

**AGENDA of the  
Portfolio Committee : Infrastructure & Planning  
22 March 2016  
(Also the agenda for the Mayoral Committee Meeting : 30 March 2016)**

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25.

**DE KELDERS: RESCISSION AND SUBSTITUTION OF COUNCIL RESOLUTION DATED 25 JUNE 2008 FOR THE SALE OF ERF 1196, DE KELDERS: BETWEEN GUTHRIE AND VYFER STREETS: TURNSTONE TRADING 48 CC (WHALE COVE DEVELOPMENT)**

7/2/3/2/

A Kotze

(028) 316 - 3724

Hermanus Administration

18 February 2016

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**1. Executive Summary**

To obtain approval for the rescission and subsequent substitution of Council resolution dated 25 June 2008 for the sale of Erf 1196, De Kelders, to Turnstone Trading 48 CC (Whale Cove Development). The amendment will, amongst others, entail the substitution of the purchaser with the Whale Cove Master Property Home Owners Association and the amendment of the purchase price.

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

Infrastructure and Planning  
Property Administration

**3. Compliance with Strategic Priorities**

Provision of democratic, accountable and ethical governance  
The encouragement of structured community participation in the matters of the municipality  
Promotion of tourism, economic and social development

**4. Delegated Authority**

None

**5. Legal Requirements**

- Administration of Immovable Property Policy of the Overstrand Municipality, as amended
- Local Government: Municipal Finance Management Act, Act 56 of 2003
- Municipal Asset Transfer Regulations (R. 878 of 2008)

**AGENDA of the  
Portfolio Committee : Infrastructure & Planning  
22 March 2016  
(Also the agenda for the Mayoral Committee Meeting : 30 March 2016)**

---

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

### **Background/Discussion**

#### Background:

The former De Kelders Hotel was situated on Erven 1072-1078, 1121, 1122, 1125, 1126 and 1183, De Kelders (hereinafter called the private properties), at the corner of Guthrie and Cliff Streets. These private properties were sold where after the Whale Cove apartment development was approved. Erf 1196, De Kelders, is located approximately within the centre of this private development and is  $\pm 526\text{m}^2$  strip of land which is shown as closed road at the records of the Surveyor General. The municipality is the owner of Unregistered Erf 1196, De Kelders. This portion of land was reserved for public street purposes, but was not utilised as such. The former hotel was in fact built over the entire Erf 1196, De Kelders. The Whale Cove development was approved during 2006 inter alia with the proviso that Erf 1196, De Kelders must be sold to the owners of the private properties at a market related price which was accepted by both parties. Important to note is that due to the physical layout and locality of Erf 1196, De Kelders, it would not be possible for anyone else to develop the erf independently. The development was approved around this single access road and has no alternative access.

#### Property:

Currently Erf 1196, De Kelders, is an unregistered erf and a subdivision of the Remainder of Farm nr 712. The subdivision diagram must still be registered in the Deeds Office, which can be done by means of this alienation. However, the Remainder of Farm nr 712 must still be registered in the name of Overstrand Municipality by means of an endorsement as it represents public road and road remainder.

#### Council approval:

Council subsequently resolved on 25 June 2008 as follows:

- “1. that Erf 1196, De Kelders be sold, out of hand to Turnstone Trading 48 CC, the adjacent owners of Erven 1072-1078, 1121, 1122, 1125, 1126 and 1183, De Kelders at R445 000.00 (VAT excluded) subject to the conditions of Council’s Asset Management Policy dated 1 November 2004 and at the cost of the purchaser;*

**AGENDA of the  
Portfolio Committee : Infrastructure & Planning  
22 March 2016  
(Also the agenda for the Mayoral Committee Meeting : 30 March 2016)**

