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A T T O R N E E Y S

Appellant: *Western Province Government: Department of Infrastructure: Directorate: Special Programmes*

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**APPEAL AGAINST THE DECISION BY HERITAGE WESTERN CAPE'S IMPACT ASSESSMENT COMMITTEE TO REFUSE THE PROPOSED DEVELOPMENT ON ERF 26439-RE, ALEXANDRA ROAD, OUDE MOLEN PRECINCT, PINELANDS, SUBMITTED IN TERMS OF SECTION 38(4) OF THE NATIONAL HERITAGE RESOURCES ACT (ACT 25 OF 1999)**

**REFERENCE NUMBER:** HM / CAPE TOWN METROPOLITAN / PINELANDS / ERF 26439-RE

**CASE NUMBER:** 21022615SB0330E

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**Introduction**

1. This is an appeal by the Western Cape Department of Infrastructure: Directorate: Special Programmes ("Appellant") against the decision by Heritage Western Cape's ("HWC") Impact Assessment Committee ("IACom") to refuse the application in terms of section 38(4) of the National Heritage Resources Act 25 of 1999 ("NHRA") for the proposed redevelopment of Erf 26439-RE, Alexandra Road, Pinelands (referred to herein as the "Application").
2. The decision which is the subject of this appeal is dated 8 April 2026 ("HWC Decision").
3. This appeal is directed to and lodged with the Council of HWC in terms of section 49 of the NHRA, read together with Regulation 12 of PN 336 in *Provincial Gazette* 5937 dated 25 October 2002.
4. The Application which is the subject of the appeal relates to the redevelopment of Erf 26439-RE in Pinelands, Cape Town ("subject property") to enable an integrated development that provides a residentially led mixed use development inclusive of affordable housing with access to job opportunities, education, as well as heritage resources.

**Factual background**

5. In 2021, the Appellant lodged a Notice of Intent to Develop ("NID") to HWC in respect of the proposed redevelopment of the Oude Molen Precinct on the subject property.

Unit 126, Victoria Junction  
57 Prestwich Street  
De Waterkant  
8001

T: +27 21 891 4402  
E: [richard@summersinc.co.za](mailto:richard@summersinc.co.za)  
[clarice@summersinc.co.za](mailto:clarice@summersinc.co.za)

Directors: Richard W. Summers  
Clarice F. Arendse

Reg No: 2017/536164/21



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6. On 4 May 2021, HWC responded to the NID requiring a Heritage Impact Assessment (“HIA”) to be undertaken as HWC had *“reason to be believe that the proposed redevelopment on Erf 26439-RE, Oude Molen Village, Cape Town will impact on heritage resources”*.
7. An HIA was prepared by Cindy Postlethwayt and the HIA Report dated March 2025 (“2025 HIA Report”) was submitted to HWC in early 2025.
8. The 2025 HIA Report reached the following conclusions:
  - 8.1. The site has layered heritage significance with tangible heritage dating to an early VOC mill (1718) and the remnants of the associated early historic werf (early eighteenth century), both of which are rare; to the racially segregated twentieth century institutional history of Valkenberg.
  - 8.2. Intangible significance is equally significant, with major historical themes including First Nation considerations; the incarceration of King Cetshwayo and of associated significance to the Zulu Nation; and the segregated psychiatric facilities for people of colour who were treated unequally in the system of mental health provision.
  - 8.3. The primary heritage associations are those of dispossession, exclusion, imprisonment, marginalisation and loss.
  - 8.4. The redevelopment of Oude Molen presents a transformative opportunity to unlock the area’s economic potential and create substantial socio-economic benefits, while preserving some of its cultural heritage.
  - 8.5. Although the proposed development will result in an altered sense of place, including the reduction of the bucolic character of the site through increased building density, the loss of some buildings (of lesser significance), and a loss of informality through a more formally ordered urban layout, the overall benefits to on-site and associational heritage and the pressing demands of the City for housing and socio-economic upliftment justify these changes.
  - 8.6. Opportunities for memorialisation and links to the Tussen Die Riviere Resistance and Liberation Heritage Route require the engagement of all interested and affected parties, and should be led by the Department of Arts and Culture in respect of the latter and the WCG site custodian in the respect of the former, as site development plans and development take shape.
9. On 25 April 2025, IACom conducted a site visit. The site visit report recorded that:
  - 9.1. *“The CoCT has graded the precinct 3A, with the historic core graded 2.*
  - 9.2. *HWC is a decision-making authority for this development.*
  - 9.3. *Both the graded and NCW structures within the precinct were viewed.*



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- 9.4. *The site is well-utilised and is an active and living space, pedestrian-friendly and safe.*
- 9.5. *Public access facilities were noted such as the swimming pool and picnic space.*
- 9.6. *Current site use is dominated by small eco-centric businesses including various trades, stables, horse riding, organic grocer, composting, social facilities including a school, creche and care facility resulting in a diverse range of people from various backgrounds and ages utilising a shared space.*
- 9.7. *Consistency of uses as “semi-rural” through time create the envelope within which the significant heritage resources are situated.*
- 9.8. *Extensive treed landscape dominated by established plants and trees.*
- 9.9. *Built form of low (2 storey), free standing structures with green setbacks from internal roads creating a pedestrian-friendly space – clear distinction between institutional and residential structures.*
- 9.10. *Long, expansive views over the river ‘valley’ onto Devils Peak and Rhodes Memorial precinct.*
- 9.11. *Apron onto the river frontage is dominated by stables and farming activities creating a gradient of less-developed into more-developed space*
- 9.12. *The existing context within the precinct can be described as “semi-rural” with various skills and trade activities alongside creative and educational facilities.*
- 9.13. *Sense of place – well utilised, integrated, community focused, functional and regenerative. Calm oasis within the City.*
- 9.14. *The main structure (Grade 2) is in a severe state of disrepair and requires urgent conservation intervention.*
- 9.15. *Area around the historic core retain a semi-rural character with open space for riding facilities and recreational area leading onto the open space of the river frontage.”*
10. The Application was tabled at the HWC IACom meeting on 14 May 2025. Following the hearing, IACom issued a document entitled Further Requirements dated 3 June 2025 noting as follows:

*“The Committee is of the opinion the HIA does not meet the requirements of S.38(3) of the NHRA for the following reasons:*

  1. *The intangible heritage/living heritage has not been sufficiently investigated including how that significance translates tangibly, with reference to S.3.3 of the NHRA.*
  2. *There is insufficient information regarding the significance of the site in relation to the broader TRUP heritage area (macroscale). Further work is required concerning spatial integration with TRUP land.*



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3. *There is insufficient information regarding the interrelated significances of various character areas within the site itself and therefore insufficient information to inform precinct specific heritage indicators.*
4. *More detailed information is required pertaining to the massing of proposed buildings in order to make an accurate assessment of the impact on heritage resources.*
5. *Additional alternatives are required regarding the nature of interfaces (internal between old and new fabric and external particularly related to TRUP land and Maitland Garden Village) and the underlying rationales supporting those alternatives.*

*The revised HIA is to be advertised for 30 days to all Interested and Affected Parties including All First Nation Groups identified in River Club HIA process.”*

11. On 18 March 2026, at a special IACom meeting, the Appellant’s professional team presented a Further Response Report, together with a revised HIA Report (“**2026 HIA Report**”). IACom advised that further documentation is required in the form of Further Requirements which were framed as follows:

*“The development as proposed cannot be considered as the HIA does not meet the requirements of S.38(3) of the NHRA for the following reasons, in addition to not meeting the further requirements of 3 June 2025, specifically:*

*The intangible heritage/living heritage has not been sufficiently investigated including how that significance translate tangibly, with reference to S3(3) of the NHRA.*

*Therefore the following is required, in order to make a final decision:*

1. *A Living Heritage Assessment for Oude Molen must be compiled in line with the National Heritage Resources Act’s recognition living heritage, the UNESCO Convention on Intangible Cultural Heritage and the City of Cape Town’s cultural landscape and intangible heritage policies. This must complement, not duplicate, the existing HIA and focus specifically on the practices, skills and community relationships that may constitute living heritage on the site. The findings of this study must inform the spatial layout of the proposed development framework and the prescient (sic) plan.*

*The above information must be compiled in a revised integrated HIA that complies with Section 38(3) and is subject to a further 30-day consultation period which includes all identified interested and affected parties (including all parties making representation at IACom meeting 18 March 2026).”*

12. In response thereto, the Appellant’s professional team expressed their disagreement with the IACom further requirements on the basis that the additional information tabled before IACom had expressly responded to the issues raised by IACom during 2025 and that the 2026 HIA Report was, in fact, compliant with section 38(3) of the NHRA, including with regard to investigation into intangible / living heritage.



