

**MEETING OF THE HERITAGE WESTERN CAPE,  
APPEALS COMMITTEE**

Minutes of a Meeting of the Appeals Committee of Heritage Western Cape held on  
Wednesday, 21 September 2016, at 09H00 in the 1<sup>st</sup> Floor Boardroom at the Protea Assurance  
Building, Greenmarket Square, Cape Town

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**1. Opening and Welcoming**

The Chairperson, Mr Richard Summers opened the meeting at 09H00 and welcomed everyone present.

**2. Attendance**

**Appeals Committee**

Mr Richard Summers (RS)  
Dr Antonia Malan (AM)  
Dr Nicolas Baumann (NB)  
Dr Piet Claassen (PC)  
Ms Laura Robinson (LR)

Appeals Chairperson  
Appeals Committee Member  
Appeals Committee Member  
Council Member  
Council Member

**HWC Staff**

Mr Mxolisi Dlamuka (MD)  
Ms Colette Scheermeyer (CS)  
Mr Zwelibanzi Shiceka (ZS)  
Mr Jonathan Windvogel (JW)  
Ms Penelope Meyer (PM)  
Ms Heidi Boise (HB)  
Mr Andrew September (AS)  
Mr Olwethu Dlova (OD)

Chief Executive Officer  
Deputy Director  
Assistant Director  
Acting Assistant Director  
Legal Advisor  
Heritage Officer  
Heritage Officer  
Admin Officer (Secretariat)

**Visitors**

Lauren Hill (Item 9.4)  
J E van der Merwe (Item 9.3)  
Mr and Mrs Pike; Mr Herdien (Item 10.1)  
Mr Arvan; Mr Lillie (Item 10.2 – 10.6)

**Observers**

**3. Apologies**

Mr Trevor Thorold (TT)

Appeals Committee member

**4. Approval of agenda**

The Appeals Committee resolved to approve the Agenda dated 21 September 2016.

**5. Approval of minutes of the previous meeting**

**5.1. Dated 24 August 2016**

The Appeals Committee resolved to approve the minutes dated 22 June 2016.

**6. Disclosure of interest**

- Dr Claassen noted his interest in connection with item 10.1 on the Agenda as he had served on IACom when this matter was heard. The Appeals Committee noted that Dr. Claassen would be recused for that item.

**7. Confidential Matters**

None

## **8. Administrative Matters**

### **8.1. Outcomes of the Tribunal Committee**

Ms Meyer provided an update of recent matters heard by the Tribunal and those matters still pending.

**Penelope Meyer**

### **8.2. Recent Court Decisions**

Nothing to report.

**Penelope Meyer**

### **8.3. Site Visits**

The Appeals Committee noted that it had undertaken site visits on 2 September in respect of the following matters:

- Proposed Alterations and Additions, Erf 8988, 22 Plein Street, Paarl: Section 34
- Proposed Alterations and Additions, Erf 3190, 4 Constantia Road, Oranjezicht: Section 34

**Penelope Meyer**

## **9. Matters Arising**

### **9.1 Proposed Remedial Work, Erf 11306, Klein Constantia Street, Paarl: Section 27**

In discussion it was noted that the information previously requested by the Appeals Committee had not yet been provided.

#### **DECISION**

The Appeals Committee resolved that the matter be held over until the requested information is received.

**Jonathan Windvogel**

### **9.2 Proposed Alterations and Additions, Erf 8988, 22 Plein Street, Paarl: Section 34**

In discussion it was noted that:

- There was no representation at the hearing by either the respondent or the appellant.

#### **DECISION**

The Appeals Committee is still formulating the decision which will be finalised and distributed.

**Jonathan Windvogel**

### **9.3 Proposed Alterations and Additions, Erf 3190, 4 Constantia Road, Oranjezicht: Section 34**

Mr JE van der Merwe was present and took part in the discussion.

In discussion it was noted that:

- The Committee had undertaken a site visit on 2 September 2016. At that site visit, and in discussion with the owners, Mr van der Merwe had indicated that they would be writing to HWC to request that the appeal be held over to enable the owners to explore an alternative design proposal for achieving their desired objective of increasing the living space on the property.
- Mr van der Merwe indicated that he had consulted with his architects and the City of Cape Town and that the City had unequivocally indicated that it would not approve any proposal to convert the existing dwelling into a double-storey dwelling.

