

**Submission package: Letter of objection to urban development on
Libertas farm**

Stellenbosch Municipal Reference LU/15191

Items included in this submission package:

Resolution document

Letter of Objection

Annexures

**RESOLUTION IN COMPLIANCE WITH THE STELLENBOSCH MUNICIPALITY LAND USE
PLANNING BY-LAW, 2015: REFERENCE LU/15191**

The authorised representatives of the Interested and Affected Parties (IAPs), set out below, hereby confirm that they agree to and support comment being submitted on behalf of the organisation they represent, by Ms Jean Pienaar (a professional Town Planner) opposing the approval of the Land Use Application under municipal reference LU/15191 for deviation from Council policy and for rezoning from agricultural and rural zone to subdivisional area in respect of:

- Remainder Farm 1040, Stellenbosch
- Remainder Farm 1480, Stellenbosch
- Portion 2 of Farm 374, Stellenbosch
- Remainder of Portion 2 (A Portion of Portion 1) of Farm Valley Lustery 371, Stellenbosch

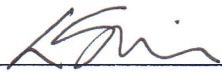
Interested and Affected Parties

The Chairperson of Stellenbosch Interest Group (SIG, established in 1993 with the aim of protecting the cultural Heritage of Stellenbosch)

20.06.2023

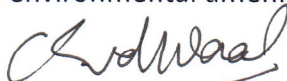
Patricia Botha (botha.patricia@gmail.com) Date

The Chairman of the Stellenbosch Ratepayers' Association (SRA, established in 1983 with the overall aim of promoting sustainable development and encouraging good governance)

20/6/2023

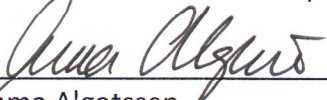
Simon Wilson (simon@landsgate.co.za) Date

The representative of Die Boord Belangegroep (BBG, established in May 2023 to safeguard the environmental amenity of Die Boord and Stellenbosch)

20/6/23

Kees van der Waal (csvdw@sun.ac.za) Date

The representative of the Brandwacht Action Group (BRAG established in 2022 to safeguard the environmental amenity of Brandwacht and Stellenbosch),

20/06/23

Emma Algotssen (emma@kompost-it.co.za) Date

The Chairperson of the Stellenbosch Heritage Foundation (SHF established in 1959 to promote sustainable conservation, architecture and urban design)

2023/06/20

Lauren Buchanan (chairperson@stellenboschheritage.co.za) Date

21 June 2023

Ms Christine Havenga
First Plan Town Planners info@firstplan.co.za

Mr Stiaan Carstens
Senior Manager; Development Management
Planning and Economic Development
Stellenbosch Municipality stiaan.carstens@ Stellenbosch.gov.za

Dear Ms Havenga

LIBERTAS FARM, WESTERN END OF VAN REEDE STREET, STELLENBOSCH

1. APPLICATION IN TERMS OF SECTION 15.2 (a) OF THE STELLENBOSCH MUNICIPALITY LAND USE PLANNING BY-LAW, 2015 FOR THE REZONING OF THE REMAINDER OF THE FARM 1040, THE REMAINDER OF FARM 1480, PORTION 2 OF FARM 374, AND PORTION 2 OF FARM 371, STELLENBOSCH FROM AGRICULTURE AND RURAL ZONE TO SUBDIVISIONAL AREA TO PERMIT A VARIETY OF URBAN LAND USES (A Conventional Residential Zone (Portion 1), two Mixed Use Zones (Portions 2 and 3), Public Roads & Parking Zone and an Agricultural and Rural Zone (Remaining portions of the subject farms): OBJECTION TO THE APPROVAL OF THE APPLICATION

2. APPLICATION IN TERMS OF SECTION 22(2) OF THE SPATIAL LAND USE MANAGEMENT ACT 2013, FOR A SITE-SPECIFIC DEVIATION FROM THE APPROVED STELLENBOSCH MUNICIPAL SPATIAL DEVELOPMENT FRAMEWORK 2019, TO INITIATE AN URBAN INFILL DEVELOPMENT OUTSIDE THE APPROVED URBAN EDGE: OBJECTION TO THE APPROVAL OF THE APPLICATION

The application of 20 April 2023 under Municipal Reference LU/15191 concerning the above, calling for comment on or before 22 May 2023, later extended to 21 June 2023, has reference: The comments outlined below are submitted on behalf of the Stellenbosch Interest Group¹, the Stellenbosch Ratepayers Association², Die Boord Belangegroep³, the Brandwacht Action Group⁴ and the Stellenbosch Heritage Foundation⁵. Representatives of these groups approached me to collate and submit

¹ SIG, established in 1993 with the aim of protecting the cultural Heritage of Stellenbosch.

² SRA, established in 1983 with the overall aim of promoting sustainable development and encouraging good governance.

³ BBG, established in May 2023 to safeguard the natural and urban environmental quality of Die Boord and Stellenbosch.

⁴ BRAG established in 2022 to safeguard the environmental amenity of Brandwacht and Stellenbosch.

⁵ SHF established in 1959 to promote sustainable conservation, architecture and urban design.

objections and comments on their behalf. This objection is supported by a petition, signed by more than 1900 residents, who believe they would be negatively impacted by the proposed development.

As you will note from the contents of this letter, there are sound reasons why the above-mentioned properties should not be included in the area enclosed by the urban edge and why the rezoning application should not be approved. You will also note that the concerns raised on behalf of all the groups are supported by the relevant evidence. For ease of reference the comments and objections appear under the following headings:

- **Executive Summary**
- **Historical Background Concerning Libertas Farm**
- **The Evolution of Land Use Legislation impacting on Stellenbosch**
- **Non-compliance with Planning Legislation, Principles and Policies**
- **Traffic Impact Assessment**
- **Heritage Impact Assessment**
- **Criteria for adjudicating the Application**
- **Consideration of Site-specific Circumstances**
- **Response to Information from the Applicant Required by the Municipality**
- **Conclusion**

1. EXECUTIVE SUMMARY

1.1 The Libertas Farm had humble beginnings and the original Land Grant in the 1680s was only 37ha in extent. At its height, Libertas Farm was 225ha in extent. Since 2007, however, the current owner has sold off 114ha, or just more than half of the Farm to developers. He also signed a power of attorney on 6 July 2021, to include the remaining 111ha of Libertas Farm in this application.

1.2 The proposed development of Libertas is in direct conflict with the vision as approved in the 2019 Stellenbosch MSDF: “We envisage a municipal area even more special than it is today; a place of natural beauty, rich in the way it preserves and exposes elements of history and culture, its produce from the land, the quality of its institutions, and the mindfulness and innovations of its people” (MSDF 2019:51). Developing what is considered prime agricultural land dismisses and devalues the natural beauty, history, culture and produce from the land.

1.3 Based on information from Cape Farm Mapper, Libertas is considered to have a land capability that is mostly high (Department of Agriculture, Forestry and Fisheries, 2016). Urban and peri-urban agriculture is becoming increasingly important as a source of both income and food in sub-Saharan Africa and South Africa in particular. This is acknowledged in the development principles of the MSDF which state that it is important to maintain and grow the natural environment and farming areas of Stellenbosch. The soils in the Stellenbosch area are conducive for wine and other cash crops. The accessibility to water from the Eerste River that the Libertas farms enjoy is an important consideration in recommending the ongoing operation of agricultural practices on this site since availability of water dramatically increases the

economic viability of crops – not something that all farms in the Stellenbosch area benefit from. As such, the MSDF states that high-value agricultural land should be protected from non-agricultural development and should not be subdivided to create uneconomical or subeconomic agricultural units. It is therefore of paramount importance that this valuable and productive piece of land should be used for agricultural purposes. The alignment of the urban edge in the Stellenbosch MSDF supports the retention of Libertas/Fleurbaai for non-urban land use. In relation to the possible future use of the Remainder of Farm No.1480 (Libertas) and the Remainder of Farm No. 1040 (Fleurbaai), the approved 2019 MSDF (p67) states: **“Redevelopment [of these designated areas indicated in the MSDF] offers the opportunity to accommodate many more residents within Stellenbosch town, without a negative impact on agricultural land, nature areas historically significant precincts, or “choice” lower density residential areas.”**

1.4 The construction of roads often slices up agricultural land and thereby reduces agricultural potential. For this reason, blocks of agricultural land that are viable and of high agricultural potential should be protected from the development of infrastructure which impacts on the potential future of agriculture in a country where food security is becoming increasingly important. These are, in fact, site-specific circumstances to retain the current urban edge as approved in the 2019 MSDF. As long ago as 18 April 2013, the highly experienced traffic engineer Paul Mann addressed the AGM of Stellenbosch Ratepayers and said that, “unless something was done to stop building additional roads, Stellenbosch would soon succumb to death by a thousand cuts.”

1.5 The residents of Stellenbosch acknowledge the pressure of urban growth caused by in-migration, especially in the Western Cape. Recognising the need for adaptability and inclusivity while still remaining productive (see MSDF vision p51), the approved MSDF identified catalytic areas. The strategic sites for infill are predominantly adjacent to the railway line or the R304 - around identified transit nodes in order to limit sprawl. Sites for mixed-use community and residential infill were identified to the NW of the town center and to the south of Jamestown. These approved areas for infill are not located near the proposed development of Libertas. Therefore, the motivation by the Applicant on page 20 of the application, namely that the proposed development will reinforce the functioning of the existing town centre, is unfounded. With the residential densities envisaged and the mixed-use areas promoted in the application, it is likely that this proposed development will detract from the functioning of the existing town centre of Stellenbosch and will inevitably encourage sprawl and further exacerbate traffic congestion.

1.6 The argument of precedence (cf development of De Bosch and Patrysvlei) should not be used to justify further development of valuable agricultural land. In the interests of responsible citizenship, it is incumbent upon the current stakeholders to ensure that Stellenbosch has a good and accessible supply of fresh produce on high-value agricultural land which has access to water.

1.7 Traffic congestion and Techno Park is the result of permitting an excessive bulk of office development. The development of Libertas/Fleurbaai is likely to negatively impact the traffic situation, irrespective of whether the proposed Techno Park - Adam Tas Link Road becomes a reality.

1.8 The proposed Techno Park-Adam Tas Link Road appears to be aimed at supporting the application to develop Libertas Farm rather than providing a second access to Techno Park. This road, if approved, would unfortunately result in unwanted consequences such as reinforcing sprawl, initiating costly infrastructure, and promoting the use of large numbers of additional private vehicles.

1.9 The transport modelling used for the proposed Techno Park-Adam Tas Link Road and Van Reede extension does not account for diverted, induced nor transferred traffic, beyond current and normal growth traffic. A thorough Traffic Impact Assessment and Environmental Impact Assessment would go some way towards realistically reflecting the real cost of the proposed development to those most directly affected by it.

1.10 Stellenbosch has an approved Conservation Management Plan (CMP) to uphold the visual impact and unique identity of Stellenbosch by preserving (maintaining) and enhancing the existing agricultural character of the landscape. In terms of the Libertas/Fleurbai properties, the CMP stipulates that it is important to keep large blocks of land under agriculture to protect the continuum of larger landscapes, noting the importance of visual permeability and the historic riverine corridor of the Eerste River and its tributaries.

