

**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No.: 12994/21

In the matter between:

OBSERVATORY CIVIC ASSOCIATION

First Applicant

**GORINGHAICONA KHOI KHOIN
INDIGENOUS TRADITIONAL COUNCIL**

Second Applicant

and

**TRUSTEES FOR THE TIME BEING OF
LIESBEEK LEISURE PROPERTIES TRUST**

First Respondent

HERITAGE WESTERN CAPE

Second Respondent

CITY OF CAPE TOWN

Third Respondent

**THE DIRECTOR: DEVELOPMENT MANAGEMENT
(REGION 1), LOCAL GOVERNMENT, ENVIRONMENTAL
AFFAIRS & DEVELOPMENT PLANNING, WESTERN
CAPE PROVINCIAL GOVERNMENT**

Fourth Respondent

**THE MINISTER FOR LOCAL GOVERNMENT,
ENVIRONMENTAL AFFAIRS & DEVELOPMENT
PLANNING, WESTERN CAPE PROVINCIAL GOVERNMENT**

Fifth Respondent

**CHAIRPERSON OF THE MUNICIPAL PLANNING
TRIBUNAL OF THE CITY OF CAPE TOWN**

Sixth Respondent

EXECUTIVE MAYOR, CITY OF CAPE TOWN

Seventh Respondent

FOUNDING AFFIDAVIT

I, the undersigned,

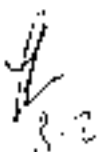
LESLIE LONDON,

do hereby make oath and state as follows:

1. I am a professor at the University of Cape Town and Head of the Division of Public Health Medicine in the University's School of Public Health Family Medicine. I have been duly authorised to depose to this affidavit in my capacity as the chairperson of the first applicant. A copy of a resolution authorising me to do so is attached marked "LL1."
2. The contents of this affidavit are true and correct. Unless I indicate otherwise, or the contrary appears from the context, they are within my personal knowledge and belief. Legal submissions contained herein are made on the advice of the applicants' legal advisors, which advice I believe to be correct. Where I rely upon information conveyed to me by others, I state the source, which information I likewise believe to be true and correct.

PARTIES

3. The first applicant is the **OBSERVATORY CIVIC ASSOCIATION**, a voluntary association established for purposes of providing a forum for the community of Observatory to express their concerns and opinions about the range of civic issues affecting residents, with offices at 60 Tull Road Observatory.
4. The second applicant is the **GORINGHAICONA KHOI KHOIN INDIGENOUS TRADITIONAL COUNCIL**, which is a voluntary association set up as a structure to promote cohesion of the Goringhaicona people
5. The first respondent is the **TRUSTEES FOR THE TIME BEING OF LIESBEEK LEISURE PROPERTIES TRUST**, cited in their representative capacities as trustees of the Liesbeek Leisure Properties Trust (the "LLPT"), whose further particulars are not known to the applicant. The trustees of the LLPT are: Allan



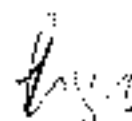
James Flynn Mundell, currently resident at 41 Grosvenor Crescent, Durban, KwaZulu-Natal; James Otto Tannenberger, currently resident at 26 Albion Road, Bryanston, Gauteng; Nicholas Scott Ferguson, currently resident at 7 Dawn Road, Constantia, Western Cape; Adam John Blow, currently resident at 16 Valley Road, Kenilworth; and Jodie Aufrichtig, currently resident at 1A Logies Bay Llundudno.

6. The second respondent is **HERITAGE WESTERN CAPE** ("HWC"), established in terms of section 23 of the National Heritage Resources Act, 25 of 1999 (the "NHRA"), with offices at 3rd Floor, Protea Assurance Building, 142 Longmarket Street, Cape Town. HWC is cited in an abundance of caution given its interest in the subject-matter of this application. No relief is sought against HWC but they are invited to place any relevant information before this Honourable Court as may assist in a determination of the matter.
7. The third respondent is the **CITY OF CAPE TOWN** (the "City"), a metropolitan municipality established in terms of the Local Government: Municipal Structures Act, 117 of 1998 (the "Structures Act"), care of the Municipal Manager at 3rd floor, Tower Block, Cape Town Civic Centre, 12 Hertzog Boulevard, Cape Town.
8. The fourth respondent is the **DIRECTOR: DEVELOPMENT MANAGEMENT (REGION 1), LOCAL GOVERNMENT, ENVIRONMENTAL AFFAIRS & DEVELOPMENT PLANNING, WESTERN CAPE PROVINCIAL GOVERNMENT** (the "Director"), with offices at 9th floor, 1 Dorp Street, Cape Town.

9. The fifth respondent is the **MINISTER FOR LOCAL GOVERNMENT, ENVIRONMENTAL AFFAIRS & DEVELOPMENT PLANNING, WESTERN CAPE PROVINCIAL GOVERNMENT** ("the Minister"), with offices at 9th floor, 1 Dorp Street, Cape Town.
10. The sixth respondent is the **CHAIRPERSON OF THE MUNICIPAL PLANNING TRIBUNAL OF THE CITY OF CAPE TOWN** (the "MPT"), established in terms of section 115 of the City of Cape Town Municipal Planning By-law ("MPB") read with section 51(2) of Spatial Planning and Land Use Management Act, 16 of 2013, care of the office of the Municipal Manager at 3rd floor, Tower Block, Cape Town Civic Centre, 12 Hertzog Boulevard, Cape Town. The sixth respondent is cited in his representative capacity.
11. The seventh respondent is the **EXECUTIVE MAYOR OF THE CITY OF CAPE TOWN** (the "Mayor"), in his capacity as the appeal authority under section 114(3) of the MPB, read with section chapter 6 of SPLUMA, with offices at 6th floor, Tower Block, Cape Town Civic Centre, 12 Hertzog Boulevard, Cape Town.

NATURE OF THIS APPLICATION

12. This application concerns a megadevelopment known as "the River Club" ("the proposed development"), which is presently in the earliest stages of construction on erf 151832, Observatory ("the River Club site").
13. The applicants believe that the implementation of this development will result in the permanent and irreversible loss of a valuable heritage resource. These views are shared by HWC, which is the body with statutory responsibility for



regulating development that has the potential to impact upon heritage in the Western Cape. As I explain below, HWC's regulatory function (which was in this instance exercised in terms of section 38(8) of NEMA) was nullified by the unlawful actions of the fourth and fifth respondents in the environmental assessment process under the National Environmental Management Act, 107 of 1998 ("NEMA").

14. The heritage resource in question is the River Club site itself, a "virtual island" occurring at the confluence of the Black and Liesbeek Rivers. This property embodies exceptional heritage significance by virtue of its symbolic (and actual) association with early confrontations between the Peninsula Khoekhoe and the first Dutch settlers (the genesis of colonialism in South Africa), as well as its location within a broader "urban park" that has an extraordinarily high concentration of heritage sites and a very unusual character. The River Club site is also an important "green lung" in the City (and identified as such in relevant spatial plans).
15. The significance of this site is underlined by the fact that it was accorded provisional protection in terms of section 29(1) of the National Heritage Resources Act, 25 of 1999 ("NHRA") in April 2018 (which protection has now lapsed), and that the Council of HWC on 22 July 2021 recommended to SAHRA that consideration be given to its declaration as a national heritage site.
16. Ordinarily, a development that changes the character of a site exceeding 5000 m² (as the River Club development does) would require an approval issued by HWC in terms of section 38(4) of the NHRA. The River Club development was however subject to the alternative procedure prescribed in section 38(8) of the



NHRA that applies where an activity is also subject to the requirement of an environmental authorisation in terms of NEMA.

17. Section 38(8) provides for a cooperative process between the relevant heritage and environmental authorities, wherein the heritage authority ensures that heritage impacts are properly assessed through a heritage impact assessment meeting the requirements of section 38(3) (in the discretion of the HWC), while the environmental authority evaluates the justifiability of the heritage impacts within the broader context of the proposed development, taking account of the heritage authority's views.
18. In the case of the River Club development, there was a complete failure of this process. I say so because the provincial Department of Environmental Affairs and Development Planning ("DEADP") issued an environmental authorisation for the proposed development on the basis of a fatally defective heritage impact assessment, in the face of strong and consistent assertions by HWC that the assessment did not meet the requirements of section 38(3). By effectively ignoring the HWC, DEADP undermined the purpose of section 38 of the NHRA and the credibility of the environmental authorisation process.
19. The heritage impact assessment in question was an anomalously sympathetic one, which the LLPT managed to procure after abandoning an earlier and significantly more limiting heritage impact assessment for the proposed development. In the circumstances, the breach by the environmental authorities of section 38(8) has had particularly serious and material consequences.



20. In the result, we contend that the environmental authorisation issued for the project is fatally defective and susceptible to review. The development approval granted for the project in terms of the MPB is, we contend, likewise defective.

21. This is an application in two parts:

21.1. In Part A, the applicants urgently seek an interim interdict pending the outcome of review proceedings that are brought in Part B.

21.2. In Part B, the applicant seeks the review and setting aside of the following decisions in terms of the Promotion of Administrative Justice Act, 3 of 2000 ("PAJA").

21.2.1. The decision taken by the Director on 20 August 2020 to grant environmental authorisation for the proposed development in terms of section 24 of NEMA.

21.2.2. The decision taken by the Minister on 22 February 2021 to dismiss the appeals lodged against the environmental authorisation in terms of section 43 of NEMA and to grant environmental authorisation for the proposed development.

21.2.3. The decision taken by the MPT on 4 September 2020 to approve the proposed development application in terms of section 98 of the MPB.

21.2.4. The decision taken by the Major on 18 April 2021 to dismiss various appeals against the MPT's decision in terms of section 108 of the MPB and to confirm the MPT's decision to approve



the proposed development

21.3. The remainder of this affidavit is structured as follows:

21.3.1. First, I deal with the circumstances justifying the urgent basis on which this application is brought.

21.3.2. Second, I provide an overview of the River Club Development and its context.

21.3.3. Third, I provide an exposition of the relevant statutory framework.

21.3.4. Fourth, I provide a chronological outline of relevant events.

21.3.5. Fifth, I deal with the status of the provisional protection notice.

21.3.6. Sixth, I address the adequacy of the process carried out for the proposed development in terms of section 38(6) of the NHRA.

21.3.7. Seventh, I address issues arising from the processes in terms of the MPB.

21.3.8. Eighth, I set out the grounds on which the review in Part B of the notice of motion is brought.

21.3.9. Ninth, I address the applicants' entitlement to an interdict.

URGENCY

22. It is regrettable that the applicants have had to bring Part A of this application on such abbreviated time periods, especially given the complexity of the

available record and the length of the papers that have been filed. Nonetheless, we contend that this matter is extremely urgent because the LLPT is in the process of defacing a valuable heritage resource, the value of which derives from its character as a relatively untransformed open space - and will no doubt claim in due course that the balance of convenience favours refusal of the relief in part A because construction has commenced (a claim that will only strengthen over time). It must be pointed out at the outset, however, that the LLPT has been put on notice of this intended review and that any work on site is at their risk.

23. Nick Smith Attorneys, who act for the LLPT, have confirmed that construction activities on the site commenced on 26 July 2021. At the time of deposing to this affidavit, the only transformation of the site that I have observed is in the form of preparation of the ground and the erection of fencing. However, the LLPT will presumably now proceed apace with construction on the site (given its timeframe of 30 months for completion of the proposed development).
24. In anticipation of any complaints that the LLPT may now level against the applicants regarding delays and self-created urgency, I record the following:
 - 24.1. The Mayor's decision to dismiss the appeals against the approval of the LLPT's development application (being the final of the decisions under review) was issued on 19 April 2021. Having received notice of the decision, the attorneys acting for the OCA set about finding and briefing suitable counsel to prepare papers for the review relief in Part B of this application. At this stage, the LLPT still required a water use licence in



terms of the National Water Act, 36 of 1998 ("NWA") to proceed with construction.

- 24.2. On 11 May 2021, the OCA's attorneys, the OCA's attorneys addressed a letter to the LLPT, in which they requested a written undertaking that the LLPT would not proceed with the proposed development before the outcome of review proceedings that it intended launching. A copy of this letter is attached marked "LL2". The LLPT did not respond to this request.
- 24.3. On 10 June 2021, the OCA received notification from the Department of Water and Sanitation ("DWS") that it had issued a water use licence to the LLPT.
- 24.4. The OCA lodged an appeal against the Minister's decision to issue the water use licence on 21 June 2021. It was forced to do so in ignorance of the reasons for the decision, which were not forthcoming from the DWS or from the LLPT. The effect of this appeal was to suspend the operation of the water use licence in terms of section 148(1) of the NWA with the result that the proposed development could not proceed.
- 24.5. On 7 July 2021, the OCA was notified by the DWS that the LLPT had submitted a request to the Minister in terms of section 148(2)(a) of the NWA for the Minister of Water and Sanitation for the operationalising of its NWA, notwithstanding the OCA's appeal. This is plainly an inappropriate case for the exercise of this discretion by the Minister of Water and Sanitation as its practical effect would be to deprive the OCA



of its right to an effective appeal (rather than to simply rectify an inconvenience where no prejudice is occasioned).

24.6. In any event, given these circumstances, the OCA's attorneys addressed a letter to Nick Smith Attorneys reiterating the OCA's intention to launch review proceedings and requesting a written undertaking that the LLPT would not commence with any construction until such time as the review had been decided. A copy of this letter is attached marked "LL3".

24.7. On 26 July 2021, the OCA's attorneys received a letter from Nick Smith Attorneys advising that the water use licence had been brought into operation by the Minister of Water and Sanitation and that construction had commenced that morning. A copy of this letter is attached marked "LL4". At this stage, the preparation of this application was close to completion and the applicants' legal team acted with expedition to ensure that these proceedings were instituted as soon as reasonably possible.

THE RIVER CLUB DEVELOPMENT

The development

25 The River Club site is an area of 14.7 hectares located at the confluence of the Black and Liesbeek Rivers. It is bordered to the west and north-west by a residual watercourse following the original course of the Liesbeek River, and by the Liesbeek Canal and the Black River to the east. The site is described in the final basic assessment report as "a virtual island" surrounded by freshwater



- systems and located in the flood plain of the Liesbeek and Black Rivers. An aerial photograph of the site is attached marked "LL5".
26. The River Club development is very substantial development, composed of clusters of multi-storey buildings arranged into 2 precincts, and offering 150 000² metres of floor space. It is portrayed in conceptual drawings as a large-scale, urban campus. A selection of these drawings is attached marked "LL6".
27. As part of the approved "Riverine Corridor Alternative", the LLPT will rehabilitate the riverine corridor along the route of the existing Liesbeek Canal running adjacent to the eastern boundary of the site, while the "old" Liesbeek River channel on the western edge of the site, the residue of the original course of the Liesbeek River, will be largely infilled and landscaped with a vegetated stormwater swale. The whole of the building will be infilled in order to lift the development approximately three metres higher out of reach of floodwater (as the River Club site is coextensive with the Liesbeek flood plain).
28. The buildings comprising the proposed development will be allocated to a variety of uses including retail, hospitality, residential (including low-cost inclusionary housing) and office space. It is common knowledge that multinational corporation Amazon is the intended anchor tenant and has been consulted and accommodated in the design and layout of parts of the proposed development.



The site

29. The greater part of the proposed development site is constituted by the River Club site, which is a 148 425 m² property owned by the LLPT, and presently operated as a rudimentary golf course with associated restaurant and conferencing facilities housed in the old "River Club" building.
30. The remainder of the proposed development site is comprised of 10 adjacent erven owned by the City. An image depicting the cadastral layout of the site is attached hereto marked "LL7". The adjacent remainder of erf 15326, which for some reason is shown in this image as falling within the boundaries of the proposed development, is the Raapenberg Wetland, an area of high faunal sensitivity, managed by the City of Cape Town as a protected area.
31. The site forms part of a broader area known as the "Two Rivers Urban Park" ("TRUP"). An image showing the location of the site within the broader TRUP area is attached marked "LL6".
32. The TRUP is a 300-hectare area incorporating large stretches of open space on either side of the M5 highway and surrounded by both residential neighbourhoods and industrial area. It incorporates diverse land uses and contains some remarkable remnants of our colonial history. Amongst these various uses are the Valkenberg Psychiatric Hospital, the South African Astronomical Observatory, the Oude Molen Eco-Village and the River Club. The area is an unlikely mix of endangered biodiversity (the Raapenberg Wetland), high-security healthcare facilities and recreational infrastructure, surrounded by industry and established suburbs (diverse in character and socio-economic standing). It is a very unusual place.



33. Much has been written about the history of the TRUP, which is remarkable for the multiple converging historical narratives and the many facets of South African history that it reflects. The various studies referred to in this affidavit detail the history associated with the site. I outline it briefly here as necessary context.
34. Very significantly, the TRUP was the site (or at least a part of the broader site) at which early and significant confrontations between colonial settlers and the Peninsula Khoekhoe occurred, culminating in their eventual exclusion from the area.
35. Many of the descendants of these groups attach profound symbolic significance to the confluence of the Black and Liesbeek Rivers (occurring on the River Club site) as a prominent marker in the lands of their ancestors, of which they were ultimately dispossessed. In this regard I refer to the supporting affidavit of Tauriq Jenkins, the High Commissioner of the Goringhaicona Khoi Khoin Traditional Indigenous Council, which is filed with this founding affidavit.
36. The notable "battle of Almeida" in which the Khoekhoe attacked and killed the Portuguese Viceroy of India, Francisco D'Almeida, occurred in 1510 in the vicinity of the site. The massacre was in retaliation for a cattle theft executed by men dispatched by D'Almeida.
37. The River Club site is one of the only undeveloped remnants of the grazing lands used in the summer by the Khoekhoe for their cattle. These groups lived as nomadic pastoralists. From 1657 onwards they were gradually eliminated from this area by Dutch settlers who erected barriers to keep them out, as well as watch posts and small forts to monitor their movements. A prominent watch

fort was probably sited on the land presently occupied by the South African Astronomical Observatory. The TRUP, including the River Club site, was the site of Khoi armed resistance against the Dutch colonialist for many years as a result.

38. It was also in this general area, along the Liesbeek River, that farms were granted to Dutch settlers under private tenure for the first time. To this day, the site is defined by remnants of the early industry of those settlers in the form of structures such as the Nieuwe Molen (the oldest and largest windmill in South Africa – and a provincial heritage site).
39. The area was later defined by institutional uses. The South African Astronomical Observatory ("SAAO") was built in 1825 on a raised portion of the TRUP which was at that stage far from the town. This resulted in the surrounding erven (which were at that stage undeveloped wetland) being put to other institutional uses, notably the Alexandra and Valkenburg mental hospitals (which were also considered to be activities that needed to be located far from the town).
40. Significant scientific advances were made at the SAAO in the early 19th century and the property on which it is located has now been declared a national heritage site in recognition of both its historic and aesthetic value. One of the reasons for establishing the SAAO at the Cape was the need to find "accurate star positions and provide a reliable time service to aid the navigation of ships". For the latter function a clear view of Table Bay was essential to pass on visual time signals. Interestingly, the site is also referred to in Khoi oral history as "place of the stars".



41. During the early 19th Century, additional structures were built around Valkenberg to facilitate the segregation of black and white patients (hence Valkenberg West and Valkenberg East).
42. The following passage from a 2016 Baseline Heritage Study of the TRUP (which I deal with below) provides an interesting insight into the character of the area around this time:

"Deacon considers the area around Valkenburg being characterised as a place for institutions "of social or physical "impurity" thereby by exclusion, sanitising the town". She cites the other uses of Ndabeni to accommodate black workers after plague scares in 1901, the presence of the abattoirs (1915), the treatment of leper cases, and the use of the Oude Molen site to accommodate black mental health patients after 1913. Other institutions included a TB hospital at the Alexandra Hospital in 1906, followed by its use as a hospital for the "medically defective" in 1918."

43. These institutional uses in the TRUP area still endure today, with the surrounding land and historical structures being put to low-intensity recreational uses – such as the Oude Molen Eco Village.
44. The recent history of the River Club site in particular is that of community recreation. It was from about 1935 used by the South African Railways (predecessor to Transnet) as recreational grounds for its workers. The property was thereafter sold to Liesbeek Leisure Properties (Pty) Ltd in 1993, which now operate it as a relatively rudimentary golf course used by a diverse section of the community.

STATUTORY FRAMEWORK

The National Heritage Resources Act

45. The National Heritage Resources Act, 25 of 1999 ("NHRA") was enacted *inter alia* to: introduce an integrated and interactive system for the management of national heritage resources; promote good governance at all levels; empower civil society to nurture and conserve their heritage resources so that they may be bequeathed to future generations; lay down general principles for governing heritage resources management throughout South Africa; and to provide for the protection of conservation-worthy places and areas by local authority. The overarching purpose of the Act is to ensure the preservation of South Africa's "national estate".
46. The national estates encompass "*those heritage resources of South Africa which are of cultural significance or other special value for the present community and for future generations*" (section 3(1)). Heritage resources protected by the NHRA may take many forms including "*places, buildings and structures of cultural significance*" (section 3(2)(a)) and "*landscapes and natural features of cultural significance*" (section 3(2)(d)). The criteria to be applied in determining whether a place or object has cultural significance or other special value such that it should form part of the national estate are listed in section 3(3). These criteria include: "*the importance of the place or object in the community*" (section 3(3)(a)) and its "*strong or special association with a particular community or cultural group for social, cultural or spiritual reasons*" (section 3(3)(g)).

47. Section 7(1) of the Act distinguishes between three categories of heritage resource. They are:
- 47.1. Grade I: Heritage Resources with qualities so exceptional that they are of special national significance.
 - 47.2. Grade II: Heritage Resources which, although forming part of the national estate, can be considered to have special qualities which make them significant within the context of a province or region.
 - 47.3. Grade III: Other heritage Resource's worthy of conservation.
48. Section 7(1) also directs SAHRA to prescribe a system for grading of heritage resources and assessment criteria. This system has been promulgated in regulation 43 of GNR. 548 of 2 June 2000. For the most part, it restates the criteria listed in section 3(3) of the NHRA.
49. Responsibility for the management and conservation of heritage resources is vested primarily in the South African Heritage Resources Agency (SAHRA) and provincial heritage resources authorities established in terms of the Act. The main function of provincial heritage resource authorities is to manage Grade II heritage resources and heritage resources which are deemed to be a provincial competence in terms of this Act.
50. In addition, a competent authority exercising a discretion in terms of any law dealing with heritage resources is required in terms of section 4(b) do so by reference to the heritage resource management principles listed in section 5(1). They are:



"(a) Heritage resources have lasting value in their own right and provide evidence of the origins of South African society and as they are valuable, finite, non-renewable and irreplaceable they must be carefully managed to ensure their survival;

(b) every generation has a moral responsibility to act as trustee of the national heritage for succeeding generations and the State has an obligation to manage heritage resources in the interests of all South Africans;

(c) heritage resources have the capacity to promote reconciliation, understanding and respect, and contribute to the development of a unifying South African identity; and

(d) heritage resources management must guard against the use of heritage for sectarian purposes or political gain."

51. In terms of section 30, a provincial heritage resources authority must compile and maintain a heritage register listing the heritage resources in the province which it considers to be conservation-worthy in terms of the heritage assessment criteria set out in section 3(3) and prescribed under section 7. Once a property is listed in a provincial heritage register, the relevant local authority has 6 months to make provision for the protection of a listed heritage resource in terms of its planning scheme or by-laws. The relevant provisions of section 30 read as follows:

"(1) A provincial heritage resources authority must compile and maintain a heritage register listing the heritage resources in the province which it considers

to be conservation-worthy in terms of the heritage assessment criteria set out in section 3 (3) and prescribed under section 7.

(2) Subject to subsection (7), a provincial heritage resources authority may, by notice in the Provincial Gazette, list a heritage resource or amend or delete an entry in a heritage register.

...

(7) A provincial heritage resources authority shall not list a place in a heritage register without having consulted the owner of such place regarding inter alia the provisions to be established under subsection (11) for the protection of the place.

...

(9) On publication of a notice in the Provincial Gazette concerning the listing in the heritage register of a place within its area of jurisdiction, or the amendment or deletion of an entry for such place, a local authority must notify the owner of such place.

...

Within six months of the publication of a notice in the Provincial Gazette concerning the inclusion in the heritage register of a place falling within its area of jurisdiction, every local authority must make provision for the protection of such place through the provisions of its planning scheme or by-laws under this Act: Provided that any such protective provisions shall be

ASZ

jointly approved by the provincial heritage resources authority, the relevant local authority and the provincial planning authority, and provided further that -

(a) the special consent of the local authority shall be required for any alteration to or development affecting a place listed in the heritage register;

.....”

52. Provincial heritage authorities are empowered in certain circumstances to “provisionally protect” heritage resources (listed or otherwise) by issuing a provisional protection notice in terms of section 29(1). This provision reads:

“SAHRA, or a provincial heritage resources authority, may, subject to subsection (4), by notice in the Gazette or the Provincial Gazette, as the case may be—

(a) provisionally protect for a maximum period of two years any—

(i) protected area;

(ii) heritage resource, the conservation of which it considers to be threatened and which threat it believes can be alleviated by negotiation and consultation;

or

(iii) heritage resource, the protection of which SAHRA or the provincial heritage resources authority wishes to investigate in terms of this Act; and (b) withdraw any notice published under paragraph (a).”

53. The effect of a section 29(1) provisional protection notice is that anyone wanting to excavate, alter, subdivide or change the planning status of a provisionally

protected place must first obtain a permit from the provincial heritage resources authority.

54. The NHRA also establishes a system of assessments and approvals for activities that impact upon or have the potential to impact upon heritage resources. Of relevance in these proceedings is section 38, which provides that any person undertaking a development that involves an activity specified in section 38(1) must, at the very earliest stage of initiating the development, notify the relevant provincial heritage resources authority and furnish it with details of the development. The relevant authority must, if there is reason to believe that the development will impact upon heritage resources, instruct the person concerned to undertake a heritage impact assessment. The assessment must comply with any requirements specified by the relevant heritage resources authority and must at least include the information specified in section 38(3). Upon considering the reports, the relevant heritage resources authority is empowered to determine that the development may not proceed, or to impose limitations and/or formal protections. The relevant provisions of section 38 read as follows:

“(1) Subject to the provisions of subsections (7), (8) and (9), any person who intends to undertake a development categorised as -

(a) the construction of a road, wall, powerline, pipeline, canal or other similar form of linear development or barrier exceeding 300m in length;

(b) the construction of a bridge or similar structure exceeding 50 m in length;

H S 2

(c) *any development or other activity which will change the character of a site*

-

(i) *exceeding 5 000m² in extent; or*

(ii) *involving three or more existing erven or subdivisions thereof; or*

(iii) *involving three or more erven or divisions thereof which have been consolidated within the past five years; or*

(iv) *the costs of which will exceed a sum set in terms of regulations by SAHRA or a provincial heritage resources authority;*

(d) *the re-zoning of a site exceeding 10 000m² in extent; or*

(e) *any other category of development provided for in regulations by SAHRA or a provincial heritage resources authority, must at the very earliest stages of initiating such a development, notify the responsible heritage resources authority and furnish it with details regarding the location, nature and extent of the proposed development.*

(2) *The responsible heritage resources authority must, within 14 days of receipt of a notification in terms of subsection (1) -*

(a) *if there is reason to believe that heritage resources will be affected by such development, notify the person who intends to undertake the development to submit an impact assessment report. Such report must be compiled at the cost of the person proposing the development, by a person or persons approved by the responsible heritage resources authority with relevant*

hsr

qualifications and experience and professional standing in heritage resources management; or

(b) notify the person concerned that this section does not apply.

(3) The responsible heritage resources authority must specify the information to be provided in a report required in terms of subsection (2) (a): Provided that the following must be included:

(a) The identification and mapping of all heritage resources in the area affected;

(b) an assessment of the significance of such resources in terms of the heritage assessment criteria set out in section 6(2) or prescribed under section 7;

(c) an assessment of the impact of the development on such heritage resources,

(d) an evaluation of the impact of the development on heritage resources relative to the sustainable social and economic benefits to be derived from the development;

(e) the results of consultation with communities affected by the proposed development and other interested parties regarding the impact of the development on heritage resources;

(f) if heritage resources will be adversely affected by the proposed development, the consideration of alternatives; and

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

(4) The report must be considered timeously by the responsible heritage resources authority which must, after consultation with the person proposing the development, decide -

(a) whether or not the development may proceed;

(b) any limitations or conditions to be applied to the development;

(c) what general protections in terms of this Act apply, and what formal protections may be applied, to such heritage resources;

(d) whether compensatory action is required in respect of any heritage resources damaged or destroyed as a result of the development; and

(e) whether the appointment of specialists is required as a condition of approval of the proposal."

55. If, however, the development is subject to the requirement of an environmental impact assessment under NEMA, authority to approve the development shifts to the competent environmental authority, subject to the proviso that the competent environmental authority must consider a heritage impact assessment that meets the requirement of the provincial heritage resources authority in terms of section 38(3) and take account of the views of the provincial heritage resources authority in reaching its decision. This is the effect of section 38(8), which provides:

"The provisions of this section do not apply to a development as described in subsection (1) if an evaluation of the impact of such development on heritage resources is required in terms of the Environment Conservation Act, 1989 (Act No. 73 of 1989), or the integrated environmental management guidelines issued by the Department of Environment Affairs and Tourism, or the Minerals Act, 1991 (Act No. 50 of 1991), or any other legislation: Provided that the consenting authority must ensure that the evaluation fulfils the requirements of the relevant heritage resources authority in terms of subsection (3), and any comments and recommendations of the relevant heritage resources authority with regard to such development have been taken into account prior to the granting of the consent."

The National Environmental Management Act

56. In terms of section 24(1) of NEMA, *"the potential consequences for or impacts on the environment of listed activities or specified activities must be considered, investigated, assessed and reported on to the competent authority."*
57. "Listed activities" are those activities that have been identified by the Minister of Environmental Affairs in terms of section 24(2) as activities that may not commence without an environmental authorisation.
58. Any person wishing to obtain environmental authorisation for a listed activity must conduct an assessment in compliance with the Environmental Impact Assessment Regulations, 2014¹ ("the EIA Regulations"), pursuant to an

¹ GNR 982 of 4 December 2014.

application submitted to the competent environmental authority (which may be the national or provincial department of environmental affairs).

59. An application for environmental authorisation may require either a basic environmental assessment or full scoping and environmental impact assessment, depending on the particular activities that have triggered the need for an environmental authorisation. The procedure applicable to the proposed development was a basic assessment process.
60. The requirements for a basic assessment report are set out in Appendix 1 to the EIA Regulations. Amongst other things, the basic assessment report must:

“through the undertaking of an impact and risk assessment process, inclusive of cumulative impacts which focused on determining the geographical, physical, biological, social, economic, heritage, and cultural sensitivity of the sites and locations within sites and the risk of impact of the proposed activity and technology alternatives on these aspects to determine- (i) the nature, significance, consequence, extent, duration, and probability of the impacts occurring to; and (ii) the degree to which these impacts- (aa) can be reversed; (bb) may cause irreplaceable loss of resources; and (cc) can be avoided, managed or mitigated;” (item 2(d))

City of Cape Town Municipal Planning By-Law

81. The Municipal Planning By-Law (“MPB”) governs all planning and application processes related to the use of land in the City of Cape Town.

62. It incorporates as schedule 1 the "Development Management Scheme" ("DMS") which promulgates the zoning and development rules for all land situated in Cape Town. Chapter 20 of the DMS provides for "Heritage Protection Overlay Zones", which functions as the planning instrument contemplated in section 30(11) of the NHRA to conserve listed heritage resources. Development within a heritage protection zone is subject to strict limitations in terms of the DMS.
63. The land-use application submitted by the developer was decided in terms of section 98 and 99 of the MPB, which is a general provision governing all applications submitted in terms of the By-Law.
64. Section 99 deals with the criteria for decision-making on land use applications. In terms of section 99(1), the prerequisites for the approval of any application submitted under the MPB are that the application is consistent with the municipal spatial development framework, complies with generally with the By-Law (which incorporates the Development Management Scheme in schedule 1) and is desirable (as determined by criteria set out in section 99(3)). The considerations that are relevant to land-use decisions are set out in section 99(2) and include consistency with relevant policies approved by the City and the extent to which the proposal is desirable in terms of factors prescribed in section 99(3).
65. Sections 98 and 99 read as follows:

98 Determination of application



" The City may in respect of an application –

(a) conduct any necessary investigation including the power to conduct an inspection as contemplated in section 96;

(b) approve the application –

(i) in whole or in part;

(ii) with an amendment provided that the amendment does not materially change the nature of the application;

(iii) subject to conditions set out in section 100; and

(iv) limit the approval to one or more of the uses included within the zoning or description of the consent use in case of an approval of a rezoning application or a consent use;

(c) refuse the application;

(d) make an appropriate determination regarding all matters necessary or incidental to the performance of its functions in terms of this By-Law and other applicable law.

99 Criteria for deciding application

(1) An application must be refused if the decision-maker is satisfied that it fails to comply with the following minimum threshold requirements –



(a) the application must comply with the requirements of this By-Law;

(b) the proposed land use must comply with or be consistent with the municipal spatial development framework, or if not, a deviation from the municipal spatial development framework must be permissible;

(c) the proposed land use must be desirable as contemplated in subsection (3); and

(d) ...

(2) If an application is not refused under subsection (1), when deciding whether or not to approve the application, the decision maker must consider all relevant considerations including, where relevant, the following –

(a) any applicable spatial development framework;

(b) relevant criteria contemplated in the development management scheme;

(c) any applicable policy or strategy approved by the City to guide decision making, which includes the Social Development Strategy and the Economic Growth Strategy;

(d) the extent of desirability of the proposed land use as contemplated in subsection (3);

(e) impact on existing rights (other than the right to be protected against trade competition);

(f) in an application for the consolidation of land unit –

(i) the scale and design of the development;

(ii) the impact of the building massing;

*(iii) the impact on surrounding properties; and City of Cape Town
Municipal Planning By-Law, 2015*

*(g) other considerations prescribed in relevant national or provincial
legislation, which includes the development principles as contained in
section 7 of the Spatial Planning and Land Use Management Act, 2013
(Act no. 16 of 2013).*

*(3) The following considerations are relevant to the assessment under
subsection (1)(c) of whether, and under subsection (2)(d) of the extent
to which, the proposed land use would be desirable –*

(a) socio-economic impact.

(b) [deleted in the by-law]

(c) [deleted in the by-law]

(d) compatibility with surrounding uses;

(e) impact on the external engineering services;

*(f) impact on safety, health and wellbeing of the surrounding
community;*

(g) impact on heritage;

(h) impact on the biophysical environment;

(i) traffic impacts, parking, access and other transport related considerations; and

(j) whether the imposition of conditions can mitigate an adverse impact of the proposed land use.

(4) . .

(5) ..."

CHRONOLOGICAL OVERVIEW OF RELEVANT EVENTS

Section 38(8) and NEMA processes

66. The River Club development was conceived in or around 2015 when the LLPT purchased the bare dominium of the River Club site from Liesbeek Leisure Properties (Pty) Ltd for R12 000 000. The latter company had acquired the site from Transnet several months earlier for the same amount. It is understood that a substantial additional amount will be payable by the LLPT to Liesbeek Leisure Properties (Pty) Ltd as further consideration for the property when the various development rights are in place

67. The development encompasses activities listed in terms of section 24 of NEMA, namely the infilling of a watercourse and the development of land zoned as open space and accordingly required an environmental authorisation. The LLPT initiated a scoping and environmental impact assessment process in or around April 2016 with SRK Consulting ("SRK") as the appointed environmental

assessment practitioner. The procedure was later downgraded to the less involved "basic assessment process" under the EIA regulations, due to a change in the regulations and associated listing notices.

68. A "notification of intent to develop" was also sent to HWC in compliance with section 38(1) of the NHRA because the proposed development will change the character of a site exceeding 5000 m². This was in late 2015. HWC responded in a letter dated 7 January 2016 in which it instructed the LLPT to undertake a heritage impact assessment, highlighting the "urban design framework" and including an archaeological study.

The First HIA

69. Shortly afterwards, SRK appointed Bridget O'Donoghue as independent heritage specialist to undertake a "phase one" heritage impact assessment ("the First HIA").
70. I pause to note that a phase one heritage impact assessment has a more limited scope than a full heritage impact assessment. It encompasses only the first five of the requirements listed in section 38(3), namely, the identification of all heritage resources that will be impacted either directly or indirectly by the proposed development; the mapping and "spatialisation" of these identified resources; an assessment of the significance of the identified resources; the results of consultations with communities affected by the proposed development and relevant heritage design indicators. The evaluation of impacts, relative socio-economic benefit and alternatives is postponed to phase two of the assessment. Phased heritage impact assessments are ordinarily employed in circumstances where a "large scale and/or long-term subdivisional

development' or where "it is prudent to obtain HWC's comment on the assessment of heritage resources heritage indicators in order to strengthen a heritage argument for revised design proposals". This is explained in HWC's "Guideline for Heritage Impact Assessments required in terms of section 38 of the National Heritage Resources Act". A copy of this guideline will be available on the day of the hearing.

71. The First HIA went through various iterations and was eventually submitted to HWC on 22 February 2017. The relevant sections of this report are attached marked "LL9" It concludes with the following recommendation (at page 103):

"The site has a unique position within TRUP and Cape Town and is assessed to possess high cultural significance. Its spatial character is a combination of an expanse of open, green landscapes, mature trees clusters, river frontages, and amenity facilities. The site has previously been assessed by the CCT and WCG with low development potential due to its value as an open area within TRUP and the ground levels below 1: 100 flood line..."