- On the basis of the City's refusal to consider plans for a double-storey, Mr van der Merwe indicated that he had no alternative but to proceed with the appeal as he feels caught between two authorities.
- In light of Mr. van der Merwe's indication that he wishes to proceed with the appeal, the Committee noted that it is not in a position to render a final decision during the meeting as, based on the site visit, the Committee had anticipated that Mr van der Merwe would not be proceeding with the appeal.

#### **DECISION**

The Committee is still formulating the decision which will be finalised and distributed.

**Jonathan Windvogel**

#### **9.4 Proposed Total Demolition, Erf 177420, 21 Wheelan Road, Newlands: Section 34**

Ms Heidi Boise made a power-point presentation.

In discussion it was noted that:

- A site visit was held between the architects representing the Applicant and the Newlands Residence Association (NRA) and that these parties had resolved to change the roof typology and roof design in accordance with the NRA's requirements and that this issue had been resolved.
- This issue had been signed off as acceptable by the NRA who did not attend the hearing and evidence was provided that the NRA had withdrawn their objection to the rezoning approval with the City of Cape Town.
- Lauren Hill who attended the hearing on behalf of the Applicant confirmed that the NRA had signed off on the revised plan.
- The revised plan does not address the setback requirement identified by BELCom, as it was felt that the change to the roof design had adequately responded to the concerns.
- The difference between the setback requirement imposed by BELCom and that proposed by the Applicant is only 0.95 metres.

#### **DECISION**

The Appeals Committee resolved that the setback of 95cm will not make a material difference to the continuity of the streetscape and the setback proposed by the Applicant is sufficient to maintain the street edge, and the continuity of the streetscape. Accordingly the Committee resolved that the appeal is upheld insofar as it relates to the imposition of a 3 metre setback condition by BELCom. The Committee resolved that a setback of 2.05 metres is imposed as reflected in the most recent plans prepared by Applicant's architect and as approved and signed by the NRA. The revised plans reflecting the NRA's endorsement to be provided to HWC as evidence of the final approved layout.

**Heidi Boise**

#### **9.5 Proposed Total Demolition, Erf 26939, 6 Roman Road, Observatory: Section 34**

Ms. Boise confirmed that the additional information requested had not been submitted.

In discussion it was noted that:

- The heritage officer had not received the decision by the Appeals Committee in this regard and that the decision had not yet been communicated to the Applicant and this would be attended to.

#### **DECISION**

The matter would be held over until the following Appeals Committee meeting.

**Heidi Boise**

#### **10. New Matters**

#### **10.1 Proposed Development on Erf 148055, 54 Tennant Road, Wynberg: Section 38 (4)**

Dr Claassen recused himself.

Mr Pike, representing all affected persons listed in the appeal, was present and took part in the discussion.

Mr Andrew September made a power-point presentation.

In discussion it was noted that:

- Option 3 was approved by BELCom on the basis that the existing development rights for the property had been previously noted by IACom on 13 June 2016.
- Mr. Pike represents all the affected persons who had lodged an appeal.
- The notion that development rights were in place in a manner which allowed the proposed development was disputed.
- Mr. Pike indicated that the property was originally zoned SR1 prior to 1990 and thereafter it was rezoned to GR4 subject to the continued use of the property for hotel purposes only.
- Mr Snelling, the heritage consultant, had submitted a letter dated 25 August 2016 to HWC confirming that based on the disputed facts regarding development rights that he no longer considered the HIA Report as complete.

#### **DECISION**

The Appeals Committee resolved that based on the recent High Court decision in the case of *Piketberg Local Heritage Committee and Another v Vleishandelaars (EDMS) Beperk and Others* and the principles of administrative justice contemplated in the Promotion of Administrative Justice Act, the public participation process had been largely limited to comment from registered conservation bodies. The affected persons (as defined in the appeal submission by Mr Pike) had not been provided with a reasonable opportunity to participate in the HIA process. Accordingly, the HIA process undertaken in connection with the proposed development cannot be construed as being compliant with section 38(2)(e) of the National Heritage Resources Act.

The Committee makes no finding regarding whether or not development rights have in fact been awarded in a manner which would permit the lawful undertaking of the proposed development. However, based on the letter dated 25 August 2016 from Mr. Snelling in which he confirms that the HIA Report he submitted to HWC cannot be considered as complete, the Committee has no alternative but to conclude that the HIA Report fails to satisfy the requirements of section 38(3)(c) of the National Heritage Resources Act.

