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FRIENDS OF STELLENBOSCH MOUNTAIN

FSM Comments, Questions and Criticism on the

**“2023 draft Municipal Spatial Development Framework” and the
 “draft 2023/2024 Capital Expenditure Framework”**

29 May 2023

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Nomenclature

- Unless otherwise indicated, we shall use the term “dMSDFA” in this document as abbreviation for the document with the impossibly long title *SPATIAL PROFILE & DRAFT AMENDMENTS TO THE SPATIAL DEVELOPMENT FRAMEWORK* as approved by Council for public comment on 15 March 2023. The term “2019 MSDF” refers to the full Spatial Development Framework which is and remains in force since approval in 2019.
- We shall also use “CEF” as an abbreviation for the (draft!) 2023/2024 draft Capital Expenditure Framework as compiled by Novus3 (Pty) Ltd and SDS Africa (Pty) Ltd and tabled in the agenda to the Council meeting of 29 March 2023. For the exact status of this “CEF”, see sections 3 and 4 below.
- As always “SM” stands for “Stellenbosch Municipality”.

1 The “Package of Plans” strategy

- 1.1 The two documents at hand, the dMSDFA and the CEF, are part of a well-coordinated and well-considered planned strategy to circumvent the principles, goals and methods prescribed by law with regard to integrated planning and the associated financing and to replace them with ad hoc projects and spending which do not arise from the pertinent laws. This strategy is embodied in a “package of plans”, which includes parts of the draft 2023 IDP and MTREF, the present 2023 CEF, the draft 2023 CITP. It uses own municipal financial reserves, external loans, external grants such as provincial and national infrastructure grants and even parts of the Housing Pipeline to achieve the intended goals.
- 1.2 The high level of coordination in this strategy is apparent from the fact that draft IDP, CITP and MSDF and the related 3-year MTREF budget and 10-year Capital Expenditure Framework were all tabled at a single meeting of Council in March 2023. All of the above appear to have this strategy in mind.
- 1.3 The goal of the strategy is to channel the considerable available financial resources as well as capital reserves, external loans and grants obtained from provincial and national governments away from the legally prescribed principles towards a far-reaching transformation of Stellenbosch into a conglomerate of new luxury-housing estates linked by an extremely expensive new road network and supported by waterworks and sewage capacity. For details, see the FSM comments on the draft CITP of 12 May 2023.
- 1.4 The strategy is motivated by a tremendous “growth potential” originating from a wave of rich migrants from other parts of South Africa (“semigrants”) resulting in high demand for luxury accommodation, and by a considerable number of farm landowners (including Blaauwklippen, Brandwacht, Longlands, Libertas, to name but a few) bought exclusively with a view to development. Obviously, neither developer supply nor semigration demand is governed by the land use and financial laws but by more venal agendas.

The second component of this strategy is a massive programme of new road building to facilitate and accommodate the above new luxury housing.

The third component of this strategy is a conscious channeling of desperately needed resources away from the legally prescribed priorities. Among these three major legally-compliant goals stand out: the catalytic Adam Tas Corridor initiative, the desperately urgent implementation of a public transport strategy, and the equally desperate need for low-income housing integrated with such a transport system. All three are given lip service but given negligible funding (as compared with the spending on the road-and-luxury-development-related projects).

- 1.5 All components of this package-of-plans strategy further the needs and convenience of the high-income sectors of society while ignoring and suppressing the legally prescribed prioritisation of low-income residents.
- 1.6 The tactical method employed by this grand “package of plans” strategy is the same throughout all the component plans: the first parts of the IDP, MTREF, CITP and CEF plans in each case set out the legally prescribed principles, strategies and goals. In the second part, however, each of the above plans negates the first part (without saying so, of course) by sneaking in a long list of projects sourced, not from the principles and strategies of a plan’s Part One but from *external documents with no legal standing* and then including the resulting projects into the plan’s Parts Two for implementation, on an ad hoc basis — **without such projects arising from the governing strategy.**

In other words, there is a common pattern of hypocritical lip service to principles coupled to implementation strategies which contradict and negate those very principles.

1.7 For example, the draft 2023 CITP follows exactly this pattern.¹ As set out in the FSM Comments of 12 May, the 2023 draft CITP seemingly follows the legal content prescription as required by the “NLTA Minimum Requirements”. Without warning or explanation, however, the draft CITP in Chapter 7 abandons those same principles and in favour of a detailed list of new roadbuilding projects. Correspondingly, Chapter 12 (Funding) allocates most of the funding to these new roads. The “Public Transport Plan” of CITP Appendix A looks nice on paper but is allocated almost no funding, while the real intentions emerge again in Appendix B (road traffic surveys) and Appendix C (Infrastructure Services 10-year budget) which dominate the attention and spending priorities, in contravention of all the other chapters of the draft CITP.

The relevance of the CITP list of projects for the CEF will be set out in detail below.

1.8 At issue in the present FSM comments are the draft MSDF amendments (“dMSDFA”) and the CEF. Of these two, the dMSDFA is rather unproblematic. A few comments are presented below in section 2 on the dMSDFA, but the matters raised are relatively minor compared to the billions of Rands of Fruitless and Wasteful Expenditure and decades in (infra)structural damage which the draft CITP, MTREF and CEF are about to wreak on Stellenbosch.

1.9 It seems strange that, given the above well-coordinated “package of plans” strategy, the 2019 MSDF is still in force, because the 2019 MSDF (and the dMSDFA) do not fit into this strategy. That will, however, change in the near future. We predict that within months or at the latest in the 2023/2024 cycle, a radically changed MSDF will be compiled which will complete the hijacking of the legally prescribed municipal planning documents to serve the purposes of the “package of plans” strategy.

2 The dMSDFA: 2023 Draft Amendments to the existing 2019 MSDF

2.1 dMSDFA Part 6: Implementation Framework

2.1 The dMSDFA includes a full three pages to the Adam Tas Corridor initiative, namely Pages 3009 to 3011 (using the Council agenda pagination since the dMSDFA has no pagenumbers of its own). The ATC combines a number of legally prescribed goals and principles into a single grand concept: spatial justice (SPLUMA) in the mix of housing and associated educational facilities, spatial sustainability (also SPLUMA), densification (more housing in a smaller land footprint), strong focus on rail, public transport and NMT. This section is welcome and strongly supported.

2.2 The “package of plans” lurks unseen in the background.

- a. For a start, the funding allocated to the ATC is negligible. The package of plans propose spending billions on road-related projects but just R2million on the ATC.
- b. There is no attempt at all in the CEF or dMSDFA or any other of the package plans to **work out the consequences and implications** of the ATC for planning and funding of other housing and infrastructure projects. **The ATC has direct very positive consequences for the entire town, not just for itself, but in reducing demand for nonsustainable structures.** For example:

- Clearly, the 13,000 housing units fill a significant portion of housing demand (for poor people!) and thereby reduces the need for new housing (for rich people!) in

¹FSM has separately officially submitted detailed comments and analysis on the draft IDP/MTREF and the draft CITP to Stellenbosch Municipality (SM). Details supporting the roads versus public transport dichotomy and the “hijacking” of the CITP by the Roads Master Plan can be found in the FSM comments of 12 May 2023.

other parts of the town. But this is entirely ignored in the current package of plans.

- Likewise, the massive infrastructural boost provided by the ATC to the western edge of the central Stellenbosch node, the massive impetus it would provide for public transport means that demand for car use and roadbuilding would be reduced.

2.3 Part 6 of the dMSDFA must therefore be extended to spell out the reduction in demand for housing and roads development in other parts of Stellenbosch.

2.4 The dMSDFA Part 5 (Council Agenda Page 3006) contains some well-meaning phrases which sound like compliance with SPLUMA densification principles:

Support infill development on private land within Stellenbosch town in a manner which serves to compact the town, expand residential opportunity, and rationalize the edges between built and unbuilt areas.

and on Page 3008

Sensitive residential infill and compaction

are badly worded and have been heavily abused. The package of plans has turned the meaning of such phrases on its head. As it is, every second luxury housing development proposal claims to be doing “residential infill” resulting in “compaction” and a “rationalized edge”. A reading of the *Urban Edge Guidelines* supports this view. We propose that the dMSDFA use wording such as

Support development of open erven within established suburbs which serves to compact existing suburbs while hardening the existing urban edge around those suburbs.

