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APPEAL AUTHORITY IN TERMS OF SECTION 114(3) OF THE CITY OF CAPE TOWN MUNICIPAL  
PLANNING BY-LAW, 2015

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NOTICE OF DECISION AND REASONS

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APPEALS AGAINST THE MUNICIPAL PLANNING TRIBUNAL'S APPROVAL OF DEVELOPMENT ON  
ERF 3032, CAPE TOWN, 150 BUITENGRACHT STREET, BO-KAAP

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**A. INTRODUCTION**

1. This decision addresses appeals lodged against the Municipal Planning Tribunal's (**MPT**) decision of 2 July 2024 to approve a six-storey, 67-bedroom hotel with a ground-floor restaurant on Erf 3032, 150 Buitengracht Street, Cape Town (**the site**).
2. The application is in terms of s 42(i) of the City of Cape Town Municipal Planning By-law, 2015, as amended in 2019<sup>1</sup> (**the By-law**) for approvals required by the Development Management Scheme (**DMS**, Schedule 3 to the By-Law). The approvals are (a) to construct a projection (canopy overhang) over a public street (item 89(c) of the DMS) and (b) to build within a Heritage Protection Overlay Zone (**HPOZ**) (item 162(1)).
3. The 653 m<sup>2</sup> site is a tarred, vacant lot situated on the interface between the Cape Town CBD and the historic and heritage-rich Bo-Kaap. Acting under s 114(3) of By-Law, I consider the appeals afresh, guided by:
  - the full record before the MPT;
  - the Planning Appeals Advisory Panel's (**PAAP**) recommendations;
  - the written and oral submissions of the appellants and the applicant; and
  - the applicable legislative and policy framework.

**The site and its context**

4. The site, zoned Mixed Use Subzone 3 (**MU3**), is in:
  - 4.1. the Bo-Kaap HPOZ;

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<sup>1</sup> The application was accepted on 14 December 2021.

- 4.2. the Cape Town CBD Local Area Overlay Zone (LOA); and
- 4.3. a Public Transport Area 2 (PT2) zone.



- 5. The site is situated on the Buitengracht service road, at the border between the CBD and the Bo-Kaap.
- 6. To the south and east is the CBD with a mix of light industrial and commercial uses.
- 7. The site and the street block in which it is located are recognised as part of the original Bo-Kaap historical fabric. The Bo-Kaap residential neighbourhood lies north and west of the site.
- 8. The proposed non-residential development of the site would be unusual but not unprecedented along this edge of Bo-Kaap. The approximately 70-metre strip containing the site is predominantly residential despite being zoned either Mixed Use Subzone 2 or 3 (**MU2** or **MU3**). Most properties in the strip are single- or double-storey residences. There are four non-residential exceptions, which are three- to five-storey buildings used as businesses or offices.

9. Several nearby properties have exceptional heritage and cultural, social, religious and historical significance.
  - 9.1. Notably, the nearby landmark Auwal Masjid (**the Masjid**), located at 34 Dorp Street, is the oldest mosque and madrassah in South Africa, established in 1794 with Tuan Guru as Imam. The mosque became a centre of Muslim communal activity, regulating and patterning social and religious life. The Masjid holds cultural significance due to its association with living heritage, links to slavery, its importance in the community, and its strong connection to the Muslim community, as well as its special association with notable figures such as Tuan Guru, Achmat van Bengalen, and Saartjie van die Kaap. The Masjid serves as a monument to the struggle of Cape Muslims for the recognition of religious freedom and expression. The Auwal Masjid continues to function as its founders intended.
  - 9.2. The status of the Auwal Masjid as a proclaimed National Heritage Site and a Provincial Heritage Site reflects this considerable social and historical heritage value.

#### **Procedural history**

10. In 2008, Heritage Western Cape (**HWC**) granted a permit for the demolition of the existing buildings on the site to develop a nine-storey mixed-use building for offices and 35 dwelling units. The City granted building plan approval under the National Building Regulations and Building Standards Act 103 of 1977 (**Building Act**). At the time, no item 162 approval was required because the Bo-Kaap HPOZ had not yet been declared when the building plan application was submitted. Since construction of that building never commenced, the 2008 building plans lapsed.
11. In 2020, the City granted a second building plan approval and extended its validity to 19 January 2022. That was for a nine-storey mixed-use development on the site comprising office and retail space on the first to third storeys, with eleven apartments on the upper floors (**the 2020 approval**). Again, no HPOZ approval was needed. According to City records, construction started under the 2020 approval. That would mean that, even though the building was not completed, the building plan approval rights are vested under the provisions of the Building Act and cannot lapse. The appellants dispute that construction started. I do not need to resolve that dispute because the 2020 approval is irrelevant to these appeals, which are governed by the By-Law and not the Building Act.



12. The owner now proposes to build a hotel and restaurant. It requires HPOZ approval (item 162 of the DMS) because the hotel plan arose after the HPOZ commenced (on 12 April 2019).
13. The HPOZ application to the City initially proposed an eight-storey building with a hotel comprising 76 guestrooms and a ground-floor restaurant of 152 m<sup>2</sup>. However, as indicated below, the proposed development envelope has since been reduced.
14. In June 2022 the Bo-Kaap Civic and Ratepayers Association (**the Association**) asked HWC to provisionally protect the site. A facilitation between all interested and affected parties was held. The South African Heritage Resources Agency (**SAHRA**) facilitated a six-month engagement, which resulted a reduced design which all parties apparently accepted.
15. Following the facilitation process, the application to the City was amended by modifying the Site Development Plan (**SDP**) to address, among other issues, heritage significance, views of the historic building, archaeological significance, street edge activation, context and scale, height, coverage, floor factor, and overall area. The building footprint (coverage), height and scale were reduced as follows:

	<b>Pre-facilitation proposal</b>	<b>Current Proposal</b>
maximum height	8 storeys	6 storeys (reduced height by 6.6m)
Buitengracht Street façade height	5 storeys	3 storeys (40% less)
coverage	652m <sup>2</sup>	493m <sup>2</sup> (24% less)
floor factor	3.9	3.6
floor area	2,586m <sup>2</sup>	2,385m <sup>2</sup> (201.5m <sup>2</sup> less)



Proposed six-storey hotel in the Bo-Kaap

16. The City's planning officials recommended that the application be approved, subject to certain conditions in Annexure A to the report to the MPT dated 14 June 2024 (**the MPT report**).
17. On 2 July 2024 the MPT met and approved the proposed development. On 5 July 2024, the City notified the applicant and the objectors of the reasons for approval and the conditions of approval.
18. Seventy-four appeals were lodged, which I address below.

## **B. DOCUMENTS**

19. I considered the following documents:

- 19.1. The report to me dated 14 October 2024 (**the appeal report**) with the following annexures:

Addendum A	Appellants' names, phone numbers and e-mail addresses.
Addendum B1	Appeals by objectors.

Addendum B2	Appeals by appellants who did not originally object.
Addendum C	Developer's comments on the appeals
Addendum D	The case officer's report to the MPT (the MPT report), with the following annexures:
Annexure A	proposed development conditions.
Annexure B	Locality plan/public participation map.
Annexure C	Site Development Plans and other relevant plans/sketches.
Annexure D	Applicant's motivation, Heritage report and previous approvals.
Annexure E	Objections received.
Annexure F	Internal Departmental comments.
Annexure G	Applicant's response to objections received.
Annexure H	Conveyancer's certificate.
Addendum E	MPT Minutes and decision letter.

- 19.2. The recommendation of the Planning Appeals Advisory Panel (PAAP) and the reasons for its recommendation.

### C. APPEAL PROCEDURES

20. The appeal served at a meeting of the PAAP held on 31 January 2025. The PAAP made a recommendation to me which I considered.

