

**REMAINDER OF THE FARM BRANDWACHT No. 1049,
TRUMALI ROAD, STELLENBOSCH
GROUP PETITION AND OBJECTION TO APPLICATION
REFERENCE: LU/13953**

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Date: 24 October 2022

Dear Mr. Heys

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 BRANDWACHT NO. 1049 FROM AGRICULTURE AND RURAL ZONE TO SUBDIVISIONAL AREA TO PERMIT A VARIETY OF URBAN LAND USES: GROUP PETITION AND OBJECTION TO THE APPROVAL OF THE APPLICATION

1 INTRODUCTION

- 1.1 TV3 Projects (Pty) Ltd (under brief from Brandwacht Land Development (Pty) Ltd – “**the registered owner**”) has applied for rezoning and deviation from the Stellenbosch Municipality’s Spatial Development Framework in respect of Remainder of the Subject Matter Farm Brandwacht No. 1049, in the division of Stellenbosch, Province of the Western Cape (“**the Subject Matter Farm**”).
- 1.2 The Application has been submitted to the Stellenbosch Municipality for consideration under Application Reference: LU/13953 (Rezoning and deviation from the Spatial Development Framework) (“**the Application**”).
- 1.3 In summary, the Application states: “*The aim of this land use planning application report is to provide the Stellenbosch Municipality with sufficient information to approve a site-specific deviation from the Stellenbosch Municipality’s Spatial Development Framework to initiate an urban infill development outside the approved urban edge of Stellenbosch, and to approve the rezoning of the subject property from Agriculture and Rural Zone to Subdivisional Area.*”
- 1.4 Whilst the Application is not for approval of the development of the Subject Matter Farm, one cannot ignore the concept development plan and ultimate desired development on the Subject Matter Farm were the Application successful.
- 1.5 Similarly, whilst the Application is not for approval of the traffic management measures, including notably the Eastern Link Road, one cannot ignore that rezoning and development of the size and extent proposed in the Application is contingent on the implementation of substantial traffic management measures, including the building of the Eastern Link Road
- 1.6 We, the residents of Brandwacht, Bo Dalsig, Dalsig, Welgelegen, Die Boord, Paradyskloof, Brandwacht aan Rivier, and beyond, stand to be affected by the wider consequences of the subject Application and submit this petition as a group of residents whose rights and legitimate expectations may be affected by the approval of the Application.

- 1.7 As a group, we object to the Application and express our strong opposition thereto for the reasons set out herein.
- 1.8 This group petition and objection is being submitted by authorized representative, Emma Algotsson, 9 Linnes Street, Stellenbosch, emmaa@mweb.co.za.

