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FRIENDS OF STELLENBOSCH MOUNTAIN

Comments and Objections to Development Proposal LU/13953 re Farm 1049/RE (Brandwacht)

21 October 2022

Interest in application: The locus standi of FSM in environmental, transport and town planning matters in Stellenbosch is long established. FSM has been active in Stellenbosch since 2008 and a SARS-accredited Public Benefit Organisation.

Reason for comments: Application LU/13953 is incompatible with SPLUMA principles, the Stellenbosch MSDF and Urban Edge, Adam Tas Corridor, transport legislation. Serious legal issues. Financial and environmental implications eg roads, biodiversity. Application is a Siamese twin of the Eastern Link Road. See details below.

Contents

1 Quick Summary	2
2 Arguments in support of refusal	3
3 Technical details, comments, context	10
3.1 Legal issue I: Contradiction between LUPA and IZSB	10
3.2 Legal Issue II: The Stellenbosch LUPB loophole as basis for salami tactics	10
3.3 Eastern Link Road issues	10
3.4 Other issues	12
3.5 Salami tactics in the past: Capitec headquarters and parkade	13
A List of Acronyms	15
B Legal context of Brandwacht application and Eastern Link Road	16
C Partial chronology of development history on Farm 1049 Brandwacht	17
D November 2019 MSDF: Policy on Urban Edge	21
E 2019 MSDF: explanation why Farm1049/RE was not included in Urban Edge	23
F 2019 FSM Comments on the MSDF (titlepage only)	24
G Comparison of MSDF Concepts with Urban Edge extension proposals	25

H	Extracts from the Urban Edge Guidelines 2005	27
I	Extracts from Environmental Impact Assessment Regulations	36
J	Integrated Zoning Scheme By-Law Chapter 24	37
K	Amended categorisation scheme, 2017	39
L	Categorisation scheme approved by Council in 2015	45
M	Recategorisation and the definition of “objections”	48
N	Capitec Development Applications: from parking lot to parkade	50
O	Dumping of excavation ground in Jamestown: December 2018	52
P	FSM Comments on the CITP and RMP, 14 June 2021 (title page only)	53
Q	Eikestadnuus article on the nonstatus of the Roads Master Plan	54

1 Quick Summary

- 1.1 We object to Application LU/13953 both in its entirety and in its parts as motivated below. The MPT should refuse the application outright.
- 1.2 The development of Farm 1049/RE into a luxury housing estate is in conflict with land use legislation, the Stellenbosch IDP, MSDF, CITP and Housing Policy. We provide detailed reasons why it is noncompliant with the MSDF.
- 1.3 Extension of the Urban Edge to include Farm 1049/RE was rejected and remains unnecessary and unwarranted.
- 1.4 The proposed development would not qualify as “infill development”.
- 1.5 The Brandwacht development proposal cannot be judged in isolation; it is closely connected with the entire Eastern Link Road project.
- 1.6 The Eastern Link Road is not supported by the MSDF, is incompatible with the transport legislation, is obsolete given the Adam Tax Corridor initiative, is very expensive, would divert precious money away from more deserving infrastructure projects, would facilitate leapfrog development, and has high environmental impacts all the way from Eerste River to Blaauwklippen.
- 1.7 There are multiple legal problems; we highlight two of them. Legal inconsistencies and loopholes have facilitated incremental “salami tactic” development while suppressing public participation and objections.
- 1.8 We provide a detailed analysis and history of the approval of the Capitec headquarters and parkade in Techno Park as an illustration of how such salami tactics have been used in the past.
- 1.9 Claims to agricultural nonviability must be rejected. Allusions to Paradyskloof and Grondves developments have no substance but on the contrary form part of the leapfrog development strategy under the developer-driven push for the Eastern Link Road.
- 1.10 The period for submitting comments was extended to 24 October 2022 for FSM and to other IAPs “on behalf of the municipality” as the section 46 notice had specified 3 October 2022 as deadline. Section 50 of the LUPB empowers a municipality to refuse applications received after the deadline. There seems to be some sort of implicit delegation in place whereby Stellenbosch Municipality has delegated its section 50 authority for extension to TV3.

2 Arguments in support of refusal

2.1 This section of our comments and objections contains the substance of our arguments. Further selected detail is supplied in subsequent sections. Supporting documents and further details can be found in the Appendices below.

2.2 Private interests and common good

Farm 1049/RE was purchased by the current owner Brandwacht Land Development (Pty) Ltd (BLD) in 1998. The previous landowner Mazatlan Estates, closely related to BLD, has owned the farm since 1967. Mazatlan and BLD have lodged numerous applications for development since at least 1989, as the partial chronology in Appendix C shows. In short, BLD and Mazatlan have always been property speculators, and their motive for development has always been personal enrichment, not the common good. It is the task of the planning authorities not to be driven by such private interests but to apply legislation and planning principles for the common good. The tail may not wag the dog.

2.3 The diagram in Figure 2 in Appendix B shows the hierarchy of legislation governing this and all other land use applications. We will refer to it throughout.

2.4 The MSDF and Brandwacht

- (a) The spatial planning laws make clear that the Municipal Planning Tribunal may not take decisions contrary to the Spatial Development Framework (MSDF, November 2019). Those laws and the MSDF sets out the general rules, and exceptions are supposed to be rare. Tables 40 to 43 of the MSDF provide a checklist of questions which should be answered.
- (b) The present application **is incompatible with the principles and specifics of the MSDF in many respects**. The MSDF strategies and policies include: the need for housing not in the high-income but in the low- and medium-income segments, the explicit strategy to direct growth along Baden Powell Drive and the R304 towards Klapmuts, the undesirability of large-scale roadbuilding, especially east of the R44, the exclusion from the Urban Edge of Farm 1049/RE in Figure 28 of the MSDF, and protection of agricultural land, even if small and low potential. Some of these incompatibilities are set out in more detail below.
- (c) The **Adam Tas Corridor (ATC)** has been included into the 2019 MSDF as a **catalytic initiative**. The ATC is a game changer which will fundamentally alter the entire town structure, including housing, transport and the road network. Here are some quotes from Section 6.9.1 of the MSDF (our emphasis):

Redevelopment in terms of the [ATC] concept offers the opportunity to:

- *Grow Stellenbosch town — and accommodate existing demand — in a manner **which prevents sprawl**, and create conditions for efficient, creative living and working*
- *Stimulate and act as a catalyst for the development of improved **public transport and NMT***
- *Rethink and reconstruct infrastructure, and particularly the **movement system**,*
- ***shift new development focus to the west of town***

*Critically, development of the corridor needs to be supported by **broader strategies impacting on Stellenbosch town as a whole**. These include: ... Private vehicle demand management (specifically to curtail the use of private vehicles for short trips within the town)*

- (d) **Economic “benefits”?** The Brandwacht application is exactly the kind of development which the Adam Tas Corridor initiative renders obsolete. In particular, the **Bloom economic study** commissioned by BLD no longer has any merit: Stellenbosch has no need for the trickle-down economics which are the focus of the Bloom study, because the ATC will direct economic growth to an area and in a way which Brandwacht can never deliver.

- (e) Because of the ATC, the **Brandwacht supporting studies**, including the site development plan and Traffic Impact Statement are also outdated both in their road- and car-centered approach and in their low-density sprawl, high-income paradigm. These studies must be rewritten while taking the ATC and its implications into account.
- (f) Contrary to the applicant’s claims, Farm 1049/RE has **no site-specific circumstances** in the sense of SPLUMA section 22. TV3 has been arguing “site-specific circumstances” for virtually every major development proposal in which it has been involved. When every land unit has “site-specific” circumstances, the concept loses all meaning and the MSDF as a whole and all planning become meaningless.

There are no so-called *site-specific circumstances* which justify deviation from the approved Stellenbosch Municipal Spatial Development Framework (MSDF). Arguments by the Applicant to this effect are based on deliberate misinterpretation of section 22(2) of SPLUMA and should be rejected.

For example, non-inclusion into the Urban Edge is not site-specific since many land units fall outside the Urban Edge; infill development is not site-specific as many land units may be considered candidates for infill development; and the agricultural viability of Farm 1049/RE is similarly not specific to Farm 1049/RE.

As a reminder: section 22(1) of SPLUMA is the rule and section 22(2) the exception. Section 22(1) states that the MPT *may not make a decision which is inconsistent with a municipal spatial development framework*.

Site specificity would require proof by the Applicant of some truly exceptional and unique circumstances which would constitute valid grounds to depart from the general principles and thrust of the legislation and in particular the MSDF. No such exceptional or unique circumstances exist for Farm 1049/RE.

2.5 The Urban Edge

The present application LU/13953 seeks an amendment to the approved MSDF to effect inclusion of Farm 1049/RE into the Urban Edge.

- (a) The 2019 MSDF itself has provided detailed comments on the issue of the Urban Edge. Pages 149, 150 and 151 of the 2019 MSDF are reproduced in Appendix D below. Especially Page 149 speaks to exactly those issues which have again been raised by the present application.
- (b) Page 155 of the same MSDF is shown in Appendix E. Item 12 on that page makes clear that the TV3 request for inclusion was rejected with the comments *The proposed urban edge was adjusted to include a smaller, more rational development area*.
- (c) FSM had already commented extensively on this question in May 2019 when this proposed urban edge change was already being considered. The titlepage of our 2019 comments is shown in Appendix F; the full text is available on request. The long table of comparisons in Appendix G is taken from those 2019 comments. Section by section of the MSDF, the question is asked whether the proposed urban edge change would be compatible with that MSDF text. **Our analysis in Appendix G shows, section by section of the MSDF, that the requested change in urban edge is incompatible with the MSDF.**
- (d) In Appendix H, we reproduce extracts from the Western Cape *Urban Edge Guidelines* of 2005, also taken directly from our 2019 comments. We draw particular attention to items 3.4, 3.5 and 3.6 of those *Guidelines* as they are very relevant to the present application. (The item numbers shown in the Appendix are those of the original Urban Edge Guidelines.)

2.6 MSDF, CITP and the Eastern Link Road

It is not possible to consider the Brandwacht application in isolation because of its close relationship with the “Eastern Link Road” (ELR). From the diagram in Figure 2 in Appendix B

and the ELR concept route, it is evident that the Eastern Link Road is effectively a regional plan, spanning many kilometres and many land units. Such regional plans are subordinate to the municipality-wide master plans but are ranked higher than individual land unit applications such as LU/13953 Brandwacht.

Farm 1049/RE Brandwacht sits exactly in the middle of the proposed ELR route. It and the ELR are therefore like Siamese twins: Further Brandwacht development depends heavily on the ELR, and the ELR in turn benefits from Brandwacht development.

For that reason, the entire ELR from Techno Park to Eerste River and all of its issues and consequences must be taken into account in judging the Brandwacht application. The purpose of the MSDF, and the task of the MPT, is to put a particular application into its spatial and structural context. The ELR is that context.

2.7 The Eastern Link Road, however, is in conflict with just about every overall policy and goal of Stellenbosch town and mobility planning:

(a) The ELR is not supported by the MSDF both in general and in specific terms. In the last column on Page 170 of the November 2019 MSDF, the MSDF states explicitly that

The Eastern Link Road is not supported by the MSDF.

(b) The ELR directly contradicts several MSDF strategies, including directing growth along Baden-Powell and R304 (eg Figure 20 of MSDF), while growth along the R44 corridor is not a goal of the MSDF.

(c) Like the Brandwacht application, the ELR has been made obsolete given the paradigm shift in mobility patterns which the **Adam Tas Corridor** will bring about. An important part of the ATC will be the upgrading and re-alignment of the central road structure involving Adam Tas Road, the R44 between Dorp Str and Merriman Rd, Alexander and George Blake Rd and Merriman itself. That intervention plus raising the vehicle occupancy rate will make the Eastern Link Road obsolete.

(d) All EMME traffic modelling results, including those of the 2018 Roads Master Plan, are obsolete. The Roads Master Plan itself is obsolete; it was never legitimate in any case.

(e) The ELR would, if approved, act as a **catalyst for further low-density development** on nearby land units, including Blaauwklippen (Erf 1457), Grondves (Farm 369P and 370), Paradyskloof nature area (Farm 369) and the Brandwacht nature area (Farm 368/2). It would split the Welgevallen experimental agricultural farm in half (Erf 16508) and disrupt land units at Coetzenburg and along Suidwal Road. All of those areas fall outside the Urban Edge.

(f) The ELR would have a high **environmental impact** on renosterveld on Farm 368/2 north of Brandwacht, on the Eerste Rivier, on Brandwacht River and Schuilplaats River and would indirectly endanger the adjacent renosterveld on Farm 369/RE, north of the Paradyskloof waterworks.

(g) The ELR is **in conflict with transport legislation** with its imperative to shift infrastructure spending away from roads, increasing the number of car occupants etc as required by transport legislation.

(h) Of course the ELR, along with the Western Bypass, is mentioned as one of the pet projects of the Roads Master Plan and since 2021 also in the CITP “update”. It is even mentioned in the 2016 MSDF. That in no way legitimises it. The question is not whether it was cleverly sneaked into the CITP but whether it and the CITP conform to legislation.

In a detailed analysis, FSM on 6 June 2021 showed that the so-called “update” which is now called the 2021 **Comprehensive Integrated Transport Plan** is not compliant with transport legislation such as the 2016 NLTA Minimum Requirements. Its prioritisation of road projects is illegitimate. The title page of our comments is shown in Appendix P; the full study can be downloaded from the FSM website at fsmountain.org or provided on request.

- (i) The ELR, like other major road projects, would be **very expensive**; we estimate **several hundred million Rands**.
- (j) ELR construction would therefore **siphon off scarce money and development contributions from transport and NMT projects**. Our analysis of 14 June 2021 shows that the so-called 2021 “CITP” “update” would, if implemented, direct between 90 and 99 percent of mobility related capital expenditure towards roads, a ridiculous imbalance.¹ The ELR would skew spending even more.
- (k) It is common knowledge that SA suffers from severe budget constraints. Provincial and/or national infrastructure grants should rather be spent on projects which are aligned with the MSDF and transport legislation and not on the ELR and similar white elephants.

2.8 Urban edge and environmental impact assessments

- (a) A list of relevant “Listed Activities” which trigger environmental impact assessments appears in Appendix I.
- (b) Since Farm 1049/RE is residential development and directly abuts Brandwacht River, an environmental impact assessment (EIA) must be conducted. The present application aims to have the land included in the Urban Edge before the EIA has even started. That is wrong and dangerous, since the 2017 Environmental Impact Assessment Regulations link urban edges to the required assessments: land outside the urban edge must conform to stricter guidelines than land inside the urban edge. In Appendix I, we have highlighted the many Listed Activities which use the word “urban area” and therefore depend on the Urban Edge.
- (c) Furthermore, to repeat: The Eastern Link Road, which is intimately tied to the present application, would result in a string of major environmental impacts. These impacts must be known **before** the urban edge is changed with respect to any of these land units.
It is therefore important to first complete environmental assessments before changes to the urban edge are considered. We need EIAs not just for Brandwacht, but for all land units impacted by the ELR.
- (d) Even if the present application is incorrectly separated from the ELR and its consequences, the Urban Edge should not be changed to include Farm 1049/RE. It was excluded in 2019 from the Urban Edge and there have been no material changes since then.

¹This same 2021 CITP also made calculation errors amounting to hundreds of millions of Rands in its budgeting. No one in the Directorate Infrastructure or in Council noticed. The spend of more than R2million on consultants for this “CITP” was fruitless and wasteful expenditure.

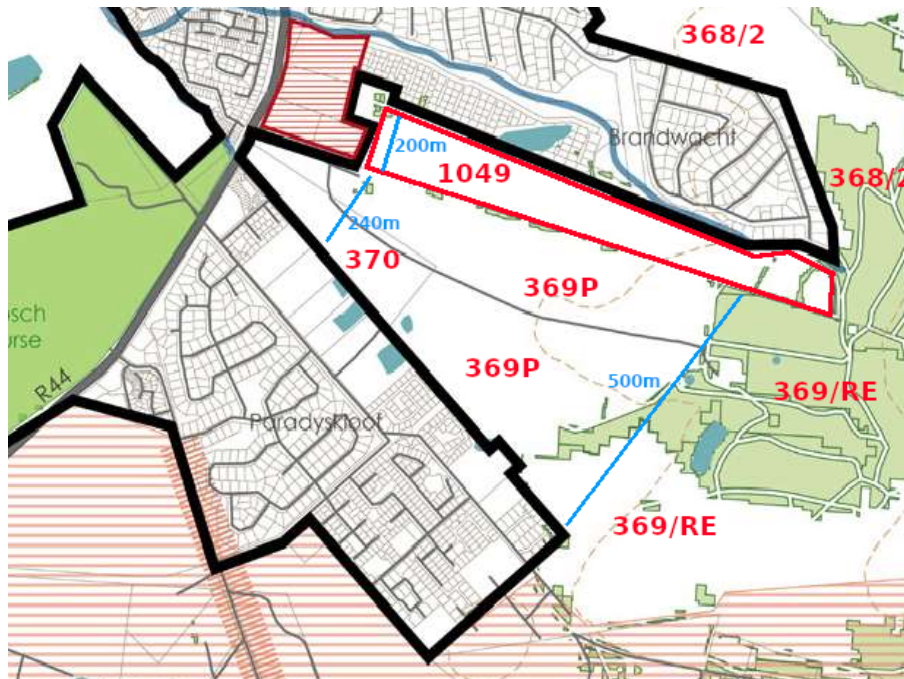


Figure 1: Cutout from Figure 28 of the November 2019 MSDF showing the approved Urban Edge as black line. Red numbers are the Farm numbers. Light green shading on the right indicates CBA (critical biodiversity area). Blue lines and numbers indicate approximate distances in metres.

