

01 August 2024

«Salutation» «Initials» «Surname» (Property reference Erf: «Erf» «Section»)

«Address_01»

«Address_02»

«Address_03»

«Address_04»

Per: «Registration»

«Registration_1»

Dear Sir / Madam

**NOTICE OF LAND DEVELOPMENT APPLICATION IN THE STELLENBOSCH MUNICIPAL AREA:
AMENDMENTS TO THE WELGEVONDEN HOA COMPOSITION**

Application property: Welgevonden Estate and Klein Welgevonden, Stellenbosch

Applicant: Dupré Lombaard, Virdus Works (Pty) Ltd, 3rd Floor, Time Square, Elektron Street, Techno Park, Stellenbosch, 7600; Cell: +27 82 895 6362; Email: dupre.lombaard@virdus.com

Owner: Welgevonden Estate Home Owners' Association, Represented by: Mr Gawie Marx, Phone: +27 21 889 5450, E-mail: manager@welgevonden.co.za, Address: Welgevonden Estate HOA, Welgevonden Boulevard, Stellenbosch, 7600

Reference number: LU/16583 (TP377/2023))

Description of land development application:

1. Application is made in terms of Section 15(2)(h) of the Stellenbosch Municipality By-Law on Municipal Land Use Planning, 2023 for an amendment of conditions in respect of the development approval granted in 1998 (and subsequently amended) to allow for properties outside of the security enclosed Estate boundary to be excluded from the HOA. The conditions to be amended are:
 - a. The conditions of approval as detailed in the Minutes of the Special Technical Services Committee Meeting of 10 November 1997:
 - Recommendation 2.1.1 (j)(xvii) "a home owners association which will be responsible for the maintenance of all communal property and private open spaces which will include all internal services, must be established in terms of Section 29 of Ordinance 15 of 1985"; and
 - Recommendation 2.1.2 (j)(xviii) "the constitution of the home owners association must be approved by the Chief: Planning and Development".
 - b. The amended conditions in the approval letter dated 14 December 2000 by decision of the same Technical Committee 1(f)(xi) (to replace (j)(xvii)) "the homeowners association will be responsible for the maintenance of all communal property and the private open space which will exclude all internal services".
2. Application in terms of Section 15(2)(l) of the Stellenbosch Municipality By-Law on Municipal Land Use Planning, 2023 to amend clause 1.10 under the Definitions in the Constitution of the Welgevonden Home Owners Association. The definition to be amended is as follows: showing a deletion [in brackets] and insertion underlined:

1.10 "the Township Area" means the Township Area currently known in its entirety as Welgevonden

(previously known as Green Oaks) as ~~[shown on Annexure A to the Architectural Directives and Design Guidelines]~~ **located within the area of controlled access** subject to any existing or future legally binding agreements that might affect the extent of the Township area.

3. Application in terms of Section 15(2)(f) of the Stellenbosch Municipality By-Law on Municipal Land Use Planning, 2023 for the amendment of the title deeds of the subject properties so as to exclude the condition making WHOA membership obligatory from the title deeds will be addressed in a separate and subsequent process if approval for the amendments sought herewith are granted.

The application is required to allow for the changes as described in the motivation report. When first approving of the development, the authorities imposed the condition of membership of all the properties created on approval of the development to ensure a harmonious development subject to architectural guidelines and rules and management of the private open spaces, private streets, and communal facilities by the WHOA. As some of the properties are to be excluded, the conditions need to reflect which properties need no longer form part of the WHOA. Maps showing the original township area and the proposed exclusions are annexed hereto.

Notice is hereby given in terms of the provisions of said Bylaw that the above-mentioned application has been submitted to the Stellenbosch Municipality for consideration. The application is available for inspection on the Planning Portal of the Stellenbosch Municipal Website for the duration of the public participation process at the following address: <https://www.stellenbosch.gov.za/planning/documents/planning-notices/land-use-applications-advertisements>. If the website or documents cannot be accessed, an electronic copy of the application can be requested from the Applicant.

You are hereby invited to submit comments and / or objections on the application in terms of Section 50 of said Bylaw. Written comment, which must include the reference to the application, the name, contact details and physical address of the person to submit the comments, the reasons for the comments, and the interest of the person who submits the comment in the application, may be submitted to the Applicant by electronic mail as follows: **Dupré Lombaard, Virdus Works (Pty) Ltd, Email: dupre.lombaard@virdus.com**. By lodging an objection, comment or representation, the person doing so acknowledges that information may be made available to the public and to the applicant. The comments must be submitted within 30 days from the date of this notice to be received on or before the closing date of **13 September 2024**.

It should be noted that the Municipality, in terms of Section 50(5) of the said Bylaw, may refuse to accept any comments/ objection received after the closing date. For any enquiries on the Application or the above requirements, or if you are unable to write and /or submit your comments as provided for, you may contact the Applicant for assistance at the e-mail address provided or telephonically by WhatsApp at +27 82 895 6362 during normal office hours.

KENNISGEWING VAN GRONDONTWIKKELINGSAANSOEK IN DIE STELLENBOSCH MUNISIPALE AREA: WYSIGING VAN DIE SAMESTELLING VAN DIE WELGEVONDEN HEV

Aansoek eiendom: Erf 15689, Welgevonden Landgoed, Stellenbosch

Aansoeker: Dupré Lombaard, Virdus Works (Pty) Ltd, 3^{de} Vloer, Time Square, Elektronstraat, Techno Park, Stellenbosch, 7600; Sel: +27 82 895 6362; Epos: dupre.lombaard@virdus.com

Eienaar: Welgevonden Estate Home Owners' Association, Verteenwoordig deur: Mr Gawie Marx, Foon: +27 21 889 5450, Epos: manager@welgevonden.co.za, Adres: Welgevonden Estate HOA, Welgevonden Boulevard, Stellenbosch, 7600

Verwysing: LU/16583 (TP377/2023))

Besonderhede van aansoek:

1. Aansoek word gedoen ingevolge Artikel 15(2)(h) van die Stellenbosse Munisipaliteit Verordening op

Munisipale Grondgebruikbeplanning, 2023 vir 'n wysiging van voorwaardes ten opsigte van die ontwikkelingsgoedkeuring wat in 1998 verleen is (en daarna gewysig is) om voorsiening te maak dat eiendomme buite die sekuriteit omheinde landgoed grens van die HEV uitgesluit word. Die voorwaardes wat gewysig moet word, is:

