

## BLAAUWKLIPPEN

**APPLICATION AND MOTIVATION FOR THE SEPARATION OF NOTARIALY TIED PROPERTIES , PORTION 17 OF THE FARM NO 369 AND PORTION 3 OF THE FARM NO 527 FROM THE MOTHER ERF, PORTION 837 OF THE FARM BLAAUW KLIP NUMBER 510.**

**1 BACKGROUND**

1.1 Initially, the properties listed in 1.1.1 to 1.1.4 below were tied to the Mother Erf, Portion 837 of the Farm Blaauw Klip Number 510 in Municipality and Division of Stellenbosch (T 34249/2015), in terms of Notarial Deed K 770/2006:

1.1.1 Farm No 1457 situate in Municipality and Division of Stellenbosch (Erf on open field opposite golf course) (A)

1.1.2 Portion 17 of the Farm No 369 in Municipality and Division of Stellenbosch (Paradyskloof Erf) (C)

1.1.3 Portion 3 of the Farm No 527 in Municipality and Division of Stellenbosch (Skilpadrug Erf) (D)

1.1.4 Remainder Portion 52 of the Farm Blaauw Klip Number 510 in Municipality and Division of Stellenbosch (Kreefgat Property)  
Remainder Portion 53 of the Farm Blaauw Klip Number 510 in Municipality and Division of Stellenbosch (Kreefgat Property)  
Remainder Portion 54 of the Farm Blaauw Klip Number 510 in Municipality and Division of Stellenbosch (Kreefgat Property)

1.2 We attach the best copy in our possession of the Deed of Sale, dated 1 November 2004 in terms of which the properties were originally notarially tied (refer inter alia, to clauses 2.2.1 and 2.2.3).

1.3 We also attach a copy of the Notarial Deed K 770/2006 in terms of which the abovementioned properties were subsequently notarially tied.

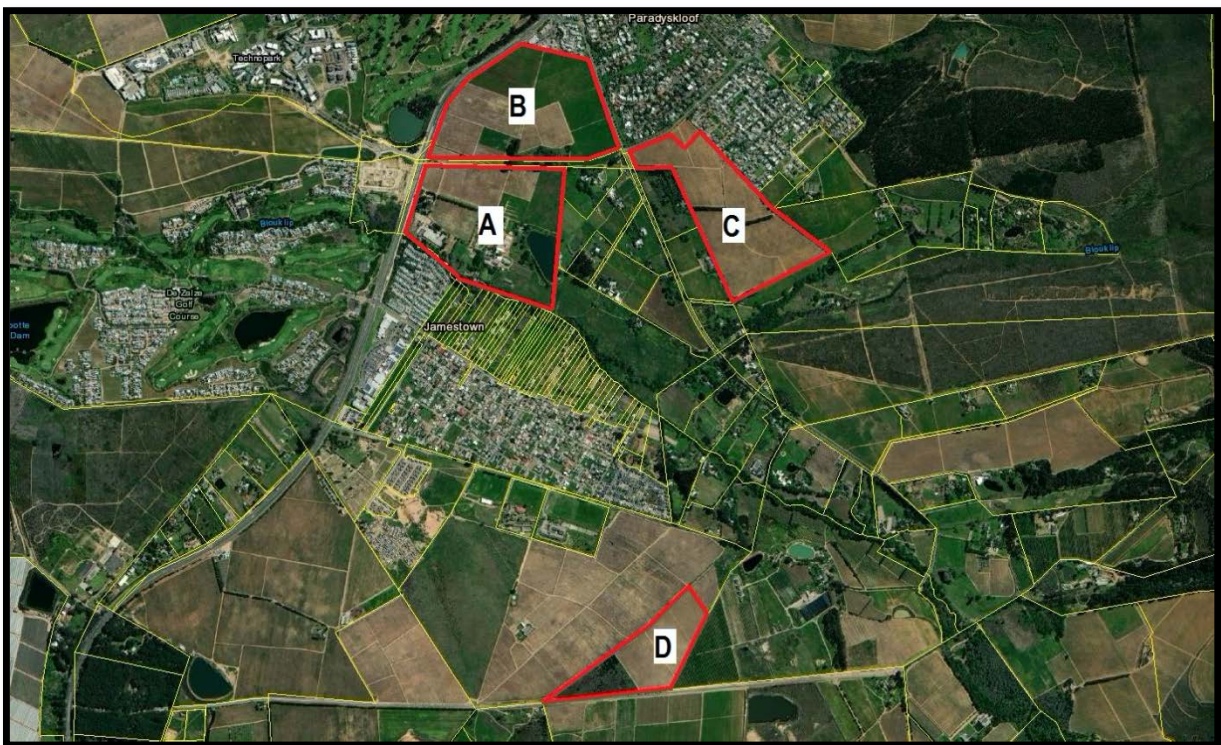
1.4 In October 2008, the Mayoral Committee in its capacity as Delegated Authority, approved the application to "un-tie" the properties listed in subparagraph 1.1.4 above. Please refer to item 5.2.7 of the Minutes of the Mayoral Committee

Meeting dated 2008-10-22: Report by Municipal Manager - attached hereto for ease of reference.