In the circumstances the appeal is upheld and a fresh application will be required to be submitted to HWC that satisfies the requirements of the Act and PAJA with regards to adequate public participation processes. It would be prudent for the Applicant to ensure that any future application is consistent with the use rights and zoning of property, subject to any restrictions thereon.

**Andrew September**

#### **10.2 Proposed Total Demolition, Erf 10878, 8 Grey Street, Woodstock: Section 34**

This item was discussed under item 10.6

**Jonathan Windvogel**

#### **10.3 Proposed Total Demolition, Erf 10868-Re, 10866-Re & 10869- Re, 4 Grey Street, Woodstock: Section 34**

This item was discussed under item 10.6

**Jonathan Windvogel**

**10.4 Proposed Total Demolition, Erf 10868, 3 Davision Street, Woodstock: Section 34**

This item was discussed under item 10.6

**Jonathan Windvogel**

**10.5 Proposed Total Demolition, Erf 10870, 83 Albert Road, Woodstock: Section 34**

This item was discussed under item 10.6

**Jonathan Windvogel**

**10.6 Proposed Total Demolition, Erf 10877, 77 Albert Road, Woodstock: Section 34**

As items 10.2 – 10.6 relate to the same development, the Appeals Committee dealt with these issues simultaneously.

Mr Arvan and Mr Lillie were present and took part in the discussion

Mr Jonathan Windvogel made a power-point presentation.

In discussion it was noted that:

- Regarding the BELCom decision no reasons were provided by BELCom as to why, in the circumstances of this application, it was felt necessary for HWC to consider the future development proposals relating to this site in the context of several discrete section 34 applications for total demolition.
- Whether or not section 38 of the National Heritage Resources Act applies to the future development proposals must be determined objectively with regard to the scope of the empowering provision. If the future development of the site is regulated by section 38 then the proponent will need to comply with those provisions of the Act.
- With regard to this application it was common cause that the sites were ungradable and not conservation-worthy.
- The suggestion by the City of Cape Town that the sites could possibly be graded (as IIC) is difficult to reconcile with the most recent heritage survey which did not grade the buildings in question.
- Recognising that HWC's power to impose conditions in terms of section 34 of the Act should not be narrowly circumscribed, recognising further that Heritage Western Cape has a broad statutory discretion to impose any terms, conditions, restrictions or directions it deems fit when granting a permit in terms of section 34 of the National Heritage Resources Act, the Appeals Committee affirms the position that each such case must be decided on the merits of the application and the specific heritage resources affected.
- In this instance none of the buildings is formally graded and therefore none has any intrinsic or contextual heritage significance. The fact that there are heritage resources in the vicinity (reference in particular to the Church) does not justify the conclusion that, in this particular instance, there is a justifiable or legitimate heritage reason for regulating the future development of this particular site.
- There are sufficient controls in terms of the applicable Zoning Scheme Regulations to deal with that scenario.
- Mr Anthony Arvan and Ashley Lillie were present and took part in the discussions.
- Mr Arvan questioned the imposition of conditions in this instance, as there is no identified heritage resource affected other than a HPOZ. He submitted that due to the HPOZ the matter of future development should be dealt with by the City in terms of section 31 of the Act (as the Competent Authority to deal with this area).
- Ms Meyer drew a distinction between areas identified in terms of section 31 of the Act and HPOZs, and concluded that proposed HPOZs are not heritage areas in terms of the Act.

- Mr Arvan attacked the condition imposed by BELCom as vague and argued that even if BELCom had the power to consider development in the area, the mere fact of a HPOZ does not lend the affected properties any significance.

**DECISION**

The Committee resolved to uphold the appeals on the basis that there is no heritage reason as to why the new development on the sites should be regulated by Heritage Western Cape pursuant to a condition imposed in terms of section 34 of the Act. The condition imposed by BELCom requiring the plans for future development to be submitted to HWC (pursuant to section 34 of the Act) is not rational or reasonable in the context of this particular application. The application for total demolition is hereby confirmed on appeal with no conditions.

**Jonathan Windvogel**

**11. Other Matters**

None

**12. Adoption of decisions and additions**

The Appeals Committee resolved to adopt the decisions.

**13. Closure of the meeting**

The Chairperson closed the meeting at: 12H30

**14. Date of next meeting**

19 October 2016

Chairperson's Signature.....

Date.....

