

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

Minutes of a Meeting of the Appeals Committee of Heritage Western Cape held on  
Wednesday, 13 December 2016, at 09H30 in the 3<sup>rd</sup> Floor Boardroom at the Protea Assurance  
Building, Greenmarket Square, Cape Town

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### **1. Opening and Welcoming**

The Chairperson, Ms Corlie Smart opened the meeting at 09H45 and welcomed everyone present.

### **2. Attendance**

#### **Appeals Committee**

Ms Corlie Smarts (CSm)  
Dr Nicolas Baumann (NB)  
Mr Tseliso Leshoro  
Dr Antonia Malan (AM)

Appeals Chairperson  
Appeals Committee Member  
Appeals Committee member  
Council Member

#### **HWC Staff**

Ms Penelope Meyer (PM)  
Ms Heide Boise (HB)  
Ms Waseefa Dhansay (WD)  
Mr Olwethu Dlova (OD)

Legal Advisor  
Heritage Officer  
Heritage Officer  
Admin Officer (Secretariat)

#### **Visitors**

Mr Ashley Lillie (AL)  
Mr Mark Callaghan (MC)  
Mr Carl Wesselink (CW)  
Ms Suzanne Vos (SV)

Mr Bradley Conradie (BC)  
Prof Michael Feast (MF)  
Mrs Elizabeth Feast (EF)  
Ms Rosemary Davis (RD)

#### **Observers**

None

### **3. Apologies**

Mr Rowen Ruiters (RR)  
Dr Andre van Graan (AvG)

Appeals Committee Member  
Appeals Committee Member

### **4. Approval of agenda**

The Appeals Committee resolved to approve the Agenda dated 13 December 2016 with the exception of item 9.2 which was removed from the agenda.

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

#### **5.1. Dated 16 November 2016**

The Appeals Committee resolved to approve the minutes dated 16 November 2016.

### **6. Disclosure of interest**

- None

### **7. Confidential Matters**

7.1 None.

## **8. Administrative Matters**

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

There were no tribunal matters to report.

**Penelope Meyer**

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

Nothing to report.

**Penelope Meyer**

### **8.3. Site Visits**

No site visits to report.

## **9. Matters Arising**

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

Ms Boise provided an update regarding this item.

#### **DECISION**

The decision is deferred to the subsequent meeting.

**Jonathan Windvogel**

## **10. New Matters**

### **10.1 Proposed Total Demolition, Erf 45499, 14 Meadow Road, Rosebank: Section 34**

Mr Ashley Lillie and Mr Bradley Conradie represented the Appellant. Mr Mark Callaghan, Prof Michael Feast, Mr Carl Wesselink, Mrs Elizabeth Constance Feast, Ms Suzanne Vos and Ms Rosemary Davis were present on behalf of the objectors.

The chairperson informed the parties that in terms of HWC policy only one representative for each party would be given the opportunity to make representation on behalf of such party.

All parties were however allowed to have 2 representatives make presentation on their behalf.

Mr Lillie indicated that Mr Conradie, being the applicant's legal representative, would be dealing with the legal issues to be addressed in the appeal and that Mr Lillie would make representation regarding the rest of the appeal.

The chairperson indicated that the application by the Appellant for the postponement of the appeal would first be dealt with after which the committee would decide whether to postpone the matter or not.

During the application for postponement it was noted that:

The Appellant was of the opinion that

- The date of the appeal hearing was only confirmed on the 1<sup>st</sup> of December 2016.
- That prior to that Mr Lillie was advised that the 13<sup>th</sup> of December 2016 was being considered and would be confirmed in due course;
- That as a result of the above the Appellant was not in a position to instruct lawyers and other experts to be available for the appeal without incurring substantial costs in securing them to do so;