2.9 Not infill development

Farm 1049/RE cannot be called “infill development”, because the agricultural and open space between Paradyskloof suburb and the existing Brandwacht suburbs is significantly larger than the existing Brandwacht urban area and also much larger than Farm 1049/RE. **Developing Farm 1049/RE would not be infill but encroachment on a large coherent area of agricultural land and fynbos.** Figure 1 and the following considerations make that clear:

- (a) **Adjacent land units are agricultural and critical biodiversity areas:** Grondves (369P and 370) on its southern border is a critical KVV viticulture site. The renosterveld of Farm 369/RE north of the Paradyskloof waterworks is critically endangered (CBAs are shown as light green shading in Figure 1). On Farm 368/2 (east of Farm 1049/RE), there is likewise mountain fynbos, also indicated as CBA. The lower portion of Farm 370 around Schuilplaats Road is made up of wetlands, albeit degraded.
- (b) **Distances:** The distances across agricultural land (Grondves) between Brandwacht and Paradyskloof are much larger than the width of Farm 1049/RE itself. Farm 1049/RE, shown in Figure 1 in red outline, is a long thin strip of land with a width of less than 200m everywhere. The distance from Farm 1049/RE to Paradyskloof suburb on the south ranges from 230m in the west to 500m in the east. If Farm 1049/RE itself is included in the distance calculations, the distances from existing Brandwacht housing to Paradyskloof are even larger.
- (c) **Land areas:** Farm 1049/RE has an area of 30 hectares. The size of Grondves Farms 369P and 370 is at least three times larger. The part of Farm 369/RE north of the waterworks, comprising renosterveld, riverine and mountain fynbos and the waterworks themselves, adds another 30ha or more.

2.10 Legal Issue I: Contradiction between LUPA and IZSB conditions

Regarding environmental and heritage conditions, there seems to be a direct contradiction between the way the **setting of conditions for approval is required** by the Stellenbosch

Integrated Zoning Scheme By-Law and the **prohibition to set such conditions** laid down by the Western Cape Land Use Planning Act. Further details can be found in Section 3.1.

2.11 Legal Issue II: Large changes to development parameters can remain secret

For supporting documents, see Appendices J, K, L, and M.

There is also a risk that, once Subdivisional Area Zoning is approved in the present application large changes to the development may never again be subject to proper scrutiny. This is true for ANY applications in terms of LUPB section 15(2)(a) to Subdivisional Area Zoning.

(a) As set out in Chapter 24 of the IZSB (see Appendix J), the purpose of a *Subdivisional Area Zone* is to grant future rezoning and other rights while the prescribed set of conditions attached to those future changes are quite vague. Chapter 24 of the IZSB leaves room for large changes in developments even after the MPT has set conditions.

(b) **Such changes do not have to be advertised.**

Here is the relevant quote from the IZSB:

241(5)(b) the plan of subdivision shall not require to be advertised in the event that the subdivision plan conforms to all the conditions of approval and is generally in accordance with the proposed development framework indicated in the original application for rezoning to Subdivisional Area Overlay zone

(c) As a result, the public would not even know that application for changes had been made. And because the public would not know, the public would have no opportunity to lodge objections. That would seem to be unconstitutional.

(d) Even worse: Council in 2017 approved the rules (called a “categorisation scheme”) shown in Appendix K, by which most applications for land use changes set out in Section 15(2) of the LUPB are referred to the Municipal Planning Tribunal **only if valid objections are received**. Such valid objections are, however, made almost impossible: see Appendix M as well as the earlier 2015 categorisation scheme in Appendix L.

The conjunction of Chapter 24 of the IZSB and the Council LUPB categorisations therefore creates a situation where large changes to development layouts and parameters can occur without advertisement and without input from either the MPT or the public at large or even knowledge of these changes. They can thus be handled in secret by administrative officials of the Municipality.

2.12 Salami tactics in practice: exploiting the loopholes

The “categorisation scheme” was implemented ostensibly to ensure that only large and substantive development applications were sent to the MPT while trivial ones could be handled administratively. The need to not overburden the MPT is sensible. However, **the present categorisation scheme is being actively exploited to gain approval for large developments by splitting them up into several components, parts or phases**. Having obtained approval for Part 1 of an application, the developer couches Part 2 of his intentions as minor “departures and amendments” to approved Part 1, and so Part 2 falls into a different “application category” without need for public participation or MPT scrutiny.

The present application LU/13953 Brandwacht seems to be another example of these salami tactics. In this Part 1, only the most general parameters are applied for, leaving a lot of room for changes in the Part 2 application later. Nothing in the present application is binding on the developer. For example:

(a) The *Concept Site Development Plan* included in the present application is not binding on the applicant.

(b) Neither the proposed road layout nor the Traffic Impact Statement is binding.

- (c) Access via the Eastern Link Road is nonbinding. Sensible alternatives to the Eastern Link Road such as road access via Ben du Toit Road or existing Brandwacht suburb streets are not mentioned, but they are not excluded either and could reappear in the Part 2 application.
- (d) Housing at two different densities is shown in the Concept SDP. The MPT could impose general density conditions but hardly prevent later large-scale shifting and escalation of subdivided erven to optimise BLD profits.
- (e) The business/office component and its zoning could in future be shifted from the present lowest westernmost location to the higher elevations in the east. The MPT can allow for a business zone but cannot control where that zone should be.
- (f) A 240m elevation restriction is not even mentioned in this Part 1 application. And so on.

2.13 Even where the Municipality were to allow the Part 2 application to be heard by the MPT — which it is not obliged to do — the MPT would already in Part 1 have granted certain rights and set certain conditions on which it could not backtrack in Part 2.

2.14 **Example of previous use of salami tactics: Capitec headquarters and parkade**

Similar salami tactics have been put to good effect in the past. The same consultant TV3 handling the present application submitted two applications on behalf of Capitec in 2018 in rapid succession for the headquarters building (Part 1) followed by the parkade (Part 2) just a few months later. An environmental impact assessment of associated groundworks has never been made public and possibly was not even done. For some details, see Section 3.5. Appendix N contains the two site development plans, one submitted in Part 1, the other in Part 2 of the Capitec application. The dumping controversy appears in Appendix O.

2.15 **Salami tactics and the Eastern Link Road**

Salami tactics have also been standard with regard to the Eastern Link Road. The six or seven segments of the ELR are each presented individually, for example “Techno Park to Wildebosch”, then “Wildebosch to Trumali” and so on. Each segment in itself would seem to have a small impact, but once they are all completed, the cumulative impact is high. The multiple issues associated with the Eastern Link Road are treated in more detail in Section 3.3. As already emphasised, the solution is to insist that the costs and impacts of the ELR must be considered as a whole, not in slices.

2.16 **Conclusion for municipal decisionmaking**

The Municipal Planning Tribunal is neither authorised nor tasked to resolve legal contradictions. The problems set out above, however, constitute a risk to Stellenbosch Municipality of divisive and expensive legal action. The only safe course of action for the MPT seem to be —

- to refuse the present application altogether; or
- to insist that the Applicant complete the required Traffic, Environmental and Heritage Impact Assessments and processes before resubmitting their application (such impact assessments should, of course, take into account the Adam Tas Corridor and Eastern Link Road issues already raised); and/or

It is not a viable alternative for the MPT to set stringent and detailed conditions in terms of section 241 of the IZSB since the IZSB itself leaves much room for changes later.

2.17 **Legal conclusions for opponents**

The legal issues raised here and by other objectors should be tested in court by Interested and Affected Parties. At issue would be, for example:

Given the contradiction between between LUPA and IZSB condition setting: Is section 40(7) of the Western Cape Land Use Planning Act lawful and compliant with SPLUMA, other legislation and the SA Constitution? If it is, then is section 241 of the Stellenbosch Integrated Zoning Scheme By-Law compliant?

and

Is section 241 of the Stellenbosch Integrated Zoning Scheme By-Law lawful?

In the light of the clear weaknesses and the attempts to prevent or inhibit public participation through redefinitions of “objections”, a court review should also ask

Is the application categorisation scheme and the definition of “objections” contained in Council resolution on Item 7.3.3 of the 2017-07-26 council meeting lawful?

Refer to Appendix M for the necessary background. While the use only of objections in categorisation is sensible for small development applications, it seems nonsensical in the case of larger developments. The absence of any reference to the size (land area, value, impact etc) of a particular development in the Stellenbosch categorisation is a matter of serious concern and should be tested in court, particularly in light of the explicit redefinitions and tightening of the term “objection” in the 2015 and 2015 Stellenbosch categorisation schemes.

3 Technical details, comments, context

3.1 Legal issue I: Contradiction between LUPA and IZSB

There seems to be a direct contradiction between the way the **setting of environmental, heritage and other conditions** is prescribed by the Stellenbosch Integrated Zoning Scheme By-Law of 2019 (IZSB) and the Western Cape Land Use Planning Act (LUPA) of 2014. On the one hand, the IZSB is unambiguous that in the case of rezoning to Subdivisional Area Zoning, the MPT is authorised and required to impose not only the general development parameter conditions set out in subsections (a) to (f) of section 241(3) of the IZSB, but in addition

*IZSB 241(3): The Municipality shall impose conditions of rezoning which specify ... (g) any other conditions the Municipality deems fit to inform the intended subdivision of land including, but not limited to, **environmental, heritage, landscaping, parking and access parameters.***

On the other hand, LUPA prohibits the setting of exactly these conditions in section 40(7):

LUPA 40(7): A municipality may not approve a land use application subject to a condition that approval in terms of other legislation is required.

Other legislation includes of course the environmental and heritage legislation which IZSB 241(3) mentions by name.

3.2 Legal Issue II: The Stellenbosch LUPB loophole as basis for salami tactics

This matter is treated in Section 2. The legal details are set out in Appendix M

3.3 Eastern Link Road issues

3.3.1 Eastern Link Road and the CITP and MSDF

Steadfast application of the CITP and MSDF is especially important in case of the Eastern Link Road and similar large roadbuilding projects, because they affect entire regions. To repeat: the Brandwacht application cannot be separated from the Eastern Link Road and the two must be considered together.

- (a) The ELR is inconsistent with the MSDF's Section 4.2 which as stated directs growth westwards and northwards from Stellenbosch Town, not towards the R44 or mountainous eastern parts.
- (b) As stated above, the Adam Tas Corridor as MSDF critical lead project has a major impact on housing, roads and transport. There is no evidence that the ELR will still be needed once the rail, public transport and central-town road realignments around the Adam Tas Corridor have been implemented.
- (c) Any traffic simulations and traffic growth projections of the past are obsolete if they do not take into account the impact of the ATC and the legally required move towards sustainable mobility (fewer cars, more people per car, more public transport and NMT).
- (d) Transport legislation is clear: All roadbuilding should be governed by the Comprehensive Integrated Transport Plan (CITP) which itself is governed by transport legislation; see Figure 2 in Appendix B.
- (e) The ELR is not a priority project within the Stellenbosch Comprehensive Integrated Transport Plan (CITP). The so-called "CITP" "update" approved by Council in April 2021 is itself highly deficient; see FSM comments of 14 June 2021; the title page appears in Appendix P, and the full document can be downloaded from the FSM website at <https://fsmountain.org/dfsm/210614-fsm-comments-citp-rmp-nmt.pdf>
- (f) That 2021 "CITP" made an illegitimate attempt to legitimise the 2018 Roads Master Plan (RMP). To repeat what has been said since 2018: The RMP which is currently again being "approved" by Council has no status in law and therefore cannot be taken into consideration in the present rezoning application.² Appendix Q dating from October 2019 explains why the RMP is of no use and should be scrapped rather than being re-approved.

3.3.2 The vicious financial cycle: Development, Development Contributions, Roads

The Eastern Link Road and the application LU/13953 are prime examples of a vicious cycle, which works like this: A developer pays development contributions, those contributions are used to finance roadbuilding, and new roads motivate further development.

The application LU/13953 motivation dangles R24.5 million in development contributions as carrot and states that such development contribution would be used to finance road building.

This vicious cycle benefits developer land owners and road-building lobby but not ordinary residents. Especially low-income residents are disadvantaged because they have no cars and use public transport. They reap no benefit from Development Contributions spent on roads.

3.3.3 Eastern Link Road construction, segment by segment

Any claim by the Applicant that LU/13953 can and should be considered in isolation from the ELR is a lie. Application Farm 1049/RE and construction of an **Eastern Link Road** (ELR) depend heavily on one another as follows:

- (a) Use of Trumali Road alone for access to a new Brandwacht suburb would be possible but inconvenient, and would of course increase the load on the R44. From the viewpoint of this application, an Eastern Link Road would be highly convenient for the new residents.
- (b) As explained, the Eastern Link Road in turn relies heavily on funding brought in by development contributions and/or provincial and national infrastructure grants.
- (c) It was already clear at the MSDF public meetings in 2018 that the strategy for getting the ELR built relied on getting individual segments constructed one by one, financed by the next new development: the segment between Techno Park and Paradyskloof would be financed by a Blaauwklippen application for development of Erf 1457/0, the segment

²The 2018 Roads Master Plan lists projects SRMP052 (Wildebosch to Blaauwklippen Rd) SRMP053 (Wildebosch to van Rheede) SRMP055 (van Rheede road extension east) SRMP056 (Suidwal Road) in connection with the Eastern Link Road. No cost estimates are provided. Priority of these projects is listed as "Medium".

between Paradyskloof and Brandwacht would be financed by the present application, and the last segment between Brandwacht and the Eerste River could then be motivated as “completing the road”.

3.3.4 Eastern Link Road: environmental and heritage impacts

The Eastern Link Road would have major environmental and heritage impacts: it would impact directly on the renosterveld sited on the lower part of Farm 368/2, immediately north of Brandwacht, and would split the Welgevallen Experimental Farm on Erven 16508 and 4261 in half. Eastwards extension of van Rheede Road would cut up Welgevallen even further. The necessary reconstruction of Suidwal Street and a bridge across the Eerste River would add to the environmental impact. Further environmental and heritage impacts would ensue on land belonging to Paul Roos and the Coetzenburg sports complex. The existing suburbs of Dalsig and Brandwacht would, of course, also be affected.

3.4 Other issues

3.4.1 Need for housing

There is a dire shortage of housing in Stellenbosch, but not in the luxury housing segment. An honest application of SPLUMA principles make quite clear that the present application LU/13953 Brandwacht does not conform to those principles. For example the SPLUMA *spatial justice* principle stresses *redress in access to land* i.e. the priority of low-income or GAP housing, the *spatial sustainability* principle explicitly requires that urban sprawl be limited, the *principle of good administration* requires that all spheres of government ensure an **integrated approach to land use and land development** that is **guided by the spatial planning and land use management systems**, not by the greed and desires of individual land owners.

3.4.2 Paradyskloof “Special Development Area”

- (a) There is no *Paradyskloof Special Development Area* in the MSDF, which would be the proper place to record its existence and purpose within the spatial planning strategy of SPLUMA and SM. The so-called *Paradyskloof Special Development Area* (PSDA) dates back to 2016. It was brought up by then Director of Planning Dupré Lombaard and was premised on the interest expressed by the Stellenbosch University Business School. The Business School has long ago decided to relocate not to Paradyskloof but to a site west of the Oude Libertas Theatre within the new ATC precincts.
- (b) From the start, the PSDA was in any case incompatible with foundational environmental principles in NEMA, the SEMF and indeed the IDP and MSDF, in that its site north of the Paradyskloof Waterworks hosts *Foothill Shale Renosterveld* as determined by qualified botanical consultants already back in 2005. Such renosterveld is one of the ecosystems classified as a Critical Biodiversity Area (CBA) under NEMBA (NEMA Biodiversity Act). See also Section B3.1.1 of the Stellenbosch Environmental Management Framework of 2018 (SEMF)
- (c) Figure 28 of the MSDF shows the Paradyskloof SDA area as a CBA. Developing this area would therefore be in contravention of the Biodiversity Act, the stated environmental policy of SM and even its MSDF.

3.4.3 Agriculture

- (a) Farm 1049/RE was bought by its present owners, Brandwacht Land Development (Pty) Ltd, from the previous owners Mazatlan Estates in 1998. At that time, all the factors listed by the Applicant’s motivational report were already known, including the cited letter from the Helderberg Irrigation Board (See Figure 5.4 in the motivational report), the proximity to the existing residential development of Brandwacht and Dalsig, the limited capacity of the Brandwacht strea, the agricultural potential, and the 1960’s road reserve. Brandwacht

Land Development bought Farm 1049/RE in full knowledge of these limitations. The land in question was and still is zoned Agriculture. Brandwacht Land Development hence bought an agricultural farm as such, with all the opportunities and limitations that went along with it. It is therefore disingenuous for the landowner to now cite these factors as motivation why agricultural activity is not possible on the land.

- (b) The truth is that Brandwacht Land Development bought the property with nothing but land speculation and residential development in mind. The first application for development already occurred in 1999, more than 22 years ago, and BLD has never stopped applying for development rights.
- (c) By its own approach and actions for the past 23 years, Brandwacht Land Development has voided any argument based on agricultural limitations. The MPT should have no sympathy with any of the Applicant's arguments with regard to agriculture.

3.5 Salami tactics in the past: Capitec headquarters and parkade

Salami tactics have been used in the past. The Capitec headquarters and parkade buildings in Techno Park provide an example. There were two successive applications, first for construction of the Capitec headquarters in application number LU/6562 which served before the MPT in March and May 2018, followed in October 2018 by a second "departure and amendment" application LU/8521 for the construction of a parking garage. The "departure and amendment" constituted a change from a simple parking lot in LU/6562 to a parking garage with five levels (basement, three storeys and roof parking) in LU/8521. The misleading nature of the "departure and amendment" process must be emphasised.

3.5.1 **Salami Part 1:** Page 19 of the original Capitec Site Development Plan for LU/6562, which was considered by the MPT in March and May 2018, is reproduced as the first page in Appendix N. This shows a three-storey Capitec Headquarters building (just visible on the right edge of Page 19) plus a shaded parking lot west of the headquarters on what was first called "Portion A" and later "Site C". On this Page 19, "Site C" is just a normal parking lot. The MPT approved the headquarters based on this information only, without a parkade.

3.5.2 **Salami Part 2:** Just a few months later in September 2018, "departure and amendment" application LU/8521 was lodged for a parking garage on Site C as reproduced on the second page of Appendix N. What had been a simple parking area in LU/6562 suddenly became a five-level parking garage with height 16.5 metres.

