

**AGENDA of the  
Portfolio Committee : Infrastructure and Planning  
18 August 2015  
(Also the agenda for the Mayoral Committee Meeting : 26 August 2015)**

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**3.  
ERF 928, 54 BERG STREET, DE KELDERS : PROPOSED REMOVAL OF  
RESTRICTIVE TITLE CONDITION : JA VAN DER VYFER**

**928 GDK (2623)**

**SW van der Merwe**

**(028) 313 8900**

**Hermanus Administration**

**25 June 2015**

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**1. Executive Summary**

To consider an application for removal of restrictive title deed condition received on 30 June 2014 from the owners of Erf 928, De Kelders, JA & MB van der Vyfer, in order to accommodate an existing second dwelling unit on the property.

A Locality Plan of the property concerned is attached as Annexure A. The Site Development Plan is attached as Annexure B, and the Motivation Report from the applicant in support of the application is attached as Annexure C.

**2. Service Delivery and Budget Implementation Plan - IGNITE**

Infrastructure and Planning  
Town- and Spatial Planning

**3. Compliance with Strategic Priorities**

Provision of democratic, accountable and ethical governance  
Promotion of tourism, economic and social development

**4. Delegated Authority**

Executive Mayor

**5. Legal Requirements**

Removal of Restrictions Act, 1967 (Act 84 of 1967)

**6. Background/Discussion/Evaluation/Conclusion**

**Background**

Erf 928 De Kelders is zoned Residential Zone 1: Single Residential and measures 595m<sup>2</sup> in extent. The property is developed with an existing dwelling, associated outbuildings and a second dwelling unit behind the existing garage.

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The approved building plans indicated servant's quarters (the current second dwelling) behind the garage which has been provided with a kitchen without the relevant approval in terms of the National Building Regulations and the Removal of Restrictions Act, No. 84 of 1967. The current application therefore proposes the removal of condition F(c) contained in Title Deed T18075/91 in order to enable the submission and consideration of building plans. The aforementioned condition is as follows:

*“that not more than one dwelling, together with the necessary outbuildings and appurtenances be erected on this erf.”*

**Discussion**

The application was advertised in the prescribed manner and notices were served on adjoining affected property owners. One letter of objection was received from Mr AL & M le Roux, the owners of the adjoining property, and is attached as Annexure D. The applicants' response is attached as Annexure E. The main grounds of objection are the following:

**Application is made under false pretences and is indeed an application for additional income**

A second dwelling unit in terms of the Overstrand Zoning Scheme Regulations may be rented out on a long term basis. This aspect in itself is not a contravention of the Scheme Regulations.

**The “proposed” apartment already exists and is rented for additional income**

Refer to comment above. It is noted that the former servant's quarters have been converted without the necessary permission into a dwelling unit as a result of the provision of a kitchen. The current application therefore considers the removal of the appropriate restrictive title condition so that the second dwelling could be utilised in line with the provisions of the Scheme Regulations, which is further elaborated upon in the evaluation below.

**The applicants' daughter currently lives in the house and not in the second dwelling**

Noted.

As stated above, a second dwelling unit once authorised may be leased on a long term basis. Therefore the argument is not whether the second dwelling unit is leased or whether it is utilised by the applicants' daughter. The fact of the matter is that the Title Deed restricts the construction of a second dwelling unit, hence the application under consideration.

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**The sitting room on the site plan is in actual fact a bedroom with sufficient bedroom space within the house to accommodate guests**

Refer to the comment above. A site inspection was conducted. It was noted that the "sitting room" referred to above is utilised as a bedroom/computer room. No objections were raised by the Building Control Department in this regard.

**Noise and disturbance at night time in close proximity to the bedroom of the objector**

The above allegation is noted. No official complaint history in this regard exists. The second dwelling unit does not encroach the applicable building lines and was legally constructed with a bedroom (former servant's quarters). Furthermore, it should be noted that a site inspection was conducted during May 2015 and that the second dwelling unit was vacant. The applicant may lease it in future but since the applicant also permanently resides at the premises it is unlikely that the second dwelling would give rise to noise and disturbance.

