



**STELLENBOSCH**  
STELLENBOSCH • PNIEL • FRANSCHHOEK

MUNICIPALITY • UMASIPALA • MUNISIPALITEIT

Ref: 3/4/3/5/2/4

2016-04-12

## **MINUTES**

### **PLANNING, ECONOMIC AND COMMUNITY DEVELOPMENT COMMITTEE MEETING**

**2016-04-05**

**MINUTES**  
**PLANNING, ECONOMIC AND COMMUNITY**  
**DEVELOPMENT COMMITTEE MEETING**

**2016-04-05**

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|                    |                                                                                                                                                                                                                                                                                                                    |
|--------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>PRESENT</b>     | Alderman JP Serdyn (Ms) [Chairperson: Planning and Land-Use Management, Building Control, Air Pollution, Spatial Planning/Environmental Heritage and Cultural Management]<br><br>Councillor SJ Louw (Ms) [Portfolio: Agriculture, LED and Tourism]<br><br>Councillor AR Frazenburg [Portfolio: Community Services] |
| <b>Aldermen</b>    | DC Botha<br>EL Maree (Ms)                                                                                                                                                                                                                                                                                          |
| <b>Councillors</b> | JA Davids<br>S Jooste (Ms)<br>N Ntsunguzi (Ms)                                                                                                                                                                                                                                                                     |
| <b>Officials</b>   | Director: Planning and Economic Development<br>Senior Legal Advisor (M Williams)<br>Manager: Land-use Management (H Dednam (Ms)<br>Manager: Local Economic Development (W Moses)<br>Senior Town Planner (L Ramakuwela)<br>Head: Committee Services (EJ Potts)<br>Committee Clerk (Ms B Mgcushe)<br>Interpreter     |

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**1. APPLICATION FOR LEAVE OF ABSENCE (3/4/3/3)**

**PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE: 2016-04-05:  
ITEM 1**

**RESOLVED** (nem con)

that leave of absence be granted to Councillor F Adams.

**(HEAD: COMMITTEE SERVICES TO ACTION)**

**2.1 COMMUNICATION BY THE CHAIRPERSON (3/4/3/6)**

None



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**PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE: 2016-04-05:  
ITEM 4**

**RESOLVED** (nem con)

that the outstanding item about the Municipal Night Shelter be provided with legal comments, whereafter same be submitted to serve at the May or June 2016 Standing Committee Meeting.

**(DIRECTOR: PLANNING AND ECONOMIC  
DEVELOPMENT TO ACTION)**

[Chairperson: Alderman JP Serdyn (Ms)]

[Portfolio: Planning and Land Use Management, Building Control, Air  
Pollution, Spatial Planning/Environmental Heritage And Cultural Management]**5. REPORTS FROM OFFICIALS: COMMUNITY DEVELOPMENT****5.1 NON-DELEGATED MATTERS****5.1.1 THE CONSIDERATION OF THE AMOUNT FOR THE CONTRAVENTION  
LEVY PAYABLE BY THE OWNER OF FARM NO. 1353/1, PAARL DIVISION***File number : PL1353/1P**Compiled by : Manager: Land Use Management**Report by : Director: Planning and Economic Development**Delegated Authority : Council****Strategic intent of item***

|                                  |                                     |
|----------------------------------|-------------------------------------|
| Preferred investment destination | <input type="checkbox"/>            |
| Greenest municipality            | <input type="checkbox"/>            |
| Safest valley                    | <input type="checkbox"/>            |
| Dignified Living                 | <input checked="" type="checkbox"/> |
| Good Governance                  | <input type="checkbox"/>            |

**1. PURPOSE OF THE REPORT**

To enable the Council to make a decision on the quantum of the contravention levy, to be paid by the owner of Farm No. 1353/1, Paarl Division for a land use contravention and illegal building work on the property. The recommendation is to take a decision on the application from the owner of the subject property, indicating the amount offered to Council for the contravention levy.

**2. BACKGROUND**

On 28 April 2009, the Provincial Minister for Local Government, Environmental Affairs and Development Planning ("the MEC") approved Brashville's application for rezoning in terms of Sections 16 and 42 of the Land Use Planning Ordinance No 15 of 1985 ("LUPO"), ("rezoning approval") subject to inter alia the following conditions:

*"2.1 the approval applies only to the rezoning in question, as indicated on the proposed site development plan attached, and shall*

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*not be construed as authority to depart from any other legal prescriptions or requirements.*

*2.11...all final building plans be submitted to the Franschhoek Aesthetic Committee [FAC], or any similar body nominated by Council, for recommendation before submission to council for approval."*

On 7 December 2009, Brashville applied to the Municipality for an amendment to the MEC's conditions of approval, in terms of section 42(3)(a) of LUPO, "so as to amend the Site Development Plan (SDP) previously approved to allow for the expansion of the guesthouse on the property". The SCA observed in this regard that Brashville now sought to erect six self-standing structures which would give it ten additional suites and that the revised site development plan thus differed entirely from the original one.

On 8 December 2009, Brashville commenced clearing the relevant site on the farm in preparation for construction works in accordance with the revised SDP.

On 18 December 2009, the Municipality purported to amend the MEC's condition of rezoning by substituting the original site development plan with an amended site development plan. On the same day, however, the Municipality served an "illegal building / cease works order" on Brashville for want of approved building plans. The notice instructed Brashville to submit building plans for approval within 30 days and to cease building operations. On 4 January 2010, Brashville undertook to stop operations until the plans had been approved.

Brashville thereafter submitted building plans to the Municipality, on 6 January 2010, which was approved on 12 January 2010 ("the first building plan decision").

On 22 January 2010, the legal representative for Jean-Phillipe Colmant (the owner of Portion 1 of the Farm No. 1447, situated in the Municipality for Stellenbosch, Division Paarl), Anne Gillian Stone (the owner of Portion 3 of Farm No. 1643, situated in the Municipality for Stellenbosch, Division Paarl) and La Bourgogne Farm (Pty) Ltd (the owner of Farm 1106 and Portion 3 of Farm 1654 in the Municipality Stellenbosch, Division Paarl) (hereinafter referred to as "the Applicants") launched urgent interdict proceedings in the Western Cape High Court in order to interdict Brashville from continuing with further building work on the farm ("the first interdict application").

On 28 January 2010, and pursuant to the first interdict application,

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Brashville agreed to not undertake further building work without providing the Applicants with one month's prior notice, and to apply to the Provincial Minister for an amendment of the conditions of the rezoning approval (in order to construct the guest houses in terms of an amended site development plan), alternatively, for the rezoning of the farm.

Brashville thereafter made an application to the MEC for the amendment of the relevant condition of approval, alternatively, for rezoning. The MEC refused this application, and stated by letter dated 25 March 2011 that the Municipality should advise Brashville to apply for a contravention levy in terms of section 40 of LUPO for the structures already constructed on the farm. The Municipality thereafter instructed Brashville to apply for a contravention levy ("the contravention levy decision").

Brashville paid a contravention levy in the amount of R51 910,08, to the Municipality, and on 20 July 2011, the Municipality approved and/or reinstated Brashville's building plans ("the second building plan decision").

On 25 July 2011, Brashville allegedly commenced with building work, but, however, failed to give the Applicants one month's notice of its intention to commence, as required by the order taken by agreement pursuant to the first interdict application. Brashville thereafter advised that it would commence with building work on 25 August 2011.

On 25 August 2011, the Applicants launched an application for a final interdict, and for an interim interdict pending a review application to be instituted in due course ("the second interdict application"). The Applicants elected not to persist with the second interdict application, as they considered the building work on the farm to have advanced too far, and instead focused on the review application.

The Applicants' review application was heard on 9 October 2011 in the Western Cape High Court and judgment was thereafter granted in favour of the Applicants.

Brashville appealed to the SCA in respect of the following three decisions of the Municipality which the Western Cape High Court had set aside:

- The approval of Brashville's building plans on 12 January 2010 (i.e. the first building plan decision).
- The decision of the Municipality to instruct Brashville to apply for the determination of a contravention levy (i.e. the contravention



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levy decision).

- The decision taken by the Municipality on 20 July 2011 to re-approve Brashville's building plans following payment of the contravention levy (i.e. the second building plan decision).

