



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

**A G E N D A**

|               |  |
|---------------|--|
| <b>DATE:</b>  | <b>1 NOVEMBER 2018</b>                               |
| <b>VENUE:</b> | <b>TOWN PLANNING COMMITTEE<br/>ROOM<br/>HERMANUS</b> |
| <b>TIME:</b>  | <b>14:00</b>   |

# OVERSTRAND MUNICIPALITY

Office of the Municipal Manager  
Civic Centre  
HERMANUS  
7200

**10 October 2018**

**TO : THE CHAIRPERSON AND MEMBERS OF THE MUNICIPAL PLANNING TRIBUNAL**

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

**NOTICE IS HEREBY GIVEN** that a meeting of the **Municipal Planning Tribunal (MPT)** will go into session on **Thursday, 1 November 2018 at 14:00, Town Planning Committee Room, 16 Paterson Street, Hermanus**, to consider the attached agenda.

You are kindly requested to submit any amendments/additions to Ms S Swart ([sswart@overstrand.gov.za](mailto:sswart@overstrand.gov.za)) on or before **17 October 2018**.

**STEPHEN MÜLLER**  
**CHAIRPERSON : MUNICIPAL PLANNING TRIBUNAL**

## **Distribution:**

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

**1. OPENING**

**2. APPLICATIONS FOR LEAVE OF ABSENCE**

**3. CONFIRMATION OF MINUTES**

**3.1 Minutes of a Municipal Planning Tribunal Meeting held on 30 August 2018**

**3.2 Minutes of a Municipal Planning Tribunal Meeting held on 10 October 2018**

**4. ITEMS FOR CONSIDERATION**

**4.1 ERF 113, 8 CLIFF STREET, DE KELDERS, OVERSTRAND MUNICIPAL AREA : REMOVAL OF RESTRICTIVE CONDITIONS AND DEPARTURE : MESSRS PLAN ACTIVE TOWN- AND REGIONAL PLANNERS ON BEHALF OF JW OTTEN**

Report attached

**4.2 PORTION 2 OF THE FARM LANGKLOOF RIVER 725, A DIVISION OF CALEDON, OVERSTRAND MUNICIPAL AREA: PROPOSED AMENDMENT OF CONDITIONS OF APPROVAL AND SITE DEVELOPMENT PLAN: MESSRS PLANACTIVE TOWN- AND REGIONAL PLANNERS ON BEHALF OF MISTY MOUNTAINS ESTATES (PTY) LTD**

Report attached

# MUNICIPAL PLANNING TRIBUNAL (MPT)

1 November 2018

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## 4.1

**ERF 113, 8 CLIFF STREET, DE KELDERS, OVERSTRAND MUNICIPAL AREA : REMOVAL OF RESTRICTIVE CONDITIONS AND DEPARTURE : MESSRS PLAN ACTIVE TOWN- AND REGIONAL PLANNERS ON BEHALF OF JW OTTEN**

113 GDK (3835)

P Roux

20 July 2018

(028) 313 8900

Hermanus Administration

**1. EXECUTIVE SUMMARY**

An application has been received on 17 November 2017 from Messrs PlanActive Town- and Regional Planners on behalf of the owner of Erf 113, De Kelders, JW Otten, for the following:

- ❖ departure in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 (By-Law) to relax lateral building line from 2m to 0m to accommodate the existing braai and built deck; and
- ❖ removal of restrictive title deed conditions in terms of Section 16(2)(f) of the By-Law for the removal of restrictive title deed conditions applicable to the property.

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

**2. DECISION AUTHORITY**

Municipal Planning Tribunal

**3. BACKGROUND / SITE HISTORY**

Erf 113, De Kelders is zoned for residential use, is zoned for residential purposes and is developed with a dwelling and various illegal structures. The illegal structures include a deck which is constructed more than 1m above the natural ground level and a braai. A previous application was approved in 2017 for a departure of the Scheme Regulations in order to depart from the 2,1m height restriction for boundary walls to construct a proposed 3,7m high boundary wall on the western boundary for privacy and security purposes. In the previous motivation the applicant confirmed that the braai and deck will be removed.

On 17 November 2017 a new application was submitted in order to legalise and retain the braai and deck.

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

The detailed motivation for the proposed application is attached to the item and must be read together with this summary below:

- ❖ The existing braai and deck was constructed on the western boundary.
- ❖ The aforementioned structures encroaches the applicable lateral building line of 2m and the title deed building line of 1,75m, hence the reason for the application.
- ❖ The owner did not consider the deck or braai a building and therefore did not consider a departure application necessary – the owner's lack of understanding

which constitutes a building led to the encroachment and not his intend to undermine the legislation applicable to the subject property.

- ❖ The raised boundary wall was approved by means of a departure application which was approved in 2017.
- ❖ The braai and deck on the western erf boundary is 2,86m long, 80cm wide and flue extends 1,6m higher than the western wall elevation.
- ❖ The deck which encroaches the 2m building line is 6m<sup>2</sup> in extent and 1,9m above the natural ground level.
- ❖ The retention of the deck and braai is supported by the next door neighbour. The owner will limit smoke nuisance and threat of fire spread.
- ❖ Title Deed T7117/2015 applicable to the property [Pages 2 to 3 D.1 and Page 4 E.(a),(c) and (d)] stipulates restrictive conditions which relate to:
  - a lateral building line of 1,57m,
  - no fires be lit on the property,
  - only one (1) dwelling on the property, and
  - the property may only be used for residential purposes.

The applicant proposes to remove the restrictive conditions in order to save the property owner future cost when acting in line with the primary rights in terms of the Zoning Scheme.

- ❖ The use and zoning of the property will remain unchanged and in line with the zoning of the neighbouring properties.
- ❖ Privacy of the next door neighbour will be maintained, the existing structures are compatible with the character of the area.
- ❖ The removal of the title deed restriction will discourage urban sprawl, encourage densification and will allow the property owner to attain his primary rights.
- ❖ The applicant further motivates that the proposal is in line with Overstrand Municipality forward planning documentation and the planning principles as depicted in the planning legislation

## 5. ADMINISTRATIVE COMPLIANCE

| Methods of advertising  |                 | Date published | Closing date for comments |
|---|-----------------|----------------|---------------------------|
| Notices   | Yes             | 07/02/2018     | 16/03/2018                |
| Ward councillor   | Yes             | 04/12/2017     | 26/01/2018                |
| Provincial Gazette  | Yes             | 09/02/2018     | 16/03/2018                |
| Local newspaper   | Yes             | 09/02/2018     | 16/03/2018                |
| Total letters of objection  | <b>Five (5)</b> |                |                           |
| Was public participation undertaken in accordance with Section 45 - 49 of the Proposed Draft By-Law on Municipal Land Use Planning?         |                 |                | <b>Yes</b>                |
| Was the application processed correctly?  |                 |                | <b>Yes</b>                |
| Is the proposal consistent with the principles referred to in Chapter 2 of SPLUMA and Chapter VI of LUPA? (can be elaborated further below) |                 |                | <b>Yes</b>                |

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

| Name   | Date received | Summary of comments | Recommendation |
|--|---------------|---------------------|----------------|
| Electro Technical Services   | 04/12/2017    | No objection.       | Positive       |
| Operational Services   | 15/01/2018    | Annexure F.         | Positive       |
| Fire Department  | 01/02/2018    | No objection.       | Positive       |
| Engineering Services   | 24/01/2018    | Annexure G.         | Positive       |
| Department of Environmental Affairs and Development Planning: <i>Planning Component</i> (DEA&DP) | 19/04/2018    | Annexure H.         | Positive       |

## 7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION

Five (5) objections were received against the application from property owners in De Kelders Township, namely NE, IC & TE Williamson - Erven 99 and 100, EJ van Rooyen – Erf 11, S (GM) Theron – Erf 391, L van der Merwe – Erf 247 and Dr HJC van Zyl – Erf 149. Most of the issues raised in the objections correlate with each other and will therefore be summarised together. The full objection is attached to this item and should be read together with the point of objection as summarised below:

**The owners of Erven 99 and 100, De Kelders expected development to take place within the parameters of the applicable legislation. With the current development the regulations are blatantly over looked.**

### Applicant's response

Erf 99 was visited and although the chimney is visible, it is within the 2m building line which forms part of a small space to view the ocean. Further, the view line from Erf 99 is already obstructed by existing dwellings, telephone poles, etc. The braai is however not more obstructive than the approved single dwellings which impact on the panoramic views of the area. The proposed development is further insignificant from the upper De Kelders slopes.

### Town Planner's response

It is noted that Erven 99 and 100 are directly opposite (behind) Erf 114 and therefore the direct line of sight will be over Erf 114 not Erf 113 which only forms part of the wider panoramic view from Erven 99 and 100. The desirability and impact of the structure will have to be considered. Further, the applicant seeks to legalise the illegal structure, thus the reason for the application.

**It appears that Erf 113 is used as overflow accommodation for the guest house next door. One of the objections considers the use of Erf 113, De Kelders as guest house/bed and breakfast as a business and no single residential.**

Applicant's response

Erf 113, De Kelders is currently used for single residential purposes. Regardless of the statement by the objector, the property owner is allowed to rent out two (2) guest bedrooms in terms of the applicable zoning as a primary right. The Title Deed prohibits the primary right and therefore removal of the title deed restriction is requested. Even a five (5) bedroom guest house is not considered a commercial land use since the latter can be applied for as a consent use application in terms of the applicable zoning.

Town Planner's response

The objection is noted. However, no proof is submitted that the dwelling on Erf 113 is used for guest accommodation. No previous objections have been received regarding unlawful usage of Erf 113 for guest accommodation.

**The application on Erf 113 makes no mention of the removal of a restrictive condition which prohibits the development of the property to 50% coverage. Was this deliberately omitted? If so how can the motivation be trusted?**

Applicant's response

The condition as mentioned by the objector is contained in the Title Deed of Erf 113, De Kelders. The condition is not applicable to the application and therefore it was not addressed in the application. All conditions to be removed have been addressed in the application. All existing structures comply with the 50% title deed restriction and Zoning Scheme parameters. The relevant conditions to be removed were indicated on the Conveyance's Certificate as submitted with the application.

Town Planner's response

It is not required that the applicant discuss restrictive conditions which does not have bearing on the application. All existing structures comply with the relevant condition.

**The objector (Erf 11) state that these types of applications for erven in the front row of De Kelders leave property owner in the second row vulnerable to the impact of these structures. Another objector (Erf 247) states that it takes away potential sea views for property owners further away from the sea and only leaves a 2m sea view gap.**

Applicant's response

The impact on views are misconstrued and exaggerated by the objectors. The only property possibly affected by the proposed structures is Erf 99 (which objection was addressed above). Neither the deck, chimney or braai structure obscure views from Erven 11, 149, 247 and 391 De Kelders.

Town Planner's response

It should be noted that view lines are not guaranteed, nor are it protected by the Title Deed. The structures under discussion are only viewable from Erf 99, and although visible the structures do not obscure the full extent of ocean view.

**The application will set a precedent for similar applications in the area. If this is approved then it will not prohibit the applicant from constructing illegal structures in the future. How will the Municipality ensure that the Building and Land Use Regulations are enforced in De Kelders?**

Applicant's response

The main points of the objection are not directly linked to the impact of the deck and braai structure. The existing structures are not to promote unlawfulness. Further, each application is considered on its own merit and the application does not serve as carte blanche for similar applications. The removal of title deed restrictions does not allow the property owner to do what he pleases on Erf 113, De Kelders. The application is limited to what is shown on the building plan and all future additions must comply with the Zoning Scheme parameters.

Town Planner's response

The comment provided by the applicant is agreed with.

**The objectors question the architect's integrity – surely he would have known that the structures are in the building lines and still blatantly ignored the rules. Perhaps the illegal structures are part of a plot to construct multi-storey guest houses on the sea front.**

Applicant's response

The construction of the deck and braai structure was not an attempt to encourage unlawfulness. Both the built braai and the open deck were constructed by the owner without the intent from departing from the Zoning Scheme and title deed restrictions. The owner's lack of understanding of what constitutes as a structure/building in the Overstrand Municipality is evident. His intent was never to undermine the legislation applicable to the subject property – hence the reason for the application.

Town Planner's response

An architect working in the Overstrand municipal area must know and have regard to the relevant legislation when designing a structure/dwelling. That being stated, the applicant has applied to rectify the situation and therefore the application must be evaluated on its merit.

**The owner wants to relax the future building plans to open a second dwelling/guest house on the subject property. The second dwelling should only be considered if the braai structure is moved back within the applicable building lines.**

Applicant's response

The property owner may construct a double storey dwelling in line with the 8m height restriction which will be more imposing than the braai structure. The removal of the title deed conditions is to enable the property owner to develop and use his property in line with the primary right as stipulated in the Zoning Scheme. The removal of the title deed restrictions will also save the property owner time and cost to take up his primary right in the future. Any additional use constitutes a land use application which the property owner will do once it is required.

Town Planner's response

Any approval provided will be limited to the structures and use as indicated on the Site Plan. As stated earlier a second dwelling and two (2) bedroom guest accommodation is a primary right in terms of the Zoning Scheme, which the property owner wishes to obtain for future use and development of his property.

