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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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1 Introduction

- 1.1. The present document constitutes a comment on the appeal as defined in Section 80(6) of the Stellenbosch Municipality Land Use Planning By-Law (SLUPB).
- 1.2. **FSM requests that the Appeal be dismissed, for the reasons set out below and those provided by other Interested and Affected Parties.**
- 1.3. Given the importance and ramifications of the land use application and appeal, FSM recommends that an oral hearing be held in terms of Section 81 of the SLUPB and that all parties, including the Appellant, persons who submitted written comments, relevant officials of the municipal Department of Planning as well as the Chairperson of the Municipal Planning Tribunal, be requested to give oral evidence.
- 1.4. Section 2 provides a short summary of Appendix A. Appendix A itself contains a detailed rebuttal of the Appeal and constitutes the main source of our arguments for appeal dismissal. The arguments set out in Section 3 were not raised in the appeal itself and are therefore provided separately here.
- 1.5. In the text below, item numbers in square brackets refer to those of the Appeal.

2 Summary of FSM arguments against Appeal document claims

- 2.1. Naturally, the points raised by the Appellant will be those which best suits his purpose, and so this section is “reactive” rather than “proactive”. The arguments in Section 3 at least as important than those treated below, or even more so.
- 2.2. Here we provide only a brief summary of some issues raised in the appeal document. As stated, Appendix A provides a more complete rebuttal.
- 2.3. **Urban edge:** The erven in question are indeed located inside the urban edge, even though they should never have been included if the 2005 Urban Edge Guidelines had been applied. Inclusion into the urban edge does not constitute a right to development but merely a minimum requirement. It is a necessary but not a sufficient condition. See Items A12–A16.
- 2.4. **Conformance of MPT decision with agenda and strategy of IDP and MSDF:** The Appellant alleges that the MPT “Reason 1”, namely that the application deviates from the prevailing agenda and strategy of the MSDF, is untrue and that the application is after all in line with the MSDF.
- 2.5. Actually, the MPT decision letter uses even stronger language. The MPT decision letter of 2 December 2020 states that “2.1.4 b) *The development of the subject property for the proposed land uses, and the outcome and impact thereof on the existing development context, would negate the development agenda and strategy of the Stellenbosch MSDF as it relates to Jamestown.*” The “negation” in question probably relates to the fact that approval of this proposed residential development on four of the “tuin erwe” (also called “water erven” because of they abut the Blaauwklippen River) would create a precedent which likely would lead to similar applications for the other water erven.

Conformance or nonconformance of the application with the MSDF is treated in Items A17–A19.

- 2.6. **Deviation of application from IDP/MSDF agenda and strategy:** Indeed the application deviates significantly from such agenda and strategy in some aspects; see e.g. the list in Item A16 and of course the significant heritage status of the land in question.

- 2.7. **Heritage and related issues:** The MPT’s “Reason 2” for turning down the application was based on the “provisions of the Stellenbosch Heritage Inventory and Management Plan”. Not unexpectedly, the Appellant makes heavy weather of the fact that the Heritage Inventory has not been formally approved by Council as a Stellenbosch policy document. While the Heritage Inventory may not have been formally tabled and approved by Council, the related **principles** feature prominently in the MSDF and IDP; see for example Appendix B, and the last sentence of Section 7.4 of the IDP declares the intent to integrate the Heritage Inventory with the MSDF.
- 2.8. This integration is also implicit in the praise of the Inventory as *the first of its kind in Africa* and *one of only five similar studies worldwide* by the Mayor herself; see Item 17 and Appendix C.
- 2.9. Not only the **legal status** but also the **principles** and the **provisions** of the Heritage Inventory were considered by the MPT, as stated explicitly in Reason 2. The content and import of the Heritage Inventory for the “water erven” or “tuin erwe”, of which the present application forms part, is valid and important as set out in the section on the Jamestown townscape: see Annexure 6 of the MPT agenda for a copy or else the original inventory report. The MPT could not willingly exclude such evidence from its decision.
- 2.10. **More on the water erven:** Regarding the status of the water erven, see also Items A17.
- 2.11. Comparison with La Clemence is inappropriate: see Item A37.
- 2.12. **Alleged misrepresentation:** The claim is made that the MPT made its decision chiefly or solely due to a misrepresentation as to the status of the Heritage Inventory or purportedly failed to take into account other considerations. It seems hard to impossible to prove what any MPT member supposedly understood or misunderstood during the decisionmaking process. The allegation of “misrepresentation” by one or more municipal officials is also dealt with in Items A4, A10 and A11 of Appendix A and throughout our replies.
- 2.13. **On so-called site-specific circumstances:** In its Reason 3, the MPT decision stated that *site-specific circumstances* were presented which could have changed the conclusion drawn from Reasons 1 and 2. Site-specificity forms a provision of the underlying SPLUMA criteria. The Appeal now wrongly claims that an approval letter from Heritage Western Cape constitutes a *site-specific circumstance*. Approvals or nonapprovals as such are not site-specific but general to all applications.
- 2.14. **Agriculture:** A claim is made that there is no need for approval from the national Department of Agriculture, while the letter from the provincial agriculture department (see Appendix D) explicitly states that its letter is only a recommendation, not an approval per se.
- There is no indication that such permission was sought or granted in the present case from **national government**. Lacking such permission, approval of the development application would therefore be unlawful. For more details, see the comments on the Appellant’s Item [11.3.3.2] below. See Item A34 in Appendix A for more detail.
- The claim by the town planning consultant’s Motivational Report that Act 70 of 1970 does not apply needs to be tested.
- 2.15. **Lawfulness of MPT decision:** The Appellant attempts to show (Items [17]-[19]) that the MPT decision and decisionmaking are inconsistent with the legislation. These items rely entirely on the premise that Appellant’s arguments presented in previous items (such as the urban edge, heritage, MSDF etc etc) were, in fact, correct. As these underlying arguments have been shown to be in part incorrect, in part only of limited validity or consequence, they do not serve as an adequate basis for further legal implications. Once these premises are shown to be incorrect, it is unnecessary to argue their consequences.

- 2.16. The allegation that the MPT decisionmaking is inconsistent is refuted in Item A46.
- 2.17. A claim is made that the decision was inconsistent and unreasonable, given that a purportedly similar application in Enkanini had been approved at the same MPT meeting. That comparison is nonsense: see Item A46ff.
- 2.18. The MPT decision is purportedly unlawful in terms of the Promotion of Administrative Justice Act (PAJA). See Items A47–A53 for our debunking of this claim.
- 2.19. For an overall assessment of the chances of success of threatened court proceedings, see Item 3.6 in Section 3.

3 Other important issues and arguments

- 3.1. **Precedent:** As pointed out by the Jamestown Methodist Church in its written comments, development approval of these four water erven will create a precedent for many similar applications in the future, with resulting loss of the Jamestown townscape and heritage.
- 3.2. **Gentrification and tax:** The Jamestown Heritage Committee in its comments of July 2019 voiced the predominant feeling and reaction that the traditional residents of Jamestown were being driven out by the snowballing gentrification through steep increases in land valuations and resulting taxes. Far from benefiting the community, developments such as the one under consideration benefit only the rich elite (see also Item 3.7 below).
- 3.3. **Forced removal comparison:** Both the Methodist Church and the Heritage Committee make the point that there are clear parallels between the gentrification process and the historical forced removals of Stellenbosch Coloured residents.
- 3.4. **Densities, location, infill:** See the comments of B Rode on appropriate densities of housing and the Urban Development Strategy. In essence, densification is essential to achieve the urgent housing needs facing Stellenbosch. The whole point of densification, however, is of course to decrease the overall footprint of development while leaving greenfield and agricultural land undeveloped. It is therefore very much a matter of the *location* of high-density development. Correspondingly, there are significant numbers of existing unbuilt erven in Jamestown itself, so in the Jamestown context, densification and infill would relate chiefly to such existing erven rather than subdivision of agricultural land.
- 3.5. **Development of portions 844 and 845 of Farm 510:** As stated, the Appellant is involved in a parallel development application for portion 844 of Farm 510, located directly behind Stellenbosch Square. A parallel application for Portion 845 is also pending. We would **support** high-density development on these portions but only on condition that a significant part of this land is reserved for present and future transport needs.
- 3.6. **Threats of high court review**

We consider the threat of high court review based on purported unfair administrative action (PAJA) to be overblown, for the following reasons:

- 3.6.1 The Appellant had multiple opportunities to interact with the Planning Department for months and years before the MPT decision in November 2020.
- 3.6.2 The November 2020 Planning Report compiled by the Department of Planning (as included in the MPT agenda, pages 1 to 19 of Volume 2 of the agenda) explicitly mentioned and reaffirmed the earlier August 2019 written comments provided by the Head: Spatial Planning, which had already recommended rejection of the proposal based on multiple arguments, including the heritage value of the water erven.

- 3.6.3 Both the November 2020 report and the August 2019 comments were available to the Appellant and to the MPT members well before the meeting itself. Both the MPT members and the Appellant therefore had plenty of opportunity before the meeting itself to consider the report and comments.
- 3.6.4 The Appellant was given an opportunity to make oral representations directly to the MPT at its meeting of 27 November 2020, in addition to its already voluminous written representations and many earlier interactions with Planning.
- 3.6.5 Claim of unfair administrative action based on purported misrepresentation of the legal status of the Heritage Inventory, and a resulting alleged misinformed MPT decision, are incorrectly based on the silent assumption that this, and only this, issue of legal status of the Inventory was the exclusive determining factor in reaching the decision. Such exclusivity would be impossible to prove in practice and is probably incorrect anyway.
- 3.6.6 Given that the decisionmaking process itself seems not impeccable but at least defensible, claims that the MPT decision and/or the process of decisionmaking as such constitute unfair, unreasonable or unlawful administrative action would need to prove that the substantive reasons provided were grossly inadequate. Based on the evidence and arguments provided by the Appellant, and our analysis of these arguments in Appendix A, such proof seems unlikely.
- 3.6.7 See also Items A47–A54.
- 3.7. The Appellant, Blaauwklippen Agricultural Estates (BAE), is a property speculator who does some agriculture and gastronomy on the side. Most recently, BAE has been acquiring Portion 844 of Farm 510 (immediately behind Stellenbosch Square) through a land swap agreement and a land use application (LU/11701) was submitted for its development in July 2020. In the past three years, BAE appears to have attempted to include into the urban edge every other land parcel owned by it. On Page 167 of the 2019 MSDF, it is noted that BAE applied for inclusion into the urban edge of Farms 1457, 369/17 and 527/3 totalling more than 74 hectares of land between Paradyskloof and Stellenrust Road, all owned by BAE. The applications for inclusion into the urban edge were denied, but they prove that development of agricultural land is high on its list of priorities.

On the better side, an application for upgrading of land uses on Farm 510/837 (on which the manor house is sited) was initiated in November 2019 but is as yet not lodged.

A Detailed comments on the Appeal

Item numbers in square brackets refer to the items in the Appellant's appeal dated 20 December 2020.

A1. **The Appellant states:** [2] *On 12 September 2018 the applicant met with the relevant planning and engineering officials to discuss the proposed development of a residential estate on the abovementioned properties. A copy of the pre-submission meeting's minutes is attached (Annexure A). [3] After the pre-submission consultation, the development proposal was finalised and on 17 September 2018 the applicant submitted a land use planning application to the Stellenbosch Municipality to obtain planning approval for the "Blaauwklippen aan Rivier" residential estate.*

We reply: As usual, the applicant is afforded special access to town planning officials, while other interested parties are given no opportunity to interact directly with town planning officials or applicants. IAPs have only 21 days to respond in writing post facto. The SLUPB by-law favours the applicant, but still the Appellant is highly upset that he was "misled" — as if he had a right to a prior promise of approval and as if any change of mind by town planning officials after the pre-submission meeting would be unlawful.

A2. **The Appellant states:** [4] *On 27 November 2020 — more than two years later — the land use planning application served before the Municipal Planning Tribunal ("MPT") for a decision. At this meeting the MPT refused the application without any further discussion or interrogation of the merits of the application, based on the planning officials' misrepresentation that the proposed uses are inconsistent with the MSDF due to alleged heritage impacts.*

We reply: The matters raised in this item are dealt with at length below.

A3. **The Appellant states:** [4] *It is our submission that the information presented by the officials as the premise for their allegation (that the proposed uses are inconsistent with the MSDF) was both legally and factually incorrect and that these errors in fact and law were material to the MPT's refusal of the application. A copy of the MPT's decision letter is attached hereto (see Annexure B). Our client has requested the audio recordings of the MPT meeting which will be transcribed and which will support the aforesaid contentions.*

We reply:

A3.1 Allegations of "misrepresentation", of "errors in fact and law" and of "materiality" will be dealt with point by point below.