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13. IACom refused the Application citing that the “*development as proposed cannot be considered as the Heritage Impact Assessment does not meet the requirements of Section 38(3) of the NHRA*”.

**Grounds of appeal**

14. The Appellant relies on the following grounds of appeal:
  - 14.1. Compliance with section 38(3) of the NHRA.
  - 14.2. IACom failed to interrogate the assessment of intangible heritage / living heritage and how that translates tangibly.
  - 14.3. The Heritage Impact Assessment dated February 2026 does sufficiently investigate tangible and living heritage in terms of section 3 of the NHRA as it clearly demonstrates that it has considered the full scope of “heritage resources” as defined in section 3, even where some aspects are addressed qualitatively rather than through separate specialist studies.
  - 14.4. The Heritage Impact Assessment dated February 2026 is consistent with, and explicitly refers to ICOMOS Intangible Cultural Heritage definitions and Principles; the ICOMOS Charter for the Interpretation and Presentation of Cultural Heritage Sites; the NHRA and the guidance of SAHRA and the City of Cape Town policies and statements.

**First ground of appeal: Compliance with the provisions of section 38(3) of the NHRA**

15. The legal requirements of section 38(3) of the NHRA, and which form the basis of IACom’s refusal in the Record of Decision dated 8 April 2026, bear repeating here: “*The responsible heritage resources authority must specify the information to be provided in a report... Provided that the following must be included:*
  - (a) *The identification and mapping of all heritage resources in the area affected;*
  - (b) *an assessment of the significance of such resources in terms of the heritage assessment criteria set out in section 6(2) or prescribed under section 7;*
  - (c) *an assessment of the impact of the development on such heritage resources;*
  - (d) *an evaluation of the impact of the development on heritage resources relative to the sustainable social and economic benefits to be derived from the development;*
  - (e) *the results of consultation with communities affected by the proposed development and other interested parties regarding the impact of the development on heritage resources;*
  - (f) *if heritage resources will be adversely affected by the proposed development, the consideration of alternatives; and*



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*g) plans for mitigation of any adverse effects during and after the completion of the proposed development”.*

16. It is self-evident from the extensive documentation submitted with this appeal, and listed at the end of this appeal statement, that every sub-section of section 38(3) of the NHRA has been expressly addressed, in addition to the requirements of the HWC in the response to the Notification of Intention to Develop and the further requirements in their letter dated 3 June 2025. We can only but call the Appeal Committee’s attention to the contents pages of the attached reports to confirm this.
17. However, on the basis of the previous comments of IACom; the discussion at the IACom meeting of 18 March 2026; and the draft Further Requirements request 18 March 2026 (subsequently withdrawn to make a Decision), it is assumed that the essence of their concern lies with the twice required assessment of *“intangible heritage/living heritage and how that translated tangibly”* which had not, in their view, been sufficiently investigated.

**Second ground of appeal: IACom failed to interrogate the assessment of intangible / living heritage and how this translates tangibly**

18. The issue of intangible / living heritage has been assessed thoroughly throughout the heritage impact assessment process for the Application by way of:
  - 18.1. The Socio-Historical Impact Assessment by Ron Martin dated February 2025 (“Socio-Historical Impact Assessment”);
  - 18.2. The Draft Heritage Impact Assessment by Cindy Postlethwayt dated September 2024;
  - 18.3. The Heritage Impact Assessment by Cindy Postlethwayt dated March 2025;
  - 18.4. The Response to Further Requirements and Heritage Impact Assessment by Cindy Postlethwayt dated February 2026; and
  - 18.5. The Comments and Response Reports as part of the two iterations of the Heritage Impact Assessments dated March 2025 and February 2026.
19. The above assessments of intangible / living heritage undertaken to-date collectively make direct reference to:
  - 19.1. The NHRA;
  - 19.2. The United Nations Educational, Scientific and Cultural Organisation’s (“UNESCO”) Convention on Intangible Cultural Heritage; and
  - 19.3. The limited available South African policy in this regard, but including the City of Cape Town’s Cultural Heritage Strategy.



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20. The primary issue with respect to the assessment of intangible / living heritage is the question of whether or not the existing tenants and their businesses can be classified as intangible / living heritage as claimed by these individuals and evident in the Comment and Response Reports collated and submitted to HWC to-date. We submit that, based on the extensive assessment undertaken to-date, the existing tenants and their businesses and activities do not and cannot fulfil the international, national and local criteria for the definition of intangible / living heritage.

Contextual background to the assessment of intangible / living heritage

21. The following key aspects are relevant to contextualising the Heritage Impact Assessment dated February 2026 and its conclusions, with specific reference to intangible / living heritage and expressed throughout the heritage process to-date:
- 21.1. The structural geography of apartheid still exists in Cape Town. The site is spatially and symbolically located purposively so as to (1) recognise the history of the site and (2) simultaneously contribute to addressing the pressing historical spatial injustices by creating a greater opportunity for housing closer to areas of employment and services.
- 21.2. The Heritage Impact Assessment dated February 2026 is comprehensive and identifies extensive and layered historical associations and heritage resources linked to the site, and the Application is specifically designed to respond to these associations and resources, as well as the broader imperatives of public ownership.
- 21.3. The proposals have undergone 7 formal iterations in the heritage process, the latest being in response to HWC's further requirements in the ROD dated 3 June 2025. The scenario in which the status quo is maintained, or a variant thereof, has been investigated extensively and most of the various iterations are accompanied by feasibility studies which recognise (1) the significant costs entailed in meaningfully addressing both the heritage-related proposals (i.e. maintaining the status quo or pursuing the development proposed in the Application); and (2) some of the socio-economic needs of the City (specifically, housing). These proposals require considerable cross subsidisation. Ultimately, the development and use of the site must benefit as broad a grouping of members of the public as possible whilst still remaining sensitive to the layered heritage associations of the site.
- 21.4. By a substantial majority, the greatest proportion of comments have been made by tenants and current users of the Oude Molen Eco-village and who are in favour of the retention of the status quo and current use of the site. Those comments have been responded to in detail in the Heritage Impact Assessment dated February 2026. Importantly, and whilst it is recognised that there will inevitably be negative consequences for some of the tenants:
- 21.4.1. The Application cannot address the question of the individual end users. However, there are opportunities for equivalent uses in the proposals including, for example, small scale urban farming or traditional planting, ceremonial, residential, commercial, schooling and institutional uses, among others, and it may be that some of the existing uses can continue to operate, albeit in a different form.



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- 21.4.2. There are many other significant claims to heritage associations with the site, and to which the proposals in the Heritage Impact Assessment dated February 2026 and associated specialist reports respond.
- 21.4.3. Should the status quo (or a variant of it) be preferred above any other alternative, it will be impossible to benefit the heritage resources and broader group of those with confirmed heritage connections to the site or those who could benefit from the site's contribution to spatial justice.
22. The context in which the Heritage Impact Assessment dated February 2026 was prepared is a vacuum of a detailed guiding policy framework from any South African heritage authorities on the criteria to satisfy intangible / living heritage within the context of the NHRA specifically.
23. Despite this limitation, and through the assessment of international guidance in this regard, the Heritage Impact Assessment dated February 2026 and associated public participation processes nonetheless resulted in a credible and responsive assessment of intangible / living heritage. The Application has, over a significant period of time and with much input from members of the public and authorities alike, addressed the heritage considerations in section 38(3) of the NHRA and those set out in the ROD dated 3 June 2025 appropriately, particularly with respect to intangible / living heritage. The Heritage Impact Assessment dated February 2026 makes detailed recommendations to ensure that identified heritage-related issues, such as intangible / living heritage, are addressed on an ongoing basis and with the input of HWC.