The report's heritage design indicators are developed to guide future development, without the potential negative impacts on the cultural resources, and to realise a potential for future mixed use, the site could have. Therefore, the site is positively assessed for sensitive development providing it addresses its position within the highly significant TRUP cultural landscape. Future development is required to incorporate the site's landscape qualities that contribute to the immediate and broader context setting. Inappropriate development on

the site will diminish the cultural significances of the site and TRUP. The site's social, historic and aesthetic values need to be enhanced within a new vision of the site."

72. The "heritage design indicators" contemplated in the above extract refer to a comprehensive list of initial heritage-associated restrictions formulated by Ms. O'Donoghue (starting at page 83 of the report). Some examples of these restrictions are as follows: integrate the site visually and spatially with adjoining TRUP sites; retain significant vistas (notably view corridors to, from, and through the site from the SAAO, and linking Raapenberg Bird Sanctuary and Devil's peak); the proposed development should address its position within TRUP and primarily respond in a positive and marked way to the cultural significance of the site's historic, social, aesthetic, associational and contextual values; building style and language should be sensitive to the setting and not visually dominate the character of the TRUP and site's landscape settings. buildings and groups of buildings should reflect the values and significance of the heritage resources in context by being designed sensitively with regard to scale, proportion, positioning, heights, and significant site and context view cones; avoid high scaled buildings and buildings with large footprints. In sum, these proposed indicators would severely restrict the density and footprint of any development on the site.
73. HWC's Impact Assessment Committee ("IACom") considered the First HIA at a meeting on 8 March 2017. The members expressed reservations about the piecemeal assessment of heritage impacts in the TRUP Area. It was recorded that *"the Committee believes that the entire TRUP precinct should be looked at*

holistically: it is problematic to consider the specifics of this application in isolation from the broader study". The minutes from this meeting also note that *"on several occasions HWC has been led to believe that the development issues for the entire TRUP area would be addressed prior to the development of individual pockets therein."* This (and the subsequent developments in IACom described below) I have gleaned from an "interim comment" addressed to the LLPT by HWC in terms of section 38(8) on 13 September 2019 ("the interim comment"). A copy of this letter is attached hereto marked "LL10".

The TRUP Heritage Study

74. The IACom decided to postpone its deliberations on the First HIA, pending consideration of "a broader baseline study of the Two Rivers Urban Park, which had been commissioned by the Western Cape Department of Transport and Public Works ("DTPW") and which was to be considered at the next meeting of the IACom on 12 April 2017. I will hereinafter refer to this study as "the TRUP Heritage Study". Relevant sections of the report are attached marked "LL11".
75. The TRUP Heritage Study had been commissioned by the Western Cape Department of Transport and Public Works ("DTPW") pursuant to implementation of "the TRUP Programme". The TRUP Programme is described in the request for proposals relating to planning, landscape architecture and heritage services (among others) as:

"...a partnership initiative between the City of Cape Town, and the Western Cape Government. The intention is to enhance the areas natural and cultural resources and develop the TRUP for residential, commercial, institutional, manufacturing and recreational activities,

h 32

aimed at generating a wide range of housing, recreation, business and employment opportunities."

76. The TRUP Heritage Study describes its objective as being "...a broad overarching baseline study ... to provide a framework for future heritage studies".
77. In line with its function as a framework instrument, the scope of the study was that of a phase one heritage assessment.
78. The report contains a high-level identification and mapping of heritage resources on the site (chapter 8). With respect to significance, the author states the following (at page 49):

"A case could be made for the TRUP having substantial cultural significance for associational, symbolic, spiritual, historical aesthetic (scenic) reasons. The entire TRUP site itself could be regarded as being of outstanding historical, symbolic scenic and amenity value, or a Grade 2 site. It is of sufficient cultural significance in terms of the definition and criteria contained within the Act."

- 78.1. This report also proposed heritage-related design informants (at page 82). Including the following: the unobstructed view to Signal Hill across the River Club Site should be retained and recognized through appropriate height restrictions associated with an astronomically related view cone across the site towards Signal Hill; buffer area on an extent yet to be decided should be negotiated adjacent to the Observatory Hill and related canal to ensure that the Observatory buildings retain the context of a hill site; development proposals to

allow for the retention of open recreational spaces; view cones to and from the Observatory Hill and peripheral areas are to be considered as a dominant heritage informant; potential for development opportunities to the north of the site along proposed Berkley Road extension provided archaeological conditions are met (s 35 NHRA) and view cone to Alexandra Mill remains unobstructed.

79. Returning to the relevant sequence of events, on 12 April 2017, IACom, having considered the TRUP Heritage Study adopted the view that *"On balance, it is evident that, based on the heritage resources identified in the baseline study and its supporting documentation, the TRUP is of extremely high heritage significance. The Committee agrees that the overall site is of at least Grade II heritage significance, if not higher."* In view of this, it was further recorded that *"Given the strategic importance and high significance of this site, it is a strong recommendation of the Committee that the Council of the HWC gives consideration to the provisional protection of the TRUP area under section 29 of the NHRA"*.
80. The matter was discussed at a meeting of the Inventories, Grading and Interpretation Committee ("IGIC") in May 2017. It is unclear from the record what the outcome of this meeting was. However, it is recorded (in the interim comment referred to above) that *"After receiving feedback from the IGIC meeting, in the form of its minute of 9 June 2017, IACom recorded the following in its minutes: the Committee is unanimously of the view that based on the information provided for in the consultant's Baseline Report tabled before this Committee, the TRUP is of potential Grade II or even Grade I significance. The*

Committee stands by its previous recommendation that the site should be provisionally protected so that the matter is fully investigated. The Committee recommends that a recommendation for the provisional protection of the TRUP is sent to the Council of HWC for its consideration."

The Second HIA

81. In the interim the LLPT, having abandoned the First HIA prepared by Bridget O'Donoghue, commissioned two new heritage specialists (Tim Hart and Stephen Townsend) to prepare a fresh heritage impact assessment (encompassing both phase one and phase two) ("the Second HIA"). The reasons for this decision were explained by Hart and Townsend in the Second HIA as follows (at page 22):

"We note that an earlier report (described as a "phase one HIA") was compiled on behalf of Liesbeek Leisure Properties Trust and submitted to HWC in early 2017. This report was, however, withdrawn before being considered by HWC as a consequence of two related factors: first, when considering the related Two Rivers Urban Park "base line studies" submitted at roughly the same time in early 2017 on behalf of the WC Provincial Government, HWC's Impact Assessment Review Committee (IAComm) was critical of what its members perceived as un-argued assumptions about the potential scale of development in the TRUP-area; second, similar assumptions to those just referred to had been included in O'Donoghue's "phase one HIA". Following the IAComm comments on these baseline studies, it was recognised by the owners that the development of Erf 151832, the study site of this report, provided an

opportunity for a radically different alternative which could transform the Liesbæk River, a concrete-lined canal, into a restored ecological element and a historically numinous and iconic section of the Liesbæk River. As a consequence, a rather differently argued Draft HIA (which rebuts some assumptions of the "phase one HIA") by us, Townsend and Hart, was circulated for public and interested party comment in January-March of 2018. That draft report, while recognising the research carried out for the "phase one HIA", also took account of the previous consultative steps under both NEMA and the NHRA but dealt with a rather different preferred alternative to that presumed in the "phase one HIA".

82. It is difficult to understand why IACOM's views regarding "unargued assumptions about the potential scale of the proposed development" (whatever these may have been) would have necessitated a fresh heritage assessment for the LLPT's proposal. I say so because the description of the proposed development in the First HIA (at that stage unrefined) was perfectly consistent with the proposed development proposal that was ultimately advanced, and also contemplated rehabilitation of the river corridor. The author, Bridget O'Donoghue, described the proposed development in the First HIA as follows (at page 8):

"The proposed development on Erf 151832 Observatory Cape Town is for mixed use buildings and sites that incorporate future retail [shops and vehicular parking areas], commercial [offices], institutional [memorials,

museum), infrastructure (roads, bridges), and the rehabilitation of river banks)."

83. In the circumstances, it seems very likely that the LLPT sought to procure a more favourable heritage assessment in order to avoid the limiting findings and conclusions set out in the First HIA and their consequences for the scale of the proposed development.
84. A draft version of Hart and Townsend's heritage impact assessment ("the Second HIA") was published for public comment in or around January 2018. A presentation based on its contents was made to the OCA during February 2018. I note that the SAAO also submitted an objection to this report (attached marked "LL12"), commenting *inter alia* that:

"The SAAO has very high historical significance as a scientific institute dating to the early 19th century and the first permanent observatory in the southern hemisphere. It is associated with a number of astronomical advances of international significance from the 1830s. It has considerable aesthetic significance with several architecturally significant buildings and a distinctive dome typology set within a wooded landscape at the confluence of the Liesbeek and the Black Rivers. The Main Building and McClean dome structure the central shaft of space.

The report argues (p.50) that the SAAO is of "low contextual significance" to the proposed project, since it is "rendered invisible" by the trees on-site (also pp.58,76). First of all, the statement is patently false, the SAAO is not invisible from the River Club. Secondly, and more importantly for the purposes of the proposal, the logic of the invisibility argument is strange: surely the point should

de 52

be that the River Club site is very clearly visible from the Observatory. And indeed it will be even more so with 4 – 12 story buildings and more lights. The SAAO strongly objects to being brushed aside as an irrelevant factor in considering the impact of redevelopment of The River Club. In fact, Observatory staff regularly use the facilities offered by the River Club for official and recreational purposes and the two sites together form an integral part of the neighbourhood."

85. On 14 March 2018, the Council of HWC resolved to publish a notice provisionally protecting the River Club site in terms of section 19(1) of the NHRA. On 28 March 2018, a letter was addressed to Mr. Jody Aufrichtig (a trustee of the LPT) giving notice of the provisional protection in terms of section 29(4).
86. It appears that the decision to protect the site in terms of section 29(1), though mooted during 2017, was prompted by notification that the LLPT intended to submit a new heritage impact assessment. This impression is created by the following statement in the interim comment:

"In or around February/March 2018, HWC management was made aware of the intent of the River Club to submit a new HIA. Following this, and noting concerns raised by the IACom, and recommendations made previously, a decision was taken at HWC Council in March 2018 to provisionally protect the site in terms of the provisions of section 29 of the NHRA..."

87. The provisional protection notice was published on 20 April 2018. A copy of the notice is attached marked "LL13". I highlight that the effect of the

provisional protection notice was not to freeze development on the site, but rather to impose the additional requirement of a permit in terms of section 29(1) of the NHRA.

88. The LLPT, the City, DEADP and DTPW all submitted appeals against the decision in terms of section 49 of the NHRA. Copies of these appeals will be available at the hearing.
89. An Independent appeals tribunal ("IAT") was constituted in terms of section 49(2) of the NHRA, and a protracted appeals process followed ("the section 29 appeal"), which revolved exclusively around technical/procedural objections to the decision. The determination of the merits of the appeal was postponed on no less than two occasions in order to address and accommodate complaints by the LLTP that it had not been meaningfully consulted – in total these two postponements occasioned a delay of approximately a year. The appeal process eventually concluded on 14 April 2020 when the IAT handed down its decision dismissing the appeals (a copy of this decision will be available at the hearing of this application). By this stage the appeal record had ballooned to over 3000 pages. All parties thereafter proceeded on the understanding that the section 29 provisional protection of the site lapsed on 20 April 2020 (i.e. two years after publication of the provisional protection notice).
90. In the meantime, a final draft of the Second HIA dated July 2019 was submitted to HWC. A copy of relevant extracts of this report is attached hereto marked "LL14". Its content and recommendations are dealt with in due course, suffice to say that the authors were supportive of the proposed development.



91. On 13 September 2019, HWC furnished its interim comment on the Second HIA (annexure "LL11"). It adopted the view that the Second HIA substantially failed to comply with the requirements of section 38(3) and provided a detailed explanation of the perceived deficits. I deal with these comments in detail below. The HWC's overriding concern was that the Second HIA had not accounted for the intangible significance of the site flowing from its historical associations, and that the assessment was consequently flawed. The interim comment concluded with the recommendation that a specialist consultant with expertise in intangible heritage should be engaged to provide a supplementary report
92. Instead, the LLPT caused a supplementary report to be submitted in December 2019 ("the supplementary report"), which was prepared by the same authors as the Second HIA and essentially re-argued its conclusions. A copy of relevant sections of the Supplementary Report are attached marked "LL15". The supplementary report also incorporated a report entitled "The River Club First Nations Report" prepared by Rudewaan Arendse of AFMAS solutions ("the AFMAS Report"). This report purported to be an investigation of the "aspirations" for the site on the part of the First Nations people. A copy of relevant extracts of the AFMAS Report are attached marked "LL16".
93. The HWC furnished its final comment on the Second HIA and the supplementary report on 20 February 2020 ("the final comment"). A copy is attached hereto marked "LL17". The final comment reiterated the points made in the interim comment and advised the LLPT that the Second HIA, with its supplement, did not meet the requirements of section 38(3).



94. On 9 June, we were informed that a final basic assessment report ("BAR") (incorporating the Second HIA and the supplementary report) had been submitted to DEADP. A copy of the cover page and executive summary is attached hereto marked "LL18". By this time, the basic assessment process had progressed through multiple phases of public comment and had attracted 494 comments from the general public (of which the overwhelming majority were negative). The primary issues raised in the comments (by a large margin) were concerns about heritage. This appears from a summary of the process provided at page 133 of the BAR, a copy of which is attached marked "LL19".
95. Just over two months later, on 20 August 2020, the Director issued an environmental authorisation for the proposed development.
96. Numerous appeals were lodged against this decision to the Minister in terms of section 43 of NEMA, including by the HWC, which submitted an appeal on 10 September 2020 ("HWC appeal"). A copy of this appeal is attached marked "LL20". The HWC appeal relied on a single ground, which was that the decision was unlawful for want of compliance with section 38(8) in that the heritage impact assessment did not fulfil the requirements of HWC.
97. Prior to determining the appeals, the Minister sought to engage with HWC to resolve its objections to the heritage impact assessment process. On 25 November 2020, the Minister addressed a letter to the CEO of HWC, in which he advised that he was considering whether to direct the LLPT to submit further information and requested HWC to provide an indication of what additional information it would require in order to be satisfied with the process



before 11 December 2020. A copy of this correspondence is attached marked "LL21".

98. The HWC apparently responded to this letter on 11 December 2020, in which it recorded their view that the defects in the heritage impact assessment process were comprehensively explained in the interim comment and the final comment and appended those comments for ease of reference. I do not have a copy of this letter, but these responses are quoted in subsequent correspondence by the Minister.
99. The Minister responded in a letter dated 26 January 2021. A copy of this letter is attached marked "LL22". The letter communicates his position as follows:

"I have reviewed your comments dated 13 February 2020 and 11 December 2020 as well as the information provided in the supplementary report to the HIA report dated 4 December 2019, as well as the Applicant's Responding Statement dated 12 October 2020. I am of the view that the issues you raised in your response dated 11 December 2020, have been addressed in the Applicant's Supplementary Report to the HIA Report, as well as the Responding Statement."

100. A brief response to this letter was provided by HWC CEO on 3 February 2021. A copy of this letter is attached marked "LL23". It states:

"Your letter dated 26 January 2021 in the above refers.

Heritage Western Cape (HWC) cannot agree with your contentions as stated in paragraph 3 thereof. It is reiterated that HWC is of the strong opinion that the Supplementary report to the HIA report dated 4

December 2019 and the Responding Statement dated 12 October 2020 merely re-state the initial opinions expressed in the original HIA and do not in fact address the issues that HWC raised in its Final Comment.

We can accordingly not also agree with the sentiments expressed in paragraph 5 thereof."

101. All of the appeals were dismissed by the Minister, who recorded his reasons in a record of decision dated 22 February 2021.

Land-use planning decisions

102. In or around March 2018, the LLPT submitted an application for the permissions that it required in terms of the MPBL to implement the proposed development ("the proposed development application"). The application was duly advertised for public comment by the City's development management department in a notification dated 27 August 2018.

102.1. rezoning of the site from Open Space 3: Private Open Space Zone to subdivisional area (comprising general business and open space zones);

102.2. permission to enable retaining structures to be constructed to a height of more than the permitted 2.0 meters above the existing level of the ground.


103. The application necessitated deviation from numerous policies of the City, including the Table Bay District Plan, which is the statutory spatial development framework applicable to the site. A lengthy motivation was submitted for the proposed development application. I will not burden the papers further by attaching this document. A copy will be available at the hearing.

104. An overwhelming number of objections against the proposed development were submitted by the general public. They are collected in a document running to 435 pages, which was attached to the decision of the Municipal Planning Tribunal ('the MPT') as Annexure F to that document.
105. Commenting parties (including the applicant) were invited to make oral presentations to the Municipal Planning Tribunal on 18 September 2020. The applicant participated in this process. The development application was substantially approved by the MPT the same day ('the MPT's decision').
106. The only respects in which the MPT's decision deviated from the proposed development application was that the LLPT's request for subdivision to "general business zoning 7" and for permission to deviate from the City's Floodplain and River corridor Management Policy and Management of Urban Stormwater Impacts Policy was refused. The practical result of this refusal was that plans to infill portions of the river, and certain business uses were excluded.
107. Numerous appeals were lodged against the MPT's decision in terms of section 108 of the MPBL. A Mayoral Planning Appeals Advisory Panel met on 23 February 2020 to hear input from Appellants and the Applicants. On 18 April 2020, the Mayor published a decision dismissing all appeals and confirming the approval of the LLPT's development application, this time without the reservations relating to general business zone 7 and the City's Floodplain and River corridor Management Policy and Management of Urban Stormwater Impacts Policy.



THE STATUS OF THE PROVISIONAL PROTECTION NOTICE

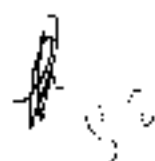
108. At the outset, I am advised and verily believe that an application of the common law would hold that the provisional protection notice issued by the HWC as described above, was suspended for the entire duration of the appeals process and is still in operation.
109. I am advised that there exists a general principle of law that an administrative appeal suspends the operation of the relevant administrative decision absent any indications in the empowering statute that the legislature had a contrary intention. There is no contrary intention evident in the NHRA.
110. By virtue of this principle, the provisional protection notice is still in operation and will continue to be so until 8 April 2022, that is, until the passage of the balance of the two-year period following the termination of the appeals process.
111. I am advised and verily believe that on application of this principle of law in the present circumstances, would mean that the LLPT requires a permit in terms of section 29(10) of the NHRA to undertake construction of the River Club site (which it does not have) and that both the MPT and the Mayor were precluded by law from altering the planning status of the property.
112. I point out that the provisional protection or otherwise of the River Club site is not a mere technical legal question, the Council of HWC has recently (on 22 July 2021) resolved that the site should be declared a national heritage site and has referred the proposal to SAHRA for consideration. I was present at this meeting.



113. I submit that on this basis alone, any construction on the site ought to be interdicted as being prima facie unlawful, and on this basis alone the decisions of the MPT and the Mayor are reviewable.

THE TREATMENT OF HERITAGE CONSIDERATIONS IN THE SECTION 38(8) AND NEMA PROCESSES

114. It will be clear from the above chronology that there has at every juncture been disagreement between HWC and the competent environmental authorities under NEMA (both the Director and the Minister) regarding the impact of the proposed development on heritage resources, and the compliance of the heritage impact assessment with section 38(3) of the NHRA.
115. The available record reveals a complete failure by the environmental decision-makers (both the Director and the Minister) to understand the nature of the enquiry called for in terms of section 38(8) and generally to perform the duties imposed by that section – namely, to ensure that heritage resources are subject to an evaluation that complies with section 38(3) of the NHRA and that the views of the relevant heritage authority (in this case HWC) are properly considered.
116. The upshot of this failure is that a very substantial development proposal, with significant implications for a unique and highly significant site, has been approved in the face of clear and consistent opposition from HWC (not to mention the community) and a large body of specialist input suggesting that a development of this nature is unacceptable.
117. The question whether the heritage impact assessment met the requirements of section 38(3) of the NRHA was not considered by the Director and was woefully



misconceived by the Minister, whose evaluation was illogical, confused and entirely untethered from the provisions of the NHRA. It is clear that there was a wholesale failure by the environmental decision-makers to engage with the issues at stake and to apply their minds to the impact of the proposed development on what are widely accepted to be exceptional heritage resources. It is also clear that both decision-makers acted in excess of their powers by purporting to determine that the Second HIA was acceptable, when the empowering provision reserves this discretion exclusively for HWC.

118. The fact that the LLPT succeeded in procuring an anomalously sympathetic heritage impact assessment means that the failure by the environmental decision-makers to conduct the process in the manner required of them in terms of section 38(8) of the NHRA has had particularly serious and material consequences.
119. I explain below the content and findings of the Second HIA, HWC's views on their adequacy and the reasoning (or lack thereof) in the respective decisions of the Director and the Minister

Deficiencies of the Second HIA

120. As noted above, the second HIA was submitted as a full HIA (encompassing both phase one and phase two of the process).
121. The content and findings of this report must, of course, be considered and understood in light of the function of a heritage impact assessment in terms of section 38(3) of the NHRA. What this section envisages is, firstly, a systematic identification and mapping of affected heritage resources together with an



objective appraisal of their significance, and thereafter an evaluation of the potential heritage impacts (and mitigations) and the relative socio-economic utility of the proposal in light of those impacts. The point of departure in assessing the "significance" of a heritage resource are the factors listed in section 3(3) of the NHRA, which include its importance in the community or pattern of South Africa's history and its strong or special association with a particular community or cultural group for social, cultural or spiritual reasons.

122. The Second HIA does not lend itself to a systematic analysis against the requirements of section 38(3). The reason for this is that it is framed essentially as a motivation for the preferred Riverine Corridor alternative and structured around the subjective opinion of the authors.
123. The authors do not undertake any systematic mapping or identification of heritage resources on site. It is explained, however, that they perceive two potential dimensions of heritage significance: environmental and historical.
124. The environmental significance flows, they say, from the association of the natural features – the river and the floodplain - with the First Nations people and its centrality in their early engagements with, and ultimate displacement by Dutch colonialists. They conclude, however, that this significance is notional and that given the disparate and scruffy state of the property, the best hope for salvaging any heritage value on the property is through rehabilitation of the river corridor. Thus, it is stated at page 80:

"The most obvious significance is the environmental and topographical significance which, while often seen as natural or even scientific, in this case we see these as a set of cultural values derived from the site as a



floodplain, as the lowest reach of the Liesbeek just before and as it meets the Black River...

Given this, the floodplain as a whole does not have a clear consistent experience or sense of place. The sense of place of the floodplain is of low-lying land but comprised of disparately-used, separated units of land without coherence. The sense that we have of this site in this landscape is of scruffiness and un-used-ness. Furthermore, as discussed earlier, the construction of the Berkley Road Extension will have a further transforming effect on the experience of the floodplain...

In other words, while we share a view of the environmental and ecological significance of these environs with many commentators in a general sense, we see this primarily as a potential rather than as a present and current significance. In other words, while the Liesbeek's floodplain is significant as a floodplain, this significance has been changed and derogated from. But this significance can be enhanced through recovery of a riverine corridor "

125. As regards historical significance, the authors are of the view that while there is historical significance attached to the land in theory, it is not feasible to accord it any practical significance because it does not take any tangible form on the site. This reasoning emerges from the following paragraphs (at page 82):

"The great historical significances of this site and its context are not visible at all and have left very little obvious impact on the landscape. Indeed, the greatest historical significance is that this floodplain as a

125

whole is one of the sites of the earliest conflict between the indigenous people and occupying intruders...

The historical significance of these political confrontations over the use and occupation of the land has as much symbolic and associative meaning today as it has ever had... this has, of course, been re-emphasized in the First Peoples groups' submissions; and, while, we recognise these claims and we emphasize our sympathies with respect to these submissions, we do not have the evidence that enables clear identification of characteristics or elements that are or should be feasibly protected."

126. I point out that the approach adopted here is definitively at odds with the scheme and principles of the NHRA. Section 3(2)(b) of the NHRA explicitly recognises "places to which oral traditions are attached or which are associated with living heritage" as heritage resources potentially worthy of formal recognition and expressly provides in section 3(3) for the definition of "significance" in line with criteria such as "importance in the community, or pattern of South Africa's history" and "a strong or special association with a particular community or cultural group for social, cultural or spiritual reasons". "Living heritage" is defined *inter alia* to mean "the intangible aspects of inherited culture, and may include... popular memory". In this regard I refer to expert opinions of Deidre Prins Solani and Bridget O'Donoghue filed with this founding affidavit, which attest to the importance of a proper identification and evaluation of living heritage and concur with HWC's view that the Second HIA (which

included a later supplementary report) does not comply with the mandatory requirements of section 3B(3) of the NHRA.

127. This notwithstanding, the authors were intractable in their view that the only conservation-worthy heritage on the site is that flowing from the notional ecological potential of the river corridor. The strongly held views of Goringhaicona commentators were dismissed as follows (at page 64):

"The Goringhaicona have made a number of "recommendations" which we include here as an articulation of their view of the site as heritage:

-That the TRUP precinct be acknowledged as a place of national and international restitution and recognition of the Khoi Khoi

That the precinct encompasses the commemoration of the 1510 battle against the Portuguese Vicaroy D'Almeida.

That the precinct recognises the intangible and tangible memory of "first and final frontier" contact.

Archaeological excavation be looked into.

More study and research be committed to the area.

That the area be recognised as a National and International Heritage site.

That area be a place that illustrates the history of the colonial decimation of the indigene and the trajectory of European settler development in South Africa

That it be a site dedicated to the untold history of the genocide of Cape San

That it be a site dedicated to the acknowledgement and commemoration to the cultural ethnocide of Khoi Khoi and San indigenous groups. This would include processes of the language restoration.

A site that would be a symbolic place of reference and utilisation for the purposes of a First Indigenous People's Conciliation Commission.

A site that celebrates place that connects the world to the DNA of the Khoi as of the oldest people on earth, through the re-engagement of a revived sense of place.

A site that recognises the Goringhaiqua, Cuchoqua, Gorechoqua, and Goringhaicona as the precincts pre-colonial Khoi Khoi historical custodians.

A site that recognises the evolution of and the intermingling of diversities of nationalities and culture as experienced pre and post-Apartheid South Africa. These identities are part of a more recent memory and history of the site.

A site committed to a precinct wide recognition of scientific breakthrough and innovation of both the indigene and western technologies which has occurred within its borders.

A site that will recognise the exquisite plant, the sensitivity of the floodplain, the restoration of the Liesbeeck River and Black River, and animal life.

A site that acknowledges the linguistic ethnocide of the how plants in the region have been named and framed outside of their cultural and geo-specific areas

A site demarcated to restoring the significance of the precolonial peopling of the area that nurtured a coexistence of animal, plant, land, water and the cosmos in ways respectful of each elements dignity and right to live and have a place under the sun

A site that exemplifies the symbiotic and intrinsic qualities of the Khoi and San culture and people."

In this regard, we point out that the low spur of raised land on which the Royal Observatory was sited and on which the Valkenberg hospital and

Porter's institution followed later in the 19th century is the site of the fences and fortifications which were meant to repel or limit the access of the indigenous peoples to the then newly settled land; and the transformed floodplain and river must, as historical heritage site, be read with this even more developed part of the topography. This wider site is the historically significant place, a 'frontier zone' (if for a short period); but its meaning and persuasiveness as heritage site has been eroded by the 19th century institutional use and development of the spur, by the growing transformation of the floodplain for sporting uses and facilities and for railway-related functions during the second half of the 20th century, by the gradual creep of the suburb and business quarter below the railway line throughout the 20th century, and by the late 20th century growth of the transformation network of arterials and motorways.

Given this, we argue that the development of the River Club site and its development and transformation is, first, an opportunity for the articulation or making public, even celebration, of the significance of the place and of its historical associations and, second, an opportunity to restore ecological life to the Liesbeek River. These articulations, celebrations, restorations must, however, find form and life in the facts of the modern, constantly changing, constantly growing city-scape. We note that many commentators disagree with this view claiming that their views are "ignored": this is incorrect; we simply have different opinions and see rather the opportunity for radical improvements to the environs which are consistent with wider goals and needs. We note also, if with sadness, the antagonism of the First People groups' representatives

A handwritten signature in dark ink is located in the bottom right corner of the page. Below the signature, the number '53' is written in a similar hand.

towards us as authors of the HIA; and we hope that not all of the members of these groups see us in the same light. We do not ignore the antagonism (which we do not understand); but we hope to withstand it with forbearance and quiet dignity.

128. This approach adopted by the authors, in addition to being inconsistent with the NHRA, is also quite at odds with the normal, best practice approach for evaluating intangible significance. In this regard, I refer once more to the expert affidavits of Bridget O'Donoghue and Deirdre Prins-Solani filed herewith.
129. Having determined that the only heritage feature of any practical significance on the site is the river corridor, the authors find that the impacts associated with the proposed development are acceptable, and there is no need to impose any restrictions on the built form of the proposed development.
130. They state (at page 109):

"We do not regard the built-form of the proposed development in this case to adversely affect the heritage-significances present and we do not suggest heritage-related built-form restrictions (other than the distances and heights described), we do regard the urban design indicators devised by Urban Concepts and discussed above to be pertinent."

131. The urban design indicators referred to here are those put forward in a high-level urban design framework incorporated into the First HIA. They do not prescribe any detail with respect to the style and dimensions of the proposed development.



132. The upshot of this position is that the buildings comprising the proposed development are not subject to any concrete design restrictions at all, save that *"heights of the built-form on the southern portion of the site fronting or lining the restored riverine corridor should be limited, for the most part, to three-to-four storeys above the new ground level in order to acknowledge and 'respect' the significance and scale of the trees and the SAAO campus across the restored riverine corridor"*.

HWC's "interim comment" on the Second HIA

133. The HWC, having considered the final draft of the Second HIA, decided that it was fatally defective and an inadequate basis for decision-making. These views were conveyed in the HWC's interim comment on 13 September 2019 (already attached as 'LL11').
134. The comment concludes with the "strong" recommendation that a specialist consultant with the requisite expertise in dealing with the intangible aspects pertaining to the wider TRUP area is engaged and that a supplementary report from this consultant is incorporated into the Second HIA.
135. I summarise below HWC's comments in relation to each of the requirements in section 38(3) of the NHRA.

Inadequate mapping and identification of heritage resources

- 135.1. The mapping of heritage resources was considered to be "illogical and flawed". The two diagrams included for this purpose reflect, in their view, the conclusions of the authors rather than serving as the point of departure for the assessment.

The mapping of heritage resources – such as was undertaken – seems to have been formulated to justify a preconceived development concept:

“The second mapping diagram merely serves to post rationalize a preconceived development concept prepared by Urban Concepts in 2016, as per page 90 of the O’Donoghue Phase 1 HIA tabled at the IACom of March 2017.

An example of this post rationalization is the attempt to grade the current river corridor between the proposed two developments “envelopes” as IIB, as indeed is the attempt to only identify some 40 – 50m of the river corridors, and confluence as heritage resources. This makes no sense and is rejected as flawed.

Notwithstanding that HWC has consistently advised against this, the HIA has not placed the River Club site within the context of the wider TRUP, and has downplayed the open low-lying green riverline character of the site which contributes to the intangible heritage experience.

Likewise, it is noted that the River Club building itself is down-played as a heritage resource, previous reports having noted the structure as being of IIB, or at least contributory significance.”

The assessment of significance is inadequate

135.2. The assessment of significance in the HIA was inadequate. The authors have not taken account of the evaluation criteria set out in section 3(3) of the NHRA, in particular whether the River Club site “(i) is considered to have cultural significance to the community; (ii) could yield information about heritage; (iii) is

135.2

important in exhibiting particular aesthetic characteristics valued by a cultural group.” Thus, it is stated:

“The HIA has not taken the above [the section 3(3) criteria] into account in the assessment of significance, and as noted, has merely reduced the identification of heritage resources, and subsequently significance to tangibly based ecological values rather than cultural heritage values.

It ignores the significance of the site to a Community that has a recognised and direct, deep and sacred linkage to the site through lineage and collective memory, and furthermore whilst acknowledging the historic importance of the site in South Africa’s pre-colonial and colonial history, it makes no attempt to assess the significance of this as a site of conflict, that has direct relation to the trajectory of South Africa’s Colonial history through the 20th century.”

Assessment of the impact of the proposed development on heritage resources

135.3. Because the mapping of heritage resources and identification of significance has not been properly undertaken, the assessment of Impacts is flawed and unreliable;

“...given the heritage resources themselves have not been fully identified or mapped, and that the assessment, or grading, of the heritage resources is flawed (given they are tailor-made for mitigation rather than as informants), then it follows that any assessment of the development on identified heritage resources must be flawed.

The report wholly downplays the irreversible impacts of transforming a green lung at the heart of the TRUP into a mega project. These irreversible impacts are hardly interrogated at all.

Whilst it is conceivable that the site may have some potential for some low-rise development and possible activation of edges, the HIA neither motivates for, or questions, the 150 000 m² of floor space proposed (in comparison, Canal Walk or Century City is 146 000 m²) and whether it is an appropriate site for a mega project.”

Evaluation of the impact of the proposed development on heritage resources relative to the sustainable social and economic benefits to be derived from the proposed development

135.4. The HWC comments in this regard are as follows

“Whilst it is acknowledged that there may well be a potential economic benefit to developing the site, it is noted that there has been no attempt to develop an argument or acknowledge the impact of the development balanced against a site which has been recognised previously by HWC as being of provincial, if not national significance.

It is further noted that other than an acknowledgment of process followed thus far, the HIA and supplementary reports have not acknowledged or interrogated the significance that HWC and previous reports have attributed to the wider valley context.

As a result, and in attempting to define or limit significance to the riverine corridors only, meaningful discussion of the impact of the development on the

F. G. J.

significance of the wider TRUP cultural landscape is avoided altogether. This is in direct conflict with the advice HWC has previously given that the River Club cannot be looked at in isolation of the wider system."

Results of consultation with communities affected by the proposed development and other interested parties regarding the impact of the proposed development on heritage resources

135.5. While the formal requirements of the Promotion of Administrative Justice Act, 3 of 2000 were complied with, the consultation was not meaningful

"It is clear to the HWC that there has been a lack or avoidance of meaningful consultation with the First Nations Groups. HWC is further disappointed that in the instances where comment has been received, this comment has seemingly been dismissed as a difference of opinion, rather than a meaningful interrogation of concerns raised."

If heritage resources will be adversely affected by the proposed development, the consideration of alternatives

135.6 HWC's comments in this regard stated the following,

"The HIA fails in this respect as there is no meaningful consideration of alternatives whatsoever.

The HIA only assesses the preferred "Riverine Corridor Alternative" and the "Island Concept Alternative (both 150 000 m² of bulk) and simply dismisses the lower bulk alternatives, such as "the Mixed-Use Affordable Alternative"

(110 000 m²) and the "the Reduced Floor Space Alternative" (102 000 m²), as these have been considered economically unviable by the town planners.

A tread-lightly, green-dominated, recreational or educational alternative is not even considered, and nor indeed is the no-go option or the adaptive re-use of the site and buildings."

Plans for mitigation of any adverse effects during and after the completion of the proposed development

135.7. HWC stated that:

"The reduction of the heritage significance to a few post-development, post-rationalised, and ecologically based values . . . is not something that can be mitigated, as it wholly ignores the broader issues pertaining to a highly significant cultural landscape."

The supplementary HIA

136. A supplement to the Second HIA ("the Supplementary Report") was prepared by the authors of the Second HIA in response to HWC's interim comment and submitted to HWC in December 2019.

137. The Supplementary Report does not do much more than defend and re-argue the original opinions and conclusions of the authors.

138. The report commences with the author's interpretation of HWC's position:

"While the Interim Comment contains a great number of statements and arguments (with one apparently central and reiterated argument)

rationalising the comment as "interim", it seems to us that the matter is rather simpler. Indeed, it seems to us that there are just two issues which could reasonably be cited as reasons for the HIA to be deemed to be "inadequate" or "incomplete". These are: first, an incomplete engagement with and representation of First Nations' interests and views; and, second, the contradictions and inconsistencies of the land-use planning development frameworks and policies for the wider environs."

139. It thereafter goes on to address what the authors perceive as the issues arising from the interim comment, namely, engagements with first nations groupings, land-use planning in the Two Rivers area, identification and mapping of heritage resources, assessment of significance and alternatives and mitigation of impacts

Engagements with First Nations groupings

140. The Supplementary Report makes reference to two reports based on a consultation process conducted by one Rudewaan Arendse of AFMAS solutions. The first is a report entitled "TRUP First Nations Report" dated 25 September 2019, commissioned, they say, by the City and the Western Cape Provincial Government pursuant to a joint project to prepare a "Local Spatial Development Framework" for the TRUP Area. The second is a similar report (seemingly derived, at least in part, from the same consultation process), also prepared by Arendse entitled "River Club First Nations Report" ("the AFMAS Report").