A3.2 The allegation of "inconsistency" is dealt with in Items A17–A19 and A46.

A3.3 Any new insights obtained from the audio recordings will clearly come too late for this appeal. None of the IAPs has had access to the audio recordings.

A4. **The Appellant states:** [10] *The format which this appeal will adopt is as follows: [10.1] At the outset we will deal substantively with the MPT's planning decision, its reasons for the decision and the grounds of appeal which are motivated in greater detail below, but which may be summarised as follows: [10.1.1] The decision was based on misrepresentation by the planning officials in respect of the correct spatial planning status of the property and the alignment of the proposed development and its associated uses with the MSDF; [10.1.2] The planning officials' misrepresentation resulted in the MPT basing their decision to reject the application on material errors in fact and law;*

We reply:

A4.1 The fact that the Heritage Inventory was not approved by Council is true but is not a "material error", and any associated "misrepresentation" does not necessarily imply that the MPT would have approved the application if it had full cognizance of the

circumstances as set out in our reply in Item A23 and following. There may have been multiple other factors influencing the decision of the MPT to reject the development proposal.

A4.2 The word “misrepresentation” implies knowing and intentional concealing and/or changing of facts. The Appellant cannot prove such intentionality based on the evidence provided in the Appeal.

A4.3 The allegation of misrepresentation is also dealt with in Item A11 and A10.

A4.4 “Alignment” and “associated uses” treat the same issue as “consistency”.

A5. **The Appellant states:** *[10.1.3] The MPT rejected the application without considering the merits of the application and, as a result the MPT failed to exercise its discretion in accordance with the criteria set out in section 42 of SPLUMA, section 49 of LUPA and section 65 of the By-Law;*

We reply:

A5.1 The MPT decision letter does not provide a detailed breakdown of the discussion process of the meeting on 27 November 2020, and there are no minutes of the meeting to date.

A5.2 Based on the documentation contained in the MPT Agenda, the MPT members were given ample opportunity to consider the so-called “merits” based on voluminous documentation provided by the Applicant, including a one-sided “Motivational report” by TV3 of 51 pages (not counting the appendices).

A5.3 The two-page letter by the Department of Planning of 6 August 2019 and a few pages of extracts from the Heritage Inventory happen to differ from the unduly enthusiastic TV3 motivational report. The letter is factual and content-oriented, as is the Planning Report of 2020-11-9 contained in the MPT agenda.

A5.4 There is thus no basis for the Appellant’s claim that “The MPT rejected the application without considering the merits of the application”.

A6. **The Appellant states:** *[10.1.4] The decision is irrational and unreasonable and reflects material inconsistency in decision-making by the MPT;*

We reply: See A51 on the alleged rationality or irrationality of the MPT’s and other role players’ actions and decisions.

A7. **The Appellant states:** *[10.1.5] The decision is in violation of our client’s rights to administrative action which is lawful, reasonable and procedurally fair as contemplated in the Constitution and entrenched in the Promotion of Administrative Justice Act, 2000 (“PAJA”) and is susceptible to judicial review.*

We reply: The Appellant will have to point to specific unlawful actions. A decision rejecting an application is not unlawful as such. See Items A47–A54.

A8. **The Appellant states:** *THE MPT’S REASONS FOR THE REFUSAL OF THE APPLICATION: [11] The following reasons were presented by the MPT for their decision to refuse the land use planning application: [11.1] Reason 1: That the proposed development deviates from the provisions of the prevailing agenda and strategy of the Stellenbosch Municipal Spatial Development Framework (MSDF) as contemplated in terms of Section 19 of the Land Use Planning Act (LUPA).*

We reply:

A8.1 Actually, the MPT decision letter uses even stronger language. The MPT decision letter of 2 December 2020 states that “2.1.4 b) *The development of the subject property for the proposed land uses, and the outcome and impact thereof on the existing development context, would negate the development agenda and strategy of the Stellenbosch MSDF as it relates to Jamestown.*” The “negation” in question probably relates to the

fact that approval of this proposed residential development on four of the water erven would create a precedent which likely would lead to similar applications for the other water erven.

A8.2 See Items A17 to A19 below regarding *prevailing agenda and strategy*.

A9. **The Appellant states:** [11.1.1] *At the MPT meeting the members were informed by Mr. Bernabé de la Bat (Manager: Spatial Planning) that the proposed development is inconsistent with the MSDF and that the MPT can therefore not take a decision on the land use planning application.*

We reply: The statement “*the MPT can therefore not take a decision*” is irrational. It is trite that no merits or demerits of an application permit the MPT not to take a decision. Clearly the MPT did take a decision, as it must by law, and Mr de la Bat could not possibly have implied that the MPT should or could not take a decision. The Appellant is accusing Mr de la Bat of a clumsy and obviously untruthful lie (that a decision could not be taken) which he could not possibly have told and which MPT members would have rejected immediately.

A10. **The Appellant states:** [11.1.2] *It is our client’s submission that Mr de la Bat knowingly misrepresented the correct status of the Heritage Inventory as the basis for his view that the proposed development is inconsistent with the MSDF.*

We reply:

A10.1 One of the factors in the determination, by the Department of Planning and the MPT, of deviation from the MSDF is not the legal status of the Heritage Inventory but its **content** and the implications of that content for urban structure and the MSDF. As stated in the MPT decision letter reason, the *proposed development deviates from the provisions of the prevailing development agenda and strategy* as explained further in Items A17 to A19 below. The reasons do not rely on the approval or nonapproval by Council of the Heritage Inventory but on its content. Note the exact use of words in Reason 2: *the proposed development deviates from the provisions of the Stellenbosch Heritage Inventory and Management Plan*. “Provisions” pertains not to legal status but to content.

A10.2 The Appeal has brought no evidence to prove that any representations by Mr de la Bat (a) were the result of deliberate volition rather than sloppiness or forgetfulness and (b) provided the sole “basis” for his views rather than one of a number of reasons brought to bear by him.

A11. **The Appellant states:** [11.1.3] *As a result of Mr de la Bat’s material misrepresentation of the correct spatial planning status, the MPT refused the application without considering the merits of the proposed uses.*

We reply: This claim is false and misleading. There is no proof that the MPT rejected the application based solely on any single argument or submission by any single person or any single issue. Merits and demerits were set out at length in the MPT Agenda, and presumably MPT members “considered” the agenda before arriving at the meeting. Also, the Appellant was provided an opportunity to orally tout the merits at the MPT meeting and thereby to place any material facts before it. The attack on Mr de la Bat is malicious.

A12. **The Appellant states:** [11.1.4] *According to the MSDF’s Stellenbosch Framework Plan, the application area is located within the Stellenbosch town’s approved urban edge and is partially located in an urban character area. See Figure 1 below.*

We reply:

A12.1 Indeed the application area is located within the urban edge as approved within the present MSDF.

A12.2 The concept of an Urban Edge does not appear in SPLUMA, in LUPA or in the Stellenbosch Land Use Planning By-Law. That is unfortunate, because it would be very helpful in providing a more solid basis for rejecting development applications outside the Urban Edge. The 2005 Western Cape Urban Edge Guidelines uses the definition *An urban edge in the context of this report is a defined line drawn around an urban area as a growth boundary, i.e. the outer limit of urban areas.*

A12.3 The urban edge therefore does not grant formal rights in any way. Read together with the ubiquitous requirement for compact settlements and densification, the urban edge can therefore be understood as a *minimum requirement* in the sense that land located inside the urban edge does not qualify for large-scale development at all, while land inside the urban edge may or may not qualify, depending on other factors such as the loss of agricultural land.

A12.4 While definitions are not uniform, this intention of a *minimum requirement* in the WC Guidelines is clear enough, as seen in the sketches below which are Figures 1a and 1b of the said Guidelines, showing how agricultural land should be excluded.

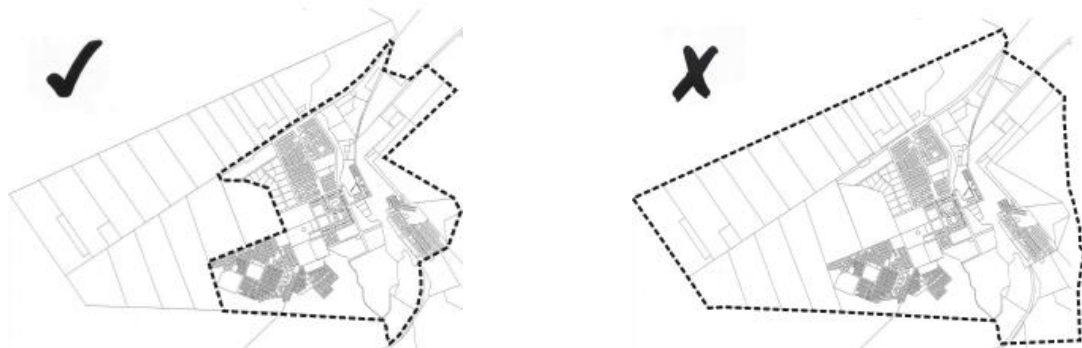


Figure 1 of the Western Cape Urban Edge Guidelines

A12.5 As the Appellant no doubt knows, the location of a particular erf or farm portion within the urban edge is therefore a necessary, but not a sufficient, precondition for development.

A12.6 **Inclusion in urban edge does per se not confer any development rights;** development rights vest in the zoning and approval for specific proposals.

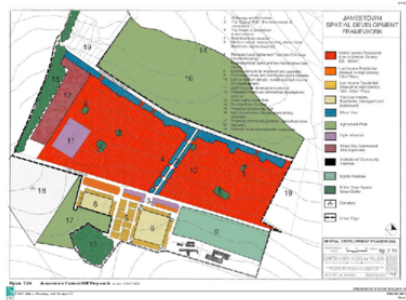
A12.7 The proposed development is not “partially located” in the urban character area but forms an integral part of the *Townscape Character* as defined and used as integral concept of the heritage assessment. See eg Appendix 8 of the Heritage Inventory which were also appended to the comments of the Department of Planning of 6 August 2019 and which form part of the MPT agenda of November 2020 (see Annexure 6 thereof).

A13. **The Appellant states:** [11.1.5] *The subject property was incorporated into the Stellenbosch urban edge as far back as 2010.*

We reply:

A13.1 Indeed the water erven north of Webervallei Road were incorporated into the urban edge at that point. There is no paper trail explaining that strange and irrational decision beyond the various maps drawn over time.

A13.2 The 2010 incorporation into the urban edge is irrational insofar as the 2002 Jamestown SDF, as quoted in the 2010 MSDF Strategies Report, shows the water erven as being **outside** the urban edge: see the dashed line on the figure in Appendix E. A small version of that map is reproduced below.



A13.3 Item 16 in the text displayed on the Jamestown SDF map explicitly specifies the water erven as “agricultural area — development strictly controlled”; see Appendix E.

A13.4 It is also important to note that the land which now constitutes La Clemence had already been zoned differently to the water erven in 2002. It can be seen on the map as the white area immediately west of the green water-erven area. The existence and approval of La Clemence therefore does not constitute grounds for residential development on the water erven.

A13.5 The 2010 urban edge was drawn **before** the compilation of the Heritage Inventory starting in 2016. New information contained in the Heritage Inventory implies that the future urban edge should be redrawn in the next iteration of the MSDF to exclude all the Jamestown land north of Webersvallei Road.

A14. **The Appellant states:** [11.1.5] *In August 2019 Council approved the current iteration of the MSDF and re-confirmed the urban edge for Jamestown (that included the subject property), and earmarked the subject property for future urban development on an activity route. [11.1.6] As the Municipality states in its MSDF: “Urban edges are also employed to ensure development in a planned manner for the settlement as a whole. Both the Municipality and private land owners and developers are provided with some certainty as to the preferred focus of development for a planning period.” (Own emphasis)*

We reply:

A14.1 Inclusion into the urban edge does **not** “earmark the subject property for future urban development”. The urban edge does not imply “earmarking” of a particular property but merely defines outer limits of urban areas. “Certainty” is provided as to the focus, not to specific development rights.

A14.2 Again: the urban edge is a necessary but not a sufficient precondition for development, and location inside the urban edge confers no rights in itself. Nothing in the above quote from the MSDF contradicts this. “Certainty as to the preferred focus” is not the same as “right to develop”.

A14.3 According to the 2005 Western Cape Guidelines, the Jamestown urban edge is in need of revision to exclude the agricultural areas.

A14.4 The 2005 WC Guidelines, the 2010 MSDF and the 2017 MSDF in all its versions all emphasise the importance of protecting agricultural land from development.