2.2 dMSDFA Appendix B: Plans and Settlement Proposals

2.1 The *exclusion of Jamestown water erven* from the Urban Edge as proposed in the dMSDFA Amendments (Page 3018) was proposed by FSM and strongly supported by the Jamestown community. FSM therefore lauds and supports this exclusion.

2.2 FSM is surprised, however, by the proposed *inclusion of Farm 527/3* and suggests that this is highly problematic for the reasons set out in Section 5 below. The exact page of the dMSDFA is reproduced in Appendix A below.

2.3 FSM strongly supports the *continued exclusion* from the Urban Edge of the remainder of Farm 1049 Brandwacht. The proposed development would constitute extension of urban sprawl, not “infill” in the sense used by SPLUMA.

2.4 dMSDFA Amendments make no mention of the *Libertas* proposal on Farm 1040 and other land units. This land, too, is owned by a development conglomerate driven not by legal prescriptions but by the expected profits. Since *Libertas* is directly adjacent to the Adam Tas Corridor, it should not even be considered until the ATC projects have reached fruition.

2.5 The above are just examples of a very general pattern of realignment of settlement proposals which the MSDF should apply everywhere.

2.3 dMSDFA Part 7 and Appendix G: Capital Expenditure Framework

- 2.1 Appendix G of the dMSDFA is “just a placeholder”. Appendix G is sloppy and was clearly prepared in haste. For example, part from Page 3024 contains amounts and analysis of the PAST CEF 2011 to 2018 (page numbers refer to the Council agenda of 2023-03-29). A strong financial position claimed, but this refers to years past, not the present or future.
- 2.2 From Page 3032, the analysis suddenly and without explanation shifts to the years 2019 to 2027.
- 2.3 Not one part of these components of the dMSDFA is therefore of any help but on the contrary provide misleading and incomplete information.

3 2023/2024 Capital Expenditure Framework

- 3.1 We shall not comment on the specific methodology for prognostication or on the technical processing used by the CEF consultants in arriving at their projections and prognoses. What concerns us rather is the crucial role of **input data** and **input plans**. Part 3 of the CEF, *Infrastructure Demand Quantification* is the problem. Table 3-1 of the CEF shows the fundamental flaw in a nutshell. In that table, the following “Plans” are listed. We shall focus on the three roads-related ones, but our comments would apply in part to the other genres.

Service Type	Plan Name	Update Year
Roads	Comprehensive Integrated Transport Plan	2011 (!)
Roads	Stormwater Management System	2018
Roads	Roads Master Plan	2022, third version in one year
Electricity	Electrical Infrastructure Master Plan	2015
Waste	Integrated Waste Management Plan	2020
Water	Water Master Plan	2021

- 3.2 We note with shock and horror that **the major input to the CEF is not the MSDF**. Not a single of the above listed so-called “master” plans is mentioned at all in SPLUMA section 21. SPLUMA s21 explicitly specifies the role of the CEF to be an instrument **of the MSDF**, not of some arbitrary “master” plans. Whatever the importance of electricity, water, roads or waste, the correct hierarchy would be this:



while the current CEF simply follows the unlawful sequence



with little to no regard for the MSDF or the spatial legislation.

- 3.3 There have been at least two major new CITP’s since 2011, but the CEF is still using a 12-year-old 2011 plan. Meanwhile, the Roads Master Plan (RMP) has been through at least five iterations in the past few years. Three of those iterations happened in 2022, in response to criticism received from the public.

- 3.4 The main point is that the **Roads “Master” Plan** has no status in law whatsoever. It is a document compiled by engineers of the Department of Infrastructure Services, independently of the Department of Planning. As its name states, the RMP is completely focused

on roads and road-related projects: there is no trace of integrated planning and application of SPLUMA or the MSDF principles and priorities. It exists as a plan on its own, without principles or rules or regulations except the priorities set by the package of plans motivations of Section 1 and the personal opinions and prejudices of the officials and consultants who compiled it.

- 3.5 Not surprisingly, the Project List shown in Section 6.9 of the CEF and all the numbers shown in the long tables are unfit for purpose. Even the appearance or omission of particular line items is a matter of dispute.
- 3.6 In short: Like all the Package-of-Plans plans, the CEF has substituted Roads Master Plans projects for the focus areas and priorities of the MSDF. That substitution is a fatal flaw and likely reviewable in court. Similar illegal substitutions may well have occurred also in the electricity, waste management and water sectors.
- 3.7 The implications of this fatal flaw for the credibility of the CEF are inevitable: the entire output of the CEF is based on outdated and incorrect input. No matter what all the sophisticated planning software may do with the numbers, the input numbers and priorities are wrong from the start. **The entire quantitative output as set out in the CEF is therefore garbage.** As computer experts will tell you: *Garbage in: garbage out*, no matter how nicely you program may work.
- 3.8 The CEF fails equally fundamentally in its approach to the Adam Tas Corridor. The acronym “ATC” is referred to, without explanation, on one page of the CEF (in the LTFP) but the Adam Tas Corridor project is not mentioned at all otherwise. In other words, the **single most important catalytic project of Stellenbosch town planning plays no role in the list of projects in the CEF.** This omission is even more glaring given that the MSDF, the proposed MSDF amendments, multiple council agendas and resolutions have been made on the ATC for years. It is clear that the CEF is either completely clueless or malicious in its omission of the ATC and its key role in future town structure.
- 3.9 Another egregious example of the CEF **NOT** following and **NOT** implementing the MSDF is provided by the following entry in Part 5 of the dMSDFA (council agenda Page 3006):

Explore the feasibility of changing/complementing the rail service along the Baden Powell Drive-Adam Tas-R304 corridor to a system providing a more frequent, flexible service better integrated into the urban realm. Alternatively, a regular bus service should be explored serving the same route.

This project, which would be fully compliant with the legislative principles and goals, is not even mentioned in the CEF, not to speak of being given funding priority.

- 3.10 The 2023/2024 draft CEF also fails on even the most basic level: that of relevant and up-to-date data. Any allocation of financial resources should be based on fundamental data. However, neither the CEF, nor the IDP, nor the MSDF, nor the CITP or MTREF provides any information on car ownership and transport mode usage in Stellenbosch or of the economic profile of the car owners. This is crucial information missing in even a basic spatial framework analysis.

Without detailed information on car ownership and current mobility patterns, it is not even possible to even address the basic SPLUMA principles and requirements applying to the MSDF and its associated CEF, never mind effectively budgeting for their implementation.

- 3.11 In summary: **The 2023/24 draft CEF is not fit for purpose and must be withdrawn.**
- 3.12 As set out in section 4, it is now incumbent on the Premier of the Western Cape Government to intervene and ensure compliance of the CEF with the Provincial (!) Spatial Development Framework, because the CEF forms part of the Stellenbosch MSDF.

4 Legal matters

- 4.1 The “package of plans” as described in Section 1 has changed the SPLUMA “Good administration” principle, *All spheres of government must ensure an integrated approach to land use and land development* into its antithesis. There is indeed now an “integrated approach to land use and land development” in Stellenbosch, but the principles on which this integration is based and executed are not those of the underlying legislation but of ad hoc goals and aims driven by private interests, not the common good. That is illegal.
- 4.2 Refer to Section 3. We find the complete omission of the ATC catalytic initiative from the CEF input to be so grave as to be reviewable. The CEF has failed to address the single most important factor in town infrastructure development of the next three decades.
- 4.3 In not executing the stated MSDF projects and priorities set out in the complete 2019 MSDF, as approved by Council, and the draft 2023 amendments, the CEF is reviewable as per SPLUMA section 21:

*(21) A municipal spatial development framework must — ... (n) **determine** a capital expenditure framework for the municipality’s development programmes, depicted spatially;*

Section 21 is unambiguous that the MSDF and its contents must **determine** the CEF. The word “determine” means “strongly influence without freedom to deviate”. As demonstrated, the CEF has ignored crucial MSDF priorities and has instead been “determined” by plans and projects which do not appear in the MSDF at all and/or are in conflict with the legislation.