141. The Supplementary Report incorporates and relies upon the AFMAS Report. Their purpose in doing so appears to be remedying identified deficits in the original assessment of significance in the Second HIA based on the failure to consider the significance of the site to the community and its "aesthetic characteristics valued by a cultural group", as well as to address HWC's comments related to consultation.
142. The AFMAS Report purports to be an inquiry directed at "[understanding] the significance of the River Club site to the First Nations by identifying Indigenous narrative of the broader TRUP cultural landscape. [and identifying] First Nations aspirations with regard to Indigenous cultural heritage and the River Club site." This inquiry is undertaken pursuant to locating the "Indigenous narrative" within "the broader TRUP cultural landscape through multi-layered and multi-dimensional contextualizing - spatial, temporal, cognitive (memory and cognitive map of historical Indigenous landscape), epistemological (based on Indigenous knowledge structure), ontological (Indigenous ways of being) and cosmology (world view)".
143. The report gives the strong impression of being not much more than an exercise in obfuscating and diluting the strongly held views of sections of the Goringhaicona people (i.e. one of the several groups who were historically displaced from the land incorporating the River Club site) regarding the significance of the area.
144. Notably, the Goringhaicona Khoi Khoi Indigenous Council refused to participate in the process. This is noted in the report as follows:



"The First Nations Collective through Chief Zenzile Khoisan explained to Mr. Tauriq Jenkins, Supreme High Commissioner of the Goringhaicona Khoi Khoi Indigenous Traditional Council and spokesperson for Paramount Chief Delrique Dextery Aran (Impose Arendse), the position taken by the Collective, and invited the Goringhaicona to participate and join the Collective. Cautioning the Goringhaicona that refusing to formally engage, would constitute a voluntary extrication from the consultation process. Akin to a self-imposed exile."

145. Obviously, the boycotting of the process by the Goringhaicona Khoi Khoi Indigenous Council compromises the recommendations in the report (given that Goringhaicona history is at issue) and poses something of a difficulty for the author - so much so that he found it necessary to enter into an unedifying analysis of comments posted on Facebook by people associated with this group (pages 5 to 7 of the report).
146. The AFMAS Report concludes with the following description of how the significance of the site to the First Nations people will be dealt with in the implementation of the proposed development (since incorporated into the site development plan):

"The First Nations Collective concluded a social compact with the developer in terms of applying the Indigenous Imperative at the River Club site.

This includes:

- *Establishing an Indigenous Garden for medicinal plants used by the First Nations.*

- *Establishing a Cultural, Heritage and Media centre at the location of the Heritage information hub.*
- *Establishing a Heritage-Eco trail that goes around the site and amphitheatre for use and cultural performances by both the First Nations and the general public.*
- *Commemorating the history of the First Nations in the area, by:*
 - *Establishing a Gateway Feature inspired by symbols central to the First Nations narrative at the road crossing the eco-corridor; and*
 - *Incorporating symbols central to the First Nations narrative in detailed design of buildings (e.g. pillars / supports, facades, building names, etc.); and*
 - *Naming internal roads inspired by people or symbols central to the First Nations narrative.*

147. The authors of the Supplementary Report conclude that:

"While it is apparent that there are some First Nations groupings who do not share this view, this First Nations Collective is authoritative; and Arendse's report is persuasive in its method, its argument and in its conclusions; and we hope and trust that Arendse's report and the incorporation of its conclusions/recommendations here in this Supplement to the HIA and in the revised development proposal will satisfy HWC at least insofar as there has been "meaningful engagement" with First Nations groupings. Indeed, we think that the interactions have been more than "meaningful"."



Land-use planning in the Two Rivers area

148. In this section the authors provide an exposition of the City's various planning instruments dealing with the TRUP area, some of which are supportive of the proposed development and others of which are not.
149. Although not entirely clear from the report, it would seem that the purpose of this section is to meet HWC's complaint that the proposal should not be assessed in isolation from the broader TRUP area - referenced and paraphrased in the Supplementary Report as "the development of the River Club site should necessarily not be planned or assessed in isolation from the wider TR-area".
150. The authors note the following:
- 150.1. the Two Rivers Urban Park Contextual Framework and Phase 1 Environmental Management Plan compiled by the City's Environmental Management Branch in 2003, which is not supportive of the proposed development, is not legally binding. It is stated that 2012 Municipal Spatial Development Framework makes no reference to the aforesaid contextual framework and instead designates most of the River Club Site as "urban development". The revised and updated 2018 Municipal Spatial Development Framework designates the site as within the "urban core".
- 150.2. The 2012 Table Bay District Plan, prepared as part of more detailed planning associated with the 2012 MSDF, designates the site as "open space". This designation was based, the authors say, on

information known at the time before the more detailed hydrological studies associated with the River Club had been undertaken and it was assumed that the site had limited development potential due to flood risk.

- 150.3. Subsequent to the completion of the Second HIA, the draft Two Rivers Local Spatial Development Framework was released for public comment. This instrument, which will have statutory force once adopted in terms of section 12 of the MPB, changes the vision for the area. The authors site quotes from the draft version dismissing earlier visions for the TRUP as "utopian" and instead describing it as "a significant area of underutilized, state owned and private land, strategically placed within the Urban Inner Core of the City".
151. It bears pointing out that the various planning frameworks adopted by the City are, at best, a factor that should be weighed (along with others) in the investigation required by section 38(3). The requirements of the NHRA and the controls imposed by that Act operate alongside the planning function of local authorities and require a distinct investigation based on the heritage impacts of a development proposal and their justifiability "relative to the sustainable social and economic benefits to be derived from the development" (section 38(3)(d)).
152. The authors conclude:

"Given this, it seems to us that the proposal analyzed in the HIA is generally in accordance with these recent land-use planning developments, that is, the preparation of and public circulation of these three land-use planning and heritage studies; and we trust that HWC will now accept that the River Club site

and its development is not being planned or assessed "in isolation from" the wider TR area. Indeed, it appears to us that the River Club proposal and these various land-use planning and heritage planning endeavours are consistent with and 'in synch' with each other."

Identification and mapping of heritage resources

153. The authors incorporate three diagrams prepared as part of other studies in order to make good the deficit raised by HWC related to the identification and mapping of heritage resources. Each one is accompanied by a comment explaining why the particular diagram falls short.
154. I note in passing that this exercise does nothing to meaningfully address HWC's assertion that the mapping of heritage resources should serve as a foundation for the assessment and inform the evaluation of significances.

Assessment of significances

155. The sole contribution of this section is defending the assessment of "significance" advanced in the Second HIA.
156. It includes an analysis of the various ways in which the proposed development proposal has been revised over the course of the process in order to accommodate commentary by the First Nations and government authorities.

Alternatives and mitigation of impacts

157. In this section the authors set out their views on why HWC was incorrect in their assessment that there was no meaningful consideration of alternatives. The authors explain that the high capital costs associated with the proposed

development mean that lower density alternatives are not feasible and therefore not worth assessing. Acceptable mitigations can only be implemented if the Riverine Corridor is selected.

158. It concludes with the complaint that *"in the sixteen years that HWC has been operating, it has seldom required that alternatives be assessed and has not, in our experience, ever argued that an HIA was inadequate for the want of an "adequate" assessment of alternatives."*

HWC's final comment on the Second HIA and the Supplementary Report

159. The HWC furnished a "final comment" on the Second HIA on 20 February 2020 in which it reiterated its views set out in the interim comment and made the following additional points:

- 159.1. The AFMAS Report appeared to HWC be unreliable for the following reasons:

"the scope of the engagement resulted in a number of groups electing to not participate fully; the research process was contested by participants in the engagements; there were doubts about the impartiality of the research questions; the methodology for the engagement does not appear to follow accepted oral history interviewing protocols; the confusion between this report and the DT&PW-commissioned report presumably a reference to the contemporaneous report prepared by AFMAS solutions in connection with First Nations issues in the broader TRUP brought the ethics of the engagement into question" (at page 9 of the comment)

- 159.2. The fact that the spatial planning tools cited in the Supplementary Report were in support of development in principle did not override heritage considerations.

h 52

The fact of the proposed development's consistency with the 2018 Municipal Spatial Development Framework could not be equated with an assessment of its impact. In any event, the Table Bay Spatial District Plan was still considered the most relevant planning framework and, from a heritage perspective, the most relevant in its concerns, specifically the following: *"preserve the qualities of the various areas of the City, which exhibits a range of diverse character zones; protect the historical built fabric, scale and texture of the historical areas of the City; maintain the interface between the City and Table Mountain, retaining view corridors, ensure the retention and protection of historical areas, sites and features; ensure that construction within the strict and specifically within heritage and conservation areas do not negatively impact on the historical character of the area or fabric."* (at page 8 of the comment)

Decision of the Director

160. The environmental authorisation for the proposed development was issued by the Director on 20 August 2020. A copy of the record of decision and reasons is attached hereto marked "LL24"

161. I point out that the environmental authorisation imposes no restriction whatsoever on the design and layout of the proposed development, save for the following condition in paragraph 16.1:

"The recommendations provided in the Heritage Impact Assessment (compiled by Mr. T. Hart and Mr. S. Townsend and dated 02 July 2019) and the Supplementary Report (compiled by Mr. T. Hart and Mr. S. Townsend and dated 04 December 2019), as included in the EMPr, must be implemented."

162. However, the recommendations provided in the Second HIA are so permissive and abstract as to be entirely devoid of content. No further content is added by the environmental management programme which simply incorporates the recommendations of the Second HIA. A copy of the relevant sections of the environmental management programme is attached hereto marked "LL25".
163. As regards the reasons for the decision, the only meaningful substantiation in so far as heritage impacts are concerned is set out in the following two paragraphs:

"According to the heritage specialists, although HWC's assessment of "National or Provincial" significance of the Two Rivers Urban Park is noted (albeit without any Section 29 investigation), it should be borne in mind that this is a planning boundary, and with the exception of the river courses (which themselves are much changed), much of the history that derives the cultural significance of the site extends over a far broader area. The heritage specialists have however indicated that they recognise that the River Club site has high historical significance, but also that this significance is not visible or apparent. The recovery of the Liesbeek riverine corridor could restore visible and apparent meaning and as a consequence of development, there is a reduction of a "sense of openness".

A meeting was held on 4 March 2020 between officials of HWC, officials of this Department, the applicant, the Environmental Assessment Practitioner and the Heritage specialists to discuss HWC's final comment dated 13 February 2020 and this Directorate's comments on the draft BAR dated 17 February 2020 (requesting that the revision of the HIA and the external review of the VIA, in



light of HWC's final comments dated 13 February 2020). It was agreed that further engagement with HWC, in the form of a meeting with the relevant HWC officials and the HWC IACOM committee and a written response to HWC's correspondence (dated 13 February 2020) was required. On 10 March 2020, the heritage practitioner and the EAP met with HWC officials and discussed the way forward. However, the scheduled HWC IACOM meeting never materialised. A written response to HWC's correspondence (dated 13 February 2020) was provided by the heritage specialists. The specialists' response (dated 31 March 2020) indicates that the proposed site creates a real and immediate opportunity, which could trigger meaningful planning of a much larger heritage site. Although the visual openness of the proposed site is highly valued, the existing development on the proposed site does not signal any heritage or cultural significance. An opportunity to commemorate and incorporate the views of the First Nations Collective exists in a space that currently displays no heritage significance. Given that significant input, research and engagement with the First Nations has been undertaken and that the views of the First Nations have been incorporated into the proposed development, the potential heritage impacts have been adequately assessed and concerns raised have been adequately responded to."

164. It is noted that the Director refers to a request from the Development Management Directorate for an external review of the Second HIA and the visual impact assessment. I do not believe that any such review was undertaken.



165. The Director does not consider or address the substance of HWC's objections, nor does he engage in any independent inquiry as to whether the requirements of section 38(3) of the NHRA were met.

Appeal decision of the Minister

166. The appeal decision runs to some 128 pages; 49 of these pages deal with appeal grounds grouped under the heading *"Insufficient consideration was given to heritage informants and the relevant heritage resource authority's comments and there was non-compliance with section 38(8) and section 38(3) of the NHRA"*. A copy of this section of the appeal is attached marked "LL26".
167. With due respect, these 49 pages convey almost nothing in the way of intelligible analysis. Much of this section is a random assemblage of quotes from the Second HIA and the Supplementary Report, which bear no relation to each other and no relation to the headings under which they are grouped, and which grow more incoherent as they go on. I do not think that it is overstating the matter to say that this section does not make any sense. Very little would be achieved by attempting to analyse it.
168. Nonetheless, by way of illustration, I will cite some examples of the poor or absent reasoning.
169. First, in attempting to address (or perhaps cure) HWC's objection that the Second HIA did not properly assess the significance of the affected heritage resources, the Minister sets out his own evaluation of "significance" (constructed from the observations in the Second HIA), except, he does not evaluate the significance of the heritage resources themselves, but rather



presents a convoluted assessment of the "significance" of each heritage related impact according to the methodology prescribed by the EIA Regulations.

170. In other words, the Minister conflates the requirement in section 38(3)(b) to assess the significance of the heritage resources affected by a development with the requirement in item 2(d)(i) of Appendix 1 to the EIA Regulations to assess "the nature, significance, consequence, extent, duration, and probability of the impacts occurring". This is clear from the following passage:

"5.28 As detailed above, section 3(3) of the NHRA outlines the criteria for the determination of the significance of a heritage resource. However, the 2014 EIA Regulations state that the potential impacts must be assessed and rated based on the methodology and rating criteria including the nature, significance consequences, extent, duration and probability of potential environmental impacts and risks associated with the proposed development and alternatives. Regulation 19(8) of the 2014 EIA Regulations states that: "A specialist report must contain all information set out in Appendix 6 to these Regulations or comply with a protocol or minimum information requirement relevant to the application as identified and gazetted by the Minister in a government notice "

171. The result is an entirely irrational and nonsensical analysis. I am advised that this error, in and of itself, is a fatal defect in the Minister's decision.
172. Second, the Minister uncritically adopts (or rather recites) the observation made by the authors in the Second HIA that the floodplain on the River Club site would in any event be compromised by the intended development of the Berkeley Road extension (at the north of the site), which was taken to be a foregone conclusion (at paragraph 5.53.6). This is entirely incorrect because this

construction would itself be subject to the requirement of heritage approval in terms of section 38 of the NHRA, being a road exceeding 300m in length. It cannot therefore be taken as a given. The Minister should have known this.

173. Third, the following quote from the Second HIA is inserted miscellaneously as one of the paragraphs under the heading "conclusions regarding significances":
- "Second, given this, they argue that what are often described as "heritage related design indicators" should be carefully devised to assist and even ensure that designers understand the significances (in kind and degree) and how those significances should be protected or enhanced. Such design advice must serve to outline criteria for decision-making by the responsible authorities. We also hope that this step-by-step methodology has assisted in the process of designing the "preferred alternative" and will serve the same purpose in the final steps of scrutiny and decision-making by the authorities."*
174. Quite apart from the fact that "heritage related design indicators" have nothing to do with the question of the significance of the heritage resources in issue, the Second HIA (as has been noted elsewhere) does not ultimately impose any heritage related design indicators, which makes any reliance on this passage very strange. One gets the impression that the author of this section of the appeal decision simply extracted paragraphs from the Second HIA which include the word "significance" and assembled them together.
175. Fourth, the section under the heading "Conclusions in respect of design indicators – criteria for decision-making" includes approximately two pages of completely unrelated and highly theoretical material extracted (i.e. copied and pasted) from the section of the Supplementary Report dealing with

"significances", in which the authors defend their opinion on the significance of the heritage resources on the River Club site. Again, it would seem that these passages were identified as relevant based on the fact that the words "Heritage-Significance Related Design Indicators – Criteria for Decision-Making" were used in the first paragraph.

176. The irresistible conclusion is that the Minister did not apply his mind to the views of the HWC on the proposed development.

THE LAND USE PLANNING DECISIONS

177. The MPT's decision is recorded in a report dated 4 September 2020 ("the MPT report"). A copy of the report (omitting the lengthy public participation section) is attached marked "LL27".
178. The MPT decision is poorly reasoned and suffers from multiple defects which – like the decisions under NEMA – reveal a failure by the MPT to appreciate and discharge its duties in terms of the NHRA.
179. The findings of the MPT were, in essence, confirmed by the mayor in his decision on appeal ("the Mayor's decision"). A copy of the Mayor's decision is attached marked "LL28".



Failure to appreciate the duties of the City in light of the HWC process to consider including the River Club site in the Western Cape Heritage Resources Register

180. In September 2020, when the MPT decided the LLPT's development application, HWC was actively investigating the possibility of listing the River Club site in the Western Cape Heritage Resources Register. This process is still underway. On 22 July 2021, the Council of HWC resolved that the site met the requirements for declaration as a national heritage site and referred the matter to SAHRA for decision. I was present at this meeting.
181. Inclusion of the River Club site in the Western Cape Heritage Resources register will trigger an obligation on the City in terms of section 30(11) to make provision for the protection of the site in its planning scheme. This will entail the imposition of a Heritage Protection Overlay Zone, which would almost certainly preclude the implementation of the proposed development.
182. While I appreciate that the MPT could not pre-emptively apply the restrictions imposed by the Heritage Protection Overlay Zone to the LLPT's development application (this would have been unlawful), the fact that the formal protection of the site was an imminent possibility should at least have been considered as a factor in the evaluation of the desirability of the proposal in terms of section 99(3) of the MPB, which expressly lists "impacts on heritage" as a relevant criterion. It should, furthermore, have been a particularly weighty factor, having regard to the duties imposed on the MPT by section 5(1)(a) of the NHRA to exercise its discretion with due regard to the lasting and irreplaceable value of heritage resources.



183. I note in this regard that the applicant attempted to submit various relevant documents to the MPT in advance of its oral hearing on 18 September, including the interim and final comments of the HWC on the Second HIA and Supplementary Report, however it was not permitted to do so. The reason for this appears from an email exchanged attached marked "LL29" in which an unidentified administrator advised *"You are not permitted to raise new information at the Municipal Planning Tribunal (MPT), as the applicant would not have had the opportunity to respond to same, nor would the panel of the MPT been given an opportunity to examine said information ahead of the scheduled meeting"*. Consequently, the only reports that the MPT considered in connection with heritage impacts were those submitted to it by the LLPT.
184. Instead, the MPT determined the proposed development application in complete ignorance of the important parallel process being conducted by HWC. This is evident from the following comment at page 194 of the MPT Report that *"Additionally, the property was protected in terms of the National Heritage Resources Act and therefore would have been considered to be amongst the critical natural assets in terms of the MSDF. That protection status however lapsed in April 2020."*
185. Thus, instead of applying their minds to the duties upon the City in terms of the NHRA to proceed conservatively in dealing with the planning status of the River Club site, the members of the MPT simply adopted the observations of the Second HIA without undertaking any evaluation of the anticipated heritage impacts of the proposed development. They are recited at pages 221 to 223 of the MPT Report.



186. On appeal, the Mayor was made aware of HWC's investigation of the formal listing of the River Club site as a heritage resource.
187. This appears from paragraph 190 (at page 66 of the decision), which states "*the GTKC contends that there is a strong likelihood that the subject property will be declared a national or world heritage site and the OCA contends that a process is underway to have the TRUP declared a Provincial Heritage Resource and a National Heritage Site.*"
188. Notwithstanding this, the Mayor, like the MPT, failed to understand or engage with the City's duties in terms of the NHRA and proceeded to dismiss the issue in three short paragraphs:

"190.1 There is, however, no requirement to stall the City's municipal planning decision-making process until the finalisation of processes under other legislation administered by a different sphere of government.

190.2 Our courts have held that it is proper for one sphere of government to take a decision whose implementation may not take place until consent is granted by another sphere, within whose are of jurisdiction the decision is to be executed.

190.3 It seems to me that, unlike what is currently featured on the subject property, the proposed development will not only protect but celebrate the site's First Nations heritage."



Irrational deviation from applicable policies

189. One would expect a development proposal such as the present one, which has been approved in the face of overwhelming public opposition, to be supported by particularly compelling policy objectives. In fact, the approval of the proposed development has necessitated deviation from multiple policies and planning instruments which deal pertinently with the site and/or issues directly connected to the proposed development.
190. What emerges clearly from the MPT's evaluation of the application (commencing on page 248) is that the assessment of the proposed development proposal in terms of sections 99(2) and 99(3) of the MPB was dominated by economic/developmental considerations at a very general and abstract level.
191. Much is made of the fact that the site is designated as "urban inner core" and the "metro-south east integration zone" in the City's 2018 Municipal Spatial Development Framework ("MSDF"), and that it will promote inclusive economic growth in line with the various overarching planning documents by virtue of its (negligible) low cost housing component and the temporary construction jobs that will be created.
192. However, the proposed development proposal conflicts with several important and directly relevant policy and planning instruments. Most notably, it is in direct conflict with the Table Bay District Plan ("the TBDP"). The TBDP is the most directly pertinent planning instrument in terms of the MPB, dealing as it does with fine-scale planning issues in the district. Notwithstanding this, the



decision to permit the deviation from the TBDP was only briefly touched upon in the MPT Report in the most superficial terms (at page 194):

"The property is located within the metropolitan node in Sub-district 3 of the Table Bay District Plan. The proposal seeks to deviate from the Table Bay District Plan (TBDP) which identifies the Two Rivers Urban Park as a multipurpose metropolitan urban park. It is designated as buffer 1 and core 2. It is regarded to be a precautionary area given the location of the site within a floodplain. A precautionary area are those areas that may pose a risk or have limited capacity for development. [Buffer 1 areas are generally farmlands and natural vegetated sites, amongst others. It could accommodate utility services. These properties usually do not form part of core areas. Core 2 areas are generally ecological areas and areas that offer ecological support. In this instance it accommodates water bodies and rivers.] The TBDP argues that such facilities as TRUP should be rehabilitated and upgraded. It should be used for passive and active recreation based on the Open Space 3 197 MPT Report Template – 8 June 2017 Page 195 of 277 zoning. According to the TBDP a limited range of development could be encouraged such as residential, some institutional uses and appurtenant limited commercial development. Public access should be permitted along the edges of the site where appropriate. As far as possible mountain to sea linkages must be retained as well as maintaining access to the waters edge. As is evidenced from the preceding comment, the district plan does not accord with the MSDF. The district plan was approved in 2012 while the MSDF was amended and approved in 2018. For this reason, district plans are presently being reviewed to ensure consistency with the MSDF. The review of district plans are still the initial stages of review.



The MSDF requires that lower order policies are consistent with the findings thereof. This principle is reiterated in the district plan. All lower level policies are informed by the higher order policies. The MSDF states that where lower order spatial plans conflict with the MSDF, the findings of the MSDF must take precedence."

193. The extent and significance of the MPT's departure from relevant policy is illustrated by the fact that the City itself submitted an appeal against the environmental authorisation granted for the proposed development (presumably through its environmental management branch), based on *inter alia* the following grounds:

193.1. The decision does not align with relevant National and Provincial Legislation, Provincial and City Policy and Spatial Plans and the (Environmental Management Framework (EMF) approved by the Western Cape Government (WCG) MEC for Environmental Affairs & Development Planning (EA&DP)

193.2. Insufficient consideration was given to the City's comments regarding context, role of the site and desirability of the proposed development.

193.3. Insufficient consideration was given to heritage informants and the relevant heritage resources authority's comments and there was non-compliance with S38(8) and S38(3) of the National Heritage Resources Act, 25 of 1999 (NHRA).

193.4. The stormwater impacts, including flooding, are not sufficiently mitigated against, the decision-maker relied on outdated information

A handwritten signature and the initials 'S. J.' are present in the bottom right corner of the page.

and the City's Floodplain and River Corridor Management Policy appears to not have been considered.

193.5. The decision does not give due consideration to climate change impacts and resilience (and is contrary to the City's Climate Change Policy).

193.6. The decision does not appropriately describe, or mitigate, the loss of open space on site.

193.7. The decision does not appropriately describe or mitigate the high negative biodiversity impact or habitat loss of a high faunal sensitivity proclaimed Protected Area and assumes a willingness on the City's part to relinquish such Protected Area.

A copy of the is attached marked "LL30".

194. Moreover, and of particular relevance, are the EMD's submissions placing in doubt the MPT's assertion that the MSDF is in fact supportive of the proposed development. They were as follows:


"The IDP and MSDF recognise Cape Town's critical environmental assets and its globally important biodiversity. The MSDF's often misquoted "Consolidated Spatial Plan Concept" (also known as "The Blue Turtle" owing to the shape of the "Urban Inner Core") does not override the MSDF's Biodiversity Network as if development were more important than conserving biodiversity. The MSDF comprises 4 main maps, and notes that this is "A series of maps that collectively indicate a metropolitan-scale interpretation of the City's spatial vision, development directives, land use informants and investment priority

areas.” This clearly shows that the MSDF is to be read as a collection of maps of equal standing, rather than the ‘consolidated spatial plan concept’ overriding all other layers of spatial informants.”

195. The unjustified and unsubstantiated deviation from sound, relevant and duly adopted policies by the MPT is, I submit, indicative of an irrational decision-making process.
196. The Minister’s decision, confirming as it does the desirability of the proposed development, equally suffers from this defect.

GROUNDS OF REVIEW

197. In light of what is stated above, I respectfully submit that both decisions taken in terms of NEMA and both decisions taken in terms of the MPB in connection with the proposed development are reviewable and should be set aside.
198. The decision taken by the Director in terms of regulation 25 of the EIA Regulations read with section 24 of NEMA to issue the environmental authorisation for the proposed development is defective for the following reasons:
- 198.1. A mandatory and material procedure was not complied with in that the competent environmental authority did not ensure that the heritage impact assessment fulfilled the requirements of HWC as required by section 38(8). The decision is therefore reviewable in terms of section 6(2)(b) of the Promotion of Administrative Justice Act, 3 of 2000.



- 198.2. The Director acted in excess of his authority in terms of section 38(8) by usurping the HWC's exclusive power to determine that the Second HIA met the requirements of section 38(8). The decision is therefore reviewable in terms of section 6(2)(a)(i) of PAJA.
- 198.3. The conclusion by the Director that the heritage impact of the proposed development was justifiable is unreasonable in light of the consistent and well-substantiated assertions of Heritage Western Cape to the contrary (reinforced by the strong opposition from the general public) was unreasonable. The decision is therefore reviewable in terms of section 6(2)(h) of PAJA.
199. The decision taken by the Minister in terms of section 43 of NEMA to dismiss the appeals and confirm the environmental authorisation is defective for the following reasons:
- 199.1. A mandatory and material procedure was not complied with in that the competent environmental authority did not ensure that the heritage impact assessment fulfilled the requirements of HWC as required by section 38(8) and the Minister perpetuated this irregularity in his decision on appeal. The decision is therefore reviewable in terms of section 6(2)(b) of the PAJA.
- 199.2. The Minister acted in excess of his authority in terms of section 38(8) by usurping the HWC's exclusive power, on appeal, to determine that the Second HIA met the requirements of section 38(8). The decision is therefore reviewable in terms of section 6(2)(a)(i) of PAJA.



- 199.3. The decision was based on a material error of law in that the Minister did not appreciate that the evaluation contemplated in section 38(3) was required to be founded on an assessment of the significance of the heritage resource. The decision is therefore reviewable in terms of section 6(2)(d) of PAJA.
- 199.4. The Minister acted unreasonably in finding that the heritage impacts of the proposed development were justifiable in light of the consistent and well-substantiated assertions of Heritage Western Cape to the contrary (reinforced by the strong opposition from the general public). The decision is therefore reviewable in terms of section 6(2)(h) of PAJA.
- 199.5. The Minister's decision was not rationally connected to the purpose of the empowering provision in that his reasoning in connection with heritage related impacts is internally incoherent and, for the most part, unintelligible. The decision is therefore reviewable in terms of section 6(2)(f)(ii)(bb) of PAJA.
200. The decision taken by the MPT to approve the LLPT's development application in terms of section 98(2) of the MPBL is defective for the following reasons:
- 200.1. It failed to take account of a relevant consideration in that it took the decision in ignorance of the pending decision to grade the site as (at that stage) a grade II heritage resource. The decision is therefore reviewable in terms of section 6(2)(e)(iii) of PAJA.
- 200.2. It was unlawful to the extent that its effect was to subdivide and change the planning status of a property subject to provisional



protection in terms of section 29 of the NHRA, contrary to the prohibition in section 29(10) of that Act. The decision is therefore reviewable in terms of section 6(2)(i) of PAJA.

200.3. The process by which it was arrived at was arbitrary and capricious in that it necessitated deviation from no less than five directly relevant policies, duly adopted by the City. The decision is therefore reviewable in terms of section 6(2)(e)(vi) of PAJA.

201. The Mayor's decision to dismiss the appeals against the MPT's decision and confirm the approval of the proposed development application in terms of section 108(7) of the MPBL is defective for the same reasons.

ENTITLEMENT TO AN INTERIM INTERDICT

202. It is my respectful submission that the requirements for an interim interdict have been established.

203. The facts set out above establish a strong prima facie right warranting protection by this court, namely a right to the review of the unlawful decisions at issue, which themselves have compromised the rights of the applicants to lawful action that conserves South Africa's heritage for the benefit of present and future generations, and to the lawful implementation of the spatial planning instruments affecting the area of Observatory.

204. It is furthermore beyond question that the anticipated harm – i.e. the destruction and transformation of the River Club site – will eventuate if the relief sought in Part A of the notice of motion is not granted. Indeed, it has already begun.



205. Finally, I submit that the balance of convenience favours the granting of the interdict, in light of the magnitude of the destruction that will result if it is not granted. The sheer quantity of objections from members of the public and concerned organisation to the development indicate that the interests of the general public are adversely affected by the interests of a single developer. In any event, any claim by the LLPT to the contrary is belied by the fact that more than one appeal has been submitted against the LLPT's water licence which will take approximately the same period to determine as Part B of this application.
206. If the destruction of the site is allowed to continue whilst the applicants' review is being determined, the relief granted therein will be undermined and will be all but meaningless. The applicants have no other recourse other than to prevent the irreversible destruction of the site, as heritage rights will not be able to be effectively restored once destroyed.
207. There is, with respect, no good reason why the financial interests of a single developer ought to be allowed to trump the rights of ordinary citizens of the country to have their heritage respected and protected by the very structures of State to which that obligation has been entrusted.

CONCLUSION

208. I respectfully state that it is appropriate, just, and equitable for this Honorable Court to grant the relief set out in Part A of the notice of motion to which this affidavit is annexed, and the relief set out in Part B in due course.



Leslie London

LESLIE LONDON

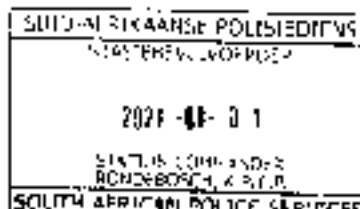
I certify that:

- I. the Deponent acknowledged to me that :
 - A. He knows and understands the contents of this declaration;
 - B. He has no objection to taking the prescribed oath;
 - C. He considers the prescribed oath to be binding on his conscience.
- II. the Deponent thereafter uttered the words, "I swear that the contents of this declaration are true, so help me God".
- III. the Deponent signed this declaration in my presence at the address set out hereunder on _____ 2021,

S. Z. [Signature]

COMMISSIONER OF OATHS

Designation and Area: *Randome Ins*
 Full Names: *Leslie London*
 Street Address: *1111 1st St NW*



RESOLUTION
OF THE MANAGEMENT COMMITTEE OF THE
OBSERVATORY CIVIC ASSOCIATION

(passed at the duly constituted meeting held in Observatory on 27 July 2021)

1. **WHEREAS** the Constitution of the Observatory Civic Association (OCA) states that the OCA's objectives are (*inter alia*):
 - to identify, express and address the concerns of the community within the boundaries of the Association;
 - to represent the interests of the community in civic matters; and
 - to promote an active interest in, and to consider the policies and affairs of the City of Cape Town and of the sub-council of which Observatory is part; and

2. **WHEREAS** on 20 August 2020 the Department of Environmental Affairs and Development Planning (DEADP) granted an environmental authorisation for the proposed River Club Development on erf 151832, Liesbeeck Parkway, which is bounded by Liesbeeck Parkway and Observatory roads, (DEA&DP Reference Number: 16/3/3/1/A7/17/3001/20); and

3. **WHEREAS** on 18 September 2020 the City of Cape Town's North Western Municipal Planning Tribunal (MPT) resolved to approve the application for rezoning, approval of council and deviations from City policies in terms of the Municipal Planning By-law, 2015, to enable the proposed River Club Development to proceed (case number 70396369); and

4. **WHEREAS** on 8 June 2021 the Department of Water and Sanitation granted a Water Use Licence (DWS Ref. No. 16 / 2 / 7 / G22 / A / 11) to the Liesbeeck Leisure Property Trust ("LLPT") in terms of the National Water Act, 1998, to enable the commence of activities for purposes of the National Water Act, 1998, at the site of the proposed River Club Development; and

5. **WHEREAS** the OCA views the River Club development as harmful to the interests of the members of the OCA and consequently:
 - (a) lodged an appeal against the environmental authorisation on 9 September 2020, and
 - (b) instructed attorneys (Cullinan and Associates Incorporated) to lodge an appeal against the MPT's decision, on behalf of the OCA, to the City of Cape Town Planning Appeals Panel, which appeal was lodged on the 26th October 2020; and

 1/1/21

- (c) instructed attorneys (Cullinan and Associates Incorporated) to lodge an appeal against the Department of Water and Sanitation's decision, on behalf of the OCA, to the Water Tribunal, which appeal was lodged on the 21st of June 2021; and
6. **WHEREAS** the OCA appeals against the environmental authorisation and the appeal to the City of Cape Town Planning Appeals Panel were unsuccessful, and it is now necessary to institute a High Court review application and / or an interdictory application to the High Court to prevent the River Club Development from going ahead as soon as reasonably possible, and that it may be necessary to instruct attorneys urgently to take the necessary action to safeguard the interests of the OCA, the heritage significance of the site and the environment; and
7. **WHEREAS** the Management Committee will ensure that funding to support any such legal action will have been secured or is likely to have been secured by the time court action begins; and
8. **NOW THEREFORE** the OCA Management Committee, acting pursuant to the resolution adopted at the AGM of the OCA on 14 November 2020,

RESOLVES:

- a. to reaffirm the OCA's opposition to the River Club development as damaging to the environment, destructive of the heritage significance of the site and a violation of civic democracy; and
- b. to ratify the decision of Mr Leslie London and the Management Committee to instruct Cullinan and Associates Incorporated to lodge the appeal to the Water Tribunal on behalf of the OCA, to deal with LLPT's request to the national Minister of Human Settlements, Water and Sanitation to lift the automatic suspension of its water use licence and act as the OCA's attorneys for purposes of the appeal to the Water Tribunal, in addition to any subsequent litigation in respect of the decisions of the National Minister or Water Tribunal in relation to the OCA's appeal; and
- c. to authorise Mr Leslie London of the OCA to engage the paid services of Cullinan and Associates Incorporated as attorneys for the OCA, and to give them the necessary instructions:
 - i. to advise on the prospects of succeeding in any proposed High Court Review of the MPI's decision to approve the rezoning application for the River Club Development and/or, the DEADP Environmental Authorisation for the River Club

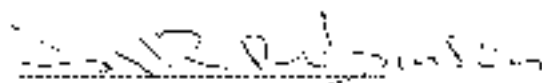
A handwritten signature and the initials 'G2' are located in the bottom right corner of the page.

- Development and/or decisions to dismiss the appeals in relation to the authorisations necessary for the River Club development, and
- ii. to advise on and institute any legal proceedings to stop the River Club Development as may, in the opinion of the Management Committee, be expedient and desirable, and to continue with that litigation until it is finally concluded;
 - iii. to institute proceedings for the judicial review of the decisions to grant the authorisations required for the River Club development and the decisions to dismiss the appeals against those authorisations, and to institute any interdict or other ancillary legal proceedings that may be necessary or desirable,
 - iv. to advise on any ancillary legal matters which might arise in relation to the OCA's opposition to the River Club Development; and
- d. to authorise Mr Leshe London of the OCA.
- i. to depose to the affidavits in respect of such interdict and review proceedings and any other ancillary legal proceedings; and
 - ii. to grant any power of attorney and sign any documents on behalf of the OCA as may be necessary or desirable to give effect to this resolution

Signed at Observatory on³⁰ July 2021



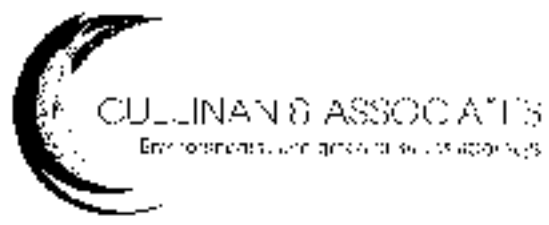
Leshe London (Chairperson of the Management Committee)



(Management Committee member/ ~~Secretary~~)



"LL2"



TRANSMITTED BY TELEFAX AND EMAIL

		Date:	13 May 2021
TO:	The trustees of the Liesbeek Leisure Property Trust	Fax:	011 217 7701
ATT:	AJF Mundell, J O Tannenberger; AJ Blow, NS Ferguson, J. Aufrechtig		
FROM:	Hercules Wessels	hercules@greencounsel.co.za	
Total pages:	3	Our ref.:	0 023-002

The information contained in this document is confidential and intended for the exclusive attention of the addressee. Unauthorised disclosure or distribution of the information is prohibited. Please advise us immediately should you have received this document in error.

