

REASONS FOR DECISION

HERITAGE WESTERN CAPE APPEALS COMMITTEE:

APPEAL AGAINST REFUSAL I.T.O S38(4) FOR PROPOSED OUDE MOLEN DEVELOPMENT SUBMITTED IN TERMS OF SECTION 49 OF THE NATIONAL HERITAGE RESOURCES ACT (ACT 25 OF 1999)

INTRODUCTION

The Appeal Committee considered an appeal against the decision of IACom to refuse the Heritage Impact Assessment (HIA) and associated development proposal for Oude Molen Eco Village, Alexandra Road, Pinelands.

The Committee was required to determine whether the IACom decision was correct in law and on the merits, and specifically whether the HIA complies with the requirements of section 38(3) of the National Heritage Resources Act, 1999 (NHRA).

LEGAL FRAMEWORK

The Committee had regard to section 38(3) of the NHRA, which requires that a Heritage Impact Assessment must:

- Identify and assess all heritage resources, including living and intangible heritage;
- Assess the significance of such resources;
- Assess the impacts of the proposed development;
- Consider alternatives; and
- Propose appropriate mitigation measures.

In addition, the Committee had regard to section 3(3) of the NHRA, which recognises living heritage, as well as applicable policy frameworks relating to cultural landscapes and intangible heritage.

ISSUES FOR DETERMINATION

The Committee identified the following central issues:

- Whether the HIA meets the requirements of section 38(3);
- Whether living heritage and intangible heritage have been adequately identified and assessed;
- Whether the site has been appropriately assessed as a cultural landscape;
- Whether the assessment of impacts, alternatives and mitigation is adequate; and
- Whether the IACom decision was reasonable and justified.

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ASSESSMENT OF THE HIA

The Committee finds that the HIA does not comply with section 38(3) of the NHRA.

The deficiencies are material and relate primarily to the identification and assessment of heritage resources, particularly living and intangible heritage. As a result, subsequent components of the assessment, including impact analysis, consideration of alternatives, and proposed mitigation, are incomplete and cannot be properly evaluated.

LIVING HERITAGE

The Committee finds that the investigation and assessment of living heritage on the site are inadequate.

Evidence before the Committee indicates that the site accommodates longstanding and interrelated communities of practice, including activities associated with education, small-scale agriculture, craft production, ecological practices and social programmes. These activities demonstrate elements of continuity, place-based association, and community recognition.

The conclusion in the HIA that living heritage is limited or absent is not supported by the available information and reflects an insufficient methodological approach.

The Committee further notes that a dedicated Living Heritage Assessment was expressly required but was not undertaken.

FAILURE TO COMPLY WITH FURTHER REQUIREMENTS

The Committee attaches significant weight to the fact that the applicant was previously directed to undertake further investigation into living heritage and did not comply with these requirements.

Instead, the applicant elected to proceed to decision.

The Committee finds that the absence of the required specialist assessment cannot be cured at appeal stage and that the failure to comply with prior lawful directives renders the HIA incomplete.

CULTURAL LANDSCAPE

The Committee finds that the site constitutes a cohesive, complex and layered cultural landscape in which built, natural and social components are interdependent.

The HIA does not adequately assess this cultural landscape or the relationships between its constituent elements. The analysis is fragmented and does not sufficiently address the spatial, ecological and social characteristics that contribute to the site's heritage significance and sense of place.

IMPACT ASSESSMENT AND ALTERNATIVES

Given the deficiencies in identifying and assessing heritage resources, the Committee finds that:

- The assessment of impacts is incomplete;
- The consideration of alternatives is not adequately informed; and
- Mitigation measures cannot be properly evaluated.

Accordingly, the Committee is not in a position to weigh heritage impacts against the potential benefits of the proposed development.

SOCIO-ECONOMIC CONSIDERATIONS

The Committee acknowledges that the proposed development may yield socio-economic benefits, including the provision of affordable housing. The relative scale of proposed affordable housing warrants concern.

However, section 38(3) requires that such benefits be assessed in the context of a complete understanding of heritage significance and impacts. In the absence of a compliant HIA, this balancing exercise cannot be undertaken.

PUBLIC SUBMISSIONS

The Committee notes that extensive submissions were made highlighting the presence of living heritage and the social, cultural and spatial significance of the site.

These submissions reinforce the need for a comprehensive and methodologically sound assessment of living heritage and cultural landscape values within the immediate and larger TRUP context.

CONCLUSION

The Committee concludes that:

- The HIA does not meet the requirements of section 38(3) of the NHRA;
- Living heritage has not been adequately identified or assessed;
- The cultural landscape has not been properly interrogated;
- The impact assessment, alternatives and mitigations are consequently incomplete; and
- The IACom decision was reasonable and justified.

DECISION

The appeal is dismissed.

The decision of IACom is upheld.

Mr Gregory Ontong
Chairperson
Heritage Western Cape Appeals Committee
Date: