

**AGENDA of the  
Portfolio Committee : Infrastructure and Planning  
19 April 2016  
(Also the agenda for the Mayoral Committee Meeting : 28 April 2016)**

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7.

**ERF 713, 21 FRONT STREET, DE KELDERS : APPLICATION FOR REMOVAL OF RESTRICTIONS AND SUBDIVISION : MESSRS WRAP CONSULTANCY ON BEHALF OF JV MEINTJIES**

**713 GDK (2572)**

**SW van der Merwe**

**(028) 313 8900**

**Hermanus Administration**

**23 February 2016**

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**1. Executive Summary**

An application has been received on 19 May 2014 from Messrs WRAP Consultancy on behalf of the registered owner of Erf 713, De Kelders, JV Meintjies for the removal of restrictive title conditions and the subdivision in two portions, namely a Remainder of  $\pm 699 \text{ m}^2$  and Portion A  $\pm 702 \text{ m}^2$ .

A Locality Plan of the property concerned is attached as Annexure A. The proposed Subdivision Plan is attached as Annexure B, and the Motivation Report from the applicant in support of the proposal is attached as Annexure C.

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

Infrastructure and Planning  
Town- and Spatial Planning

**3. Compliance with Strategic Priorities**

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

**4. Delegated Authority**

Executive Mayor

**5. Legal Requirements**

- Section 24 of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985)
- Removal of Restrictions Act, 1967 (Act 84 of 1967)

**6. Background/Discussion/Evaluation**

**Background**

Erf 713, De Kelders is zoned Residential Zone 1: Single Residential (SR1) and measures  $1401 \text{ m}^2$  in extent. The subject property is developed with a dwelling

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house ( $\pm 143\text{m}^2$ ) in extent abutting Front Street. The rear portion of the site is undeveloped. The subject property is bounded by single residential erven to the side and rear. Various erven in the surrounding area have already been subdivided varying in size from  $641\text{m}^2$  and  $700\text{m}^2$  up to  $1084\text{m}^2$ .

It is proposed to subdivide the property into two portions namely a Remainder ( $\pm 699\text{m}^2$ ) and Portion A ( $\pm 702\text{m}^2$ ) in extent. Portion A, situated to the rear will be accessed from Front Street via a 3m access servitude over the Remainder.

Application is also made for the removal of restrictive title condition E.(B)(e) contained in Title Deed T11510/2014 in order to enable the subdivision of the subject property.

### **Discussion**

The application was distributed to all the registered property owners within De Kelders (one thousand two hundred and thirty two (1232) letters) via registered mail and was advertised in the local press and Government Gazette. Thirteen (13) letters of objection as well as one (1) letter of support were submitted and are attached as Annexure D. The applicant's response to the objections is attached as Annexure E.

The main grounds of objection and the Town Planner's response after each point of objection could be summarised as follows:

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

*The erven will have a similar extent as subdivided erven in the surrounding area that varies between  $641\text{m}^2$  and  $700\text{m}^2$  up to  $1084\text{m}^2$  (refer to the Locality Plan). Six (6) of these erven are within the vicinity of the application property ( $\pm 130\text{m}$ ).*

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

*With reference to the comment under paragraph 1) above, the precedent has already been established. The merits of the application cannot be considered on the basis of the precedent. Regard is to be taken to the principles of desirability and impact on vested rights of adjoining properties as per Section 36 of LUPO and also having regard to existing Spatial Planning Initiatives, i.e. the Spatial Development Framework (2006), Growth Management Strategy (2010), etc.*

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- 3) The proposed subdivision of the subject property will change the character of the surrounding area**

*The proposed subdivision will create an additional single residential erf of comparable size having had regard to previous subdivisions in the surrounding area. The erven remain single residential and will not result in the upgrade of development rights. The respective erven are also long and narrow and following subdivision will be capable of development on the front and rear section (the new erf). As such, the spacing and distances between properties to lateral boundaries are maintained and contribute to the fact that the subdivisions do not adversely impact on the visual amenity of the street scene or the character of the area.*

- 4) The large erven contribute towards the character of De Kelders**

*The erven situated between Steyn and Front Street is generally larger than those situated to the east of Steyn Street. The latter are in the region of 600m<sup>2</sup> opposed to erven west of Steyn Street that measures in the region of 1190m<sup>2</sup>. Various subdivisions as small as 505m<sup>2</sup> have already been permitted in the surrounding area. The proposed erven following subdivision measures 699m<sup>2</sup> and 702m<sup>2</sup> respectively which is still considered to be large erven and not considered to unacceptably detract from the character of the surrounding area characterised by large erven.*

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

*The subdivision will impact on engineering services. For this reason the applicant will be required to pay bulk services levies which are used for the upgrade of the necessary engineering services and to ensure that bulk service capacities are in place to accommodate the new erven, thus ensuring that the health and welfare of the surrounding neighbourhood is not affected. The proposal is supported by the Engineering Services Department, subject to conditions.*

- 6) The application for subdivision is contradictory to the Title Deed condition prohibiting the subdivision of the erf without the Administrator's permission**

*This statement is correct. The application also involves an application for the removal of restrictive title conditions to the Department of Environmental Affairs and Development Planning (DEA&DP) for the removal of this particular Title Deed condition. Accordingly a recommendation will be made to the competent authority in this regard,*

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*whilst approval of the subdivision will be subject to approval of the removal of restrictions application by the competent authority.*

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

*The following is stated in the original land use application:*

*"The subject property falls within planning unit 1 which states the following in terms of residential densification:*

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

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

**8) The subdivision proposal is not in line within the conservation initiatives identified by Overstrand Municipality**

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

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

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

*Refer to the comment under paragraph 9) above.*

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

*Refer to the comment under paragraph 5).*

- 11) E la Grange indicates that she is the owner of Erf 712, De Kelders**

*The objector owns Erf 714, De Kelders and not Erf 712, De Kelders as stated within the objection.*

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

*The applicant's statement as per paragraph 12) (attached as Annexure E) is disagreed with. Section E of the Title Deed states:*

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

*A. AS being in favour of the registered owner of each erf in the Township-*

- (a) That this erf be used for residential purposes only.*
- (b) That not more than one half the area of this erf be built upon.*
- (c) That not more than one dwelling, together with the necessary outbuilding and appurtenances to be erected on this erf.*
- (d) That no building shall be erected within 15 feet of any street line which forms a boundary of this erf or within 5 feet of the boundary of any adjoining erf, provided that this latter restriction shall not apply to the common boundary or erven held as one erf under consolidated title.*

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*B. AS being in favour of the Administrator-*

