

**APPROVED MINUTES OF THE MEETING OF  
HERITAGE WESTERN CAPE,  
APPEALS COMMITTEE**  
**Held on Wednesday, 14 July 2021 via Microsoft Teams, scheduled  
for 08:30**



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**Opening and Welcome**

The Chairperson, Ms Katherine Dumbrell officially opened the meeting at 08:30 and welcomed everyone present.

**Attendance**

**Committee Members:**

Ms Katherine Dumbrell (KD)  
Dr Andre van Graan (AvG.)  
Dr Antonia Malan (AM)  
Dr Nicolas Baumann (NB)  
Mr Stuart Hermansen (SH)

**Members of Staff:**

Ms Nosiphiwo Tafeni (NT)  
Ms Aneeqah Brown (AB)  
Ms Cathy-Ann Potgieter (CAP)  
Ms Zikhona Sigonya (ZS)  
Ms Penelope Meyer (PM)

**Visitors:**

**Item 9.1**

Mr Nicholas Smith (for the Applicant)  
Mr Anton Slabbert (for the Appellant)  
Mr Johan Cornelius (Heritage Consultant)

**Item 10.1**

Mr John Henry Alexander (Appellant)

**Item 10.2**

Dr Jayson Orton  
Ms Megan Taplin  
Ms Maretha Malan

**Item 10.3**

Ms Lizemarie Botha  
Ms Ntombekhaya Nkoane

**Item 10.4**

Dr Rolf Annas  
Mr Clive Theunissen  
Mr David Delaney  
Ms Linda Minki  
Mr Zwelibanzi Shiceka

**Item 10.5**

Ms Karla Burger  
Mr Kholole David Maripane  
Mr Paul Naylor

**2. Apologies**

None

**3. Absent**

Approved Appeals Minutes 14 July 2021

None

#### **4. Approval of Agenda**

##### **4.1 Dated 14<sup>th</sup> July 2021**

The Committee resolved to approve the Appeals Agenda dated 14<sup>th</sup> July 2021.

#### **5. Approval of Minutes of Previous Meeting**

##### **5.1 Appeals Minutes dated 15<sup>th</sup> June 2021**

The Committee resolved to approve the minutes dated 15<sup>th</sup> June 2021 with minor changes.

#### **6. Disclosure and Conflicts of Interest**

None

#### **7. Confidential Matters**

None

#### **8. Administrative Matters**

##### **8.1 Outcome of the Tribunals and recent Court Decisions**

CAP reported back on the following Tribunal outcomes:

###### **Sir Lowry Road: Tribunal dismissed the Appeal**

Within the ruling, the clarity requested by the Appellants with regards to a ROD being linked to an assessed scheme was provided.

###### **Kotze Street: Tribunal dismissed the Appeal**

The Committee noted the issue regarding Tribunal referring directives to HWC for execution. WD to follow up with HWC legal.

##### **8.2 Report back from HWC Council**

None. The Committee notes the next Council Meeting on 22<sup>nd</sup> July 2021, is convened to conclude the business of the previous Council Meeting, since it was not quorate at the end of the meeting.

##### **8.3 Site Visits Conducted**

Erf 1444, 24 Davenport Road, Vredehoek

##### **8.4 Potential Site Visits**

None

##### **8.5 Discussion of the Agenda**

PM provided clarity regarding Item 10.1. The Appellant was not invited to be present at the HOMs meeting where his application was considered. The application was refused, and he was not informed of this decision as the case officer had left HWC. In a meeting with HWC management, it was acknowledged that he may appeal the decision considering that procedural fairness had not been complied with.

#### **9 Matters Arising**

##### **9.1 Proposed Alterations and Additions, Erf 1444, 24 Davenport Road, Vredehoek, CT34-A&A HM/CAPE TOWN METROPOLITAN/VREDEHOEK/ERF 1444**

**Case No:** 21020115KB0202E

Approved Appeals Minutes 14 July 2021

Ms. Cathy-Ann Potgieter introduced the case.

The site inspection report was read into the record by Dr Andre van Graan.

