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Sent: Wednesday, 06 May 2026 17:00
To: OMP; HWC Appeals
Cc: Karen White; Ute Kuhlmann
Subject: Oude Molen Precinct - Reponse to Appeal CASE NUMBER: 21022615SB0330E
Attachments: APPEAL RESPONSE_OudeMolen.pdf

Good day

Please see below summary, and attached full response to the appeal.

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Executive Summary

This submission responds to the appeal against the refusal of the Heritage Impact Assessment (HIA) for the Oude Molen site. The central issue is narrow and dispositive: whether the HIA complies with section 38(3) of the National Heritage Resources Act (NHRA). The Impact Assessment Committee found that it does not, due to a fundamental failure to identify and assess living heritage. That finding discloses no error of law or principle and is sufficient to sustain the refusal.

Section 38(3) establishes a clear and mandatory sequence: identification of heritage resources, assessment of their cultural significance, and evaluation of development impacts. Living heritage—expressly recognised under the NHRA—forms part of the national estate and must be included at the identification stage. Where identification is incomplete, all subsequent stages are rendered unreliable. This is the core defect in the HIA.

The appeal mischaracterises the Committee’s decision by suggesting that an impermissible requirement for a Social Impact Assessment (SIA) was imposed. This is incorrect. The Committee required compliance with section 38(3), which already encompasses social value as a component of cultural significance. Where heritage value arises from ongoing social practices, community use, and place-based relationships, the disruption or displacement of those practices constitutes a direct heritage impact that must be assessed. The HIA failed to do so.

The deficiency is not a matter of professional disagreement or methodology preference. It is a structural failure to disclose a transparent, criteria-based process for identifying and evaluating living heritage. The HIA does not explain how evidence was assessed, what criteria were applied, how significance was determined, or why certain forms of heritage were included or excluded. In the absence of a rational and reviewable chain of reasoning, the conclusions reached are not legally “adequate”.

Evidence before the Committee demonstrated sustained, place-based social practices at Oude Molen over more than three decades, including care-based, educational, agricultural, therapeutic, and community-support activities. These practices are materially dependent on the site’s spatial and environmental characteristics and collectively give rise to a living cultural landscape. This evidence was not systematically evaluated. Instead, it was summarised and effectively dismissed without reasoned analysis, leaving the heritage baseline incomplete.

The HIA further fails to assess the site as a cultural landscape or to evaluate cumulative impacts. Heritage significance at Oude Molen arises not only from discrete built elements but from their relationship to a broader spatial, ecological, and social context. The proposed high-density development would fundamentally alter this context, resulting in irreversible impacts that were not assessed. The reliance on future “refinement” does not cure this defect, as section 38 requires that heritage impacts be understood before approval, not deferred to later stages.

The appeal’s reliance on delay, development benefits, or spatial justice is legally misplaced. Statutory compliance with section 38(3) is mandatory and cannot be relaxed on the basis of expediency or policy preference. The balancing of heritage impacts against social and economic benefits can only occur after heritage resources have been properly identified and assessed. That prerequisite has not been met.

Because living heritage was not adequately identified or evaluated, the HIA’s conclusions on significance and impact are unreliable. This deficiency is foundational and cannot be remedied through conditions, post hoc supplementation,

or design adjustments. The applicant was afforded an opportunity to address these issues but elected to proceed to decision. The consequences of that election cannot be cured on appeal.

Accordingly, the refusal of the HIA was the only lawful outcome. The appeal should be dismissed, and the decision of Heritage Western Cape upheld. A revised HIA is required, grounded in a clear, transparent methodology, that properly identifies and assesses living heritage, evaluates the site as a cultural landscape, and addresses cumulative and irreversible impacts in compliance with section 38(3) of the NHRA.