2 OBJECTIONS

- 2.1 We urge the Municipality to disapprove and reject the Application for the various reasons referred to below, including:
- 2.1.1 the Application does not comply with sections 35, 45, and 47 of the Stellenbosch Municipality Land Use Planning By-Law (2015) as the Applicant **failed to serve a notice of the Application for rezoning “on every owner of land adjoining the land concerned”**, which makes the application incomplete, and the Municipality should on that basis refuse to accept the Application as a whole;
- 2.1.2 **the timing of the Application**, which requires the amendment of the Municipal Spatial Development Framework (MSDF), to coincide with the Integrated Development Plan (IDP) public participation **process is deliberate and mischievous**. Revisions of the IDP and SDF are matters of fundamental importance to the sustainable development of Stellenbosch and its environments and should not be allowed to be pushed through as a consequence of a rushed public participation process. While we appreciate the extension that was granted for the submission of comments, this extension was only provided after extensive pressure from residents and only for those who were informed about the requirement to individually request for the extension. September is exam time and includes a public holiday; parents are occupied with their children's studies and preparations for very important record exams and cannot be expected to pay due attention to the IDP, SDF, and related Application during this time;
- 2.1.3 the Application has been **rejected by several Ward Committees** in affected areas of Stellenbosch. Ward committees have an important role to play in actively taking part and determining the core municipal process. Ward committees further allow for members of the community to influence municipal planning in a manner that best addresses their needs. The rejection of the Application by these Ward committees demonstrates strong residential objection to the rezoning and proposed development and should guide the Municipality in its rejection of the Application;
- 2.1.4 the Application fails to make mention of condition 3.11 of the Amendment of the Stellenbosch Urban Structure Plan (Guide Plan), and the Rezoning of a portion of the farm, Brandwacht No 1049, Stellenbosch, 11 May 2009 which states that **“the remainder of the property must be retained for agricultural purposes and no further urban development be allowed”**. The imposition of condition 3.11 aligned the planning decision to the Environmental Authorization and served to reinforce the application proposal for the development of Brandwacht aan Rivier. On this basis alone the Application must be rejected, as it contravenes a stated municipal condition which is municipal policy. The condition has not been revoked or repealed and there is no rational reason to revoke or repeal the condition, nor has the due process been followed in this regard. It is of great concern that the condition has not been enforced by the Municipality through amendment of the title deeds, formation of servitude, or similar measures to ensure that the agricultural nature of the land is retained and legally enshrined. However, municipal failure to enforce this municipal condition should not be in the Applicant's favor as the farm has been neglected for the sole purpose of demonstrating the lack of viability of the agricultural potentials of the farm and with the intention of future development, in clear contravention of the municipal condition and as demonstrated by the Application that we now have in front of us;
- 2.1.5 Contrary to the strategic planning processes of the Municipality, which are underpinned by evidence-based and normative urban and regional planning and seek to organize, coordinate and integrate how the economy, society, and the built environment operate in space and over time, the Application constitutes **development driven change to existing spatial and legal frameworks**, including the Municipal Spatial Development Plan (MSDP).

- 2.1.5.1 the Application proposed an unjustifiable deviation from the MSDF and it fails to provide a rationale for the proposed rezoning and consequential diversion of the current urban edge, and if allowed, will set an undesirable precedent for further development-driven development outside of the urban edge;
- 2.1.5.2 the subject matter farm is excluded from urban development in the MSDF (2019) with the arguments that its inclusion would negatively impact agricultural land, nature areas, historically significant precincts, and "choice" lower-density residential areas;
- 2.1.5.3 the subject matter farm is excluded from New Development Action as per the Amended MSDF (May 2022). The Application does not fit within the concept of an infill development as it is outside the urban edge and the use of this infill argument in the Application is mischievous and deliberately misleading. The Application falls squarely within the concept of urban sprawl, which is strongly contrary to municipal planning policy and practice;
- 2.1.5.4 the Application is in contradiction to the core principles of the MSDF which are 'to maintain and grow our natural assets, to respect and grow our cultural heritage, and to direct growth to areas of less natural and cultural significance;
- 2.1.5.5 at this point in time, the Adam Tas Corridor, which is a municipality driven and approved development project, should be a priority for the Municipality;
- 2.1.6 were the Application successful, and the envisioned development thereon be ultimately permitted, the **Eastern Link Road will almost certainly be required** to manage the additional traffic between the proposed development and Stellenbosch. In this regard, it is important to note that the Traffic Impact Study concludes that the Eastern Link Road, along with other traffic upgrades, will be required to address the traffic impacts of the proposed development. The development application is therefore not divisible from the construction of the Eastern Link Road and other road upgrades to service the proposed development.
 - 2.1.6.1 the Eastern Link Road is a flawed concept from the 1960s that is no longer feasible or viable for Stellenbosch in 2022 and will serve very little purpose to relieve traffic;
 - 2.1.6.2 the viability of the Eastern Link Road is in question for various reasons, including the availability of land for road reserve; feeder and distribution access to the link road which is inadequate to accommodate any more traffic than is currently carried; the environmental, social and economic impact of such a substantial road development; and the financial impact of such mega-infrastructure on the municipal financial resources and standing; amongst others. There is no indication that the municipality has undertaken an adequate technical, financial, and legal feasibility assessment of the Eastern Link Road, and therefore approval of the Application, which is reliant on the Eastern Link Road, is non-sensical.
 - 2.1.6.3 the Eastern Link Road will do much aesthetic and environmental damage, especially over Brandwacht and Coetzenburg, over the Eerste Rivier, and through Boland College;
 - 2.1.6.4 the needs of the Eastern Link Road must be assessed separately from the Application. This is to ensure that the Eastern Link Road is not forced upon the Municipality, with the concomitant legal and financial consequences for the Municipality, as an aftermath of approving the Application;
 - 2.1.6.5 the Eastern Link Road is vigorously opposed and for a project with such potential irrevocable negative impacts (possibly the most destructive act committed by the Municipality to date), a thorough public participation process and input from professionals on its impacts on the town and transport planning, urban design, the natural environment, and heritage is required;
- 2.1.7 The Application is contrary to the Heritage Inventory, which is municipal policy and is a requirement of the National Heritage Resources Act (NHRA), Act 25 of 1999, which clearly states that "...*heritage informants are an obligatory component of current and future proposals for any amendments to urban settlement and development planning*