1.11 The supporting documentation in the application that deals with aspects normally found in EIA processes, does not have the quality or scope of professional EIA research. The content of this supportive material is in many cases based only on desk-top information, lacking the necessary depth and is both biased and limited to personal opinion.

1.12 By separating the process into phases, the public participation process has been undermined, as the necessary information has not been taken into account by the developer, nor has the developer been able to respond to realistic opposing argumentation. This lack of information is also an important hindrance in the work of the tribunal, provincial authorities and mayor in the decision-making, appeal and jurisprudence associated with this application and its unforeseen consequences.

1.13 Section 42 (2) of SPLUMA also states that when considering an application affecting the environment, **a Municipal Planning Tribunal must ensure compliance with environmental legislation**. Because no EIA has yet been undertaken as required by NEMA, **this application cannot be considered by the Municipal Planning Tribunal**.

1.14 The rezoning of Libertas/Fleurbai from Agriculture to Subdivisional Area in order to subdivide the current property and accommodate a variety of urban land uses, should clearly not be permitted on high quality agricultural land. Permitting urban development outside the approved urban edge would also defeat the very purpose of the urban edge which was instituted to curb urban sprawl by promoting densification on “brownfield” sites and around transit nodes. Development of these properties would compromise cultural heritage of the site and exacerbate the already challenging traffic situation.

2. HISTORICAL BACKGROUND CONCERNING LIBERTAS FARM

2.1 The currently proposed development, to urbanise the remainder of Libertas Farm No. 1480 (including the remainder of Farm No. 1040 which was sold by the owner of Libertas Farm to the applicant in 2017) has been preceded by a long and unfortunate history. Previous applications to urbanise portions of the historic property known as Libertas were met with strong opposition and dissatisfaction by the local residents and by officials of the Municipality. In an application to develop a small portion of Libertas Farm (Portion 1 of Farm No. 1374) which is now known as De Bosch, apart from the loss of agricultural land and the spectacular views to the south, enjoyed by a few properties in Saffraan Avenue, increases in vehicular traffic were of primary concern in opposing this relatively recent approval. It is accordingly important to reflect on the historical background which gave rise to the approval of De Bosch and the adjoining Patrysvlei development for urban or peri-urban development. This is necessary because history in its fullness is the meeting place of knowledge.

2.2 The Libertas Farm and homestead date from the earliest settlement at the Cape. The first owner of the farm, then 37ha in extent, sold it to Hans Jurgen Grimpe in 1692. **On marrying Grimpe's widow, Adam Tas became the owner and in due course gave his name to the farm.** During the 1950s, however, the historic homestead on some 100ha was acquired by the father of the current owner of the Remainder of Farm No. 1480, 108,0048 ha in extent. This family previously owned and lived on Doornbosch Farm adjoining the R44 which was expropriated by the State in 1954, for the purpose of accommodating Eikestad and Rhenish Primary Schools. After the initial acquisition of Libertas by the Blake family, additional land adjoining the original purchase was acquired and at the time of the death of Robert Blake in 1991. He owned seven portions of land totaling 225ha which made up Libertas Farm. The fact that the seven portions of land comprising Libertas Farm were not consolidated into a single unit before 1970 (when the Subdivision of Agricultural Land Act No. 70 of 1970 came into effect) has facilitated the relatively recent excision and loss of portions of Libertas Farm to urban or peri-urban development. This is so because in terms of Act 70 of 1970, the consolidation and re-subdivision of agricultural land is a straightforward process, provided that additional or an increased number of land units or farm portions are not created.

2.3 With the demise of apartheid and the coming into being of a new democracy in South Africa in 1994, land in the Western Cape came under increased pressure for urbanisation with the result that Stellenbosch is currently considered to have the highest real estate growth potential in the Western Cape⁶. **The fact that the developers of both Die Boord and Kleingeluk were bankrupted by their developments has not deterred developers from targeting Libertas Farm for urban development.** During 1995 the current owner of the Remainder of Farm No. 1480 signed an agreement providing a developer with the option to purchase what was then Portion 1 of the Farm No. 1374 (15,4810ha in extent) for conventional residential development (120 Erven), subject to approval being granted by the relevant authorities. This property is situated along the northern boundary of Libertas (Farm No. 1480) and adjoins the Eerste River in the north. Direct vehicular access to this

⁶ According to the Western Cape Department of Environmental Affairs and Development Planning.

farm portion was provided for in the layout of the second phase of Die Boord development approved as Stellenbosch Extension 21 on 26 February 1976. Such access was to have been via Rokewood Avenue, Saffraan Avenue and Damask Street, which are public roads. While a detailed layout of the proposed 120 erven development was submitted by the aspirant developer, because of opposition from the public and as it was outside the Guide Plan area and urban edge, the application was, however, refused by the Municipality.

2.4 During 2002/2003 a new agreement was entered into by the owner of Libertas Farm and another developer. The owner of Libertas Farm provided the new developer with an option to purchase the same property (Portion 1 of the Farm No. 1374) for urban development, again subject to approval being granted. In the Environmental Impact Assessment (EIA) Report, two alternative proposals were submitted by the new developer, the first of which was practically identical to the 1995 proposal for 120 erven which had been turned down, except that vehicular access to the development would now be restricted to a servitude road, extending from the western end of Van Reede Street along the eastern boundary of the Libertas Farm to the southern boundary of Portion 1 of the Farm No. 1374. This proposal involved the prohibition of access from any of the adjoining public roads namely, Rokewood Avenue, Saffraan Avenue and Damask Street. The second alternative was for the subdivision of the property into seventeen small holdings. In terms of the second alternative the only access to the development would be via the western end of Saffraan Avenue.

2.5 During the Environmental Impact Assessment (EIA) process which preceded the approval of the application, the merits of the two alternatives and a “no go” option were debated with Interested and Affected Parties (IAPs). The 120-erven proposal was listed as the preferred alternative, with the seventeen small holdings as second choice. At a meeting held on 18 March 2003, at the Doornbosch Hall on the R44, a lengthy debate took place and various specialists were present to answer questions and to address concerns that IAPs had. A nineteen-page summary of the discussions dated 26 March 2003 was drafted by the EIA practitioner and circulated to IAPs. In this document (see **Annexure A**), **the increase in vehicular traffic emerged as the principal objection** and the traffic engineer explained that Saffraan Avenue would not be used for access to the proposed 120 erven alternative for this reason. One IAP stated that the owner of Erf 5627, situated on the north-west corner of Van Reede Street and Lovell Avenue intersection would be most unhappy about the proposed use of Van Reede Street to provide access to the proposed development. **The EIA consultant responded by saying that the owner in question would have been aware of the status of Van Reede Street when he built his house on the property.**

2.6 During the discussion of the traffic implications, the traffic consultant, Mr Hein Stander, indicated that both intersections from Die Boord onto the R44, namely Saffraan Avenue and Van Reede Street already carried vehicular traffic that exceeded the capacity of these intersections during peak hours. He accordingly stated that any increase in traffic would have a negative impact, but he doubted that the Municipality could afford mitigation measures to improve the traffic situation. **He concluded by saying that one way for the Municipality to counter the development of agricultural land is to enforce its densification policy.** In the general discussion towards the end of the meeting **there appeared to be reasonable consensus that**

seventeen small holdings would be the better option from the objectors' point of view.

2.7 In the end, De Bosch Residential Estate, comprising twenty small holdings or "estate erven" and a public road, with vehicular access only to Saffraan Avenue was approved on 27 February 2007. The internal roads serving the development ended in two "cul-de-sacs" (Riverbosch and Bergbosch Streets) restricting further future development to the west and south. **As will be seen in Figure 1 below**, the layout of this development was specifically designed not to permit access to Rokewood Avenue or Damask Street in the future.

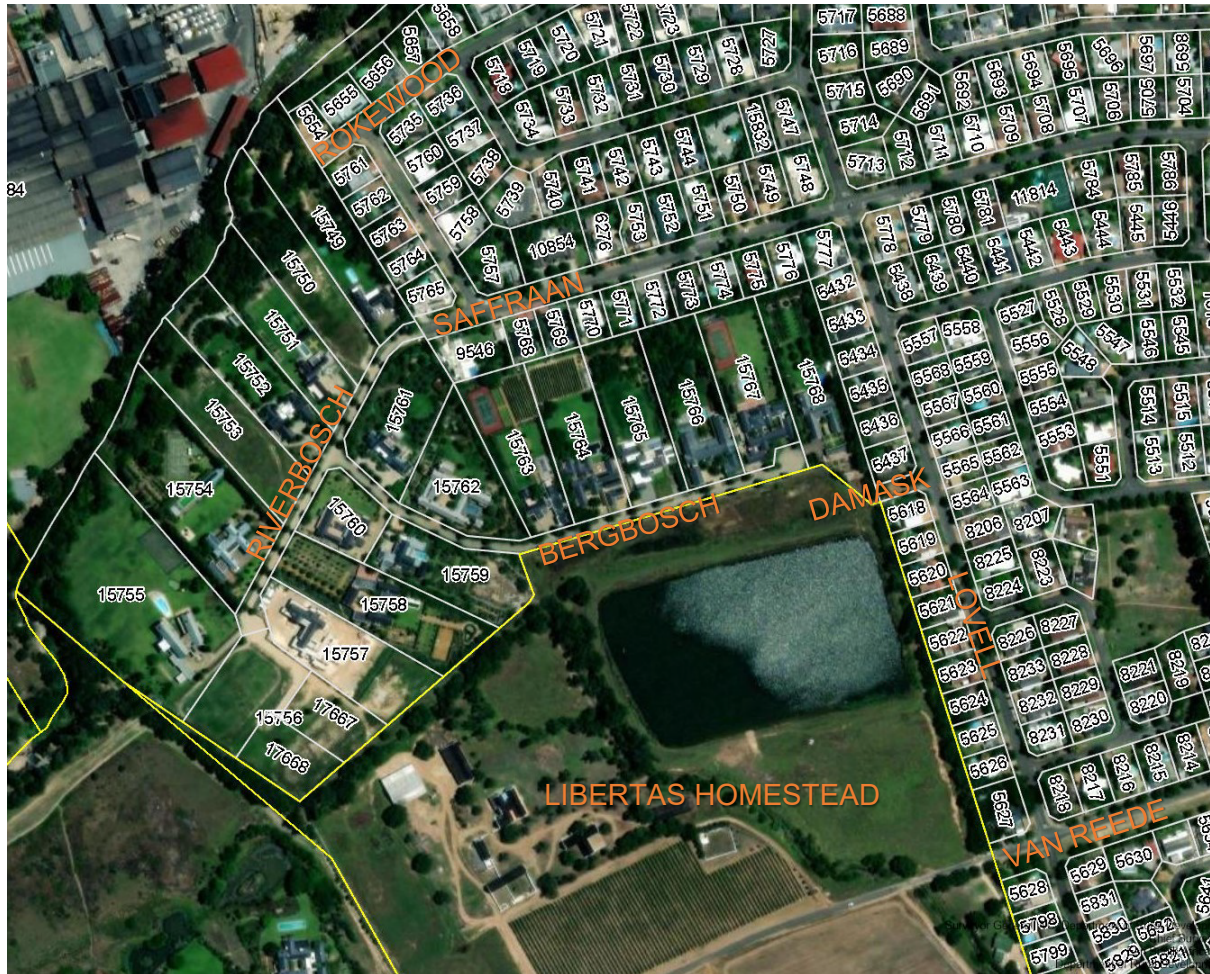


Figure 1: De Bosch, Die Boord and Libertas

It is important to note that when Die Boord was developed, such development took place in three phases. The first phase of Die Boord, known as Stellenbosch Extension 18 was laid out largely north of Van Reede Street and extended northwards to Saffraan Avenue. The layout of the second phase of Die Boord, known as Stellenbosch Extension 21, comprising 145 erven was approved on 26 February 1976. In this second phase of Die Boord the approved General Plan provided for a limited amount of future westward expansion onto Portion 1 of Farm No. 1374 via Rokewood and Saffraan Avenues and Damask Street. The third phase of Die Boord, comprising 152 erven is located largely south of Van Reede Street and was approved on 9 January 1981.

