 2015

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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


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

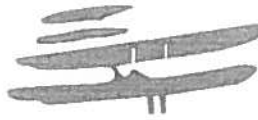
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The proposed development (which detracts from the ambience and character of the area) will result in a negative urban environment (being a high-density node within a surrounding low density environment) rather than an attractive and desirable sea-side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

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

Yours sincerely


PHILIP EDUARD MALHERBE



WRAP



TP - A Theant
(Suldo name)

ESTABLISHED 2002

Town and
Regional
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and Procedures

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Reg No
CK 2002/060745/23

Our Reference: 14/012

2 April 2015

The Municipal Manager
Overstrand Municipality
P O Box 20
HERMANUS
7200

Sir

ERF 713, 21 FRONT STREET, DE KELDERS, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR REMOVAL OF RESTRICTIONS ACT, 1967 (ACT 84 OF 1967) AND SUBDIVISION

Your letter dated 18 March 2015 has reference.

We hereby respond to the letters of objection that was submitted to the above application. Letters were received from the following parties:

- A de V La Grange SC;
- HK & JR Leibowitz;
- W van Heerden;
- Elna La Grange;
- Dr AJ & Mrs EH Malan;
- Marlo Trust;
- JC Calitz;
- Steynstraat Trust;
- Smartie Genade Family Trust;
- The Etihan Louw Family Trust;
- CM & LS du Plessis;
- I & MFE Lourens; and
- PE Malherbe.

A letter of support was submitted by CF Quass.

FILE NO:	EL 713-DK
SCAN NO:	67
COLLABORATOR NO:	775924

15 APR 2015



What is important to note is that ten (10) out of the thirteen (13) letters of objection that were submitted against the application is almost word for word identical to each other. Some of these objectors' properties are located as far as half a kilometre from the subject property. It is therefore evident that one individual has approached these owners to gather support against the proposed subdivision and removal of restrictive title deed condition. We therefore maintain that the approval of this application will not have any impact whatsoever on many of these objectors. Notwithstanding the above, the points of objection have been summarised and are contained, together with our response in the paragraphs below.

1. If the application is approved, the proposed erven will not have the same extent as surrounding properties.

The statement is not correct. The two proposed portions will have similar extents as erven that have already been subdivided in the immediate surrounding area. These erven can be clearly observed on the location map that has been attached with the original application. Six (6) erven of similar extents can be observed within 130 meters from the subject property.

2. The approval of this application will set a precedent which will allow surrounding property owners to apply for similar land use approvals.

It is every owner's prerogative to apply for the subdivision of his/her property. However, land use applications cannot be evaluated on the precedent alone. Any development proposal must be consistent with the spatial planning initiatives that are applicable to a specific area and adhere to the provisions of Section 36 of the Land Use Planning Ordinance, 1985 (no.15 of 1985)(LUPO). In the original land use application it was demonstrated how the development proposal is in line with the strategies identified for the De Kelders area with regard to future development. The application was also motivated with regard to Section 36 of LUPO. Therefore any future possible subdivision applications in the area will have to be motivated to the same extent as the application that has been submitted for Erf 713.

3. The proposed subdivision of the subject property will change the character of the surrounding area.

This statement is not accurate. The application is for the subdivision of the subject property. The zoning of the erven will remain Residential Zone I: Single Residential Zone, which is exactly the same zoning that all erven surrounding the subject property have. No other land use rights, apart from single residential land use rights, will be established with the approval of this application. It is therefore maintained that the approval of this application will not change the character of the surrounding area.

4. The large erven contribute towards the character of De Kelders.

A study of the De Kelders area revealed that only 23 erven have similar extents, characteristics and location as the subject property. A further five erven did compare with aforementioned erven, but have been subdivided into smaller portions over the years. To state that erven with extents similar to the subject property's extent (before subdivision has taken place) is the norm within De Kelders is therefore not correct. On average, erven range between 500 m² and 700 m². It is therefore accurate to state that erven with these extents define the character of erven with regard to erf size. The proposed portions will have extents of 699 m² and 702 m² respectively. It is therefore



evident that the subdivision of the subject property will not have a negative impact on the character of De Kelders with regard to the perception of large erven.

- 5. Should all erven surrounding the subject property be subdivided, it will have a significant impact on engineering services and will negatively affect the health and welfare of the surrounding neighbourhood.**

The statement is to a certain extent correct. The subdivision of surrounding properties will have a significant impact on engineering services. It is for this reason that bulk services levies are paid to the municipality with the registration of new erven. These levies are then used by the municipality to upgrade the necessary engineering services and to ensure that the necessary bulk service capacities are in place to accommodate the new erven. The point of objection as a standalone argument is therefore valid, but in the broader context as explained above becomes irrelevant.

