

Date: 22 May 2023

Ref: 11278

Your ref: LU/15191

Via email to: info@firstplan.co.za

Cc: Stiaan.Carstens@stellenbosch.gov.za



I L Rosenberg House 80 Jordaan Street BO-KAAP

☒ 242 Buitengracht Bo-Kaap CAPE TOWN 8001

T: 021 531 8435 E: info@tommybrummer.co.za

OBJECTION: APPLICATION FOR REZONING AND INCLUSION INTO URBAN EDGE: REM FARM 1040 ("FLEURBAAI") AND FARM 1480 (INCLUDES THE FARM "LIBERTAS"), PTN 2 OF FARM 374 AND REM PTN 2 OF FARM 371 ("THE DEVELOPMENT SITE")

A. INTRODUCTION

1. We have been appointed by the Trustees of the Waterfall Trust (Trust Reg IT 8715/07 (T)) ("our clients"), the owners of Rem Ptn 6 of the Farm Fleurbaai, Farm 1040, Stellenbosch to object to the above application. A power of attorney confirming our appointment is attached marked "Annexure A".
2. Our clients have a direct interest in the application as their property abuts the largest portion of the development site to the north-west. This close relationship between our clients' farm (dotted outline) and the largest of the proposed 3 development nodes (solid red outline) is shown on the images below.



Member: THOMAS BRIAN BRÜMMER
Registration Number: B. Sc M(TRP) Pr Planner A/281/1985
Tommy Brümmer CC: Registration Number: CK 94/032549/23
Vat Registration Number: 4900146830



3. The application has two component parts. The first part is an application in terms of Section 15(2)(a) of the Stellenbosch Municipality Land Use Planning By-law, 2015 ("the 2015 SMLPB"), for the rezoning of Rem Farm 1040, Farm 1480, Ptn 2 of Farm 374 and Rem Ptn 2 of Farm 371 ("the development site") from "Agricultural and Rural Zone" to "Subdivisional Area" to permit urban development. The second part is for a "site-specific deviation" from the approved Stellenbosch Municipality Spatial Development Framework of 2019 ("the MSDF") to permit urban development outside the approved urban edge.
4. Our objection will show that the development proposal as contemplated by the application is, *inter alia*, inconsistent with applicable legislation, the MSDF and policy generally. The application is also based on assumptions that are made without a proper factual basis and are flawed. The application is undesirable as the development contemplated thereby will have a significant negative impact on the greater Stellenbosch area and on our client's property specifically.
5. We reserve the right to supplement this letter of objection with further supporting information and documentation within any extended time permitted for submissions.
6. The reasons for our objection are fully described in **Section C** of our objection report.

B. SITE HISTORIC VALUE

7. The historic value of our clients' property, the farm Fleurbaai, as well as of the abutting farm Libertas, frames the context and importance of the land that is subject to the applicant's development proposal.
8. The Stellenbosch Heritage Inventory and Conservation Management Plan (2019) confirms both the significance and importance of the "landscape unit C15", where the subject farms are located

as per the extract below (source: Heritage Statement, Rev 4, November 2021). The C15 landscape unit assessment is attached as “Annexure B”.

The landscape unit is characterised by distinct rectilinear vineyards on a gradual slope that sits as a rural finger on the southwestern edge of Stellenbosch. Wedged between the Eerste River, Technopark and De Zalze Estate, the slope rises toward Technopark on the crest, where most of this office park is hidden behind a tree line. The rise to the south of this landscape shields the R44 and suburban development from view, creating a visual continuum between the Eerste River corridor, the agricultural fields in the foreground, and the foothills and high peaks of the Helderberg Range beyond. The service roads between the vineyards also lie perpendicular to the slope, directing views towards the dramatic mountains as an uninterrupted view. The central area of the northern slopes has high soil suitability, declining towards the eastern edge. Smaller blocks in an irregular pattern of field crops and vineyards denote the western and southern edge of this land unit, referring to historic commonage. A large, significant historic freehold farm, Libertas, is located in close proximity to Die Boord. The historic Fleurbaix site is particularly vulnerable to agri-industrial development which has already impacted the site. The suburban sprawl of Stellenbosch is a threat to this unique heritage site and its broader landscape. Agricultural landscape attributes a specific rural character to the town of Stellenbosch with significant views from the Polkadraai Road entering Stellenbosch. Any development in this land unit would compromise the rural character of Stellenbosch. The landscape unit demonstrates the relationship between river corridor and settlement, as well as the rural patterns of use and the wilderness beyond. This interplay is extremely characteristic of the Cape Winelands, and key to its high cultural significance.

9. A previous comment in an earlier version of the heritage statement (as quoted in section 4 of the VIA report attached to the applicants’ motivation report), when referring to an earlier alternative development concept, clearly considered development on the Fleurbaai and Libertas farms to be an ‘erosion of the urban edge and urban sprawl’.
10. From a heritage value and historic landscape point of view, it is clear that the development site forms a significant contribution to local and indeed South African history and that the development of these historic farms for urban purposes should be considered inappropriate and undesirable.
11. We also submit that the heritage value is being under-reported by the high-level planning report attached to the applicant’s motivation report and the need for a full Heritage Impact Assessment (“HIA”) at this stage is highlighted by the under-reporting of national heritage value.

C. OBJECTIONS

I. Legislative Issues

i. Sections 15 and 60 of the 2015 SMPBL

12. As per the applicant’s published notice, its application for rezoning to *Subdivisional Area* and for a deviation of the MSDF so as to permit development outside of the urban edge was submitted in terms of Section 15(2)(a) of the 2015 SMPBL.

13. S 15(2) of the 2015 SMPBL provides for the categories of application for the development of land that may serve before the Stellenbosch Municipality ("SM"). Section 15(2)(a) deals with rezoning applications. Section 15(2) does not cater for applications to deviate from the MSDF and to the extent that the applicant has suggested that the application for a deviation of the MSDF falls within the rubric of section 15(2), the Applicant is incorrect and the application is not competent as the 2015 SMPBL provides no mechanism to consider the application in this respect.

14. Section 60 of the SMPBL empowers either an authorised official or the Municipal Planning Tribunal ("MPT") as follows:

An employee authorised by virtue of section 69(1), or the Tribunal by virtue of section 69(2), as the case may be, may in respect of an application contemplated in section 15(2)—

(a) approve, in whole or in part, or refuse that application;

(b)

Section 60 therefore clearly authorises an official or the MPT to only take decisions on applications made in terms of S 15(2) of the 2015 SMPBL. As indicated, a deviation from the MSDF is not such an application.

