

7.3.2	<b>APPLICATION FOR SEPERATION OF NOTARIALLY TIED PROPERTIES, PORTION 17 OF FARM 369 AND PORTION 3 OF FARM 527 FROM THE MOTHER ERF, PORTION 837 OF THE FARM BLAAUW KLIP NUMBER 510</b>
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Collaborator No:

IDP KPA Ref No:

Meeting Date:

Good Governance

19 April 2023

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

**2. PURPOSE**

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

**3. DELEGATED AUTHORITY**

Council

**4. EXECUTIVE SUMMARY**

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

In terms of Clause 2.2.3 it was recorded that:

*“The seller shall be entitled to impose a notarial tie condition between the property hereby sold and the existing property of the purchaser, so that the purchaser or its successor in title shall not be entitled to sell or otherwise alienate or transfer any portion of the property hereby sold without the simultaneous sale or alienation or transfer of the property collectively referred to as Blaauwklippen Estate, being the existing property of the Purchaser, or its successor in title, to the same transferee.”*

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

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

development of the properties as the farm will remain zoned for agricultural purposes and be protected by the MSDF.

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

## 5. RECOMMENDATION

FOR CONSIDERATION

## 6. DISCUSSION / CONTENT

### 6.1 Background

#### 6.1.1 Blaauwklippen, Stellenbosch

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

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

In terms of Clause 2.2.3 it was recorded that:

*“The seller shall be entitled to impose a notarial tie condition between the property hereby sold and the existing property of the purchaser, so that the purchaser or its successor in title shall not be entitled to sell or otherwise alienate or transfer any portion of the property hereby sold without the simultaneous sale or alienation or transfer of the property collectively referred to as Blaauwklippen Estate, being the existing property of the Purchaser, or its successor in title, to the same transferee.”*

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

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

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

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

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

## 6.2 DISCUSSION

### 6.2.1 Location and context

The property under discussion is situated at Blaauwklippen Farms.



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

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

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

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

Farm 369/17 – Paradyskloof erf – 26.67ha

Farm 527/3 – Kreefgat Property – 14.79ha

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

### **6.3 FINANCIAL IMPLICATION**

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

### **6.4 LEGAL IMPLICATIONS**

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

### **6.5 STAFF IMPLICATIONS**

No additional staff implications.

### **6.6. PREVIOUS COUNCIL RESOLUTIONS**

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

### **6.7 RISK IMPLICATIONS**

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

### **6.8 INPUTS RECEIVED FROM DIRECTORATES**

The item was not circulated for input yet.

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**ANNEXURES:**

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

**FOR FURTHER DETAILS CONTACT:**

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