Existence of intangible / living heritage of the tenants on the site

24. The extent of public participation with respect to the Application has been extensive and is thoroughly detailed in the Heritage Impact Assessment dated February 2026. We refer the HWC Appeals Committee to the relevant sections of the Heritage Impact Assessment dated February 2026 and associated annexures which also include the unabridged comments.
25. Barbour & van Der Merwe undertook a baseline study of existing information, including leases, a report prepared by Professor Mark Swilling in 2020, and interviews with tenants ("Baseline Study"). A lease audit conducted in 2020 indicated that, at the time, there were approximately 40 separate tenants with leases on the site, with a number of lessees having leases to multiple units and some even multiple premises. These include the Robin Trust, River Lodge, the Waldorf school, Pinelands Montessori as well as Oude Molen Stables. Approximately 39% of the total building lease area was vacant, with informal leases on undeveloped land yet to be verified. There was no reference at this stage to the tenant's views of themselves as intangible / living heritage during this process. The Baseline Study notes that *"Despite the diversity, core tenants generally share the same broad ethos of environmental sustainability, heritage conservation, public accessibility of the site, socio-economic inclusivity, custodianship, and creative land uses"*.
26. The Applicant has been engaging with the tenants for many years on the conditions of their tenancy and it has also been made clear for a considerable length of time that the site will undergo a process to obtain development rights. The repeated requests by the tenants for a co-design approach have been responded to but, given the differing interests at play between the site tenants and the site custodian (i.e. the Western Cape Government which is required to be



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fiscally responsible and to utilise its resources for the benefit of the broader community) any such co-design process is unlikely to achieve an equally satisfactory outcome for all. Such a stasis outcome will be to the detriment of the site and heritage resources thereon.

27. The concept of intangible / living heritage has been developed and articulated in the Heritage Impact Assessment dated February 2026, informed by investigation, consultation as well as independent professional assessments. By way of background to the assessment's conclusion that there is no intangible / living heritage applicable to the current tenants on the Application site, we record as follows:
  - 27.1. The origin of Oude Molen Eco Village effectively dates to around 1997-1998, mainly in response to the site's abandonment by Valkenberg Hospital. After the site was vacated, the property was subject to land invasion and vandalism. This continued unabated during the late 1990's and early 2000's with many of the buildings on site being vandalised and some destroyed.
  - 27.2. Some of the occupants pursued a more formal arrangement with the Applicant and various agreements were put into place with some of the occupants. The first leases were signed in 1998, and much work put into rehabilitating the grounds and vandalised buildings.
  - 27.3. The site initially attracted many uncommitted idealists, with squatting and rent refusal remaining intermittently problematic for several years. Closure of each successive hospital ward witnessed vandalism and stripping of the building for materials. Some of the buildings were also occupied. This included Block G (River Lodge Backpackers), which was occupied by Chief Joseph Little and a group of around 30 destitute children around 1993. Chief Little ran a live-in programme known as Learn to Earn to Own. Another early occupant was the Robin Trust, which moved into the prefabricated building (i.e. Block T) in 1994, and which is currently still used for Alzheimer's patients. Other early known occupants were Gary Glass and Howard Krut around 1994. Glass, a former Valkenberg patient, started the first new gardening activity on the site, the predecessor of the existing Oude Molen Precinct Food Garden. Krut started what is now Oude Molen stables and a cart-horse rehabilitation programme.
  - 27.4. By 1995 the old homestead was occupied by homeless individuals, and there were serious concerns relating to potential vandalism, damage and fire risk on the site. Two parties, the Pinelands Rotary Club and His Word Ministries each approached Valkenberg Hospital and Department of Land Affairs to take over the Application site. Both proposals envisaged conservation of the old homestead and management of the grounds but neither came to fruition. By mid-1995, the subject property was the subject of negotiated short-term leases, mainly in order to protect the site. The old homestead was leased out to the Friends of Valkenberg, and inhabited by a resident caretaker. Site access management was poor, and vandalism and stripping continued. Permanent structures were stripped of plumbing infrastructure, electrical wiring, fixtures and fittings, and even floorboards.
  - 27.5. By the 1997 aerial survey, most of the prefabricated buildings constructed during the 1970s had been demolished, and only slabs remained. Unwanted material such as insulation



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material was discarded on-site, and later added to by the processing of material stripped from other buildings.

- 27.6. A small group of like-minded 'social entrepreneurs' later prepared the 'Eco-Village' concept in partnership with the Lynedoch Sustainability Institute, with the derived principles currently informing many of the various uses. A natural 'sifting process' over the past two decades or so has resulted in the weeding out of certain potentially incompatible land uses, anti-social behaviour, squatting and non-committed idealists. The Eco-Village entrepreneurs approached the Applicant with a proposal to lease the site for establishing a micro-enterprise village emphasizing principles of sustainability, environmental and heritage custodianship, employment creation, and youth development. The vision also endorsed public accessibility, the creation of a safe space for other communities, and tourism development on the site. Squatting was not a significant problem, but vandalism and stripping continued unabatedly, in part due to lack of site access control.
- 27.7. By the end of 1998 leases had been signed with 70 tenants. Some rentals were initially waived to encourage the new tenants to invest in returning the buildings to habitability, with variable success.
- 27.8. Proposals to sell and/or develop the subject property resurfaced around 2003 and, to resolve the uncontrolled uses on site and restore order following the move of Valkenberg East, the Western Cape Departments of Transport and Public Works as well as the Department of Human Settlements approached the Sustainability Institute to investigate the subject property for development in 2006. The preferred scenario of an Eco-village with medium density, mixed use and mixed income received in-principle support from the Western Cape Cabinet in 2007. It is understood that the tenants were supportive of this Eco-village, however, as the process was taken forward in terms of formalising leases and evictions to enable the proposed development, the process was stymied by substantial pushback campaigns.
- 27.9. In 2010 the Regeneration Programme was created, and the subject property came back on the portfolio for development. This was investigated and, again, the leases became a matter of contention. As minuted at a meeting held at the subject property on 2 November 2010, attended by the senior manager of the City Regeneration Programme, staff of property management and representatives of the tenants, the need for the site to develop income streams with measurable social benefits and highest and best use was highlighted, and the tenants noted their resistance to removals, as they argued that they were responsible for running enterprises that provided a livelihood for those who worked in them. This has always been the over-riding concern, despite the then-recent (illegal) occupation and no security of tenure.
- 27.10. A semi-formal and fluid tenancy arrangement existed for some years, and not all occupants were part of the arrangement. In 2022, the management company sought to bring all tenancies onto a single standard lease, and to date all legal occupants on the site are now on this lease. These are all 3-year leases with an option for renewal. The lease agreements include termination conditions in the event the Applicant secures development rights and



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proceeds with development. These leases expired in August and September 2025 and are currently on a month-to-month tacit lease basis.

27.11. By way of a summary, the tenant activities on the subject property are as follows:

Tenant category	Details	Historical use	Additional notes
<b>Education</b>	Gaia Waldorf Pinelands Montessori	2001 2015	
<b>Health Care</b>	Robin Trust (Alzheimer's permanent care, sub acute, carer training & placement)	1994	
<b>Residential</b>	Largely individuals 'Congolese grouping' Chief Aran of the Gorinhaikona and members of his Tribe Some Informal	varies About 20 years 2019/20  Varies	Expands, contracts & variable   Problems with some tenants: drugs, building burnt down, squatting, uncontrolled sub-letting
<b>Goringhaiqua Kraal</b>	Chief Aran of the Gorinhaikona and members of his following	2019/20	
<b>Urban Farming/ Gardening</b>	OMV Food Garden  A number of smaller food gardens and basic nurseries, poultry Three compost manufacturing operations, Honeybee Foundation's apiary	2008 initially an allotment for tenants     +20 years	Expanded considerably over time (initially started between the homestead and the property western boundary in 1994)
<b>Equestrian</b>	OM Stables,	Started mid 1990s as rehabilitation of cart horses; expanded 1997 with 4 riding horses; current tenant took over 2010.	Extensive informal use is made of the adjoining CCT owned and managed Black River floodplain and the Raapenburg Bird Sanctuary. Now 52 horses. Determination of carrying capacity in this regard does not appear to have been undertaken.
<b>Artistic, artisanal and creative</b>	Chameleon Custom World of Wonder Shannon Wright artist's studios Belinda Ormonde Ceramics, Debra Roets photographic studio. Masa Mara African fashion studio, A number of fine artists, some of whom share studio space with lease holders.	?	creative carpentry gift manufacturing musical instrument repair  Ceramics Photography  Fashion