- 4.4 SPLUMA section 22(3) states that *Where a provincial spatial development framework is inconsistent with a municipal spatial development framework, the Premier must, in accordance with the Intergovernmental Relations Framework Act, take the necessary steps, including the provision of technical assistance, to support the revision of those spatial development frameworks in order to ensure consistency between the two.* We find the 2019 MSDF itself to be at least marginally compliant with the Provincial Spatial Development Framework. As pointed out, the CEF must be **determined** by the MSDF. Unlike the 2019 MSDF, the current draft CEF is **not** compliant with the 2019 MSDF or with the PSDF. By SPLUMA s 22(3), the Premier is therefore required to take the necessary steps to ensure not only consistency between the PSDF and MSDF, but the PSDF and the ensuing CEF.
- 4.5 We also find several aspects of the public participation process followed in conjunction with the draft MSDF Amendments and the draft CEF to be in violation of legally prescribed public participation processes and thereby reviewable. We base this opinion on the public participation sections of SPLUMA, the associated regulations, LUPA and the SM Land Use Planning By-Law, all of which make clear that transparency is paramount in all public participation processes. The process has, in our contention, not been transparent but on the contrary misleading.
 - a. **Part 7 and Appendix G of the dMSDFA:** As already stated, the dMSDFA Part 7 (from Page 3024 in council agenda) refers only to an old 2022/23 CEF, not the new draft 2023/24 CEF. Even worse, Appendix G of the dMSDFA contains amounts and analysis of the PAST CEF 2011 to 2018 i.e. about ten years out of date. This content is clearly misleading.
 - b. The public notice published in the Eikestadnuus and also online (see Appendix B below) exclusively requests public input into the draft MSDF amendments. No mention is made of the existence or crucial role played by the 2023/24 draft Capital Expenditure Framework.

5 Example: Blaauwklippen multiple developments and the MSDF

- 5.1 In this section, we return to Appendix B of the dMSDFA as previewed in subsection 2.2 above. The specific issue of *inclusion of Farm 527/3 into the Urban Edge* is raised by the dMSDFA there. Our focus here is not the specific merits or demerits of Jamestown housing or related urban edge changes. Our focus is on showing how Farm 527/3 forms part of the typical dynamics driven by developer greed and the ensuing modification of the package of plans of section 1. In short, this innocuous item in the dMSDFA opens a can of worms.
- 5.2 Appendix C shows the location of some of the Stellenbosch properties jointly owned by investment group and property developer *Blaauwklippen Agricultural Estates* (BAE). Farm 527/3 is at the southernmost tip of the land allocated to the Jamestown housing extensions. The pink area under the title “Jamestown” in that map refers to Portions 52, 53, 54 and 71 of Farm 510, owned by BAE, which forms the basis of the controversy and BAE appeal in 2021 as set out below.
- 5.3 There have been indications that BAE intends to apply for development of nearly all its agricultural properties e.g. the lower left panel of Figure 17 of the 2019 MSDF (App D), shows at least one of the stated BAE properties. While Farm 527/3 would probably be used for GAP housing, some the other parts are likely earmarked for luxury housing estates.
- 5.4 As set out in the FSM CITP comments, the prioritisation of by the 2023 CITP of the Eastern Link Road (ELR) appears irrational — until it becomes clear that the Eastern Link Road would give a significant boost to any motivation to develop Farms 1457 and 369/17 owned by BAE as well as Farm 1049 owned by property developer Brandwacht Land Developments (Pty) Ltd. This “priority part” of the ELR appears as two projects in the CITP, RMP and now also the CEF project list. As stated, there is a well-coordinated “package of plans” strategy in place with respect to the ELR.
- 5.5 These BAE properties have a controversial recent history. In 2020, BAE applied for developments of said portions 52, 53, 54 and 71 of Farm 510. The application was turned down by the MPT. BAE appealed against that decision. The Jamestown Heritage Association and FSM provided comments opposing the BAE application; see eg Appendix E. The appeal authority, the Mayor of Stellenbosch, held an oral hearing of the appellant and the opposing parties on 27 May 2021 in the mayoral chambers adjacent to the mayoral offices. The applicant’s team conferred with the mayor in her office just minutes before the commencement of the hearings itself. The appeal was thereupon upheld by the mayor as set out in her notice on 13 July 2021; see Appendix F.
- 5.6 As shown in Appendix G, the Sunday Times on 17 October 2021 alleged that the Democratic Alliance had free use of the Blaauwklippen Estate facilities in the same period as the above appeal process and appeal upholding was unfolding. The Democratic Alliance the top management of Stellenbosch Municipality (by voice of spokesperson Grobbelaar) did not deny such use.
- 5.7 The details underlying Sunday Times article remain to be clarified. The general silence has left an impression that the matter is to be suppressed in the public information space.
- 5.8 Unfortunately, Blaauwklippen has yet again taken another step which does not inspire confidence in their purely agricultural intentions. In the agenda of the Council meeting of 24 May 2023, just a week ago, the item reproduced in Appendix H requested the “notarial untying” of title deed provisions which the municipality itself had imposed as conditions of sale of said properties to the current owners in 2004. The motivation for that untying as reproduced in Appendix I are quite unconvincing. As pointed out in the Council item itself in Appendix H, such untying would open the door for a future development application on the BAE-owned properties involved.

Table 51. Summary table of first round comments received as well as associated responses

PRIMARY SETTLEMENT SUBMISSIONS	SUBMISSION	DEVELOPMENT PROPOSAL	COMMENTS/RECOMMENDATIONS
<p>SM: INTEGRATED HUMAN SETTLEMENTS</p>	<p>JAMESTOWN PHASE 4</p> <ul style="list-style-type: none"> Portion 3 of Farm No 527, Stellenbosch forms part of the IRDP & FLISP housing programme as noted in the adopted Housing Pipeline (Council resolution 25/05/2022) and forms part of the greater Jamestown development proposed. An estimated 1500 – 2000 service sites and top structures is proposed. 		<ul style="list-style-type: none"> The project is forms part of the Municipality's Housing Pipeline and is incorporated in the Municipal 5-year DP (dated 2022 – 2027). The project is located within the proclaimed Stellenbosch PHDA and will provide new housing opportunities in the GAP Market which is a strategic objective of the Integrated Human Settlements Directorate. The proposal is consistent with the inclusive development supported by the approved SDF and from a strategic spatial alignment perspective, the project falls within the spatially targeted areas i.e. the functional area and priority development area. <p>Recommendation: Include Portion 3 of the Farm No 527 earmarked for urban infill within the urban edge.</p>

STELLENBOSCH

B MSDF Amendment PPP Notice, March 2023

LOCAL MEDIA NOTICE STELLENBOSCH MUNICIPALITY

PUBLIC NOTICE: CALL FOR PUBLIC COMMENT ON THE FIRST DRAFT AMENDED MUNICIPAL SPATIAL DEVELOPMENT FRAMEWORK (MSDF)

Notice is hereby given in terms of Sections 21(1) and 21(2) of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), Section 20(3) of the Spatial Planning and Land Use Act, 2013 (Act No. 16 of 2013), Section 13(2) of the Western Cape Land Use Planning Act, 2014 (Act No. 3 of 2014) and Sections 3(1)(b) and 7(1)(b) of the Stellenbosch Municipality: Land Use Planning By-Law, 2015, that approval for the commencement of the public participation process for a period of 60 days for comments on the draft amended MSDF was approved at the Council meeting on 29 March 2023. The public is hereby invited to submit written comments and representations in connection with the first draft amended MSDF by electronic mail to the Manager: Spatial Planning at Spatial.Planning@stellenbosch.gov.za on or before **30 May 2023**. No late submissions will be considered.

The first draft amended MSDF is available on the Stellenbosch Municipality's website (www.stellenbosch.gov.za) and hard copies will be available at the local libraries and satellite offices as reflected in the table below, including the public participation dates and venues.