15. It follows that the 2015 SMPBL does not empower the SM to approve applications for deviation from the MSDF.

16. The only provision in the SMPBL that deals with amendments to the MSDF is section 10. Section 10 contemplates amendments to the MSDF as contemplated by the SM and not third parties.

17. The application, insofar as it contemplates an amendment to the MSDF, is therefore not in accordance with legislated provisions and cannot be considered for approval by the SM.

ii. On-site Notice

18. We are instructed by our client that the site notice for the application was only placed at the end of Van Rhee de Road on or about 26 April 2023. This is at least one week after the date of the notice, which is dated 20 April 2023.

19. In terms of S 48 (2)(a) of the 2015 SMPBL, "*Public notice contemplated in subsection (1) may be given by— displaying a notice contemplated in section 47 of a size of at least 60 centimetres by 42 centimetres on the frontage of the erf concerned or at any other conspicuous and easily accessible place on the erf*". We note that the "erf" in this case is in fact four farms. A notice should have been placed on each of these land units in compliance with this requirement. It is further suggested that a site with a total area of 182 ha should have been provided with more than one site notice.

II. Objection to Proposed Development Application Process

i. Non-Compliance with National Legislation and Provincial Directives

20. The applicant describes a planning process that is a linear sequential process. Thus, the current application is the 'first step' in a sequence of contemplated applications. This process was purportedly "*agreed with the Municipality ... to ensure a well-informed process and decisions*" (page 3 of the planning application report). We point out that is not open to the Municipality to make agreements of this kind, and we strongly disagree that the process as proposed can result in well informed decisions, especially if the basis for these decisions are all "high-level" and "desktop" studies which all require further refinement during the process.

21. As part of this process, the applicant notes that it is "*foreseen that various triggers within the regulations of the National Environmental Management Act, 1998 (NEMA) and the National*

Heritage Resources Act, 1999 (NHRA), would require the submission of a Heritage Impact Assessment (HIA) and an Environmental Impact Assessment (EIA).....” (page 4 of motivation report). This “step” in the process is proposed to be step three (“III”).

22. In terms of Section 38 of the NHRA, “any person who intends to undertake a development categorized as (***our bold highlighting***);

*(a) the **construction of a road**, wall, powerline, pipeline, canal or other similar form of linear development or barrier **exceeding 300m** in length;*
(b) the construction of a bridge or similar structure exceeding 50 m in length;
*(c) any **development or other activity which will change the character of a site**—*
*(i) **exceeding 5 000 m²** in extent; or*
*(ii) **involving three or more existing erven** or subdivisions thereof; or*
(iii) involving three or more erven or divisions thereof which have been consolidated within the past five years; or
(iv) the costs of which will exceed a sum set in terms of regulations by SAHRA or a provincial heritage resources authority;
*(d) the **re-zoning of a site exceeding 10 000 m²** in extent*

must at the very earliest stages of initiating such a development, notify the responsible heritage resources authority and furnish it with details regarding the location, nature and extent of the proposed development.

23. We submit that it is very clear that at this stage already, the Applicant’s application has triggered the requirement for the submission of the applicant’s development proposal to Heritage Western Cape as required by Section 38 of the NHRA. A submission to Heritage Western Cape cannot be seen as a future phase of the application process; as the section itself provides, notification to the Heritage Authority must be at the very earliest stages of initiating the development. At the latest, that stage is now.
24. In terms of the consideration of the applicant’s application by a Municipal Planning Tribunal (“MPT”), we refer to Section 42 (2) of the Spatial Planning and Land Use Management Act, 2013 (“SPLUMA”) which requires a Municipal Planning Tribunal to “*ensure compliance with environmental legislation*”. Absent the conclusion of an environmental process, the application cannot be considered by the MPT and to do so would be premature and a contravention of Section 42(2) of SPLUMA.
25. We also refer you to the Provincial Department of Environmental Affairs and Development Planning (DEA&DP) Circular No 0026/2020 (Attached as “**Annexure C**”). This circular explicitly states that where there are other authorizations required specifically in terms of NEMA and the NHRA, a parallel application process should be followed. This approach is also supported by case law and by the principles of the Promotion of Administrative Justice Act (PAJA) as explained in the circular.
26. The proposed ‘process’ as set out in the application is therefore not only completely contrary to the directives in Circular 26/2020, it also does not comply with the requirements of the NHRA and is also not consistent with promoting good administrative process. It will result in decisions being taken based on incomplete information and potential high-risk outcomes that are not in the interest of the local community. Furthermore, when applications are stepped in the manner proposed in this case, the approval of prior applications often exercises a bias in favour of the grant of applications in the minds of the decision makers down the line.
27. The Municipality of Stellenbosch cannot support an application that is in contravention of National Legislation and clear Provincial directives.

ii. Inadequate Information for Decision making

28. The applicant's motivation report for rezoning and a deviation from the MSDF is accompanied by a number of 'specialist studies'. These studies are generally described as 'high-level', 'preliminary' or 'desktop' studies.
29. All the studies make it clear that they are preliminary studies and that further detailed studies will be required as the proposed 'process' progresses. The difficulty with this approach is that there are no clear indications of what all the potential impacts, risks and concerns are with respect to the proposed development. The applicant is therefore proposing that the SM grants the application notwithstanding the fact that it is based on incomplete and partial information. This is clearly contrary to the development principles, norms and standards of Chapter 2 of SPLUMA.
30. SPLUMA requires that decisions are based on clear and complete information, and that specifically "*special consideration be given to the protection of prime and unique agricultural land*" (Refer to Chapter 2, Section 7(b) (ii) and Chapter 6 S 42(1)(b)). In this regard, we note that no agricultural study of any form is included in the applicant's motivation report, notwithstanding the fact that the MSDF has demarcated the development site as being of high agricultural value.
31. Based on the fact that the development site is zoned for "*Agricultural and Rural*" purposes, as well as the fact that the land is located outside the urban edge and is subject to Act 70 of 1970 (see Section III of our objection for a discussion on Act 70 of 1970), we submit that the level of supporting 'specialist studies' are inadequate to support any informed decision. The absence of an agricultural potential study is perhaps the most concerning omission in the applicant's motivation report, especially given the importance of preserving agricultural land, as stressed in the MSDF and the fact that the MSDF identifies the development site as falling within an area of high agricultural potential.