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

*From the above it is clear that the Title Deed differentiates between two (2) sets of conditions. The opinion is however held as per paragraph e) that the restrictive conditions are imposed in favour of all property owners in De Kelders, including those of the objectors. For this reason the applicant submitted notices to all registered property owners in De Kelders. Since due process was followed, the objectors cannot claim deprivation of property rights as per Section 25 of the Constitution. Furthermore, this statement could only be made (or confirmed) by the courts.*

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

*It is not a requirement of a land use application to submit building plans for a subdivision application that aims to subdivide an existing property into two portions. The proposed development will have to comply with the development parameters for Residential Zone I erven as per the Overstrand Zoning Scheme Regulations. A building plan to this effect will be submitted to the Overstrand Municipality for evaluation and approval before any construction commence.*

- 14) The respective Title Deed conditions are quoted wrongly in the application**

*The application was submitted to DEA&DP as well as the Overstrand Municipality. Both authorities evaluated the application before the public participation process commenced. Both authorities are therefore satisfied that the application reads correctly with regard to the Title Deed restriction that the application achieves to remove. This point of objection is therefore dismissed.*

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

*The statement within Section 13 of the land use application is incorrect. Plan 4 contained in the Motivation Report correctly illustrates that the subject property is located further away than 100 meters from the high water mark of the sea.*

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

*The condition that prohibits subdivision is indeed a real right or prandial servitude where, in general, a person has a right because he is the owner of a certain property. Should he sell the property, the servitude will move over into the Title Deed of the new property owner. In this specific matter, the prandial servitude came about with the establishment of De Kelders Township in the form of restrictive conditions laid down by the Administrator of the Province, which the applicant now seeks to remove. It should also be borne in mind that the respective conditions referred to above are imposed in all the Title Deeds of De Kelders Extension I and the same argument is therefore also applicable to those smaller erven.*

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

*Noted, but approval of the application cannot cause the objector's property to be further away from the sea than it currently is. It should however be borne in mind that it is possible for the applicant under the applicable primary rights to develop the subject property on the rear property boundary up to 3 storeys high, 2m from the rear property boundary by means of an attached or detached structures in line without triggering the applicable Title Deed restrictions. Accordingly the impact of the proposed subdivision would be no different compared to the aforementioned. It is therefore considered that this point of objection regarding negative impact on property value has no merit.*

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

*The statement is not correct. Any future dwelling on the newly created portion will be located below the objector's property, which is located on a plateau. It should be mentioned that the applicant is well within his primary rights to demolish the existing dwelling on the property and constructing a dwelling higher up on the subject property, or extend towards the rear or to construct a detached structure/outbuilding over more than one storey on the rear building line. Having had regard to the aforementioned it is clear that development of the subject property in line with the Zoning Scheme Regulations and restrictive title conditions to the*

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*maximum will have the same impact on the objector's property with regard to views. Accordingly the impact of the proposed subdivision will be no different compared to the aforementioned. This point of objection therefore has no merit.*

**19) Same goes for outbuilding under the current primary rights**

*Refer to the comments under paragraphs 17) and 18) above. It should be noted that an outbuilding may comprise more than one storey in the circumstances and may contain habitable rooms, i.e. a braai or games room above ground floor with the same impact as that of a dwelling unit on the subdivided erf.*

**20) Two (2) dwellings located within the area of the subject property will adversely affect the privacy of the objector**

*This statement is highly speculative since detailed building plans regarding the development on the proposed new portion is not available. The dwelling unit located on the front property will not have any impact on the privacy of the objector. To therefore state that two (2) dwelling units will impact negatively on the privacy of the objector is not necessarily correct.*

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

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

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

*Refer response 16) and 21).*

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

*The statement is correct. The applicant does not intend to construct more than one dwelling unit on each of the proposed portions. The need to inform the owners of De Kelders of this particular condition is therefore unclear. Registered notices were served on all De Kelders property owners; whilst the application documents were available for scrutiny should they wish to do so. If the applicant incorporated the removal of the one dwelling unit restriction it would effectively allow for the construction of four (4) dwelling units on the two (2) erven as a primary right, which will have a far greater impact on the adjoining properties and the objectors. In order to contain development to a primary dwelling on the remainder and the proposed erf it is crucial that this condition remains within the Title Deed of the remainder as well as the new erf.*

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

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

*In terms of Section 4(3) of the Removal of Restrictions Act 84 of 1967, the Administrator may grant an application subject to the condition that the applicant shall pay to any objector specified in such condition, the value of whose land or real right in land will, in the opinion of the Administrator be adversely affected materially by the granting of the application, compensation in an amount which, in the absence of agreement between such applicant and objector, shall be determined by the Administrator.*

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*Having had regard to case law, the matter of deprivation of property rights are ultimately a matter for the courts to decide upon. In doing so regard has to be taken to the process and whether administrative action was just, fair and transparent. In this instance all registered property owners in De Kelders Extension 1 received a registered notice (one thousand two hundred and thirty two (1232) property owners) whilst only thirteen (13) letters of objection were received. From the aforementioned three (3) objection letters represent two (2) adjacent properties, whilst three (3) letters represents property owners in Ingang Street (Erf 462), Main Road (Erf 814) and Stanford's Cove (Erf 1219) which is not likely to be affected by the proposal from a visibility point of view. The remaining seven (7) letters represents properties abutting Steyn Street within a distance varying between 80m to 100m, measured from the rear property boundary of Erf 713.*

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

*Refer to the response under paragraphs 16) and 23) above.*

- 26) The applicant has failed to disclose to affected owners that his application is in truth also aimed at removing the restrictive Title Deed condition which prohibits the erection of more than one (1) dwelling on the subject property**

*Refer to the comments under paragraph 23). It should further be noted, should the subdivision and removal applications been granted it will be in the interest of surrounding property owners to retain the one (1) dwelling unit restriction in the Title Deed, since in terms of the Scheme Regulations the construction of a second dwelling unit is a primary right. Should this Title Deed restriction be removed, a total of four (4) dwelling units will be permissible on the two (2) erven in terms of the applicable primary rights opposed to two (2) dwelling units, one (1) on each erf should the restrictive one (1) dwelling unit condition be retained. It is thus clear that the application does not entail the removal of the said restriction.*

- 27) The applicant had to resort to the removal of the restrictive Title Deed condition through the current process rather than through an application to the courts**

*It is irrelevant which process the applicant choses to follow to remove the restrictive Title Deed condition, i.e. a formal application in terms of the*

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*removal of restrictions act or an application to the court. The applicant chose the first mentioned. As such, provided that due process is followed this point of objection should not have any bearing with regard to the evaluation of the development proposal.*

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

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

- 29) The Removal of Restrictions Act does not permit a local authority to arbitrarily deprive a property owner of his servitudal rights**