**How does the proposal meet the Fire Regulations?**Applicant's response

The application has been circulated to the Fire Department for comment.

Town Planner's response

The Fire Department has provided comment on the application and no objection has been received.

**The letter of consent from the next door neighbour was not attached to the notice.**Applicant's response

Only the required documentation is circulated to the property owners as per the Municipality's instruction. The notice did advise that the application is available for inspection at the Municipality. The letter of consent was submitted with the application.

Town Planner's response

The applicant's comment is noted.

**How does the departure and removal of title deed conditions not encourage urban sprawl and densification? Say yes to one and say yes to all.**Applicant's response

Urban sprawl refers to the spread of an urban area into what used to be countryside (beyond the urban edge). The proposed application promotes land development that is spatially compact and in a location that is spatially sustainable.

Urban densification suggests environmental advantages of living closer together. The subject property in its current state (with only one (1) dwelling) does not

encourage densification. With the removal of the restriction of only one (1) dwelling the property owner will be able to develop a second dwelling and will then be in line with the Overstrand Municipal Growth Strategy, 2010 (OMGS) that promotes densification (i.e second dwellings) in the current planning unit.

Town Planner's response

The applicant's comment is noted.

**The proposed application will allow the owner to construct a multi-storey building on the subject property. This would compromise the owner of Erf 149, De Kelder's view of Hermanus Plate break water area. Erf 149 was purchased with the understanding that the owner of Erf 113 and the surrounding erven would not be able to construct multi-storey structures.**

Applicant's response

The current structure on Erf 113 is a single storey structure and the property owner has the right to develop up to 8m from the base level. There is no overlay or conditions which prohibit the construction of multi storey dwellings on the front row erven, provided that the applicable development parameters in terms of the scheme regulations and title deed are adhered to.

Town Planner's response

The applicant's comment is agreed with. Erf 149 is situated higher than Erf 113 and will also be able to develop a multi-storey dwelling should the property owner of Erf 149 require so in the future.

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

See comment above.

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

The comment received from Department of Environmental Affairs and Development Planning (DEA&DP) states that the department has no objection towards the proposed departure application and recommends the removal of Title Deed condition E.(d). However, the department states that the removal of conditions D.1 and E.(a) and (c) should be considered with circumspect as no specific development approval is provided to measure against Section 39(5) of the Land Use Planning Act, 2014 (Act 3 of 2014).

Town Planner's response

The comment from DEA&DP is noted and Section 39(5) of LUPA, 2014 (Act 3 of 2014) will be considered when evaluating the removal of the title deed restrictions under Section 10.9 of this report.

## **10. MUNICIPAL PLANNING EVALUATION (REFER TO RELEVANT CONSIDERATIONS GUIDELINE)**

### **10.1 (In)consistency with the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013)**

The proposed application is considered consistent in the following manner from a town planning perspective:

#### **Spatial Justice**

The proposed application will not further promote the spatial development imbalances. The proposed application is in character with the existing area (De Kelders) where similar applications have been approved in the past and therefore the approval of the proposed application will not be spatial bias.

#### **Spatial sustainability**

The application is considered spatially sustainable as the existing property will be more optimally utilised without affecting natural vegetation. The existing structures are compatible with the character of the area and do not impact negatively on the rights of any adjacent property owner.

#### **Efficiency**

The proposed application only affects the current property and its immediate neighbouring properties, and therefore has limited impact. Further, the property has been in existence since 1939 and is already developed, and therefore the impact on the biophysical environment will be low.

#### **Spatial resilience**

The application will ensure that the existing land resources are utilised in line with the Overstrand Municipality's forward planning documents.

#### **Good administration**

The application followed the required planning procedures to ensure that land use activity is in line with Municipal By-Laws and the public process has been followed.

### **10.2 (In)consistency with the principles referred to in Chapter VI of the Land Use Planning Act, 2014 (Act 3 of 2014)**

Same as above.

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

The primary uses are in line with the land use parameters in terms of the Zoning Scheme. The proposed application is further in line with the principles of the Overstrand Municipality Wide Spatial Development Framework, 2006 (OMSDF) and the Overstrand Municipality Integrated Development Framework, 2014 (IDF) which promote tourism accommodation and facilities.

**10.4 (In)consistency with guidelines prepared by the Provincial Minister**

Not applicable.

**10.5 Impact on Municipal engineering services**

Services are to be rendered as stated in the Services Report. No additional services will be required.

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

The proposed application does not trigger any listed activity in terms of the National Environmental Management Act (NEMA).

**10.7 Existing and proposed zoning comparisons and considerations**

The subject property is zoned Single Residential Zone 1 and therefore Single Residential Zone 1 parameters as prescribed in the Overstrand Municipal Zoning Scheme, 2013 are applicable.

**10.8 The desirability of the proposal**

The applicant seeks to acquire approval for the following proposals:

- ❖ in terms of Section 16(2)(b) of the Overstrand By-Law for a building line relaxation from 2m to 0m to accommodate the existing braai and built deck on the lateral boundary;
- ❖ in terms of Section 16(2)(f) of the Overstrand Municipality By-Law for the removal of restrictive title conditions applicable to the property which read as follows:

- T7117/2015, D.1 - Pages 2 to 3

*“Geen vure sal aangesteek word binne die grense van die persele hierdeur verkoop, behalwe deur of met die skriftelike toestemming van die Transportgewer.”*

- T7117/2015, E. - Page 4

- “(a) That this erf be used for residential purposes only,*
- (c) That not more than one dwelling together with the necessary outbuildings and appurtenances be erected on the erf; and*
- (d) That no building shall be erected within 4,72m of any street line which forms a boundary of this erf or within 1,57m of the boundary of any adjoining erf, provided that this latter restriction shall not apply to the common boundary of erven held as one under consolidated title.”*

**The first proposal is a building line relaxation from 2m to 0m to accommodate the existing braai and stoep. It is also proposed to remove condition E.(d) in order to accommodate the existing structures.**

Previous approval was provided to the property owner on Erf 113, De Kelders for the retention of a boundary wall higher than 2,1m in order to promote privacy between Erven 113 and 114. The property owner of Erf 114 has further provided approval for the retention of the braai and deck. Therefore, it is noted that the braai is the only structure visible to surrounding property owners. However, it is and cannot be more prominent to view lines than for instance a main dwelling constructed 8m from the base level. Erf 113 is also lower than the adjacent properties south east of the property and therefore the braai structure on Erf 113 will be in the view lines, but it will not block any views.

The deck is built at the same level as the living area of the dwelling. However, the property has a steep slope and therefore the deck was also constructed at a maximum of 2m from the natural ground level in order to maintain the level of the living area and therefore boundary wall was required, as previously approved, in order to create privacy between the two neighbours.

The retention of the stoep extension and braai will not have a further impact on the next door neighbour as the approved boundary wall already contributes to creating privacy from the next door neighbour. Further the deck faces towards the ocean and away from other properties and therefore the retention of the deck will have no impact on the adjacent property owners.

Given the minor impact of the existing structures, the proposed removal of condition E.(d) and the departure can be supported.

#### **10.9 ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS**

It should first be stated that the applicant acquired a Conveyance's Certificate which stipulated which conditions should be removed. Therefore the applicant applied for the removal of the conditions as stipulated. Further, the cost of removing the title deed conditions in De Kelders is costly due to all the owners in De Kelders being notified via registered mail. The cost of the registered mail can be R30 000 plus, this provides property owners more incentive to remove all relevant restrictive conditions at once.

Further, although no specific development proposal is provided for removal of conditions E.(a) and (c), it can be contemplated that any development which may occur after the removal of the aforementioned restrictions will have to be in line with the Zoning Scheme parameters and therefore be in line with the character of the area which is predominantly residential.

The Title Deed conditions read as follows:

- T7117/2015, D.1 - Pages 2 to 3

*“Geen vure sal aangesteek word binne die grense van die persele hierdeur verkoop, behalwe deur of met die skriftelike toestemming van die Transportgewer.”*

- T7117/2015, E. - Page 4

*“(a) That this erf be used for residential purposes only,*

- (c) *That not more than one dwelling together with the necessary outbuildings and appurtenances be erected on the erf; and*
- (d) *That no building shall be erected within 4,72m of any street line which forms a boundary of this erf or within 1,57m of the boundary of any adjoining erf, provided that this latter restriction shall not apply to the common boundary of erven held as one under consolidated title."*

The removal of D.1 will allow the property owner to retain the existing braai which is part of the departure application. Further, the removal of this restriction does not allow the property owner to act contrary to the National Fire Regulations as depicted in SANS 10400. Any additional braai structures will have to obtain building plan approval, where upon SANS 10400 will be considered.

The removal of E.(a) will allow the property owner to utilize his property in line with primary rights as depicted in the Zoning Scheme Regulations. It is noted that the property owner currently does not foresee acting on the primary rights, but may in future. Mention is made in the objections to guest accommodation (bed and breakfast). However, no proof is provided from the objector's that the property owner is utilizing his property on such a basis. Further, the primary right in terms of the Zoning Scheme allows for two guest bedrooms to be rented out on short term basis, on condition that the provisions of the Zoning Scheme are maintained. Should the property owner wish to rent more than the two (2) bedrooms then a consent use application will have to be submitted.

The removal of E.(c) will allow the property owner to construct a second dwelling in accordance with the Zoning Scheme. Thus, the additional structure will have to comply with the same parameters as the existing dwelling (same 8m height restriction and 2m side/rear building lines and 4m street building lines), except for the footprint of the second dwelling, which cannot be more than 120m<sup>2</sup>. Thus, the impact of the second dwelling will not be more compared to the existing dwelling.

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

**Will financial or other value of the rights in terms of the restrictive condition enjoyed by a person or entity, irrespective of whether these rights are personal or vest in the person as the owner of a dominant tenement?:**

The property owner will be able to act upon the rights provided to him through the Zoning Scheme, thus adding value to his property. It is further clear that the restrictive conditions were registered to create a residential character in De Kelders. Similar applications have been approved and therefore the removal of the conditions at hand is still in line with the character of the area.

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

The Municipality gains no benefits in keeping or removing the restrictive conditions.

**The personal benefits which will accrue to the person seeking the removal, suspension or amendment of the restrictive condition if it is removed, suspended or amended:**

As stated earlier the property owner will be enabled to develop his property in line with the Zoning Scheme Regulations.

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

There is no social benefit should the condition remains in place.

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

The rights enjoyed by the beneficiary will remain in place since the erf will remain residential and the right obtained will be subservient to the zonings, e.g. residential. The residential rights of the adjacent property owners will not be affected.

Given the abovementioned evaluation the opinion is held that if the restrictive conditions are removed as proposed, it will allow the property owner to retain the existing structures and in future develop his property in line with the Zoning Scheme parameters and to mitigate any further additional costs. The opinion is further held that the proposal is sufficiently evaluated in terms of Section 39(5) of LUPA, 2014 (Act 3 of 2014).

## 11. RECOMMENDATION

1. that in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 (By-Law), the application for a building line departure from 2m to 0m to accommodate the existing braai structure and stoep area on Erf 113 De Kelders, **be approved** in terms of the provisions of Section 61 of the By-Law;
2. that in terms of Section 16(2)(f) of the By-Law, the application for the removal of restrictive title conditions as contained in Title Deed T7117/2015 applicable to Erf 113, De Kelders, namely conditions D.1 and E.(a), (c) and (d), **be approved** in terms of the provisions of Section 61 of the By-Law;
3. that the approvals provided in point 1 and 2 are subject to the following conditions;
  - (a) that the approvals are for the development as indicated on Project No 2016-009 and Drawing No CD7, that was submitted with the application;
  - (b) that building plans be submitted to the Building Department for approval;
  - (c) that the approvals do not absolve the applicant from compliance with any other relevant legislation;

- (d) that all the conditions in the Services Report (attached as Annexure G), be complied with;
  - (e) that the approvals do not absolve the applicant from compliance with any other relevant legislation, and
  - (f) that all other development parameters as prescribed in the relevant Zoning Scheme be complied with.
4. that the applicant and the objectors be notified of their respective appeal rights in terms of Section 78 of the Overstrand Municipality By-Law on Land Use Planning, 2015 with regard to the above conditional approvals.

## 12. REASONS FOR RECOMMENDATION POINT 1 AND 3

- ❖ The encroachment of the lateral building line has a minimal impact on the adjoining neighbours.
- ❖ Privacy issues are mitigated.
- ❖ The objections received have been sufficiently addressed.
- ❖ The application has followed due procedure.
- ❖ None of the internal departments have any objection.
- ❖ Local and provincial departments have provided supporting comments for the proposed application.
- ❖ The relevant legislation was considered with the removal of the restrictive conditions in the Title Deed.
- ❖ The proposal is compliant with the spatial policies contained in the SDF.
- ❖ The proposal is constant with the spatial principles as set out in SPLUMA and LUPA.