- 6. The application for subdivision is contradictory to the title deed condition prohibiting the subdivision of the erf, without the Administrator's permission.**

This statement is correct. That is the reason why application is also made to the Department of Environmental Affairs and Development Planning (DEADP) for the removal of this particular title deed condition. It would appear that the objector has not fully informed himself/herself with the information relevant to the application.

- 7. The subdivision proposal is not in line with the proposals as contained within the Overstrand Municipal Growth Strategy.**

The following is stated in the original land use application:

"The subject property falls within planning unit 1 which states the following in terms of residential densification: Although this area is subject to management zones and several other conserving valued features, incremental densification by subdividing erven into two or three portions (housing typologies B1 and B2) is proposed for an assumed 20% of this Planning Unit. Based on this assumption, this proposal can potentially contribute 192 additional dwelling units, increasing the current gross density from 11.3 to 14.7 dwelling units per hectare."

From the above it is evident that the subdivision proposal is consistent with the proposals contained within the Overstrand Municipal Growth Management Strategy (OMGMS).

- 8. The subdivision proposal is not in line with the conservation initiatives identified by Overstrand Municipality.**

The applicant fails to see how the subdivision of the subject property will impact negatively on the natural environment. The subdivision will not extend beyond the boundaries of an existing residential erf. The subdivision will not "jump" the road into the natural coastal belt and no additional service installations will be required within the immediate surrounding area that may impact on the natural environment.


WRAP

Contrary to the objector's view it is argued that the subdivision will in fact contribute towards the conservation initiatives identified by the Overstrand Municipality. Promoting the densification of existing urban areas eliminates the need for the development of green field areas to accommodate natural urban growth. Natural environments therefore remain intact, with development limited to a well-defined urban footprint.

9. The approval of the subdivision will impact negatively on the natural environment and the natural coastal belt.

Refer Response 8.

10. The necessary engineering service capacities are not in place and the approval of the subdivision application will have a negative impact on these specific services.

Refer Response 5.

11. E La Grange indicates that she is the owner of Erf 712, De Kelders

The objector owns Erf 714, De Kelders and not Erf 712, De Kelders as stated within the objection. It is recommended that her legal counsel familiarise themselves with the area, before submitting objections against land use approvals.

12. The condition with regard to the subdivision of the subject property has been registered in favour of the objector's property. The removal of the restriction will result in the deprivation of property within the meaning of Section 25(1) of the Constitution.

The applicant differs from the interpretation of the legal counsel of the objector. For the purposes of this motivation the following is quoted from the relevant title deed:

"E. further subject to the conditions contained in said Deed of Transfer No. 17576/1945 imposed by the Administrator in pursuance of the provisions of Ordinance, 33 of 1934 relating inter alia to future amendments in pursuance of Section 18 and the duty of the Local Authority to enforce observance of these conditions in pursuance of Section 61 and which is also enforceable in law by the owner of any erf in the Township and their respective successors in title, and which have been imposed as follows:

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

- (a) That this erf be used for residential purposes only.
- (b) That not more than one half the area of this erf be built upon.
- (c) That not more than one dwelling, together with the necessary outbuilding and appurtenances to 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 or erven held as one erf under consolidated title.

WRAP

B. As being in favour of the Administrator –

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

From the above it is clear that the title deed differentiates between two sets of conditions. The restrictions contained under condition A is registered **in favour of the registered owner of each erf in the township** while condition B is registered **in favour of the Administrator**. As the applicant has applied for the removal of the restriction contained under E.B it is evident that the restriction regarding subdivision has not been registered in favour of the objector's property.

- 13. No building plans are provided for the proposed new erf and therefore it is assumed that a dwelling will be developed on the proposed second erf to the maximum extent that the Overstrand Zoning Scheme allows.**

It is not a requirement of a land use application to submit building plans for a subdivision application that aims to subdivide an existing property into two portions. The dwelling that can be developed on the proposed subdivided portion must adhere to the parameters of the Single Residential Zone zoning as contained within the Overstrand Municipality Zoning Scheme. A building plan to this effect will be submitted to the Overstrand Municipality for evaluation and approval before any construction commence.