A15. **The Appellant states:** [11.1.7] *The comment by the Manager: Spatial Planning, Heritage and Environment understates the significance of the subject property’s inclusion within the urban edge and its designation in the MSDF for urban development.*

We reply: The urban edge grants no implicit right to develop or any other “significant” rights. It is a necessary but not a sufficient condition.

A16. **The Appellant states:** [11.1.8] *Once approved, the SDF forms part of the IDP, which, in terms of section 35 of the Systems Act, has the following status: ... [11.1.9] The effect of the above provisions have been described as follows by Gildenhuys J in Johannesburg Metropolitan*

Municipality v Gauteng Development Tribunal and Others (Mont Blanc Projects and Properties (Pty) Ltd and Another as Amici Curiae) 2008 (4) SA 572 (W): ...

We reply: For once we agree wholeheartedly with the Appellant. The significance of the MSDF and IDP cannot be overstated.

A17. **The Appellant states:** [11.1.10] *The MSDF states in Section 5.3 (on page 67) that, “Other infill opportunities also exist in Stellenbosch town, specifically in Cloeteville, Idas Valley, Stellenbosch Central, along the edges of Jamestown”. [11.1.11] The MSDF states in Table 19 (on page 69) that, “Support inclusive infill development on vacant public land within Cloeteville, Idas Valley, Stellenbosch Central and Jamestown”. [11.1.12] The MSDF states in Table 28 (on page 102) that the development and land use management focus in Stellenbosch town should be the “Broadening of residential opportunities for lower income groups, students, and the lower to middle housing market segments”.*

We reply:

A17.1 The Appellant quotes very selectively from the MSDF. The same MSDF also states in Table 19, just before the quoted Section 5.3 (our emphasis): *Actively support residential densification and infill development within urban areas (with due consideration to the valued qualities of specific areas)*. Similarly, Table 20 states: *Pro-actively support higher density infill residential opportunity in the town centre, areas immediately surrounding it, and along major routes (with consideration of historic areas and structures)*. The MSDF therefore does not give blanket approval to everything which might be construed as infill.

A17.2 There is specific reference to the “water erven” in the 2019 MSDF (except that they are called “tuin erwe” there). See Appendix F. On page 170 of the MSDF *as approved by Council*, the MSDF cites comments made by FSM expressing concern that the so-called “tuinerwe between Webersvallei Road and Blaauwklippen River” in Jamestown were included in the urban edge. In reply to the FSM comments, the MSDF notes in column 4 on Page 170 that **The “tuinerwe” is not intended for development.**

A17.3 Even without that specific reference to the water erven in the MSDF, the present application falls well short on the general goals and principles of the MSDF and IDP, as we now consider in more detail.

A17.4 Firstly, is trite that the MSDF contains not only the goals and principles quoted by the Appellant but many others. It is secondly equally trite that, should a particular application fulfil one or several of the MSDF conditions, goals or principles, the remaining ones do not automatically lapse.

A17.5 **Infilling:** The MSDF and town planning documents indeed support infill development as an important aid to achieve densification and other desirable targets. As already explained in A12 with respect to the urban edge, infill and broadening would constitute necessary but not sufficient conditions for approval. The MSDF does not thereby automatically support **any** infill development within the urban edge.

A17.6 As implied by Figure 1 of the Urban Edge Guidelines reproduce in Item A12 and Chapters 3 and 4 of the Guidelines, development of the Jamestown water erven would **not** constitute infilling but rather expansion and should never have been included in the urban edge in first place.

A17.7 Strategies and principles contained in the MSDF and IDP to which the present application does not conform include:

- (a) **Heritage:** The MSDF and IDP contain important principles which argue against the development of the water erven; for example the second Key Principle (page 51) *Respect and grow our cultural heritage, the legacy of physical artefacts and intangible attributes of society inherited from past generations maintained in the present and preserved for the benefit of future generations.*

- (b) **Protect places:** In Section 2.3 on Policy Implications, we read that one key policy imperative is *the protection of places and buildings of heritage/ cultural value* (page 27). See also Figure 19 on Page 52.
- (c) **Housing:** On page 101 we also read in Section 6.3 that *the spatial development priority in all settlements should be to: . . . Provide housing for lower income groups in accessible locations* and in 6.6.3 that *The housing focus in other settlements should primarily be to improve conditions for existing citizens, specifically those in informal settlements, backyard structures, and those lacking security of tenure* (page 116).
- (d) **Gated estates:** Along with multiple other policy documents, the MSDF states in Section 6.6.3 that *Gated residential development is not favored*.
- (e) **Agricultural land** preservation.

A18. **The Appellant states:** [11.1.13] *Contrary to the view held by the MPT (based on Mr de la Bat's misrepresentation of the spatial planning status) it is therefore clear that the proposed infill development (to provide middle-income housing along the edge of Jamestown) is consistent with the MSDF as the application area is located within the Stellenbosch town's urban edge and is earmarked for some form of urban development (an urban character area is however not clearly defined by the MSDF).*

We reply:

A18.1 It has been made amply clear in our previous responses that the proposed infill development is not consistent with many goals and principles in the MSDF. Infilling and urban edge inclusion alone do not guarantee “consistency”.

A18.2 The Appellant's farm portions are in no way specifically selected or “earmarked” for development in the MSDF. They are not mentioned in the MSDF at all except in the nondevelopment context of the “tuinerwe” as already set out.

A19. **The Appellant states:** [11.1.13 continued] *According to the Department of Environmental Affairs and Development Planning's circular No 0021/2020 (dated 15 October 2020), “Section 19(2) [of LUPA] states that if an MSDF does not specifically provide for the utilization or development of land as contained in a proposal, but the proposed utilisation or development is not in conflict with the relevant designation in an MSDF, then the utilization or development is regarded as being consistent with the MSDF”.*

We reply:

A19.1 The Appellant has misconstrued the LUPA text. The exact wording of Section 19(2) of LUPA reads (our emphasis)

*19(2) If a spatial development framework or structure plan does not specifically provide for the utilisation or development of **land** as proposed in a land use application or a land development application, but the proposed utilisation or development is **not in conflict with the purpose of the relevant designation** in the spatial development framework or structure plan, the utilisation or development is regarded as being consistent with that spatial development framework or structure plan.*

A19.2 The word **land** is defined Section 1 of LUPA as a specific piece of land:

*“land” means **any erf or farm portion**, and includes any improvement or building on the land and any real right in land;*

A19.3 The question to be asked in applying Section 19(2) to the present case is therefore “*Are the proposed utilisation or development of Portions 52, 53, 54 and 71 of Farm 510 in conflict with the **purpose of the relevant designation** in the MSDF?*”

A19.4 The words *purpose* and *designation* are undefined in LUPA and thereby open to interpretation.

- A19.5 In referring to LUPA Section 19, the MPT decision letter used the phrase *the provisions of the prevailing development agenda and strategy of the Stellenbosch MSDF* rather than *purpose of designation*. That seems a reasonable paraphrase of LUPA’s *purpose and designation*. Since *land use rights* are governed by the Zoning Scheme, not the MSDF as such, the meaning of *purpose* and *designation* must indeed be construed as referring not to existing rights but to the overall intentionality (*agenda and strategy*) of the MSDF in the context of the erf or farm portion in question.
- A19.6 Clearly, the MSDF “broadening of residential opportunities” quoted in [11.1.12] and the MSDF reference to “infill development” quoted in [11.1.13] cannot be remotely construed as referring specifically to the portions of Farm 510. Broadening and infill are general principles which should indeed be followed where possible, but would obviously be superceded by *purpose and designation* where such purpose and designation refers to particular farm portions.
- A19.7 The MSDF **does** refer specifically to *purpose and designation* of the *water erven* as we already pointed out in Item A17 above. To repeat: The 2019 MSDF cites comments made by FSM expressing concern that the so-called “tuinerwe between Webersvallei Road and Blaauwklippen River” in Jamestown were included in the urban edge. In reply to the FSM comments, the MSDF notes in column 4 at the top of Page 170 that **The “tuinerwe” is not intended for development.** The MSDF containing these comments and responses was *approved by Council*.
- A19.8 *Purpose and designation* would also follow from the clear recommendation of the Heritage Inventory, as cited in the IDP and MSDF, that the water erven play a constitutive role in the Jamestown context. Refer specifically to the *Heritage Landscape Plan* of the May 2018 IDP as reproduced in Appendix B.
- A19.9 The same *purpose and designation* are present in the 2002 Jamestown SDF as well as planning and historical documents predating it.
- A20. **The Appellant states:** [11.1.14] *We point out furthermore that, in the course of the Municipality’s consideration of the application it was referred to various line functionaries within the Municipality for their comment, including the Manager: Spatial Planning. At no point in this process (or in his response) did he ever adopt the view, let alone inform the applicant, that the development proposal is inconsistent with the Heritage Inventory and MSDF and that it cannot be considered by the MPT. A copy of his comments is attached hereto (Annexure C). This in itself is contrary to the Municipality’s constitutional obligation to ensure that administrative action is lawful, reasonable and procedurally fair as contemplated in section 33 of the Constitution and entrenched in the Promotion of Administrative Justice Act, 2000 (PAJA”).*
- We reply:**
- A20.1 This is blatantly untrue, as we now set out in detail.
- A20.2 The comments by Manager: Spatial Planning are dated 6 August 2019, more than 15 months before the MPT meeting; see Appendix G. He quotes at length from the Heritage Inventory reports and associated plans and comments with respect to Jamestown. These have been available online since 2018.
- A20.3 The Appellant’s town planner TV3 was well aware of these comments. In a ten-page letter dated 2 December 2019, TV3 writes to the municipal Department of Planning setting out at length its views and counterarguments to these comments which, according to TV3, had been provided to it by email on 18 November 2019 (ie more than one year before the MPT meeting). See Pages 279 to 288 of the MPT agenda of 27 November 2020; the first page of this letter is attached in Appendix H below.
- A20.4 The MSDF and IDP in all their aspects as set out in Item A17 are freely available, including those parts quoted in Appendices B and F below. The Planning Report by Mr Stiaan Kotze is dated 9 November 2020, 18 days before the MPT meeting; a part

of this Planning Report is attached as Appendix I. The MPT agenda was also freely available. In other words, there was ample time for the Applicant to inform himself of the prevailing opinions of the Department of Planning and its consultants. The Appellant appears to have intentionally ignored this important and pertinent information which was long available.

A20.5 It is the duty of the Appellant to do his own research rather than expecting to be spoon-fed by the Municipality. Specifically, the Appellant and the application documents do not refer to heritage and the NHRA and the Stellenbosch Heritage Inventory except in the most cursory way. Sloppy preparation on the part of the Appellant or deliberate ignoring of important legislation and information cannot be laid before the doors of the municipality or its officials.

A20.6 We deal with allegations of PAJA unfair administrative action in Items A47 to A54.

A21. **The Appellant states:** *[11.2] Reason 2: That the proposed development deviates from the provisions of the Stellenbosch Heritage Inventory and Management Plan for the water erven in Jamestown.*

A22. **The Appellant states:** *[11.2.1] The Heritage Inventory and Management Plan for Tangible Resources in the Stellenbosch Municipality report (dated 8 May 2018) – commonly referred to as the “Heritage Inventory” - was endorsed by Heritage Western Cape on 25 June 2018.*

We reply: Indeed. The municipal planning authorities and the MPT would hence have to take into consideration such approval.

A23. **The Appellant states:** *[11.2.2] At the MPT meeting on 27 November 2020, the members were informed by Mr. De la Bat that during the September 2018 Council meeting, Council formally approved and adopted the Heritage Inventory and that the Heritage Inventory is now Council policy that must be complied with. This is false.*

We reply: We agree. There does not seem to be a proof that the Heritage Inventory was formally tabled and approved by Council.

A24. **The Appellant states:** *[11.2.3] to [11.2.7]*

We reply:

A24.1 Appellant’s Items [11.2.3] to [11.2.7] contain long-winded repetitions of allegations already dealt with above. We deal only with individual matters of additional interest.

A24.2 Re [11.2.5]: The Heritage Inventory and associated plans do not currently constitute formal policy of Stellenbosch Municipality. It was, however, formally approved by Heritage Western Cape. The Inventory and associated documents and maps are also cited in multiple places in the MSDF and IDP which *were* formally tabled and approved in Council.

A24.3 As already stated in Item A10 and the MPT’s own *Reason 2*, consideration of the Heritage Inventory during decisionmaking rested mainly on its **provisions** even if its **municipal legal status** left something to be desired.