### D. FORMAL REQUIREMENTS

21. Six valid appeals were submitted.
22. Sixty-eight appeals are invalid, but still considered. They are invalid in that they do not comply with one or more of the requirements in the By-Law: not submitted on the prescribed form or not signed by the prospective appellant (s 108(1)(a)); the prospective appellant is not a person referred to in s 108(2)(a) to (f)); or the appeal is late (s 108(3)). Despite these prospective appeals being invalid, I still considered their grounds of appeal because they are similar to those in the valid appeals.

## E. GROUNDS OF APPEAL

### Summary of the appeal grounds:

#### The Bo-Kaap Civic and Ratepayers Association and Ms N Levy's appeal

23. The Association and Ms Nadeema Levy appealed on the same grounds. In summary, they contend:
- 23.1. that the site is recognised for its architectural, historical, cultural, and religious significance, including its proximity to the oldest Masjid in the country, the Auwal Masjid;
  - 23.2. that the proposed development has the potential to damage the site's historical significance irreparably. Key concerns include the impact on the surrounding heritage, particularly the Auwal Masjid;
  - 23.3. that there were various inaccuracies in the MPT Report in respect of the heritage impacts and the public participation process;
  - 23.4. that the application requires approval for work in the HPOZ, which was not adequately considered in that the development proposal does not meet the criteria in the HPOZ;
  - 23.5. that the Bo-Kaap has predominantly Islamic heritage, which should be retained.
  - 23.6. that the development proposal is part of an ongoing process of gentrification and would erode the Bo-Kaap's unique heritage;
  - 23.7. that the provisional protection process in terms of s29 of the National Heritage Resources Act 25 of 1999 was flawed due to inadequate time and the exclusion of interested parties;
  - 23.8. that while the MPT report correctly states that all of the parties have 'endorsed' the current six-storey development proposal as consistent with the facilitation team's recommendations and that the appellants were pleased that the development proposal had been reduced to six storeys, it does not point out that the appellants still regard the development proposal to be intrusive and damaging to the heritage significance of the place and environs;
  - 23.9. that despite the initial public participation process occurring more than 24 months before consideration by the MPT, the application was not readvertised because the Department considered it unnecessary given the

reductions in the proposed building size and because there was no new departure or other new applications;

- 23.10. that the development remains intrusive and damaging to the heritage significance despite the reductions in height, scale and coverage;
- 23.11. that the MPT report fails to adequately assess the impact on heritage despite acknowledging the Bo-Kaap's unique cultural heritage;
- 23.12. that the development proposal does not comply with s 99, is not desirable, does not comply with relevant City policies, significantly impacts the rights and legitimate expectations of abutting neighbours, will significantly negatively impact the surrounding heritage; and the changes to the development proposal do not adequately mitigate negative impacts;
- 23.13. that the MPT refused to consider proposals to mitigate the negative impacts of the development to 'tolerable levels', which Dr. Stephen Townsend attempted to submit on behalf of the Association during the MPT hearing;
- 23.14. that the appeals should be upheld and development should be disapproved because it is too large and bulky, negatively impacting the area's historic context and heritage; and
- 23.15. alternatively, if the development is approved, that the appeals should be upheld in part, and that conditions be imposed:
  - 23.15.1. omitting the canopy projecting into the side-space viewing corridor in front of the curvilinear-parapet house;
  - 23.15.2. amending the configuration of the four units at the front of the proposal on the 1st, 2nd and 3rd storeys, omitting the diagonal elements projecting into the viewing corridor and the balconies overlooking the abutting houses on the south-west and orienting the four units and their windows and balconies to Buitengracht and the city;
  - 23.15.3. increasing the set back the third storey facade facing onto Buitengracht from 3m to 4m;
  - 23.15.4. omitting the entire 4th storey (losing 13 of 67 units);
  - 23.15.5. omitting the two units (or redesign creating a setback) of the now fourth storey at the rear overlooking the abutting houses (losing two more units) and the balcony of the unit now with access to the roof terrace created;



- 23.15.6. reducing all parapets to 300mm high with timber or steel balustrades set back a minimum of 600mm; and
  - 23.15.7. requiring that all street-facing parapets have corniced mouldings and all wall surfaces be plastered and painted.
24. The appellants argue that the proposed conditions would reduce the overall height to a tolerably faceted mass, minimise overlooking into private spaces, redirect views towards public areas, and remove obtrusive and discordant elements.

The Cape Institute for Architecture Appeal

25. The Cape Institute for Architecture (**CIFA**) was represented by Dr Townsend at the MPT hearings and is represented by Dr Townsend in this appeal. The CIFA appealed on the grounds:
- 25.1. that the size and scale of the proposed development are incompatible with the surrounding historical context, particularly in relation to the heritage significance of the Bo-Kaap, which is characterized by smaller buildings and unique historical features;
  - 25.2. that the proposed development would disrupt the area's character, causing harm to both the physical and cultural fabric of the Bo-Kaap which is designated as a Grade 1 heritage resource of national importance;
  - 25.3. that the development would impact neighbouring properties, including loss of privacy and overshadowing; and
  - 25.4. that the development does not comply with the By-Law, as it does not fit with the area's heritage and residential character.
26. In summary, CIFA continues to oppose the development, citing its potential to severely affect the historic and residential character of the Bo-Kaap area and the rights of neighbouring residents.

Other grounds of appeal

27. As explained, I will consider the grounds raised in the invalid appeals along with the grounds in the remaining four valid appeals.
28. In summary, those appeals contend that the proposed development will:
- 28.1. intrude on neighbouring properties given its scale;
  - 28.2. overshadow and diminish the historical significance of South Africa's oldest Masjid;

- 28.3. infringe the appellants' human rights by disabling the free practice of their religion and culture;
- 28.4. disrespect the historic environment and erode what makes the Bo-Kaap unique and special;
- 28.5. harm the activities of the Masjid and the appellants' religion and culture;
- 28.6. inconvenience people attending the Masjid and the community at large;
- 28.7. attract inappropriate activities right opposite the Masjid such as alcohol, immorality, adultery, loud music, and disrespectful language; and
- 28.8. risk safety and security with strangers occupying the apartments on a short-term basis;
- 28.9. worsen the shortage of parking in the narrow roads of Bo-Kaap which is under extreme parking pressure since:
  - 28.9.1. most houses in the Bo-Kaap do not have off-street parking, but its residents need cars because the Bo-Kaap has no public transport nodes and is far from the station;
  - 28.9.2. the Bo-Kaap's tariff-free parking attracts motorists seeking to avoid paid parking in the CBD; and
  - 28.9.3. the mosques in the Bo-Kaap have insufficient parking for prayer times and events.
- 29. The appellants contend that, although the site is in a PT2 zone, it is at the very edge of the PT2 border; therefore, the standard off-street parking requirements should apply to avoid existing Bo-Kaap residents having to park far from their homes.
- 30. The appellants also worry that the hotel might complain about the call to prayer.

## **F. COMMENT ON THE APPEALS AND DEPARTMENTAL ASSESSMENT**

### **Departmental response to the grounds of appeal**

- 31. The Department pointed out that several appeals are invalid. Nonetheless, the appeal report summarises all the appeals, including invalid appeals. As I explained above, I will consider all appeal grounds.
- 32. In response to the complaint that the MPT disregarded submissions made by the appellants for the first time during the MPT hearings, the Department states that the objectors attempted to introduce further design suggestions and additional concerns regarding the SAHRA facilitation process. The MPT disregarded that new information

because it considered the objectors to have had adequate opportunity to submit their concerns during the facilitation and advertising processes.

33. The appeal report also states:

- 33.1. that the MPT considered all objections and comments, relevant factors, City policies, and timeously submitted information;
- 33.2. that the MPT report summarised all comments and objections, which were annexed;
- 33.3. that before the MPT hearings, the MPT members declared that they had scrutinised all relevant documentation, objections and comments;
- 33.4. that the MPT considered the application and resolved, by consensus, to approve the application. The MPT's reasons for approval are in section 3 of the appeal report and annexed to the 5 July 2024 decision letter (Addendum E to the appeal report);
- 33.5. that the appeals do not contain any new information not already addressed in at the MPT hearings;
- 33.6. that the appeal raises similar issues to that raised in the objections by the appellants;
- 33.7. given that the issues raised in the appeal were addressed in the MPT report, the Department reaffirms the responses in the MPT report; and
- 33.8. that the application is in alignment with City policies and is desirable for the reasons described in paragraph 6.2.4. of the MPT report.