3.5.3 It is highly unlikely that a multimillion Rand project such as the parkade was just an afterthought which occurred to planners after the Part 1 approval. The more likely explanation is that plans for the parkade were already being conceived even as the empty parking lot plans were being submitted for approval in the Part 1 phase.

3.5.4 **Salami Part 3:** That does not seem to be the end of it. There are clear indications that a **conversion of the parkade to office buildings** was also being planned even as the application for the parkade was being made:

- (a) The Part 2 parkade application served before the MPT on 2 February 2019. The MPT was uncomfortable with the changes and referred the matter back to the administration for additional information.
- (b) Shortly afterwards, TV3 made a presentation to the MPT on 27 February 2019. The meeting minutes record that

Chairperson Mdludlu enquired whether there were no prospects that it [ie the parkade being applied for] will be converted into office blocks

to which the answer was

Mr Heys stated that if the need should arise, a formal application will be obtained from the Municipality. It's not a single purpose building. It can be redressed for the next generation in 20 years.

3.5.5 Suppression of objections

At the same meeting, the MPT enquired whether objectors had been informed and invited to this second meeting. They had not. The MPT approved the Part 2 application anyway but complained that the principle of *audi alteram partem* had not been observed by the Municipality.

3.5.6 Excavations and Environmental Impact Assessments

- (a) From late October 2019 or early November 2019, large-scale earth excavations were observed on Site C, covering the entire 6454 square metre area and with a depth of more than three metres in places.
- (b) A conservative estimate would be that more than 10,000 cubic metres of ground were excavated. A part of the excavated ground was apparently dumped in Jamestown, as the Eikestadnuus article shown in Appendix O indicates.
- (c) To emphasise the point made also in the Eikestadnuus article: these excavations were carried out at a time when the Part 2 application for changing the Site C parking lot to a parkade had not been approved. The MPT only had sight of this in February 2019, more than three months later. At that point, however, the excavations had already been completed, without approval.
- (d) To our knowledge, no environmental impact assessment was done on the Site C excavations. The MPT did not ask about EIAs in February 2019.
- (e) Throughout, Capitec representatives have maintained that Capitec had “approved building plans” for the parking garage but refused to reveal specific building plans or any claimed municipal approval documents of such plans. No doubt such approval and building plans had been legitimately issued with respect to the Part 1 headquarters building. There is reason to doubt, however, whether those approvals included the Part 2 parkade.
- (f) Even if such “municipal approval documents” had been in fact issued for excavations in terms of building regulations, the fact remains that the Part 2 application for the parkade had not served before the MPT at that point in time.

A List of Acronyms

ATC	Adam Tas Corridor
CBA	Critical Biodiversity Area
CITP	SM Comprehensive Integrated Transport Plan
EIA	Environmental Impact Assessment
ELR	“Eastern Link Road (?)”, some people’s wishlist project
FSM	Friends of Stellenbosch Mountain
IDP	SM Integrated Development Plan
IZS	SM Integrated Zoning Scheme
IZSB	SM Integrated Zoning Scheme By-Law
LUPA	Western Cape Land Use Planning Act (2014)
LUPB	SM Land Use Planning By-Law (2015)
MPT	SM Municipal Planning Tribunal
MR16	NLTA Minimum Requirements (2016)
MSA	Municipal Systems Act
MSDF	SM Municipal Spatial Development Framework (2019)
NEMA	National Environmental Management Act (1998) and derivative acts
NHRA	National Heritage Resources Act
NLTA	National Land Transport Act
NLTSF	National Land Transport Strategic Framework
PLTF	Provincial Land Transport Framework
PSDF	Western Cape Provincial Spatial Development Framework
SEMF	Stellenbosch Environmental Management Framework
SM	Stellenbosch Municipality
SPLUMA	Spatial Planning and Land Use Management Act (2013)

B Legal context of Brandwacht application and Eastern Link Road

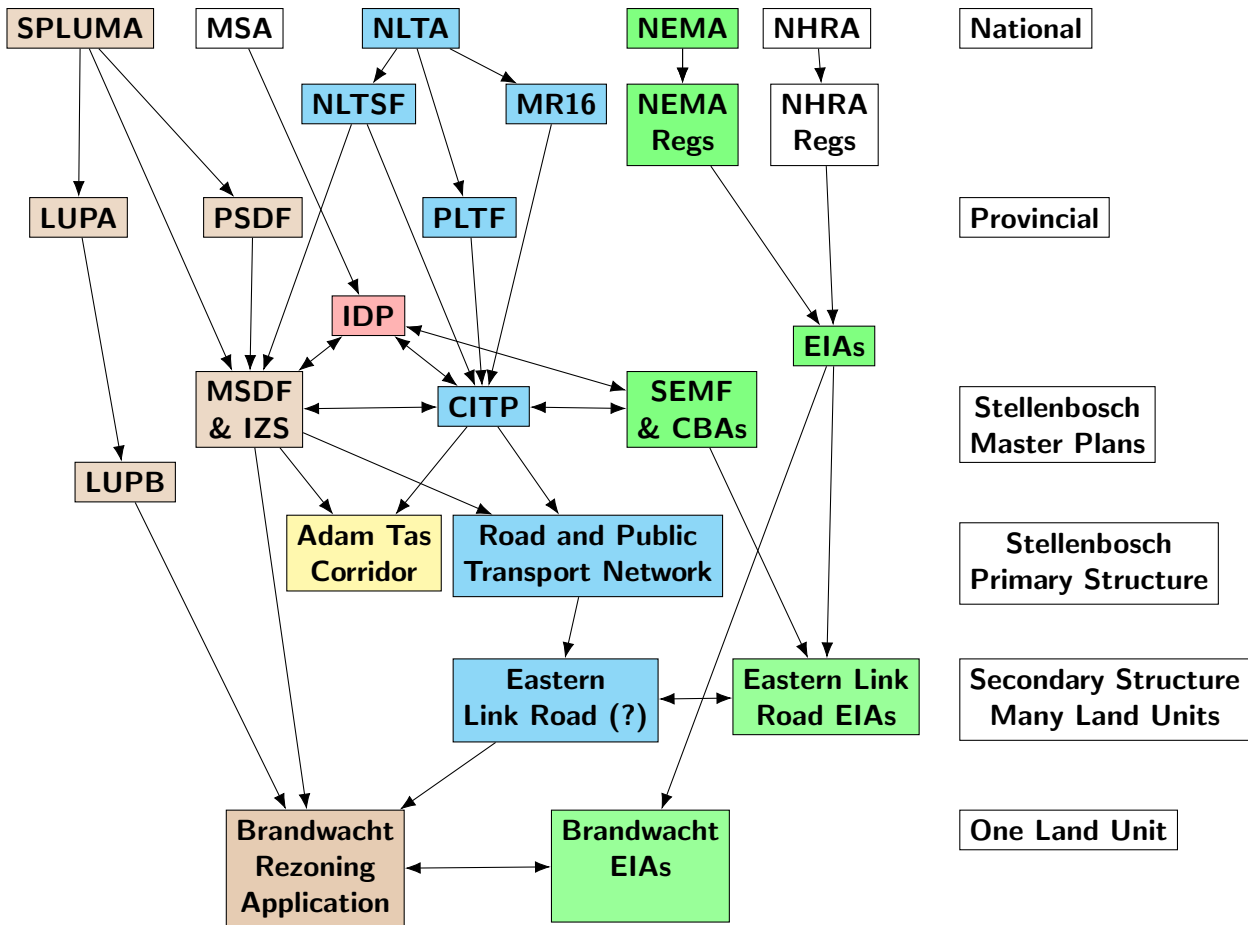


Figure 2: Brandwacht application in context. Each arrow shows which law or aspect prevails over another. Brown boxes denote land use legislation and processes, blue boxes denote mobility, and green boxes environmental ones. The Adam Tas Corridor spans land use and mobility. The Eastern Link Road may never be built but is essential for the Brandwacht rezoning application and must be considered in conjunction with it.

C Partial chronology of development history on Farm 1049 Brandwacht

The chronology regarding the application for development as presented by SRK in the Plan of Study for Scoping, the Background Information Document, the Draft Scoping Report as well as its Executive Summary version are all gross misrepresentations. A more complete chronology is presented here, reconstructed from various sources.

1965	Mazatlan Estates, owner of Farm 1049, is sold to the present applicant (du Toit, Puddu, Gildenhuys).
17 Aug 1967	Mazatlan Estates develops part of the farm into what is now Brandwacht township.
19 Dec 1989	Application for amendment of the then Cape Metropolitan Guide Plan to allow township development on the farm.
20 Feb 1990	Stellenbosch Municipality supports amendment to the Guide Plan.
13 Mar 1990	This resolution was rescinded; Municipality opposed to the amendment of the Guide Plan.
20 Apr 1995	Application to Winelands Regional Services Council for incorporation of farm into Stellenbosch Municipality, as well as subdivision and rezoning.
25 May 1995	Application for consent in terms of the Agricultural Land Act No 70 of 1970.
19 Jun 1995	Letter WRSC to applicant saying it would handle application for the amendment of the Guide Plan, the rezoning application and the application for incorporation.
21 Jun 1995	Letter Department Agriculture to applicant turning down application for subdivision
5 Jul 1995	Letter Cape Metropolitan Council to Municipality asking for the application to be advertised.
25 Aug 1995	Application on Inclusion, Rezoning, Subdivision (NOT amendment of Guide Plan) advertised.
4-12 Oct 1995	Lots of objections received, supplied to applicant
5 Oct 1995	Winelands supports inclusion into Municipal Area
undated 1995:	Memo by Mazatlan to Director General of Agriculture Pretoria asking for revision of negative Dept Agriculture decision (no copy of letter was supplied to the Municipality).
8 Dec 1995	Dept Agriculture to applicant: Department is now willing to review decision.
14 Dec 1995	Applicant writes to Municipality asking for information on studies
19 Dec 1995	also 8 Jul 1996: Dept Agriculture to Applicant: guide plan decision must be made by Western Cape Province (PAWC)
19 Dec 1995	Agriculture to Municipality asking for IAP comment
9 Feb 1996	Agriculture to Municipality: Guide Plan is proclaimed Structure Plan; comments should therefore be sent to Provincial Administration (PAWC) Planning.
14 Feb 1996	Meeting between Municipality, WDC, PAWC, Agriculture on principles of new structure plan
21 Apr 1996	Minister of Agriculture to applicant: Application may not be considered until new planning policy for environment has been approved.
1 Jul 1996	First written reply by applicant to objections received in October 1995. Inclusion of Agriculture 21 April letter.
5 Aug 1996	Municipality to PAWC asking for comment (given the "ongewone betrokkenheid van PAWC") on issues
19 Sept 1996	WC Planning to Municipality: advertise amendment of Structure Plan separately

1 Nov 1996	SECOND advertisement after PAWC request, lots of objections received.
31 Jan 1997	Applicant's replys to objections given to Municipality
25 Mar 1997	Stellenbosch Council accepts recommendations on higher densities, limiting loss of agricultural land, limiting urban sprawl, Urban Area, SMZ. (p. A.11)
7 May 1997	Meeting Municipality-TV3-Agriculture-PAWC: present application does not conform to principles. Applicant given chance to change his application.
3 Jun 1997	Council turns down application. Refusal is motivated in detail on many grounds. Applicant must show that the farming unit is not economically viable. Officials want proof that agricultural land is NOT high potential: “dat die aansoek ... vir afkeuring aanbeveel word tensy die aansoeker ... bewys kan lewer dat die betrokke plaas nie 'n ekonomiese landbou-eenheid is nie, in welke geval die Raad die aansoek in heroerweging sal neem.” There is a big difference between SUPPORT and RE-CONSIDERATION.
May 1998	Soil survey report by Lambrechts and Schloms
28 May 1998	Applicant to Municipality: claim that farm is not economically viable. Asks for application be considered in conjunction with Paradyskloof Golf Resort.
7 Jul 1998	Mazatlan sells Brandwacht to Brandwacht Land Development; both companies are owned by the du Toit/Puddu/Gildenhuys clan.
3 Nov 1998	Provincial Dept of Planning to TV3: Scoping exercise required.
11 Nov 1998	Mazatlan to Municipality: embarking on scoping exercise.
12 Nov 1998	Mazatlan to Provincial Planning: SRK engaged to carry out EIA and scoping.
18 Jan 1999	Memo Hardcastle (CNC) to Pretorius (Dept Planning) regarding Brandwacht: relation with Stellenbosch SDF
Apr 1999	Specialist studies: Traffic, others
Mar 1999	River specialist study by Ractliffe
30 Mar 1999	Period of comment ends
24 May 1999	Declaration of Conflict by Stellenbosch Save the Mountain Alliance (SSMA) against SRK in terms of NEMA
12 Jun 1999	Retief Olivier of IMSSA appointed as mediator in conflict
17 Jun 1999	second scoping feedback meeting held by SRK
29 Jun 1999	Meeting Olivier — SRK
Jul 1999	Draft Scoping Report available for public comment
27 Jul 1999	Meeting Olivier — SSMA
19 Aug 1999	Mediation session, centering on revision of the Executive Summary of the DSR
5 Oct 1999	Final version of Executive Summary made available to SSMA
21 Oct 1999	Meeting Olivier — SSMA: SSMA says that the Executive Summary was inconsistent with the revisions agreed on on 19 Aug and that trust had now broken down.
26 Oct 1999	Report on conflict resolution by R Olivier: It was therefore deemed that the conflict has not been resolved and that the Executive Summary does not reflect and represent IAP's concerns in any fair and unbiased way . . .
Oct 1999	Final Scoping Report submitted by SRK to DECAS (formerly CNC)
Jul 2000	DECAS requires recommendation from Dept of Agriculture
May 2001	Dept of Agriculture requires soil study
Sep 2001	Soil survey completed
Feb 2002	Reduced application submitted to Dept of Agriculture by TV3

19 Feb 2002	Dept of Economic Affairs accepts conditionally the proposed development of 18.5 ha
17 Apr 2002	Dept Agriculture agrees to 18.5 ha development proposal
28 Aug Nov 2002	Stellenbosch Town Engineer requires infrastructural upgradings and pro rata participation
Sep 2002	Checklist and documentation submitted as required by DEA& DP
14 Feb 2003	Reduced application advertised, then aborted
18 Feb 2003	Comment by Director Regional Planning recommending that the proposed development is not desirable in terms of LUPO.
13 Mar 2003	Chennels Albertyn to TV3: takes up again the declared conflict and its issues, as well as agricultural land and other matters
Aug 2003	Heritage study completed, required by DEA& DP
15 Sep 2003	Heritage Western Cape to Albertyn: application for declaration as a provincial heritage site should include the historic farm and remaining agricultural land. 200 units considered inappropriate.
Nov 2003	New scoping process required
2 Nov 2003	Stellenbosch Town Engineer satisfied by Traffic Impact study methodology
25 Jun 2004	Submission of EIA Application Form and Checklist; Submission of Plan of Study for Scoping (PoSS)
20 July 2004	1:50 floodline set out
13 Aug 2004	Advertisement of EIA process in Eikestadnuus.
15 Oct 2004	Release of Draft Scoping Report by SRK
3 Nov 2004	"Open House" held by SRK. No formal presentations are made as, according to SRK, "people have had two previous opportunities (in 1998) to participate in public meetings."
10 November 2004	Brandwacht Action Group to Dept Agriculture re soil potential
15 Nov 2004	End of period for comment on Draft Scoping Report; many IAP comments submitted
16 November 2004	Hearing by municipal Planning and Economic Development
19 April 2005	SRK Final Scoping Report available (dated December 2004, re all of Farm 1049)
April 2005	Further correspondence between SRK and Chennells Albertyn Attorneys acting on behalf of Brandwacht Action Group; complaints why the Scoping Report was submitted to DEADP but had not been made available to IAPs
7 December 2006	Record of Decision issued by DEADP authorising 3ha office park, 2.5ha rural hotel, remaining 43ha to remain agricultural land. Residential component refused.
22 December 2006	Appeal lodged at DEADP by Brandwacht Land Development against Record of Decision
29 January 2007	Letter from Brandwacht Action Group to MEC Essop opposing BLD appeal
5 February 2007	Letter from Stellenbosch Interest Group to MEC opposing appeal
21 March 2007	Article in <i>Die Burger</i> about the Western Cape Department of Agriculture opposing development even of low-potential agricultural land
30 March 2007	Letter from Stellenbosch Ratepayers' Association opposing the appeal
15 October 2008	Letter from new MEC for Environmental Affairs, Pierre Uys, to Brandwacht Action Group informing the BAG that he has "varied the decision of the delegated officer of DEADP dated 8 December 2006". 120 residential units to be allowed on 18.5ha; the remaining 30ha to remain agricultural land.
29 October 2008	Brandwacht Action Group requests Uys to provide reasons

November 2009	TV3 LUPO application for structure plan amendment, rezoning, subdivision and departure on 18.5ha
12 December 2008	Letters Brandwacht Action Group to Municipality and to Agriculture MEC Cobus Dowry re Uys variation decision
10 March 2009	Stellenbosch Planning and Development Services recommends change of structure plan and subdivision after 84 objections received (2.5ha hotel, 120 residential units 5.9ha, open space 7.1ha)
10 March 2009	Appeal by Stellenbosch Ratepayers' Association against the change of structure plan and subdivision
6 April 2009	Ratepayers' Association request for reasons
30 April 2009	MEC Pierre Uys amends Stellenbosch structure plan; remainder remains zoned Agriculture
4 July 2009	LUPO Appeal sent by Chennells Albertyn on behalf of Brandwacht Action Group to MEC for Environmental Affairs
11 October 2010	DEADP MEC Anton Bredell extends the validity period of the authorisation of 15 October 2008 by two years
26 May 2015	Traffic Impact Assessment re 1049/2 (hospital)
2015	Rezoning from Business Zone II to Institutional Zone (hospital)
3 March 2016	Farm 1049/2 applies for change in environmental authorisation (hospital building)
10 May 2016	EIA report for F1049/2 available
2016	Directorate Infrastructure Services commissions detailed maps including Eastern Link Road (drawn by ICE)
2017	Infrastructure Services, TV3 and ICE push plans for the Western Bypass and Eastern Link Road
April 2017	DTPW letter to Stellenbosch Municipality explicitly requires construction of Schuilplaats to Trumali connector
April 2017	<i>DTPW strongly supports the suggested extension of Wildebosch Road to link with the extension of Trumali Road to be a priority for implementation by the Municipality</i>
2018	Preparations for development of the remainder of Farm 1049 commence.
November 2017	ICE gives public presentations on bypass roads at the MSDF meetings on behalf of Stellenbosch Municipality. FSM complains about conflicts of interest.
February 2018	F1049 Heritage Impact Assessment (Lize Malan)
February 2018	F1049 Detailed site development plans already developed by TV3
February 2018	F1049 OABS Agricultural Potential Study
March 2018	Traffic Impact Statement and detailed alignment of Eastern Link Road compiled by ICE
April 2018	F1049 Bloom economic study
April 2018	Roads Master Plan completed
May 2018	Letter Dept Agriculture to TV3, no objection
June 2021	Attempts to include F1049/RE into the urban edge of the MSDF
November 2021	Final MSDF puts F1049/RE outside the urban edge
4 April 2022	TV3 submits application LU/13953 for rezoning
28 April 2022	Roads Master Plan "approved" by Council, includes bypass roads
1 September 2022	Notice given to IAPs
30 September 2022	Published deadline for IAP comments
24 October 2022	Extended deadline for comments
October 2022	Roads Master Plan again "approved" by Council

D November 2019 MSDF: Policy on Urban Edge

B. Public Comment Received Following Advertising of the Draft MSDF

The Draft MSDF was advertised for public comment during March 2019, and again during May 2019. Comments received during both rounds are summarised in Tables 51 and 52. Several observations can be made related to the comments received, addressed under themes in the paragraphs below.