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<b>Recreational Facilities</b>	Oom Danie se Plaas pool/ picnic/ braai area  The Play Shed Yes, We Can Jazz and Sports Foundation Oude Molen Tavern	Rehabilitated by previous tenant 2001. 2009 2015  2022?	Pool built mid 1970s, part of Valkenberg E. Currently leased by OMVETA Play and Party venue Events and functions venue  Part of Riverlodge Backpackers. There has been previous incidents with City of Cape Town Law Enforcement on the use and operations of this.
<b>Cafés, Shops and Delis</b>	The Millstone  Jet Away  Eden Valley Back of Beyond	Originally opened late 1990s. Closed down, reopened by current tenant 2019 +/- 2005  2019 2009	Deli & coffee shop, functions & events  Café. Previously Oude Molen Café. owned by a member of the resident Congolese community Tuck Shop Deli & coffee shop own organic garden, also operates a sizeable commercial composting operation on site
<b>Backpackers</b>	Lighthouse Lodge River Lodge Rooster's Corner	1997? 1999 2020?	
<b>Film Industry</b>	Prop Art props hire Lynne Matthysen Catering	Over 20 years Over 20 years	
<b>Light Industry</b>	Mr Dibwe's panel-beating Cuckoo's Nest lasercutting and engraving PowerSolv's detergent manufacturing OM Metal Workshop Access Rigging workshop	? ?  Over 20 years  Over 20 years	In portion of fire damaged Block H
<b>Non-profit Organisations</b>	O'Grace Land	2015	residential out-of-care facility
<b>Other</b>	Molwana Property Developers Doggy Daycare Mobile Telephone Networks	15 years resident	

28. The Applicant does acknowledge that close community connections have developed amongst many who live, work and visit the site. There is also, for many, a common commitment to sustainable and alternative lifestyle principles and ethos whilst accommodating a wide range of cultural and ethnic groups, beliefs and lifestyles with a prevailing sense of mutual tolerance and respect, and a general sense of goodwill and mutual accommodation. Despite this, interviews with tenants have indicated that for many, the significance of the subject property lies in accessibility and affordability, space for parking, storage and links to open space. What is not clear is that the community is as coherent and committed to the same principles as projected.
29. The tenant's and users' own views are articulated in their comments made throughout the public participation process. The Appeals Committee is referred specifically to Annexure K2, comments 8.7 and 8.9, commissioned by the Oude Molen Eco-Village Tenants Association



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(“OMVETA”) of Saaliegah Zardad and Tauriq Jenkins. The locational imperative has been less a planned and structured process of establishing spiritual and functional relationships between uses towards a consistent objective, and more of a random and lengthy, on-going response to site conditions and occupation at any one time. This is insufficient in creating an intangible / living heritage.

30. The Heritage Impact Assessment dated February 2026 as well as the Socio-Historical Impact Assessment have taken an explicit view on the focus of a social impact assessment in the context of the Application:
- 30.1. *“The general objective is to “enlarge the map of historical knowledge and legitimate major new areas of scholarly inquiry – as for example the study of households and kinship; the history of popular culture; the fate of the outcast and the oppressed ....”. This giving of voice to the experience of marginal groups (or those historically so), is particularly significant in South Africa, and has become, appropriately, an increasingly important component of assessment in terms of the NHRA”.*<sup>1</sup>
- 30.2. *“whilst the voice of the existing users must be heard, (and following Rasool 2004) we should recognise the existence of multiple narrations intersecting and crosscutting each other, paralleling and contradicting each other as they compete for the creation of historical meaning”.*<sup>2</sup>
- 30.3. It is within the frame of “creation of historical meaning” that the Socio-Historical Impact Assessment makes its contribution to the Heritage Impact Assessment dated February 2026. *“The socio-historical themes of the site and related broader socio-historical imperatives will be the appropriate focus of this impact assessment. This is not to deny other social concerns or imperatives, but these are more relevant as inputs into the planning and design process, not the heritage impact assessment process, and should be utilised accordingly”.*<sup>3</sup>
- 30.4. *“Oude Molen boasts one of the richest social tapestries in Cape Town, being part of a landscape pivotal to the sustainability of the First Nations groups, most notably the Gorinhaiqua; then the site of dispossession of said groups through the advent of the Free Burgher system; ground zero for the first war between black and white in this country; among the first colonial frontier farms; a place of incarceration; a place of healing and now, a (possible) place of reconciliation”.*<sup>4</sup>
- 30.5. *“A Socio-historical Study would ideally incorporate voices of individuals and groups who had first-hand experiences of these events and processes. This is not possible due, inter alia, to the timeline involved, the dispossession of the original inhabitants and the site, the lack of recorded history by these original inhabitants and the biased recordings by the colonial masters. However, a strong resurgence movement has long been researching hidden and other sources, piecing together the subtle nuances of the lost voices of our collective past,*

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<sup>1</sup> Page 56 of the Heritage Impact Assessment dated February 2026.

<sup>2</sup> Page 56 of the Heritage Impact Assessment dated February 2026.

<sup>3</sup> Page 56 of the Heritage Impact Assessment dated February 2026.

<sup>4</sup> Page 6 of the Socio-Historical Impact Assessment.



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*enabling the aims of this study to navigate the rich aforementioned tapestry and assign specific significance to the rich layer of heritage narrative attached to the precinct”.*<sup>5</sup>

31. Against the backdrop of information provided on the uses of the site, it is possible to assess from both the Heritage Impact Assessment dated February 2026, the supporting specialist assessments and information provided by the objectors, whether such uses and individuals could be said to constitute intangible / living heritage. Despite assertions to the contrary by the objectors, the Heritage Impact Assessment dated February 2026 has consistently supported the argument that the site is significant to First Nation practitioners, that there are currently practices on site that align with the commonly repeated definitions of intangible / living heritage, and should be regarded as intangible / living heritage. The proposal should (and does) make provision for the inclusion of these activities, specifically through the Tussen Die Riviere Resistance and Liberation Heritage Route project (to be led by the Department of Arts and Culture) and a proposed Oude Molen Memorialisation Project as part of the implementation phase which requires the engagement of all directly relevant interested and affected parties including the communities of practice as site development plans take shape. These examples of clear intangible / living heritage are clearly distinct to the ethos of the tenants, which we argue do not constitute intangible / living heritage.
32. The Heritage Impact Assessment dated February 2026 makes the following clear as to whether the tenants of the subject property and associated businesses constitute intangible / living heritage:
  - 32.1. The tenants’ classification of themselves and their activities as a “*rich living heritage*” is not a correct interpretation of the NHRA or corresponding internationally accepted definitions thereof.
  - 32.2. HWC has no clear policy or guidelines in respect of incorporating matters affecting social history and intangible heritage into the formally legislated heritage impact assessment process. Nor is there any guidance of how such matters should be weighed against other factors relating to tangible heritage findings. Nevertheless, such matters are increasingly (and rightly so) assuming importance in the heritage arena and require greater clarity.
  - 32.3. The NHRA defines “living heritage” in section 2(xxi) of the NHRA as “*the intangible aspects of inherited culture and may include:*
    - 32.3.1. *Cultural tradition;*
    - 32.3.2. *Oral history;*
    - 32.3.3. *Performance;*
    - 32.3.4. *Ritual;*
    - 32.3.5. *Popular memory;*
    - 32.3.6. *Skills and techniques;*
    - 32.3.7. *Indigenous knowledge systems; and*
    - 32.3.8. *The holistic approach to nature, society and social relationships”.*

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<sup>5</sup> Page 6 of the Socio-Historical Impact Assessment.