The SCA handed down judgment on 6 May 2014 and held inter alia as follows:

- The first building plan decision was challenged on the basis that inter alia there was no compliance with condition 2.11 of the Provincial Minister's rezoning approval. The Municipality failed to ensure that the original condition, viz, the submission of plans to the Franschhoek Aesthetics Committee [replaced by the PAC], was fulfilled. As this condition was peremptory, the first building plan decision fell to be set aside.
- The Municipality's decision to instruct Brashville to apply for a contravention levy was pursuant to an instruction the Municipality received from the MEC, and that the Municipality did not apply its mind to the legal alternatives prescribed by section 40 of LUPO. The contravention levy decision was set aside on this basis.
- Both the Municipality and Brashville conceded that if the contravention levy decision was set aside, then the second building plan decision must also be set aside. The SCA found this concession to have been properly made.

On 16 January 2015 the Director: Planning and Economic Development considered an Application (attached as **APPENDIX 8**) in terms of Section 40(1)(a) of the Land Use Planning Ordinance, 1985 (Ordinance No.15 of 1985), that allows the municipality to exercise its discretion and decide whether it will instruct the owner to rectify the contravention or to submit an application for the determination of a contravention levy on Farm No. 1353/1, Paarl Division. The report dated the 16<sup>th</sup> of January 2015 deals with all the detailed information which assisted the Director: Planning & Economic Development to take all the relevant factors into consideration to have made an informed decision on the determination of a contravention levy.

The decision from the Director that Brashville Properties (Pty) Ltd must apply for a contravention levy was conveyed to them by registered mail dated 21 January 2015 (attached as **APPENDIX 9**).

Werksmans Attorneys who represented Jean-Phillipe Colmant (the owner of Portion 1 of the Farm No. 1447, Paarl Division), Anne Gillian

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Stone (the owner of Portion 3 of Farm No. 1643, Paarl Division) and La Bourgogne Farm (Pty) Ltd (the owner of Farm 1106 and Portion 3 of Farm 1654, Paarl Division) was also notified per registered mail, dated 21 January 2015, of the instruction to Brashville properties to apply for the determination of a contravention levy. (attached as **APPENDIX 10**).

On 10 February 2015, Mr J P du Plessiss from Du Plesiss, Hofmeyr, Malan Land and Law specialists, Brashville's attorney, responded in writing to the decision of the Director: Planning and Economic Development. The said letter contained an application for determination of payment of a contravention levy of R100,00 (one hundred rand). (Attached as **APPENDIX 11**).

On 9 April 2015 and 13 July 2015 Werksmans Attorneys requested written reasons explaining the justification for allowing Brashville to apply for a contravention levy determination as well as clarification on the procedures followed to reach the decision. (Attached as **APPENDIX 12**).

On 8 July 2015, Mr JP du Plessiss from Du Plesiss, Hofmeyr, Malan Land and Law expressed their concern on the letter from Werksmans Attorneys. (Attached as **APPENDIX 13**).

On 15 July 2015, the Director: Planning and Economic Development replied in writing with additional further comments to Werksmans Attorneys explaining the reasons for the determination of the contravention levy for portion 1 of the Farm 1353, Paarl Division of Brashville Properties (Pty) Ltd. (Attached as **APPENDIX 14**).

### 3. ITEM FOR CONSIDERATION

The following need to be considered:

- That an appropriate quantum of the contravention levy be determined which must be levied in terms of Section 40(3)(a) and (b)(ii) of the Land Use Planning Ordinance, 1985 (Ordinance No.15 of 1985) (LUPO), on Farm No. 1353/1, Paarl Division.

### 4. PROPERTY INFORMATION

|                      |                                                                                                                                              |
|----------------------|----------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Farm number</b>   | 1353/1, Paarl Division                                                                                                                       |
| <b>Location</b>      | ±1km south of Franschoek Town, with access off a private road (Verdun Road) that links up with Divisional Road No. 26. ( <b>APPENDIX 2</b> ) |
| <b>Zoning/Zoning</b> | Agricultural Zone I with a spot zoning for                                                                                                   |

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|                                            |                                                                           |
|--------------------------------------------|---------------------------------------------------------------------------|
| <b>Scheme</b>                              | Residential Zone V for a guesthouse / Section 8 Zoning Scheme Regulations |
| <b>Current Land Use</b>                    | Agriculture & Guest accommodation                                         |
| <b>Unauthorized land use/building work</b> | Yes / Yes                                                                 |
| <b>Property size</b>                       | 4,08ha                                                                    |
| <b>Applicant</b>                           | DHM Land Law Specialists                                                  |
| <b>NHRA Applicable</b>                     | No                                                                        |
| <b>Title deed conditions</b>               | None                                                                      |

5. **DISCUSSION**

The aim of this report is to recommend the quantum of the contravention levy of the operation of a guesthouse and illegal construction of certain buildings on Farm No. 1353/1, Paarl Division. The land use contravention and illegal building work is not consistent with the decision taken by the Provincial Minister for Local Government, Environmental Affairs and Development Planning dated 28 April 2009.

Section 40(1)(a) of the Land Use Planning Ordinance No. 15 of 1985 (LUPO) states that if a building or any part thereof was erected in contravention of Section 39(2)(a) of LUPO, the local authority shall serve an instruction on the owner concerned to either:

- (i) Rectify such contravention or;
- (ii) To apply for a determination of a contravention levy

Delegation 62 in terms of Stellenbosch Municipality's Systems of delegation furthermore states that the Director: Planning & Development is authorized to, where a building or any part thereof was erected in contravention of Section 39(2)(a) of LUPO, direct the owner to:

- (a) Rectify such contravention; or
- (b) Apply for the determination of a contravention levy; or
- (c) Apply for a departure

The extent of the applicable delegation is furthermore discussed in Delegation 63 that stipulates the following: *"to, if the said owner fails to comply with the instruction, take all such steps as may be necessary to rectify such contravention, in terms of Section 40(1) of the Land Use Planning Ordinance No. 15 of 1985."*

After consideration of the three under mentioned options, the Director: Planning and Economic Development resolved that an application for the determination of a contravention levy (Option 3) in

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terms of Section 40(3)(a) and (b)(ii) of the Land Use Planning Ordinance, 1985 (Ordinance No.15 of 1985) (LUPO), be submitted to the municipality on Farm No. 1353/1, Paarl Division.

Option 1: Apply for a departure

The applicant applied to Council for the rezoning and amendment of conditions of approval that was supported by Council and referred to the Competent Authority, the Western Cape Department of Environmental Affairs & Development Planning for a decision. Although not an application for departure, the land use application submitted was aimed at achieving the outcome of obtaining the appropriate land use rights and this option has thus already been exhausted by the applicant.

Option 2: Rectify such contravention

The evaluation criteria in terms of Section 36 of Land Use Planning Ordinance No. 15 of 1985 clearly states that a land use application may only be refused should it pose a lack of desirability. The assessment that was undertaken by Council clearly shows that the proposal to amend the condition of approval relating to the amendment of the approved site development plan and the rezoning of the new portion did not lack desirability. The area that accommodates guesthouse structures was reduced from the initially approved 1 134m<sup>2</sup> to 1 051m<sup>2</sup> in extent. The initial approval envisaged one building that was located within the 1:50 year flood line in its entirety. The current layout has only four (4) units that is located within the flood line area, whilst the other structures are located outside this area. The current guesthouse building has been built in a courtyard with a swimming pool as a central feature of the courtyard.

The representations submitted by Werksmans Attorneys on behalf of their clients (La Bourgogne Farm (Pty) Ltd, JP Colmant & Anne Gillian Stone) mainly focused on the merits of the application that have been evaluated on several occasions by this Council and the applicable provincial department. The evaluation of the land use found it not to lack desirability in terms of Section 36 of the Land Use Planning Ordinance. This was confirmed in the report of the Stellenbosch Municipality's department of Planning & Development Services, the report of the Western Cape Minister of Local Government, Environmental Affairs & Development Planning. The latter concurring with the recommendations made by Council and the provincial sub-directorate, but refusing the application on the basis of commencing building work without the prior approval of building plans. This however is argued as being a matter that must be

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resolved in terms of the National Building Regulations of the Republic of South Africa, rather than the Land Use Planning Ordinance No. 15 of 1985.