Urban edges

The overwhelming majority of comments received relate to urban edges. On the one hand, there are requests for the extension of urban edges, and mostly the extension of urban edges into land currently reserved for agricultural purposes. On the other, there are objections to smallish extensions of urban edges to include infill residential development – in a way rounding off current edges in places where services exist – and providing more opportunity for housing adjacent to existing urban development.

The requests for urban edge amendments – mostly submitted via town planning consultants representing private landowners of agricultural land – is extensive. A more detailed analysis of these requests, based on comments received in response to the Draft MSDF (and also including an analysis of comments received on the previous MSDF) is summarised in the map forming part of this appendix (Diagram 1). Some 1 375ha of land is involved, a land area almost comparable to the size of Stellenbosch town.

It is a serious issue. If accepted, all requests for urban edge expansions will result in the large scale loss of valuable agricultural land and associated opportunity. Furthermore, it will disperse development energy to the extent where national, provincial, and local settlement development and management policy objectives aimed at the compaction of urban settlements (and associated benefits) will probably never be achieved.

Should the policy position to contain the lateral sprawl of settlements be valued, it appears to be very important to take a tough stance now in decision-making related to settlement development. The continued dispersal of development energy – focused on ad hoc development of peripheral land – will in all likelihood render achieving more compact settlements unachievable. At the same time, the loss of agricultural land and nature assets is likely to have serious consequences on future livelihood sustainability.

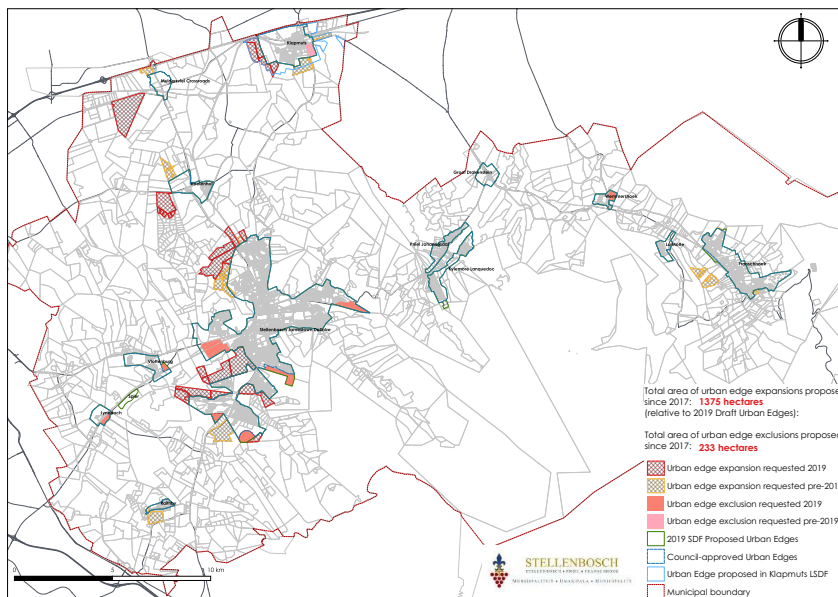
The MSDF simply asks decision-makers to enable an opportunity to achieve agreed policy objectives. Hold urban edges for now as far as possible to enable compaction and more efficient settlement development to take place. This position is not negligent of various concerns and issues related to agricultural activity, including that of safeguarding agricultural assets from theft where farms adjoin urban development, issues related to land redistribution, and so on. Also, it is understood that compacting settlements is a tough task. Associated land is often expensive, there are issues of adjoining activity and "rights" to be considered, the need for partnering between land owners, and reconfiguring existing infrastructure (as opposed to designing things "anew"). It is not the development approach that we have become accustomed to. Albeit it is easy to frame a policy of compaction and curtailing sprawl; implementation is tough and not the norm. Yet the MSDF has identified a significant alternative: the Adam Tas Corridor initiative. The project provides the opportunity to fundamentally restructure Stellenbosch town – benefitting large numbers of people. However, it will only succeed if tight urban edges are maintained in parallel to rolling out the project. In the case of Klipmuts, the development of Farm 736/RE will unlock land and infrastructure development for which municipal funding does not exist. In this settlement, as in

Stellenbosch, it is important to realise development potential in an orderly manner. Widespread urban edge expansion and allocation of rights in response to a policy position recognising the growth potential of Klipmuts may undermine initiatives for which bankable business plans and development programmes exist.

The second issue relates to public reaction to land identification initiatives to extend residential opportunity adjacent to existing residential areas on the urban edge, rounding off existing urban edges, and often involving public land. Clearly, if settlements are to be compacted, and residential opportunity to be extended within existing settlements, every opportunity needs to be explored to do so. However, residents in established communities adjacent to such land appear to fear the implications of further development. It is perceived that the quality of neighbourhoods will diminish, property values be impacted upon, and so on. Again, these fears are real, and should not be ignored or taken lightly.

Infill development is a necessity to achieve compact, more efficient settlements and maintain assets of nature and agriculture. The key appears to be the processes followed in enabling infill development. Open processes should be followed – as prescribed in legislation – where the concerns of existing residents are heard, respected, and incorporated in planning. At the same time, existing residents need to recognise that others have needs, and fulfilment of these needs lie at the heart of sustaining livelihood opportunity and well-being for settlements as a whole.

Finally, it appears that there is a view that the inclusion of land within urban edges is a "right to develop" and first step to acquire "higher" development rights. It is as if many have little regard for the overall principles of the MSDF (or that of its higher level statutory and normative context as



Proposed urban edge expansions and exclusions

outlined in SPLUMA and related national, provincial, and local policy). Inclusion in the urban edge has become a "guarantee" to development rights. The MSDF process has primarily become a discussion of urban edges – what is in and what not – as opposed to organising activities in space in a manner which serves the public good.

An urban edge is a planning instrument employed to direct and manage the growth of an urban area towards achieving stated objectives. It should not be seen as giving rise to development rights, or as a means to circumvent or underplay appropriate environmental, infrastructural, and planning investigations. Urban edges could be adjusted, if it is proved that this would result in benefit to the overall settlement and community in multi-dimensional ways. If a developer or project initiator believes – and can prove – that a development proposal will be aligned to or benefit stated and agreed national, provincial, and local settlement development and management objectives, it should matter little whether the proposal is located outside the urban edge.

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. In the case of SM, this focus is to compact settlements as far as possible.

Klipmuts

The MSDF, aligned with higher level settlement development policy, identifies Klipmuts as a place with significant development opportunity. A previous

study – aimed at establishing Klipmuts as a “special economic development area” – has created high expectations among land owners, and numerous requests for urban edge adjustments.

It is not the purpose of the MSDF to prepare a LSDF for Klipmuts. Rather, the MSDF sets out to identify the overall role of and core principles for the future development and management of Klipmuts. The MSDF expresses concern about the extent of development projected through the previous study for both Klipmuts south and north (in the case of the north, DM commissioned a LSDF for the area east of Farm 736/RE). In many cases, there appears to be limited evidence of “bankable” business cases for the extent of development proposed. The MSDF therefore cautions against extensive adjustments beyond the current urban edge. The focus should rather be on supporting the implementation of projects achievable over the planning period, and careful further phasing of future development based on bankable development proposals.

Farm worker housing

The provision of farm worker housing is a key issue. A number of proposed farm worker housing initiatives are under preparation, including proposals at Meerlust, Koelenhof, and De Novo. The Municipality supports initiatives to provide farm worker housing/ agrif-villages. A key issue is whether or not this form of housing should be delineated by an urban edge. The Municipality is of the view that farm worker housing does not necessarily require inclusion within urban edges. It can occur within the rural landscape. This discussion – whether or not to include farm worker housing within urban edges – should not impede the provision of farm worker housing in any way.

The Stellenbosch Northern Extension

A number of comments relate to the delineation of the northern edge of Stellenbosch town in the vicinity of Kayamandi. The proposed northern edge

has been adjusted in discussion with municipal housing officials. Given the slope of land north of Kayamandi, it is suggested that this edge be determined in detail based on detailed studies associated with specific development proposals. The current proposal suggests some extension north of Kayamandi, as opposed to unimpeded northern growth following the R304.

The Adam Tas Corridor initiative

The Adam Tas Corridor initiative received broad support in deliberations about the MSDF. It is a critical initiative, indicating how many national, provincial, and local policy objectives – including compacting settlements and containing sprawl – can be achieved in Stellenbosch town.

Achieving the potential of the project will not be easy, and will require partnering, institutional, and procedural arrangements beyond the norm for development in South Africa. Nevertheless, considerable progress has been made on the project, in parallel with developing the MSDF. It is an opportunity to restructure Stellenbosch town in a manner which serves many diverse needs, and will receive considerable focus during the 2019/ 20 business year as part of the MSDF implementation framework.

Droë Dyke

The MSDF identifies the Droë Dyke area as ideally situated to address housing needs in Stellenbosch in a manner which serves national, provincial, and local settlement management objectives. Objections have been received stating that this land is used for agricultural research purposes and could not be considered for development.

Notwithstanding these objections, the MSDF maintains that the area is ideal for housing development, supports associated policy directives, and form an integral part of the Adam Tas Corridor initiative. The Municipality has approached the HDA to assist in unlocking the land (owned by

the National Department of Public Works). In this process, issues of current use will be addressed.

Van der Stel Sports Grounds

Some concern has been expressed related to the possible future development of the Van der Stel Sports complex. Redevelopment of the site could contribute significantly to restructuring Stellenbosch town. However, 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 to sport opportunity and associated facilities.

TechnoPark

In terms of the MSDF, TechnoPark should be developed and promoted to become an even more specialised zone for technological inventions and a hub for specialised business. Ideally, all stakeholders should work together to create an environment where the special purpose of TechnoPark can be developed to its full potential.

“Relief”, link, and by-pass roads

Considerable public debate in Stellenbosch has focused on the possible construction of relief, link, or by-pass roads. This is a response to increasing traffic congestion experienced at particular times on specific routes in and around Stellenbosch town. The MSDF maintains that a precautionary approach is required towards major road construction in and around Stellenbosch. Ideally, significantly more opportunity should be made for ordinary workers and students to live within Stellenbosch, in that way relieving existing roads of commuters. At the same time, the University, large corporations, and the Municipality should proactively work together to introduce traffic demand management measures, supported by the provision of NMT infrastructure and associated systems.

E 2019 MSDF: explanation why Farm1049/RE was not included in Urban Edge

No.	SUBMISSION	KEY COMMENTS / ISSUES RAISED	THEME	MUNICIPAL RESPONSE
10	VIRDIUS WORKS (PTY) LTD EMAIL SUBMISSION: 23 APRIL 2019	<ul style="list-style-type: none"> Objection is made to the inclusion of state land for urban development purposes at Stellenbosch: Farm Vredenburg no. 281, the remainder and portion 8 of farm Vredenburg No. 283, Portions 17 and 35 of farm Grootvlei No. 188, and Farm 1357. The above referred state-owned land falls into the category of unique agricultural land where expansion of the agricultural output must be promoted. As part of the Stellenbosch Municipality Heritage Survey numerous parcels of land within the municipality have been indicated for proposed exclusion from Act 70 of 1970. These are in Kromrivier, Klopnuts, Priel, Lanquedoc, Kylemore, the Franschoek area, La Motte, Wemmershoek, Stellenbosch, and Ratfby (the land parcels are listed in the submission). 	Proposed use of some "agricultural land areas" for urban development and proposed exclusion of other land areas from the provisions of Act 70 of 1970	<ul style="list-style-type: none"> The MSDF sets out to consider the appropriate use of land from a range of perspectives (not only its current use). The Droë Dyke area is ideally situated to address housing needs in Stellenbosch in a manner which serves national, provincial, and local settlement management objectives. The Municipality has approached the HDA to assist in unlocking the land (owned by the National Department of Public Works). In this process, issues of current use will be addressed. The Municipality understands that a proclamation for various land parcels to be excluded from the provisions of Act 70 of 70 was retracted. Nevertheless, exclusion of land from the provisions of the Act does not of necessity imply that the Municipality should consider the land for urban development or include the land parcels within the urban edge.
11	PHILIP LUND RESIDENT AND LANDOWNER, FRANSCHHOEK EMAIL SUBMISSION: 25 APRIL 2019	<ul style="list-style-type: none"> The change of streets from single residential properties into streets comprising commercial properties is ruining Franschoek. There is a need for regulations related to "Airbnb's" in the area (the lack thereof is ruining the market value of the current residential buildings). The longer term planning objectives have been replaced by short term convenient but harmful planning decisions on property development use, "capped" by the lack of enforcement. 	Land use change in Franschoek	<ul style="list-style-type: none"> The MSDF emphasises the need to maintain the unique character of Franschoek, while providing in the needs of residents. This includes maintaining a balance between the needs of residents and tourism establishments/ activities (critical to sustaining livelihoods). The concerns raised predominantly relates to matters of zoning and land use management.
12	TV3 ARCHITECTS AND TOWN PLANNERS, ON BEHALF OF BRANDWACHT LAND DEVELOPMENT (PTY) LTD EMAIL SUBMISSION: 25 APRIL 2019	<ul style="list-style-type: none"> The submission expresses support for the Draft MSDF, in that comments submitted on the 25 April 2018 have been included in the Stellenbosch urban edge and earmarked it for future urban development. 	Stellenbosch urban edge	<ul style="list-style-type: none"> The proposed urban edge was adjusted to include a smaller, more rational development area.
13	FEEDBACK WARD 19 AT BOTTELARY TENNIS COURT HALL 24 APRIL (COMMENT AT THE PUBLIC MEETING)	<ul style="list-style-type: none"> Concern was expressed related to the De Novo township not being included within the urban edge. 	De Novo township urban edge	<ul style="list-style-type: none"> The Municipality is of the view that the farm worker housing and institutional focus of De Novo do not necessarily require its inclusion within an urban edge.

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**Comments on the
2019 Draft Municipal Spatial Development Plan**

8 May 2019

BY EMAIL

Contents

1 Preliminaries	2
2 General comments on the MSDF	2
3 Urban Edge extensions and the Urban Edge Guidelines	3
3.1 Brandwacht Farm 1049	3
3.2 Paradyskloof (Farm 369)	4
4 Roads and car traffic in the context of the MSDF	6
4.1 General	6
4.2 Eastern Link Road, again	6
4.3 A bigger picture emerges	7
5 Governance	9
A Comparison of MSDF Concepts with Brandwacht/Paradyskloof Urban Edge extension proposals	11
B Appendix: Extracts from the Urban Edge Guidelines 2005	13
C Appendix: 2009 letter regarding Brandwacht development proposal	23
D Appendix: Email regarding roads strategy	29

G Comparison of MSDF Concepts with Urban Edge extension proposals

In this table, “Brandwacht” refers to exactly the Farm 1049/RE which is the subject of the present application, while “Paradyskloof” refers to the renosterveld area on Farm 369/RE north of the Waterworks.

Page	Sect	MSDF text	Paradyskloof	Brandwacht
			Compatibility	Compatibility
49	4.1	Maintain and grow the assets of Stellenbosch Municipality’s natural environment and farming areas. Critical biodiversity areas, valuable land areas (including agricultural land), land affecting the maintenance of water resources, and so on, cannot be built upon extensively, it cannot be the focus for significantly accommodating existing or future settlement need spatially.	PKloof is a biodiversity area. IN-COMPATIBLE	Brandwacht is a farming area. IN-COMPATIBLE.
49	4.1	3: Direct growth to areas of lesser natural and cultural significance as well as movement opportunity	High natural significance	Some cultural significance
62	5.2	Critical biodiversity and nature areas: Work to extend, integrate, restore, and protect a system of protected areas that transect the municipality and includes low-to-high elevation, terrestrial, freshwater, wetlands, rivers, and other ecosystem types, as well as the full range of climate, soil, and geological conditions.	PKloof is a biodiversity corridor	N/A
62	5.2	Critical biodiversity and nature areas: Maintain Core (and to an extent Buffer) areas largely as “no-go” areas from a development perspective, only permitting non-consumptive activities (for example, passive outdoor recreation and tourism, traditional ceremonies, research and environmental education).	Figure 26 shows SPCs 1b, 2.	N/A
62	5.2	Water courses: No development should be permitted on river banks below the 1:100 floodlines.	Schuilplaats Valley actually contains a river.	N/A
62	5.2	Agricultural land: High potential agricultural land must be excluded from non-agricultural development.	N/A	The soil is considered medium to high potential.
62	5.2	Urban edge: Prohibit the ad-hoc further outward expansion of urban settlements through maintaining relatively tight urban edges.	Very much ad hoc: FAIL	Developer-driven ad hoc: FAIL
62	5.2	Scenic landscapes: Maintain a clear distinction between urban development and nature/agricultural areas at the entrances to settlements.	Development proposal blurs that distinction	N/A
63	5.2	Areas for residential densification and infill: Actively support residential densification and infill development within urban areas (with due consideration to the valued qualities of specific areas).	Biodiversity area, no development	If development at all, then high density.