instruments, spatial development frameworks, transportation plans and the like.” The Stellenbosch Inventory of Heritage Resources categorizes the affected area as having Very High Significance. The Application is contrary to the stated intent to maintain and maximize heritage value in the Stellenbosch municipal area and based on the **heritage impact of the proposed rezoning and its contravention of the Heritage Inventory** alone the Application should be rejected.

- 2.1.8 It is noted with concern that the application **does not include a comprehensive Environmental Impact Assessment**, which would presumably have considered many of the aspects raised above, particularly noting the sensitive nature of some of the areas that the Application impacts and the associated development, Eastern Link Road and other indivisible considerations of the Application. On this basis alone the Application must be rejected, as it does not adequately consider the impacts of the proposals contained in the Application and required or implied by the Application.

3 COMMENTS ON APPLICANT'S MOTIVATIONS

- 3.1 regarding the Applicant's summary of facts and motivation, we comment as follows quoting their assertions:

- 3.1.1 “*The farm’s agricultural potential is limited*” – this has been inadequately assessed and its veracity is contested. This especially considering the Applicant, contrary to conditions imposed on the existing Brandwacht aan Rivier development, has failed to farm the land to demonstrate its viability or lack thereof, and never had any intention of farming the land;

3.1.1.1 the agricultural potential of wine farms is typically determined by the soil type, availability of water, climate conditions, appropriate vine cultivars planted, the size of the farm, etc. Quite contrary to claims made by the Applicant and the findings of the Agricultural Impact Assessment, we contest that all these conditions are present on the subject matter farm. This claim is supported by senior management at KWV and VINPRO (VINPRO holds the current lease of Grondves farm) - both hold that the slopes of Stellenbosch Mountain are of extreme agricultural potential and so are the vineyards and grapes produced by it. The Applicant fails to prove why the farming potentials (soil type and climate) at Brandwacht farm are of any less quality than the neighboring Grondves farm. Notably, in conversation with the parties named above, they have expressed an interest in leasing the Brandwacht Farm for vine cultivation, disproving the assertion that it is uneconomic to farm the land and indicating that farming of the land is not only viable but that there is significant potential and interest in doing so;

3.1.1.2 geological surveys suggest that there is plenty of water on the upper parts of Brandwacht farm and that the area is suitable for drilling. Brandwacht Farm further has the water rights to the dam at Brandwacht aan Rivier. This dam should have sufficient water for the remaining vineyards because vineyards only require water for certain times of the year and to assist the vines under extreme heat conditions. We have information that the Applicant never applied for water use rights from Theewaterskloof and contest that the Applicant must prove that such application was submitted and subsequently rejected;

3.1.1.3 in the documentation from Pierre Uys, ANC minister of agriculture in the Western Cape in 2009, it was submitted that the soil of Brandwacht aan Rivier is of lower quality, approved for development then, but that the remainder of the farm should remain as agricultural land and be farmed. By implication, this means that the soils of the remainder of Brandwacht farm are of high quality, and suitable for grape production. The Application has failed to prove otherwise;