*Refer to response under paragraphs 16) and 24).*

- 30) The removal of the restrictive Title Deed conditions must be to the benefit of the residents of De Kelders and the fact that the removal may not be undesirable does not mean that such removal is indeed desirable or in the interest of the area**

*This point of objection is addressed in the evaluation below.*

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

*Refer to the response under paragraph 7).*

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

*This statement is disagreed with. Refer to the response under paragraph 7) above as well as Sections 11 and 13 of the applicant's Motivation Report dealing with the aforementioned. Notwithstanding the above,*

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*two (2) guiding principles of the Provincial Spatial Development Framework (2014) (PSDF) are sustainability and resilience and spatial efficiency. Sustainability and resilience requires land development to be spatially compact, resource-frugal, compatible with cultural and scenic landscapes, and should not involve the conversion of high potential agricultural land or compromise ecosystems. The principle of spatial efficiency relates to the form of settlements and use of resources - compaction as opposed to sprawl, mixed-use as opposed to mono-functional land uses, residential areas close to work opportunities as opposed to dormitory settlement, and prioritisation of public transport over private car use. When a settlement is compact, higher densities provide thresholds to support viable public transport, reduce overall energy use, and lower user costs as travel distances are shorter and cheaper.*

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

*The Overstrand Municipal Growth Management Strategy (OMGMS) is not based on the planning policy framework of the DFA alone. It is clearly stated that current national and provincial policy context, within which the concept of urban densification is strongly advocated, lies in a number of strategy and policy documents prepared by different spheres of government. The Constitution of the Republic of South Africa, the DFA and the PSDF are all listed as strategies and policy documents. The objector only chooses to highlight the DFA in support of his argument, without mentioning the other strategies and policy documents that are referred to. In this instance the GMS was approved in terms of the provisions of the Local Government Act, Municipal Systems (Act 32 of 2000).*

- 34) Six (6) methods of densification are identified within the OGMS. The applicant has not taken any other alternatives into account and therefore the Overstrand Municipality and MEC cannot approve any of the applications made**

*According to the GMS densification proposals pertaining to the subject property relates to subdivision to provide for second dwelling units. Also refer to the response under paragraph 7). It is agreed that the GMS does not confer property rights, nor does it take rights away. The GMS is however a policy document, been subject to a public participation process and informs or supports decision making.*

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

*The first two (2) statements that the objector makes are correct. The properties will not be used for affordable housing and it is unlikely that future owners will be reliant on public transport. However, to state that future potential buyers will not be the sort of people who would contribute to urban sprawl is ridiculous. There is no motivation provided to substantiate this claim. Every single person that is in a position to purchase any future erf resulting from the subdivision of the property has the potential to contribute towards urban sprawl as they have the means to purchase properties, whether or not these properties are located in existing township areas or new township areas.*

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

*The proposed subdivision makes use of brownfield land, within the urban edge. It will result in the more efficient use of land and more compact settlements. If the need for additional development opportunities can be provided for by means of subdividing existing erven into smaller portions, there will not be a need for the development of greenfield developments. Therefore, densification in the form as proposed within this application will definitely curb urban sprawl in the future.*

- 37) The objector lists all of the motivations for densification as contained within the OMGMS and argues why the development proposal does not contribute towards these principles**

*Considering the relevant Section of the GMS, Section 4.2 the following is stated with regard to the motivation for urban densification.*

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

*"Densification proposals therefore do not have to comply with all the criteria listed under Section 4.2.1. Should this be the case, no densification will ever take place within the Overstrand area as there is no*

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*public: transport system, apart from taxi services catering for the lower income housing neighbourhoods.*

*The OMGMS actually addresses most of the concerns and points of objection that are raised by the objectors further on in Section 4 of the document. The document states that:*

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

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

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

*The interpretation above is not correct. The conditions contained in the Title Deed of Erf 713 will be transferred to the new subdivided portion. However, the abovementioned restriction that is registered in the Title Deed of Erf 713, will not limit the construction of any future dwelling units on the newly created portion, but will serve to prohibit the construction of second dwelling units as per the applicable primary rights in terms of the Overstrand Zoning Scheme Regulations. Should the applicant therefore wish to construct a second dwelling unit, the applicable condition will have to be removed by means of an application to remove the relevant restrictive title condition and will ensure that one (1) dwelling unit is developed on each erf, instead of two (2).*

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

*Refer to the response under paragraph 15).*

- 40) The construction of an access road to the proposed Portion A will be located within 100 meters from the high water mark of the sea. This constitutes a listed activity in terms of the National Environmental**

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**Management Act (NEMA) as more than five (5) cubic metres of soil or sand will be removed**

*The subject property is located outside the 100m distance from the high water mark and NEMA is not applicable pertaining to the application for subdivision. Future building plans that will contain details of amongst others filling and excavation will be scrutinised against the relevant triggers in terms of NEMA.*

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

*It should be noted that since the application was submitted and processed prior to the repeal of LUPO in the Overstrand Municipality on 1 February 2016 this application is disposed in terms of the LUPO and the Removal of Restrictions Act. The local authority is therefore not delegated to remove Title Deed restrictions at this point in time. This is done by the Department of Environmental Affairs and Development Planning (DEA&DP). Restrictions are also not just removed for the sake of removal. The application goes through a rigorous process that include a public participation process, assessment by the local authority, assessment by the land use planners at DEA&DP, assessment by spatial planners at DEA&DP, etc. To state that local authorities removed restrictions under the impression that these restrictions were relics of the past, etc. is therefore untrue.*

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

*Registered notices were served onto each and every land owner as per the instruction of the competent authority (DEA&DP) and proof has been submitted to the Overstrand Municipality. A total of one thousand two hundred and thirty two (1232) registered letters were served, proof of which will be submitted to the competent authority to enable the competent authority to assess the removal of restrictions application.*

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## **Evaluation**

### Existing Forward Planning

The Overstrand Spatial Development Framework: 2006 (SDF), in line with Provincial and National Government Planning Policies encourage densification within the urban edge thereby making more efficient use of brownfield land within the confines of the urban edge. Following the SDF, the Overstrand Growth Management Strategy, 2010 (GMS) encourage residential densification in appropriate locations.

The subject property is located within Planning Unit 1 which is earmarked as a densification zone varying between ten (10) – twenty (20) dwelling units per ha (du/ha). The aforementioned is to be achieved via subdivision to allow for a second dwelling on a plot.

From the aforementioned it is clear that the proposed subdivision constituting brownfield development on land within the demarcated urban edge is in line with the existing forward planning policies applicable to the area.

