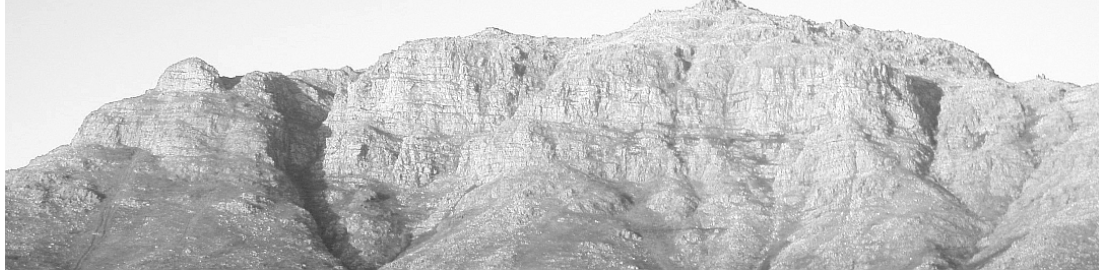

FRIENDS OF STELLENBOSCH MOUNTAIN



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To the
Executive Mayor, Ald. G. van Deventer
and the
Municipal Manager, Adv. G. Mettler
Stellenbosch Municipality

5 October 2018

BY HAND AND EMAIL

Re: Legal and planning considerations regarding the Draft Roads Master Plan, MSDF, CITP and Farm 372/1/2/3

Dear Mayor van Deventer, dear Municipal Manager Mettler,

we write to both of you as respectively the Executive Mayor and Appeal Authority in terms of the Stellenbosch Land Use By-law and the CEO of the Stellenbosch Municipality administration and Chairperson of the Project Committee. Friends of Stellenbosch Mountain (FSM) wish to bring to your attention the matters set out below for your kind consideration. Documents supporting the statements below can be found in the various municipal agendas and minutes, the Farm 372 applications, and to some extent at the website <http://www.physics.sun.ac.za/~eggers/fsm/docs18/>

1. Summary

- 1.1 There appears to be no basis in law for the Roads Master Plan of 2012 and the Draft Roads Master Plan as presented to the Stellenbosch Municipality Mobility Forum on 14 September 2018. The Draft Roads Master Plan is therefore noncompliant with spatial planning and transport legislation and its use is probably unlawful. There is no statutory or mandatory requirement for the preparation of a roads plan outside of a Comprehensive Integrated Transport Plan.
- 1.2 Remuneration and expenses paid to date for consulting work focused exclusively on the Draft Roads Master Plan rather than integrated spatial and transport planning must hence be construed as fruitless and wasteful expenditure.
- 1.3 FSM therefore respectfully requests that the Draft Roads Master Plan should be withdrawn before the start of the IDP/MSDF 2018/19 public participation processes in the coming weeks.

- 1.4 Promotion of roads and private vehicles without proper integration with all other modes contravenes Section 5(4) of the National Land Transport Act of 2009 (“NLTA”) and the corresponding sections in the Minimum Requirements for preparation of ITPs of 2016 and the Provincial Land Transport Framework (“PLTF”).
- 1.5 As a result, IDP and MSDF public participation process presentations must concern themselves with the central legal instruments (the IDP itself, the MSDF, and the CITP) and reflect the integrated approach and topics as required. Presentations concentrating on roads alone rather than the full transport picture are unlawful.
- 1.6 Likewise, the Draft Roads Master Plan cannot serve as a direct input into the workings of the Project Committee(s) and the Intergovernmental Steering Committee as defined in LUPA and the Stellenbosch Land Use By-law. Rather, the Project Committee(s) work must take into account integrated spatial and transport situation and goals in their entirety and consider all policy goals and Key Performance Indicators rather than just road infrastructure. Roads form a small component both of the MSDF and CITP.
- 1.7 No new road construction should be approved even in principle before the issue of traffic and the road network has been properly integrated into the MSDF and the Comprehensive Integrated Transport Plan and the present revisions of the MSDF and CITP have been completed and approved in May 2019. The moratorium includes the R44 between Stellenbosch and Somerset West, a possible link of Paradyskloof Road to Trumali Road, and any other segment of any new road in the municipal area.
- 1.8 The Environmental Impact Assessment ROD approval regarding the Farm 372 development applications pertains only to the extension of Schuilplaats Road. Approval of any other road link between Paradyskloof Rd and Trumali Rd such as L3b and L3c on Figure 1 would therefore require another Environmental Impact Assessment.
- 1.9 Unwarranted and possibly unlawful interference and conflicts of interest on the part of external parties involved in municipal spatial and transport planning should be stopped.