The aggrieved parties to the development further re-iterated that the property owner was aware that the transgressions may lead to rectification through demolition and that imposing any other measure will result in a precedent being set of transgress first and apply later.

It was also further highlighted that the aggrieved parties or any interested and affected parties must be allowed to provide Council with comments prior to deciding on an option in terms of Section 40(1) of the Land Use Planning Ordinance No. 15 of 1985. Although the latter section in the planning law does not make provision for public participation to be conducted, Council invited the transgressor to submit representation in dealing with the land use contraventions. Council further submitted such representation to all the interested and affected parties and granted an opportunity to comment within thirty (30) days in terms of Section 3 of the Promotion of Administrative Justice Act.

It is also clear that the decision of the provincial Minister to refuse the application for rezoning and amendment of the conditions can be seen as being unconstitutional as it is not consistent with Schedule 4 & 5 of the Constitution of the Republic of South Africa that clearly identifies this matter as a municipal function, and Council supported the application, thus providing substantial evidence that the proposal is acceptable in terms of the applicable planning legislation. This fact thus provides Council with sufficient reason to not follow the option of obtaining a demolition order, as the proposal is assessed to be desirable.

Option 3: Apply for the determination of contravention levy

The motivation put forward by the department clearly states that the most suitable option to address or rectify the contravention is to allow the property owner to apply for the determination of a contravention levy. This would in essence permit Council to indirectly impose a further penalty onto the property owner. In addition to such penalty, it also addresses the fact that the application does not lack desirability, as well as remedies the delay in processing the matter within a suitable timeframe.

It is thus the recommendation by the Land Use Management Section that the Director: Planning & Economic Development exercise Delegation 62, 63 & 64 in terms of Stellenbosch Municipality's System of Delegation and support the proposal that the applicant be

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permitted to apply for a determination of a contravention levy to rectify the illegal construction, including finishes, of Unit No(s). 1- 10, including walkways and communal areas of an area of  $\pm 771\text{m}^2$  in extent.

#### 6. REASONS FOR RECOMMENDATION

As indicated in the report dated the 16<sup>th</sup> of January 2015, the contravening portion of the guesthouse does not pose a lack of desirability, as guesthouses are also characteristic of all farming areas within the municipal boundaries of Stellenbosch Municipality and it is an amenity for tourists that are aimed at providing an additional form of capital input in order to further sustain the agricultural activity being operated on the property.

It should also be noted that the property did not suffer any loss of productive agricultural land by the development. Guest accommodations on farms are forms of economic generators that lure tourist to the area and allow such tourists to invest more capital into the property in a manner that does not influence or destroy the agricultural character of the property and the surrounding area.

Franschhoek Valley Conservation Trust argues on behalf of “the Applicants” (Colmant, Stone and La Bourgogne Farm) that the buildings will detract from the ambience of the area by erecting “intrusive, alien and inappropriate developments such as the Buildings”. However, both Colmant and Stone erected similar scaled, and located additional buildings on their properties (Farm No(s). 1447/1 and 1643/3, respectively). Thus, it does not appear to be a case of protecting the character of the area, but rather punishment of Brashville (para 17.6, letter dated 17/12/2014) that motivates the objection.

From the Fabio Todeschini Report dated 16 December 2014 it followed, no development whatsoever should occur in the cultural landscape without prior heritage approval and consideration. However, it is inconceivable that all unauthorized or prior unapproved buildings should be demolished if assessed to be desirable in terms of Section 36 Land Use Planning Ordinance No. 15 of 1985. Applying this measure equally to all buildings on the surrounding area would mean demolishing significant capital investment simply because of an illegal activity and not with consideration of the relevant informants and criteria.

If actual building costs for the contravention portion be calculated based on current market related costs, the total calculation will be approximately far over R 1 million rand. A contravention levy is a

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means of punishment for the offender and to discourage illegal construction, such a levy will be an appropriate measure to achieve this goal. It is however the opinion that an amount far over R1 million rand may result in a negative impact on the economic viability of the tourist facility. It does not seem like a sensible option if the land use concerned does not lack desirability.

#### 7. CONCLUSION

The development / activity / land use is not undesirable if measured in terms of Section 36 of LUPO. This is supported by the previous findings of the Directorate, the provincial government and all the relevant facts.

The Courts found that the use was not undesirable or did not express an opinion thereon. Instead, the Courts found only that the processes were not correctly administered, i.e. the illegal construction of a desirable land use is what is under consideration.

A contravention levy is a means of punishment for the offender and therefore an amount of R100,00 (one hundred Rand) as applied for cannot be condoned or accepted. Authorities should actively discourage illegal construction. Any attempt to calculate a levy based on the construction cost and building areas in keeping with the provincial circular detracts from the focus of buildings and uses established without prior approval or subsequent to cease work orders. The cost of the building is not the issue, i.e. a low cost building and a high cost building both have the same effect (which is desirable) but both would be erected in conflict with the approved statutory provisions, i.e. a monetary sanction measure (not a fine) would be a more appropriate means of settling the matter, more so in view of the various submissions made by the objectors in the matter.

The spreading of the payment over time allows for the limitation of the effect of the sanction on the cash flow of the business, given seasonal and other considerations. The intention is not to damage the business.

#### 8. COMMENTS FROM OTHER RELEVANT DEPARTMENTS

##### Finance Services

No comments received.

##### Legal Services

See APPENDIX 11.

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### Corporate and Strategic services

No comments received.

### RECOMMENDED

- (a) that cognizance be taken of the Report dated 16 January 2015 and the decision of the Director: Planning and Economic Development, as delegated authority, with regards to the extent of the approval and the conditions imposed, to consider an application (attached as **APPENDIX 8**) in terms of Section 40(1)(a) of the Land Use Planning Ordinance, 1985 (Ordinance No.15 of 1985), of a contravention levy on Farm No. 1353/1, Paarl Division;
- (b) that cognizance be taken of the decision of the Director: Planning and Economic Development, as delegated authority, with regards to the extent of the approval and the conditions imposed (attached as **APPENDIX 9**, dated 21 January 2015) that Brashville Properties (Pty) Ltd were authorized to, where a building or any part thereof was erected in contravention of Section 39(2)(a) of the Land Use Planning Ordinance No. 15 of 1985, to apply for the determination of a contravention levy in terms of Section 40(1) of the Land Use Planning Ordinance No. 15 of 1985;
- (c) that cognizance be taken that Brashville Properties (Pty) Ltd (attached as **APPENDIX 11**, dated 10 February 2015) applied for the determination of a contravention levy with a payment of R100,00 (one hundred Rand);
- (d) that cognizance be taken of the correspondence between the Director; Planning and Economic Development to and from du Plessis, Hofmeyer, Malan Land Law Specialists and Werksmans Attorneys attached as **APPENDICES 12 to 14**;
- (e) that approval be granted that in terms of Section 40(3)(a) and (b)(ii) of LUPO a contravention levy of R250 000,00 (two hundred and fifty thousand Rand) be paid on Farm No. 1353/1, Paarl Division, quarterly in four equal portions over a period of one year from date of final notification of Council's resolution.
- (f) that the amount of R51 910,08 (fifty one thousand nine hundred and ten Rand and eight cent) already paid by the property owner as a contravention levy to the Municipality in 2011, leading to the Municipality's reinstatement of Brashville's building plans on 20 July 2011, be credited from the amount determined in par (e);



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[Portfolio: Planning and Land Use Management, Building Control, Air Pollution, Spatial Planning/Environmental Heritage And Cultural Management]

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- (g) that building plans be submitted in terms of the National Building Regulations and Building Standards Act, 103 of 1977 which will be considered in terms of the said requirements; and
- (h) that this approval applies only to the application in question and shall not be construed as authority to depart from any legal prescriptions or requirements.

