

MEETING OF THE HERITAGE WESTERN CAPE, APPEALS COMMITTEE

Approved Minutes of a Meeting of the Appeals Committee of Heritage Western Cape held on Wednesday, 24 January 2018, at 09H30 in the 1st Floor Boardroom at the Protea Assurance Building, Greenmarket Square, Cape Town

1. Opening and Welcoming

2. The Chairperson Rowen Ruiters officially opened the meeting at 09:39 and welcomed everyone present.

3. Attendance

Appeals Committee

Ms Corlie Smart (CSm)	Appeals Chairperson
Dr Andre van Graan (AvG)	Appeals Committee Member
Mr Tseliso Leshoro (TS)	Appeals Committee Member
Dr Nicolas Baumann (NB)	Appeals Committee Member
Mr Rowen Ruiters (RR)	Appeals Committee Member

HWC Staff

Mr Mxolisi Dlamuka (MD)	Director
Ms Colette Scheermeyer (CSc)	Deputy Director
Mr Zwelibanzi Shiceka (ZS)	Assistant Director
Mr Jonathan Windvogel (JW)	Assistant Director
Ms Penelope Meyer (PMe)	Legal Advisor
Mr Andrew September (AS)	Heritage Officer
Ms Katherine Robinson (KR)	Heritage Officer
Ms Waseefa Dhansay	Heritage Officer
Ms Heidi Boise (HB)	Heritage Officer
Mr Zethembe Khuluse (ZK)	Heritage Officer
Ms Stephanie Barnardt (SB)	Heritage Officer
Ms Aneeqah Brown (AB)	Intern
Mr Zukisani Sijula (ZSi)	Intern

Visitors

Mr Neil Schwarz (NS)	Mr Mike Scurr (MS)
Ms Barbara Southworth (BS)	Ms Lize Malan (LM)
Mr Ashley Lillie (AL)	Mr Nicholas Smith (NS)
Dr Stephen Townsend (ST)	Mr Dave Domin
Ms Katherine Handley (KH)	Mr Byron Cost (BC)
Mr Richard Summers (RS)	Mr Nicholas Smith (NS)
Ms Geraldine Goncalves (GG)	Mr Paul Edmunds (PE)
Ms Melissa Groenink (MG)	Mr Alastair Rendall (AR)
Ms Natalie Sherren (NS)	Ms Clarice Arendse (CA)
Mr Bruce Plane (BP)	Mr Craig Armstrong, (CAr)
Mr Russell Smith (RS)	

Observers

Mr Chris Snelling (CSn)

4. Apologies
Mr Olwethu Dlova (OD) Admin Officer

5. Approval of agenda

The Appeals Committee resolved to approve the agenda dated 24 January 2018 without amendments.

6. Approval of minutes of the previous meeting

6.1. Dated 15 November 2017

6.2. The Appeals Committee resolved to approve the minutes dated 15 November 2017 with minor amendments.

7. Disclosure of interest

6.1 Item 10.1

8. Confidential Matters

7.1 None

9. Administrative Matters

9.1. Outcomes of the Tribunal Committee

- None

Penelope Meyer

9.2. Recent Court Decisions

- None

Penelope Meyer

9.3. Site Visits

- Erf 518 – 3 Central Drive, Camps Bay
- Erf 95029- Lady Hamilton Hotel, Weltevreden Street, Gardens

9.4. Appointments:

Item 10.1 Proposed Development of the East Quay Precinct Erf 149294 and 176352- V&A Waterfront

9.5. HOMs Discussions:

Proposed site inspections - 10.3, 10.4, 10.6, 10.7

Ms Corlie Smart took over the chair

10. Matters Arising

9.1 Proposed Total Demolition, Erf 97471, 4 Lemon Lane, Newlands: Section 34- HM/CAPE TOWN METROPOLITAN/ERF 97471

Case No.: 17050901KR0510E

Ms Katherine Robinson gave a PowerPoint presentation.