1.5 We attach a copy of Notarial Deed K 57/2010 which released the aforementioned properties from the Mother Erf. These properties are now held by CRT Number T 20990/2020.

1.6 Blaauwklippen Agricultural Estates Stellenbosch (Pty) Ltd ("Blaauwklippen") wishes to apply to un-tie Portion 17 of the Farm No 369 (Paradyskloof Erf) (C) and Portion 3 of the Farm No 527 (Skilpadrug Erf) (D) from the Mother Erf (A) and submits herewith its motivation for the requested separation.

1.7 A Location map of the properties C and D to be untied from A is included as Figure 1 below:



- A – Farm 510/837, Stellenbosch (±36.44ha)
- B – Farm 1457, Stellenbosch (±33.39ha)
- C – Farm 369/17, Stellenbosch (±26.67ha)
- D – Farm 527/3, Stellenbosch (±14.79ha)

## **2 THE EFFECT OF COVID AND NEED FOR FLEXIBILITY IN ENCUMERING OR SELLING THE PROPERTIES**

The Covid pandemic has had, and continues to have, devastating effects on Blaauwklippen's wine and hospitality businesses and Blaauwklippen need to generate additional funds for operational purposes and to settle debt due and payable.

Two options to raise funds have been identified, ie to Sell off certain properties, and/or raise additional loan capital.

2.1 Due to its location in relation to the Mother Erf, the Paradyskloof property C and the Skilpadrug property D have been identified as appropriate properties to sell. However, due to the restrictive tie-conditions, Blaauwklippen cannot sell these properties individually without also selling the Mother Erf as well as Erf 1457 (B), all tied to the Mother Erf.

2.2 The subject properties are currently tied under one Mortgage Bond as security for repayment of the loan obtained when Blaauwklippen was purchased from the previous owner.

For the same reason, the current Bondholder cannot release only properties C and D from the bond and new financiers are not prepared to lend funds without security of unbonded properties.

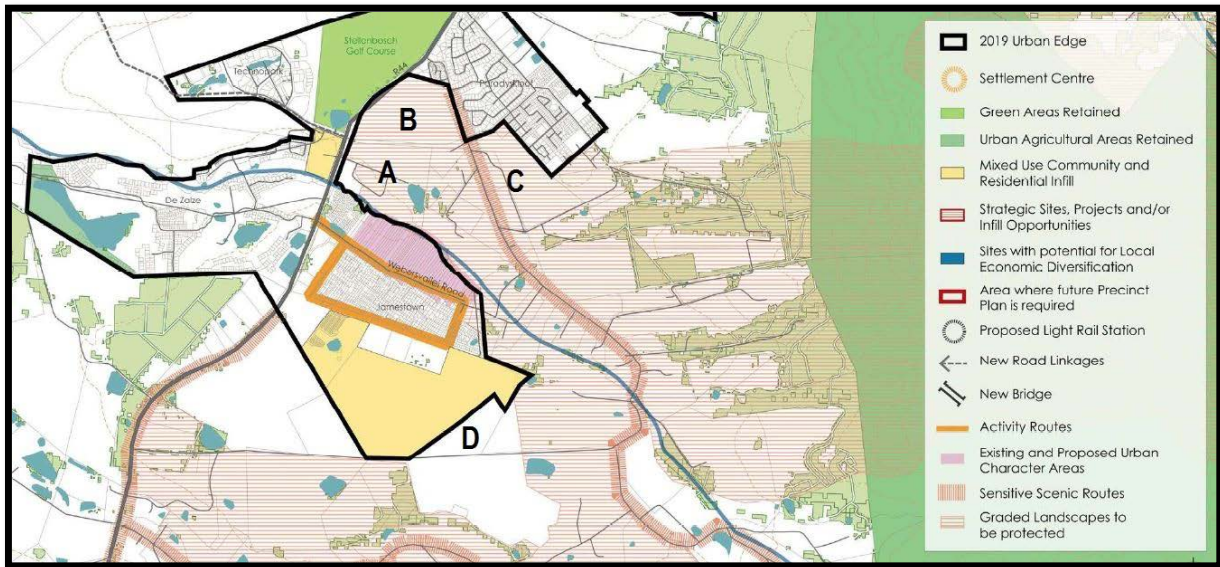
## **3 THE ORIGIN OF THE NOTARIAL TIE OF CERTAIN OF THE PROPERTIES TO THE MOTHER ERF:**

3.1 Clause 2.2.3 of the Deed of Sale provides that the Seller (Stellenbosch Municipality) shall be entitled to impose a notarial tie condition between the property thereby sold and the existing property of the Purchaser (Cape Dutch Estate (Pty) Ltd) so that the Purchaser or its successors in title shall not be entitled to sell or otherwise alienate or transfer any portion of the property thereby sold without the simultaneous sale or alienation or transfer of the property collectively referred to as Blaauwklippen Estate being the existing property of the Purchaser, or its successors in title, to the same transferee.

