

**FURTHER OBJECTIONS TO, COMMENT ON AND REPRESENTATIONS ABOUT, THE PROPOSED MIXED-USE BUILDING DEVELOPMENT ON ERVEN 8210 AND 144698, BOUNDED BY THE BUITENGRACHT, SHORTMARKET, LONGMARKET AND ROSE STREETS, CENTRAL CAPE TOWN.**

**To be addressed to the Municipal Planning Tribunal during the course of the interview in this matter on the 7<sup>th</sup> June 2016**

**CITY OF CAPE TOWN APPLICATION REF: 70268599  
HERITAGE WESTERN CAPE CASE NUMBER: none**



**Figure 1:** Bird's Eye View Photo-montage utilizing Google Earth and SketchUp, showing the proposed building (in white in the centre) in its setting, with Riebeeck Square and Heritage Square in the foreground (to the left and right, respectively) and the Bo-Kaap and Signal Hill in the background, courtesy Rick Brown Architects

**PREPARED AT THE REQUEST OF THE BO-KAAP CIVIC AND RATEPAYERS ASSOCIATION, SOME LOCAL PROPERTY OWNERS AND OTHER INTERESTED AND AFFECTED PARTIES**

**6<sup>th</sup> June 2016**

by

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Respected Municipal Planning Tribunal:

We were provided with copy of the Case Officer's report in this matter during the course of last week, after pointedly requesting it. I was only provided with the Appendices to the report during the afternoon of the 2<sup>nd</sup> June (some pages were missing). I have noted that the overall height of the slightly revised development proposals remains unchanged at 60 meters.

In the circumstances of the very limited time available, these representations are brief (some of the wording is underlined for emphasis). Over 1,000 objections to the proposals were lodged and, although the proposals have since been marginally amended, the objections to the out-of-scale proposed building stand.

It seems to me that there are two main issues before the Tribunal in this matter. The first is the proponents' application in terms of S 42 (i) of the By-Law for Council approval in terms of Item 162 of the DMS to develop a new building within the Heritage Protection Overlay Zone HPO/2/3. Because the Tribunal's decision on this may set new precedent for subsequent applications, the decision in this regard is clearly of very considerable importance. The second issue relates to non-compliance of the proposals with the city's densification policy and SDF. These are briefly dealt with sequentially below.

The pertinent facts of the matter relating to the first issue, as I see them, are that:

- Heritage Western Cape does not support the application and "... the substantial impacts of an over-scaled building [proposal]." (p. 1767 of the papers for the tribunal meeting, in the context of the HWC letter of objection, pp. 1765-1767);
- In the course of two internal city reports on the development proposals (pp. 1666-1675), Mark Bell, the Principal Heritage Professional at the City of Cape Town, notes that "all the heritage resources [Riebeeck Square, Erven 1299 and 1300, the Bo-Kaap precinct, the Cape Town Centre HPOZ, and Heritage Square] ... will be impacted on in a negative manner ... because of the [proposed building] design's sheer size and magnitude" (p. 1673 and repeated at p.1675). Moreover, he stated "The overall height [of the proposed development] is seen as problematic ..." (p. 1673 and repeated at p.1675);
- The Cape Institute of Architects objects to the proposals, as do over 1,000 other individuals or groups of individuals, many being residents of the Bo-Kaap;
- The purpose of the Heritage Protection Overlay Zone that was put in place by the City of Cape Town is precisely that: to protect heritage and to only approve new building proposals situated within the designated area if they would not do damage to the character of the area. This is in compliance with international best practice (see for example: ICOMOS (2005) *XI'AN Declaration on the Conservation of the Setting of Heritage Structures, Sites and Areas*; and UNESCO (2015) *Operational Guidelines for the Implementation of the World Heritage Convention*) as well as local legal provisions embodied in the HPOZ.
- With respect, the Heritage Statement prepared by Aikman Associates (pp. 1732-1764) fails to define the character of the area and, as a consequence (as also specifically noted by Heritage Western Cape (pp. 1766-1767)), the design indicators/principles it defines are entirely inappropriate and inadequate;
- The development proponents are silent on the damage to the local tourism economy that would result if the development proposal was approved.