## 13. Annexures

|             |  |
|-------------|--|
| Annexure A: | Locality Plan  |
| Annexure B: | Site Development Plan  |
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| Annexure D: | Objections received  |
| Annexure E: | Applicant's comment on the objections                        |
| Annexure F: | Operational Department                                       |
| Annexure G: | Engineering Services   |
| Annexure H: | Department of Environmental Affairs and Development Planning |
| Annexure I: | Title Deed   |

## SIGNATURES

### AUTHOR:

Name: **PETRUS ROUX**

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

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

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

**REGISTERED PLANNER**

Name :

**S VAN DER MERWE**

SACPLAN Reg No:

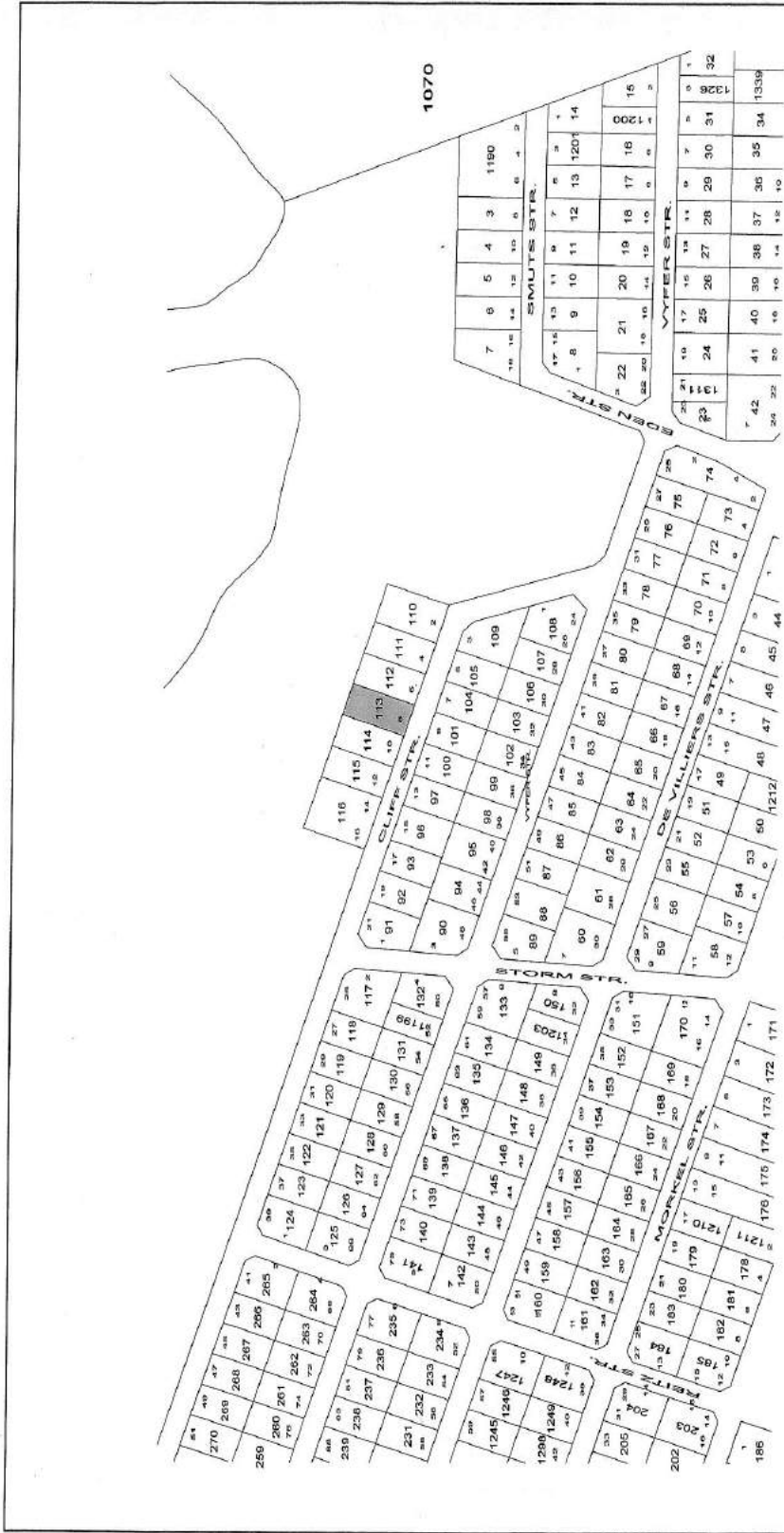
**A/1850/2014**

Signature :

\_\_\_\_\_

Date:

\_\_\_\_\_



ANNEXURE A 1/1

Scale: NTS  
 Drawing Nr: dekel113L.dwg  
 Date: 10/2017

Plan Description:  
**LOCALITY MAP**

Property Description:  
**ERF 113  
 DE KELDERS**

All distances approximate  
 and subject to survey.  
 COPY RIGHT RESERVED

**PLAN** Stads- en Streeksbeplanners  
 Town & Regional Planners

**PROPOSED DEPARTURE & REMOVAL OF  
RESTRICTIVE TITLE DEED CONDITIONS:  
ERF 113 DE KELDERS**

**DIVISION: CALEDON**

**OVERSTRAND MUNICIPALITY**

**MOTIVATION REPORT**

**1. BACKGROUND**

Plan Active Town & Regional Planners has been instructed by J.W. Otten, the owner of erf 113 De Kelders, to apply for the departure and removal of restrictive title deed conditions of the subject property.

Erf 113 De Kelders is 714m<sup>2</sup> in extent and is held by title deed no. T71117/2015.

There is an existing dwelling and single garage situated on the subject property. When the owner constructed the dwelling on erf 113 De Kelders he also built a braai and deck on the western erf boundary. The aforementioned structures encroach the applicable lateral building lines. In addition these existing structures also encroach the title deed lateral building lines. This application therefore intends to address the zoning scheme regulations' lateral building line encroachment and the encroachment of the title deed lateral building lines.

## **2. APPLICATION DETAILS**

Application is made in terms of:

- Chapter 4, Section 16(2)(b) of the Overstrand Municipality's By-law on Municipal Land Use Planning, 2016, for the departure (building lines only) of erf 113 De Kelders;
- Chapter 4, Section 16(2)(f) of the Overstrand Municipality's By-law on Municipal Land Use Planning, 2016, for the removal of the restrictive title deed conditions of erf 113 De Kelders.

## **3. GENERAL APPLICATION INFORMATION**

### **3.1 PROPERTY DESCRIPTION**

Erf 113 De Kelders is situated at 8 Cliff Street, De Kelders. Refer to the locality plan attached. Erf 113 De Kelders is 714m<sup>2</sup> in extent and situated in a residential environment.

### **3.2 ZONING**

The subject property is zoned Residential Zone I: Single Residential and is utilized as such.

Surrounding properties are zoned for Residential Zone I: Single Residential purposes.

### 3.3 LAND USE

There is a dwelling and single garage situated on the subject property. Consequently the subject property is used for single residential purposes only.

Land uses that surround erf 113 De Kelders are dwellings, public open spaces, public roads and the ocean.

### 3.4 PROPOSED DEVELOPMENT

- The departure (building lines only) of erf 113 De Kelders in terms of Chapter 4, Section 16(2)(b) of the Overstrand Municipality's By-law on Municipal Land Use Planning, 2016, to:
  - relax the western lateral building line from 2m to 0m to accommodate the existing built braai and open deck;
- The removal of the restrictive title deed conditions in terms of Chapter 4, Section 16(2)(f) of the Overstrand Municipality's By-law on Municipal Land Use Planning, 2016, to accommodate:
  - the existing built braai and open deck on the 0m western lateral building line;
  - possible future additional / secondary rights on the subject property.

There is an existing dwelling and single garage situated on the subject property. When the owner constructed the dwelling on erf 113 De Kelders he also built a braai and deck on the western erf boundary. The aforementioned structures encroach the applicable lateral building lines. In addition these existing structures also encroach the title deed lateral building lines. This application therefore intends to address the zoning scheme regulations' lateral building line encroachment and the encroachment of the title deed lateral building lines.

Both the built in braai and open deck were constructed by the owner without the intent of departing from the zoning scheme regulations and title deed restrictions since the owner considered neither the braai nor the deck to be a building. The

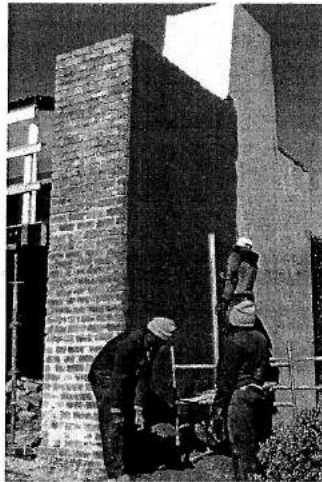
owner's lack of understanding with regards to what constitutes a structure / building and the relevant legislation that guides the construction of built braais and decks in the Overstrand Municipal area is therefore evident. It is however important to note that his intent was never to undermine the legislation applicable to the subject property – hence the application to address the structures that encroach the western lateral building line.

Application is therefore made for a permanent departure to:

- relax the western lateral building line from 2m to 0m to accommodate the existing built braai and open deck.

The owner recently raised the western erf boundary wall (common boundary with erf 114 De Kelders). The owner applied for the necessary departure to increase the height of the boundary wall to 3,7m above ground level. The aforementioned was granted and the boundary wall was constructed accordingly. The existing built braai and deck is positioned on the same boundary (western boundary) and adjoins the boundary wall. Refer to the photograph below taken during construction of the raised boundary wall:

a. Construction of the raised western erf boundary wall

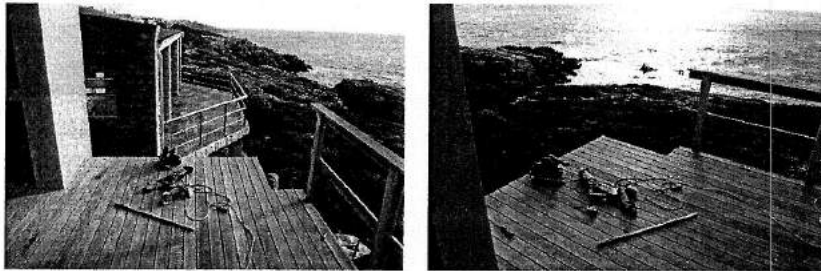


The positions of both the existing built braai and deck on the western erf boundary are indicated on the site development plan attached. The existing braai is 2,86m long and 80cm wide. The braai (braai flue / chimney) extends 1,6m higher than the existing

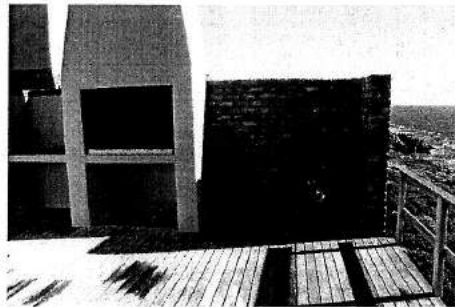
approved western boundary wall (refer to the braai elevation on the site development plan) and it is only the braai flue (chimney) that can be seen from the neighbouring property (refer to the south west elevation on the site development plan).

The portion of the deck that encroaches the western lateral building line is 6m<sup>2</sup> in extent. The deck was constructed 1,9m above natural ground level – refer to the north west elevation on the site development plan. The deck is enclosed to the west by the solid (plastered) boundary wall and consequently the deck is not visible from the neighbouring property (erf 114 De Kelders). A 1m high hand railing encloses the deck on the northern edge. Refer to the photographs below indicating b. the deck prior to the construction of the raised boundary wall and c. the deck enclosed by the boundary wall:

b. Deck prior to erf boundary wall construction



c. Deck after erf boundary wall construction



The retention of the built braai and deck is supported by the adjacent neighbour (owner of erf 114 De Kelders, Mr B. Slabbert). The letter of consent from Mr B. Slabbert dated 7 October 2017 is attached. It is submitted that the built braai would reduce the threat of fire spread and also eliminate smoke nuisance. Due to the raised boundary wall

neither one of the structures will impact on the privacy of the neighbours. The position of the braai was also informed by the position of various Milkwood Trees on the subject property and the current position of the braai therefore ensures that these trees are not endangered.

