

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

**Held on Wednesday, 12<sup>th</sup> October 2022 via Microsoft Teams, scheduled for 08:30**

**Opening and Welcome**

The Chairperson, Ms Katherine Dumbrell officially opened the meeting at 08:30 and welcomed everyone present.

**Attendance**

**Committee Members:**

Ms Katherine Dumbrell (KD)  
Dr Andre van Graan (AvG)  
Dr Antonia Malan (AM)  
Mr Stuart Hermansen (SH)  
Dr Nicolas Baumann (NB)

**Members of Staff:**

Ms Nosiphiwo Tafeni (NT)  
Mr Waseefa Dhansay (WD)  
Ms Penelope Meyer (PM)  
Ms Zikhona Sigonya (ZS)  
Mr Thando Zingange (TZ)  
Ms Chane' Herman (CH)  
Ms Corne Nortje (CN)

**Visitors:**

**Item 9.1**

Mr Boet Smuts  
Ms Patricia Botha  
Dr Reinier Bence  
Ms Bridget O 'Donoghue

**Item 10.1**

Ms Jacky Poking  
Ms Ursula Rigby  
Mr Kevin Fellingham  
Mr Vaughn Deetlefs  
Ms Tamar Shemtov'

Mr Richard Summers  
Ms Winnie Sze  
Mr Warren Kliphuis  
Ms Kirsten Meiring  
Mr Richard Summers

**Item 10.2**

Mr Richard Summers  
Ms Cindy Postlethwayt  
Mr Andriese Louw  
Ms Kirsten Meiring

Ms Leanne Mitchell  
Mr Chris Fauldaine  
Ms Nicolene Visser

**Item 11.1**

None

**Item 11.2**

None

## **Apologies**

None

### **3. Absent**

None

### **4. Approval of Agenda**

#### **4.1 Dated 12<sup>th</sup> October 2022**

The Agenda dated 12<sup>th</sup> October 2022 was approved.

### **5. Approval of Minutes of Previous Meeting**

#### **5.1 Appeals Minutes dated 14<sup>th</sup> September 2022**

The Committee unanimously resolved to approve the minutes dated 14<sup>th</sup> September 2022.

### **6. Disclosure and Conflicts of Interest**

None

### **7. Confidential Matters**

None.

### **8. Administrative Matters**

#### **8.1 Outcome of the Tribunal Committees and Recent Court Decisions**

24 Claremont Avenue, Claremont. The Tribunal agreed to the demolition but with conditions on replacement building in terms of the heritage indicators itemized in the report by Peter Büttgens.

#### **8.2 Report back from HWC Council**

The nomination period for Council and committees has closed. Council members will now be selected from the applications and once it is appointed Council will appoint its committees.

#### **8.3 Site Visits Conducted**

S.34 Proposed Additions and Alterations on Erf 17200, 212A Buitengracht Street, Bo-Kaap.

#### **8.4 Potential Site Visits**

8.4.1 S.27: Proposed additions and alterations on Erf 138 & 3110, 19 Mead Way, Pinelands.

#### **8.5 Discussion of the Agenda**

None

### **9 Matters Arising**

9.1 **Erven 2455 & 2456, C/O Joubert Street & Merriman Avenue, Stellenbosch.  
HM/ DRAKENSTEIN MUNICIPALITY/STELLENBOSCH/ERVEN 2455 & 2456  
Case NO: 18080605HB0807E**

Referral from the Ministerial Tribunal in terms of its directive date 18 May 2020.

Ms Penelope Meyer introduced the item.

Present on behalf of the Applicant: Mr Boet Smuts

Present on behalf of the objectors: Ms Patricia Botha (for SIG).

Applicant:

- The applicant has submitted as-built drawings of the two historic properties and pointed out on the plans where he had put in the proposed dimensions.
- The floor to roof changes allowed the alterations to stay within the approved envelope. A minor change to the rear of no.38 allowed for a parking bay.

For the objectors:

- Ms Botha's Teams connection failed.

#### **DISCUSSION**

Amongst other things, the following was discussed by the Committee:

- The Tribunal ruling reads: "40(a) The Appeals is dismissed", therefore it is only paragraph 40(b), compliance with further information and a new proposal, that is being considered today.
- Further information has been supplied.
- The new proposal retains both buildings, numbers 38 and 40.
- The applicant's presentation has addressed the further requirements.

#### **DECISION**

The Appeals Committee decided to approve the amended proposal as contained in drawings numbered H506(RevA), H507 (RevA) and H508(RevA) dated 25 05 2022 prepared by Smuts de Kock architects as meeting the requirements of paragraph 40(b) of the Tribunal Ruling dated 18 May 2020.

**WD**

## **10. New Matters**

10.1 **S.34: Proposed Additions and Alterations on Erf 17200, 212A Buitengracht Street, Bo-Kaap.  
HM/CAPE TOWN METROPOLITAN/BO-KAAP/ERF 172004  
Case No: 19080614LB0807E**

Mr Thando Zingange introduced the item.

Dr Andre van Graan read the site inspection report into the record.

For the appellant:

Ms Jacky Poking (BKCA)  
Mr Warren Kliphuis  
Mr Vaughn Deetleefs

For the Respondent:

Mr Richard Summers (Attorney)  
Ms Ursula Rigby (Heritage Consultant)  
Ms Winnie Sze and Mr Kevin Fellingham (Owners)

were present and took part in the discussion.