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- 32.4. In terms of section 3(2) of the NHRA, the national estate of heritage resources includes, among others, *“places to which oral traditions are attached or which are associated with living heritage”*.
- 32.5. With respect to the criteria for assessing the significance of a place or objects, section 3(3)(g) of the NHRA ascribes heritage significance to a place because of *“its strong or special association with a particular community or cultural group for social, cultural or spiritual reasons”*. In this regard, we record as follows:
  - 32.5.1. Social value is associated with economic, social or religious activity, and is associated with intangible / living heritage by way of cultural traditions, public culture, oral history, performance or ritual.
  - 32.5.2. Spiritual value is associated with religious activity and/or phenomena, and is significant to a particular group and specific spiritual events and/or activities.
- 32.6. Section 3(3)(d) (i.e. importance in demonstrating the principal characteristics of a particular class of South Africa’s natural or cultural places or objects) and (e) (i.e. importance in exhibiting particular aesthetic characteristics valued by a community or cultural group) appear to be most pertinent to the analysis, although there remains a lack of clarity in defining exactly the extent to which these associations apply to the understanding of intangible / living heritage.
- 32.7. UNESCO’s Convention for the Safeguarding of the Intangible Cultural Heritage of 2003 (*“Convention on Intangible Cultural Heritage”*) proposes five broad domains in which intangible cultural manifests and which includes *“traditions or living expressions inherited from our ancestors and passed on to our descendants, such as oral traditions, performing arts, social practices, rituals, festive events, knowledge and practices concerning nature and the universe or the knowledge and skills to produce traditional crafts”*. The importance of intangible cultural heritage, according to the Convention *“is not the cultural manifestation itself but rather the wealth of knowledge and skills that is transmitted through it from one generation to the next”*.
- 32.8. The belief practices of indigenous communities are most often referred to when it comes to assessing matters of intangible / living heritage and which include the transmission of historic practices, rituals and beliefs that define a cultural identity and are passed down through generations. Clear examples of intangible / living heritage in South Africa are, therefore:
  - 32.8.1. The Riel Dans;
  - 32.8.2. Namaqua traditional song and music;
  - 32.8.3. Xhosa, Zulu and many other historical and on-going social cultural practices;
  - 32.8.4. The practices of traditional medicine;
  - 32.8.5. Traditional farming methods;



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- 32.8.6. Those keeping near-extinct indigenous languages alive; and
- 32.8.7. Historical community presence and cultural traditions in places like the Bokaap.
- 32.9. On a local policy level, only the draft 2007 Maropeng National Policy on South African Living Heritage provides specificity in the local context in respect of intangible / living heritage, however, this has a clear focus on the living heritage of people indigenous to Africa and enslaved peoples, and is unable to provide any guidance as to the applicability of the concept of intangible / living heritage to the tenants at the Application site.
- 32.10. The Cultural Heritage Strategy for the City of Cape Town notes similarly to the South African Heritage Resource Agency's living heritage pamphlet in that "*Cultural value resides in both tangible and intangible heritage. Oral traditions, ceremonies, events and knowledge systems are a vital part of heritage. Intangible heritage enriches the experiences of the physical environment through memory and knowledge*".<sup>6</sup>
33. With the above national and international policy framework in mind with respect to intangible / living heritage, the tenants and their life on the subject property cannot fall within this conceptual understanding for the following reasons:
- 33.1. Whilst a number of the tenants have developed a group identity over approximately 20 years, and there are clearly symbiotic relationships between a number of the uses, this does not amount to intangible / living heritage as understood in terms of the legislative and policy frameworks, the broader context of heritage applicable to the subject property and the imperative of promoting intangible heritage on the Application site.
- 33.2. Personal expressions of people's way of living, even where generally consistent within a community, cannot in and of itself be defined as intangible heritage, particularly where the aspect of inter-generational transmission is absent.
- 33.3. The tenants do represent, in many but not all respects, the values of a particular sector of Cape Town society but this is small, largely niche and lifestyle-oriented. The development of the sustainability ethos (to simplify the various aspects of current practice on site) has neither been continuous, uni-directional nor all-encompassing but instead gradual and completely new to the subject property following occupation after the institutional uses were relocated.
- 33.4. The tenants do not meet the commonly held criteria for inter-generational expression of long held continuity of cultural practice regarded as intangible / living heritage, including contemporary intangible / living heritage practices. The majority of uses of the subject property cannot in the main be regarded as cultural practices, and many of the users have more recent associations with the site. Furthermore, the tangible heritage resources on site have not been protected through the tenancy.

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<sup>6</sup> Page 17 of the Cultural Heritage Strategy for the City of Cape Town.



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- 33.5. The discussions of the tenant's current practices have in the circumstances of the Application been increasingly and opportunistically shoehorned into more elastic and uncommon definitions of intangible / living heritage so as to provide greater security of tenure. In other words, the recent claims of intangible / living heritage are self-serving and not formulated on the basis of proven international and national heritage considerations.

**Ground of appeal 3: The Heritage Impact Assessment dated February 2026 does sufficiently investigate tangible and living heritage in terms of section 3 of the NHRA as it clearly demonstrates that it has considered the full scope of "heritage resources" as defined in section 3, even where some aspects are addressed qualitatively rather than through separate specialist studies**

34. Section 3 of the NHRA requires consideration of both tangible and intangible heritage, not standalone studies for each. Section 3 defines national estate heritage resources broadly, including:

34.1. Tangible heritage:

34.1.1. Places, buildings, structures and equipment of cultural significance (section 3(2)(a));

34.1.2. Places linked to oral traditions or living heritage (section 3(2)(b));

34.1.3. Archaeological and palaeontological sites (section 3(2)(c)-(d));

34.1.4. Landscapes and natural features of cultural significance (section 3(2));

34.1.5. Graves and burial grounds (s 3(2)(g)); and

34.1.6. Sites of historical significance (s 3(2)(h)).

34.2. As well as intangible / living heritage:

34.2.1. Oral traditions (s 3(2)(b));

34.2.2. Traditional knowledge systems (s 3(2)(j)); and

34.2.3. Cultural practices and associated living heritage values embedded in places and landscapes.

- 34.3. The NHRA requires identification and assessment of impacts on these resources; it does not prescribe that each category must be investigated through separate specialist reports if adequately covered in an integrated Heritage Impact Assessment.

35. The Heritage Impact Assessment dated February 2026 and supporting documentation sufficiently addresses tangible heritage. The threshold of sufficiency is key here to demonstrating compliance with the impact assessment requirements in section 38 of the NHRA. The Heritage Impact Assessment dated February 2026 is argued sufficient for the following reasons:



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- 35.1. It identifies built environment, archaeological, cultural landscape, and burial-related resources.
- 35.2. It assesses direct and indirect impacts on these resources.
- 35.3. It evaluates significance using NHRA criteria (historical, aesthetic, scientific, social, spiritual value).
- 35.4. It includes mitigation or avoidance measures.
36. This satisfies the investigation obligation regarding material heritage resources contemplated in Section 3 of the NHRA. In fact, the 2025 Eastern Cape Provincial Heritage Resources Authority guideline even helps you: it says living heritage statements may be preliminary in a Phase 1 Heritage Impact Assessment and may only trigger deeper Phase 2/3 work if warranted and which supports sufficiency, not deficiency.
37. Living heritage has been investigated through place-based and social significance assessment. Insofar as IACom’s criticism that “living heritage” was not separately studied, this argument cannot be sustained. The Heritage Impact Assessment dated February 2026 sufficiently investigates living heritage because it demonstrably addresses the following:
  - 37.1. Considers social and spiritual significance attached to places.
  - 37.2. Includes community consultation or stakeholder engagement.
  - 37.3. Records oral histories, cultural associations, sacred associations, customary use, or traditional practices linked to the landscape.
  - 37.4. Treats living heritage as embedded in the significance assessment of places, rather than isolating it as a separate topic
38. This aligns with the NHRA’s integrated understanding that living heritage is often inseparable from place.
39. Sufficiency is judged by adequacy and reasonableness, not exhaustive documentation. The standard is whether the Heritage Impact Assessment dated February 2026 enables informed heritage decision-making. The Heritage Impact Assessment dated February 2026 meets the purpose of sections 38 read with section 3 in that the assessment:
  - 39.1. Identifies relevant heritage resources;
  - 39.2. Assesses likely impacts;
  - 39.3. Considers both physical fabric and associated intangible values; and
  - 39.4. Provides a rational basis for authority review.



