

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

Approved Decisions of a Meeting of the Appeals Committee of Heritage Western Cape  
held on Wednesday, 19 July 2017, at 09H30 in the 1st Floor Boardroom at the Protea  
Assurance Building, Greenmarket Square, Cape Town

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### **MATTERS DISCUSSED**

#### **9. Matters Arising**

9.1 None

#### **8 New Matters**

#### **10.1 Proposed Total Demolition, Erf 55166, 10 Feldhausen Road, Claremont: Section 34**

##### **CONCLUSIONS:**

- Ito section 49(1) of the NHRA the system of appeals must be prescribed by Regulations. HWC Regulation 12(1) prescribes the process and time frames applicable to appeals.
- Regulation 12(8) indicates that the date on which the decision was made known to the applicant is deemed to be the date on which the decision was mailed by registered mail to the applicant.
- Regulation 12(1)(b) indicates that the appeal must be lodged in writing within 14 days of the date on which the decision was made known to the applicant.
- The requirements for a procedurally fair administrative action as prescribed in section 3(2)(b) of PAJA were not adhered to.
- In terms of the High Court decision in Piketberg Local Heritage Committee vs Liebco Vleishandelaars (Pty) Ltd (2016) – the Appellant should have been provided with an opportunity to participate in the permit application prior to the decision by Belcom.
- In terms of section 10(2)(c) of the NHRA a person who may be affected by a decision has a right of appearance at a meeting where a decision to issue or not to issue a permit is taken.
- Submission of a completed appeals form and the payment of the prescribed fee are not required by regulation 12 of the NHRA.
- The HWC document titled “Procedure for Appeal to Council of HWC” indicates that an appeal must comply with the requirements of policy which includes a duly completed prescribed appeal form. The document does not state at what point in the process the appeal form should be filed.
- The public participation process prior to the decision to grant a permit was flawed. The Appellant was not given an opportunity to comment / object or to participate / appear at the meeting where the decision was taken.
- The Appellant was not notified of her right to appeal the decision to grant the permit prior to receiving a copy of the permit on the 15<sup>th</sup> of May 2017.
- The Appellant filed an appeal within 14 days after the receipt of the permit.
- The filed appeal was complete and the failure to file a completed appeal form and pay the prescribed fee does not render the appeal incomplete.
- The administrative action was procedurally unjust.

## **DECISION**

The appeal is upheld.

The parties have a right to request reasons for the decision.  
The parties have a right to an appeal to section 49(2) of the NHRA.

**Jonathan Windvogel**

### **10.2 Proposed Total Demolition, Erf 55165, 8 Feldhausen Road, Claremont: Section 34**

#### **CONCLUSIONS:**

- Ito section 49(1) of the NHRA the system of appeals must be prescribed by Regulations. HWC Regulation 12(1) prescribes the process and time frames applicable to appeals.
- Regulation 12(8) indicates that the date on which the decision was made known to the applicant is deemed to be the date on which the decision was mailed by registered mail to the applicant.
- Regulation 12(1)(b) indicates that the appeal must be lodged in writing within 14 days of the date on which the decision was made known to the applicant.
- The requirements for a procedurally fair administrative action as prescribed in section 3(2)(b) of PAJA were not adhered to.
- In terms of the High Court decision in *Piketberg Local Heritage Committee vs Liebco Vleishandelaars (Pty) Ltd (2016)* – the Appellant should have been provided with an opportunity to participate in the permit application prior to the decision by Belcom.
- In terms of section 10(2)(c) of the NHRA a person who may be affected by a decision has a right of appearance at a meeting where a decision to issue or not to issue a permit is taken.
- Submission of a completed appeals form and the payment of the prescribed fee are not required by regulation 12 of the NHRA.
- The HWC document titled “Procedure for Appeal to Council of HWC” indicates that an appeal must comply with the requirements of policy which includes a duly completed prescribed appeal form. The document does not state at when the appeal form should be filed.
- The public participation process prior to the decision to grant a permit was flawed. The Appellant was not given an opportunity to comment / object or to participate / appear at the meeting where the decision was taken.
- The Appellant was not notified of her right to appeal the decision to grant the permit prior to receiving a copy of the permit on the 15<sup>th</sup> of May 2017.
- The Appellant filed an appeal within 14 days after the receipt of the permit.
- The filed appeal was complete and the failure to file a completed appeal form and pay the prescribed fee does not render the appeal incomplete.
- The administrative action was procedurally unjust.

## **DECISION**

The appeal is upheld.

The parties have a right to request reasons for the decision.  
The parties have a right to an appeal to section 49(2) of the NHRA.

**Jonathan Windvogel**

**10.3 Proposed New Swimming Pool, School Hall, Additional Classrooms and Vehicular Thoroughfare with Parking on Erven 333, 2281 & 2281 & 2907, St Cyprian's School, Oranjezicht: Section 38(4)**

**DECISION:**

The committee resolved to conduct a site visit on Tuesday 8 August 2017 (RR, AvG and NB).

**Katherine Robinson**

**9 Other Matters**

11.1 None.

**10 Adoption of decisions and additions**

The Appeals Committee resolved to adopt the decisions.