Area	Place	Public participation date & venue
Stellenbosch CBD	Library, Plein Street, Stellenbosch PMU Building (Mark Street) Ward 7: Jan Marais Eco Centre Ward 10: Lapland (Municipal Building)	Tuesday, 18 April 2023 (18:00 – 20:30) Stellenbosch Town Hall, Plein Str.
Franschhoek	Ward Office: Ward 1 (Mooiwater Building) Ward Office: Ward 2 (Groendal Community Hall)	Wednesday, 12 April 2023 (18:30 – 20:30) Groendal Community Hall
Kylemore	Kylemore Ward Office	Monday, 17 April 2023 (19:00 – 21:00) Kylemore Community Hall
Pniël	Library, Main Road, Pniël Pniël Ward Office	Monday, 17 April 2023 (19:00 – 21:00) Kylemore Community Hall
Wemmershoek	Ward 3: Wemmershoek Ward Office (Community Hall)	Monday, 17 April 2023 (19:00 – 21:00) Kylemore Community Hall
Jamestown	Jamestown Library Jamestown Ward Office	Tuesday, 18 April 2023 (19:00 – 21:00) Webergedenk Primary School Hall, Jamestown
Cloetesville	Cloetesville Ward Offices (Ward 16 and 17) Library, Vredelust Street, Cloetesville, Stellenbosch	Monday, 17 April 2023 (19:00 – 21:00) Eike Hall, Cloetesville
Ida's Valley	Ward Office: Ward 5 (Ida's Valley Sport Ground) Ward Office: Ward 6 (Library, Rustenburg Rd.) Library, Sonnebloem Street, Ida's Valley,	Thursday, 13 April 2023 (19:00 – 21:00) Lückhoff High School, Ida's Valley
Kayamandi	Kayamandi Ward Offices (Kayamandi Corridor) Library, Masithandane Street, Kayamandi, Stellenbosch	Wednesday, 12 April 2023 (18:30 – 20:30) Kayamandi High School,
Vlottenburg	Vlottenburg Ward Office (Vlottenburg Primary School)	Tuesday, 18 April 2023 (18:00 – 20:30) Stellenbosch Town Hall, Plein Str.

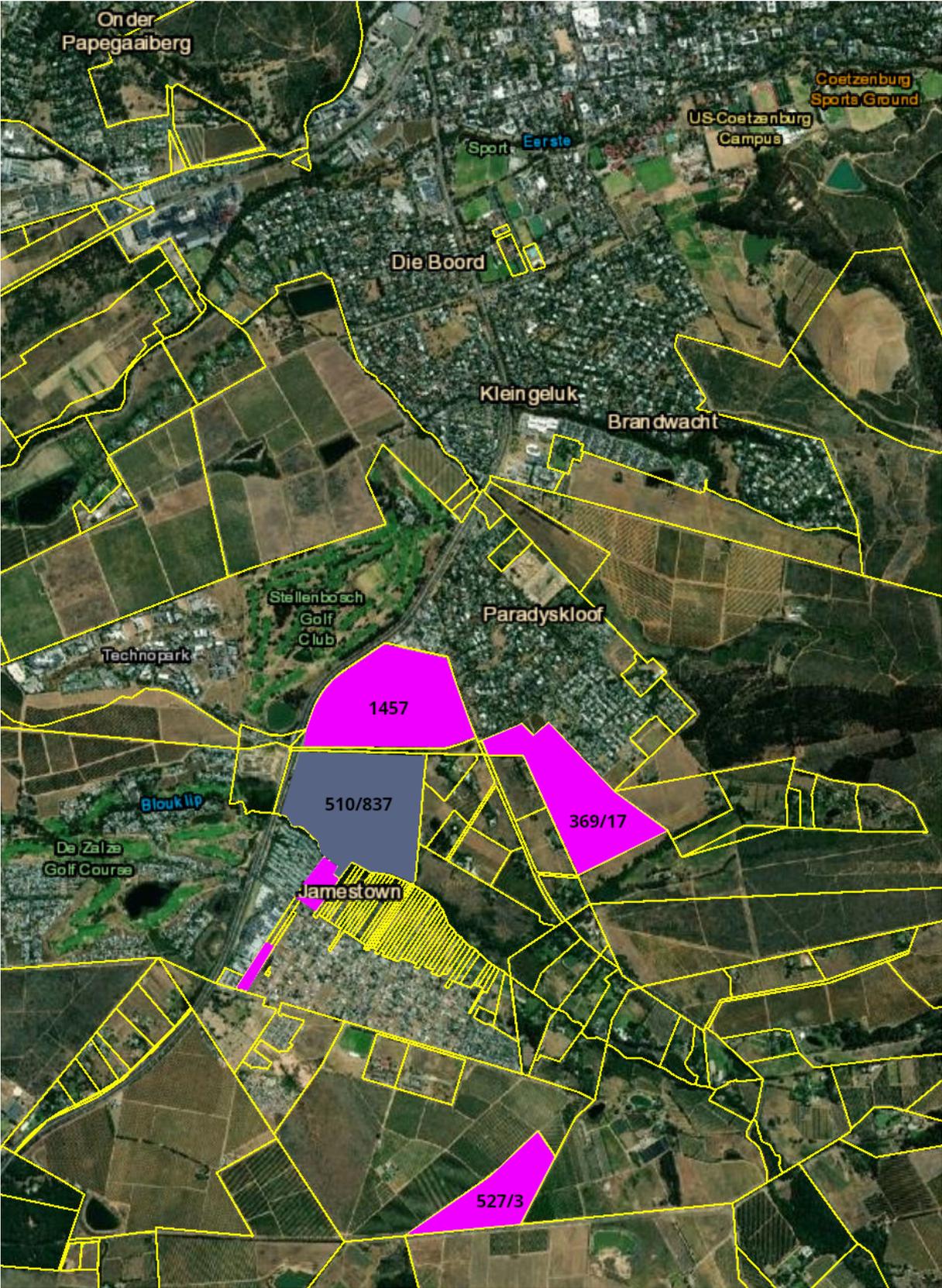
Klapmuts	Klapmuts Ward Office (Klapmuts Multi-Purpose Centre)	Thursday, 13 April 2023 (19:00 – 21:00) Klapmuts Multi-Purpose Centre
Ward 19	De Novo Ward Office (Primary School in De Novo)	Thursday, 13 April 2023 (19:00 – 21:00) Klapmuts Multi-Purpose Centre

Any person needing assistance to transcribe that person's comment or representation may, during normal office hours, approach the Spatial Planning Office, 2nd Floor, NPK- Building, corner of Plein and Ryneveld Streets, Stellenbosch, for assistance with the lodging of comments and representations, if any, in respect of the first draft MSDF.

Contact person: Chantel Hauptfleisch (Senior Spatial Planner)
 Tel: (021) 808-8607
 E-mail address: Spatial.Planning@stellenbosch.gov.za