**(DIRECTOR: PLANNING AND ECONOMIC DEVELOPMENT TO ACTION)**

**APPENDICES**

- Appendix 1: Conditions of Approval
- Appendix 2: Locality Map
- Appendix 3: Representation submitted by DHM Land Law Specialists obo Brashville 51 (Pty) Ltd
- Appendix 4: Comment of representation submitted by the Franschoek Valley Conservation Trust
- Appendix 5: Comment of representation submitted by Werksmans Attorneys obo JP Colmant; AG Stone & la Bourgogne farm
- Appendix 6: Report by Western Cape Minister of Local Government, Environmental Affairs & development Planning dated 23 March 2011
- Appendix 7: Site Development Plan indicated area that must be used in order to determine the contravention levy
- Appendix 8: Report dated 16 January 2015 to the Director: Planning and Economic Development
- Appendix 9: Decision of the Director: Planning and Economic Development, dated 21 January 2015
- Appendix 10: Further correspondence, dated 21 January 2015, to Werksmans Attorneys with regards to the decision of the Director: Planning and Economic Development
- Appendix 11: Reply from Du Plesiss, Hofmeyr, Malan Land and Law Specialists dated 10 February 2015
- Appendix 12: Request for reasons, dated 9 April 2015 and 13 July 2015 from Werksmans Attorneys
- Appendix 13: Correspondence from Du Plesiss, Hofmeyr, Malan Land and Law Specialists dated 8 July 2015

[Chairperson: Alderman JP Serdyn (Ms)]

[Portfolio: Planning and Land Use Management, Building Control, Air  
Pollution, Spatial Planning/Environmental Heritage And Cultural Management]

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Appendix 14: Reasons for decision of determination for contravention levy conveyed to Werksmans Attorneys, dated 15 July 2015

**(DIRECTOR: PLANNING AND ECONOMIC  
DEVELOPMENT TO ACTION)**

**MAYORAL COMMITTEE MEETING: 2015-11-18: ITEM 5.1.4**

**RESOLVED** (nem con)

that this matter be referred back to allow the Administration to provide all relevant information whereafter same be resubmitted to this Committee for consideration and subsequent recommendation to Council.

**(DIRECTOR: PLANNING AND ECONOMIC  
DEVELOPMENT TO ACTION)**

**FURTHER COMMENTS FROM DIRECTOR: PLANNING AND ECONOMIC  
DEVELOPMENT**

The representative of the subject property, Mr Johan du Plessis, approached the Administration after having noted the agenda item on the Mayoral Committee of 18 November 2015. A summary of the consultation is contained in **APPENDIX 15**.

Mr du Plessis indicated that the delegated official erred in determining a contravention levy of R250 000,00, i.e. the quantum of the levy is a concern. The applicant's discussion and motivation in this regard is logical and it not being incorporated into the decision-making process is an oversight, due to the large volume of documents and complexity of the matter. In view thereof initial recommendation is amended with this further comment and this report supersedes all previous reports, i.e. should be considered afresh.

In the submission Mr du Plessis correctly points out that a contravention levy can only be paid for building that was built in contravention of any statutory prescripts or departing from an approved building plan. Section 39 of LUPO refers specifically to the erection of a building and the use of land in keeping with a building plan. Thus, the focus is on the building plan and not the land use that contravenes the zoning conditions. When considering the timeline for the matter, it is clear that illegal building occurred over a period of 16

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days during which no building plans were approved. At the end of this period the municipality had approved the building plans, which were subsequently set aside through a court order and due to errors made by the decision-making authorities, not the applicant.

Thus, to impose a further contravention levy on the applicant would be punishment of the applicant for mistakes made by the decision-making authorities.

The municipality is like the proverbial ham in the sandwich in this case, as both the applicant and the objectors feel they have a legal case against the municipality.

- The objectors feel that the municipality should impose a contravention levy of significant value, referring to millions of rands.
- The applicant is of the opinion that the municipality cannot impose a further contravention levy, and if so then a nominal amount.

If the municipality does not impose a contravention levy then the objectors might have grounds for review of the matter. It is unlikely that the objectors can successfully challenge the quantum of a contravention levy on review of a decision taken in this matter. On the other hand, if the municipality imposes a significant and punitive contravention levy, the applicant might have grounds for review given the facts of the matter and the admitted error of the decision-maker in not considering the relevant facts when determining the quantum of the contravention levy. Thus, the Director: Planning and Economic Development chooses not to exercise the relevant delegation for determination of a contravention levy amount, but rather to refer it to Council, which is the next decision-making authority in terms of the approved system of delegations. Moreover, the recommendation is for the determination of a nominal levy quantum, as motivated above, but then in consideration of the fact that an amount of R51 910,08 has already been paid for the contravention that occurred during the aforementioned 16 day period.

The fact that there are no approved building plans for the current buildings is not as a result of any neglect or action by the applicant, but rather due to the bungled consideration and decision-making process and a decision of the court to repeal the approved building plans. In view thereof it is recommended as follows:

#### **RECOMMENDED**

- (a) that cognizance be taken of the Report dated 16 January 2015 and the decision of the Director: Planning and Economic Development, as delegated authority, with regards to the extent of the approval and the conditions imposed, to consider an application (attached as

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**APPENDIX 8**) in terms of Section 40(1)(a) of the Land Use Planning Ordinance, 1985 (Ordinance No.15 of 1985), of a contravention levy on Farm No. 1353/1, Paarl Division;

- (b) that cognizance be taken of the decision of the Director: Planning and Economic Development, as delegated authority, with regards to the extent of the approval and the conditions imposed (attached as **APPENDIX 9**, dated 21 January 2015) that Brashville Properties (Pty) Ltd were authorized to, where a building or any part thereof was erected in contravention of Section 39(2)(a) of the Land Use Planning Ordinance No. 15 of 1985, to apply for the determination of a contravention levy in terms of Section 40(1) of the Land Use Planning Ordinance No. 15 of 1985;
- (c) that cognizance be taken that Brashville Properties (Pty) Ltd, dated 10 February 2015 applied for the determination of a contravention levy with a payment of R100,00 (one hundred Rand) and the respons from both the Franschhoek Valley Conservation Trust and Werksmans Attorneys, dated 13 February 2015 whom motivated why the contravention levy amount cannot be R100.00 (attached as **APPENDIX 11**)
- (d) that cognizance be taken of the correspondence between the Director; Planning and Economic Development to and from du Plessis, Hofmeyer, Malan Land Law Specialists and Werksmans Attorneys attached as **APPENDICES 12 to 14**;
- (e) that approval be granted that in terms of Section 40(3)(a) and (b)(ii) of LUPO a contravention levy of R100,00 (one hundred Rand) be paid on Farm No. 1353/1, Paarl Division within one month of final notification of Council's resolution.
- (f) that the amount of R51 910,08 (fifty one thousand nine hundred and ten Rand and eight cents) already paid by the property owner as a contravention levy to the Municipality in 2011, leading to the Municipality's reinstatement of Brashville's building plans on 20 July 2011, be retained as a contravention levy over and above the amount determined in recommendation (e) above;
- (g) that building plans be submitted in terms of the National Building Regulations and Building Standards Act, 103 of 1977 which will be considered in terms of the said requirements; and
- (h) that this approval applies only to the application in question and shall not be construed as authority to depart from any legal prescriptions or requirements.

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**APPENDICES**

- Appendix 1: Conditions of Approval
- Appendix 2: Locality Map
- Appendix 3: Representation submitted by DHM Land Law Specialists obo Brashville 51 (Pty) Ltd
- Appendix 4: Comment of representation submitted by the Franschhoek Valley Conservation Trust
- Appendix 5: Comment of representation submitted by Werksmans Attorneys obo JP Colmant; AG Stone & la Bourgogne farm
- Appendix 6: Report by Western Cape Minister of Local Government, Environmental Affairs & development Planning dated 23 March 2011
- Appendix 7: Site Development Plan indicated area that must be used in order to determine the contravention levy
- Appendix 8: Report dated 16 January 2015 to the Director: Planning and Economic Development
- Appendix 9: Decision of the Director: Planning and Economic Development, dated 21 January 2015
- Appendix 10: Further correspondence, dated 21 January 2015, to Werksmans Attorneys with regards to the decision of the Director: Planning and Economic Development
- Appendix 11: Reply from Du Plesiss, Hofmeyr, Malan Land and Law Specialists dated 10 February 2015 and the responses from the Franschhoek Valley Conservation Trust dated 13 February 2015 and Werksmans Attorneys dated 13 February 2015.
- Appendix 12: Request for reasons, dated 9 April 2015 and 13 July 2015 from Werksmans Attorneys
- Appendix 13: Letter from Du Plesiss, Hofmeyr, Malan Land and Law Specialists dated 8 July 2015

[Chairperson: Alderman JP Serdyn (Ms)]

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Appendix 14: Reasons for decision of determination for contravention  
levy conveyed to Werksmans Attorneys, dated  
15 July 2015

Appendix 15: Letter of concern DHM Attorneys, dated 20 January 2016

**(DIRECTOR: PLANNING AND ECONOMIC  
DEVELOPMENT TO ACTION)**

**PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE: 2016-04-05:  
ITEM 5.1.1**

**RESOLVED** (nem con)

that this item be referred back to Administration to obtain further legal  
opinion from the external legal advisor regarding the amount of the  
contravention levy payable based on the 16 day construction period.