---

2. *that Erf 1196, De Kelders be consolidated with Erven 1072-1078, 1121, 1122, 1125, 1126 and 1183, De Kelders but only after Erf 1196, De Kelders has been rezoned from ordinary erf to Central Business Zone, by and at the cost of Turnstone Trading 48 CC;*
3. *that the rezoning and consolidation of Erf 1196, De Kelders be finalised by Turnstone Trading 48 CC within 12 months after the registration of the property into the name of the purchaser;*
4. *that the objection received against the sale of Erf 1196, De Kelders to Turnstone Trading 48 CC be rejected for the reasons stipulated under item 6.2 of the report;*
5. *that the application of Deneys Reitz Attorneys on behalf of Turnstone Trading 48 CC, the owners of Erven 1072-1078, 1121, 1122, 1125, 1126 and 1183, De Kelders for a re-adjustment of the purchase price of R445 000.00 (VAT excluded) in terms of their motivation, be refused;*
6. *that notice be taken that the following provisions of Section 14 of the Local Government: Municipal Finance Management Act, 2003 (No. 56 of 2003) have been complied with:*
  - (a) *that Erf 1196, De Kelders is not needed to provide the minimum level of basic municipal services and that the fair market value and the economic and community value to be received in exchange for the land have been obtained and considered, and*
  - (b) *that the sale of Erf 1196, De Kelders is fair, equitable, transparent, competitive and consistent with the Supply Chain Management Policy of Council."*

The abovementioned approval for the sale of Erf 1196 De Kelders was given in terms of Council's Asset Management Policy of 2004 on the basis that this property is essential to provide access to the apartment development and is non-viable property which can be of no practical use to any other person/entity. A public participation process was followed before the abovementioned approval was obtained.

Valuation:

- (a) Municipal valuation: The value of the property in terms of the 2008/2009 General Valuation roll was R585,000.00 (FIVE HUNDRED AND EIGHTY FIVE THOUSAND RAND) (VAT included). The 2012/2013 valuation roll indicates a zero value.

**AGENDA of the  
Portfolio Committee : Infrastructure & Planning  
22 March 2016  
(Also the agenda for the Mayoral Committee Meeting : 30 March 2016)**

---

- (b) 2008 market related valuation: A valuation for sale purposes was done in 2008 where the market related purchase price was determined at an amount of R445,000.00 (FOUR HUNDRED AND FOURTY FIVE THOUSAND RAND) (VAT excluded), which was confirmed by the appointed valuer on 7 April 2008. The value was determined taking into consideration the property sales in the vicinity, the zoning of the said property and for what purpose it will be developed and used. It was envisaged that this property must be rezoned to Central Business Zone to be consolidated with the adjoining properties (which will now be a notarial tie).
- (c) 2012 market related valuation: A new valuation was done on 5 March 2012 when a new request was submitted to purchase the property. The valuer indicated, that should the property be valued as a ordinary erf ("volwaardige erf") then the value is determined at an amount of R595,000.00 (FIVE HUNDRED AND NINETY FIVE THOUSAND RAND) (VAT excluded). However, he indicated further that as the property cannot be developed independently, but will add value to the development, the value of the property is determined at an amount of R200,000.00 (TWO HUNDRED THOUSAND RAND) (VAT excluded).
- (d) 2016 market related valuation: Our Valuers, Boland Valuers BK, provided a new valuation of the property to the Whale Cove Home Owners Association for the purchase of the property. In this valuation, the valuers indicated that although the property is a non-viable property (i.e. cannot be developed on its own) it does have a value for the development itself and will add value to the development. However, the overall market, especially in the Gansbaai area, has dropped in the last year, which must also be taken into consideration. The latter was discussed with Mr Hendri Badenhorst (Boland Valuers BK) who confirmed same. The property was therefore valued at an amount of R165,000.00 (ONE HUNDRED AND SIXTY FIVE THOUSAND RAND) (VAT excluded).

The Whale Cove Master Property Home Owners Association requests that the property be alienated to them at an amount of R165,000.00 (ONE HUNDRED AND SIXTY FIVE THOUSAND RAND) VAT excluded. This Association will at the end be the Master Home Owners' Association for the whole Whale Cove Development, which will consist of representatives of Whale Cove A (erven 1072, 1073 and 1074, De Kelders), Whale Cove B (erven 1076 and 1077, De Kelders), Whale Cove BB (Jovanka Trading CC – erven 1075 and 1078, De Kelders) and Whale Cove C and D (Van der Werf Familie Trust – erven 1121, 1122, 1125, 1126 and 1183).

