

APPROVED MINUTES THE MEETING OF HERITAGE WESTERN CAPE, APPEALS COMMITTEE

HELD ON WEDNESDAY, 5 March 2025, MICROSOFT TEAMS, SCHEDULED FOR 08:30

1. Opening and Welcome

The Chairperson, Mr Gregory Ontong, officially opened the meeting at 08:30 and welcomed everyone present.

2. Attendance

Committee Members:

Mr Gregory Ontong (GO)
Ms Corlie Smart (CS)
Dr Andre van Graan (AvG)
Mr Stuart Hermansen (SH)

Members of Staff:

Ms Nosiphiwo Tafeni (NT)
Ms Penelope Meyer (PM)
Ms Colette Scheermeyer (CSc)
Ms Waseefa Dhansay (WD)
Ms Corne Nortje (CN)
Ms Stephanie Barnardt (SB)
Ms Xola Mlwandle (MX)
Ms Sofia Vy Menell Briel (SVMB)
Mr Ruan Brand (RB)
Ms Chiara Singh (CSI)
Ms Yusrah Hoosain
Mr Austin Vhukeya

Visitors:

Ms Cindy Postlethwayte
Mr Neels Nel
Mr Ashley Lillie
Mr Paul-Michael Keichel
Mr Matodzi Albert Silindi

Mr Richard Summers
Mr Henry Paine
Mr Chris Snelling
Ms Celine Oates
Mr Martin Jakobe

3. Apologies

4. Acceptance of the Code of Conduct

Members re-affirmed their commitment to the Code of Conduct

5. Approval of Agenda

5.1 Dated 5 March 2025.

The Committee resolved to approve the agenda dated 5th March 2025. AvG moved to adopt the approval of the agenda and C S seconded.

6. Disclosure and Conflicts of Interest

6.1 None

7. Approval previous of Minutes dated 12 February 2025

7.1 The Committee resolved to approve the Minutes dated 12 February 2025. CS moved to adopt the approval of the minutes and AvG seconded.

8. Confidential Matters

Appointment of additional member.

9. Administrative Matters

9.1 Outcome of the Tribunal Committees and Recent Court Decisions

None

9.2 Report back from HWC Council

GO reported back on the Council meeting held on 21 February 2025.

9.3 Site Visits undertaken/Site Inspection Report(s)

9.4 Potential Site Visit

9.4.1 None

9.5 Discussion of attendance at any upcoming Tribunal meetings

9.5.1 None

9.6 Discussion of the Agenda

9.6.1 None

9.7 Appointments

9.7.1 None

MATTERS TO BE DISCUSSED

10 Matters Arising

10.1 None

11. New Matters

**11.1 Portion of Remainder 33 of Farm Nooitgedagt 30 (RE/33/30)
HM / CAPE TOWN METROPOLITAN / GREEN POINT / ERF 1361
Case No: HWC24100906SB0910**

Ms Stephanie Barnardt-Delport introduced the item.

Neels Nel, Henry Paine, Cindy Postlethwayt, Mr Summers

For the appellant, Ms Cindy Postlethwaite presented, inter alia, the following arguments:

- The NID was submitted by an archaeologist with a palaeontological and visual studies.
- There was no analysis of the cultural landscape.
- Not all germane heritage information was provided in the NID.

- In terms of S38(2) of the NHRA if heritage resources will be affected an HIA must be requested.
- Heritage resources were identified.
- This valley is highly significant.
- The visual assessment did in fact find that there were visual impacts which could be dealt with by implementation of monitoring.
- There is little understanding in the report of the substance of the effects on Boomplaas.
- There was a prior application submission made to HWC in respect of Boomplaas, where it was held that Boomplaas was very significant, possibly Grade II. It pre-dates by 40 years any other Cape Dutch residences in the Cango region.
- As a consequence of not understanding the impacts, more emphasis was placed on physical impact on the werf. The impacts are on the sense of place on the Boomplaas homestead.
- Visual Impact statement annexed to the NID stated that there is largely a high visual impact.
- Removal of Poplar trees will significantly increase the intrusion of the greenhouse structures on the homestead.
- The scenic quality from the R28 is degraded.
- There are impacts on heritage resources and there should be an HIA to investigate the extent of the impact, with emphasis on impact on the historic homestead on Boomplaas.