### Overstrand Zoning Scheme Regulations

In terms of the applicable Scheme Regulations the subject property is zoned for single residential purposes and subject to 4m street, 2m lateral- and rear building lines, coverage restriction of 50% and an 8m height restriction. In terms of the applicable primary rights the applicant may construct a dwelling house, second dwelling unit and associated outbuildings up to three (3) storeys in height subject to adherence with the aforementioned development parameters and the applicable height restriction. Having had regard to the applicable Title Deed restrictions the applicant will be allowed to develop in accordance with the aforementioned provided that the development does not comprise a second dwelling unit and subject to the prior approval of building plans in terms of the National Building Regulations.

Following subdivision, the same development parameters will be applicable to development on both erven. There will be no increase in the development footprint (coverage) over and above the existing, whilst the residential use one dwelling unit, coverage and building line restrictions as per paragraphs E, A(a), (b), (c) and (d) of the Title Deed remains applicable. As such, the primary right in terms of the Scheme Regulations to construct a second dwelling unit will not be applicable.

### Character of the area

The single residential erven situated between Steyn-, Front- and Barnard Streets are larger but narrower and deeper than those situated east of Steyn-

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and south of Barnard Streets. Front Street is lower whilst the natural ground level has a steep incline towards a plateau that roughly follows the eastern rear property boundary of the Front Street erven.

Having had regard to the locality plan, it is evident that the surrounding area contains various subdivided erven with erf sizes varying from as small as 505m<sup>2</sup> and 700m<sup>2</sup> up to 1184m<sup>2</sup> in extent. The principle of subdivision has already been established. The average erf size in the immediate surrounding area is  $\pm 755\text{m}^2$  whilst a 10% variation thereon is usually deemed to be acceptable. The proposed subdivision will result in two (2) erven measuring 699m<sup>2</sup> and 702m<sup>2</sup> in extent and would not detract from the character of the area and is still deemed to be fairly large erven, capable of accommodating low density development, without having to resort to building line and coverage encroachments in order to accommodate a dwelling that will be in keeping with the visual amenity of the locality and the character and appearance of the surrounding area.

Having had regard to the primary rights applicable to the subject property the applicant will be able to develop the property on the rear building line in line with the Title Deed restrictions, which development will have a similar or even greater impact on the adjoining properties, especially those located at the rear of the subject property. The opinion is thus held that the objectors, although it is currently the case, cannot claim a right to unobstructed sea views. Accordingly the opinion is held that the refusal on the basis of loss of views, property value cannot be justified as a reason for refusal. Similarly the opinion is held that given the applicable primary rights there is no reason to restrict development of the subdivided erf to single storey only.

#### Services

The proposed development will utilise existing municipal services that is available in the area. Council's Engineering Services department did not object to the proposal from an engineering services point of view, subject to adherence to conditions, which amongst other includes the payment of a bulk services levy.

#### Title Deed Restrictions

The Title Deed restrictions as per section E, A & B(a) to (e) of Title Deed T11510/2014 are registered in favour of all property owners in De Kelders. The no subdivision clause as per paragraph A, B(e) is a praedial servitude that serves to preserve the character of the area and bounds all the property owners in the De Kelders and also overrides the Scheme Regulations. The Administrator may however upon application in the prescribed manner remove the said restriction. The restrictive condition cannot be removed without providing the property owners in De Kelders Extension I the opportunity to object/comment. Accordingly the application for the removal of restrictive title

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conditions were advertised in the prescribed manner, whilst registered notices were served on all property owners in De Kelders (approximately one thousand two hundred and thirty two (1232) registered notices). A total of thirteen (13) objection letters and one (1) letter of support were received.

Having had regard to case law, the matter of deprivation of property rights is ultimately a matter for the Courts to decide upon. In doing so regard has to be taken to the process and whether administrative action was just, fair and transparent. In this instance all registered property owners in De Kelders Extension I received a registered notice (one thousand two hundred and thirty two (1232) property owners), whilst only thirteen (13) letters of objection were received. From the aforementioned three (3) objection letters represent two (2) adjacent properties, whilst three (3) letters represents property owners in Ingang Street (Erf 462), Main Road (Erf 814) and Stanford's Cove (Erf 1219) which is not likely to be affected by the proposal from a visual point of view. The remaining seven (7) letters represents properties abutting Steyn Street within a distance varying between 80m to 100m, measured from the rear property boundary of Erf 713.

The proposed subdivision will create an additional erf within the existing urban edge in line with the principles of densification in a manner that will respect the character of the area and is in line with the average erf size of the surrounding area. The aforementioned is also in line with the applicable provincial planning policy context. Having had regard to the purpose of the restrictive title condition that serves to protect the character of the area, specifically the De Kelders Township as a whole the opinion is held that the proposed subdivision would not unacceptably detract from the aforementioned. The proposal will actually ensure that densification contributes positively in that it will create an additional erf in a good quality and sustainable environment, whilst the applicable Scheme Regulations would ensure that the development would be aesthetically pleasing, complies with building line and height restriction, whilst adhering to the National Building Regulations and Fire Safety Standards.

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

### **Conclusion**

That the application for subdivision and removal of restrictive title conditions be supported as per the recommendation below for the following reasons, namely:

- the proposed subdivision is in line with the applicable municipal and provincial planning policy and will make more efficient use of brownfield land within the urban edge;

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- the proposed subdivision will serve the principles of densification in an environmentally sustainable manner that will not detract from the character of the natural and built environment;
- it will not negatively impact on existing/vested rights of adjoining property owners;
- it will not negatively impact on the safety and welfare of the of the community, and
- it will not have a negative impact on the vested rights of adjoining property owners or the De Kelders Township, Extension 1.

**7. Financial Implications**

None

**8. Staff Implications**

None

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

**Engineering Services**

Attached as Annexure F.

**Fire Services**

No objection.