All three valuation reports (all done by Boland Valuers BK) were perused and it was found that the valuations done in 2012 and 2016 are a more correct

**AGENDA of the  
Portfolio Committee : Infrastructure & Planning  
22 March 2016  
(Also the agenda for the Mayoral Committee Meeting : 30 March 2016)**

---

reflection of the status of the erf. The methodology used in determining the value of the property is in line with the proposed use thereof by the development. As the market has taken a plunge since 2012, which is evident from the yearly valuations done by the Property Administration Department for the updating of the Fixed Asset Register, it is recommended that the valuation done in 2016 be accepted. We must also take into consideration that this particular erf cannot be sold to any other person/entity as it is the current access to the development and forms part of the initial approval of the development by the Overstrand Municipality.

Purchaser:

The initial approved Purchaser was Turnstone Trading 48 CC, who was the developer and owner of Erven 1072-1078, 1121, 1122, 1125, 1126 and 1183, De Kelders. Turnstone Trading 48 CC however never took transfer of Unregistered Erf 1196, De Kelders as it did not accept the conditions imposed by Council when the alienation was approved, specifically as to the purchase price.

Since obtaining the abovementioned approval, Turnstone Trading 48 CC (in liquidation) sold and transferred erven 1075 and 1078 De Kelders to Jovanka Trading CC. Erven 1072, 1073 and 1074 are in ownership of the Whale Cove A Body Corporate and erven 1076 and 1077 in ownership of the Whale Cove B Body Corporate. Erven 1121, 1122, 1125, 1126 and 1183 was sold to the Van der Werf Familie Trust, but not yet registered in the Deeds Office.

Taking the above into consideration, and as it is not practical to transfer unregistered Erf 1196, De Kelders, to Turnstone Trading 48 CC, it is recommended that the name of the purchaser as contained in the Council Resolution dated 25 June 2008 be substituted with the Whale Cove Master Property Home Owners Association, being the Master Home Owners' Association for the Whale Cove Development.

Notarial Tie vs Consolidation:

The approval obtained in June 2008 stated that "*Erf 1196, De Kelders be consolidated with Erven 1072-1078, 1121, 1122, 1125, 1126 and 1183, De Kelders but only after Erf 1196, De Kelders has been rezoned from ordinary erf to Central Business Zone, by and at the cost of Turnstone Trading 48 CC*". A consolidation of erven is only possible if all the erven belong to one owner (as the case was when Turnstone Trading 48 CC was the owner of all the erven). As the 12 initial erven are now in separate ownership, it is not possible to consolidate the erven anymore. In this case, it is recommended that a notarial tie be affected to tie all the properties in the Whale Cove development to each other and to unregistered Erf 1196, De Kelders (once the registration of the transfer of the latter erf is effected in the Deeds Office).

**AGENDA of the  
Portfolio Committee : Infrastructure & Planning  
22 March 2016  
(Also the agenda for the Mayoral Committee Meeting : 30 March 2016)**

---

A notarial tie will also give effect to the Court order obtained in April 2015 in the High Court of South Africa (Western Cape Division, Cape Town) which states that:

*“2.1 The abovenamed First Respondent (“Turnstone”) and its successors in title:*

*2.1.1 are and will be obliged to notarially tie the Jovanka erven simultaneously with the opening of a sectional title register in respect of a sectional title scheme thereon to be known as Whale Cove BB Sectional Title Scheme, or earlier if required by the Applicant (“the Municipality”);*

*2.1.2 will upon the opening of the said Whale Cove BB Sectional Title Register, be bound by the Articles of Association of the Whale Cove Property Homeowners’ Association (“the WCPHOA”), and are bound to do all things to ensure that purchasers and owners of all units in the Whale Cove BB Sectional Title Scheme shall be obliged to become members of the WCPHOA;*

*2.1.3 are and will be obliged to notarially tie the Jovanka erven to all the other erven in the Whale Cove Development (being erven 1072, 1073, 1074, 1076, 1077, 1121, 1122, 1125, 1126 and 1183, De Kelders) to preserve the identity of the Whale Cove Development as a whole;*