A24.4 When it comes to its general content and specific **provisions**, the Heritage Inventory is a masterpiece. It and the associated process were in fact a long series of “Phases” which were done extremely thoroughly. The result, called *Our Stellenbosch Municipality Heritage Inventory and Conservation Management Plan* by the Mayor in her address to Council on 23 October 2019 (see Appendix C) was a world-class product which is *the first of its kind in Africa and one of only five similar studies worldwide*.

A24.5 The Heritage Inventory and its associated maps **are** discussed at length in Section 7.4 of the 2018 IDP. Appendix B reproduces the relevant section from the 2018 IDP (which precedes the present development application).

A24.6 The last sentence of IDP Section 7.4 declares the intent to integrate it with the MSDF. That has not happened yet in the full breadth which the Heritage Inventory deserves. While it therefore does not constitute formal policy, its content and import are of undisputable quality and therefore must play a role in any discretionary processes as discussed further below.

A25. **The Appellant states:** *[11.2.8] A reading of the CMP (and Heritage Inventory) makes it clear that it is a “broad brush”, high level planning policy which aims to assist decision-makers in exercising their discretion in considering planning applications. The CMP expressly states that “The overall approach taken by this CMP is heritage conservation management at a landscape scale.”*

We reply:

A25.1 This is incorrect. The Inventory and CMP do contain sweeping broad-brush sections, but there are also parts which are area-specific. Page 46 is devoted entirely to Jamestown, and the recommendations are unambiguous.

A25.2 Furthermore, Appendix 8 of the Inventory makes extensive comments on Jamestown. In particular, it states in Criterion E: *Prevent gentrification from threatening the distinctiveness of this unique settlement within the Stellenbosch winelands.*

A25.3 The comments and specific recommendations of Appendix 8 were included in part in the comments by the Manager: Spatial Planning as included in Appellant’s Annexure C and in Annexure 6 of the MPT agenda.

A26. **The Appellant states:** *[11.2.9] What Mr de la Bat sought to do is to elevate a draft council policy which has no formal approval status or force of law, to preemptory, binding legal status. This tainted the decision-making discretion that was supposed to have been exercised by the MPT.*

We reply: We have already dealt with the personal and malicious attacks on Mr de la Bat as well as the decisionmaking process. Repetition of such allegations does not thereby make them true. The onus rests on the Appellant to prove intentionality and to prove that the formal status of the Heritage Inventory was the single and exclusive reason why the MPT decided to reject the application.

A27. **The Appellant states:** *[11.2.10] While we accept the fact that the Heritage Inventory (that forms part of the draft CMP) includes comment on Jamestown, and that it has been endorsed by Heritage Western Cape, we reiterate that it remains a policy (whether formally adopted by Council, which we dispute, or not) which does not have the force of law and which is intended to guide decision-making, based on the exercise of the decision-maker’s discretion once the application has been considered on its merits with due regard to all laws and applicable policies. [11.2.10 continued] We maintain that the Heritage Inventory was a draft policy which had not yet been adopted by Council but even if that view is incorrect, the MPT still had an obligation to consider the application on its merits which it failed to do, instead approaching the MSDF as if it was a straightjacket which prevented the exercise of discretion. This was an error in law.*

We reply: Once again: read Section 7.4 of the 2018 IDP as reproduced in Appendix B. The IDP is more than policy or guideline. The delay in formal approval of the Heritage Inventory does not thereby invalidate it or its import. And the MPT can hardly be prohibited from considering its provisions, as Reason 2 says that it did.

A28. **The Appellant states:** *[11.2.11] Regardless of the Heritage Inventory’s status, we point out that the proposed development was approved in terms of section 38(2) of the NHRA by the relevant heritage resources authority, Heritage Western Cape on 25 May 2018. Heritage Western Cape based their decision on their view that “there is no reason to believe that the*

proposed development will impact on heritage resources...” A copy of their letter of approval is attached (Annexure F).

We reply:

A28.1 Approval of such applications is based on the *Notice of Intent to Develop* (NID). It is quite possible that the NID, which is written by the applicant, could have misrepresented the heritage context of Farm 510. No copy of the NID has been supplied.

A28.2 It is thereby plausible that the approval was granted by a HWC clerk without knowledge of the fact that the Jamestown tuyn erven were expressly slated for conservation in the HWC-approved Heritage Inventory.

A28.3 Of course Heritage Western Cape should have done its homework independent of the NID. Failure to do so may have resulted in the lapse of judgement which the approval of 28 May 2018 constitutes.

A28.4 Because the NID has not been made public, the Appeal Authority should require that it be supplied in order to judge the procedural background to this approval.

A29. **The Appellant states:** [11.2.12] *The Stellenbosch Municipality’s Integrated Development Plan (May 2018) states on page 125 that “A local authority must provide for the protection of a heritage area through the provisions of its planning scheme or by-laws under the National Heritage Resources Act”. In other words, the zoning scheme is the relevant legal planning mechanism that a municipality must use to protect sensitive heritage areas. [11.2.13] On 29 May 2019, Council finalized and adopted the new Stellenbosch Zoning Scheme By-law. In Chapter 25 of the Zoning Scheme By-law, five urban and rural conservation areas (i.e. heritage areas) are identified for protection. These urban and rural conservation areas consist of Stellenbosch Urban, Franschoek Urban, Jonkershoek Valley, Dwars River Valley and Ida’s Valley, but it did not include Jamestown as a protected heritage area.*

We reply:

A29.1 The correct term is *Urban and Rural Conservation Overlay Zone* (URCO). Section 244(2) of the 2019 Integrated Zoning Scheme states that *the aim of this zone is to provide an **additional** mechanism through which the Municipality can manage sensitive areas.* Section 244(3) reads *The overlay zone gives the Municipality a mechanism whereby **additional measures and conditions** can be imposed with which to avoid potential adverse impact of development on the receiving environment and mitigate them where they cannot be avoided.*

A29.2 The URCO therefore imposes **additional** measures and conditions, meaning that they would be read **in addition to** conditions and measures imposed by the underlying zoning (eg *Agriculture and Rural Zone* in the case of the water erven).

A29.3 The absence of an **additional** URCO zoning for Jamestown does not imply that heritage-related considerations may not form part of land use decisionmaking; of course they may and they must. It merely implies that heritage-related zoning conditions do not apply automatically, while conditions pertaining to the underlying *Agriculture and Rural Zone* do apply automatically.

A29.4 Naturally, given the strong endorsement by the Heritage Inventory, the Jamestown water erven should in future be declared as an URCO zone.

A30. **The Appellant states:** [11.2.14] *It is our submission that the MPT was misled on the official status and legal significance of the Heritage Inventory and the proposed development’s consistency with the MSDF. We submit that the appeal must be upheld on this basis alone, however, the MPT’s subsequent failure to consider the application on its merits due to the aforementioned errors in fact, gave rise to a further appealable irregularity.*

We reply: This item constitutes just a repetition of previous arguments, so no reply is needed. Repetition of false or incomplete arguments does not make them true.

- A31. **The Appellant states:** *[11.3] Reason 3: That no site-specific circumstances as contemplated in terms of Section 22(2) of the Spatial Planning and Land Use Management Act (SPLUMA) was presented. 11.3.1] Our client’s town planning consultant, who was responsible for the preparation and submission of the relevant application, and all engagements with the Municipal officials relating to the application, forcefully disagrees with this contention. [11.3.2] Firstly, our instructions are that the applicant was never requested to present site-specific circumstances as to why the proposed development should be considered on a site-specific basis (since the planning officials never gave any indication that the proposed development was considered to be inconsistent with the MSDF).*

We reply:

A31.1 SPLUMA does not place the onus for requesting site-specific circumstances on the decisionmaking authority, so no “request” was required. It would have been up to the applicant’s town planning consultant to present any relevant matters on his own initiative.

A31.2 In a ten-page letter dated 2 December 2019, the Appellant’s town planner TV3 wrote to the Department of Planning; see Appendix H for its first page and the MPT agenda Pages 279ff for the full letter. The applicant brought all his best arguments in this letter and in the “Motivational Report” in the original application. All relevant information was already on the table; any “site-specific” additional arguments would have been trivial anyway.

- A32. **The Appellant states:** *[11.3.3] Secondly, if the MPT had studied the planning assessment report in more detail, they would have seen the following site-specific circumstances contained in the planning reports, that support the proposed development and would have justified a departure from the provisions of the MSDF (assuming that the proposed development is inconsistent with the MSDF which we dispute):*

We reply: Yes, the rejection by the MPT was based in part on the inconsistency of the application with the MSDF.

- A33. **The Appellant states:** *[11.3.3.1] Heritage Western Cape (from a heritage point of view) supports the proposed development of the application area.*

We reply: This argument misinterprets Section 22(2) of SPLUMA. Section 22(2) refers to *site-specific* circumstances. Approval or nonapproval by Heritage Western Cape would happen not only in the present development application but in *all* applications on *all* sites. Approval or nonapproval as such is hence not *site-specific*, because approval or nonapproval happens for *every* development application.

- A34. **The Appellant states:** *[11.3.3.2] Western Cape Government: Agriculture (from an agricultural point of view) supports the proposed development of the application area. A copy of their letter of no objection is attached hereto (see Annexure G).*

We reply:

A34.1 Again: approval or nonapproval is not per se a *site-specific circumstance* triggering SPLUMA Section 22(2): *all* applications on *all* possible development sites require approval by Agriculture.

A34.2 Appellant’s Item [11.3.3.2] is also misleading. Appellant’s Annexure G constitutes a recommendation, not an approval. Jurisdiction with respect to the Subdivision of Agricultural Land Act lies not with Western Cape Province, but with national government.

The letter of no objection shown in Annexure G of the Appellant by the **provincial** Department of Agriculture clearly states that *Please note that this is only a **recommen-**
dation to the relevant Authorities in terms of the Subdivision of Agricultural Land Act 70 of 1970.*

A34.3 There is no indication that such permission was sought or granted in the present case from **national government**. Lacking such national government permission, approval of the development application would therefore be unlawful.

A34.4 The claim made in the Motivational Report by the town planning consultant that Act 70 does not apply needs to be tested.

A34.5 In the Government Gazette of 2 March 2018, the then Minister of Agriculture, Forestry and Fisheries attempted to declare that many farm portions around Stellenbosch were “excluded from the provisions of Subdivision of Agricultural Land Act (Act 70 of 1970)”. The list of portions included “all of Blaauwklip 510”, in other words also the Jamestown water erven.

A34.6 There was an outcry and to our knowledge this notice was withdrawn by national government. Hence any proposed development on any portion of “Blaauwklip 510” remain under the provisions of said Act 70. If such exemption was not sought or granted, the present development application is in any case unlawful.

A35. **The Appellant states:** [11.3.3.3] – [11.3.3.7] and [11.4.1] – [11.4.2]

We reply: These items constitute a repetition of all the purported merits of the application and have been dealt with elsewhere in this reply. These items are all to be found in the applicant’s motivational report which served before the MPT and were therefore considered by the MPT already.

A36. **The Appellant states:** [11.3.4] – [11.3.6]

We reply: These items, too, are mere repetitions of arguments already made and rebutted.

A37. **The Appellant states:** [11.4.3] *The retirement village of La Clemence is located directly west of the application area, on the Blaauwklippen River. See Figure 3 below. [11.4.4] This gated residential estate was approved by Council based on the site’s historic non-rural land uses (i.e. that it was historically not used for agricultural purposes). However, no acknowledgement was given by the MPT to the application area’s historic non-rural land uses. If the same rules were applied to the proposed development (than for La Clemence), then the application should also have been approved by the MPT.*

We reply:

A37.1 A few dozen shacks on 3 hectares of land do not constitute “historic non-rural land use”.

A37.2 Furthermore, the historical land use on the land now occupied by La Clemence was legal, while occupation by squatters of the application area was illegal. It was incumbent on the (previous) land owner to deal with that illegality, and over many years he did not do so. Neglect by the landowner cannot be used as a motivation for development.

A37.3 The legal land use of the land is *Agriculture* as recorded in the Zoning Scheme. The legal land use of *Agriculture* is the land use which should be taken into consideration by the MPT, as it should be.

A37.4 See also the comments in the November 2020 Land Use Planning report on the status of La Clemence as compared to the water erven.

A38. **The Appellant states:** [12] – [14] *THE DECISION REFLECTS A FAILURE BY THE MPT TO EXERCISE ITS DISCRETION LAWFULLY AND REASONABLY IN ACCORDANCE WITH THE CRITERIA SET OUT IN SECTION 49 OF LUPA AND SECTION 65 OF THE PLANNING BY-LAW:*

We reply: Legal detail on LUPB etc omitted here. The detail is correct but the factual basis for its use is disputed by us.