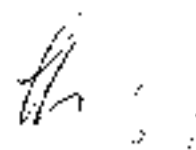
Dear trustees

REQUEST FOR UNDERTAKING TO DELAY ALTERATION OF RIVER CLUB SITE

1. We represent the Observatory Civic Association, a voluntary association that is registered as a non-profit organization under the Non-profit Organizations Act, 1997 ("the OCA").
2. On 3 May 2021 the Liesbeek Leisure Property Trust ("LLPT") gave notice to the Western Cape Department of Environmental Affairs and Development Planning ("DEA&DP") that it intends to commence the development of the River Club precinct ("the Proposed Development") in or about mid-June 2021 or as soon as possible thereafter. Although this notice was subsequently retracted, we presume that it is still your intention to commence developing the River Club site ("the Site") as soon as possible.
3. The OCA intends to apply to the High Court (Western Cape Division) for an order reviewing and setting aside the environmental authorisation and the land use planning authorisations which permit the LLPT to undertake the Proposed Development, and the decisions to dismiss the appeals against the environmental

authorisation and the land use planning authorisations, respectively (referred to collectively below as "the Authorisations").

4. As you will appreciate, the Proposed Development will have very significant heritage and environmental impacts and will have a direct and substantial impact on the residents and businesses of Observatory, whose interests the OCA represents. The OCA and many other concerned organizations and individuals believe that it is not in the public interest for the Proposed Development to proceed. The significant public opposition to the Proposed Development is apparent from the extensive press coverage of this issue over several years, petitions opposing it, discussions on social media, the pending applications for the site to be graded as a Grade II provincial heritage resource, and protests such as the *Walk of Resistance* which took place on Freedom Day, 27 April 2021. In the light of this, the OCA believes that it is very important that the validity of the Authorisations be tested in open court.
5. The OCA intend to launch the application referred to in paragraph 3 above, as soon as reasonably possible. However, it will take some time to prepare the application papers, particularly given the long history of this matter and the large volume of relevant documents that must be considered.
6. The OCA and its members are particularly concerned that the commencement of earth works and other alterations to the site will have irreversible impacts on extremely important heritage as well as on the ecosystems associated with the Black and Liesbeek rivers. Consequently we have been instructed to request you to provide a written undertaking on behalf of the LLPT that you will not permit the commencement of any earth works or other alterations to the Site (including those parts of the Site owned by the City of Cape Town) until the review application referred to in paragraph 3 above has been finally determined. This undertaking may be subject to the condition that the OCA must institute those review proceedings by 21 June 2021, failing which the undertaking will lapse.
7. In our view, there is a reasonable prospect that the proposed review application would succeed. Consequently it is essential to ensure that the irreversible harm that the OCA and others seek to prevent by challenging the Authorisations, does not take place before the lawfulness of the Authorisations has been finally determined. The easiest and most expeditious way to achieve this is by you providing the undertaking requested in the previous paragraph. If you are unwilling to provide this undertaking (or a similar undertaking acceptable to our client) then our client will have no option but to approach the High Court for interim relief.
8. Please acknowledge receipt of this letter and confirm that you will respond to our request in writing by no later than noon on Monday, 17 May 2021.

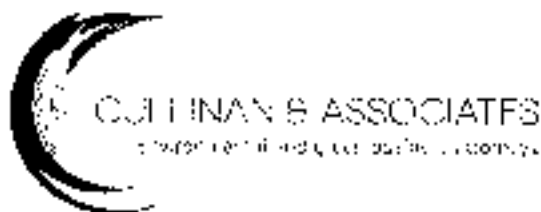


Yours sincerely



CULLINAN & ASSOCIATES INC.
per: Hercules Wessels





TRANSMITTED BY EMAIL

Date: 21 July 2021

TO: The trustees of the Liesbeek Leisure Property Trust

ATT: All Mundell, J O Tannonberger, jody@tannonberger.co.za
 AJ Blow, NS Ferguson, J Aufrichtig

CC: Michelle Couzyn-Kademeyer michelle@zenprop.co.za

CC: Nicholas Smith nicks@nsmithlaw.co.za

FROM: Hercules Wessels hercules@greencounsel.co.za

Total pages: 3 Our ref: O 023 002

The information contained in this document is confidential and intended for the exclusive attention of the addressee. Unauthorised disclosure or distribution of the information is prohibited. Please advise us immediately should you have received this document in error.


Dear trustees,

REQUEST FOR UNDERTAKING TO DELAY ALTERATION OF RIVER CLUB SITE

1. As you would know we represent the Observatory Civic Association ("the OCA"). We also confirm that we represent the Goringhaicona Khoi Khoi Indigenous Traditional Council ("GKKITE").
2. As per our letter of 11 May 2021, we requested you to provide a written undertaking on behalf of the Liesbeek Leisure Property Trust ("LLPT") that you will not permit the commencement of any earth works or other alterations to the Site (including those parts of the Site owned by the City of Cape Town) until the review application which the OCA intends to make, has been finally determined. We also advised you that the OCA is of the view that undertaking the activities for which you received authorisation and land use approval will cause irreparable harm to the environment and the significant heritage value of the site, and that if you are not willing to provide the required undertaking, then our client will approach the High Court for interim relief.

Yours faithfully,


 Hercules Wessels
 Director


 Jody Tannonberger
 Director

3. On 17 May 2021 Ms Michelle Couzyn-Rademeyer on behalf of yourself and the LLPT replied by confirming that the LLPT is not in a position to give such an undertaking.
4. According to our instructions, you have subsequently commenced with the development. This was done with the full knowledge and awareness that
 - 4.1. the DCA will institute proceedings to review and set aside the decisions to grant the LLPT the environmental authorisation and land use approvals for the development,
 - 4.2. the DCA's view (which the GKKIIC shares) is that your activities will cause irreparable harm to the environment and heritage significance of the site; and
 - 4.3. in the absence of an undertaking from you that you will stop activities associated with the development until the judicial review has been decided, the DCA will seek interim relief from the court.
5. Consequently, the DCA and the GKKIIC will be instituting review proceedings within the course of the next month and will request the court to grant an interim interdict preventing the LLPT from commencing with activities associated with the development until the review application has been decided.
6. As part of instituting the review proceedings, we will be serving a copy of the application on each of the trustees of the LLPT. Please confirm whether the following individuals are all the current trustees of the LLPT and that the below mentioned addresses are their respective addresses at which they will accept service of the review application, or advise us of alternative addresses at which they will accept service.

6.1. *Mundell, Allan James Flynn*

41 Grosvenor Crescent
Durban North
KwaZulu Natal

6.2. *Tannenberger, James Otto*

26 Albion Road
Bryanston
Gauteng

6.3. *Ferguson, Nicholas Scott*

7 Dawn Road
Constantia
Western Cape



6.4. *Blow, Adam John*

16 Valley Road

Kenilworth

Western Cape

6.5. *Aufrichtig, Jody*

1A Logies Bay

Llundudno

Western Cape

7. Please acknowledge receipt of this letter and confirm whether the abovementioned addresses are correct and the addresses at which you will receive service, no later than noon on Monday, 26 July 2021.

Yours sincerely



CULLINAN & ASSOCIATES INC.

per: Hercules Wessels



"LL4"



NICHOLAS SMITH ATTORNEYS
ENVIRONMENTAL LAW SPECIALISTS

Cullinan & Associates Incorporated
Attention: Mr. Hercules Wessels
By e-mail: hercules@greencourt.co.za

Our ref: NDS/sg/L39/0011
Your ref: M. H. Wessels

Copies to:

The Trustees of the Liesbeek Leisure Properties Trust
Care of: Mr. Jody Aufrichtig
By email: jody@orange3street.co.za

Zenprop Property Holdings
Michelle Couzyn-Redemeyer
By email: michelle@zenprop.co.za

26 July 2021

Dear Mr. Wessels

RE: YOUR "REQUEST FOR UNDERTAKING TO DELAY ALTERATION OF RIVIER CLUB SITE" DATED 21 JULY 2021

1. We have been asked to provide a response (as may be strictly necessary at this juncture) to your letter of the 2nd instant, received under cover of your e-mail of the same date. We do so before the deadline you set by you in your letter under reply.
2. Our client disputes your client's view that undertaking the activities for which our client has received environmental authorisation ("EA"), and use approval, and more recently, a water use licence, will "... cause irreparable harm to the environment and the significant heritage value of the site ...", as your client asserts or at all. All the evidence in this matter, and the decisions taken to date by the various responsible authorities, suggest that the development is ecologically, economically and socially sustainable.
3. The decisions taken respectively by the Western Cape Department of Environmental Affairs and Development Planning's Director Development Management on 20 August 2020 to grant the EA, which was confirmed on appeal by the MEC for Local Government, Environmental Affairs and Development Planning in the MEC's record of decision in the appeal EA of 22 February 2021; and by the City of Cape Town's

Ms. Jody Aufrichtig, BA (Hons), LL.B., LL.M (Pret.), LL.M (Dur.), LL.M (Wits), LL.M (UCT), LL.M (Stellenbosch)

Tel: +27 (0) 21 424 5300 | Fax: +27 (0) 21 424 5800 | Email: info@nicholas-smith.co.za
1401 Main Road, 14th Floor, 1401 Main Road, 1401 Main Road, 1401 Main Road, Cape Town

Municipal Planning Tribunal on 30 September 2020 in respect of my client's land use planning applications, which decision was confirmed on appeal by the City's Executive Mayor on 19 April 2021, as well as the record of decision of the water use licence granted to my client on 8 June 2021 and the *Record of recommendations* bearing the same date and pertaining to the water use licence as signed by the Acting Regional Head: Western Cape in the national Department of Water and Sanitation) all clearly suggest otherwise.

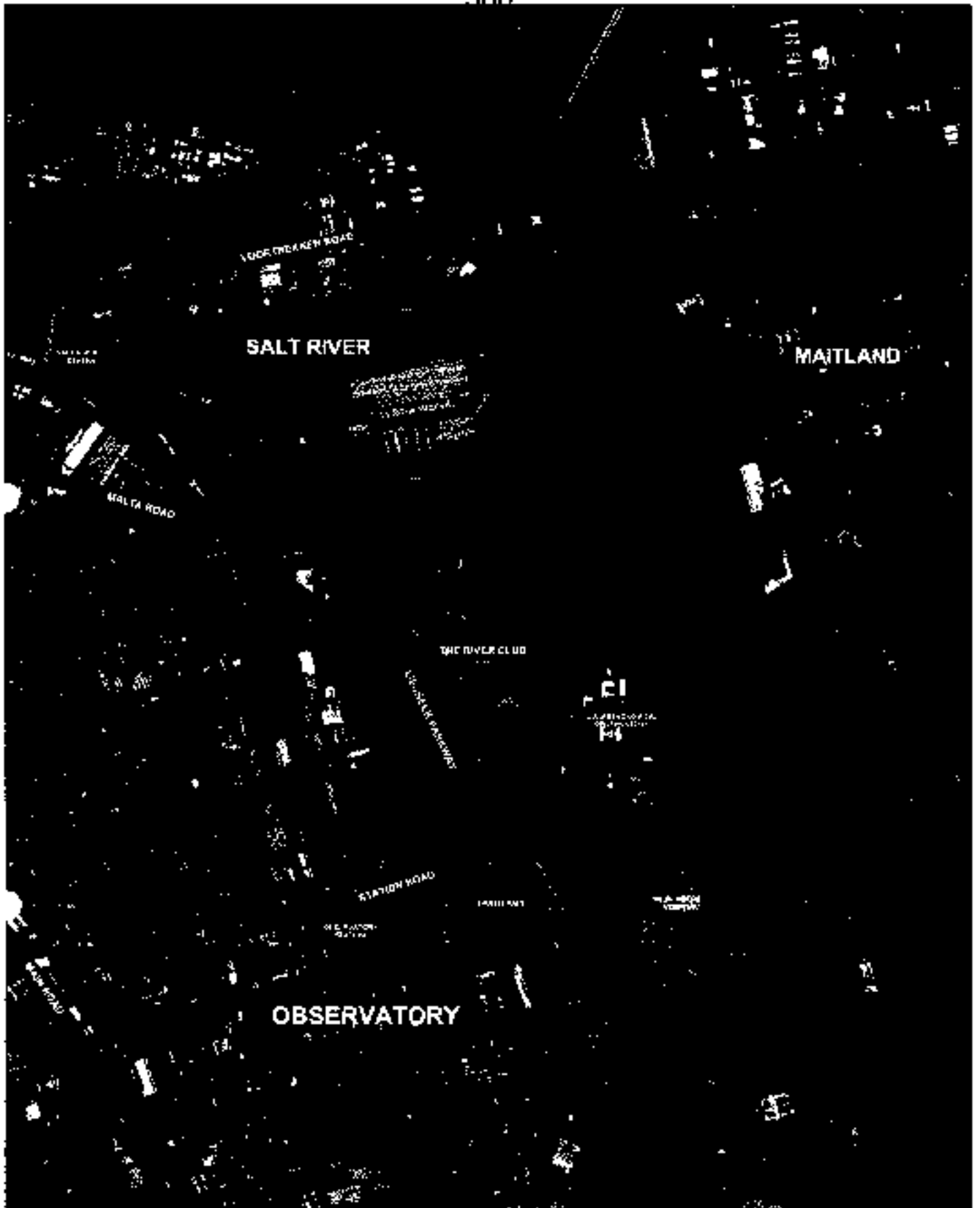
4. Regarding the commencement of authorised activities, it is not correct that our client had commenced with the development by the date of your letter (21 July 2021). My instructions are that my client's contractors commenced this morning with the development-related activities authorised in the approvals described in this letter. This activity follows on Minister Sisulu's decision of Thursday last week to lift the suspension occasioned by the delivery of your client's appeal on 21 June 2021, and also upon our client's receipt of written confirmation last week from DWS's Acting Head: Western Cape that the necessary pre-commencement requirements set out in the water use licence have been met by my client.
5. As you are no doubt aware, other organisations have now purported to deliver appeals. None of those three parties is, to the best of our knowledge, represented by you but it is clear that at least one of those parties has communicated with you in respect of its so-called "appeal". We hold instructions to deliver responses to those documents, which we will do shortly. Suffice to say for present purposes that it appears that none of the latter organisations has the requisite standing to deliver an appeal. Even if they do have standing (which is disputed by my client), their purported appeals are in any event entirely devoid of any grounds of appeal. As such, they are entirely without merit and consequently, without any prospect of success.
6. We note your threat to approach the High Court for interim relief pending the determination of the review proceedings you also threaten. To the extent that you institute High Court proceedings on your clients' instructions, our client confirms that the addresses set out in your letter under reply are the respective trustees' addresses at which those individuals will accept service.
7. In the interim, we reserve our client's rights to respond more fully to each assertion made in your letter under reply in due course and should that be necessary.

Yours faithfully,

NICHOLAS SMITH ATTORNEYS

Per:

NICHOLAS SMITH



 THE SITE

Handwritten signature and initials

**THE RIVER CLUB
OBSERVATORY**

CONTEXT


SCALE 1:10000

PLANNING PARTNERS 

JUNE 2018

Figure 2

Figure 8a: Perspectives of the ecological corridor



"LL6"

for 5.2

Figure 6b: View from Raapenberg Wetland edge looking south-west



DESBEK RIVERPARK

vivid architects

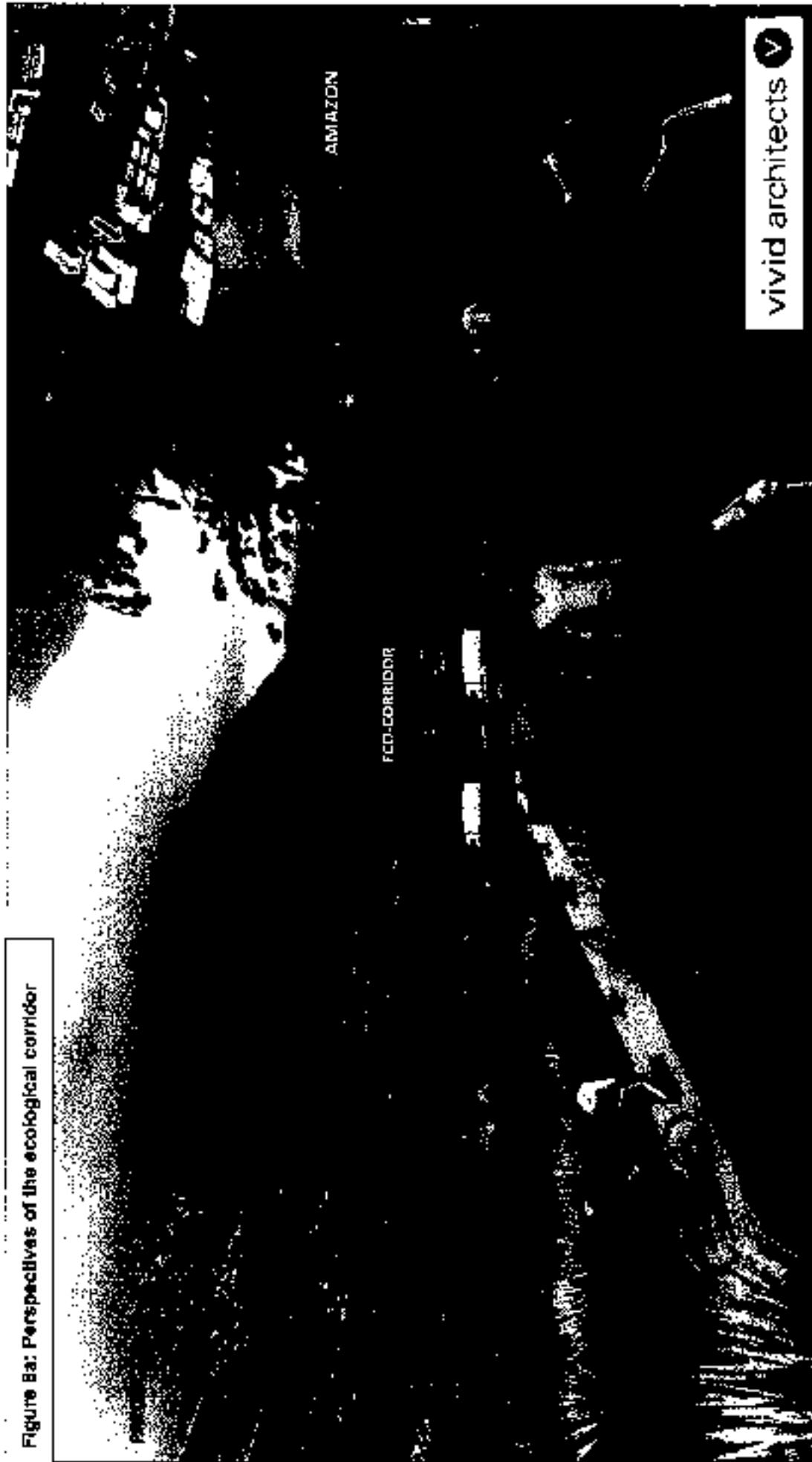
Handwritten mark

3.2



Figure 8c: View from SAAC looking north-west

Figure Ba: Perspectives of the ecological corridor



Handwritten mark

Handwritten mark

3204

Figure 8b: View from Raspenberg Wetland edge looking south-west



LIEBECK RIVERINE

vivid architects

the

30



THE RIVER CLUB



TRUP

h

THE RIVER CLUB
OBSERVATORY

TWO RIVERS URBAN PARK



NTS

PLANNING
PARTNERS



JUNE 2014

Figure 4

5-2

HERITAGE IMPACT ASSESSMENT PHASE ONE

HWC Submission 22 February 2017

RIVER CLUB

ERF 151832 OBSERVATORY ROAD OBSERVATORY CAPE TOWN

SUBMITTED TO HERITAGE WESTERN CAPE IN TERMS OF THE NATIONAL HERITAGE RESOURCES ACT NO. 25 OF 1989 SECTION 38(8) AND THE CITY OF CAPE TOWN IN TERMS OF THE MUNICIPAL BY LAW 2015

HERITAGE WESTERN CAPE CASE NUMBER 151-2504WD1217E
DEPARTMENT OF ENVIRONMENTAL AND DEVELOPMENT PLANNING REFERENCE NUMBER: 16/3/3/6/12/A/1/1/3104/16

PREPARED FOR



SRK Consulting (South Africa) (Pty) Ltd

The Administrative Building, Albion Spring, 183 Main Road, Rondebosch, 7700
Tel: +27-21-659-3060; Fax: +27-21-685-7105

HERITAGE PRACTITIONER



Bridget O'Donoghue

Architect • Heritage Specialist • Environment

PostNet 122 Private Box X1005 Claremont Cape Town Tel: 021 761 2355 Mobile: 071 1090 900 E Mail: bodonoghue@telkomsa.net

"677"

EXECUTIVE SUMMARY

1. SUMMARY

This report is the Phase One of the two phase Heritage Impact Assessment (HIA) required by Heritage Western Cape (HWC) for the proposed development on the River Club site, situated on Erf 151832 in Observatory Cape Town

Heritage Western Cape (HWC) response on the Notification for Intent to Develop (NID) application was for a Heritage Impact Assessment (HIA) focussing on the built and archaeological environments. The site is a component of the culturally significant Two Rivers Urban Park (TRUP). The site abuts the South African Astronomical Observatory and is surrounded on the majority of its boundaries by riverine environments. The use is currently for recreational and commercial purposes, in the form of a mashie golf course, restaurants, bars, and conference facilities. Rezoning of the site is required for the proposed development as the site is zoned a public open space.

The River Club's unique character is a combination of the expanse of open landscapes, river frontages, mature trees and amenity values. This HIA Phase One report benefits from numerous past and current studies, namely:

- Two detailed TRUP studies by the City of Cape Town (CCT)(2002) and Western Cape Government (WCG)(2012);
- South African Astronomical Observatory (SAAO) cultural survey 2011; HIA on the Valkenberg Hospital by Nicolas Baumann (2013);
- Western Cape Government (WCG) TRUP study by NIM & Associates. The WCG TRUP Cape Town Baseline Heritage Study October 2016) Draft for Discussion is a specialist study within this project.

2. SITE LOCATION

The site is a component of the identified precinct known as Two Rivers Urban Park (TRUP). TRUP is 297ha in extent and consists of a variety of

BRIDGET O'DONOGHUE ARCHITECT HERITAGE SPECIALIST ENVIRONMENT

open, owners and uses. The project site is situated within the 'inner core' of TRUP defined by the Liesbeek River and Black River and consisting of institutional, recreational, ecological and commercial land uses.

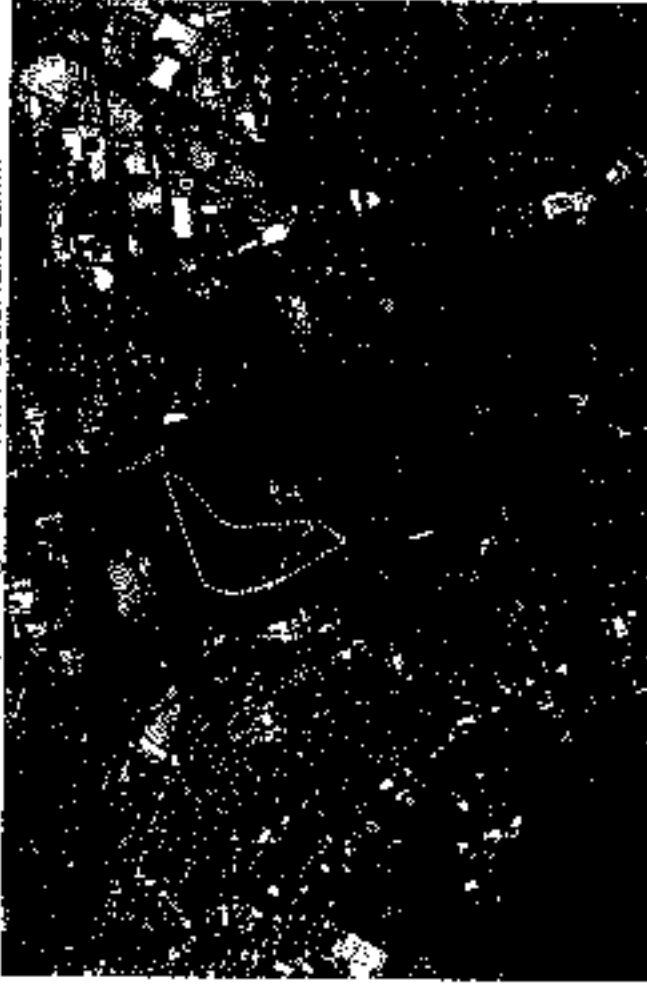


Figure 1: Site position within Cape Town context, site identified in white outline, TRUP identified in red outline. source Google Earth 2016

3. PROPOSED DEVELOPMENT

The proposed development is a series of multi level buildings for mixed use. As this report is a Phase One HIA, no further detail on the proposed development is supplied.

4. SITE AND CONTEXT HERITAGE RESOURCES

The TRUP cultural landscape is a complex and multi layers precinct that has been assessed for high cultural value due to the historic, social,

aesthetic, architectural, scientific, associational and environmental significances. The overall landscape is a complex composite of natural, cultivated and built landscape elements. It is a cultural landscape that has been transformed by thousands of years of settlement history. The TRUP site adds to our understanding of past attitudes, beliefs, uses, events, persons, periods, techniques and design. It has associated with important past events, people, uses, community memories, identities and oral histories. TRUP possesses a strong sense of place within its urban context. The cultural significance of TRUP is expressed at several scales: the overall landscape, precinct, site and object scales.

The site has previously been assessed by the CCT and WCG with low development potential due to its value as an open area within TRUP. However, current TRUP planning studies may potentially offer a new vision, which may include more development within TRUP.

5. HERITAGE DESIGN INDICATORS

The heritage design indicators are developed to retain the site's social, historic, aesthetic, associational and contextual values within a new vision of the site. Relevant sections of the Urban Design report by Urban Concepts are the Visual Impact Assessment Scoping report by SRK Consulting (Pty) Ltd are included into the report, with the full reports contained in the annexures. The heritage design indicators are to guide future development in order to reduce potential negative impacts on the heritage resources of the site and context. As the site is situated within and in the context of significant heritage resources of national, provincial and local grades, the development response is required to consider the site and context high cultural significance.

The heritage design indicators are divided into the following categories:

- Site's landmark qualities.
- Natural environment;
- vistas;
- Open spaces,
- Public realms.
- Land use.
- Develop site to its cultural potential;

- Spatial ordering of development;
- Response to abutting heritage sites;
- Ground levels;
- Buildings;
- Roads;
- Access and parking;
- Archaeology

6. ANTICIPATED IMPACTS ON HERITAGE RESOURCES ON SITE AND IN CONTEXT

The development on the site will be assessed for potential impacts in the HIA Phase Two.

7. COMMENTS RECEIVED

Comprehensive comments from the City of Cape Town, Observatory Civic Association (OCA) and Vernacular Society of South Africa (VASSA) in addition to interested and affected parties (I&APs) were received in the public participation process in terms of the Environmental Impact Assessment public consultation requirements. The OCA, CCT and VASSA comments have been included into this report. The comments and responses from the Open Day and Workshop are included into Annexure 6.

The commentators have had the Scoping and revised Scoping Reports in addition to all the specialist reports. Within the Scoping report, information in the form of diagrams and block models of the proposed development were provided.

All comments from the OCA, CCT EHRM, CCT Spatial planning and VASSA voice their concerns on the scale of the proposed development, and the subsequent loss of green and open space.

8. HIA PHASE ONE CONCLUSIONS AND RECOMMENDATIONS

The HIA Phase One concludes that the site is within a precinct of high cultural significance. It provides the setting for the Grade 1 site, SAAO and forms a component of the green landscape that is associated with the Two Rivers Urban Park and the valley associated with the Liesbeek and Black Rivers. In order to retain this contextual site significance and to limit

potential negative impacts to TRUP and the TRUP adjacent site neighbours, development has to be carefully considered and moderated. There is no doubt that the site has high potential in terms of providing an improved recreational and public space, and this aspect should be explored, but not at the expense of reducing the cultural landscape significance of TRUP.

The HIA Phase One is submitted to HwC for interim comment.

The report recommends:

The Heritage Design Indicators contained in Section 5 be approved to guide future development on site. The following principles should guide the site's design concepts for future development.

Future development:

- Should improve the site's natural features and identified cultural significances (historic, aesthetic and social);
- Retain open areas within future development for public recreational purposes;
- Retain the island character of the site by the location of future buildings;
- Limit development adjacent to South African Astronomical Observatory (SAAO);
- Consider layout, scale and amount of development on site in order to be contextual to the associated TRUP precincts;
- Explore the possibility of demolition of the existing historic structures in order to maximise the potential of future development;
- Provide site precincts in which biodiversity will be enhanced and protected;
- Optimise on the site's potential for an increased and broader range of recreational facilities;
- Optimise the aesthetics of the natural riverbanks;
- Provide non motorised links from and onto the site; and
- Provide improved access to surrounding TRUP precincts.

3. Authors

HIA:
AIA:
VIA:

Bridget O'Donoghue Architect Heritage Specialist
Environment (February 2017)
Agency for Cultural resource Management, Jonathan Kaplan (March 2016)
SRK Consulting (Pty) Ltd (July 2015)

TABLE OF CONTENTS**EXECUTIVE SUMMARY**

SECTION 1 INTRODUCTION	2
1.1 INTRODUCTION	8
1.2 PROJECT DESCRIPTION	8
1.3 LEGAL HERITAGE REQUIREMENTS	8
1.4 TERMS OF REFERENCE: OPPORTUNITIES AND CONSTRAINTS REPORT	8
1.5 ASSUMPTIONS AND LIMITATIONS	9
1.5.1 Assumptions	9
1.5.2 Limitations	9
1.6 APPROACH TO THE STUDY	9
1.7 PROJECT TEAM	9
1.8 DECLARATION OF INDEPENDENCE	9
	10

SECTION 2 STATUTORY FRAMEWORK

2.1 INTRODUCTION	13
2.2 ADMINISTRATIVE CONTEXT AND STATUTORY FRAMEWORK	13
2.2.1 Introduction	13
2.2.2 National Heritage Resources Act No. 25 of 1989 (NHR Act)	13
2.2.3 The Restitution of Land Rights Act 22 of 1994 and No. 15 of 2014	16
2.2.4 Municipal Policy and Planning Context	16
2.3 TWO RIVERS URBAN PARK (TRUP)	20
2.4 INTERNATIONAL POLICIES, CONSERVATION CHARTERS & PUBLICATIONS	26
2.5 EXISTING HERITAGE SURVEYS AND REPORTS	26

SECTION 3 SITE AND CONTEXT DESCRIPTION

3.1 SITE CONTEXT	28
3.2 USE AND DEVELOPMENT OF SITE AND CONTEXT	28
3.2.1 Salt River Railways Site	36
3.2.2 Valkenberg Hospital	37
3.2.3 South African Astronomical Observatory	38
3.3 PRESENT SITE CONTEXT	41
3.3.1 SPATIAL SYSTEM	41
3.3.2 VISTAS AND VIEW CORRIDORS	42
3.3.3 LAND USE	43
3.3.4 PUBLIC AND PRIVATE REALMS	43

3.3.5 BUILT FORM	44
3.3.6 BUILDING HEIGHTS	45
3.4 SITE	50
3.5 CHARACTERISTICS OF SITE AND CONTEXT	59
3.5.1 Rivers	59
3.5.2 Vistas	59
3.5.3 Mature Trees	59
3.5.4 Buildings	64
3.5.5 Landscaping	64
3.5.6 TRUP	64

SECTION 4 VISUAL RESOURCE OF SITE & CONTEXT

4.1 INTRODUCTION	65
4.2 TERMS OF REFERENCE	65
4.3 APPROACH AND METHOD	65
4.3.1 Method	65
4.4 VISUAL CONTEXT (AFFECTED ENVIRONMENT)	65
4.4.1 Landscape Character	66
4.4.2 Visual Character	67
4.4.3 Visual Quality	69
4.5 VISUAL RECEPTORS AND VISIBILITY	69
4.5.1 Visual Receptors	69
4.5.2 Viewing Distance and Visibility	70

SECTION 5 HERITAGE RESOURCE SIGNIFICANCE OF SITE & CONTEXT

5.1 INTRODUCTION	74
5.2 CONTEXT HERITAGE RESOURCES	74
5.3 SITE HERITAGE RESOURCES	76

SECTION 6 HERITAGE DESIGN INDICATORS

6.1 INTRODUCTION	83
6.2 SITE'S LANDMARK QUALITIES	83
6.3 NATURAL ENVIRONMENT	84
6.4 VISTAS	84
6.5 OPEN SPACES	85
6.6 PUBLIC REALMS	85
6.7 LAND USE	85
6.8 DEVELOP SITE TO ITS CULTURAL POTENTIAL	86
6.9 SPATIAL ORDERING OF DEVELOPMENT	86

6.10 RESPONSE TO ABUTTING HERITAGE SITES	87
6.11 GROUND LEVELS	87
6.12 BUILDINGS	88
6.13 ROADS, ACCESS AND PARKING	88
6.14 ARCHAEOLOGY	89

SECTION 7 PUBLIC PARTICIPATION

7.1 INTRODUCTION	91
7.2 COMMENTS RECEIVED ON THE INITIAL SCOPING REPORT	91
7.2.1 OBSERVATORY CIVIC ASSOCIATION (ARCHITECTURE AND HERITAGE)	91
7.2.2 CITY OF CAPE TOWN (Various Departments)	94
7.2.3 CCT Heritage Resources Management (HRM)	95
7.3 COMMENTS RECEIVED ON THE REVISED SCOPING REPORT	97
7.3.1 OCA	97
7.3.2 CCT (Various Departments)	99
7.3.3 Vernacular Architectural Society Of South Africa (VASSA)	101
7.4 REPRESENTATIVES OF THE FIRST NATION	102

SECTION 8 CONCLUSION AND RECOMMENDATIONS

8.1 CONCLUSION	103
8.2 RECOMMENDATIONS	103
8.3 SOURCES	104
	104

ANNEXURES

Annexure 1:	HWC NID Response
Annexure 2:	Heritage Resources in Context to the Site
Annexure 3:	Urban Concepts: River Club Urban Design Indicators Draft 2
Annexure 4:	Peer Review: Nicolas Baumann Urban Conservation and Planning
Annexure 5:	Response To Peer Review
Annexure 6:	Comments: <ul style="list-style-type: none"> OCA CCT VASSA
Annexure 7:	Tree Survey
Annexure 8:	VIA
Annexure 9:	WCG TRUP Heritage Baseline Report. Draft for Comment October 2016

SECTION 1 INTRODUCTION

1.1 INTRODUCTION

SRK Consulting Pty Ltd commissioned by their client Liesbeek Leisure Properties Trust (LLPT) contracted Bridget O'Donoghue Architect Heritage Specialist Environment for a Heritage Impact Assessment (HIA) for future development on Erf 151832, the site known as 'The River Club'. The heritage related work on the site is divided into the following stages:

- Opportunities and Constraints report (Completed September 2015);
- Notification for Intent to Develop application (December 2015);
- Heritage Impact Assessment Phase One report (Draft 5 for PPP July 2016 and HWC Submission January 2016), and
- Heritage Impact Assessment Phase Two report.

An Environmental Impact assessment (EIA) process is in the process for the proposed development on the River Club site, Observatory Cape Town, Western Cape by SRK Consulting Pty Ltd.

A peer review by Nicolas Baumann Urban Conservation and Planning conducted on the Report Draft 3. This review comment is annexed to the report and is responded to in Annexure 5 (refer Annexure 4 and 5).

The Draft 5 HIA submitted for public participation process (PPP) is updated post the receipt of public comments and the issuing of the Western Cape Government's (WCG) TRUP Baseline Heritage Report (draft for Discussion) October 2016. This WCG Baseline Heritage report is intended as an overarching baseline report for future TRUP planning and heritage assessments.

1.2 PROJECT DESCRIPTION

The proposed development on Erf 151832 Observatory Cape Town is for a mixed use buildings and sites that incorporate future retail (shops and vehicular parking areas), commercial (offices), institutional (memorials, museum), infrastructure (roads, bridges), and the rehabilitation of river banks). The LLPT vision for the site is 'create a lasting legacy, create job

BRIDGET O'DONOGHUE ARCHITECT HERITAGE SPECIALIST ENVIRONMENT

opportunities, commercial enterprise and a space for people of all cultures to live and work and which is open to the community for safe recreational activities through the creation of a financially sustainable development'. The design is and will be informed by detailed specialist report and authorities comments.

Note the proposed project is situated on a section of the site as indicated in Figure 1: The areas outside the project site are the Barclay Road Extension Corridor, PRASA owned land north of the Barclay Road Extension corridor, and the SAOC site east of Liesbeek River tributary².

1.3 LEGAL HERITAGE REQUIREMENTS

An HIA will submitted under National Heritage Resources Act, No 25 of 1999 (NHR) Section 38 (B) as it is a specialist report within an EIA in terms of the National Environment Management Act (NEMA). Heritage Western Cape (HWC) Impact Assessment Committee (IACOM) will comment on the HIA Phase One and Phase Two reports for the EIA submission to the Department of Environmental Affairs and Development Planning (DEA&DP). The site is situated inside of a City of Cape Town (CCT) proposed Heritage Protection Overlay Zone (HPOZ). A Notification for Intent to Develop (NID) was submitted to HWC, as the proposed development will change the character of the site of over 5000 sq. meters. HWC response to the NID was for a Heritage Impact Assessment (HIA) that included an archaeological study and highlights the urban design framework of the proposed development (refer Annexure 1).