**The boundary wall is not 1,8m high but 1,6m. Requests that the boundary wall be raised with 0,5m**

The height of the boundary wall has no bearing on the application under consideration and is a matter for agreement between the applicant and the objector, in line with the applicable building legislation.

The applicants' response is attached as Annexure E.

**Evaluation**

The existing structures comply with the former building lines applicable to the property at the time of construction, being situated 1,57m from the lateral- and 3m from the rear property boundaries. The position of a kitchen to the servant's quarters created a dwelling unit without external changes or alterations. The second dwelling unit complies with the applicable building lines and is not considered to have an adverse impact onto the adjoining property owners, especially as the applicants permanently reside at the premises.

The removal of the restrictive title condition is supported as the proposal is in line with National- and Provincial Planning Policies that seek to achieve densification within the existing urban edge. The aforementioned principle is also in line with the Overstrand Spatial Development Framework (2006) as well as the Overstrand Growth Management Strategy (2010) that encourages

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amongst other residential densification. The construction of additional dwelling units amongst others is deemed to be an acceptable form of densification and since the second dwelling unit remains part of the same cadastral unit it will not detract from the character and appearance of the surrounding area.

Section 6.1.4 of the Overstrand Zoning Scheme Regulations permits the construction of a second dwelling as a primary right, subject to certain requirements being met, namely:

- (a) the total floor area of the second dwelling units shall not exceed 120m<sup>2</sup>;*
- (b) the same development rules apply as for the primary dwelling unit;*
- (c) one on-site parking bay must be provided to the satisfaction of Council;*  
*and*
- (d) confirmation of the availability of services shall be obtained from the Director: Infrastructure and Planning or his successor in title.*

The second dwelling complies with the aforementioned criteria. The removal of the relevant restrictive title condition is therefore supported. Following approval of the removal of restrictions application, the applicants will be required to submit building plans to the Building Control Department for approval.

**Conclusion**

That the application be supported as per the recommendation below.

**7. Financial Implications**

None

**8. Staff Implications**

None

**9. Comments from other Departments, Divisions and Administrations**

**Building Department**

No objection.

**Protection Services: Fire Brigade**

Attached as Annexure F.

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**Electro Technical Services**

No objection.

**Operational Services**

No comment received.

**10. Annexures**

- Annexure A: Locality Plan
- Annexure B: Site Development Plan
- Annexure C: Motivation Report
- Annexure D: Letter of objection
- Annexure E: Applicants' comment to objection
- Annexure F: Comment: Protection Services: Fire Brigade

**RECOMMENDATION:**

1. that, in terms of the Removal of Restrictions Act, 1967 (Act 84 of 1967) the application for the removal of restrictive title deed condition in order to accommodate the existing second dwelling unit , **be recommended for approval** to the Provincial Government: Western Cape, subject to the following conditions:
  - (a) that building plans be submitted for approval within 30 days from the final approval of the application by the Provincial Government Western Cape to the Building Control Department of the Municipality;
  - (b) that three onsite parking bays in line with the Site Development Plan (attached as Annexure B) be provided for as long as the second dwelling unit remains in existence;
  - (c) that this approval does not absolve the applicant from compliance with any other relevant legislation; and
  - (d) that all other development parameters as prescribed in the relevant Zoning Scheme be complied with.
2. that the applicant be notified of its right of appeal in terms of Section 62 of the Local Government : Municipal Systems Act No 32 of 2000 with regard to the above decision.

