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

Minutes of a meeting of the Appeals Committee of Heritage Western Cape held on Wednesday, 29 January 2014, at 10H30 in the 1st Floor Boardroom at the offices of the Department of Cultural Affairs and Sport, Protea Assurance Building, Greenmarket Square, Cape Town

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**1. Opening and Welcoming**

The Chairperson Mr Richard Summers opened the meeting at 10H30 and welcomed everyone present.

**2. Attendance**

**Appeals Committee**

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| Mr Richard Summers | Chairperson Appeal Committee |
| Dr Antonia Malan | Appeal Committee member |
| Dr Nicolas Baumann | Appeal Committee member |
| Mr Rowen Ruiters | Council member |

**HWC Staff**

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| Mr Andrew Hall | Chief Executive Officer |
| Ms Christina Jikelo | Deputy Director |
| Mr Zwelibanzi Shiceka | Acting Assistant Director |
| Ms Ntombi Nkoane | Heritage Officer |
| Mr Olwethu-Oz-Dlova | Admin Officer (Secretariat) |

**3. Apologies**

**3.1** Mr Trevor Thorold — Appeal Committee member

Notwithstanding the Chairperson's acceptance of Mr Thorold's apologies it was noted that Mr Thorold was not in fact party to the decision-making process which is the subject of the appeal.

The Chairperson noted that he served on IACom at the time the matter originally was considered by HWC and would raise this issue directly with the parties to the appeal in Item 10.1.

The Chairperson and officials will liaise before Appeal Committee meetings to ascertain with certainty which members had participated in decision-making processes which are the subject of appeals. Members are requested to scrutinise the items on the agenda before recusing themselves from meetings.

**4. Approval of agenda**

**4.1** The Committee resolved to approve the agenda dated 29 January 2014.

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

**5.1 Dated 20 November 2013**

The Committee agreed to ratify the minutes adopted at the meeting of 20 November 2013.

Approved

## 6. Disclosure of interest

None

## 7. Confidential Matters

**7.1** None

## 8. Administration Matters

### 8.1 Report back of the outcome of the Tribunal Committee

The CEO indicated that there were no Tribunal matters to report back on. It was noted that no final appeal decision had yet been rendered in the UCT lecture theatre matter.

### 8.2 Housekeeping rules

The Chairperson re-iterated his request that the HWC case officer must circulate all appeal documentation to members at least one week before the date of the meeting.

### 8.3 Chronology of events

- A one page timeline summarising the decision making process involving HWC must be prepared by the HWC case officer and circulated to members with the appeal documentation.
- A similar set up applies in connection with Tribunal Appeals and the same should be utilised with regards to Appeals Committee matters.

## 9. Matters Arising

**9.1** None

## 10. New Matters

### 10.1 Proposed Total Demolition on Erven 11126 & 11127, Corner of Albert and Frere Roads, Woodstock: Section 34

Mrs Claire Donavan (Heritage Consultant), Mr. Jody Aufanchty (Applicant), Mr Johan Cornelius (appellant, representing the City of Cape Town), Mrs Marie-Lou Roux (observer, representing Habitat Council) and Mr. Siyavuya Mzantsi (observer, Cape Times journalist) were present.

The Chairperson raised with the parties the fact that he had been serving on IACom at the time this matter was originally dealt with by HWC ito section 38 of the Act, although the Chairperson recalled that he was not present (and therefore not party to the decision) when the matter was dealt with. The appellant and applicant were both provided with an opportunity to object to the Chairperson sitting on the Committee. Both parties expressly indicated that they had no objection to the Chairperson continuing.

The CEO objected to the hearing on the basis that the City had not discharged its obligations in terms of the Intergovernmental Relations Framework Act.