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40. The law requires adequate investigation, not exhaustive ethnographic documentation where no evidence suggests overlooked living heritage impacts.
41. Consultation processes can evidence investigation of living heritage. The fact that consultation with affected communities, traditional authorities, or interested parties was undertaken, supports the argument that living heritage was considered. IACom overlooked the obvious fact that living heritage is often investigated through participation processes rather than specialist technical surveys. The process undertaken and opportunities for consultation were numerous and this itself demonstrate compliance.
42. The HIA's investigation of living heritage is consistent not only with the NHRA, but also with applicable policy frameworks governing intangible heritage, including UNESCO principles. The investigation and assessment of living/intangible heritage also satisfy applicable policy frameworks, including applicable UNESCO instruments and guidelines. The finding that living heritage was inadequately investigated fails to take into account that the Heritage Impact Assessment dated February 2026's methodology is aligned not only with section 3 of the NHRA, but also with broader national and international heritage policy frameworks that recognize intangible heritage as embedded in social practice, cultural landscapes, and community associations.
43. The investigation and assessment of living heritage undertaken in the Heritage Impact Assessment dated February 2026 accords with principles reflected in the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage (2003), which recognizes intangible heritage as including:
  - 43.1. oral traditions and expressions;
  - 43.2. social practices, rituals and customary practices;
  - 43.3. traditional knowledge systems;
  - 43.4. cultural practices associated with places and landscapes;
  - 43.5. community-recognised heritage transmitted through living traditions.
44. Importantly, the UNESCO framework does not require intangible heritage to be assessed only through a discrete or standalone study; rather, it emphasizes identification, recognition of community associations, continuity of practice, and safeguarding through integrated management approaches. These principles are reflected in the Heritage Impact Assessment dated February 2026 through its assessment of social significance, cultural associations, landscape values, and stakeholder consultation.
45. Further, the integrated treatment of living heritage in the Heritage Impact Assessment dated February 2026 is consistent with internationally accepted heritage practice, which increasingly understands tangible and intangible heritage as interrelated and often inseparable. The assessment therefore accords with contemporary heritage management principles rather than omitting living heritage.



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46. To the extent that the decision suggests that intangible heritage required a different or additional form of investigation, such an interpretation is inconsistent with these applicable policy frameworks and imposes a standard not required either by the NHRA or by recognized international heritage practice.
47. Accordingly, the Heritage Impact Assessment dated February 2026 not only satisfies Section 3 of the NHRA, but also complies with relevant policy guidance, including UNESCO principles relating to the identification and safeguarding of intangible heritage, further confirming the adequacy of the investigation undertaken.
48. The purpose and legal scope of an HIA is heritage assessment, not a social impact assessment. The Applicant submits that the criticism of the Heritage Impact Assessment dated February 2026 improperly conflates the purpose of a Heritage Impact Assessment with that of a Social Impact Assessment, thereby applying an incorrect standard.
49. An HIA undertaken in terms of section 38 of the NHRA is a specialist heritage instrument intended to identify, assess and manage impacts on heritage resources as contemplated in section 3. Its purpose is to inform heritage decision-making concerning impacts on the national estate. Its focus is therefore necessarily heritage-centred, namely:
  - 49.1. identification of heritage resources;
  - 49.2. assessment of their significance;
  - 49.3. evaluation of impacts on those resources; and
  - 49.4. formulation of avoidance, mitigation or management measures.
50. That is fundamentally different from the purpose of a Social Impact Assessment, which examines broader socio-economic, demographic, livelihood and social wellbeing impacts of development.
51. Living heritage assessment in a heritage impact assessment must be understood within a heritage, not social planning, framework. To the extent that the decision appears to require a broader socio-cultural or anthropological inquiry akin to a social impact assessment, this imposes requirements outside the lawful scope of a heritage impact assessment. While living or intangible heritage forms part of Section 3 and must be considered, its investigation in a heritage impact assessment is directed at heritage significance — not a general social inquiry into all community dynamics, social impacts, or development consequences. A heritage impact assessment is concerned with whether heritage values, including living heritage values attached to place, may be affected — not with undertaking the broader remit of a social impact assessment. Requiring a heritage impact assessment to function as a social impact assessment misunderstands the nature of the instrument and applies an inappropriate evaluative standard.
52. The HIA appropriately addressed living heritage insofar as relevant to heritage impacts. The Heritage Impact Assessment dated February 2026 investigated and assessed living heritage to the extent relevant to its statutory heritage purpose, including social and cultural associations



linked to heritage resources. That satisfies the requirements of a heritage assessment. The fact that the Heritage Impact Assessment dated February 2026 did not undertake the type of socio-economic or anthropological investigation associated with a social impact assessment cannot constitute a deficiency, because that is not what the NHRA requires of a heritage impact assessment. To hold otherwise would improperly expand the scope of heritage assessments beyond their legislative purpose and duplicate other environmental and social assessment processes

53. Requiring an HIA to perform the function of an SIA is irrational and ultra vires the statutory scheme. The decision effectively imposes obligations associated with another assessment regime and, in doing so, exceeds what Section 38 read with Section 3 requires. Heritage authorities must assess whether heritage impacts have been sufficiently investigated, not whether a heritage impact assessment has undertaken the work of a social impact assessment. The proper question is whether heritage resources, including living heritage values, were adequately assessed for heritage purposes. On the record, they were.

**Ground of appeal 4: The Heritage Impact Assessment dated February 2026 is consistent with SAHRA Guidance and ICOMOS Cultural Landscape Principles**

54. The Heritage Impact Assessment dated February 2026 accords with SAHRA guidelines and accepted heritage practice. The Applicant submits that the adequacy of the Heritage Impact Assessment dated February 2026 must be assessed not only against the NHRA, but also against applicable heritage practice standards, including SAHRA guidelines and accepted professional methodology. The Heritage Impact Assessment dated February 2026 follows the established methodology contemplated in SAHRA guidance for heritage impact assessments, namely:

- 54.1. identification and recording of heritage resources;
- 54.2. assessment of significance;
- 54.3. assessment of direct and indirect impacts;
- 54.4. consideration of cultural landscape values; and
- 54.5. and development of mitigation or management recommendations.

55. This is the recognised purpose and scope of a heritage impact assessment.

56. Importantly, SAHRA-aligned practice recognises that living heritage and cultural landscape values may be investigated through integrated heritage significance assessment and community-informed heritage enquiry, rather than only through a separate specialist intangible heritage study. SAHRA's comment on the Application dated 28 January 2026 is telling in terms of their attitude towards the Heritage Impact Assessment dated February 2026: *“Following SAHRA’s comment of 30 October 2024, the revised Heritage Impact Assessment presents a more balanced and inclusive proposal, with reduced massing, improved recognition of primary heritage resources and their surroundings, preserved visual connections, softened edges and a measure to retain living heritage and cultural practices. SAHRA further recommends the*



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*development of appropriate conservation and disaster risk planning documentation, together with interpretation signage to communicate the site's significance and strengthen linkages to the wider context, ensuring the safeguarding and meaningful appreciation of the identified resources".*

57. Further, South African heritage guidance recognises cultural landscapes and intangible heritage as part of a layered heritage resource assessment. National and provincial guidance has increasingly affirmed that intangible/living heritage may be captured in a statement of assessment within a Phase 1 heritage impact assessment, with further investigation only where triggered by findings.
58. The Heritage Impact Assessment dated February 2026 is therefore consistent with applicable heritage practice.
59. The Heritage Impact Assessment dated February 2026 is aligned with International Council on Monuments and Sites ("ICOMOS") Convention for the Safeguarding of Intangible Cultural Heritage. The Heritage Impact Assessment dated February 2026 is further consistent with principles advanced by International Council on Monuments and Sites concerning cultural landscapes, including the recognition that:
  - 59.1. landscapes embody both material and intangible heritage values;
  - 59.2. people, place, memory and practice are interconnected;
  - 59.3. heritage assessment should consider associative and living values attached to landscapes; and
  - 59.4. and cultural significance is often best assessed holistically rather than by artificially separating "tangible" and "intangible" components.
60. These principles are reflected in ICOMOS cultural landscape doctrine, including the ICOMOS-IFLA Principles Concerning Rural Landscapes as Heritage (2017) and broader ICOMOS cultural landscape guidance, which treat landscapes as repositories of layered biocultural heritage values. The Heritage Impact Assessment dated February 2026's integrated treatment of landscape, social significance and living heritage accords precisely with this approach.
61. The decision applies an approach inconsistent with accepted heritage doctrine. By implying that living heritage required a broader or separate social-anthropological assessment akin to a Social Impact Assessment, the decision departs from accepted heritage doctrine. Both SAHRA guidance and ICOMOS principles support a heritage-focused integrated methodology, not the transformation of a heritage impact assessment into a social impact process. The criticism therefore applies a standard inconsistent with both national heritage practice and international conservation principles.



