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DIRECTORATE: PLANNING AND ECONOMIC DEVELOPEMNT

DEPARTMENT OF DEVELOPMENT MANAGEMENT

LAND USE MANAGEMENT

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INFORMATION GUIDELINE:

TOURIST ACCOMMODATION ON PROPERTIES ZONED AGRICULTURAL AND RURAL ZONE

1. Land use applications are regularly made for consent to permit self-catering units on properties zoned for Agriculture and Rural Zone. Applications for only bedrooms (non-self-catering) it is a different case and not the subject of this communication.

2. To gain an accurate understanding of the provision of tourist accommodation on properties zoned for agricultural and rural use, the policy guidelines on additional dwellings, tourist dwelling units and tourist accommodation establishments in accordance with the purpose of the Agricultural and Rural Zone in the Stellenbosch Zoning Scheme By-law (zoning scheme) is relevant and needs to be collectively interpreted and applied.

3. Based on the definition of additional dwelling units in the zoning scheme and policy guidelines in this regard, residential units on properties zoned Agricultural & Rural Zone, apart from the main residence, are limited to 5 units depending on the size of the property.

3.1 It is prudent that the following definitions in the zoning scheme are noted:

"dwelling unit" (wooneenheid) *means a self-contained inter-leading rooms which consist of at least one bedroom, one bathroom and no more than one kitchen or open-plan area set aside for preparation of meals, and which is utilised or intended to be utilised as a complete residence and accommodation for one family, and can be a dwelling house, second dwelling house, additional dwelling house, group house, employee housing or dwelling units in flats or apartments*

*"**additional dwelling unit"** means a dwelling unit other than an employee housing unit, together with its customary ancillary outbuildings, which is erected on land an in Agricultural and Rural zone, on which a dwelling house and second dwelling already exist or are in the process of being erected, provided that such additional dwelling units may only be erected with the Municipality's consent use approval on land units exceeding 20 ha in size, and no more than four additional dwelling units may be erected on any one land unit at a ratio of one dwelling unit for every 10 ha exceeding 20 ha[1]*

3.2 The footnote in the zoning scheme provides further clarity:

[1] To clarify, refer these examples: On farms up to 20 ha, a main dwelling and second dwelling is permitted as primary rights. On farms exceeding 20 ha the Municipality may grant additional dwellings as consent use, to a maximum of an additional four over and above the main dwelling and second dwelling houses. The permitted number of additional dwellings may never exceed four and must be calculated at the ration of one unit per 10 ha exceeding 20 ha. Thus, if the farm measures 32 ha one additional dwelling can be applied for as a consent use. On a 70-ha farm a maximum of four additional dwelling units may be applied for.

4. The Western Cape Government: Land Use Planning Guidelines on Rural Areas (Rural Guidelines), which has been adopted as an integral component of the Stellenbosch Municipal Spatial Development Framework (MSDF), provides that:

- *Additional dwelling units should be restricted to 1 unit per 10ha, to a maximum of 5 units; 175m² maximum floor area including garaging and building height of 1 storey (6,5m measured from natural ground level to the highest point of a building). Additional dwelling units should not be alienated, whether by individual erven, sectional title, share block or by any other means.*

- *Properties smaller than 50 ha in size are not accommodated for in the table, since only the additional dwelling density model should be used for those properties i.e., 1 unit per 10 ha with a maximum of 5 units, with the exception of one additional unit that can be allowed in all cases irrespective of the size of the agricultural land unit. This implies that a rezoning to resort zone should not be entertained for properties of which the size is less than 50 ha.*

5. In terms of the relevant definitions, it is common cause that the purpose of additional dwelling units is for permanent residency and there is consequently no restriction that additional dwelling units be leased for permanent residency. An additional dwelling unit may however not be used for short-term tourism accommodation for the purpose of a tourist dwelling unit without obtaining the required approval, either as Additional Use or as a Consent Use (exceeds the threshold, e.g., of 7 bedrooms).

5.1 See extracts from the zoning scheme below.

207. Bed and breakfast, guest house, tourist dwelling unit as additional use in this zone.
(3) A guest house and/or tourist dwelling unit accommodation, when conducted as additional uses, may only be conducted from one or more approved dwelling units on the land unit.
(6) The Municipality may grant a consent use for a greater number of bedrooms to be used for a guest house, tourist dwelling unit or bed and breakfast, provided that these activities shall remain confined to the approved dwelling units on the land unit and the number of additional dwellings may not exceed the number permitted by means of the definition of "additional dwellings".

6. Approval must therefore first be obtained for a second or an additional dwelling unit and then an application can follow to use the approved second or additional dwelling unit as a tourist dwelling unit.