- That the appellant wanted the opportunity to instruct a senior council to represent her;
- That two of the objectors was not involved in the application and therefore 'new objections' were received that should be responded to;
- That a report to the City of Cape Town authored by Rosebank and Mowbray Planning Advisory Committee (RAMPAC) was attached to the objections filed;
- That the report mentioned above dealt with grading and heritage overlay zones of the zoning scheme regulations;
- That the appellant should have the opportunity to respond to the report by Rosebank and Mowbray Planning Advisory Committee (RAMPAC);
- That the appellant was not given adequate time and opportunity to consider and respond to the written objections received from parties opposing the appeal;
- That the appellant is of the opinion HWC therefore did not consider the appellant to have a right to consider and respond prior to the appeal committee hearing the appeal;
- That the HWC removed the appellants right to properly consider and respond in writing to objections prior to the appeal committee meeting;
- That the above resulted in the process not being fair, transparent and lawful administrative action.
- That the issues raised by the objectors were entirely new or not relevant;
- That the objectors should also have an opportunity to respond to the content of the Appellant's response to their objections and thus it would be unfair to the objectors not to have such an opportunity;
- That the Belcom's imposition of a rule prohibiting the recording of the meeting by the representatives of the appellant and the failure by the secretariat of HWC to record the Belcom proceedings had the result that there is 'no record of the meeting at all'.
- The appellant created a record of the proceedings from hand written notes of the appellant's representatives.
- That the above amounts to negligence on behalf of HWC and limits the appellant's rights to rely on 'an undisputed record' of Belcom meeting.
- That the appellant requested that the appeal committee undertake a site visit;

Mr Wesselink represented the objectors and was of the opinion:

- That the availability of Senior Council to act on behalf of the appellant was not relevant and should not be considered;
- The failure to record the Belcom meeting was not unfair;
- That the RAMPAC report to the City is merely a suggestion to the city and not a complicated matter;
- That the principles of the heritage value of the property and its context are not complicated and can be heard by the appeal committee without further documents being filed
- That the objectors have no issue with the request by applicant for the committee to do a site inspection and believe it to be essential

Appellant's response to the representation by the objectors:

- That as a result of the fact that RAMPAC deemed it fit to include the report to the City in their documents it therefore forms part of the documents to be considered;
- That the appeal should be postponed until the City has made a decision regarding the contents of the report to City by RAMPAC;

Committee went into closed session to consider the application for the postponement of the hearing of the appeal.

**DECISION – POSTPONEMENT APPLICATION:**

The committee in discussion noted that:

- That the parties were given sufficient notice of the date on which the appeal would be heard.
- That the applicant's contention that not having the opportunity to brief a specific senior counsel would prejudice the applicant was incorrect.

- That should all parties involved with appeals insist on arranging dates for meetings around the availability of chosen legal representatives, it would create a situation where arranging meeting dates would be impossible;
- According to the principles of administrative justice and the relevant court decisions an appellant does not have an automatic right to a rebuttal.
- That the applicant would still have an opportunity to verbally address any issues raised by the objectors that the applicant felt should be addressed;
- The committee noted that the appellant did not request reasons for Belcom's decision *ito PAJA*.
- That the recording of a meeting where decisions are taken by an administrator is not a right and therefore not in itself a reason to indicate an unfair administrative action;
- The committee was of the opinion that absence of a recording of the Belcom meeting had no bearing on the request to postpone the appeal;
- That the report by RAMPAC to the City had no legal status and that the relevance thereof to the appeal was questionable;
- That the appellant's heritage practitioner would have an opportunity to address the report by RAMPAC and its content during the appeal meeting and will therefore not be prejudiced.

**DECISION:**

The committee resolved not to postpone the appeal and that the appeal should proceed.

**CONSIDERATION OF THE MAIN APPEAL**

The appeal meeting proceeded after the decision not to grant the postponement was communicated to the parties. It was noted that Mr Mark Callaghan had left during the tea break.

During the representation the appellant it was noted:

- The appellant was of opinion that the report by RAMPAC to the city has no analysis of the fabric of the heritage resource/s
- Further that the assessment was no more than a windscreen survey
- That the report by RAMPAC is impossible to engage with;
- That the City of Cape Town has full competence to grade and that it was graded IIIc by City and Belcom agreed with the grading;
- That the heritage resource does not warrant a grading of IIIb
- That RAMPAC report was irrelevant and that a previous assessment resulted in the urban conservation area
- That the objections contained objections not relevant to heritage
- That the status of the RAMPAC report is not relevant

During the presentation by the objectors, it was noted:

- That the objectors would like to protect the context of Meadow Road
- That number 10, 7 and 3 Meadow Road have 'heritage status'

Committee went into closed session to consider the appeal.

**DECISION**

The committee resolved to undertake a site visit prior to making a decision regarding the outcome of the appeal.

**Waseefa Dhansay**

**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: 12H00

**14. Date of next meeting**

19 January 2017

Chairperson's Signature.....

Date.....

Approved