Municipal Manager
Stellenbosch Municipality
Notice Number 37/2023

C Locality of properties owned by Blaauwklippen Agricultural Resources



D 2019 MSDF map showing the Blaauwklippen development applications

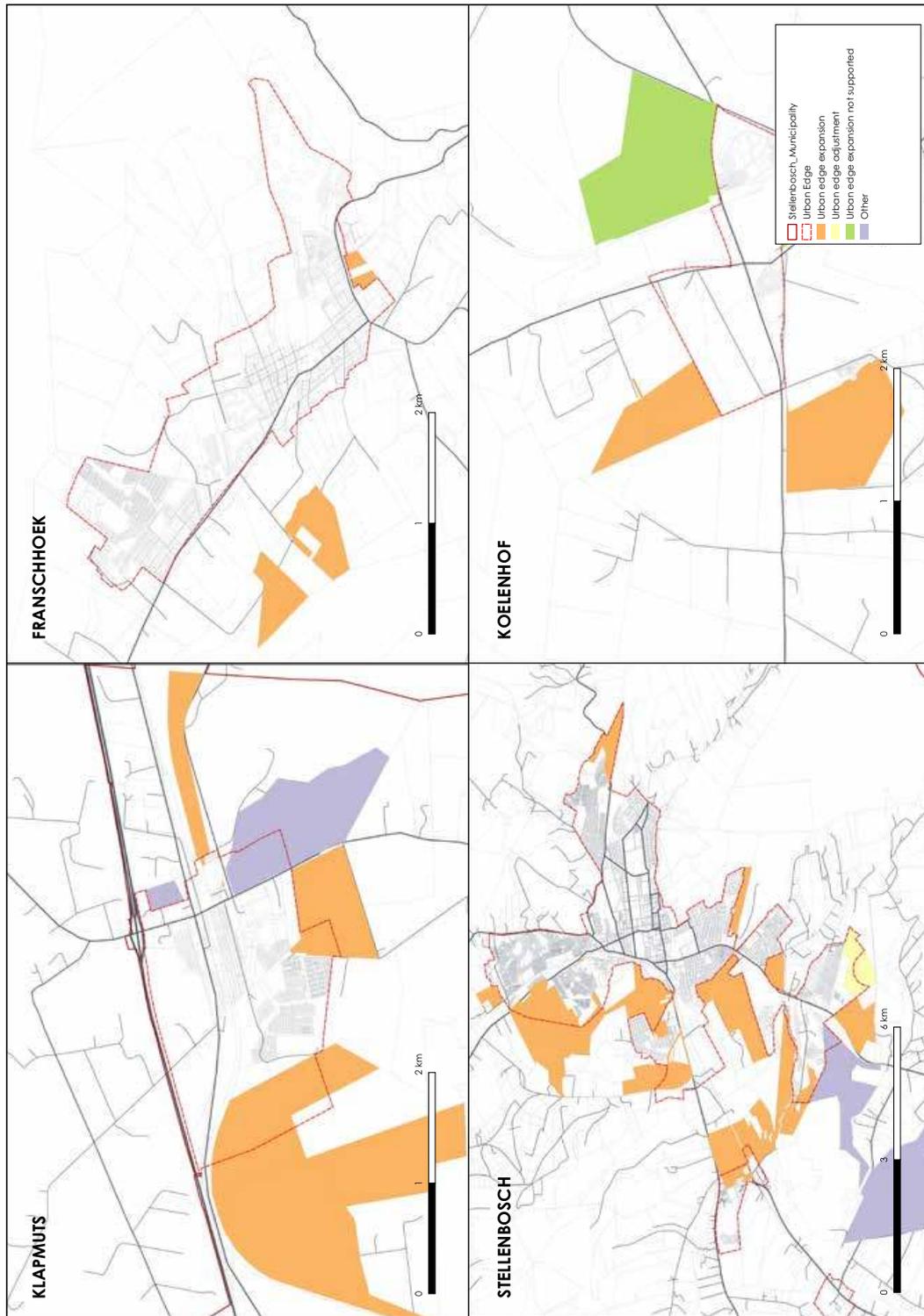


Figure 17. Current development pressures on the periphery of settlements in the SM

E Extract from FSM comments on BAE Appeal, January 2021



Chairperson: HC Eggers
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P.O. Box 3218, 7602 Matieland
11 Grandiceps Rd, 7600 Stellenbosch
Public Benefit Organisation No. 930049434
SARS Tax Number 9423023184

FRIENDS OF STELLENBOSCH MOUNTAIN

Comments

on the appeal lodged on 2020-12-20 by Blaauwklippen Agricultural Estates:
against the MPT decision of 2020-11-27
regarding LU/8567 re Portions 52, 53, 54 and 71 of Farm 510 Stellenbosch,

To the Appeal Authority and the Municipal Manager
Stellenbosch Municipality

BY EMAIL to Lenacia.Kamineth@stellenbosch.gov.za

2021-01-06

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F Blaauwklippen Appeal decision by Stellenbosch Mayor, July 2021



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NOTICE OF DECISION OF APPEAL AUTHORITY

APPEAL LODGED IN TERMS OF SECTION 79(2) OF THE STELLENBOSCH MUNICIPAL LAND USE PLANNING BY-LAW (2015) AGAINST THE APPLICATION FOR CONSOLIDATION, SUBDIVISION, REZONING, DEPARTURE ESTABLISHMENT OF HOME OWNERS ASSOCIATION, APPROVAL OF DEVELOPMENT NAME, APPROVAL OF SITE DEVELOPMENT PLAN, ALLOCATION OF STREET NAMES, APPROVAL OF THE ARCHITECTURAL AND LANDSCAPING GUIDELINES: PORTION 52, 53, 54 AND 71 OF FARMS NO. 510, STELLENBOSCH (LU/8567)

DECISION OF APPEAL AUTHORITY:

The Appeal Authority hereby, in terms of Section 81(7) of the Stellenbosch Municipal Land Use Planning By-law 2015:

Tick the appropriate box:

CONFIRM	VARY	REVOKE	X
THE DECISION OF THE MUNICIPAL PLANNING TRIBUNAL, ON THE 12TH OF DECEMBER 2021, TO REFUSE IN TERMS OF SECTION 60 OF THE STELLENBOSCH MUNICIPAL LAND USE PLANNING BY-LAW DATED 20 OCTOBER 2015, THE APPLICATION FOR CONSOLIDATION, SUBDIVISION, REZONING, DEPARTURE ESTABLISHMENT OF HOME OWNERS ASSOCIATION, APPROVAL OF DEVELOPMENT NAME, APPROVAL OF SITE DEVELOPMENT PLAN, ALLOCATION OF STREET NAMES, APPROVAL OF THE ARCHITECTURAL AND LANDSCAPING GUIDELINES: PORTION 52, 53, 54 AND 71 OF FARMS NO. 510, STELLENBOSCH (LU/8567)			
1. The abovementioned appeal refers.			
2. The Municipal Planning Tribunal, on the 12 th of December 2020, Refused , in terms of Section 60 of the Stellenbosch Municipal Land Use Planning By-law, promulgated by Notice no 354/2015 dated 20 October 2015, the application for a Group Housing Estate(See ANNEXURE 1).			
3. The application was approved subject to a number of conditions imposed in terms of Section 66 of the Stellenbosch Municipality Land Use Planning By-Law (2015).			
4. Mr. Justin Truter from Werksmans Attorneys lodged an appeal on behalf of Blaauwklippen Agricultural Estates in terms of Section 79(2) of the By-Law, with the			

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MS



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Municipality on the 21st of December 2020, against the decision of the Municipal Planning Tribunal.

5. The appeal assessment report was drafted based on all documentation provided.
6. In order to comply section 81 (6) of the Stellenbosch Municipality Land Use Planning By-Law (2015), an inspection of the documents must be held before the handover to the Appeal Authority for consideration and decision making, however as the report was completed during the National Lockdown period, the report was forwarded electronically to all relevant parties on the 18th of March 2021.
7. Comments relating to the appeal assessment report were received from Professor Eggers on behalf of Friends of the Stellenbosch Mountain on the 23rd of March 2021. Further comments were received from Mr Justin Truter from Werksmans Attorneys on the 14th of April 2021, where after all documentation was handed over to the Appeal Authority for decision making.
8. An oral hearing was requested by Professor Eggers from the Friends of the Stellenbosch Mountain as well as Mr Clifford Heyes from TV 3 Planners to be heard prior to the Appeal Authority taking a decision in respect of the appeal. The oral hearing was granted and subsequently took place on the 27th of May 2021 where all relevant parties attended, including Professor Eggers, Mr Heyes and Mr February on behalf of Jamestown Erfenis.
9. The Appeal authority carefully considered all relevant documents, the written appeal, information and submissions made during the oral hearing and listened to the recording of the MPT meeting. Having weighed the merits and demerits off all this information, the Appeal Authority, decided, in terms of Section 81 (7) (b) of the Stellenbosch Municipality Land Use Planning By-Law to **UPHOLD** the appeal and

Page 2 of 6

2



REVOKE the decision of the Municipal Planning Tribunal dated 27 November 2021 to refuse the Application for Consolidation, Subdivision, Rezoning, Departure Establishment of Home Owners Association, Approval Of Development Name, Approval of Site Development Plan, Allocation Of Street Names, Approval of the Architectural and Landscaping Guidelines: Portion 52, 53, 54 And 71 of Farms No. 510, Stellenbosch.

10. That the decision of the Stellenbosch Municipal Planning Tribunal **BE REPLACED** in terms of section 81(9) (b) of the Stellenbosch Municipality Land Use Planning Bylaw(2015) with the following decision:

10.1 That the application for:

- a. The consolidation of Portions 52, 53, 54 and 71 of the Farm No. 510, Stellenbosch Division in terms of Section 15(2)(e).
- b. the rezoning of the consolidated property from Agricultural Zone I to Sub-divisional area for 55 Residential Zone III (townhouses) erven and 1 Residential Zone IV erf (24 flat units), 2 Private Open Space erven (1 private road and 1 private open space) and 1 Transport Zone II erf (public road widening purposes) in terms Section 15(2)(a).
- c. The subdivision of the consolidated property into 59 erven, namely 55 Residential Zone III (townhouses) erven and 1 Residential Zone IV erf (24 flat units), 2 Private Open Space erven (1 private road and 1 private open space) and 1 Transport Zone II erf (public road widening purposes) in terms of Section 15(2)(d).
- d. Departure on the Residential Zone IV erf to relax the internal side building lines from 4m to 3m and the street building line from 8m to 3m in terms of Section 15(2)(b).