2. On the lawfulness of isolated road planning versus integrated development and transport planning

- 2.1 There are many indications that unlawful antecedence and priority is being given to planning, funding and construction of new road infrastructure over and above integrated spatial and transport scenarios featuring compact, mixed use and denser land use activity. Planning of roads and public parking is being prioritised over the promotion of travel demand management solutions, public transport development and non-motorised transport.
- 2.2 The meeting of 13 September 2018 of the Stellenbosch Municipality Mobility Forum (“SMMF”) provided a telling example in at least three ways.
 - (a) The agenda of the SMMF meeting was changed. A balanced initial version which was sent out 7 August for a meeting on 4 September included a range of important topics such as Transit-Oriented Development, NMT, “Traffic Problems” etc, while no mention was made of a Roads Master Plan (“RMP”). That meeting was cancelled. Later, a revised agenda was sent out which contained just the single agenda item of the (Draft) Roads Master Plan. The explanation provided for exclusive concentration on the RMP was unconvincing, especially in the light of the urgency of other issues with a view to the current 2018/19 IDP/MSDF processes and the peripheral status of the RMP within these processes.
 - (b) While the RMP has not yet been released and should not be released, the details and maps presented at the SMMF meeting show unbroken 20th century silo thinking

and a determination to proceed with a purely roads- and urban-sprawl-driven based development model with no regard or respect for the legislation and the Stellenbosch IDP and MSDF. We set out the details below.

- (c) The zeal and urgency of the RMP-related processes contrast with the marked lack of urgency regarding transport matters and the Mobility Forum itself. While critical parameters are being laid down in the months September–November 2018, the next SMMF meeting is scheduled only for January 2019.

2.3 Specifically, the presentation to the SMMF on 13 September 2018 —

- (a) concentrated exclusively on what was called the *Western Bypass* and the so-called *Eastern Link Road*,
- (b) made no mention of the governing principles and legislation or of the approved Stellenbosch IDP/MSDF policies which are supposed to form the basis for spatial and transport planning,
- (c) made no mention of the critically important alternative scenario which would involve *Transit Oriented Development* along with *Travel Demand Management*, including a major shift of trips to various forms of shared travel, cycling and public transport with extensive park and ride operations, along with the some realignment and improvement of the Adam Tas transport corridor to increase passenger throughput,
- (d) presented as fact a set of transport modelling outputs for the proposed bypass roads, whose assumptions and input parameters have not, as had previously been agreed, been shared with other transport planning experts and are therefore in dispute,
- (e) prioritised an eastern link between Paradyskloof Rd and Trumali Road based only on car traffic modelling and without providing any legislation- SDF-, transport- or other principle-based grounds for such prioritisation.

2.4 It has since emerged that **the Stellenbosch Municipal Roads Master Plan in all its forms has no basis in the relevant national, provincial and municipal legislation or policy**. There appears to be no reference to the requirement of a municipal Roads Master Plan in any legislation or policy applicable to Stellenbosch Municipality.

2.5 Rather, there is multiple, unequivocal and explicit reference to integrated land use and transport planning in all of the above. Exclusive concentration on road infrastructure therefore amount to unfair administrative action.

2.6 Simple incorporation of the current RMP into the CITP does not thereby make it lawful. Road network planning is subject to transport legislation. Section 5 of the National Land Transport Act of 2009 (“NLTA”) explicitly requires the national minister to promote public over private transport. Derivative legislation which implements this includes the Minimum Requirements for preparation of ITPs of 2016 (“MR16”) and Section 6.2 of the Provincial Land Transport Framework (“PLTF”) in terms of Provincial Key Performance Indicators (KPIs) (Section 13 of PLTF). Corresponding Municipal KPIs appear in Section 2.6 of the Stellenbosch Comprehensive Integrated Transport Plan (“CITP”).

2.7 A RMP “reborn” as part of the MSDF also remains subject to spatial planning legislation. Comparison of the 2018 approved MSDF with the RMP make clear that RMP contents do not comply with, at a minimum, the MSDF itself or the principles of Chapter 2, Section 12(1), 12(5) and Section 21 of the Spatial Land Use and Management Act (“SPLUMA”). It also likely does not comply with the principles of Section 7 of SPLUMA, including spatial justice, spatial sustainability, efficiency, resilience (flexibility) and good administration: witness the dichotomy between the Department of Engineering and the Department of Planning.