Approved

In discussion it was noted that:

- The circumstances giving rise to the appeal are essentially that the City alleges it was not provided with a reasonable opportunity to engage with Heritage Western Cape before a final decision was rendered to issue the section 34 permit.
- Related to that is the City's concerns that the only version effectively informing Heritage Western Cape's decision on the section 34 application was that the remaining structures were deemed to be structurally unsound and therefore requiring total demolition.
- Mr. Cornelius's primary concern was that at no point in the section 34 decision-making process did anyone address the question as to whether or not the façades could in fact be saved in a manner which would retain the heritage significance.
- Although Mr. Cornelius had framed the appeal broadly under the banner of "the procedure" giving rise to the decision in question, it is clear that the concerns listed above were the primary issues giving rise to the appeal. The Committee indicated that it was sympathetic to the issues raised by Mr. Cornelius.
- Mr. Hall, on behalf of Heritage Western Cape, pointed out that this was a response to an emergency situation which HWC considered (albeit reluctantly) was reasonable and procedurally fair in the circumstances on the basis that there was no reasonable alternative but to approve the demolition due to the potential threats to health and safety.
- Further, Mr Hall argued that all material put before Heritage Western Cape (including the report of Heritage Consultant Claire Abrahamse dated December 2013 as well as two separate independent structural engineers' reports) identified that there was little alternative but to order the total demolition of the remaining structures.
- The position in which permits issued under the Act for partial demolition are effectively undermined by a subsequent total demolition permit issued in response to acts of vandalism affecting the stability of the structures concerned (as in this instance) is highly undesirable. The net result is effectively to call into question the basis for granting the original permit in the first instance.
- Given the nature of the concerns raised by the City on appeal and, crucially, the fact that the structures forming the subject of the application have in fact been demolished, it is difficult to contemplate what the appropriate relief sought by the appellant could be in such circumstances.
- The remaining structures which were deemed to be of historical significance have in fact now been demolished. This was confirmed by the applicant. There is no remaining structure of heritage significance warranting or requiring protection in terms of the National Heritage Resources Act.
- To uphold the appeal would give rise to a decision which is of academic interest only. This is not appropriate in the circumstances.
- There was no detailed motivation in support of the appeal in which it is clear that HWC could or should have reached an alternative decision.

**DECISION**

The Committee resolved to consider the appeal notwithstanding the objection by the CEO of HWC to the appeal on the basis that the Intergovernmental Relation Framework Act had not been adhered to by the City.

The Committee resolved to consider the appeal notwithstanding the point raised by the applicant that it was provided with a version of the section 34 permit which

APPROVED

omitted the reference to the 14-day statutory appeal period. On the face of it, the appeal was validly lodged in terms of the Act and shall be dealt with accordingly.

The Committee resolved to dismiss the appeal and uphold HWC's decision. The reasons for the Committee's decision include the following:

- Faced with an apparent emergency situation and the instability of the structures in question, the status of which had been supported by the views of two separate independent engineers, HWC's dealing with this matter in terms of section 34 of the Act, on an urgent basis, was reasonable in the circumstances.
- The reasons advanced by the appellant – although related to heritage issues and concerns – go to the heart of compliance with other legislative provisions (i.e. other than the National Heritage Resources Act 25 of 1999).
- The structures in question remaining on site after the acts of vandalism which ostensibly affected the stability of the structures have since been demolished by the landowner (i.e. applicant), pursuant to the section 34 permit issued by HWC.
- None of the issues raised by the appellant in support of the appeal justify the Committee reaching a different conclusion on appeal. The structures in question of heritage significance have been demolished and upholding the appeal would result in an outcome of academic significance only.

**Ntombi Nkoane**

**11. OTHER MATTERS**

**11.1** None

**12. ADOPTION OF DECISIONS AND ADDITIONS**

The Committee resolved to adopt the decisions.

**13. Closure of the Meeting**

The Chairperson closed the meeting at 12H00

**14. Date of Next Meeting** **19 February 2014**

Chairperson's Signature…….

Date……..

Mr Andrew Hall
ACCOUNTING AUTHORITY
For Head of Department

Approved