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<b>RESPONSIBLE OFFICIAL :</b>	<b>SW VAN DER MERWE</b>
<b>TARGET DATE FOR IMPLEMENTATION :</b>	<b>9 SEPTEMBER 2015</b>
<b>TARGET DATE TO INFORM APPLICANT :</b>	<b>9 SEPTEMBER 2015</b>
<b>TARGET DATE TO INFORM OBJECTOR :</b>	<b>9 SEPTEMBER 2015</b>

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**(028) 313 8900**

**Hermanus Administration**

**25 June 2015**

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**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON  
18 AUGUST 2015, WHICH COMMITTEE SUPPORTED THE RECOMMENDATION**

**RESPONSIBLE OFFICIAL :**

**SW VAN DER MERWE**

**TARGET DATE FOR IMPLEMENTATION :**

**9 SEPTEMBER 2015**

**TARGET DATE TO INFORM APPLICANT :**

**9 SEPTEMBER 2015**

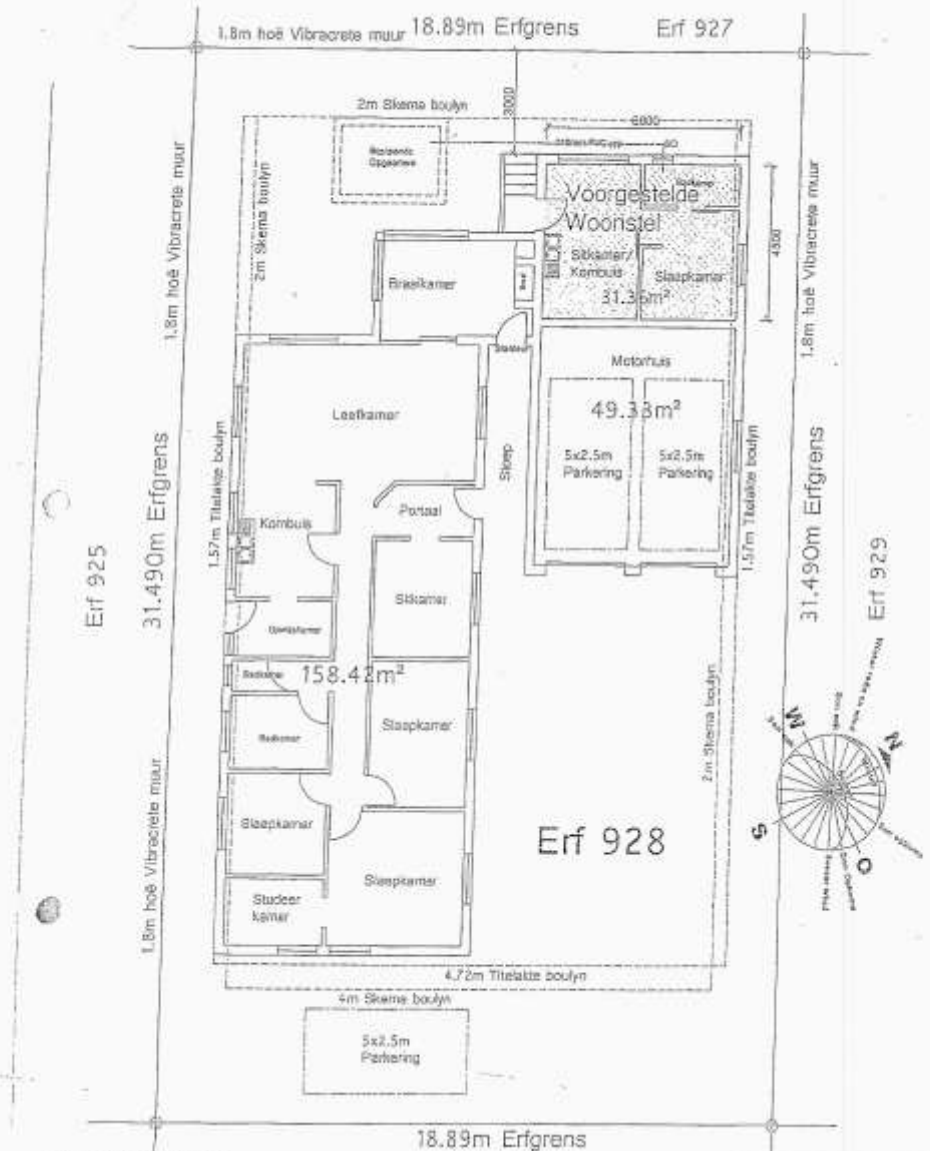
**TARGET DATE TO INFORM OBJECTOR :**

**9 SEPTEMBER 2015**



LOCALITY PLAN  
Ert 928, De Kelders





Onopgeste Kles : H3 Vloerhoogte  
 Rooftelk : 4 persone per huis 207

Oppervlakte:	
Grondoppervlakte:	158.42m <sup>2</sup>
Motorhuis:	49.33m <sup>2</sup>
Woonstel:	31.35m <sup>2</sup>
Sloep:	8.95m <sup>2</sup>
Totaal:	248.05m <sup>2</sup>
Erf:	595.00m <sup>2</sup>
Dekking:	41.68%