3.1.1.4 based on the above, one would have expected that the Agricultural Potential Impact Assessment includes a financial viability study (number of ha, yields per ton, cultivar split per ha, and production costs). However, the impact assessment fails to address any of these important considerations, but

chooses to focus on the Brandwacht aan Rivier and how this development has defined the farm's future to be part of the urban use;

- 3.1.1.5 it serves to remind the Applicant that the sole reason for the farm being stripped of its agricultural potential is the owner's rezoning and development of 18.5 ha of the farm in 2009. That the remainder of the farm is now only 30ha should have been considered by the owner before commencing with the development at Brandwacht aan Rivier. This is especially so since condition 3.11 compelled the owner to continue with farming operations on the remainder of the farm. The owner of the farm further could have investigated the possible merging of farming activities in Grondver and Brandwacht farms or the sale of the farm for agricultural purposes and has failed to do so;
 - 3.1.1.6 instead, the farmer has since the development of Brandwacht aan Rivier deliberately neglected the farm and its vineyard and thus purposely sought to undermine or destroyed the agricultural viability of the farm. The purpose of this has been to demonstrate the lack of viable agricultural potentials of the farm and for the short-term financial benefit of the owner. Not only are these actions in direct contravention of condition 3.11, but a disingenuous and mischievous attempt to obtain approval for the rezoning. Had the landowner complied with condition 3.11, and the farm had been retained for agricultural purposes, Western Cape Agricultural Department in their decision not to object to the rezoning application, would very likely have come to a different conclusion as should the Municipality when assessing this Application;
 - 3.1.1.7 the Application fails to present approval from national Department of Agriculture. All documents and underlying assumptions that were presented to the Western Cape Agricultural Department as well as the application to the national Department of Agriculture must be made public;
 - 3.1.1.8 the Applicant further by neglecting to mention condition 3.11 in the Application, fails to provide any rationale as to why condition 3.11 is now being departed from or any reasoning why it should be removed as a condition on the 2009 development at Brandwacht aan Rivier;
 - 3.1.1.9 senior management at both KWV and VINPRO categorically denies any knowledge of KWV or VINPRO requesting that no vine framing take place on the subject property farm.
- 3.1.2 *"It will have a limited impact on heritage resources"* – this statement is not only disingenuous but a misrepresentation of Stellenbosch and its surrounding as a significant heritage resource;
- 3.1.2.1 a detailed heritage evaluation was carried out by a heritage consultant for the Brandwacht farm in 2003 (SRK Consultants). In terms of this assessment, the consultants concluded that Brandwacht farm should be classified as a Provincial Heritage Site. This opinion was based on the farm's location, its history, aesthetics, and own character, as well as the visual context and the farm's cultural contributions;
 - 3.1.2.2 the heritage report of 2003 further suggested that some of the proceeds generated from the development of Brandwacht aan Rivier be applied for the rehabilitation of the river and the re-establishment of the vineyards on the remainder of the farm. These recommendations however were simply ignored;
 - 3.1.2.3 the importance of protecting the terrain from the adverse visual impact of potential development on the Subject Matter Farm is discussed at length in chapter 5 of the report. If compromised, this would severely impact the environment in terms of a 'sense of place' and the 'rural character' of Stellenbosch in general;
 - 3.1.2.4 from an esthetic perspective, the heritage value of the Subject Matter Farm is of critical importance for the whole of Stellenbosch. Stellenbosch has a unique combination of mountain scenery and rural landscape that makes this area a prime tourist destination of critical importance to the economy of the

