

Our Ref: HM/ CAPE TOWN METROPOLITAN/ BISHOPS COURT/
ERVEN 212 AND 242
Case No.: 17120718WD1208M
Enquiries: Waseefa Dhansay
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Tel 021 483 9533
Date: 5 August 2019



ACO ASSOCIATES
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INTERIM COMMENT

In terms of Section 38(8) of the National Heritage Resources Act (Act 25 of 1999) and the Western Cape Provincial Gazette 6061, Notice 298 of 2003

THE PROPOSED RE-DEVELOPMENT OF THE SITE FOR RESIDENTIAL, EDUCATION AND PUBLIC OPEN SPACE LOCATED ON ERVEN 212 AND 242, PROTEA VILLAGE, ADJACENT TO KIRSTENBOSCH DRIVE AND WINCHESTER AVENUE, BISHOPS COURT, CAPE TOWN, SUBMITTED IN TERMS OF SECTION 38(1) OF THE NATIONAL HERITAGE RESOURCES ACT (ACT 25 OF 1999)

The matter above has reference.

Heritage Western Cape is in receipt of your application for the above matter. This matter was discussed at the Impact Assessment Committee (IACom) meeting held on 10 July 2019.

Amongst other things, the following was discussed:

- Mr Underwood gave a PowerPoint presentation which outlined the iterative internal planning process which the applicants had followed to this point.
- Mr Hart addressed the Committee and provided an overview of the previous comments and concerns raised by the Committee which had been considered by the applicants. He informed the Committee that some concerns had been addressed, but that certain of the Committee's comments had been challenged. Amongst other things it was submitted that:
 - There has been considered effort to keep trees on Erf 242. However, it will be up to the owners of the property if they wish to keep the trees, or plant more as the case may be.
 - It is the wishes of the returning community, who have a particular sensitivity toward it, that there is no direct access to the Spring from Kirstenbosch Drive. The spring will still be open to the public, but would be accessed via the north-south riverine open space system, which is being retained.
 - It was reiterated that the client, and the 'primary heritage resource', is the returning community, and it was intimated that all other considerations should be secondary to this.
- It was further argued by Mr Hart that it is his contention, "should the returning community wish to build a five-storey hotel on the site, they should be allowed to do so". However, it was pointed out to Mr Hart that the returning community is bound by the provisions of the NHRA, as indeed is the State itself, and any other property owner. HWC is an objective body that has to consider every application submitted to it impartially and on its own merits. As such the Committee is obliged to consider the impact of the development on all identified heritage resources, no matter how compelling the argument may be in respect of the returning community.
- The Committee stated that it fully supports the restitution of the land to the community. Indeed, had any entity, other than this returning community been the applicant in this instance, the Committee would have had no reservations whatsoever in proposing that HWC provisionally protect the property in terms of the provisions of s29 of the NHRA, given that the proposed development model is so evidently inappropriate and reminiscent of an exclusive segregated model of spatial planning, let alone to the irreversible detriment of heritage resources.
- The Committee noted with regret, that other than the retention of some more trees within the overall layout, the development plan as previously seen by the Committee had not changed, and in this regard, given none of its concerns previously expressed had been addressed, it reiterated that its concerns expressed previously in regard to the proposed development model itself, are still regarded as valid. Furthermore, given that the Committee had been informed earlier that it would be the owners of the properties prerogative to keep or plant new trees, it is queried as to whether the retention of more trees as indicated on the SDP, is anything more than a token gesture.