The title deed of erf 113 De Kelders has restrictive title deed conditions with regards to the lateral building lines that have to be removed to accommodate the proposed departure application. Title deed no. T71117/2015 stipulates that a 1,57m lateral and rear building line applies to all structures on the subject property. In addition the title deed stipulates that no fires may be lit on the subject property without the relevant consent. It is also proposed to remove the conditions that prohibit the future use of the subject property for second dwelling purposes (currently an additional right in terms of the zoning scheme) or guest house purposes (a consent use in terms of the relevant zoning scheme) to save our client time and costs for any future land use applications / additions to his property given the extent of the public participation process (notices to ±1200 property owners) that has to be followed. It is therefore proposed to remove the following restrictions in the title deed to accommodate the existing built braai and deck, to allow the owner to lit / start a fire (braai) on the subject property and to remove conditions that prohibit possible future use (second dwelling; guest house) of the subject property:

Title deed no. T71117/2015, Pages 2-3, paragraph D.1:

D. ONDERHEWIG aan en met die voordeel van die volgende spesiale voorwaardes opgelê in Transportakte Nr. 19917, gedateer 18 November 1946, en waarvan nalewing afgedwing kan word deur die Transportgewer vir eie voordeel as eienaar van die restant van die grond omskrywe in Transportaktes Nr. 1255 gedateer 25 Februarie 1935 en 3733 gedateer 20 Maart 1920 en gemelde sertifikaat van Dorpstitel Nr. 1067 gedateer 9 Februarie 1940, en vir die voordeel van toekomstige eienaars daarvan of enige gedeelte waarvan almal van wie of gesamentlik of afsonderlik geregtig sal wees om nalewing van sodanige voorwaardes af te dwing – saam met die voorwaardes opgelê deur die Administrateur in terme van sy goedkeuring van die stigting van die gemelde dorp, naamlik:

- \* 1. *Geen vure sal aangesteek word binne die grense van die persele hierdeur verkoop, behalwe deur of met die skriftelike toestemming van die Transportgewer.*

Title deed no. T71117/2015, Page 4, paragraph E.(a),(c) and (d):

E. ONDERHEWIG aan die voorwaardes opgelê in Transportakte No. 19917 gedateer 18 November 1946, deur die Administrateur ingevolge bepalings van Ordonnansie 33 van 1934 met betrekking tot onder andere tot toekomstige wysigings ingevolge Artikel 18 en die plig van die plaaslike owerheid om nalewing daarvan af te dwing ingevolge Artikel 61 en wat ook

*afdwingbaar is volgens Wet deur die eienaar van enige erf in die dorp en hul respektiewe opvolgers in title en wat opgelê is as volg:*

*Ten voordeel van die geregistreerde eienaar van enige erf in die "De Kelders Extension No.1 Township":*

- (a) That this erf be used for residential purposes only.*
- (c) That not more than one dwelling together with the necessary outbuildings and appurtenances be erected on this erf.*
- (d) That no building shall be erected within 4,72 metres of any street line which forms a boundary of this erf or within 1,57m of the boundary of any adjoining erf, provided that this latter restriction shall not apply to the common boundary of erven held as one under consolidated title."*

The existing structures on the subject property do not create an infringement to any passing traffic or public activity.

Except for the deviations mentioned above all other structures on the subject property meet all the land use parameters applicable to SR1 zoned properties.

The zoning of erf 113 De Kelders will remain unchanged (Residential Zone I: Single Residential). All buildings as indicated on the site development plan already exist and the application addresses existing structures only. Consequently the proposed departure and removal of restrictive title deed conditions will not have a greater impact on the surrounding properties.

The proposed departure and removal of restrictive title deed conditions of erf 113 De Kelders are not in contrast to the existing land use tendencies in the surrounding environment and we therefore do not foresee any problems with the proposed application.

It is submitted that the existing structures are compatible with the character of the area, do not impact negatively on the rights of anyone else and that no good reason exists for not approving this application.

When considering the proposed departure and removal of restrictive title deed conditions application, the point of departure is the need to discourage the phenomenon of urban sprawl and to encourage densification and more compact towns and cities, all of which relates to more responsible resource use or sustainable development.

The proposed departure and removal of restrictive title deed conditions of erf 113 De Kelders are not in contrast to the existing land use tendencies in the surrounding environment and we therefore do not foresee any problems with the proposed application.

### **3.5 CHARACTER OF THE ENVIRONMENT**

It is not proposed to change the land use or structures of the subject property. The impact on the character of the area will therefore remain unchanged. The surrounding properties are developed with single and double storey dwellings and the use of the surrounding properties are for permanent residences, holiday houses and guest houses. In addition the neighbour on which the existing built braai and deck will have the greatest impact (Mr B. Slabbert, owner of erf 114 De Kelders), already supports the retention of the existing structures and agrees that the built braai will reduce the threat of fire spread. The high chimney of the built braai will also eliminate possible smoke nuisance.

In addition to keep the existing structures ("As Built") it will contribute towards the value of the subject property and consequently have a positive impact on the area as a whole. It is therefore submitted that the proposed encroachments are compatible with the character of the area and does not impact negatively on the rights of anyone else.

Furthermore the departure and removal of restrictive title deed conditions to accommodate the existing structures will not have a greater impact on the privacy of any other neighbours in the immediate vicinity.

### **3.6 POTENTIAL OF THE PROPERTY (DESIRABILITY OF THE PROPOSED UTILIZATION)**

*The subject property's zoning and land use will remain unchanged.*

The location of the subject property within a single residential area allows the property to be developed (in future, with further applications) for low impact land uses only such as a Bed-and-Breakfast, guesthouse, home occupation, etc. The proposed departure will not hinder any future land use applications on erf 113 De Kelders. The proposed removal of restrictive title deed conditions will in fact enable the owner to exercise his additional land use rights / secondary rights (bearing in mind that another land use application has to be submitted to acquire secondary rights) in future without having to apply for the removal of restrictive title deed conditions again (which implies registered notices to be sent to ±1200 property owners).

The subject property allows for the deviations being applied for due to the layout and position of the existing dwelling, the position of the existing Milkwood Trees on the subject property, the ideal position of an entertainment area overlooking Walker Bay, the materials used, the scale of the surrounding built environment, the low impact on adjacent property owners, etc. The existing built braai and deck will not have a negative impact on the neighbours or the streetscape. It is submitted that an open mobile fire as an alternative to the built braai will be potentially hazardous since it could cause a veld fire. The built braai was designed to eliminate possible fire spread and the high chimney was added to ensure that the smoke is not a problem for the occupants of the house or the neighbours.

### **3.7 IMPACT ON EXTERNAL ENGINEERING SERVICES**

#### **3.7.1 PROVISION OF SERVICES**

All services on the subject property already exist. No additional loading of the existing civil infrastructure is anticipated.

Additional services (if required) will be provided to the satisfaction of the Overstrand Municipality.

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

Access to erf 113 De Kelders will remain unchanged and will be from Cliff Street. No new access points are proposed. Refer to the site development plan.

The Overstrand Zoning Scheme Regulations (2013) stipulate that a minimum of two parking bays are required for single dwellings. Provision is made for a single garage on erf 113 De Kelders as indicated on the site development plan. Ample space exists in front of and adjacent to the single garage to accommodate an additional vehicle on site. The dwelling house on erf 113 De Kelders therefore complies with the minimum parking requirements.

The subject property will still be used for single residential purposes only and therefore the impact on the traffic flow in the area will remain unchanged.

### **3.8 TITLE DEED**

\* The title deed of erf 113 De Kelders has restrictive title deed conditions with regards to the lateral building lines that have to be removed to accommodate the proposed departure application. Title deed no. T71117/2015 stipulates that a 1,57m lateral and rear building line applies to all structures on the subject property. In addition the title deed stipulates that no fires may be lit on the subject property without the relevant consent. It is also proposed to remove the conditions that prohibit the future use of the subject property for second dwelling purposes (currently an additional right in terms of the zoning scheme) or guest house purposes (a consent use in terms of the relevant zoning scheme) to save our client time and costs for any future land use applications / additions to his property given the extent of the public participation process (notices to  $\pm 1200$  property owners) that has to be followed. It is therefore

proposed to remove the following restrictions in the title deed to accommodate the existing built braai and deck, to allow the owner to start / lit a fire (braai) on the subject property and to remove conditions that prohibit possible future use (second dwelling; guest house) of the subject property:

Title deed no. T71117/2015, Pages 2-3, paragraph D.1:

F. ONDERHEWIG aan en met die voordeel van die volgende spesiale voorwaardes opgelê in Transportakte Nr. 19917, gedateer 18 November 1946, en waarvan nalewing afgedwing kan word deur die Transportgewer vir eie voordeel as eienaar van die restant van die grond omskrywe in Transportaktes Nr. 1255 gedateer 25 Februarie 1935 en 3733 gedateer 20 Maart 1920 en gemelde sertifikaat van Dorpstitel Nr. 1067 gedateer 9 Februarie 1940, en vir die voordeel van toekomstige eienaars daarvan of enige gedeelte waarvan almal van wie of gesamentlik of afsonderlik geregtig sal wees om nalewing van sodanige voorwaardes af te dwing – saam met die voorwaardes opgelê deur die Administrateur in terme van sy goedkeuring van die stigting van die gemelde dorp, naamlik:

1. *Geen vure sal aangesteek word binne die grense van die persele hierdeur verkoop, behalwe deur of met die skriftelike toestemming van die Transportgewer.*

Title deed no. T71117/2015, Page 4, paragraph E.(a),(c) and (d):

G. ONDERHEWIG aan die voorwaardes opgelê in Transportakte No. 19917 gedateer 18 November 1946, deur die Administrateur ingevolge bepalings van Ordonnansie 33 van 1934 met betrekking tot onder andere tot toekomstige wysigings ingevolge Artikel 18 en die plig van die plaaslike owerheid om nalewing daarvan af te dwing ingevolge Artikel 61 en wat ook afdwingbaar is volgens Wet deur die eienaar van enige erf in die dorp en hul respektiewe opvolgers in tittle en wat opgelê is as volg:

*Ten voordeel van die geregistreerde eienaar van enige erf in die "De Kelders Extension No.1 Township":*

- (b) That this erf be used for residential purposes only.*
- (c) That not more than one dwelling together with the necessary outbuildings and appurtenances be erected on this erf.*
- (d) That no building shall be erected within 4,72 metres of any street line which forms a boundary of this erf or within 1,57m of the boundary of any adjoining erf, provided that this latter restriction shall not apply to the common boundary of erven held as one under consolidated title."*

Refer to a copy of the conveyancers certificate compiled by Hennie van Zyl at VZK Attorneys dated 25 October 2017. There is no bond registered against erf 113 De Kelders.

### **3.9 OTHER RELEVANT LEGISLATION FOR CONSIDERATION OF THE APPLICATION**

#### **3.9.1 HERITAGE VALUE**

Erf 113 De Kelders is not situated within the Heritage Overlay Zone as determined by the Overstrand Heritage Report (2009). The subject property is also not earmarked for heritage conservation purposes with reference to the Overstrand Municipal Growth Management Strategy (2010) or the Overstrand Heritage Report (2009).

The existing structures on the subject property are not older than 60 years. Furthermore the existing structures will remain unchanged. The subject property is not associated with any important persons or groups or important events and activities. The subject property has no association with the history of slavery and is not used for living heritage.

In the light of the abovementioned it is evident that the proposed departure and removal of restrictive title deed conditions will not have a negative impact on the heritage value of the De Kelders or Greater Gansbaai area.

#### **3.9.2 IMPACT ON THE BIOPHYSICAL ENVIRONMENT**

The proposed departure and removal of restrictive title deed conditions of erf 113 De Kelders do not trigger any listed activities in terms of the National Environmental Management Act (NEMA), 1998 (Act no. 107 of 1998).

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

The *Overstrand Spatial Development Framework (2006)* earmarks the area where erf 113 De Kelders is situated, for residential purposes. Refer to the Spatial Development Framework Plan (2006) attached. The zoning of the subject property will remain unchanged (Residential Zone I: Single Residential) and therefore the proposed application falls within the existing planning for the Greater Gansbaai area.

The *Overstrand Municipal Growth Management Strategy (OMGMS, 2010)* specifies that erf 113 De Kelders forms part of Planning Unit no. 1. Planning unit no. 1 promotes densification in this area. This application does however not propose to create any additional portions, nor does it propose the construction of an additional dwelling unit on the subject property. The density of the applicable planning unit will therefore remain unchanged.

From the above it is evident that the proposed departure and removal of restrictive title deed conditions application adheres to the spatial planning policies for the De Kelders area and consequently falls within the existing planning for the De Kelders and Greater Gansbaai area.

### **3.11 PLANNING PRINCIPLES**

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

Spatial justice: The proposed departure and removal of restrictive title deed conditions are in character with the existing character of the area and will not have a negative impact on the surrounding neighbours. The impact on the biophysical environment will be low as the subject property has been in existence since 1939.

Spatial sustainability: It is submitted that the existing structures are compatible with the character of the area and do not impact negatively on the rights of anyone else. The proposal promotes land development that is spatially compact as motivated in terms of the relevant spatial planning policies. The subject property allows for the deviations being applied for due to the layout and position of the existing dwelling, the position of the existing Milkwood Trees on the subject property, the ideal position of an entertainment area overlooking Walker Bay, the materials used, the scale of the surrounding built environment, the low impact on adjacent property owners, etc. To keep the existing structures "as built" will promote land development in a location that is sustainable. The existing structures are to an improved erf within an established residential area and therefore will not impact on urban sprawl or upon a sensitive environment.

Efficiency: The subject property is easily accessible and conveniently located close to Gansbaai and surrounding attractions.

It is motivated that keeping the existing as built structures proves to be efficient as it discourages the phenomenon of urban sprawl, encourages densification and more compact towns and cities, all of which relates to more responsible resource and infrastructure use and sustainable development. Furthermore the proposal is efficient in that it optimizes existing resources and infrastructure and continues the existing suburban development typology.

It proves to be efficient to keep the existing structures at the current positions to avoid additional and / or greater impacts on the adjacent property owners and the environment.