- a. Die goedkeuringsvoorwaardes soos uiteengesit in die Notule van die Spesiale Tegniese Dienste Komiteevergadering van 10 November 1997:
 - Aanbeveling 2.1.1 (j)(xvii) "'n huiseienaarsvereniging wat verantwoordelik sal wees vir die instandhouding van alle gemeenskaplike eiendom en privaat oop ruimtes wat alle interne dienste sal insluit, moet ingevolge Artikel 29 van Ordonnansie 15 van 1985 ingestel word"; en
 - Aanbeveling 2.1.2 (j)(xviii) "die grondwet van die huiseienaarsvereniging moet deur die Hoof: Beplanning en Ontwikkeling goedgekeur word".
 - b. Die gewysigde voorwaardes in die goedkeuringsbrief gedateer 14 Desember 2000 by besluit van dieselfde Tegniese Komitee 1(f)(xi) (om (j)(xvii)) te vervang "sal die huiseienaarsvereniging verantwoordelik wees vir die instandhouding van alle gemeenskaplike eiendom en die privaat oop ruimte wat alle interne dienste sal uitsluit".
2. Aansoek ingevolge Artikel 15(2)(l) van die Stellenbosse Munisipaliteit Verordening op Munisipale Grondgebruikbeplanning, 2023 om klousule 1.10 te wysig kragtens die Definisies in die Grondwet van die Welgevonden Huiseienaarsvereniging. Die definisie wat gewysig moet word, is soos volg: met 'n skrapting [tussen hakies] en invoeging onderstreep:
- 1.10 "the Township Area" means the Township Area currently known in its entirety as Welgevonden (previously known as Green Oaks) as ~~[shown on Annexure A to the Architectural Directives and Design Guidelines,]~~ located within the area of controlled access subject to any existing or future legally binding agreements that might affect the extent of the Township area.
3. Aansoek ingevolge Artikel 15(2)(f) van die Stellenbosch Munisipaliteit Verordening op Munisipale Grondgebruikbeplanning, 2023 vir die wysiging van die titelvoorwaardes van die onderwerp eiendomme om die voorwaarde uit te sluit wat HEV-lidmaatskap verpligtend maak, sal in 'n aparte en daaropvolgende proses aangespreek word indien goedkeuring verleen word vir die wysigings wat hiermee gesoek word.

Die aansoek is nodig om voorsiening te maak vir die veranderinge soos beskryf in die motiveringsverslag. By die eerste goedkeuring van die ontwikkeling het die owerhede die voorwaarde van lidmaatskap van al die eiendomme wat by goedkeuring van die ontwikkeling geskep is, opgelê om 'n harmonieuse ontwikkeling te verseker onderhewig aan argitektoniese riglyne en reëls en bestuur van die privaat oop ruimtes, privaat strate en gemeenskaplike fasiliteite deur die HEV. Aangesien sommige van die eiendomme uitgesluit moet word, moet die voorwaardes weerspieël watter eiendomme nie meer deel van die HEV hoef te vorm nie. Kaarte wat die oorspronklike dorpsgebied en die voorgestelde uitsluitings toon, word hierby aangeheg.

Kennis word hiermee gegee in terme van die voorskrifte van die genoemde Verordeninge dat bovermelde aansoek by die Stellenbosch Munisipaliteit ingedien is vir oorweging. Die aansoek is beskikbaar vir insae op die Beplannings Portaal van die Stellenbosch Munisipaliteit se Webtuiste vir die tydsduur van die publieke deelname proses by die volgende adres: <https://www.stellenbosch.gov.za/planning/documents/planning-notices/land-use-applications-advertisements>. Indien die webtuiste of tersaaklike dokumente nie toeganklik is nie, kan die Aansoeker versoek word om 'n elektroniese kopie van die aansoek beskikbaar te stel.

Kommentaar en/ of besware kan vervolgens gedien word op die aansoek ingevolge Artikel 50 van die tersaaklike Verordening. Skriftelike kommentaar, wat besonderhede ten opsigte van die verwysings nommer van die aansoek, die name, fisiese adres en kontak besonderhede van die persoon wat die kommentaar lewer, die redes vir die kommentaar, en die belang van die persoon wat die kommentaar lewer in die aansoek, by die Aansoeker ingedien word by wyse van elektroniese pos as volg: **Dupré Lombaard, Virdus Works (Pty) Ltd, Email:**

dupre.lombaard@virdus.com. Deur 'n beswaar, kommentaar of vertoë te rig, erken die persoon wat dit doen dat persoonlike inligting aan die publiek en aan die aansoeker beskikbaar gestel kan word. Die kommentaar moet binne 30 dae vanaf die datum van hierdie kennisgewing gestuur word en moet ontvang word voor of op die laaste dag van die sluitings datum van **13 September 2024**.

Daar moet kennis geneem word dat die Munisipaliteit, in terme van Artikel 50(5) van die vermelde Verordeninge, mag weier om enige kommentaar / beswaar te aanvaar wat na die sluitingsdatum ontvang word. Indien daar enige navrae op die aansoek of bovermelde vereistes vir die lewer van kommentaar is, of indien dit nie moontlik is om geskrewe kommentaar te lewer of die kommentaar op die wyse te lewer soos voorsiening gemaak is nie, kan die Aansoeker geskakel word vir bystand by die vermelde elektroniese pos adres of telefonies per WhatsApp by +27 82 895 6362 gedurende normale kantoor ure.