Mr Ashley Lillie, Ms Katherine Handley, Mr Richard Summers (RS), Dr Stephen Townsend, Ms Geraldine Goncalves (GG), Ms Melissa Groenink (MG) and Ms Natalie Sherren were present and some of the parties took part in the discussion

In summary, it was noted in discussion that:

- RR and NB were not present at the Appeals Committee meeting of the 15th of November 2017 when the item was before the committee.
- The parties were provided with an opportunity to read the minutes of the Appeals Committee meeting dated the 15th of November 2017 and confirmed that the minutes were sufficient and correct. The parties confirmed they had no objection to RR and NB participating in the hearing and decision-making process.
- The parties were also given the opportunity to indicate whether they were of the opinion that NB should recuse himself from the matter due to his involvement in a previous study which was submitted and before the committee.
- The parties indicated that they were of opinion that it was not necessary for NB to recuse himself.
- Dr Townsend indicated that the previous minutes incorrectly reflects that he made submissions to the committee. (Submissions referred to in minutes included written and oral submissions.)
- RS indicated:
 - NRA submitted additional documents dated the 22nd of January 2018 and the Appellant / Applicant objected to the submission thereof. The chairperson confirmed that as it was not part of the documents submitted within the provided timeframes (as per the decision of the 15th of November 2017, the documents were not provided to the committee

- by the case officer and therefore not before the committee. Only documents filed on time would be considered by the committee.
- That the information was submitted timeously by the Appellant / Applicant and that the other parties had more than enough time to peruse and respond thereto.
 - The key issue related to what the heritage resources are and whether development control would be justified this matter.
 - The site does not relate to the core of the Newlands Village and immediate surroundings and that 3 expert opinions indicated that the area has no heritage value. The trees do contribute to the character but not to the heritage significance in the context of the site and that a landscape plan was submitted.
 - The committee should focus on the significance and the impact on heritage resources and should not consider a 'draft HPOZ' for the area within which the property is situated. That the draft HPOZ has not been formalised by the CoCT.
 - The Gees judgement was not applicable to this matter. The application was not a section 38 application or part of an EIA process.
 - The committee had adequate information regarding the section 34 application to make a final decision.
 - GG referred to the draft HPOZ'
 - The chairperson indicated to GG that oral submissions regarding the 'draft HPOZ' will not be allowed as the document was not before the committee as indicated earlier in the meeting.
 - GG indicated that she was of the opinion that it was procedurally unfair to not take it into consideration.
 - MG indicated:
 - The information submitted to the committee was not new but a response to the Appellant / Applicant's submissions.
 - That the 'draft HPOZ' is indicative of the heritage resources and broader Newlands area as contained in the map and document.
 - That her client was not completely opposed to development on the site but that the design as marketed and additional information provided do not conform to the height and bulk of the surrounding area and were not in scale and ought to be protected in the 'draft HPOZ'.
 - That her clients have shown which heritage resources will be impacted in various documents submitted
 - GG indicated that she supported the submissions made by MG and had nothing further to add.
 - RS objected to a slide of the marketing material that was shown on the screen during the submissions.
 - The chairperson confirmed that the slide shown will not be taken into consideration by the committee.
 - To clarify NB asked RS whether his interpretation of section 34 would preclude the committee from analysing the impact of the basement parking on the rivers and streams that could be construed to be part of the significance of the site.
 - In response to a question by NB, RS indicated that the riverbank is not a heritage resource and that the stream and river contribute to the surroundings but are not heritage resources. That he failed to see that the basement under the ground could influence the riverbank if it is considered to be a heritage resource.
 - RS submitted a written version of his oral submissions which also refers and sets out the legal argument whether Belcom was correct when they decided to include suspensive conditions in their decision.

- The Committee discussed and took the following into consideration:
 - The documents and submissions made by the parties as well as the site visit report.
 - That appeals to the Appeals Committee are appeals in the 'wide sense' and the committee can assess all information it deems necessary. That the committee can replace the decision of Belcom with a new decision if deemed appropriate.
 - That if the committee is of the opinion that heritage resources will / may be impacted on the committee may require that plans for the proposed development must be submitted for approval to assess such impact on heritage resources.
 - That should the committee be of the opinion that heritage resources might / will be impacted; the committee is mandated by the NHRA and legal precedent to impose conditions with a conservation objective.
 - That the existing structure has no heritage value in itself and that as such it can be demolished.
 - That the streams and rivers and the confluence of the rivers in the greater Newlands area are heritage resources as they are the reason for the establishment of settlements in the area..
 - The heritage resource relevant to this matter was identified as the watercourses in Newlands.
 - The site does not relate to the historic, small scale and fine grain development found on Mains Road.
 - The actual impact on the heritage resource should be considered and the proposed development plans would shed light on whether it will impact on the heritage resource.
 - The scale of the proposed development should be considered in relation to the immediate context rather than the scale of existing buildings on Mains Road.
 - The impact of excavations for the basement should be considered in view of its potential impact on the steeply sloped riverine context.