- 3.2 At the time, the lessee, Blaauwklippen Agricultural Estates Stellenbosch Pty Ltd (also a party to the Deed of Sale) was renting the properties which were the subject of the sale from the Municipality in terms of long-term leases.
- 3.3 The preamble to the Deed of Sale recorded, inter alia, that the purchaser through its affiliate company the lessee (Blaauwklippen) was conducting farming activities on the sale properties and is desirous of purchasing the said property so as to incorporate same into its present farming activities on the wine estate known as Blaauwklippen Estate.
- 3.4 The Deed of Sale expressly records in paragraph F that "*The properties forming the subject matter of the sale are situate in the area of jurisdiction of the municipal council of Stellenbosch and therefore do not constitute "agricultural land" as envisaged in terms of the Subdivision of Agricultural Land Act, 70/1970.*"
- 3.5 Clause 14 of the Deed of Sale provides a mechanism to deal with the future use of the property in the event that the "*...purchaser or its successor in title..... develop or sell or otherwise dispose of the property or any portion thereof for purposes of development of the property or any portion thereof for any purpose other than bona fide agricultural purposes, .....*"
- 3.6 The properties listed in 1.1.4 above were also previously notarially tied to the Mother Erf in accordance with a similar sale agreement dated 13 August 2003 but were subsequently released in October 2008. Those properties, to be consolidated with Portion 71 of Farm Blaauw Klip 510, received rezoning and subdivision approval on appeal from the Executive Mayor on 13 July 2021.
- 3.7 It is our contention that the said properties C and D should also be untied from the Mother Erf to afford the owner the flexibility to exercise its constitutional property rights.

#### 4 SPATIAL PLANNING CONSIDERATIONS

- 4.1 It is clear from a consideration of how the Stellenbosch town has grown since 2004 when the Deed of Sale was entered into, and 2006 when the notarial tie of the properties was registered, that circumstances have changed, that the spatial planning vision for the municipality's growth has evolved and that other statutory protections are in place to protect land deemed to have agricultural and rural value.
- 4.2 Having regard to Figure 1 above as well as the location of the properties that are still notarially tied to the Mother Erf, it is clear that the notarial tie of the properties no longer makes logical spatial planning sense. The properties do not form an economic unit with one another or with the Mother Erf and are not contiguous to each other. Furthermore, the properties are in any event protected by their current designation in the MSDF and through other statutory means and the need to protect the agricultural and rural use of the properties through a notarial tie to the Mother Erf has become superfluous.
- 4.3 Having regard to the fact that an owner of property has the constitutional right to administrative action which is lawful, reasonable and procedurally fair, it is our submission that the property owner has the right to have this application considered on its merits in terms of the applicable spatial planning and statutory application processes that apply at the time. The changes in circumstances since 2004 warrant a reconsideration of the notarial tie that significantly limits the property owner's property rights.
- 4.4 It is important to note that this application is not for change in land use for development purposes of the subject properties, but merely to enable the owner to utilise the properties independently to raise funds.



**Figure 2: Extract of the Stellenbosch MSDF (2019)**

- 4.5 The cancellation of the notarial tie will patently not lead to the urban development of the subject properties. The farms will remain zoned for agricultural purposes and protected by the MSDF.
- 4.6 This function to protect Council's vision for the spatial development of Stellenbosch, has been replaced by the MSDF and using a Title Deed condition or a notarial tie to enforce the Stellenbosch Municipality's spatial planning policy has become outdated.

### **REQUEST / APPLICATION**

5. The inability to raise finance, encumber, or sell the individual properties due to the fact that they are notorially tied to the Mother Erf is placing a further commercial constraint on Blaauwklippen's business as it cannot raise the necessary funds for operational purposes. The financial institutions or potential purchasers of some of these properties require free title as security for lending purposes and / or to enter into sale agreements.
- 6 In the light of the above, we ask therefore that the application for the removal of the restrictive condition (the notarial tie) as per Notarial Deed K 770/2006, be approved insofar as it relates to the following properties:

- 6.1 Portion 837 of the Farm Blaauw Klip Number 510 in Municipality and Division of Stellenbosch ( Mother Erf ) (A)
- 6.2 Portion 17 of the Farm No 369 in Municipality and Division of Stellenbosch (Paradyskloof Erf) (C)
- 6.3 Portion 3 of the Farm No 527 in Municipality and Division of Stellenbosch (Skilpadrug Erf) (D)

7 We ask further that the Municipality provide the necessary Power of Attorney confirming that the aforementioned properties have been released from the notarial tie to the Mother Erf to enable the owner to sell, alienate or encumber the properties separately.

8 We thank you in anticipation.

A handwritten signature in black ink that reads "Ben-Carl". The signature is written in a cursive style with a large, circular initial "B" and a long horizontal stroke extending to the right.

**Ben-Carl Havemann**

**Blaauwklippen Agricultural Estates Stellenbosch (Pty) Ltd**

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