

**APPROVED MINUTES OF THE MEETING OF
HERITAGE WESTERN CAPE,
APPEALS COMMITTEE**
**Held on Wednesday, 21st April 2021 via Microsoft Teams,
scheduled for 08:30**



1. Opening and Welcome

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

2. 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)
Mr Olwethu Dlova (OD)
Ms Cathy-Ann Potgieter (CAP)
Ms Anita Shologu (AS)
Ms Penelope Meyer (PM)
Ms Khanyisile Bonile (KB)
Ms Stephanie Barnardt (SB)

Visitors:

Item 9.1

Mr Mike Scurr
Ms Wendy Wilson
Mr Alexis van der Merwe
Dr Stephen Townsend

Item 9.2

Mr Rob Young-Pugh
Mr Wilhelm Louw
Mr Louis Steyn

Item 9.3

Mr Martin Bey
Dr Stephen Townsend
Mr Chris Snelling
Mr Alexis van der Merwe
Mr Ashley Lillie

Observers:

None

3. Apologies

None

Absent

None

4. Approval of Agenda

4.1 Dated 21st April 2021

The Committee resolved to approve the Appeals Agenda dated 21 April 2021.

5. Approval of Minutes of Previous Meeting

5.1 Appeals Minutes dated 17th March 2021.

The Committee resolved to approve the minutes of the Appeals Committee meeting which was held on 17th March 2021.

6. Disclosure and Conflicts of Interest

6.1 None

7. Confidential Matters

7.1 None

8. Administrative Matters

8.1 Outcome of the Tribunal Committees and Recent Court Decisions

Nothing to report.

8.2 Report back from HWC Council

Nothing to report

8.3 Site Visits Conducted

Hathersage site visit conducted on Monday 29th March 2021 by SH and AM. Site Inspection report is attached.

Vineyard Road site visit conducted on Monday 29th March 2021 by AvG and NB. Site inspection report is attached.

8.4 Potential Site Visits:

Proposed Total Demolition, Erf 405, 11 Oldfield Road, Sea Point, CTS34-Total Demolition. The Committee noted that the exterior and context need to be inspected, and that an interior inspection is not necessary. AM and NB have confirmed that they will undertake the site inspection on Monday 26th April 2021.

8.5 Discussion of Agenda

PM raised concerns regarding Tribunal directives referred back to the Appeals Committee for assessment and decision. The I&APs are insisting on being included in public participation in HWCs reconsideration of the revised proposal, but the matter cannot be heard *de novo*. Unless the Tribunal has ruled that public participation must take place, HWC cannot insist on it. This is a problem that has consistently arisen and is creating a perception in the public mind that it causes administrative injustice. It further implies that the Tribunal does not have the necessary expertise to make such decisions, as is required by the Act and its regulations. As such, PM will urge the Tribunal that it is in their mandate to take final decisions. It is an urgent matter as Tribunals referring matters back to HWC also results in HWC incurring great costs. The Committee noted that it may be necessary to raise the issue at Council.

8.6 UCT PHS Fire

PM reported back on the UCT investigation after the fire. Rennie Scurr Adendorf Architects have been appointed to monitor work on the Jagger Library Reading Room. There will be a need for emergency permits, and if they will be issued on the condition that the work is overseen by qualified practitioners. SAHRA will also participate.

8.7 General

The Committee agreed to the move from the HWC blog to One Drive to access documents in the future.

9 Matters Arising

9.1 Proposed Restoration, Erf 55307, 43 Vineyard Road, Claremont, CTS34-A&A HM/CAPE TOWN METROPOLITAN/CLAREMONT/ERF 55307 Case No: 20101305SM1013E.

A site inspection was undertaken on the 29th of March 2021 and the report was presented by Dr Van Graan.

Original Decision: Appeal of BELCom permit issued in terms of Section 34 of the NHRA on 7th January 2021.

Ms Cathy-Ann Potgieter introduced the case.