- 14. The respective title deed condition is quoted wrongly in the application.**

The application was submitted to DEADP as well as the Overstrand Municipality. Both authorities evaluated the application, before the public participation process commenced. Both authorities are therefore satisfied that the application reads correctly with regard to title deed restriction that the application achieves to remove. This point of objection is therefore dismissed.

- 15. The application states that the erf is located further than 100 meters from the high water mark of the sea in Section 15, but in Section 13 it is stated that the erf is located within 100 meters of the high water mark of the sea.**

The statement within Section 13 of the land use application is incorrect. As illustrated by Plan 4 (contained within the land use application) the subject property is located further away than 100 meters from the high water mark of the sea.

- 16. The condition prohibiting subdivision is a real right (or praedial servitude which is registered over the applicant's property in favour of the objector's property) and considerably adds value to the objector's property. It was for this reason that the objector purchased the property.**

It is agreed that the condition prohibiting subdivision is indeed a real right or praedial servitude where, in general, a person has a right because he is the owner of a certain property. Should he sell the property, the servitude will move over to the new owner.



In this specific matter, the praedial servitude came about with the establishment of De Kelders township in the form of restrictive conditions laid down by the Administrator of the Province.

- 17. The approval of application will relegate the objector's property from a second row property to a third row property from the sea and will therefore have a negative impact on the value of the property.**

This point of objection is irrelevant. The approval of the application cannot cause the objector's property to be further away from the sea than it currently is.

- 18. Any new dwelling unit erected on the newly created erf will be "virtually" on the same level as the objectors dwelling unit and will have a negative impact on the sea views that the objector currently enjoys.**

The statement is not correct. Any future dwelling unit on the newly created portion will be located below the objector's property. It should be mentioned that the applicant is well within his primary rights to demolish the existing dwelling unit on the property and constructing a dwelling unit higher up on the subject property.

- 19. Two dwellings located within the area of the subject property will adversely affect the privacy of the objector.**

The dwelling unit located on the front property will not have any impact on the privacy of the objector. To therefore state that two dwelling units will impact negatively on the privacy of the objector is not correct.

- 20. The objector scrutinised the title deeds of the surrounding properties and in doing so was assured by the fact that the applicant's property was a servient tenement subjected to restrictive title deed condition in favour of the objector's property. The objector was aware that the Administrator can remove restrictive title deed conditions, but was advised that this could only be done in very limited circumstances and in instances that strictly deserve.**

Again a distinction must be made between the restrictive conditions that have been registered within the subject property's title deed. Restrictions contained under condition E.A speak of definite restrictions, i.e. that the erf can only be used for residential purposes, that no more than half the area of the erf is built upon, that only one dwelling unit and associated outbuildings be erected, etc. The condition that the application aims to remove reads as follows:

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

Technically speaking it is not necessary to remove abovementioned restriction as the erf may be subdivided with the consent of the Administrator. However, the removal of restrictive title deed condition process is process which the Administrator chose over the years to deal with conditions as quoted above.

One can also argue that due to recent court orders, the abovementioned restriction is unconstitutional. In June 2010 the Constitutional Court delivered judgment that

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declared Chapters V and VI of the DFA unconstitutional and invalid. These chapters authorised provincial development tribunals established in terms of the act to determine applications for the rezoning and land and the establishment of townships. The dispute was about which sphere of government is entitled to exercise powers relating to the establishment of townships and the rezoning of land within the municipal area or the city. The above judgement confirmed that municipal planning is a function assigned to municipalities in terms of the Constitution. The subdivision of a single residential erf therefore clearly falls under this category and is therefore supposed to be a solely municipal matter.

The condition does not read "that this erf shall not be subdivided". It states that "this erf shall not be subdivided except with the consent in writing of the Administrator". The objector therefore must have been aware that a situation can occur where surrounding properties are subdivided. The argument can therefore not be used to oppose the proposed subdivision.

- 21. The objector expected that the removal of any restrictive title deed condition will result in compensation to landowners affected by the removal of said restriction. However, the objector denies that there is any rational basis for a conclusion on the part of the MEC that the jurisdictional requirements for the removal of the title deed restriction concerned have been met.**

Refer Response 16 and 20.

- 22. The application document does not make mention of Condition A.(c) that limits the number of dwellings that can be constructed on a subject property. Owners in De Kelders are therefore not aware of this particular condition.**

The statement is correct. The applicant does not intend to construct more than one dwelling unit on each of the proposed portions. The need to inform the owners of De Kelders of this particular condition is therefore unclear.