34. The Department has no view on the suggested conditions other than to state that the MPT discussed the proposal in detail before approving it.

#### **Applicant's comments on the appeals**

35. In response to the appeals, the applicant responded:

- 35.1. that although the site is surrounded by several graded sites with significant heritage resources, the site itself is not a graded heritage resource;
- 35.2. that since the initial advertising of the application in 2022, the building has been carefully redesigned and scaled down following the six-month facilitation process with the community;
- 35.3. that the façade of the building, along Buitengracht street, has been articulated to resemble the feeling of two separate buildings and scaled down from 5-storeys to 3-storeys to retain the abutting building height lines.

The result is a scale consistent with the character of the immediate streetscape, and the building's mass would not be easily visible from the street.

- 35.4. that although not all the concerns could be addressed through the facilitation process, the revised design elements are more contextually appropriate and more sensitively scaled;
- 35.5. that the facilitation process demonstrates that the applicant put significant design work into the facilitation process and has gone above and beyond the necessary public engagement processes and has tried to respond sensitively to the concerns by making the building much smaller;
- 35.6. that both HWC and the City's Environmental and Heritage Resource Management Department (**EHM**) support of the revised design;
- 35.7. that the appellants have not demonstrated how the proposal will diminish the historical significance of the Masjid or their cultural practices;
- 35.8. that the Masjid will continue to operate unencumbered by the development. Part of the facilitation process required that there be a written Memorandum of Agreement (**MOA**) that the development on the site will not, at any time, object or complain about any activities of the Masjid, including the electronically broadcast call to prayer.
- 35.9. that the site is one of the few properties in the 'buffer zone', between the CBD and the Bo-Kaap residential area that is larger than the abutting properties and is uniquely poised for a new development of a larger scale;
- 35.10. that this development complies with objective 9 of the City's Urban Design Policy.
- 35.11. that the appellants ignore that the base zoning of the site, MU3, permits a floor factor of 6 and a building height of 38m with 0m setbacks. Therefore, any development complying within these development rights cannot be regarded as objectionable.
- 35.12. that this site falls into the City's PT2 area which means that no parking is required in terms of the DMS. The hotel will have a significantly lower parking demand than flats since a hotel generally attracts guests who make use of alternative transport such as Uber or tour bus facilities. The peak parking demand is during the day, which does not coincide with the peak residential times and therefore local residents should not have parking constraints in the evenings.

- 35.13. that the City's transport departments have all supported the application. The appellants have not articulated how traffic and parking constraints will impact on the HPOZ; therefore, this is an unsubstantiated complaint that should be disregarded.
- 35.14. that a concern regarding damage that might be caused during construction works is speculative and would need to be reported to the developer and would be dealt with accordingly. Issues related to building work are dealt with in terms of the Building Act;
- 35.15. that contentions regarding construction under previously approved building plans mentioned in the MPT report is irrelevant because this is an entirely new application;
- 35.16. that s 94(1) of the By-Law provides for discretion in the need for re-advertising of an application after 24 months has passed. There was no need to re-advertise the application considering the additional public engagement during the facilitation process and the vastly downscaled proposal;
- 35.17. that at the MPT meeting on 2 July 2024, the objectors' representative, Dr Townsend, attempted to introduce additional points of concern which arose from the SAHRA facilitation process. The MPT believed those further design suggestions would be tantamount to introducing new information and were thus disregarded by the MPT. The objectors were given far more opportunity than required to submit their concerns during both the advertising and facilitation processes.

#### **G. THE PLANNING APPEALS ADVISORY PANEL**

- 36. PAAP first considered the appeal on 26 November 2024 and deferred it to permit interviews.
- 37. On 21 January 2025, PAAP heard oral submissions on behalf of the appellants (the objectors) and the applicant (the developer) and considered the appeal report. PAAP recommended that the appeals be dismissed for the following reasons, subject to the conditions set out in Annexure A to the MPT report:
  - 37.1. the application complies with the minimum threshold requirements set out in s 99(1);
  - 37.2. the development proposal complies with all criteria in s 99(3);



- 37.3. the application is desirable in terms of s 99(3) as the proposal is in keeping with the residential nature of the Bo-Kaap area. The proposed hotel use is compatible with the residential character of the area;
- 37.4. the development proposal complies with pertinent City policies;
- 37.5. the development proposal will activate the streetscape and pedestrian environment;
- 37.6. the rights and legitimate expectations of abutting neighbours will not be significantly negatively impacted on;
- 37.7. the proposed built form will not have a significant negative impact on the surrounding heritage context;
- 37.8. conditions are proposed to mitigate potential adverse impacts;
- 37.9. the objections lodged against the development proposal have been considered in the redesign of the building with emphasis on architectural aesthetics, height, scale and massing; and
- 37.10. the design presented by the developer sufficiently addressed the issues of scale, overlooking and immediate impact on the Masjid and the neighbourhood in general.

#### **H. DECISION AND REASONS**

- 38. I agree with PAAP's recommendations for the reasons set out below.
- 39. I reached this decision after considering all relevant considerations, including the documentation before me, the appeal grounds and the responses to the appeals, the assessment of the appeals by the City's planning officials, PAAP's recommendations and reasons, and the provisions of the By-Law and other applicable laws and policies.
- 40. To the extent that any issues in the appeals are not specifically addressed below, I am satisfied that they are adequately addressed in the MPT report, the MPT decision, the appeal report and PAAP's recommendations and reasons, and adopt them as my own.

#### **Response to the grounds of appeal**

- 41. I will first deal with the grounds of appeal thematically. Thereafter, I will consider the decision criteria in s 99.

#### Gentrification

- 42. A significant concern of appellants is that the development will contribute to the gentrification of the Bo-Kaap, harming existing residents. Gentrification, in essence,

involves the displacement of existing, often lower-income residents due to rising property values and the introduction of higher-income residents or businesses. The gentrification of the Bo-Kaap is a serious concern, given the area's unique historical and cultural significance.

43. An urban development project, including a hotel development, does not automatically contribute to gentrification.
44. Therefore, assessing the risk of gentrification requires understanding the development proposal in the specific context of the site and the context of the Bo-Kaap.
45. The fact that the site is currently a vacant lot means that the development will not displace any residents.
46. Many appellants are happy with the development of a hotel on the site but would like the building to be shorter and smaller. Their concern is not about gentrification because no residents will be displaced regardless of whether the hotel is built to a height of six storeys as proposed by the applicant or reduced in height as the appellants' request.
47. I must also consider that the revitalisation of an unused land parcel will result in several benefits to residents, including by:
  - 47.1. improving the safety, cleanliness, and attractiveness of the area;
  - 47.2. creating a vibrant, mixed-use neighbourhood by positioning a hotel among residences to the mutual benefit of residents and visitors;
  - 47.3. providing permanent, sustainable jobs for local residents, especially in hospitality, tourism, and related services;
  - 47.4. attracting tourists who spend money in local businesses, fostering economic diversity and creating a dynamic and diverse urban environment; and
  - 47.5. promoting economic mobility for people who have lived in Bo-Kaap for generations through stable employment opportunities, and the provision of services.
48. I am satisfied that these benefits for the Bo-Kaap will be achieved without displacing residents.

#### Heritage concerns and height and scale

49. A key concern raised by all the appellants is the height and scale and design of the proposed development, as well as its relationship to the surrounding historical context.
50. Although the site is not a graded heritage site, the Bo-Kaap is a Grade 1 heritage area with national cultural significance. Any development in this area must, therefore, be

carefully assessed in relation to the unique character and cultural heritage of the area. This includes respecting the scale, architecture, and traditional practices that define the Bo-Kaap.