*2.1.4 are bound to negotiate in good faith with the Municipality to reach agreement on electricity and services supplied to the Jovanka erven; and*

*2.1.5 are bound to negotiate in good faith with the Municipality, together with the Whale Cove Property Owners’ Association and Turnstone (or its successor in title to erven 1121, 1122, 1125, 1126 and 1183, De Kelders) for the acquisition of the de facto access road comprising Erf 1196, De Kelders.”*

### **Evaluation**

A: Administration of Immovable Property Policy of the Overstrand Municipality:

The following conditions of the said Policy will apply to both or either of the two portions:

**Paragraph 7: “The transfer of ownership of immovable property must be fair, equitable, transparent, competitive (unless it is not applicable or unpractical e.g. non-viable immovable property) and consistent with the supply chain management policy of the Municipality in accordance with Section 14(5) of the MFMA.”**

**AGENDA of the  
Portfolio Committee : Infrastructure & Planning  
22 March 2016  
(Also the agenda for the Mayoral Committee Meeting : 30 March 2016)**

---

Council has already followed a process for the alienation of unregistered Erf 1196, De Kelders, and has already approved the alienation.

**Paragraph 9(1)(a):** *“The Municipality may transfer ownership or otherwise dispose of a non-exempted immovable property only after the Municipal Council has, in terms of sections 14(2)(a) and (b) of the MFMA decided on reasonable grounds that the immovable property is not needed to provide the minimum level of basic municipal services.”*

Council has already decided that the subject property is not needed to provide the minimum level of basic municipal services.

**Paragraph 9(1)(b):** *“The Municipality may transfer ownership or otherwise dispose of a non-exempted immovable property only after the municipal council, in terms of sections 14(2)(a) and (b) of the MFMA considered the fair market value of the immovable property and the economic and community value to be received in exchange for the immovable property in accordance with Section 14(2) of the MFMA.”*

Boland Valuers determined the market related value of unregistered Erf 1196, De Kelders, at an amount of R165,000.00 (ONE HUNDRED AND SIXTY FIVE THOUSAND RAND) (VAT excluded).

**Paragraph 9.2:** *“The Municipality may transfer ownership or otherwise dispose of a non-viable immovable property, as non-exempted immovable property which can be of no practical use to any other person, directly to adjoining property owner(s), only after the Municipal Council has, in terms of sections 14(2)(a) and (b) of the MFMA”*

Unregistered Erf 1196, De Kelders, can be classified as a non-viable property.

**Paragraph 28:** *“All costs pertaining to a transaction shall be borne by the successful bidder/purchaser, e.g. survey, advertisements, valuation, rezoning, relocation or provision of services where necessary, etc. The Municipality may, however, waive its right to claim the costs should it be to its advantage to bear the costs.”*

The purchaser will be liable for all costs, excluding the costs for the valuation. Subsequently the costs will entail the subdivision, notarial tie, transfer costs, the connection of services and the rezoning of the property.

**AGENDA of the  
Portfolio Committee : Infrastructure & Planning  
22 March 2016  
(Also the agenda for the Mayoral Committee Meeting : 30 March 2016)**

---

**Paragraph 30: “Small areas of land such as closed roads or portions of public place sold to an adjacent owner must be consolidated with the existing property of the adjacent owner, unless circumstances exist which, in the opinion of the Municipality, make such consolidation undesirable.”**

A consolidation will not be legally possible. It is recommended that the all the properties in the Whale Cove Development be notarially tied to each other and to unregistered Erf 1196, De Kelders, as per the Court Order obtained in 2015.

**Paragraph 33: “The agreement might contain a suspensive condition in respect of immovable property which is sold subject to approval in terms of land use planning legislation.”**

A condition to this effect will be included in the Deed of Sale.

**Paragraph 34: “A 10% deposit of the agreed/tendered purchase price will be due and payable by the purchaser/successful bidder within 10 days of date of request in writing thereof by the Municipality.”**

A condition to this effect will be included in the Deed of Sale.

**Paragraph 35: “Interest on the purchase price, as from date of signature of the deed of sale, must be charged by the Municipality should payment or transfer be delayed due to an action or failure on the part of the successful bidder/ purchaser.”**

A condition to this effect will be included in the Deed of Sale.