- 23. The title deed that is proposed to be removed is a registered praedial servitude for the benefit of all other erven in the De Kelders area. The erven in De Kelders is therefore both a servient tenement and a dominant tenement. Registered praedial servitudinal rights such as those covered by the relevant title deed condition fall within the concept of and are part and parcel of one's property, which is to be safeguarded in terms of the Constitution. As such the removal of the restriction will bring about the extinction of registered praedial servitudinal rights and will amount to the deprivation of property belonging to each of the dominant tenements.**

The Removal of Restrictions Act 84 of 1967 empower the Administrator of a province to alter, suspend or remove certain restrictions and obligations in respect of land in the province, including restrictive conditions or servitudes registered against the title deed of the land or a provision of a law relating to the establishment of townships or to town planning, or a provision of a town planning scheme and a provision of a law relating to the establishment of townships or to town planning, and which relates to the subdivision of land (Section 1 of the Act).


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In terms of Section 4(3) of the Removal of Restrictions Act, 1967, the Administrator may grant an application subject to the condition that the applicant shall pay to any objector specified in such condition, the value of whose land or real right in land will, in the opinion of the Administrator, be adversely affected materially by the granting of the application, compensation in an amount which, in the absence of agreement between such applicant and objector, shall be determined by the Administrator.

- 24. It is not in the interest of the township for the restrictive title deed condition to be removed. The applicant fails to understand that the removal of the restrictive condition effectively seeks to unilaterally eradicate servitudinal rights enjoyed by all the property owners of De Kelders Extension 1 and in the process deprive each one of them of their proprietary rights. This is regarded as a deprivation of existing property rights.**

Refer Response 16 and 23.

- 25. The applicant has failed to disclose to affected owners that his application is in truth also aimed at removing the restrictive title deed condition which prohibits the erection of more than one dwelling on the subject property.**

The allegations that the legal counsel of the objector is making with regard to the application is unfounded. Repeated references are made to title deed restriction E.A.(c) even though the application is clearly not for the establishment of more than one dwelling unit on the proposed portion. These repeated references are used in an attempt to argue that the restrictive condition, with regard to the subdivision of the property (condition E.B(e)), has been registered in favour of the objector's property, when in fact only the conditions contained under restriction E.A is registered in favour of the objector's property. From **Response 20**, it is evident that the arguments presented by the legal counsel of the objector are fatally flawed.

- 26. The applicant had to resort to the removal of the restrictive title deed condition through the current process rather than through an application to the courts.**

It is irrelevant which process the applicant chose to remove the restrictive title deed condition. The applicant fails to see how this point of objection should have any bearing with regard to the evaluation of the development proposal.

- 27. Various erven are for sale in the vicinity of the subject property and therefore there is no need for the creation of additional erven. The removal of the restrictive title deed condition can therefore not be to the benefit of the residents of De Kelders.**

The objector makes a vague statement that various erven are for sale in the vicinity of the subject property. However, it is not indicated how many erven are for sale and therefore the statement with regard to the need for the subdivision is highly questionable. Only nine (9) erven are undeveloped in the immediate surrounding area and it is unfortunately not clear how many of these erven are actually currently for sale. It can therefore be argued that there is a need for the creation of additional opportunities as only nine vacant erven are left in the area.



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It has been stated in numerous responses above that the particular condition with regard to subdivision has not been registered in favour of the residents of De Kelders.

28. The objector states that courts have held that municipal policies, town planning schemes and zoning regulations cannot trump the rights of owners derived from their title deeds. In this regard it has recently also been held that authorities should bear in mind that restrictive title deed conditions are aimed at preservation of specific ownership whereas zoning scheme regulations or planning policy serve another purpose – namely the general regulation of general town planning standards.

Refer Response 16 and 23.

29. The Removal of Restrictions Act does not permit a local authority to arbitrarily deprive a property owner of his servitudinal rights.

Refer Response 16 and 23.

30. The removal of the restrictive title deed condition must be to the benefit of the residents of De Kelders and the fact that the removal may not be undesirable does not mean that such removal is indeed desirable or in the interest of the area.

The applicant fails to see how something deemed not to be undesirable cannot be interpreted as desirable. An issue such as a removal of a restrictive condition can either be undesirable or desirable. The point of objection is therefore not relevant to this application.

31. The applicant fails to show how the specific development envisaged is supposed to serve the so-called densification drive or initiative on the part of the Overstrand Municipality.

Refer Response 7.

32. The applicant fails to give substance to the bald contention that the development proposal is consistent with existing spatial planning initiatives.

Refer Response 7.