1.4 TERMS OF REFERENCE: OPPORTUNITIES AND CONSTRAINTS REPORT

The HIA Phase One report includes the following methodology and terms of reference:

² Many report figures indicate the 'broader' site, which includes the areas northwards to the confluence of the rivers. Figure 1 reflects the accurate site, which terminates at the proposed Barclay Road extension.

- Review existing documentation of the site and its immediate context;
- Identify and map the cultural significance of the site and immediate context's heritage resources, including archaeological resources;
- Assign a cultural significance to the identified heritage resources on the site and immediate context;
- Establish heritage design indicators to guide the proposed development;
- Submit draft reports to the client and project team comments;
- Submit the Draft HIA to peer review from an accredited heritage practitioner.
- Submit draft report for the public participation process, conducted by the Environment Assessment Practitioner (EAP), which includes the registered conservation body, Observatory Civic Association,
- Finalise report considering the comments received, and
- Submit to HWC for interim comment.

1.5 ASSUMPTIONS AND LIMITATIONS

1.5.1 Assumptions

It is assumed that the data on the proposed project information provided by the client, project team and the CCT EIR/M is accurate and up to date at the time of finalising the draft report.

1.5.2 Limitations

This HIA Phase One has the following limitations:

- The report has not examined in any detail social and economic issues that will be affected by the proposed development, as this is outside the brief of the report.
- The finalised WCG Heritage Baseline study October 2016 has not been submitted to HWC for comment. As this WCG report is to be the overarching baseline study for TRUP, the draft report has been used in this report, and added to the annexures;
- As the proposed building on the SAAO land adjacent to the site is in the tender stage no information on the scale and bulk of the proposed building is known;
- No Social Impact Assessment or Socio Economic report is available for inclusion into the report.

1.6 APPROACH TO THE STUDY

The proposed approach to the study is based on the guidelines for Involving Heritage Specialists in EIA processes' Edition 1 CSIR report no. ENV-S-C 2005 053 RSA, Provincial Government of the Western Cape. Department of Environmental Affairs and Planning, Cape Town (DEA&DP). These guidelines are based on accepted international best practice guidelines.

1.7 PROJECT TEAM

The project team comprises of the following consultants:

- Environmental Practitioner: Matthew Law, SRK Consulting (Pty) Ltd
- Planning: Geoff Underwood, Planning Partnership
- Fresh Water Specialist: Dr Liz Day, Fresh Water Consulting Group
- Urban Designer: Marise Potgieter, Urban Concepts
- Engineers: Carshif Tafip, Aurecon Consulting Engineers,
- Traffic Engineers: Bertie Phillips Kantey & Tompler Consulting Engineers,
- Architect: Imraam Ho-Yee, Vivid Architects
- Visual Specialist: Scott Masson, SRK Consulting (Pty) Ltd³

Heritage Specialists

Heritage Practitioner Bridget O'Donoghue is responsible for the report with the inclusion of the Archaeological report by Jonathan Kaplan (Agency for Cultural Resource Management). Sections of the EIA specialist Visual Impact Assessment by SRK Consulting is included in the report.

Bridget O'Donoghue has a Bachelor of Architecture degree and a Masters of Philosophy degree (Environmental Science) from the University of Cape Town. She is a registered Architect with the South African Council for the

³ Scott Masson, SRK Consulting is a registered Professional Landscape Architect with the South African Council of the Landscape Architecture Profession, Certified Environmental Practitioner of South Africa. Scott Masson is an Environmental Consultant and has been involved in the environmental and landscape architectural field for the past 6 years. His expertise includes Visual Impact Assessments, Environmental Impact Assessment, Environmental Management Plans and Environmental Control Officer work, Integrated Water and Waste Management Plans, environmental planning and sensitivity studies, and landscape architectural planning and design.

Architectural Profession (SACAP), an accredited member of the Association of Professional Heritage Practitioners (APHP), member of the Vernacular Architectural Society of South Africa (VASSA), South African affiliate of the International Association of Impact Assessors (IAIASa) and DOCOMOMOsa. Bridget is a specialist heritage practitioner with 16 years experience in the field of heritage management. Prior to establishing her own consultancy in 2007, Bridget worked for the City of Cape Town in the Environmental and Heritage Resources Management.

Jonathan Kaplan qualified with an MA in Archaeology in 1989 from the University of Cape Town. He has taken part in more than 750 Archaeological Impact Assessments (AIAs) specialising in Stone Age, rock art and herder studies. He has undertaken baseline studies on large infrastructure projects, as well as coastal and inland surveys, research projects, catchment management studies, monitoring of construction activities, Heritage Management Plans and excavations of rock shelters and coastal shell middens.

1.8 DECLARATION OF INDEPENDENCE

This is to confirm that Bridget O'Donoghue and Jonathan Kaplan are responsible for undertaking the report. Bridget O'Donoghue and Jonathan Kaplan are independent and have no vested or financial interest in the future development on River Club site being either approved or rejected by the relevant authorities.



Figure 2: Project Site, with contours identified. Planning Partners 2016



Figure 3. Site within its immediate context, Google Earth 2015

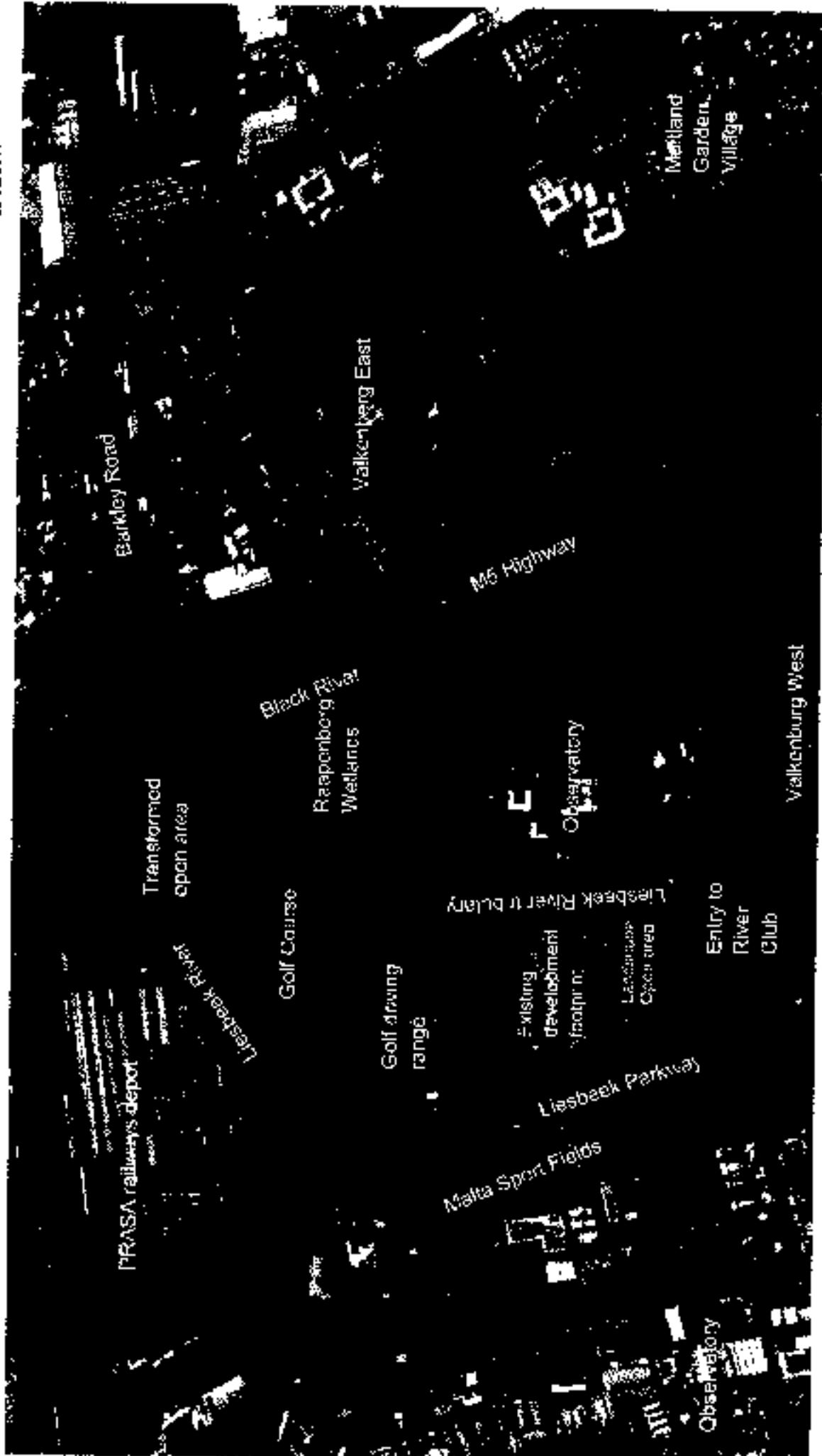


Figure 4: Site and Context, Google Earth 2015

SECTION 6 HERITAGE DESIGN INDICATORS

6.1 INTRODUCTION

The heritage design indicators result from an understanding of the site's identified aesthetic, historic, social, associational, architectural and contextual significances as outlined in Table 2. These indicators are developed for the retention and enhancement of the site's significance at metropolitan precinct and site scales. The indicators provide the basis for the assessment in the HIA Phase 2 report. The heritage design indicators are outlined in Sections 6.2 – 6.16 and depicted in Figure 92.

As HWC require the HIA to include urban indicators. Urban Concepts were commissioned to study the site and its context and produce urban indicators. The initial urban design concept has been used in this section as a base for the heritage design indicators as it represents the heritage design indicators

The majority of the urban design analysis and diagrams are included in Section 2. The urban design diagrams omitted differ from the author's assessment of the site. Similarly, the majority of the urban design indicators are integrated into this section's Heritage Design Indicators. Those that are omitted are the ones that differ from the heritage design indicators, such as heights of proposed buildings and proposed grain of development. The complete urban design report can be accessed in Annexure 3.

The heritage related design informants within the TRUP Baseline Heritage Study (October 2016, report for discussion) identifies high-level heritage related design informants and precinct specific heritage design informants. For the purposes of this report, the high level informants and the River Club and Vaarschedrif informants are included below (in italics):

- WCG Baseline Heritage Study (October 2016) High level design informants²⁴
- Retain where possible the open 'rural qualities' of the TRUP and directing compact development strategically to less heritage

sensitive areas:

- Retain mature tree belts and green corridors where they add to the cultural landscape significance of the site.
- Retain mature tree belts and green corridors where they add to the cultural landscape significance of the site.
- Enhance a sense of place and uniqueness of character by the creative use of heritage sites and their contexts.
- To allow visual and physical integration of each precinct or character area into the greater Two Rivers Urban Park framework.
- To encourage the retention of dominant landmark qualities of heritage site and cultural landscapes within the TRUP.
- To ensure visual linkages, significant view cones and corridors both to and from historic sites and cultural landscapes.
- To acknowledge the history of displacement and segregation within the TRUP and to seek mechanisms for memorialisation and redress.
- To ensure adaptive re-use for historic structures and sites.
- To ensure qualities of scale, presence and form presented by historic structures and their contexts are not adversely affected.
- To ensure development options respond to and are informed by heritage informants.
- To ensure that development responds positively to heritage assets allowing for a sensitive and appropriate transition between the old and the new.
- To ensure that development responds positively to the cultural landscapes and patterns within the landscapes. This may affect scale height density orientation to responses to topography.
- To ensure that community values are reflected in the heritage responses to the site.

The specific heritage design informants to for the River Club site are as follows²⁵:

- The unobstructed view to Signal Hill across the River Club Site should be retained and recognized through appropriate height

²⁴ WCG October 2016 p 75 & 74

²⁵ WCG October 2016 p 82 & 83

restrictions associated with an astronomically-related view cone across the site towards Signal Hill.

- A buffer area on an extent yet to be decided should be negotiated adjacent to the Observatory Hill and related canal to ensure that the Observatory buildings retain the context of a hill site;
- Mechanisms should be introduced to celebrate and commemorate the notion of the transhumant crossing area at Vaarschedrift as well as the presence of the First Nation in the Peninsula;
- Where wetland or biodiversity areas exist in a relatively pristine form, they may be used to commemorate the notion of the pre-colonial landscape i.e. the use of the landscape as artifact;
- Development proposals to allow for the retention of open recreational spaces;
- Removal of canal walls and reinstatement of soft river edges where possible;
- Retention of treed edges to mitigate potential development impact on Observatory Hill;
- Strong emphasis on height and bulk restrictions insofar as they may impact on the Observatory Hill. Height limit of 5 floors above existing (including parking) to be considered as an acceptable height limit;
- View cones to and from the Observatory Hill and peripheral areas are to be considered as a dominant heritage informant;
- Potential for development opportunities to the north of the site along proposed Berkley Road extension provided archaeological conditions are met (s 35 NHRA) and view cone to Alexandra Mill remains unobstructed.

Liesbeek Parkway Corridor²⁶

- Development proposals should consider the scale and grain of the HPOZ of Observatory. Height and bulk of development proposals should consider the historic scale and form of the HPOZ. Scaling mechanisms and buffer areas (landscape) should be considered to minimize impact on the heritage qualities of the suburb;
- Recreational open spaces are to be retained where possible;
- Development proposals should use historic precedent and engage with the river corridor in terms of orientation towards the Liesbeek

River;

- Any proposed development near a potential archaeological site should be subject to prior archaeological investigation;
- Entrance to the site from Station Road should be celebrated within the confines of appropriately scaled and contextually appropriate gateway mechanisms;
- The historic gateway and route to Valkenburg east of the river should be retained. Historic gate pillars should be protected and upgraded as part of a system of gateways at the entrance to the site

6.2 SITE'S LANDMARK QUALITIES

The site has a landmark quality due to:

- An expanse of open, green space;
- Surrounding rivers, and
- Accessible views of the site.

Furthermore, the spatial interconnection of most TRUP sites contributes to the heritage value of the site and TRUP as a whole.

The landmark quality indicators are as follows:

- Retain a large primary open area and subsidiary open areas within future development, and
- Integrate the site spatially and visually with adjoining TRUP sites.

6.3 NATURAL ENVIRONMENT

The site's significant natural features are the mature trees, seasonal floods, and the abutting riverine environments. The site is unique in Cape Town with its position between the original course of the Liesbeek River and Liesbeek River canal. The site is a component of the city's open space network.

The natural environment indicators are as follows:

²⁶ WCG October 2016 p 83

- Respect the required environmental setbacks from the river edges, and embrace these as an opportunity to rehabilitate the watercourses and canal, and introduce public spaces to their edges as achieved along sections of the Liesbeek River;
- Ensure that future changes to the existing ground levels do not impact negatively on the cultural heritage significance of the site and TRUP;
- Ensure that changes to the topography of the site do not impact the Raapenberg Bird Sanctuary and the riverine environments (e.g. through changes to surface flow dynamics);
- Ensure no buildings' high, blank facades face the rivers;
- Celebrate the Raapenberg Bird Sanctuary with setting buildings back from this adjacent site boundary and the development of a site's public space adjacent to the sanctuary;
- Rehabilitate watercourses to promote ecological functioning;
- Balance future recreational uses on the rivers with the river's ecological requirements;
- Do not to create blank facades/edges on the development; and
- Although beyond the site on PRASA land, be cognizant of the convergence of the two rivers (Liesbeek and Black river) as a significant historic place on TRUP;
- Remove canal walls and reinstatement of soft river edges where possible.

6.4 VISTAS

To retain the site's visual accessibility from the surrounding roads and sites, the vista indicators are as follows:

- Retain identified significant vistas to, into and through the site (from adjacent sites and roads) in the design of future development's massing and scale;
 - Maintain and define views linking the site with the significance TRUP features / landmarks (e.g. SAAO, Alexandra Mill, Valkenberg Hospital, Liesbeek and Black Rivers);
- Celebrate the historic view connection between the SAAO and Signal Hill through design of the buildings in this view cone;

6.5 OPEN SPACES

The site's open spaces have the following characteristics:

- It is the major spatial characteristic that links the site to neighbouring TRUP sites;
- Differentiates the site from the surrounding urban context; and
- Gives the site landmark status.

The following indicators are recommended to retain the open space characteristics of the site:

12. Retain as a site character the green open landscape that spatially connects to the adjacent TRUP sites:
 - Design open spaces to provide:
 - A park-like environment with buildings in it (as opposed to a building complex with park spaces around it)
 - An undeveloped setting adjacent to the SAAO;
 - Historic view corridors to, from, and through the site from the SAAO;
 - Publically accessible recreational areas, and
 - Improved ecological areas.
 - Connect open spaces to the surrounding TRUP undeveloped (green) areas, allowing access to rivers and views through the site and towards the mountains;
 - Ensure the continuation of the current walking and cycle routes along Liesbeek Parkway and the Liesbeek River; and
 - Retain and reinforce the physical connection of the site with Liesbeek River and its tributary, and
13. Retain and reinforce the spatial connection of the site with the Raapenberg Bird Sanctuary.

6.6 PUBLIC REALMS

Historically TRUP is a site of historic exclusion, starting with the Dutch erected barriers to restrict Khoikhol access and thereafter the restrictive access to the institutions, Valkenberg Hospital and the SAAO. The site is privately owned but currently provides commercial publically accessible amenities such as a massive golf course, restaurants and bars, children play areas in addition to conference facilities. Other core TRUP sites offer

varying degrees of public access, such as restaurants, hotel, riverbanks and grassed areas. Indicators to enhance the site's public accessibility are as follows:

- Promote public access to the site by providing (for example):
 - Paths and walkways;
 - Bird watching facilities;
 - Restaurants;
 - Community facilities;
 - Sport facilities and events;
 - Publically accessible open areas and river banks; and
 - Other recreational activities;
- Include the experience of a future public open space and the Raapenberg Bird Sanctuary as an integral part of a continuous public space system;
- Retain and reinforce the physical connection between the site's natural features, such as rivers and Raapenberg Bird Sanctuary; and
- Promote non-motorized transport (NMT) such as walking, running and cycling to and through the site.

6.7 LAND USE

Heritage Design indicators for the future use of the site are as follows:

- Integrate a mix of land uses on site (private and public) to complement the variety of existing land uses in surrounding areas;
- Incorporate an open landscaped area for public use with recreational uses;
- Promote public access to the site;
- Include residential properties to promote a variety of site use and to ensure permanent occupancy; and
- Include institutional land use if possible; and
- Celebrate and commemorate the First Nation's use of the site.

6.8 DEVELOP SITE TO ITS CULTURAL POTENTIAL

The heritage design indicators for the development of the site to achieve a greater degree aesthetic, social and ecological significance are:

- The development should address its position within TRUP and primarily respond in a positive and marked way to the cultural significance of the site's historic, social, aesthetic, associational and contextual values.
- Capitalize on the unique accessibility of the site within the CCT;
- Develop site areas which lack ecological and aesthetic significance;
- Enhance the site's physical connections with surrounding TRUP precincts and suburbs;
- Promote the site integration with surrounding TRUP precincts and suburbs; and
- Address ecological site conditions such as the high water table and frequent flooding in a manner that does not reduce the site's historic, recreational, associational and aesthetic significances;
- Mechanisms should be introduced to celebrate and commemorate the notion of the transhumant crossing area at Vaarschedrif, for example a pedestrian bridge, landscaping, interpretive signage in this site precinct.

6.9 SPATIAL ORDERING OF DEVELOPMENT

There are a number of conceptual organization models of urban forms and related spaces. The model that best responds to the site and TRUP high cultural significance should be selected²⁷.

²⁷ Examples of organization models are:

- Centralized: central dominant building/space around which a number of secondary buildings are grouped;
- Linear: linear sequence of buildings (generally repetitive).
- Radial: central building/space from which linear buildings are extended in a radial manner;
- Clustered: buildings grouped by proximity or the sharing of a common space or structure; and

The heritage design indicators for the spatial ordering for future development are as follows:

- Cluster zones of buildings rather than linear, block, radial or grid arrangements. This approach is recommended because it encourages an open space design and allows for the conservation of the ecological, visual and heritage attributes and characteristics of the site.
- Distinguish the site from the surrounding built urban context, which is predominately an orthogonally determined event: Respond to the spatial ordering of the central core TRUP precinct primarily, and in particular in the southern portion of the site (as opposed to the orthogonal spatial ordering of the non-TRUP urban development, such as office buildings on Fir Street) and
- Predominately cluster buildings into precincts to allow the retention of open areas and vistas through, towards and from the site. A limited linear organizational model can be considered adjacent to the proposed Berkley Road extension provided that view corridors between certain of these buildings are retained, and
- Set buildings within the open spaces and riverine landscape.

6.10 RESPONSE TO ABUTTING HERITAGE SITES

The site is part of a larger precinct where skirmishes between the KhoiKhoi and the Dutch colonialists occurred in the late 17th century prior to it being used for agriculture. Situated adjacent to the SAAO, Raapenberg Bird Sanctuary and convergence of the Liesbeek and Black Rivers, and located in close proximity to the Valkenberg Hospital and Valkenberg Manor House, future development has to respond to these significant cultural and natural landscapes.

As well as indicators recommended elsewhere, the following specific measures are recommended to preserve this heritage value:

- Grid: buildings organized by a structural grid.

- The development should aim to preserve the heritage value of abutting sites like SAAO, Valkenberg Hospital, Valkenberg Manor, Raapenberg, Bird Sanctuary, the convergence of the Liesbeek Rivers, Vaarschedrif crossing and the cultural significance of the area. This can be achieved by retaining and promoting the buildings within the park character and the landscaped site edges;
- Retain a treed landscape at the interface with the SAAO;
- Celebrate the pre-colonial Vaarschedrif crossing over the Liesbeek River;
- In the southern site precinct, set buildings back from the SAAO boundary in order to retain the SAAO vegetated site setting, and
- Implement appropriate landscaping and retain the existing ground level immediately adjacent to the SAAO common boundary.

6.11 GROUND LEVELS

In order to avert frequent flooding of the site, the proponent proposes to raise the site's ground level to prevent the seasonal flooding. Careful consideration must be given to this aspect in order to retain the heritage value of the site and surrounding TRUP sites. The following indicators are recommended.

- Changes to the ground level should be an overall subtle visual intervention and should not be overly obvious or visually discordant;
- Restrict the terrace level to the minimum safe height for habitation.
- Respect and follow the current topography of the Liesbeek and Black River valleys when determining terrace heights;
- Manipulate ground levels in a series of different scaled levels / terraces;
- Retain a portion of the site at natural ground level to allow seasonal floods in certain site precincts; and
- Design buildings to relate to their site position and levels (e.g. by promoting active interfaces between buildings and open areas).

6.12 BUILDINGS

The heritage design indicators for new buildings on site are:

- Building style and language should be sensitive to the setting and not visually dominate the character of the TRUP and site's landscape settings;
- Buildings and groups of buildings should reflect the values and significance of the heritage resources in context; by being designed sensitively with regard to scale, proportion, positioning, heights, and significant site and context view cones;
- Use techniques for design and construction to differentiate the proposed buildings from buildings in the surrounding non-TRUP urban context (for example, by using different materials, colours, glazing, 'soft' corners and visibility into and through buildings);
- Fragment and restrict the height of buildings in proximity to the SAAO and retain the SAAO setting (it should be noted that the National Research Foundation intend to develop ~8 000 m² of BLA at Erf 151833 at the southern portion of the site which may alter this setting);
- Restrict and stagger the height of buildings north of the existing River Club building;
- The scales of the proposed buildings require modelling within the site and site context in order to assess the potential impacts on the site and TRUP. The height limit should not exceed the adjacent buildings on Fir Road (which is eight storeys)²⁸;
- Stagger building heights from south to north and across the site. Locate the tallest buildings adjacent to the proposed Berkley Road extension;
- Building heights should vary so as not to create a monolithic built complex;
- Avoid high scaled buildings and buildings with large footprints;
- Prevent a building or building cluster from dominating other buildings, the site and surrounding TRUP sites in terms of scale, position and massing;

²⁸ Note the height limit in the WCG Draft Baseline Heritage Study is for a maximum of 6 storeys (including parking)

- Design buildings to be fragmented with various sizes and architectural forms (certain building complexes could be individualized to offer variety and / or signify entry / position etc.);
- Design buildings to define open spaces and routes;
- Allocate continuous buildings that define spaces and create active edges (e.g. perimeter block buildings) in areas where noise, wind and visual mitigation is necessary;
- Consider the scale of buildings with respect to the view cones from adjacent significant site, e.g. from the SAAO towards Devil's Peak and Signal Hill;
- All signage to be sensitive to the TRUP environment;
- Associate buildings (especially recreational use buildings) and publically accessible facilities to the publically accessible open spaces and riverine landscapes (including the PRASA land to the north and in particular the Liesbeek and Black Rivers) by, for example:
 - Connecting buildings with levels, routes, paths and landscaping features; and
 - Providing staggered, interactive building facades.

6.13 ROADS, ACCESS AND PARKING

Currently the site can only be accessed via Observatory Road to the south. Development of the site will require additional site access, including the proposed Berkley Road extension, which will define the northern boundary of the site.

The indicators for future roads, site access points and vehicular parking areas are as follows:

- The Berkley Road extension should not sever the site from the PRASA south of the rivers, but should be designed and articulated in such a way that visual and usage connections are retained;
- Restrict roadways and car dominant spaces within the site. The road network should reflect and be very sensitive to the park-like setting;
- Retain the existing entrance to the site as a key vehicular / pedestrian link into the new development, if possible depending

- Allow new access points (bridges) from Liesbeeck Parkway and Berkley Road extension;
- Design bridges so that the site does not lose its island qualities;
- Encourage linkages to the PRASA owned land north of the site to ensure that this area (including the convergence of the rivers) remains integrated into the site and TRUP;
- Design roadways to avoid general public vehicular thoroughfare through the site;
- Limit the amount of vehicular parking on site in order to retain open areas. Avoid large open parking areas and accommodate parking within buildings and terraces where possible;
- Locate parking garage access points close to the site entrances, if possible;
- Include small, landscaped pockets of ground level parking;
- Accommodate non-motorised movement routes in a practical, safe and visually pleasing manner. Pedestrian routes and movement should be incorporated on all vehicular routes, be unrestrictive and user friendly to promote a people friendly and NMT environment;
- Vehicular parking to be addressed within the constraints of the site's high water table.

6.14 ARCHAEOLOGY

In terms of the findings of the archaeological sensitivity assessment, the site does not possess any material evidence that attributes to the pre-colonial or post-colonial periods. Nevertheless, provincial and local heritage authorities may require an archaeological watching brief during any excavation and landscaping, trenching or digging of footings. In the event of an archaeological find being made, an emergency permit will need to be obtained for an archaeologist to inspect the find and to make the necessary recommendations.

The indicator for archaeology is as follows:

- As the site possesses potential for archaeological evidence, an archaeological watching brief be put in place prior to any earthworks occurring on site.

221011

Our Ref: HM/CAPE TOWN METROPOLITAN OBSERVATORY ERF 151832
Case No. 15112504WD12176
Enquiries: Waseefa Dhansay
E-mail: waseefa.dhansay@westerncape.gov.za
Tel: 021 453 9535
Date: 13 September 2019



Liesbeek Leisure Properties Trust
PO Box 786739
Sandton
2146

INTERIM COMMENT
In terms of Section 38(8) of the National Heritage Resources Act (Act 25 of 1999) and the Western Cape Provincial Gazette 6061, Notice 298 of 2003

PROPOSED DEVELOPMENT ON ERF 151832 CORNER LIESBEEK PARKWAY AND OBSERVATORY ROAD, THE RIVER CLUB, OBSERVATORY, SUBMITTED IN TERMS OF SECTION 38(8) OF THE NATIONAL HERITAGE RESOURCES ACT (ACT 25 OF 1999)

HWC Case Number: 15112504WD12176
DEA/DP Reference Number: 16/3/3/6/7/2/A7/17/3104/16
DWS Reference Number: WU9026 River Club and 16/2/7/G22/A/16

The matter above has reference

Heritage Western Cape is in receipt of your application for the above. This matter was discussed at the Impact Assessment Committee (IACom) meeting held on 22 August 2019.

The Committee resolved to comment as follows.

Heritage Western Cape is in receipt of a Heritage Impact Assessment (HIA), submitted on 15th July 2019, under the provisions of 38(8) of the National Heritage Resources Act (NHRA) and contained within a Basic Assessment process conducted under the National Environmental Management Act (NEMA), for the redevelopment of the River Club site, Erf 151832 and its adjoining riverine banks, the construction of the adjoining arterial Berkeley Road Extension on Erf 15326, the widening of Liesbeek Parkway, and of the road intersections giving access to Erf 151832, Observatory, Cape Town.

Prior to discussion of the HIA, the following is set out in order to provide background summary to the application tabled before the Committee, as well as highlight various issues that HWC has already placed on record.

The HIA tabled, conducted by Dr Stephen Townsend and Mr Jim Ford, and dated 2 July 2019, replaces the Phase 1 HIA submitted to HWC on 22 February 2017, prepared by Ms. Bridget O'Donoghue, (including a peer review conducted by Dr Nicolas Baumann), which was tabled at the Impact Assessment Committee meeting of HWC on 8th March 2017.

The minutes of the meeting of the 8th March noted amongst other things that: "The Committee believes that the entire TRUP precinct must be looked at holistically, it is problematic to consider the specifics of this application in isolation from the broader study".

It was also noted by the IACom that: "On several occasions HWC has been led to believe that development issues for the entire TRUP area would be addressed prior to the development of individual projects therein".

It was understood at the time however, that there was a broader Baseline Study of the Two Rivers Urban Park (TRUP), commissioned by the DT&FW and conducted by Melanie Altwall and Graham Jacobs, and which included the River Club within its area of study, and that this was to be considered by the IACom at its next meeting of 12th April 2017. On this understanding, the Committee resolved to undertake a site inspection of the site, and wider TRUP, prior to any further consideration of the O'Donoghue Phase 1 HIA.

www.westerncape.gov.za/cas



The Baseline study for the TRUP (which included the River Club), and submitted in terms of s38(2), was thereafter tabled at the IACOM meeting of 12th April 2017, and of importance to the common being provided in respect of the current application, the minutes of that meeting reflected:

"On balance it is evident that based on the heritage resources identified in the baseline study and its supporting documentation, that the TRUP is of extremely high heritage significance. The Committee agrees that the overall site is of at least Grade II heritage significance, if not higher", and the IACOM recommended that:

"Given the strategic importance and high significance of the site, it is a strong recommendation of the Committee, that the Council of HWC gives consideration to the provisional protection of the TRUP area under s29 of the NHRA".

The Committee also noted at its meeting of 12th April 2017, that it had concerns that the following issue(s) should also be addressed in the Baseline Study:

"The National Khoisan Legacy Project; in particular the understanding that this site may form an important aspect thereof. It is further understood that this site has been identified as part of the National Liberation and Resistance Project of Government. These are aspects that cannot be ignored and must be taken into account when framing heritage related informants for the site"

Notwithstanding certain of the concerns raised in respect of the baseline study, Ms Atwell and Mr Jacobs were commended for an extremely thorough report, (particularly in respect of the identification of significance of the TRUP), and one which is also noted to have been commended by First Nation representatives at the MEC Tribunal hearings.

A number of further meetings were held with respect to the TRUP Baseline Study, and the proposed provisional protection throughout the course of 2017. These include discussion of the TRUP at the Inventories, Grading and Interpretation Committee (IGIC) in May 2017.

The IACOM resolution following feedback from the IGIC meeting held, as recorded in its minute of 9th June 2017 intains;

The Committee is unanimously of the view that based on the information provided for in the consultant's Baseline Report tabled before this Committee, the TRUP is of potential Grade II or even (Grade I significance). The Committee stands by its previous recommendation that the site should be provisionally protected so that the matter is fully investigated. The Committee recommends that a recommendation for the provisional protection of the TRUP is sent to the Council of HWC for its consideration.

A wider public meeting was held on 29th August 2017 in order to discuss the proposed boundaries of a wider s29 provisional protection for the entire TRUP area.

The Atwell and Jacobs Baseline Study, along with a supplementary report, was resubmitted to HWC for consideration at its IACOM meeting of 8th November 2017. The minutes of the meeting reflect that neither the Heritage Practitioners, nor Town Planner were at the meeting, and that the IACOM were informed that a representative of the DT&PW would answer any heritage related questions.

The IACOM was however informed, that Interested and Affected parties had not been given sight of the supplementary report. The Committee therefore removed the item from the agenda, and resolved that:

The applicant must circulate all supplementary information to ISAP's for comment. Any additional comments from ISAP's and the heritage practitioners' response thereto, must be included with the resubmission of the supplementary report.

It is important to note that it was during the course of this meeting that in response to a query by the DT&PW representative, the Committee verbally informed that it could not prevent a separate application being submitted by any individual land owner, but that this would be at the risk of the applicant, should the broader TRUP Baseline Study, which provides informants for the whole TRUP, not be completed, as HWC has been explicit previously in this regard.

In or around February/March 2018, HWC Management was made aware of the intent of the River Club to submit a new HIA. Following this, and noting concerns raised by the IACOM, and recommendations made previously, decision was taken at HWC Council in March 2018 to provisionally protect the site in terms of the provisions of s29 of the NHRA and the provisional protection was formally gazetted in the

Provincial Gazette, No 7916, on 20th April 2018. The Notice records the significance of the site, and the wider TRUP area as follows:

Significance:

The River Club forms part of the wider Two Rivers Urban Park (TRUP) and represents a microcosm of Cape history. It reflects the pattern of South Africa's social, architectural and political history spanning across the pre-colonial, colonial, apartheid and more recent history.

The Two Rivers Urban Park landscape has high cultural values of historical, social, aesthetic, architectural, scientific and environmental significance. It contributes to an understanding of past attitudes, beliefs, uses, events, persons, periods, techniques and design. It has associated links with past events, persons, uses, community memory, identity and oral history. It possesses a strong sense of place.

The Two Rivers Urban Park landscape is a complex composite of natural, cultivated and built landscape elements. It is a cultural landscape, transformed by thousands of years of settlement history. The landscape expresses both artistic and innovative qualities in terms of its natural setting, architecture and planting patterns. It also has narrative qualities, possessing a rich layering of physical evidence brought alive by the oral histories of the people who lived and worked in institutions, amongst other things, the Vaikenberg Hospital and the South African Astronomical Observatory.

Different historical narratives create a story of pioneering and philanthropy, social reform and identity, self-sufficiency, farming and institutionalisation.

The Two Rivers Urban Park possesses many distinctive and interrelated precincts which clearly demonstrates or are strongly associated with its various historical roles and uses as a place for indigenous hunter-gatherers, grazing grounds for herders, colonial farms, scientific research, reformatory and hospitals.

This decision was appealed to the MEC Tribunal, by a number of parties, namely the owners of the River Club, the DEA&OP, the DT&PW, as well as the City of Cape Town. However, as there was a procedural flaw in the HWC Council's decision to provisionally protect, (not provisionally proclaim) the River Club as a PHS, as stated in the current HIA, the Tribunal ordered on 29th January 2019, that this be rectified and must include consultation and negotiation with the appellants and I&APs. That HWC must invite the owners of the River Club to an oral hearing held by its Council within three months, that HWC must submit a report to the Tribunal within two months of the oral hearing; and that the parties will then be given thirty days in which to make final submissions and the Tribunal will then hold a final hearing and finalize the appeal.

Whilst this process has been completed, the MEC has yet to meet and take a final decision in this regard. It is accepted that the s29 provisional protection remains in place.


However, as noted, and communicated to representatives of the DT&PW, applicant, DEA&OP and the City at the IACom meeting of December 2017, this does not preclude any party making a NEMA / NHRA s33(1) application in the interim. HWC is somewhat confused therefore by the contention on page 23 of the HIA that it was the interim ruling of the MEC Tribunal released on 5th February 2019, which enabled the integrated NEMA and NHRA process to continue. This was never the case.

What is noted is that a s29 provisional protection does not preclude an applicant from making an application, (inprecis s29(1)) of the NHRA makes provision for this).

It is finally noted that there has been no further submission of the TRUP Baseline Study, since the IACom meeting of 8th November 2017.

Representation was however made to the IACom, by the DT&PW at its meeting of 12th June 2019, (some two years after the release of Baseline Study was submitted) where the Committee was informed by the DT&PW that:

"The DT&PW had, during the process of the s29 protection of the River Club, become aware of a real need for public engagement. In this regard, DT&PW had resolved to undertake a further public participation process for the wider Two Rivers Urban Park. This is primarily to address the role that the first Nation groups have in commenting on the wider process".



The above has been set out in order to provide a broad background to the current application, and particularly to inform that HWC have continually informed all parties, and demonstrated via the provisional protection, that it is of the opinion that the site, and the wider TRUP area is of exceedingly high cultural significance, (of Provincial or even National significance), and that until the Basic Assessment Report, which addresses concerns already ventilated by HWC, and in particular, or meaningful consultation with representatives of the First Nation and Cape Indigene groups in order to better understand the significance of the site to these groups, has been incorporated into the study, any application for development of a property within the TRUP area is in danger of being compromised.

That the applicant has chosen to proceed with the application, without meaningful reference to any of the previous studies is regarded as unfortunate.

HWC remains of the opinion that the River Club is an integral part of a highly significant cultural landscape, that is of the very least of Provincial significance, but more realistically and given South Africa's history, is one of National significance. Indeed, the TRUP as a whole could be regarded as one of the single most historically significant sites in the Country.

In respect of all of the above, as it has been confirmed that the comment being provided by HWC is an Interim, rather than a Final Comment, the following part will primarily concern itself with the Heritage Impact Assessment report, and as to whether it has complied with the provisions of s38(3) of the NHRA.