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- The Committee re-stated its opinion previously expressed, in respect of the planning model proposed; it is the type of inwardly focussed development which is the antithesis of an integrated and inclusionary planning framework which should be addressing the ills of apartheid spatial planning and suburban development, and not entrenching it, particularly with more gated communities as is proposed for portions of the site to the south of Kirstenbosch Drive.
- Over and above the very tangible loss of the link between Erf 242 and the Spring that would be the result of the proposed development model along the edge of the development to the south, it is queried why the returning community would request no direct access to the spring from Kirstenbosch Drive be allowed, as it would be the upmarket development, which is funding the project, who would benefit from this, rather than the claimant community who would be returning to Erf 242, located to the north of Kirstenbosch Drive.
- It is evident that there is a very strong disconnect between what the Committee means by an inappropriate planning model, and the applicant's understanding of what the Committee means.
- The Committee regrets that a very real opportunity for providing a meaningful and spatially integrated development response has been missed: The solution as proposed perpetuates divisive planning and market approaches, which are incongruous with the best virtues of place making, and fails to set the tone for progressive, inclusive spatial design that expresses the best values of our constitution and the moral and qualitative imperatives of spatial redress. The paramount necessity to redress social and spatial inclusion has been misinterpreted and has inadvertently replicated an out-dated and spatially exclusive planning model, based primarily on narrow market concerns, under the guise of social justice. This is a planning model that has been imposed on the landscape and not one which is informed by it.
- The Committee does however agree that the primary consideration, on all levels, including heritage, must be the return of the community to the land they were evicted from in the 1960's, and in this regard if the proposed planning model of cross-subsidisation is indeed the only one that would provide the financial means of enabling this, then the Committee resolved as follows:
 - There are no objections to the development as proposed to the South Western portion of the site, (to the south of the stream).
 - The Committee accepts that the community wish to return to Erf 242, and notwithstanding its reservations in respect of the inwardly focussed suburban development model as tabled, it is also accepted that had the community not been subjected to the provisions of the Native Land Act of 1913, the Urban Land Act of 1924, and the Group Areas Act of 1951, which precluded them from having title to their land in the first instance, and furthermore had they not been evicted from the land in the 1960's, Erf 242 may well have been developed already, in accordance with surrounding patterns and as market forces dictate. Whilst this is conjecture, it is recognition that both colonial, and apartheid laws had precluded the community from having tenure of the land and any say in its future, and that development of this portion of land, in accordance with the community's desire, is an appropriate means of restitution, (albeit the Committee remains deeply concerned in respect of the inwardly focussed, exclusionary planning model).
 - One area of this development that must be addressed however, and which the Committee has strong reservations about, is that the inwardly focused development turns its back on the stone cottages, which have historic, intangible and tangible connections with Erf 242, and as such it severs ties with the cottages that served as one of the more meaningful tangible reminders of the severed community through the 1960's to the present. A backdrop of a backyard, boundary walls etc, to the stone cottages would be to the detriment of their setting and significance.
 - The Committee is, albeit with reluctance, prepared to accept the development in the western half of the property, directly to the south of Kirstenbosch Drive.
 - It does however not accept the severing of the link to the Spring, and likewise does not accept the extent of, or nature of the townhouse development on the eastern half of this portion, for all the reasons as provided in this meeting and previously. Whilst development of the other portions of the wider property, will certainly lead to the loss of tangible heritage resources, (which could be mitigated to a small degree), the townhouse development as currently proposed for this portion would result in a cumulative and irreversible negative impact, and indeed would impact on consideration of the Spring as a proposed Provincial Heritage Site, given its almost total severing from the land and community. It was noted that the Feasibility Study by NM & Associates (2004) indicated the eastern parcel as a 'memory node' and as a 'no-go' area. The current layout was a drastic departure from this

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- As it stands, the Committee rejects the statement that should the development proceed as tabled, that the developed portions of the property should be regarded as Grade IIIA heritage resources.
- In response to a statement by Rev van Diemen, who noted that it feels as if the rug has continually been pulled from under the claimant community's feet since 1995, the Committee noted that heritage considerations of the site have remained unchanged from those as identified in the NM & Associates report of 2004, and it is only the proposed planning model which is objected to by the Committee for all the reasons as provided. The Committee requested that the community consider that the pursuance of the short-term benefits of the development would result in a complete and detrimental loss to tangible, as well as intangible heritage resources to future generations. This is wholly against the intent of the NHRA.
- Furthermore, the Committee reminded the applicants that Heritage Western Cape is only a commenting body in respect of this application, and that the consenting authority is the DEA&DP. It recognizes that the comment provided at this stage is still an interim comment, and that final comment will be provided once the final Basic Assessment Report (BAR) is submitted. The final comment will be reflective of the comment provided at this meeting, should the development proposal remain the same.

INTERIM COMMENT

The Committee retains its strong reservations in respect of the outdated and spatially exclusive planning model proposed, which is one that is imposed on the landscape and will have an irreversible impact on identified heritage resources.

The Committee does however accept that the return of the claimant community must be the primary consideration, and in this respect if, and only if the outdated and spatially exclusive planning model as proposed is the only one which would facilitate this return, then the Committee notes as follows:

There is no objection to development of the South Western portion of the property to the south of the stream, (regardless of the planning model).

The Committee accepts the development of Erf 242 (the claimant village), however the inwardly focussed model must address its relationship to the stone cottages to the west of its boundary, and provide a meaningful tangible connection between the two.

The Committee furthermore would reluctantly accept development to the western half of the portion of land to the south of Kirstenbosch drive, with stringent conditions to be determined in due course.

It does not however accept the severance of the Public Open Space system and spring from Kirstenbosch Drive, nor does it accept the extent, and nature of the development to the eastern half of the portion of land to the south of Kirstenbosch Drive, which is visually intrusive and partially fills in the easternmost pond. This development should be reduced in extent.

Finally, should it be unavoidable to have two security developments to the south of Kirstenbosch Drive, the interface / gap between these two should at least allow for a direct pedestrian route from the claimant village to the Spring.

HWC reserves the right to request additional information as required.

Should you have any further queries, please contact the official above and quote the case number.


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Dr. Mxolisi Dlamuka
Chief Executive Officer, Heritage Western Cape

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