Page	Sect	MSDF text	Paradyskloof	Brandwacht
			Compatibility	Compatibility
62	5.2	Community/institutional use: Cluster community facilities together with commercial, transport, informal sector and other activities so as to maximise convenience, safety and socio-economic potential.	Far from commerce and transport	Far from commerce and transport
62	5.2	Community/institutional use: Institutional buildings (accommodating community activities, educational and health services, and entrepreneurial development and skills training) should be located at points of highest access in urban settlements.	Very inaccessible	Inaccessible
63	5.2	Actively support the Adam Tas Corridor within Stellenbosch town for new mixed use development.	Far from ATC	Far from ATC
67	5.3	Stellenbosch Town: Maintain and improve the nature areas surrounding Stellenbosch town.	FAIL	N/A
67	5.3	Stellenbosch Town: As a general principle, contain the footprint of Stellenbosch town as far as possible within the existing urban edge (while enabling logical, small extensions).	Neither logical nor small	Some logic, but not small
67	5.3	Stellenbosch Town: 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).	as above	as above
67	5.3	Stellenbosch Town: Cluster community facilities together with commercial, transport, informal sector and other activities so as to maximise convenience, safety and socio-economic potential.	as above	as above
101	6.4	Proposed MSDF Policy: Actively promote compact, dense, mixed use development which reduces car dependence and enables and promotes use of public and NMT.	Car dependence would be total	Highly car dependent
101	6.4	Proposed MSDF Policy: Work towards and maintain – for each settlement in the municipality – a compact form and structure to achieve better efficiency in service delivery and resource use, the viability of public and NMT, and facilitate inclusion, integration, and entrepreneurship development.	No compaction, no efficiency, no public transport or NMT compatibility	Ditto
101	6.4	Proposed MSDF Policy: Adopt a conservative view towards the extension of existing urban edges over the MSDF period.	Would be non-conservative	Nonconservative
101	6.4	Proposed MSDF Policy: Support increased densities in new, infill, and redevelopment projects.	N/A	Would hence have to result in high-density infill

Page	Sect	MSDF text	Paradyskloof	Brandwacht
			Compatibility	Compatibility
101	6.4	Proposed MSDF Policy: Focus major development effort in SM on unlocking development in Klapmuts North and the Adam Tas Corridor (in Stellenbosch town).	At the opposite end	At the opposite end
		Urban Edge Guidelines: The function of an urban edge is two-fold, namely: * It is a growth management tool, used to limit sprawl and the outward growth of urban areas, in favour of densification and infill development, to ensure the more efficient use of resources and land within the urban area ; and * It is a conservation tool, used to exclude certain elements of the environment from the urban area, in order to protect or preserve it, or to discourage its development in the short and medium term, while the long term implications are uncertain.	Extension does not limit sprawl, does not exclude environment	

H Extracts from the Urban Edge Guidelines 2005

The text below represents exact quotes from the 2005 Urban Edge Guidelines. The item numbers shown are those of the Urban Edge Guidelines section numbers. Bold highlighting is ours.

Exec Summary: An urban edge is a demarcated line to manage, direct and control the outer limits of development around an urban area. The intention of an urban edge is to establish limits beyond which urban development should not occur.

Exec Summary: The field research however indicated that market pressure in many regions caused local authorities to approve land use applications that are in conflict with national and provincial planning policy and detrimentally affect the environment.

Exec Summary: Urban edges are matters of regional significance and would therefore remain with the PG:WC for decisions.

- 1.3 **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. . . .**
- 1.3 Definition of the Guideline For The Management Of Development On Mountains, Hills And Ridges Of The Western Cape (Directorate : Environmental Management, 2001): It is a demarcated line to manage, direct and control the outer limits of development. **The intention of the urban edge is to establish limits beyond which urban development should not be permitted.**
- 1.5 Stringent town planning regulation and control, e.g. regulating development densities and the location of new development, is seen as the most important contributing factor in the virtual elimination of urban sprawl in Britain (Geyer, 2002).
- 2.2 **There are two major categories of edges, namely hard and soft edges. . . . Soft edges have the potential to promote sprawl and the negative growth trends that need to be discouraged.**
- 3.1 [As the] criteria and issues to be considered are so divergent, a typical “checklist approach” would have to be used in determining which of the factors and issues are of relevance to a specific urban area.

- 3.1 [...] **urban growth far exceeds the natural population growth and the economic growth of these towns and areas.** The number and value of building plans has for example grown by 100 % year on year during the last two years in one of these towns, whereas the expansion of the town into the rural hinterland amounted to less than 15% growth. It is therefore obvious that the establishment of urban edges is an essential element in the planning of the Southern Cape urban areas in order to prevent continuous growth, mostly in linear format along the Garden Route and the sea.
- 3.3 Urban And Rural Use Definitions: . . . urban development includes all development of land where the primary use of the land is for the erection of structures . . . as opposed to the potential for use of the property with no building development.
- 3.3 The decision relating to smallholdings should be primarily based on the use of the property, i.e. for the generation of a primary income (urban agriculture or bona fide agricultural use) or whether it is merely a low density residential use where the owner of the property generates a primary income by working elsewhere and augmenting the primary income by the keeping of live stock or the planting of crops. Smallholdings used for bona fide agricultural purposes would or should typically be excluded from the urban area by delineation of an urban edge.
- 3.4 Urban Edge Functions And Concepts: The purpose of an urban edge is to manage, direct and phase urban growth pro-actively and to protect environmental resources outside of the urban area. It must thus assist all role-players in achieving the “triple bottom line” goals of social, economic and environmental sustainability in development.
- 3.4 The function of an urban edge is two-fold, namely (1) It is a growth management tool, used to **limit sprawl** and the outward growth of urban areas, in favour of densification and infill development, to ensure the more efficient use of resources and land within the urban area ; and (2) it is a **conservation tool**, used to exclude certain elements of the environment from the urban area, in order to protect or preserve it, or to discourage its development in the short and medium term, while the long term implications are uncertain.
- 3.4 **[A soft edge] has however received much attention in literature and has been proven to be ineffective** and indeed a contributing factor to urban sprawl, as it encourages **leapfrog development** in the long term.
- 3.4 Ecological or biological diversity and conservation areas, proclaimed public nature reserves and heritage sites, protected natural environments and any other statutorily established sensitive environment conservation area, . . . seem to be more efficient as urban edges than any other land use. . . . It seems as if an urban edge would only be a long term edge if there are legislated grounds for the protection of the non-urban uses outside of the edge. If not, the edge seemingly becomes just another issue in the consideration of land use and development applications, dictated by market forces.
- 3.4 **[Reasons should be provided:]** An urban edge should not be defined as a simple continuous growth boundary, but rather **a combination of purpose drawn lines with fixed points. Over its entire length it must be determined in segments to achieve specific goals**, such as the conservation of environmental assets, promoting integration in the urban area, promoting growth in desirable areas, containing sprawl along major transport routes or limiting expansion beyond the reach of services infrastructure. The urban edge could thus form part of spatial development framework, as a clearly defined line on a map, **representing an identifiable line in the landscape.** In addition thereto, **the determinants relating to each segment should be indicated in the same document, as consideration of applications relating to that edge line would have to consider all the relevant factors, which would only be possible if the factors are clearly defined and shown.**
- 3.5 **Edge Determination And Management Criteria** (a selection)

- Prominent landform and character areas ;
- Valuable soils ;
- Hydrology (surface and ground water features) ;
- Ecological resources (aquatic and terrestrial) ;
- Protected areas (conservation sites) ;
- High intensity / potential agricultural resources ;
- Services infrastructure (barrier effect) ;
- Availability of developable land in urban area ;
- Visual impact ;
- Bio-regional spatial planning categories (core and buffer) ; and
- Density policy for residential development in rural towns.

3.5 [An urban edge] is not a line drawn around features excluded from development inside the larger urban area. . . . The following explanation and evaluation of the criteria and issues must generate an in depth debate of the case for inclusion or exclusion of certain areas or elements in the environment from the urban edge. It is suggested that the criteria and informants be used for the following purposes

- To determine where the urban edge should be located, often with serious consequences for integrated and continuous development, favouring the conservation of natural resources and **establishment of open space corridors**. The criteria would assist in the determination of the edge, by inclusion or exclusion of certain environmental features and in the manner in which the edge is determined in relation to the features.
- To support decisions on the distance between the existing development and the urban edge, i.e. the area allowed for urban growth outside of the current development.
- Consideration of applications for the expansion or amendment of the urban edge, subsequent to its determination, amongst others to determine a priority model for growth management.

3.5 **Criterion: Prominent landform and character areas**

Prominent landform and character areas. A mountain, hill or ridge is described as a physical landscape feature, elevated above the surrounding landscape. This includes the foot or base, slopes and crest of the mountain, hill or ridge.

The gradient and slope of a prominent landform must be considered in addition to the feature value thereof. Steep slopes are often valuable opportunities for high value development. The cost of development and maintenance of the services on steep slopes however detract from the attraction thereof from an authority perspective. Moreover, development on steep slopes often detracts from the aesthetic appeal of the environment and destroys natural habitat not affected by farming activities.

3.5 A natural area is defined as an area that is characterised by undisturbed natural conditions. Such areas would typically comprise mainly indigenous species (flora and fauna). They may include areas that are infested with alien vegetation, as there is potential to rehabilitate back to predominantly indigenous vegetation. In general natural areas can be expected to be of high conservation value because of their biophysical characteristics and due to their scenic/aesthetic worth.

3.5 **Criterion: Valuable soils and High intensity / potential agricultural resources**

Roughly 3% of the soil in South Africa or 3,6 million hectares can be classified as high-potential agricultural land. There is however a component of this land, which, because of the specific combination of soil, climate and crop, can be, classified as “unique” land where viable sustainable farming can exist, for example the Hex River Valley, which is world renowned for its export table grape production. The jealous protection of high-potential and unique agricultural land against any change of land use, is of utmost importance for sustainable agricultural production (Manager : Land Use And Soil Management (as delegate of the Minister Of Agriculture), 2004). See Figure 5

3.5 Criterion: Hydrology (surface and ground water features)

The riparian zones of rivers are of the utmost importance in river conservation. Riparian zones form that part of the catchment that directly affect the river ecosystem and has an effect on the quantity and quality of stream flow. The vegetation in the riparian zone supplies food to the aquatic fauna, controls the drainage of water, nutrients and other minerals to the stream, provides shade to decrease the harmful effects of warm water on the biota and stabilises the stream banks, thereby keeping the water silt-free. Many uses, such as agriculture, forestry, urban and tourism development contribute towards disturbance of water bodies and more specifically rivers and riparian zones. Modifying natural watercourses by the removal or destruction of riparian vegetation can rapidly bring about the collapse of the stream system and reduce it to an unattractive drainage system that merely serves to dispose of polluted water and topsoil into estuaries and the ocean (Department of Water Affairs and Forestry, 1999).

Wetlands are as important as river systems. . . .

The presence of water is often an unreliable indicator of wetlands, thus the soil morphology and / or vegetation would have to be used to determine whether an area is a wetland or not. The hydrology, soils and vegetation generally change gradually from the outside to the inside of a wetland. Thus, the boundary of the wetland is often not apparent and the precautionary principle must be applied in determining the outer edges. The disruption of wetland functions has a high cost to the environment. The effects of wetland destruction are measured economically, socially and ecologically. . . .

Wetlands also play a significant role in flood regulation and groundwater recharge. They are important as breeding and staging areas for migratory birds, as spawning and nursery grounds for fish and as habitat for a great many invertebrates, reptiles, amphibians and plants. Wetlands play an essential role in maintaining wildlife populations, providing key habitat for a diverse fauna and flora. Wetlands are home to about one third of the wildlife species that have been identified as endangered, threatened or rare. Wetlands also support substantial tourism and recreational opportunities, such as hunting, fishing, bird watching and nature photography. . . .

Another issue in the consideration of hydrological systems is the proximity of urban development to the coast and /or hydrological systems.

3.5 Criterion: Ecological resources (aquatic and terrestrial)

Ecological resources such as water, land, vegetation, wildlife and minerals are the basis of economic activity and often the grounds for the establishment of urban areas. . . .

Biological diversity or biodiversity as it is mostly referred to, is the collection all living organisms in the environment. As all organisms have genetic differences, it is important to preserve as wide a genetic pool as possible, to ensure the continued presence of life for as long as possible. The value of biodiversity to the environment and more particularly humans can be measured in the intrinsic value through its mere existence and use value for medicinal, research and sustenance purposes. In order to achieve the highest diversity, the largest possible collection of living organisms needs protection and preservation in the environment, as an ecosystem.

It is essential to consider the proximity of development to the coast and /or hydrological resources, as mentioned above. The nature of the fauna and flora, in terms of sensitivity and rarity, should guide the location and intensity of development in proximity of aquatic resources. Sensitive and rare collections of living organisms should not isolated by development. They should rather form part of a wider biodiversity network where natural migration is not inhibited, which suggests exclusion of such ecosystems from the urban area.

- 3.5 **Criterion: Protected areas (conservation sites):** [This is not applicable at present, but the possibility of declaring parts as protected areas may not be pre-empted by earlier urban edge changes] Inclusion of protected areas in the urban edge reduces opportunities for later expansion and the establishment of biodiversity corridors. Surrounding it with development puts pressure on the conservation area and often decreases access thereto, e.g. if even back onto it.

3.5 Criterion: Services infrastructure (barrier effect)

Railway lines, inaccessible and higher order roads (freeways and elevated roads), waste water treat-

ment works and solid waste disposal sites are examples of the services infrastructure that create barriers to development and are often undesirable within urban areas. While it is acknowledged that elements of transport infrastructure offer as many opportunities as it creates buffers, it is also recorded in literature that **these infrastructure elements, when included into the urban areas, hasten urban expansion and promote growth.**

Waste water treatment works, solid waste disposal sites and bulk reservoirs also create buffers and, when surrounded by urban development, **cause nuisances, either for the surrounding residents and land owners or for the service providers.** Odours, periodic upgrading of the bulk connections, noise and the use of hazardous substances **should cause these uses to be excluded from the edge, to form part of a biodiversity network or at least an open space network if it has no biophysical value.**

3.5 Criterion: Services infrastructure (capacity and reach) It is important to recognise that all development, inclusive of services infrastructure development, must be socially responsible and it should stimulate equitable and sustainable development. However, it should also be environmentally and economically sound. All costs associated with the provision of infrastructure services, direct and indirect, need detailed assessment when considering edge development or the establishment of urban edges.

3.5 Criterion: Vacant / under-utilised land in urban area and Availability of developable land in urban area

There is also an added cost to the interaction between the productive farms in the rural areas and the markets in the urban areas, as the distance between the two increases as the urban area expands. The loss of resources, such as usable agricultural land, biodiversity and other environmental assets also has a cost. . . . There is however also a benefit to the availability of vacant and under-utilised land, as it contributes to the reduction in the cost of land and accommodation in urban areas.

3.5 Criterion: Higher order roads, access routes and transport infrastructure

Urban uses tend to spread along roads, where the visibility attracts passing customers, especially along tourist routes, where the urban uses also detract from the aesthetic quality of the area that is the reason for it being a tourist route. The urban edge should be used to deter such undesirable uses.

3.5 Criterion: Cadastral boundaries of adjoining land units The environmental features of the land, rather than the ownership or cadastral boundaries, determine where the edge should be drawn. See Figure 7

3.5 Criterion: Growth requirements (over a predetermined period)

(Stellenbosch: proximity of protected areas and urban development; hence the “extension distance” of the urban edge in such regions should be zero or extremely limited)]

3.5 Criterion: Land use applications for new development

Does the market dictate where development occurs, or does forward planning? If the market dictates, then the urban edge would be a flexible line with no real purpose. If pro-active planning is the determining factor, then an urban edge has real value in achieving the goals set out above.

3.5 Criterion: Visual impact

The value of the environment is often under-estimated from a visual perspective. It is the visual quality of the environment that, to a large degree, generates the attraction for the tourism industry and draws people to certain areas as desired locations for living a lifestyle out of the large cities and densely developed urban areas.

(The visual impact may not be limited to the perspective from the R44. Visual impact would be overwhelming from the perspective of the surrounding nature area which is essential to the tourism sector]

3.5 Criterion: Cultural / heritage resource areas

3.5 **Criterion: Ownership of land and existing land use rights**

Many land owners acquired land at the urban edge solely for development purposes. Large tracts of land around urban areas are owned by local authorities and in some instances the state. Such land is often included in the urban edge by default, as it is not productively utilised for agricultural purposes and the use thereof causes its degradation. The situation of the land might however not be in line with current planning and development principles, and yet it is mostly included, as its disposal or continued use for agricultural or other non-urban purposes would not generate the best income.

There are also numerous examples of historic land use authorisations that have remained undeveloped or partially developed, outside of the urban fringe. Inclusion of this land in the urban edge would probably satisfy the owner, but would not necessarily comply with current best practice. Thus, ownership and existing land use rights need serious consideration as a criterion relative to the other criteria when determining the edge. The ownership of land should be one of the lesser criteria in determining the edge. Undeveloped land with historic rights should be treated likewise.

3.5 **Criterion: Informal settlements**

Informal settlements and subsidy housing schemes have traditionally occurred outside of current urban areas as a result of the old segregation policies of the country.