**B: Advertisement/Notification**

The necessary advertisement in terms of Section 14 of the Local Government: Municipal Finance Management Act (Act 56 of 2003) was placed before the approval was obtained from Council to alienate the property.

**Conclusion**

It is recommended that conditions 1 to 6 of the Council resolution dated 25 June 2008 be rescinded. It is further recommended that conditions 1 to 4 and 6 as contained in abovementioned resolution be substituted with the following conditions:

**AGENDA of the  
Portfolio Committee : Infrastructure & Planning  
22 March 2016  
(Also the agenda for the Mayoral Committee Meeting : 30 March 2016)**

---

1. that direct alienation and transfer of unregistered Erf 1196, De Kelders, to the Whale Cove Master Property Home Owners Association at an amount of R165,000.00 (ONE HUNDRED AND SIXTY FIVE THOUSAND RAND) (VAT excluded), **be approved**;
2. that Council take cognisance of the fact that the direct alienation is only approved as unregistered Erf 1196, De Kelders, is classified as a non-viable property;
3. that unregistered Erf 1196, De Kelders, be notarially tied with Erven 1072-1078, 1121, 1122, 1125, 1126 and 1183, De Kelders, but only after Erf 1196, De Kelders has been rezoned from ordinary erf to General Business Zone II, at the cost of the purchaser;
4. that the rezoning and notarial tie of unregistered Erf 1196, De Kelders, be finalized by purchaser within 12 months after the registration of the property in the Deeds Office;
5. that the initial objection received against the alienation of unregistered Erf 1196, De Kelders, be rejected for the reasons stipulated under item 6.2 of the report that served before Council on 25 June 2008;
6. that all the costs pertaining to the transaction, e.g. subdivision, rezoning, transfer costs, water- and sewer connections (if applicable), bulk services contribution (if applicable), etc., excluding the valuation costs, be paid by the purchaser; and
7. that it is confirmed that Council has taken cognisance of the fact that the Municipal property herewith alienated is not required for the provision of basic municipal services in terms of the provisions of Section 14 of the Local Government: Municipal Finance Management Act (Act 56 of 2003).

## **7. Financial Implications**

The Municipality stands to gain the market related purchase price of R165,000.00 (VAT excluded) for the property.

In terms of the Services Agreement the developer has to provide and install a new 500kVA miniature substation for the development. The anticipated maximum demand of the development currently under consideration (Blocks A, B and BB) is 106.5kVA. Therefore, the municipality will have to purchase the spare capacity of 393.5kVA from the developer at a cost of R386,983.19, based on the approved tariffs for 2015/16 financial year.

**AGENDA of the  
Portfolio Committee : Infrastructure & Planning  
22 March 2016  
(Also the agenda for the Mayoral Committee Meeting : 30 March 2016)**

---

It is therefore recommended that the purchase price of R165,000.00 be set towards the purchase of the spare capacity in future.

It will be made a condition of sale that the property cannot be transferred before the municipality has taken transfer of the new 500kVA miniature substation.

**8. Staff Implications**

None

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

The comments of the internal departments were obtained when the initial approval for the alienation of the property was obtained on 25 June 2008.

**10. Annexures**

Annexure A: Locality plan

Annexure B: Diagram of unregistered Erf 1196, De Kelders

**RECOMMENDATION TO THE COUNCIL:**

1. that direct alienation and transfer of unregistered Erf 1196, De Kelders, to the Whale Cove Master Property Home Owners Association at an amount of R165,000.00 (ONE HUNDRED AND SIXTY FIVE THOUSAND RAND) (VAT excluded), **be approved**;
2. that Council take cognisance of the fact that the direct alienation is only approved as unregistered Erf 1196, De Kelders, is classified as a non-viable property;
3. that unregistered Erf 1196, De Kelders, be notarially tied with Erven 1072-1078, 1121, 1122, 1125, 1126 and 1183, De Kelders, but only after Erf 1196, De Kelders has been rezoned from ordinary erf to General Business Zone II, at the cost of the purchaser;
4. that the rezoning and notarial tie of unregistered Erf 1196, De Kelders, be finalized by purchaser within 12 months after the registration of the property in the Deeds Office;
5. that the purchase price of R165,000.00 be set towards the purchase of the spare electrical capacity;