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

stipulated by the Overstrand Municipality's By-law on Municipal Land Use Planning, 2016.

#### **4. RECOMMENDATION**

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

- The building line relaxation is to accommodate existing structures ("As Built");
- The existing structures are compatible with the character of the area and do not impact negatively on the rights or privacy of anyone else;
- The proposal has no impact on the streetscape;
- No impact on the scale and usage of the existing available services is anticipated;
- The architectural style and design of the built braai and deck as well as the materials used promote the desirability of the proposed deviation;
- The proposed departure and removal of restrictive title deed conditions will not have a negative impact on the current character and land values of the surrounding erven;
- The proposed land use application will comply with the relevant spatial planning policies for the area;
- The application is fully compliant with the applicable planning principles described in the LUPA (2014) and SPLUMA (2013).

With regards to the above mentioned it would be appreciated if the delegated authority / the municipal planning tribunal would approve the departure and removal of restrictive title deed conditions of erf 113 De Kelders.





TR A Theart  
ANNEXURE D 1/10  
(Sud Mame)

NE Williamson, TE Williamson & IC Williamson  
C/O NE Williamson  
5 Mutual Way  
Bergvliet  
7945  
26 February 2018

The Municipal Manager  
Overstrand Municipality  
16 Paterson St  
Hermanus  
7200

Dear Madam/Sir

RE: APPLICATION FOR DEPARTURE AND REMOVAL OF TITLE DEED RESTRICTIONS OF ERF 113 DE KELDERS

We N E Williamson, Dr T E Williamson and I C Williamson, co-owners of Erven 99 and 100 De Kelders, wish to place on record our objections and comments to the request from Plan Active, on behalf of the owner, J W Otten, of Erf 113 De Kelders, for removal of title deed restrictions applicable to Erf 113 De Kelders in terms of Section 16(2)(f) of Municipality's Land Use Planning 2016 as well as Section 47, said Land Use Planning 2016, in terms of Section 16(2)(b).

The departure, pertaining to Section 16(2)(b), applies to the relaxing of the western building line from 2m to 0m to accommodate the braai place structure that was built with the house.

The owner and builder transgressed the building lines by building the braai place on the western boundary line. The Municipality then allowed the boundary wall to be built to height of 3,7 m. Please advise the normal height of boundary walls permitted without plans.

It is noted that the site plan bears no architect's signature or owner's signature, only reg no 3674. The said plan does bear the logo of Otten and partners Architects. There appears to be a relationship between the architect and owner. This, questions, the veracity of the statement "owner considered neither the braai place or deck, to be a building". This is of a brick- built braai place with foundations and measuring 2.86m in length, 800mm wide and with a height of 3.7 m and a flue extending 1.6m further.

Our family have owned Erf 99 De Kelders since 1973 built on it in 1976. Erf 100 was purchased later in 1981 to try and protect our views and outlook, from the West to the North East. We could see beyond Erf 110, then. We knew development would occur sooner or later, but expected the protection afforded us by building regulations to be upheld. In this respect, these regulations were blatantly, overlooked. It would appear that regulations are overlooked to ensure economic growth for the Municipality to the detriment of other residents.

It has been noted that the dwelling on Erf113 has been used as overflow accommodation, either as guest house or bed and breakfast, in conjunction with Cliff Lodge (Erf 112) next door, over the last year. The continued conversion of properties to Bed and Breakfast or Guest House establishments is we contend, not single residential use. They are businesses in the hospitality industry.

|                  |              |
|------------------|--------------|
| FILE NO:         | EL 113       |
|                  | De Kelders ✓ |
| SCAN NO:         | GDK 113      |
| COLLABORATOR NO: | 1137973      |

## ANNEXURE D 2/10

Our Title Deed dated 14/6/1973 (copy attached) reflects a further restriction, that not more than 50% of the area of the erf be built upon. The application before you, makes no reference to this restriction which is/was enforceable by any owner of an erf in the township. (see attached copy page 4 and 5 of Transfer Deed T 000032690.2013). Previously in our submission we questioned the veracity of the owner's assertion regarding what constituted a building. Now we question; was this omission deliberate on the owner's part or that of Plan Active. Their motivational report is skewed in favour of obtaining approval of their submission.

We perceive the applicant/company protests too much about the benefits and their interest in upholding Council's by laws, when said Council, has flouted their own rules regarding building standards. Can we believe the statement, 3.5, it is not proposed to change the land use or structures of the subject, property. How long until the owner wishes to build on more than 50% of the erf.

For all of the above reasons, we do not agree that "the removal of restrictive title deed conditions will not have a negative impact on land values of surrounding erven. We oppose the removal of title deed restrictions.

Sincerely  
N E Williamson



I C Williamson



Dr T E Williamson



ANNEXURE D/3/10/20

Transfer reserves to itself as owner of all riparian lots in the township and as owner of any other land held by it by Deed of Transfer No. 3753 dated 20th March, 1920, the sole and exclusive right to the use of all water arising on or flowing over the said lots or erven, and also to any water to which such lots or erven may be entitled as riparian property or by servitude or agreement, and the transferee and his successors in title shall not be entitled to any such water and the transferee is hereby deprived of any rights to water as owner of land riparian to any stream flowing over or under the land.

4. That the transferor reserves to itself and its successors in title the right of free access at all reasonable times to this erf for the purpose of maintaining and repairing piping under any portion of the above erf or other erven, together with the right to do all such acts and things on the said land as may be necessary or desirable for the convenience of the inhabitants of this and other erven in the Township and to administer such supply until a local authority is established for the township, together with the right to discontinue the supply of water to the abovementioned erven in the event of the refusal of the transferee or any successor of his to pay such charges for the supply of water as the transferor shall levy with the approval of the Administrator, or to prevent unnecessary waste of water.
6. That there shall not be erected on any portion of the above lot or lots any building, the plans and specifications of which have not, prior to the commencement of building operations, been submitted to and approved by the Transferor in writing.
- D. To the conditions contained in said Deed of Transfer No. 13215/1946 imposed by the Administrator pursuant to the provisions of Ordinance 33 of 1934 relating, inter alia, to future alterations in terms of Section 18 and the duty of the Local Authority to enforce observance thereof under Section 61 and legally enforceable also by DE KEIDERS SYNDICATE, LIMITED, and the owner of any erf in the Township and their successors in title, and imposed in the following form:-

(1) L/....

TD 0000 32690/2013  
 ANNEXURE D 4/10  
 11/7/2013

- 5 -  
 In favour of the registered owner of any erf  
 in De Aarders Extension No. 1 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 outbuildings and appurtenances be erected on this erf.
  - (d) That no building shall be erected within 4,72 metres of any street line which forms a boundary of this erf or within 1,57 metres of the boundary of any adjoining erf, provided that this latter restriction shall not apply to the common boundary of erven held as one under consolidated title.
- (2) In favour of the Administrator:
- (e) That this erf shall not be subdivided except with the consent in writing of the Administrator.
- (3) In favour of the Local Authority:
- (f) That the owner of this erf, whether the applicant for the establishment of the township or any future owner, shall be obliged to allow the drainage and sewerage of any other erf or erven to be conveyed over such erf if deemed necessary by the Local Authority that may hereafter be constituted for the township and in such manner and in such position as may from time to time be reasonably required by that authority.
  - (g) That the owner of this erf, whether the applicant for the establishment of the township or any future owner, shall be obliged without compensation to remove any septic tank installed thereon after month's notice has been given by the Local Authority that may hereafter be constituted for the township.

E. EMBLES

TP - A Theort  
(5 ANNEXURE D 5/10)

Alida Conradie - ERF 113 DE KELDERS: INPUT

From: Biffy Van Rooyen <bvrooyen@gmail.com>  
To: <aconradie@overstrand.gov.za>  
Date: 2018/03/09 04:05 PM  
Subject: ERF 113 DE KELDERS: INPUT



239 Moller Street  
Meyerspark  
0184

Email: [bvrooyen@gmail.com](mailto:bvrooyen@gmail.com)

The Municipality  
16 Paterson Street  
Hermanus

[aconradie@overstrand.gov.za](mailto:aconradie@overstrand.gov.za)

Dear Sir/Madam

Re: APPLICATION FOR DEPARTURE AND REMOVAL OF TITLE DEED RESTRICTIONS OF ERF 113 DE KELDERS, as requested by M. Lerm, Town & Regional Planners 6 Magnolia Street PO Box 296 HERMANUS 7200

As the owner of ERF 11 in Smuts Street, I do not grant permission for departure and removal of title deed restrictions of ERF 113.

In my experience, the departure and removal of title deed restrictions on erven in the front row, leave property owners in the second and subsequent rows vulnerable to the impact of structures, whose size, shape and elevation adversely affect the situation of the second and subsequent row dwellers.

Yours faithfully

EJ van Rooyen p  
(Mrs) Biffy van Rooyen

Cell: [+27 82 668 6103](tel:+27826686103)

|                  |              |
|------------------|--------------|
| FILE NO:         | EL 113       |
|                  | De Kelders ✓ |
| SCAN NO:         | BIFFY        |
| COLLABORATOR NO: | 1137983      |

12 MAR 2018



GM Theron (Erf 391 De Kelders)

Bordeauxlaan 28

Everglen

7550

Tel: 082 257 6737

ANNEXURE D 6/10

Die Munisipale Bestuurder

Overstrand Munisipaliteit

Hermanus Admin

Posbus 20

Hermanus

7200

Vir aandag: SW van der Merwe

TR-A Theat  
(S. v. d. Merwe)

|                  |                      |
|------------------|----------------------|
| FILE NO:         | EL 113<br>De Kelders |
| SCAN NO:         | GDK 113              |
| COLLABORATOR NO: | 1138787              |

## AANSOEK OM AFWYKING EN OPHEFFING VAN DIE TITELBEPERKING VAN ERF 113 DE KELDERS

Die bogenoemde het betrekking. Dit is met versigtigheid dat ek die bogenoemde oorweeg. Die vraag is watter president in so 'n geval geskep word indien die aansoek toegestaan word. Hoe sal ander/toekomstige oortredings/oorskrydings van bouregulasies in die toekoms verhoed word as dit as voorbeeld gebruik kan word.

As sulke gevalle goedgekeur word watter waarborg is daar dat toekomstig enige persoon nie bouwerk kan doen en daarna om verslapping aansoek doen nie. Alle persone is tog sekerlik bewus van bougrense en munisipale reëls. Watter planne is aanvanklik goedgekeur? Dit gee afstand tussen wonings en ook, in die geval, lyk dit of hul in elke geval onbeperkte seeuitsig het – so ook die bure wat hul toestemming gegee het. Wat van eiendomme agter sulke gevalle waar daardie grensspasie al uitsig is wat hul sou he. Later kan selfs dak/ pergola/ ens. opgesit word. Hoe word dit beheer, wat verhoed hul dan weer om dit te doen omdat die munisipaliteit nie nodig het om betrek te word nie.

Ek is bewus van ander areas waar sulke toestemming as voorbeeld voorgehou is en daarom het die persoon ook toestemming gekry om dieselfde te doen.

Hoe gaan huiseienaars van De Kelders en selfs die groter Gansbaai area verseker word dat daar voortgegaan sal word om munisipale regulasies te alle tye nougeset toe te pas.

Daarom dra die aansoek nie my goedkeuring weg nie.

Groete

Selma (G M) Theron

13 MAR 2018

Alida Conradie - PA17090; PLAN ACTIVE RELAXING BOUNDARY LINES AND  
 CONSENT OF USE APPLICATION FOR STAND 113 DE KELDERS



From: Leon Van der Merwe <leon@genesisflooring.co.za>  
 To: <aconradie@overstrand.gov.za>  
 Date: 2018/03/14 11:10 AM  
 Subject: PA17090: PLAN ACTIVE RELAXING BOUNDARY LINES AND CONSENT OF  
 USE APPLICATION FOR STAND 113 DE KELDERS

TR A Theun  
 CS del merwe

|                  |           |
|------------------|-----------|
| FILE NO:         | EL 113    |
| SCAN NO:         | De Kelder |
| GDK 113          |           |
| COLLABORATOR NO: | 1140555   |

Hi Mr. Conradie.

Erf 247 De Kelders objection refers.