Mr Nicolas Smith (for the Applicant), Mr Johan Cornelius (Heritage Consultant) and Mr Anton Slabbert (for the Appellant) were present and took part in the discussion.

**APPELLANT** presented, amongst others, the following arguments:

- The Appeal is against BELCom's decision to approve the application.
- The submission of a new proposal for alterations to the existing building rather than total demolition is an attempt to circumvent the Gees judgement. The application for alterations is effectively one for demolition as the existing structure will be encased within a larger building that is not sympathetic to the heritage character of the area.
- The initial application was refused, and this decision was appealed. The appeal was dismissed. The appeal was then presented to the Minister and was, to a large extent, refused.
- The conditions imposed by the MEC were intended to restrict the extent to which the development could be expanded.
- The application was therefore denied on four occasions due to the potential impact on heritage resources. The substance of this application has been considered on four occasions which renders HWC *functus officio*. These refusals are based on strong heritage grounds (and the heritage value of the building) and each stage has indicated an intention on the part of the Applicant to submit the same application in different forms.
- The heritage report prepared by Mr Cornelius shows a consistent building height in this area.
- The overall height of the proposed building is not referred to by the Heritage Consultant. The proposed height is not sensitive to the consistent heights of the surrounding buildings as it will be much higher than is suggested by Mr Cornelius' heritage report.
- The proposal only pays lip service to the conditions imposed by the MEC. In effect, it proposes an entirely new building.
- This building, from a heritage point of view, is completely contrary to the protection of heritage resources. The decision of BELCom is therefore incorrect considering the history of this matter. The application is not in accordance with the heritage character of the area.
- The proposed HPOZ must have bearing on the consideration of this Appeal.

**APPLICANTS** presented, amongst others, the following arguments:

**Mr Nicholas Smith:**

- The history of the matter and the refusals of the demolitions are not relevant to this application.
- The fundamental dichotomy between demolition and alterations must be noted.
- The proposal is that the building will remain intact, therefore this is not a demolition application.
- The Appellants in the previous proposal process are not party to this Appeal, which indicates that the new proposal has addressed their previous concerns. This indicates an agreement that the new proposal suitably ameliorates the previous concern regarding the proposed height of the new building.
- BELCom discussed the contextual surrounds and existing precedent. Therefore, the argument by the Appellant that this was not considered by BELCom is incorrect.
- The new proposal acknowledges and respects the Art Deco character of the area by providing for a substantial set-back of the upper storeys.

- The current architectural design responds to the heritage character of the area.
- The application does not circumvent the Gees judgement as it is materially different to the matters that appeared before the SCA.
- Because the application and approach is materially different, this is a *de novo* application and HWC is not *functus officio*. The previous refusals are therefore not relevant.
- The condition imposed by BELCom regarding enclosure of balconies is vague and must be reconsidered. A rational condition must be imposed for it to conform to the Gees Judgment.

**Mr Johan Cornelius:**

- The previous decisions are not relevant to this matter.
- The setbacks are well-considered and sensitive to the area. The historic building is clearly visible and is therefore conserved.
- The views back, and downwards towards the site from higher up the road, are significant and, from those vantage points, the appropriateness in scale and height of the proposal is evident.

**DISCUSSION**

Amongst other things, the following was discussed:

- The site inspection Report was presented to the Committee by AvG (attached).
- The Committee noted the number of I&APs who confirmed attendance but who did not attend. However, both parties were represented and therefore the matter could proceed.

**Procedural issues:**

- PM noted that HWC is not *functus officio* since this is a new application. The application can therefore be considered *de novo*.
- The Tribunal conditions were argued to be "irrational". The SCA judgment did not interrogate the rationality of the conditions, but rather whether the Tribunal could impose conditions in the first place.
- As such, the Committee agreed that the application before BELCom was a new application for additions and alterations.

**Substantive issues:**

- It was noted that the level of setback enables the streetscape to still be read the way that it currently does.
- The Committee believed that the symmetrical form of the existing building is not contradicted by the new proposal.
- The Committee agreed that the building is substantially lower than the previous application. Given the setback that further mitigates the height, the Committee believed that BELCom was correct in its decision to approve the application.
- The vague condition regarding the enclosing of the balconies must be corrected. The retention of the through-view between buildings is important and a primary reason for conditions relating to the balconies.

