

**APPROVED MINUTES TEMPLATE FOR THE MEETING OF
HERITAGE WESTERN CAPE,
APPEALS COMMITTEE**
**Held on Wednesday, 11 January 2023 via Microsoft Teams,
scheduled for 08:30**



Opening and Welcome

Ms. Penelope Meyer presided over the election of a chairperson in terms of the rule 12(5) of the Rules of Order and Conduct at Meetings of HWC. The Committee elected Mr. Gregory Ontong as chair of the meeting. The Chairperson, Mr. Gregory Ontong officially opened the meeting at 08:30 and welcomed everyone present.

Attendance

Committee Members:

Dr Antonia Malan (AM)
Dr Andre van Graan (AvG)
Dr Nicolas Baumann (NB)
Ms Cornelia Smart (CSm)
Mr Gregory Ontong (GO)

Members of Staff:

Ms Aneeqah Brown (AB)
Ms Penelope Meyer (PM)
Ms Colette Scheermeyer (CS)
Ms Waseefa Dhansay (WD)
Ms Ayanda Mdludlu (AM)
Ms Corne Nortje (CN)
Ms Sneha Jhupsee (SJ)
Ms Stephanie-Ann Barnardt (SB)
Mr Thando Zingange (TZ)
Mr Robin George (RG)

Visitors:

Item 10.1:
Mr Jason de Villiers
Ms Ursula Rigby

Item 10:2
Mr Peter Buttgens

Apologies

None

3. Absent

None

4. Approval of Agenda

4.1 Dated 11 January 2023

The Agenda dated 11 January 2023 was approved.

5. Approval of Minutes of Previous Meeting

Approved Appeals Minutes 11 January 2023

5.1 Appeals Minutes dated 12 October 2022

The Committee unanimously resolved to approve the minutes dated 12 October 2022.

5.2 Appeals Minutes dated 5 December 2022

The Committee unanimously resolved to approve the minutes dated 5 December 2022.

6. Disclosure and Conflicts of Interest

None

7 Confidential Matters

None

8 Administrative Matters

8.1 Outcome of MEC Tribunal Appeals and Recent Court Decisions

8.2 Report back from HWC Council

8.3 Site Visits Conducted

8.3.1 Erf 3035, 51 Bryant Street, Bo-Kaap (Item 9.2).

8.4 Potential Site Visits

8.5 Discussion of the Agenda

9 Matters Arising

**9.1 Proposed Additions & Alterations and Partial Demolition on Erf 3035, 51 Bryant Street, Bo-Kaap
HM/CAPE TOWN METROPOLITAN/ BO-KAAP/ERF 3035
Case No: 22091502RG0915E**

Appeal against the BELCom decision.

The parties to the matter did not join via the Teams platform. It was unclear as to whether all parties had been informed that the item was on the agenda for the meeting.

DISCUSSION

- The Committee agreed to hold the matter over to the next meeting.

HELD OVER

The matter was held over to the meeting of 8 February 2023.

RG

10. New Matters

**10.1 ALTERATIONS TO THE ATLANTIS ON RE OF ERF 194, 331A AND 331B BEACH ROAD, BANTRY BAY
HM/CAPE TOWN METROPOLITAN / BANTRY BAY / RE OF ERF 194
Case No: 22090501CN1005E**

Appeal against the BELCom decision.

For the Appellant:
Mr Martin Bey was not available.

For the Respondent:
Mr Jason de Villiers (attorney)

Observing:
Ms Ursula Rigby (heritage consultant)

DISCUSSION OF POINT IN LIMINE

First point in limine

- The first point in limine was raised by CSm as to whether there was in fact a decision that was capable of appeal in the light of the fact that the BELCom had merely recommended that the parties enter into a mitigation agreement with HWC.

Second point in limine

- The second point in limine was raised by the respondent who stated that the appeal was out of time.

DISCUSSION

Amongst other things, the following was discussed by the Committee:

- It was agreed that if the first point in the limine was indeed of application, then there was no appeal and therefore there would be no need to discuss the second point in limine.
- WD stated that although the ROD issued by BELCom indicated that the outcome was a decision, this was considered to be an error.
- PM indicated that the initial application made clear that there had been illegal work. HWC cannot approve work already done as there is no provision made in the NHRA for the condonation of illegal work. It is clear from the NHRA that permits must be obtained prior to the initiation of any alterations or additions to a heritage resource protected either formally or generally.
- Furthermore, the BELCom had clearly indicated that they could not approve the illegal work. They had made a recommendation to the CEO that a heritage mitigation agreement be entered into with the parties in order to restore significance to the heritage resource. Such agreement is not a Heritage Agreement in terms of S42 of the NHRA.
- The regulations contained in PN 336 dated 25 October 2002 provide that an appeal may be brought in respect of a decision to “grant or refuse a permit, authority or consent...” (Regulation 12(1)).
- The Committee considered that the recommendation of BELCom did not comply with this definition.
- It was also not an administrative action in terms of PAJA.

- There was accordingly no need to consider whether the “appeal” was lodged timeously.

DECISION

The Committee resolved that there was no appeal before it as there was no decision taken by the BELCom which was capable of appeal in terms of the NHRA.

CN

10.2 Proposed Alterations and Additions on Erf 2334, 20 Church Street, Prince Albert HM / CENTRAL KAROO / PRINCE ALBERT / ERF 2334 Case No: HWC22102603SJ1026

Ms. Sneha Jhupsee introduced the item.

Appeal against HOMs decision.

Mr. Peter Büttgens was present and presented the following:

- The initial appeal was against three issues raised by the appellant (the Prince Albert Cultural Foundation).
- The respondent had had discussions with the PACF and they had withdrawn their appeal in respect of the boundary wall and scullery addition.
- The appellant agreed to remove the barn dormer window.

DISCUSSION

Amongst other things, the following was discussed by the Committee:

- The Committee agreed to approve the amended plans indicating the removed dormer window, and that these could be stamped by the case officer.

DECISION

The appeal was partially upheld in respect of the barn dormer window.

The Committee resolved to approve the amended proposals presented by the respondent which were endorsed by the appellant. The amended drawings numbered LAD001 Rev N; LAD002 Rev N; LAD003 Rev N; LAD004 Rev K; LAD005 Rev B; LAD006 Rev B to be stamped by the case officer.

SJ

10.3 Proposed redevelopment of Erven 3080 and 3081, 220-222 Upper Buitengracht Street, Bo-Kaap HM/CAPE TOWN METROPOLITAN/ BO-KAAP/ERVEN 3080 AND 3081 Case No: 22091208TZ0915E

HELD OVER

The matter was held over by agreement of the parties to 8 February 2023.

TZ

11. Other Matters

11.1 Last meeting of Dr Antonia Malan

The Committee expressed its appreciation and gratitude for Dr Malan’s contribution to the Appeals Committee and to the management of heritage in general over the years and wished her well in the future.

12. Proposed next date of the meeting: 8 February 2023

13. Adoption of decisions and resolutions

The Committee unanimously resolved to adopt the decisions and resolutions dated 11 January 2023.

14. Closure: The meeting was adjourned at 11:55

MINUTES APPROVED AND SIGNED BY:

CHAIRPERSON

DATE

SECRETARY _____



_____ **DATE_8 February 2023** _____