3.5 **Criterion: Urban agriculture and small scale farming** urban agriculture still plays a significant role in the community and this leads to extremely low development densities. Many of the small towns and urban areas like Genadendal, Middleton, Melkhoutfontein, Suurbraak, Elim, Zoar, Wupperthal, Mamre and Prince Alfred Hamlet rely strongly on the ability of the residents to produce their own food for sustenance and to produce for small markets or co-operatively for larger markets. Erf sizes typically vary from a 1,000 to 30,000 square metres in these towns. As a result, the development densities of these urban areas are extremely low and they are inefficient from an urban services perspective. These towns however have other strengths and benefits that can not be measured in urban servicing terms. The social value of the unique land use probably far outweighs the costs of the inefficiency from a services perspective.
(Jamestown]

3.5 **Density policy for residential development in rural towns**

There is a need to increase densities in select areas within the towns and cities. The normal planning principles and development approach determine the most suitable locations and means of achieving the goals of densification. For purposes of this study, the criterion simply needs highlighting. **Growth across an urban edge or outside of an existing urban area should not be permitted unless the development density of the development is in keeping with the trend to higher densities**, which, together with the principle of grading densities down from the central areas to the edges, means that there must be an increase in residential densities in selected and clearly demarcated areas.

3.5 **Criterion: Bio-regional spatial planning categories (core and buffer)**

The bio-regional planning manual provides a good background to the value of various biomes (a group of ecosystems) when considering urban edges. It also determines spatial planning categories (SPC's), two of which are core and buffer areas. Core areas indicate wilderness areas, where no development should occur. **Buffers areas are in support of the core areas and are also not intended for development.** As a result, the indication of bio-regional spatial planning categories would effect urban edges and cognisance should be taken of the SPC's, especially in the coastal and mountainous regions.

3.6 The purpose thereof, namely to direct and phase urban growth. ...

Priority ranking of Urban Edge line segments:

The edge line segments must be ranked in terms of priority for preservation of the edge. The priority is thus linked to the maintenance of the edge over the long term. A high priority edge is one that must be retained at all possible cost, whereas a low priority edge would be one that could be

amended in response to a suitable application or in the course of a spatial development framework planning process. The prioritisation must be done in consultation with all the major role-players in the planning process, as it relies on the relative significance and sustainability of the rural or non-urban use on the outside of the edge. It requires amongst others comparison of the agricultural potential of farms and farming activities, comparison of the aesthetic quality of various places and environments, the biological diversity and conservation value of different sites, the visual quality and hydrological situation of the rural area surrounding the edge and the cost-benefit assessment of development scenarios and the preservation of the rural use and relative assessment of all land outside of the edge in terms of the other edge determination criteria discussed above.

3.6 Use up available land first

As a growth management tool, used amongst others to limit sprawl and promote densification and infill development, the local authority must identify land for alternative development inside of the urban edge. Thus, if there is suitable land for development inside of the edge, then the edge should be retained until the available land has been utilised.

3.6 Proactive rezoning

The urban agricultural uses in the urban areas referred to above are the prime example. These should all be rezoned to a suitable agricultural zoning, which would indicate that it is not a low density residential use area and therefore not suitable for redevelopment and infill. On the other hand, the local authority should indicate commonage inside an urban area as suitable for development and zone it accordingly. . . .
(Jamestown)

3.6 **Infill development** The local authority should indicate such land as an opportunity for infill development to redress the previous planning practices if there are no outstanding land claims applicable to the land. The nature of the infill development should take cognisance of the surrounding development, but primarily focus on returning the land to the communities that previously occupied it and were forcibly removed.

3.6 Access to natural amenities: As a tool to direct and phase urban growth, local authorities must also use the urban edge to re-establish and create opportunities for access to natural amenities, where current development trends exclude access to natural amenities. . . . **The linear development of urban areas along the coastal areas, rivers, water bodies and mountains must be prevented by the establishment of urban edges. Moreover, the urban edges should create suitable buffers between the amenities and the urban development that does occur in proximity of any amenity, which is in keeping with the criteria for the establishment of urban edges (exclusion of rivers, prominent landforms, and others) discussed above.**

3.6 Special development areas:

The purpose of the urban edge could be to cause urban restructuring by drawing close, high priority, edges where possible around the furthest sides of the neighbourhoods and low priority edges along the facing sides of the neighbourhoods, if any edges are required, thus promoting growth between the neighbourhoods as a priority. Likewise, the edge could be used for the establishment of conservation areas, i.e. where they do not exist, but where there are grounds for the establishment of conservation areas. Where ecologically sensitive areas exist outside of the urban edge, causing a buffer between land that is suitable for development and the urban area, a high priority edge must be drawn either side of the sensitive area, or an ecologically determined edge development with sufficiently wide and interconnected corridors leading to and along the ecologically sensitive area must be permitted. In the one instance the edge would cause the sensitive and the suitable (developable) land to be excluded from the urban area or leapfrog development. In this case the land would remain in private ownership and largely inaccessible, often with detrimental effect on the ecological value thereof. The alternative is to include all the land in the edge, but with suitable planning designations, with the purpose of conserving the ecological asset value thereof. Controlled access to land that is of conservation significance is often its saving grace. The granting of development approvals on the less

sensitive portions of private land that is largely worthy of conservation, in order to raise funds for the conservation and the incorporation of the sensitive sections into a larger biodiversity network, could contribute to the conservation thereof. If it is accessible to an interested public, the conservation value thereof increases and this would only become possible by inclusion of the land in the urban edge or the acquisition thereof by a public conservation body.

- 4.1 the management guidelines relating to the urban edges of all the urban areas must comply with the policy contained in the Western Cape Provincial Spatial Development Framework
- 5.1 Conclusion: Urban edge guidelines. The development trends are probably not sustainable, as it causes losses in agriculture, which is a large employment sector, and it detracts from the natural environment, which is a major attraction in the tourism and the development sectors. Low density sprawl and outward growth of urban areas also increases the cost of living for many residents while the cost of service provision to these residents is considerably higher than where it would be in more central locations. These trends therefore need to be reversed or managed. . . . **These policies and guidelines therefore aim to reduce urban development on land that is better suited for conservation as environmental assets and resources.**
- 5.4 **Set out priorities explicitly:** The urban edge must be indicated on a detailed cadastral and topographic map as part of a spatial development framework, together with the table setting out the priorities, purpose, use inside and outside of the edge for each sector of the edge, i.e. for each part of the line. Where there are edge management areas, these also need to be related to the edge sectors. **The distance of the line from the current built or developed area must be explained in terms of the need for space as an indication of the growth rate over a five-year period, together with a motivation of what alternative options, including infill and densification have been considered and why these are or are not suitable.**
6. Recommendations: the first recommendation is that urban edges must be incorporated into legislation
 - 6.1.1 Urban edges must not be universally determined in a top down approach and must not be determined through legislative processes. Legislation must only cause urban edges to be determined for every urban area in the Western Cape.
 - 6.1.3 **Urban edges must be determined, delineated and defined by following the guidelines set out hereafter. The edge must be determined to:**
 - Exclude prominent landforms and environmental character areas from the urban area ;
 - Exclude valuable soils for agricultural purposes ;
 - Exclude valuable soils for mining purposes ;
 - Exclude surface and ground water resources that could be used to produce potable water ;
 - Exclude surface and ground water features;
 - Exclude ecological resources and establishing suitable biodiversity corridors to link resource areas;
 - Exclude all statutorily declared, proclaimed and protected natural areas;
 - Exclude high intensity use and high potential agricultural resources and activity areas;
 - Exclude scenic routes and routes of tourism significance;
 - Exclude cultural and heritage resource areas and sites; and
 - Exclude areas that have visual sensitivity, skylines, mountainsides, ridgelines and hilltops.
- 6.1.3 Services infrastructure that could impact on development, such as waste water treatment works and solid waste disposal sites must be excluded from the urban area and suitable buffers around the infrastructure and corridors to the urban edge must be established if long term development approaches such infrastructure.

- 6.1.3 Allowing for proven growth requirements outside of the edge for a minimum five and maximum eight year period, in keeping with the requirement for infill and densification rather than and before outward growth.
- 6.1.3 Utilising topographical features, identifiable lines and definable lines with co-ordinates rather than the cadastral boundaries of adjoining land units when delineating the urban edge.
- 6.1.3 **Ignoring land use applications for new development and insisting on development to progress in keeping with the priorities determined for the amendment of the urban edge, unless the benefits of the proposed use are proven to outweigh the short and long term costs and the development would make a significant contribution to the social, economic and environmental goals for the area.**
- 6.1.3 **Ignoring ownership of land and existing land use rights and establishing urban edges in keeping with the environmental and social guidelines.**
- 6.1.3 Creation of opportunities to increase public access to natural amenities and prevent linear sprawl along natural amenities such as mountainsides, water bodies and the coast.
- 6.1.3 **Maintenance of the three “rural” Bio-regional Spatial Planning Categories (core, buffer and agricultural) outside of the edge.**
- 6.1.3 **Identifying land for specific development inside the urban area and retaining the edge until the available land has been fully utilised for the specific use.**
- 6.2.2 Urban edge amendments that do not occur in keeping with the regional growth potential assessment of the urban area and the priority ranking of the edge segments, should be assessed at a level of strategic planning, i.e. applications must be subject to Strategic Environmental Assessment and amendment of the applicable Spatial Development Framework (SDF) and it must incorporate a cost-benefit analysis of the development. **(In other words: as the Brandwacht and Paradyskloof amendments do NOT occur in keeping with the regional growth potential, they must be assessed at a level of strategic planning.)**

I Extracts from Environmental Impact Assessment Regulations

Listing Notice 2 (GNR325 of 2017)

activities requiring authorisation in terms of sections 21,22,23,24 of 2014 regulations (Environmental Impact Assessment).

LN2 Activity 27: The development of a road with a reserve of more than 30 metres or catering for more than one lane of traffic in both directions but excluding a road which is 1km or shorter or where the entire road falls within an **urban area**.

(A road is defined by GNR325 as a *linear development activity*).

Listing Notice 1 (GNR327 of 2017)

activities requiring authorisation in terms of sections 19 and 20 of 2014 regulations.

LN1 Listed Activity 24: *The development of a road . . . (ii) with a reserve wider than 13,5 metres or where no reserve exists where the road is wider than 8 metres, but excluding a road . . . where the entire road falls within an **urban area**; or which is 1 kilometre or shorter.*

LN1 Listed Activity 28: *Residential, mixed, retail, recreational, tourism, commercial or institutional developmens where such land was used for agriculture, game farming, equestrian purposes or afforestation on or after 01 April 1998 and where such development (1) will occur inside an **urban area**, where the total land to be developed is bigger than 5 hectares; or (ii) will occur outside an urban area, where the total land to be developed is bigger than 1 hectare.*

LN1 Listed Activity 56: *The widening of a road by more than 6 metres, or the lengthening of a road by more than 1 kilometre – (i) where the existing reserve is wider than 13,5 metres; or (ii) where no reserve exists, where the existing road is wider than 8 metres, excluding where widening or lengthening occur inside urban areas.*

Listing Notice 3 (GNR324 of 2017)

activities requiring authorisation in terms of sections 19 and 20 of 2014 regulations.

LN3 Urban areas definition: “urban areas” means areas situated within the urban edge as defined or adopted by the competent authority

LN3 Listed Activity 4: *The development of a road wider than 4 metres with a reserve less than 13,5 metres **for areas outside urban areas** containing indigenous vegetation.*

LN3 Listed Activity 14: *The development of . . . (ii) infrastructure or structures with a physical footprint of 10 square metres or more; where such development occurs . . . **outside urban areas** . . . on critical biodiversity areas or ecosystem service areas as identified in systematic biodiversity plans adopted by the competent authority or in bioregional plans. See also Listed Activity 23.*

LN3 Listed Activity 18: *The widening of a road by more than 4 metres, or the **lengthening of a road by more than 1 kilometre** for all areas **outside urban areas** containing indigenous vegetation.*

LN3 Listed Activity 26: Phased activities . . . where any phase of the activity was below a threshold but where a combination of the phases, including expansions or extensions, will exceed a specified threshold.

J Integrated Zoning Scheme By-Law Chapter 24

CHAPTER 24: SUBDIVISIONAL AREA OVERLAY ZONE

238. Zone name and designation on map

- (1) The Subdivision Area Overlay zone may be referred to by the code (SAO) and shall be indicated on the zoning map as black hatching, retaining the colour of the base zone before the land was rezoned to subdivisional area.



239. Purpose of the zone

- (1) This overlay zone designates land for future subdivision where a change of zoning from the pre-existing base zone will be required once the subdivision is approved and where the principle of future subdivision has been approved through a rezoning process, but the subdivision plan itself has not yet been approved.

240. Land use within this zone

- (1) Notwithstanding the conditions imposed when rezoning land to Subdivisional Area, a property may continue to be used for the purposes set out in the base zone prior to rezoning until the rezoning approval is being acted on and the subdivision or portions thereof have been confirmed.
- (2) Upon confirmation of the subdivision the permitted primary, additional or consent uses as permitted by the applicable new base zones as approved in the rezoning application, shall apply to the confirmed land units unless the conditions of approval stipulate additional restrictions.

241. Designation of land and development parameters

- (1) An owner shall apply to rezone land to this Overlay zone in accordance with Planning Law if it is proposed to subdivide and develop land where more than one new zoning will be allocated to the land units falling inside the development area after subdivision and where subdivision will create additional rights (for example residential subdivision).
- (2) When land to be subdivided for new development will not require allocation of more than one new zoning rezoning to this overlay zone is not required.
- (3) Upon approval of an application to rezone land to Subdivisional Area, the Municipality shall impose conditions of rezoning which will specify at least the following information:
- (a) the permitted mix of land uses and zoning;
 - (b) the permitted density in the case of residential development;
 - (c) the permitted floor area in the case of business, industrial and other significant land uses;
 - (d) the approximate ratio of open space and public road, if required by the development;
 - (e) any departures from the development rules which may be required by the intended development;
 - (f) provisions for the supply of external and internal municipal engineering services and development charges;
 - (g) any other conditions the Municipality deems fit to inform the intended subdivision of land including, but not limited to, environmental, heritage, landscaping, parking and access parameters.
- (4) Land zoned as subdivisional area may be subdivided as contemplated by Planning By-law in accordance with the conditions imposed.
- (5) A plan of subdivision shall be submitted for approval in terms of the Planning By-law for land which is zoned Subdivisional Area Overlay zone; and:
- (a) the plan of subdivision shall indicate the zoning of each of the proposed land units in accordance with the zones of the Scheme;

- (b) the plan of subdivision shall not require to be advertised in the event that the subdivision plan conforms to all the conditions of approval and is generally in accordance with the proposed development framework indicated in the original application for rezoning to Subdivisional Area Overlay zone;
- (c) it may identify land parcels (superblocks) which may be further subdivided in future and identify these as Subdivisional Area Overlay zoned land units;
- (d) the development may be phased and if so indicated on the plan of subdivision, the remainder of land which is set aside for subsequent phases may be indicated as Subdivisional Area on the subdivision plan. In this case, the application shall clearly indicate which portion of development rights have been taken up by the development and which development rights remain available for allocation to subsequent phases.

242. Updating of the zoning map

- (1) The Municipality shall in every instance where a subdivision requires a change of zoning to more than one new zone, rezone land in terms of the Planning By-law to Subdivisional Area Overlay zone. The land unit(s) rezoned as Subdivisional Area shall be indicated accordingly on the zoning map.
- (2) Upon confirmation of the subdivision or part thereof, the said subdivision or part thereof shall be allocated the appropriate base zones on the zoning map, replacing the Subdivisional Overlay zone designation.

K Amended categorisation scheme, 2017

512

AGENDA

10TH COUNCIL MEETING OF THE COUNCIL
OF STELLENBOSCH MUNICIPALITY

2017-07-26

7.3.3	AMENDMENT OF THE EXISTING CATEGORISATION OF APPLICATIONS, AMOUNTS PAYABLE TO THE STELLENBOSCH MUNICIPAL PLANNING TRIBUNAL AND APPOINTMENT OF AN ADDITIONAL INTERNAL MUNICIPAL PLANNING TRIBUNAL MEMBER IN TERMS OF SPATIAL PLANNING AND LAND USE MANAGEMENT ACT NO 16 OF 2013 (SPLUMA)
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1. PURPOSE OF REPORT

To motivate and seek approval from Council to amend the existing decisions (approved in Item 8.6 dated 27 May 2015). Further to propose to Council to appoint an additional Internal Municipal Tribunal Members, to amend the existing categorisation of applications and adjust the remuneration of external Municipal Tribunal member's fees in line with market value.

2. BACKGROUND

During 2015 Council authorised the establishment of a Municipal Planning Tribunal (MPT) for Stellenbosch Municipality (WC024) in line with new planning legislation which include the Spatial Planning and Land Use Management Act No 16 of 2013 (SPLUMA), the Western Cape Land Use Planning Act No 3 of 2014 (LUPA) as well as the Stellenbosch Municipal Land Use Planning By-law (2015).

Council took a series of decisions during 2015 [*Resolution 8.6 dated 27 May 2015 as **APPENDIX 1***] and [*item 7.4 (36th Council Meeting dated 25 of November 2015 as **APPENDIX 2***] in line with the above mentioned land use planning legislation. Amongst others Council approved the appointment of external public Municipal Planning Tribunal Members, the remuneration for external MPT members, the categorisation of applications, and the appointment of an authorised employee (the Director for Planning and Economic Development) to consider and determine certain applications in line with Council's approved categorisation.

During 2016 not one Municipal Planning Tribunal meeting was conducted, amongst others as a result of the existing categorisation of applications approved by Council.

The purpose of this item is to amend the existing categorisation of applications in terms of SPLUMA, LUPA and the Land Use Planning By-law to amend the remuneration of External Municipal Planning Tribunal Members in line with the SACPLAN professional fees and appoint additional second Internal Municipal Planning Tribunal members.

3. DISCUSSION

3.1 AMENDMENT OF THE CATEGORISATION OF APPLICATIONS

In May 2015 Council approved the existing categorisation of applications as seen in **APPENDIX 1** under resolution (g). The main reasons are the categorisation of applications (which refer only major developments to the MPT, few of which occur in the area as a result of infrastructure and planning policy limitations) and the fact that that the existing categorisation only refers land use applications to the MPT with "Substantive Objections".

In terms of Section 35 of SPLUMA, only Council can categorise applications which must be considered by the Municipal Planning Tribunal.

