

## HERITAGE WESTERN CAPE

Minutes of a meeting of the Appeal Committee of Heritage Western Cape held on Thursday 14 January 2010, at 09:30 in the Boardroom on the 1<sup>st</sup> floor at the Offices of the Department of Cultural Affairs and Sport, Protea Assurance Building, Greenmarket Square, Cape Town

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### 1. OPENING AND WELCOME

The Chairperson opened the meeting and welcomed everyone.

### 2. ATTENDANCE

#### Appeal Committee

Mr Bandile Joyi	Appeal Committee Chairperson
Ms Sharon de Gois	Appeal Committee member
Mr David Hart	Appeal Committee member
Ms Laura Robinson	Appeal Committee Member
Dr Janette Deacon	Appeal Committee Member
Dr Mthobeli Guma	HWC Chairperson and Appeal Committee member

#### Co-opted to Appeal Committee for Items 7.2 and 7.3

Dr Simon Hall	Co-opted advisor to Appeal Committee
Ms Mary Patrick	Co-opted advisor to Appeal Committee

#### BELCOM Observer

Mr David van den Heever	BELCOM member (Observer)
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#### Staff

Olwethu Dlova	Secretary
Ms C Jikelo	Deputy Director
Mr R Nyuka	Senior Heritage Officer
Ms N Njobe	Heritage Officer
Mr N Wiltshire	Senior Heritage Officer
Ms B Mutti	Heritage Officer

### 3. APOLOGIES

Mr M Abrahams	Senior Heritage Officer
Mr S Dyers	Heritage Officer
Mr C van Wijk	Assistance Director

### 4. APPROVAL OF MINUTES OF PREVIOUS MEETING DATED 23 NOVEMBER 2009

Page 2, item 7.1, under discussion "At this point Ms Laura Robinson apologised and left for another engagement" to be added as the last paragraph.

Page 3, item 7.2 "van" should be changed as "Van".

Page 4, item 7.4, "main" should be changed as "Main"

Proposed by David Hart and seconded by Sharon de Gois, the Committee accepted the minutes with amendments.

## **5. CONFIDENTIAL MATTERS**

**None**

## **6. MATTERS ARISING FROM THE MINUTES**

### **6.1 ERF 97539, CNR PATERSON & MAIN STREET, NEWLANDS**

It was noted that:

- A site visit had been conducted by Dr Janette Deacon, Dr Mthobeli Guma and Mr Bandile Joyi. Ms Sharon de Gois and Ms Laura Robinson apologised for not being able to attend.
- The houses have been extensively renovated and no contextual value, original fabric or heritage significance remains.
- The appellants had appealed on the grounds of social and contextual value and the lack of consultation with local stakeholders.

Mr David van den Heever recused himself from the discussion and decision-making.

It was AGREED:

- to dismiss the appeal.
- The buildings are in a highly altered state and retain no architectural significance and little of historical value.
- To remind staff to consult the list of registered conservation bodies and inform them of applications received in their area of interest.

**Shaun Dyers**

### **6.2 Erven 27 AND 72, McGREGOR, PROPOSED DEVELOPMENT**

Ms de Gois recused herself and left the room.

It was noted:

- Appeal Committee members attended a site visit in McGregor on 13 January 2010.
- The appellants argued that the development, and particularly the density, was not appropriate for McGregor where a frail care facility of this scale was not appropriate for the village.
- The change will not fit the heritage character of the village and the development will bring many more cars that will impact on traffic control.
- The main argument made by the applicants at the site meeting was that the issue was not about density, but about the grain, texture and scale of the development in relation to the historical texture of the village, and particularly the part of the village where the development is planned.
- The Committee acknowledged the thorough and professional work that has been done by the consultants and the applicant.
- Concern was expressed about the fact that a SAHRA representative was not invited to attend the site meeting or the Appeal Committee meeting as requested by the Appeal Committee. It was understood that SAHRA

had recommended that McGregor be graded as a Grade I site and clarity was needed on this point.

- The proposed layout has gone through several iterations and the design development had come a long way, although there was concern amongst some members that the layout, in particular the blocks situated around a central courtyard area was not an appropriate response to the existing pattern of the village layout.
- The institutional use is appropriate for the site and the architecture draws from vernacular styling,

Mr David van den Heever recused himself and left the room.

