

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



**Held on Wednesday, 18 November 2020 via Microsoft Teams, scheduled
for 09:00am**

1. Opening and Welcome

The Chairperson, opened the meeting at 09:00 officially and welcomed everyone present.

2. Attendance

Committee Members:

Ms Katherine Dumbrell (KD)
Dr Andre van Graan (AvG)
Dr Antonia Malan (AM)
Dr Nicolas Baumann (NB)
Adv Mandla Mdludlu (MM)

Members of Staff:

Mr Thando Zingange (TZ)
Mr Olwethu Dlova (OD)
Ms Cathy-Ann Potgieter (CAP)
Ms Nosiphiwo Tafeni (NT)
Ms Colette Scheermeyer (CS)
Ms Penelope Meyer (PM)

Visitors:

Item 10.1

Dr Waheeda Amien
Ms Heidi Boise

Item 10.3

Mr Marnus Barnard

Observers:

None

3. Apologies

None

Absent

None

4. Approval of Agenda

4.1 Dated 18 November 2020

The Committee resolved to approve the Appeals Agenda dated 18 November 2020.

5. Approval of Minutes of Previous Meeting

5.1 Appeals Minutes dated 21 October 2020

The Committee resolved to approve the minutes of the Appeals Committee meeting which was held on 21 October 2020.

6. Declaration of Conflicts of Interest

6.1 None

7. Confidential Matters

7.1 None

8. Administrative Matters

8.1 Outcome of the Tribunal Committees and Recent Court Decisions

PM reported back on the outcome of the 8 & 10 Feldhausen Road Ministerial Tribunal. The Tribunal endorsed the Appeals Committee's decision, which confirmed BELCom's decision, but provided that HWC must approve the final development.

8.2 Report back from HWC Council

None

8.3 Site Visits Conducted

None

8.4 Potential Site Visits

None

8.5 Appointments

None

9 Matters Arising

9.1 None

10 New Matters

10.1 Proposed alterations and additions on Erf 10046, 58 Lymington Way, Zonnebloem HM/CAPE TOWN METROPOLITAN/ZONNEBLOEM/ERF 10046

Case No: 20062308TZ0806E

Mr Thando Zingange introduced the case.

Dr Waheeda Amien (owner) and Ms Heidi Boise (Heritage Consultant) were present and took part in the discussion.

APPELLANTS

- The Appellant appealed the decision to issue a Section 51 letter in terms of the NHRA, as she informed the Committee and emphasised that the work had not started on the property at 58 Lymington Way, Zonnebloem.
- The Appellant requested reasons to be furnished by Heritage Western Cape for the issuing of the Section 51 letter. The Appellant requested that the letter be withdrawn so that she could continue with the process required for development to proceed.

DISCUSSION

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

- The Committee raised concerns regarding the inability to conduct site inspections and the reliance on affidavits to confirm that work had not commenced.
- TZ raised the point that site inspections could not be undertaken when the matter was set down to be heard by HOMs because of the lockdown at that stage.
- The Committee suggested that an apology be issued to the owner and requested the officials to ensure that this error should not happen again because of possible negative legal repercussions. The request was accepted by the officials.
- The Committee took note of the Section 51 letter and noted that the work had in fact not commenced, and therefore the letter was issued in error.
- PM confirmed the new process in the HOMs meetings whereby the case officers are to request written confirmation that work has commenced in the event of suspected illegal works before issuing a Section 51 letter to avoid such errors in the future. This will ensure that there is evidence available before such a S51 letter is issued.
- PM noted that a lot of illegal work has been undertaken and it has been difficult to navigate the conditions under which HWC is working during lockdown.
- As HOMs cannot reverse a decision to issue a Section 51 letter, because they are considered *functus officio*, (a principle in terms of which decisions of officials

are deemed to be final and binding once they are made) once the decision is taken; the Appeals Committee must uphold the appeal in order for the applicant to continue with the process required for development to proceed.

- The Committee considered the original application for the permit before HOMs and agreed that the permit can be granted.