51. The development proposal comprises a building that presents as a three-storey structure on Buitengracht Street, situated in front of a five-storey building behind. In section, the highest part of the building is six storeys, but because of the steep fall across the site towards Buitengracht Street, the building generally presents as a five-storey building behind the three-storey façade. See the render in paragraph 15 above.
52. The current development proposal significantly scales back from the previous approval and the initial application. The 2020 building plan approved a nine-storey building. This application was initially for an eight-storey building, but the proposal is now for six storeys at its highest.
53. The current design is the product of an extensive and formal facilitation process by SAHRA.

#### *SAHRA facilitation and agreement*

54. The facilitation process engaged the developer with interested parties, including the Association, over six months from December 2022 to May 2023.
55. The engagement process reflects a remarkable effort by the facilitators, Bo-Kaap community representatives, and the developer, which resulted in consensus on the form that the development should take. To appreciate the significance of the result, it is necessary to consider the following details of the facilitation process, which SAHRA records in a detailed 63-page report dated 30 June 2023 (**the SAHRA report**).
  - 55.1. SAHRA appointed a facilitation team comprising three members from the SAHRA Council:
    - 55.1.1. the SAHRA Council Chairperson, Dr. L. Mpahlwa, (MSc. Arch)/(PrArch) SACAP, Adjunct Prof. UCT, African Centre for Cities, Author);
    - 55.1.2. SAHRA Corporate Services Committee Chairperson, Mr. P. Mellet, (MSc. Tourism Dev. - Historian, Heritage Practitioner, and Author); and
    - 55.1.3. SAHRA's Heritage Resources Management Committee Chairperson, Mr. M. Serekoane (Anthropologist and Heritage Practitioner).

- 55.2. SAHRA officials supported the facilitation process with an in-depth understanding of the applicable heritage legislation and similar community engagements. The facilitation team included heritage architects, heritage practitioners, historians, anthropologists, legal experts, and built environment experts.
- 55.3. The facilitation process was founded on principles that were discussed, circulated, and endorsed by the stakeholders.
- 55.4. The facilitation process consisted of five facilitation meetings, several design workshops, and a site visit.
- 55.5. At the first facilitation meeting, held on 1 December 2022, the facilitation team briefed stakeholders on their role and asked stakeholders to respond to the heritage tribunal outcomes formally.
- 55.6. At the second facilitation meeting, held on 28 March 2023, the developer, presented a revised design proposal, which had been circulated to all stakeholders before the meeting. The Association objected to the revised proposal on several grounds, including the building's then height, its impact on the area's heritage character, and the inadequacy of community consultation. The developer was asked to revise the proposal to address the Association's concerns. The developer agreed to revise the proposal and to consult further with the Association.
- 55.7. The facilitation team advised the developer and the appointed architects to provide 3D massing studies of the proposed development and to prepare for design workshops with all stakeholders. All parties agreed to attend the workshops.
- 55.8. At the third facilitation meeting, held on 25 April 2023, HWC reported that it had published a gazette to provisionally protect the site as directed by the Heritage Tribunal. The Acting Manager, SAHRA Built Environment, gave a presentation dealing with the site's morphology, tangible and intangible heritage qualities and the area's history, including the nomination and heritage declaration of neighbouring properties. The architect presented the revised design proposals. The stakeholders discussed their concerns and suggested revisions for the next workshop.
- 55.9. The stakeholder's concerns included:
  - 55.9.1. the building's height, then seven storeys;

- 55.9.2. the building's mass and negative impact on the existing heritage buildings;
  - 55.9.3. massing on the Buitengracht edge out of scale to existing buildings and street fronts; and
  - 55.9.4. balconies and openings would compromise the privacy of surrounding residences and the Masjid.
- 55.10. At the fourth facilitation meeting, held on 16 May 2023, the developer proposed several design iterations to mitigate the impact of the proposed building on the neighbourhood's cultural heritage. These included reducing the building height and footprint, revising the façade design and articulation, improving access to surrounding properties and integrating the development into the Bo-Kaap built fabric. In addition, the building had been setback from the Buitengracht street edge. Other concerns were traffic, noise and changes to the neighbourhood's character. The Association submitted that the developer must:
- 55.10.1. limit the building height to five storeys above street level and the street façade height to three storeys;
  - 55.10.2. set back the building evenly from the side and rear boundaries; and
  - 55.10.3. redesign the building to echo the Bo-Kaap residential fabric and townscape, for example, by creating open-to-the-sky spaces, terraces, balconies, and even cantilevered volumes, and making the windows appear more residential.
- 55.11. By mutual agreement, a design workshop was held on 30 May 2023 to address the concerns of the Bo-Kaap community. The developer produced three further design iterations:
- 55.11.1. **Option A** explored a radical design departure, where units spanned the full street elevation on levels 2 and 3, creating a view 'window'. However, that idea was abandoned as it did not resolve concerns and created further issues.
  - 55.11.2. **Option B** had units hard up against the boundary lines, reorientating rear units east-west. While that would have widened the view corridor, the option was considered undesirable because it would have added a 7th floor. Also, building on boundaries raised concerns about structural safety



and whether some existing buildings had encroached on building lines.

- 55.11.3. **Option C** modified unit windows on the north elevation to view into the courtyard, reduced the size of the front north units, removed balconies, and splayed the walls to address north visual overlooking concerns. The view corridor would also be widened by setting the ground floor back a further 1.6m to create a 5.6m corridor.
- 55.12. The developer recommended Option C as the most desirable option as it reduced the building height on a larger footprint, integrated the development into the Bo-Kaap built fabric community more positively, and widened the view corridor by a maximum of 600mm without the need to add a 7<sup>th</sup> floor. The developer submitted that this addressed concerns about the north elevation, allowing for good visual sight lines to the site, did not require a lift shaft extension and kept the building offset from the boundary.
- 55.13. The design proposals were discussed, and further comments were conveyed to the architect and developer, including the suggestion that no balconies or windows face adjacent properties to protect adjacent residences and the Masjid.
- 55.14. At the end of the design workshop, it was agreed that the Association and Dr Townsend, as the Bo-Kaap community's architect, would present the three design proposal options to the community, with Option C being preferred.
- 55.15. At the fifth facilitation meeting, held on 30 May 2023, the Association reported that they would, in principle, accept the revised design with six storeys. The feedback emphasised that there were still some fine-tuning design details to be worked out. The Bo-Kaap community members reported that they had asked themselves whether they could live with this building and, in principle, agreed to a six-storey building, noting that there were still some aesthetic details to be finalised.
- 55.16. The parties discussed how to ensure the new building would be aesthetically compatible with the neighbourhood. They agreed that the final decision on whether to approve the new building rests with the City, as the municipality, but that the facilitators would recommend its approval.

- 55.17. To address all concerns, the architects developed further design iterations and submitted them to the developer. The final design proposal submitted by the developer was **Revised Design Proposal Option C2**.
- 55.18. On 25 April 2023, the Association, the facilitation team, and HWC conducted a site visit to allow the parties to inspect the site and discuss the development proposal.
- 55.19. The parties provided the facilitation team with concluding submissions.
  - 55.19.1. The Association's submission was received after consultations with the broader Bo-Kaap Community. The submission acknowledged the efforts of the developer and architect in revising the design to address its concerns.
  - 55.19.2. The submission from the developer was received following further design iterations by the architects, to incorporate comments and concerns raised at the design workshop. Those related to both tangible and intangible heritage issues, building heights and privacy, especially to the Masjid and the surrounding residential properties.
- 55.20. The SAHRA report record that:
  - 55.20.1. The facilitation undertaken by SAHRA was conducted in a transparent and consultative manner.
  - 55.20.2. The parties were adequately represented and participated in a positive spirit throughout the facilitation.
  - 55.20.3. The facilitation team recorded that the facilitation process was successful, and an amicable design proposal was presented and accepted by both sides.
  - 55.20.4. Revised Design Proposal Option C2 presented by the developer was acceptable to all parties.