III. Deviation from MSDF Urban Edge

i. No Demonstratable Site Specific Circumstances for Inclusion

32. The development site is located outside the urban edge as delineated in the MSDF. The application includes an amendment to the MSDF so as to re-align the Stellenbosch urban edge in such a manner that it includes the development site within the urban edge of Stellenbosch.
33. The legislated basis for considering such an application has already been discussed. The applicant's motivation report concedes that in terms of Section 22(2) of SPLUMA, the only basis upon which a MPT is entitled to deviate from a MSDF is where there are 'site-specific circumstances' justifying a departure from the MSDF.
34. As noted in the motivation report, there are no clear guidelines for determining what constitutes 'site-specific circumstances'. However, the report refers to a National Department of Agricultural, Land Reform and Rural Development Draft guideline document where 'site specific circumstances' are defined as follows (page 19 of motivation report):

"any land use related condition that is applicable to a specific land parcel. A site-specific circumstance is by nature an attribute or characteristic or condition which is adjudged unique to or exceptionally related to the land which is the subject of a land development application".

35. From this definition the **site-specific circumstances must clearly relate to the land unit or land parcel** that is the subject of the development proposal. "**Site-specific" does not relate to nor is it dependent on the nature of a development proposal, the effect of the development proposal on the surrounding areas or external future planning proposals – such as road planning.**"

36. We note that the applicants' motivation report does not include the National guideline document referred to. We have not been able to find a copy of this document after a search conducted on-line.
37. The motivation report suggests that it deals with site specific circumstances in sections 7.1.1 and 7.1.2 thereof. A reading of these sub-sections contains no detail in relation to 'site-specific circumstances' at all, as required by Section 22 (2) of SPLUMA.
38. We submit that in this instance, there are in fact no site-specific circumstances that exist for inclusion of the development site into the urban edge – there are however numerous site-specific circumstances that support the argument that the **development site should be retained as agricultural land units outside the urban edge**. We will expand on these in Section IV below.
39. The applicant's categorization in the four bullet points on page 19 of the applicants' motivation report of what site-specific circumstances would be, can apply to any property in general, are exceedingly vague and there is no proof that they originate from the said National Guideline document. They cannot be considered as relevant in this case and must be discarded.
40. The entire motivation for the 'site-specific circumstances' as contained in Section 7.1.1 of the motivation report is based on the position of the proposed future Techno Park link road to Adam Tas Road, as well as on the effect of the proposed development on the site and its' surrounds. These motivations and arguments do not relate to the specific attributes or characteristics of the development site - they relate to other external factors – being a future road proposal off-site as well as a design concept for development and the socio-economic impact of the proposed development.
41. The Municipality cannot consider the motivation for site specific circumstances to permit the inclusion of the subject farms into the urban edge where no such site-specific circumstances are articulated.

ii. The development directives as contained in the MSDF do not support the proposed development

42. The MSDF contains other directives, aside from the urban edge line, to strengthen and support the protection of agricultural land and limit urban sprawl. The extracts from the MSDF below, confirm this. The urban edge is not an isolated line but is supported by other clear and important guidelines and directives.
43. The MSDF is both a recent document as well as a thoroughly researched and comprehensive Council approved statement of the intent for growth management in the Stellenbosch Municipal area. The integrity of this statement should be able to withstand applications for development that are contrary to the stated policies and intention of the MSDF, such as this application. The protection of agricultural land and the implications for the SDF are highlighted below.

Table 7. Stellenbosch's Biophysical context - Issues and implications

KEY ISSUES	SDF IMPLICATIONS
- Biodiversity and related ecological services essential to human existence are threatened by the fragmentation of eco-systems, transformation and degradation of land. - The most highly modified and polluted sections of rivers in the municipal area are those that run through agricultural and urban areas, where natural buffer areas have been eroded and rivers are impacted by agricultural run-off, over-extraction, storm water and waste water discharge, and the reduced flow resulting from climate change. - High potential agricultural land is lost to other land uses, including urban development. - The impact of climate change on the natural resource base and agriculture is still unclear, but it is likely to impact on the quality of life and economic base of the municipal area.	<i>The outward growth of settlements should be restricted to prevent the consumption of valuable agricultural and natural environments and associated economic benefits.</i> <i>The efficient use of centrally located land within existing urban areas is critical to prevent the erosion of agricultural and natural assets.</i> <i>The upgrading of existing poorer settlements is essential to prevent the degradation of natural assets.</i> <i>New building and settlement expansion should be limited to already disturbed areas of lowest environmental and agricultural value.</i> <i>New development should consider the impacts of climate change, for example through ensuring sufficient and appropriate landscaping that assists in lowering temperatures. In addition, the creation of attractive urban public spaces and places, where extreme heat is mitigated, will be important for both local residents and the tourism industry.</i>

44. This is also confirmed in the first 3 of 7 tenets of the MSDF where, in addition to the protection of agricultural land, the protection of the cultural heritage character is also endorsed:

4.2. Concept

The concept for spatial development and management of SM comprises seven key tenets:

1: Maintain and grow our natural assets

Valuable land areas, including critical biodiversity areas, 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.

2: Respect and grow our cultural heritage

The areas and spaces – built and unbuilt – that embody the cultural heritage and opportunity of SM needs to be preserved and exposed further. Some areas and spaces need to be maintained intact, others provide the opportunity for new activity, in turn exposing and enabling new expressions of culture.

3: Direct growth to areas of lesser natural and cultural significance as well as movement opportunity

Within areas of lesser natural and cultural significance, the focus should be on areas where different modes of transport intersect, specifically places where people on foot – or using non-motorised transport – can readily engage with public transport.