**DECISION**

The Committee resolved to dismiss the Appeal. The decision of BELCom is upheld, with the addition of the following condition:

In the event that owners wish to enclose the balconies, such proposals must be returned to HWC (BELCom) for approval. This is to ensure the retention of the lateral side views through and between the buildings, which is a characteristic of the Art Deco buildings of the area.

**10. New Matters**

**10.1 Proposed Alterations and Additions, Erf 55, 85 Church Street, Elim, CTS27  
HM/OVERBERG/CAPE AGULHAS/ELIM/ERF 55  
Case No: 191024LB1126E**

Appeal against the HOMS decision and lodged after a meeting held between the Appellant and HWC Management on 04-05-21.

The appeal pack was tabled.

Ms Cathy-Ann Potgieter introduced the case.

Mr John Alexander (Appellant) was present and took part in the discussion.

**APPELLANT** presented, amongst others, the following arguments:

- He was not invited to the HOMS meeting timeously, nor was he informed of the HOMS decision to issue a Stop Works order. He did not receive such an order.
- Elim Opsienserraad did not support the proposal. The HOMS minutes did not record the comments of I&APs.
- A proper site inspection was not conducted. The Appellant considers a site inspection important, given the heritage significance of Elim.
- The neighbouring houses have corrugated iron roofs and therefore it is not rational that this application for such a roof was rejected.

**DISCUSSION**

Amongst other things, the following was discussed:

- The Committee resolved to condone the late filing of the Appeal.
- The Committee noted that the other parties were invited but they were not in attendance.
- HOMS conducted a site inspection and noted that, while the site is not part of the historic core of the area, it was significant within the heritage context as an extension of Church Street.
- The Committee noted the heritage zones mapped as part of the Le Grange study and included within the submission pack. This indicates the site as outside Zone 3, but part of Church Street.
- The Committee noted that a Stop Works Order is in place.
- The Committee also noted that they do not have a copy of the local authority submission plan set before them.
- The Committee require amended plans that reflect the as-built conditions, and which exclude the parapet wall in front of the roofed corner veranda facing the street.
- It must be ensured that the corner feature is a secondary architectural element that does not compete with the façade.

**DECISION:**

HWC cannot condone illegal work. The Committee resolved that a Heritage Agreement must be entered into between the Appellant and HWC in order to protect the existing character of the street-facing facades. This Agreement should allow for the Stop Works Order to be lifted, provided that amended plans that reflect the as-built conditions, and which exclude the parapet wall in front of the roofed corner veranda facing the street, are submitted to HWC for approval and stamping.

**10.2 Notification of Intent to Develop: Proposed Clearance of Vegetation on Rem of Erf 558,  
Garden Route National Park, Knysna. CT38(8)  
HM/GARDEN ROUTE/KNYSNA/REM OF ERF 558/GARDEN ROUTE NATIONAL PARK  
Case No: 210521111SB0527E**

Appeal against the HOMs decision to require a Heritage Impact Assessment in accordance with the provisions of Section 38(3) of the NHRA.

Appeal pack to be tabled.

Ms Cathy-Ann Potgieter introduced the case.

Dr Jayson Orton (for the Applicant), Ms Maretha Malan and Ms Megan Taplin (SANParks) were present and took part in the discussion.

**APPELLANT** presented, amongst others,

- The project is for the purposes of attracting more visitors to the National Park.
- The potential impact will be minimal.
- The HOMs Committee did not require any specialist studies and therefore erred in requiring an HIA due to a lack of understanding of the extent of the project.
- The area is noted to have been affected by the Knysna fires.
- There is an EMP in place.

#### **DISCUSSION**

Amongst other things, the following was discussed:

- The Committee noted that the I&APs were invited but that the Appeal is unopposed.
- The Committee noted that the archaeological concerns were adequately addressed by Dr Orton.
- The Committee agreed that the proposed platforms are visually discreet and will therefore have a minimal impact once the rehabilitation program is complete.