### Bergstraat 54



Hiervan bouplan is opgestel volgens die standaard vir boutekeninge : SABS 0142

Voorgeselde Woonstel vir  
 Mnr van der Vyver te erf 928,  
 Bergstraat 54, De Kelders.

Tekening:	Toneelplan
Projek No:	54V/DW14
Skaal:	1:100
Bladsy:	1 van 1
Datum:	27 April 2014

Die Municipale Bestuurder  
 Posbus 26  
 GANSBAAI  
 7220

30 Junie 2014

ERF 928, DE KELDERS : AANSOEK OM OPHEFFING VAN BEPERKENDE  
 TITELAKTEVOORWAARDES (TWEDE WOONEENHEID)

Erf 928, De Kelders is vir enkel residensiële doeleindes gesoneer, 595m<sup>2</sup> groot en geleë te Bergstraat 54, De Kelders. Die eiendom is ontwikkel met 'n woonhuis met gepaardgaande bultegebou en 'n tweede wooneenheid.

Ter oëtergrond:

Ons dogter is enkelouer en werksaam as 'n verpleegster. Ten einde haar in staat te stel om onafhanklik te wees het ons 'n tweede wooneenheid op die eiendom vir haar ingerig. Uit die aard van haar beroep as verpleegster is dit vir ons gerieflik om haar naby ons te hê as gevolg van gesondheidsfaktore en om bystand indien nodig aan ons te verleen. Familie kom ook gereeld by ons besoek af en is dit dus nie nodig om enige kamers te ontruim om familie te akkommodeer nie. In die toekoms kan ek en my vrou ook afskaal en in die woonstel woon en kan ons dogter ons versorg indien nodig.

Overstrand Soneringskema regulasies en Beperkende titelaktevoorwaarde

In terme van die Overstrand Soneringskema regulasies is 'n tweede wooneenheid 'n primêre reg op die eiendom en is die volgende bepaling van toepassing:

1. Die totale vloeroppervlakte van die tweede wooneenheid mag nie 120m<sup>2</sup> oorskry nie.
2. Dieselfde ontwikkelingsreëls geld soos vir die primêre wooneenheid;
3. Een parkeerplek moet voorsien word;
4. Bevestiging van dienste

Voorwaarde F(c) soos vervat in titelakte nr. T18075/91 bepaal onder andere die volgende:

"that no more than one dwelling, together with the necessary outbuildings and appurtenances be erected on this erf....."

Genoemde beperkende titelaktevoorwaarde beperk dus die oprigting van 'n woonhuis op Erf 928, De Kelders tot slegs een. Die doel van die aansoek is dus om die beperkende titelakte voorwaarde op te hef ten einde die bestaande tweede wooneenheid op die eiendom te wettig.

Voldoende parkering kan op die eiendom voorsien word.

Geen addisionale dienste (water, krag, riool, stormwater ens.) word benodig ten einde die tweede wooneenheid op die eiendom te akkommodeer nie.

P.T.O. / B.G.A.