- region. The farm is close to and visible from a “Scenic Route” of the Winelands and is part of the heritage resources of Stellenbosch;
- 3.1.2.5 the heritage value of Stellenbosch is under great threat of fragmentation through creeping urbanization;
 - 3.1.2.6 the Application fails to disclose that the Subject Matter Farm is classified as Very High Significance in the Stellenbosch Heritage Inventory (pg 44) and thus to give a substantial rationale for departure from the policy;
 - 3.1.2.7 the Application fails to present approval from Heritage Western Cape, given the stated heritage importance of the affected area and the heritage impact of the Application;
 - 3.1.2.8 the original Brandwacht Manor House remains intact and is a significant heritage resource along with the remainder of the Brandwacht Farm. The current owner of the Brandwacht Manor House is strongly opposed to the proposed rezoning and development;
- 3.1.3 *“It will have a limited visual impact”* – The Application proposes the development of a high-density residential area on one of Stellenbosch's most known and admired mountain slopes. The Application suggests that the proposed development will have medium to high visual impact, especially on the high-lying areas of the farm, and present mitigating actions (development rules, residential densities, erf sizes, building form, style and colour, and landscaping) to lessen the impact of the development;
- 3.1.3.1 the Application however fails to consider the heritage right to a view. Existing erven in Brandwacht have unobstructed views of Stellenbosch, Helderberg, and Table mountains and well beyond False Bay and Bottelarij hills. Also, from a large farm outside of Stellenbosch there are unobstructed views of the farm. Any development will be clearly seen distances up to 50 km and will be a deviation from the heritage value of a view of Stellenbosch and its vineyards;
 - 3.1.3.2 when the development of Brandwacht aan Rivier was under construction, the visual impact of the proposed development was a very important consideration, but because this development would be below the 160 m contour, the development was eventually approved. The addendums to the Application suggest that the proposed development would be well above the very important general 240 m contour guideline, which would make it the highest development in Stellenbosch. Given the fact that even the Brandwacht aan Rivier development was highly contentious, the current Application for rezoning and development on the remainder of the farm, on much higher slopes, is incomprehensible;
 - 3.1.3.3 while South African courts generally are reluctant to attribute value to an existing view, courts have further held that the loss of a view, and the potential effect that a proposed development may have on the value of surrounding properties must be investigated and considered when assessing a development application. The Application has failed to properly investigate any of these aspects and should be rejected based on this. The fact that this Application is for re-zoning and not for development makes this argument even more compelling as the farm, which is situated outside of the urban edge, does not have a right in its own to obscure views;
- 3.1.4 *“Brandwacht Farm has already succumbed to urban development”* – this statement is disingenuous and misleading. This is especially considering condition 3.11 of the Brandwacht aan Rivier development, which clearly states that “no further urban development be allowed.
- 3.1.4.1 the Application is proposing to develop a large-scale development that has the potential of significantly altering the appearance of the area as well as the perceived amenity value of the neighborhood. Evidence from elsewhere shows that large scale-residential developments such as the one proposed have a significant negative effect on neighboring properties and especially on nearby detached properties. The Applicant fails to demonstrate any evidence

- of pre-existing property trends in the neighborhood and what measures will be implemented to mitigate or compensate for the significant risk of a decline of property prices in nearby neighborhoods;
- 3.1.4.2 the Application is not compatible with the characters of the immediate surrounding area, which is situated at the foothill of Stellenbosch mountain, with vineyards alongside it and the 'sense of space' of Stellenbosch;
- 3.1.4.3 it is further not compatible with the important viticulture practices on the adjacent Grondves farm. VINPRO has expressed opposition to the Application and the diversion of the urban edge closer to their farming operations;
- 3.1.5 *"The property is not an environmentally sensitive area and there will be no loss of a critical biodiversity area"* –this statement is not substantiated and is bold since the Application does not include an Environmental Impact Assessment (EIA). An independent EIA is an essential part of any rezoning application, and the finding of the EIA needs to be carefully considered by the Municipality when assessing the Application and the site-specific biodiversity conservation and management constraints and requirements.
- 3.1.5.1 Contrary to claims by the Applicant, the loss of open space to urban uses will have an impact on the biodiversity of the surrounding area. The Subject Matter Farm falls within The Cape Winelands Biosphere Reserve that has been included in the world Network of Biosphere Reserves. Known for its uniqueness and high species diversity, the renosterveld of the Stellenbosch Mountain is already under serious threat with only 5% of its original extent remaining, and further urban sprawl into the fynbos biome is undesirable.
- 3.1.5.2 The Application is further a threat to the nomination of the Cape Wineland a World Heritage Site.
- 3.1.6 *"It will have significant socio-economic benefits for Stellenbosch town (e.g. it will create new employment opportunities)"* – this statement is false as there is no evidence of any socio-economic assessment being done that supports such a sweeping statement.
- 3.1.6.1 the short-term job creation benefits of this must be offset against the long-term impact on the infrastructure and cost of the municipality, the nature of the town, the historic and biodiversity value of the Winelands, its tourism potential, and various other factors that undermine economic growth and prosperity;
- 3.1.6.2 there is no evidence that this has been considered and we contend that the development will have long-lasting negative impacts associated with its urban sprawl, its impact on already strained existing municipal infrastructure (roads, water supply, sewerage, electricity, stormwater management, etc), on the provision of school and hospital facilities, along with the impact on biodiversity, heritage, and tourism value;
- 3.1.6.3 in addition, the Application conveniently fails to detail the financial risks of severely compromising the municipal value of properties based in the Dalsig/Brandwacht areas and thus inadvertently decreasing the tax base for the municipality;
- 3.1.7 *"The resulting traffic impact will be limited"* – this statement is false, even when considering the information included in the Application.
- 3.1.7.1 the traffic impact of the proposed development will be substantial and will compound the significant congestion and traffic challenges that Stellenbosch already faces. Should the Application result in the Eastern Link Road being implemented, which the Application's own Transport Impact Study concludes is a requirement of the proposed development, there is no doubt it will result in increased traffic through these quiet suburbs and over the beautiful reserve leading to Coetzenburg;
- 3.1.7.2 as stated elsewhere, the technical, financial, legal, and operational viability of Eastern Link Road is strongly in doubt and there is no evidence that the road