**Building department**

No objection

**Electro Technical Services**

*“Erf 713, De Kelders currently has only one 60 amp single phase electrical connection. The bulk service contribution levy for subdivision of existing erf will be applicable as well as a standard connection fee for the new erf. If any additional capacity is required, the necessary forms need to be completed. Investigation and upgrading fees will be for the clients account.”*

**10. Annexures**

- Annexure A: Locality Plan
- Annexure B: Proposed Subdivision Plan
- Annexure C: Motivation Report
- Annexure D: Objections
- Annexure E: Comment on objections

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Annexure F: Services Report

**RECOMMENDATION:**

1. that the application in terms of the Removal of Restrictions Act 84 of 1967 in order to remove condition E, B(e) contained in Title Deed T11510/2014, **be recommended for approval** to the Provincial Government Western Cape;
2. that, in terms of Section 25 of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985), the application for the subdivision of Erf 713, De Kelders in two (2) portions, namely Portion A approximately 702m<sup>2</sup> and a Remainder approximately 699m<sup>2</sup> in extent, **be approved**, subject to the following conditions:
  - (a) the successful removal of the restrictive title condition referred to in paragraph 1 above;
  - (b) that all conditions imposed in the Services Report (attached as Annexure F), be complied with;
  - (c) that the approved SG Diagrams be submitted to the Municipality for record purposes;
  - (d) that the approval does not absolve the applicant/owner from compliance with any other relevant legislation and/or Title Deed conditions;
  - (e) that all other development parameters as prescribed in the Overstrand Zoning Scheme Regulations, be complied with;
  - (f) that a right of way servitude, minimum 3m wide, be registered across the remainder of Erf 713, De Kelders in favour of the subdivided portion and be written into the Title Deed, and
  - (g) that the development of on the subject property be restricted to one (1) primary dwelling unit only and written into the Title Deed of the new portion as such.
3. that the applicant be notified of its right of appeal in terms of the provisions of Section 62 of the Local Government : Municipal Systems Act No 32 of 2000 with regard to the above conditions of approval.

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<b>RESPONSIBLE OFFICIAL :</b>	<b>SW VAN DER MERWE</b>
<b>TARGET DATE FOR IMPLEMENTATION :</b>	<b>12 MAY 2016</b>
<b>TARGET DATE TO INFORM APPLICANT :</b>	<b>12 MAY 2016</b>
<b>TARGET DATE TO INFORM OBJECTORS:</b>	<b>12 MAY2016</b>

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**7.**

**ERF 713, 21 FRONT STREET, DE KELDERS : APPLICATION FOR REMOVAL OF RESTRICTIONS AND SUBDIVISION : MESSRS WRAP CONSULTANCY ON BEHALF OF JV MEINTJIES**

**713 GDK (2572)**

**SW van der Merwe**

**(028) 313 8900**

**Hermanus Administration**

**23 February 2016**

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**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON 19 APRIL 2016, WHICH COMMITTEE SUPPORTED THE RECOMMENDATION**

**RESPONSIBLE OFFICIAL :**

**SW VAN DER MERWE**

**TARGET DATE FOR IMPLEMENTATION :**

**12 MAY 2016**

**TARGET DATE TO INFORM APPLICANT :**

**12 MAY 2016**

**TARGET DATE TO INFORM OBJECTORS:**

**12 MAY2016**

Location

Subject property

Erf 713, De Kelders

Plan: 14/012/05

All distances approximate and subject to survey.

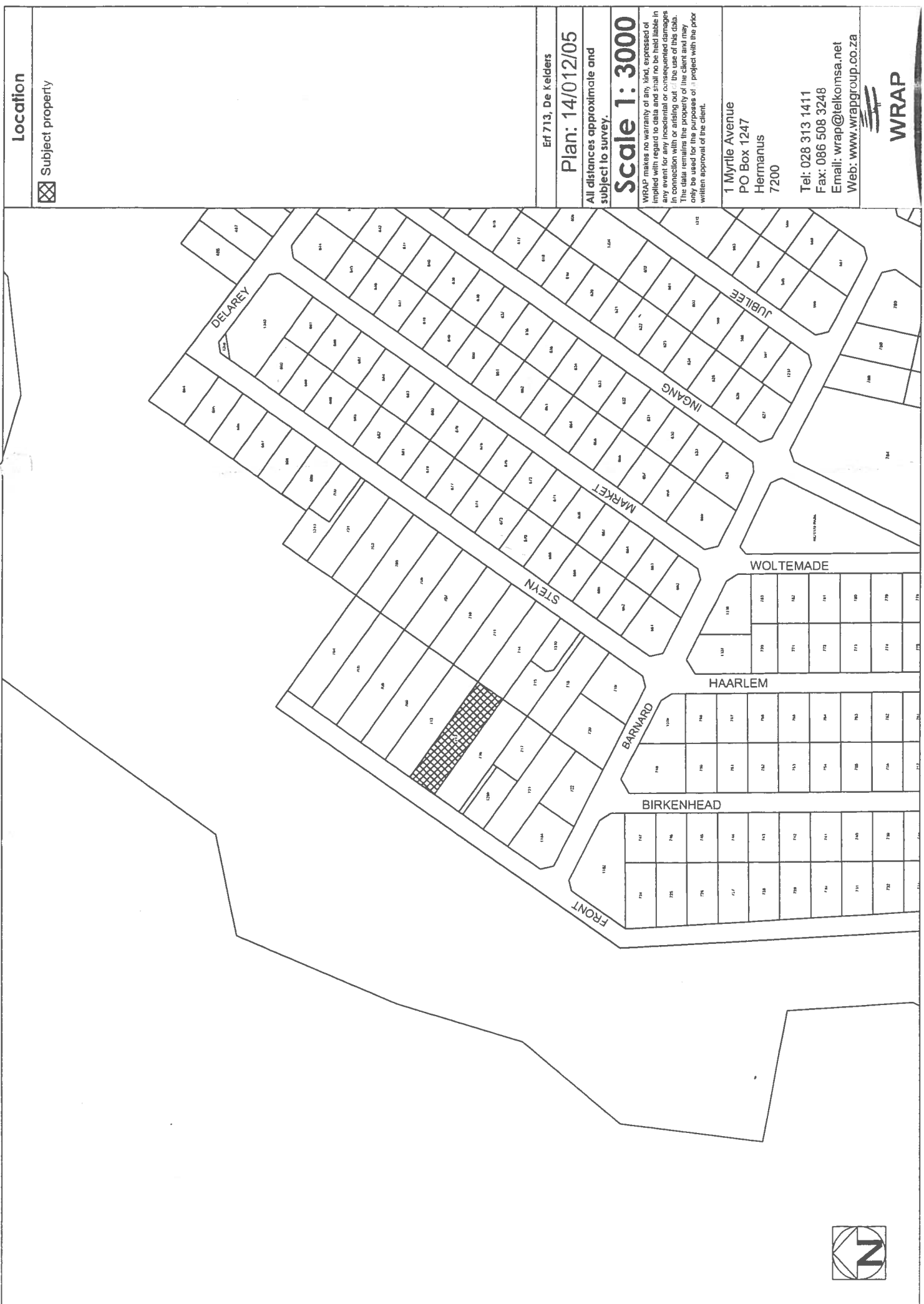
Scale 1:3000

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**Subdivision Diagram**

Remainder: 699 m<sup>2</sup>  
 Portion A: 702 m<sup>2</sup>  
 ab: 36.96 m  
 bc: 18.94 m  
 cd: 37.03 m  
 ad: 18.84 m  
 be: 36.98 m  
 ef: 19.01 m  
 fc: 36.96 m

