



**APPROVED MINUTES FOR THE MEETING OF
HERITAGE WESTERN CAPE,
APPEALS COMMITTEE**

Held on Wednesday, 8th March 2023 via Microsoft Teams, scheduled for 08:30

Opening and Welcome

The Chairperson, Mr Gregory Ontong officially opened the meeting at 08:30 and welcomed everyone present.

Attendance

Committee Members:

Mr Gregory Ontong (GO)
Ms Corlie Smart (CSm)
Dr Nicolas Baumann (NB)
Mr Stuart Hermansen (SH)
Dr. Andre van Graan (AvG)

Members of Staff:

Ms Nosiphiwo Tafeni (NT)
Ms Penelope Meyer (PM)
Ms Colette Scheermeyer (CS)
Ms Waseefa Dhansay (WD)
Mr Jonathan Windvogel (JW)
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)
Ms Chane Herman (CH)
Mr Yaseen Samodien (YS)

Visitors:

Item 9.1

Mr Jay Vomacka,

Item 9.2

Mr Henry Aikman

Item 10.1

Mr Nick Smith, Mr Sithole

Item 10.2

Ms Kathy Dumbrell
Mr Phillip Smith
Ms Tracy Chalmers and
Mr Jan Groenewald

Apologies

- 3. Absent**
None

4. Approval of Agenda

4.1 Dated 8th March 2023.

The Agenda dated 8th March 2023 was approved. AvG & SH

5. Approval of Minutes of Previous Meeting

5.1 Appeals Minutes dated 8th February 2023

The Committee unanimously resolved to approve the minutes dated 8th February 2023.

6. Disclosure and Conflicts of Interest

6.1 Recusals General

7. Confidential Matters

None.

8. Administrative Matters

8.1 Outcome of the Tribunal Committees and Recent Court Decisions

8.2 Report back from HWC Council

None.

8.3 Site Visits Conducted

None

8.4 Potential Site Visits

8.4.1 Proposed removal of five Eucalyptus trees on Erf 665, 8 Weyers Avenue, Durbanville

8.4.2 Proposed Total Demolition on Erf 155802, 5 Victoria Road, Foreshore

Monday 3 April 2023 GO, NB, AvG, SH, CS

8.5 Discussion of the Agenda

8.5.1 Royal Road Muizenberg

Illegal work, BELCom refused.

8.6 Appointment of Archaeologist to attend next meeting

The committee agreed to co-opt Ms K Smuts to attend the next meeting as specialist archaeological skills will be required.

9 Matters Arising

9.1 Proposed additions and alterations on Erf 138 & 3110, 19 Mead Way, Pinelands. HM/CAPE TOWN METROPOLITAN/PINELANDS/ERF 138 & 3110 Case NO: 22030311TZ0304E

Appeal against BELCom's decision.

Mr Thando Zingange introduced the item. Matter had been held over for further requirements.

The Appellant was present and took part in the discussion.

For the Appellant: Mr Jay Vomacka,

- The appellant stated that he wishes to preserve the visual aspect of the street.
- He has taken care that the aesthetics of the building were maintained in the garage addition.
- He wishes to keep the brickwork consistent with the house.

DISCUSSION

Amongst other things, the following was discussed:

- Revised drawings were provided.
- The committee agreed that the set back of the garage as indicated on the revised plan was adequate.
- It was agreed that the proposal was acceptable and had met the committees' requirements.

DECISION

The appeal is partially upheld.

The Committee agrees that the further requirements have been met and approves the revised proposal shown on the drawings dated Feb 2022 and numbered #JBV.013 prepared by Desmond Brandt Designs.

TZ

9.2 PTN 2 of Farm De Leeuw No 527, Paarl HM/CAPE WINELANDS/DRAKENSTEIN/PAARL/FPTN 2 OF FARM DE LEEUW NO.527 Case NO: 22091502RG0915E

Appeal against HOMS's Decision for approval

Ms. Stephanie-Ann Barnardt introduced the item.

Mr Henry Aikman (heritage consultant) was present and took part in the discussion.

- Mr Aikman concurred with the presentation of the case officer

DISCUSSION

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

- As the local authority and interested and affected parties were *ad idem* that there would be no visual impact and that there was no potential impact on heritage resources, therefore an HIA was not required.

DECISION

The Appeal is upheld, and no further studies are required.

SB

10. New Matters

- 10.1 **To proceed with the 60 days public participation process in terms of S 27(8)(a)(b) and (c) of the NHRA: Re 32564 Athlone Power Station
HM/CAPE TOWN METROPOLITAN/ATHLONE/ ATHLONE POWER STATION ERF 32564
Case No: N/A**

Appeal against IGIC's decision.