Without wasting too much time on this matter I must object to the above for the following reasons:

- I live in JHB and every day I have to see the painful view of ensuing CHAOS as far as braking rules/laws, left right and centre, both on the road, in society and illegally built/renovated building structures alike, are concerned. It's not a pretty sight, I assure you! So naturally this is a bit of a sensitive issue from my side. I have heavily invested in the area and want to one day perhaps retire in the area myself for obvious reasons. I would hate to see the same thing happening in our beautiful Overberg district as up here in JHB. My point is that in studying the building plans, careful consideration was made by the draftsman/architect not to encroach on the sea front building line which is rather ironic when not just a little portion of the western building line was utilised, but the WHOLE LOT! My opinion is that the home owner knew exactly what he did when he had the decking and braai built, in the hope that this will not be noticed. The title deed is very clear on all restrictions and any sane person, draughtsman/architect will FIRST consider those restrictions before planning alterations. The braai and wall is an extension to the existing dwelling. How was it "NOT SEEN AS A BUILDING"?
- Had the home owner stick to the building lines, he would have enjoyed an already spacious decking space in front of the home, but my opinion is that he was more concerned about not restricting his beautiful sea view, therefore "planted the new structure as far away from the beautiful view and disregarded the "rules" regardless.
- Now the building owner also wants relaxation on future plans to open a second dwelling/guest house in an area when there seems to be more than enough guesthouses as it is, and an existing guest house, RIGHT NEXT DOOR.
- When fire restrictions were imposed I am sure the authorities had very valid reasons for it. In a drought stricken province, allowing open fires to be lit in a highly sensitive fire prone fynbos eco system, I don't believe this is wise at all considering we all know that "wind is manufactured in the Overberg", and constant strong wind is added at no additional cost. Fynbos burns like hellfire!
- Where is the "attached" letter of consent from the affected neighbour Mr. B Slabbert, dated 07 October 2017 Plan Active stated they added?
- The question main remains. When encroaching on building lines, and the WHOLE ONE IN THIS CASE, how does that NOT encourage urban sprawl and densification. Where do you draw the line to not promote this, and where do you draw the line on the next 100's of building line relaxation applications. So, we say yes to one, then you have to say yes to

16 MAR 2018

file:///C:/Users/aknoetze/AppData/Local/Temp/XPgrpwise/5AA9030BHermanusMun... 2018/03/16

them all. And if you want to make this argument about densification, all **ANNEXURE D 8/10** visit JHB once and see the chaotic devastation for yourself.

- Encroaching on the sea view west side building line was in my opinion was a deliberate act of greed, be it from a "viewing" point of view.
- It is my opinion that the home owner must break down the structure, move it to be within the allowed servitudes, then the application for a second dwelling may be considered. He should not have his bread buttered on both sides because he knew full well what he did was against the law and no amount of "fancy motivations from a seasoned town planner such as Plan Active will ever cover it up or justify his actions.
- In the end, I am not opposing the application, nor am I approving it either. I encourage you to take the matter into consideration from my point of view also, and not just on the motivation presented by Plan Active. They get paid to say "fancy things". I speak from the heart.

Please do not hesitate to contact us should you require any further information.

"Never, never, never, never, ever give up"

Regards,

Leon van der Merwe

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Tell: 011 864 5996/0118691210  
 Cell: 0824540691  
 Fax: 0866070300

**Alida Conradie - Erf 113 De Kelders - application to relax deed restrictions**

---

**From:** "Dr. Van Zyl, Chris (MNG)" <cvanzyl@nust.na>  
**To:** "aconradie@overstrand.gov.za" <aconradie@overstrand.gov.za>  
**Date:** 2018/03/14 03:00 PM  
**Subject:** Erf 113 De Kelders - application to relax deed restrictions  
**Cc:** "zylplex@gmail.com" <zylplex@gmail.com>, "willemsylvia4@gmail.com" <will...

---

Dear Mr S.W. van der Merwe & other relevant Overstrand Municipality officials

I refer to the registered letter that I have received in connection with an "Application for departure and removal of title deed restrictions of erf 113 De Kelders".

I do not support the application, because a relaxation or removal of erf 113's title deed restrictions would enable the owner to erect a multi-story building on the erf. In that way I would sacrifice my view of the ocean and the Hermanus Plate break water area with the adjacent white dunes. When I bought my erf 149, I was aware of the title deed restrictions on the mentioned erf 113 as well as all the adjacent erfen below Cliff Street. The latter definitely influenced my purchasing decision. I have furthermore designed my house on erf 149 in such a way that I could have an unobstructed view of the ocean in the direction of the Hermanus Plate with white dunes in the background, based on the knowledge that the mentioned erf 113 and surrounding erfen would not be able to erect multi-story buildings. The value of my property without the described views towards the Hermanus Plate region would be negatively affected should erf 113's title deed restrictions be relaxed or removed.

It additionally seems as if the owner of erf 113 is an architect or at least closely associated with an architect (based on the evidence contained in the documentation that was sent to me as part of the application to relax/remove the title deed restrictions)? If so, he should have known better than to ignore the title deed restrictions when he built his barbeque and deck. He should have known what the consequences of such an act of ignorance would be. Alternatively, it could be argued that by ignoring the title deed restrictions when he decided to build the barbeque and deck, it was part of a carefully planned strategy (experienced architects should know this) to persuade other property owners around him to relax/remove the title deed restrictions. In such a scenario the eventual real outcome would be the design and erection of a multi-story guest house which would otherwise not have been approved had he not used the built barbeque and deck areas to persuade other property owners around him to relax/remove title deed restrictions.

My final decision is that I am not in favour of any relaxation or removal of the title deed restrictions on erf 113. The owner should face the consequences for ignoring the title deed restrictions on erf 113.

Best regards

Dr. HJC (Chris) van Zyl  
Owner of erf 149, De Kelders  
PO Box 6399  
Welgemoed, 7538

Chris Van Zyl

**ANNEXURE D 10/10**

Senior Lecturer  
Faculty of Management Sciences  
Namibia University of Science and Technology

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ANNEXURE E 1/7

**PLAN** Town & Regional Planners  
**Active** Stads-en Streeksbeplanners



6 Magnolia St / Rte  
 PO Box / Posbus 296  
 HERMANUS  
 7200  
 Tel: (028) 313 1673  
 Fax / Faks: (028) 312 1351  
 Email: [planactive@hermanus.co.za](mailto:planactive@hermanus.co.za)  
 Website: [www.planactive.co.za](http://www.planactive.co.za)

Our reference: PA17090/ML  
 Your reference: 113 GDK (3835)

12 APRIL 2018

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

**FOR ATTENTION: MR SCHALK VAN DER MERWE**

Sir

**PROPOSED DEPARTURE & REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS: ERF 113 DE KELDERS**

- **J.W. OTTEN**

Reference is made to our application dated 14 November 2017 as well as your letter with objections attached thereto dated 20 March 2018.

1181 registered notices were sent to property owners in the immediate extension of De Kelders. Only five objections were received from N.E., I.C. & T.E. Williamson (owners of erven 99 and 100 De Kelders), E.J. van Rooyen, S. Theron, L. van der Merwe and H.J.C. van Zyl. This amounts to only 0,42% of residents in the area that objected to the application.

The location of the respective objectors is indicated on the objectors map attached (except for erf 247 and 391 De Kelders since the aforementioned erven are located a far distance away from the application property). Of all the objections received only the owners of erven 99 and 100 De Kelders could be affected by the proposed application since the braai structure is visible from their property. The structure is however not visible from erven 247, 149, 391 and 11 De Kelders. Herewith a summary of the objections received and our response thereto:

***The owners of erf 99 De Kelders bought erf 100 De Kelders in 1981 to protect their views. They expected that development would occur sooner or later, but also expected the protection afforded them by the building regulations. With the application on erf 113 De Kelders these regulations were blatantly overlooked.***

We visited erf 99 De Kelders and agree that the braai and chimney is visible from erf 99 De Kelders. But regardless of it being on the 0m or 2m building line it would still fall within this small window of view between the existing structures and it impacts only on a small portion of erf 99 De Kelder's existing sea view. We are of the opinion that the braai chimney falls in a line of view already

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

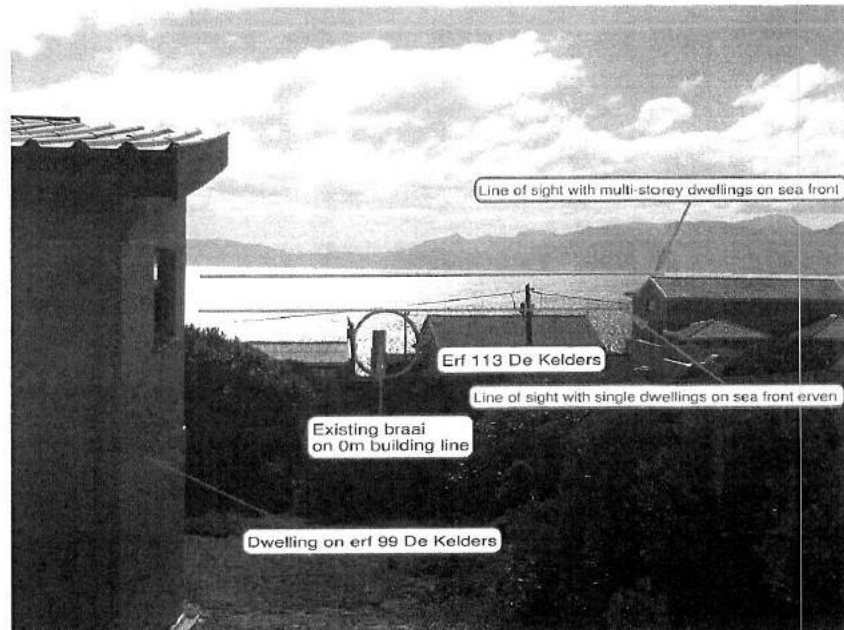
John Mc Lachlan: Ndip (Town Planning) Tech Witwatersrand, MSAPI  
 Pauline Spronk: B (Soc Sc) US, BA Hon (UNISA)  
 Menké Lerm: B. Art et Scien Cum Laude (Town Planning) UNW; SACTRP

TP-A Theort  
(S vld Merwe)

|                  |            |
|------------------|------------|
| FILE NO:         | EL 113     |
|                  | De Kelders |
| SCAN NO:         | 03         |
| COLLABORATOR NO: | 1149305    |

obstructed by the existing dwellings, telephone poles, the neighbours' braai chimney, etc. The braai chimney therefore follows the existing line of obstruction and is not seen as a single, large, obtrusive structure that impacts on their greater panoramic views of the area. In addition the braai chimney does not extend higher than the existing single storey dwelling on erf 113 De Kelders.

Views from the upper De Kelders slopes and village area are wide horizon ocean views. The proposed development is insignificant within the context of the broad panoramic views towards the ocean. Refer to the photograph below taken from erf 99 De Kelders:



***It appears that erf 113 De Kelders is used as overflow accommodation for the guest house (Cliff Lodge – erf 112 De Kelders) next door. One of the objectors considers the use of erf 113 De Kelders as guest house / bed and breakfast establishment as a business and not a single residential use.***

Erf 113 De Kelders is currently used for single residential purposes. Regardless of this statement by the objector, the subject property is allowed to rent out two bedrooms for bed-and-breakfast purposes in terms of its SR1 zoning status since guest rooms are a primary use for SR1 properties (subject to the requirements as stipulated by the Overstrand Zoning Scheme Regulations, 2013). At the moment the title deed prohibits even the renting out of two guest rooms only – hence the removal of this condition to allow the owner to exercise his primary right in future and potential secondary rights (five bedroom guest house with consent from the municipality). In addition even a five bedroom guesthouse is not considered a commercial land use since the latter can be applied for as a consent use application on SR1 zoned properties.

***According to one of the objectors the title deeds of De Kelders also refers to a condition that not more than 50% of the area of the erf be built upon. The application for erf 113 De Kelders makes no reference to this condition – was this condition deliberately omitted from the application / report? How can they then believe the statement that “it is not proposed to change the land use or structures of the subject property”?***

This condition is also contained in the title deed of erf 113 De Kelders. It was most certainly not deliberately omitted from the application. It was not addressed in the application since it does not apply to the application. All title deed conditions to be removed have to be motivated accordingly and at this stage no reason / motivation exists to remove this condition from the title deed. The existing structures comply with the 50% coverage and no additions / alterations are proposed. In addition the SR1 zoning only allows for 50% coverage for SR1 zoned properties and thus the title deed condition is in line with the land use restrictions allowed for SR1 zoned erven.

A conveyancer's certificate compiled by Hennie van Zyl at VZK Attorneys dated 25 October 2017 was submitted with the application and this document confirmed the conditions to be removed from the title deed of erf 113 De Kelders.

***One of the objectors (erf 11) states that these types of applications for erven in the front row of De Kelders leave property owners in second and subsequent rows vulnerable to the impact of these structures. Another objector (erf 247) states that it takes away potential sea views for properties at the back with perhaps a sea view through the 2m building line window only.***

The impact on views are totally misconstrued and exaggerated by objectors. The structure is only visible from erf 99 De Kelders (objection with regards to impact on their sea view addressed above) and does not impact on the views of the other four objectors' properties. Neither the deck nor the braai structure / chimney obscure the views of erven 11, 149, 247 and 391 De Kelders.

***The application will set a precedent for similar application in this area. If this application is approved nothing will prohibit the owner (and other property owners in the area) to construct illegal structures with the assumption that it will be approved later on. How will the municipality ensure that the building and land use regulations are enforced in De Kelders?***

It seems that this is the main objection for all properties not directly impacted by the existing deck and braai structure. The construction of the deck and braai structure was not an attempt to encourage lawfulness. Each application is dealt with and evaluated on merit and this application does not serve as Carte Blanche for similar land use applications in future. The removal of restrictive title deed conditions also does not allow the property owner to do as he pleases on erf 113 De Kelders. The departure application is attached to the plan submitted and will only afford the owner a deviation from the western lateral building line to accommodate the braai structure and deck. All future additions / alterations to the subject property have to be in line with the zoning scheme parameters. Any deviations from these parameters will have to follow a new separate land use application process in which the adjacent property owners will be notified again during the public participation period.