DECISION

The Committee resolved to uphold the Appeal and the decision of the BELCom is replaced with the following:

The committee approves the demolition of the structure, subject to the approval by the appeals committee of the proposed development's plans in order assess the development's impact on the heritages resources identified as the watercourses in Newlands. “

Katherine Robinson

9.2 Proposed Total Demolition, Erf 518 - 3 Central Drive, Camps Bay: Section 34- HM/ CAPE TOWN METROPOLITAN/ CAPE TOWN CBD/ ERVEN 117665, 9745, 4347 AND 4339, CAPE TOWN CBD

Case No.: 17080710WD0808E

Ms Waseefa Dhansay gave a PowerPoint presentation.

Dr Stephen Townsend and Mr Mike Scurr were present and took part in the discussion.

AVG gave a report back on the site inspection conducted. A copy of the site inspection report is attached as SI 1.

In discussion, amongst other things, it was noted that:

- ST submitted that:
 - The architects endeavoured to design additions to the structure but it was not possible to do so without the demolition of the structure.
 - The CoCT and the Camps Bay Ratepayers Association in their comment indicated that the grading of the structure should be IIIC.
 - The grading of IIIC should only be afforded to a structure should it contribute to the environment in relation to the heritage value of the environment.
 - Unless the structure contributes to the heritage value of the environment it should not be protected
 - The structure's possible heritage significance could be the balconies and two gables but it is questionable whether that structure is a landmark.
 - All parties agreed that the structure is worthy of a grade IIIC grading but that while it may have a charming façade, the interior of the structure does not contribute to the heritage value of the structure.
 - The 'test' in the Gees Judgment is a good test to assess whether the structure can be demolished and whether development regulated.
- The Committee discussed and took the following into consideration:
 - The documents and submissions made by the parties as well as the site visit report.
 - The site tapers towards the rear with a very small rear garden.
 - The existing double-gabled Cape Revival house was designed by Cedric Sherlock. It has however been altered and the west elevation no longer has its original sash windows, although it retains the gables and the arcaded recessed central porch.
 - Internally the house has been completely modernized and does not retain any original fabric.
 - The front garden with its landscaping is an important visual element in the street and the treed aspect of the site is an important landmark element in the area.
 - The adjoining house to the north is double-storeyed, while the house to the south rises to four storeys (including the basement parking).
 - The structure does not contribute to the heritage value of the environment within which the property is located.

DECISION:

The Committee resolved to uphold the Appeal.

A permit for the demolish of the structure is granted without any conditions.

Waseefa Dhansay

**9.3 Proposed Total Demolition, Erf 95029, Lady Hamilton Hotel, Weltevreden Street, Gardens: Section 34
HM/CAPE TOWN METROPOLITAN/GARDENS/ERF 95029**

Case No.: 160829112AS1021E

Mr Andrew September gave a PowerPoint presentation.

Mr Paul Edmunds [PE] (on his own behalf - Appellant), Dr Stephan Townsend [ST] (on behalf of the owners of Leinster Hal - Appellant), Ms Lize Malan (Heritage Consultant to the Applicant), Mr Byron Cost and Mr Nicholas Smith [NS] (on behalf of the Applicant / Appellant) were present some of them took part in the discussion.

In summary, it was noted in discussion that:

- AvG gave a report back on the site inspection conducted.
- NS handed up a written version of his submission and highlighted parts thereof. NS submitted that:
 - That 2 court judgements were applicable
 - The wording of section 34 of the NHRA.
 - Discussed the implications of the Gees judgement
 - Discussed the separation of powers into the Constitution of the Republic of South Africa and the implications thereof on the matter.
- NS handed up the permit with the sections of the conditions that are not consistent with the conservation objectives as referred to in the Gees Judgement.
 - The sections highlighted were issues that should be dealt with by the CoCT.
- NS referred to the relevant facts in Gees and Qualidental Judgements
- Indicated that the question the building heights etc were not with the competency of HWC in terms of the Constitution. That neither of the two other appellants answered in their documents to his client's appeal and that as a result thereof there was no opposition to his client's appeal.
- In reply to a question by NB NS replied that the items highlighted on the permit were not related to heritage but related to land use.
- PS submitted:
 - That the development was out of scale and too big.
- ST submitted:
 - His client's objection was about the scale of the development and that the environment has been damaged by these types of developments
 - The Qualidental judgment did not assist NS's submission
 - Section 34 also refer to 'place' and therefore not only the structure and the site itself
 - Referred to the Gees Judgement and town planning discussed in the judgement.
 - The conditions in the permit are not planning related as the conditions are to protect the heritage value.
 - That the conditions contained in the appeal were vague and the drawings were insufficient and will lead to confusion
 - The interested parties could not peruse the plans and comment on them.
 - The scale of the new development affects the heritage resources
 - That 2 storeys of the proposed development should be taken off.
- The Committee discussed and took the following into consideration:
 - The documents and submissions made by the parties as well as the site visit report.
 - The site abuts Leinster Hall to the east. This is an important historic building.
 - The proximity of the existing development of the Lady Hamilton Hotel was noted.
 - The development bulk rises to its maximum height in line with Leinster Hall.