Yours faithfully / Die uwe

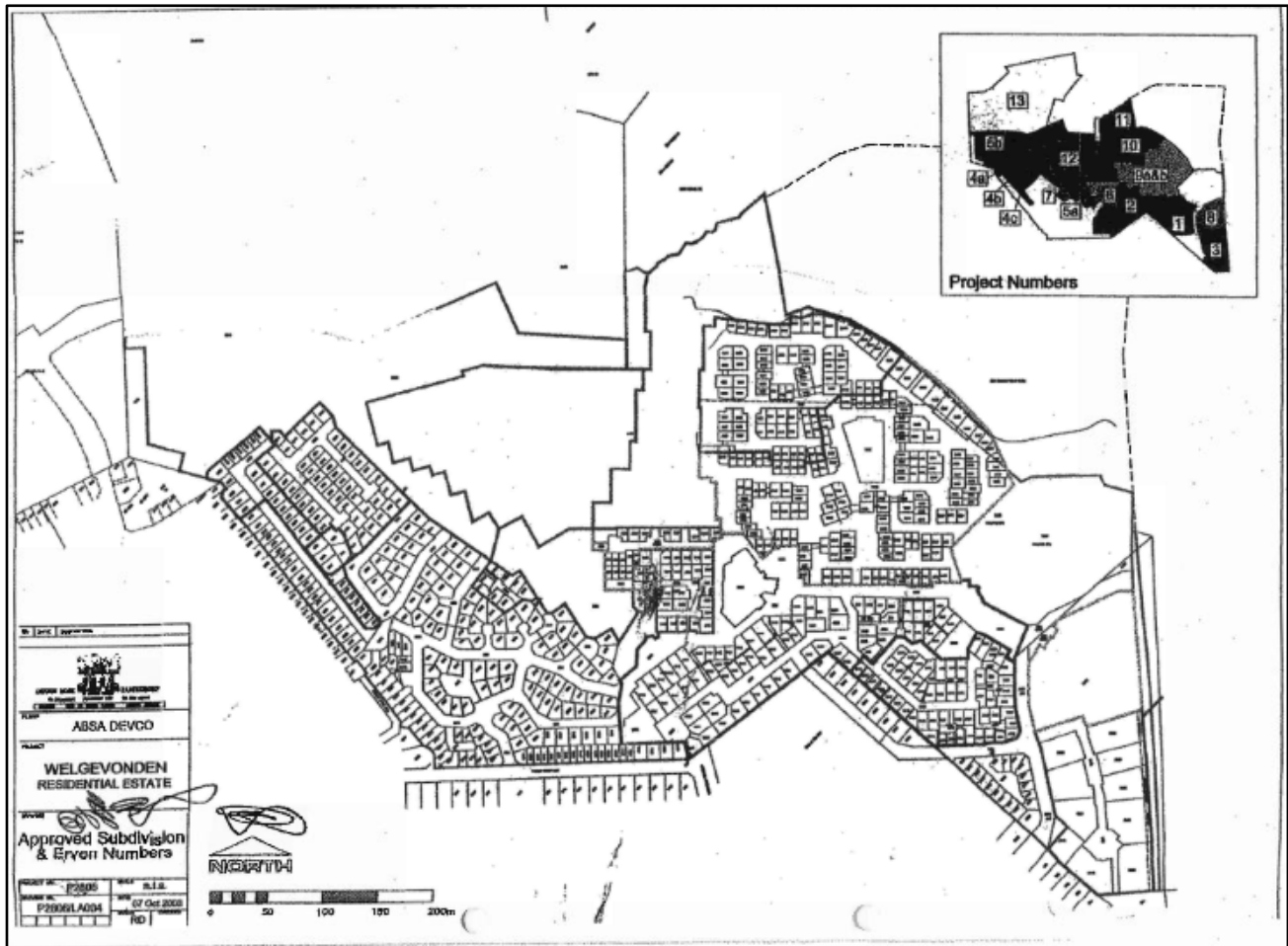


Dupré Lombaard

Technical Planner and Environmental Assessment Practitioner

SACPLAN B/8076/1998 // EAPASA 2019/304

Annexure A: Original township area

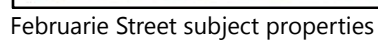


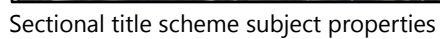
Welgevonden approved layout plan

Annexure B: Properties proposed for exclusion



Welgevonden development showing subject properties





**MOTIVATION IN SUPPORT OF LAND
DEVELOPMENT APPLICATION FOR:**

**AMENDMENT OF THE WELGEVONDEN
RESIDENTIAL ESTATE DEVELOPMENT
CONDITIONS AND HOME OWNERS'
ASSOCIATION CONSTITUTION**



CONTENT

1.	BACKGROUND	4
1.1	Introduction.....	4
1.2	Context	5
2.	LAND DEVELOPMENT APPLICATION	8
3.	REASONING.....	9
3.1	Special dispensation for certain properties.....	10
3.2	Conditions of approval	12
3.3	Title conditions	12
3.4	Prior consultation	12
4.	CONCLUSION	13

Table of figures

Figure 1: Welgevonden approved layout plan.....	4
Figure 2: Welgevonden development showing subject properties	5
Figure 3: Februarie Street subject property context.....	6
Figure 4: Sectional title scheme property context.....	7

ANNEXURE

ANNEXURE A: SUBJECT PROPERTY LOCALITY
ANNEXURE B: APPLICATION AUTHORISATION
ANNEXURE C: APPLICATION FORM
ANNEXURE D: EXAMPLE TITLE DEED
ANNEXURE E: PREVIOUS APPROVALS
ANNEXURE F: WHOA CONSTITUTION
ANNEXURE G: NOTICES SENT TO AFFECTED OWNERS
ANNEXURE H: RESPONSES RECEIVED TO NOTICES
ANNEXURE I: FEBRUARIE STREET RESIDENTS' MEETING RECORD

EXECUTIVE SUMMARY

MOTIVATION IN SUPPORT OF LAND DEVELOPMENT APPLICATION FOR: AMENDMENT OF THE WELGEVONDEN RESIDENTIAL ESTATE DEVELOPMENT CONDITIONS AND HOME OWNERS' ASSOCIATION CONSTITUTION	
<u>Applicant:</u> Welgevonden Home Owners' Association Represented by: Mr Gawie Marx (Estate Manager) Phone: +27 21 889 5450 E-mail: manager@welgevonden.co.za Address: Cnr Hendrikse Street and Welgevonden Boulevard, Stellenbosch, 7600, Western Cape	<u>Project Consultant:</u> Virdus Works (Pty) Ltd Reg. No. 2018/585747/07 Represented by: Mr Dupré Lombaard SACPLAN: B/8076/1998 // EAPASA: 2019/304 Cellular: +27 82 895 6362 E-mail: dupre.lombaard@virdus.com Address: 3rd Floor, Time Square, Elektron Street, Techno Park, Stellenbosch, 7600, South Africa

The application herewith is for amendment of the conditions of approval of the Welgevonden Estate development and for an amendment of the Welgevonden Home Owners' Association Constitution. The purpose of the amendment is to allow for the exclusion of certain properties from the Welgevonden Home Owners' Association in view of their location and/or unique situation.

The application is made in terms of Section 15(2)(h) of the Stellenbosch Municipality Land Use Planning Bylaw, 2015 for an amendment, deletion, or imposition of conditions in respect of the development approval granted in 1998 (and subsequently amended) for the development. Amongst others the conditions of approval included the establishment of a home owners' association for the entire development, which included the subject properties. The title conditions of the subject properties would also need to be amended in a subsequent process so as to exclude the relevant condition relating to membership of the HOA from the individual title deeds. The subject properties, to be excluded from the Welgevonden Home Owners' Association include single dwellings and sectional title units and number 275 in total. The properties are:

Erf	Description	Units
12060 – 12063	Februarie Street	4
13637 – 13652	Februarie Street	16
13758	La Belle Vie	102
14463	Stellenhurst	11
14471	Pearl's Place	20
14474	Chabliz	19
14475	Emerald Court	19
14476	Camelot II	14
14478	Camelot I	12
14479	Serena's Place	18
14480	Seize Mansions	16
14591	Shiraz	24

1. BACKGROUND

1.1 Introduction

The Welgevonden Home Owners' Association (WHOA) was created by the further development and subdivision of Green Oaks, which comprised the erven described on General Plans 3665/1994, 3667/1994, 3248/1992, 1336/1997, 4451/1998, 6489/1998 and 7349/1998, the Remainders of Erven 11224 and 13209 Stellenbosch, the Remainder of the Farm Patrysen Valley No. 85, and the Remainder of the Farm Patrys Valley No. 101, situate in the Division of Stellenbosch in December 2000, following a decision to approve of the development on appeal by the Western Cape Department of Housing, Local Government and Planning in 1998.