**(DIRECTOR: PLANNING AND ECONOMIC  
DEVELOPMENT TO ACTION)**

[Chairperson: Alderman JP Serdyn (Ms)]

[Portfolio: Planning and Land Use Management, Building Control, Air Pollution, Spatial Planning/Environmental Heritage And Cultural Management]

5.2            **DELEGATED MATTERS**

5.2.1        **APPLICATION FOR A WAIVER FROM THE BY-LAW RELATING TO THE CONTROL OF BOUNDARY WALLS AND FENCES: ERF 1443, FRANSCHHOEK**

*File number*                      : 1443 FH

*Compiled by*                     : Senior Town Planner (LS Ramakuwela)

*Report by*                        : Director: Planning and Economic Development

*Delegated Authority* : Planning, Economic and Community Development Committee

**Strategic intent of item**

|                                         |   |
|-----------------------------------------|---|
| <i>Preferred investment destination</i> | X |
| <i>Greenest municipality</i>            |   |
| <i>Safest valley</i>                    | X |
| <i>Dignified Living</i>                 | X |
| <i>Good Governance</i>                  |   |

**1. PURPOSE OF REPORT**

To enable the Committee to make an informed decision on the proposed application to deviate from the By-law relating to the control of boundary walls and fences. The application is **recommended for approval**.

**2. BACKGROUND**

There is no relevant background information that has a bearing on the current application.

**3. APPLICATION FOR CONSIDERATION**

Application is made for a waiver from the by-law relating to the control of boundary walls and fences, in order to deviate from the condition that 50% of the height of the street boundary wall on residential zoned properties must consists of open decorative work, to construct a 9.5m long solid boundary wall with a height of 1.8m on the street boundary, bordering Paris Crescent on Erf 1443, Franschhoek. See **APPENDIX 3** for the proposed boundary wall.

[Chairperson: Alderman JP Serdyn (Ms)]

[Portfolio: Planning and Land Use Management, Building Control, Air  
Pollution, Spatial Planning/Environmental Heritage And Cultural Management]**4. PROPERTY INFORMATION**

|                              |                                                                                      |
|------------------------------|--------------------------------------------------------------------------------------|
| <b>Farm number</b>           | ERF 1443, Franschoek                                                                 |
| <b>Location</b>              | The subject property is located in Franschoek on Paris Crescent. <b>(APPENDIX 2)</b> |
| <b>Zoning/Zoning Scheme</b>  | Single Residential Zone /Franschoek Zoning Scheme                                    |
| <b>Current Land Use</b>      | Residential                                                                          |
| <b>Property size</b>         | 351 m <sup>2</sup>                                                                   |
| <b>Applicant</b>             | Patrick Douglas Lambson                                                              |
| <b>NHRA Applicable</b>       | No                                                                                   |
| <b>Title deed conditions</b> | No                                                                                   |

**5. DISCUSSION****5.1 Legal Requirements**

Applicable laws and ordinances:

- By-law Relating to the Control of Boundary Walls and Fences (30 October 2009).
- Franschoek Zoning Scheme

In the Single Residential zoning the following uses are permitted:

| Normal Development                                                 | Special Development                                                                                         |
|--------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>• Dwelling house</li> </ul> | <ul style="list-style-type: none"> <li>• Educational building</li> <li>• Place of public worship</li> </ul> |

**5.2 Public participation**

No advertising to the surrounding property owners was deemed necessary in accordance with Council's Policy on Public Participation for Land Use Management as the applicant submitted the letters of no objection together with the application. An objection was received from the Municipal Spatial, Heritage and Environment Section on the proposal. However, the objecting department did not provide reasons for not supporting the proposed boundary wall **(APPENDIX 4)**.

**5.3 Planning Assessment**

All building plans submitted to Council for boundary walls must comply with the promulgated By-law, unless a deviation from the By-law is approved by Council.



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The applicant proposes to build a boundary wall that does not comply with the 50% transparency and 50% solid requirements of the By-law. The portion that is applied for covers a length of ±9,5m that will consist of a 1,8m high solid boundary wall that forms part of the entrance gate of the property.

The proposal is therefore not in line with section 5 of the subject By-law, which stipulates the following;

*"5. For **residential zoned** properties the height of any wall or fence (including the entrance structure and columns) shall be regulated as follows;*

*(a) on a **street boundary: - 2.1m high**, on condition that **50%** of the height of the wall or fence, including gates on residential zoned properties **must consists of open decorative work to create transparency**. The solid construction shall not interfere with sight lines of vehicles entering or leaving the property, or passing traffic."*

The property is currently used for residential purposes without a boundary wall. On the 19 February 2016, approval was granted by the delegated authority for a departure to relax the street building line from 4.6m to 1.5m in order to construct a swimming pool (**APPENDIX 5**). The applicant is therefore requesting approval from Council to build a solid wall in order to screen the newly approved swimming pool and garden for privacy reasons. The length of the property on the street side is 13m, the proposed gate space will be 3.5m in length, and therefore the length of the wall will be only 9.5m.

Section 13 of the subject by-law allows Council to consider deviations and stipulates the following;

*"13. Council may grant a waiver to any of the provisions of this By-law if in Council's opinion; the specific site topographical conditions are such that the granting of a waiver will not result in the erection of a wall or fence that will materially detract from the character of the area. In granting such a waiver, Council shall have due regard to the built form that may result if abutting neighbours request similar waivers as well as the impact such waiver may have on traffic safety (both pedestrian and vehicular)."*

No sight distances or the aesthetic appearance of the property or area will be negatively affected by the proposal, as the property apposite the subject property already has a solid wall of approximately 1.5m in height. However, it must be noted that the two adjacent properties do not have a boundary wall.

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Pollution, Spatial Planning/Environmental Heritage And Cultural Management]

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#### 5.4 Concluding Planning Comments

The proposed boundary wall will be in line with the character of the existing residential area and is setback off the street. For this reason the proposed boundary wall should have no impact on the existing streetscape. The height of the proposed boundary wall is in line with the By-Law as it will not exceed 2.1m and has taken the cognizance of the existing character of the street as similar wall exist on the opposite property. The proposed deviation from the by-law is therefore supported from a planning point of view.

#### RECOMMENDED

that **approval be granted** in terms of Section 13 of the By Law Relating to Control of Boundary Walls and Fences, in order to deviate from Section 5 of the by-law applicable to Residential Zoned properties, to construct a 1.8m high solid wall on the street boundary for Erf 1443, Franschoek, Paris Crescent, as indicated on Drawing No: 301, dated September 2015, drawn by Oscar Schmidt Architecture, attached as **APPENDIX 3**.

#### APPENDIXES

Appendix 1 : Conditions of Approval

Appendix 2 : Locality Map

Appendix 3 : Boundary Wall Plan

Appendix 4 : Comments from Spatial, Heritage and Environment

Appendix 5 : Departure Approval

Appendix 6 : Street View Photos of the Subject Property.

(DIRECTOR: PLANNING AND ECONOMIC  
DEVELOPMENT TO ACTION)

[Chairperson: Alderman JP Serdyn (Ms)]

[Portfolio: Planning and Land Use Management, Building Control, Air  
Pollution, Spatial Planning/Environmental Heritage And Cultural Management]

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## APPENDIX 1

### FILE NO: 1443, FRANSCHHOEK

In this approval document:

"Council" means the Stellenbosch Municipality

"the owner" means the registered owner of the property.

"the site" means **ERF 1443, FRANSCHHOEK**

**EXTENT OF APPROVAL:** Waiver in terms of Section 13 of the By Law Relating to Control of Boundary Walls and Fences, in order to deviate from Section 5 of the by-law applicable to Residential Zoned properties, to construct a 1.8m high solid wall on the street boundary for Erf 1443, Franschoek, Paris Crescent, as indicated on Drawing No: 301, dated September 2015, drawn by Oscar Schmidt Architecture t, attached as **APPENDIX 3**.