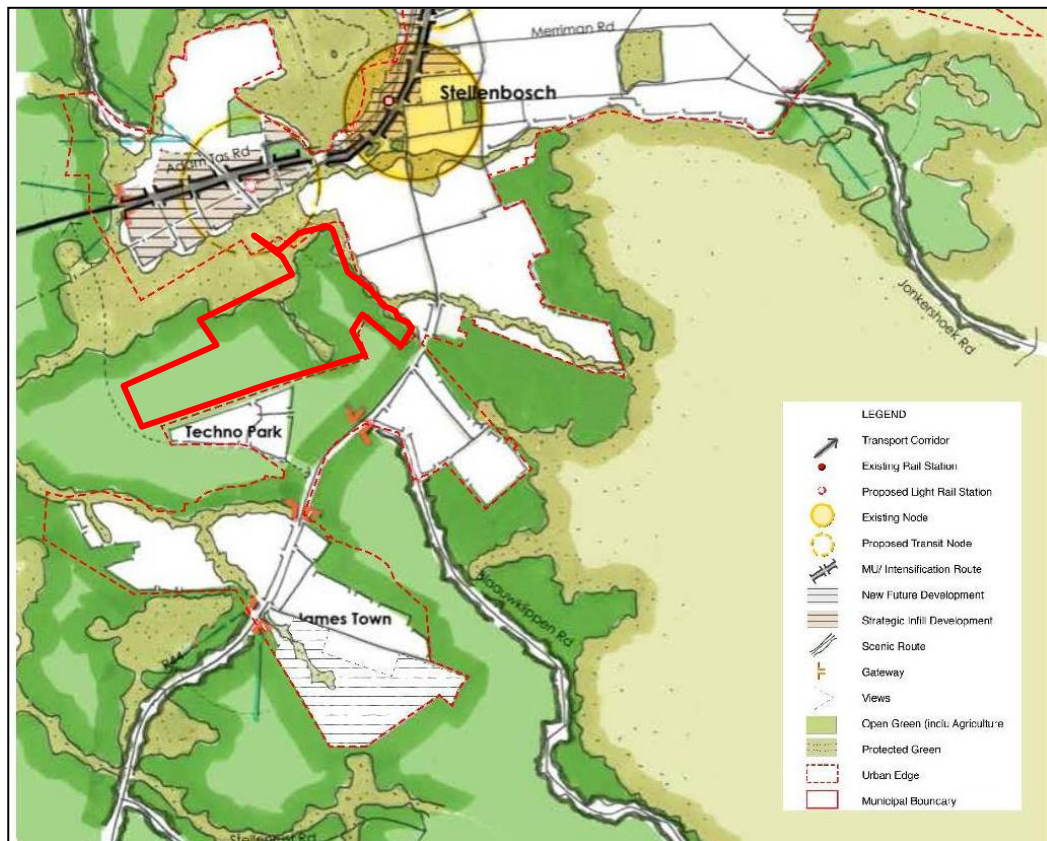
45. The protection of the agricultural land around Stellenbosch as well as the defense of the urban edge are amongst the strong and clear statements in the MSDF that support our objection. Whilst we note that “logical small extensions” of the urban edge may be considered as per the extract

from table 20 in the MSDF, we submit that the inclusion of 180 ha of agricultural land outside the urban edge, dispersed as 3 separate nodes, interspersed with open space cannot be seen as small or logical.

Table 20. Plan Elements and Proposals for Stellenbosch Town

TYPE OF ACTION	SDF ELEMENT	SPATIAL PROPOSALS
Protective Actions	CBA's, ESA's, Protected areas	- Maintain and improve the nature areas surrounding Stellenbosch town. - Work to increasingly connect and integrate nature areas, also with the urban green areas, to form an integrated green web or framework across the town and its hinterland area.
	Water courses	Improve public continuity, access, and space along the Kromrivier, Plankenbrug, Eerste River, and Blaauklippen River corridors.
	Agricultural land	Retain and improve the relationship between Stellenbosch town and surrounding agricultural land.
	Urban edge	As a general principle, contain the footprint of Stellenbosch town as far as possible within the existing urban edge (while enabling logical, small extensions).
	Scenic landscapes, scenic routes, special places	Retain the strong sense of transition between agriculture and human settlement at the entrances to the town.
	Historically and culturally significant precincts and places	- Maintain the integrity of historically and culturally significant precincts and places (as indicated in completed surveys). - Improve public space and movement routes within historically and culturally significant precincts, with a focus on pedestrianism. - Work to grow the extent of historically and culturally significant precincts and places in daily use and accessible to the public (through appropriate re-design and use of specifically disused industrial buildings along the Adam Tas Corridor).
	Informal settlements to be upgraded	- Define and hold the northern and eastern edges of Kayamandi. - Support land use change along George Blake Road to enable the integration of Kayamandi with the Adam Tas Corridor and Stellenbosch central area.
	Areas for residential	Pro-actively support higher density infill residential opportunity in the town centre, areas immediately surrounding

The MSDF extract below confirms the exclusion of the development site in its' entirety from the urban development growth area of Stellenbosch.



iii. Provincial Directives do not support proposal

46. In addition to the Stellenbosch Municipal SDF, the proposal is not supported by various Provincial Spatial Planning initiatives. In this regard, the most recent document which is aimed at the

coordinated management of the wider Cape Metro Area is the **Greater Cape Metro Regional Spatial Implementation Framework (RSIF) Final Report - July 2019**. The aim of the RSIF as a: “*plan that provides long term strategic direction and coordination to the overall growth, spatial development, land use management, and conservation*” of the functional region. The spatial outcomes sought over the next decade are improvements in the performance of the regional economy and its human settlements so that growth is re-energised, more inclusive and on a sustainable trajectory”.

47. The RSIF specifically identifies the threat of ‘settlement roll-out’ between Stellenbosch and Helderberg as per the table on page 82 of the report, included below. The RSIF is clear in as much as the protection of the existing heritage and agricultural working landscape in this location is a priority. Any development proposal that perpetuates this problematic settlement pattern must not be supported.

Urban Growth Issue	Management Requirements
Settlement model roll-out threat to agricultural working and heritage landscapes between Stellenbosch and Helderberg.	• Settlement types, their roll-out and management within the Stellenbosch-Helderberg rural interface area demonstrates the following settlement policy disparities: - A CoCT settlement policy underpinned by strict settlement growth management (i.e. containment) and limited non-agricultural and new settlement development in its rural area. - A Stellenbosch Municipality settlement policy focussing on “inter-connected nodes” with existing rural and urban settlement transformation through densification and extension. • The roll-out of the “inter-connected node” settlement model within the Stellenbosch-Helderberg interface rural area raises concern in the following respect: - Various urban settlement forms, architectural styles and land use components not compatible with the existing heritage and agricultural working landscape (e.g. Jamestown/ De Zalze node). - Promotion of ribbon development along the R44 (e.g. Jamestown/ De Zalze node). - Development or extension of inter-connected nodes in close proximity to the CoCT urban edge (e.g. Raithby, De Wynlanden Estate) with such developments prompting similar development demand outside the CoCT urban edge. • Ensuring the integrity of heritage and agricultural working landscapes that comprise the Stellenbosch-Helderberg rural interface requires a joint CoCT-Stellenbosch Municipality collaborative planning forum to achieve synergy between the disparate settlement policies.