Mr. Jonathan Windvogel introduced the item.

Mr Nick Smith and Mr Sithole, were present and took part in the discussion

For the Appellant: Mr N Smith

- The presentation did not include i the chronology at the tabling of the item of 4th February 2022 at the IGIC where there was a dispute over the area to be protected.
- There was a meeting on 6 May 2022 as well. IGIC chairman sought to postpone the matter in order to obtain an internal legal opinion.
- At the meeting of 5 August 2022, the Deputy Director: Legal Support had not formulated a written opinion.
- The appellant had at all times insisted that specific activities should be excluded in order to protect the ability of the City to conduct normal operational activities.
- The reference to S27(a) should be S27(8)(d).
- It is admitted that fair procedure i.t.o. S27(8)(d) was followed.
- The City considers that the implementation of S27(8)(a) without exceptions will be exceedingly onerous on its usual operations.
- There is also an issue as to which areas are to be excluded from the nomination.
- On the evidence of the archaeologist, there is no particular heritage significance in the vacant land.
- The idea that the site is threatened without the declaration is untrue, there are protections in place.
- Any developments of the site would be subject to assessment by HWC.
- The issue of the chimney stacks is 'water under the bridge'. It appears that DOCOMOMO believes that the declaration would render the chimney stacks protected.
- Both the areas on A1 and A2 have no heritage significance *per se*.

- There is no dispute about exclusion of activities, reference can be made to p71 of the record.
- In regard to the reasons provided by IGIC they do not stand muster.
- Committee should either remit back to IGIC, or issue afresh a 27(8)(a) notice with exemptions and physical exclusions.

For Respondent

- IGIC decision was a good and fair decision taking into account where the process is.
- Finalisation of PHS boundaries can be managed further in the public participation process.
- There is still opportunity to find balance
- DOCOMOMO has been generally accommodating of the concerns, with the exception of the two excluded areas.
- It is not treading new ground, other PHS sites do exist in conjunction with normal activities (Thornton Road for example)
- The respondent is not disputing activities to be excluded and will be guided by HWC.
- Structure 25: one of the most important operating areas within the power station. It is possible to have buildings that are of lesser importance within a PHS.
- Area A2: includes railway and some of the gantries, the structures are essential to the telling of the story of how the power station worked. The larger extent of the area has already been excluded.
- Area A1: where cooling towers were demolished, is intrinsic to the understanding of the whole site. Declaration does not preclude development, but development would have to be considered in the context of the site.
- The site has been considered at various times by HWC who have decided that the site needs investigation for declaration as a PHS.
- At the time of the Appeal there were no ideas for redevelopment of the site, this year there has been a proposal to initiate an electricity generation site.
- Formal protection would guide redevelopment and be able to define the proposal.

DISCUSSION

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

- JW addressed the point raised by the appellant regarding the legal opinion and stated that the Chair of IGIC had merely stated that a legal opinion would be helpful as the Deputy Director: Legal Support was not present. There was no directive to provide a written opinion.
- The inclusion of Areas A1 and A2 is onerous on the City of Cape Town, and the exceptions have been regarded by both parties as reasonable.

DECISION

The appeal is upheld.

The committee agreed that the prior notice in terms of S27(8)(a) be withdrawn in terms of S27(10) and a fresh notice in terms of S27(8)(a) be sent which contains the following: Exclusions from the temporary protection conferred:

- a. The area formerly occupied by the cooling towers marked as **"A1"**
- b. The area identified as the coal stockpile site marked as **"A2"**.

The following structures within Docomomo's preferred area should be excluded from the proposed declaration of the site as a Provincial Heritage Site.

- a. The structure described as item 24 in Mr. Hart's table, which is the building described as the "New Stores".
- b. The structure described under item 25 of Mr. Hart's table (the gas turbine plant).

The following activities in the Docomomo' s preferred area must be exempted from Section 27(a) of the NHRA and in terms of Section 48(2) of the NHRA be published in the Provincial Gazette.