*City's Environmental and Heritage Resource Management Department's comment on the SAHRA report*

- 56. At the request of SAHRA, EHM (the City's Environmental and Heritage Resource Management Department) commented on the SAHRA report. The EHM comment, dated 4 October 2023, states that EHM endorsed the SAHRA report and requested that the HWC Appeals Tribunal stamp the final set of drawings for Revised Design Proposal Option C2.

57. The EHM comment notes that HWC has issued a letter to the applicant dated 14 February 2024, stating that *'the drawings prepared by Rennie Scurr Adendorff, dated 24 November 2023 (Dwg Nos C-1001 to C-1007, C-2001, C-2002, C-3001 and C-3002) are substantially in accordance with the parameters as contained in the letter dated 1 July 2023 as set out by the facilitation task team'* and that the HWC-stamped plan drawings are included in the current application submission and are in accordance with the Design Proposal Version C2.
58. The EHM comment notes the following.
  - 58.1. The plans show various elements on the rooftop, but these are not annotated, so it is unclear what they are and what their potential visual impact will be. For instance, circular shapes are shown, but there is no annotation for these.
  - 58.2. The first-floor (ground-level) plan indicates a '200kva 3 Phase Silent Diesel Generator, 3.3m x 1.15m x 1.75m', located in the courtyard space; however, in the 3D renders and elevation drawings, the generator is not shown. If the intention is to have an open-view corridor to the significant heritage wavy-parapet house on Erf 2838-RE, then it is not desirable to obstruct the view with the generator. Its position will need to be reconsidered.
  - 58.3. The ground-level plan shows a fence and gate closing off the courtyard space from the street, which needs to be visually permeable to afford views of the wavy-parapet house. However, the appearance and height of the fence and gate are unknown as the elevations and 3D renders do not show them.
  - 58.4. The projecting canopy element appears out of context for Bo-Kaap.
  - 58.5. The stairway access to the roof of the building is presumed to be for the servicing of rooftop equipment and not for use as a roof top terrace/deck, but this needs to be stated explicitly e.g. 'non-trafficable roof'.
  - 58.6. The applicant's motivation report states that the "changes have been supported by all parties". However, it is not evidenced or clear that all the objectors to the previous LUM application participated in the HWC public engagement process, which includes the SAHRA facilitation process. Therefore, they might not have had an opportunity to comment on the revised proposal now under consideration. The ward councillor had objected to the previous LUM application proposal; yet there is no evidence

on the case file of the ward councillor's support for the current revised proposal.

58.7. EHM supports Revised Design Proposal C2 but requires the above concerns be addressed by the applicant before approval of the application.

59. The applicant responded to EHM's comment as follows:

59.1. The circular structures are water tanks, which are 1.8m high and project 800mm above the parapet but are set back, and will not be visible from the street, given the angle of incidence. The tanks will also be screened and, therefore, will have no visual impact. The plans and elevations have been updated. Most of the wet services plant is approximately 600mm high and screened by the 1m high parapet walls and will therefore have no visual impact.

59.2. The generator is shown on the updated plan. It is screened with a planter and has no visual impact on the adjacent erf 148.

59.3. The gate is shown on the updated plan. The metal gate is set back from the street and has no visual impact on the adjacent erf 148.

59.4. The design features an overhead canopy that creates shading and a sense of enclosure. This echoes the Bo-Kaap street interface elements, such as verandas and open stoeps, which are key components of life on the street across the Bo-Kaap area. The developer acknowledges that the canopy extends beyond the site boundary and will require the City's consent.

59.5. The Roof is non-trafficable.

#### *Assessment of height and scale and its impact*

60. I considered the site in the context of its surroundings. I took account of the effect the proposed development may have on the significance of the Bo-Kaap and the Auwal Masjid in particular. To assess the relative impact of height, scale and massing, the following image shows the site ([A], in red) alongside Buitengracht Street, which divides the Bo-Kaap from the CBD, the Masjid [B] and a sample of surrounding buildings [C] to [G] with an indication of their height in storeys.



The site [A], the Auwal Masjid [B] and other surrounding buildings [C] to [G]

61. The site fronts onto the Buitengracht Street service road, which runs parallel to and is separated vertically from Buitengracht Street itself.
62. The site is near but does not abut the Auwal Masjid [B]. Two residential double-storey houses separate them. The Masjid is a one/two-storey building with an extended minaret. The balance of the houses on the Masjid side of Dorp Street are single-storey.





[B] Auwal Masjid

63. The buildings directly opposite the Masjid [C] range in height from 8.6 to 14.4 m. Given a typical floor height of 2.7m, these buildings are the equivalent of 3-storeys to 5-storeys. At least two of these buildings are non-residential.



[C] Buildings in Dorp Street directly opposite Auwal Masjid

(height equivalent of 3 to 5 storeys)

64. The Hyatt Regency [D] at 126 Buitengracht Street is a 10-storey hotel on the Bo-Kaap side of Buitengracht Street one block north of the Auwal Masjid, about 100m away.



[D] Hyatt Regency Hotel at 126 Buitengracht Street (10 storeys)

65. The Cape Town Lodge Hotel [E] at 103 Buitengracht is another 10-storey hotel. It is diagonally opposite the Auwal Masjid, about 50 m away.



[E] Cape Town Lodge Hotel at 103 Buitengracht (10 storeys)

66. Directly opposite the site on the other side of Buitengracht Street, construction is underway on a new development on erf 142181, 105 Buitengracht Street [E]. The



development, called The Fynbos, comprises a 24-storey mixed-use residential building including a roof top entertainment terrace. It is 35 m from the site.



[F] Render of building at 105 Buitengracht Street  
under construction (24 storeys)

67. About 50 from the site at 115 Buitengracht [G] is a 5-storey commercial building.



[G] 115 Buitengracht (5 storeys)

68. In summary, there are several buildings near the Auwal Masjid and the site, on both sides of Buitengracht Street, that range in height from 5-storeys (immediately opposite the Masjid) to 24-storeys.

*Conclusion on heritage, height and scale*

69. Having considered the issues set out above, I am satisfied that the proposed development will not have a significant adverse effect on the Bo-Kaap or the Auwal Masjid. The revised design has considered the Bo-Kaap's unique cultural heritage. It responds appropriately to the heritage context and the development proposal, including its height and scale, are contextually appropriate within the existing and surrounding built form and residential uses. This conclusion is based on the following.

- 69.1. The proposed development's height and scale are comparable to or smaller than nearby buildings, including several hotels such as the Hyatt Regency and Cape Town Lodge Hotel. Three hotels are within 100 m of the Masjid, including the Cape Town Heritage Hotel and Spa.
- 69.2. The site is zoned MU3, which permits hotel use as of right under the By-Law, requiring no rezoning or departures. The MU3 parameters allow nine storeys, 38m in height, a 6.0 floor factor, and 100% coverage. The proposed development is well below all these limits and only requires HPOZ approval.
- 69.3. The site falls within the HPOZ and is in a culturally and historically significant area. Heritage concerns were addressed through substantial design revisions following engagement between the developer and objectors, facilitated by SAHRA.
- 69.4. The facilitation process led to meaningful reductions in height, scale, and coverage, making the proposal more sensitive to the HPOZ and responsive to appellants' concerns.
- 69.5. Local community involvement shaped the design, which now respects the area's low-rise, traditional character and community feel. It integrates with the neighbourhood and enhances the streetscape without overpowering it.
- 69.6. The revised design does not harm the historical integrity of nearby residential buildings, aligns with the Bo-Kaap's historical streetscapes and patterns, promotes contextually appropriate use of space, and will not overshadow the Auwal Masjid.

### Procedural issues

#### *Procedure in the provincial heritage protection process*

70. The appellants raised concerns regarding the time allowed and purported exclusion of interested parties in the provincial heritage protection process. However, that process was not a City process and is governed by different laws. Any flaws in that process do not prevent the City from finalising its processes in terms of the By-Law.