BE APPROVED in terms of section 60 of the Bylaw, and subject to conditions of approval in terms of section 66(1) of the said Bylaw.



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CONDITIONS OF APPROVAL

- a. The approval applies only to the consolidation, rezoning, subdivision, departures, establishment of Home Owners Association, approval of the estate name and allocation of street names and numbers in question (See **ANNEXURE 2**) and shall not be construed as authority to depart from any other legal prescriptions or requirements from Council and external departments;
- b. Erf diagrams/general plans must be submitted to the municipality for record purposes.
- c. The approvals will lapse if not implemented within 5 years from final notification.
- d. A Home Owners Association is established in terms of Section 29(1) of the Land Use Planning By-law, 2015.
- e. The constitution of the Home Owners Association be submitted to the Director: Planning and Economic Development for approval and which constitution must make provision for the matters provided for in Section 29(3) of the Land Use Planning By-law, 2015.
- f. Submit the final detailed Architectural and Landscaping Guidelines for the Blaauwklip-aan-Rivier Residential Estate to the Director: Planning and Economic Development for approval.
- g. The final Site Development and Landscaping Plan, indicating the street names Blaauwklip Avenue, Malbec Close, Zinfandel West Street, Zinfandel East Close, Pinot West Street, Pinot East Close, Merlot West Street and Merlot East Close to the internal private roads and the allocation of street numbers be submitted to the Director: Planning and Economic Development for approval.
- h. Should any heritage resources, including evidence of graves and human burials, archaeological material and paleontological material be discovered during the execution of the activities above, all works must be stopped immediately, and Heritage Western Cape must be notified immediately.
- i. Adhere to the conditions of approval from the **National Department of Water and Sanitation** in their letter dated 05/07/2019 (See **ANNEXURE 3**).



- j. Adhere to the conditions of approval from **Eskom** in their letter dated 08/07/2019 (See **ANNEXURE 4**).
- k. That the applicant conclude an engineering services agreement with the municipality which service agreement must contain and be in compliance with all the conditions of approval from the **Municipal Directorate Infrastructure Services** in their memorandum dated 01/07/2020 (See **ANNEXURE 5**) and to the satisfaction of the Director Infrastructure Services.
- l. Development charges is payable and which contributions will be calculated in terms of the relevant policy and the prevailing tariff structure for such development contributions at the time of payment of the applicable charges.

REASONS FOR THE DECISION

- 1. The site is located within the Stellenbosch urban edge and has been since 2010. The Municipality has throughout the last ten years not changed this status, hence the site remains inside the proclaimed urban edge.
- 2. Heritage Western Cape endorsed the Stellenbosch Heritage Inventory but in spite of it, stated in their impact assessment the development will not impact on the heritage resources.
- 3. The development is supported by Western Cape Agricultural Department.
- 4. The development is not inconsistent with the Stellenbosch Municipal Spatial Development Framework (MSDF).
- 5. An important site specific circumstance is presented in the fact that this site was "urbanised" and lost its rural and agricultural character through an illegal invasion, changing it to an informal residential area that lasted for a period of over 20 years. This factor distinguishes this erf from the other water erven that remained rural and agricultural to some extent.
- 6. The site is only 2.4 hectares and not a viable agricultural unit, and after 20 years of residential use no longer of agricultural nature.
- 7. The La Clemence development, which is a similar development, was approved next to the proposed development.

CM



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8. This decision will not create a precedent as every application has to be judged on its own merits.

SIGNATURE: Adv. Gesle van Deventer **DATE:** 13/07/2021

Adv. Gesle van Deventer
EXECUTIVE MAYOR

(Appeal Authority in terms of Section 79(1) of the Stellenbosch Municipal Land Use Planning By-Law)

12

Sunday Times

News Property

Row over DA role in wine estate deal

Development plan approved after party's functions hosted

By **BOBBY JORDAN**

● The DA mayor of Stellenbosch approved an upmarket development on the town's oldest wine estate just weeks after the farm hosted and bankrolled two events for the political party.

The DA this week confirmed that the cost of two events at Blaauwklippen on May 27 and in early July had been "credited as a donation in kind".

The functions – for a provincial council and a candidate selection panel – took place days after mayor Gesie van Deventer presided over an appeal hearing involving Blaauwklippen's owners.

Their planning application had been turned down by a municipal tribunal earlier in the year, but on July 13 the mayor granted the appeal in spite of opposition from the adjoining former mission station, Jamestown, where residents fear gentrification of the historic area.

The ANC said this week it would report the Blaauwklippen matter to the public protector and request a municipal inquiry into whether Van Deventer had breached the councillors' code of conduct.

The ANC's Western Cape elections head, Cameron Dugmore, said the party will also lodge a complaint with the minister of cooperative governance & traditional affairs.

"We have always argued that the DA has a very cosy relationship with certain de-



The glass cathedral at Blaauwklippen: The estate hosted two political events for the DA. Picture: blaauwklippen.com



Gesie van Deventer

velopers," said Dugmore.

"Up to now, given that there was no legislation covering declaration of donations, we have been convinced that they have continued to do special favours for certain developers, some of whom are funders of the DA."

The Stellenbosch Ratepayers Association also questioned the context of the mayor's

appeal decision. "It does raise a red flag if decisions are made following political meetings and donations," it said in a statement.

The DA and the municipality denied any wrongdoing. The party's Western Cape chair, Jaco Londt, said the DA is committed to transparency.

"There is no quid pro quo between the party and its donors," he said. "We are in an election season and have reached out to thousands of potential donors.

"We declare all donations according to the Political Party Funding Act – one of the very few parties that actually do this properly."

Londt said the donation in kind from Blaauwklippen – a waiver of commercial rates for the two functions – had been declared in accordance with the act.

"Venues are selected according to avail-

ability, convenience and suitability for our purpose. Provincial councils are rotated across regions. For the selection panel, attended by delegates from various regions, Blaauwklippen was the most convenient location."

The donation amount was not disclosed. Blaauwklippen's website advertises daily rates of about R40,000 for its main indoor venues. It is unclear how long the DA selection process lasted or what facilities were made available.

The municipality dismissed any inference of impropriety regarding the mayor's appeal decision.

"Any suggestion of partisan-interference is completely unfounded and amounts to nothing more than a baseless attack," said spokesperson Stuart Grobbelaar. "We cannot provide a comment that relates to party political activities."

Van Deventer said her appeal decision was based on written submissions and oral representations. "It should be noted that the

decision was accepted by all parties concerned as none of the parties took the decision on review," she said.

"The decision letters are open to the public, in the interest of transparency, and are available from the municipal website."

Blaauwklippen CEO Ben-Carl Havemann said the proposed development of 2.4ha is not located "within the main agricultural Blaauwklippen farm" and is adjacent to a retirement village.

"The site lost its agricultural character and use through an illegal invasion, changing it to an informal settlement for more than 20 years," Havemann said.

"We are still in the planning phase of the development and will announce the timeline and the makeup of the estate when we are able to do so."

Blaauwklippen is one of SA's oldest wine farms, founded in 1682 and owned by Stellenbosch property group ATM.

Civil society groups have raised concerns about a perceived local government bias in

favour of upmarket developments at the expense of low-income housing provision and other social purposes.

Chrisben February, head of the Jamestown Heritage Committee, said the Blaauwklippen development approval disregarded strong local opposition.

"The negative effect of gentrification for the local old and long-living Jamestown families was one of the most important reasons for our appeal," February said.

Property developers, however, complain that projects worth millions of rands to the economy, and which create jobs, are too often blocked by local authorities despite the ever-growing demand for housing.

Last month the Sunday Times reported on another Stellenbosch development, Longlands, which received municipal approval despite ratepayer opposition.

The development company, Longlands Village, also appeared on a recent list of DA donors, but it denied any link between its political donations and business operations.