DECISION

The Appeal was upheld, and the letter issued in terms of Section 51 of the NHRA is rescinded. The Committee resolved to approve the application as contained on the revision 1 drawings dated November 2019.

TZ

10.2 Proposed Total demolition on Erf 164592, 48 Riverside Road, Fernwood, Newlands HM/CAPE TOWN METROPOLITAN/NEULANDS/ERF 164592

Case No: 20020411LB0205E

Ms Khanyisile Bonile introduced the case.

APPELLANTS

DISCUSSION

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

- The Committee confirmed that a site visit is to be conducted before the next Appeals meeting.
- NB and AvG confirmed that they will conduct the site inspection on a date to be determined.

POSTPONEMENT

Therefore, the matter was postponed and set down to be heard by the Appeals Committee on 4th December 2020, after the site inspection has been conducted.

KB

10.3 Proposed telecommunications mast, Erf 204, 12 Burger Street, De Rust HM/CENTRAL KAROO/OUTSHOORN/DE RUST/ERF 204

Case No: 20021705JW0304E

Mr Jonathan Windvogel introduced the case.

Mr Marnus Barnard (Chairperson of the Greater Oudtshoorn Joint Permit Committee) was present and took part in the discussion.

APPELLANTS

- The appeal against the installation of the mast on a site on which a PHS is situated is more focused on the receiving environment, which is an area of heritage buildings surrounding the PHS.
- The appeal is against the HOMs response to the Notice of Intent to Develop, requiring no further studies, on 3rd March 2020. The appellant became aware of the application for relaxation of building lines on 15th September 2020 when they were notified of that application by the local authority. By the 17th of September the appellant received the written decision from HWC.
- The appellant stated that the HOMs decision that heritage resources will not be impacted upon is incorrect and that heritage resources may be negatively affected. A Heritage Impact Assessment should be required.
- The appellant claimed that the development is in close proximity to a number of houses that are older than 60 years old and are therefore considered to be potential heritage resources.
- The development is argued to potentially have a negative impact on these houses, both visually and acoustically in terms of views and noise pollution.
- The appellant confirmed that there were no heritage surveys done on the area.
- The appellant stated that the church property that is a PHS is a full town block, which contains the church, the old church wall, and a vacant piece of land that functions as a common. Surrounding this common there are 14 houses which are all over 100 years old. The intrusion of a semi-industrial element is argued to intrude on this historical area.

DISCUSSION

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

- The Committee raised concerns regarding the late lodging of the appeal.
- The first issue before the Committee was whether it should hear this appeal; the second was whether the Committee should withdraw the Section 38 decision and proceed via Section 27 of the NHRA.
- The Committee noted that it is important for the appellant to be heard due to the fact that they were not notified of the development, and that the lapse in time was through no fault on their part.
- PM confirmed that there is no requirement that NIDs be sent to conservation bodies for comment in terms of the NHRA and its regulations. As such, there is no legal requirement for public participation at the Notice of Intention to Develop (NID) stage.
- The Committee noted that the impact in question could impact on the streetscape. The tower is visible from afar, as per its nature, and its impact is therefore broader than the ambit of a Section 27 application.
- The Committee noted the potential socio-economic impacts of the development.
- The Committee noted that both Sections 27 and 38 are triggered by the proposed development, and that each focuses on different aspects of the case.

There is precedent that a case be assessed sequentially in terms of both triggered clauses

DECISION

1. The late filing of the Appeal is condoned.
2. The Appeal is upheld. An HIA in terms of Section 38(3) of the NHRA, which includes a Visual Impact Assessment must be submitted to HWC.

JW

11. Other Matters

The Chair to refer the issue of public participation for NIDs to Council.

12. Adoption of decisions and resolutions

The Decisions and Resolutions of the meeting were unanimously adopted by the Appeals Committee.

13. Proposed next date of the meeting:

4th December 2020

14. Closure: The meeting was adjourned at: 11:43

MINUTES APPROVED AND SIGNED BY:

CHAIRPERSON _____ **DATE** _____

SECRETARY _____ **DATE** _____