**AGENDA of the  
Portfolio Committee : Infrastructure & Planning  
22 March 2016  
(Also the agenda for the Mayoral Committee Meeting : 30 March 2016)**

---

6. that it will be made a condition of sale that the property cannot be transferred before the Municipality has taken transfer of the new 500kVA miniature substation;
7. that the initial objection received against the alienation of unregistered Erf 1196, De Kelders, be rejected for the reasons stipulated under item 6.2 of the report that served before Council on 25 June 2008;
8. that all the costs pertaining to the transaction, e.g. subdivision, rezoning, transfer costs, water- and sewer connections (if applicable), bulk services contribution (if applicable), etc., excluding the valuation costs, be paid by the purchaser; and
9. that it is confirmed that Council has taken cognisance of the fact that the Municipal property herewith alienated is not required for the provision of basic municipal services in terms of the provisions of Section 14 of the Local Government: Municipal Finance Management Act (Act 56 of 2003).

<b>RESPONSIBLE OFFICIAL :</b>	<b>A KOTZE</b>
<b>TARGET DATE FOR IMPLEMENTATION :</b>	<b>29 APRIL 2016</b>
<b>TARGET DATE TO INFORM APPLICANT :</b>	<b>15 APRIL 2016</b>
<b>TARGET DATE TO INFORM OBJECTOR :</b>	<b>N/A</b>

**AGENDA of the  
Portfolio Committee : Infrastructure & Planning  
22 March 2016  
(Also the agenda for the Mayoral Committee Meeting : 30 March 2016)**

---

25.

**DE KELDERS: RESCISSION AND SUBSTITUTION OF COUNCIL RESOLUTION DATED 25 JUNE 2008 FOR THE SALE OF ERF 1196, DE KELDERS: BETWEEN GUTHRIE AND VYFER STREETS: TURNSTONE TRADING 48 CC (WHALE COVE DEVELOPMENT)**

*7/2/3/2/*

**A Kotze**

**(028) 316 - 3724**

**Hermanus Administration**

**18 February 2016**

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**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON 22 MARCH 2016, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:**

**RECOMMENDATION TO THE COUNCIL:**

1. that direct alienation and transfer of unregistered Erf 1196, De Kelders, to the Whale Cove Master Property Home Owners Association at an amount of R165,000.00 (ONE HUNDRED AND SIXTY FIVE THOUSAND RAND) (VAT excluded), **be approved**;
2. that Council take cognisance of the fact that the direct alienation is only approved as unregistered Erf 1196, De Kelders, is classified as a non-viable property;
3. that unregistered Erf 1196, De Kelders, be notarially tied with Erven 1072-1078, 1121, 1122, 1125, 1126 and 1183, De Kelders, but only after Erf 1196, De Kelders has been rezoned from ordinary erf to General Business Zone II, at the cost of the purchaser;
4. that the rezoning and notarial tie of unregistered Erf 1196, De Kelders, be finalized by purchaser within 12 months after the registration of the property in the Deeds Office;
5. that the purchase price of R165,000.00 be set towards the purchase of the spare electrical capacity;
6. that it will be made a condition of sale that the property cannot be transferred before the Municipality has taken transfer of the new 500kVA miniature substation;
7. that the initial objection received against the alienation of unregistered Erf 1196, De Kelders, be rejected for the reasons stipulated under item 6.2 of the report that served before Council on 25 June 2008;
8. that all the costs pertaining to the transaction, e.g. subdivision, rezoning, transfer costs, water- and sewer connections (if applicable), bulk services contribution (if applicable), etc., excluding the valuation costs, be paid by the purchaser; and

**AGENDA of the  
Portfolio Committee : Infrastructure & Planning  
22 March 2016  
(Also the agenda for the Mayoral Committee Meeting : 30 March 2016)**

---

9. that it is confirmed that Council has taken cognisance of the fact that the Municipal property herewith alienated is not required for the provision of basic municipal services in terms of the provisions of Section 14 of the Local Government: Municipal Finance Management Act (Act 56 of 2003).