As a stakeholder in the process, HWC will reserve the right to provide a more detailed comment on other heritage related aspects of the development, as well as any other material issues relating to the development proposal, at the time it provides its Final Comment.

HWC is obliged, in terms of the provisions of s38(8) of the National Heritage Resources Act, (NHRA), to give consideration as to whether the evaluation of the impact of the development on heritage resources fulfils the requirements of the relevant heritage resources authority in terms of s38(3) of the NHRA.

It is the unanimous view of the IACom, being the delegated authority to issue comment on behalf of HWC in terms of s38(8), that the HIA as tabled does not comply with the provisions of s38(3).

For ease of reference, the comment which follows is structured under the subsections of s38(3).

(a) The identification and mapping of all heritage resources in the area affected.

HWC is of the view that this requirement has only been partly complied with.

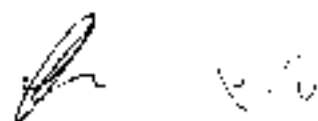
It is noted that the HIA has been very well researched, and that the historical background is well articulated. This includes the history of planning and development as it relates to the 20th Century.

What is considered unfortunate however, is the chasm between the initial acknowledgement of the historic significance of the site and wider environs and the actual identification and mapping of the heritage resources.

Indeed, the actual mapping of identified heritage resources, is noted as illogical, and flawed, and is effectively relegated to two diagrams in section 10.8 of the report which is titled 'Conclusions regarding impacts on significance'. The identification and mapping of heritage resources is something that should be addressed in the first part of the report, and should set the tone of the report, rather than being relegated to a conclusion.

Notwithstanding that, both diagrams seemingly ignore the significance already identified in previous studies, public comments that as previously expressed by HWC, and indeed the historical significance of the site as tabled in part 7.1.2 of the current HIA report itself.

As such, the first mapping diagram bases significance on 'ecology' rather than cultural values, and reduces the acknowledged and far wider cultural landscape of the valley to just the river(s). Arguing that the 'river itself is the only tangible visual element which survives as a resource which warrants protection', negates in its entirety the exceedingly high historic, and symbolic significance of the site identified in all previous studies, and submitted continuously throughout the process by the relevant I&APs.



The tangible aspects of the river, confined to their current extent, while certainly important, are not the only heritage resources which should be mapped and identified. They are an integral part of a much wider and highly significant system, as indeed is the River Club property itself.

The second mapping diagram, merely serves to post-rationalize a pre-conceived development concept prepared by Urban Concepts in 2014, as per Page 90 of the O'Donoghue Phase 1 HIA tabled at the SACem of March 2017.

An example of this post-rationalization, is the attempt to grade the current river corridor between the proposed two developments 'envelopes' as IIB, as indeed is the attempt to only identify some 40-50m of the river corridors, and confluence as heritage resources. This makes no sense, and is rejected as flawed.

Notwithstanding that HWC has consistently advised against this, the HIA has not placed the River Club site within the context of the wider TRUP, and has downplayed the open low-lying green riverine character of the site which contributes to the intangible heritage experience.

Likewise, it is noted that the River Club building itself is down-played as a heritage resource, previous reports having noted the structure as being of #B, or of least contributory significance.

The notion that the 20th Century disturbance, has resulted in a degraded site is, from a heritage point of view, is also rejected.

The HIA notes that:

"This wider site is the historically significant place, a 'frontier zone' (if for a short period); but its meaning and persuasiveness as heritage site has been eroded by the 19th century institutional use and development of the spur, by the growing transformation of the floodplain for sporting uses and facilities and for railway-related functions during the second half of the 20th century, by the gradual creep of the suburb and business quarter below the railway line throughout the 20th century, and by the late 20th century growth of the transformation network of arterials and motorways".

HWC is of the view that the HIA errs in this contention, and the fact that the site has been considerably disturbed in the latter half of the 20th Century, does not in any way take away the meaning of the site as a historic frontier or point of conflict, or its significance to the representatives of the First Nations to whom the site and wider area also has sacred significance.

Whilst this aspect will be noted later under s39(e), HWC is also of the strong view that part of the failure of the HIA to identify and map the heritage resources is that there appears to have been no meaningful engagement with the First Nation communities to either understand, or help inform, the identification of heritage resources.

It is noted that the O&PW has now identified the lack of meaningful engagement with the First Nation Groups as being problematic in the wider TRUP Baseline Study, and has resolved to correct this, by entering into a new stakeholder process. It is a strong recommendation that in order to correct the inherent flaws in the report in this regard, that the River Club does the same or awaits the outcomes of that stakeholder process.

Until this is done, the identification and mapping of heritage resources must be regarded as incomplete. Currently, and based on all documentation to hand and submissions made, there is not merely a "difference of opinion", between the applicants and First Nations' understanding of heritage resources, (and significance), but a disconnect.

It is submitted therefore that the identification and mapping of heritage resources is both incomplete and inherently flawed, and is one which is based around a preconceived development concept which pre-judges this HIA.

(b) Assessment of the significance of such resources in terms of the heritage assessment criteria set out in section 6(2) or prescribed under section 7, (of the NHRA).

HWC is of the view that the assessment of significance is inadequate.

As noted, the disconnect between the various stakeholders' understanding of what comprises the heritage resources of the area, and that of the HIA, is already problematic. It stands to reason therefore, that given the absence of a complete identification and mapping of the heritage resources defining

In the wider 'valley' that the grading of these resources will not be flawed. Indeed, if the fundamental grading of significance is wrong, then all that follows, and conclusions of the HIA will also be wrong.

Section 2(3) of the NHA sets out, amongst others, the following criteria, in determining whether or not a site:

- i) is considered to have cultural significance to the community;
- ii) could yield information about heritage;
- iii) is important in exhibiting particular aesthetic characteristics valued by a cultural group;

The HIA has not taken the above into account in the assessment of significance, and as noted, has merely reduced the identification of heritage resources, and subsequently significance to tangibly based ecological values rather than cultural heritage values.

It ignores the significance of the site to a Community that has a recognized and direct, deep and sacred linkage to the site through lineage and collective memory and furthermore whilst acknowledging the historic importance of the site in South Africa's Pre-Colonial, and Colonial History, it makes no attempt to assess the significance of this as a site of conflict, that has direct relation to the trajectory of South Africa's Colonial History through to the 20th Century.

It is again noted that a meaningful engagement with the First Nation Communities would have assisted in further informing significance.

The concept of significance is broadly underpinned by authenticity. The values attributed to the site by the stakeholders have not been carried through into the report and have therefore not adequately informed the unique significance of the site and appropriate development indicators. This is a methodological problem that the HIA does not address.

The HIA undermines the significance of the heritage resources generally, or is confusing or contradictory. For example:

On the one hand it states that "River Club site and its surrounds to be of very high environmental/topographical/ecological and historical significance both as the floodplain of the Lesheek River and as a part of the place of early confrontations between indigenous peoples and settlers", and on the other hand, it states that the River Club itself is of low significance (p117).

On p5 it states that "the Lesheek River corridor, if recovered and restored to full ecological functioning and given meaningful presence, should be recognized as a heritage resource and be declared to be a provincial heritage site." But at the same time, the HIA gives no significance to the floodplain between the rivers, and supports the redevelopment of the River Club site, which immediately abuts and divides the green walking for this river corridor with a bulk of 150 000m² and heights of 10 storeys.

Here again it is considered that it is the post rationalizing of the development that has resulted in the incongruence in the report.

It is not just the riverine corridor, (unrehabilitated or not), but the entire TRUP valley including the riparian corridor which is noted as highly significant and is expressed in both its tangible and intangible qualities. This has been recognized and assessed in previous reports considered by HWC, a significant number of other stakeholders, and indeed the ACom, and HWC itself in taking the step to provisionally protect the site in terms of s29 of the NHA.

The lack of recognition of the grounds of the River Club site is also noted by the D&PW in its comment on the HIA, and, as previously stated, the River Club building itself, an integrated component of the grounds, and one which at the least is of contributory, (and historic), significance, is contrary to previous studies conducted, now deemed of no value.

In general, and in spite of HWC having previously advised that whilst individual (and owners) are entitled to proceed with an HIA for their own development, to ignore the existing studies and the bigger TRUP picture could be "of their own peril".

In this instance, the assessment of heritage resources has ignored both the existing studies, and the wider picture, and as such has attempted to grade significance in the isolation of a much wider system. As a result, it is very difficult not to believe that the assessment of significance has been tailored to arrive at mitigation for the development rather than an assessment of significance that would assist in informing

an appropriate development. It is as a result of this that the report contends that "the heritage-related criteria-for-decision-making/design indicators are relatively limited in guiding the architectural/urban character of the proposed development itself," in other words, there are hardly any heritage indicators for development.

It is considered that sigified to relegate the significance of the site, which is an integral part of a broader area which has a recognized and acknowledged high cultural significance, to a set of post-rationalized and confined areas of significance, primarily based on ecological rather than cultural values and to isolate the subject site from the broader cultural landscape.

There is a fundamental problem with the assessment of significance, or grading in the HIA, and as stated: if the grading of significance is wrong, then the conclusions will certainly be wrong, as is the case with this HIA.

(c) Assessment of the impact of the development on such heritage resources.

As noted above, given the heritage resources themselves have not been fully identified or mapped, and that the assessment, or grading, of the heritage resources is flawed, (given they are tailor made for mitigation rather than as informants), then it follows that any assessment of the development on identified heritage resources must be flawed.

Amongst other things, HWC notes that:

The report wholly downplays the irreversible impacts of transforming a green lung of the heart of the TRUP into a mega project. These irreversible impacts are hardly interrogated at all.

Whilst it is conceivable that the site may have some potential for some low-rise development and possible activation of edges, the HIA neither motivates for, or questions, the 150,000m² of floor space proposed (in comparison, Canal Walk at Century City is ±146,000m²), and whether this is an appropriate site for a mega project.

The HIA appears not to regard the built form of the proposed development as affecting the significant heritage resources present, neither does it recommend heritage related built form restrictions. Unlike the TRUP Baseline Study and the Phase 1 HIA for the River Club (both of which provide some well-considered, specialised indicators), this HIA practically gives the development carte blanche (i.e. height and massing).

It is noted that the Preferred Alternative (1) has heights of 4-9 storeys in Precinct 1 (south) and 5-10 storeys in Precinct 2 (north).

The HIA does not motivate for, or critically interrogate those heights, or its impacts on the heritage resources identified in the report itself.

For example:

- Noting that HWC have already queried these recommendations or informants previously, ("concern was raised in respect of the origin of certain of the heritage informants that have been tabled, one example is that the HIA wholly unclear as to how the height related informants for the River Club were derived. It is difficult not to draw conclusion that these are based on a pre-conceived development concept", IAC minutes 12th April 2017), other consultants recommended a maximum of 3-4 storeys next to the South African Astronomical Observatory (SAAO), the HIA now supports 4-9 storeys in Precinct 1.
- Whilst it is noted that it recommended that a 'suitable memoria' is located on the site, within the northern corner of the natural PH5 area, which commemorates the legacy of the first Nelson Grieks and Cape indigene, there is no assessment of the impact that a 10 storey building would have on this site, or for that matter the proposed corridor. Indeed, it is noted that when this was put to the heritage practitioner at its meeting of 22nd August 2019, the IAC members were informed that this site was not fixed, and could conceivably be anywhere within the development. It is questioned then, if the site and built form is not fixed, how can the impact on heritage resources be assessed.

The statement that the impact on the site's sense of place is "dependent of the personal aesthetic and values of the observer" is not supported.

Indeed, this dismisses (or avoids) the observations previously noted by HWC, those contained within the Attwell, Bauman, and O'Donoghue reports, as well as that of a considerable number of public and governmental stakeholders, which includes the SAAC, DFW, and the CoC EMS.

The considered comment and concerns raised by these bodies must surely be regarded as something more than "a difference of opinion".

Importantly the HIA fails to assess the impact of the development on the most important heritage resource: The site's open, green qualities as a remnant of landscape that has considerable intangible historic and cultural heritage significance.

It is agreed that a private golf course is not the ideal end use for such a significant site. However, instead of the recovery of both significance and sense of place, the proposal completely destroys what is left of the landscape.

The statement that the sense of place has already been transformed iteratively over the past 80 years, does not make it acceptable to destroy what remains.

It is finally noted that the Visual Impact Assessment (VIA) is inadequate in its assessment of the cultural landscape and defining the sense of place. The photographs provided are too crude and inaccurate to be considered as a useful tool to assess impact.

Furthermore, while the VIA finds that "a loss of sense of place is expected" (p.37) and "new built structures will be visually intrusive", it simply echoes the HIA, by concluding that the judgement of visual impacts depends on "viewer perceptions".

This is neither conclusive nor useful.

HWC notes that it is only a commenting body in respect of this application, and that consideration of the VIA is DEA&DP's concern as the authorizing body, however: it is noted that should the situation arise where it has to take a decision in respect of this application, it would require that the accompanying VIA material either be conducted by a practitioner who HWC recognizes as having the requisite expertise for heritage related work, or should at least be conducted by an independent consultant, and not by the EAP's company.

(d) Evaluation of the impact of the development on heritage resources relative to the sustainable social and economic benefits to be derived from the development.

Whilst it is acknowledged that there may well be a potential economic benefit to developing the site, it is noted that there has been no attempt to develop argument or acknowledge the impact of the development balanced against a site which has been recognized previously by HWC as being of Provincial, if not National, significance.

It is further noted that other than an acknowledgement of process followed thus far, the HIA has also barely acknowledged or interrogated the significance that HWC and previous reports have attributed to the wider valley context.

As a result, and in attempting to define or limit significance to the riverine corridors only, meaningful discussion of the impact of the development on the significance of the wider TRUP cultural landscape is avoided altogether. This is in direct conflict with the advice HWC has previously given that the River Club cannot be looked at in isolation of the wider system.

Noting that the proposed development is in line with the City of Cape Town's new Metropolitan Spatial Development Framework (MSDF), it is not an evaluation of the impact of the development on heritage resources. It is noted that the revised MSDF designates the River Club and TRUP area as part of the 'Urban Inner Core', and that urban development within these areas is supported in principle. A high-level spatial planning tool which supports development in principle, does not override heritage considerations, or indeed mean that a mega project is appropriate on this particular site, in comparison with an upgrade to the Voortrekker Road Corridor for example.

Notwithstanding the above, it is also noted that the Table Bay Special District Plan (SDP) and Environmental Management Framework (EMF) 2012 is still the most relevant planning and policy

framework applicable to the site and that from a heritage point of view, the following, amongst other things, must be taken into account:

- Preserve the quality of the various areas of the City which exhibit a range of diverse character zones;
- Protect the historical built fabric, scale and texture of the historical areas of the City;
- Maintain the interface between the City and Table Mountain, retaining view corridors and scenic vistas and avoiding monolithic structures that block views;
- Ensure that proposed development is in keeping and appropriate to the historical nature of the City;
- Ensure the retention and protection of historical areas, sites and features both above and underground;
- Ensure that construction activities within the district and specifically within heritage and conservation areas do not negatively impact on the historical character of the area or fabric;

It is the view of HWC that the HIA has ignored this.

The viability argument is regarded by HWC as unconvincing and inadequate. That there appears to be a cross subsidy of the development to help fund the City's proposed Berkeley Road extension should in no way be used as mitigation to try and argue for sustainable and economic benefits.

The HIA argues that "a lesser development would not generate adequate funds for the great public good that we argue for: the restoration of the Liesbeek riverine corridor."

The report reportedly extols the benefits of the "restoration" of the Liesbeek riverine corridor, (to notion considered by some as inauthentic and contrived), but it is clear that it is also the substantial earthworks required to artificially raise the site some 2 to 3 metres out of the 100-year floodplain and the Berkeley Road extension that contribute to the high capital costs that underpin the motivation for the high bulk development scenario.

HWC queries whether the proposed earthworks and infrastructure indeed constituted a greater public good.

In fact, it is problematic that the character of the site is changed from a "low-lying green riverine character as part of a larger, if fragmented natural system", as noted in the O'Donnogue report.

(e) Results of consultation with communities affected by the proposed development and other interested parties regarding the impact of the development on heritage resources.

HWC acknowledges that in terms of the provisions of the PAJA (in so far as a formal notice and commenting procedure is concerned), that the report complies with this section.

It is clear to HWC however, that there has been a lack or avoidance, of a meaningful consultation with the First Nation Groups. HWC is further disappointed that in the instances where comment has been received, this comment has seemingly been dismissed as a "difference of opinion", rather than a meaningful interrogation of concerns raised.

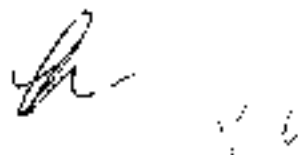
As previously noted, the DT&PW itself has entered into a stakeholder engagement with First Nation Communities, as it has recognized that the Baseline Study first tabled at the ACom on 12th April 2017 was deficient in this regard, and it now seeks to rectify this.

HWC queries as to what would be the point of this exercise, if the development of the most critical undeveloped land parcels is proceeding ahead of this process?

(f) If heritage resources will be adversely affected by the proposed development, the consideration of alternatives.

The HIA fails in this regard, as there is no meaningful consideration of alternatives whatsoever.

The HIA only assesses the preferred 'Riverine Corridor Alternative' and 'Island Concept Alternative' (both 150 000m² of bulk) and simply dismisses the lower bulk alternatives such as the 'Mixed-Use Affordable Alternative' (110 000m²), and the 'Reduced Floor Space Alternative' (102 000m²), as these have been considered economically unviable by the town planners.



A "read lightly", green-dominant, recreational or educational alternative, without substantial filling in of the floodplain is not even considered, and not indeed is the no-go option or the additive reuse of the site and buildings.

A discussion of alternatives, should include a meaningful discussion of the no development option, and although the No Go Option is tabled in the HIA as well as the Planning Partners Report. In The River Club, Overview of Development Alternatives, dated June 2019, there is no consideration whatsoever, which would weigh this against the potential benefit, or otherwise, of this option to identify heritage resources.

As a site of conflict alone, it is queried for argument's sake, had this site had similar particular meaning and significance to other South African Cultures and Communities such as a "Blood River", "Isandlwana", "Rouka's Drift", "Spioen-Kop", or even the Battle of Blouberg site, to use a more nearby example, would there even be consideration of there being sites that could be developed at all, let alone in the manner of any of the mega project alternatives.

(g) Plans for mitigation of any adverse effects during and after the completion of the proposed development.

The reduction of the heritage significance to a few post-development, post-rationalized, and ecologically based values, (which in itself contradicted by the raising of the site by 2-3 meters above the 100 year flood plain in order to allow for the development), is not something that can be mitigated, as it wholly ignores the broader issues pertaining to a highly significance cultural landscape.

As noted, if the identification of significance and assessment of that significance is wrong from the start, the conclusions will likewise be wrong.

In conclusion:

HWC regards the wider TRUF, of which the River Club site is an integral component, as a highly significant cultural landscape in the City with a significant interplay between natural and man-made landscapes. It is this interplay that defines cultural landscapes. HWC is of the opinion that this area is of at least provincial significance. If not of national significance.

It is a site which is recognized as a sacred place. The open, largely undeveloped floodplain is a tangible reminder of intangible heritage.

It is recognized through historic record, as well as Cultural Memory, as being a place of conflict for over 150 years. It is recognized as the place where, in 1652, Colonial Settlement of South Africa truly took root with the establishment of the first settler farms along the Liesbeeck Valley, and the place where the Cape Indigene were first truly dispossessed of, and excluded from access to their ancestral land.

It is a place where almost all of the stages of South Africa's developmental history and policies are either embedded deep within this cultural landscape, or is viewed from it. It is a place where Gushwaga and Langkoba were exiled to. It is a place which speaks to who we are now, and from where we have come, not just as a City, or a Province, but as a Nation.

The HIA has unfortunately reduced this significance to a set of ecological values, provided for the most part to post-rationalize a wholly intrusive development model, rather than inform appropriate development.

The Committee also noted that a 'memorial' / 'museum' and recreated river courses were inadequate in commemorating the significance of the site and appears to 'box-in' heritage significance when the remaining sense of place is not recovered, but destroyed. A portion allocated to the museum on the northern-most corner is inconsistent with the significance, and the bulk and mass of the development proposal does not respond to the site as a living heritage.

The HIA does not comply with the provisions of 136(5) of the NHR Act, and it is noted that until a meaningful engagement with the First Nation Groupings has taken place, both on a broader level, and more immediate one in terms of the site itself, and that furthermore is integrated with, and informed by, the Baseline Study being conducted for the wider TRUF area, it is unlikely to do so in the future.



HWC cannot recommend strongly enough, or indicate in its own records as having done previously, that the online TRUP is looked at holistically and that any proposed development of the River Club site, follows up from this.

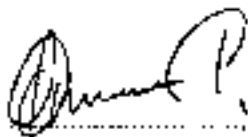
HWC finally notes that:

Notwithstanding the unquestionable qualifications and heritage standing of both heritage practitioners who compiled the report, HWC is of the opinion that the HIA would benefit from input from a specialist consultant, with the requisite expertise in dealing with the intangible aspects pertaining to the wider TRUP area. This input would assist in focussing on, in particular, the strong sense of place and meaning of the site pertinent to the First Nation Representatives.

It is a strong recommendation that a supplementary report from an expert in this field is incorporated into the HIA.

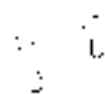
HWC reserves the right to request additional information as required.

Should you have any further queries, please contact the official above and quote the case number.



.....
Dr Mxolisi Dlamuka

Chief Executive Officer, Heritage Western Cape



"1111"



DRAFT FOR DISCUSSION
TWO RIVERS URBAN PARK
CAPE TOWN
BASELINE HERITAGE STUDY

**Including erven Oude Molen Erf 26439 RE
Alexandra Erf 24290 RE Valkenburg Erf 26439 RE,
erven 118877,160695 The Observatory erf 26423-0-1
River Club erf 151832 Ndabeni Erf 103659-0-2 RE**

Prepared for:

NA & Associates Planners and Designers on behalf of Provincial Government of the Western
Cape (Department of Transport and Public Works) and Heritage Western Cape

October 2016

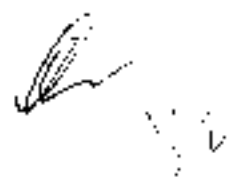
TWO RIVERS URBAN PARK

CAPE TOWN

BASELINE HERITAGE STUDY

**Including erven Oude Molen Erf 26439 RE
Alexandra Erf 24290 RE Valkenburg Erf 26439 RE,
erven 118877,160695 The Observatory erf 26423-0-1
River Club erf 151832 Ndabeni Erf 103659-0-2 RE**

October 2016



Executive Summary

This is a Baseline Heritage Study for the Two Rivers Urban Park (TRUP). The Park consists of the following areas:

- The TRUP site
- The Black and Liesbeek River Corridor
- The Ndabeni Triangle
- Alexandra Institute Precinct
- Maitland Garden Village
- Valkenburg East including Oude Molen
- Valkenburg West including Valkenburg Hospital and Valkenburg Manor
- The South African Astronomical Observatory Hill and buildings
- The River Club and Voarschedrif
- The Liesbeek Parkway Corridor.

It includes but is not limited to, the following erven:

Oude Molen Erf 26439 RE, Alexandra Erf 24290 RE, Valkenburg Erf 26439 RE, erven 118877, 160695, The Observatory erf 26423-0-1, River Club erf 151832, Ndabeni Erf 103659-0-2 RE.

The Two Rivers Urban Park (TRUP) consists of 297 ha of land situated in the Municipal District of Cape Town. It is located approximately 5km from the Cape Town Central Business District, at the intersection of the N2, M5 and N1 freeways, and at the confluence of the Black and Liesbeek Rivers.

The ownership of sites within the TRUP rests with State, Provincial Government and Local Government entities as well as privately owned and leased sites.

The purpose of the study is to place the heritage component within the planning framework and to fulfil the requirements of HWC in terms of S 38(1) and S 38(3). The report identifies and assesses heritage resources within the site, provides historical and planning backgrounds and places the heritage assessments within the relevant policy frameworks. It assesses heritage resources and provides statements of significance (Section 10) followed by heritage related design informants (Section 11). The report concludes that the requirements of the Study to assist in the planning process by the identification and assessment of heritage resources and the provision of heritage-related Design informants have been met. The report notes that future planning for the TRUP site will assist in overcoming the legacies of apartheid planning barriers and separation and link previously separated parts of the City.

In terms of heritage, the report notes that the TRUP site is complex and multi-layered, with many sites of heritage significance, with links to intangible heritage and memory. It is of significance in terms of tangible heritage resources and also to contemporary amenity groups and people with strong historical and cultural associations with the site. The report records that;

- The requirements as contained within the Response to the Notification of Intent to Develop of 25th August 2016, i.e. the requirements of S 38(3) in terms of the identification, mapping and assessment of heritage resources, have been met.



- The requirements for consultation with registered conservation bodies have been met in terms of the extended period of public consultation underway by SUN, which includes registered conservation bodies as well as other heritage and community groups with an interest in the TRUP.
- That the Heritage indicators or HRDI have been identified based on an analysis of the character areas and statements of cultural significance. (See Sections 10 and 11).
- That the heritage sites and sites of memory exist at a variety of scales of objects of significance to entire landscapes of intangible value.
- The site is important in the pre-colonial and early colonial history of the Cape and has high heritage significance.



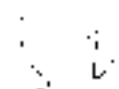
Table of Contents

Statement of independence

List of Figures

List of acronyms

1. Introduction
 - 1.1. Overview of the planning process
 - 1.2. Overview of the package of plans approach
 - 1.3. Overview of the heritage process
 - 1.4. The purpose and structure of this report
2. Site location and Context of the TRUP
 - 2.1. Site Location
 - 2.2. Site Description
 - 2.3. Site context: transportation
 - 2.4. Site context: environment
 - 2.5. Site context: Land Use
 - 2.6. Site context Heritage
3. Statutory Framework
 - 3.1. TRUP Heritage Parametres: National Heritage Resources Act (Act 25 of 1999).
 - 3.2. The Restitution of Land Rights Act No 22 of 1994, No 15 of 2014.
 - 3.3. National Environmental Management Act No 107 of 1998 (as amended)
 - 3.4. Local Authority Heritage Related Formal Protections (HPOZ)
4. Scope of Work and methodology
 - 4.1. Scope of Work
 - 4.2. Methodology
5. Limitations to the Study
 - 5.1. Extent and Complexity of the Study area
 - 5.2. Limitations arising out of previous baseline study
 - 5.3. Gaps in the heritage data and grading record
 - 5.4. Distinction between a PHS and A Grade 2 site.



- 5.5. Gaps in the CF (2003) regarding heritage.
- 5.6. Current Heritage studies
- 5.7. Use of existing heritage studies
- 6. Policy Frameworks
 - 6.1. Planning Policy Frameworks
 - 6.2. Heritage Related policies
 - 6.3. International Policies affecting the Rights of Indigenous Peoples
- 7. Historical Background to the TRUP
 - 7.1. Background and Findings: Pre-colonial History:
 - 7.2. Background and findings: Historical River System
 - 7.3. Background and Findings: Agricultural use
 - 7.4. Background and Findings: The South African Astronomical Observatory
 - 7.5. Background and Findings: The Medical Institutions
 - 7.6. Background and Findings: Mills and Early Industry
 - 7.7. Conclusions
- 8. Identification, mapping and grading of heritage sites § 38(3).
 - 8.1. The historical record and heritage resources
 - 8.2. Assessment and grading of heritage resources
 - 8.3. Identification and mapping required in terms of the NHRA
 - 8.4. Photographic record of selected heritage resources
- 9. Consultation with registered heritage conservation bodies and I&AP's.
 - 9.1. Background to Public Consultation
 - 9.2. Public consultation to date
 - 9.3. Stakeholders
 - 9.4. Public Consultation and Heritage
- 10. Character Statements and Statements of significance
 - 10.1. Character area 1. The TRUP site and the Green River Corridor System
 - 10.2. Character area 2. Ndabeni
 - 10.3. Character area 3. The Alexandra Institute and Surrounds
 - 10.4. Character area 4 Maitland Garden Village
 - 10.5. Character area 5 Valkenburg East
 - 10.6. Character area 6. Valkenburg West
 - 10.7. Character area 7 The South African Astronomical Observatory (SAAO)
 - 10.8. Character area 8. The River Club and Vaarschedrif

10.9. Character area 9. The Liesbeeck River Parkway Corridor

11. High Level Heritage Related Design Informants (HRDI)

11.1. Introduction and Purpose of HRDI

11.2. Description of methodology

11.3. Heritage related design informants (high level). The site: Area 1.

11.4. Heritage related design informants. Area 2. Ndabeni.

11.5. Heritage Related Design Informants. Area 3. The Alexandra Institute.

11.6. Heritage Related Design Informants. Area 4. Maitland Garden Village.

11.7. Heritage Related Design Informants. Area 5. Valkenburg East.

11.8. Heritage related Design Informants. Area 6. Valkenburg West.

11.9. Heritage Related Design Informants. Area 7. The South African
Astronomical Observatory.

11.10. Heritage Related Design Informants. Area 8. The River Club and
Vaarschedrif.

11.11. Heritage Related Design Informants. Area 9. The Liesbeeck parkway
Corridor.

12. Conclusions.

13. Recommendations.


14. Sources Consulted and Acknowledgements.

15. Annexure 15.1. NID.

Annexure 15.2. ACO Associates.

Annexure 15.3. List of registered owners.

Annexure 15.4. List of consultation meetings undertaken.



landscape context. The primacy of the Observatory buildings and central open space needs to be protected and enhanced.

- The status of the historic Georgian classical revival Observatory building – The Royal Observatory - as the major focal point around which the campus revolves must not be eroded by excessive and high bulk peripheral buildings or any other developments which erode the unique qualities of the campus.
- All additional structures should respect the nature of the topography as well as the site's existing heritage and architectural character, scale and form, and should therefore not exceed the height and bulk of the existing Observatory building and related historic structures. Any additional structures need to be subservient. Such height and bulk restrictions to be implemented to ensure primacy and dominance and a "stand alone" quality of the Historic Observatory Hill and the Baker Observatory.
- The forecourts, visual settings and related surrounds of historic and graded buildings should be protected and enhanced.
- The treed quality of the campus should be retained where possible and used to defined spaces, forecourts and winding paths.
- Adaptive re-use and retention of all graded structures (except for some grade 3C). Demolitions applications should consider the impact of the loss of individual structures on the composite.
- Historic routes across the site to be respected in terms of new spatial design concepts.
- The historic astronomical view cone from the Main Buildings towards Devil's Peak to be maintained.
- View cones from the Observatory Hill towards Signal Hill to be retained.

11.10. Character Area 8: The River Club and Vaarschedrif

11.10.1. The River Club and Vaarschedrif: Heritage related design informants

- The unobstructed view to Signal Hill across the River Club Site should be retained and recognized through appropriate height restrictions associated with an astronomically related view cone across the site towards Signal Hill.
- A buffer area on an extent yet to be decided should be negotiated adjacent to the Observatory Hill and related canal to ensure that the Observatory buildings retain the context of a hill site.
- Mechanisms should be introduced to celebrate and commemorate the notion of the transhuman crossing area at Vaarschedrif as well as the presence of the First Nation in the Peninsula.
- Where wetland or biodiversity areas exist in a relatively pristine form, they may be used to commemorate the notion of the pre-colonial landscape i.e. the use of the landscape as artefact.
- Development proposals to allow for the retention of open recreational spaces.
- Removal of canal walls and reinstatement of soft river edges where possible
- Retention of treed edges to mitigate potential development impact on Observatory Hill.

- Strong emphasis on height and bulk restrictions insofar as they may impact on the Observatory Hill. Height limit of 5 floors above existing (including parking) to be considered as an acceptable height limit.
- View cones to and from the Observatory Hill and peripheral areas are to be considered as a dominant heritage informant.
- Potential for development opportunities to the north of the site along proposed Berkley Road extension provided archaeological conditions are met (s 35 NHRA) and view cone to Alexandra Mill remains unobstructed.

11.11. Character Areas 9: Liesbeeck Parkway Corridor

11.11.1. Liesbeeck Parkway Corridor: **Heritage related design informants:**

Development proposals should consider the scale and grain of the HPOZ of Observatory. Height and bulk of development proposals should consider the historic scale and form of the HPOZ. Scaling mechanisms and buffer areas (landscape) should be considered to minimize impact on the heritage qualities of the suburb.

Recreational open spaces are to be retained where possible.

Development proposals should use historic precedent and engage with the river corridor in terms of orientation towards the Liesbeeck River.

Any proposed development near a potential archaeological site should be subject to prior archaeological investigation.

Entrance to the site from Station Road should be celebrated within the confines of appropriately scaled and contextually appropriate gateway mechanisms. (see 1.2.1.)

The historic gateway and route to Valkenburg east of the river should be retained. Historic gate piers should be protected and upgraded as part of a system of gateways at the entrance to the site

12. Conclusions

The report concludes the following:

Planning:

- That the purpose of this Baseline study to assist in the planning process by the identification and assessment of heritage resources and the provision of Heritage-related Design informants, have been met.
- That future planning for the TRUP site will assist in overcoming the legacies of apartheid planning barriers and separation and link previously separated parts of the City.



6 March 2018

SRK Consulting (South Africa) (Pty) Ltd
 The Administrative Building
 Athlisa Spring
 103 Main Rd
 Rondebosch 7700
 Cape Town
 South Africa

Attention: Amy Hill - Environmental Management Consultant

Comments on the Heritage Impact Assessment (HIA) for the Proposed Redevelopment of The River Club and the Rehabilitation of Watercourse at Adjacent Properties in Observatory, Cape Town (HWC Case No.: 15/12504WD/2-17E, DEA&DP Ref. No.: 16/3/3/6/7/2/A7/17/3104/16 and DWS Ref. No.: 16/2/7/G22/A/11)

The owner and operator of The River Club in Observatory, Cape Town, the Liesbeck Leisure Properties Trust, LLP, wishes to redevelop the site for residential, commercial, institutional and associated uses.

LIPPT appointed SRK Consulting (South Africa) Pty Ltd, SRK, to undertake the Scoping and Environmental Impact Reporting process and as an interested and affected party, the National Research Foundation (NRF) a statutory entity established in terms of the National Research Foundation Act (Act No. 23 of 1998) acting through its National Facility the South African Astronomical Observatory (SAAO), is required to pass comments on the HIA.

The following are comments and concerns of SAAO:

The SAAO is deeply concerned with the proposal as presented in the plan dated November 2017. As a historic Observatory established in 1820 the SAAO is a working National Research Foundation facility with over 100 staff, a residential site of half dozen households, located on the historic property directly adjacent to The River Club, it should come as no surprise that SAAO has many concerns.

The SAAO has considerable historical, scientific, aesthetic, architectural and social significance and has been graded by South African Heritage Resources Agency (SAHRA) as Grade I. The site forms an integral part of Two Rivers Urban Park (TRUP), which has been identified by Heritage Western Cape (HWC) as Grade II in terms of its pre-colonial and early colonial history, particularly regarding its associations with colonial expansion and Khoekhoe resistance during the mid-17th century.

The SAAO has very high historical significance as a scientific institute dating to the early 19th century and the first permanent observatory in the southern hemisphere. It is associated with a number of astronomical advances of international significance from the 1830s. It has considerable aesthetic significance with several architecturally significant buildings and a distinctive dome typology set within a wooded landscape at the confluence of the Liesbeck and the Black Rivers. The Main Building and McClean dome structure the central shaft of space,

The report argues (p.50) that the SAAO is of "low contextual significance" in the proposed project, since it is "rendered invisible" by the trees on-site (also pp.58,76). First of all, the statement is patently false, the SAAO is not invisible from the River Club. Secondly, and more importantly for the purposes of the proposal, the logic of the invisibility argument is strange: surely the point should be that the River Club site is very clearly visible from the Observatory. And indeed it will be even more so with 4 - 12 story buildings and more lights. The SAAO strongly objects to being brushed aside as an irrelevant factor in considering the impacts of redevelopment of The River Club. In fact Observatory staff regularly use the facilities offered by the River Club for official and recreational purposes and the two sites together form an integral part of the neighbourhood.

We note that the plan makes mention on several times of a proposed SKA building on a portion of Erf 26423. It is occasionally mentioned in justifying the planned redevelopment of the River Club (for example, on p.6), when discussing the no-go alternative it is argued that the proposed SKA building would be isolated and out of place without the proposed River Club development; on p.76, when mentioning that the future SKA building south of the site masks the views of the development from that direction). This is very misleading. SKA, or in fact SARAQ (the South African Radio Astronomy Observatory) is a facility of the NRF since 2017, and we know very well that our mutual umbrella organisation NRF does not have approval from the Government to building anything, whether on our portion of land at the current entrance to the River Club, or elsewhere. It is unsure when such an approval would be given, and where SARAQ would be located when that time comes. In fact, one of the options discussed internally as a location further up the Observatory hill, in between SAAO and Valkenberg Hospital, which would make more sense in many respects, and would not impact The River Club area. In another (inaccuracy, p 6 of the Urban Design Framework document mentions the future SKA building to be in the region of B storeys, while the preliminary plans by SKA are in fact a 3 storey building.

The essential point is that the SKA (SARAQ) building remains a future possibility, very far from an "inescapable fact" (p.72) or "inevitability" (p.52), that any proposal arguments could be based on. The indication of the SKA (SARAQ) building on a portion of our property, Erf 26423, should therefore be excluded from any discussion of the proposed development at the River Club.