7. If a labourer's cottage is proposed to be used as a tourist dwelling unit, it must first be converted into a second or additional dwelling unit and then into a tourist dwelling unit. If the number of additional dwelling units allowed on a land unit is exceeded, this is no longer possible as it deviates from the definition in the zoning scheme. And it is not possible to depart from a definition.

8. In such instances, applications for a Consent Use for a tourist accommodation establishment must be submitted, as the zoning scheme in section 208 allows for instances where the number of permitted dwelling units on a land unit is exceeded.

208. Tourist accommodation and hotel in this zone*.*
(1) When the number or scale of buildings, in which accommodation for transient guests is provided, exceed the maximum number or scale of dwelling houses and additional dwelling houses permitted on a land unit, or if other buildings, which are not the approved main dwelling house, second dwelling house or additional dwellings units, are converted to transient guest accommodation, the activity shall be classified either as a tourist accommodation establishment or a hotel, depending on the type of accommodation and the ancillary uses.

9. The provision for such type of development must however not be construed that it is possible in all cases. The policy guidelines are clear in which circumstances it can be allowed, and in particular that it is only permitted on properties that are larger than 50ha. There are also other relevant criteria to consider when applying for tourist accommodation. The Rural Guidelines refers to resort developments, which is described as tourist accommodation establishment in the zoning scheme.

9.1 Some of the pertinent considerations as listed in the Rural Guidelines includes:

- *A resort development should be closely associated with a resource which clearly benefits and distinguishes the site, in terms of its amenity value, from surrounding properties.*

- *Resort applications outside urban areas can only be considered if linked to a unique resource, unless the area in question has already been demarcated for resort development in terms of an approved SDF or overlay zone.*
- *Only in exceptional cases where special desirability factors can be motivated, would any probability arise for new resorts to be established.*
- *If access to a linear or natural resource exists within an existing urban area nearby, then new resort development outside of the urban edge should not be permitted.*
- *Resorts may not be located within productive agricultural landscapes, but must be situated adjacent to a natural feature or resource (e.g., dam, river) that offers a variety of leisure and recreation opportunities (e.g., hiking, mountain biking, water based activities), and is well connected to regional routes.*

10. The Strategic Environmental Management Framework (SEMF) and the Rural Guidelines provides a specific spatial emphasis that are relevant considerations. It was also a deliberate decision of Council to include the relevant aspects of both the SEMF and Rural Guidelines into the MSDF. As such, these provisions are elevated to statutory compliance in terms of the status of the MSDF.

11. In order to consider the development proposal, it must be determined into which Spatial Planning Category (SPC) the property falls, as the Rural Guidelines and the MSDF's policy guidelines are based on the SEMF and SPCs. By way of illustration, some policy guidelines listed in the MSDF that apply to tourist accommodation in the Agricultural, Buffer 1 and Buffer 2 SPCs are listed below:

- *Whilst it is preferable that they be located within the farmstead, dispersed rental units should be on existing farm roads, in visually unobtrusive locations, and be self-sufficient in terms of servicing.*
- *Additional dwelling units should be restricted to 1 unit per 10ha, to a maximum of 5 units; 175m² maximum floor area including garaging and building height of 1 storey (6,5m).*
- *A resort development should be closely associated with a resource which clearly advantaged and distinguished the site, in terms of its amenity value, from surrounding properties.*
- *Resorts may not be located within productive agricultural landscapes, but must be situated adjacent to a rural feature or resource (e.g. dam, river) that offers a variety of leisure and recreation opportunities (e.g. hiking, mountain biking, water based activities), and is well connected to regional routes.*
- *Rezoning to resort zone should not be entertained for properties of which the size is less than 50 ha. Only in exceptional circumstances should more than 50 units be allowed.*
- *Rural resorts should be compact and clustered in nodes and a range of accommodation types is encouraged.*
- *The building height of any new resort unit should be restricted to that of a single storey (6,5m).*

12. If an application is made for more than the permitted number of additional dwelling units on a farm property (in relation to the size of the farm), the proposed development is not in compliance with the provisions in the MSDF. As the application will deviates from the MSDF, the application must be presented and motivated on the basis of site-specific justification to depart from the MSDF as envisaged in Section 22 of SPLUMA. The DRDLR *Guideline on the Determination of Site-Specific Circumstances in terms of Section 22(2) of the Spatial Planning and Land use Management Act, (Act No. 16 of 2013), 2021* needs to be considered in this regard.

13. The Municipality cannot consider the merits of such application that deviates from the MSDF if there are no justifiable site-specific considerations to support the application. Only after a determination is made by the authorised decision maker that there are indeed site-specific circumstances present to justify a deviation for the MSDF, may the application be considered. If such site-specific determination on the MSDF cannot be made, the authorised decision maker is prohibited to further consider the merits of the specific application under consideration.