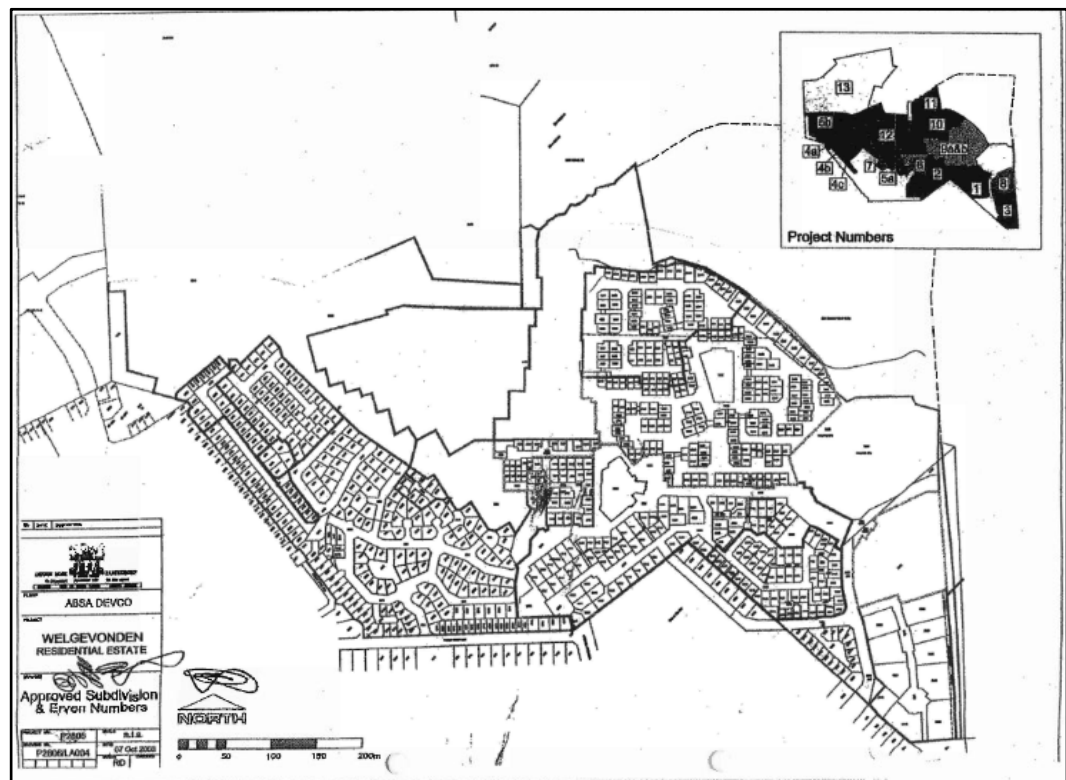


Figure 1: Welgevonden approved layout plan

Amongst others the conditions of approval as detailed in the Minutes of the Special Technical Services Committee Meeting of 10 November 1997 included Recommendation (j)(xvii) "*a home owners association which will be responsible for the maintenance of all communal property and private open spaces which will include all internal services, must be established in terms of Section 29 of Ordinance 15 of 1985*"; and (xviii) "*the constitution of the home owners association must be approved by the Chief: Planning and Development*". The conditions were first amended in December 2000 by decision of the same the Technical Committee 1(f)(xi) (to replace (j)(xvii) "*the homeowners association will be responsible for the maintenance of all communal property and the private open space which will exclude all internal services*").

The available information indicates that the latest approved version of the Welgevonden Home Owners' Association (WHOA) Constitution is Version 4, dated

27 November 2014. This Version includes the subject properties and determines that the owners of all properties in the development be members of the WHOA.



Figure 2: Welgevonden development showing subject properties

The title deeds of the subject properties all contain a condition relating to membership of the WHOA, which reads as follows or similar, but numbered differently in most title deeds: *"B. SUBJECT to the following condition as contained in Deed of Transfer No T92761/1998 and imposed by the Municipality of Stellenbosch in terms of Section 42 of Ordinance 15 of 1985 in favour of the Green Oaks Homeowners Association: "The within property may not be sold or transferred without the prior written consent of the Welgevonden Home Owners Association of which the within Transferee shall become a member, which consent shall not be unreasonably withheld"*.

1.2 Context

The minutes of the Annual General Meeting (AGM) of the Welgevonden Home Owners' Association (29 November 2021) provide the background to the application. At the meeting a motion *"To release erven under jurisdiction of the WHOA, but which are located outside the security fence of Welgevonden Estate, from membership of the WHOA"* was adopted.

The AGM decided to *"appoint consultants to lodge, after consultation with interested and affected parties, an application with the Stellenbosch Municipality and other relevant authorities for consent to exclude from the Welgevonden Home Owners' Association certain erven that still form part of the Association, but which*

are located outside the security enclosure of Welgevonden Estate, and to implement the decision(s) made by the relevant authority/authorities pursuant to such application(s)".

Squirrel Close, which is part of so-called Klein Welgevonden and the cluster of sectional title developments, albeit consisting of separate group housing erven, previously formed part of the HOA and was released in similar manner to what is intended with this application.

Because the subject properties are located outside of the Welgevonden Estate security boundary, they for all practical purposes do not form part of the Estate. Yet, they are bound by the rules of the WHOA Constitution. Six of these erven located in Februarie Street (shown in orange in the Annexure and in Figures 2 and 3, have direct access to the Estate via doors / gates in the boundary wall of the Estate. Four of these were the original Green Oaks show houses and planned as an integrating element between the Estate (township area) and Cloeteville. The six properties were given access to the Estate following legal action by one of the owners, when a security fence was erected along the northern boundary of the properties, thus excluding them from the Estate (township) security area. The argument raised successfully at the time was that the security fence, if required, should rather run along the southern (February Street) boundary of the properties than along the rear fences, as the properties were part of the Estate (township area) by design and development.



Figure 3: Februarie Street subject property context

The other February Street properties however back onto houses in the Estate and have no direct access to the Estate.



subject to the municipal zoning scheme, whereas same does not apply to the "external properties" located outside of the security fence.