A39. **The Appellant states:** [14.2] *It is clear from the manner in which the MPT arrived at their decision that they mistakenly adopted the view of Mr de la Bat to the effect that the proposed development is inconsistent with the Heritage Inventory, that the Heritage Inventory is in fact formal council policy and that it overrides the relevant heritage resources agency, HWC's approval of the proposed development and is inconsistent with the MSDF. It is clear that both de la Bat and the MPT approached the Heritage Inventory and MSDF as if it was peremptory and binding law which absolved them of a duty to consider the application independently and on its merits. This was an appealable and reviewable irregularity which tainted the MPT's exercise of its decision-making discretion as it failed to have regard to the application on its merits and simply adopted the planning official's recommendation and reasons without independent interrogation. [14.3] In the circumstances the MPT's decision fails to take into adequate (if any) consideration the other decision-making criteria set out in section 65 of the By-Law and section 49 of LUPA. The MPT has given undue weight to a draft Heritage Inventory while ignoring, or paying lip-service to, the relevant considerations as prescribed under the By-Law, SPLUMA and LUPA.*

We reply:

A39.1 The Appellant again implies that MPT decisionmaking ignored the voluminous material made available to MPT members before the meeting and was swayed solely or even chiefly by the single issue of the Heritage Inventory Council approval. The onus is on the Appellant to prove that the MPT members did *not* take into consideration that voluminous material and other issues.

A39.2 This has already been dealt with at length above. The claim that the MPT based its decision **solely and uniquely** or given *undue weight* on what was said with respect to the status of heritage is unprovable.

A40. **The Appellant states:** [14.4] *The MPT has furthermore patently failed to have adequate regard to the merits of the application and its proposed uses. Had it done so it would have arrived at the inescapable conclusion that the proposed uses are desirable and should be permitted.*

We reply: The conclusion is entirely escapable. The application had not only merits but demerits, and those will have been considered by MPT members before their arrival at the meeting. And so on, as before. This is getting boring.

A41. **The Appellant states:** [14.5] *The MPT is not empowered under the By-Law and LUPA to refuse an application purely on the strength of the draft Heritage Inventory and alleged non-compliance, as a result, with the MSDF. To do so is clearly ultra vires under the By-Law and LUPA, read with section 42 of SPLUMA.*

We reply: To repeat: The Appellant has not shown that the MPT rejected the application purely on the strength of the Heritage Inventory's status. The inconsistency with the MSDF has been dealt with at length above.

A42. **The Appellant states:** [17] – [19]

We reply: In these items, the Appeal attempts to prove that the MPT decision and decision-making process were inconsistent with the legislation. The Appellant's arguments in Items [17] – [19] rely entirely on the premise that arguments presented in previous items (such as the urban edge, heritage, MSDF etc etc) were, in fact, correct. As these underlying arguments have been shown to be in part incorrect, in part only of limited validity or consequence, they do not serve as an adequate basis for further legal implications. Once premises are shown to be incorrect, it is unnecessary to argue their consequences. We therefore only address below a few remaining issues as and when they arise.

A43. **The Appellant states:** [19.3.4] *The MPT did not provide any reasons addressing these submissions by our client in its motivation report which supports our contention that the MPT failed to engage with the motivation and take an independent decision based on the merits of the application as they were statutorily obligated to do.*

We reply: Those reasons which were provided appear to be sufficient to warrant the rejection. Further reasons are then unnecessary.

A44. **The Appellant states:** [19.4.1] *There is no opposition to the proposed uses from any organs of state and all comments received from the public and organs of state were comprehensively and adequately addressed in the town planner's comments and responses report. The MPT clearly did not have regard to this fact or, if it did, it failed to place adequate, if any, weight on this factor.*

We reply: The comments received from the public, especially those from the local Jamestown residents, were not addressed adequately at all.

A45. **The Appellant states:** [19.5] *A registered planner's written assessment in respect of the application (section 65(1)(g)); [19.5.1] Our client's town planner presented a comprehensive written assessment in support of the proposed uses as contemplated in section 65(1)(g) of the By-Law. The Motivation Report concluded that the proposed uses were desirable and should be permitted. The MPT clearly did not apply their mind properly to this report as they were obliged to do.*

We reply: Naturally the town planner's assessment would be enthusiastic and one-sided, given that the planner is employed by the Applicant. This does not imply that the MPT has to do the same.

A46. **The Appellant states:** [20.1] *The MPT has a Constitutional obligation to determine land use applications in a manner that is reasonable, fair and rational. This contemplates consistency in decision-making. Having regard to the following land use applications which were approved by the MPT it is clear that they have not acted consistently in exercising their mandate and, as a result, the decision to refuse the proposed development is irrational, unreasonable and unfair: [20.1.1] Example 1: Enkanini informal settlement: [20.1.1.1] At the MPT meeting of 27 November 2020 an application for subdivision, consolidation, rezoning and amendment of the municipal urban edge on Erf 2175, Kayamandi (Application No. LU/8597) served before the MPT for a decision. . . . [Comparison of Enkanini and Kreefgat applications] [20.1.3] The two development proposals listed above, were similar in context, yet with Enkanini (which was patently less aligned with the MSDF than the Kreefgat proposal) the MPT was of the opinion that regardless of the non-compliance with the MSDF, they may still evaluate the application and approve it, while they rejected the Kreefgat application without evaluating it further on its merits, based on perceived non-compliance with the MSDF. This was irrational, unreasonable and administratively unjust.*

We reply:

A46.1 The claim to similarity is a misrepresentation, either intentional or due to sloppiness on the part of the Appellant. According to Pages 321ff of Volume 2 of the MPT meeting of 2020-11-27, the land in question (several erven and farm portions) is about 32.1 hectares in size, while the present Farm 510 application erven together make up about 3 hectares, one tenth of the size. More importantly, the Enkanini land is already almost entirely within the existing urban edge, and "only" about 1.1 hectares is outside.

The Enkanini land use change amounts to a long-overdue formalisation of long-existing facts on the ground and would directly benefit the livelihood of thousands of shack dwellers. By contrast, the Farm 510 portions are still largely agricultural, and the few dozen informal dwellers on Kreefgat could and were easily relocated, even though the specifics of that relocation remain to be probed.

A46.2 The Farm 510 Kreefgat proposal would, if approved, provide space for at most 100-200 people. The approved Enkanini proposal provides space for a few ten thousand people. Remember the SPLUMA central principle of *spatial justice*?

A46.3 The Enkanini application was thus by no means “patently less aligned with the MSDF than the Kreefgat proposal” or “unreasonable”.

A46.4 On the argument of the Appellant, the MPT should have rejected the Enkanini application also. We would go along with that: you cannot simply chop off a piece of a declared protected area if and when it suits you. The wiser decision would have been to insist that the 1.1 hectares of protected area should remain protected and should hence be cleared of informal settlements. That is easier said than done, however.

A47. **The Appellant states:** *THE DECISION IS IN VIOLATION OF OUR CLIENT’S RIGHTS TO ADMINISTRATIVE ACTION WHICH IS LAWFUL, REASONABLE AND PROCEDURALLY FAIR AS CONTEMPLATED IN THE CONSTITUTION AND ENTRENCHED IN PAJA AND IS SUSCEPTIBLE TO JUDICIAL REVIEW:*

We reply: The Appellant’s case made for unfair administrative action is weak, as set out further below.

A48. **The Appellant states:** *[21] In the light of the above, aside from being susceptible to being overturned on appeal, the MPT’s decision is also susceptible to judicial review in terms of PAJA on the following grounds:*

A49. **The Appellant states:** *[21.1] It was taken because irrelevant considerations were taken into account or relevant considerations were not considered (section 6(2)(e)(iii) of PAJA);*

We reply: The phrase *irrelevant considerations* has not been used even once in the Appellant’s appeal. Which consideration was irrelevant?

A50. **The Appellant states:** *[21.2] It is not rationally connected to the purpose of the empowering provision (section 6(2)(f)(ii)(bb));*

We reply: For the purposes of the present case, the empowering provision is to determine whether the proposed development was not only consistent with, but also strategically aligned with the rational principles and specific policies and implementations contained in the Stellenbosch IDP, MSDF and other relevant legislation. The arguments made both in the comments of the Department of Planning and the MPT are rationally connected to these determinations.

A51. **The Appellant states:** *[21.3] It is not rationally connected to the information before the MPT (section 6(2)(f)(ii)(cc));*

We reply: To use the argument of irrationality, the Appellant would have to show that there was no logical chain of argument connecting the facts before the MPT and its decision. That seems impossible, because there is a clear logical chain connecting the principles and strategy of the IDP, MSDF and planning legislation to rejection, and the Appellant has yet to show that that logical chain was not applied in the present case. Dearth of information cannot be argued either, given the voluminous agenda material serving before the MPT and the supposedly rational arguments made by the Appellant’s town planner during his oral submission.

A52. **The Appellant states:** *[21.4] It is so unreasonable that no reasonable person could have decided thus (section 6(2)(h)); and*

We reply: This accusation therefore claims that all members of the MPT as well as the officials in the Department of Planning are “unreasonable persons”. Many non-MPT persons would in the present case also have decided to reject the application. Proof based on S6(2)(h) would hence hinge on declaring **all** those other persons unreasonable too. We look forward to the Heads of Argument to prove this claim.

A53. **The Appellant states:** *[21.5] It is otherwise unconstitutional or unlawful (section 6(2)(i)).*

We reply: In what way, specifically, is the rejection unlawful, once the unproven and/or incorrect PAJA subsection arguments have been eliminated?

A54. **The Appellant states:** *[21.6] Finally, we submit that the MPT's decision breaches the requirements of the principle of legality, for all the reasons set out above.*

We reply: The principle of legality is undisputed and is being followed in the very process of this appeal.

A55. **The Appellant states:** *[22] CONCLUSION: For the reasons motivated above we ask that the MPT's decision be overturned on appeal.*

We reply: FSM requests that the decision of the MPT to reject the development application be upheld on Appeal.

B IDP approved in May 2018: Heritage Landscape Plan

7.4 HERITAGE LANDSCAPE PLAN

The South African Heritage Resources Act, 1999 (Act 25 of 1999) (NHRA) inter alia provides for:

- ‡ an integrated and interactive system for the management of national heritage resources;
- ‡ the promotion of good governance at all levels, and the empowerment of civil society to nurture and conserve their heritage resources so that they may be bequeathed to future generations;
- ‡ setting out the general principles for heritage resources identification and management;

The NHRA sets out responsibilities and the competence of heritage and local authorities for the identification and management of the national estate.

There is a three-tier system for heritage resources identification and management, in which national level functions are the responsibility of SAHRA, provincial level functions are the responsibility of provincial heritage resources authorities (in the Western Cape, Heritage Western Cape (HWC) is the relevant authority) and local level functions that are the responsibility of local authorities. Heritage and local authorities are accountable for their actions and decisions relative to heritage identification and management.

The NHRA requires that a planning authority (such as a local municipality) must at the time of the revision of a town or regional planning scheme, or the compilation or revision of a spatial plan, prepare an inventory of the surviving tangible heritage resources comprised in the area of its jurisdiction. With this in mind and by way of tender, the Stellenbosch Municipality appointed consultants in that regard in December 2015. An inventory of heritage resources spanning the full range of wilderness, rural and urban domains within the municipality is being prepared in accordance with best international and national practice.

A Phase 1 report on the project, entitled Approach, Concepts, Method and Preliminary Findings was produced in April 2016 and a Phase 2a report entitled *Preliminary Draft Heritage Inventory of Large-Scale Landscape Areas in the Rural Domain of the Stellenbosch Municipality Informing Proposed Heritage Areas* was produced and approved by Heritage Western Cape in January 2017. Together with other project documents, both these reports have been available to the interested public at large via the website of the Stellenbosch Heritage Foundation:

www.stellenboschheritage.co.za/cape-winelands-heritage-survey-2.

A more complete and detailed draft 2 heritage inventory, inclusive of Grading of significance of each resource irrespective of its location in wilderness, rural or urban contexts was finalized and made available for public comment during March 2018 ending on 6 April 2018. All comments will be considered in the final report which will be submitted to the HWC for its approval during May 2018.

As enabled by the NHRA and promoted by HWC, the heritage inventory proposes extensive and graded Heritage Areas where appropriate development will be designated relative to the character that prevails and its heritage significance.

A local authority must provide for the protection of a heritage area through the provisions of its planning scheme or by-laws under the NHRA, provided that any such protective provisions shall be jointly approved by the provincial heritage resources authority, the provincial planning authority and

the local authority, and provided further that the special consent of the local authority shall be required for any alteration or development affecting a heritage area.