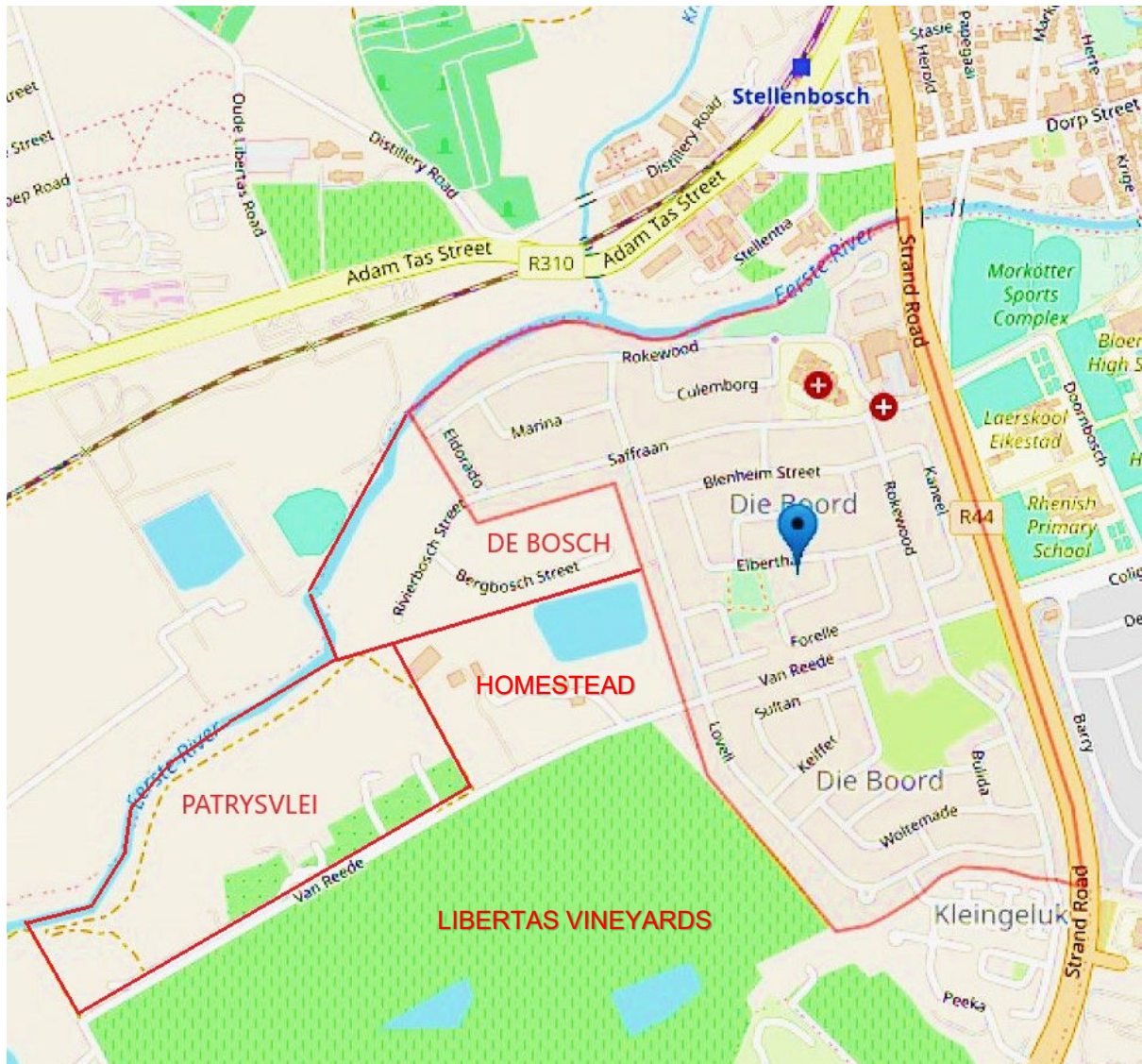


Figure 2: Patrysvlei, De Bosch, Die Boord and part of Libertas farm

In the southern portion of Die Boord, south of Van Reede Street no provision whatsoever was made for the westward expansion of the suburb. It is also important to note that in this layout, the future status of Van Reede Street as a limited access road was jeopardized, in that a T-junction on Van Reede Street at Formosa Avenue was provided for. At the same time the existence of the large Public Open Space being Erf 5652 precluded access to Van Reede Street from the south opposite the Rokewood Avenue T-junction north of the park. At a later stage, the Public Park was bisected by Rhodes Avenue North providing access to Van Reede Street opposite Rokewood Avenue. A fourth junction onto Van Reede Street, from Laetitia Street, providing access to twelve erven (also excised from the Public Park on Erf 5652) was also permitted soon thereafter. **The owner of Erf 5627, situated at the entrance to Libertas Farm, was rewarded for supporting the approval of the De Bosch Estate by being provided with an option to acquire another portion of Libertas Farm.** This portion of the farm 28,7886ha in extent, adjoining De Bosch in the east and

bordering the Eerste River in the north was divided into two exactly equal parts and approval was granted to erect four large dwellings on each portion, namely on Portions 1 and 2 of Farm No. 1480. A total of eight large dwellings have since been built on the two portions and the development is known as Patrysvlei. There was no public participation in the consent process leading to the approval of this second development and its excision from Libertas Farm.

2.8 The end result of processes of networking and negotiation between the Municipality (officials and councillors) and developers was the loss of 44,28ha of agricultural land to urban or peri-urban development. It is accordingly important to reflect on the loss to the community, resulting from these approvals. Prior to 2003, Libertas Farm was a crucial element or vital asset of Stellenbosch which contributed to the quality of life of residents and visitors in and around the town. The sign “Libertas” on the median of the R44 at the Van Reede Street junction was a landmark that directed consumers where to go to acquire high quality farm produce. The loss resulting from the excision of Portions 1 and 2 of Farm 1480 was particularly lamentable. From the 1960s and possibly earlier, generations of Maties students and other consumers had visited Libertas Farm from September to December to purchase strawberries by the bucket full. Gooseberries and sweet potatoes were other sought-after crops from Libertas. Only the select few, however, got to enjoy the gooseberry jam made by the farmer. The grape harvest from Libertas Farm was delivered to Stellenbosch Farmers Winery on the opposite side of the Eerste River via a farm road on Portion 1 of Farm No. 1374 and via a historic drift in the riverbed of the Eerste River. On several occasions the owner of Libertas Farm was rewarded by the Winery for the high quality of the harvest delivered to the Winery. Mounds of river stone removed from the vineyards were also available free to consumers who had the means to transport such material. Prior to the death of Robert Blake in 1991, Libertas was also a mecca for members of the agricultural community where important issues such as water quotas from Theewaterskloof were debated and negotiated. In the recent process of limited urbanisation, scores of seasonal farmworkers had to find alternative employment and access to the winery via the drift to deliver the grape harvest was lost. Future access to the Eerste River adjoining De Bosch and Patrysvlei by the public has also been a casualty resulting from the approval of De Bosch and Patrysvlei. Concerning De Bosch, the same applies to the denial of access by the public to the internal public roads on the property because of the erection of a security gatehouse at the western end of Saffraan Avenue. It is important to note that in the layout of Die Boord, a strip of public land between the Rokewood erven and the Eerste River was provided for and was zoned public open space. It is accordingly difficult to understand why the river frontage in De Bosch was not similarly zoned public open space. In terms of both the 2019 approved Municipal Spatial Development Framework (MSDF Table 29 on p104) and the Conservation Management Plan (CMP) the need to “respect development setbacks from water courses to provide protection from flooding as well as creating scenic and ecological corridors” is expressed. The need to implement guidelines of this nature was dramatically demonstrated during the devastating floods of the past week.

2.9 The broader community has had little choice but to resign itself to the fact that matters could have been worse, especially from a traffic congestion point of view. To be fair, however, mitigation measures were introduced to address the concerns of homeowners in Saffraan Avenue, by imposing restrictive

building lines on the estate erven which back onto erven in Saffraan Avenue. Understandably homeowners on the southern side of Saffraan Avenue were grateful for the concession granted.

3. THE EVOLUTION OF LAND USE LEGISLATION IMPACTING ON STELLENBOSCH

3.1 The book edited by Professor Mark Swilling of the Institute for Sustainable Development and published in November 2012, **Sustainable Stellenbosch: Opening Dialogues: edited by Mark Swilling, Ben Sebitosi, Ruenda Loots, (Africa Sun Media, Sun Press 2012)** (see **Annexure B**) has as its first chapter a contribution by Simon Nicks, who had been the principal town planning consultant to the Municipality for more than a decade. In this chapter **Nicks deals with the historical background to planning interventions and legislation since the establishment of Stellenbosch in 1680**. Nicks states that Stellenbosch first threw off its environmental shackles in 1930 and began to consume resources at an exponential rate, after which it became necessary to consider benefits to society against costs to the environment, namely the monetary benefit of development versus the conservation of agricultural land for tourism and food security. Control over this process was first provided for in the Western Cape Townships Ordinance No. 33 of 1934 which was updated as the years went by. This legislation was eventually superseded by the Land Use Planning Ordinance (LUPO) No.15 of 1985. What is missing from the admirable background to planning interventions in Stellenbosch described by Nicks, are visions by the prominent industrialist, Dr Anton Rupert and by the first professor of Town Planning at Stellenbosch University, Dr Danie Page during the middle 1960s. **Both men saw the future of Stellenbosch as a University town with a rich history as the centre of the viticulture industry**. Today, Stellenbosch remains an acclaimed center of academic excellence in South Africa and the heart of the viticulture industry – a significant roleplayer in the regional economy.