- The lower section is on the boundary with Leinster Hall but with a blank wall that is partly screened by the existing trees. This portion is approximately 7,5 meters high.
- The height of the existing building, although in close proximity, is mitigated by the existing trees.
- The existing heights of the Lady Hamilton are important datum levels in terms of visual impact on Leinster Hall
- That the conditions set out in the Belcom decision were sufficiently descriptive.
- The conditions were considered to be in line with the mandate of HWC to 'restrict' the development proposal in order to protect the heritage resources.
- The conditions were endorsed by the Appeals Committee.

DECISION

All three Appeals are dismissed and the decision of BELCom is confirmed.

Andrew September

10. New Matters

10.1. Proposed Development of the East Quay Precinct Erf 149294 and 176352 - V&A Waterfront- HM/ CAPE TOWN METROPOLITAN/V&A WATERFRONT/ ERF 149294 and 176352

Case No.: 17020905WD0110M

Ms Waseefa Dhansay gave a PowerPoint presentation.

Ms Barbara Southworth and Mr Neil Schwarz were present and took part in the discussion.

In summary, it was noted in discussion that:

- The only issue raised in the appeal was the decision that the development may not exceed the height of 21m
- Restricting the height of the development to 24m as opposed to the 21m referred to in the decision would not increase the impact the development will have on heritage resource/s.
- The relationship between the site and the sea was considered. The scaling down of the buildings toward the waterfront created a stronger link between the two.

DECISION

The Committee resolved to uphold the Appeal and permit the height as applied for.

Waseefa Dhansay

**10.2. Proposed Development on Erven 117665, 9745, 4347 and 4339, Zero2One, Cape Town CBD
HM/ CAPE TOWN METROPOLITAN/ CAPE TOWN CBD/ ERVEN 117665, 9745, 4347 AND 4339, CAPE TOWN CBD**

Case No.: 1608310303WD0919M

The Chairperson, Ms Smart handed over the Chair to RR and left the meeting.

Ms Waseefa Dhansay gave a PowerPoint presentation.

Dr Stephan Townsend, Mr Ashley Lillie, Mr Alastair Rendall, Ms Clarice Arendse, Mr Bruce Plane Mr Craig Armstrong and Mr Russell Smith were present and took part in the discussion.

In summary, it was noted in discussion that:

- RS handed up a written version of his oral submissions and requested that should the committee have questions regarding urban design or heritage related matter that it be directed to Mr Rendall or Mr Lillie
- RS highlighted some of the written submission handed up and submitted that:
 - The appeal fundamentally turned on the issue of the height of the proposed development.
 - There was a disconnect between the IACom decision and the information contained in the HIA.
 - The HIA recognised that the site was a prominent site but that its prominence does not relate to its heritage value or status as a heritage resource and the HIA confirmed that the site was not a heritage resource.
 - HIA confirmed that heritage resources would not be affected by the development.
 - He highlighted the issue regarding the site's location within the CBD HPOZ.
 - The HPOZ is not a homogenous heritage resource.
 - IACom was required to consider the site, location and the context thereof.
 - The fact that the site is within a HPOZ does not, in itself, justify a limitation on the height of the development.
 - IACom's concerns regarding the height and urban design were addressed.
 - No indication that IACom applied its mind to the information regarding both urban design and heritage in response to the restriction of the height of the development.
 - The new information regarding the above was not taken into consideration by IACom.
 - That there has been no coherent counterargument put forward as to why the height of 137m is not acceptable from a heritage perspective.
 - The proposed building could serve as an apex of the existing cluster of tall buildings.
 - The VIA concluded that the proposed development will not have a negative heritage impact.
 - The development is set on the edge of the area of tall buildings and the fine grain of the heritage buildings.
 - There is no material impact on the context of the immediate area by the additional height of the development.