- ‡ The Stellenbosch Municipal area comprises a wide array of wilderness, rural and urban domains essential for heritage conservation. Heritage conservation is only possible through the establishment of an appropriate heritage resource inventory and a related management plan, for the entire municipal area for two main reasons:
- ‡ Firstly so that the surviving heritage resources and their significance are properly identified and managed in the broad public interest: all in accordance with, as well as in terms of the aims of the Stellenbosch Municipality and of affected communities and groups.

Secondly, such heritage inventory and management plan are necessary so that current and future development needs, considered at many scales and time-frames, may be shaped effectively, and with due regard to the significant heritage resources that have survived and that should be respected. These landscapes have long been inhabited by diverse peoples and the adaptations that have resulted over the centuries encompass very positive landscape and settlement layering, as well as some negative intrusions that have been occasioned in more recent decades.

What needs to be identified and pursued are far more sustainable and creative development opportunities, via the application of strong and resilient concepts and a more sophisticated, yet practical and achievable, developmental and growth management paradigm that spans heritage and development. The approach of the study is to systematically develop an understanding about the overlapping rational spatial constraints and informants (across ecological, heritage and development dimensions) that exist and should prevail in the interest of the longer-term public good. Overall this approach will help to define spatially three kinds of areas:

- ‡ no-go areas (wilderness and rural areas) where no urban development should be permitted;
- ‡ areas suited for urban intensification of existing settlements; and
- ‡ the determination of areas and sites for new and dense urban villages, not suburbia.

Clearly there is much commonality to be found in the rural area plan, SDF and the Heritage Inventory and Management Plan. The Heritage Inventory has to be seen as a base informant to the rural area plan, the SEMF and the SDF. These coordinated plans will jointly form the basis for the preservation and management of the cultural landscape. The Heritage Inventory and Management Plan are intended to provide detailed management information and guidelines for heritage resources in the municipal areas.

Through the Stellenbosch Heritage Foundation a heritage inventory was completed for the historical core of Stellenbosch, submitted to Heritage Western Cape and approved. A further heritage inventory was completed for the Stellenbosch University and approved by Heritage Western Cape. More recently, as mentioned above, a heritage inventory covering the balance of the municipal area is being finalized by consultants. What will follow is the preparation of a Management Plan.

The Heritage Inventory and Management Plan will be completed in June 2018 and will be integrated with the MSDF.

C Mayor's Address to Council, 23 October 2019

2

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MINUTES

32ND MEETING OF THE COUNCIL
OF STELLENBOSCH MUNICIPALITY

2019-10-23

1.	OPENING AND WELCOME
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The Speaker, Cllr WC Petersen (Ms) welcomed all present at the 32nd Council meeting. Councillor A Florence opened the meeting with a prayer.

2.	MAYORAL ADDRESS
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“Goeie dag, Good Morning, Molweni, As-salaam Alaikum

1. Good news: Our Stellenbosch Municipality Heritage Inventory and Conservation Management Plan has won top honours at the Institute for Landscape Architecture in South Africa (ILASA)
 - Our heritage mapping project has recently won the ILASA Presidents Award as well as the first place in the ILASA Awards of Excellence for a Publication.
 - This in-depth mapping of our cultural and environmental heritage is the first of its kind in Africa and is considered to be one of only five similar studies worldwide.
 - It produced an advanced Heritage Inventory that identifies all heritage resources and measures their significance. The inventory is a living document that can be expanded when required and will inform our Conservation Management Plan (CMP) to ensure compliance with the National Heritage Resources Act.
2. Last Thursday, 17 October 2019, I had the great privilege to attend the old Victoria Street Public Participation Event opening.
 - Local non-profit organisation, Ranyaka Community Transformation, has been awarded a ten-year lease for the old Victoria Street Clinic.
 - In 2020, the historical clinic building will be transformed into a unique space that will unlock opportunities for entrepreneurs coming from previously disadvantaged backgrounds.
 - It will provide local entrepreneurs with training on how to develop, grow and manage their business
 - It will give especially entrepreneurs from the townships and outlying areas access to prime retail space and clientele at the heart of town
 - Very special occasion for me
 - Met with some of our local entrepreneurs, and was astonished and overjoyed at the businesses they were able to build, despite difficult circumstances.
 - Ranyaka will now continue to raise funds and work with all stakeholders and role-players to create a space that will present our young entrepreneurs with a future.
3. This is also the message of hope we want to spread with the GET STARTED entrepreneurship expo, currently taking place in the Town Hall
 - This is our first ever expo of this sort and brings together stakeholders and role-players who can assist and guide our entrepreneurs of the future.
 - As a municipality we want to assist in creating sustainable opportunities for jobs and businesses for residents.
 - Promoting and supporting entrepreneurship is a critical component in job creation.
 - Being an entrepreneur, especially from a disadvantaged background is very challenging.

D Letter by provincial Department of Agriculture



Western Cape
Government

Agriculture

Cor Van Der Walt
LandUse Management
Email: LandUse.Elsenburg@elsenburg.com
tel: +27 21 808 5099 fax: +27 21 808 5092

OUR REFERENCE : 20/9/2/5/6/910
YOUR REFERENCE : 3527-P
ENQUIRIES : Cor van der Walt

TV3 Architects and Town Planners
97 Dorp Street
First Floor, La Gratitude
Office Building
Stellenbosch
7600

Att: Clifford Heyes

APPLICATION FOR CONSOLIDATION, REZONING, SUBDIVISION, DEPARTURE, ESTABLISHMENT OF A HOME OWNERS' ASSOCIATION, APPROVAL OF THE DEVELOPMENT NAME, APPROVAL OF A SITE DEVELOPMENT PLAN, ALLOCATION OF THE STREET NAMES , APPROVAL OF THE ARCHITECTURAL AND LANDSCAPING GUIDELINES: DIVISION STELLENBOSCH

PORTION 52 OF THE FARM BLAAUWKLIP NO 510

PORTION 53 OF THE FARM BLAAUWKLIP NO 510

PORTION 54 OF THE FARM BLAAUWKLIP NO 510

PORTION 71 OF THE FARM BLAAUWKLIP NO 510

Your application of 06 June 2019 has reference,

The Western Cape Department of Agriculture: Land Use Management has no objection to this application.

Please note that in terms of the Subdivision of Agricultural Land, Act no. 70 of 1970, section 3 (f) states: "no area of jurisdiction, local rea, development area, peri-urban area or other area referred

to in paragraph (a) or (b) of the definition of "agricultural land" in section 1, shall be established on, or enlarged so as to include, any land which is agricultural."

In terms of above, the consent of the National Minister of Agricultural, Forestry and Fisheries (DAFF) must also be obtained.

Please note:

- That this is only a recommendation to the relevant deciding Authorities in terms of the Subdivision of Agricultural Land Act 70 of 1970.
- Kindly quote the above-mentioned reference number in any future correspondence in respect of the application.
- The Department reserves the right to revise initial comments and request further information based on the information received.

Yours sincerely



Mt. CJ van der Walt

LANDUSE MANAGER: LANDUSE MANAGEMENT

2019-11-11

Copies:

Directorate Land Use and Sustainable Resource Management
National Department of Agriculture
Private Bag X 120
PRETORIA
0001

Department of Environmental Affairs & Development Planning Cape Town
1 Dorp Street
Cape Town
8000

Stellenbosch Municipality
PO Box 17
STELLENBOSCH
7599

Page 2 of 2

E From the 2001 Jamestown Spatial Development Framework



Figure 7.26 Jamestown Current SDF Proposals (source: CNDV, 2002)

F Mention of water erven in the 2019 MSDF

No.	SUBMISSION	KEY COMMENTS / ISSUES RAISED	THEME	MUNICIPAL RESPONSE
49	<p>PIETER SCHAAFSMA</p> <p>EMAIL SUBMISSION: 8 MAY 2019</p>	<ul style="list-style-type: none"> • Mobility issues at the Technopark will be exacerbated through the current construction of the head office of a national bank in the TechnoPark. • One solution would be to encourage the bank to acquire and develop the remaining vacant land in the TechnoPark for higher density residential development for its employees and to convert certain of the existing office buildings that become vacant, for the same purposes. • A private/ public initiative in this regard is urgently required. • The mobility issues brought about by the decision to permit the establishment of the head office of a national bank in the TechnoPark. The issue is that there is no funding available for access to be provided. • If the bank is not willing to fund the cost of a second access route, or to be advised to convert its new head office for residential purposes sooner rather than later, as was the case with the Cape Town CBD Old Mutual office. That out grew its space and was converted into residential. • As part of page 102 of the MSDF "Avoid retail malls and office parks in peripheral locations reliant on private vehicular access". In terms of this guideline a banking head office should clearly not have been permitted in the TechnoPark. • As indicated in Table 13 on page 40 of the draft MSDF Stellenbosch Municipality has limited capacity to address issues such as the evolution of TechnoPark into an office park. The Municipality's institutional arrangements for addressing joint planning challenges also appear to be weak and intermittent. On page 45 of the Draft MSDF this situation is highlighted as a mismatch between the multiplicity of policy documents drawn up by or for the Municipality and the day to day ability to make sense of or apply such policies. The SRA would like to see representatives from interested & affected parties attending portfolio committee meetings as observers where, with the permission of the chairperson, they can participate in discussions (but have no vote). • The Van der Stel Sports Complex, while an integral part of the Central district of the Adam Tas Corridor, should not form part of or be utilised for any strategic infill development. If the space is lost it will be difficult to replace. • They were in agreement that the upper portion of Brandwacht Farm (Farm 1049) and a 20ha portion of Farm 369 (south of Brandwacht Farm) had inadvertently been included in the urban edge in Fig 27 on page 66 and Fig. 28 of the Draft MSDF. • On a similar note the "Beltana" proposal adjoining the Helshoogte Road, shown as "new future development" in Fig. 27 on page 66 and as "mixed use, community and residential infill" in Fig 28 on page 68 needs to be carefully reconsidered. This area is Zoned as "Local Authority - General", however as "utility" and "Agriculture" in the Draft Integrated Zoning Scheme (IZS). • Precinct Plans accordingly need to include clear guidelines as to include appropriate densities for sustainable development in specific locations. This will assist in providing transparency in understanding the developers plans within the area. • Move away from housing for students alone and include housing for families as long term use. • The urban edge as proposed for the area east of the R310 at Lynedoch should be excluded from the urban edge at Vlothenburg should be limited to the previously approved. This is from a scenic and a safety point of view. 	<p>Mobility issues around the TechnoPark</p> <p>Stellenbosch urban edge and other matters</p>	<ul style="list-style-type: none"> • The MSDF argues that the TechnoPark should be developed/ managed to become a more specialised business hub. It is proposed that the land owners/ management body and municipality prepare a local/ precinct level plan aimed at achieving the abovementioned goal. • The MSDF supports a position where access issues to TechnoPark is resolved through cooperation between relevant stakeholders and local authority in participation with provincial government. Further access improvements be required (particularly from the Baden Powell/ Adam Tas area, this should be funded without concomitant release of agricultural land for development. • It is recommended that the land owners/ managers of TechnoPark and the Municipality undertake a joint planning exercise to plan the development of TechnoPark into a specialised business hub. • Should the Van Der Stel complex be considered for development (as part of the ATC initiative) sufficient green space should be safeguarded, as well as public access as sport opportunity and associated facilities. • Not supported.
50	<p>STELLENBOSCH RATEPAYERS ASSOCIATION</p> <p>EMAIL SUBMISSION: 8 MAY 2019</p>	<ul style="list-style-type: none"> • Mobility issues at the Technopark will be exacerbated through the current construction of the head office of a national bank in the TechnoPark. • One solution would be to encourage the bank to acquire and develop the remaining vacant land in the TechnoPark for higher density residential development for its employees and to convert certain of the existing office buildings that become vacant, for the same purposes. • A private/ public initiative in this regard is urgently required. • The mobility issues brought about by the decision to permit the establishment of the head office of a national bank in the TechnoPark. The issue is that there is no funding available for access to be provided. • If the bank is not willing to fund the cost of a second access route, or to be advised to convert its new head office for residential purposes sooner rather than later, as was the case with the Cape Town CBD Old Mutual office. That out grew its space and was converted into residential. • As part of page 102 of the MSDF "Avoid retail malls and office parks in peripheral locations reliant on private vehicular access". In terms of this guideline a banking head office should clearly not have been permitted in the TechnoPark. • As indicated in Table 13 on page 40 of the draft MSDF Stellenbosch Municipality has limited capacity to address issues such as the evolution of TechnoPark into an office park. The Municipality's institutional arrangements for addressing joint planning challenges also appear to be weak and intermittent. On page 45 of the Draft MSDF this situation is highlighted as a mismatch between the multiplicity of policy documents drawn up by or for the Municipality and the day to day ability to make sense of or apply such policies. The SRA would like to see representatives from interested & affected parties attending portfolio committee meetings as observers where, with the permission of the chairperson, they can participate in discussions (but have no vote). • The Van der Stel Sports Complex, while an integral part of the Central district of the Adam Tas Corridor, should not form part of or be utilised for any strategic infill development. If the space is lost it will be difficult to replace. • They were in agreement that the upper portion of Brandwacht Farm (Farm 1049) and a 20ha portion of Farm 369 (south of Brandwacht Farm) had inadvertently been included in the urban edge in Fig 27 on page 66 and Fig. 28 of the Draft MSDF. • On a similar note the "Beltana" proposal adjoining the Helshoogte Road, shown as "new future development" in Fig. 27 on page 66 and as "mixed use, community and residential infill" in Fig 28 on page 68 needs to be carefully reconsidered. This area is Zoned as "Local Authority - General", however as "utility" and "Agriculture" in the Draft Integrated Zoning Scheme (IZS). • Precinct Plans accordingly need to include clear guidelines as to include appropriate densities for sustainable development in specific locations. This will assist in providing transparency in understanding the developers plans within the area. • Move away from housing for students alone and include housing for families as long term use. • The urban edge as proposed for the area east of the R310 at Lynedoch should be excluded from the urban edge at Vlothenburg should be limited to the previously approved. This is from a scenic and a safety point of view. 	<p>Mobility issues around the TechnoPark</p> <p>Stellenbosch urban edge and other matters</p>	<ul style="list-style-type: none"> • The MSDF argues that the TechnoPark should be developed/ managed to become a more specialised business hub. It is proposed that the land owners/ management body and municipality prepare a local/ precinct level plan aimed at achieving the abovementioned goal. • The MSDF supports a position where access issues to TechnoPark is resolved through cooperation between relevant stakeholders and local authority in participation with provincial government. Further access improvements be required (particularly from the Baden Powell/ Adam Tas area, this should be funded without concomitant release of agricultural land for development. • It is recommended that the land owners/ managers of TechnoPark and the Municipality undertake a joint planning exercise to plan the development of TechnoPark into a specialised business hub. • Should the Van Der Stel complex be considered for development (as part of the ATC initiative) sufficient green space should be safeguarded, as well as public access as sport opportunity and associated facilities. • Not supported.