- The advantages of forming part of the "security managed area" and thus payment of full levies include the security services rendered to the residents, whereas the properties outside are not offered the same security services. Such external security service, e.g., patrolling of Klein Welgevonden and February Street is a cost and administrative encumbrance to the WHOA and therefore not undertaken except for occasional patrols in February Street.
- Due to the title conditions of the properties indicating their membership of the WHOA, the owners argue that they have an advantage in the assessment of the value of the properties, as properties in or part of the Estate are valued higher than those in Cloeteville and immediate surroundings. They argue that exclusion from the WHOA would cause their properties to be valued lower and that they would be thus prejudiced by exclusion.

The subject properties, to be excluded from the Welgevonden Home Owners' Association include single dwellings and sectional title units and number 275 in total. The properties are:

Erf	Description	Units
12060 – 12063	Februarie Street single dwellings	4
13637 – 13652	Februarie Street single dwellings	16
13758	La Belle Vie sectional title scheme	102
14463	Stellenhurst sectional title scheme	11
14471	Pearl's Place sectional title scheme	20
14474	Chabliz sectional title scheme	19
14475	Emerald Court sectional title scheme	19
14476	Camelot II sectional title scheme	14
14478	Camelot I sectional title scheme	12
14479	Serena's Place sectional title scheme	18
14480	Seize Mansions sectional title scheme	16
14591	Shiraz sectional title scheme	24

2. LAND DEVELOPMENT APPLICATION

The application in terms of the Stellenbosch Municipality Land Use Planning Bylaw, 2015, is for an amendment, deletion, or imposition of conditions in respect of the development approval granted in 1998 (and subsequently amended) to allow for properties outside of the security enclosed Estate boundary to be excluded from the HOA in terms of Section 15(2)(h).

The amendment of the title conditions of the subject properties so as to exclude the condition making WHOA membership obligatory from the title deeds will be addressed in a separate and subsequent process if approval for the amendments sought herewith are granted.

In terms of Section 29(6) of the Bylaw, an owners' association may amend its constitution, when necessary, but if an amendment affects the Municipality or a provision referred to in

subsection 29(3), the amendment must also be approved by the Municipality. In this instance there is no obvious effect on the Municipality and an application for the approval of a new Constitution is not made. It is only clause 1.10 under the Definitions in the Constitution that requires amendment.

The definition to be amended is as follows, showing a deletion [in brackets] and insertion underlined:

1.10 "the Township Area" means the Township Area currently known in its entirety as Welgevonden (previously known as Green Oaks) as ~~[shown on Annexure A to the Architectural Directives and Design Guidelines]~~ located within the area of controlled access subject to any existing or future legally binding agreements that might affect the extent of the Township area.

The application is required to allow for the changes as described herein. When first approving of the development, the authorities imposed the condition of membership of all the properties created on approval of the development to ensure a harmonious development subject to architectural guidelines and rules and management of the private open spaces, private streets, and communal facilities by the WHOA. As some of the properties are to be excluded, the conditions need to reflect which properties need no longer form part of the WHOA.

The conditions to be amended are:

- 2.1 The conditions of approval as detailed in the Minutes of the Special Technical Services Committee Meeting of 10 November 1997 - Recommendation
 - 2.1.1 (j)(xvii) *"a home owners association which will be responsible for the maintenance of all communal property and private open spaces which will include all internal services, must be established in terms of Section 29 of Ordinance 15 of 1985"*; and
 - 2.1.2 (j)(xviii) *"the constitution of the home owners association must be approved by the Chief: Planning and Development"*.
- 2.2 The amended conditions in the approval letter dated 14 December 2000 by decision of the same the Technical Committee 1(f)(xi) (to replace (j)(xvii) *"the homeowners association will be responsible for the maintenance of all communal property and the private open space which will exclude all internal services"*).

3. REASONING

The Welgevonden development (township area) contains 973 single title erven, of which 20 in Februarie Street, 10 sectional title apartment blocks as well as a commercial property in Klein Welgevonden and Squirrel Close, which was previously excluded from the WHOA. The WHOA consists effectively of four parts, namely:

- The security enclosed Welgevonden Estate with 953 separate title erven, private open space, and public roads;
- Six separate title erven in Februarie Street with access to the security enclosed Estate via gates / doors in the common boundary (Erven 12060 – 12063, 13651, 13652);
- 14 separate title erven in Februarie Street which do not have any access to the security enclosed Estate (Erven 13637 – 13650); and

- 10 sectional title schemes each with an own home owners' association and body corporate outside of the security enclosed Estate (Erven 13758, 14478, 14475, 14474, 14476, 1414471, 14463, 14479, 14480, and 14591).

The WHOA Constitution determines amongst others that membership of association (Clause 5.1) is obligatory "*Upon registration of ownership of an erf in the Township Area, the owner of such erf automatically becomes a member of the Association and will be obliged to comply with the provisions of this Constitution and any conduct rules made, and any control measures issued or implemented, hereunder*". The "Township Area" was initially defined as: "*the Township Area currently known in its entirety as Welgevonden (previously known as Green Oaks) as shown on Annexure A to the Architectural Directives and Design Guidelines and which comprises the erven described on General Plans Nos. 3665/1994, 3667/1994, 3248/1992, 1336/1997, 4451/1998, 6489/1998 and 7349/1998, the Remainders of Erven 11224 and 13209 Stellenbosch, the Remainder of the Farm Patrysen Valley No 85 and the Remainder of the Farm Patrysen Valley No 101, situate in the Division of Stellenbosch*". This definition has since been simplified as will be reflected below.

Membership of the Association is linked to "*registered ownership in the Deeds Registry in Cape Town of one or more erven in the Township Area*" and "*no person is entitled to cease to be a member while remaining the registered owner of an erf in the Township Area*" according to the WHOA Constitution. These two clauses in the WHOA Constitution are indicative of the process required to allow certain properties to be excluded from the WHOA. On the one hand a redefinition of the "Township Area" that requires an amendment of the conditions of approval of the development, and on the other an amendment of the Constitution and resulting changes to the title conditions of those properties of which owners no longer need to be members of the WHOA.

3.1 Special dispensation for certain properties

Clause 44 - Status of Erf Fully or Partly Exempt from Levies, makes provision for a special dispensation for some of the erven which form part of the "Township Area". The owners of the subject properties are completely or partially exempted from the payment of levies and special levies to the WHOA in terms of Clause 43 of the Constitution. Exemption from paying levies however does not in any way derogate from the status of such erf as being part of the Township Area, and subject to the Constitution, inclusive of the conduct rules and architectural rules.