IV. Development Motivation

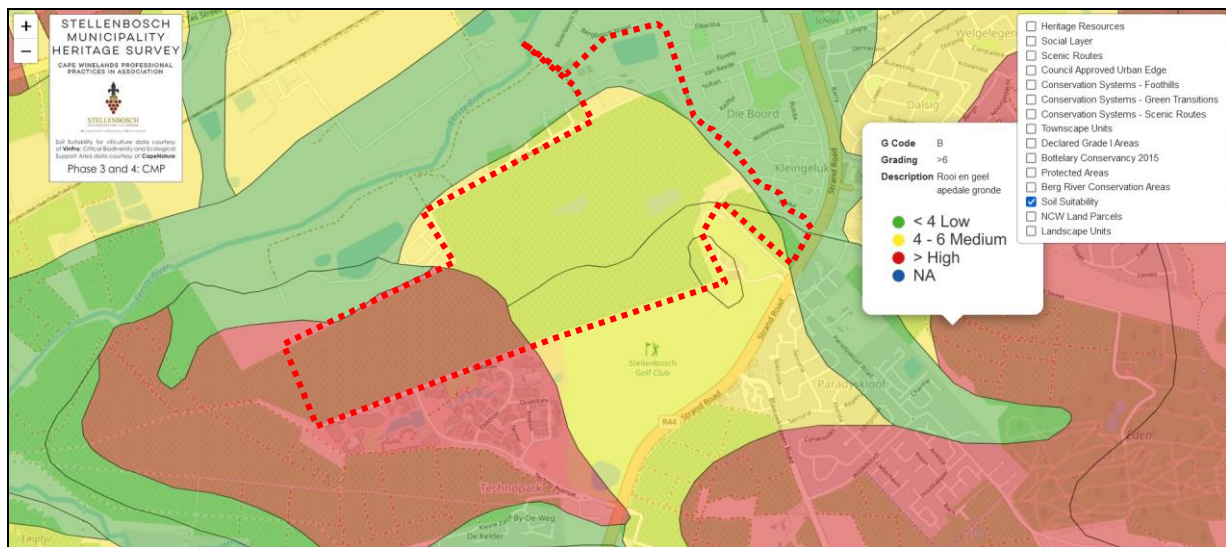
The development motivation is based on significantly inadequate data as well as unsupported planning reasoning and statements. The following points of concern are highlighted in support of our objection.

i. High Agricultural Potential

48. The agricultural potential of the development site is clearly supported by the fact that it has been used for cultivation for more than 200 years. The extract from the Cape Farm Mapper, indicating the 2017/2018 winter crops, clearly confirms that the land has recently been used for grape cultivation. Our client has had a grape harvest of 15 tones/ha in the 2022/2023 season.



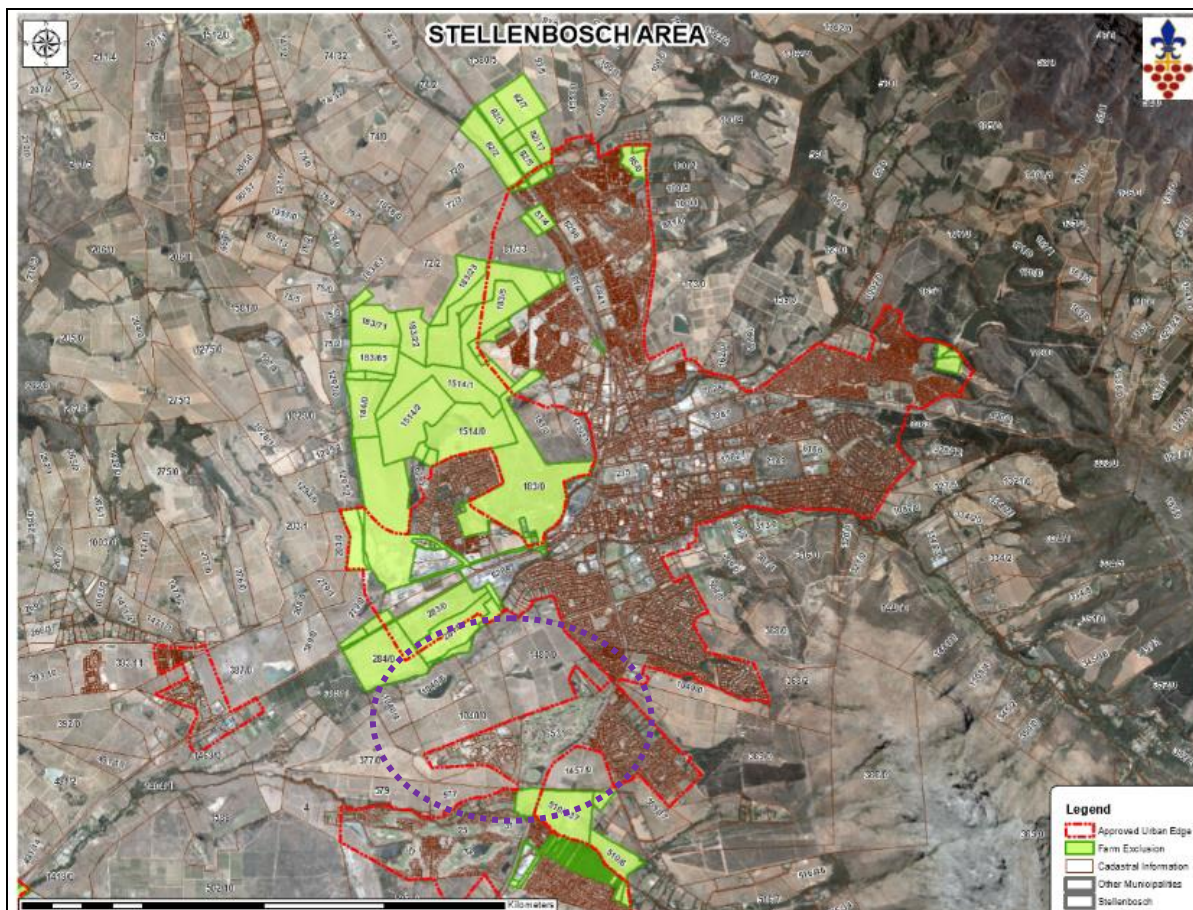
49. This would translate to approximately 1770 tons of grapes on the development site (118 ha under grapes as per 2017-18 survey). A significant loss in grape production will result if this development proposal is approved. The knock-on effect of this on wine production from this area is not clear.
50. The agricultural potential is confirmed by the extract of the Stellenbosch Municipality Heritage Survey, below. The survey indicates that the area has medium to high agricultural potential.