Section 35 of SPLUMA reads that (1) *A municipality must, in order to determine land use and development applications within its municipal area, establish a Municipal Planning Tribunal.*(2) *Despite subsection (1), a municipality may authorise that certain land use and land development applications may be considered and determined by an official in the employ of the municipality.* (3) *A municipality must, in order to determine land use and land development applications within its municipal area, categorise development applications to be considered by an official and those to be referred to the Municipal Planning Tribunal.*

Linked to the above the SPLUMA Regulation Chapter 3 Regulation 15 read that (1) *if a municipality decides not to authorise an official to consider and determine certain land development and land use applications, the Municipal Planning Tribunal must consider and decide all land use and land development and land use applications that is submitted to the municipality.*

- (2) *If a municipality authorises an official to consider and determine certain land development and land use applications as contemplated in section 35(2) of the Act, it must consider the following aspects in its categorisation of land development and land use applications:*
- (a) *type of land development or land use application;*
 - (b) *scale and nature of the land development or land use application;*
 - (c) *the potential impact of the right granted if the land development or land use application is approved;*
 - (d) *the level of public participation required;*
 - (e) *whether or not the land development or land use application is in line with the municipality's spatial development framework and other relevant policies;*
 - (f) *any other aspect that the municipality considers appropriate; or*
 - (g) *any combination of the aspects referred to in paragraph (a) to (f).*
- (3) *If the municipality decides to categorise land development and land use applications according to the type of application referred to in subregulation 2(a), it may use the standard categorisation of land development and land use applications contained in provincial legislation or contemplated in Schedule 5, subject to any modifications and qualifications as the municipality deems necessary.*
- (4) *The municipality must determine which category of land development and land use application must be considered and determined by the authorised official and which category must be considered and determined by the Municipal Planning Tribunal and may use the standard division of functions contained in Schedule 5.*

In view of the nature of applications in the municipal area and the repeated objections by members of the public, the administration proposes that Council amend the existing categorisation of applications in keeping with the statutory requirements of SPLUMA, LUPA and Section 15 of the Land Use

Planning By-law (2015) by repealing resolution (g) and (h) of Item 8.6 of 27 May 2015 by replacing it with the following table:

Table 1 : Categorisation of Land Use applications i.t.o the Land Use Planning By-law (2015)

NO	APPLICATION TYPE	COUNCIL	Category 1 Municipal Planning Tribunal	Category 2 (AO/AE)
Actions in terms of Sections 11 and 22 of the Western Cape Land Use Planning Act 2014 and Section 35(3) and 47(2) of the Spatial Planning and Land Use Management Act, 2013				
1.	Approval / amendment of Spatial Development Framework	X		
2.	Approval / amendment of Zoning Scheme	X		
3.	Approval / amendment of an Overlay Zone for the zoning scheme 15(2)(j) of the Land Use By-law read with section 12 & 13 of MSA	X		
4.	Title Deed Relaxations to enable minor departure applications SPLUMA 47(2)			X
5.	Categorisation of applications	X		
Application types as per section 15 of the Stellenbosch Municipal Land Use Planning By-law (2015)				
6.	15(2)(a) Rezoning of Land		X OBJECTIONS	X NO OBJECTIONS
7.	15(2)(b) a permanent departure from the development parameters of the zoning scheme		X OBJECTIONS	X NO OBJECTIONS
8.	15(2)(c) a departure granted on a temporary basis to utilise land for a purpose not permitted in terms of the primary rights of the zoning applicable to the land;		X OBJECTIONS	X NO OBJECTIONS
9.	15(2)(d) a subdivision of land that is not exempted in terms of section 24, including the registration of a servitude or lease agreement;		X OBJECTIONS	X NO OBJECTIONS
10.	15(2)(e) a consolidation of land that is not exempted in terms of section 24;			X
11.	15(2)(f) a removal, suspension or amendment of restrictive conditions in respect of a land unit;		X OBJECTIONS	X NO OBJECTIONS
12.	15(2) (g) a permission required in terms of the zoning scheme ;			X
13.	15(2)(h) an amendment, deletion or imposition of conditions in respect of an existing approval ;			X
14.	15(2) (i) an extension of the validity period of an approval			X
15.	15(2) (j) an approval of an overlay zone as contemplated in the zoning scheme ;	X		
16.	15(2)(k) an amendment or cancellation of an approved subdivision plan or part thereof, including a general plan or diagram ;			X
17.	15(2)(l) a permission required in terms of a condition of approval ;			X
18.	15(2)(m) a determination of a zoning ;			X
19.	15(2)(n) a closure of a public place or part thereof;		X OBJECTIONS	X NO OBJECTIONS
20.	15(2)(o) a consent use contemplated in the zoning scheme;		X OBJECTIONS	X NO OBJECTIONS
21.	15(2)(p) an occasional use of land ;			X
22.	15(2)(q) to disestablish a home owner's association			X
23.	15(2)(r) to rectify a failure by a home owner's association to meet its obligations in respect of the control over or maintenance of services;			X

24.	15(2)(s) a permission required for the reconstruction of an existing building that constitutes a non-conforming use that is destroyed or damaged to the extent that it is necessary to demolish a substantial part of the building.			X
25.	15(2)(6) When the Municipality on its own initiative intends to conduct land development or an activity contemplated in subsection (2), the decision on the application must be made by the Tribunal in accordance with this Chapter and Chapter IV and no official may be authorised to make such a decision.		X	
26.	15(2)(l) Amendment of Site Development Plan			X
27.	15(2)(l) Compilation / Establishment of a Home Owners Association Constitution / Design Guidelines			X

Note: "OBJECTIONS" above refer only to submissions indicating objection to the proposed development / activity and not comment submitted with proposed conditions and mitigation measures.

3.2 AMENDMENT OF PROFESSIONAL FEES FOR EXTERNAL MPT MEMBERS

Item 8.6 resolution (e)(ii) reads that *:that the MPT public members be remunerated at the following rates:(ii) that the four members of the public that sit at every meeting be remunerated at R300,00 per hour, with no more than 10 hours being set aside per meeting and that the rate be reconsidered annually in the budget:...*

It will be recommended that the hourly rate be amended according to Category B of the South African Council of Professional Planners (SACPLAN) professional fees rate (**APPENDIX 3– National gazette No. 38078 dated 10 October 2014**) from R 300.00 per hour (which has no professional fee foundation) to R 1 000.00 hour per hour. The appointed External Municipal Planning Tribunal Members meets the criteria of SACPLAN Category B as their expertise are of private consulting firm in practice standard whom have adequate expertise and relevant experience to perform the work of a planning nature and whom can carry the direct technical responsibility for one or more specific activities.

3.3 APPOINTMENT OF ADDITIONAL INTERNAL MUNICIPAL PLANNING TRIBUNAL MEMBERS

Read with resolution f Item 8.6 dated May 2015, it is recommended to expand the internal members from a minimum of 3 internal MPT members by appointing an additional 3 secondi members whom are employed by Council. It is thus recommended that the following three members be appointed:

1. Environmental Planner
2. Head of Transport
3. Manager: Integrated Development Planning

4 LEGAL SERVICES

Council will comply with the provisions of SPLUMA, LUPA and the Land Use Planning By-law.

5 FINANCIAL SERVICES

That the professional fees for external MPT members be amended in line with SACPLAN professional fees for external consultants.

MAYORAL COMMITTEE MEETING: 2017-07-19: ITEM 5.3.3**RECOMMENDED**

- (a) that Council rescind the approved categorisation of applications as per resolutions (g) and (h) of Council Item 8.6 dated 27 May 2015 and replace it with the table below in line with Section 35 of SPLUMA:

NO	APPLICATION TYPE	COUNCIL	Category 1	Category 2
			Municipal Planning Tribunal	(AO/AE)
Actions in terms of Sections 11 and 22 of the Western Cape Land Use Planning Act 2014 and Section 35(3) and 47(2) of the Spatial Planning and Land Use Management Act, 2013				
1.	Approval / amendment of Spatial Development Framework	X		
2.	Approval / amendment of Zoning Scheme	X		
3.	Approval / amendment of an Overlay Zone for the zoning scheme 15(2)(j) of the Land Use By-law read with section 12 & 13 of MSA	X		
4.	Title Deed Relaxations to enable minor departure applications SPLUMA 47(2)			X
5.	Categorisation of applications	X		
Application types as per section 15 of the Stellenbosch Municipal Land Use Planning By-law (2015)				
6.	15(2)(a) Rezoning of Land		X OBJECTIONS	X NO OBJECTIONS
7.	15(2)(b) a permanent departure from the development parameters of the zoning scheme		X OBJECTIONS	X NO OBJECTIONS
8.	15(2)(c) a departure granted on a temporary basis to utilise land for a purpose not permitted in terms of the primary rights of the zoning applicable to the land;		X OBJECTIONS	X NO OBJECTIONS
9.	15(2)(d) a subdivision of land that is not exempted in terms of section 24, including the registration of a servitude or lease agreement;		X OBJECTIONS	X NO OBJECTIONS
10.	15(2)(e) a consolidation of land that is not exempted in terms of section 24;			X
11.	15(2)(f) a removal, suspension or amendment of restrictive conditions in respect of a land unit;		X OBJECTIONS	X NO OBJECTIONS
12.	15(2) (g) a permission required in terms of the zoning scheme ;			X
13.	15(2)(h) an amendment, deletion or imposition of conditions in respect of an existing approval ;			X
14.	15(2) (i) an extension of the validity period of an approval			X
15.	15(2) (j) an approval of an overlay zone as contemplated in the zoning scheme ;	X		
16.	15(2)(k) an amendment or cancellation of an approved subdivision plan or part thereof, including a general plan or diagram ;			X
17.	15(2)(l) a permission required in terms of a condition of approval ;			X
18.	15(2)(m) a determination of a zoning ;			X

19.	15(2)(n) a closure of a public place or part thereof;		X OBJECTIONS	X NO OBJECTIONS
20.	15(2)(o) a consent use contemplated in the zoning scheme;		X OBJECTIONS	X NO OBJECTIONS
21.	15(2)(p) an occasional use of land ;			X
22.	15(2)(q) to disestablish a home owner's association			X
23.	15(2)(r) to rectify a failure by a home owner's association to meet its obligations in respect of the control over or maintenance of services;			X
24.	15(2)(s) a permission required for the reconstruction of an existing building that constitutes a non-conforming use that is destroyed or damaged to the extent that it is necessary to demolish a substantial part of the building.			X
25.	15(2)(6) When the Municipality on its own initiative intends to conduct land development or an activity contemplated in subsection (2), the decision on the application must be made by the Tribunal in accordance with this Chapter and Chapter IV and no official may be authorised to make such a decision.		X	
26.	15(2)(l) Amendment of Site Development Plan			X
27.	15(2)(l) Compilation / Establishment of a Home Owners Association Constitution / Design Guidelines			X

Note: "OBJECTIONS" above refer only to submissions indicating objection to the proposed development / activity and not comment submitted with proposed conditions and mitigation measures.

- (b) that Council amend resolution e (ii) of Council Item 8.6 dated 27 May 2015 in line with SACPLAN professional fees (Category B) from R300. 00 per hour to R 1 000, 00 per hour to a maximum remuneration equal to five hours per meeting. The appointed External Municipal Planning Tribunal Members meets the criteria of SACPLAN Categories B as their expertise are of private consulting firm in practice standard whom have adequate expertise and relevant experience to perform the work of a planning nature and whom can carry the direct technical responsibility for one or more specific activities;
- (c) that Council amend resolution f of Council Item 8.6 dated 27 May 2015 to expand the internal members from 3 internal MPT members to 6 by appointing additional 3 secondi members whom include:
1. The Environmental Planner
 2. Head of Transport
 3. Manager: Integrated Development Planning; and
- (d) that Council authorise and delegate the Municipal Manager to appoint Internal Municipal Planning Tribunal Members fulfilling the designations in accordance with the requirements set in the Land Use Planning By-law (2015), the Land Use Planning Act (2014), and the Spatial Planning and Land Use Planning Act (2013).

Meeting: Ref no: Collab:	10 th Council: 2017-07-26 1/1/1/40	Submitted by Directorate: Author Referred from:	Planning & Economic Development SPLUMA Compliance Officer Mayco: 2017-07-19
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L Categorisation scheme approved by Council in 2015

74

MINUTES

30TH MEETING OF THE COUNCIL
OF STELLENBOSCH MUNICIPALITY

2015-05-27

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- (i) that the Director: Planning and Economic Development be the delegated official for decision-making in Category 2 cases until the amended System of Delegations has been approved by Council;
 - (j) that an elected Appeal Committee consisting of Councillors of the WC024 be designated as the Appeal Authority;
 - (k) that the evaluation panel to evaluate the nominations for MPT members received by the Municipality be the Planning and Economic Development Portfolio Committee; and
 - (l) that the terms of reference for the evaluation panel be determined by the Executive Mayor in consultation with the Mayoral Committee members.

**(DIRECTOR: PLANNING AND ECONOMIC
DEVELOPMENT TO ACTION)**

30TH COUNCIL MEETING: 2015-05-27: ITEM 8.6

RESOLVED (majority vote with 10 abstentions)

- (a) that the draft Council approve the establishment of a WC024 Municipal Planning Tribunal in terms of Section 35 of the Spatial Planning and Land Use Management Act, 16 of 2013;
- (b) that the term of office for the Municipal Planning Tribunal (MPT) be three years;
- (c) that the Municipal Manager be authorised to proceed with the processes in accordance with Section 36(1) of the SPLUMA to comply with the institutional requirements for the establishment of a WC024 Municipal Planning Tribunal (MPT);
- (d) that the MPT consists of a panel of 10 people available to sit on the MPT, seven of which are members of the public and three officials:
 - (i) that four members of the public sit at every meeting; and
 - (ii) three additional members be appointed to stand in for unavailable tribunal members.
- (e) that the MPT public members be remunerated at the following rates:
 - (ii) that the four members of the public that sit at every meeting be remunerated at R300,00 per hour, with no more than 10 hours being set aside per meeting and that the rate be reconsidered annually in the budget; and
 - (ii) that the sitting members be reimbursed for travelling expenses, inclusive of travel from and back home to the sittings, at the rates approved from time to time for Councillors in the Mayoral Committee, in keeping with the relevant policy of the Municipality.

- (f) that Council approve of the municipal employees for the Tribunal, namely:
- (i) Manager: Development Services;
 - (ii) Manager: Spatial Planning, Heritage and Environment, Directorate: Planning and Economic Development; and
 - (iii) Senior Legal Advisor
- (g) that the following categories of applications be approved:

Category 1 Applications (complex) are:

- (i) the establishment of an integrated (mixed use) township or the extension of the boundaries of a township (urban edge);
- (ii) the amendment of an existing scheme or land use scheme by the rezoning of land to which substantive objections were submitted;
- (iii) the removal, amendment or suspension of a restrictive or obsolete condition, servitude or reservation registered against the title of the land to which substantive objections were submitted;
- (iv) the subdivision of any land outside the urban edge for purposes other than the provision of any service;
- (v) permanent closure of any public place;
- (vi) any consent or approval required in terms of a condition of title, a condition of establishment of a township or condition of an existing scheme or land use scheme to which substantive objections were submitted;
- (vii) any departure or use not provided for in the relevant zoning scheme;
- (viii) any application on municipal or other public land where the Municipality is the applicant; and
- (ix) Amendment of a condition of approval where the decision was taken by the Tribunal or the appeal authority.

Category 2 applications are:

- (i) the subdivision of any land inside the urban edge to which substantive objections were not submitted;
- (ii) the consolidation of any land;
- (iii) the consent of the municipality for any land use purpose or departure or deviation in terms of a land use scheme or existing scheme which does not constitute a land development application;
- (iv) the removal, amendment or suspension of a restrictive title condition relating to the density of residential development on a specific erf where the residential density is regulated by a land use scheme in operation;
- (v) the amendment of an existing scheme or land use scheme by the rezoning of land to which substantive objections were not submitted;
- (vi) the removal, amendment or suspension of a restrictive or obsolete condition, servitude or reservation registered against the title of the land to which substantive objections were not submitted; (g) any consent or approval required in terms of a

-
- condition of title, a condition of establishment of a township or condition of an existing scheme or land use scheme to which substantive objections were not submitted;
- (vii) extension of the validity period of an approval;
- (viii) phasing, amendment or cancellation of a plan of subdivision or a part thereof;
- (ix) permission required in terms of a condition of approval; and
- (x) special consent for the temporary use (maximum 21 days) of land not provided for in the zoning scheme.
- (h) that the following definition be used for “substantive objection”:
Substantive objections are defined by one or more of the following:
- (i) likelihood of direct loss of property, land use rights or significant property value of the objector(s) directly affected by the application in question;
- (ii) evidence that the proposed land development activity is in conflict with all or most of the guidelines, principles, prerequisites, and standards contained in the IDP, applicable SDF, relevant by-laws and related approved policies;
- (iii) evidence is presented which demonstrates that the proposed land development activity or alteration has a potential for significant adverse impacts on one or more of the following descriptors of the environment:
- ecological functioning;
 - permanent nuisance and/or disturbance with effects on health and well-being of surrounding residents, occupants or property owners;
 - post construction traffic patterns;
 - areas of historic and/or archaeological significance;
 - scenic and/or recreation values; (6) post construction infrastructure services provision.
- (i) that the Director: Planning and Economic Development be the delegated official for decision-making in Category 2 cases until the amended System of Delegations has been approved by Council;
- (j) that an elected Appeal Committee consisting of Councillors of the WC024 be designated as the Appeal Authority;
- (k) that the evaluation panel to evaluate the nominations for MPT members received by the Municipality be the Planning and Economic Development Portfolio Committee; and
- (l) that the terms of reference for the evaluation panel be determined by the Executive Mayor in consultation with the Mayoral Committee members.

Councillor F Adams requested that his vote of dissent be minuted.

