

PRESENTATION TO APPEAL AUTHORITY
(27 MAY 2021)

APPEAL IN TERMS OF SECTION 79(2) OF THE STELLENBOSCH MUNICIPAL PLANNING BY-LAW (2015) AGAINST THE DECISION OF THE MUNICIPAL PLANNING TRIBUNAL: APPLICATION FOR CONSOLIDATION, SUBDIVISION, REZONING, DEPARTMENTURE, ESTABLISHMENT OF HOME OWNERS ASSOCIATION, APPROVAL OF DEVELOPMENT NAME, APPROVAL OF SITE DEVELOPMENT PLAN, ALLOCATION OF STREET NAMES, APPROVAL OF ARCHITECTURAL AND LANDSCAPING GUIDELINES: PORTIONS 52, 53, 54 AND 71 OF THE FARM BLAAUWKLIP NO. 510, STELLENBOSCH

BROAD LOCALITY



LOCAL LOCALITY

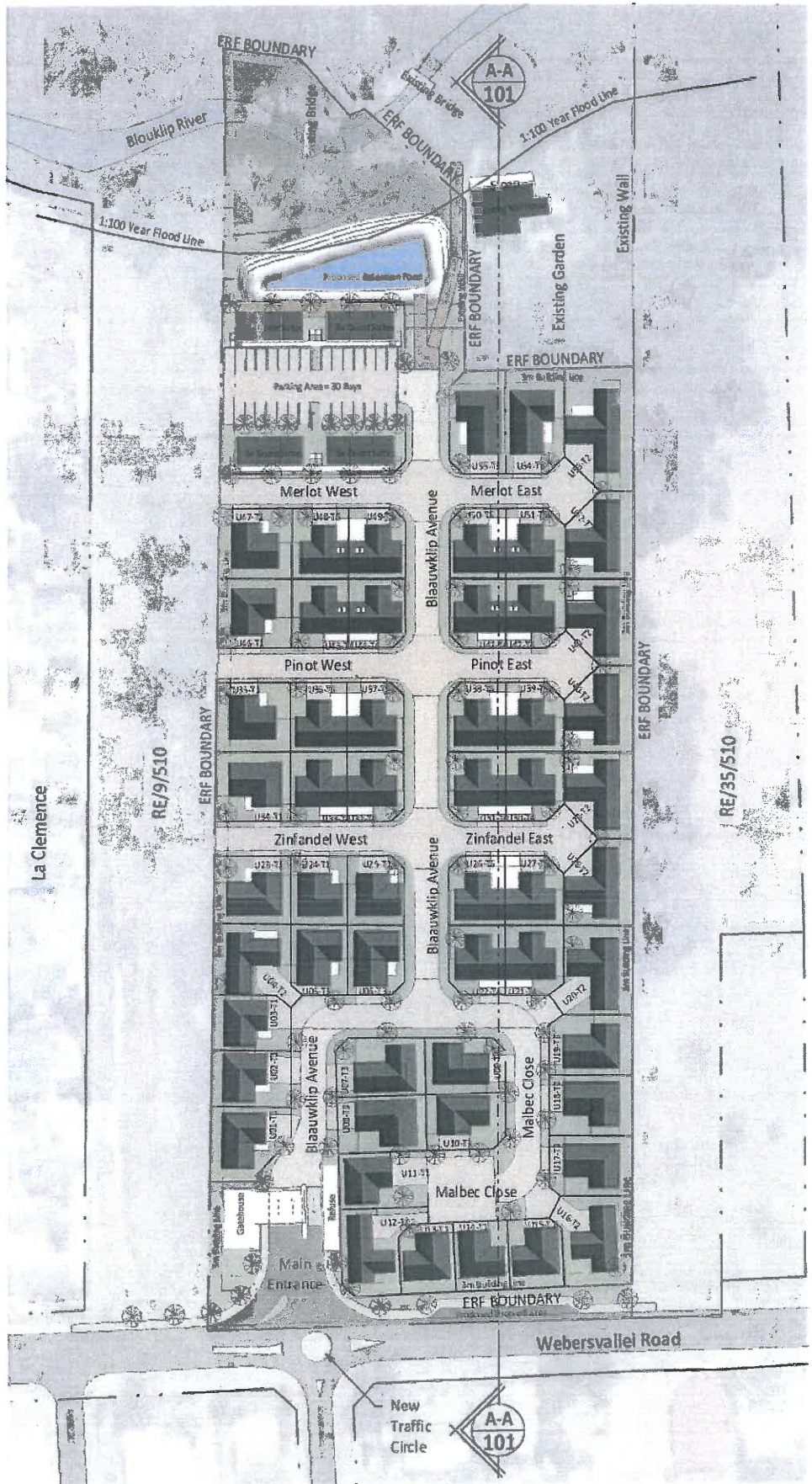


LAND USE: KREEFGAT INFORMAL SETTLEMENT

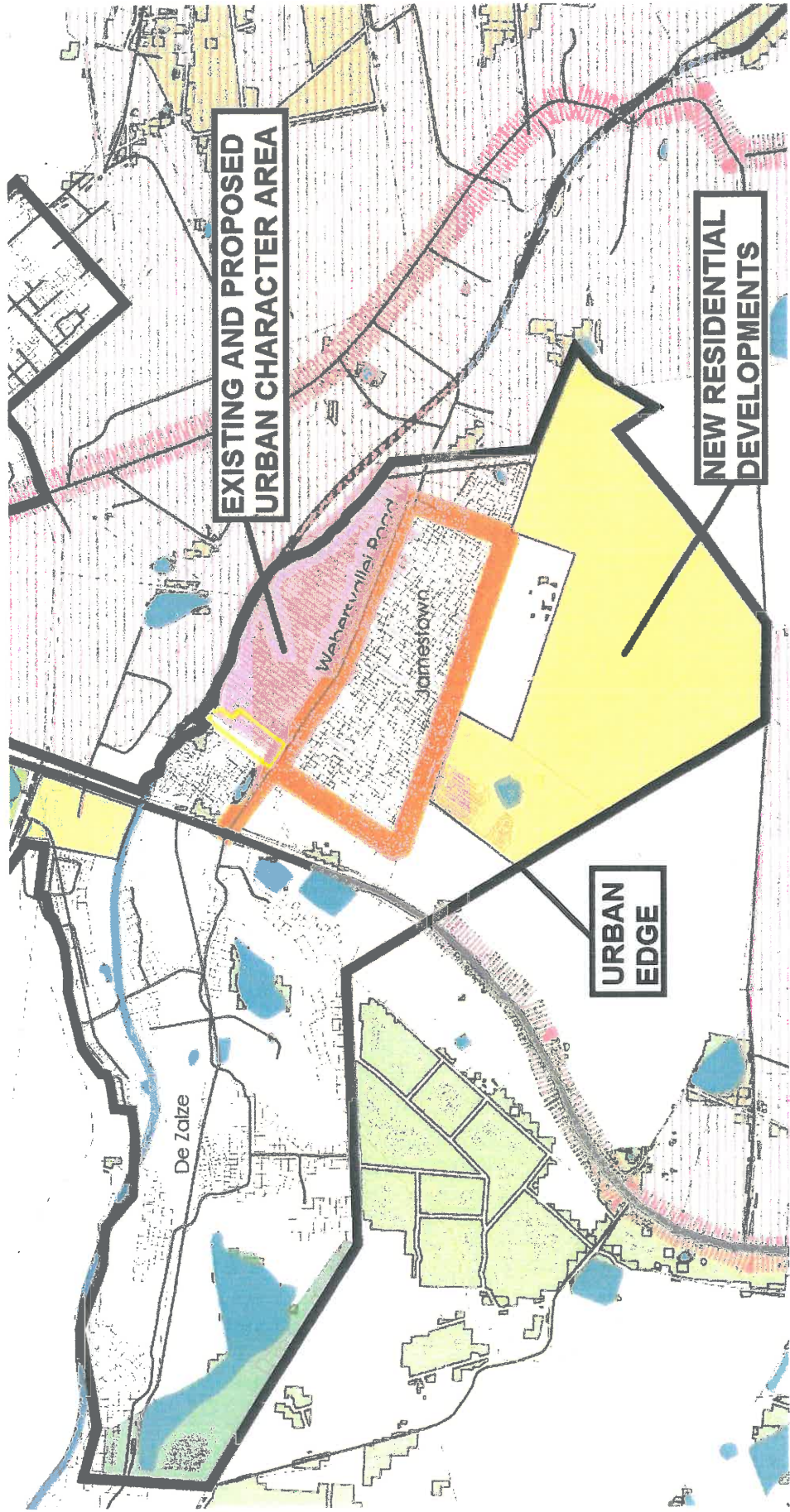


RESIDENTIAL DEVELOPMENT PROPOSAL

55 townhouses & 24 tourist accommodation units linked to Blaauwklippen Farm.



COUNCIL POLICY: STELLENBOSCH MSDF (2019)



CONSISTENCY WITH THE MSDF

- The MSDF forms part of the IDP, which, i.t.o. the Municipal Systems Act is the principal strategic planning instrument which guides and informs all planning and development, and all decisions with regard to planning, management and development, in the Municipality.
- The site is located inside the urban edge and the purpose of an urban edge is to differentiate between urban and rural land.
- The site is partially in an “urban character area” but the MSDF does not define an “urban character area”.
- The MSDF does state, “*infill opportunities also exist in Stellenbosch town, specifically in Cloetesville, Idas Valley, Stellenbosch Central, along the edges of Jamestown*”.
- The proposed infill development on land formerly used as an informal residential settlement, is considered consistent with the MSDF.