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**OMVETA**

62. With particular respect to OMVETA's submission in respect of the Heritage Impact Assessment dated February 2026, we record as follows:
- 62.1. It is not clear how the conclusions that the assessment relies on a "*narrow, vertical, numericist and ahistorical interpretation of UNESCO's formulation*" when, evidently, inter-generational transmission is but one consideration as part of the assessment of intangible / living heritage on the subject property in the Heritage Impact Assessment dated February 2026 as well as the Socio-Historical Impact Assessment.
- 62.2. There was never any specified threshold in the Heritage Impact Assessment dated February 2026 for how many years inter-generational transmission should constitute, nor has any been found in the policies and literature reviewed in the relevant assessment. Nevertheless, inter-generational transmission is consistently a primary international and national criterion for identifying intangible / living heritage.
- 62.3. By contrast, the current uses of the subject property have emerged 'as new' from the relatively recent opportunities that the initially vacant and poorly managed subject property offered following the relocation of Valkenberg East, and have had a relatively inconsistent and unstable trajectory until relatively recently.
- 62.4. Based on a review of the existing business and/or occupation of the site, there is no necessary associated spatial fix to this site, and the uses have arisen and continue to operate as a fortuitous result of the availability of a relatively large area of cheap and poorly managed but well-located land.
- 62.5. There is no assumption made in the Heritage Impact Assessment of February 2026 that intangible / living heritage is fixed in the past, as contemporary practice is clearly inherent in the term "living heritage". Nor was there any dismissal of revivalist heritage-based practice, which is explicitly acknowledged in respect of First Nation revivalist practice and catered for in the proposed redevelopment.
- 62.6. Nonetheless, the latest further requirements for a "Living Heritage Assessment" for Oude Molen, focused specifically on the practices, skills and community relationships that may constitute living heritage on the subject property and subject to a further 30-day consultation period which includes all identified interested and affected parties, not only disregards the extensive information provided by a full reading of the Heritage Impact Assessment dated February 2026, supporting specialist assessments and the IACom hearings, but are also unlikely to achieve anything further than the current *impasse*, with further significant costs and substantial delays.
63. The tenants have, over a very lengthy period of time, more recently in addition to some of the site users/visitors, and by way of extensive media and social media campaigning, vociferously defended the status quo and their right to remain but which has been recently been shoehorned into elastic heritage-related arguments regarding intangible / living heritage. It is a now common phenomenon in cultural landscapes where 'evidence' leads to conflicting framings about what



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it means. There is no gold standard for objective truth. The concern for recognition impedes the two 'truths': those presented by independent professional interpreters of information (as biased and dismissive); and those with the direct experience of the reality, leading to expressions of popular will at any given time (as pure and obvious). Nevertheless, the following remains critical to the enquiry and a decision thereon:

- 63.1. The need to safeguard against social components being used inappropriately to entrench sectarian interests, bearing in mind the cultural significance of living heritage sites, lies in the way of life and social activities associated with traditional communities.
- 63.2. The difficulties in how to measure and/or manage the social performance and interpret social quality in a measurable way.
- 63.3. In order to achieve integration, and to retain social quality through heritage management practices, there is a need for applicable guidelines.
- 63.4. The issue of what considerations are relevant or irrelevant must be determined in light of the NHRA and based on the unique facts of the site and context.
- 63.5. The NHRA provides a non-exhaustive list of some of the matters that serve as relevant considerations to intangible / living heritage.
- 63.6. The purpose of the power being exercised under the NHRA is also relevant to determining what factors are relevant in each case.
- 63.7. Defining communities and communities' associations with heritage sites can be problematic in respect of matters such as a putative community claimed special association and historically fake or questionable historic validity.
64. Ultimately, it is imperative to balance the need to conserve heritage resources, inclusive of intangible / living heritage, with the need for development and growth. The utopian discourse argued by the tenants potentially marginalises the backdrop of Cape Town's fundamental inequalities and other heritage considerations inexorably tied to the Application site. The Heritage Impact Assessment dated February 2026, associated specialist reports and further requirements report have contained extensive information on the tenant activities and assessments of significance are based on these, a reading of legislation, policy and academic and public debate, as well as additional information provided through comments submitted. The inescapable conclusion is that there is no existing intangible / living heritage applicable to the tenancy of the tenants on the Application site.

**Hybrid character of the site as containing both rural and urban elements**

65. In addition to the Further Requirements for a Living Heritage Assessment initially stipulated by IACom on 18 March 2026, there is an additional issue that has been repeatedly raised by IACom, but which was not included in Further Requirements discussed at the meeting. This is the concern that the Heritage Impact Assessment dated February 2026 and development proposal do not recognise the hybrid character of the site as containing both rural and urban elements.



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66. IACom has repeated the view that the subject property is in fact a site with a rural or semi-rural character and associated uses<sup>7</sup> which is suggested by IACom as a significant heritage informant. We draw the Appeals Committee's attention to the fact that this issue has been fully ventilated in the Heritage Impact Assessment dated February 2026 and Further Requirements Report. The professional team remains of the view that IACom overstated the rural/semi-rural character of the site and its heritage significance with insufficient qualification other than its sense of place. This position of IACom is not evidence based. A number of precedent references were made which are viewed as inappropriate and unjustifiably prescriptive: Soetmelks Vlei, !Khwa ttu Nature Reserve, Paarl Farms. The first and last are working farms, the first in an authentic rural landscape, the latter at the outer edges of a rural town. The subject property is manifestly distinguishable from these other examples. They are in fact incomparable.
67. The history of the original farm and mill follows similar trajectories to most of Cape Town's early colonial farm allocations, and always appeared to be marginal. Detailed in the Heritage Impact Assessment dated February 2026, pages 18 – 24, the history of the site is summarised as follows:
- 67.1. Initial land grants in the area were primarily associated with milling, not agriculture.
- 67.2. From 1802-1880 the subject property was farmed and then acquired by the Government for the incarceration of King Cetshwayo.
- 67.3. From 1885-1912 the subject property accommodated Mackenzies farm.
- 67.4. In 1912 the subject property was purchased by the State for Valkenberg East mental Hospital for "coloured patients". In this regard:
- 67.4.1. Market gardening and animal husbandry were part of the therapeutic and self-sufficiency imperatives across Valkenberg's entire landholding and continued on site after Valkenberg Hospital took over.
- 67.4.2. The period 1957-1977 witnessed the transformation of the old farming portion of the site into additional hospital capacity.
- 67.4.3. By the time of the 1988 aerial survey, no small food gardens were in evidence any longer.
- 67.5. Minor food gardening and cart-horse rehabilitation started up again only recently during the early days of illegal occupation of the site in the 1990s and has expanded in recent years.
68. The Cultural Landscape assessor notes that while the site has residual pastoral qualities (allotments, open spaces, scattered trees), its dominant heritage character is that of a transitional institutional landscape, layered over earlier agricultural and indigenous uses. From

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<sup>7</sup> IACom comment DS: (on the site visit) we were all struck by the sylvan, semi-rural nature of the site, it is quite unique, a sense of an eco-village detached from the city with those views over to the mountain. It has a very unique sense of place which it has taken on over the last few years with the various uses and the fact that it's a very well treed site (author's emphasis).



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a visual and landscape perspective, the site is best described as bucolic-institutional—a hybrid that retains vestiges of small-scale agriculture, overlaid by institutional built form, but situated firmly within the urban cultural landscape.