To this end Dr Rupert established “Historic Homes” in 1966 to purchase and restore historic homes in Stellenbosch, to be financed on a sustainable basis through the rental market. More importantly, he also made it clear that to preserve the heritage of Stellenbosch, the establishment of industries in Stellenbosch should be discouraged. For this reason, he located Rembrandt’s cigarette factory in Paarl although he chose to live in Stellenbosch. **Professor Page, appointed as the first professor of town planning at the University of Stellenbosch in 1967, conveyed this vision to his town planning students over the years. As a consultant to the Municipality Professor Page was also instrumental in curbing the eastward expansion of the town, hence the easternmost street in Rosendal is named Omega Avenue. According to Dr Piet Claassen, Prof Page was influenced by the British New Town model with dense development in the town and no development in the countryside. Use of this model, however, faded in the 1980s when golf estates became popular.**

3.2 Simon Nicks reflects on the introduction of the Group Areas Act in 1950, associated with forced removals to Cloetesville, followed by the abolition of influx control in 1986. **Nicks states that the Statutory Guide Plan trumped Provincial and Local Planning and has legal standing that “endures to this day” (2012).**

Unbeknown to him and to the planning profession, however, this was not the case from a legal or constitutional point of view, as in terms of the 1996 Constitution of the Republic of South Africa, planning had become the exclusive domain of local authorities. As will be seen below, this lacuna was only addressed with the enactment of the Spatial Land Use Management (SPLUMA) Act No. 16 of 2013. Before then, transitional arrangements were in place until the promulgation of the Municipal Systems Act, Act 32 of 2000 and Stellenbosch Municipality only had jurisdiction over the area covered by the Statutory Guide Plan. Development in the area beyond this boundary was controlled by the Winelands Divisional Council (WDC) in terms of the Winelands Integrated Development Framework. The development of De Zalze, for example, took place at this time as a Special Management Zone (SMZ) where it was approved as a tourism resort by the WDC. It is important to note that at that time the zoning of land within WC024 was controlled by three separate Town Planning Schemes, namely Stellenbosch, Kayamandi, and Franschhoek with all the remaining area of land being subject to zoning control in terms of Section 8 of the Land Use Planning Ordinance No. 25 of 1985 (LUPO). These separate zoning schemes remained in force until the Stellenbosch Zoning Scheme By-Law 2019 was published in the Provincial Gazette. Interestingly, until 2019 residential erven in De Zalze were zoned “Resort Zone II” reflecting the original intention to provide for short term accommodation, now only provided for in the hotel on the property.

3.3 Parallel to the ongoing evolution of town planning controls, the Environment Conservation Act No. 73 of 1989, followed by the National Environmental Management Act No. 107 of 1998 (NEMA) came into operation. In terms of NEMA “sustainable development” means the integration of social, economic, and environmental factors into planning, implementation, and decision-making **so as to ensure that development serves present and future generations**. In terms of section 2(4)g of NEMA “**Decisions must take into account the interests, needs and values of all interested and affected parties, and this includes recognizing all forms of knowledge, including traditional and ordinary knowledge**”.

3.4 **As the statutory Guide Plan of 1988 remained in force at least until 2013 it is important to reflect on the guidelines contained in the document. These guidelines were aimed at safeguarding agricultural productivity and the cultural and historical significance of Stellenbosch for posterity.** Approved in 1988, after years of consultation with all stakeholders, the plan designated agricultural land including Libertas Farm to be preserved for agricultural production. In this respect it is important to note that agricultural land was subject to the following policy guidelines as contained in the approved Guide Plan of 1988:

“Par 2. GUIDE-LINES FOR AN URBAN STRUCTURE

“Par 2.1 The spatial ordering of Stellenbosch should be aimed at the retention of the present cultural and historical interaction between Stellenbosch and the Peninsula, as well as the nearby satellite towns in the fringe area of the Cape Metropolitan Area, namely Paarl/Wellington and the Hottentots-Holland Basin.”

“Par 2.2 Because of the existing restraints as regards the potential of Stellenbosch for long-term physical expansion, the urban development that

does take place should be qualitative rather than quantitative and a compact urban structure with higher residential densities should be aimed at.”

“Par 2.4 The protection of the area’s good agricultural land should enjoy priority at all times.”

“Par 2.6 No subdivision of agricultural land may take place with a view to the creation of further smallholdings for extensive residential purposes.”

When the statutory Guide Plan was approved in 1988 it was done after a rigorous public participation and inter-governmental consultation process. At that time Libertas Farm was (and still is) an iconic historic and strong economic unit. The then owner, Robbie Blake, as both farmer and politician, had no desire or intention of ever developing any part of the Farm for urban purposes. He accordingly supported the exclusion of the property from urban development. The same applied to the iconic historic Brandwacht Farm which as an agricultural unit fell under the jurisdiction of the then Divisional Council. From a roads perspective, Van Reede Street was not considered to be a main road in the Guide Plan and nowhere was there any indication that it would serve urban development west of Die Boord.

3.5 With the coming into operation of the Municipal Systems Act in 2000 the entire landmass of South Africa was divided into local authorities and the area including Stellenbosch, Franschhoek, Klapmuts and the surrounding farms and hamlets such as Pniël, Raithby and Vlothenburg were included in what is now known as WC024. The Winelands District Council remained in existence but with greatly reduced powers and responsibilities, and its head office was moved to Worcester. The guidelines contained in the Statutory Guide Plan, referred to in paragraph 2.4 above, were absorbed into the Integrated Development Planning (IDP) process as required by the Act. The 2005 Stellenbosch Spatial Development Framework (MSDF) was drafted under the guidance of the consultant Simon Nicks following three rounds of public participation over a period of four years. In this process it was sought to break away from the ad hoc expansion of both high and low-income housing. In this process scenario planning was chosen as a vehicle to explore how the Municipality might develop differently, to accommodate the growing urban settlements. In the public participation process various visions to guide the development of Stellenbosch were drafted. One vision saw Stellenbosch town as **“An integrated settlement, free from discrimination, based on its status as an acclaimed center of learning, supported by a vibrant tourism industry based on its scenic splendour and its status as the viticulture capital of the country.”** Five scenarios were put forward for consideration in support of this vision. The **first** was based on **a few local MSDFs**. The **second** looked at the location of **development near employment growth nodes**. The **third** focused on **development at nodes on road corridors**. The **fourth** focused **development on rail corridors** and the **fifth** focused **development at three growth nodes**, Stellenbosch, Franschhoek and Klapmuts, with no development anywhere else. **In none of these scenarios was the urbanisation of Libertas considered as a development option.** With the change in political leadership at the end of 2005 this scenario-based planning was, however, not pursued. **Simon Nicks concludes his 2012 chapter on the historical evolution of planning legislation and controls affecting Stellenbosch with a few statements relating to unfortunate decisions. One of these was**

opening the door to office development (over-bulking) in the Techno Park which has led to the current traffic problems facing commuters to and from the Techno Park as well as other users of the R44.

3.6 Following 2012, compilation of the MSDF faced an uncertain future and during October 2013 the Spatial Planning Division of the Municipality in consultation with the Institute for Sustainable Development began a wider consultation process in an initiative called **Shaping Stellenbosch**. The Stellenbosch Ratepayers Association (SRA) participated in this process and submitted comment to the Spatial Planning Division of the Municipality on 31 July 2014 (**see Annexure C**). In this letter the SRA supported the initiative but had reservations about the University leading the process. Paragraph 9 of the letter in question concludes with the following statement: "In order to move forward, the Municipality possibly needs to consider extracting the best out of earlier SDFs and the recently repealed 1988 Guide Plan. The latter document contains a clear statement that, "...in the long term a large part of the increase in population will have to live elsewhere in the Metropolitan Area. While this has certainly happened during the past 25 years, the associated traffic congestion is not ideal. Bearing in mind the recently planned expansion for 250 000 people on the Heartland (AECI) property in Somerset West, this could nevertheless form part of a realistic scenario, provided public transport is made viable (for example, by providing dedicated bus lanes on the R44). A major shortcoming of the Guide Plan was, however, the fact that it was limited to the then Municipal area. This fact, coupled with opportunistic developers and weak development control, has led to low density developments such as De Zalze and an unfortunate increase of extensive residential development on agricultural land. The Shaping Stellenbosch initiative went on to produce an admirable document in which the need to protect agricultural land and avoid building additional roads was emphasized (**see Annexure D**). Unfortunately, the Shaping Stellenbosch Initiative came to an end in 2017 because Prof Mark Swilling resigned from the Mayor-Rector forum as it ceased to be an honest interface between the university and the town: "The New Vice-Chancellor did not want to upset municipality" by debating sensitive, controversial issues (**see Annexure E**). In certain respects, the initiative was not in vain, however, because it paved the way for the compilation of a credible MSDF in 2019.

3.7 The current Municipal Spatial Development Framework (MSDF) for Stellenbosch, approved in November 2019, remains a key element of the IDP and contains similar if not identical principles to those contained in the Statutory Guide Plan. This document was and is highly regarded as it contains guidelines that are clear and unambiguous. As already mentioned, in terms of the November 2019 approved MSDF, the subject property was excluded from urban development. The current proposal to include the Libertas/Fleurbaai farms in the urban edge can accordingly also not be recommended for approval in terms of this document.

On page 67 of the approved 2019 MSDF the following statement is of critical importance for the possible future use of the Remainder of Farm No.1480 (Libertas) and the Remainder of Farm No. 1040 (Fleurbaai): "**Redevelopment offers the opportunity to accommodate many more residents within Stellenbosch town, without a negative impact on agricultural land, nature areas historically significant precincts, or "choice" lower density residential areas.**" Based on this

statement, Libertas/Fleurbaai was excluded from the urban edge as **its inclusion would have a negative impact on agricultural land, nature areas, historically significant precincts, and “choice” lower density residential areas.** This conclusion is in line with the core principles and policies listed on page 52 of the MSDF which can be summarised as follows:

- maintain and grow our natural assets;
- respect and grow our cultural heritage;
- direct growth to areas of less natural and cultural significance as well as movement opportunity;
- clarify and respect the different roles and functions of settlements;
- clarify and respect the roles and functions of different elements of the movement structure;
- ensure balanced, sustainable communities; and
- focus collective energy on critical catalytic projects.

3.8 Based on the seven principles above and six other very well-defined policy statements in the MSDF (quoted below), **development proposals and policy statements that do not conform to these principles should not be approved.** One cannot have principles and policies and then adjust them for different situations.

“Even if difficult, it is a matter of now or never. We cannot behave and live like before. We cannot afford to lose more nature and agricultural land, develop at low densities, and prioritise building roads for private cars more than public transport. If we do that, the system will fail. Material wealth will not assist.” (Page 9 of the MSDF preamble).

“Containing settlement footprints by curtailing the further development of peripheral dormitory housing projects.” (Page 25 of the MSDF).

“Containment of settlements to protect nature / agricultural areas and enable public and non-motorized transport and movement.” (Page 26 of the MSDF).

“A focus on public and non-motorized transport and movement.” (Page 26 of the MSDF).

“Maintain and grow the assets of the Stellenbosch Municipality’s natural environment and farming areas.” (Page 51 of the MSDF).

“Respect and grow our cultural heritage, the legacy of physical artefacts and intangible attributes of society inherited from past generations maintained in the present and preserved for future generations.” (Page 51 of the MSDF).