51. The applicant has not provided any proof that the development site cannot be farmed successfully. In fact, it is clear from the information at hand that there are no agricultural reasons not to farm the development site, other than purposeful neglect of the farms. The Municipality commissioned numerous studies that support the claim that this area is an important cultural historical contributor to the municipal area. In addition, the subject properties making up the development site are high-value agricultural lands that should be protected as directed by the MSDF.
52. The agricultural value of the land further confirms the site-specific argument for the exclusion of the development site from the urban edge.

ii. “Future Development Area” Claim

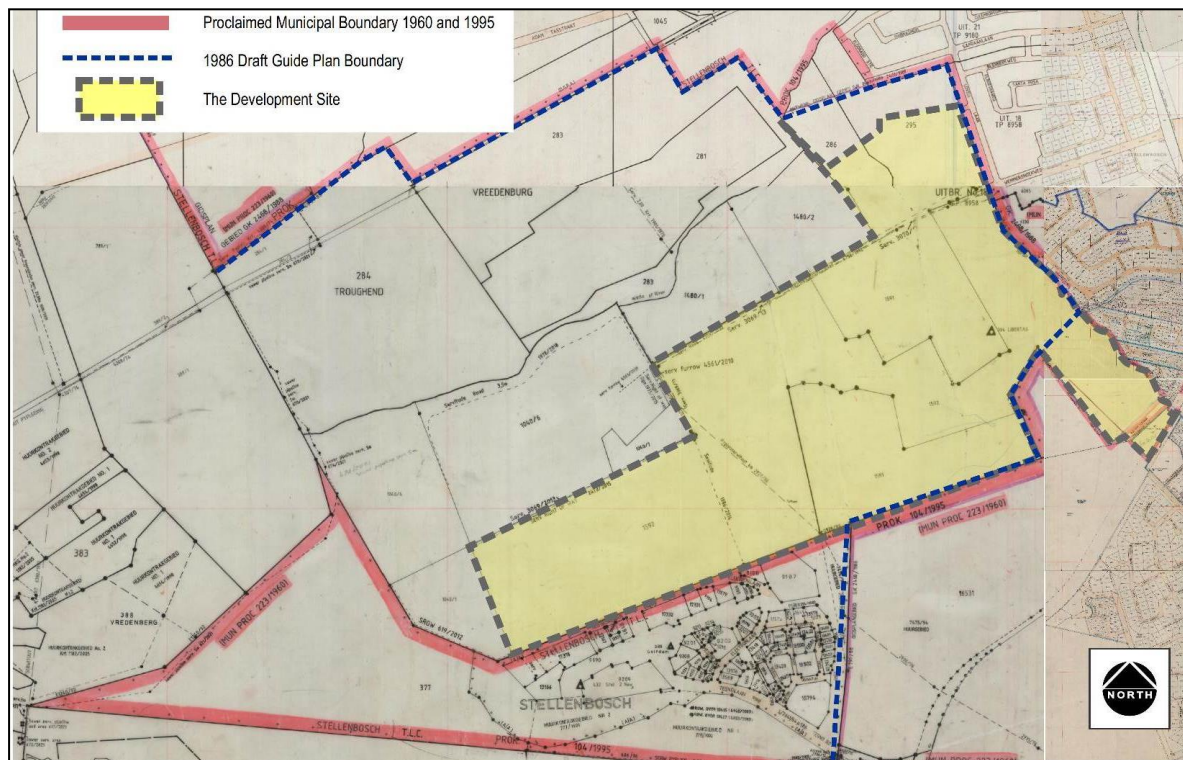
53. The applicant claims in the motivation report (page 27) that the area of the development site has *“always been envisaged as a possible future development area of Stellenbosch”*. This claim is highly speculative and devoid of any factual basis, given the facts at hand and the content of the MSDF. We may mention in this regard that the SM has published, for comment, a proposed amendment to the MSDF. The proposal underscores and emphasizes the need to recognise the importance of areas of high agricultural value, including the development site, and to protect such areas against urban expansion.
54. The current MSDF clearly excludes the development site as area available or appropriate for development by placing the area outside the delineated urban edge.
55. Prior to the MSDF, the Municipality circulated proposals in 2018 by the National Dept. of Agriculture for the proposed exclusion of certain properties from the provisions of the Subdivision of Agricultural Land Act, Act 70 Of 1970. A diagram from this document, showing land for proposed exclusion from Act 70 of 1970 is included below. The subject properties making up the development site are not shown for exclusion on this diagram.



Areas proposed for exclusion from Act 70 of 1970 by the Department of Agriculture (areas coded pea-green). Source: Letter of Comment by Cape Winelands Professional Practices in Association – Letter dated 16 April 2018 – attached as “Annexure C”.

56. In terms of Act 70 of 1970, we note that the subject properties making up the development site were not included into the Stellenbosch Municipal area when the municipal area was proclaimed in 1960 or when the Stellenbosch Transitional Local Council area was promulgated in 1995. This land is therefore undisputed agricultural land that falls within the ambit of Act 70 of 1970. The noting sheets, confirming these promulgated boundaries are shown below. It is clear that the land is of national interest in terms of the requirement to deal with it under Act 70 of 1970.

57. The 1986 Draft Guide Plan, now no longer legislatively applicable but of historic importance, also excluded the development site from urban development and included the land in the 'Agriculture' category. This document stated on page 104 that; "5.1.5 The protection of the area's good agricultural land should enjoy priority at all times". This statement remains as relevant today as in 1986.