69. By commonly accepted definitions, a rural area or countryside is a geographic area that is located outside towns and cities. Semi-rural areas are neither entirely urban nor fully rural and usually provide a transition between urban and rural, and maintain a predominantly rural character. They comprise predominantly open spaces, farmland, or natural landscapes and are characterised by lower population densities. The site cannot be argued as fulfil either definition. IACom states *“There are also plenty of European examples of such hybrid semi-rural landscapes – but not many that are so close to a major city as is the case here”* in their minutes provided on 24 April 2026.
70. We would argue that this site is not so much close to a major City as being an erf entirely enveloped by it; and there are many such examples of urban gardening throughout Cape Town, but which makes them (often) survivalist or lifestyle choices, not rural activities.
71. It has been described variously as "semi-agricultural", in that parts of the site are partially or moderately involved in agriculture, but the primary focus or function of the site is not exclusively (or even predominantly) 'agricultural', and residential, educational, institutional and light industrial activities also occur.
72. The history of urban agriculture has been described and acknowledged in the Heritage Impact Assessment dated February 2026. Ultimately, however, it is necessary to balance all the competing heritage references on the site. The Heritage Impact Assessment dated February 2026 demonstrates that whilst much of Cape Town inevitably has some historical association with farming as a consequence of the colonial patterns of growth and development, the major historical themes of significance to this site relate to the broader First Nation considerations of dispossession; the incarceration of King Cetshwayo and of associated significance to the Zulu Nation; and the segregated psychiatric facilities for people of colour who were treated unequally in the system of mental health provision (dispossession, exclusion and containment).<sup>8</sup> The current character which includes, but is not limited to, urban gardening and tree planting is of recent origin and not regarded as being of heritage significance.
73. The Heritage Impact Assessment dated February 2026 recognises the transitional function of subject property in relation to the broader riverine and open space landscape, but it neither a rural/semi-rural area itself, nor a rural/semi-rural backdrop looking onto the site. The site sits within the broader context of an **urban cultural landscape with a significant riverine open space component**.
74. Should the HWC Appeals Committee support the views of the appellant with regard to Living Heritage and the 'rural' character of the site as an historical informant, many other considerations become moot. Moreover, it should be reiterated that at this stage the Heritage Impact Assessment seeks approval for a high-level Development Framework. The draft Precinct plan and urban design principles are also tabled for support on the understanding that they will

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<sup>8</sup> Heritage Impact Assessment dated February 2026 page 185-186.



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return to HWC for approval at the time they can be developed. The details can only be developed as the proposals become progressively more detailed, as is typical of such developments. The Heritage Impact Assessment heritage indicators, mitigations and conditions are extensive and explicit in this regard and provide sufficient safeguards oversight to ensure that any subsequent Precinct plans are developed in accordance with therewith.

## Conclusion

75. The Heritage Impact Assessment dated February 2026 is consistent with Section 3 and Section 38 of the NHRA, applicable SAHRA heritage assessment methodology, and internationally recognised ICOMOS Intangible Cultural Heritage definitions. It appropriately assessed tangible heritage, cultural landscape values and living heritage within a heritage-focused framework. The suggestion that the Heritage Impact Assessment dated February 2026 is deficient because it did not undertake a broader social impact enquiry reflects a misunderstanding of both the purpose of a heritage impact assessment and accepted heritage doctrine.
76. Accordingly, the Heritage Impact Assessment dated February 2026 can be argued to have sufficiently investigated both tangible and living heritage in terms of Section 3 of the NHRA, because:
  - 76.1. It considered the full range of heritage resources contemplated by Section 3;
  - 76.2. It assessed tangible heritage directly;
  - 76.3. It addressed living heritage through social, cultural landscape and consultation-based analysis; and
  - 76.4. The NHRA requires adequate integrated assessment, not separate specialist treatment for every heritage category.
77. The Heritage Impact Assessment dated February 2026 satisfies the requirements of Section 3 read with Section 38 of the NHRA because it adopts a holistic assessment of heritage resources, including both physical heritage fabric and associated living heritage values, thereby providing a sufficient evidentiary basis for informed heritage decision-making. Section 3 creates an integrated concept of the “national estate,” where tangible and intangible dimensions overlap. The Heritage Impact Assessment dated February 2026 assessed, social significance, and community associations, then living heritage was not omitted but was addressed holistically as the NHRA contemplates.
78. The Applicant submits that the impugned finding is based, in part, on an impermissible conflation of a Heritage Impact Assessment with a Social Impact Assessment. A heritage impact assessment is a heritage-focused statutory instrument, not a general socio-economic or anthropological assessment. The Heritage Impact Assessment dated February 2026 appropriately investigated living heritage insofar as relevant to heritage significance and impact, thereby satisfying both the purpose of Section 38 and the heritage resource framework in Section 3 of the NHRA. Any expectation that the HIA should have functioned as a social impact assessment imposes a legally and conceptually incorrect standard and should be rejected.



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79. In light of the fact that IACom in its Record of Decision dated 8 April 2026 did not raise any other matters in respect of deficiencies of the Heritage Impact Assessment dated February 2026, it is requested that the Appeals Committee:
- 79.1. Upholds the appeal.
- 79.2. Endorses the Heritage Impact Assessment dated February 2026 as satisfying the requirements of section 38(3) of the NHRA.
- 79.3. Supports the Development Framework, Draft Precinct Plan, Urban Design Guidelines and proposed preferred alternatives development 4c described in Annexure H. This is to be subject to the on-going application of the heritage indicators included in section 12 of the Heritage Impact Assessment dated February 2026 and mitigation measures included in section 17 thereof, as well as on the understanding that refine of areas of heritage concern will be undertaken and resolved appropriately at subsequent design levels. All proposed mitigation measures must be appropriately included in any further planning and design documentation that follows this phase of approvals, and should be submitted to Heritage Western Cape for confirmation of conformity with indicators and mitigation measures proposed.
- 79.4. Approves the demolition of the buildings older than 60 years identified in Figure 183 of the Heritage Impact Assessment dated February 2026.
- 79.5. The archaeological indicators should be considered during design development phase of this project going forward, with the following indicators of particular importance:
- 79.5.1. The very high archaeological sensitivity of the likely site of the mill ruin should be considered as a no-go area for any development going forward.
- 79.5.2. Test-trenching in the area of the mill should be undertaken to test for the presence of the mill, and which should be undertaken in terms of a work plan to be prepared for approval by HWC. The trenching should be undertaken prior to the next phase of design development such that the outcomes of this work can inform the design process going forward.

**Annexures in support of this appeal:**

1. Annexure A: Contemporary Oude Molen.
2. Annexure B: HWC Record of Decision dated 8 April 2026.
3. Annexure C: Final Revised Heritage Impact Assessment report folder incorporating the following documents:
  - 4.1. Response to HWC Further Requirements Oude Molen Final February 2026;



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- 4.2. Heritage Impact Assessment dated February 2026;
- 4.3. Annexure A: HWC Response to Notice of Intention to Develop;
- 4.4. Annexure B1 Historical Background;
- 4.5. Annexure B2: A historical background of Oude Molen Pinelands;
- 4.6. Annexure C: Socio-Historical Study, Oude Molen, Feb 2025;
- 4.7. Annexure D1: Oude Molen VIA Final Report Updated Final (2025-03-03);
- 4.8. Annexure D2: 77306\_Cape Town Ouden, Molen Precinct Tree Catalogue Survey Report Rev C January 2025\_Resized (1);
- 4.9. Annexure E1 Built Environment Inventory sheets (included in HIA report);
- 4.10. Annexure E2: 2020 12 11\_OMP\_Building Due Diligence SVA & O'Donoghue;
- 4.11. Annexure F: Oude Molen AIA final Feb 2025;
- 4.12. Annexure G: Criteria heritage significance (included in HIA report);
- 4.13. Annexure H1: Development Framework;
- 4.14. Annexure H2 2025 11 04 Dev Proposal for Heritage Assessment;
- 4.15. Annexure H3 SVA\_OMP02\_Precinct Plan Urban Design Report r05;
- 4.16. Annexure H4 77306 OMP-PLP-XX-XX-DR-LA-0002\_Precinct Landscape Plan (Rev-D, Oct 2025);
- 4.17. Annexure H5 77306\_Oude Molen Landscape Guidelines Rev A\_06112025;
- 4.18. Annexure I Oude Molen Socio-economic impact report-7 March 2025;
- 4.19. Annexure J OMP (folder)- 1st Comments & Responses Report\_2025-03-06\_1102;
- 4.20. Annexure K1 (folder) Proof of advertising Nov 2025; and
- 4.21. Annexure K2 (folder) Comments Records Dec 2025.