- 2.8 As set out in the appeal by Eggers against the proposed R44 upgrade, new road construction subsidises private vehicle owners while disadvantaging the poor and those using public transport and NMT. This contravenes the above SPLUMA principles.
- 2.9 Even if one were to stay within the narrow ambit of road infrastructure, the Roads Master Plan did not fairly consider all alternatives. Apart from the public transport/NMT priority already mentioned, the Stellenbosch CITP in Section 8.3 explicitly lists three alternatives. Of these, only the two bypass routes have been assessed in any detail so far, while the other alternatives are being ignored. These include capacity improvements of existing arterial roads and a link road between Adam Tas and Plankenbrug Roads on the western side of the railways, as researched in detail in a 2015 Royal Haskoning report on Transit Oriented Development.
- 2.10 Within the narrow ambit of roads, modelling of traffic is a critical input into decisionmaking. The Municipality is currently using only one modelling consultant and is refusing to share parameters and data with other consultants to check assumptions and results.
- 2.11 It is clear to most observers that there is a strong dichotomy between the approaches taken by Stellenbosch Municipality Department of Engineering Services on the one hand and the Department of Planning and Economic Development on the other. To quote, for example, from the minutes of 4 May 2018 of the Municipal Planning Tribunal (“MPT”):

Mr Rabie stated that it seems that there is not a lot of coordination between the departments of Council for example between the Planning department and the Engineering Department. Mr Rabie stated that departments can't work in isolation. Chairperson agreed with Mr Rabie and stated that this is one organisation which must work together.

Apart from paralysing the planning and all processes, such dichotomy is unlawful as, for example, per Section 7(e) of SPLUMA.

- 2.12 Given that the RMP appears to have no standing in law, given the clear directives of the legislation, and given the KPIs and alternatives in the existing Stellenbosch CITP, it is inexplicable why Stellenbosch Municipality has commissioned and continues to propagate a standalone revision of the Draft Roads Master Plan by, for example, giving it priority at the Mobility Forum over more important and pressing issues in the CITP and MSDF.
- 2.13 It is likewise inexplicable why, during the 2017/18 IDP/MSDF public participation process, the RMP and its details were given broad coverage both by municipal officials and consultants while the legally mandatory Integrated Transport Plan and its many issues was hardly mentioned. Furthermore, written questions by FSM regarding the planned road infrastructure were answered by irrelevant statements, months after the IDP process had concluded.
- 2.14 It is inexplicable why the municipality approved spending of hundreds of thousands of Rands in several MTREF budgets for the revision of the 2012 Roads Master Plan. The RMP is a luxury, not a necessity.
- 2.15 It is furthermore inexplicable that an overwhelming fraction of the grants requested and received from Western Cape provincial agencies for infrastructure projects relate to road infrastructure only.

3. The RMP and public participation processes

- 3.1 At least two public participation processes are required by the legislation; see for example the LUPB and Section 12(1)(o) of SPLUMA. Naturally such processes should reflect those sectoral plans and processes which are prescribed by law.

- 3.2 The RMP is not required by law, but Integrated Spatial and Transport Planning is. It should hence be self-evident that the RMP has no place in official IDP/MSDF public presentations. These should give priority to, and focus on, exactly those spatial and integrated transport plans which are identified and prescribed by the law.
- 3.3 Not focusing on the essential and required components of the MSDF and CITP in favour of irrelevant and extraneous matters would be in violation of the relevant sections of the Promotion of Administrative Justice Act.

4. The role of DTPW

- 4.1 The role of the Western Cape Department of Transport and Public Works (“DTPW”) in the MSDF and specifically the RMP must also be examined. It is well known in Stellenbosch that the *Road Network Management* branch or section of DTPW is playing an inordinately large role in influencing and, it would seem, skewing policy and practice in this municipality towards roads, while the DTPW sections *Transport Management* and *Strategy, Planning and Coordination* seem to play a subordinate role.
- 4.2 For example, the role of DTPW Road Network Management in propagating the controversial upgrade proposals of the R44 between Stellenbosch and Somerset West is well known and documented.
- 4.3 Among many other examples, a letter written on 6 April 2017 by said Road Network Management regarding the proposed Farm 372 developments (see below) convey the level of influence wielded. While the Farm 372 matter at hand related merely to the question of a local extension of Schuilplaats Road, the DTPW letter interferes directly with the work of the Project Committee and the IDP/MSDF processes by attempts to directly prescribe the detail of the large-scale road network:

7. This Branch strongly supports the suggested extension of Wildebosch Road to link with the extension of Trumali Road and should be a priority for implementation by the Municipality which will together with the extension of Wildebosch Road to the Techno Park access on the R44 alleviate congestion at the Blaauwklippen Road and Paradyskloof Road on the R44. The extension of Wildebosch further north should also be considered to provide a parallel alternative to the R44.