**VALIDITY OF APPROVAL:** The above mentioned approval is valid for 1 year from the date of final notification.

### CONDITIONS IMPOSED THAT ARE APPLICABLE IN TERMS OF SECTION 42(1) OF THE ORDINANCE 15 OF 1985 THAT:

1. The approval applies only to the application for the waiver from the subject By-law in question and shall not be construed as authority to depart from any other legal prescription or requirements from council.
2. Building plans must be submitted to this municipality for approval, prior to any building work commencing on site.
3. The building plans may not differ substantially from this approval.

### PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE: 2016-04-05: ITEM 5.2.1

**RESOLVED** (nem con)

that **approval be granted** in terms of Section 13 of the By Law Relating to Control of Boundary Walls and Fences, in order to deviate from Section 5 of the by-law applicable to Residential Zoned properties, to construct a 1.8m high

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[Portfolio: Planning and Land Use Management, Building Control, Air  
Pollution, Spatial Planning/Environmental Heritage And Cultural Management]

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solid wall on the street boundary for Erf 1443, Franschoek, Paris Crescent, as indicated on Drawing No: 301, dated September 2015, drawn by Oscar Schmidt Architecture, attached as **APPENDIX 3**.

**APPENDIXES**

Appendix 1 : Conditions of Approval

Appendix 2 : Locality Map

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Appendix 6 : Street View Photos of the Subject Property.

**(DIRECTOR: PLANNING AND ECONOMIC  
DEVELOPMENT TO ACTION)**

[Chairperson: Alderman JP Serdyn (Ms)]

[Portfolio: Planning and Land Use Management, Building Control, Air  
Pollution, Spatial Planning/Environmental Heritage And Cultural Management]**5.2.2 DIRECTORATE PLANNING AND ECONOMIC DEVELOPMENT: MONTHLY  
REPORT: FEBRUARY 2016***File number:* 8/1/4/2/5*Compiled by:* Head: Customer interface and Administration*Report by:* Director: Planning & Economic Development*Delegated Authority:* Planning, Economic and Community Development  
Committee***Strategic intent of item***

|                                         |   |
|-----------------------------------------|---|
| <i>Preferred investment destination</i> | X |
| <i>Greenest municipality</i>            | X |
| <i>Safest valley</i>                    | X |
| <i>Dignified Living</i>                 | X |
| <i>Good Governance</i>                  | X |

**1. PURPOSE OF REPORT**

To provide feedback on the activities of the Directorate Planning and Economic Development for the month of February 2016.

**2. BACKGROUND**

It is incumbent upon Directorates to report on the activities within their respective Directorates on a monthly basis.

**3. DISCUSSION**

The report of each Department within the Directorate Planning and Economic Development is submitted as outlined in the Appendices below:

|            |                                            |
|------------|--------------------------------------------|
| Appendix 1 | Community Development                      |
| Appendix 2 | Building Development Management            |
| Appendix 3 | Customer Interface and Administration      |
| Appendix 4 | Spatial Planning, Heritage and Environment |
| Appendix 5 | Land Use Management                        |
| Appendix 6 | Local Economic Development                 |

[Chairperson: Alderman JP Serdyn (Ms)]

[Portfolio: Planning and Land Use Management, Building Control, Air  
Pollution, Spatial Planning/Environmental Heritage And Cultural Management]

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4. **LEGAL IMPLICATION**

None required

5. **FINANCIAL IMPLICATION**

None required

6. **COMMENTS FROM OTHER RELEVANT DEPARTMENTS**

None required

**RECOMMENDED**

that the report of the Directorate Planning and Economic Development for the month of February 2016, be noted.

**(DIRECTOR: PLANNING AND ECONOMIC  
DEVELOPMENT TO ACTION)**

**PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE: 2016-04-05:  
ITEM 5.2.2**

**RESOLVED** (nem con)

that the report of the Directorate Planning and Economic Development for the month of February 2016, be noted.

**(DIRECTOR: PLANNING AND ECONOMIC  
DEVELOPMENT TO ACTION)**

[Chairperson: Councillor SJ Louw (Ms)]

[Portfolio: Agriculture, LED and Tourism]

**6. REPORTS FROM OFFICIALS: AGRICULTURE, LED AND TOURISM****6.1 NON-DELEGATED MATTERS****6.1.1 APPROVAL OF TRANSFER OF CESSION OF LEASE AGREEMENT OF FARM 502BH FROM STELLENBOSCH SMALL FARM HOLDING TRUST TO INDIVIDUALS***File number:* 7/2/2/1/1/2*Compiled by:* Manager: Local Economic Development*Report by:* Director Planning & Economic Development*Delegated Authority:* Executive Mayor***Strategic intent of item***Preferred investment destination Greenest municipality Safest valley Dignified Living Good Governance **1. PURPOSE OF THE REPORT**

- (a) To request the ceding of the lease on Farm 502BH from the Stellenbosch Small Farm Holdings Trust (referred hereafter as the Trust or SSFHT) to the individual Small Farmers currently farming on the land;
- (b) To request Council to write off the arrears accrued for rental and water;
- (c) To mandate the Municipal Manager to sign the individual lease agreements with farmers currently farming on Farm 502 BH.

**2. BACKGROUND**

The Farm 502 BH Project started in 2002 when a group of small farmers from historically disadvantaged backgrounds, moved on to 65 hectares of irrigated municipal commonage land when the original lessee (Spier) decided to close down their organic fresh produce operation. (Currently ten (10) farmers are on the land).

[Chairperson: Councillor SJ Louw (Ms)]

[Portfolio: Agriculture, LED and Tourism]

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Whilst at the time of the change of tenancy there was access to water on the land it was only sufficient for viticulture but approximately 30% under the minimum requirement for cash crops. The infrastructure was also built for a commercial operation and did not take into consideration the needs of individual farmers on small lots of land. However, a number of the farmers have since 2002, despite limited financial and other support, and a dire shortage of water, managed to farm on their five hectare allotments - albeit from hand to mouth.

The Stellenbosch Small Farmers Holdings Trust which was established in December 2002 was in keeping with the South African constitutional land reform process of the time. The sole object of the SSFHT was to promote, support and facilitate access to land and use of land on "an equitable basis" for the benefit of the beneficiaries.

On 31 March 2003, with the support of the Municipality, the Trust became the lawful tenant of the land when it superseded the then existing tenant (Spier Holdings Pty Ltd). In terms of the lease with the Municipality, the Trust is the tenant of the land until 2041 and the Trust represents the interest of the beneficiaries.

The Trust entered into individual five year sub-let contracts with the small farmers in 2009. The sub-lease agreements provide that *the SSFHT will relinquish its rights as lessee of Farm 502BH and that the Municipality will provide the following to fulfil its developmental objectives:*

- *Security of tenure – Individual lease agreements and uphold the conditions as set out therein*
- *Water – the water meters as well as the pipeline to be installed*
- *Assist with priority infrastructure which includes fencing and an additional water pipeline to ensure sufficient pressure for irrigation*

The Trust will continue to play a supportive role in pursuit of its objectives amongst its members independently from the Municipality but in collaboration with it. The existing farmers agree to continue leasing the land directly from the Municipality subject to the terms and condition of the lease.

The current lease agreement will cease to exist as soon as the individual lease agreements have been signed between the municipality and the individual farmers. The replacement of the Municipality as lessor does not lessen the rights of the holders; and such further arrangements as may be made between the SSFHT and the Municipality to support the new holders.



[Chairperson: Councillor SJ Louw (Ms)]

[Portfolio: Agriculture, LED and Tourism]

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### 3. DISCUSSION

The Trust has always indicated their intention to cede the lease agreement with the Municipality to the individual farmers. The objective of the Farm 502 BH is, among others, to ensure security of tenure which will enable the farmers' access to funding and to assist them to compete on equal footing with commercial farmers.

Furthermore experience has shown that the success of **group** farming enterprises relies on farmers being held **individually** accountable for their rental and water charges by the Municipality.