#### **DECISION**

The Appeal is upheld. The Committee has reason to believe that no heritage resources will be impacted upon. The HOMs Response to the Notification of Intent to Develop is overturned. No further studies are required.

### **10.3 Notification of Intent to Develop: Proposed Rezoning on Erf 7614, Knysna, CTS38(1) HM/EDEN/BITOU/KNYSNA/ERF 7614 Case No: 21030213SB0216E**

Appeal against the HOMs decision to require a Heritage Impact Assessment in accordance with the provisions of Section 38(3) of the NHRA.

Appeal pack and advice from APM to be tabled.

Ms Cathy-Ann Potgieter introduced the case and presented the APM Comment.

Ms Lizemarie Botha (Appellant) and Ms Ntombekhaya Nkoane (Knysna Municipality) were present and took part in the discussion.

**APPELLANT** presented, amongst others, the following arguments:

- The Municipality is in full support of the Application.
- The Committee is requested to reconsider the requirement for an HIA due to cost and time implications in the context of the project being for affordable housing.
- The site is vacant.
- There is no heritage or cultural significance on the properties in question.
- The site falls within quite a densely developed context.
- VIAs are extremely expensive undertakings, and this particular site will not have a substantial visual impact on the area.

- Visual and heritage impacts will therefore be minimal and do not warrant the HIA as required by HOMs.

**KNYSNA MUNICIPALITY** presented, amongst others, the following arguments:

- The site falls outside of the Urban Conservation Area, and this application relates more to town-planning.
- The Municipality is not aware of the SAHRIS sensitivity map.
- The Appeal is otherwise unopposed.

#### **DISCUSSION**

Amongst other things, the following was discussed:

- The Committee noted that the Appeal was unopposed.
- The Committee resolved to condone the late filing of the Appeal.
- The Committee noted the APM recommendation that a full HIA comprising specialist archaeology and palaeontology studies is necessary. The Committee further noted that their emphasis was on archaeological and palaeontological resources.
- The Committee noted that the site is outside of the Knysna Urban Conservation Area, within the SDF and forms part of a reconstruction zone.
- It was agreed that the Knysna Heritage Study requires review, taking all aspects of heritage conservation into account, including SAHRIS information. There have been further developments, information, and studies in the area since the Study was conducted.
- The Committee agreed that monitoring may not be viable in this context.
- Other than the flagged archaeological and palaeontological sensitivities, the Committee believes no heritage resources that would justify the requirement of an HIA are expected to be impacted upon on the site.

#### **DECISION**

The Committee resolved to condone the late filing of the Appeal. The decision of HOMs requiring an HIA is overturned. No further studies in terms of S38 of the NHRA are required. An application in terms of S35 of the NHRA is required to address the impact on archaeology and palaeontology.

#### **10.4 Letter issued in terms of Section 51(1)(c) of the NHRA and Regulation 3(3)(a) of PN 298 (29 August 2003) HM/CAPE WINELANDS/DRAKENSTEIN/PAARL/ERVEN 2139 & 5213 Case No: 21012103SM0127E**

Appeal against the HOMs decision to issue a letter in terms of Section 51(1)(c) of the NHRA.

Appeal pack was tabled.

Ms Cathy-Ann Potgieter introduced the case.

Dr Rolf Annas (Appellant), Mr Clive Theunissen, Mr Daniel Delaney (DHF), and Ms Linda Minki were present and took part in the discussion.

**APPELLANTS** presented, amongst others, the following arguments:

- The decision of HWC disregarded the recommendations of all the local registered conservation bodies (Paarl300, DHF, and Heritage Committee of Drakenstein Municipality) calling for the involvement of heritage specialists.
- HWC did not properly apply its mind. The matter should have been referred to BELCom.
- There is no record of what was originally in place and what has been demolished.

- BELCom had (prior to this application) considered a heritage-worthy building in the same area and required the involvement of a heritage specialist.
- The Applicant who undertook illegal work is not suffering the consequences of undertaking such work, which creates a perception that HWC has shown favouritism towards the Applicant.
- It is unclear how building plans for Grade IIIA resources can proceed without a permit.