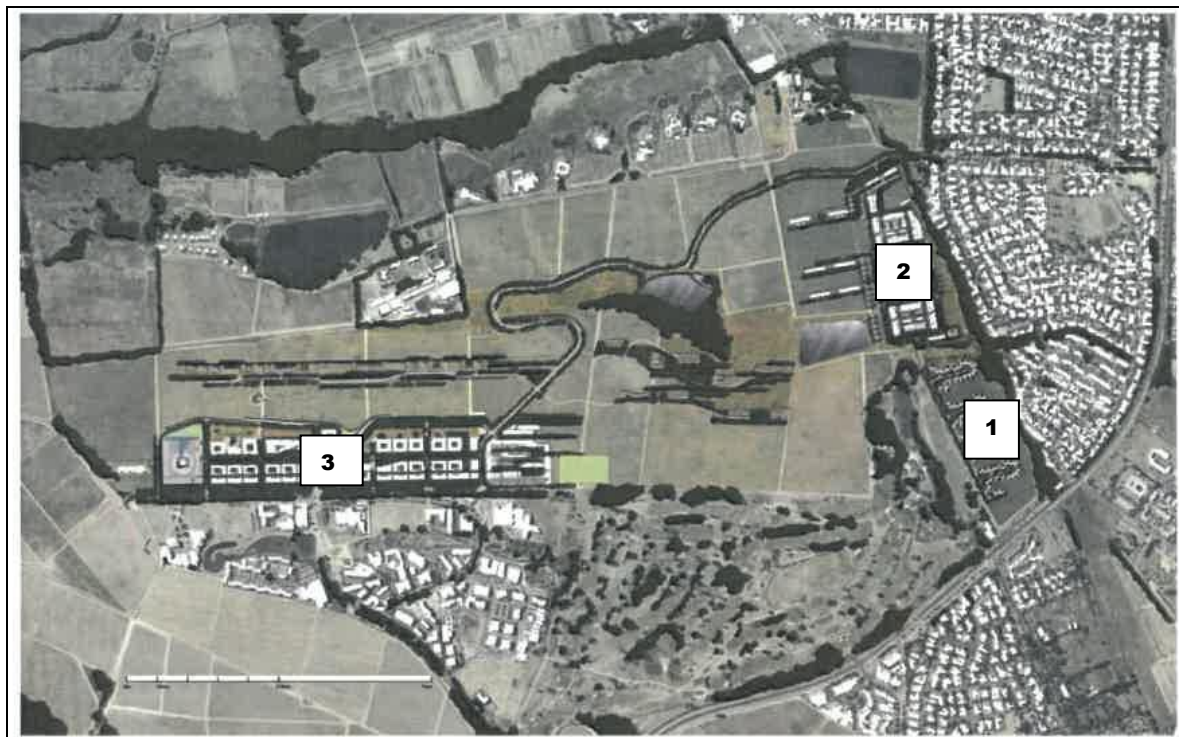
58. The claim *vis-à-vis* the 'future development area' is not supported by the facts and must be treated as unsubstantiated.

iii. "Infill Development" Myth

59. The application motivation claims on page 36 that; "...the subject property is ideally located close to the town's central business district and can be regarded as a logical infill development opportunity...". The image below disproves this claim in as much as the site for the bulk of the proposed development ("3" on diagram) is located at least 4,5km by road from the Stellenbosch 'CDB' and does not represent 'infill development' but rather 'leapfrog nodal establishment'. The only portions of the development that could be described as 'infill development' are the components directly abutting 'Die Boord' ("2 & 1" on the diagram below).



60. If the claim that the development proposal for the subject farms represents ‘infill development’, was based on one of the Applicant’s earlier development concepts, as depicted at page 15 of the VIA study attached to the motivation report and copied below, there may have been some planning merit in such a claim. The initial development proposal depicted ‘infill development’ immediately east of Die Boord (“2”), between Die Boord and the golf course (“1”) and immediately abutting the existing Techno Park development (“3”).



61. The initial proposal has not been persisted with and the current proposal (below) is somewhat different. The MSDf clearly refers to ‘small, logical’ extensions to the urban edge. If regard is had to the current proposal, below, whilst areas 1 and 2 could qualify as logical and small, area 3 is neither small nor is it a logical extension of the Stellenbosch urban area.



62. Aside from the fact that the proposed development of the isolated node comprising area 3 is not compliant with the MSDP and various Provincial guidelines, the Stellenbosch Municipality must not permit unsupported claims to be considered as motivation for this application. The proposed development concept below, as depicted on the extract from the urban design report (page 15), confirms our claim that area 3 is in fact isolated nodal development. Similarly, area 1 is isolated from the existing development of Die Boord and these 7 single residential erven here seem out of place and contrived.

iv. Availability of Engineering Services

63. Section 11 of the applicants' motivation report refers to the alleged availability of engineering services. We note that all the engineering reports are preliminary high-level statements.
64. With reference to the availability of potable water, the discussions with the relevant municipal department took place more than 2 years ago. The availability of spare capacity in the water network may have changed since then.
65. In terms of sewerage, the motivation report refers to a rising main that will be required and will cross the Eerste River to enable the development proposal. This proposal is a significant requirement to allow the development, regardless of whether there is spare capacity available at the treatment plant. Significantly more detail on the nature of this proposal must be provided to ensure that sewerage can be dealt with adequately. In addition, this proposal will trigger the requirement for an EIA, and must be dealt with upfront, not as a later application in the process.
66. Aside from the current national rolling blackouts, it is clear that there is currently not enough spare capacity available to provide the proposed development with electricity. In 2020 the Municipality confirmed that there is 1 MVA available whilst the development will require 5,8MVA as per the engineering estimate. Again, the provision of the additional 4,8MVA is left to later application and planning. This cannot be considered as adequate consideration in terms of municipal decision making.
67. In terms of stormwater, reference is only made to provision for 5-year storm events. No clear plan or provision is made for 10, 50 or 100-year storm events. This is a serious omission and may have significant impacts on the existing agricultural activities in the area.

68. The conclusion of the services 'availability' is that there is no clear indication that services are in fact still available (water) or how the services design will be implemented (sewerage and stormwater). There is not nearly enough electricity available to service the proposed development. The development cannot be considered as sustainable or suitable in such a service provision void.

v. Visual Impact

69. The motivation report refers briefly to the visual impact study in section 9 (page 53) and further discusses the visual impact of the proposed road links in section 10.7 from page 61 to page 65. Whilst the visual impact of the road links will be significant, very little is mentioned about the visual impact of the proposed development, especially area 3, being the main component of the development, directly abutting our client's farm.
70. On reading the VIA report prepared by *Filia Visual* in May 2022 one would expect, having regard to the geographical location and topography of the development site, for the VIA report to conclude that there are serious visual impacts that are significant, permanent and long term. This is however not the case as the VIA is in support of the development proposal. We do not agree with the conclusion of the VIA in support of the application.
71. The following extracts from the VIA report supports our proposition that visual impact has not been fully investigated nor correctly reported and that a *"precautionary approach should be adopted"*. Thus that a **"formal VIA is necessary"**. The results of the VIA must be subjected to a third-party independent review.

