

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

Minutes of a meeting of the Appeals Committee of Heritage Western Cape held on Wednesday, 19 November 2014, at 09H00 in the 1<sup>st</sup> 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 09H05 and welcomed everyone present.

### **2. Attendance**

#### **Appeals Committee**

Mr Richard Summers  
Dr Nicolas Baumann  
Dr Antonia Malan  
Mr Trevor Thorold  
Dr Lita Webley

Chairperson Appeal Committee  
Appeal Committee member  
Appeal Committee member  
Appeal Committee member  
Council member

#### **HWC Staff**

Mr Andrew Hall  
Mr Zwelibanzi Shiceka  
Ms Penelope Meyer  
Ms Katherine Robinson  
Mr Guy Thomas  
Mr Jonathan Windvogel  
Mr Olwethu Oz Dlova

Chief Executive Officer  
Assistant Director  
Legal Advisor  
Heritage Officer  
Heritage Officer  
Heritage Officer  
Admin Officer (Secretariat)

### **3. Apologies**

None

### **4. Approval of agenda**

The Committee resolved to approve the agenda dated 19 November 2014.

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

#### **5.1 Dated 15 October 2014**

The Committee agreed to ratify the minutes adopted at the meeting of 15 October 2014.

### **6. Disclosure of interest**

None

### **7. Confidential Matters**

None

## **8. Administration**

### **8.1 Outcomes of the Appeal Tribunal**

The CEO reported back on the matters (appeals) that have gone to the Appeal Tribunal.

### **8.2 System of Appeals**

The CEO raised various issues in connection with current appeal system and potential opportunities for reviewing and reforming HWC's appeal regulations.

8.3 The CEO will give brief discussion at the next Appeals Committee meeting about the breakdown of the delegation of City of Cape Town specially regarding to appeals.

## **9 Matter Arising**

### **9.1 Proposed Total Demolition, Erf 2716, No. 138, 9<sup>th</sup> Street, Voelklip, Hermanus: Section 34**

Ms Katherine Robinson made a power-point presentation.

Mr Raymond Smith and Mrs Ninon Rode (both representing the appellant) were present and took part in discussion.

In discussion it was noted that:

- The dwelling is a significant heritage resource both in relation to the fabric and in the dwelling being a representative example of a collection of holiday homes of a particular period in Hermanus.
- The fact that the other representative examples of this grouping are not immediately adjacent to the property does not detract from the significance of the resource in question.
- The demolition would result in a loss of this resource and an adverse effect on the character of the area.
- The HWC policy indicates that Grade 3C resources are contextual and the policy does not expressly stipulate that they can be demolished.

### **DECISION**

The Committee resolved to dismiss the appeal on the basis that the dwelling has sufficient intrinsic worth and contextual significance and is part of an ensemble of holiday homes of a particular period with significance.

The argument that the proposed demolition would enable the landowner to optimise its property rights in terms of its development potential is not a compelling argument to the appropriate management and conservation of heritage resources.

Further, the Committee resolved to refer the grading of the dwelling to IGIC in order to resolve with finality the issue of clarity relating to the grading of the dwelling.

**Kate Robinson**

## **10. New Matters**

### **10.1 Proposed Total Demolition, Erf 1374, No. 50 Synagogue Street, Paarl: Section 34**

Ms Katherine Robinson made a power-point presentation.

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

In discussion it was noted that:

- BELCom members had undertaken a site inspection but had arrived after hours and the premises were closed. The applicant's representative (Mr. Henry Aikman) indicated that the Committee members were therefore unable to confirm certain pertinent facts including in relation to the significance of the interior fabric and the extent to which the interior fabric in the dwelling remains.
- Mr Aikman submitted that there was only one interior wall comprising interior fabric of any significance.
- The surrounding context is a significant consideration in the analysis of Grade 3C heritage resources.
- Photographic material submitted as part of the application appears to show that the interior of the dwelling has been gutted and devoid of significant interior fabric.
- Without a site visit the Committee would be unable to assess the interior, the contribution of the dwelling to the streetscape, and whether or not the argument that the dwelling is situated in an isolated pocket of Victorian buildings isolated from their context has a bearing for heritage management.
- It would be difficult to argue cogently that the dwelling is part of a significant local grouping.

#### **DECISION**

The Committee resolved to undertake a site inspection prior to rendering a final decision on the appeal as it is difficult based on the information serving before the Committee to judge the significance of the interior fabric and the contribution to the streetscape. A site inspection is therefore required in order to understand the extent to which the area has changed and whether the overall change in land use towards industrial in the surrounding area has impacted on the significance.

**Kate Robinson**

### **10.2 Proposed Alterations and Additions, Erf 565, Kerk Street, Prince Albert: Section 34**

Mr Jonathan Windvogel made a power-point presentation.

In discussion it was noted that:

- The Appellant had been invited to the appeal hearing but had elected not to attend. Neither the appellant nor the appellant's architect was therefore present to respond to issues of clarification raised by the Committee regarding the nature of the proposals; the potential heritage impacts; or the extent to which BELCom's concerns had been addressed.

- The material comprising the application was deficient and did not enable the Committee to make an informed assessment of the heritage impacts.
- The dwelling is graded 3C in terms of an approved survey.
- The allegation in the appeal is that HWC's BELCom did not have regard to all the documentation submitted before it in connection with the application.
- The drawings submitted in connection with the application are not sufficiently detailed and are difficult to read in terms of the impact on heritage resources. No indication of the surrounding context is in the documentation before the Committee.
- Proposals could result in the "gentrification" of the building which could result in an impact to the streetscape of Prince Albert. It is not clear what the typical form is of these vernacular buildings and the Committee would like to see an analysis of the building's form and its function.