For the respondent Mr R Summers presented, *inter alia*, the following arguments:

- A heritage statement was prepared, which does not avoid the issues of grading and significance.
- The structure belonging to the appellant is not formally protected.
- Even if we accept the grading, there is more than enough protection provided by the general provisions in the NHRA.
- The greenhouse structure being objected to is a *bona fide* agricultural use of the land.
- The nature of the intervention has been assessed in terms of the NHRA.
- The impact is primarily one of a visual nature.
- The impact is capable of being mitigated in terms of recommendations in the statement.
- There are ways to legally enforce mitigation measures.
- The proximity of the homestead does not justify the immediate conclusion that the site cannot be built on.
- This is a fresh determination on the merits based on all available information. The impact is capable of being mitigated.
- The applicant has applied blackout shading that mitigates the light impact at night.
- The mere fact of the homestead does not imply a buffer.

FINDINGS

- In respect of the issue of whether a NID can be submitted *ex post facto* (after the development has occurred) – S38(1) refers to the earliest possible stage of the development. It does not expressly preclude the consideration of the NID at a later stage. It is differentiated from S34 which requires the issuing of a permit prior to the commencement of construction.
- The committee cannot impose conditions unless they are connected to a specific application in terms of the NHRA and must only consider the application that was submitted.
- There is accordingly the need to assess whether an HIA should be required on the facts of the case.
- The merit of an HIA in this case is questioned.
- The issue lies around screening and the impact on the adjacent structures.
- Requiring an HIA would not provide any further mitigation.
- The critical issue was the impact of light pollution at night. However, the respondent has installed blackout blinds which have removed the negative impact of the lighting at night.
- The impact on the scenic route – if Oudtshoorn municipality had objected this would have had more impact.

- In terms of an impact on the cultural landscape the greenhouse is an agricultural use and there are many agricultural uses visible from the Swartberg pass.

REASONS

- An HIA would not provide further mitigation.
- In terms of an impact on cultural landscape the greenhouse is an agricultural use and there are many agricultural uses visible from the Swartberg pass.
- The impact of the development does not change the character of the site itself

DECISION

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

SB

11.2 Proposed Total Demolition on Erf 56314, 64 Newlands Road, Claremont HM / CAPE TOWN METROPOLITAN / CLAREMONT / ERF 56314 Case No: HWC24071820CN1122

HELD OVER

The matter was held over for the committee to conduct a site inspection on 11 March 2025 at 09h00 (GO & AvG).

CN

12. Other Matters: For Noting

12.1 Proposed Alterations, Additions and Partial Demolition on Erf 168487, 124 Waterkant Street, Cape Town HM / CAPE TOWN METROPOLITAN / CAPE TOWN / ERF 168487 Case No: HWC24102411CH1125

The matter was not ready to be heard and will be tabled at the meeting of 2 April 2025.

HELD OVER.

CH

12.2 Erf 1061 Remainder, 12 Main Road, Hout Bay HM / CAPE TOWN METROPOLITAN / HOUT BAY / ERF 1061 REMAINDER Case No: HWC24091804EJV0818

CS stated that the appeal was not before the committee as it still did not contain the grounds for appeal. Regulation 12(1)(a) of the Regulations to the NHRA dated 25 October 2002 (PN 336) provides that the appeal must be lodged together with the grounds of appeal. The applicant is to be informed that the appeal must be lodged together with the grounds of appeal and with an application for condonation for late lodgement.

The committee resolved to remove the item from the agenda.

EJV

13. **Proposed next date of the meeting to be held online:** 2 April 2025

14. **Adoption of decisions and resolutions**

Closure: The meeting was adjourned at 11:30

MINUTES APPROVED AND SIGNED BY:

CHAIRPERSON



DATE

2 April 2025

SECRETARY

DATE

2025