Erf 713, De Kelders

Plan: 14/012/01

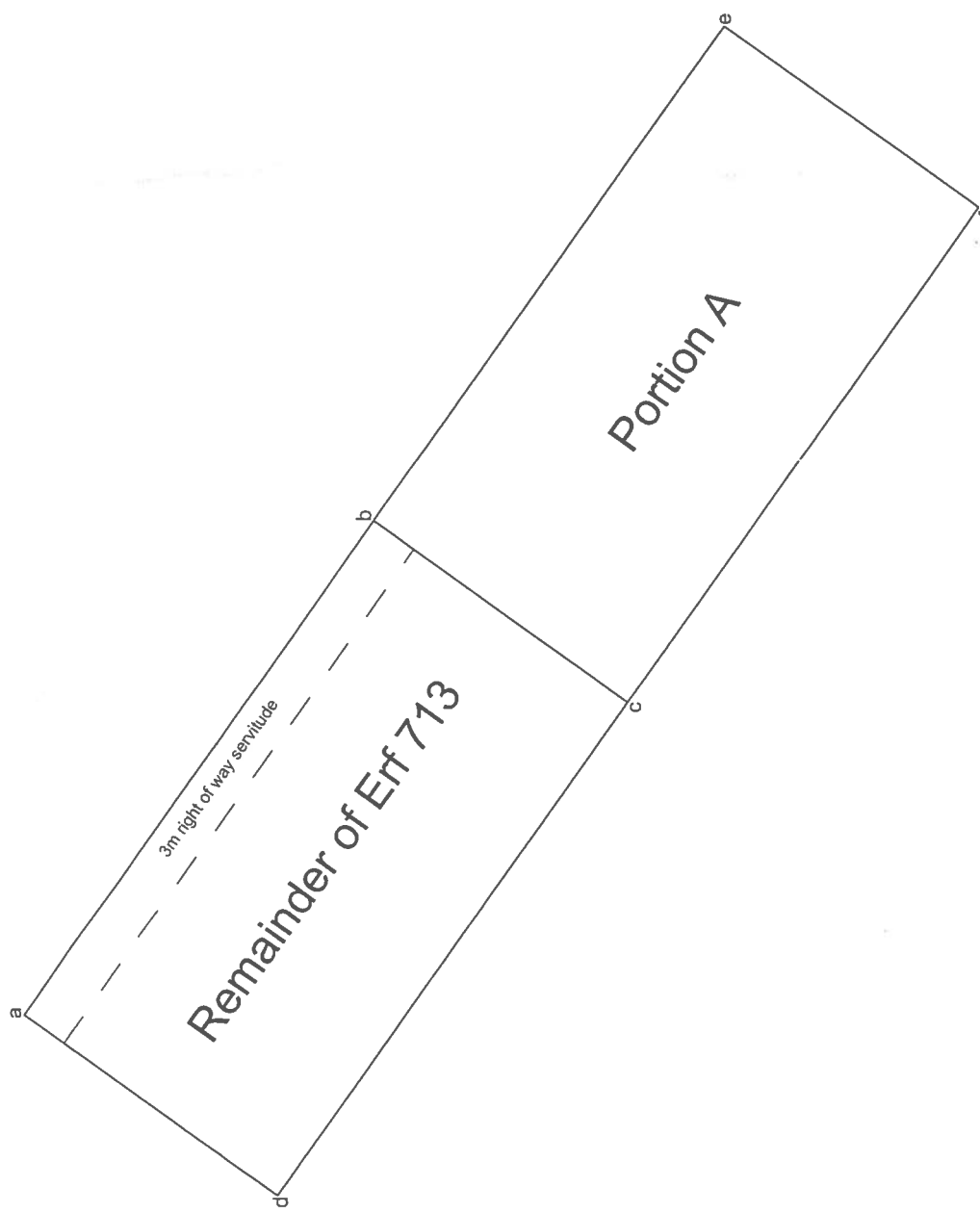
All distances approximate and subject to survey.

**Scale 1: 300**

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## EXECUTIVE SUMMARY

### 1. SUMMARY

Erf 713, De Kelders (hereafter referred to as the application area) is located in Front Street De Kelders and has a zoning of Residential Zone I: Single Residential Zone in terms of the Overstrand Municipality Zoning Scheme. The property is developed with a single residential dwelling unit and has an extent of 1 401 m<sup>2</sup>.

The proposal is to subdivide the property into two (2) portions of approximate equal size. The two portions will therefore have the following extents:

- Remainder of Erf 713 – 699 m<sup>2</sup>;
- Portion A – 702 m<sup>2</sup>.

The zoning of both properties will remain Residential Zone I: Single Residential Zone.

Access to Portion A will be provided by means of a 3 meter wide right of way servitude that

will be registered over the Remainder of Erf 713, in favour of Portion A.

Application is hereby made for the following:

- The **SUBDIVISION** of Erf 713, De Kelders in two (2) portions (Remainder: 699 m<sup>2</sup>; Portion A: 702 m<sup>2</sup>) in terms of Section 24 of the Land Use Planning Ordinance, 1985 (no.15 of 1985).

In order for the above subdivision to be approved, it is necessary for the following application to be approved by the Department of Environmental Affairs and Development Planning (DEADP):

- The removal of restrictive title deed condition B.(e) as contained in title deed T11510/2014 in terms of the Removal of Restrictions Act, 1967 (Act 84 of 1967).


 WRAP

## INTRODUCTION

### 2. PROJECT DESCRIPTION

Erf 713, De Kelders (hereafter referred to as the application area) is located in Front Street De Kelders and has a zoning of Residential Zone I: Single Residential Zone in terms of the Overstrand Municipality Zoning Scheme. The property is developed with a single residential dwelling unit and has an extent of 1 401 m<sup>2</sup>.

The new owners of the property intend to subdivide the property into two (2) portions of approximately equal extents. However, it was discovered that a restrictive title deed condition has been registered in the deed of the property that has to be removed in order for the subdivision to take place.

In light of the above, WRAP Consultancy was appointed for the preparation and submission of this application (refer **Annexure A**).

### 3. PHYSICAL SIZE OF THE LAND USE PROPOSAL

The subject property has an extent of 1 401 m<sup>2</sup> (refer **Plan 1**). The proposal is to subdivide the property into two (2) portions of approximate equal size. The two portions will therefore have the following extents:

- Remainder of Erf 731 – 699 m<sup>2</sup>;
- Portion A – 702 m<sup>2</sup>.

The zoning of both properties will remain Residential Zone I: Single Residential Zone.