In June 2015 a Project Coordinator was appointed by the LED Department to assist with the streamlining and coordination of the Stellenbosch Small Farmers project and to ensure all aspects needed for a successful project is achieved. The idea is to devise a generic model to facilitate and support projects of similar nature or an extension of the Farm 502 project. The following issues have specifically been under the magnifying glass:

- a. To whom are we ceding the individual lease agreements?
- b. Dealing with the arrears that have accrued through water usage due to the fact that individual water use could not be measured;
- c. Arrears that accrued with rental of the land due to insufficient water and crop failure;
- d. Initial actions of the Consultant appointed in 2015 impacting on the project: Purchase of water meters and surveying of Farm 502BH.
- e. Day to day operations on Farm 502BH in the absence of institutional arrangements.

Dealing with the non-payment of water charges has been quite a challenging task in the past, since individual water meters were not installed. As a result of this farmers have been reluctant to pay their dues.

The management of the irrigation system will however no longer be a problem, since the municipality has purchased individual water meters to measure the amount of water used by individual farmers. As a result, each farmer will from now on be responsible for their own water account.

Farmers will be held responsible for their own water account as soon as the water meters are installed in the winter of 2016 (During winter farming activities, the disruption of farming activities will be marginal. The appointed consultant will be responsible for the reading of the

[Chairperson: Councillor SJ Louw (Ms)]

[Portfolio: Agriculture, LED and Tourism]

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meters and communication of outstanding fees/rent between the farmers and the municipality.

Attached please find a report on the abovementioned issues as **APPENDIX A.**

#### 4. INPUTS BY OTHER DEPARTMENTS

##### PROPERTY DEPARTMENT

The current contractual arrangement is between Stellenbosch Municipality and the Stellenbosch Small Farm Holdings Trust (SSFHT) in terms of an agreement concluded on 31 March 2003, in terms whereof all rights, liabilities obligations and interest of Spier Holdings (Pty) Ltd (the previous Lessee) were transferred to SSFHT.

SSFHT therefor stepped into the shoes of Spier Holdings (Pty) Ltd for the remainder of the contract period, i.e. until 2014-03-31. In terms of this Agreement, however, Spier was still held accountable "*should the substitute Lessee, for any reason whatsoever, fails to comply with any condition pertaining to the Lease Agreement*".

This situation, however, changed in 2008, when the parties signed a further Agreement, in terms whereof Spier, nor any of its shareholders, were to have any rights and obligations in relation to the Municipality or the SSFHT whatsoever arising from or in connection with the Lease Agreement. As from 1 January 2009 the SSFHT was responsible for all obligations, including the payment of rental and water usage, albeit at a reduced rate of 20% of market value, as approved by Council in December 2007. Subsequently the outstanding debt has risen to R247 536.14 in total, as at 31 January 2015\*

The proposed ceding of the agreement is in terms of the contract, in particular clause 13, which deals with sub-leasing, cession and assignment. In terms hereof the SSFHT may not sub-lease or cede any of their rights without prior written approval from the Municipality.

\*Should Council indeed approve the ceding of the Agreement to the 13 individual farmers, it should be subject thereto that the individual farmers take responsibility for their pro-rate share of the outstanding rental and/or service charges as at the day of the ceding agreement coming into operation. This means that the SSFH Trust will no more be responsible for the outstanding debts. [the agreement reached is that the farmers will be responsible pro rata for the rental ask that the service charges be written off (in part because we can't determine what each farmer owes in the absence of water meters) The current outstanding debt, as at 31 January 2015, is as follows:

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|          |                                       |
|----------|---------------------------------------|
| Rentals: | R 32 980.57                           |
| Water:   | R214 305.57                           |
| Other:   | R 250.00                              |
| Total:   | R247 536.14 (Latest amounts attached) |

This means that the individual farmers will have to take responsibility for R19 022.01, being their pro-rata portion of the outstanding debt as at 31 January 2015.

Alternatively Council could consider writing off the outstanding debt, or a portion thereof.

The other issue that Council still needs to decide on is whether the SSFHT will still be responsible for the communal infrastructure, such as the water network and communal shed that was constructed some years ago.

Council also needs to decide on how to deal with “vacancies” i.e. should it become necessary to replace any of the individual farmers, for whatever reason. This department would suggest that the SSFHT should still be responsible to “appoint” replacement tenants, to be ratified by Council. Alternatively Council will have to go through a tender process to replace individual Lessees every time that a “vacancy” occurs. [Advisory Ccommittee to deal with it in terms of principles]. Will be in line with new policy].

The Draft Agreement makes provision for a lease period of 9 years and 11 months. This is not in line with the current Lease Agreement, which only lapse in 2041. Under normal circumstances, when ceding an agreement, the substitute Lessee take over all the rights and obligations of the Lessee for the remaining period of the Agreement, i.e until 2041-03-31. [Lease agreements to be until 2041].

#### **FINANCIAL SERVICE DEPARTMENT**

In general, Finance supports the principle of transferring the lease to 13 individual farmers, but with some additional conditions to ensure practicality of implementing the logistics.

1. Each individual lessee must, in addition to a lease agreement, also enter into a consumer agreement with the municipality for the provision of services. This will include the payment of consumer deposit i.r.o. water.
2. The abovementioned will only be applicable if individual meters are installed. [this will be prioritised by the new appointees] Otherwise, Finance does not support the item. Each individual water meter must also have the functionality of being able to be turned off individually. Water consumption will be for agricultural purposes only and as such, water supply will be terminated in the

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event of non-payment. Debt will not be allowed to escalate out of control as has been the case up to now.

3. Leases must make provision for cancellation in the event of rent OR rates OR water not being paid. (i.e. any outstanding debt in respect of the rental of the land) Included in the principles, lease to be finalised.

Current debt of the SSFHT exceeds R200 000. In this respect, the current farmers have undertaken to pay an amount of R200 per month till such time that the individual leases are in place. What about the period thereafter? At a rate of R200 per month x 13 farmers it will take in excess of 10 years to collect this debt, excluding interest and the cost of administration of this account. As soon as the lease is transferred, SSFHT will also be in a position to disband and deny further responsibility to the debt. An offer of R200 per month is not really feasible and council should perhaps consider writing off this debt. Farmers will pay R400 a month towards rental; will ask for water to be written off.

#### **LEGAL SERVICE DEPARTMENT**

Stellenbosch Municipality initially leased Farm 502 BH to Mon Villa (Eiendoms) Beperk which name was amended to Spier Holdings (Pty) Ltd ("Spier"). On 31 March 2003 the Municipality, Spier and the Small Farm Holding Trust ("the Trust") agreed that the Trust would substitute Spier as lessee but that Spier would remain liable in the event that the Trust failed to comply with the lease.

On 4 March 2008 Spier, the Trust and the Municipality entered into an agreement in terms of which the lease agreement between the Municipality and Spier was ceded to the Trust. The Trust entered into the shoes of Spier. In terms of clause 13 of the written lease agreement, the Trust need to obtain the prior written consent of the Municipality before the lease agreement is ceded. The 13 small farmers with the consent of the Municipality will step into the shoes of the Trust and we propose that a new lease agreement be entered into incorporating the comments/conditions of the various departments. The lease agreement should make provision for the cancellation of same, if the lessee fails to pay the rental and water charges. We propose that the filling of vacancies, in circumstances where the lease agreement is terminated, should be overseen by the Trust. The Municipality should ratify/condone the appointments accordingly. With regard to the arrear rental and water charges it is Council's prerogative to resolve that same be paid in full, alternatively that rental and water be written off in part or in full.

Recommendation (a) should be amended from the Executive Mayor in consultation with the Municipal Manager to Council. The rest of the recommendation is supported.

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## 5. CONCLUSION

Under an individual tenure system farmers will be able to approach financial institutions for loans. They will also be able to get assistance from the Land bank for their ventures. This implies some risk taking by the farmers but also that they will personally invest in the land.

One can expect a certain “pride of ownership” to develop and fencing and demarcation of the properties will become a reality.

## ANNEXURE A

### 1. Current farmers on the land

The initial of farmers were:

Braam Botha, Chris Jacobs, Christine Jephtha, Eric Linders, Gerrit Hendricks, Hermanus Booysen, Neville Cloete, Peter Stone, Roland Meyer, Rudi Hendricks, Simon Opperman; Willem Klaasen; Aurora Cooperatives (c).