SAAO is also concerned that the raising of the level of The River Club area by several metres by necessity would cause more flooding on the lower lying SAAO areas, both on the Lesbeek and Black River sides. The proposal claims there would be no consequences, but SAAO was informed that the hydrology assessment may have been flawed. We obviously are no experts in the subject, but would wish to hear the latter concerns addressed.

Apart from the SAAO specific concerns above, the most important of our general concerns is the loss of a park-like area in a strategic region of the City, with likely rapid commercial and residential development in the coming years. The SAAO is of the opinion that the TRUP area to which the River Club belongs is precisely that area which should be intelligently developed into a green open area for breathing in the middle of the growing Observatory, Salt River, Maitland, and Paarden Eiland areas. We have seen other options for the usage of the River Club area much closer to the ideals we maintain, of respecting history, sense of place and space, with sight lines to the surrounding areas from our historic hill, while at the same time taking development, both commercial and residential opportunities for people working in the vicinity seriously. By no means do we oppose smart and sensitive development of the area - however, the current proposal is too dense, too high, and does not sit well, in our opinion, as a neighbour to our historic Observatory site. We appreciate the thought going into the green areas around the river banks, but, frankly, it is not open space, and that is what we as a stakeholder feel is crucial to retain in the middle of an otherwise urbanised area (highly urbanised in the future).

Finally, we list several issues which should be kept in mind during major construction of any kind at the River Club:

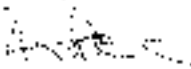
- Development within the TRUP should comply with development plans being put in place by the City of Cape Town and the Western Cape Government as part of their broader planning strategy.
- Building heights limited to the zoning restrictions and limited to heights not overpowering the sense of a historic Observatory on a hilltop next to it
- Traffic congestion
 - o There is already tremendous traffic congestion at the intersection of Liesbeek Parkway and Station/Observatory road during peak hours. Construction vehicles will heavily impact out the traffic flow and the road surface.
 - o Access to SAAO, Valkenberg Hospital, and other businesses down the narrow Observatory Road should not be restricted.
 - o A separate construction vehicle access to the River Club via should be provided elsewhere during the construction phase.
 - o Access of heavy vehicles should be limited to periods outside of peak hours.



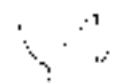
5/7

- Terrestrial Flora
 - A plant species that is unique to the area on SAAO, *Moraea Aristata* bulbs, may be negatively affected.
- Aquatic Fauna
 - The breeding pools of the threatened Western Leopard Toads, *Amietophrynus pantherinus*, in the water ways may be negatively affected. *We are concerned that no mention is made of them in the project proposal.*
- The noise and vibration levels anticipated during construction phases will negatively affect the residents and activities of the SAAO, and must be mitigated.
- If the flow of the Liebeck River is returned to its natural course or altered in any way, it will directly impact on portion of our property on Erf 26423 resulting in erosion due to the flow dynamics of the altered course of the river. The effects must be studied prior to any such work and mitigated.
- Security concerns due to influx of various contractors must be addressed.

Sincerely,



Prof. Petri Vaisanen
SAAO Director



"LL13"

Western Cape Government • Wes-Kaapse Regering

PROVINCE OF WESTERN CAPE

PROVINSIE WES-KAAP

Provincial Gazette

Provinsiale Koerant

7916

7916

Friday, 20 April 2018

Vrydag, 20 April 2018

Registered at the Post Office as a Newspaper

As 'n Nuusblad by die Postkantoor Geregistreer

CONTENTS

INHOUD

**Reprints are available at Room 522, Provincial Legislature Building, 7 High Street, Cape Town 8001.

**Herfskryf is beskikbaar by Kamer 522, Provinsiale Regeringsgebou, Ministerstraat 7, Kaapstad 8001.

No Page

Ni Bladsy

Proclamations

Proklamasie

3 West Coast District Municipality: Closure 270

3 Wes-Kaapse Distriktmunisipaliteit: Sluiting 270

Provinsiale Kennisgewings

Provinsiale Kennisgewings

55 Western Cape Education Department: Closure of Public School 271

55 Wes-Kaapse Onderwysdepartement: Sluiting van Openbare Skool 271

56 Department of Environmental Affairs and Development Planning: Declaration of Mountain-Foothill Protected Environment 272

56 Departement van Omgewingsake en Ontwikkelingsbeplanning: Verklaring van Mountainhoek Beskermd Omgewings 272

Tenders:

Tenders:

Notices 286

Kennisgewings 286

Local Authorities

Plaaslike Owerhede

Bergvliet Municipality: Consent Use and Removal of Restrictions 286

Bergvliet Munisipaliteit: Vergoeding van Beperkings en Ophelling van Beperkings 286

Bitsa Municipality: Municipal Planning Tribunal: Appointment of Members 295

Bitsa Munisipaliteit: Munisipale Planneer Tribunal: Appointment of Members (English only) 295

Bitsa Municipality: Public Notice 296

Bitsa Munisipaliteit: Publieke Kennisgewing 296

Breda Valley Municipality: Removal of Restrictions 295

Breda-vallei Munisipaliteit: Removal of Restrictions (English only) 295

City of Cape Town Metropolitan Municipality: Extension of a Local State of Disaster 295

Stad Kaapstad Metropolitaanse Munisipaliteit: Ekstensie van 'n a Lokaal State of Disaster (English only) 295

City of Cape Town Metropolitan Municipality: Extension of Declaration of a Local State of Disaster 295

Stad Kaapstad Metropolitaanse Munisipaliteit: Ekstensie van Verklaring van 'n Lokaal State of Disaster (English only) 295

City of Cape Town: Deletion of Condition 300

Stad Kaapstad: Skraping van Voorwaarde 300

City of Cape Town (Blansburg District): Closure 300

Stad Kaapstad (Blansburg-Distrik): Sluiting 300

City of Cape Town: Deletion and Amendment of Condition 300

Stad Kaapstad: Skraping en Wysiging van Voorwaarde 300

City of Cape Town: Deletion of Restriction 298

Stad Kaapstad: Skraping van Beperkings 298

City of Cape Town: Municipal Planning By-Law 299

Stad Kaapstad: Verandering op Munisipale Beplanning 299

City of Cape Town: Removal of Condition 298

Stad Kaapstad: Ophelling van Voorwaarde 298

City of Cape Town: Removal of Condition 295

Stad Kaapstad: Removal of Condition (English only) 295

Draakenstein Municipality: Removal of Restrictions 295

Draakenstein Munisipaliteit: Ophelling van Beperkings 299

HERITAGE WESTERN CAPE

PROVISIONAL PROTECTION OF ARCHAEOLOGICAL AND PALAEOETHNOLOGICAL SITES, UNMARKED BURIALS, LANDSCAPES AND NATURAL FEATURES OF CULTURAL SIGNIFICANCE AND, STRUCTURES, SITUATED ON OR AT ERF 151832, THE RIVER CLUB, CORNER LINDSECK PARKWAY AND OBSERVATORY ROAD, OBSERVATORY, CAPE TOWN.

HERITAGE WESTERN CAPE

In terms of section 20(1)(a) of the National Heritage Resources Act, No. 25 of 1999, Heritage Western Cape, which is the provincial heritage resources authority for the Western Cape province, hereby provisionally protects the area known as Erf 151832, the River Club, Observatory, fully described in the schedule below for a maximum period of two years from the publication of this notice.

Schedule:

Erf 151832, the River Club, Corner Lindseck Parkway and Observatory Road, Observatory, Cape Town, bounded by Lindseck Parkway, Observatory Road and the Lindseck River, Observatory, and as shown on the attached map, annexure A.

Significance:

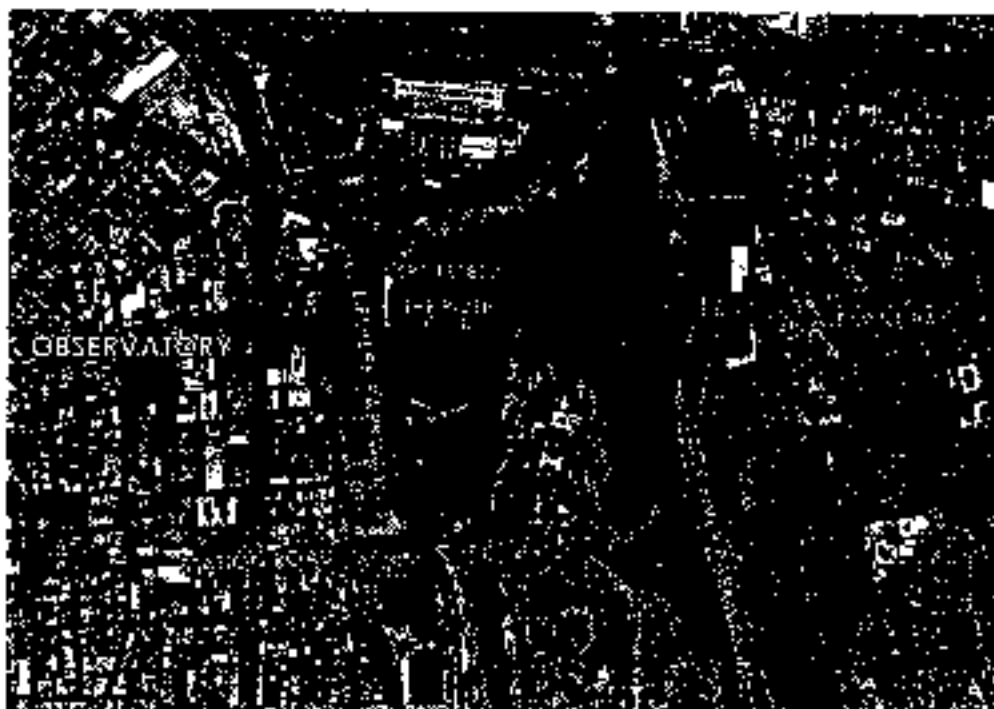
The River Club forms part of the wider Two Rivers Urban Park (TRUP) and represents a microcosm of Cape history. It reflects the pattern of South Africa's social, architectural and political history spanning across the pre-colonial, colonial, apartheid and more recent history.

The Two Rivers Urban Park landscape has high cultural values of historical social, aesthetic, architectural, scientific and environmental significance. It contributes to an understanding of past attitudes, beliefs, uses, events, persons, periods, techniques and design. It has associated links with past events, persons, uses, community, identity and oral history. It possesses a strong sense of place.

The Two Rivers Urban Park landscape is a complex composite of natural, cultivated and built landscape elements. It is a cultural landscape transformed by thousands of years of settlement history. The landscape expresses both artistic and innovative qualities in terms of its natural setting, architecture and planting patterns. It also has narrative qualities, possessing a rich layering of physical evidence brought alive by the oral histories of the people who lived and worked in institutions, amongst other things, the Valkenberg Hospital and the South African Astronomical Observatory. Different historical narratives create a story of pioneering and philanthropy, social reform and identity, self-sufficiency, farming and institutionalisation.

The Two Rivers Urban Park possesses many distinctive and interrelated properties which clearly demonstrates or are strongly associated with its various historical roles and uses as a place for indigenous hunter-gatherers, grazing grounds for herders, colonial farms, scientific research, reformatory and hospitals.

Annexure A:



11/11/19

**A HERITAGE IMPACT ASSESSMENT
regarding
THE PROPOSED DEVELOPMENT
of
THE RIVER CLUB SITE,
OBSERVATORY, CAPE TOWN**

for consideration by

**HERITAGE WESTERN CAPE
and
THE DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND DEVELOPMENT
PLANNING**

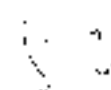
in terms of Section 38(B) of the National Heritage Resources Act
and
the National Environmental Management Act and Its Regulations

Timothy JG Hart
MA, Cape Town
Archaeologist

and

Stephen Townsend
B Arch. Cape Town; Dipl in the Study and Restoration of Monuments, Rome,
PhD, Cape Town
Architect, Statutory Planner, Conservationist

2 July 2019



CONTENTS OF THE SPECIALIST REPORT – CHECKLIST FOR APPENDIX 6 of GNR982

Regulator GNR 982 of 2014, Appendix 6	Section of Report
(a) details of the specialist who prepared the report, and the expertise of that specialist to compile a specialist report including a <i>curriculum vitae</i> ;	Details of Specialists
(b) a declaration that the specialist is independent in a form as may be specified by the competent authority;	Declarations of Independence
(c) an indication of the scope of, and the purpose for which, the report was prepared;	1 Introduction
(d) the date and season of the site investigation and the relevance of the season to the outcome of the assessment;	n/a
(e) a description of the methodology adopted in preparing the report or carrying out the specialised process;	1.3 Method
(f) the specific identified sensitivity of the site related to the activity and its associated structures and infrastructure;	6 Identification of heritage resources
(g) an identification of any areas to be avoided, including buffers;	7 Significances
(h) a map superimposing the activity including the associated structures and infrastructure on the environmental sensitivities of the site including areas to be avoided, including buffers;	9 The proposed development
(i) a description of any assumptions made and any uncertainties or gaps in knowledge;	3.3 Assumptions
(j) a description of the findings and potential implications of such findings on the impact of the proposed activity, including identified alternatives on the environment;	8 Heritage indicators 10 Assessment of Impacts
(k) any mitigation measures for inclusion in the EMPr;	11 Mitigations
(l) any conditions for inclusion in the environmental authorisation;	11 Mitigations
(m) any monitoring requirements for inclusion in the EMPr or environmental authorisation;	10 Assessment of impacts
(n) a reasoned opinion— i. as to whether the proposed activity or portions thereof should be authorised; and ii. if the opinion is that the proposed activity or portions thereof should be authorised, any avoidance, management and mitigation measures that should be included in the EMPr or Environmental Authorization, and where applicable, the closure plan;	12 Recommendations
(o) a summary and copies of any comments received during any consultation process and where applicable all responses thereto; and	Appendices
(p) any other information requested by the competent authority;	Appendices

EXECUTIVE SUMMARY

The Liesbeek Leisure Properties Trust has appointed Dr Stephen Townsend and Tim Hart (ACO) to compile a Heritage Impact Assessment satisfying Section 38(8) of the National Heritage Resources Act (NHRA) in conjunction with a Basic Assessment process conducted under the National Environmental Management Act (NEMA) for the redevelopment of the River Club site, Erf 151832 and its bounding riverine banks, the construction of the abutting long-planned arterial Berkley Road Extension on Erf 15326, the widening of Liesbeek Parkway, and of the road intersections giving access to Erf 151832, Observatory, Cape Town. Although use of the River Club site has been gradually intensified over the years, Liesbeek Leisure Properties Trust have explored the possibility of developing the site as the land is under-used within this urban context close to Cape Town where land for urban densification is needed and desired. The proposal is to construct a mixed-use development on the site that will contain residential, hotel, retail, office, business and educational facilities.

The River Club project area is a roughly triangular site at the confluence of the Liesbeek and Black Rivers between a canal cut in 1952 to carry the waters of the Liesbeek and a relic of the older course, itself much altered by its own meanderings and by various 20th century dredging and infill, and since 1952 serving only as a component of the local stormwater system, sometimes receiving water backing up from the slow-moving river below the confluence. We will refer to the two courses as "*the new post-1952 canalized Liesbeek River course*" and "*the old pre-1952 course*" (or variations to suit the context). The lower reaches of the Liesbeek and its surrounds was the earliest site of settler farming during the early years of the VOC occupation; and the loss of what had been used for summer-grazing brought the settlers into conflict with KhoiSan pastoralists.

The process of compiling an HIA and of seeking the comment of interested and affected parties and the public at large has been complicated both the legal framework and by a decision in March 2018 by HWC to provisionally proclaim the property to be a provincial heritage site. This final version of the HIA will accompany a Basic Assessment Report for circulation for pre-application stakeholder engagement in terms of Regulation 19(1)(a) of the NEMA EIA regulations of 2014 and will be submitted to HWC for their comment in terms of Section 38(8) of the NHRA. This final version of the HIA has been preceded by earlier versions circulated for comment in order to satisfy separate requirements under the NHRA between 25 January and 26 March 2018 and again between 22 March and 2 May 2019 in order to include discussion regarding the provisional proclamation relevant to the development application under the NHRA and NEMA.

Heritage Significance

The low-lying area at the confluence of the Liesbeek and Black Rivers and the raised spur of land between the two rivers that accommodates the South African Astronomical Observatory and Valkenburg Hospital was a key site in the early



frontier zone. The lower reaches of the Liesbeek and its surrounds were the earliest sites of settler farming during the beginning years of the VOC occupation; and the loss of land which had been used for summer-grazing by Khoikhoi pastoralists brought the settlers and these pastoralists into conflict.

Descriptions in Moodie (1938) and the VOC *Resolutions* indicate that the Liesbeek, for much of its length, was an early frontier and, as such, partially fortified.

Although no tangible remnants of the actual events, forts, outposts or graves have been found so far, the topography and 'place' survive albeit greatly transformed by the iterative changes of land-use. Wilderness and wetlands were transformed to farm land, then for various institutional uses, and thereafter into modern suburbia. The Liesbeek and Black Rivers, their confluence, and the remnants of the Salt River estuary still exist today. Indeed, the one heritage feature of high significance that has been identified is the Liesbeek River corridor itself and the confluence. They are an important topographical element; a powerful historic symbol that takes us back to the early landscape of pre-colonial transhumance use, colonial settlement and agriculture, and contestation; and it is today claimed as a living heritage site by First Peoples groups.

The site itself has no tangible traces of early pre-colonial or colonial historic events. The 1930s recreational club building and its extensions are of low heritage significance and the site itself contains no tangible resources that are worthy of conservation. The immediate surrounds, however, contain some highly significant heritage places and structures and the late-Victorian and early 20thC suburbs of Observatory and Maitland are nearby. They are, however, the Astronomical Observatory (SAAO) apart, too distant from the site to be impacted on in any immediate or direct sense by the development proposed.

So, while the landscape remains, it is in a much transformed state. Also, the future development of the Berkley Road Extension will change the character of the site and its surrounds considerably as it will stretch across the River Club 'island' and the Black River to Maitland. Likewise, if development of the land owned by the SAAO immediately to the south of the River Club site occurs, the sense of place here would be affected though we understand that this is now unlikely.

As a consequence, the possible pre-colonial river crossing site and the Liesbeek floodplain/riverine corridor and its sense of place apart, there are no heritage resources on the site that require intervention. Given this, we contend that the heritage-related criteria-for-decision-making/design indicators are relatively limited in guiding the architectural and urban character of the proposed development itself. We do argue, however, that the heritage indicators aimed at the recovery and restoration of the Liesbeek riverine corridor and those aimed at protecting the sense of place of the river and the spur of land occupied by the Observatory (SAAO) should be the primary generators of the position, form and design of the development proposal.

 4

In this last sense, there is we argue little distance between our assessment of the sense of place, significance of this stretch of the Liesbeek River and the views expressed by many commentators. Indeed, we argue that the Liesbeek River corridor, if recovered and restored to full ecological functioning and given meaningful presence, should be recognised as a heritage resource and be declared to be a provincial heritage site.

The development proposal

Five development scenarios have been considered. These include the no-go alternative, a preferred 'riverine corridor' alternative, an 'island concept' alternative and another two which are not financially viable. Both the preferred 'riverine corridor' alternative and the 'island concept' alternative propose a mixed-use development comprising a mixture of open space and multi-storey complexes with office space, residential, retail and hospitality components. They both provide for approximately 150 000sqm of accommodation.

The preferred 'riverine corridor' alternative offers meaningful rehabilitation of the canalised portion of the Liesbeek River on the eastern boundary of the site restoring ecological functioning, providing public access along the 40m wide bank as part of the restored Liesbeek River as historical and topographical feature. The old pre-1952 Liesbeek course would be landscaped and retained as a part of the storm water system (as it is at present) but also connected ecologically across the property with a 70m-wide ecological corridor to the restored Liesbeek riverine corridor. Several significant changes/ mitigations have been added since the last version of the HIA was circulated.

The 'island concept' alternative, offers a similar development mix but without rehabilitation or meaningful improvement of the canalised section of the river or of the old pre-1952 Liesbeek course.

Impacts

The greatest negative impact of both the preferred 'riverine corridor' and 'island' alternatives on the floodplain as a whole and the site and surrounds is that the proposed development will result in a fundamental change in the appearance and character of the site, which has been perceived as a negative impact by almost all commentators. Also, development of this site will affect the experience of the SAAO from within and without even though the nearest buildings of the development will be as much as 160m from the main Observatory building and its campus; and such change is difficult to mitigate (although we regard the restoration of the Liesbeek River to have a positive overall impact on the SAAO). As a consequence, it is recommended that the visual impact of the development of the southern portion of the site closest to the SAAO be mitigated by keeping its height rather lower than that of the bank of trees on the SAAO ridge and include a range of building heights, variation in building form, and an avenue of trees lining the development along the edge of the riverine corridor.



10/10

On the other hand, the proposed restoration of the Liesbeek riverine corridor in place of the canal, with pedestrian access to the confluence, is a positive impact and a place-making contribution that is of benefit to both cultural and natural heritage and to the amenity of the environs more generally; and this seems to us to be able to trigger a positive contribution to the planning for the Two Rivers Urban Park, an endeavour now more than twenty years in the making.

Mitigation

Mitigation measures include enhancing/restoring the Liesbeek riverine corridor and providing open public access to the corridor by doing the following:

- 1) The Liesbeek River: the currently canalised section of the Liesbeek bounding the site is to be rehabilitated so as to create the sense of a natural riverine environment and engender conditions favourable to creating biodiversity and natural qualities. This action will result in a powerful, positive contribution to the overall commemoration of this feature and enhance and celebrate its symbolic and historical significance.
- 2) The riverine buffer zones: a riverside green strip or buffer that is pedestrian-, flora- and fauna-friendly along both the old and now river courses. Wetland specialists have indicated the size and specification of the buffer. A pedestrian walk along the buffer zone will provide an enhanced view of the SAAO site, the river itself, wetlands and the bird sanctuary. Furthermore, it will enhance the quality of the area generally.
- 3) Ensure that the buildings of the southern precinct, Precinct 1, lining the riverine corridor are limited to a height of four storeys above the new ground level.
- 4) A commemorative area: space is left open for the establishing of a green zone or open area at the confluence of the Liesbeek and Black Rivers, at or near to the likely historic crossing point of the Salt River (near *Varschedrift*), to serve as a commemorative and/or celebratory marker of the history of contestation.
- 5) Implement monitoring and chance-find procedures for archaeological and palaeontological material during excavations of the western bank of the Liesbeek Canal and during excavations for the construction of the Berkley Road extension (as specified in the EMP) in particular at the potential pre-colonial crossing point at the northern-most point of the subject site.

Conclusions

Given the identified heritage significances and the heritage-related criteria for decision-making presented in this report, and the determination of the impacts of the development proposed on the heritage significances, mitigation measures have been identified and proposed. These are incorporated into the preferred alternative, the Riverine Corridor Alternative (the preferred alternative being the result of specialist inputs, especially ecological, heritage and urban design), which offers the best solution and will enhance the amenity- and symbolic-value of the Liesbeek River, this



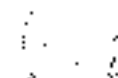
site and the environs from a heritage point of view.

As a consequence, on balance, we do not anticipate unacceptable impacts on heritage resources or their significances; and it is recommended that Heritage Western Cape supports the development proposed and recommends approval of the proposed alternative to the NEMA decision-maker, the provincial Department of Environmental Affairs and Development Planning.

 2017

CONTENTS

EXECUTIVE SUMMARY ..	3
DETAILS OF THE SPECIALISTS..	8
GLOSSARY.....	13
PREFACE.....	19
1 INTRODUCTION.....	22
1.1 The Site and Receiving Environment ..	23
1.2 The proposed development.....	25
1.3 The Structure of this HIA.....	26
2 LEGAL AND PROCEDURAL FRAMEWORK ..	28
2.1 National Heritage Resources Act (NHR Act) and National Environmental Management Act (NEMA).....	28
2.2 Land Use Planning Act and the Municipal Planning By-Law:.....	29
2.3 The Provisional Proclamation of the River Club Site as a PHS and the MEC's Tribunal: ..	31
3 SOURCES OF INFORMATION ..	32
3.1 Sources of Information i.r.o. the Site History.....	32
3.2 Information restrictions.....	33
3.3 Assumptions.....	33
3.4 Interested Party Consultation.....	34
4 The history OF THE PLACE ..	34
4.2 The importance of the rivers.....	37
4.3 Roots of conflict and the commencement of farming ..	39
4.4 The defended boundary ..	43
4.5 19 th and 20 th century history of the site ..	47
4.6 The History of the Berkley Road Extension:.....	50
5 CONSULTATION AND COMMENTARY OF INTERESTED PARTIES ..	52
5.1 The Consultation and Commenting Processes Dealt with Here:.....	53
5.1.1 First and second consultation processes under S.38(B) of the NHRA. 25 January-26 March 2018 and 22 March-2 May 2019:.....	53
5.1.2 Heritage resource-related comments made during the Municipal Planning By-Law rezoning process: 14 Sept-15 Oct 2018:.....	55



5.1.3	Commentary volunteered under the provisional proclamation appeal process:	55
5.2	The Over-Lapping Heritage, Environmental and Land-Use Processes:.....	55
5.2.1	Higher Order Planning Issues:	56
5.2.2	Ownership/Title:.....	56
5.2.3	Spatial Development Frameworks:	57
5.2.4	Traffic and its effects:.....	58
5.2.5	Planning for the Two Rivers Urban Park (TRUP):	59
5.2.6	Alternatives and the question of feasibility:.....	60
5.2.7	Flooding:.....	61
5.2.8	Presumptions regarding the Intentions of the City Council and the SAAO on Abutting Land:	61
5.4	The Sense of Place of the Floodplain:	66
5.4.1	The River Club Site, Its Immediate Edges, and Its Ecology:.....	67
5.4.2	The Pre-1952 River Course:.....	67
5.4.3	Conclusion regarding Commentary on the Floodplain as Heritage Resource:.....	68
5.5	Commentary on Heritage Resources On or Near the Site	68
5.5.1	The River Club Building on the Site:.....	68
5.5.2	The South African Observatory:	68
5.5.3	Other Nearby Heritage Resources:	70
5.6	Miscellaneous Issues Raised by Commentators:.....	70
6	Identification of heritage resources	70
6.1	The Site as Part of the Floodplain	70
6.2	Early Crossing Points.....	71
6.4	Heritage resources in the surrounding area	76
6.4.1	The SAAO	76
6.4.2	The TRUP and nearby elements	78
6	Significances.....	79
7.1	High-order cultural significances:	80
7.1.1	Environmental significances:	80
7.1.2	Historical significances:	82
7.2	Low-order cultural significances:.....	83
7.3	Conclusions regarding significances:	84



8	HERITAGE-SIGNIFICANCE RELATED DESIGN INDICATORS - CRITERIA FOR DECISION-MAKING	85
8.1	The Restored River Criterion/Indicator:.....	86
8.2	The Scale/Height Criterion/Indicator:	86
8.3	The Colonial Crossing	87
8.4	The Old Pre-1952 River Course:.. ..	87
8.5	Conclusions in respect of Design Indicators-Criteria for Decision-Making: ...	88
9	THE PROPOSED DEVELOPMENT	89
9.1	The Urban Design Framework	89
9.1.1	Integration of environmental aspects and view corridors ..	90
9.1.2	Public Realm Continuation:	91
9.1.3	Fragmentation of building form:	92
9.1.4	Building heights:	93
9.1.5	Site integration and accessibility:.....	94
9.2	Urban design framework conclusions	95
9.3	The Alternative Development Proposals	96
9.3.1	The 'No-Go' Alternative:.....	97
9.3.2	The Riverine Corridor Alternative, the Preferred Alternative.....	98
9.3.3	Alternative 2: The Island Concept Alternative:.....	104
9.3.4	Alternatives 3 and 4: The Mixed-Use Affordable Alternative and the Reduced Floor Space Alternative:.....	106
9.4	Commentary of IAPs on the Development Proposal:.....	106
10	Assessment of Impacts ON SIGNIFICANCE.....	109
10.1	Potential Impact H1: Potential loss or damage to archaeological and palaeontological resources:	110
10.2	Impact H2: Loss of Structures at the Site with Potential Heritage Value	111
10.3	Impact H3: Change in Environmental and Historical Character of the Site	111
10.4	Impact H4: Change in Heritage Value of the Liesbeek River Floodplain at the Site	113
10.4.1	The Riverine Corridor Alternative	113
10.4.2	The Island Concept Alternative	114
10.5	Impact H5: Change in Historical Setting of the SAAO Campus	114
10.5.1	The Preferred Riverine Corridor Alternative	115

10.5.2	The Island Concept Alternative	116
10.6	Visual impacts on the significance of other nearby heritage resources..	116
10.7	Ranking of Alternatives	116
10.8	Conclusions regarding Impacts on Significance	117
11	MITIGATIONS.....	118
12	RECOMMENDATIONS.....	119
	References.....	121

FIGURES

Figure 1	The project area.....	24
Figure 2:	Aerial view of the site and environs.....	25
Figure 3	An excerpt from the Van Der Graaff compilation map of 1788. (Brommer Atlas, 2009). The confluence of the Liesbeek, Black River and Salt River estuaries is depicted along with associated farms.....	38
Figure 4.	Excerpt from 1880 - 1900 map series (Chief Directorate: Surveys and Mapping) which depicts most of the early farms before major subdivision, but also the Liesbeek and Black Rivers before canalisation. The Salt River estuary is clearly visible. It was reclaimed in the early 20th century for railway yards	388
Figure 5.	An excerpt from the 1935 topographic series (Chief Directorate: National Geospatial Information) which reveals that by 1935 a large portion of the Salt River estuary had been filled for railway development and the river diverted. Also, it is clear that the Liesbeek had been straightened for a significant amount of its length. The River Club site is already being used for recreation.....	39
Figure 6.	By 1935 recreational grounds were in place and the Liesbeek had been straightened and its confluence with the Black River moved south.	49
Figure 7.	By 1940 the site enjoyed the same configuration.....	49
Figure 8.	By 1960, the old course of the Liesbeek had been diverted and filled, A new canal was built on the east side. The River Club house is visible... ..	49
Figure 9.	In 1980 there is no water course shown along the old Liesbeek course. .	49
Figure 10.	By 1990 the Old Liesbeek River course had been partially restored, albeit without the straightness of the 1934 alignment.....	49
Figure 11.	1941 aerial photograph showing the River Club site and the lower course of the Liesbeek effectively canalised.....	50
Figure 12	Proposed layout of the Berkley Road Extension and the proposed T-junction with Liesbeek Parkway.....	51
Figure 13	One of the early crossing points (circa 1760) at the confluence.....	72

Figure 14. A late 19th century view of the Black River in the foreground and the SAAO from where the M5 is today, looking towards Devils Peak with Lions Head in the background. 76

Figure 15. View towards Signal Hill from the SAAO are obscured by Eucalyptus trees 77

Figure 16. View across the River Club site towards Observatory suburb and Devil's Peak from the roof of the main Observatory building..... 78

Figure 17. The canalised Liesbeek River (built 1952) viewed from SAAO towards the River Club and to the south..... 79

Figure 18. Diagram showing the integration of environmental aspects and view corridors..... 91

Figure 19. Diagram showing the public realm continuation..... 92

Figure 20. Diagram showing the fragmentation of building form 93

Figure 21. Diagram showing the building heights..... 94

Figure 22. Diagram showing site integration and accessibility 95

Figure 23. The River Club site as at present: The "existing rights" or "no-go" alternative..... 98

Figure 24. The architectural concept..... 99

Figure 25. The preferred Riverine Corridor Alternative showing the two precincts and the restored riverine corridor..... 101

Figure 26. The preferred Riverine Corridor Alternative from the west..... 101

Figure 27. The preferred Riverine Corridor Alternative from the north-east 102

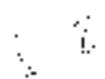
Figure 28. Sections through the intended development and associated topography 102

Figure 29. View of the proposed development across the restored Liesbeek from the SAAO with Devil's Peak in the background..... 105

Figure 30. The Island Concept Alternative showing the two precincts, the retained canalized River, and the unrehabilitated earlier River course..... 105

Figure 31. Diagram of current significances of the riverine topography as cultural landscape..... 117

Figure 32. Diagram of future significances of the riverine topography as cultural landscape after the restoration of the Liesbeek River 118

PREFACE

The proposal to redevelop the River Club property has become increasingly controversial. The River Club site is extremely important historically and there are a wide range of interest groups arguing different significances and claiming different if related 'ownerships' including arguments about some matters that are not ordinarily recognised to be 'heritage-related'.

It is also true that the complex framework of laws regulating development in these circumstances demand iterative public and interested party commenting processes; and these repeated requests for comment have angered some parties while others have accused us, the authors of this heritage impact assessment, of what have been claimed are unreflective views that fuel ethnocide.

Given the increasingly inflammatory attacks on the process and on us as the authors of this heritage impact assessment, it seems sensible to articulate our position by making clear at the outset what we think the primary issues are, what we think our professional role is, and what we think can be achieved in this instance.

First, the primary issues, as we see them, are as follows

- indigenous First Peoples groups have legitimate claims to an 'ownership' of the wider environs as their pre-colonial heritage and as a place where early steps in the process of the destruction of their pre-colonial way of life took place;
- the subject property, within the 'frontier zone' of the first settler-indigenous peoples conflict, is important historically;
- the wider area is transformed by radical changes made to the Liesbeek River and by the establishment of the observatory, the hospital, the levelling of sportsfields, and the growing inner-city suburb of Observatory;
- the Liesbeek itself had by the 1950s become little more than a stormwater channel and a number of stretches of the river were then canalised;
- the subject property, a small part of the Liebeek floodplain and since the late-1920s the SAR&H recreational club, had been subject to decades of dredging, dumping and reshaping and in 1952 the course of the Liesbeek was changed decommissioning the course on the western side of the floodplain (hence only carrying stormwater from the abutting suburb) and cutting a new canalised course along the base of the low spur occupied by the Observatory;
- the old defunct section of the river is of ecological value (but, from a heritage point of view, we regard this as incidental);
- the subject property is privately owned, used for restaurants, conferences and golfing practices, and is not meaningfully accessible to the public or, most importantly we think, to the First Peoples groups;
- there is an opportunity for the realisation of several public goods through development of the site which are most unlikely to be achieved in any other set of circumstances;


- not dealt with directly are aspects that are not central to what we regard as the heritage-related significances of the property: these aspects include, for example, the purchase of the property, flooding, environmental protections and traffic generation.

Second, our professional role is to undertake an investigation that enables (a) the articulation of the heritage-related significances associated with the site and its environs and (b) the identification of heritage, both tangible heritage resources and intangible practices and beliefs, that comprise or are associated with the site and its environs, and (c) that also enables us to advise and assist the owners to propose development that responds to and respects the articulated significances, mitigates recognised potential damage to heritage both tangible and intangible and, ideally, that enables the recovery and even enhancement of heritage resources.

The manner in which we approach these tasks is not, of course, value free: but we do self-consciously approach them in as open and as transparent a way as we are able. And, given the submissions of the Goringhaicona Khoi Khoin Indigenous Traditional Council, given in particular their belief that, "The HIA downplays our history for what we feel are for purposes of greed and avarice. Trust has been broken with the HIA author and the applicant", we emphasize the context and dilemmas faced here and in circumstances like these more generally: yes, the significance of this place and of the particular subject site within the wider environs is great; and, yes, the rights of indigenous peoples should be affirmed and promoted. However, it must be recognized that the significances associated with this particular site are also associated with the wider environs; and that these significances are difficult to attach directly to this particular property and, perhaps most starkly, it is always difficult to see how intangible cultural heritage, practices and beliefs, can be 'brought to ground' in the practical world of property ownerships, legal frameworks, and the making of the modern city in a context of urbanisation, growth and development; and it must be said that the submissions of the First Peoples groups have not given us grounded reasons or evidence enabling us to promote greater or more tangible restitution or access.

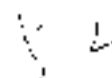
Third, despite the controversy raised and the heat of the resistance articulated by most of the parties responding in the commenting processes and recognising the current degraded state and use of the site and its very great significance, we have also recognised the potential for the creation of a public good of the highest order through the recovery and restoration of the Liesbeek River/canal as a historically and spatially meaningful and ecologically functional Liesbeek riverine corridor.

In this regard, we note that most of the commentators (the First Peoples groups excepted) seem, implicitly at least, to accept that some form of development should/will proceed but most also argue that the current proposal is simply too great: we think that this, from a heritage management perspective, is contradictory; and we think this because any development of the subject property, even single storey row-houses like those in nearby Observatory would transform the site and the floodplain



affecting the wider environs in the same way (from a heritage management perspective); but, importantly, a lesser development would not generate adequate funds for the great public good that we argue for, the restoration of the Liesbeek riverine corridor. In other words, we think that the choice is stark but clear: accept the currently proposed Riverine Corridor Alternative with what we think are very considerable public benefits or accept that the River Club property will remain as it is.

Finally, we must also point out that neither of us sought the roles we have accepted: given the then already growing controversy, we did so reluctantly; but we have embarked on this because we believe that, if the potential for enhancement of the riverine corridor and for meaningful public access is recognised by the heritage-claimants and if the authorities recognise the opportunities presented here, a significant gain for all parties can be realised. We are, of course, paid for our professional endeavours; but we are independent professional advisers and we have nothing to gain or lose from the success or failure of the development proposal.



welcome a use of the site that enabled the restoration/transformation of the canal to riverine corridor as comprehensively (and, at least, of a similar dimension, design and public accessibility) as proposed on the River Club site.