***The objectors question the architect's integrity – surely he would have known that this constituted a structure in the building lines and still blatantly ignored the rules. Perhaps the illegal construction of the deck and braai is part of a carefully planned strategy to persuade surrounding property owners to do the same with the outcome being the construction of multi-storey guest houses on the sea front.***

The construction of the deck and braai structure was not an attempt to encourage lawfulness. Both the built in braai and open deck were constructed by the owner without the intent of departing from the zoning scheme regulations and title deed restrictions since the owner considered neither the braai nor the deck to be a building. The owner's lack of understanding with regards to what constitutes a structure / building and the relevant legislation that guides the construction of built braais and decks in the Overstrand Municipal area is evident. It is however important to note that his intent was never to undermine the legislation applicable to the subject property – hence the application to address the structures that encroach the western lateral building line.

***One of the objectors states that the owner also wants relaxation on future building plans to open a second dwelling / guest house on the subject property. The second dwelling should only be considered if the braai structure is moved back within the applicable building lines.***

At the moment the dwelling on erf 113 De Kelders is only single storey as opposed to a height restriction of 8m measured from base level to top of roof allowed on the subject property (i.e. three storeys). If an "as of right" building is constructed the impact on the existing views will be higher than with the mere construction of the braai structure and deck on the 0m building line. The application at hand is to accommodate existing structures and land uses only. The title deed stipulates that no fires may be lit on the subject property without the relevant consent (thus this condition has to be removed otherwise our client will not be able to braai anywhere on the subject property). It is also proposed to remove the conditions that prohibit the future use of the subject property for:

- a) second dwelling purposes: this is currently a primary right in terms of the zoning scheme, i.e. this will bring the title deed in line with the existing land uses allowed on the subject property subject to the requirements of a second dwelling) and;
- b) guest house purposes (a consent use in terms of the relevant zoning scheme but as mentioned above this condition even prohibits the primary right of renting out two guest rooms on the subject property and therefore has to be removed).

The above will bring the title deed in line with the land uses allowed for SR1 zoned properties; not to mention that it will save our client time and costs to take up his primary rights (second dwelling and two guest rooms if considered by the property owner in future) or to submit any future land use applications given the extent of the public participation process that had to be followed (notices to 1181 property owners). Neither a second dwelling nor a guest house is currently proposed for the subject property. A separate land use application has to be submitted should the owner intend to operate a guest house with more than two bedrooms from the premises. Our client does however not need to obtain any land use approvals to redevelop his property in future as a multi-storey dwelling or with a second dwelling if the latter meets the requirements of the existing SR1 zoning parameters.

***How will the proposal meet the fire regulations?***

The application was circulated to the Fire & Safety Department for comment.

***The letter of consent from the neighbour, Mr. B. Slabbert, was not attached to the notice.***

Only the required documents as per the instruction letter from the municipality was attached to the notices sent out to the public. The notice as well as the advertisement placed in the news paper clearly stipulates that the application was available for inspection at the municipality during the public

participation period. The letter of consent from the neighbour was submitted with the land use application.

***How does the departure and removal of title deed conditions not encourage urban sprawl and densification? Say yes to one – say yes to all.***

Urban sprawl refers to the spread of an urban area into what used to be countryside (i.e. beyond the demarcated urban edge). The proposal for removal of restrictions and departure does not encourage the later, but rather promotes land development that is spatially compact and in a location that is spatially sustainable. The existing structures are to an improved erf within an established residential area.

Urban densification is a term used in urban planning and urban design to refer to the number of people inhabiting a given urbanized area. Urban densification suggests environmental advantages of living closer together – i.e. private space sacrificed for better used public space to foster a sense of community. The proposal in its current state (only one dwelling) does not encourage densification (i.e. no new land portions or dwellings proposed). With the removal of the second dwelling title deed restriction the owner will be allowed to construct a second dwelling in future as a primary right under the current zoning (should he wish to exercise this right). The latter will then be in line with the Overstrand Municipal Growth Management Strategy (2010) that promotes densification in this Planning Unit of De Kelders.

***The proposed application will allow the owner to construct a multi-storey building on the subject property. This would compromise the owner of erf 149 De Kelder's view of the Hermanus Plate break water area. The owner of erf 149 De Kelders bought is property with the knowledge that erf 113 De Kelders and surrounding erven would not be able to construct multi-storey buildings (based on the conditions in the title deed). Views lost will compromise the values of the properties at the back.***

At the moment the dwelling on erf 113 De Kelders is only single storey as opposed to a height restriction of 8m measured from base level to top of roof allowed on the subject property (i.e. three storeys). If an "as of right" building is constructed the impact on the existing views will be marginally higher than with the mere construction of the braai structure and deck on the 0m western building line. If the existing or a new owner of erf 113 De Kelders should decide to construct a multi-storey dwelling on the subject property, the latter will be within their primary right (i.e. no land use application required) if the proposal is in line with the land use restrictions for SR1 zoned properties. There is no overlay zone for the front row erven that prohibits multi-storey dwellings (as is evident from the existing multi-storey dwellings in the area) and the title deed does not restrict the development of the subject property to a single storey structure only. The objector's statement is therefore incorrect and irrelevant.

To conclude: A mere five objections (0,42% of property owners that received notices) were received against the proposed application, of which only one of the objector's views might be impacted on by the proposal at hand (deck and braai structure). It is submitted that the views from the upper De Kelders slopes and village area are wide horizon ocean views. The proposed development is insignificant within the context of the broad panoramic views enjoyed by the upper lying erven towards the ocean. Most of the other objectors took this opportunity to object to departure and removal applications in general and the impact on views are totally misconstrued and exaggerated by the objectors in general. There is a general misconception that title deeds provide additional protection against development in a specific town or extension of a town. In the past zoning and

**ANNEXURE E 6/7**

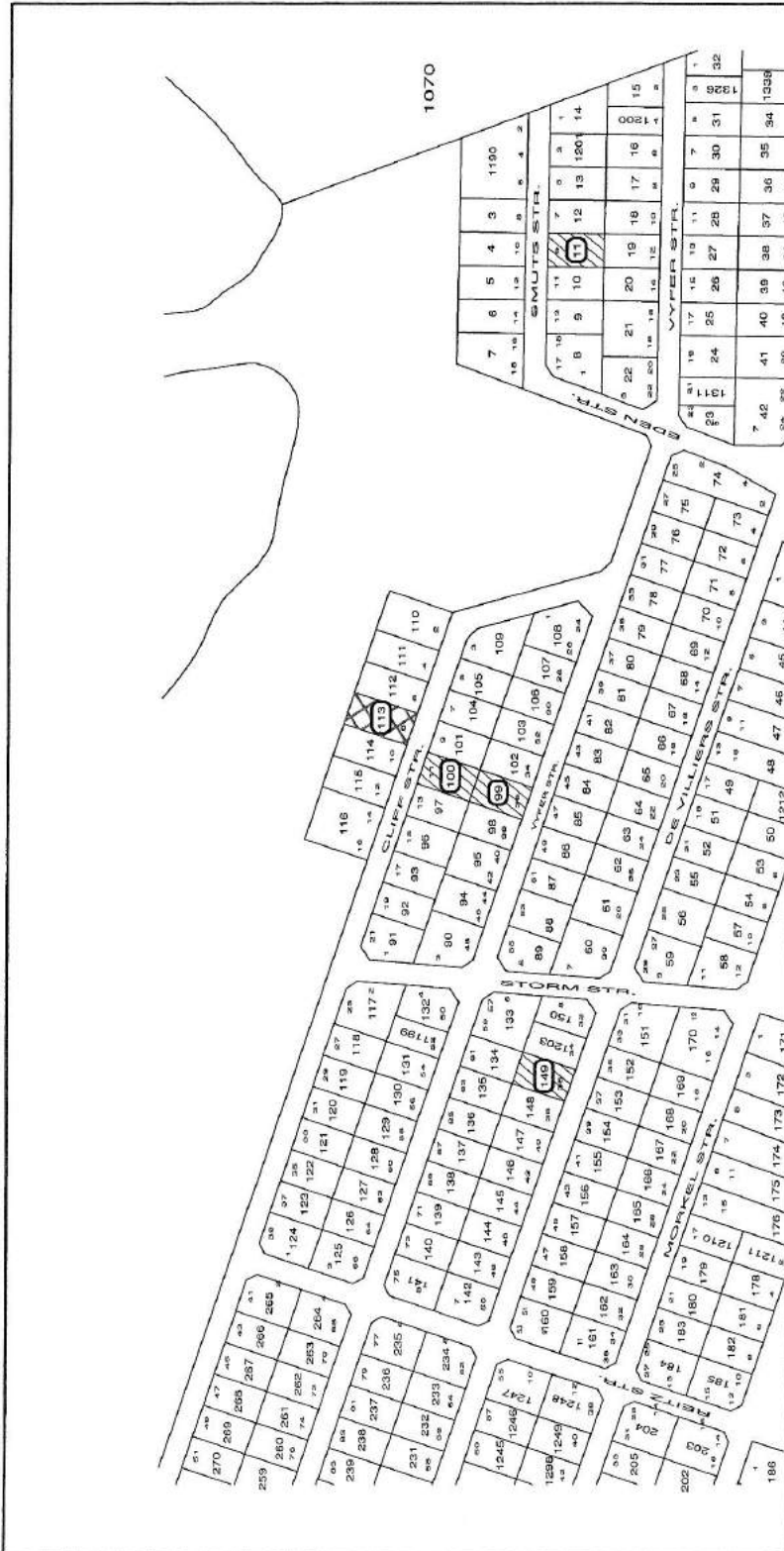
development management schemes did not exist and thus the conditions / planning parameters pertaining to the development of an area were stipulated in the title deeds to guide development. In recent years zoning and development management schemes were promulgated to guide, protect and manage development in towns and cities. To update title deed conditions (to allow second dwellings and guest houses with the consent of the municipality) to be in line with the latest approved zoning scheme of an area is therefore required to ensure the economic and development growth of an area.

We trust that you find the above in order and that you will now be able to proceed with the processing of the application.

Yours faithfully



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



NOTES:  
 [Hatched Box] Erf 113 De Kelders  
 [Hatched Box] Location of objectors' erven in close proximity to erf 113 De Kelders

**PLAN**  
 Active  
 Stads- en Streeksbeplanners  
 Town & Regional Planners

All distances approximate  
 and subject to survey.  
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Property Description:  
**ERF 113  
 DE KELDERS**

Plan Description:  
**LOCALITY MAP:  
 OBJECTIONS**

Scale: NTS  
 Drawing Nr: deksid113-obj.dwg  
 Date: APRIL 2018



*Munisipaliteit – U-Masipala – Municipality*  
**OVERSTRAND**

**INTERNAL MEMORANDUM**

|                                    |   |                          |                                     |
|------------------------------------|---|--------------------------|-------------------------------------|
| <b>Aandag /<br/>For Attention:</b> | Town Planning department:<br>A Conradie | <b>Van /<br/>From:</b>   | Department:<br>Operational Services |
| <b>Afskrif /<br/>Copy:</b>         |   | <b>Datum /<br/>Date:</b> | 15 January 2018                     |

Ref: Erf 113, Gansbaai

**RE: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS AND DEPARTURES– ERF 113, GANSBAAI**

The request for comment from the Department: Operational Services (Gansbaai) with regard to the abovementioned proposal refers.

The proposal entails the following:

- Proposed removal of restrictive title deed conditions and departure of building lines.

**1. ANALYSIS**

**1.1. Water**

- 1.1.1. The existing water connection to Erf 113 shall be used to service Erf 113.
- 1.1.2. The proposed removal of restrictive conditions and departure will not have a significant impact on the existing municipal water supply network. The Directorate: Infrastructure and Planning must however give comment with regard to the relevant Bulk Services Levies.

**1.2. Sewer**

- 1.2.1. The existing sewer conservancy tank on Erf 113 shall be used to service Erf 113.
- 1.2.2. Sewerage will be removed from the sewer conservancy tanks as per municipal arrangement.
- 1.2.3. The developer must investigate and determine the limitations of the site in terms of sewer drainage, subject to the minimum requirements of *SANS 10400 – P: 2010: Drainage*.

1.2.4. The proposed removal of restrictive conditions and departure will not have a significant impact on the existing municipal sewer tanker service. The Directorate: Infrastructure and Planning must however give comment with regard to the relevant Bulk Services Levies.

**1.3. Streets**

1.3.1. Access can be obtained from Cliff Street.

1.3.2. Any additional and / or extended vehicle entrances will be for the owner's account.

**1.4. Storm water**

1.4.1. The "Common Law" shall apply with regards to storm water discharge.

**1.5. Parking**

1.5.1. "On-site parking" must be provided. The parking areas are to be provided at a ratio as described by the Town Planning Scheme, with permanent surfaces and layout to the satisfaction of the Department: Operational Services.