**(DIRECTOR: PLANNING AND ECONOMIC
DEVELOPMENT TO ACTION)**

M Recategorisation and the definition of “objections”

- M1 Section 15(2) of the Stellenbosch Land Use Planning By-Law of 2015 (LUPB) sets out the different types (categories) of applications starting with 15(2)(a) rezoning for which LU/13953 is applying.
- M2 In terms of sections 68 and 69 of the Stellenbosch Municipality Land Use By-Law (LUPB) and section 35 of SPLUMA, a LUPB section 15 application may be decided by either an authorised employee or by the Municipal Planning Tribunal. Section 69 of the LUPB also specifies that land use applications must be decided according to a categorisation system approved by Council.
- M3 Determining whether a particular application is heard by the MPT or handled administratively is of course very important, because the MPT is an independent body while administrative officials are employees.
- M4 At its meeting of 26 July 2017, Council approved an amendment to the existing 2015 categorisation; this is shown in Appendix L. The full 2017 categorisation appears in Appendix K. In brief, the categories are

Category 1 applications

In terms of Table 1 of the 2017-07-26 Council resolution, Category 1 applications must be adjudicated by the MPT, **but only if objections are lodged**, where “objections” now presumably refers to the new 2017 definition. Where no such objections are received, the matter is handled administratively and not by the MPT.

Category 1 applications include

- **rezoning** in terms of section 15(2)(a) of the LUPB,
- **permanent and temporary departures** as per s15(2)(b) and s15(2)(c),
- **subdivision** as per s15(2)(d),
- **consolidation** as per s15(2)(e), and
- **changes in restrictive conditions** as per s15(2)(f).

Category 2 applications

As per Table 1 in Appendix K, Category 2 applications are delegated automatically for administrative decisionmaking by a planning official. These include

- any **amendment, deletion or imposition of conditions** in terms of an existing approval as per s15(2)(h),
- any **amendment** or cancellation of an approved **subdivision plan** as per s15(2)(k), and
- a **determination of zoning** as per s15(2)(m).

- M5 The Stellenbosch categorisation scheme shown in Appendix K is remarkable because it sets up **objections** as a criterion: if no objections are received to a particular application, the matter is not passed to the MPT; if there are objections, the matter goes to the MPT. Therefore, the definition of what constitutes an “objection” and the possibility of lodging one become a central issue.
- M6 If a particular application is never made public, then objections are per definitions impossible. This is why section 241(5)(b) of the Integrated Zoning Scheme By-Law is quite problematic.
- M7 **2015 definition of “substantive objections”**

The original categorisation scheme approved by Council on 2015-05-27 used and defined “substantive objections”; Item 8.6(h) of that Council Meeting’s minutes below is quite complicated (see also Appendix L):

2015 Council resolution:

(h) that the following definition be used for “substantive objection”:

Substantive objections are defined by one or more of the following:

- (i) likelihood of direct loss of property, land use rights or significant property value of the objector(s) directly affected by the application in question;
- (ii) evidence that the proposed land development activity is in conflict with all or most of the guidelines, principles, prerequisites, and standards contained in the IDP, applicable SDF, relevant by-laws and related approved policies;
- (iii) evidence is presented which demonstrates that the proposed land development activity or alteration has a potential for significant adverse impacts on one or more of the following descriptors of the environment:
 - ecological functioning;
 - permanent nuisance and/or disturbance with effects on health and well-being of surrounding residents, occupants or property owners;
 - post construction traffic patterns;
 - areas of historic and/or archaeological significance;
 - scenic and/or recreation values; (6) post construction infrastructure services provision.

M8 The resolution passed by Council on 2017-06-27 as shown in Appendix K below abrogated subitems (g) and the above subitem (h) of the 2015-05-27 resolution, so that “substantive objections” were no longer defined. In its stead, the 2017-06-27 resolution replaced these subitems (g) and (h) of 2015 with Table 1 shown in Appendix K. Below that table, the Council resolution of 2017-06-27 implicitly redefined “objections” in ambiguous and vague language:

2017 Council resolution:

“OBJECTIONS” above refer only to submissions indicating objection to the proposed development / activity and not comment submitted with proposed conditions and mitigation measures.

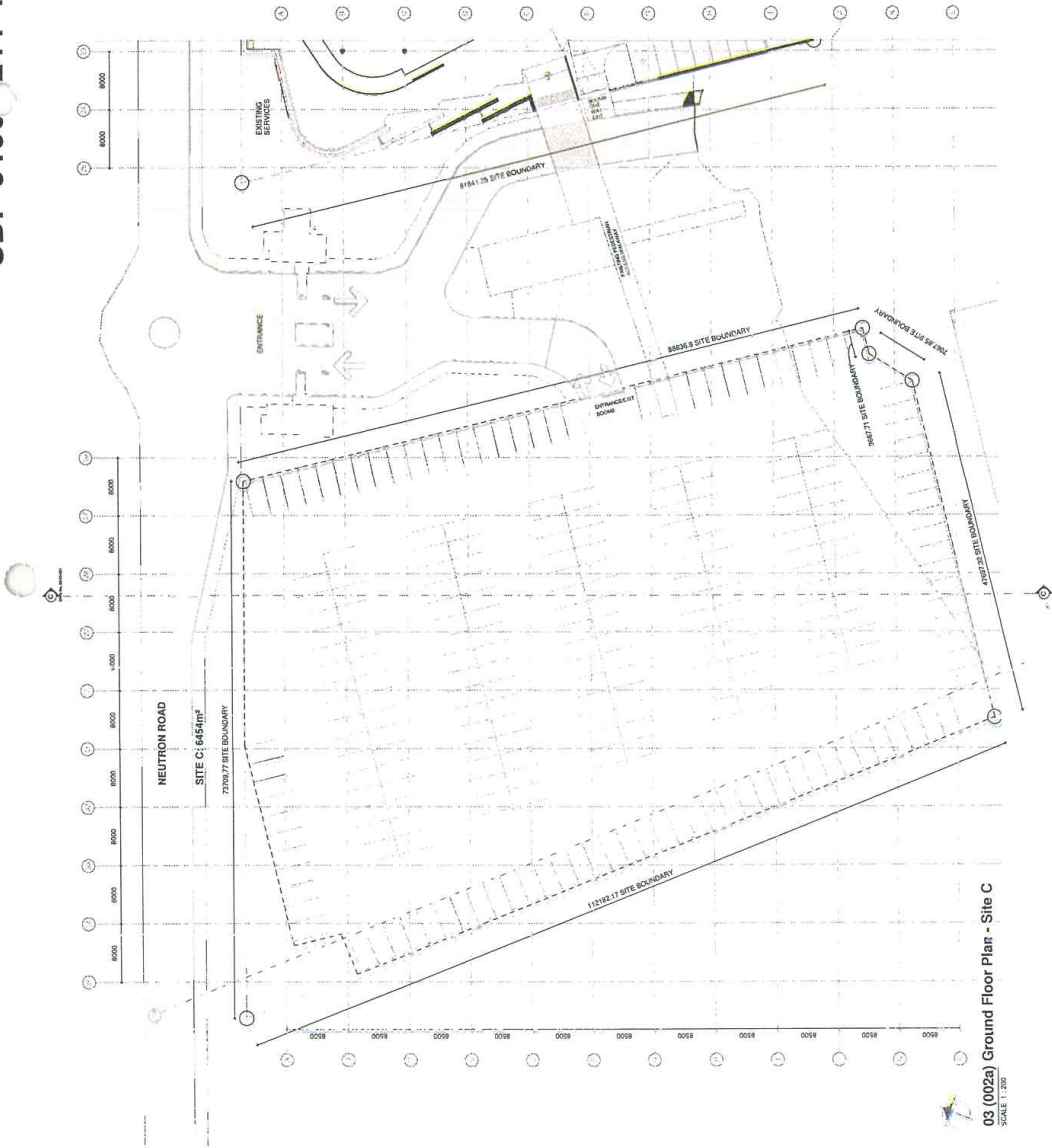
which seems to mean that only such IAP submissions which explicitly reject a development proposal **as a whole** are now deemed to be “objections”, and that all other submissions are invalid.

M9 Is this disqualification of IAP submissions intentional? This interpretation is supported by two facts: Firstly, the last paragraph on Page 513 of the Agenda of the 2017-07-26 Council Meeting refers to “repeated objections” as motivating the proposed changes in the categorisation scheme. We quote from the Council Item 7.3.3 of 2017-7-26:

In view of the nature of applications in the municipal area **and the repeated objections by members of the public**, the administration proposes that Council amend the existing categorisation . . .

Secondly, there is no difference in the categories between 2015 and 2017, so that the new 2017 resolution seems unnecessary unless the intention was to change the definition of “objections”.

SDP 9190-211-13166, Page 19 of 21



STELLENBOSCH MUNICIPALITY
 THIS SITE DEVELOPMENT PLAN IS APPROVED IN
 TERMS OF SECTION 60 OF THE STELLENBOSCH
 MUNICIPAL LAND USE PLANNING BY-LAW (2015),
 SUBJECT TO THE CONDITIONS AS PER APPENDIX 6.
 MUNICIPAL MANAGER
 DATE 30/5/18

INFORMATION
 DATE: 01-05-2020/IE
 0405517 | 11:200 @ AU

169359
 0405517 | 11:200 @ AU

Ground Floor Plan - Site C

Capitec

Always

Capitec

Capitec



Jamestown-grondstorting ontstel

Danie Keet 181220

Inwoners van Jamestown is ontstel oor bourommel wat in hul omgewing gestort word. Die bourommel is na bewering afkomstig van uitgrawings vir 'n parkeergarage vir die nuwe Capitec-hoofgebou wat in Technopark opgerig word.

Besorgde lede van die wyk het ook hul kommer uitgespreek oor die bou van die parkeergarage, wat skynbaar reeds aan die gang is, ten spyte daarvan dat 'n openbare deelnameproses nog uitgevoer word.

"Die aansoek vir die alleenstaande parkeergarage sirkuleer nog vir openbare kommentaar. Eers wanneer al die kommentaar van geïnteresseerde en geëffekteerde partye ontvang is, sal dit aan die munisipale beplanningstribunaal (MBT) vir besluitneming voorgelê word. Die bou van die parkeergarage is dus nog nie goedgekeur nie," het Stuart Grobbelaar, die munisipale woordvoerder, by navraag gesê.

"Goedgekeurde bouplanne bestaan wel vir die bou van ondergrondse (kelder-) parkering as deel van die Capitec-gebou, waarvoor 'n omgewingsbestuursplan ook ingedien is.

"Die aansoekdokumentasie wat vroeër vanjaar by die MBT gedien het, het aangetoon dat uitgrawings vervoer sal word na plaas 387 direk wes van die konstruksieterrein. Die voordele van hierdie reëling is dat konstruksievoertuie nie enige openbare paaie hoef te kruis nie en dat die publiek en

sakeondernemings nie aan steurnisse soos geraas en stof blootgestel sal word nie. Om te verseker dat hierdie reëling nie enige regulasies met betrekking tot die nasionale omgewingsbestuurswet (Wet 107 van 1998) oorskry nie, het die aansoeker 'n omgewingskonsultant aangestel om wetlike nakoming te verseker. Die kontrakteur het intussen die munisipaliteit genader om uit te vind of daar enige gebiede binne die munisipale gebied is waar opvulling nodig is en die dam bo Jamestown is geïdentifiseer as ideale terrein omdat dit 'n gevaar vir kinders inhou. Boumateriaal is onwettig deur ander mense daar gestort en wetstoepassing in die gebied is reeds verskerp om hierdie voorvalle te voorkom."

Grobbelaar wou ook nie kommentaar lewer op gerugte dat die betrokke wykskomitee opdrag gekry het om geen besware teen die bou van die parkeergarage te opper nie.

"Ons kan nie kommentaar lewer op gerugte rakende die wykskomitee nie. Die wykskomitee is 'n onafhanklike komitee wat ingevolge sy mandaat onder meer 'n adviserende rol vertolk oor aangeleenthede wat die wyk raak via die wyksraadslid aan die raad en in openbare deelnameprosesse wat gevolg word," het hy gesê.

In 'n sterk bewoorde brief aan sy wykslede skryf Dale Simons, 'n wyksraadslid vir Jamestown, dat die hele omgewing deur die storting van die grond uit die Capitec-uitgrawings verander word.

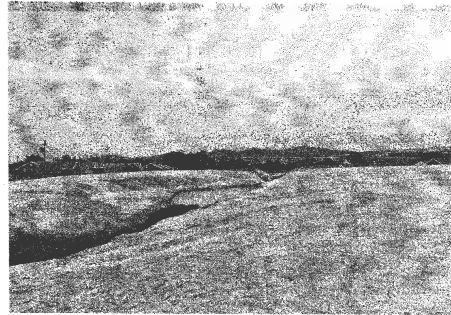
"As 'n lid van die wykskomitee wat vir hierdie



Bourommel is deel van die grond wat nou in Jamestown gestort word.

omgewing verantwoordelik is, glo ek die munisipale administrasie het deur hierdie optrede sy algehele miskenning van die inwoners van Jamestown getoon," skryf Simons.

"Ons het geen amptelike kommunikasie van hulle ontvang nie en daar was geen poging om met ons te praat nie. Ek sal baie verbaas wees as iemand in der waarheid verantwoordelikheid vir hierdie omgewingsgemors gaan aanvaar. Dit is nie net grond uit die uitgrawings wat hier gestort word nie – daar is gemengde afval van beton en selfs motorbande wat nou hier gestort word. Ons reg om in 'n skoon en gesonde omgewing te woon, is geskend."



Die dam in Jamestown word nou met grond van die Capitec-uitgraving in Technopark opgevol.

P FSM Comments on the CITP and RMP, 14 June 2021 (title page only)



FRIENDS OF STELLENBOSCH MOUNTAIN

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**Comments on the draft
August 2019 Roads Master Plan (RMP)
June 2020 Comprehensive Integrated Transport Plan (“CITP”)
December 2020 NMT Master Plan (NMTMP)
as respectively approved for comment or accepted at the
Stellenbosch Municipality Council Meeting of 2021-04-28**

2021-06-14

BY EMAIL to engineering.services@stellenbosch.gov.za
AND TO the SMF (Stellenbosch Sustainable Mobility Forum) email list

Contents

1	Status of the 2021 “Comprehensive Integrated Transport Plan”	3
2	Budget imbalance	8
3	Poverty, roads, and subsidising the rich	10
4	Railway transport and the Adam Tas Corridor	11
5	Comments on the draft Roads Master Plan	13
6	Comments on the draft NMT Master Plan	15
A	Article in Eikestadnuus on subordinate role of RMP	16
B	Item 11.5.5 of Council Agenda, 28 April 2021	18
C	Section 11(1)(c) of the National Land Transport Act	22
D	An annotated guide to contents and compliance of the 2021 “CITP”	24

Q Eikestadnuus article on the nonstatus of the Roads Master Plan

Why the Roads Master Plan has no status in law

HC Eggers
16 October 2018

The draft Roads Master Plan (RMP) presented at the Mobility Forum in September complies with none of the legislation and should hence be withdrawn. At best, it can serve as partial input into a new Roads Sectoral Plan.

The reasons for this claim requires some legal context. South African legislation is hierarchically structured in two ways:

The first hierarchy pertains to the sphere of government: national, provincial and municipal (local) government. Theoretically district government also exists but it does not play a large role. National laws govern provincial ones, and both in turn govern municipal ones. The lowest level of the hierarchy are so-called Sectoral Plans.

The second hierarchy pertains to the type of law. Acts at the top of the hierarchy often result in subordinate Frameworks. Acts and Frameworks together govern Regulations, Policies and Plans, and all together determine so-called Standard Operating Procedures and implementation.

The hierarchical structure is crucial: instances higher up in the hierarchy are mandatory for those lower down. A low-level Plan which contradicts a high-level Act or Regulation thereby becomes unlawful.

Where, then, does the Roads Master Plan appear in the hierarchy? The diagram sets out the relevant legislation. At the peak, we have the Constitution. The main national acts, shown in green, are SPLUMA (Spatial Land Use and Management Act), MSA (Municipal Systems Act), NLTA (National Land Transport Act), NEMA (National Environmental Management Act) and NHRA (National Heritage Resources Act). Relevant on national level are also the NLTSF (National Land Transport Strategic Framework) and MR16 (Minimum Requirements for drawing up an integrated transport plan).

On provincial level, LUPA (Land Use Planning Act) and PSDF (Provincial Spatial Development Framework) shown in green are directly relevant because they are required by SPLUMA. Similarly, the PLTF (Provincial Land Transport Framework) is required by the national NLTA.

The chief planning instrument on local-government level is the IDP (Integrated Development Plan) as required by the national MSA. The key municipal spatial planning instrument is the MSDF (Municipal Spatial Development Framework). It is required and governed both by spatial planning (SPLUMA, LUPA, PSDF, LUPB) and by transport planning (NLTSF), and of course the IDP. On the transport side, the key municipal planning instrument is the Comprehensive Integrated Transport Plan (CITP); it is mandatory in terms of the NLTSF, and the MR16 sets out in detail the type of contents of a CITP.

No Roads Master Plan is even mentioned in this hierarchy. It therefore cannot exist on its own; it is either illegal or it must have an optional place within these hierarchies. There is no doubt that the only lawful place for an RMP is that of a Sectoral Plan at the lowest level of the hierarchy. It is governed by all of the higher legislation and should therefore be called a Roads Slave Plan.

By contrast, the CITP is mandatory under the NLTA, and the MSDF is mandatory under multiple pieces of legislation. The principles and strategies of higher-order legislation, including the CITP and MSDF are binding on any RMP. The CITP and MSDF determine what a

RMP should contain and not vice versa. Naturally, funding priorities are also set not by the RMP itself.

Specific projects are at the very bottom of the hierarchy. Any and all new road construction must be considered within the parameters set by all of the above. A Roads Slave Plan has no freedom to pick and choose specific projects.

What type of projects does the legislation prefer? **The entire hierarchy of legislation is unambiguous that the future lies not in construction of more and wider roads but in densification and public transport.** By law, public transport and NMT must hence form the focus of the MSDF and CITP Project Teams and the Intergovernmental Steering Committees while road construction should be perpetually on the back burner. Any Roads Slave Plan should be an afterthought or not appear at all.

Traffic congestion by itself is not a valid ground for new road construction. All of the above legislation is well aware of congestion but nevertheless is unanimous and strident in requiring densification, public transport and NMT rather than road construction.