Amongst others the owners of the properties need to submit building plans to the executive committee (Excom) of the WHOA for examination and approval prior to the submission of such plans to the Stellenbosch Municipality for approval. All buildings and structures on the properties need to comply with the architectural rules, which include rules relating to the alteration or renovation affecting the exterior aesthetic appearance of, an existing dwelling, or for the erection of a pergola, fence, boundary wall, retaining wall, or the laying of paving.

This clearly creates encumbrances on the owners and the WHOA Excom, especially for those properties located outside of the security enclosure, as evidenced by the properties in Februarie Street. The WHOA management must execute inspections and oversight of the maintenance and use of the Estate (township area) properties, which is difficult for those properties outside of the Estate security area. Moreover,

due to limited access control to these properties, the owners do not necessarily comply with the provisions and rules relating to the use and maintenance of the properties.

In the "Estate Rules", the following is stated: *"The primary objects of the Welgevonden Home Owners' Association [the WHOA] are, firstly, the promotion and enforcing of standards for community-living so that residents may derive the maximum collective benefit therefrom, and, secondly, the maintenance of basic aesthetic standards to enhance property values in the Estate. It aims to provide residents with a superior quality lifestyle, offering safe and harmonious community-living. To achieve its objects, the WHOA has made certain conduct rules that are binding on all WHOA members and other persons who reside in, or who enter, the Estate".*

Under Clause 6 - Security Measures, it then determines that: *"A resident and any other person who enters the Estate must comply strictly with the systems and procedures relating to access control and other security measures from time to time issued or implemented by Excom, and must comply with the instructions of Estate Security and of the Managing Agent".*

Compliance with such security measures cannot apply to the properties outside of the security enclosure and creates a conundrum for the owners and WHOA alike.

Another clause that creates difficulties is Clause 14 - Maintenance of Properties and Streetscape that contains very specific requirements for the management of the gardens of the properties and the upkeep thereof. While this clause can be effectively managed inside of the security enclosure, it is an undesirable encumbrance on properties outside, which have their own unique setting and character and where the management of the HOA cannot easily manage changes and alterations being made.

Thus, rather than to make special rules and implement special management conditions for the subject properties, it seems better to exclude these properties from the WHOA and to allow them to function under their own HOA rules in the case of the sectional title schemes and as normal single dwelling erven in a residential neighbourhood in the case of the Februarie Street properties. The primary negative effect of such exclusion is the effective closure of direct access to the security enclosed Estate for the six erven in Februarie Street with access gates / doors in the back fences.

An assessment of the municipal valuation roll indicates that the argument relating to the values of the properties forming part of the WHOA ("Township Area") might not hold water. The dwellings in February Street are of differing age, with the properties on the southern side generally older and less modern and the houses on the northern side (the "Township Area" properties) being more modern. Valuations on the northern side of the street are generally in the range of R1,13 – R1,45 million, while properties on the southern side of the street, all pre-dating the "Township Area" dwellings by more than 15 years, are in the range of R0,84 – R1,14 million, which difference is ascribed rather to the age and finishes than to the membership of the WHOA. Properties inside of the security fence in the abutting

"Township Area" range from R1,61 – R3,76 million, thus indicating that the real difference in value is more likely whether or not a property is located inside or outside of the security fence and the age of the dwelling, and not membership of the WHOA.

3.2 Conditions of approval

Amendment of the conditions of approval of the Welgevonden development will have no effect on the development, which is completed and nearly fully developed. The only effect of the required amendment would be to allow the subject properties to function outside of the WHOA and not be subject to the Constitution and its component parts. The amendment will have no effect on any neighbouring properties, owners, or residents.

3.3 Title conditions

The Welgevonden HOA AGM decided to commence a process for the release of the subject properties from the HOA in November 2021 as indicated above. The application as submitted herewith is in execution of the decision and provides the details of the amendments required to achieve the goal of allowing certain properties to operate without the perceived benefits and encumbrances of membership of the WHOA from which most derive insignificant, if any, benefit and to which they make no or insignificant contribution. The effect of the change, if approved, will be felt mostly by those owners of properties with direct access to the security area through the gates / doors in the common boundary.

In view of the statutory requirements for making applications, application is not made for the amendment of the title conditions applicable to each property to be excluded in terms of this application.

Allowing for the removal of the title conditions obliging owners of the subject properties to be members of the WHOA will have no effect on any neighbouring properties, owners, or residents, or the remaining members of the WHOA inside of the security enclosed "Township Area". Those members of the WHOA inside of the security fence who make full levy contributions to the WHOA in any event derive no benefit from the membership of the subject properties outside through financial contribution to the costs of the Estate.

In view thereof, the HOA will decide on a way forward with the removal of the relevant title conditions after receipt of a decision on the amendment. If the amendments are approved in whole or in part, then the current indications are that the HOA will approach the court for a decision on the removal of the conditions, rather than to encumber each owner to have to make or grant authorisation for an application.

3.4 Prior consultation

A previous process for the exclusion of the subject properties was halted due to a lack of consultation with the affected property owners. The WHOA Excom thus entered into a process of consultation with all the affected owners, first by sending

out notices to alert the owners and body corporates to the process and subsequent thereto by providing a copy of the application to each for consideration, as evidenced in Annexure G - I. Those who indicated an interest in the application, namely some of the six Februarie Street owners with access to the security area, attended a public meeting to discuss the matter, the record of which is included in the Annexure.

Some of the Februarie Street owners are willing to be excluded from membership of the WHOA, while others are strongly opposed, primarily due to the history of "exclusion" by the fencing of the security area along the rear of their properties and their resultant loss of the benefits derived from the WHOA membership as indicated above.

The body corporates of the sectional title schemes in Klein Welgevonden did not offer any comment or objection to the proposed changes.

4. CONCLUSION

The proposed changes will have an effect on some of the owners of properties in Februarie Street. Those with direct access to the security area of the Estate will be most affected, even though some of the owners are not opposed to the exclusion of membership, especially if it causes them not to have any financial obligations to the WHOA. Others will lose the enjoyment of direct access and alternatives to management of direct access should be considered if it is a real concern. The arguments relating to the property values do not seem to be valid, based on the records as in the municipal valuation roll.

In view of the above motivation and the fact that the required amendments to the development conditions and Constitution and removal of the relevant title conditions will have no visible or other effect on the development or the surrounding community, the application in terms of the Stellenbosch Municipality Land Use Planning Bylaw, 2015, for an amendment of the development approval granted in 1998 (and subsequently amended) to allow for properties outside of the security enclosed Estate boundary to be excluded from membership the HOA in terms of Section 15(2)(h) can be approved. The properties to be so excluded are:

Erf	Description	Units
12060 – 12063	Februarie Street	4
13637 – 13652	Februarie Street	16
13758	La Belle Vie	102
14463	Stellenhurst	11
14471	Pearl's Place	20
14474	Chabliz	19
14475	Emerald Court	19
14476	Camelot II	14
14478	Camelot I	12
14479	Serena's Place	18
14480	Seize Mansions	16
14591	Shiraz	24

Approval of the above will further allow for the amendment of the WHOA Constitution in terms of Section 29(6) of the Bylaw by the amendment only of the definition of the "township area" to read as follows:

1.10 "the Township Area" means the Township Area currently known in its entirety as Welgevonden (previously known as Green Oaks) as located within the area of controlled access subject to any existing or future legally binding agreements that might affect the extent of the Township area.