**1.6. Other services**

1.6.1. The Department: Operational Services does not have any information regarding any Telkom-, other telecommunications- and / or Electrical services which may be affected by the proposed development. The Electrical- and Traffic departments, as well as Telkom and other relevant service providers, must therefore also give their recommendations regarding the application.

**1.7. Refuse removal**

1.7.1. Removal will be done from the sidewalk according to the normal removal schedule of the municipality.

**1.8. Irrigation water**

1.8.1. No irrigation water is available in this area.

**1.9. Waste Water Treatment Works (WWTW)**

1.9.1. The proposed removal of restrictive conditions and departure will not have a significant impact on the Waste Water Treatment Works. The Directorate: Infrastructure and Planning must however give comment with regard to the relevant Bulk Services Levies.

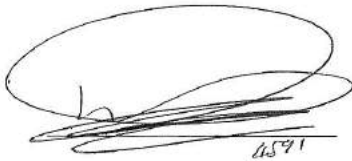
**1.10. Bulk Water Supply**

- 1.10.1. The proposed removal of restrictive conditions and departure will not have a significant impact on the bulk water supply, reservoirs or other bulk water infrastructure. The Directorate: Infrastructure and Planning must however give comment with regard to the relevant Bulk Services Levies.

**RECOMMENDATION**

- 1.1. With regard to the application for the removal of restrictive title deed conditions and departures of Erf 113, Gansbaai, **the Department: Operational Services has no objections to the application, subject to the following conditions:**
- 1.1.1. That the existing water connection and sewer conservancy tank to Erf 113 shall be used to service Erf 113.
- 1.1.2. That the developer investigate and determine the limitations of the site in terms of sewer drainage, subject to the minimum requirements of *SANS 10400 – P: 2010: Drainage*.
- 1.1.3. That on-site parking facilities are provided as per the Planning Schedule, and to the satisfaction of the Department: Operational Services.
- 1.1.4. That any additional and / or extended vehicle entrances will be for the owner's account.
- 1.1.5. That the Electrical- and Traffic Departments, as well as Telkom and any other relevant authorities and service providers not have any objections to the application.

Yours faithfully



**W. Germishuys**  
Principal Technician: Operational Services  
Gansbaai



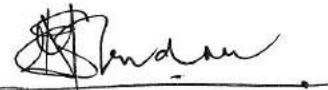
**T. Steenberg**  
Senior Manager: Operational Services  
Gansbaai

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:  
APPLICATION FOR DEPARTURE & REMOVAL OF RESTRICTIVE TITLE  
DEED: ERF 113, DE KELDERS (3835)**

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

**Conditions:**

1. that only the existing water connection and sewer conservancy tank shall be used to service Erf 113, 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. 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;
3. that the developer must investigate and determine the limitations of the site in terms of sewer drainage, subject to the minimum requirements of SANS 140400 – P: 2010: Drainage;
4. that any additional and / or extended vehicle entrances will be for the developer's account;
5. that stormwater be allowed to discharge through Erf 113, De Kelders, unobstructed;
6. that no on-street parking be allowed.



**DENNIS HENDRIKS  
SENIOR MANAGER:  
ENGINEERING SERVICES**

24/1/2018

**DATE**



**DEVELOPMENT MANAGEMENT: REGION 2**  
**ANNEXURE H 1/1**

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 1 Dorp Street, Cape Town 8001  
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**REFERENCE:** 15/3/2/12/BO3/Erf 113, De Kelders

The Municipal Manager  
 Overstrand Municipality  
 P O Box 20  
 Hermanus  
 7200

For attention: P Roux

TR A Theart  
 (P Roux)

|                  |            |
|------------------|------------|
| FILE NO:         | EL 113     |
|                  | De Kelders |
| SCAN NO:         | 04         |
| COLLABORATOR NO: | 1152781    |

**REQUEST FOR PLANNING COMMENT: REMOVAL OF RESTRICTIVE TITLE CONDITIONS AND DEPARTURE ON ERF 113, DE KELDERS**

- Your request for comment, dated 6 February 2018, has reference.
- This planning component has no objection to the proposed departure to enable the owner to utilise part of the property for a braai and an open deck on the 0m western building line, provided the consent is obtained from the abutting property owner (Erf 114).
- It is further recommended the Title Deed condition E. (d) be removed for the purposes of the braai and deck. The application for the removal of conditions D.1 and E.(a) and (c) should be considered with circumspect, given that there is no specific development proposal to measure against the considerations prescribed in Section 39(5) of the Land Use Planning Act, 2014(Act 3 of 2014).

  
 \_\_\_\_\_  
**CHIEF TOWN AND REGIONAL PLANNER: REGION 2**

**DATE:** 10/4/2018



En genoemde Komparant het verklaar dat sy prinsipaal, op 2 Oktober 2015, waarlik en wettiglik verkoop by Privaat ooreenkoms, en dat hy, in sy voorgenoemde hoedanigheid hierby sedeer en transporteer aan en ten gunste van

**JOHANNES WILHELMUS OTTEN**  
 Identiteitsnommer 551011 5062 088  
 Getroud buite gemeenskap van goed

sy Erfgename, Eksekuteurs, Administrateurs of Regverkrygendes, in volkome en vrye eiendom

**ERF 113 DE KELDERS**  
**IN DIE OVERSTRAND MUNISIPALITEIT**  
**AFDELING CALEDON**  
**PROVINSIE WES-KAAP**

**GROOT 714 (SEWE HONDERD EN VEERTIEN) Vierkante meter**

**AANVANKLIK OORGEDRA KRAGTENS TRANSPORTAKTE NOMMER T19917/1946 MET KAART NO 8132/46 DAARBY AANGEHEG EN GEHOU KRAGTENS TRANSPORTAKTE NO. T13963/1982.**

- A. **ONDERHEWIG** aan die voorwaardes waarna verwys word in die Sertifikaat van Dorpstitel No 1067 gedateer 9 Februarie 1940
- B. **NIE ONDERHEWIG** aan voorwaarde B op Bladsy 3 van Transportakte Nr. T13963/1982 kragtens Artikel 53 van die "Mining Titles Registration Amendment Act 24 of 2003
- C. **ONDERHEWIG** aan en met die voordeel van die serwituul waarna verwys word in 'n endossement gedateer 12 Junie 1939 op Transportakte No 3733 gedateer 20 Maart 1920 en wat as volg lui:
- "Remainder, Registration of Servitude. By Deeds of Transfer No 5993 dd. 12.6.39; 12705 dd. 17.11.1939; No 13657 dd. 14.12.1939 certain restrictions over the land thereby conveyed including grazing, ..... Water rights, trading and fishing, have been imposed in favour of and against the remainder held hereunder, as will more fully appear on reference to the said Deeds of Transfer"
- D. **ONDERHEWIG** aan en met die voordeel van die volgende spesiale voorwaardes opgelê in Transportakte Nr. 19917, gedateer 18 November 1946, en waarvan nalewing afgedwing kan word deur die Transportgewer vir eie voordeel as eienaar van die restant van die grond omskrywe in Transportaktes Nr. 1255 gedateer 25 Februarie 1935 en 3733 gedateer 20 Maart 1920 en gemelde Sertifikaat van

Dorpstiel Nr. 1067 gedateer 9 Februarie 1940, en vir die voordeel van toekomstige eienaars daarvan of enige gedeelte daarvan almal van wie of gesamentlik of afsonderlik geregtig sal wees om nalewing van sodanige voorwaardes af te dwing – saam met die voorwaardes opgelê deur die Administrateur in terme van sy goedkeuring van die stigting van die gemelde dorp, naamlik

1. Geen vure sal aangesteek word binne die grense van die persele hierdeur verkoop, behalwe deur of met die skriftelike toestemming van die Transportgewer.
2. Die Transportgewer behou die reg voor om te enige tyd hierna elektriese, telegraaf – of telefoondrade oor en op enige deel van die bogenoemde erf of erwe te span, met die verdere reg om dit aan enige gebou of opstal vas te heg op 'n hoogte van minstens 3,05 meter van die grond af, en reg van toegang te enige tyd om dit te verwyder of in orde te hou.
3. Die Transportgewer behou vir sigself as eienaar van enige onverkoopte persele in die dorpsgebied en as eienaar van enige ander grond gehou deur hom volgens Akte van Transport Nr 3733 gedateer 20 Maart 1920 die uitsluitende reg voor tot die gebruik van al die water wat ontstaan op of vloei oor die gesegde persele of erwe en ook tot enige water waarop sulke persele of erwe geregtig is as oewergrond, of kragtens serwituut of ooreenkoms en die Transportnemer en sy opvolgers in titel sal nie geregtig wees op enige sodanige water nie, en die Transportnemer as eienaar van oewergrond aan enige waterstroom wat oor of onder die grond vloei, word hiermee alle watterregte ontnem.
4. Dat die Transportgewer behou vir sigself en sy opvolgers in titel die reg van toegang op alle redelike tye na hierdie erf vir die doeleindes van instandhouding en reparasie van pype onder enige deel van voorgenoemde erf of ander erwe, tesame met die reg om al sulke akte en dade te doen, op die gesegde grond wat nodig of wenslik mag wees vir die gerief van die bewoners van hierdie of ander erwe in die dorpsgebied, en om so 'n voorraad te beheer totdat 'n plaaslike bestuur vir die dorpsbestuur gestig is, tesame met die reg om die voorraad van water na die bogenoemde erwe af te sny ingeval die Transportnemer of enige opvolgers van hom weier om sodanige fooi as die Transportgewer vir die verskaffing van water, met die goedkeuring van die Administrateur sal ophië, te bepaal.

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- 6 Daar mag nie op enige deel van die bogenoemde erf of erwe enige gebou opgerig word as die Kaart en spesifikasies nie vooraf aan die Transportgewer voorgelê en deur hom skriftelik goedgekeur is nie

- E. **ONDERHEWIG** aan die voorwaardes opgelê in Transportakte No 19917 gedateer 18 November 1946, deur die Administrateur ingevolge die bepalings van Ordonnansie 33 van 1934 met betrekking onder andere tot toekomstige wysigings ingevolge Artikel 18 en die plig van die plaaslike owerheid om nalewing daarvan af te dwing ingevolge Artikel 61 en wat ook afdwingbaar is volgens Wet deur die eienaar van enige erf in die dorp en hul respektiewe opvolgers in titel en wat opgelê is as volg.

Ten voordeel van die geregistreerde eienaar van enige erf in die "De Kelders Extension No 1 Township".

- "(a) That this erf be used for residential purposes only.  
 (b) That no more than one half of the area of this erf be built upon.  
 (c) That not more than one dwelling together with the necessary outbuildings and appurtenances be erected on this erf.  
 (d) That no building shall be erected within 4,72 metres of any street line which forms a boundary of this erf or within 1,57 metres of the boundary of any adjoining erf, provided that this latter restriction shall not apply to the common boundary of erven held as one under consolidated title."

ten gunste van die Administrateur:

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

ten gunste van die Plaaslike Owerheid:

- "(f) That the owner of this erf, whether the applicant for the establishment of the township or any future owner shall be obliged to allow the drainage and sewage of any other erf or erven to be conveyed over such erf if deemed necessary by the Local Authority that may hereafter be constituted for the township and in such manner and in such position as may from time to time

- 5 -

be reasonably required by that authority.

- (g) That the owner of this erf, whether the applicant for the establishment of the township or any future owner shall be obliged without compensation to remove any septic tank installed thereon after one month's notice has been given by the Local Authority that may hereafter be constituted for the township.

F. **GEREGTIG** op die voordeel van die terme van die aantekening gedateer 20 Februarie 1941 op voornoemde Sertifikaat van Dorpstitel Nr 1067/1940, betreffende sekere beperkings, insluitende die aansteek van vure, reg van toegang vir die lê van elektriese drade, herstel van pyplyne, waterregte en voorwaardes betreffende geboue ens

WESHALWE die komparant afstand doen van al die regte en titel wat

**THEODORE JOHN FREDERICK DE RIJK , Getroud soos vermeld**

voorheen op genoemde eiendom gehad het, en gevolglik ook erken het dat hy geheel en al van die besit daarvan onthef en nie meer daartoe geregtig is nie en dat, kragtens hierdie akte, bogenoemde

**JOHANNES WILHELMUS OTTEN , Getroud soos vermeld**

sy Erfgename, Eksekuteurs, Administrateurs of Regverkrygendes, tans en voortaan daartoe geregtig is, ooreenkomstig plaaslike gebruik, behoudens die regte van die Staat en ten slotte erken hy dat die verkoopprijs die bedrag van **R2 370 000,00 (Twee Miljoen Drie Honderd en Sewentig Duisend Rand)** beloop

TEN BEWYSE WAARVAN ek, genoemde Registrateur, tesame met die Komparant hierdie Akte onderteken en dit met die Ampseël bekragtig het.

ALDUS GEDOEN EN VERLY op die Kantoor van die REGISTRATEUR VAN AKTES te KAAPSTAD op hede die

10 2015

2015

In my teenwoordigheid

REGISTRATEUR VAN AKTES

q.q.