

MEETING OF THE HERITAGE WESTERN CAPE, APPEALS COMMITTEE

Approved Minutes of a Meeting of the Appeals Committee of Heritage Western Cape held on Wednesday, 17 April 2019, at 09H30 in the 1st Floor Boardroom at the Protea Assurance Building, Greenmarket Square, Cape Town

1. Opening and Welcoming

Dr Antonia Malan was nominated as chairperson by the Committee. The acting Chairperson, Dr Antonia Malan, officially opened the meeting at 9:41 and welcomed everyone present. The chairperson, Ms Corlie Smart took over as chairperson at 10:37.

2. Attendance

Appeals Committee

Ms Corlie Smart (CSm) arrived at 10:34	Appeals Chairperson
Dr Andre van Graan (AvG)	Appeals Committee Member
Dr Nicolas Baumann (NB)	Appeals Committee Member
Dr Antonia Malan (AM)	Council member (Co-opted)

HWC Staff

Ms Penelope Meyer (PMe)
Mr Andrew September (AS)
Ms Heidi Boise (HB)
Ms Aneeqah Brown (AB)
Ms Khanyisile Bonile (KB)
Mr Thando Zingange (TZ)
Ms Colette Scheermeyer (CS)

Visitors

Ms Vanessa Weissenstein	Mr Jeff Dooley
Mr March Turnbull	Mr Andrew Duncan
Mr Peter Sutherland	Mr Richard Summers
Mr Gus van der Spek	Mr Steffan Sontag
Mr Mark Saint Pol	Mr Henry Aikman

Observers

Mr Mike Scurr	Mr Craig Scarterfield
Mr Simon van der Schans	Ms Cathy Duncan

3. Apologies

Mr Rowen Ruiters (RR)
Mr Tseliso Leshoro (TS)
Ms Waseefa Dhansay (WD)

4. Approval of agenda

The Appeals Committee resolved to approve the agenda dated 17 April 2019 with addition items.

5. Approval of minutes of the previous meeting

5.1 Dated 20 March 2019

The Committee resolved to approve the previous minutes dated 20 March 2019 with minor amendments that will be provided by NB via email.

6. Disclosure of interest

6.1 None

7. Confidential Matters

7.1 None

8. Administrative Matters

8.1 Outcomes of the Tribunal Committee and Recent Court Decisions

In summary it was noted in discussion that:

- The decisions were circulated regarding the Seapoint case and the Lady Hamilton case. HWC's position was upheld.
- In the Lady Hamilton case, the tribunal held that "a permit could not be issued subject to a suspensive condition".
- In the Seapoint case, the tribunal held that suspensive conditions can be imposed.
- HWC will continue to impose suspensive conditions, as tribunal rulings are not binding in law.

Penelope Meyer

8.2 Recent Court Decisions

In summary it was noted in discussion that:

- There are no recent court decisions.
- HWC has received a court application for review of the Tribunal decision in respect of the demolition of the house on Erf 156 Sea Point (a house next to the Church)
- Senior Counsel opinion has been sought as to whether to pursue the case or not.

8.3 Site Visits

The follow site inspection was conducted by members:

- Erf 9096, 6 Mill Street, Paarl: Section 49 (34)
- Erven 9282, 1398 & 206069, Berg River Boulevard, Swartvlei & Synagogue, Paarl: Section 49(38)(1)

8.4 Potential Site Visits

- Remainder of Erf 1560, Paarl

8.5 Confirmation of attendance for Appeals Meeting, 13 June 2019

- CSm has tendered her apologies for the Appeals Meeting, 13th of June 2019.

8.6 Issuing of Minutes and Decisions provided

In summary it was noted in discussion that:

- The committee members will respond and comment on the minutes within 48 hours.