HERITAGE IMPACT ASSESSMENT

- Heritage Western Cape has endorsed the Heritage Inventory.
- The Stellenbosch Municipality has not endorsed the Heritage Inventory and it is a guideline document – not policy.
- According to the Heritage Inventory the site is located in a special area with heritage significance in Jamestown. However, Jamestown is not identified by the Stellenbosch Zoning Scheme as an urban or rural conservation area that needs to be protected.
- A Heritage Impact Assessment was undertaken i.t.o. National Heritage Resources Act to assess the development proposal.
- Heritage Western Cape approved the development stating the “*development will not impact on heritage resources*”.

PLANNING MOTIVATION (NEED & DESIRABILITY)

- The site is located inside the Stellenbosch town urban edge.
- The development is consistent with the MSDF.
- Heritage Western Cape has approved the development (with full knowledge of the Heritage Inventory).
- The site has been used for ±21 years for residential purposes (Kreefgat informal settlement).
- The site is not a viable agricultural land unit and cannot be effectively farmed.
- Western Cape Government: Agriculture supports the proposed development.
- Council has approved similar developments in Jamestown (e.g. La Clemence and Aan de Weber).
- The development will lead to the sensible densification and integration of an urban neighbourhood.
- Engineering services are available.
- The development will benefit the broader community of Stellenbosch by creating new employment opportunities, by supporting the further development of tourism (by providing tourist accommodation for Blaauwklippen Farm's guests) and by supporting local economic development.
- The development will support the SPLUMA development principles (spatial justice, spatial efficiency, spatial sustainability, spatial resilience and good administration).

MPT REFUSAL: REASON 1

The proposed development deviates from the provisions of the prevailing agenda and strategy of the MSDF.

- The MPT refused the application on the basis of its alleged inconsistency with the MSDF and did not interrogate the merits of the application (which included the site-specific circumstances presented in the motivation report) adequately, if at all. This was in contravention of the 2-step test under SPLUMA.
- Extract from the MPT meeting's audio: Mr Munro then proceeds to ask Mr April if the application was "*packaged as if it is in line with the SDF and therefore there is no motivation to deviate... Is that correct?*" To which Mr April responds "*correct*". Mr Munro then responds as follows "*So the committee and council do not have motivations for deviation. So, unless members of the Tribunal have justification to deviate from the SDF the application is over*". Mr April again states that there is "*no information submitted to justify deviation*" (refer to the audio recordings at 51:31).
- There were no further questions from the MPT members with regard to the site-specific circumstances of the application and it is clear that the MPT failed to interrogate the merits of the application or the "site-specific circumstances" further.

MPT REFUSAL: REASON 1

The proposed development deviates from the provisions of the prevailing agenda and strategy of the MSDF.

- Refer to slide 7 (Consistency with the MSDF).
- The proposed development is consistent with the MSDF, and the applicant was never informed by Town Planning that the development proposal is inconsistent with the MSDF.
- The site is located inside the urban edge and earmarked for urban development.
- The MSDF refers to infill development opportunities on the edges of Jamestown.

MPT REFUSAL: REASON 2

The development deviates from the provisions of the Stellenbosch Heritage Inventory for the 'water erven' in Jamestown.

- Refer to slide 8 (Heritage Impact Assessment).
- The MPT was informed by a municipal official that Council has endorsed the Heritage Inventory – which is untrue.
- The Heritage Inventory is only a draft municipal policy.
- Heritage Western Cape has endorsed the Heritage Inventory, but they also approved the development.
- The Stellenbosch Zoning Scheme, 2019 has identified Stellenbosch Urban, Franschhoek Urban, Jonkershoek Valley, Dwars River Valley and Ida's Valley – but not Jamestown – as a protected heritage areas.

MPT REFUSAL: REASON 3

No site-specific circumstances as contemplated i.t.o. SPLUMA was presented.

- Refer to slide 10 (MPT refusal: Reason 1).
- The applicant was never requested to present site-specific circumstances as to why the proposed development should be considered on a site-specific basis.
- The development is considered consistent with the MSDF.
- If the MPT had studied the planning reports in more detail, they would have seen the many site-specific circumstances contained in the reports, that supports the proposed development.
- Refer to slide 9 (Planning Motivation).

MPT REFUSAL: REASON 4

All the Jamestown “water erwe” should be used for agricultural activities.

- The site is ±2.4ha and a non-viable agricultural land unit.
- The soils are disturbed and contaminated (owing to the historic residential land uses).
- La Clemence was approved based on the land’s historic urban land uses (similar to our site).
- The Dept. Agriculture supports the development of the site.

RELIEF SOUGHT BY THE APPELLANT

- The MPT's decision reflects a failure to exercise its discretion lawfully and reasonable in accordance with the criteria set out by LUPA and the Planning By-law.
- If the MPT evaluated the application on its merits, it would have been approved.
- The relief sought by the appellant is for the Appeal Authority to overturn the MPT's decision and to approve the land use planning application (as submitted).

THANK YOU