3.9 **The reason for emphasizing the above principles and policy statements has to do with the fact that policy has now progressed from simplistic statements that land is either within or outside the urban edge, to a more reasoned level of policy, based on principles of sustainable development.** Consequently, elements or parts of the approved MSDF cannot be viewed in isolation or simplistically. In cases such as this, where the proposed development does not comply with the above-mentioned principles and policies, this is a matter of fact and

the development in question cannot be supported. **Please note that the proposed development of the Remainder of Libertas/Fleurbaai does not comply with any of the five afore-mentioned policy statements. In the opinion of the author there was and is accordingly no basis for including the Remains of Libertas/Fleurbaai in the urban edge. If the development of these properties were to be approved it would repeat an unfortunate precedent, defeating the principles and policies contained in the MSDF.**

3.10 During 2019, at the beginning of a five year review of the IDP process, consultants acting for the owners of Fleurbaai/Libertas submitted a request to the Municipality to include the property in the urban edge. This request, to include Fleurbaai/Libertas in the urban edge to meet the demand for higher and middle-income housing was repeated on 7 May 2019 (see page 165 of the MSDF) and again on 5 July 2019 (see page 166 of the MSDF). As motivation for the inclusion in the urban edge, the consultants used the contradictory argument that extending the urban edge would result in a more compact urban form. Contrary to the fact that urban growth always results in higher costs to the community, the consultants also stated that the “significant” development contribution payable by the developers would contribute significantly to the upgrading of the municipal infrastructure. **The Municipality responded with an emphatic “no” to all three requests stating that; “The MSDF sets out to actively curtail sprawl of Stellenbosch town and protect agricultural land over the planning period. The MSDF maintains that sufficient land exists within the urban edge for the type of development envisaged.”** As stated on page 11 of the notes drafted by the environmental consultant for De Bosch dated 26 March 2003 (attached as Annexure A), the traffic consultant, Mr Hein Stander indicated that Stellenbosch was unlikely to be able to afford to build itself out of congestion. He added that at present it had been concluded that Stellenbosch could not afford the mitigation measures needed to improve the traffic problems.

3.11 **The current motivation by the Applicant on page 20 of the application, namely that the proposed development will reinforce the functioning of the existing town centre is unfounded. With the residential densities envisaged and the mixed-use areas promoted in the application, it is likely that this development will detract from the functioning of the existing town centre and will inevitably encourage sprawl.**

4. NON-COMPLIANCE WITH PLANNING LEGISLATION, PRINCIPLES AND POLICIES

4.1 As a point of departure the current application is fundamentally flawed in several ways. The most basic of flaws is the failure to provide proper notice of the proposal as required by Section 46(2)(c) of the Stellenbosch Municipal Land Use Planning By-Law 2015. The relevant section states that, **“a notice contemplated in sub-section (1) must be served on each person whose right or legitimate expectation may be affected by approval of the application.”** The failure to serve notice on any of the twenty or more farm-dweller families is accordingly a serious omission that needs to be rectified. Without going into detail, the contents of the notice displayed at the entrance to Libertas Farm also did not comply with the requirements of Section 47 of the Act and this omission also needs to be rectified.

4.2 Secondly, as stated by U Govindjee, “Approvals to extend the urban edge are criticised in certain cases for being political decisions that clearly go against the city's urban edge guidelines. They result in unwanted consequences such as reinforcing sprawl, initiating costly infrastructure, promoting the use of private vehicles, or even promoting segregation by excluding poor and Black people. **Economic and political processes become open to negotiation and networking, with the state ending up "circumventing control and regulation"** (see Defining the Urban Edge – A guide to its implementation for Sustainable Development: U Govindjee, Potchefstroom *Electronic Law Journal* (PELJ) PER vol 25 n1, Potchefstroom 2022, page 15 quoting Horn, Plan Perspect 3)(see **Annexure F**). **As will be seen from the above-mentioned historical background of both Libertas Farm and the evolution of Planning Legislation impacting on Stellenbosch, this process has contributed to the notion of an urban edge losing much of its credibility. Stellenbosch Municipality, comprising both senior officials and political office bearers, has become open to negotiation and networking, which may result in the circumvention of control and regulation. This fact was alluded to by Simon Nicks where he stated that, “with the shift of the political balance in 2006, senior line managers were replaced and few of the projects that needed to be implemented were actioned.”** As stated in paragraph 1.2 above, forty-four hectares of agricultural land formerly part of Libertas Farm were sold and have since been developed for extensive residential purposes at an average gross density of less than one dwelling per hectare (De Bosch and Patrysvlei). It is also important to note that since the end of apartheid in 1994, planning legislation has been in a state of transition and many developments took place in contravention of existing planning principles and policies. **As was recently stated by Mr Peter Mons, a former town planner of the Winelands District Council then based in Stellenbosch, approvals granted by local authorities stand, unless successfully challenged in a court of law.**

4.3 The volatility referred to in paragraph 4.2 continues to this day, albeit under a different political regime and the risk of the Municipality circumventing control and regulation remains a cause of considerable concern. One would have hoped that with the approval of the Stellenbosch (Integrated) Town Planning Scheme in 2019 and the approval of the admirable MSDF in the same year, there would have been a measure of stability in decision making. Senior officials who do not toe the party-political line are, however, sidelined and, in some cases, dismissed. The exercise of power by the Municipality where the Executive Mayor, after networking with applicants and developers, is also the appeal authority, is a further cause for concern. This is so because there is no clear separation between the municipality as the legislative authority and the mayor who has executive powers in the hearing of appeals.

4.4 One negative aspect that was introduced into planning legislation with the enactment of the Spatial Land Use Management Act 2013 (SPLUMA) was providing for the hearing of appeals by the Executive Authority, namely the Executive Mayor as the Competent Authority. This dictatorial provision is undemocratic as it means that any aggrieved party must seek redress in a court of law which for the majority of Interested and Affected Parties (IAPs) is unaffordable. To illustrate this point, when the City of Cape Town appointed a planning consultant some years ago, to assist the Executive Mayor in considering appeals, he was told to forget what he had learned at University as he needed to recommend the approval of all development proposals,

unless the site in question was subject to flooding or impacted by nuclear or other toxic waste.

4.5 Section 42 (2) of SPLUMA also states that when considering an application affecting the environment, **a Municipal Planning Tribunal must ensure compliance with environmental legislation**. Because no EIA has yet been undertaken as required by NEMA, **this application cannot be considered by the Municipal Planning Tribunal**.

4.6 **With reference to the above-mentioned historical background and associated land use controls and legislation applicable to Libertas, the rezoning from Agriculture to Subdivisional Area to subdivide the current property, to accommodate a variety of urban land uses, should clearly not be permitted on high quality agricultural land. Permitting urban development outside the approved urban edge would also defeat the very purpose of the urban edge which was instituted to promote densification and to curb urban sprawl.**

5. TRAFFIC IMPACT ASSESMENT

5.1 The draft scoping report for the proposed Techno Park – Adam Tas link road makes the following surprising statement:

C-2.7 Traffic

The proposed development will not result in an increase in traffic conditions. The proposed development will assist in alleviating the traffic conditions on the surrounding roadways. A Traffic Impact Assessment will not be required due to the proposed development not resulting in a traffic impact but will instead create improved infrastructure for current and future road users. Therefore, the development proposal is to better accommodate the existing and future traffic of the area. A Traffic Impact Assessment will therefore not be conducted.

5.2 This statement is incorrect. Unfortunately, the Traffic Impact Statement (TIS) for the proposed Libertas development relies on this statement to justify the proposed road network, specifically the Van Reede link and the western link road (Technopark and Adam Tas). Furthermore, the TIS relies exclusively on the flawed transport model for traffic data and provides very little justification for the outcomes of the traffic assignment and growth. Any new land development, with associated road investments typically results in the following categories of traffic:

5.2.1 Current and Normal growth traffic – This includes the current traffic using or assigned to the road network. Normal growth traffic is the growth in the current traffic which is due to the growth in the population and economy.

5.2.2 Diverted Traffic: This is the traffic diverted from other routes to the new route as a shorter distance, or less congested road network or simply to avoid the conventional route.

5.2.3 Induced traffic – Additional traffic now generated due to the development over and above the normal growth traffic.

5.2.4 Transferred traffic – traffic transferred from other modes (public transport, walk, cycle etc.) to this new route using private cars. This often happens when areas become car dependent and current traffic conditions make it not viable for non-motorised transport or public transport.

5.3 The current traffic impact statement completely ignores traffic categories 5.2.2, 5.2.3 and 5.2.4 and only focusses on 5.2.1. It seems as if the current traffic is arbitrarily assigned to the new route with a generic growth factor applied to reflect the future traffic. This extrapolated traffic to predict future congestion is used to motivate additional capacity. However, adding additional capacity simply generates traffic, which leads to repeated congestion with higher traffic volumes and further car-oriented transport and land use patterns, such as the proposed Libertas development. This vicious cycle continues until road capacity expansion costs become unacceptable and / or surrounding neighbourhood experience urban decay due to traffic impacts.

5.4 Roads such as the Link Road and the Van Reede extension will create transport demand for travel and expansion by their very existence. Environmental requirements such as the Environmental Impact Assessment are not arbitrary hoops through which local and provincial government must jump. The environmental and transport regulations are designed to ensure that the public and government at all levels are well informed about the environmental and social consequences of the development and proposed roads. The environmental impact and traffic statements in this case fail in several significant respects to serve this purpose and completely underestimate the growth in traffic.

5.5 Several examples exist internationally and in South Africa of interested and affected parties (IAPs) that have successfully sued government for failing to consider land use impacts and generated traffic in Environmental Impact Assessments or Traffic Impact Assessments. Courts conclude that some EIA and TIA processes were based on the unlikely assumption that population would grow by the same numbers with and without the new development, even though the project was being promoted to stimulate growth. Courts often find that this circular reasoning afflicts the TIA and EIA's core findings and under-estimate the negative transport impacts of new developments of supportive roads.

5.6 The aim of a Traffic Impact Assessment (TIA) is to conduct a *comprehensive investigation* of how the proposed development and the associated additional traffic will affect the existing and proposed future transport and road network and how the increase in traffic will impact on the surrounding neighbourhood. As the name suggests, a Traffic Impact Assessment implicitly refers to the *impact of the traffic*. *It is important to note that the use of the term "Traffic Impact Statement", as used in the Libertas proposal, does not equate to a Traffic Impact Assessment since it lacks comprehensive investigation.*

5.7 The purpose of a traffic study is to present both the positive and *negative effects* expected on *all road users*, and all affected people, by implementing the proposed

development. Normally, a TIA will be a source of information from which there should be an understanding of:

5.7.1 the development proposal such as additional traffic generated and allocated to the surrounding road network,

5.7.2 the alternative options considered in terms of alignment, transport modes, traffic mitigating measures, etc,

5.7.3 any negative impacts that may occur and,

5.7.4 importantly, the measures taken to minimise these negative impacts.

Mitigating, or preventing the undesirable effects, such as additional congestion, noise pollution, air pollution, increased vehicle accidents, an unsafe pedestrian environment, vibration, and light pollution and generally an unpleasant environment, are probably the most important objectives of the traffic study. These mitigating measures are subsequently used to determine developer contributions. None of these elements are present in the current traffic impact statement. In fact, this Libertas “traffic impact statement” seems to focus exclusively on whether there is sufficient road capacity to serve the proposed development.

5.8 Finally, an important outcome of a traffic impact assessment is to ensure that all interested and affected parties, which are the community, developer, and local authority, will have access to all relevant and public information relevant to the proposed development to facilitate the approval process. Again, this traffic impact statement only reports on the outcome of previous cursory modelling and relies on a previously developed EMME model. No indication is provided on the data used to calibrate and populate the EMME model.