It was AGREED that:

Prior to the finalisation of the decision, comment with regard to the specific application be obtained from SAHRA Western Cape. This was in terms of SAHRA's interest in designation of the village as a Grade I site and the impact that a development of this nature might have upon such a grading.

This should be done within the next 7 days and circulated to members of the Appeal Committee.

**Ronny Nyuka**

### **6.3 Erf 4269 Corner of Orange and Van der Stel Street Somerset West. Proposed total demolition**

It was noted that:

- Mr David Hart and Dr Janette Deacon went to the site on 13 January 2010.
- The owner had applied to demolish an old barn to make it possible for apartment blocks to be developed.
- The site visit made it clear that there is huge development potential even without demolition of the barn.
- From what could be ascertained from a roadside inspection, the barn is clearly old and worth retaining in the context of Somerset West.
- The barn could be converted without damage to its significance.
- The oak trees around the barn should be retained.
- The City of Cape Town Roads Department wishes to acquire a small portion of the property to realign the intersection of Orange and Rhodes streets.

Mr David van den Heever recused himself.

It was AGREED:

- to dismiss the appeal.
- There is more than adequate development potential without demolition of the old building.
- The Roads Department must be informed of the significance of the barn and the oak trees.

**Shaun Dyers**

## **7. NEW MATTERS**

### **7.1 ERF 88739, 24 CAPRI ROAD, ST JAMES, PROPOSED FENCING**

It was noted that:

- The appeal submitted by the Kalk Bay and St James Ratepayers Association objected to the height of the fencing on Boyes Drive as it Exceeds the 1.2 m enhanced regulation limit in Section 93 of the City of Cape Town zoning scheme.
- The City recommended that the height of the fence to be reduced to the correct height.
- The Local Authority recommended that the guidelines and regulations for the conservation area be adhered to and that HWC assist the City to ensure that fences are appropriately designed and conform to all regulations.
- The RoD from HWC made no mention of the zoning scheme regulations.

Mr David van den Heever recused himself.

It was AGREED:

- To up-hold the appeal.
- The fencing must be reduced to the required height as stipulated.
- The City of Cape Town must be informed of the decision in writing and the City must inform the owner and ensure that he complies.

**Ntombi Njobe**

### **7.2 HM/WEST COAST/CEDERBERG/ELAND'S BAY/BABOON POINT PHS/ERVEN 64, 65, 66, 67, PORTION 4 OF VERLOREN VLEI 8 & ERF 10 PORTION 8 OF VERLOREN VLEI 8: PROPOSED RESIDENTIAL HOUSING DEVELOPMENT**

The Committee noted the presentation done by Adv Treurnicht and Mr G. Jacobs on behalf of the developer, Midnight Storm.

Dr Deacon indicated that she would recuse herself from the meeting as she had been a member of the APM Committee when the decision was taken on 3 November 2009.

It was noted that:

- This is an appeal against the decision of the APM Committee of HWC.
- The developer filed an application to develop residential housing on erven which it owned that are mostly within the boundaries of the Baboon Point/Cape Deseada Provincial Heritage Site.
- The BELCOM Committee had conveyed approval for the proposals as outlined in the HIA prepared by Graham Jacobs on 29 October 2009.
- The appellant felt that BELCOM's decision should be the decision of HWC and therefore the APM could not reject the proposal.

- The appellant was of the opinion that the APM Committee's meeting did not conform to section 10 of the NHRA since the appellant and the public were requested to leave before the decision was made.
- The appellant believed that the APM Committee's decision was biased by the presence of one of the heritage officers, Mr N. Wiltshire, and by Mr T. Hart, an APM Committee member, who had been involved in a scoping report for Baboon Point in 2005.
- The appellant felt that the merits of the case need not be considered in light of the procedural flaws presented in their case.
- The appellant queried the number of Council members present on the Appeals Committee as per the Appeals Procedures document for HWC.