7. Conclusion and Recommendations

The subject site is located outside of the urban edge, within a Landscape Unit graded Grade IIIb and within a Green Transition Conservation System area. The receiving environment is valued for its scenic, heritage and cultural resources, and maintains a high level of intactness and integrity, with relatively few discordant elements within the study area to erode the sense of place or temper its sensitivity to change. Given the sensitivity of the Receiving environment is very high, the pre-cautionary approach suggested by the Heritage and Scenic Resource Inventory and Policy Framework (Western Cape Government, 2013) should be adopted.

The placement of the proposed development within the agricultural domain should continue to be carefully considered to minimise visual impact on the character of the landscape and the visual amenity from scenic routes.

- i. While these concerns have been addressed by the current proposal to a large extent, a formal VIA is necessary to methodologically assess the various visual impacts and should also include visual impact mitigation per precinct, as necessary.
- ii. This recommendation is supported by the Heritage Practitioner (Jansen, 2020) as well as the Stellenbosch HS&CMP Guidelines which state that any development proposal within a Landscape Units with coverage of more than 70% from Grade II scenic routes should undergo a visual impact assessment (Appendix 3: Conservation Systems (Municipal scale), 2019, p. 15).

Based on the project information at hand, and according to the DEA&DP Guideline for involving visual & aesthetic specialists in EIA processes, the proposed development is for a **Category 4⁵ and 5⁶** development within an **Area or route of high scenic, cultural, historical significance**. A Level 4 visual assessment is appropriate for what is expected (before assessment) to be potentially High to Very High Visual impact⁷ according to Table 1 and Box 3 of the DEA&DP Guideline (Oberholzer, 2005, pp. 5-6).

V. Specific Negative Impacts on Ptn 6 of Farm 1040

72. The motivation report claims on page 78, section 12.5 that *“the impact of the proposed development on the immediately abutting properties is not considered negative...”* and *“the proposed use will also not impact on the health or wellbeing of neighbours”*.
73. The existing rights of our client will definitely be impacted negatively by the proposed development as explained below. We note that these impacts will all result from the proposed development where the land will be utilized for urban development rather than agricultural production. The applicants seek to obtain significant additional rights for the land and these additional rights will have severe negative impacts on abutting properties, contrary to the claim in section 12.5 of the motivation report.
74. We also note that the development motivation is very careful to stay away from or deal clearly with the impacts on our clients’ property at all. This is a cause of great concern as the impacts, briefly discussed here, will be severe, permanent and irreversible.

i. Traffic

75. The proposed development seeks to convert the existing servitude access road to our clients’ property to a class 4 access road. The current servitude access road, utilized by a small number of private vehicles and for agricultural activity will in future be used by traffic generated by 1200 residential units as well as the undefined traffic generated by the undefined *retail/office* and *cultural/institutional* uses. This is a significant increase in traffic which will negatively impact on the use of our clients’ property.

ii. Hydrology

76. The development will result in changes to the site hydrology, hitherto unreported or investigated by the applicants. Our clients’ farming activities relies on groundwater that seeps downhill from the agricultural land up-slope. Any urban development and hardening of surfaces that will occur as a result of the development will disturb the natural site hydrology and will potentially result in a significant reduction in ground water available to our client for his agricultural activities. This is a point of great concern and cannot be left to chance. The application cannot be fully adjudicated in terms of impacts if a detailed hydrological report is not undertaken and submitted.

iii. Safety and Security

77. The introduction of 1200 plus residential units, commercial, retail and ‘institution’ activities into the area will increase the local security risks significantly. The applicants’ motivation report correctly states that *“the subject property is currently not accessible to the general public”* and then makes the illogical and unsupported conclusion that by making it accessible to the general public, this will improve security. This is simply incorrect. More and unrestricted access will have a serious negative impact on the safety and security of the surrounding properties.

iv. Impact on Agricultural Landscape: Loss of Sense of Place

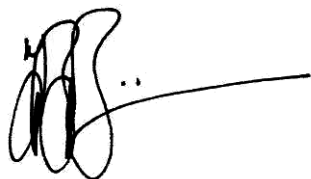
78. The proposed development, specifically the development of area 3, the largest component of the proposed development, is positioned on the common boundary with our clients’ farming property. This agricultural land will be irreversibly transformed to urban development. The impact of this is indisputably negative and will change the character of the area permanently. No amount of ‘mitigation’ can reverse this and the sense of place will be lost forever.
79. The development site is highly visible from all surrounding roads and developing this land for urban use will have a significant and visible negative impact on the rural and agricultural foreground to the current developed area of Stellenbosch. It will also completely destroy the

agricultural backdrop to our clients' farming property and the sense of place in this rural part of the Stellenbosch agricultural area will be lost.

D. CONCLUSION

80. In conclusion we highlight the fact that the development proposal is considered to be completely inappropriate and undesirable from a local and provincial heritage, economic and future sustainability point of view. It represents leap-frog development that flies in the face of good practice in planning design and growth management.
81. The proposed process of development authorization is non-compliant with national, provincial and municipal legislation and good practice, cannot be supported and should not be permitted.
82. There is no site-specific motivation to support the inclusion of the development site into the urban edge. The only site-specific evidence that exists is in full support for the development site to remain outside the urban edge and be utilized as per their current zoning – for agricultural purposes.
83. The Stellenbosch Municipality cannot consider this significant application based on the limited and 'high-level' information which is supposed to support the proposal. The information is hopelessly inadequate to make an informed decision.
84. The application must be refused.
85. We request a verbal hearing, should this matter be referred to the MPT for its consideration.

Yours faithfully



Tommy Brummer

Attachments:

Annexure A: Power of Attorney

Annexure B: Stellenbosch Heritage Inventory and Conservation Management Plan (2019), C15 landscape unit assessment.

Annexure C: Provincial Department of Environmental Affairs and Development Planning (DEA&DP) Circular No 0026/2020.

Annexure D: Areas proposed for exclusion from Act 70 of 1970 by the Department of Agriculture; Letter of Comment by Cape Winelands Professional Practices in Association – Letter dated 16 April 2018.