#### *Consideration of additional mitigating factors*

71. I note the complaint that the MPT refused to consider the additional mitigating factors presented by the appellants at the MPT hearings. However, I have considered the additional mitigating factors presented by the appellants in their appeal. See, for example, para 23.15 above.

71.1. As I have noted above, and as noted in the SAHRA report, the appellants engaged in SAHRA's extensive facilitation process, which resulted in the substantive redesign of the building. The appellants accepted the revised design proposal.

71.2. The agreed design revisions reflect a reasonable and collaborative compromise reached as part of an extensive facilitation process. The further design revisions proposed by the appellants are not based on substantive new concerns. The revised design, which has received prior consent, addresses all the issues raised by the appellants in the appeal as regards the negative impacts of the development proposal on the heritage significance of the place and environs.

71.3. In deciding this appeal, I took account of the appellants' proposed additional mitigating factors. Accordingly, this appeal process corrects any perceived failure by the MPT.

#### *Public participation process under the By-Law*

72. Since the initial public participation process occurred more than 24 months ago, s 94(1) of the By-Law affords the City a discretion to require fresh notice of an application.

72.1. The threshold requirement for the exercise of the discretion afforded to the City under s 94(1) read with s 94(3) is whether a material issue has arisen since the initial advertisement that calls for fresh notice to be given.

72.2. The mere fact that there has been an amendment to an application is not sufficient – more is required before an amendment can be said to be material.



- 72.3. Once the City has determined that the amendment is material, it retains a discretion as to whether the material amendment calls for re-circulation and/or re-advertisement of the application. In exercising that discretion, regard must be had to the nature of any amendment, the extent of the materiality of the amendment, the potential for the amendment to adversely affect the rights and interests of interested parties and any other relevant factors.
- 72.4. As I have noted above, the application already underwent an extensive public participation process, which included consultations with relevant stakeholders and interested parties. As a result of that extensive engagement process, the design was changed to reduce its impact.
- 72.5. The design revisions do not introduce any additional negative effects or changes that would materially alter the impact of the proposed development. The design revisions respond to and to mitigate the concerns raised by the interested parties and by the appellants who were not objectors in the initial application process.
- 72.6. Accordingly, the design changes are not material for purposes of s 94(1). No further participation is required.

Parking / traffic concerns

73. Item 137(d) provides that 'If an area has not been specifically identified by the City as a PT1 or PT2 area, then the parking requirements for standard areas shall apply.' A PT2 classification demarcates an area where the use of public transport is promoted and the City considers the provision of public transport good, or where the use of motor vehicles is very limited.
74. During November 2022, the City approved and implemented the new PT areas. The site now falls within a PT2 area where the on-site parking requirement is zero. Consequently, there is no requirement in the DMS for a development of this nature to provide parking. This is what the law provides and does not require an administrative decision as part of this appeal.
75. In addition, the development proposal is for a hotel which would have a much lower parking demand than an ordinary residential development in that hotel guests and short-term visitors would generally use transportation methods such as rideshare apps, shuttles and the like that would not result in the same need for parking that a residential development would require.

76. The concern that the proposed development will exacerbate parking pressure in the area is based on a misunderstanding of the existing parking dynamics. The area already experiences a decrease in parking demand after office hours, as office workers who occupy the parking spaces during the day leave the area in the evenings. This presents an opportunity for residents who have cars, to park in those spaces once office workers have vacated the area.
77. The absence of on-site parking in the proposed development aligns with the PT2 zone principles, as the area has good access to public transportation. The proposed development is well-connected by public transportation options, which reduce the reliance on private vehicles and, therefore, mitigate the parking demand for residents.
78. The appellants have not set out any basis for upholding the appeals based on off-street parking considerations.

Concerns relating to activities incompatible with the Masjid

79. The appellants are concerned that the proposed hotel development near the Masjid and in a predominantly Muslim will result in antisocial activities incompatible with the Islamic faith of the area.
80. The City respects, protects, promotes and fulfils all fundamental rights, including the cultural and religious rights of the Bo-Kaap community. Therefore, I have carefully considered the appellants' concerns and whether the hotel will operate in harmony with its surroundings and respects the sensitivities of the local community.
81. Three hotels are already within 100m of the Auwal Masjid (two of which are larger than what is proposed on the site), which has not resulted in reports of disharmony.
82. The fact the roof of the proposed development is non-trafficable will contribute to ensuring that the hotel is operated with consideration for the peaceful environment of the Masjid and the surrounding residential area.
83. The SAHRA facilitation process required that there be a written memorandum of agreement (MOA) that ensures that the development will not, at any time, object to or complain about any of activities of the Masjid, including the electronic call to prayer. That will ensure that the Masjid will continue to operate unencumbered by the development.
84. I am satisfied that the proposed hotel development will not restrict or impinge on the religious and cultural practices of the area. The non-trafficable roof and the provisions of the MOA will ensure that the development is compatible with the local community's cultural and religious practices, fostering a respectful and peaceful coexistence.

### Decision criteria

85. The reasons given above deal with the main issue on appeal. For completeness, I turn to consider each of the decision criteria governing this appeal, in s 99 of the By-Law.

### Section 99(1) factors

#### The MSDF (s 99(1)(b))

86. The Metropolitan Spatial Development Framework (**MSDF**) is focused on the spatial transformation of the City's urban form which it seeks to achieve through dense, diverse, and transit-oriented development. It aims to address current inefficiencies in urban form by supporting inward growth through the densification and diversification of land uses in areas that have good transport infrastructure and are close to economic and other opportunities. The MSDF informs 'where', 'when' and 'how' appropriate land use development can be facilitated. The MSDF supports the City's resilience and sustainability efforts in response to built-environment stresses, such as urban sprawl.
87. To this end, the MSDF identifies the City's Urban Inner Core (**UIC**) as the focal point for public and private urban development. The UIC is the priority investment focus at a metropolitan scale.
88. The site in the UIC and CBD's existing urban footprint, along a structuring corridor that emphasises intensification and diversification of land uses to support City growth. Densification of the site aligns with the area's development trends and spatial vision.
89. The development proposal is broadly in line with the three spatial strategies contained in the MSDF, being (a) planning for economic growth and improve access to economic opportunities; (b) managing urban growth and creating a balance between urban development food security and environmental protection; and (c) building an inclusive, integrated, vibrant and healthy city. The proposed development will achieve this alignment because it:
- 89.1. promotes infill development within an existing built footprint of the City;
  - 89.2. constitutes contextually appropriate land use diversification and intensification along a development corridor;
  - 89.3. supports this Spatial Transformation Area by incrementally intensifying in an area of service capacity;
  - 89.4. ensures urban growth towards a more integrated and accessible city by supporting appropriate urban development and land use intensification within the UIC;

- 89.5. encourages a more compact city form by promoting higher land use and building densities compatible with existing residential land uses to create an optimum relationship between urban form and public transport services;
  - 89.6. is in line with the City's objective of actively pursuing an urban form with higher densities and mixed land use patterns within the UIC, supported by an extensive and efficient public transport system; and
  - 89.7. moderately intensifies and densifies this edge of an urban node with a mix and clustering of urban activities and land uses at a point of accessibility, exposure, and urban opportunity.
90. The site is ideally suited for densification because it is central and highly accessible, near public transportation, good roads, employment opportunities and areas of high amenity.
91. I am accordingly satisfied that the proposed development substantially complies with the MSDF.

Granting the property the development rules of the next sub-zone (s 99(1)(d))

92. The approval will not have the effect of granting the development rules of the next subzone within a zone. The development proposal complies with s 99(1)(d).
93. The application is not disqualified under the threshold criteria in s 99(1).