Notwithstanding the above, two guiding principles of the Provincial Spatial Development Framework 2014 (PSDF) are as follows:

Sustainability and resilience

Land development should be spatially compact, resource-frugal, compatible with cultural and scenic landscapes, and should not involve the conversion of high potential agricultural land or compromise ecosystems.

Spatial efficiency



Efficiency relates to the form of settlements and use of resources – compaction as opposed to sprawl, mixed-use as opposed to mono-functional land uses, residential areas close to work opportunities as opposed to dormitory settlement, and prioritisation of public transport over private car use. When a settlement is compact higher densities provide thresholds to support viable public transport, reduce overall energy use, and lower user costs as travel distances are shorter and cheaper.

- 33. De Kelders Extension 1 Township has been established and developed according to a town planning scheme and therefore the Development Facilitation Act is not applicable to the applicant's application. The applicant cannot therefore rely on a spatial development strategy (Overstrand Municipal Growth Management Strategy) which in turn is based on and seeks to promote the planning policy framework catered for in the DFA.**

The Overstrand Municipal Growth Management Strategy is not based on the planning policy framework of the DFA alone. It is clearly stated that current national and provincial policy context, within which the concept of urban densification is strongly advocated, lies in a number of strategy and policy documents prepared by different spheres of government. The Constitution of the Republic of South Africa, the Development Facilitation Act (DFA) and the Provincial Spatial Development Framework are all listed as strategies and policy documents. The objector only chooses to highlight the DFA in support of his argument, without mentioning the other strategies and policy documents that are referred to.

- 34. Six methods of densification are identified within the growth management strategy. The applicant has not taken any other alternatives into account and therefore the Overstrand Municipality and MEC cannot approve any of the applications made.**

Refer Response 7.

- 35. The proposed use of the new erf is not for affordable housing, is not suitable for use by people reliant on public transport, nor would the potential buyers be the sort of people who would contribute to urban sprawl if they are unable to buy expensive stands in one of the sought after areas of De Kelders.**

The first two statements that the objector makes are correct. The properties will not be used for affordable housing and it is unlikely that future owners will be reliant on public transport. However, to state that future potential buyers will not be the sort of people who would contribute to urban sprawl is ridiculous. There is no motivation provided to substantiate this claim. Every single person that is in a position to purchase any future erven resulting from the subdivision of the property has the potential to contribute towards urban sprawl as they have the means to purchase properties, whether these properties are located in existing township areas or new township areas.

- 36. The applicant fails to motivate how the subdivision will contribute towards the containment of urban sprawl or reduce the consumption of non-renewable fuels by lessening car dependency, which according to the Overstrand Municipal Growth Management Strategy is central to this requirement.**

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The applicant fails to see how the objector cannot comprehend that the approval of the subdivision application will contribute towards a more compact township and therefore curb urban sprawl. If the need for additional development opportunities can be provided for by means of subdividing existing erven into smaller portions, there will not be a need for the development of greenfield developments. Therefore, densification in the form as proposed within this application will definitely curb urban sprawl in the future.

37. The objector lists all of the motivations for densification as contained within the Overstrand Municipal Growth Management Strategy and argues why the development proposal does not contribute towards these principles.

Considering the relevant section of the growth management strategy, Section 4.2 the following is stated with regard to the motivation for urban densification.

"Densification, carefully and prudently applied to existing and new development, can contribute positively to the creation of good quality, efficient and sustainable urban environments in a **number of different ways**".

Densification proposals therefore do not have to comply with all the criteria listed under section 4.2.1. Should this be the case, no densification will ever take place within the Overstrand area as there is no public transport system, apart from taxi services catering for the lower income housing neighbourhoods.

The growth management strategy actually addresses most of the concerns and points of objection that is raised by the objectors further on in Section 4 of the document. The document states that:

- Densification does not imply high-rise buildings;
- Densification is not the cause for poor quality living environments or overcrowding;
- Densification will not result in a mass of applications reducing erf sizes and the loss of an area's unique character; and
- High density developments are not unattractive and will not impact negatively on the quality of lower-density residential areas.

It is maintained, as motivated in this response as well as the original land use application that the subdivision proposal will contribute towards the densification goals of the Overstrand Municipality, the Western Cape Province as well as National Government in a sensible and non-intrusive manner.

38. Title deed condition E(A)(c) applies to "this erf", which is regarded as the whole of Erf 713. The condition is therefore applicable to the whole of Erf 713, regardless in how many portions it has subsequently been subdivided. The applicant's application is therefore fatally flawed and should for this reason be dismissed.