### **DECISION**

The Committee resolved that there was insufficient information to consider the merits of the appeal or the potential heritage impacts. The appellant is requested to provide the Committee with the following information:

- A photograph of the full width of the existing facade
- Contextual photographs of the building showing its role in the streetscape
- Contextual photographs of surrounding and adjacent buildings to enable a comparative assessment of the significance of the building and the surrounding context
- A heritage statement focusing on the heritage impacts of the proposed alterations and a description of the surrounding context and heritage resources surrounding or adjacent to the building.

**Jonathan Windvogel**

### **10.3 Proposed Partial Demolition and Alterations, Erf 1837, 57 Pepper Street, Bo-Kaap, Cape Town: Section 34**

Mr Jonathan Windvogel made a power-point presentation.

Mr Sadiq Toffa, Mr Osmar Shaboodien, Ms Salwa Fakier, Ms Jacquwline Poking, Dr Tonfiek Samaai (representing Bo-Kaap Civic Association), Mr Y Edries, Mr Abdillah Williams, Ms Quahnita Samie and Mr Yunus Samdien (representing applicant) were present and took part in discussion.

### **DECISION**

The Committee resolved to postpone the matter for the reason that the appellant had prepared an additional submission dated 14 November 2014 entitled "Reply to response to appeal against HWC Record of Decision for proposed demolition of Erf 1837 at 57 Pepper Street Bo-Kaap in terms of section 27 NHRA" which had not been circulated before the meeting to either the applicant's representatives or the Committee. Whilst the applicant's representatives were afforded an opportunity to consider whether or not they wished the appeal to proceed the Committee felt that it would be placed at a disadvantage insofar as it had not had a sufficient opportunity to engage with this latest submission. No further written submissions will be entertained by the Committee and the matter is held over until Thursday 27 November 2014.

**Jonathan Windvogel**

#### **10.4 Proposed Construction of a Temporary Art Installation, “The PharoX Star”, Erf 1391, Signal Hill: Section 27**

Mr Guy Thomas made a power-point presentation.

Mr M. Matthews, Mr Chris Swift (representing applicant), Mr Anton Groenewold (City of Cape Town) and Mr Sadiq Toffa, Mr Osmar Shaboodien, Ms Salwa Fakier, Ms Jacqueline Poking and Dr Tonfiek Samaai (representing Bo-Kaap Civic Association), were present and took part in discussions.

In discussion it was noted that:

- There were clear records of numerous attempts on the part of Mr. Swift to engage directly with Mr. Shaboodien as a representative of one of the stakeholder interest groups in the Bo-Kaap area. These attempts had been made throughout the initiation of the project and at least as far back as December 2013.
- Being pressed for an explanation as to why the Bo-Kaap Civic Association had failed to engage at this earliest possible juncture with Mr. Swift in connection with its concerns regarding the installation, no compelling reason or explanation was offered by the Bo-Kaap Civic Association for its failure to engage.
- Stakeholders clearly had an opportunity to engage. It is their responsibility to ensure that such opportunities are utilised responsibly and meaningfully.
- The applicant had approached HWC relatively late at the eleventh hour, despite the fact that the site is a provincial (?national) heritage site. The applicant was engaging with several other authorities at the time and the Committee failed to understand why the issue of a section 27 permit was applied for as an afterthought.
- It is not clear why formal application to HWC was only submitted in September 2014, several months after active engagement with the City’s Heritage Management Section on this issue.
- The applicant’s and the City’s position that a consultative process was undertaken and that no public participation process is required in relation to temporary installations, proffers nothing by way of legitimate explanation for the absence of public participation undertaken in accordance with the prescripts of the National Heritage Resources Act in connection with this application.
- The failure to consult registered conservation bodies in accordance with published HWC policy has potentially deprived stakeholders from engaging meaningfully on the issue of heritage impacts and the management of heritage resources.
- The fact that the installation has now been erected is of no consequence to the appeal although it might in due course have a bearing on the remedies available to the applicant/appellants subject to the final determination of this appeal.
- The remedies/consequences flowing from the erection of the installation is primarily an issue of enforcement which is to be dealt with by HWC and not by the Appeals Committee.
- The purpose of the appeal is to interrogate the issue of heritage impacts and the opportunities for public participation in accordance with procedures prescribed by HWC policy.
- However irresponsibly the Bo-Kaap Civic Association may have acted – and as a result thereof given rise to a self-created argument based on procedural fairness – it is clear to the Committee that there was no evidence of a

meaningful consultative process in accordance with the requirements of the NHRA. It is also clear that there is no indication that proper assessment of impact on heritage resources was undertaken in accordance with section 27 of the NHRA.

- The Committee noted that the EMP failed to 'predict negative impacts' in terms of heritage resources. Also that a VIA had been undertaken but that the VIA alone was insufficient for the purposes of determining the impact on heritage resources in accordance with the NHRA.

### **DECISION**

The Committee resolved to hold over a final decision on the appeal until a later date due to the fact that the information serving before the Committee is insufficient for the purposes of decision-making. In order to enable the Committee to make an informed decision on the appeal the Committee requires the applicant to submit to Heritage Western Cape a concise and succinct Heritage Statement prepared by an accredited practitioner which addresses the following issues:

- The significance of the heritage resources affected by the installation.
- The impacts on heritage resources, including socio-historical heritage resources and intangible heritage.
- The VIA is required to be updated to include an analysis of the scale and siting of the installation.
- The layered history of the site.

The heritage statement is required to be subjected to appropriate consultation with registered conservation bodies.

**Guy Thomas**

### **11. OTHER MATTERS**

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 14H00.

### **14. Date of Next Meeting**

**To be confirmed**

Chairperson's Signature.....

Date.....

Mr Andrew Hall  
ACCOUNTING AUTHORITY  
For Head of Department