5.9 The upgrading of Van Reede Street to accommodate higher traffic volumes will result in Die Boord being split into two sections, divided by a high-volume road associated with high traffic volumes, noise, unacceptable speed, reduced inter-neighbourhood connectivity and a very unpleasant urban environment. None of these traffic impacts are considered in the traffic impact statement. On the contrary, the traffic section in the application suggests that the officials concerned have been working in isolation, or in silos, focusing on who or what will fund the proposed link road without giving any consideration at all to the impact the proposal might have on the environment, or the community directly affected by the proposed link road. The modelling used to justify the proposed link road, is also certainly not aligned, or integrated with the MSDF as required by the Integrated Development Plan (IDP). The information contained on page 58 of the Application is most disconcerting as far as the political - and senior management of the Municipality supported the proposed rezoning of the Libertas Farm for urban development as far back as 2017. The developers rely upon 2017/2018 correspondence between the Provincial - and the Local authority in support of their application. In his letter of 26 February 2018, the Provincial Chief Director: Road Network Management at the time refers to a meeting held on Friday 2 February between the Executive Mayor of Stellenbosch, her Municipal Manager, and her officials on the one side and the

Provincial Minister of Transport and Public Works (and his officials) on the other. In this letter, the Chief Director Provincial Roads quotes from another letter, received on 22 February, from Mr JG Louw, the then Director of Infrastructure at the municipality (Ref 16/3/2). It is clear from the contents of paragraph 5.4 of the Chief Director's letter that Mr Louw linked the time frame of the additional access to Capitec's head office and Main Road 177, to "*the development contributions related to development adjacent to Techno Park* which [the development contribution] would be sufficient for completion of the alternative access". To quote from page 58 of the application, the developers stated the following: "According to correspondence (1 December 2017) from Stellenbosch Municipality to Western Cape Government (WCG): Department of Transport and Public Works, during the approval process of the Capitec Head Office recently constructed in Techno Park, planning of the Techno Park access link to Adam Tas Road is being planned, the alignment fixed, and "*will be implemented with the start of the adjacent Libertas development, which will provide for development contributions of over R100m*", which will be more than enough to cover the construction costs for the link road". Any reasonable person perusing these letters must conclude that all officials participating in the 2 February 2018 meeting were, at the time, not only aware of "*the adjacent Libertas development*" but were also very much in support thereof. As a *fait accompli*, without consultation or discussion thereof with their constituents. In looking into this issue, the only reasonable explanation appears to be that the Directorate of Planning and Economic Development misinformed the Transport, Roads, and Stormwater Division of Infrastructure Services as to the true status of the land comprising the Libertas Farm at that time. In the absence of a more credible explanation, it will be necessary to determine what happened during the compilation of the approved 2019 MSDF when, support for the development of the Libertas Farm was emphatically reversed. In closing this argument: The Applicants, and specially Annexure 16 to their application, also fall foul of the prescription by the legislator as prescribed in Section 38 (2) (b) of the National Land Transport Act 5 of 2009: developments of this nature ARE SUBJECT TO traffic impact assessments and public transport assessments as prescribed by the Minister – a mere Traffic Impact Statement does not comply with the legislation. Any such development is subject to these conditions, and, in this instance, the applicants disregarded the legislation.

6. HERITAGE IMPACT ASSESSMENT

6.1 Stellenbosch prides itself on being the first municipality in South Africa for which an extensive Conservation Management Plan and Heritage Register (CMP) for the broader landscape has been approved - something that had become urgently required as the character of the unique rural landscape with its historic farms and vistas over the winelands increasingly came under pressure for development. The heritage impact of this rezoning application is determined in terms of the CMP.

6.2 The application site is situated in landscape unit C15 (Eerste River Central Area) which is a Green Transition area of municipal scale (bordering the town).

Appendix 3 to the CMP explains the concept and role of Green Transitions: The concept of green transitions as a conservation system was developed based on the threats exerted on these existing special features, and the opportunity to allow more of these areas to be positively utilised as open green spaces by thinking of them as a continuous system that fulfils a 'cultural service'. The system of Green Transitions also incorporates existing planning tools such as the urban edge. It thereby forms a dual heritage protection role: **it prevents the encroachment of urban development into the rural character areas of Stellenbosch and preserves the agricultural continuum/domain that traditionally surrounds settlements within the Winelands.** Additionally, **this green system can facilitate integration by creating an alternate system of mobility and recreation.** These are envisioned to be **networks where different sectors of the public can rub shoulders, and where access to nature and agricultural practices improves individual and social wellbeing.** (Emphasis supplied)

6.3 Appendix 3 to the CMP lists rules that are applicable to Green Transitions. Based on these rules, the CMP provides specific development criteria for every Green Transition Landscape unit such as C15 which is described as follows in the CMP:

“C15 Well-defined landscape feature on the southwestern edge of Stellenbosch
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 service roads between the vineyards lie perpendicular to the slope, directing views towards the dramatic mountains as an uninterrupted view. This rural landmark is a well-defined landscape feature entering into Stellenbosch from the Polkadraai Road. 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 denotes the west and southern edge of this land unit, referring to historic commonage. A large historic freehold farm [Libertas] is located in close proximity to Die Boord. The historic Fleurbaai 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.”

MAIN AIM: CONSERVE AND ENHANCE: *The existing character of this landscape unit must be conserved (maintained). This requires protection and maintenance of significant buildings, trees, avenues of trees and other landscape elements such as vineyards. It may also require appropriate re-development of other historic places in the landscape. Where sites have been degraded, manage, and regenerate these heritage environments into the future, to become more inclusive.*

MAIN VALUE: HISTORIC - *Appropriate use of heritage features is critical for their preservation. Development that will result in the loss of the agricultural character of this landscape unit, will threaten its heritage value as a whole.*

CONSERVATION SYSTEM: *This landscape unit is located within the town-scale green transition system, which aims to maintain the clear division between townscape and surrounding rural landscape and prevent suburban sprawl. Maintenance of the green and open agricultural character of this landscape unit is important.*

DEVIATED LAND USE/USES THAT WILL LIKELY ERODE LANDSCAPE CHARACTER: *Over scaled private dwellings, cluttered properties, gated residential estates, large-scale industrial structures, suburban development, mining, landfill or sewage plant, parking lot, business park, isolated shopping centre.*

Large-scale business-park development and suburban expansion, together with increased transport infrastructure, threatens the significant historic pattern of settlement in this landscape unit."

6.4 The guidelines listed in the CMP which are specifically relevant for the purpose of conserving and enhancing the landscape character and economical significance of landscape unit C15 have been numbered from 6.4.1. to 6.4.16 and are copied below.

6.4.1 Prevent construction of new buildings on visually sensitive, steep, elevated, or exposed slopes, ridgelines, and hillcrests. Retain the integrity of the distinctive and predominantly agricultural landscape character. For example, the Techno Park development has visual impact on both the R44/Blaauwklippen Valley and Eerste River Valley.

6.4.2 Encourage mitigation measures (for instance the reinforcement of existing windbreaks and planting of new ones) to "embed" existing over-scaled buildings into the surrounding landscape. The maintenance, reinforcement, and "thickening" of the windbreak between this landscape unit and Techno Park is particularly important.

6.4.3 Maintain the balance of Urban, Rural and Wilderness areas. It is the interplay and relationship between these that give the study area its unique character.

6.4.4 Avoid insensitive 'dominating' developments that erode the agricultural continuum and rural character of the landscape unit. In this context, dominating development would include gated residential estates, large-scale infrastructure, suburban development, and industrial developments.

6.4.5 Land-use and infrastructure that is not one of the core agricultural systems (vineyards fields and orchards) could have a negative visual effect within the landscape (greenhouses, black plastic ground cover, shade netting, chicken batteries). The placement of these agricultural elements should be carefully considered and limited within this context.

6.4.6 Traditional planting patterns should be protected by ensuring that existing treed avenues, tree alignments and dense planting along the river corridor, and copses are not needlessly destroyed, but reinforced or replaced, thereby enhancing traditional patterns with appropriate species.

6.4.7 It is recommended that visual permeability should be maintained towards mountains, valleys and across open fields. (a) Discourage the use of solid walls

around areas in public view and along scenic routes. (b) Views should be framed and enhanced by development wherever possible.

Movement Systems and Settlement Patterns

6.4.8 The scale of roads (especially those that align with historic wagon routes) should be the minimum possible. Insensitive hard elements can compromise the rural character of a landscape as a whole.

6.4.9 Respect the distinctive settlement patterns along the Eerste River. Proposals should be carefully considered in relation to potential impacts on the heritage significance of these settlements and the historic riverine corridor.

Planting Patterns

6.4.10 Traditional planting patterns should be protected by ensuring that existing tree alignments and copses are not needlessly destroyed, but reinforced or replaced, thereby enhancing traditional patterns with appropriate species.

6.4.11 Significant avenues should be protected as a heritage component.

Development criteria pertaining to economic significance of the landscape:

6.4.12 Care should be taken that vineyards and orchards are not needlessly destroyed and replaced by non-agricultural development. The potential agricultural use of the land should be retained for the future.

6.4.13 The proliferation of non-agricultural uses, particularly in visually prominent locations, should be avoided. This is to protect the predominantly agricultural character of the landscape.

6.4.14 The subdivision of farms fundamentally erodes the agricultural character of the landscape and should be discouraged. Rather, maintain larger unified land areas to protect larger landscape continuums that display a unified scenic character.

New Development

6.4.15 Ensure that new developments within rural contexts are in sympathy with the topography and unique *genius loci* of the place/landscape unit.

6.4.16 Ensure that new buildings within historical precincts or werf contexts are in sympathy with the scale, massing, layout, and idiom of surrounding buildings.

6.5 Guidelines relating to farm werfs, and historic buildings are also provided. However, as these are not relevant to the current application for rezoning of sections of the Libertas farm and inclusion of the farm within the urban edge, these guidelines are not copied from the CMP.

6.6 Heritage Impact of the proposed rezoning of sections of Libertas, and its inclusion within the urban edge.

6.6.1 The purpose of the current application is (a) to rezone 35.9ha of agricultural land outside the urban edge for urban development and (b) to amend the urban edge to include 180ha of agricultural land within the urban edge. The main aim of the CMP on the other hand, is to preserve (maintain) and enhance the existing agricultural character of the landscape.

6.6.2 The visual impact of the proposed development and supporting road infrastructure on the landscape of visibility 7.3, is of major concern. The sensitive landscape is not suitable for any residential development. According to the Heritage Comment in the Application: *The proposed development will result in a change to the landscape and scenic character of the site. Any form of urban development within this agricultural landscape will result in the erosion of scenic resources, but the nature of the development demonstrates a high level of sensitivity to the visual, heritage, cultural etc. indicators that the professional team have uncovered over time. Therefore, based on the current proposal, it is believed that the proposed development will not result in significant loss of the agricultural character of this landscape unit (the C15 Eerste River Central Area Landscape Unit) if the necessary guidelines are followed. It is our opinion that the present urban design team, URBA in consultation with TERRA+ Landscape Architects, presented a proposal that took cognisance of the significant heritage, landscape and visual context the site presents. The proposed development will result in a change to the landscape and scenic character of the site.* Despite the considerable efforts that have been made to get the proposal into an acceptable form, it is highly questionable whether replacing vegetation with architecture will maintain the agricultural landscape.

6.6.3 From the Heritage Comment (Liana Jansen, May 2022), Appendix 13 to the Land Use Application, it appears that interpretation of guidelines is subjective and is determined to a large extent by the angle from which one looks at it. What is acceptable to one party is not necessarily acceptable to another. In the case of the De Zalze Golf Estate, the positioning and layout of the various components of the development was carefully designed to limit the visual impact to a minimum. Many photographs from different vantage points were used to illustrate how existing trees or landform would limit the views of the development. Today, De Zalze is an eyesore along the R44 Strand Road. The measures that were intended to mitigate the visual impact did not work and/or no longer exist, or the development deviated from the plans for which the mitigating measures would be effective. The risk of the mistakes made at De Zalze being repeated at Libertas farm are too high.