As identified in my report of the 10<sup>th</sup> February 2016, the character of the area, inclusive of Heritage Square and other significant resources proximate to the site under review, rests on the relatively fine-grain and limited heights and plan-frontage rhythms of most buildings, somewhat damaged by some more recent intrusive taller developments, such as the Hilton Hotel.

City of Cape Town management has been alive to this issue of out-of-place, intrusive, tall buildings in this area for very many decades, hence: the Title Conditions in force relating to development along Rose Street dating from the 1950's; much work undertaken by the city in the

West City Action Area during the 1980's on the abandonment of the prior, heavily engineered, Solly Morris scheme for the Buitengracht and Heritage Square; the retention of the entire Heritage Square city block proximate to the site in question and Van Riebeeck Square; and the Heritage Protection Overlay Zone HPO/2/3 put in place subsequently.

Indeed, it is relevant here that a city report of the late 1980's recommended a maximum building height of 14 meters in this context, because of the heritage significance of the area: the report "was prepared by Derek Chittenden ... with the assistance of ... Henry Aikman" (City of Cape Town (1987) *West City Action Area Report Three (Draft)*, p. 51).

We strongly submit that the proponents' application in terms of S 42 (i) of the By-Law for Council approval in terms of Item 162 of the DMS to develop a new building within the Heritage Protection Overlay Zone HPO/2/3 should not be approved on the grounds that the building height and massing is far too high and massive, respectively, and would do irreparable harm to the character of the area, as well as on other grounds previously advanced in my February report (pp. 229-281).

Some pertinent facts of the matter relating to the second issue of policy compliance are:

- The development proponents mis-represent the city densification policy to the point of non-compliance by virtue of their omission of at least three 'umbrella' core statements that are an integral part of the declared policy:
  - "Higher-density forms of development need to be carefully evaluated in order to ensure that proposals fit in with the surrounding environment. The form and the design of the development must be compatible with the area's built / natural character." (Heritage Western Cape, p. 1766);
  - "If it is not possible to accommodate a compatible built form without negatively altering the existing built context, or compromising the surrounding built environment, the development should not be supported." (My February report, appearing at p. 231);
  - "Contextual informants related to the development application and its immediate surroundings, such as the natural environment, land use, **built and heritage character** ... should determine the densities appropriate in a specific location." (My February report, appearing at p. 243);
- When taken into account, as they must, these policy statements have the logical effect of relegating the proposals to the category of not compliant with city policy;
- Densification should be contextually sensitive and the proposals are patently not.

Accordingly and in summary, as a consequence of consideration of the issue of inappropriate heritage impact, in pursuit of the principles of spatial justice and good administration (Chapter 2 of SPLUMA and Chapter 6 of LUPA) and as involved citizenry, we urge the Municipal Planning Tribunal to find that:

- As currently framed, the proposals and development applications do not comply with city policy and with the relevant legal provisions. Therefore, they are not in the public interest and can not be approved.
- Given the significant heritage resources in the immediate context, if revised proposals are formulated, heritage practitioner/s be required to prepare a Heritage Statement and a Heritage Impact Assessment, both to the satisfaction and to the approval of Heritage Western Cape, having received comment from the Heritage Committee of the Cape Institute for Architecture, as well as heritage officials at SAHRA and the CoCT.
- In this way proper guidance would be given to the preparation of appropriately contextualised architectural development proposals for the site in question, such that Cape Town could be proud of the potential redevelopment of the site.

Surely, the very professional integrity of the built-environment professions in Cape Town is at stake here: a valid and logical decision by the Tribunal should make sense to society at large and uphold the public interest. Whatever the Tribunal decides in this matter will be a milestone of great significance for Cape Town.