H Blaauwklippen “untying” application: Council agenda of 24 May 2023

Page 2026

AGENDA

14TH MEETING OF THE COUNCIL
OF STELLENBOSCH MUNICIPALITY

2023-05-24

11.2	YOUTH, SPORTS AND CULTURE: [PC: CLLR R ADAMS]
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NONE

11.3	CORPORATE SERVICES: (PC: CLLR L NKAMISA)
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11.3.1	APPLICATION FOR SEPERATION OF NOTARIALLY TIED PROPERTIES, PORTION 17 OF FARM 369 AND PORTION 3 OF FARM 527 FROM THE MOTHER ERF, PORTION 837 OF THE FARM BLAAUW KLIP NUMBER 510
--------	--

Collaborator No:

IDP KPA Ref No:

Meeting Date:

Good Governance

17 May 2023 & 24 May 2023

1. **SUBJECT: APPLICATION FOR SEPERATION OF NOTARIALLY TIED PROPERTIES, PORTION 17 OF FARM 369 AND PORTION 3 OF FARM 527 FROM THE MOTHER ERF, PORTION 837 OF THE FARM BLAAUW KLIP NUMBER 510**

2. **PURPOSE**

To obtain Council-approval for the separation of Notarial tied properties, portion 17 of Farm 369 and portion 3 of Farm 527 from the Mother Erf, Portion 837 of the farm Blaauw Klip number 510.

3. **DELEGATED AUTHORITY**

Council

4. **EXECUTIVE SUMMARY**

During October 2004 a Deed of Sale was entered into between the Stellenbosch Municipality, the Cape Dutch Estate Stellenbosch (Pty) Ltd and Blaauwklippen Agricultural Estates (Pty) Ltd. A copy of the Deed of Sale is attached hereto as **APPENDIX 1**. In terms of the Deed of Sale various portions of Council-owned land were sold to the purchasers (now the applicants).

In terms of Clause 2.2.3 it was recorded that:

“The seller shall be entitled to impose a notarial tie condition between the property hereby sold and the existing property of the purchaser, so that the purchaser or its successor in title shall not be entitled to sell or otherwise alienate or transfer any portion of the property hereby 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 successor in title, to the same transferee.”

The reason for inserting the clause was to ensure that the Purchaser would not be able to sell or otherwise dispose of the property that was sold to them. For this reason, the municipal properties were first consolidated into one portion, and then notarially tied to the property collectively referred to as Blaauwklippen. The Notarial Deed, registering the notarial tie (condition of sale), was registered with the Registrar of Deeds on 25 July 2006, a copy of which is attached hereto as **APPENDIX 2**.

An application is now brought to un-tie Portion 17 of the Farm 369 (Paradyskloof Erf) and Portion 3 of the Farm 527 (Skilpadrug Erf) from the Mother Erf (**APPENDIX 4**). The application is brought on the basis that the fact that Blaauwklippen cannot sell these properties is placing a financial strain on the business and they are not able to raise the necessary funds they require for operational purposes. COVID had, and continues to have, a devastating effect on Blaauwklippen's wine and hospitality businesses. They say it is not an application for change in land use for development purposes, but merely to enable the current owners to utilise the properties individually to raise funds. They say it will not necessarily lead to the urban development of the properties as the farm will remain zoned for agricultural purposes and be protected by the MSDF.

The properties are situated outside the urban edge (**APPENDIX 5**). Council however in March 2023 approved the inclusion of "portion of remainder, portion 3 and a broader portion of portion 7 of farm 527 portion 7 of Farm 527" to form part of the housing pipeline (**APPENDIX 6**).

5. RECOMMENDATION

FOR CONSIDERATION

6. DISCUSSION / CONTENT

6.1 Background

6.1.1 Blaauwklippen, Stellenbosch

The property was initially leased from the municipality after which the Deed of Sale was entered into.

During October 2004 a Deed of Sale was entered into between the Stellenbosch Municipality, the Cape Dutch Estate Stellenbosch (Pty) Ltd and Blaauwklippen Agricultural Estates (Pty) Ltd. A copy of the Deed of Sale is attached hereto as **APPENDIX 1**. In terms of the Deed of Sale various portions of Council-owned land were sold to the purchasers (no applicants).

In terms of Clause 2.2.3 it was recorded that:

"The seller shall be entitled to impose a notarial tie condition between the property hereby sold and the existing property of the purchaser, so that the purchaser or its successor in title shall not be entitled to sell or otherwise alienate or transfer any portion of the property hereby 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 successor in title, to the same transferee."

The reason for inserting the clause was to ensure that the Purchaser would not be able to sell or otherwise dispose of the property that was sold to them. For this reason, the municipal properties were first consolidated into one portion, and then notorially tied to the property collectively referred to as Blaauwklippen. The Notarial Deed, registering the notarial tie (condition of sale), was registered with the Registrar of Deeds on 25 July 2006, a copy of which is attached hereto as **APPENDIX 2**.

The following properties were tied to Mother Erf, Portion 837 of the Farm Blaauw Klip Number 510 (Title Deed 34249/2015), in terms of Notarial Deed K 770/2006:

1. Farm No 1457 – erf on open field opposite golf course;
2. Portion 17 of the Farm No 369 – Paradyskloof Erf – C on map below;
3. Portion 3 of the Farm 527 (Skilpadrug Erf) – D on map below.
4. Remainder Portions 52, 53 and 54 of the Farm Blaauw Klip number 510 (Kreefgat Properties).

On 22 October 2008, the Mayoral Committee recommended to un-tie the properties known as remainder portions 52, 53 and 54 for the Farm Blaauw Klip number 510 (also known as the Kreefgat properties).

These properties were released from the Mother Erf by Notarial Deed K57/2010 which is attached hereto as **APPENDIX 3**.

6.2 DISCUSSION

6.2.1 Location and context

The property under discussion is situated at Blaauwklippen Farms.



Fig 1: Proposed areas to un-tie: C and D.

Hereto attached as **APPENDIX 4** an application received from Blaauwklippen Agricultural Estates Stellenbosch (Pty) Ltd. to un-tie Portion 17 of the Farm 369 (Paradyskloof Erf – C above) and Portion 3 of the Farm 527 (Skilpadrug Erf -D above) from the Mother Erf. The application is brought on the basis that the fact that Blaauwklippen cannot sell these properties is placing a financial strain on the business and they are not able to raise the necessary funds they require for operational purposes. COVID had, and continues to have, a devastating effect on Blaauwklippen's wine and hospitality businesses. The applicants say is not an application for change in land use for development purposes, but merely to enable the current owners to utilise the properties individually to raise funds. They say it will not necessarily lead to the urban development of the properties as the farm will remain zoned for agricultural purposes and protected by the MSDF.

The sizes of the different portions requested to be released are as follows:

Mother Erf – Farm 1457 – erf on open field opposite golf course – 36.44ha

Farm 369/17 – Paradyskloof erf – 26.67ha

Farm 527/3 – Kreefgat Property – 14.79ha

The properties are situated outside the urban edge (**APPENDIX 5**). Council however in March 2023 approved the inclusion of “portion of remainder, portion 3 and a broader portion of portion 7 of farm 527 portion 7 of Farm 527” to form part of the housing pipeline (**APPENDIX 6**).

6.3 FINANCIAL IMPLICATION

There will be no financial implications for the Stellenbosch Municipality subject to the applicant carrying all the costs for the removal of the restrictive conditions and registration of the properties and the notarial deed that needs to be amended.

6.4 LEGAL IMPLICATIONS

Council may revise the decision taken in 2008 to un-tie the properties. If untied nothing stop the applicants from selling the properties separately and the new owners bringing applications to develop the land, unless conditions are attached and registered against the title deeds of the untied properties. If any development is planned that is not in line with the current zoning of agricultural the owners will have to apply for rezoning of the properties. There is a further complication that the properties are outside the urban edge which will need a change to the Spatial development Framework to amend the urban edge. Council however in March 2023 approved the inclusion of “portion of remainder, portion 3 and a broader portion of portion 7 of farm 527 portion 7 of Farm 527” to form part of the housing pipeline (**APPENDIX 6**).

6.5 STAFF IMPLICATIONS

No additional staff implications.

6.6 PREVIOUS COUNCIL RESOLUTIONS

On 22 October 2008, the Mayoral Committee recommended to un-tie the properties known as remainder portions 52, 53 and 54 for the Farm Blaauw Klip number 510 (also known as the Kreefgat properties). At the time of the compilation of the item writer was unable to locate the council resolution that followed on the 2008 recommendation. These properties were however released from the Mother Erf by Notarial Deed K57/2010 which is attached hereto as **APPENDIX 3**.