6.6.4 The application cannot be considered until the necessary final Heritage Impact Assessment has been completed and assessed by Heritage Western Cape. According to Liana Jansen (Heritage Comment) *“The detailed historic, visual and archaeological studies to be undertaken for the HIA could potentially highlight further heritage concerns.”* A full impact assessment of the proposed Adam Tas Link Road from Techno Park to the R310 is also needed. In addition, consideration needs to be given to the spatial impacts that will or are likely to occur in implementing the proposed link road. The proposed bypass is likely to lead to ribbon development along the new road, a phenomenon that typically precedes a more extensive form of urban development. This would have an additional negative impact on the visually sensitive rural landscape and will lead to additional pressure on the urban edge. This view is

supported in the current application (page27): *“Due to the proposed delineation of this link road, the proposed extension of Van Reede Road and the existing urban development at Technopark it can be accepted that there would be pressure for infill development between this new road link and the existing urban developments of Stellenbosch and thus the eventual amendment of the demarcated urban edge in this area.”*

The impact on Fleurbaai⁷

6.6.5 The proposal is to insert a mixed-use development (3-4 and possibly up to 5 storeys) with footprint 34.9ha near Fleurbaai. The CMP states: *The suburban sprawl of Stellenbosch is a threat to this unique heritage site [Fleurbaai] and its broader landscape.* The Heritage Comment does not mention the threat posed to the Fleurbaai heritage site and states that *the coding for Precinct A is acceptable, apart from a few of the central buildings that could potentially be of less storeys to minimize visual impact (see Visual Statement 2021).* However, the Visual Statement did not determine the potential impact of Precinct A on the unique heritage site.

6.6.6 The inclusion of Libertas within the urban edge of Stellenbosch and approval of the proposed link road that cuts through the landscape, will have major negative implications for Libertas, Fleurbaai and other historic farms including Troughend (Klein Vredenburg) and their surrounding landscape.

Soil suitability and retention of agricultural land

6.6.7 According to the CMP, *the central area of the northern slopes [where the area adjacent to Fleurbaai is proposed for development] has high soil suitability, declining towards the eastern edge.* Development criterion No. 6.4.12 copied above refers to soil suitability: *Care should be taken that vineyards and orchards are not needlessly destroyed and replaced by non-agricultural development. The potential agricultural use of the land should be retained for the future.* **The High-Level Landscape Framework** reports that the application site is situated in an area of *rich alluvial soils supporting agriculture, primarily viticulture.* **The Heritage Comment** focusses on the viticulture use only: *“The proposed development is located on medium to low soil suitability for viticultural use, where Mr Blake retained all vineyards on the high soil suitability areas.*

⁷ Note that the original spelling of Fleurbaai was Fleurbaix.



Figure 3: Libertas Farms (ref: Google Earth)

6.6.8 The google image above (2023) shows the poor condition of the vineyards on the Fleurbaai (RE of Farm 1040) section of Libertas (sold in 2017) which was formerly part of the well-known, successful wine farm for more than a century. From the google image it appears that the vineyards south of the Fleurbaai homestead have indeed been removed.

6.6.9 The impact on the Libertas werf has not been evaluated. According to the Stellenbosch Heritage survey (2016): **The site is highly representative of a werf that displays the fine interplay between built environment, the rural landscape, and the wilderness beyond.** The site exhibits many rare and unique elements, such as the murals, an extremely fine holbol gable, and the burial ground with gabled vaults. It has a strong and tangible connection with the history of slavery. The site holds extremely high levels of historical, architectural, archaeological, landmark/scenic, aesthetic/contextual significance, and is a rare example.

7. CRITERIA FOR ADJUDICATING THE APPLICATION

7.1 In terms of Section 65(1) on page 51 of the Stellenbosch Municipal Land Use Planning By-Law 2015 (MLUPB) the Municipality must have regard to the following criteria when considering, evaluating, and adjudicating an application:

- (h) The impact of the proposed land development on municipal engineering services.

- (i) The IDP including the MSDF.
- (j) The IDP and SDF of the District Municipality, where applicable.
- (k) The applicable local SDF adopted by the Municipality.
- (l) The applicable structure plans.
- (m) The applicable policies of the Municipality that guide decision-making.
- (n) The provincial SDF.
- (o) Where applicable a regional SDF
- (p) The policies, principles and the planning and development norms and criteria set by the national and provincial government.
- (q) **The matters referred to in section 42 of SPLUMA.**
- (r) The principles referred to in Chapter VI of LUPA
- (s) The applicable provisions of the zoning scheme.

In terms section 65(1)(q) of the MLUPB 2015 (see above) matters referred to in Section 42 of the Spatial Land Use Management Act (SPLUMA) also need to be considered in evaluating the application. Section 42(1)(a) of SPLUMA states that in considering and deciding an application **a Municipal Planning Tribunal (MPT) must be guided by the principles set out in Chapter 2.** The relevant development principles are set out in section 7 of Chapter 2 of SPLUMA and can be summarised as follows.

- (a) Spatial justice
- (b) Spatial sustainability
- (c) Efficiency
- (d) Spatial resilience
- (e) Good administration

Section 42(1)(b) of SPLUMA states that a MPT must make a decision **which is consistent with norms and standards, measures designed to protect and promote the sustainable use of agricultural land**, national and provincial government policies, and the municipal spatial development framework; and (c) take into account-

- (i) the public interest;
- (ii) the constitutional transformation imperatives and the related duties of the State;
- (iii) the facts and circumstances relevant to the application;
- (iv) the respective rights and obligations of those affected;
- (v) **the state and impact of engineering services, social infrastructure, and open space requirements.**

7.2 What is of paramount importance, and which stands out clearly in the above-mentioned criteria and principles is firstly: **the protection and promotion of the sustainable use of agricultural land is not negotiable** and secondly; **the impact of the proposal on engineering services is of fundamental importance. The failure by the Municipality to adhere to its own planning policies and guidelines is rapidly plunging Stellenbosch into a crisis of disastrous proportions. The impossibility of Van Reede Street coping with the increase in vehicular traffic, if the application were to be approved, will be very difficult to deal with and the impact on engineering services impossible to quantify. The naive idea that the construction of the western link road and the dualling of Van Reede Street will**

lead to sustainable urban development while maintaining an acceptable quality of life, is misleading to say the least. Considering this application in the absence of a detailed, intensive, and extensive Environmental Impact Assessment is an exercise in futility. As stated in the 2019 approved MSDP there are other preferred priority development areas available for development and there is limited capital to provide the necessary infrastructure to service these areas let alone the Libertas Farm area.

7.3 As indicated in the sections above, there are a number of arguments that illustrate that **the proposed development does not comply with any of the above-mentioned criteria or principles**. Section 42 (2) of SPLUMA also states that when considering an application affecting the environment, **a Municipal Planning Tribunal must ensure compliance with environmental legislation**. Because no EIA has yet been undertaken as required by NEMA, **this application cannot be considered by the Municipal Planning Tribunal**.

8. CONSIDERATION OF SITE-SPECIFIC CIRCUMSTANCES

8.1 On page 18 of the application it is submitted that Section 22(2) of the Spatial Planning Land Use Management Act 2013 (SPLUMA), allows for a departure from the restrictions imposed by an urban edge if site-specific circumstances justify such departure. The Applicant also states that, where justified, a decision maker must consider such application.

8.2 As a point of departure the Applicant relies on the following definition by the National Department of Agriculture which defines a **site-specific circumstance** as **“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 development application.”** It is, however, further stated that any departure should not explicitly or implicitly undermine the overall purpose of the Municipal Spatial Development Framework. Other issues mentioned refer to the need to contain the footprint, limit departures to minor extensions, protect natural, cultural, and agricultural assets and avoid gated communities.

8.3 In paragraph 7.1.1 on pages 22 to 29 of the application, unsubstantiated reasoning is provided. In this section the applicant states that if a developer can prove that the proposal will be aligned with, or benefit stated and agreed objectives of national, provincial, and local government it should not matter whether the development is inside or outside the urban edge. The applicant then refers to the following imagined and unsubstantiated outcomes of the proposed development:

- Will be compact, dense, mixed use, reducing car dependency and enable NMT.
- Be based on public transport.
- Will stimulate desirable change.
- Expand housing opportunities.
- Will not lock out desirable development elsewhere.

Will support inclusion, provide a range of housing types and opportunities for entrepreneurs.

Will need to make best use of existing structures on the site.

8.4 Apart from being unsubstantiated, the information on pages 23 and 24 is misleading in that the subject site is not surrounded by urban development on all sides. The Techno Park abuts the subject site in the south and the suburb of Die Boord abuts it in the east. All the land to the west of the site is, however, agricultural as is most of the land to the north, including Patrysvlei which is situated outside the urban edge. The low density De Bosch development which abuts the historic homestead to the north could also best be described as peri-urban development. **Figure 15 is also misleading in that it shows the proposed Techno Park link road on an extract from the approved 2019 MSDF. The controversial proposed link road, however, has no status in relation to the MSDF.**

8.5 On page 27 of the application the following surprising statement is attributed to a senior official of the Planning Directorate, namely, **“that from a spatial planning point of view it is considered more desirable to rather develop a total farm such as the subject site, than portions of several farms on the urban edge.”** One needs to bear in mind that the historic Libertas farm was only 37ha in extent when it was granted to the first owner in the 1690s and was enlarged since then to eventually cover 225ha in the 1990s. **The afore-mentioned statement is accordingly both irrational and irrelevant. The statement also makes a mockery of the urban edge as contained in the approved 2019 Stellenbosch Municipal Spatial Development Framework.** As the acclaimed architect and planner, Piet Louw, has repeatedly stated, people who do not wish to farm should sell their farms to farmers and not to developers. **It is important to stress that the statement attributed to the senior official made at a meeting held on 22 October 2021 (to discuss the future alignment and status of Van Reede Street) is highly prejudicial and indicates that the Planning Directorate is compromised and conflicted in considering this application. The fact that an agent of the developer is also a member of the Stellenbosch Municipal Planning Tribunal is a further cause of serious concern.**

8.6 On page 28 of the application there is a vague statement to the effect that **“the opinion is held that the current development proposal complies with the above”** (site-specific circumstances?) **“as”:**

- The design of this development proposal will be limited to three precincts.
- The detailed design proposals for the individual precincts would further be guided by strict urban design principles.
- Provision has been made for linkages from the proposed development precincts and green areas with the proposed non-motorised network of Stellenbosch.
- The mixed-use activities would be of a local nature.
- The approved Stellenbosch 2017 Integrated Human Settlement Plan has a target of 18775 residential units to cater for the current housing backlog.
- The proposed development will have significant socio-economic benefits for Stellenbosch in the form of new employment opportunities, taxes, infrastructure

upgrades, traffic improvements and new housing opportunities as well as community facilities.

It is most important to note that none of the above statements or any of the outcomes referred to in paragraph 7.3 above, justifies the opinion that the current development proposal complies in any way with the definition of site-specific circumstances. The alleged socio-economic benefits referred to in the last bullet above would in any event be outweighed by the socio-economic costs involved.