1. Maintenance and repair activities within the refined area, including all and any routine maintenance and repair to structures, fences, walls, ground surfaces, cabling and related underground infrastructure, including such infrastructure as it pertains to stormwater lines; water reticulation; the City's foul sewer; the City's foul sewer rising main; electrical cabling and lines; the pilot lines; the lines respectively depicted as KV-oil and KV-gas; and the PRTEC and fibre optic lines.
2. Maintenance activities performed on all and any underground or overhead existing and future services infrastructure in the refined area.
3. Activities in the refined area directed at replacing, substituting, or augmenting any operational equipment and infrastructure situated there.
4. All and any landscaping work in the refined area including routine landscape maintenance, and encompassing gardening, pruning, mowing, undergrowth clearance, planting, and removal of dead wood.
5. All and any roadworks and service provision in the refined area, including all roadworks and provision and maintenance of all and any underground services.
6. All and any activities that are already the subject of the demolition permit granted by HWC pursuant to the records of decision respectively issued by HWC's Built Environment and Landscape Committee ("BELCom") on 25 February 2020 and pertaining to the activity of removing asbestos in all of its forms and wherever encountered on the site; and the activities authorised in the record of decision handed down by the MEC for Cultural Affairs and Sport's Independent Appeal Tribunal on 10 February 2021 with particular reference to the approved total demolition of the ash handling plant and the approved demolition (to 1 meter above the octagonal) of the chimney stacks depicted in Mr. Hart's provisional grading respectively as items 14 and 15.
7. All and any activities pertaining to the removal of all, and any internal and external material related to the ongoing decommissioning operations at

the APS and to making it safe. The material removed by the exempted decommissioning activities includes but is not limited to asbestos wherever that is present on the property; and to external fixtures and fittings attached to the primary infrastructure constituting the APS (examples being the catwalks and appurtenant structures on the chimney stacks; and external cladding, material and infrastructure attached to the boiler house like the dust scrubbers and related infrastructure present there).

8. All and any activities undertaken or to be undertaken in the areas referred to and forming part of servitudes as reflected in the title deed of the property and its accompanying diagrams." (Underlining as in the original).

JW

**10.2 Proposed Additions & Alterations on Erf 179757, 3 Royal Road, Muizenberg
HM / CAPE TOWN METROPOLITAN / MUIZENBERG / ERF 179757
Case No: HWC22100311SJ1107**

Appeal against BELCom's decision.

Ms. Sneha Jhupsee introduced the item.

? was present and took part in the discussion

Ms K Dumbrell (on behalf of the Appellant)

- CoCT initially made a mistake when dating the building, question was asked in the wrong place, and the client was advised to proceed. Applicant made decision on the information to hand.
- The information was never questioned, never changed until it was assessed by HRS.
- The situation has become quite personal and acrimonious.
- Appellant is fixed on the idea of a gambrel roof as this will give a second storey that reads as roof.
- The roof, given the receiving environment, which is hard to read coherently, is not unusual
- The proposed HPOZ is quite a broad one, should have been broken down into precincts.
- The committee should decide for themselves whether that information is sufficient to justify an HPOZ in the area.
- The committee has to decide on what the heritage resource is.
- Much of the fabric remains on the first floor, however it is a much-altered building.

Mr Phillip Smith, (on behalf of the CoCT),

- He had advised owner in 2020 that the work needed a permit
- The building is located within the proposed HPOZ; however this does not change the legislative trigger.
- The City contends that a s51 letter cannot be issued.
- Notices were served and considerable work was undertaken, nevertheless.

Ms Chalmers and Mr Groenewald (Respondents)

- Aligned themselves with the views of the City and BELCom
- Requested that the committee focus on the heritage aspects and disregard the allegations of acrimony.

DISCUSSION

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

- The heritage significance of the area cannot be ignored. There is an HPOZ adjacent to the site, and it is within a proposed HPOZ.
- The current proposal has a negative impact on heritage resources.
- The issue of the continuance of illegal work despite numerous stops works orders from both the City of Cape Town and HWC is very concerning. It sets a harmful precedent that heritage resources can be damaged with impunity.
- The appellant has shown an unwillingness to change their proposals.
- HWC can accordingly not issue a s51 letter as there has been no attempt to mitigate the damage to heritage resources.

DECISION

The appeal is dismissed and the decision of the BELCom is upheld.

SJ

11. Other Matters

- 11.1 **Proposed removal of five Eucalyptus trees on Erf 665, 8 Weyers Avenue, Durbanville
HM/CAPE TOWN METROPOLITAN/ DURBANVILLE/ ERF 665
Case No: HWC23012309CH0130**

NOTED, WILL BE CONSIDERED AT THE MEETING OF 12 APRIL 2023

CH

- 11.2 **Proposed Total Demolition on Erf 155802, 5 Victoria Road, Foreshore
HM/ CAPE TOWN METROPOLITAN/ ERF 155802
Case No: HWC22061315CH1115**

NOTED, WILL BE DISCUSSED AT THE MEETING OF 12 APRIL 2023

CH

12. Proposed next date of the meeting:

12th April 2023


13. Adoption of decisions and resolutions

The Committee unanimously resolved to adopt the decisions and resolutions dated 8th March 2023.

14. Closure: The meeting was adjourned at 00:00

MINUTES APPROVED AND SIGNED BY:

CHAIRPERSON _____ DATE 12 April 2023

SECRETARY  _____ DATE 12 April 2023