Mr Mike Scurr (Heritage Practitioner for the Applicant), Ms Wendy Wilson (Heritage Practitioner), Mr Alexis van der Merwe (Chairman of UCCRA) and Dr Stephen Townsend were presented and took part in the discussion.

APPELLANTS

- Dr Stephen Townsend noted that there is agreement by all parties regarding the S34 application for work on the building. There is also agreement that the site as a whole and its environs are heritage resources.
- The concern is that BELCom has taken a view that the application or aspects thereof are outside its jurisdiction.
- The case law (*Gees and Qualidental*) is argued to be applicable in this case. It is therefore argued that future development proposals can be regulated and are within HWC's jurisdiction.
- The Appeal is therefore based on the fact that BELCom actually does have jurisdiction and that BELCom erred in deciding otherwise.
- The Appellants raised the possibility that the matter be referred back to BELCom.

RESPONDENT

- Mr Mike Scurr agreed that the site is highly significant and reiterated that they have elected not to respond to the Appellants, as they, too, are seeking clarification regarding the jurisdiction.
- Mr Scurr noted that the Respondents have not provided responding papers to the substantive appeal because the jurisdictional issue must be decided prior to discussion of the substance of the appeal.

DISCUSSION

Amongst other things, the following was discussed:

- PM noted that BELCom is *functus officio* and therefore the matter cannot be referred back to them. It is for the Appeals Committee to uphold or overturn BELCom's decision.
- The Committee notes that the first issue is that of jurisdiction.
- PM noted that the issue is about a subdivision, while case law (*Qualidental*) refers to the whole site. As such, there is no precedent regarding subdivisions. There is therefore a concern as to how S34 is able to deal with subdivided sites.
- The question arose about jurisdiction to make a decision related to an associated structure (a well) that is on the subdivided site. S34 refers to the structure of the

heritage resource, but the Old Thatch Cottage does not touch the well. S38 refers to the context (environs), but this is a S34 application and does not refer to context. *Qualidental* referred to 'site' but this was in the context of a demolition and replacement building on the same site. The Committee noted the lack of clarity.

- The Committee noted that the site was never declared a National Monument, nor a PHS.
- The Committee also noted that in this case subdivision does not trigger the NHRA as the total site is not bigger than 5000sq. The site is also not under specific protection, and therefore the protection does not carry over to the subdivided site.
- The Committee also noted that, in the process of subdivision, demolition will take place on parts of the building. However, it was agreed that those additions to the existing building were not of sufficient conservation-worthiness to warrant their retention on heritage grounds.
- The Committee referred to the wording of S34 and definitions of terms used in its deliberating on the matter.
- NB noted his dissent to the Committee's decision.

DECISION

The Appeal is dismissed, and BELCom's decision is upheld.

9.2. **The Proposed Residential Development Located on
HM/CAPE TOWN METROPOLITAN/SOMERSET WEST/ERVEN 3135, 2750 & 7115
Case No: 20042805SM0429E.**

A site inspection was undertaken on the 29th of March 2021 and the report was presented by Mr Stuart Hermansen.

Original Decision:

Appeal of HOMs Response to NID issued in terms of Section 38(2) of the NHRA on 4th May 2020

Mr Louis Steyn, Mr Rob Young-Pugh (HRF), and Mr Wilhelm Louw were present and took part in the discussion.

APPELLANT

- The CoCT heritage map indicates that the site is a Grade IIIB landscape. It has also been indicated that there are potential Grade IIIA resources on the site.
- The surrounding buildings were identified as having heritage significance (with reference to a i2013 report).
- The site is rich in exotic vegetation.
- There is a discrepancy between the NID as approved by HWC and the current environmental application.
- HWC erred in stating that no further studies were necessary because heritage resources will not be affected.
- HWC has previously required a HIA for a neighbouring area, and therefore should have required the same of the current site.
- The NID and HWC response should therefore be reviewed.
- The Appellants argue that the scope of development as indicated in the NID is not the same as elsewhere described and that this discrepancy should be explained and rectified

DISCUSSION

Amongst other things, the following was discussed:

- The Committee noted that, based on the findings of the site inspection report, the site has heritage significance and therefore HOMs erred in its decision that no further studies were required.
- The Committee is of the opinion that a HIA is required, including a VIA.