Access to Portion A will be provided by means of a 3 meter wide right of way servitude that will be registered over the Remainder of Erf 731, in favour of Portion A.

### 4. THE APPLICATION

Application is hereby made for the following (refer **Annexure B**):

- The **SUBDIVISION** of Erf 713, De Kelders in two (2) portions (Remainder: 699 m<sup>2</sup>; Portion A: 702 m<sup>2</sup>) in terms of Section 24

of the Land Use Planning Ordinance, 1985 (no.15 of 1985).

In order for the above subdivision to be approved, it is necessary for the following application to be approved by the Department of Environmental Affairs and Development Planning (DEADP) (refer **Annexure C**):

- The removal of restrictive title deed condition B.(e) as contained in title deed T11510/2014 in terms of the Removal of Restrictions Act, 1967 (Act 84 of 1967).

### 5. PROPERTY DETAILS

**PROPERTY DESCRIPTION** – Erf 713 De Kelders, in the Overstrand Municipality, Division Caledon, Province of the Western Cape.

**EXTENT** – 1 398 m<sup>2</sup> (cadastral information provided by the Surveyor General's office indicates that the property has an extent of 1 401 m<sup>2</sup>. (refer **Plan 2**) For the purposes of this application last-mentioned extent will be utilised as this is the most accurate)

**OWNERSHIP** – Jan Viljoen Meintjies (ID number: 7007205251083)

**TITLE DEED NUMBER** – T11510/2014

### 6. TITLE DEED

The subject property is in process of being transferred on to the name Mr JV Meintjies. A copy of the deeds inquiry report as well as the concept title deed submitted to the deeds office has been attached as **Annexure D**.

In the above deed, the following restriction has been registered:

“B. As being in favour of the Administrator –

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

With the removal of the above restriction, the proposed subdivision can take place.

## CONTEXTUAL ANALYSIS

### 7. LOCATION IN THE LANDSCAPE

The property is located in De Kelders within Front Street. The property is bound by Erf 712 to the north, Erf 714 to the east, Erf 716 to the south and Front Street to the west. (refer **Plan 3**)

### 8. SITE ACCESS

Access to the subject property can be obtained via Front Street by means of an existing access point.

### 9. LAND USE AND STATUS QUO

The subject property is developed with a single residential dwelling unit with an approximate extent 143 m<sup>2</sup>. The remainder of the property is undeveloped.

### 10. LAND USE CHARACTER OF THE SURROUNDING AREA

The character of the surrounding area can be described as single residential in nature.

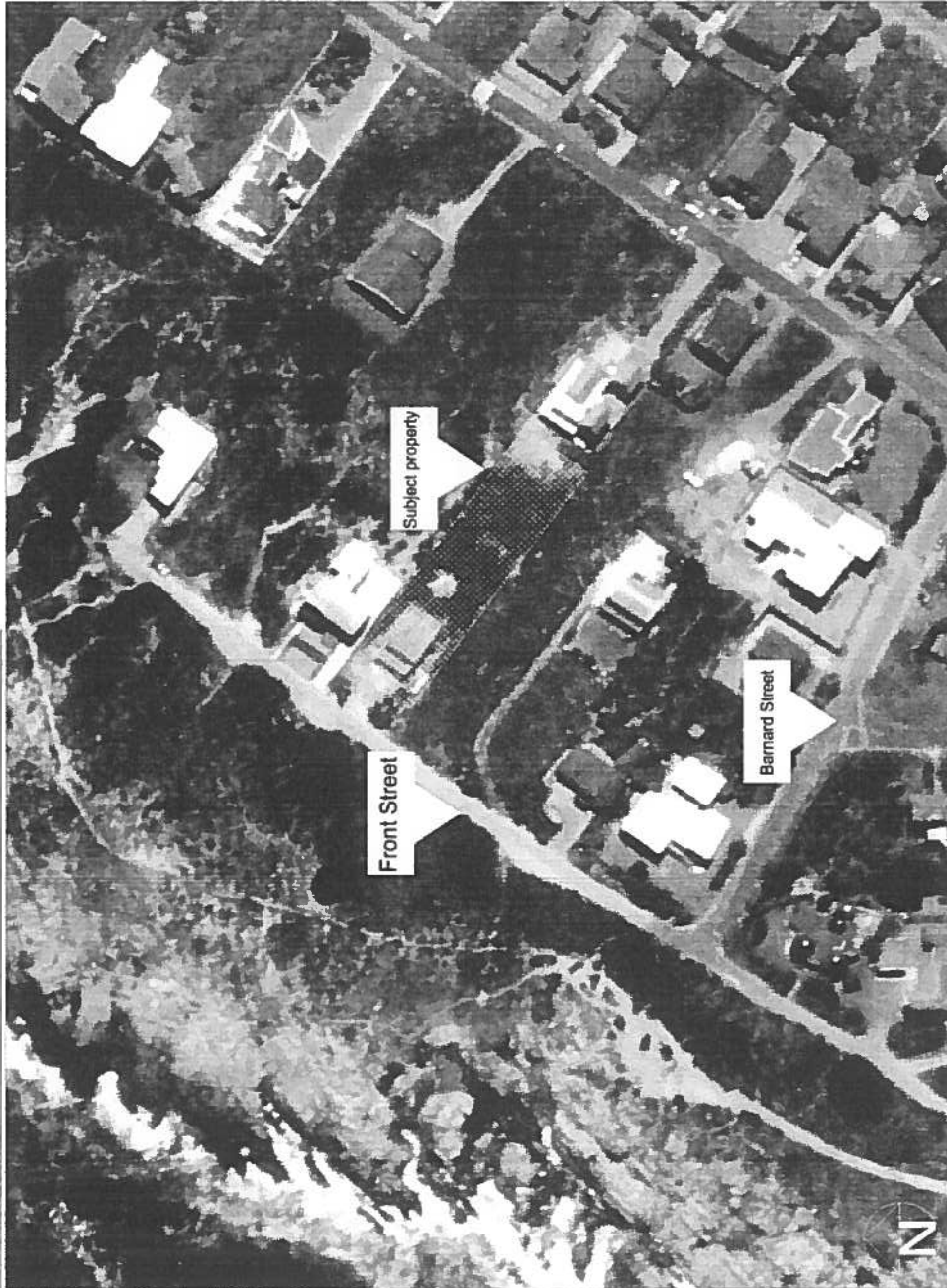


Figure 1: Location



## CONTEXTUAL ANALYSIS

### 11. SPATIAL PLANNING INITIATIVES

OVERSTRAND MUNICIPAL GROWTH MANAGEMENT STRATEGY – This particular spatial planning initiative guides densification within the Overstrand Municipality and is regarded as the most applicable initiative with reference to this particular application.