Dit is my mening dat die tweede woonheid nie afbreek doen aan die karakter van die omgewing of die omliggende grondelenaars se bestaande regte nie. Die tweede woonheid voldoen ook aan die vereistes tov tweede woonhede soos vervat in die Overstrand Soneringskema regulasies en is dit nie teenstrydig met die bepalinge van die Overstrand Munisipaliteit nie. Ek versoek dus hiermee dat u my aansoek gunstig sal oorweeg.

baie dankie



M.B. van der Vyver

FILE NO:	EL 928-DK
SCAN NO:	44
COLLABORATOR NO:	776519

Mr. A.L. M. Le Roux  
 BELGSTRAT 52  
 DE KELAELS, 7320

Tel/Faks: (018) 354 0846

11 APRIL 2015

TP- A Theart  
 (Siddhartha)



Vir Aandag:

Mr. S.W. VAN DER MEULE  
 STADSBEPLANNING  
 Overstrand Munisipaliteit

Geogte Menses

AANSOEK INGEVOLGDE WET OP OPHEFFING VAN BEPERKINGSE ERF 938,  
 BELGSTRAT 54, DE KELAELS

Met verwysing na u skrywes gedateer 30 Junie 2014 en 2 Maart 2015  
 respektiewelik, wil ons graag hoern dat by. aansoek onder valse  
 voorwentsels gemaak word en aansoek is vir elektra inkomste.

1. Daar word verwys na "voorgestelde woonstel", maar gevende 2de woon-  
 eenheid word tel van begin af vir verhuur om elektra inkomste in  
 te win, gebruik, m.a.w. toe huis gebou is is 2de woonenheid ook  
 gebou om aan huurders te verhuur. Mens word dit om n Sevissey  
 dume verhuur ± 2 jaar lank verhuur, dus hoef daar nie op die peedel  
 n 2de woonenheid oopgetig te word nie.

2. Ons wil u graag verwys na "ter agtergrond" paragraaf woorde daar  
 aansoek geleen word. Volgens ons by sy dopter verhoj Jan. 2013 binnes-  
 huis en is sy werksaam by n De. Kelaels as ontwerpselame. Gewins  
 word daar gese dat dit verhuur word nie (2de woonenheid).

B.O.A.

12 APR 2015

3. Die "sinnamer" woorde verwys word op plan links van portaal is in "slaapkamer", dit is dus nie nodig om enige kamers te ontruim as familie beselle ofte nie, want daar is 12 slaapkamers beskikbaar (verwys na huisplan).
4. Daar is 8 ander huise rondom erf 928 waar daar nie permanente huisbewoners self hul huise bewoon nie, maar wel uitverhuur en dat erf 924 in oop erf is, daarom wil ons dat daar geen bewoos van hul sal wees nie.
5. Ons as direkte inwoners van erf 928, wil ons net room dat in die verlede daar skermise regtelike ure gewes het ~~28~~ 4 opel van onopgetuie wie die woonheid huur, daar toeters, harde geproxy en vinnig wegtrek met n voortuig is. Ons slaapkamer is aangrensend aan erf 928 in die pad.

As direkte inwoners dra dit jensins ons goedkeuring weg nie in wil room dat die aangrensende muur nie 1,8 m is nie, en op 3 verskillende plekke gemeet met 'n mate van 1,6m. Indien dit u goedkeuring dra, sal dit beskies word dat muur met 2m van voor tot agter gelyk en gelyk word aan ons kant met kleur wat tans op is.

Die Uwe

Mr. A. W. Kaur

Mr. M. Kaur

ANNEXURE E 1/3

FILE NO:	EL 928-DK
SCAN NO:	13
COLLABORATOR NO:	785322

Mr. J.A. & M.B. vd. Vyver  
BERGSTRAAT 54  
DE KELDERS 7220

TEL.: 028-3842281

TR. A Theart

(SvdMerwe)

19 MEI 2015

AANDAG:

MNR. S.W. VAN DER MERWE  
STADSBEPLANNING  
OVERSTRAND MUNISIPALITEIT



GEGAGTE MENEER.

AANSOEK INGEVOLGE WET OP OPHEFFING  
VAN BEPERKINGS: ERF 928, BERGSTRAAT 54,  
DE KELDERS.

Ons wil reageer op die aantygings  
van aansoek onder valse voorwendsels  
gemaak: Hulle maak van ons  
leuenars deur om uit afguns die  
werklike aansoek om wettige titelakte  
vir woonstel mis te kyk.