DECISION

The Committee resolved to uphold the Appeal and to substitute the HOMs decision with the following:

An Integrated HIA is required, which complies with S38(3) of the NHRA and which includes, amongst other studies:

- Potential impacts on the landscape integrity.
- Spatial relationships and interfaces with surrounding heritage sites.
- Cultural landscape associated with the Lourens River and the Hathersage farm and garden precinct.
- Analysis of the agricultural landscape and associated features.
- An oral history.

The interwoven nature of significances of the site should be reflected in the heritage indicators, which must inform a revised development proposal.

9.3 Tribunal: Proposed Demolition, Erven 5165 & 55166, 8 & 10 Feldhausen Road, Claremont HM/CAPE TOWN METROPOLITAN/CLAREMONT/ERVEN 5165 AND 55166 Case No: 16070501JW0720E: Appeal documents.

Original Decision: Tribunal directive dated 10th November 2021 as a condition attached to the successful appeal.

Submission of revised consolidated development proposal was tabled by the Applicant.

Mr Martin Bey (STBB), Dr Stephen Townsend, Mr Chris Snelling, Mr Alexis van der Merwe (UCRRA) and Mr Ashley Lilley were present and took part in the discussion.

APPLICANT

- The report has been submitted in terms of the Tribunal directive, which called for analyses of the existing fabric and responses to those elements.
- The report also depicts the nature of the subject block and a break-down of the streetscapes adjoining the block.
- It extrapolates the informants of the development proposal.

OBJECTORS

- Dr Stephen Townsend raised concerns over the lack of public participation with the new proposals.

DISCUSSION

Amongst other things, the following was discussed:

- The Committee notes that the Tribunal decision was made on the Appeal that was lodged against the decision of this Committee, and then went through a full Tribunal hearing process. The outcome of the Tribunal process was a directive which has been returned to the Appeals Committee. The Committee is thus *functus officio* but is fulfilling the directive of another committee.
- As such, this is not a *de novo* hearing, and the Committee cannot hear arguments from parties.
- PM stressed that the Tribunal did not state that a public participation process was required and therefore HWC does not have the jurisdiction to insist on public participation.

- The Committee noted that it is a possibility that, by mutual agreement of the parties, the parties can be given the opportunity to review and respond to the revised proposal before the Committee hears the matter.
- The parties came to mutual agreement in the meeting on a way forward, to allow all parties to review and respond to the revised proposal before the next Appeals meeting.

FURTHER REQUIREMENTS

Based upon the mutual agreement between the parties, The Committee will hear the matter on 12th May 2021. UCRRA, Dr Stephen Townsend, and Mr Chris Snelling are to be given sight of the material and have until close of business on 3rd May 2021 to respond to the material. The applicant must then respond to the comments by close of business on 7th May 2021.

10. New Matters

- 10.1 Proposed Total Demolition, Erf 405, 11 Oldfield Road, Sea Point, CTS34-Total Demolition HM/CAPE TOWN/METROPOLITAN/SEA POINT/ERF 405**
Case No: 20102604ND1027E: Appeals pack for noting

Appeal against HOMs Permit for Total Demolition issued in terms of Section 34 of the NHRA

FURTHER REQUIREMENTS

The Committee resolved to undertake a site inspection.

11. Adoption of decisions and resolutions

The Decisions and Resolutions of the meeting were unanimously adopted by the Appeals Committee.

- 13. Proposed next date of the meeting:** **12th May 2021**

- 14. Closure:** The meeting was adjourned at: 11:53

MINUTES APPROVED AND SIGNED BY:

CHAIRPERSON _____

DATE _____

SECRETARY _____

DATE _____