will alleviate the congestion and traffic issues of Stellenbosch nor the additional burden that the proposed development imposes. It is clear that contrary to the statement in the application, the proposed development will lead to additional congestion of Stellenbosch roads, with all the concomitant impacts;

- 3.1.7.3 the Applicant's Transport Impact Study is fatally flawed and extremely disingenuous – it wrongfully assesses the impact on the number of units that are mentioned in the Application and not on the number of units the rezoning the rezoning would actually allow. Also, the Applicants make the hugely underestimated assumption that each unit will have one car.
- 3.1.8 *“The development provides for different housing typologies”* – the Application attempts to suggest that the proposed development would benefit the broader cross-section of the community and therefore allow a broad-based typology;
 - 3.1.8.1 the Application fails to address how it will benefit the lower end of the housing market and how the increased need for lower-income houses will be addressed. It has been demonstrated elsewhere that the development of higher-income residents, as proposed in the Application, will lead to an increased need for settlements that accommodate a labor force (comprised of domestic workers, gardeners, painters, plumbers, bricklayers, etc).
 - 3.1.8.2 The Application mentions just under 300 units in the development plan while the approval sought would actually allow for up to 1000 units.
- 3.1.9 *The application will have no impact on bulk services* - the Application has failed to prove that bulk services are available to accommodate the new proposed land use as required by the Stellenbosch zoning scheme by-law, 2019, s.13(9).
 - 3.1.9.1 It is common knowledge that the current sewage capacity in the area in question is severely overextended and it is highly likely that the proposed development will exacerbate the infrastructural backlog in Stellenbosch;
- 3.1.10 *A transparent application* – the Application fails to mention whether the Applicant has had any pre-application meetings with the Municipality and the outcome of these meetings as required by Stellenbosch zoning scheme by-law, 2019, s. 38(1).
 - 3.1.10.1 Minutes of these meetings should be made public to ensure a transparent process and for the public to understand whether pre-application financial or otherwise agreements have been reached between the Applicant and the Municipality. This is of utmost importance considering the history of developers and their agents attempting to escape public surveillance and input by making behind-the-door agreements with the Municipality;

4 CONCLUSION

- 4.1 In conclusion, we categorically object to the approval of:
 - 4.1.1 the site-specific deviation from the Stellenbosch Municipality's Spatial Development Framework to initiate an urban infill development outside the approved urban edge of Stellenbosch on the Subject Matter Farm; and
 - 4.1.2 the rezoning of the Subject Matter Farm from an Agriculture and Rural Zone to a Subdivisional Area.