No.	SUBMISSION	KEY COMMENTS / ISSUES RAISED	THEME	MUNICIPAL RESPONSE
<p>51</p> <p>FRIENDS OF STELLENBOSCH MOUNTAIN</p> <p>EMAIL SUBMISSION: 8 MAY 2019</p>	<ul style="list-style-type: none"> While their comments were of overall impressive of the MSDF, their main criticism had been in lines of the inexplicable contradiction encapsulated in the proposed extensions of the Urban Edge in Paradyskloof, Brandwacht and Southern Jamestown. These extensions are not discussed and just appear in figure 27 and 28 of the MSDF. Reasons for this inclusion has not been provided. The Brandwacht Farm 1049 would continue to be used for agriculture, with high agricultural soil potential and is a highly protected agricultural land. They also questioned some existing decisions regarding a triangular part of Farm 502 (south of De Zaize) and the agricultural smallholdings (Tuinewe) between Webersvallei Road and Blaauwklippen River in northern Jamestown. The urban edge guidelines provide cogent reasons for any particular delineation, and they are in agreement and request the these two areas be excluded from the Urban edge. Farm 502 triangle is a Critical Biodiversity Area (CBA) and will thereby never become a candidate for development. The Jamestown smallholdings are part of its cultural heritage and of course also represent agricultural land, that the MSDF also agrees should not be developed. Brandwacht Farm is not mentioned in the Draft MSDF and Paradyskloof is mentioned once. The Adam Tas Corridor project is supported by the FSM on two conditions. Firstly, it must be a replacement rather than additional peripheral land development. Secondly, it should accommodate modern high-density housing and TOD-friendly development (from the beginning of development). The MSDF makes no mention of the 240m contour line as an upper bound for development. Given the many hills and mountains in the WC024 area, the 240m line has proven an important tool and should be reintroduced. It should also be applied to future development proposals. The rejoinder that inclusion into the Urban Edge does not confer rights as such is meaningless. Planning officials tasked with assessing a development application routinely cite inclusion into the urban edge as a strong indicator that development is somehow thereby permitted even if the zoning would indicate otherwise. In summary: the proposed extensions of the urban edge to include Brandwacht Farm 1049 remainder and the 20ha portion of Farm 369 are inconsistent with the MSDF, the Urban Edge Guidelines and legislation and regulations governing the interplay between Critical Biodiversity Areas and spatial planning. They should be rescinded. The Eastern Link Road does not appear in any map in the MSDF itself or any version of such maps presented at the IDP/MSDF meetings. Notwithstanding the above, it is a budget item for the imminent 2019/ 20 financial year. It has thereby moved the Eastern Link project beyond mere planning into the implementation phase, even if the allocated money were to be used only for route and engineering design studies. Implementation is now imminent even before it appears in any planning document. Discontent was drawn in relation to the MSDF public participation process, that had very little to do with the MSDF but rather on other municipal planning documentation that had not been made publicly available for comment. 	<p>Stellenbosch urban edge, the Eastern Link Road, ATC</p>	<ul style="list-style-type: none"> The "Tuinewe" is not intended for development. The Eastern Link Road is not supported by the MSDF. The triangular piece of land south of De Zaize has been excluded from the urban edge. To achieve agreed national, provincial, and local settlement development and management objectives, it is necessary for the Municipality to actively seek infill residential development opportunity. Prior to implementation of any such opportunity, numerous studies and investigations are required through land use planning, environmental, and infrastructure related statute and regulations, including the need for public participation at different stages of development processes. These studies will inter alia consider what parts of the land area could be developed, what nature and form of development would be appropriate in its context, and who best will be responsible for implementing the development. The Municipality adheres to all applicable legislation and policy in enabling development and will follow these processes should any development in the area identified be pursued. The ATC initiative is planned as a TOD environment with significant residential opportunity providing for a range of income groups (as well as students). 	



STELLENBOSCH
STELLENBOSCH • PNEFI • TRANSCHHOEK

MUNICIPALITY • UMASIPALA • MUNISIPALITEIT

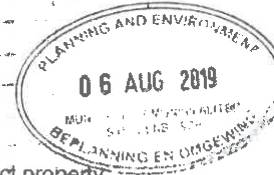
Spatial Planning, Heritage and Environment

To : **Manager: Land Use Management (N Katts)**
From : **Manager: Spatial Planning**
Date : **5 August 2019**
Re : **Application for consolidation, rezoning, subdivision, departure, HOA and SDP for Farm 510/52, Jamestown**

I refer to your request for comment on the above application.

1) Opinion / reasoning:

F 510/52 ST



In terms of the approved MSDF for Stellenbosch Municipality, the subject property is located within the approved urban edge of Jamestown node. However, in terms of the approved Heritage Inventory the subject properties were identified as a Special Area with heritage significance in Jamestown.

Although infill development and densification is encouraged in terms of the MSDF, the subject properties are identified as historical erven and the main aim is to enhance and manage the proposed Special Area for Jamestown. The appropriate use and renewal of heritage features is critical for their preservation. Any development that will result in the loss of the remaining agricultural plots will completely undermine the heritage value of this townscape unit.

Over-scaled private dwellings, change in land use to non-residential uses, construction on the farming, gardening allotments, cluttered properties, gated residential estates, high and solid boundary treatments were all identified deviated land uses that will likely erode the townscape character.

The layout of Jamestown is orientated towards the Blaauwklippen River that edges the allotment-style "water erf" properties. The remaining place-making elements present in the village of Jamestown are the long, narrow agricultural plots which provide visual containment and an agricultural context to the village as a whole. Rezoning of the agricultural strip and over-scaled new development should not be allowed.

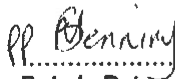
The consolidation or subdivision of land units will impact the "grain" of the neighbourhood. Densification should only be contemplated where it respects the historical patterns of subdivision. No new development should be permitted on these productive land units, especially in the form of permanent built structures that are unrelated to the agricultural use.

In terms of the approved Heritage inventory, gentrification should be prevented from threatening the distinctiveness of this unique settlement within the Stellenbosch winelands.

2) **Supported / not supported:**

This department therefore does not support the application for the reasons mentioned above.

(Please also refer to extract of the approved Heritage Inventory attached to this memo)



.....
B de la Bat
MANAGER: SPATIAL PLANNING

H Letter by TV3 to Department of Planning, 2 December 2019
(Page 1 only)

279



ARCHITECTS AND TOWN PLANNERS
ARGITEKKE EN STADSBEPLANNERS

Our Reference: 3527-P
Application No: LU/8567

97 DORP STREET
FIRST FLOOR
LA GRATITUDE
OFFICE BUILDING
STELLENBOSCH 7600
TEL +27 (21) 861 3900
FAX +27 (21) 882 8025
EMAIL info@tv3.co.za

2 December 2019

Director: Planning and Economic Development
Stellenbosch Municipality
Town House
7600 STELLENBOSCH

Attention: Ms. Nicole Katts

Madam

APPLICATION FOR CONSOLIDATION, REZONING, SUBDIVISION, DEPARTURE, ESTABLISHMENT OF A HOME OWNERS' ASSOCIATION, APPROVAL OF THE DEVELOPMENT NAME, APPROVAL OF A SITE DEVELOPMENT PLAN, ALLOCATION OF THE STREET NAMES, APPROVAL OF THE ARCHITECTURAL AND LANDSCAPING GUIDELINES: PORTIONS 52, 53, 54 & 71 OF THE FARM BLAAUWKLIP NO. 510, JAMESTOWN, DIVISION OF STELLENBOSCH

1. Your e-mail of 18 November 2019 has reference.
2. On 17 September 2018 we submitted the abovementioned land use planning application to the Stellenbosch Municipality.
3. On 6 June 2019 the application was advertised to the public and circulated to all the internal line departments for their comments, and on 18 November 2019 we received the Manager: Spatial Planning, Heritage and Environment's comments (dated 5 August 2019) on the application.

TV3 PROJECTS (PTY) LTD • REGISTRATION NO: 2006/015278/07

DIRECTORS: JJJ van Rensburg | E Swanepoel | IG Birk | NI Vme | IR Houges | MM Wolcott

I Extract from the Planning Report, 9 November 2020

6

Clemence, Aan de Weber, considering that the developers made their profit, the municipal got its property rates, taxes and higher property tariffs, while the community have to live with the long term financial burden of higher rates and taxes with nothing in return from these developments. It is rather suggested that Blaauwklippen alternatively use these agricultural zone properties for agricultural projects beneficial to the Jamestown Community, which could attract tourist. It was previously requested that these agricultural erven be placed outside the Urban Edge to avoid similar applications in future. The location of the group-housing scheme and flats will negatively affect and even destroy the unique character of Jamestown. The celebration of the Jamestown Strawberry festival from 2015 by the Webers Tourism network intends to provide a platform for the small farmers for their products and to encourage other up and coming farmers to cultivate the Jamestown agricultural properties.

Applicant's comments (See ANNEXURE 4 for the POE):

The applicant's comments on the objections is attached as **Section H** to the Portfolio of Evidence. They also commented on and noted late objections that has been received.

DEPARTMENTAL ASSESSMENT:

The subject land partials were previously occupied by the "Kreefgat" community, which has been relocated to the housing development site on Farm No. 527, Stellenbosch close to the Jamestown graveyard.

Jamestown lies in a scenic valley with remarkable views towards the Stellenbosch mountains and access to the Jamestown village is obtained from the intersection of the R44 (which is a major regional route from Stellenbosch to Somerset West) with Webbersvallei Road. Other than the entrance into De Zalze, this intersection and entrance to Jamestown lack a sense of place, that does not contribute to announcing that a historical settlement with a special character lies beyond.

Jamestown developed into a small scenic village by the subdivision and development of the original "waterweven"/agricultural properties established along the bank of the Blaauklippen River. These agricultural properties were and are well known for the strawberries and vegetables, which was/are grown here (See ANNEXURE 7 for photo). Water for irrigation is obtained from the Blaauklippen River.

The proposed development entails the consolidation of some of these "watererven" to create a housing development. Jamestown consists of a closely-knit, fairly homogenous community who

consider Jamestown a very special place and a village distinct from Stellenbosch and the surrounding residential areas. This is strongly expressed in the comments/objections on the applications as well.