- 4.4 Please refer to Figure 1 for a partial map of the “suggested extensions” which in reality amount to a complete change of the entire spatial planning of the region south of the Eerste River — all outside of the legally prescribed principles and processes.
- 4.5 The 6 April 2017 DTPW letter is being quoted within the Farm 372 development applications (see below) as stating a fact. There is also no doubt that the various meetings between the developer consultants and DTPW led to an alignment of the respective proposals.
- 4.6 Similar issues and arguments apply to the so-called Western Bypass and its components, including the so-called *Western Priority Link* propagated by the presentation at the SMMF meeting of 13 September 2018.

5. Consultants and conflicts of interest

- 5.1 Stellenbosch has a history of consultants acting in conflict of interest, being simultaneously remunerated for promoting specific development applications and for consulting for the municipality itself which adjudicates development applications.
- 5.2 The latest example is the iCE Group (Pty) Ltd (“ICE”), which has been acting as consultant for the developers of Farm 372 since at least 2017. Among others, ICE did the traffic

impact assessment for Portions 2 and 3 as well as writing a number of letters and opinions on various questions as reflected in the Farm 372 EIA and appeal documents. ICE also met with DTPW on 15 December 2016, following which the Schuilplaats extension was propagated by all these parties.

- 5.3 On the other hand, ICE had been strongly involved in the 2017/18 MSDF process. ICE director Piet van Blerk gave one of the primary presentations at the November 2017 MSDF public meetings.
- 5.4 ICE has played a large role in the Western Bypass. See for example a letter dated 23 April 2017 from ICE to the Municipality entitled *STELLENBOSCH WESTERN BYPASS — STATUS REPORT*. A four-page list of questions pertaining to this presentation and the bypass submitted in writing by FSM to ICE was ignored. Months later, the IDP office sent a two-paragraph reply which did not even attempt to address the questions.
- 5.5 ICE was furthermore used as consultant during the compilation of the Stellenbosch Development Contribution policies, amongst other drawing up a map of future roads entitled *FUTURE ROAD INFRASTRUCTURE STELLENBOSCH*, document number TCO2203-R-02, which formed part of the May 2017 MTREF documents.
- 5.6 There is therefore no doubt that ICE has a conflict of interest: ICE is acting on behalf of private developers while at the same time influencing and in some case writing Stellenbosch-wide policy, specific road planning and even budgets.
- 5.7 We note that TV3 Architects and Town Planners have acted on behalf of one of the Farm 372 development applications as well as numerous other development applications in the past decades. To prevent conflicts of interest, TV3 cannot therefore consult for Stellenbosch Municipality in any way. Both ICE and TV3 may, of course, participate as Interested and Affected Parties.
- 5.8 No legal persona may act in conflict of interest, including councillors, administration officials, consultants and service providers. We assume that this Municipality is serious about eliminating all possible conflicts of interest.

6. The Farm 372 Portions 1, 2 and 3 development applications

- 6.1 We refer to the application for development of Portions 1, 2 and 3 of Farm 372, the resulting decisions of the Municipal Planning Tribunal (“MPT”) and the controversy regarding the alignment of any connecting road between Paradyskloof Rd and Trumali Rd, which are shown in red in Figure 1 below. We would like to bring to your attention that the Environmental Impact Assessment and the corresponding Record of Decision dated 2017–11–24 authorises only the extension of Schuilplaats Road. Approval of any other road link between Paradyskloof Rd and Trumali Rd such as L3b and L3c on Figure 1 would therefore require another Environmental Impact Assessment. The ICE Group letter of 2018–07–27 similarly notes that the links L3b and L3c would require a new environmental impact assessment. For that reason alone, it would be very unwise to approve or require one of the road alternatives L3b and L3c of Figure 1.
- 6.2 Not approving alternatives L3b or L3c does not automatically imply approval of alternative L3a, the Schuilplaats Rd extension. Of course levels of service along the R44 are bad and will worsen even more. Yet, as set out multiple times in all the legislation, development should be driven not by car-traffic modelling and developer- and demand-driven road construction but by proactive intervention to reduce the use of private motor vehicles.
- 6.3 We note that neither the development applications nor any of the traffic impact assessments or the letters by consultants (ITS, ICE, TV3 et al) or DTPW even attempts to

consider travel demand management scenarios whereby private car usage is reduced and actively discouraged through a range of supporting measures.