8.7 Anson Square discussion at APHP Conference

In summary it was noted in discussion that:

- PM reported back on a presentation at the conference which was done by herself and Richard Summers.
- The focus was on the definition of the term “site” in the context of the trigger of S38 (1) which is a “site bigger than 5000m². It was noted that an erf or a development footprint is an arbitrary trigger and not heritage related.
- It was agreed that more appropriate parameters and section 38(1) of the NHRA triggers for HIAs that are heritage related must be developed.
- NB suggested that the DEA&DP approved guidelines for NEMA processes could serve as a basis for further discussion. NB to circulate and PM to suggest that HWC and APHP develop proposed guidelines triggers.

9. Matters Arising

9.1 Proposed Development on the Remainder of Erf 49306, the Cannon Brewery, Cannon Street, Newlands: Section 49 (Section 38(4))

Case No: 17022304AS0306E

Mr Andrew September gave a presentation

Ms Vanessa Weissenstein, Mr Jeff Dooley, Mr March Turnbull, Mr Andrew Duncan, Mr Peter Sutherland, Mr Richard Summers (RS), Mr Gus van der Spek, Mr Steffan Sontag and Mr Mark Saint Pol were present and took part in the discussion.

In summary it was noted in discussion that:

- MT submitted:
 - The I & AP’s were not provided with a 30 day period to comment on the documents submitted by the Applicant.
 - The Applicant chose the date of the Appeal.
 - He requested that the appeal be postponed to allow the I & AP’s enough time to comment on the new documents.
- RS responded and submitted:
 - The I & AP’s had enough time to comment on the documents that the Applicant submitted.
- The appeals committee, in closed session, took note of Ms Meyer’s advice regarding the necessity to consult again with I & AP’s after they had already had a 30 day commenting period.

- The committee decided not to postpone the appeal and after informing the parties proceeded with the hearing of the Appeal.
- The Applicant submitted:
 - The arboricultural expert, Riaan van Zyl, is internationally recognized and the objectors should have submitted a report by their own arboricultural expert if they were of the opinion that Mr van Zyl's report was not correct.
 - It was not possible to draft a detailed landscape plan at this stage of the project.
 - Some of the big trees were over 100 years old and the trees at the entrance to the site will be protected.
 - The basement will be situated to avoid the major trees and the basement will not affect the current groundwater level.
 - The roots of the trees will be bridged.
 - Addressed the committee on the number of highly, significant and nonsignificant trees as indicated on the tree survey presented to the committee.
- VW in response indicated:
 - The new documents submitted contain incorrect information and the I & AP's could not interact if the document contained incorrect information.
 - JD indicated:
 - They did not question Mr van Zyl's expertise but that the report should be done by an independent specialist.
 - The latest landscape plan does not address the heritage indicators.
 - The HIA originally indicated that the site was graded as Grade IIIA which included the garden and if the development is approved it would effectively destroy the garden.
 - If the Appeals Committee approved the development it will effectively abandon the grading of the site as grade IIIA.
- AD submitted:
 - The overall plan did not contain sufficient information.
 - That "Workshop West" and two other buildings were not indicated.
 - A tree planting and water management plan have not been submitted
- PS indicated:
 - It is not indicated that the arborist will monitor the project weekly or monthly.
 - The CMP does not replace the section 38 of the NHRA decision.
- MSP indicated:
 - The landscape will not be destroyed.
 - There will be more walkways which would add to the layout and increase the use of the garden.
 - The water management plan has addressed the harvesting of water on the site and the soft planting will improve water management.
 - That the garden is a living and not a static entity.
 - The character of the garden will be kept by retaining the three terraces.

In summary, the committee noted and took the following into account:

- The appeal by the Applicant against the conditions set by IACom was dismissed by the Appeals Committee on the 20th of February 2019.
- The Appeals committee required further information relating to the proposed landscaping of the site in order to make a decision regarding the appeal by the I& AP's.
- It is acknowledged that the character of the garden scape will be changed irretrievably by any development.