**Section 99(2) factors**

Spatial development framework (s 99(2)(a))

94. The site in Sub-district 2: City Bowl, Port and Surrounds in the Table Bay District Plan (**the District Plan**). The District Plans designates the site for urban development, which makes it suitable for a variety of urban uses, including housing development, and the incremental intensification of urban areas where appropriate, guided by available infrastructure capacity, neighbourhood density and character, proximity to job opportunities and social facilities, and access to public transport.
95. As discussed, the proposed design aligns with the aesthetic of the Bo-Kaap and acknowledges and respects the surrounding urban environment, including its density and character.
96. The proposed development will promote new urban infill on underutilised land within the urban footprint, which the District Plan encourages.
97. The shift in use from a derelict, vacant lot to an intensive residential use (hotel) constitutes an appropriate intensification of land use.

98. Consequently, the development proposal is consistent with the District Plan's spatial vision for the area.

Development Management Scheme (s 99(2)(b) and items 162 and 164(2))

99. Since this is an application for approval contemplated in item 162 of the DMS, I must consider item 164(2), which provides:

'In considering an application referred to in item 162(1), the City must take into account the effect such activity may have on the significance of the heritage place or heritage area concerned.'

100. I have carefully considered the potential impact of the proposed development on the significance of nearby heritage places, particularly the Auwal Masjid, and on the Bo-Kaap heritage area. For the reasons given above, I conclude that the development will not harm the significance of these or any other heritage place or heritage area.
101. I am also satisfied that the development proposal complies with the development rules set out in the DMS for the approvals sought for the reasons in this decision.

City policies (s 99(2)(c))

*Integrated Development Plan*

102. The development proposal complies with the Integrated Development Plan (IDP) by contributing to denser urban development, especially along a public transport route. The reduction in the number of parking bays and proximity to public transport align with the IDP's focus on transit-oriented development.

*Inclusive Economic Growth Strategy*

103. The Inclusive Economic Growth Strategy, 2021 (**IEG Strategy**) is a short-, medium-, and long-term plan for addressing the economic crisis facing Cape Town in the South African context and for identifying comparative advantages that can be leveraged. It is a fundamental lever in attaining the opportunity city and inclusive city strategic focus areas. The EGS recognises that Cape Town is facing a serious economic challenge, characterised by declining economic growth, inadequate employment growth and job creation, and entrenched inequality in an already unequal society and that it is incumbent on the City to proactively respond to this challenge as best it can within its mandates.
104. The development proposal complies with the IEG Strategy by creating employment both during the construction phase and sustainable longer-term employment in the service industry. This will enhance economic growth and investment in the City.

### *Densification Policy*

105. The City's Densification Policy, 2012 (**Densification Policy**) encourages densification in areas with accessible public transport, concentrated commercial development and high amenity. Densification is not an end in itself, but appropriate densification facilitates a gradual restructuring of the city, which is vital for social, economic, and environmental sustainability. A compact urban form is essential for well-performing cities. Densification supports several sound policy and development principles, including:
  - 105.1. long-term sustainability because high densities make the provision of municipal services and public infrastructure viable, and more efficient and cost-effective; and
  - 105.2. counteracting urban sprawl, thereby reducing traffic and the associated harmful emissions and preventing agricultural land on the urban edge from being consumed by urban development;
106. The development proposal is consistent with the objectives of the Densification Policy as it ensures optimal and efficient use of infrastructure, services, facilities, and land; supports the development of a viable public transport system and improves the levels of access to the City's resources and amenities; and helps to provide property investors with a level of certainty regarding areas that will be targeted for various types of densification. The scale of the development proposal is appropriate in the immediate context; it provides a mix of land uses, opportunities and integrated living environments; and it contributes to place-making and the development of attractive safe urban environments.
107. The proposal to densify the site, given that it is situated in a well-located area in the UIC with strong public transport links, aligns with the objective of increased environmental sustainability because of reduced travel distances, which in turn reduces congestion on the City's transportation network with the attendant environmental benefits of reduced fuel consumption and reduced emissions.
108. I am satisfied that the proposed densification is appropriate for the surrounding area.

### *Urban Design Policy*

109. The development proposal aligns with the Urban Design Policy, 2013 (**the Urban Design Policy**) objective of ensuring that development contributes positively to the urban structure of the City by creating integrated and legible places and neighbourhoods. The proposed development is consistent with the City's vision to intensify residential areas throughout the City.

110. The development proposal also aligns with the Urban Design Policy objective of creating safe and secure communities by developing a vacant lot into a residential development, promoting active and passive surveillance, which contributes to safety.
111. The Urban Design Policy objective of promoting development intensity, diversity, and adaptability is satisfied, as the development proposal will result in more intense development by utilising the site optimally. The development proposal ensures enclosure and positive interfaces with the public realm by replacing the vacant lot with a well-designed, aesthetically pleasing, and visually permeable frontage, providing a positive interface with the adjacent street.
112. The Urban Design Policy objective of respecting and enhancing the heritage, character and unique identity of the city and its neighbourhoods is satisfied as the revised design has designed the building to respect the scale of the adjoining building façades and the façade has been articulated to resemble two separate buildings to resemble the appearance of the historical grain of façades in the street. Consequently, the revised design incorporates a new proposal within the existing context, retaining the key elements of the cultural landscape while responding sensitively to building height, massing, and scale.
113. I am therefore satisfied that the design of the proposed development incorporates an appropriate contextual response to the site and meets a number of the objectives of the City's Urban Design Policy.

#### *Transit-Oriented Development Strategic Framework*

114. I am satisfied that the proposed development's location in an area well-served by public transport, including e-hailing taxi services, renders it consistent with the objectives of the Transit-Oriented Development Strategic Framework, 2016.

#### *Scenic Drive Network Management Plan*

115. The Scenic Drive Network Management Plan, 2033 (**SDNMP**) is part of a broader study aimed at identifying routes through areas of 'outstanding scenic quality' in Cape Town, balancing conservation with tourism and recreational development. Buitengracht Street, particularly between Carisbrook Road and Walter Sisulu Drive, is classified as an S2 route, which refers to roads that pass through scenic areas but are frequently used. The Bo-Kaap is the main scenic feature along this route.
116. The proposed development is situated on the western side of Buitengracht Street, in an area that already features dwellings and offices, which partially obstruct the views. Given the site's elevation, the proposed development will not impact views of the Bo-Kaap, as the existing buildings already block those views from the street. The

development proposal aligns with the SDNMP's objectives and does not interfere with the scenic views of the Bo-Kaap, making the SDNMP not directly applicable to the current application.

Impact on existing rights (s 99(2)(e))

117. For the reasons already addressed, the appellants' contention that the proposed development will negatively impact existing rights is unfounded. I am satisfied that the proposed development is contextually appropriate and will not have a materially negative impact on the surrounding area or its built-form character. There is no evidence to suggest that the proposed development will devalue surrounding properties. The fact that appellants disagree with aspects of the development proposal does not mean that their rights are infringed.

Other considerations in terms of national and provincial legislation (s 99(2)(g))

118. I am satisfied that the development proposal complies with the development principles outlined in the Spatial Planning and Land Use Management Act of 2013 (**SPLUMA**) and the Land Use Planning Act of 2014 (**LUPA**).
119. The development proposal promotes spatial justice by fostering the utilisation of the site to its full potential, which in turn facilitates access to opportunities through employment creation in an accessible location. The development proposal promotes efficiency by encouraging more intensive use of the site, which in turn discourages a sprawling urban form. A denser use of the site promotes the principle of resilience by increasing access to mobility and economic opportunities. The proposed development is spatially sustainable as it increases residential density on a small footprint, reducing the pressure to develop in urban peripheries. I am satisfied that the application was assessed in accordance with the principle of good administration.
120. I am accordingly satisfied that the proposed development is consistent with the various development principles and applicable national and provincial legislation.