6.7 RISK IMPLICATIONS

The risk exists that if the property is sold that new owners will want to develop the land and change the agricultural zoning currently attached to the properties.

6.8 INPUTS RECEIVED FROM DIRECTORATES

6.8.1 Municipal Manager

Support the application provided that the deed contains a provision to protect the agricultural zoning.

6.8.2 Chief Financial Officer**6.8.3 Director Infrastructure**

No objection against the application.

6.8.4 Director Planning and Economic Development

To consider the merits of an application to untie a notarial tie the original purpose and intend for imposing the subject notarial tie by the beneficiary thereof should be understood.

The subject Blaauwklippen Farms were previously owned by the Stellenbosch Municipality. In the context of the Stellenbosch space economy these collective farming units have two prime characteristics which are important considerations:

1. The agricultural potential of the subject properties is very high, and
2. The subject properties are an important element of the Stellenbosch Open Space System.

Farmlands is a significant characteristic and important ingredient of the Stellenbosch space. Economy that contributes towards the value of the cultural, scenic, and productive landscape, and ultimately the economic and associated tourism vitality of the Cape Winelands brand.

When the Stellenbosch Municipality embarked on the process to sell the land, it was the intention to ensure that the farms remain productive to retain its value for the Stellenbosch space economy. With due consideration of the need to secure the ongoing financial feasibility of the subject farms, it was considered prudent to retain and operate the farms as a collective entity. For this purpose, it was consequently the rationale of the notarial tie to ensure this objective.

To untie the notarial tie will facilitate that the separate farms portions can be sold off to different entities and would ultimately undermine the feasibility to retain the farms as economic viable entities. This will pave the way to solicit support for the eventual development of the properties in yet sprawling high end residential estates and the loss of a high value asset.

It should be noted that it is not speculative to suggest that it is the prerogative of the owner to develop the subject farmlands, as the owner has recently already held exploratory discussions with the Spatial Planning section for the eventual development of the entire land area that compromises the subject Blaauwklippen farmlands.

The subject properties fall outside of the urban edge and the original rationale for the properties in the context of the Stellenbosch space economy is maintained in the present municipal spatial planning framework.

It is thus submitted that there is no justifiable rationale for the municipality to agree to the unbinding of the notarial tie over the subject properties, and that if it should be supported, it would potentially undermine the MSDF by paving the way to pursue development rights of the subject properties.

6.8.5 Director Community and Protection Services.

No objection to application.

RECOMMENDATIONS FROM THE EXECUTIVE MAYOR, IN CONSULTATION WITH THE EXECUTIVE MAYORAL COMMITTEE, TO COUNCIL: 2023-05-17: ITEM 7.3.1

that Council considers the application.

ANNEXURES:

- Appendix 1: Deed of Sale
- Appendix 2: Notarial Deed K770/2006
- Appendix 3: Notarial Deed K57/2010
- Appendix 4: Application
- Appendix 5: Extract from SDF indicating urban edge 6: Extract from the approved housing pipeline

FOR FURTHER DETAILS CONTACT:

NAME	<i>Annalene de Beer</i>
POSITION	<i>Director: Corporate Services</i>
DIRECTORATE	<i>Corporate Services</i>
CONTACT NUMBERS	<i>021-8088073</i>
E-MAIL ADDRESS	annalene.debeer@stellenbosch.gov.za
REPORT DATE	<i>2023-05-09</i>

APPENDIX 1

1682

BLAAUWKLIIPPEN

APPLICATION AND MOTIVATION FOR THE SEPARATION OF NOTARIALLY 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

Blaauwklippen Agricultural Estates (Pty) Ltd

Company Registration: 1972/000312/07 | VAT: 4600102141 | Directors: DF Comerma, AT Markgraaff

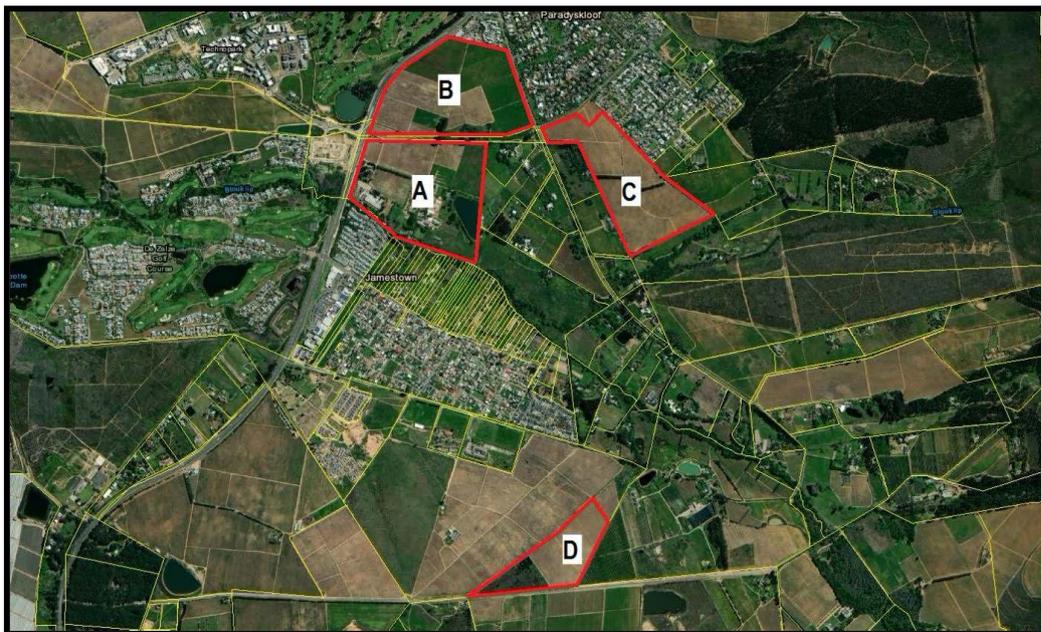
Strand Road, R44 Stellenbosch, 7600 | t: + 27 (0)21 880 0133 | e: info@blaauwklippen.com | blaauwklippen.com

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.

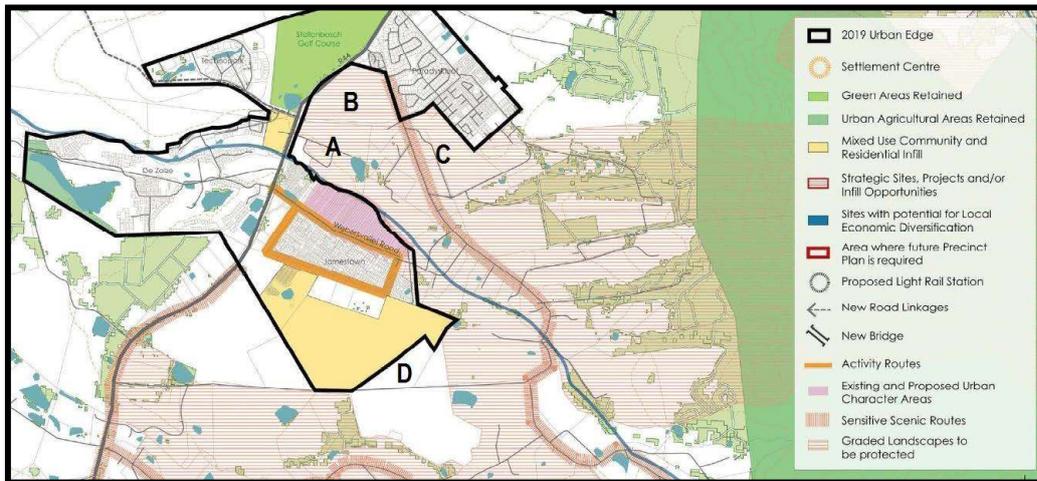


Figure 2: Extract of the Stellenbosch MSDF (2019)

- 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 notarially 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

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- 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, stylized initial 'B' and 'C'. A horizontal line is drawn underneath the signature.

Ben-Carl Havemann

Blaauwklippen Agricultural Estates Stellenbosch (Pty) Ltd

Chief Executive Officer | bc@blaauwklippen.com