## **DISCUSSION**

Amongst other things, the following was discussed:

- The Committee raised concerns regarding the purpose of the S51 letter, especially the statement that "no further action is required".
- The Committee noted that there is a vagueness regarding the S51 process.
- The Committee noted that the NHRA does not empower HWC to approve any unauthorised work.
- PM noted that the long-term solution to this problem would be the delegation for local authorities to deal with Grade III sites.
- The Committee noted that HOMs may have been misled by the initial application, especially because the application was made for minor works.
- The Committee further noted that the laying of charges may be necessary.

## **DECISION**

The Committee resolved to uphold the Appeal and withdraw the letter issued in terms of S51 of the NHRA. The Committee recommended that charges be laid in terms of S51 of the NHRA. The Committee further recommended that a Stop Works Order be issued by HWC.

### **10.5 Notification of Intent to Develop: Proposed fencing on Rem of Farm 94, Klein Melkbosch, Blaauwberg, Cape Town. CTS38(4) HM/CAPE TOWN METROPOLITAN/BLAAUWBERG/REM OF FARM 94 Case No: 21051908SB05212E**

Appeal from HOMs decision to require a Heritage Impact Assessment in accordance with the provisions of Section 38(3) of the NHRA.

Appeal pack was tabled.

Ms Cathy-Ann Potgieter introduced the case.

Mr Paul Naylor (FOB), and Ms Karla Burger (for the Appellant) were present and took part in the discussion.

**APPELLANT** presented, amongst others, the following arguments:

- There is already a fence located on the site. The application is therefore simply to replace the existing fencing, and therefore will not have more of an impact than the existing fencing has on the area.
- The fencing was present before the Appellant became the owner of the property.
- The new fence will still have visual permeability.

**RESPONDENT** presented, amongst others, the following arguments:

- Various shell scatters have been found in the area, which indicates palaeontological and archaeological sensitivity.
- The fencing will be visible from the road and will cut across Blaauwberg Hill (a previous National Monument site).

- The existing fence is an old wire fence, which is very different to the type of fence that is proposed. It will have a negative impact on the rural view as it is double the height of the existing fence.
- The proposed fencing may have impacts on the natural resources of the area which must be studied in detail.

**DISCUSSION**

Amongst other things, the following was discussed:

- The proposed replacement fence (mesh/clear view) was noted to be very different to the existing fence (wire).
- The existing fence fits in with the rural landscape. The proposed fence is not in keeping with the rural context as it is more suburban in character.
- The Committee is of the opinion that the proposed fencing is not appropriate, but that the existing fencing is not very secure. If there are increasing security concerns in the area this should be noted, but the Appeal has not raised such concerns.
- The Committee noted that the need for the fence was not motivated by the Appellant.
- The Committee therefore noted that the primary impact issue in this case is the visual impact of the fence on the existing landscape.
- The HIA should, while still meeting the requirements of S 38(3), focus on the visual impacts.

**DECISION**

The Committee resolved to dismiss the Appeal. The decision of HOMs requiring an HIA is upheld.

- 10.6 Notification of Intent to Develop: Proposed Additional House to the Property on Farm 1441, Stellenbosch. CTS38(4)  
HM/CAPE WINELANDS/STELLENBOSCH/FARM 1441  
Case No: 21041504MS0423E**

The Committee noted the withdrawal of the Appeal.

- 10.7 Proposed Alterations and Additions, Erf 2911, 38 Huguenot Road, Franschhoek. CT34-A&A  
HM/CAPE WINELANDS/STELLENBOSCH/FRANSCHHOEK/ERF 2911  
Case No: 2011250KB1126E**

This matter is for noting only.

- 13. Proposed next date of the meeting: 11<sup>th</sup> August 2021**

- 14. Adoption of decisions and resolutions**  
The Committee unanimously resolved to adopt the decisions and resolutions dated 14<sup>th</sup> July 2021.

- 15. Closure:** The meeting was adjourned at 16:00

**MINUTES APPROVED AND SIGNED BY:**

**CHAIRPERSON** \_\_\_\_\_

**DATE** \_\_\_\_\_

**SECRETARY** \_\_\_\_\_

**DATE** \_\_\_\_\_