Section 10 (2b) of the NHRA reads as follows:

' a meeting at which decisions are taken, must be open to the public and the agenda and minutes must be available for public scrutiny: Provided that when there is good reason to do so, a matter may, by decision of the majority of members present, be declared confidential and the discussion and minutes may be excepted from public scrutiny;'

The Appeals Committee decided to hold a closed Committee session to discuss matters of procedure with Dr Palmer who had been present at the APM meeting in November 2009

The members of the public, the appellants, Dr Deacon, and APM & BELCOM members of staff recused themselves and left the room.

It was AGREED that:

- The decision of the Archaeology, Palaeontology & Meteorites Committee made on 23 November 2009 is set aside and the application is referred back to the APM for consideration with due regard to Section 10 of the National Heritage Resources Act, 1999

**Nick Wiltshire**

### **7.3 BABOON POINT, ERVEN 65, 66 & PTN VERLOREN VLEI, FARM NO 8, ELANDS BAY: PROPOSED DEVELOPMENT**

The Committee noted the presentation done by Adv van Zyl on behalf of the Eland's Bay Environmental Defence Action Group (EBEDAG).

It was noted that:

- EBEDAG was not aware that a decision on the residential development at Baboon Point was going to be made at BELCOM on 29<sup>th</sup> October 2009
- The appellant felt that BELCOM had not applied their minds to the case as two of the Committee members designated to read the HIA had been asked to return their copies due to perceived bias as former Declaration Review Committee members.

- The appellant was concerned that the Committee did not go into a closed session after the public discussion forum to deliberate on the matter and that people with a vested interest in the development were allowed to influence the Committee members during decision making.
- The appellant provided an example of a 2-storey building in Eland's Bay approved by the Cederberg Municipality as a one-storey building. EBEDAG therefore expressed fears that the houses proposed at Baboon Point may deviate from the restrictions recommended in the reports.
- The appellant pointed out various discrepancies in the presented Erf sizes in the reports which, in their opinion, implied that Site C would be placed back on the development plan if approval was obtained for Site A and B. The appellant argued that HWC would not be justified in opposing Site C if they went ahead and approved Site A and B.
- The appellant questioned the degree to which the community of Eland's Bay would benefit from temporary employment derived from the development as opposed to the permanent loss of their heritage site
- The appellant felt that the developer had not provided specific plans for management of the heritage resources and mitigation in the HIA.
- The appellant argued that the development did not comply with current town planning zoning schemes.
- EBEDAG also questioned the developer's stance that their property rights were absolute and primary in relation to the heritage significance of the heritage resources present on the site.

It was AGREED that:

- The decision of the Built Environment & Landscapes Committee made on 23 November 2009 is set aside and the application is referred back to BELCOM for consideration.

At this point Ms L Robinson apologised and left for another engagement

**Zwelibanzi Shiceka**

#### **7.4 HM/WEST COAST/BERGRIVIER/DWARSKERSBOS/ MODDERFONTEIN 28: PROPOSED DEVELOPMENT**

Dr Deacon recused herself

It was noted that:

- The appellant, Mr J Kaplan, submitted an Archaeological Assessment to the APM on 1 December 2009 and the Record of Decision was issued on 18 December 2009.
- The APM agreed not to accept the assessment as it only referred to a small section of a larger property that is sensitive and will be negatively impacted by the proposed development.
- The appellant argued that the report was not an AIA, but a study to compile an archaeological constraints map that would help identify potential areas for development of seven units. The rest of the property will not be developed..
- The APM decision was made on the assumption that this was an AIA.

It was AGREED that:

- This appeal could not be considered as an appeal because the Archaeological Assessment was not linked to a NID and was not part of a requirement in terms of the NHRA or NEMA.

**Nick Wiltshire**

**7.5 ERF 23685, MAIN STREET, PAARL**

It was noted that:

- The case officer Mr Zwelibanzi Shiceka was on sick leave and the applicants and appellants were not present in the meeting.
- The appeal was deferred.

**Zwelibanzi Shiceka**

**7.6 Loop Street, Paarl:**

This appeal was deferred.

**Ronny Nyuka**

**8. OTHER MATTERS**

None

**9. DATE OF NEXT MEETING  
15 February 2010**

**10. CLOSURE**

Ms Jane Moleleki  
ACCOUNTING AUTHORITY  
For Head of Department