Of the original farmers not all are as active as desirable. The situation now is as follows.

|                      |                                                                                                                                                |
|----------------------|------------------------------------------------------------------------------------------------------------------------------------------------|
| Bram Botha           | Full time farmer - Active and successful                                                                                                       |
| Chris Jacobs         | Full time farmer - Active and successful                                                                                                       |
| Christine Jephtha    | Full time farmer - Active and successful                                                                                                       |
| Eric (Morty) Linders | Full time farmer - Active and successful                                                                                                       |
| Gerrit Hendricks     | Full time farmer. Due to an old injury to his heel has been inactive for two years. Recently had operation and promise to become active again. |
| Hermanus Booysen     | Decided that farming was too much trouble at his age of 70+. Gave up                                                                           |
| Neville Cloete       | Got another job and gave up.                                                                                                                   |
| Peter Stone          | Full time farmer - Active                                                                                                                      |
| Roland Meyer         | Full time farmer – Active                                                                                                                      |
| Rudi Hendricks       | Inactive                                                                                                                                       |
| Simon Opperman       | Deceased                                                                                                                                       |
| Willem Claasen       | Full time farmer - Active and successful                                                                                                       |
| Aurora Cooperatives  | Now being farmed successfully by a nominee Magda Stephanus                                                                                     |

### 2. Individual lease agreements

Security of tenure is crucial for successful land reform and agricultural development. This will not only motivate the farmers to invest in the land (municipal land, which remains municipal property), but also would allow them to access support from the private sector.

The intention of the individual lease agreements is in the first instance to assist poorer, but eligible families who have experience of farming to earn a living and to become economically independent. Some of the

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farmers had to turn down many contracts from reputable retail stores such as Woolworths, because they do not have individual lease agreements.

Furthermore, the vacant plots will need to be filled as soon as the Draft Agricultural Land Policy is accepted by Council. Preference should be given to people with a farming background (preferably previously in an overseeing capacity) whom have been residents of Stellenbosch for a period of at least 10 years. Farmers need to have the basic equipment (transport and some capital) and must be able to within a reasonable period be able to till the land. This will be subject to the approval of a business plan that shows that they understand the challenges and opportunities which is embedded in the use of leasehold land. Farmers need to be prepared to take individual responsibility for rental, water and general management of the property.

**3. Dealing with the arrears that accrued through water usage and rental of the land.**

A total amount of approximately R374.143.21 (end October 2015) (**ANNEXURE B**) in arrear rental and water charges have been accrued. Partly due to the fact that some farmers are using more water than others and also the means to measure the water use, non-payment has become a norm.

Whilst the municipality are strongly opposed to this irresponsible attitude and would have preferred to enforce payment of all outstanding dues, it is nevertheless true that over the past 13 years these farmers have never received substantial and coordinated assistance to put them on a road to success and in a position to make a decent living.

Under the circumstances it is recommend that the total amount (of R374.143.21) in arrears for the water and rental charges be written off. Farmers must also formally be made aware of the consequences should they default in any way. These issues are already addressed by the current draft individual lease agreements which the Trust and the farmers have agreed to sign.

**4. Dealing with individual non-payment of either rental or water usage in future**

In the lease agreement with the farmer's, specific provision is made and strict rules pertaining to on time payment of all dues to the municipality is made. It basically makes provision that individual water meters can be cut off and also that the tenant can be evicted.

These rules will in future be enforced without exception.

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**5. Initial actions of the Consultant appointed in 2015 impacting on the project: Purchase of water meters and surveying of Farm 502BH**

As water meters were seen as a priority, the first actions of the Consultants were to install 26 water meters. The water meters will be installed in the month of January 2016.

Farm 502 BH were never formally divided into separate lots in 2002 and therefore it was imperative that a surveyor measure the land and demarcate the individual pieces of land. This was completed in October 2015.

**6. Day to day operations on Farm 502BH in the absence of institutional arrangements**

The difficulties experienced in terms of the current institutional arrangements are relevant: Two research reports into the project have recommended tiered institutional arrangements that include among others individual lease agreements, payment obligations, criteria for new entrants and a structure to deal with everyday operation, enforcement of terms of conditions of leases etc. These are discussed below.

**a) Management principles**

The criteria for new entrants into the project and the 'use it or lose it' principle will function into the future. The principles that will guide the municipality and will be entrenched in the lease agreements between the Municipality and the individual farmers which include:

- Each farmer will be responsible for his/her individual rental and water charges. Subject to certain conditions and reasonable negotiation, non-payment will be met with the cancellation of the lease.
- Cancellation may also follow non-compliance with the operational rules of Farm 502BH.
- Once a contract is cancelled the municipality will advertise the vacant allotment and leasing will take place in a competitive process as prescribed by the MFMA and the Policy for the Management of Municipal Agricultural Land (currently in draft format).

**b. Strategic Partner: Day to day management**

It is envisaged to recruit a Strategic partner in the future. Currently farmers indicated that they have their own model to manage themselves and only need the following from the municipality:

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- *security of tenure – Individual lease agreements and uphold the conditions as set out therein*
- *Water – the water meters as well as the pipeline to be installed*
- *Assist with priority infrastructure which includes fencing and an additional water pipe to ensure appropriate pressure for irrigation*

**c. Billing individual farmers**

Following a series of engagements with the Finance Department, the aforementioned department has given its assurance that it sees no obstacles in collecting rental from the farmers as individual tenants. The assessment and collection of water charges is currently problematic as the allotments are not individually metered and it is therefore impossible to assess individual accounts. This problem shall be solved when individual water meters are installed.

**RECOMMENDED**

- (a) that approval be granted for the ceding of the lease agreement between the municipality and the Trust to the current ten (10) individual farmers on Farm 502BH and;
- (b) that the Municipal Manager be mandated to sign the abovementioned individual lease agreements after it have been scrutinised by Legal Services;
- (c) that the leasing of the remainder allotments be determined by a competitive process as per the MFMA and the Policy for the Management of Municipal Agricultural Land (Currently in draft format);
- (d) that the Municipal Manager to sign future lease agreements for probable further leasehold contracts to new entrants and;
- (e) that the arrears accrued for water and rental, be written off.

**(DIRECTOR: PLANNING AND ECONOMIC  
DEVELOPMENT TO ACTION)**



[Chairperson: Councillor SJ Louw (Ms)]

[Portfolio: Agriculture, LED and Tourism]

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**PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE: 2016-04-05:  
ITEM 6.1.1**

**RECOMMENDED**

- (a) that approval be granted for the ceding of the lease agreement between the municipality and the Trust to the current ten (10) individual farmers on Farm 502BH and;
- (b) that the Municipal Manager be mandated to sign the abovementioned individual lease agreements after it have been scrutinised by Legal Services;
- (c) that the leasing of the remainder allotments be determined by a competitive process as per the MFMA and the Policy for the Management of Municipal Agricultural Land (Currently in draft format);
- (d) that the Municipal Manager to sign future lease agreements for probable further leasehold contracts to new Historical Disadvantaged Individuals (HDI) as entrants and;
- (e) that the arrears accrued for water and rental, be written off.

**(DIRECTOR: PLANNING AND ECONOMIC  
DEVELOPMENT TO ACTION)**

**6.2 DELEGATED MATTERS**

NONE

[Chairperson: Councillor AR Frazenburg]

[Portfolio: Community Development]

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7. REPORTS FROM OFFICIALS: PLANNING AND LAND USE  
MANAGEMENT, BUILDING CONTROL, AIR POLLUTION, SPATIAL  
PLANNING/ ENVIRONMENTAL HERITAGE AND CULTURAL  
MANAGEMENT

7.1 NON-DELEGATED MATTERS

NONE

7.2 DELEGATED MATTERS

NONE

8. REPORTS SUBMITTED BY THE MUNICIPAL MANAGER

NONE

9. NOTICES OF MOTIONS AND NOTICES OF QUESTIONS RECEIVED BY  
THE MUNICIPAL MANAGER

NONE

10. MOTIONS OF EXIGENCY

NONE

11. MATTERS TO BE CONSIDERED IN-COMMITTEE

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Meeting adjourned at 14:30.

**CONFIRMED**

**CHAIRPERSON** .....

(Signature & date)