1. Die klaer woon ± 4 jaar by genoemde  
adres „Bergstraat 52“, Hulle bewering  
van verhuring is verkeerd, aangesien  
huis vanaf einde 1999 bewoon word.  
Dit lyk vir ons alles gaan oor die  
ekstra inkomste - vergoeding. Van ons  
kinders was ook afhanklik vir die  
huur van 'n buite woonstel en

B. O. A.

21 MAY 2015

en tuis loseer. Ons as ouers was baie bly dat hulle 'n dak oor hul kop gehad het, in die groot stede.

2 Dit is jammer dat klaer vir ons wil voorskryf hoe ons, ons private huishouding moet beplan. Weereens gaan dit oor uithuur vergoeding.

3 Die sitkamer  $\pm$  3mt x 3mt is 'n rekenaar kamer! Dit is verregaande dat klaer as buite staander in ons private huishouding wil besluit!

4 Uit die aard van die besware op papier sal dit net :-

A.W. & M. le Roux wees wat kla!  
Die mening is as gevolg van 'n persoonlike vete!

5 Die nagtelike steurnisse is onwaar. Ons slaapkamer is 4mt nader aan pad en 1mt. van ons oprit. Nooit het ons wakker geword nie want dan sal ons opgetree het teen steurnisse. Wat ons wel 'n paar keer gesteur het, is wanneer mnr. A. le Roux van 'n skou afkom met sy woonwa. Gewoonlik op 'n Sondag nag tussen 12m en 2.00m. Dit word dan met die bakkie in tru-rat

B.O.A.

3.

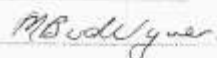
in die erf gestoot. Dan word die bakkie se masjien opgejaag om oor die sypaadjie te kan kom, asook die begeleiding van STOP, LINKS, REGS en VORENTOE en die begeleider se stem moet kompeteer met die bakkie se masjien se gedruis. Die woonwa met sy inhoud word vir ekstra inkomste gebruik!

6 Die aangrensende muur is 1.8mb, met 6 panele. Hulle het hul agterplaas sement gegooi. Die kant teen die muur is opgevuul met 'n sementlaag met stene en sement opgebou. Die gevolg van 20cm. laer as 1.8mb. Ter opsomming van al die klagtes skyn dit of dit 'n finansiële aanslag teen ons te wees.

Die uwe.



Mr. J.A. vd. Vyver



Mev M.B. vd Vyver

File reference:	2523
Date:	30 April 2015

Munisipaliteit • W. Kaapstad • Municipality

**OVERSTRAND****INTERNAL MEMORANDUM**

From	:	Town Planning Department
Town Planner	:	Schalk van der Merwe

**TO:**

Area Manager	Building Department	District Health	Electrical Department
Environmental Officer	Fire Department ✓	Infrastructure and Planning	Local Heritage Committee
Operational Services	Traffic Department	Ward Councillor	Waste Management

Property Details	ERF 928 DE KELDERS
Application Description	REMOVAL OF RESTRICTIVE TITLE DEED CONDITION

**ATTACHMENTS :**

1. Notice	Should the information be insufficient for you to make an informative comment, please list any additional documentation that you would require to make informed comments.
2. Locality Plan	
3. Site & Ground Floor Plans	
4. Motivation	

**YOUR DEPARTMENT'S COMMENTS:**

- ① A 30 minute roof height, beam filled fire wall must be provided between the 2nd Dwelling and garage.
- ② 2nd Dwelling results in the occupation classification H4 to change to H3 in terms of National Building Regulation

Signature:		Date:	2015
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MUNISIPALITEIT OVERSTRAND MUNICIPALITY

FIRE BRIGADE / BRANDWEERS

APPROVED / GOEDGEKEUR

2015

Please provide your comments with specific reference to any conditions of approval that should be imposed in the space provided above or in a separate Memo by not later than the date stipulated below. If you require an extension of time for submission of comments, kindly request this in writing. Should no comments be received, it will be assumed that you have no objection to the proposal and where appropriate, the Mayoral Committee will be informed accordingly.

**COMMENTS REQUIRED BY: 15 MAY 2015**