- However, the concept of the garden as a living and dynamic entity is also acknowledged.
- Elements that are embedded in the existing landscape concept including the central axis and the front lawn, the terracing and the retention of existing trees have been incorporated in the proposed landscape plan and are supported.
- However, a final landscape plan must address the final approved layout of the structures and building forms.

DECISION

The appeal of the objectors is dismissed and the decision of IACOM dated 26 November 2018 confirmed with the addition of the following conditions:

1. A final landscape plan must address the final approved layout and building forms and must be submitted for approval by HWC.

Andrew September

9.2 Proposed Total Demolition, Erf 1455, 14 Kotze Street, Gardens: Section 49 (Section 34- Total Demolition)

Case No: 18050710ZK0509E

Mr Andrew September provided the Committee with a presentation.

In summary, the committee noted and took the following into account:

- The submitted design proposal is not congruent with the concept sketch design previously presented in terms of scale, apertures and solid void relationships.
- The submitted design proposal now has a dominant roof structure and a pronounced horizontality.
- As opposed to the concept sketch, the proposal is now symmetrical.

DECISION

The current proposal dated 26 March 2019 is not approved and a revised proposal addressing the heritage indicators and previous requirements of the 21 November 2018 Appeals decision must be submitted to the Appeals Committee for approval.

Waseefa Dhansay

9.3 Proposed Addition and Alteration Erf 4140, Ou Hoof Gebou, Stellenbosch University, Stellenbosch: Section 49 (Section 27 – Addition and Alteration)

Case No: 18103112HB1107E

The Committee will undertake a site inspection at 10:00 on the 13th of May 2019.

Heidi Boise

9.4 Proposed Addition and Alteration Erf 191, 119 Buitenkant Street, Gardens: Section 49 (Section 34 – Addition and Alteration)

Case No: 18080204HB0806E

In summary it was noted in discussion that:

- The new proposal does not address the issues raised by the committee in the previous meeting.

DECISION

1. The current proposal is not approved. The case officer will provide the applicant with clarity on the design requirements as previously communicated.
2. A revised proposal to be submitted to HOMs for approval.

Heidi Boise

9.5 Proposed Consolidation and Redevelopment of Erven 9282, 1398 & 206069, Berg River Boulevard, Swartvlei & Synagogue, Paarl: Section 49 (Section 38(1))

Case No: 19020406TZ0204E

Mr Thando Zingange gave a PowerPoint presentation.

Dr Andre van Graan reported back on the site inspection.

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

In summary it was noted in discussion that:

- HA submitted that there was a lack of consistency in previous decisions.
- That HOMS required a HIA, which was not considered to be appropriate.

In summary, the Committee noted and took the following into account:

- The site lies adjacent to an area that has been redeveloped.
- The adjacent properties are all commercial developments.
- The residential property which is proposed to be demolished is not of any heritage significance.
- The area around the site has no heritage value.
- Berg River Boulevard, which is a wide through road, separates the site from the adjacent residential area.

DECISION

The appeal is upheld.

Thando Zingange

10. New Matters

10.1 Proposed Additions and Alterations, Erf 9096, 6 Mill Street, Paarl: Section 49 (Section 34 Additions and Alterations): For noting

Case No: 17072520WD0425M

Ms Waseefa Dhansay gave a PowerPoint presentation

DECISION

The appeal is noted. Matter will be heard on 22 May 2019

Waseefa Dhansay

10.2 Proposed Upgrade and Redevelopment of Tourist Facilities, Rem. Farm 1560, Domaine Brahams Farm, Vryguns Road, Windmeul, Paarl Section 49 (Section 38(4) – Heritage Impact Assessment)

Case No: 19011502LB0218E

Mr Lwazi Bengu introduced the item to the Committee.

DECISION

The appeal is noted. The matter will be heard on 22 May 2019. The Committee will undertake a site inspection at 12:00 on the 13th of May 2019.

Lwazi Bengu

11. Other Matters

11.1 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: 14:25

14. Date of next meeting: 22 May 2019

Chairperson's Signature.....

Date.....