- That considerations relating to section 38 should be taken into account.
- Significant impact on socioeconomic consideration of the affordable housing element of the development should be considered.
- In a response to a question by NB Mr Rendall explained the notion of apex development mentioned.
- RS objected to ST making any submissions as there was no formal opposition by any party to the written appeal and that that third parties were therefore not before this committee. That the Cape Institute for Architecture's comment on the HIA were already before the committee.
- PM indicated that in the Appeals Committee may consider any additional information it deems could be helpful in coming to a decision.
- ST submitted:
 - That the Institute submitted to IACom that the surrounding buildings in the area gave a context for other buildings and created the basis for the height of new buildings should be set at 115m.
- The Committee discussed and took the following into consideration:
 - The documents and submissions (both written and oral) made by the parties.
 - The issue of height between what was proposed and what IACom had set down in its decision was difficult to justify.
 - The height laid down in the decision appeared to be arbitrary as it did not relate to any specific datum.
 - The difference in height was relatively small.

DECISION:

The Committee resolved to uphold the Appeal and permit the height of 137m as applied for.

Waseefa Dhansay

**10.3 Proposed Total Demolition - Erf 987 - 38 Arthurs Road, Sea Point
HM/ CAPE TOWN METROPOLITAN/ SEA POINT/ ERF 987**

Case No.: 17081809WD0906M

Ms Waseefa Dhansay gave a PowerPoint presentation.

In summary, it was noted in discussion that:

- The committee was of the opinion that a site visit should be conducted in order to make an informed decision.

INTERIM RESPONSE:

The committee resolved to undertake a site inspection.

Waseefa Dhansay

**10.4 Proposed Total Demolition of Structures on Erven 2769 & 2592-Re, 1 Chelsea And 25 Aandbloem Roads, Vredehoek
HM/CAPE TOWN METROPOLITAN/VREDEHOEK/ERF 2769 & HM/CAPE TOWN METROPOLITAN/VREDEHOEK/ERF 2592-RE**

Case No.: 17042407KR0503M & 17042408KR0503M

Ms Katherine Robinson gave a PowerPoint presentation.

In summary, it was noted in discussion that:

- The committee was of the opinion that a site visit should be conducted in order to make an informed decision.

INTERIM RESPONSE:

The committee resolved to undertake a site inspection.

Katherine Robinson

**10.5 Proposed Demolition, Alterations and Additions of the Van Breda Bridge, Ceres
HM/CAPE WINELANDS/ WITZENBERG/ CERES/ VAN BREDA BRIDGE**

Case No.: 17083118WD0912M

Ms Waseefa Dhansay gave a PowerPoint presentation.

INTERIM COMMENT:

The matter has been postponed until the meeting of 21 February 2018 in order to conclude the public participation process.

Waseefa Dhansay

10.6 Proposed Total Demolition - Erf 5277 and 5278, 51 Buitenkant Street, Cape Town CBD- HM/ Cape Town Metropolitan/ Cape Town CBD/ Erf 5277 and 5278

Case No.: 1709506WD0610M

Ms Waseefa Dhansay gave a PowerPoint presentation.

Dr Stephen Townsend was present and took part in the discussion.

In summary it was noted:

- The committee was of the opinion that a site visit should be conducted in order to make an informed decision.

INTERIM COMMENT:

The committee resolved to undertake a site inspection.

Waseefa Dhansay

**10.7 Proposed Total demolition: Erf 325, 5 Bantry Bay, Bantry Bay, Cape Town
HM/ CAPE TOWN METROPOLITAN/ BANTRY BAY/ ERF 325**

Case No.: 17092808ZK1004E

Mr Zethembe Khuluse gave a PowerPoint presentation.

In summary, it was noted in discussion that:

- The Committee was of the opinion that a site visit should be conducted in order to make an informed decision.

INTERIM COMMENT:

The committee resolved to undertake a site inspection.

Zethembe Khuluse

11. Other Matters

11.1 None.

Adoption of decisions and additions

The Appeals Committee resolved to adopt the decisions.

12. Closure of the meeting

The Chairperson closed the meeting at: 14:28

13. Date of next meeting: 21 February 2018

Chairperson's Signature.....

Date.....