



Chairperson: H Koekemoer
hanneskoekemoer@proton.me

Secretary: HC Eggers
076-785-3514 heggers@pm.me

P.O. Box 3218, 7602 Matieland
11 Grandiceps Rd, 7600 Stellenbosch

Public Benefit Organisation No. 930049434
fsmountain.org

FRIENDS OF STELLENBOSCH MOUNTAIN

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

21 October 2022

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

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

Contents

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

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

1 Quick Summary

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

2 Arguments in support of refusal

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

2.2 Private interests and common good

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

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

2.4 The MSDF and Brandwacht

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

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

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

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

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

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

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

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

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

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

2.5 The Urban Edge

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

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

2.6 MSDF, CITP and the Eastern Link Road

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

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

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

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

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

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

The Eastern Link Road is not supported by the MSDF.

- (b) The ELR directly contradicts several MSDF strategies, including directing growth along Baden-Powell and R304 (eg Figure 20 of MSDF), while growth along the R44 corridor is not a goal of the MSDF.
- (c) Like the Brandwacht application, the ELR has been made obsolete given the paradigm shift in mobility patterns which the **Adam Tas Corridor** will bring about. An important part of the ATC will be the upgrading and re-alignment of the central road structure involving Adam Tas Road, the R44 between Dorp Str and Merriman Rd, Alexander and George Blake Rd and Merriman itself. That intervention plus raising the vehicle occupancy rate will make the Eastern Link Road obsolete.
- (d) All EMME traffic modelling results, including those of the 2018 Roads Master Plan, are obsolete. The Roads Master Plan itself is obsolete; it was never legitimate in any case.
- (e) The ELR would, if approved, act as a **catalyst for further low-density development** on nearby land units, including Blaauwklippen (Erf 1457), Grondves (Farm 369P and 370), Paradyskloof nature area (Farm 369) and the Brandwacht nature area (Farm 368/2). It would split the Welgevallen experimental agricultural farm in half (Erf 16508) and disrupt land units at Coetzenburg and along Suidwal Road. All of those areas fall outside the Urban Edge.
- (f) The ELR would have a high **environmental impact** on renosterveld on Farm 368/2 north of Brandwacht, on the Eerste Rivier, on Brandwacht River and Schuilplaats River and would indirectly endanger the adjacent renosterveld on Farm 369/RE, north of the Paradyskloof waterworks.
- (g) The ELR is **in conflict with transport legislation** with its imperative to shift infrastructure spending away from roads, increasing the number of car occupants etc as required by transport legislation.
- (h) Of course the ELR, along with the Western Bypass, is mentioned as one of the pet projects of the Roads Master Plan and since 2021 also in the CITP “update”. It is even mentioned in the 2016 MSDF. That in no way legitimises it. The question is not whether it was cleverly sneaked into the CITP but whether it and the CITP conform to legislation. In a detailed analysis, FSM on 6 June 2021 showed that the so-called “update” which is now called the 2021 **Comprehensive Integrated Transport Plan** is not compliant with transport legislation such as the 2016 NLTA Minimum Requirements. Its prioritisation of road projects is illegitimate. The title page of our comments is shown in Appendix P; the full study can be downloaded from the FSM website at fsmountain.org or provided on request.

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

2.8 Urban edge and environmental impact assessments

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

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

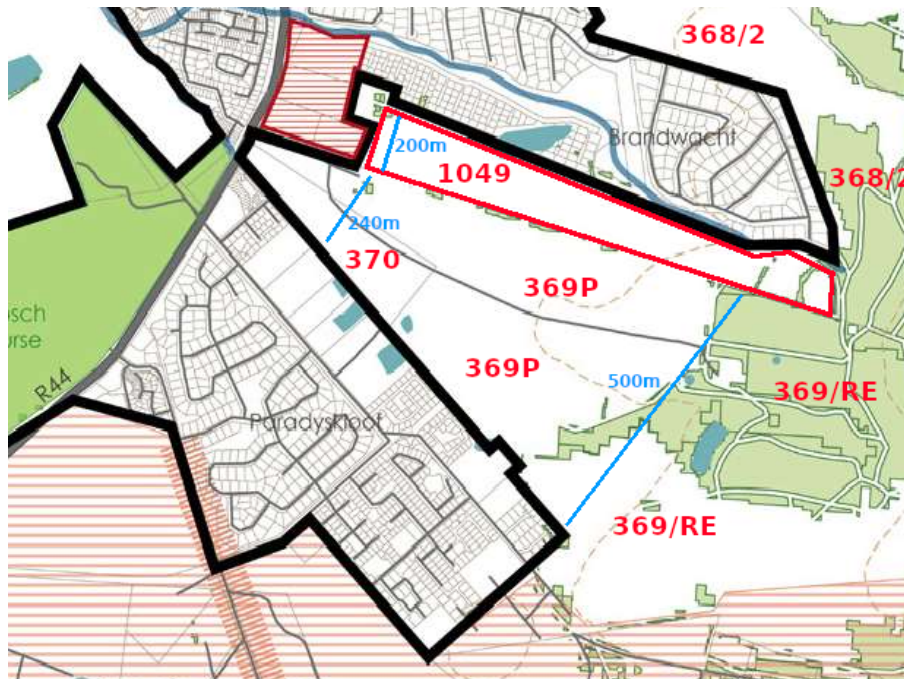


Figure 1: Cutout from Figure 28 of the November 2019 MSDF showing the approved Urban Edge as black line. Red numbers are the Farm numbers. Light green shading on the right indicates CBA (critical biodiversity area). Blue lines and numbers indicate approximate distances in metres.

2.9 Not infill development

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

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

2.10 Legal Issue I: Contradiction between LUPA and IZSB conditions

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

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

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

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

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

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

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

Here is the relevant quote from the IZSB:

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

- (c) As a result, the public would not even know that application for changes had been made. And because the public would not know, the public would have no opportunity to lodge objections. That would seem to be unconstitutional.
- (d) Even worse: Council in 2017 approved the rules (called a “categorisation scheme”) shown in Appendix K, by which most applications for land use changes set out in Section 15(2) of the LUPB are referred to the Municipal Planning Tribunal **only if valid objections are received**. Such valid objections are, however, made almost impossible: see Appendix M as well as the earlier 2015 categorisation scheme in Appendix L.

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

2.12 Salami tactics in practice: exploiting the loopholes

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

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

- (a) The *Concept Site Development Plan* included in the present application is not binding on the applicant.
- (b) Neither the proposed road layout nor the Traffic Impact Statement is binding.

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

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

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

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

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

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

2.16 **Conclusion for municipal decisionmaking**

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

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

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

2.17 **Legal conclusions for opponents**

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

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

and

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

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

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

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

3 Technical details, comments, context

3.1 Legal issue I: Contradiction between LUPA and IZSB

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

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

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

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

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

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

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

3.3 Eastern Link Road issues

3.3.1 Eastern Link Road and the CITP and MSDF

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

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

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

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

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

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

3.3.3 Eastern Link Road construction, segment by segment

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

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

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

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

3.3.4 Eastern Link Road: environmental and heritage impacts

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

3.4 Other issues

3.4.1 Need for housing

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

3.4.2 Paradyskloof “Special Development Area”

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

3.4.3 Agriculture

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

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

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

3.5 Salami tactics in the past: Capitec headquarters and parkade

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

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

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

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

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

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

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

to which the answer was

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

3.5.5 Suppression of objections

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

3.5.6 Excavations and Environmental Impact Assessments

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