The interpretation as above is not correct. The title deed conditions contained in the title deed of Erf 713 will be transferred to the new subdivided portion. However, the



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abovementioned title deed restriction that is registered in the title deed of Erf 713, will not limit the construction of any future dwelling units on the newly created portion.

39. The objector alleges that the high water mark of the sea is incorrectly shown on the attached maps.

Refer Response 15.

40. The construction of an access road to the proposed Portion A will be located within 100 meters from the high water mark of the sea. This constitutes a listed activity in terms of NEMA as more than 5 cubic metres of soil or sand will be removed.

Refer Response 15.

41. The approval of subdivisions in the area has taken place between 1974 and 2000, at a time before certain definitive judgements, which condemned the practice of removing title deed restrictions for unconvincing reasons, were handed down by the courts. From these judgements it is clear that the local authorities for many years laboured under the impression that title deed restrictions were a relic of the past and departed from the premise that applications for the removal of title deed restrictions were at odds with their planning regulations should be favourably entertained.

It should be noted that the local authority is not delegated to remove title deed restrictions at this point in time. This is done by the Department of Environmental Affairs and Development Planning. Restrictions are also not just removed for the sake of removal. The application goes through a rigorous process that include a public participation process, assessment by the local authority, assessment by the land use planners at DEADP, assessment by spatial planners at DEADP, etc. To state that local authorities removed restrictions under the impression that these restrictions were relics of the past, etc is therefore untrue.

42. The objector does not know if everyone has been notified of the application as required by the Directorate: Land Management.

Notice to each and every land owner in De Kelders has been sent out by means of registered letter as instructed by DEADP. Proof of aforementioned process has been submitted to the Overstrand Municipality.

We trust that you will find the above in order. Should you require any additional information within this regard, please do not hesitate to contact this office.

Yours faithfully



JOHANN PIENAAR
B.Art et Scien (Pr.Pl'n A/125/2009)

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:
APPLICATION FOR SUBDIVISION: ERF 713, DE KELDERS**

Stormwater (SW)	:	In Order
Electricity	:	In Order
Water	:	In Order
Sewer	:	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 (2015/2016) is as follows:

Freehold erven:

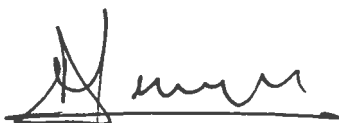
Water (W7A)	R 24 851.00 x 1	=	R 24 851.00
Sewerage (SEW5A)	R 19 945.00 x 1	=	R 19 945.00
Roads & (SW) (RDST1)	R 6 500.00 x 1	=	R 6 500.00
Electricity (E16A2A)	R 30 197.80 x 1	=	<u>R 30 197.80</u>
TOTAL (inclusive of VAT)		=	R 81 493.80

Note:

The above figures are estimates

- 2.1 that a 3m wide service servitude be registered over the Remainder of Erf 173 which will be used as a right of way and the provision of water, sewerage, electricity and any other services;
- 2.2 that the developer will be responsible to connect to the existing services at the developer's cost;

- 2.3 that only the existing electricity connection will be available for the development and that, should additional capacity be required, an investigation be conducted, with regard to the capacity required and that available, at the developer's cost;
- 2.4 that the existing water connection and sewer conservancy tank to Erf 713 shall be used to service the proposed Remainder of Erf 713;
- 2.5 that the existing water connection of Erf 713 be relocated to a position within the proposed Remainder of Erf 713 (see attached Annexure A);
- 2.6 that any part of the existing water and sewer services on Remainder of Erf 713 that crosses the common boundary of Remainder of Erf 713 and Portion A of Erf 713 be disconnected and sealed off, at the developer's cost;
- 2.7 that Portion A of Erf 713 must be serviced with an individual and separate water connection which must comply with the standards of the Department: Operations, as well as a sewer conservancy tank, at the developer's cost;
- 2.8 that Portion A must be provided with a sewer conservancy tank, which must comply with the standards of the Department: Operations, and to which the sewer services on the erf must connect to, at the developer's cost;
- 2.9 that a suction point for the sewer conservancy tank, which must comply with the standards of the Department: Operations must be provided at the recommended street boundary of Portion A with Front Street, at the developer's cost;
- 2.10 that the developer investigate and determine the limitations of the site terms of sewer drainage, subject to the minimum requirements of SANS 140400 – P:2010: Drainage.



DENNIS HENDRIKS
SENIOR MANAGER:
ENGINEERING SERVICES

4/8/2015

DATE