The By-Law (s 99(2)(h))

121. The application complies with By-Law's information requirements and was sufficiently advertised. Affected parties and the public had sufficient opportunity to comment. The necessary officials have considered and provided input on the proposed development. I am satisfied that the information, motivation, responses, and objections submitted during these processes have been thoroughly engaged with, both during the initial application and during this appeal.
122. I am satisfied that the application complies with the requirements of the By-Law and has been processed in accordance with the principle of good administration.



### **Desirability (ss 99(2)(d) and 99(3))**

#### Socio-economic impact

123. The development proposal is expected to have a positive social impact on the surrounding community, as it will increase residential accommodation in the area near amenities and facilities, thereby enhancing the social aspects of the area. Jobs will be created both during construction and in the long term. The development will increase tourism revenue in the area. The appellants' concerns regarding gentrification are unfounded.
124. For these reasons and those addressed elsewhere, I am satisfied that the proposed development will have a direct, positive socioeconomic impact.

#### Compatibility with surrounding uses

125. For the reasons addressed in detail above in the response to the grounds of appeal, I am satisfied that the development proposal is compatible with surrounding uses.

#### Impact on the external engineering services

126. The site is situated in an established urban area with existing engineering services. The application was circulated to the relevant departments in the City, which do not object, subject to the imposition of standard development conditions in Annexure A.

#### Impact on safety, health and wellbeing of the surrounding community

127. For the reasons already addressed, I am satisfied that the development proposal will not harm the safety, health, and well-being of the surrounding community. The development of a vacant, derelict plot will enhance the safety of the surrounding community.

#### Impact on heritage

128. For the reasons already addressed, I am satisfied that the development proposal will not harm heritage.

#### Impact on the biophysical environment

129. I am satisfied that the development proposal has no impact on the biophysical environment as the site is within an existing urban footprint area and is currently a vacant, derelict lot.

#### Traffic impacts, parking, access and other transport-related considerations

130. The traffic, parking, access and other transport impacts are addressed in detail above in response to the grounds of appeal.

Conditions that can mitigate an adverse impact of the proposed land use

131. As detailed above, the amended design already substantially mitigates the impacts of the proposed development.
132. Having considered all relevant considerations, including those prescribed by ss 99(2) and 99(3) of the By-Law, I am satisfied that the application should be granted, the proposed development approved, and the necessary authorisations issued.

**I. CONCLUSION**

133. This appeal concerns an application near to, but not abutting, a Masjid that is of profound heritage significance to all of Cape Town. For that reason, this matter has been treated with great care, and has followed an exhaustive process to this point. Few, if any, other development proposals have gone through such extensive community consultation, and iterative redesign. The engagement process included a remarkable community facilitation convened by the South African Heritage Resources Agency (SAHRA). That facilitation resulted in a consensus that the building should be smaller, lower, and that overlooking features be removed, along with several other mitigating design changes. All those agreed changes were made.
134. The proposed building began its journey as nine storeys, but is now proposed at six storeys, with a front facade of three storeys on Buitengracht St. This is like other buildings in the immediate vicinity, with a 14.4m-high building – equivalent to five storeys – directly opposite the Masjid, and other larger hotel buildings nearby.
135. The concerted and meaningful effort to accommodate residents' concerns has resulted in a context-sensitive development that both protects heritage and promotes sustainable development, and therefore the appeals in terms of s 108(7) of the By-Law are dismissed.
136. Accordingly, the MPT's decision is hereby confirmed and the application for the various authorisations in respect of the proposed development is approved. The decision, the authorisations, and the relevant conditions are set out in Annexure "A" hereto.



**GEORDIN HILL-LEWIS**

**EXECUTIVE MAYOR OF THE CITY OF CAPE TOWN**

**APPEAL AUTHORITY IN TERMS OF SECTION 114(3) OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW**

Date: 27/05/2025

# ANNEXURE A

In this annexure:

"City" means the City of Cape Town

"The owner" means the registered owner of the property

"The property" means **Erf 3032, Cape Town, 150 Buitengracht Street, Bo-Kaap**

"Bylaw" and "Development Management Scheme" has the meaning assigned thereto by the City of Cape Town Municipal Planning Bylaw, 2015 (as amended)

"Item" refers to the relevant section in the Development Management Scheme

"Dir: DM" means Director: Development Management or his/her delegatee.

**CASE ID: 1500014362**

## **1. APPLICATION FOR CITY APPROVAL GRANTED IN TERMS OF SECTION 98 (b) OF THE BYLAW**

### **City Approval**

- 1.1. Item 89(c): City Approval to construct a projection (canopy overhang) over a public street (the road reserve of Buitengracht Street).
- 1.2. Item 162(1): To permit building work within a Heritage Protection Overlay Zone.

## **2. CONDITIONS OF APPROVAL IMPOSED IN TERMS OF S100 OF THE BYLAW**

- 2.1 The development shall be substantially in accordance with the development plan attached as Annexure C.
- 2.2 A Construction Phase Management Plan (CPMP) shall be submitted and approved prior to building plan approval or unless determined otherwise by the Director: DM, to the satisfaction of the Director: Transport detailing how the construction phase will be managed and its effects (i.e. noise, dust, pre-construction survey, etc.) mitigated.
- 2.3 The CPMP is required to contain, at a minimum, the following:
  - 2.3.1 A fully dimensioned plan indicating the erf boundaries, the stockpile areas, toilet facilities during construction, entrances and exits to the erf during construction.
  - 2.3.2 A detailed explanation on how the following issues are to be dealt with: dust control, protection of the street tree, construction traffic (i.e. comprehensive traffic accommodation plan), demarcation of site, ablution facilities, waste management during construction, materials handling, storage and stockpiles.
  - 2.3.3 The developer shall comply with, and enforce compliance by contractors (including sub-contractors), with the provisions of the CPMP during the earthworks, installation of the services and the construction of the building. The developer shall ensure that the CPMP forms part of the contractor's documentation.

## **HERITAGE MANAGEMENT**

- 2.3.4 If any archaeology is found on the site during construction the work must cease immediately and HWC must be informed immediately.

## **ROADS INFRASTRUCTURE & MANAGEMENT**

- 2.3.5 The owner / developer shall be responsible for all costs incurred in respect of the upgrading, extension, deviation, connection or removal of any existing storm water, sewerage, electricity, roads or other service or work arising from the development.
- 2.3.6 A permission agreement must be concluded to permit the canopy into the road reserve of Buitengracht Street prior to building plan approval.
- 2.3.7 Parking and stacking space to be to the satisfaction of TIA & DC.
- 2.3.8 Levels at the boundary to be 110mm + 3% above the top of the road edge.
- 2.3.9 Canopy to be covered by a permissions agreement and to be set back 500mm from the kerb line / (edge of road if no kerb exists).
- 2.3.10 Storm water discharge to be to the satisfaction of this department.
- 2.3.11 The developer will be responsible for the reinstatement of all damaged municipal infrastructure after completion of the construction work to full municipal standards.

## **ENERGY & CLIMATE CHANGE**

- 2.3.12 From the plans submitted, the total load, including commercial activities is anticipated to be approximately 300 to 400kVA.
- 2.3.13 In order to provide the required electricity supply a substation needs to be established on the premises. The minimum internal dimension are 5x4x3m with a set 2,5x2,5m in the 5m side opening outward to the sidewalk, a 1m deep trench below floor level, which is to be 50mm to 300mm below the adjacent sidewalk level. A 3-dimensional substation servitude is to be registered over the substation in favour of the City as per the Electricity Department's standard conditions and requirements.
- 2.3.14 The present authorised capacity of the site is 41,6kVA. Consequently, SNC fees will be applicable to the capacity increase.
- 2.3.15 The meter room is required to be slightly wider and its entrance door is to be relocated the street façade.
- 2.3.16 The proposed structure will encroach to within 3m of the existing overhead line. This is to be replaced with underground services at the client's expense.
- 2.3.17 If the development necessitates relocation of any electrical infrastructure, including supplies to adjacent 'land-locked' erven, this will be for the client's account.
- 2.3.18 No construction activity as defined in the OHS Act may commence prior to obtaining wayleaves from this department