- 6.4 Indeed, the developers of Portions 2 and 3, including the developer's consultant TV3, insist that they have a right to continue with low-density urban sprawl. The relevant appeal documents show that they are angry that the MPT reminds them of the need for densification. The Municipality can no longer support any application for low-density development and is fully entitled to enforce densification.

7. Requests

Based on the aforesaid, FSM respectfully submits its requests as follows:

- 7.1 The Municipality should withdraw the 2012 Roads Master Plan and any drafts or revisions or amendments thereto from the 2018/19 IDP and MSDF public participation processes and from the agenda of the Intergovernmental Steering Committee ("IGSC") as defined in Western Cape Land Use Planning Act of 2014 ("LUPA") or the Stellenbosch Land Use Planning By-Law of 2015 ("LUPB") and elsewhere.
- 7.2 The Municipality should refer any results, data and considerations obtained within the recent revision of the RMP back to the Stellenbosch Municipality Project Committee, as established in terms of the LUPA and LUPB, for consideration within the integrated spatial and transport planning framework and parameters set by the legislation.
- 7.3 Evidently, consideration and planning of the roads network by the Project Committee and IGSC should henceforth be conducted within the provisions of LUPA and the *Minimum Requirements for the Preparation of Integrated Transport Plans* of 2016 ("MR16"). By law, the Project Committee and IGSC —
- (a) must, when considering roads within spatial planning, take into account and address Section 10 of the LUPA in its entirety rather than just focusing on subsection 10(3)(a); and
 - (b) ensure that road-related issues are addressed within the framework of the existing Stellenbosch MSDF and CITP. True and useful remnants, if any, of the current draft Roads Master Plan could be incorporated into *Chapter 5: Transport Needs Assessment* and *Chapter 7: Transport Infrastructure Strategy* of the CITP as prescribed by the *Minimum Contents* section 8 the MR16.
- 7.4 FSM further requests
- (a) that the aforementioned consultants play no further role consulting for the municipality or as presenters in the upcoming and future public participation processes,
 - (b) that Stellenbosch Municipality communicates with the Western Cape Department of Transport and Public Works requesting said Department to cease and desist from prescribing to Stellenbosch and its citizens the details of its spatial and transport planning and of any other municipal planning policies,
 - (c) that no approval for construction of any link between Paradyskloof Road and Trumali Road be granted prior to the finalisation of the 2018/19 MSDF,
 - (d) that any current traffic modelling consultants are compelled to open their modelling to public inspection and verification by independent competent experts outside the municipality,
 - (e) that the Appeal by the developers of Portion 1 against the density requirement of 20–30 units per hectare of the Municipal Planning Tribunal be dismissed,
 - (f) that the set of questions submitted on 16 November 2017 by FSM within the 2017/18 MSDF public participation process regarding the Western Bypass, Eastern Link

Road, the R44, disclosure of interests and other matters be answered in full and in writing rather than in the two cursory paragraphs provided to FSM in June 2018.

Yours faithfully

HC Eggers
Secretary: Friends of Stellenbosch Mountain



Figure 1: Current and RMP-envisioned road network. Relevant existing roads are marked in green, including the R44, Paradyskloof Road marked “P”, Wildebosch Road as “W”, Blaauwklippen Road as “B”, Schuilplaats Road as “S” and Trumali Road as “T”. Portions 2, 3 and 4 of Farm 372 approved for development are marked in yellow. Marked in purple and red are the successive “links” in the entire road “chain”: WL represents the “Western Link”, the RMP-envisioned link between Technopark and Wildebosch Rd, L2 the existing Wildebosch link, L3 a, b and c the three alternative links between Wildebosch Rd and Trumali Rd, L4 the envisaged link between Trumali Rd and Brandwacht suburb, and the dotted lines of L5 the last remaining link between Brandwacht and Central Stellenbosch.