Content of the Municipal Spatial Development Framework (MSDF), its legal status and the municipal comment and intend on the classification of the Jamestown small holdings as "Urban Character Area":

Within the limitations of a MSDF as laid down by the Local Government Municipal Systems Act, 2000 (Act 32 of 2000) i.e. that it should be a guiding and informing document that does not confer real rights on land, it is intended that the MSDF should be a binding document approved by the Municipal Council and approved in terms of the Municipal Systems Act. These SDF principles will assist with the processing of development applications, demonstrating compliance with different sectoral policies, etc.

The remainders of the "watererven" on the northern side of the Webersvallei Road have historically been earmarked for agricultural purposes since the late 1990's, via formally adopted policy documents and draft discussion documents e.g. the 1989 prepared "Webersvallei Plaaslike Gebied Struktuurplan", the 1998 "Gidsplan vir Stellenbosch", the 2002 Jamestown Spatial Development Framework discussion document, the 2013 Stellenbosch Municipal Spatial Development Framework the latest Stellenbosch Heritage Inventory documents and the 2019 MSDF. The extension and growth of Jamestown has also always been promoted in a southern direction on the eastern side of the graveyard, by all forward planning documents prepared for the area. While the protection of the heritage significands of the agricultural zoned "watererven" has always been promoted by the authorities. No current policy document promotes the development of the agricultural zone properties to the north of Webersvallei Road for any other use than agriculture, notwithstanding the fact that the current MSDF gives indication that the area around the long agricultural properties in Jamestown is set aside for a proposed "**Urban Character Area**", which needs to be unpacked and understood in context.

The intend and guidelines of the subject "**Urban Character Area**" is however not been elaborated on in the 2019 MSDF, but need to be considered and read together with the Stellenbosch Heritage Inventory where the "Character areas" has been discussed. These aforementioned concepts and methods, in terms of the subject inventory are not only relevant in rural domains; they also apply to

the towns and other urban nuclei within the municipality. They therefore identify 'urban, or townscape character units' of cultural significance.

The landscape units in the inventory were identified and evaluated according to four main categories, namely 'natural elements' (such as landform and geology), 'cultural elements' (such as forestry and settlement), 'perceptual elements' (such as view sheds and scenic routes) and 'defining elements'. It is this latter group that dominate in the evaluation of townscape character units which the Jamestown urban agricultural land units are located in.

In terms of the discussions around Jamestown, this area is being referred to as a Special Area "**Jamestown Townscape Character Unit**". See attachments to the comments from the Spatial Planning Department in **ANNEXURE 6**. It is therefore noted that the reference in the Stellenbosch Framework (see **ANNEXURE 8**), in the MSDP to **Urban Character Area** purely refers to the fact that the agricultural plots are now included in the Urban Edge, but does not necessarily mean that it is earmarked for infill residential or other developments. The inventory indicates that the farming allotments are seen to be the most significant element within Jamestown, spatially and symbolically connecting it to the grouping of Mission Settlements, which are of significance in the history of the Cape and the Province. These elements are collectively seen to embody the core remaining townscape character of Jamestown, and should duly be protected, and development controlled to ensure this historic pattern is retained and strengthened.

The document goes as far as to identify its main aim, main value and deviated land use / uses that will likely erode townscape character.

***Main aim:** Enhance (Manage) – the main aim of the proposed Special Area for Jamestown is not to protect each and every structure, but rather to preserve those character-giving elements that extend beyond each individual property and are common to the village as a whole. Special characteristic elements and features include the allotment gardens, the church, and the modest scale of the historic dwellings along Webersvallei Road.*

***Main Value:** Historical; The appropriate use and renewal of heritage features is critical for their preservation. Any development that will result in the loss of the remaining agricultural plots or remnant historic buildings, will completely undermine the heritage value of this townscape unit.*

Deviated Land Use/Uses that will likely erode townscape character: *over-scaled private dwellings (including multi-storey residential structures), change in land use to non-residential uses, construction on farming/gardening allotments, cluttered properties, gated residential estates, high and solid boundary treatments, large parking lots, isolated shopping centres or petrol stations."*

These shortcomings of the 2019 MSDF were enquired about during the public participation process but were however not fully addressed in the final document, but partially commented on by the municipality.

- **Comment from Stellenbosch Ratepayers Association** - The Jamestown smallholdings are part of its cultural heritage and of course also represent agricultural land, that the MSDF also agrees should not be developed.

Municipal response - The "Tuinerwe" / "watererven" is not intended for development.

- **Comment from the De Zalze HOA** - The area between the Webersvallei Road and the Blaauwklippen River is now included in the urban edge and is marked as "existing and proposed urban character areas". The HOA enquires as to what is meant by this description.

Municipal response - No comment was provided.

The Le Clemence development as catalyst and precedent for future development:

The Le Clemence development to the north of the Webersvallei Road, cannot be seen as a precedent or an intend of the municipality to develop all erven north of the Webersvallei Road. This property was always zoned out of agriculture. Historically for business and industrial activities and lately for the development of the Le Clemence Retirement Village. This portion of land (the retirement village site) was therefore always included into all previous Urban Edges and was set aside for uses other than agricultural, hence the establishment of the said non-agricultural uses north-west of the Webersvallei Road.

The fact that illegal occupiers of the subject properties has now been removed from the properties, provides an opportunity to restore its historical significands in the context of the bigger Jamestown, than rather establish developments that can threatens the heritage of the area.

Shortcomings and policy contradictions of the development proposal:

The proposed development does not provide for the integrations with any future development to its east where the remaining agricultural properties are located. It only makes provision for extension to

its west on a single property, between the proposed development area and the Le Clemence Retirement Development. The proposed gated development is also not promoted by the principles of the MSDF and the Heritage Inventory. The adhoc development of a private residential estate with its back turned on the rest of the historical agricultural properties will have a significant impact on the cultural landscape of Jamestown and the rural character, which the spatial planning documents intend to protect for spatial and heritage reasons. The proposed development contradicts as previously mentioned in the departmental assessment, the intend of the MSDF, when the subject area is referred to "**Urban Character Area**". It is rather an area that needs to be protected against gated residential estates, as applied for and the construction on the farming/gardening allotments.

Spatial planning relating to the agricultural properties "watererven" in Jamestown:

At present the agricultural land in Jamestown is not being utilized to its fullest potential, but are predominantly still farmed by subsistent farmers. See **ANNEXURE 7** for photos. Although the municipality need to institute an enquiry into the present use of agricultural activities and the factors influencing success, the future of agricultural activities must first be understood in order to plan and manage the agricultural land or approving adhoc applications, rezoning these properties to none agricultural uses. Only an investigation into the agricultural economy in Jamestown could therefore inform any planning and management decisions to change the historical landscape of Jamestown north of the Webersvallei Road.

The development of the agricultural properties has therefore always been opposed, not for only its historical significance, but considering that there are no documented collective agreement amounts the owners and the municipality over the possibility of developing the historical agriculture propertie. The heritage of this area is therefore now under treat, while the Jamestown community have not been granted an opportunity to reconsider the possibility of development on the agricultural even north of the Webersvallei Road for alternative uses, as a collective.

Should it be the intend of the community and the municipality in future to develop the area, it cannot be considered through adhoc applications without a clear spatial planning document for the entire agricultural area. All owners and the community must buy in to the redevelopment of the agricultural properties, considering that at least a road master plan or a "Jamestown Local Spatial Development Plan" that guide the alignment of roads, subsequently municipal services, land uses, etc. needs to be prepared, consulted with the public and adopted by the municipality. Such a process has not been initiated or discussed and it is therefore premature to consider adhoc development applications that does not lend itself for future integration, promote gated residential developments

within a rural town and applications which contradicts the current Spatial Development Framework principles. As previously indicated, the proposal could establish a development that threatens the heritage, character and townscape of Jamestown in its current form and location.

The importance of spatial planning documents to ensure development control from a land use management perspective:

Land use planning refers to the process by which land is allocated between competing and sometimes conflicting uses in order to secure the rational and orderly development of land in an environmentally sound manner to ensure the creation of sustainable human settlements. These aforementioned functions must be supported by relevant research and mapping which are also major components of the land use planning process, as discussed in this report. Land-use planning does not exist in isolation, it is necessary to view land-use planning as an integral part of the process of managing our resources and impact on growth and development. Among other things, this process seeks to identify, articulate and satisfy the basic social/human needs of a community within the context of its heritage and environmental values, available economic/financial resources and technical knowledge.

While houses must be built for the population, they cannot be provided in areas found undesirable from a heritage, environmental, safety, etc. perspective. Land-use planning seeks to accommodate desirable development within a technical and spatial framework. Due to the absence of a local spatial planning policy, guiding development proposals in this area and the impact on a heritage significant area, the application is premature and deemed undesirable.

The development control function seeks to manage and regulate property development to ensure that all development takes place at an appropriate time and place and in such a manner that it conforms to a pre-determined set of policies or standards. As mentioned, in the absence of these local spatial planning policy frameworks, and the impact on current heritage resources, development applications that threatens the cultural landscape and heritage of an area needs to be considered very carefully due to the uncertainty of its long-term impact.

Concluding planning comments:

- The key aspect that the agricultural roots of Jamestown's "watererven" should be retained and that no development occurs in the defined Jamestown Townscape Character Area is supported, until such time as the owners/community and the municipality agree on and prepare a Local Spatial Development Plan for the area.

- Such a spatial planning document must guide and promote sensible long-term planning for the subject agricultural area. Consideration must be given to the drafting of such a Framework that takes into consideration public landscaping, the river corridor, routes connecting the different subareas, carrying capacity of future roads and where to construct them, developing an approach or take a stand on gated villages in the area, etc.
- Unsympathetic developments that threatens the cultural landscape of Jamestown and that could destroy the agricultural potential of the land should not be supported.
- The authorities should rather look at rates rebates for those portions of properties under bona-fide agricultural activities if not already done so, to promote agricultural activities on properties zoned for primary agricultural purposes at this stage.
- The proposal does not promote function integration for a development within the urban edge, by the proposed gated development, with private roads and no provision for extension to the east.
- In carrying out the development control function in evaluating application, one should always remain alert to changes that have occurred which may signal the need to amend Plans, policies and standards. However, this should not be done arbitrarily or on an adhoc bases. This will create uncertainty, confusion, inconsistency and lack of credibility in the development control process. Instead, we should use the procedures provided for in the legislation or other transparent, administrative procedures for making such amendments that are necessary to ensure that Plans and policies are always current and relevant; that decisions are consistent and that developers/applicants are treated fairly. The department are of the view that this area lacks a local spatial planning framework to regulate future development of the agricultural area, if it's the communities intend, which has not been established. Considering the objections received, it's does not seem that it's the current intend to open up this area for development.
- Current studies and policy prescription for the area do not promote the proposal and in the absence of an overall development framework for future development of the area, there isn't any sound basis or foundation for the application to be approved in its current form and location. In the absence of a policy framework that guide development, decisions are left entirely at the discretion of the authorized authority evaluating a development proposal. The authorized authority will therefore have to consider the contents of the Heritage Inventory, the MSDF principles, the proposed development layout and land used, etc. in the proposed location, in the evaluation of the desirability of the application.

Considering the subject land uses, land development applications, the provisions of the Land Use Planning By-law, other relevant policies and the above planning assessment, the application is not desirable and it is recommended that the proposed development not be approved.

Delegated decision making authority for the respective applications.

Applications	Decision delegated to
<p>Application is made in terms of the Stellenbosch Municipal Land Use Planning By-Law, promulgated by notice number 354/2015 dated 20 October 2015,</p> <p>a) for the consolidation of Portions 52, 53, 54 and 71 of the Farm No. 510, Stellenbosch Division in terms of Section 15(2)(e).</p> <p>b) for the rezoning of the consolidated property from Agricultural Zone I to Subdivisional 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).</p> <p>c) for 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).</p> <p>d) for 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).</p>	<p>Municipal Planning Tribunal {Category: A(d)4 as per the categorisation model approved on 08 April 2020 by the Executive Mayor under delegated Authority via item 7.7.1}</p>
<p>The establishment of a Home Owners Association.</p>	<p>The establishment of a Home Owners Association and adoption of a constitution must be imposed as a condition of approval.</p>
<p>The approval of the development name Blaauwklip-aan-Rivier Residential Estate</p>	<p>Council on recommendation of the Executive Mayor in terms of the system of delegations (LUP7) as part of the POLICY ON PLACE NAMING, STREET NAMING & RENAMING & NUMBERING dated NOVEMBER 2010.</p>