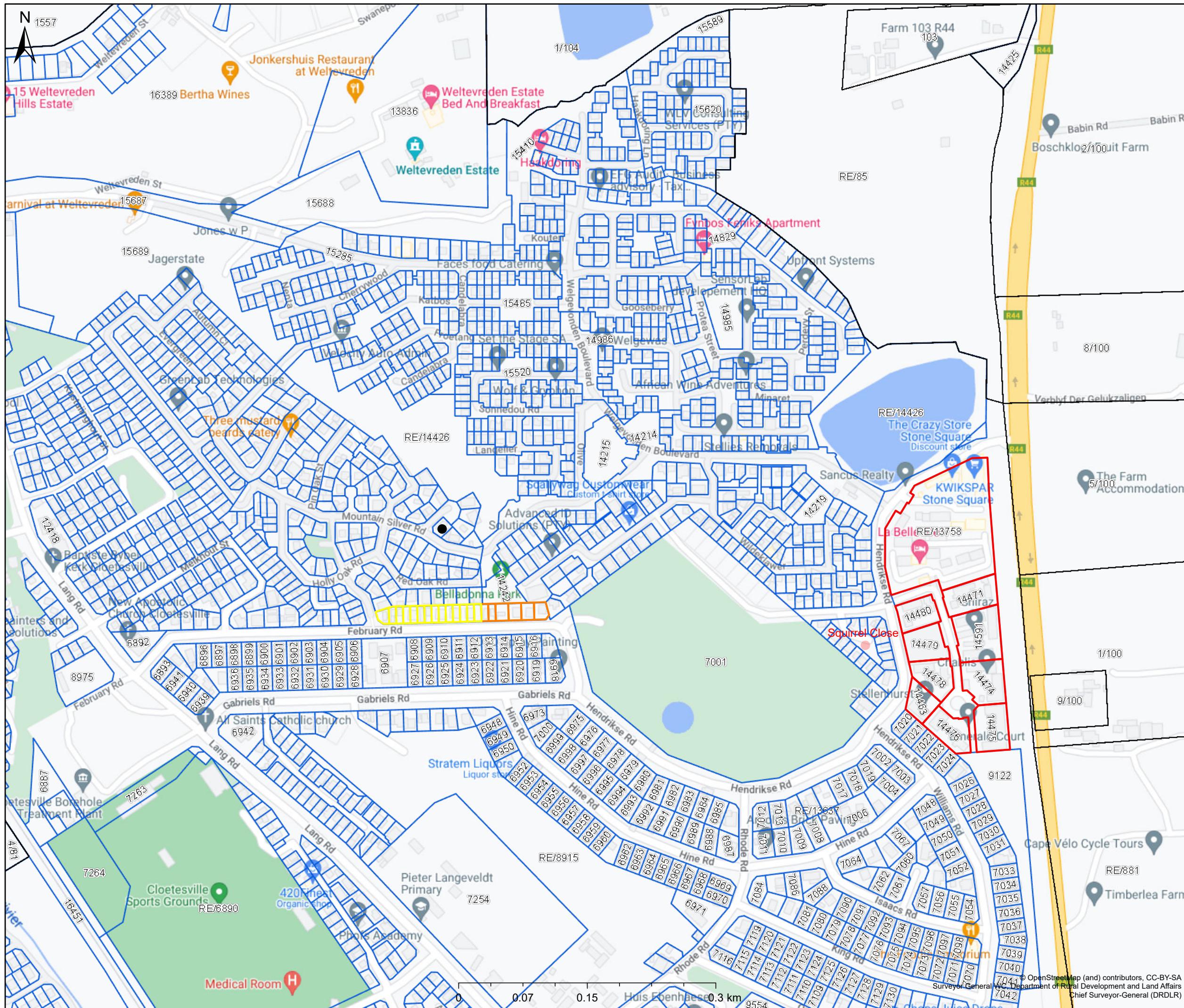
ANNEXURE A: SUBJECT PROPERTY LOCALITY

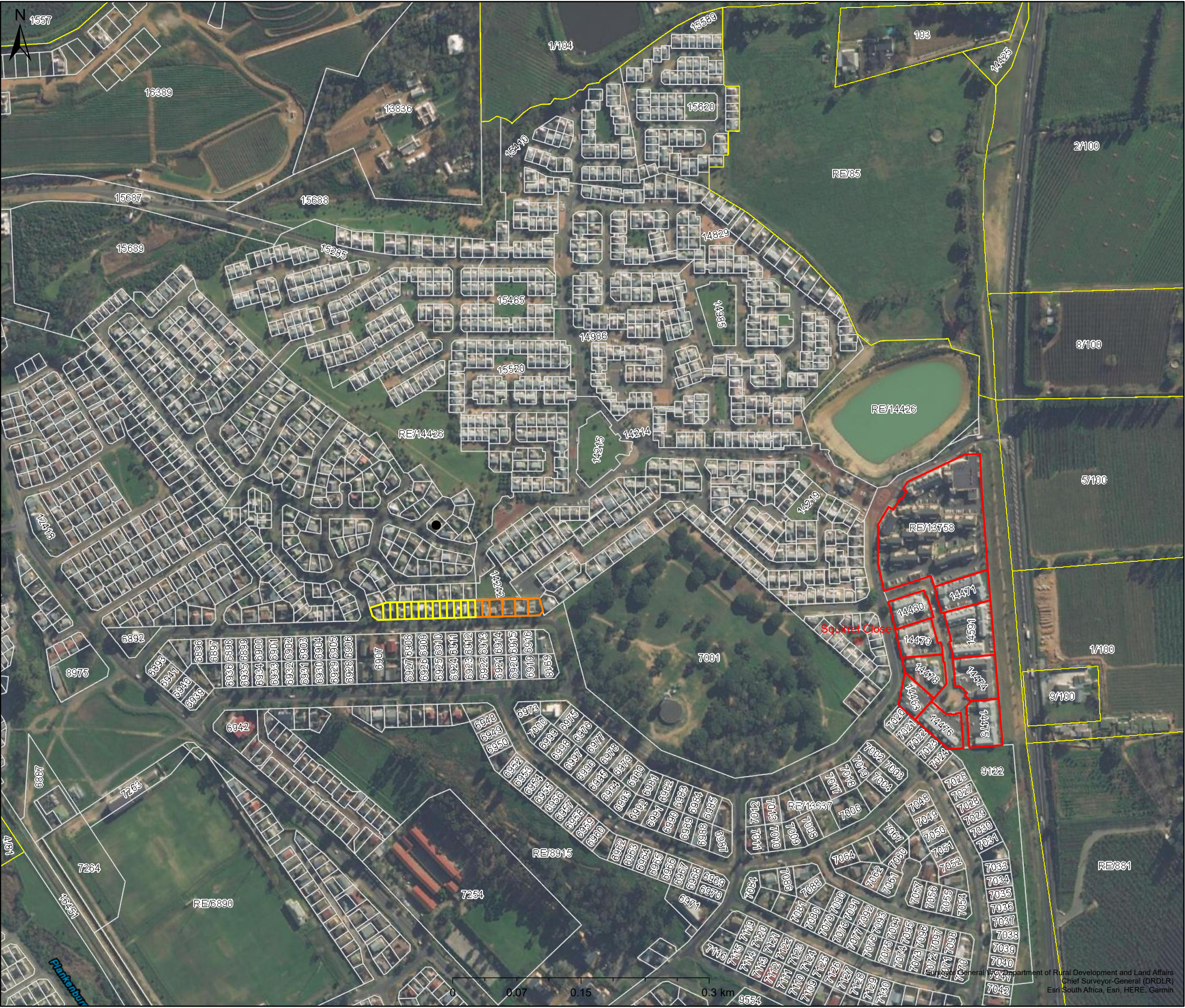
Welgevonden HOA change: exclusion erven

Legend

- Farm Portions
- Erf

Map Center: Lon: 18°51'13"E
Lat: 33°54'8.6"S
Scale: 1:5 000
Date created: November 5, 2022





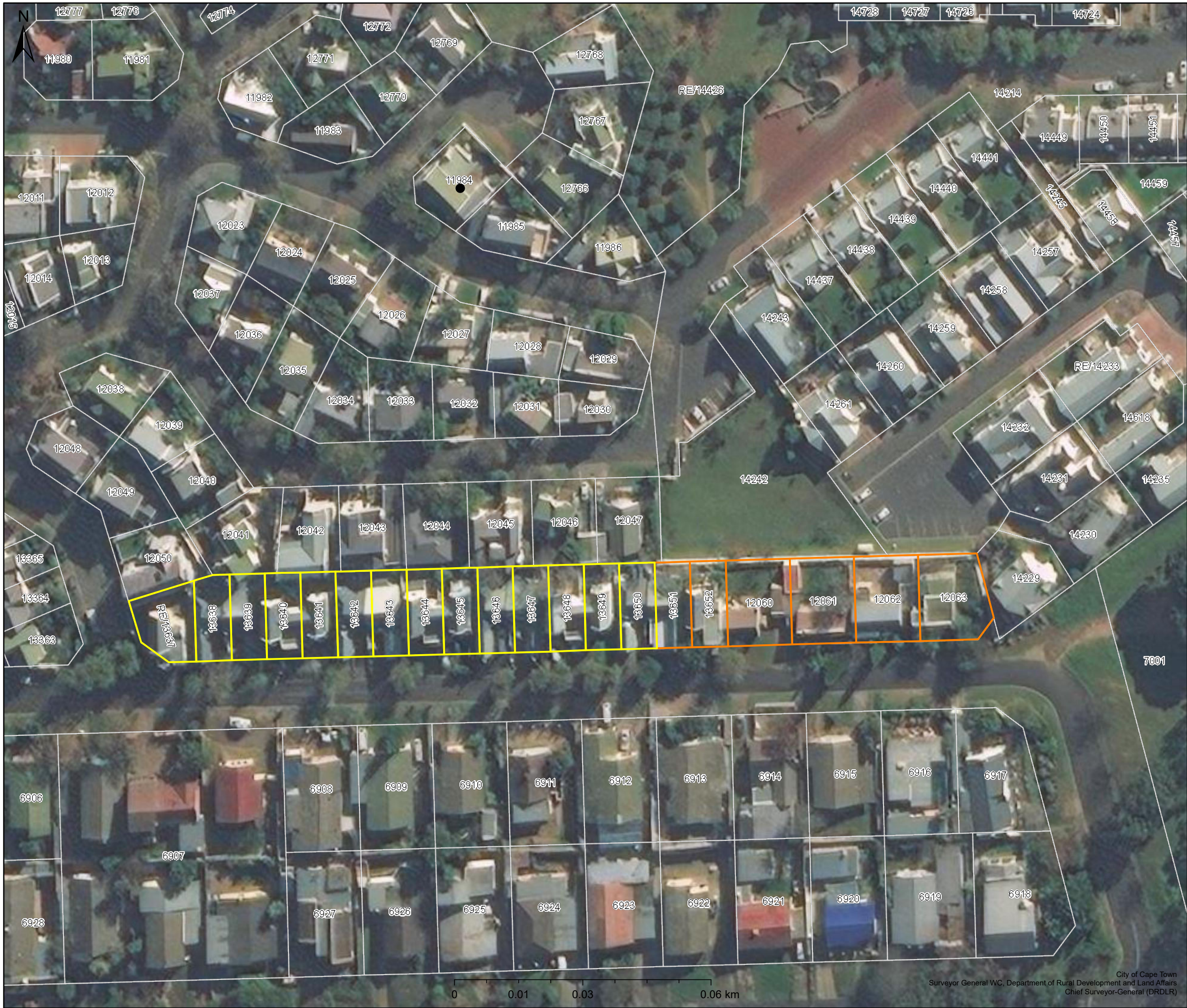
Welgevonden HOA
change: exclusion erven

- Legend
- Farm Portions
 - Erf

Map Center: Lon: 18°51'13"E
Lat: 33°54'8.6"S

Scale: 1:5 000

Date created: November 5, 2022



**Welgevonden HOA
change: February Street
erven**

Legend

□ Erf

Map Center: Lon: 18°51'7.1"E
Lat: 33°54'11.8"S

Scale: 1:1 000
Date created: November 5, 2022



**Western Cape
Government**
FOR YOU Agriculture

City of Cape Town
Surveyor General WC, Department of Rural Development and Land Affairs
Chief Surveyor-General (DRDLR)

Welgevonden HOA change: Sectional Title erven



Legend

-  Farm Portions
-  Erf

0 0.03 0.06 0.11 km

Map Center: Lon: 18°51'24.4"E
Lat: 33°54'12.5"S

Scale: 1:2 000

Date created: November 5, 2022



Western Cape
Government
FOR YOU

Agriculture