Appeal against HOMs decision.

Argument for the Appellant:

Mr Kliphuis.

- Committee's attention is drawn to the Bo-Kaap HPO.
- The heritage significance is more than architecture, and the location offers views of the harbour, City Bowl.
- Parking will be adversely affected.
- Main recreational area of the property in Jordan Street faces this building; therefore, his views and privacy will be affected.
- This will result in devaluation of his property.

Mr Deetleefs;

- The respondents seem to think that their rights are paramount, but they must be balanced against those of the broader community.
- The proposal will destroy the culture of Bo-Kaap as it sets a precedent.
- Right of occupation, undisturbed use and enjoyment of property, is protected in the Constitution.
- The proposal will infringe on their rights in that it overshadows, cutting out natural light, and will impact on their privacy.

Ms Poking

- Re-stating the initial objections of the Bo-Kaap Civic to the development as a whole
- Detracts from the physical and cultural heritage of the Bo-Kaap.
- Takes issue with some of the assertions in the Tribunal Ruling.

For the Respondent:

- All issues raised by the appellants have already been addressed when assessing the initial proposal, which was approved by the Tribunal, so it is too late to traverse these issues at this stage.
- None of the issues raised deal with the specifics of the current proposal.
- All that is sought by the respondent is to deal with the minor discrepancies in the two sets of plans.
- Differences are minor, and the impacts are less and in particular the impact on neighbours.
- Most of the issues raised have no direct bearing on heritage resources and significance.

## **DISCUSSION**

Amongst other things, the following was discussed by the Committee:

- The Committee does not have jurisdiction to amend the Tribunal ruling and concurs with the respondent that the only avenue open to the appellants to do so would have been to institute review proceedings in the High Court.
- There was a set of HWC stamped plans which had been amended at City level, and so the only issue before the Committee is the minor deviation proposed.
- The Committee concurs with the heritage consultant's evaluation of the minor deviations in the plans.
- The merging of the two options has no impact on heritage.
- There is accordingly no reason to overturn the decision of HOMs.

## DECISION

The Appeal is dismissed and the decision of HOMs is upheld.

TZ

### 10.2 **S.34: Proposed Total Demolition on Erf 20746, 166-170 Main Street, Paarl.** **HM/CAPE WINELANDS/ DRAKENSTEIN/PAARL/ERF 20746** **Case No: 22062704CH0630E**

Ms Chané Herman introduced the item.

Ms Mitchell (for Mr Len Raymond), Mr Summers & Ms Postlethwayt (for respondents) and Ms Meiring were present and took part in the discussion.

Appeal against BELCom's decision.

Argument for the Appellant:

- Ignores the special heritage area, proclaimed after consultation with local community.
- There were procedural irregularities as the approval of the replacement building was not included in the original application for demolition on the BELCom agenda.
- The local authority must control the zoning scheme, BELCom ignored the zoning scheme provisions.
- This development is of excessive scale and will affect the experience of the street and backdrop of the Paarl mountains.
- BELCom does not have a delegation to approve the demolition or replacement building in a S31 area.
- There is an old wall on the site.

Respondent:

- The submissions are totally without merit. All the issues raised can be found in the documentation.
- The written arguments fully rebut the allegations made regarding the procedural issues. The appellant was able to attend the meetings and chose not to. The agenda and minutes were made public.
- The replacement building was fully assessed in the Heritage Statement, and the public consultation process was reported.
- The Heritage Statement also addressed the relationship between HWC and local authority responsibilities and processes.

- The old wall is off-site, and was discussed by BELCom.

## DISCUSSION

Amongst other things, the following was discussed by the Committee:

- Query as to why S34 was applicable. Heritage consultant's report shows that one building was over 60 years old.
- The arguments regarding S31 are without merit as the Local Authority is not competent and the HPOZ has not been declared as a Heritage Area in terms of S31 of the NHRA.
- The procedural issues are without merit as the BELCom meetings complied fully with the provisions of S10 of the NHRA.
- The replacement structure has been thoroughly analysed by the heritage consultant and the developer has responded to the input of the BELCom.

## DECISION

The appeal is dismissed. The decision of BELCom is upheld.

CH

### 11. Other Matters

**S.27: Proposed additions and alterations on Erf 138 & 3110, 19 Mead Way, Pinelands  
HM/CAPE TOWN METROPOLITAN/PINELANDS/ERF 138 & 3110  
Case No: 22023030TZ0304E**

Deferred to conduct a site inspection on 31 October 2022 at 09h00 (AvG, AM, NB).

TZ

### 11.2 Athlone Power Station Erf RE 32564, Athlone HM/CAPE TOWN METROPOLITAN /ATHLONE/RE 32564 ATHLONE POWER STATION Case No: N/A

Deferred to the next meeting on 9 November 2022.

## FOR NOTING

JW

12. **Proposed next date of the meeting:** **9<sup>th</sup> November 2022**

### 13. Adoption of decisions and resolutions

The Committee unanimously resolved to adopt the decisions and resolutions dated 12 October 2022.

14. **Closure:** The meeting was adjourned at 12:38

## MINUTES APPROVED AND SIGNED BY:

CHAIRPERSON \_\_\_\_\_ DATE \_\_\_\_\_ 2022

SECRETARY \_\_\_\_\_ DATE \_\_\_\_\_ 2022

APPROVED