8.7 The section on site-specific circumstances (paragraph 7.7.1) concludes with the statement that: The proposed development of the subject property is thus considered to be in line with the objectives of the Stellenbosch Municipality Spatial Development Framework for sites of this nature. **The applicant, however, fails to mention that in the approved MSDF, sufficient sites of this nature have already been identified. It also fails to deal with any of the negative consequences or impacts that would arise if the application were to be approved. The concluding comment by the applicant is in fact an admission that there are no site-specific circumstances to justify the inclusion of the subject property in the urban edge. This is so because the design proposals put forward by the applicant in support of the development could be applied to any site in any location as they are not site-specific.**

8.8 In the closing statement on page 83 of the application, **FIRST PLAN** submits that, **“sufficient motivation has been given for site-specific circumstances to deviate from approved policy.”** It is also stated that there is no evidence that this proposal will impede on anybody’s rights as it will lead to the optimum use and enhancement of the subject properties to the long-term benefit of all parties concerned.” It is, however, not understood what the author means by “impede” (i.e., obstruct or hinder). **It is nevertheless certain that if this application were to be approved it would impinge (negatively impact) on the rights of residents in Stellenbosch, “to an environment that is not harmful to their health or well-being.”** For example, the emissions from thousands more motorcars and the negative effects of increased traffic congestion on the health and well-being of residents of Stellenbosch cannot be ignored or ruled out.

9. RESPONSE TO INFORMATION FROM THE APPLICANT REQUIRED BY THE MUNICIPALITY

After the CLOSING STATEMENT in the Application, there is a copy of a seven-page letter in which the Applicant responds to nine questions or requests by the Municipality. In the interest of a comprehensive overview, the issues raised are responded to below. The request by the Municipality is listed first in bold, followed by the response from the Applicant, with a concluding comment by the author of this letter, again in bold.

9.1 **Provide motivation that specifically addresses the reasons why a Site-Specific Deviation from the MSDF should be supported.** The report has been revised, based on the definition by the National Department of Agriculture guideline on the determination of Site-Specific Circumstances.

Response: As indicated in paragraph 8 above, no credible reasons have been provided to justify the opinion that sufficient site-specific circumstances exist to deviate from the MSDF.

9.2 The Rezoning application together with precinct plans must inform the reader as to what is proposed. The Report has been revised and addresses the listed items in the next paragraphs.

Response: Accepted.

9.3 A general overview must be provided. This appears below.

Response: Accepted.

9.3.1 Main access roads to and in the development. Access is anticipated via Van Reede to the R44 and Techno Avenue to the R44 etc.

Response: Access to the site via Van Reede is extremely limited and problematic. Proposed Link roads are also problematic and pose a serious threat to the agricultural sector.

9.3.2 Precincts that are to be created. Three proposed development precincts are described.

Response: Accepted. The precincts are, however, purely schematic, and subject to change.

9.3.3 Main Services available. A Civil Services Availability Report was prepared.

Response: Accepted. As there is, however, no clarity as to what is proposed and because other proposals within Stellenbosch enjoy priority, the report is of little value.

9.3.4 The Management of the Open Space and Nature areas. A Master Home Owner Association will manage the public open spaces.

Response: This idea is fraught with problems relating to access and management.

9.3.5 The impact that the proposal will have on the character of the area. The impact on the Cultural and Visual Landscape was done by Liana Jansen.

Response: This is a very difficult impact to determine meaningfully. Impact related statements reflect the opinions of the authors and are not convincing as substantial and sufficiently reasoned impact statements.

9.4 Visual impact of the various components. A revised Visual Impact Study and Visual Statement was prepared by Filia Visual.

Response: Accepted but of questionable value as the proposals are purely hypothetical.

9.5 Each development must be discussed in detail. Preliminary information is given in the Town Planning Submission Documentation. It was agreed with the Municipality that the necessary applications would follow one another commencing with a rezoning application to Subdivisional Area (namely this application) accompanied by a Site-specific deviation. **Secondly**, an application in terms of the Subdivision of Agricultural Land Act 70 of 1970 would take place. **Thirdly**, applications

in terms of both the National Environmental Management Act, 1998 and the National Heritage Resources Act 1999 would be submitted. **Fourthly**, detailed Subdivision and Site Development Plans would be submitted.

Response: The afore-mentioned procedure conflicts with the provisions of Section 42(2) of the Spatial Land Use Management Act No. 16 of 2013 (SPLUMA) which reads as follows; “When considering an application affecting the environment, a Municipal Planning Tribunal must ensure compliance with environmental legislation.” In the absence of the necessary environmental authorisation the Municipal Planning Tribunal cannot consider this application.

9.6 **The consolidation of the various portions.** It is intended to submit a consolidation application, if required.

Response: Accepted.

9.7 **Treatment/management of public open space.** The Master Home Owner Association will manage the public open spaces.

Response: This is an error as it is a repetition of 9.3.4 above.

9.8 **Integration of development with its surroundings.** The impact on the Cultural and Visual Landscape was done by Liana Jansen. A Traffic Impact Statement is attached as Annexure 16.

Response: Accepted but this is also essentially a repetition of 9.3.5 above.

9.9 **Diverse housing opportunities if any.** A variety of housing opportunities is proposed.

Response: Accepted, but essentially only medium to high income housing is proposed.

10. CONCLUSION

10.1 The commitments made by various government and municipal departments to undertake the development of the Link Road associated with the development of the Libertas/Fleurbaai farms, prior to investigations, notifications (e.g. to farmworkers residing on the farms) or assessments (e.g. Environmental Impact Assessment) as required by legislation, brings good governance into serious question.

10.2 The current traffic congestion at Techno Park is a result of the excessive bulk of office development permitted to take place, in contravention of the 1986 guidelines. Creating further urban development on the Libertas/Fleurbaai farms is likely to compound the traffic issues and negatively impact on the quality of life enjoyed by residents and visitors to Stellenbosch, irrespective of the proposed Link Road. The broader issue of traffic congestion in and around Stellenbosch should be rigorously workshopped with independent experts, who represent the interests of the broader community and not simply those of developers.

10.3 Recognising the stewardship required of the elected councillors and appointed officials of Stellenbosch, we urge the municipality to acknowledge the important role of urban agriculture, as a source of food and employment, in close proximity to Stellenbosch. In particular, the Libertas/Fleurbaai farms are endowed with soils which

have a high land capability and access to water, and therefore have an important role to play in food security. The approved Conservation Management Plan (CMP) of the Municipality (the first such document produced by any local authority in South Africa) recognizes that non-agricultural development creates uneconomical or subeconomic agricultural units and that it is important to keep large blocks of land under agriculture to protect the continuum of larger landscapes, noting the importance of visual permeability and the historic riverine corridor of the Eerste River.

10.4 The approved 2019 SDF identified other areas around transit nodes which are more suited to mixed-use and residential infill development in order to limit sprawl. The important agricultural role of the Libertas/Fleurbaai farms was acknowledged. The traffic issues were understood to be addressed through strategic location of future development adjacent to the railway line or the R304, or south of Jamestown. It is argued that adjusting the urban edge to include Libertas/Fleurbaai as mixed-use development will exacerbate sprawl and traffic congestion.

10.5 Based on the information gathered in compiling this letter my clients are of the opinion that other options, besides urban sprawl and congestion, need to be considered. One of these options would be for the citizens of Stellenbosch to take ownership of their heritage for posterity by seeking the cooperation of the applicants, the Provincial and Local Government and other key role players to do so. There are several important historical precedents which underpin this option as indicated below:

10.5.1 The University of Stellenbosch owes its existence to the legacy of a bequest by Jan S Marais. This legacy, to a great extent continues to contribute to the economy and quality of life enjoyed by students, residents of and visitors to Stellenbosch.

10.5.2 The cultural heritage of Stellenbosch, which is the backbone of the town's quality of life, is further underpinned by the generous and far-sighted initiatives and bequests made by other noteworthy families and individuals, which have taken place during the past 100 years.

10.5.3 The preservation, protection and enhancement of Libertas Farm (especially the unique wall paintings from the 18th century), as part of Stellenbosch's rich historic legacy, could greatly contribute to the tourism sector while at the same time largely mitigating the negative aspects that will accompany the urban sprawl and congestion option.

10.6 Based on the above information, and information that has not been provided by the applicant, the relevant decision-making body of the Stellenbosch Municipality is therefore respectfully requested to refuse Application LU/15191 to extend the urban edge and allow for rezoning on the Libertas/Fleurbaai properties.

Yours sincerely,



Jean Pienaar
TRP(SA) A/1112/1999

Cc:

Premier Alan Winde, Premier of the Western Cape,
Premier.Winde@westerncape.gov.za

Minister Ivan Henry Meyer, Western Cape Minister of Agriculture
ivan.meyer@westerncape.gov.za, Daniel.Johnson@westerncape.gov.za

Dr Mogale Sebopetsa, Head of Department, Western Cape Department of Agriculture
mogale.sebopetsa@westerncape.gov.za

Mr Ricardo Mackenzie, Western Cape Minister of Transport and Public Works
Ricardo.mackenzie@westerncape.gov.za

Ms J T Gooch, Head of Department, Western Cape Department of Transport and Public Works
Jacqui.gooch@westerncape.gov.za

Minister Anton Wilhelm Bredell, Western Cape Minister of Environmental Affairs and Development Planning
anton.bredell@westerncape.gov.za,
magdalena.griesel@westerncape.gov.za

Mr Gerhard Gerber, Head of Department, Western Cape Department of Environmental Affairs and Development Planning
gerhard.gerber@westerncape.gov.za

Ms Anroux Johanna Marais, Western Cape Minister of Cultural Affairs and Sport
anroux.marais@westerncape.gov.za
Herman.VanDerWesthuizen@westerncape.gov.za

Mr Guy Redman, Head of Department, Western Cape Department of Cultural Affairs and Sport
guy.redman@westerncape.gov.za, Kim.Ismail@westerncape.gov.za

Adv Gesie van Deventer, Executive Mayor, Stellenbosch Municipality
Mayor@stellenbosch.gov.za

Cllr Esther Groenewald, Ward Councillor for Ward 22, Stellenbosch
Esther.Groenewald@stellenbosch.gov.za

Ms Geraldine Mettler, Municipal Manager, Stellenbosch Municipality
MM@stellenbosch.gov.za

Annexures

The documents of each annexure are provided with URL links and can be opened by clicking on the relevant document title.

- A. [EIA NOTES, PROPOSED DEVELOPMENT ON PORTION 1 OF FARM 1374 \(DE BOSCH\), 18 MARCH 2003](#)
- B. [SUSTAINABLE STELLENBOSCH: OPENING DIALOGUES, CHAPTER 1, SIMON NICKS, 2012](#)
- C. [SHAPING STELLENBOSCH, LETTER BY THE RATEPAYERS' ASSOCIATION, 31 JULY 2014](#)
- D. [SHAPING STELLENBOSCH, REPORT, JUNE 2014](#)
- E. [SUSTAINABLE STELLENBOSCH, MARK SWILLING, NOTES OF ADDRESS, STELLENBOSCH INTEREST GROUP 5 JUNE 2017](#)
- F. [DEFINING THE URBAN EDGE, U GOVINDJEE, 2022](#)