The subject property falls within planning unit 1 which states the following in terms of

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



## APPLICATION DETAIL AND MOTIVATION

### 12. DEVELOPMENT OBJECTIVES

The objectives of this application are twofold. The first is to obtain approval for the subdivision of the subject property into two (2) portions and the second is for the removal of the restrictive title deed condition that prohibits the subdivision of the property.

As mentioned in previous sections, it is proposed to subdivide the property into two (2) portions. These portions will have the following extents:

- Remainder of Erf 713 – 699 m<sup>2</sup>;
- Portion A – 702 m<sup>2</sup>.

In light of the above, application is hereby made for the following:

- The **SUBDIVISION** of Erf 713, De Kelders in two (2) portions (Remainder: 699 m<sup>2</sup>; Portion A: 702 m<sup>2</sup>) in terms of Section 24 of the Land Use Planning Ordinance, 1985 (no.15 of 1985).

Access to Portion A will be provided by means of a right of way servitude that will be registered over the remainder of Erf 713. This servitude will have a width of 3 meters.

The zonings of the properties will remain Residential Zone I: Single Residential Zone.

The second objective of this application is to remove the restrictive title deed condition that prohibits the subdivision of the subject property.

This particular condition reads as follows:

"B. As being in favour of the Administrator –

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

With the removal of the above restriction, the property can be allowed to be subdivided. Application is therefore made for the following:

- The removal of restrictive title deed condition B.(e) as contained in title deed T11510/2014 in terms of the Removal of Restrictions Act, 1967 (Act 84 of 1967).

### 13. CONSISTENCY WITH SPATIAL PLANNING INITIATIVES AND LEGISLATIVE COMPLIANCE

When one considers the Overstrand Municipal Growth Management Strategy, it is evident that the area wherein the subject property is located has been identified for incremental densification by means of subdivision. It is therefore obvious that this proposal is indeed consistent with the abovementioned spatial planning initiative.

The development proposal was also measured against the listed activities as identified in terms of the National Environmental Management Act, 1998 (Act 107 of 1998). It was noted that some activities have been identified for actions taking place within 100 metres of the high water mark of the sea.

As the subject property is located approximately 98 metres from the high water mark of the sea, some of these activities may have been triggered. However, it is evident that said activities relates to construction activities. This includes Activity 16, 18 and 45 of GN No.R.544, and Activity 16 and 24 of GN No.R.546. Considering the definition of construction, it is evident that subdivision does make part thereof. Future construction on Portion A will not be within 100 meters of the high water mark of the sea, as illustrated by **Plan 4**.

### 14. NEED AND DESIRABILITY OF THE LAND USE PROPOSAL

Spatial planning initiatives indicate that there is a definite need for the densification of the existing township in a sensitive manner. Seeing as the neighbourhood has a single residential character, the only desirable manner to achieve the above would be for the development of additional dwelling units or the subdivision of existing erven. From the development proposal it is clear that this is the intention of this application.

### 15. LOCATION AND ACCESSIBILITY

As mentioned above, the subject property is located in an area identified for incremental densification by means of subdivision of



## APPLICATION DETAIL AND MOTIVATION

existing erven. It is also located in an area that has experienced similar subdivisions in the past. The erf is furthermore located further than 100 meters from the high watermark of the sea.

Both erven will gain access directly from Front Street. The remainder of the property will make use of the existing access point and Portion A will gain access by means of a right of way servitude registered over the remainder.

### 16. COMPATIBILITY WITH THE SURROUNDING ENVIRONMENT AND IMPACT ON EXISTING LAND USE RIGHTS

The character of the surrounding area is single residential in nature. No change in zoning or land use rights is proposed for the subject property and therefore the status quo will remain within this regard. The only additional land use rights that will be established with the approval of this application, is the single residential land use rights associated with the newly created erf. However, no negative impact on existing land use rights are foreseen within this regard.

### 17. IMPACT ON SERVICE INFRASTRUCTURE

**WATER SUPPLY** – one additional water connection will be required for the purposes of this application.

**ELECTRICITY SUPPLY** – one additional electricity connection will be required for the newly created erf.

**SEWAGE SYSTEM** – one additional sewage connection will be required for the purposes of this application.

The abovementioned will be for the account of the applicant in the form of bulk service levies that will be paid to the municipality upon registration of the newly created erf.

### 18. GRANTING AND REFUSAL OF APPLICATION

The Land Use Planning Ordinance, 1985 (no 15 of 1985) in Section 36 stipulates that:

- o "any application shall be refused solely on the basis of a lack of **desirability** of the contemplated utilization of land concerned including the guideline proposals included in a relevant structure plan in so far as it relates to desirability, or on the basis of its effect on existing rights concerned", and
- o "regard shall be had, in considering relevant particulars to only the **safety and welfare of the members of the community** concerned, the conservation of the natural and developed environment concerned or the effect of the application on existing rights concerned".

The acceptance of land use on a specific land portion must be tested in accordance with the physical characteristics of the property, existing planning in the area, and the character of the environment, the potential, location and accessibility of the property as well as the provision of service infrastructure to the proposed development.

It has been argued in the above sections that the proposal as contained within this application is indeed desirable and that it is consistent with the principles of the applicable structure plan and other spatial initiatives. It was also shown that the proposal will not have any negative impact on existing land use rights of surrounding property owners or of the land use rights associated with the existing zoning of the property. Lastly it was proven that the proposal will not have a negative impact on the safety and welfare of the members of the community and will not have any detrimental impact on the natural or developed environment.

In light of the above it is maintained that this application complies with the provisions of Section 36 of the Land Use Planning Ordinance, 1985 (no.15 of 1985) and therefore it is our recommendation that this application be approved.

## 19. RECOMMENDATION

This motivational report has provided a clear and complete analysis of the land use proposal. It was shown that the proposal is indeed consistent with existing spatial planning initiatives and that there is a definite need for development such as this to be approved. This application furthermore attempts to establish the land use in the most desirable manner. It was also shown that the proposed land use is compatible with the character of the surrounding area and that the approval of this application will not result in negative impacts on existing land use rights. Lastly it was shown that the impact of the development on service infrastructures will be minimal.

In light of the above, it is recommended that the following application be approved:

- The **SUBDIVISION** of Erf 713, De Kelders in two (2) portions (Remainder: 699 m<sup>2</sup>; Portion A: 702 m<sup>2</sup>) in terms of Section 24 of the Land Use Planning Ordinance, 1985 (no.15 of 1985); and
- The removal of restrictive title deed condition B.(e) as contained in title deed T11510/2014 in terms of the Removal of Restrictions Act, 1967 (Act 84 of 1967).