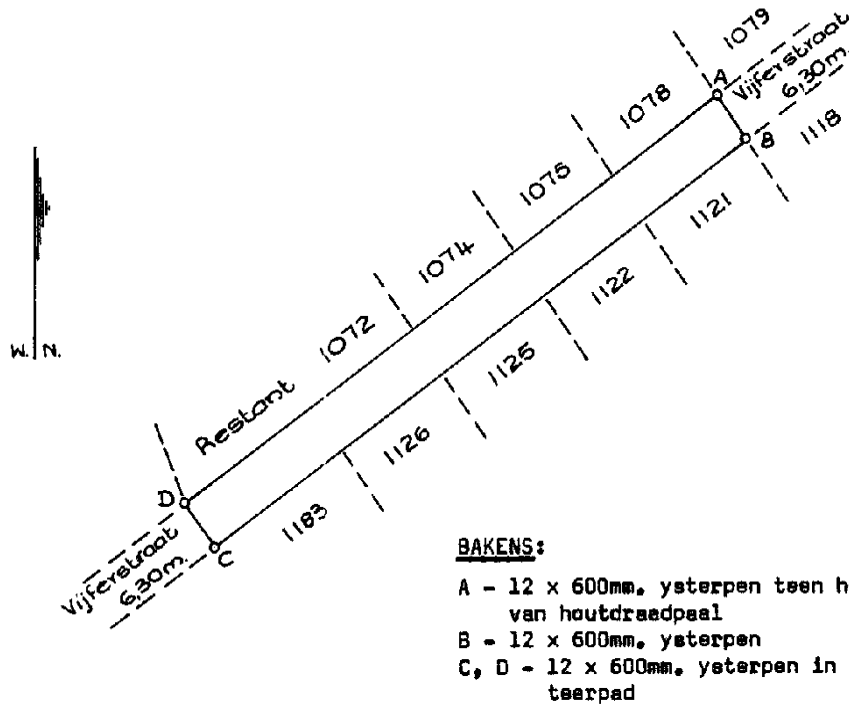
<b>RESPONSIBLE OFFICIAL :</b>	<b>A KOTZE</b>
<b>TARGET DATE FOR IMPLEMENTATION :</b>	<b>29 APRIL 2016</b>
<b>TARGET DATE TO INFORM APPLICANT :</b>	<b>15 APRIL 2016</b>
<b>TARGET DATE TO INFORM OBJECTOR :</b>	<b>N/A</b>



KANTOORAFSKRIF

K53 (200)

SYE METER		RIGTINGS-HOEKE	KOORDINATE		L.G. No.
			Y	Stelsel Plaaslik X	
AB	6,41	270.00.00	A + 1 006,41	+ 937,00	5951/82 Goedgekeur <i>[Handwritten Signature]</i> Landmeter-generaal 1983-07-22
BC	82,78	0.00.00	B + 1 000,00	+ 937,00	
CD	6,31	90.00.00	C + 1 000,00	+ 1 019,78	
DA	82,78	179.56.00	D + 1 006,31	+ 1 019,78	



**BAKENS:**  
 A - 12 x 600mm. ysterpen teen hoek van houtdraadpaal  
 B - 12 x 600mm. ysterpen  
 C, D - 12 x 600mm. ysterpen in teerpad

Skaal 1: 750

Die figuur A B C D

stel voor

526 vk. meter

grond, synde

ERF 1196 DE KELDERS

geleë in Plaaslike Gebied D: Kelders

Administratiewe Distrik

Caledon

Provinsie Kaap die Gooie Hoop.

Opgemeet in Junie - Julie 1982

deur my,

*[Handwritten Signature]*  
Landmeter

Hierdie kaart is geheg aan No. gedateer t.g.v.

Die oorspronklike kaart is. No. 581/1831 geheg aan Transport/Grondbrief No. Sw. Q. 7. 12

Lêer No. S. 125/9  
M.S. No. E. 176/82  
Komp. AI-58A/Z52 (489)  
Alg. Plan K. 53 (2981)

Registrateur van Aktes