5.3 The Landscape as Heritage:

The landscape, the riverine corridor within its wider floodplain with its historical pre-colonial and early-colonial associations, is identified in this report as the most interesting and most important heritage resource associated with the site and affected by the proposed development; and it is clear that this is the most important set of issues. Indeed, there are several separable headings under which the wider issue is discussed; and we come to an overarching conclusion in this regard:

Some commentators have argued that the site is a part of a 'cultural landscape' and is significant as such, in particular, to the First Peoples.

This is common cause; but, as a cultural landscape, "fashioned from a natural landscape by a culture group" and/or "a tangible manifestation of human interactions and beliefs set against and within the natural landscape", this landscape is not visibly or self-evidently significant and neither is it designed or created intentionally nor organically evolved. However, notwithstanding the absence of material cultural evidence, it is an 'associative cultural landscape'³³ with definable/known historical associations of great socio-political import (these historical associations are acknowledged and described at some length in Section 4: The History of the Place, pp34-52 above).

Importantly, the First Peoples groups have in their contributions to the provisional proclamations appeal process³⁴ and in their more recent comment³⁵ claimed an historic sense of ownership of the TRUP area as a whole and of the site in question as heritage; and the High Commissioner of the Goringhaicona Khoi Khoi Indigenous Traditional Council quotes from the recent Attwell/Jacobs Two Rivers Urban Park Baseline Heritage Study, discussing the TRUP as a whole, as follows:

"The history of this landscape is ancient and tragic. Not only does it mark 'the beginning of the end' of Khoikhoi culture but it also symbolises the process and patterns whereby the indigenous inhabitants of Africa, the New World, Asia and Australia-New Zealand, succumbed to the tidal wave of colonial globalisation. Although there are no tangible remnants of the actual places of conflict, forts or outposts or graves, the topography and 'place' survive albeit greatly transformed by more recent layers of development. The valley of the Liesbeek, Black rivers the confluence and remnants of the Salt River estuary

³³ Fowler, pp15-23, on the idea of cultural landscape', quoting Sauer, 1926 and Melnick, 1964.

³⁴ In, for example, Jenkins, Tauric, undated (delivered to the MFC s Tribunal, we think, on 15 September 2017). Letter from the High Commissioner of the Goringhaicona Khoi Khoi Indigenous Traditional Council on behalf of Paramount Chief Aran.

³⁵ Letter (undated, received on 2 May 2019) from Fauziq Jenkins, High Commissioner of the Goringhaicona Khoi Khoi Indigenous Traditional Council, on behalf of Paramount Chief Aran.

exist today. In the context of the history of South Africa this is an historical place. It is suggested that the Liesbeek River itself is worthy of declaration of a grade II Provincial Heritage Site along with the remaining open land, the confluence and wetlands."³⁶

Indeed, the site is part of a cultural landscape that has considerable meaning and significance, but this significance is associative and has no clear or defined place or locus or even any physical characteristics other than being rooted here in this general location on the floodplain of the Liesbeek. There has been no identified archaeology of pre-colonial settlement found in the area as yet. The river itself is the only tangible visible element that survives as a resource that warrants safeguarding or, rather, given its current degraded and ambivalent identity, recovery. As argued in the following section on Significances, the Liesbeek River Canal and the old pre-1952 river course (now serving primarily as a component of the stormwater system) have confused the readings, meanings and identity of this landscape as heritage; but we do not contest the claims regarding this place as heritage.

The Goringhaicona have made a number of "recommendations" which we include here as an articulation of their view of the site as heritage:

- "That the TRUP precinct be acknowledged as a place of national and international restitution and recognition of the Khoi Khoi
- That the precinct encompasses the commemoration of the 1510 battle against the Portuguese Viceroy D'Almeida.
- That the precinct recognises the intangible and tangible memory of "first and final frontier" contact.
- Archaeological excavation be looked into.
- More study and research be committed to the area.
- That the area be recognised as a National and International Heritage site
- That area be a place that illustrates the history of the colonial decimation of the indigene and the trajectory of European settler development in South Africa
- That it be a site dedicated to the untold history of the genocide of Cape San
- That it be a site dedicated to the acknowledgement and commemoration to the cultural ethnocide of Khoi Khoi and San indigenous groups. This would include processes of the language restoration.
- A site that would be a symbolic place of reference and utilisation for the purposes of a First Indigenous People's Conciliation Commission.
- A site that celebrates place that connects the world to the DNA of the Khoi as of the oldest people on earth, through the re-engagement of a revived sense of place.

³⁶ I have not been able to find this passage in Attwell's report; but it is quoted directly from Jenkins' letter referred in the preceding footnote. See Attwell, Melanie and Arcon, October 2015, *Two Rivers Urban Park Baseline Study* a report commissioned by the Western Cape Provincial Government.



A site that recognises the Goringhaiqua, Cochoqua, Gorachuqua, and Goringhaicona as the precincts pre-colonial Khoi Khoi historical custodians.

A site that recognises the evolution of and the intermingling of diversities of nationalities and culture as experienced pre and post Apartheid South Africa. These identities are part of a more recent memory and history of the site.

A site committed to a precinct wide recognition of scientific breakthrough and innovation of both the indigene and western technologies which has occurred within its borders.

A site that will recognise the exquisite plant, the sensitivity of the floodplain, the restoration of the Liesbeeck River and Black River, and animal life.

A site that acknowledges the linguistic ethnocide of the low plants in the region have been named and framed outside of their cultural and geo-specific areas.

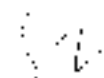
A site demarcated to restoring the significance of the precolonial peopling of the area that nurtured a coexistence of animal, plant, land, water and the cosmos in ways respectful of each elements dignity and right to live and have a place under the sun.

A site that exemplifies the symbiotic and intrinsic qualities of the Khoi and San culture and people.³⁷

In this regard, we point out that the low spur of raised land on which the Royal Observatory was sited and on which the Valkenberg hospital and Porter's institution followed later in the 19th century is the site of the fences and fortifications which were meant to repel or limit the access of the indigenous peoples to the then newly settled land; and the transformed floodplain and river must, as historical heritage site, be read with this even more developed part of the topography. This wider site is the historically significant place, a 'frontier zone' (if for a short period): but its meaning and persuasiveness as heritage site has been eroded by the 19th century institutional use and development of the spur, by the growing transformation of the floodplain for sporting uses and facilities and for railway-related functions during the second half of the 20th century, by the gradual creep of the suburb and business quarter below the railway line throughout the 20th century, and by the late 20th century growth of the transformation network of arterials and motorways.

Given this, we argue that the development of the River Club site and its development and transformation is, first, an opportunity for the articulation or making public, even celebration, of the significance of the place and of its historical associations and, second, an opportunity to restore ecological life to the Liesbeeck River. These articulations, celebrations, restorations must, however, find form and life in the facts of the modern, constantly changing, constantly growing city-scape. We note that many commentators disagree with this view claiming that their views are "ignored": this is incorrect; we simply have different opinions and see rather the opportunity for

³⁷ Goringhaicona, 2 May 2019, pp29-30.



radical improvements to the environs which are consistent with wider goals and needs. We note also, if with sadness, the antagonism of the First People groups' representatives towards us as authors of the HIA; and we hope that not all of the members of these groups see us in the same light. We do not ignore the antagonism (which we do not understand); but we hope to withstand it with forbearance and quiet dignity.

5.4 The Sense of Place of the Floodplain:

Several commentators have commented on the importance of the 'openness' in the sense of place of the floodplain, as well as on the views from within and across the floodplain. We do not disagree with these remarks as observations on the sense of place however ephemeral and difficult to define that sense of place may be here.

The character of the site will be transformed by the development and this transformation will be of significant visual impact. But we argue that this impact will be of relatively low heritage significance, whether the site is developed or otherwise. It will always have a history which not manifested on the ground and cannot be destroyed by physical changes. The site is located in a significantly transformed floodplain between even more radically transformed land, is degraded and will be further affected by the future development of the Barkley Road extension. Although the development will lead to adverse visual impacts (which cannot be entirely mitigated), a very considerable heritage benefit is anticipated from enhancing and restoring the Liesbeek River corridor.

However, in our view, the comments made by some regarding views from within the site are mistaken. Firstly, the urban design study which we have relied on has recognised a view-axis along the bank of the restored river and Devil's Peak which has determined the alignment of the connecting green-space (thus creating or articulating a new view-axis). Secondly, Devil's Peak is so massive and so close that it will be experienced from every part of the site as it is moved through. And, thirdly, the 40m set-back of buildings from the restored Liesbeek River ensures that the Observatory 'ridge' and the SAAO campus, which is 160m from the nearest proposed building, will be visible from within the development.

Furthermore, south of the River Club site, the floodplain is already developed and used for sports facilities of some sort (with considerable visual intrusion) or, to the north, has been occupied by railway- and harbour-related infrastructure (some of it bulky and tall) from some distance up the river all the way down to the sea. Given this, the floodplain as a whole does not have a clearly experienced sense of place. Rather, the reading of the sense of place of the floodplain is of low-lying land comprised of disparately-used, separated units of land without coherence. Indeed, we suspect that few currently recognise the place as a riverine floodplain; and the sense of place of these lower reaches of the Liesbeek as floodplain cannot be meaningfully re-made or recovered.

5.5.3 Other Nearby Heritage Resources:

A number of other relatively nearby heritage sites and resources are referred to by some commentators, but these are, notwithstanding the very considerable significance of some of them, out of sight and will not be affected by the development. These include several sites of early homesteads all but one are 'buried' within the urban townscape of Observatory. The exception, the Valkenberg homestead, is too distant from the site to regard it as 'affected' by the proposed development although we do regard its significance to be *improved* by restoring the riverine corridor.

5.6 Miscellaneous Issues Raised by Commentators:

There are a number of miscellaneous issues raised by commentators which are not regarded to be heritage-related. These include arguments about financial feasibility and sustainability, and an anxiety about the loss of the current River Club recreational facilities and, of course, those matters referred to earlier which are not ordinarily dealt with as heritage resource-related aspects.

6 IDENTIFICATION OF HERITAGE RESOURCES

6.1 The Site as Part of the Floodplain

While we are unlikely to ever know the exact positions of Van Rieboeck's defensive line, watch towers and redoubts, there is compelling evidence to suggest that the slightly raised spine or ridge of land between the Liesbeek and Black Rivers, which houses the Royal Observatory and Valkenburg Hospital, played an important role. The site for the Royal Observatory was chosen in 1820 on account of its key location on raised ground that placed it in line of sight of Table Bay, so that the falling of the time ball could be observed from Table Bay and the Castle. Descriptions contained in Moodie and the *Resolutions* indicate that one of the major forts of the VOC – Khoekhoe confrontation (Fort *Ruitervacht* II) was built on the same site as its signals could be observed from the Fort and other watch towers that formed part of the system. Indications are that the defensive barrier would have extended through the grounds of Valkenburg Hospital, then southwards across Rondebosch Common before turning westwards to Kirstenbosch. The exact places where incidents and confrontations occurred can never be known, but what is evident is that the historic landscape between the Black and Liesbeek River marks the site of one of the earliest frontiers that were to eventually herald the fragmentation of the Khoekhoe nation. Although there are no tangible remnants of the actual places of conflict, forts, outposts or graves, the topography and 'place' survive, albeit greatly transformed by more recent layers of development. Wilderness and wetlands were transformed into farm land, and then again to modern suburbia. On the other hand, the Liesbeek and Black rivers, the confluence and remnants of the Salt River estuary, exist and are still

identifiable as such, and, in the context of the history of South Africa, this is an historic place of considerable significance.

While these early years may be historically remote in terms of issues affecting the project area, they remain relevant as the River Club site falls within this key historic landscape. In the context of the Two Rivers Urban Parks project certain groupings have emerged which identify strongly with Koekhoen culture and are intent on upholding indigenous rights to commemoration within the Liesbeek River Valley. Reference has been made to the early resistance of the Khoekhoen to de Almeida as well as the first Khoekhoen war (Altwell, Supplementary Report, 2017). The De Almeida confrontation took place just a little more than a 'league'⁴⁷ from the anchorage at Cape Town which would place the event in the Salt River-Black River area and, perhaps more decisive, the actual massacre took place on a beach which was, we must presume, most likely in the Salt River mouth area and certainly not in either the surrounding TRUP zone or the River Club site. Hence, we concur with findings of Altwell's detailed supplementary report⁴⁸ on this subject prepared for TRUP

The landscape of the first Khoekhoen war included the River Club site, however, and in 1659 the entire Liesbeek River Valley as far as Van Riebeeck's own farm on the Bishopscourt side of Wynberg Hill fell within this zone of contestation. Given this, the River Club is a part of this historical 'frontier zone', most of which is now subsumed within the suburbs from Salt River to Bishopscourt.

6.2 Early Crossing Points

The Liesbeek-Black River estuary was an important site, and remains so to this day. Indications are that there were two or more early drifts at this point, one of which may well have been a phase of the early Vaarshe Drift crossing point. The significance of these crossing points is that they were the only real point of entry into Cape Town from the hinterland – the combination of the Salt and Black Rivers rendered the Table Bay part of Peninsula an island of sorts. The drifts were guarded and entry into the settlement was regulated by small forts in Maitland and Salt River. This resulted in the use and establishment of a large outspan on the Ysterplaats flats where traditionally the Khoekhoen would have outspanned with their herds, and in later years VOC farmers would wait when bringing cattle to trade in the city. This land was appropriated by the government in the 20th century eventually becoming Ysterplaat Airforce base, Wingfield camp and base.

A mid-18th century map of the project area depicts the riverine system in detail. Noted is the presence of a place of execution, and the drift system. The road system in those times was undeveloped and somewhat *ad hoc* in character, however roads did converge at the river confluence where they crossed both the Liesbeek and

⁴⁷ A 'league' has several definitions but in 16thC Portugal it most likely meant either the distance walked in an hour, 6173m or it was a 'sea-league' measuring 5655m.

⁴⁸ Altwell and Jacobs, pp51-63.

102

Black River over the slightly higher ground where the River Club and Observatory land is today. This is probably because it was more viable to cross both rivers with harder ground underfoot than to brave the mudflats and wider waters below the confluence

In later years, once bridge building had become feasible, the crossing point moved northwards to where Voortrekker Road crosses the Salt River estuary today.

Given this, we presume that the most likely pre-colonial crossing of the Black and Liesbeek Rivers took place more-or-less on the line of the Berkley Road Extension; and we, therefore, regard this site as a potential heritage resource, indeed, in our view, it is one of considerable potential



Figure 13 One of the early crossing points (circa 1760) at the confluence. Atlas Africa.

6.3 The River Club Site as a Heritage Resource

While the area in which the River Club is situated is historically important for the role it played in the distant past, no tangible heritage relics or resources have survived on the site. The only element on or immediately abutting the site that has been a constant through both pre-colonial and colonial periods is the Liesbeek River itself. However, although its alignment and function has been altered to the point that not much of the original course survives, the main elements and a confluence exist today. But the river is a strong symbol of past events, even if with intangible and imprecise associations; and it gives a sense of deep-time reflecting the history and significance of the area. The Liesbeek River is therefore identified as the surviving physical heritage resource that deserves significant celebration.

In the 'phase one HIA' of the River Club, O'Donoghue (2017) regarded the River Club as part of the TRUP and argued that the heritage indicators for the River Club should be synchronised with those determined in the TRUP process. Importantly,

she also argued that the site's "island character" should be retained.⁴⁹ Baumann (2016), in his review of O'Donoghue's "draft phase one report", pointed out that the TRUP is comprised of a variety of precincts of very different topographies, histories of use, of development-type, each with its own qualities and a variety of potential heritage significances; and he questioned the "island character" idea of the development.

The River Club is a privately-owned conference facility, sports club, driving range and nine-hole golf course. The site itself has very little obvious heritage significance of which the only apparently significant qualities are the architecture of the unremarkable Grade IIIc structures (which we dismiss) and its sense of place as a part of the Liesbeek floodplain (which, although much transformed, damaged and degraded, we regard as *potentially* significant). We argue that the Liesbeek River is the common thread and the significant heritage resource that links the River Club, the TRUP and the environs more generally; and we argue that the potential significance of the flood plain can only be realised by restoring the riverine corridor.

The archaeological survey by Kaplan (in O'Donoghue 2017) shows that much of the land that makes up the site has been subject to considerable disturbance and has very little archaeological potential which we confirm. While it can be argued that the golf-course contributes to the sense of open space, it is a man-made and spoiled landscape that contributes little to the natural qualities of the confluence. We, therefore, insist that the river is the primary physical and symbolic heritage resource in proximity to the site. It is this that needs to be celebrated and enhanced. Provided this is done adequately, and the Raapenburg wetlands conserved, development of the site is justifiable.

The difficulty in articulating the heritage-sensitivity of the River Club site is that although the site is historically important in terms of the role this area played in the history of the Cape, there is no or very little physical heritage on the site – it has been transformed and reclaimed from estuary mud; and the course and nature of the Liesbeek has been dramatically altered.

While the entire Liesbeek River valley has not been surveyed, many parts of the Observatory section have been examined. The River Club itself was previously surveyed by Kaplan, while Hart has checked excavations for new structures on the neighbouring SAAO site. Comprehensive trial excavations have taken place at Valkenberg, Varsche River as well as checking of excavations for renovation of the Hospital. The archaeological material that has been found to date relates entirely to the VOC period and thereafter. Despite the major works that have involved canalization of the river, no graves or human remains have been reported or are lodged according to the skeleton register at either Iziko Museum or the UCT medical school which have been the official repositories of such finds since both institutions

⁴⁹ O'Donoghue, p4.

were established. The nearest recorded of remains of pre-colonial people and archaeological sites are from close to the Salt River estuary in Milnerton.

Cremation among Khoikhoi people has not been described in any known historical ethnography; however, burial methods are described and are archaeologically well documented. The emailed assertion by Hromnick (who believes that the Khoikhoi people were migrants from India) is disputed.

The records from the register⁵⁰ are as follows:

SAM 6019 - found in Salt River by the SAPS in 1972; from the excavation for a building - a cranium and mandible.

SAM 6070 - found at Site B in Alfred Road in 1983 - a complete cranium, mandible and other minor human remains.

UCT 263 - found beside the old Cape Town infirmary in a street excavation at the site of an old graveyard - 2 crania.

UCT 145 - Hiddingh Estate in Newlands - a colonial coffin burial, complete skeleton.

Contrasting with the above observations, the archaeological signature of pre-colonial people is strong on the Cape Peninsula – the sites of numerous middens are well-known, particularly in Hout Bay, the western shore and the greater Peninsula, which are a clear indicator of where people were living. Shell middens were plentiful all the way up the West Coast. However, what is noticeable is the high frequency of them on the Vredenberg Peninsula which is historically known to be a center of Khoikhoi stock-keeping. One site which was clearly of significance for Khoikhoi was the rocky massif known as Kasteelberg which has been extensively studied and radiocarbon dated. The massive shell middens around the Kasteelberg massif contain layers of human occupation including bone from indigenous domesticated sheep and early domesticated cattle as well as grinding groves in the granite.⁵¹ Radiocarbon dates confirm an occupation sequence that goes back almost 2000 years since the first advent of herding people in South Africa. It must be noted that many of the archaeological sites on the Vredenberg Peninsula have been ploughed over many times, yet the archaeology of the area remains visible.

The Liesbeek valley has no sequences of human occupation such as described above. In fact, to date no San or Khoikhoi archaeological sites have been identified. This does not mean that people were not living here as stock-keeping people were very mobile following available grazing. It does, however, mean that there was no focus in the project area that attracted repeated visits or long-term occupation of any kind, as would be the case with sacred places and capital settlements.

The historic records we have used in this assessment refer extensively to the vast encampments of the Khoikhoi on the other side of the Salt River – that is Milnerton, Yesterplaas-Wingfield. These large tracts of landscape which contained extensive

⁵⁰ Morns, 1992.

⁵¹ Smith et al, 1991; Smith, 2006.

wetlands were accepted as the common grazing lands outside Cape Town, which represented the end of the cattle trading route from the interior. In the 1800s they were designated as common or outspan land in continuation of a long tradition of cattle herding which dates back to precolonial times. In the early 20th century this land which was owned by no-one was appropriated by the government for the construction of military facilities and have retained this status to this day.

Archaeological evidence has been used several times to corroborate oral history in court of law. The matter of the Salem Commonage (20kms south of Grahamstown) has contributed to legal precedent in terms of the way in which oral history is considered, particularly in the context of land claims.⁵² The judgment in this case took into account the oral history of the claimants, evidence provided by expert witnesses and, importantly, sort the verification of oral history through the employment of archaeologists to verify the physical evidence of previous settlement through material remains. This means that although oral history was considered in the judgment, physical evidence played a decisive role.

However, returning to the case at hand, while First People's representatives have made claims about burials in the environs, there is no physical evidence in this regard.

The heritage resources on the site are summarised thus:

- 1) The Liesbeek River and the confluence are important as a place in the landscape (its 'physicality' is too transformed, however, to be argued to be anything like it may have been during its historically important moments) and the historical and symbolic significance of the river is very high.
- 2) River Club land was possibly the site of an early crossing point where an informal route passed along and over the confluence to a point to the west (near where the bird hide is today) before continuing into the hinterland. Although this spot may be at the northern boundary of the property where the Berkley Road Extension is planned, it is also possible it may have been where the current Station Road axis crosses the Liesbeek. There is no evidence of this crossing today.
- 3) Although the River Club site is effectively a recreational area and a golf course and has a green open-space quality which is shared with the reaches of the Liesbeek corridor immediately upstream of the site, this belies its degeneration and impairment as a heritage resource.
- 4) The current landscape qualities of the site are a consequence of the history and context as summarised above. The context is historic and symbolic. The site has several significant heritage sites relatively nearby, but the physical properties of the site, with its club house and sports-related facilities, its managed, landfilled and bland landscape for sporting activity, are of low

⁵² *Salem Party Club v Salem Community* (20526/14) [2016] ZASCA 203 (13 December 2016)

significance; and it contains very little else which we argue can be accepted as significant.

In other words, the Liesbeek River (both the pre-1952 and the post-1952 canalised channels), the confluence, the banks, and the riverine corridor generally comprise the significant heritage resource associated with the site.

6.4 Heritage resources in the surrounding area

6.4.1 The SAAO



Figure 14. A late 19th century view of the Black River in the foreground and the SAAO from where the M5 is today, looking towards Devils Peak with Lions Head in the background (Mike Fortune collection).

The most significant heritage resource close to the project area is the South African Astronomical Observatory (SAAO; recently confirmed as a National Heritage Site in December 2018) which is situated on a rise, what we have called the 'spine' or 'spur' between or at the confluence of the Liesbeek and Black Rivers. It is to the east of the project site across the canalised course of the Liesbeek River. The core historic structure (built in 1820) is centrally situated with a 'campus' of significant structures to its immediate south. To the north and surrounding the 'campus' the complex is, however, extended by a plethora of structures of various ages – these range from 19th century staff buildings as well as some recent late-20th century structures. The area is well-treed and most structures are obscured from view by a combination of oak, eucalyptus and pine trees. In other words, the old Royal Observatory and the SAAO campus is barely visible from its surrounds, including from the River Club itself, due to the dense tree cover.

As Sarah Winter has it, "(l)ocated at the centre of TRUP, the wooded setting of the SAAO provides a protective tree canopy and visual screening element from the Black River Parkway", it has "very high historical significance as a scientific institute dating to the early 19th century and the first permanent observatory in the southern hemisphere", its association "with a number of astronomical advances of international significance from the 1830s", housing "a range of objects and

instruments associated with major advances in astronomy during the 19th and 20th centuries", and with "a number of astronomers who were pre-eminent in the field during the 19th and 20th centuries. It has considerable aesthetic significance in terms of the dispersion of a number of architecturally significant buildings and a distinctive dome typology set within a wooded landscape, between the Liesbeek and the Black Rivers, and at the centre of TRUP" and that, as "a centre of excellence, the site continues to have associational significance as one of the country's most internationally acclaimed scientific institutions".⁵³

The Observatory was built on this raised spine of land that was visible from the Castle (where the 12 o'clock signal gun was/is located) as well as from Table Bay where mariners could observe the fall of the time-ball for chronometer setting. These views from the Observatory to the Castle and Table Bay, which were but no longer are central to the functioning of the Observatory, are now obscured by development. Lions Head, Signal Hill and Devils Peak remain visible, but the view has to be sought from vantage points below the trees, and is clearly not of any importance in the day-to-day life of the SAAO. Furthermore, and these vistas have not been of importance since the beginning of the 20th century. The line of sight between the SAAO and Signal Hill is of no current relevance although it is historically interesting since the noon-day gun (previously at the Castle) at the Lion Battery on Signal Hill has been electronically triggered for most of the 20th century.

We note that Attwell and Jacobs, in their baseline study of the TRUP as an entity, argue that the view from the 1820 Observatory building to Signal Hill is still important and, by implication, is a heritage resource that should be protected. Given that the SAAO itself has not needed or attempted to sustain or recapture that view, we regard this view/axis as interesting but not demanding a response in design.



Figure 15 Views towards Signal Hill from the SAAO obscured by Eucalyptus trees (Tim Hart, 2017)

⁵³ Winter, p24.



Figure 16 Views across the River Club site towards Observatory suburb and Devil's Peak from the roof of the main SAAO building (Imraan Yo-Hee, June 2019)

6.4.2 The TRUP and nearby elements

The River Club is a large piece of privately-owned land within the proposed Two Rivers Urban Park (TRUP). The TRUP consists in large part of government-owned land within the Black River - Liesbeek River corridor, and it has been subject to an ongoing land-use and spatial planning process (which includes a heritage resource 'baseline' study) to inform a vision for the future for the area. This 'urban park'⁵⁴ is comprised of several distinct precincts of widely varying character, and it also contains a variety of heritage resources of varying grades including the neighbouring SAAO, the Valkenburg Hospital complex (noted for the recently restored old hospital) and its various facilities dispersed across the flat ridge, and the Valkenburg homestead site (one of the earliest VOC land grants in 1657, which later became the Porter Reformatory). Across the Black River and although visible, a considerable distance from the River Club site is the Oude Molen component of Valkenburg Hospital, its mid-early 20th century wards set in an open environment adjacent to the broad open river corridor of the Black River (one of the ancient Oude Molen farm buildings has survived although in very poor condition). Also inside the TRUP is the Alexandra Institute and historic mill as well as Maitland Garden Village which, while visible from the River Club site, is visually insignificant in this context.

The significance of the area is derived from the history of and concentration of historic elements in this landscape as well as the symbolic values of the Black and Liesbeek Rivers. Given this, the TRUP contains components of high significance, not

⁵⁴ It is difficult to understand the use of the word 'park' in the name of this planning project

only on account of its built, cultural environment and setting, but also its place in the very early history of the Cape. It is, however, also clear that the TRUP is a very large area ranging considerably in use, built-form and in significance.

While the River Club shares a geographical context with TRUP, the most significant shared heritage resource is the Liesbeek River – a linear asset that passes through much of the Southern Suburbs all the way from Upper Newlands and Kirstenbosch – within its floodplain of varying width and character. As do the various precincts of TRUP (some of which have distinctive heritage qualities), the River Club has its own character and distinctive history and should be treated as such

The interests of indigenous First Peoples must feature prominently in discussions with respect to the area and play a significant role in the determination of a high heritage grading for the area. It must, however, be pointed out that the land that forms the TRUP is part of a wider landscape of resistance in the mid-17th century that involved the entire Liesbeek Valley up to its source in Kirstenbosch (O'Donoghue 2017, Attwell and Jacobs 2017, Hart and Schiategatto 2017). These interests, of course, have bearing on the River Club site.



Figure 17. The canalised Liesbeek River (built 1952) viewed from SAO towards the River Club and to the south (Tim Hart, 2017)

6 SIGNIFICANCES

By way of an introduction to our analysis of the significances of the site and its surrounds, we repeat our differences with certain earlier studies: the significances of the River Club site and its context argued in earlier preliminary studies (a phase one HIA by O'Donoghue, a review of that study by Baumann, and Attwell and Jacobs' baseline study of the wider TRUP area) were argued in relatively broad terms and,

although several commentators on our earlier *Draft HIA Prepared for Interested Party Consultation* referred to O'Donoghue's phase one report seem to prefer those opinions, we emphasize two major differences with those opinions:

- previously no recognition has been given to the possibility of transforming the Liesbeek canal into a riverine corridor as a potentially functional ecological system and, therefore, no recognition has been given to the potential of recovered heritage significance (those views apparently preferring a "historical" course much altered through the 20th century and effectively defunct as a river course since 1952); and
- previously heritage indicators and development limitations that are not directly heritage-related were articulated (echoing preliminary views articulated in the TRUP land-use study).

The difficulty in assigning heritage-related significance to the subject site and its context demands rather more clarity: and we hope to be more precise or, at least, explicit, even if our view is one that contradicts the view held by most commentators. That said, relying on the description of the topography, the account of the historical making and layering of the site and its context above, we articulate the cultural significances of the site and surrounds as follows:

7.1 High-order cultural significances:

First, there are only two but very closely related high-order significances: one is environmental and the other is historical.

7.1.1 Environmental significances:

First, the ecological value of the Liesbeek River floodplain as a whole has been significantly degraded at the site, and therefore does not require preservation in its current state, but rather presents an opportunity for rehabilitation and enhancement.

The most obvious significance is the environmental and topographical significance which, while often seen as natural or even scientific, in this case we see these as a set of cultural values derived from the site as a floodplain, as the lowest reach of the Liesbeek just before and as it meets the Black River, a singularly important maker and component of the topography, creating a special and strong visually understandable sense of place even if the major roadway, the Liesbeek Parkway running parallel with the river, and the strip of sports fields on the mountainside of the plain (including the old Hartleyvale football ground and the high-tech hockey field and stands) have had a transforming effect on the sense of place.

This visual sense of place also signals both faunal and floral significances which are not immediately apparent but which are intrinsically connected and associated with

both the old defunct and the new canalized river courses. Each of the river courses, old and new, has meaning and significance; although both courses are currently degraded and diminished.

To the east of the Liesbeek floodplain and bounding it visually is, first, a flatland at the Liesbeek-Black River confluence which is the Raapenburg bird sanctuary which then rises into a low ridge or spur occupied by the Observatory and, south of that, the Valkenberg Hospital. To the west of the floodplain is the urban development of Observatory with Devil's Peak rising sharply behind this townscape.

This floodplain of this, the lowest section of the Liesbeek before it joins the Black River floodplain, is, despite the damage and erosion of its sense of place and its ecological functioning, still a singularly important component of the Liesbeek River as landscape and topographical determinant of the historical and current urban environment/townscape.

Perhaps, in this context, most important is the presence (and potential), along the eastern boundary of the subject site, of the Liesbeek River course itself (now canalised); and, on the western boundary, although off the site, is the remnant of the earlier river course (now serving to drain stormwater): and, in our view, although diverted from its earlier course and canalised in 1952 along the immediate western edge of the low ridge or spur of land housing the Observatory, the current river course is, despite the canalisation, topographically and ecologically the most significant feature of the site and its context. The old river course bounding the western edge of the site is now part of the city's stormwater system and does also, because the land is very low-lying, receive back-flow from the Black River periodically flowing up this course. This old course, despite its own infilling and dredging history during the 20th century and particularly between 1952 and about 1990, remains an important component of the flatland-wetland ecological system of the confluence.

The floodplain, however, the narrow riverine corridor itself apart, has either been occupied by railway- and harbour-related infrastructure (some of it very bulky and tall) or is developed and used for sports facilities of some sort (with considerable visual intrusion)⁵⁶ from some distance up the river and all the way down to the sea. Given this, the floodplain as a whole does not have a clear consistent experience or sense of place. The sense of place of the floodplain is of low-lying land but comprised of disparately-used, separated units of land without coherence. The sense that we have of this site in this landscape is of scruffiness and un-used-ness. Furthermore, as discussed earlier, the construction of the Berkley Road Extension will have a further transforming effect on the experience of the floodplain.

⁵⁶ In this regard, we note the recent controversy regarding the intention of the City Council to permit a football club to redevelop Hartleyvale as an example of the inevitable continued intensification of use and development of the floodplain generally

In other words, while we share a view of the environmental and ecological significance of these environs with many commentators in a general sense, we see this primarily as a potential rather than as a present and current significance. In other words, while the Liesbeek's floodplain is significant as a floodplain, this significance has been changed and derogated from. But this significance can be enhanced through recovery of a riverine corridor.

7.1.2 Historical significances:

The great historical significances of this site and its context are not visible at all and have left very little obvious impact on the landscape. Indeed, the greatest historical significance is that this floodplain as a whole is one of the sites of the earliest conflict between the indigenous people and occupying intruders: the floodplain and the adjacent flatlands were used seasonally by the Khoi/Khoekhoen herder-people and then, from 1657, occupied by settler-farmers leading to conflict and confrontation and, soon, to fortifications, fences and the relatively nearby forts of Keert de Kōe and Ruitervacht II.

The historical significance of these political confrontations over the use and occupation of the land has as much symbolic and associative meaning today as it has ever had. Indeed, given the failure of the modern democratic state to deliver more than political freedom, this history and significance is perhaps experienced ever more sharply; and we must recognise that these environs are a landscape of memory, a place reverberating with current political meaning. This has, of course, been re-emphasized in the First Peoples groups' submissions; and, while, we recognise these claims and we emphasize our sympathies with respect to these submissions, we do not have the evidence that enables clear identification of characteristics or elements that are or should be feasibly protected. This is not to disagree or contest those submissions; but it underlines the difficulty in locating intangible heritages, practices and beliefs in the physical landscape and built world.

Directly associated with this significance is the presence of the land granted to the early settlers; and, although there are no relics or evidence of their occupation or use of the site itself either, the nearby early homesteads of Vaarschedrift, Malta, Belleviet, Onderneming, Westloë, Coornhoop and Valkenberg are reminders/evidence, on the one hand, of the loss of land and the ultimate success of colonisation/subjugation and, on the other, of the settlement and the establishment of a new colonised outpost/homeland.

The old Royal Observatory, across the currently canalised Liesbeek River and behind its bank of trees, is without question of the highest significance (and SAHRA has recently declared it a national heritage site) We recognise the historical and scientific significance of this neighbouring and over-looking spur of land with its complex of buildings; but this significance is not or need not, we argue; be affected

by its neighbour, the River Club, because of the scale of the sites, and because of their separation (by the distance, by the River/canal/proposed riverine corridor and by the trees).

The early visual 'connections' with the Castle, Signal Hill and the sea, the set of topographical determinants of the selection of the Royal Observatory siting in 1820, have long been lost and no longer have meaning, and given that the sea and the Castle are now no longer visible from the Observatory site at all, and given that even the Signal Hill and time-gun site are, because the Observatory site itself is covered with trees, barely visible, this interest is now of a relatively low order.

7.2 Low-order cultural significances:

There are also various relatively low-order significances associated with a number of nearby places: and there are also higher-order significances associated with other sites/places/complexes but their distance from the River Club site mitigates the reciprocal effects; and, as a consequence, in our view, none of these significances are of sufficient weight to have a bearing on the development of the River Club site itself. These include:

The site itself accommodates a complex of buildings built from the mid-1930s (the main building has a foundation-stone dated 1939), a number of trees, a grassed driving range and a nine-hole short-course for golfers. In our view, none of this has more than passing interest; and certainly not enough significance to be taken into account when devising heritage-related design indicators or to be regarded as factors or criteria in decision-making.

To the east of the River Club site strung along the low spur is the Observatory complex; This low spur is well-treed and screens the entire Observatory complex, rendering it, in effect, invisible and consequently, despite its very high scientific and historical significances, of relatively low *contextual* significance which can be mitigated; and the well-treed western slopes of the Observatory ridge do also contribute to the definition of the floodplain and the potential riverine corridor.

Still on this low spur but south of the Observatory site is the Valkenberg Hospital complex which includes the important 1900 hospital complex. But it is screened by a banal series of late twentieth century buildings rendering it, in effect, invisible and therefore despite its high architectural and medical significances, of low contextual significance. The Valkenberg homestead complex is too distant to be taken into account here.

To the west of the River Club site are the old Liesbeek River course (though now much altered), the Liesbeek Parkway, the string of sportsfields which are within and



along the Liesbeek River floodplain described above. However these elements are not of as high an environmental or visual significance and, while still a part of and within the floodplain, are ambivalently and irrecoverably so. Beyond these elements is the so-called five to seven-storey Black River Office Park; and beyond that are the railway line and the inner-city suburb of Observatory.

In other words, these other heritage-related significances and heritage resources are either of relatively low order (in the context of the River Club site) or, despite their high order significance, are screened or distant from the River Club site and have little meaningful effect on the River Club site and, in turn, have significances that will not be affected by the development of the River Club site.

7.3 Conclusions regarding significances:

We regard the River Club site and its surrounds to be of very high environmental/topographical/ecological and historical significance both as the floodplain of the Liesbeek River and as a part of the place of early confrontations between indigenous peoples and settlers. Indeed, this significance, taken as a single complex of significance and symbolic meaning, is of the highest order in the current socio-political climate.

These significances, however, while both visual and bound/tied to this land and because of both the nature of these significances and because of the scales/distances involved, can be protected and even enhanced by celebrating the riverine corridor and floodplain. Indeed, the nature of these significances does, in our minds, suggest obvious and direct protective/managerial measures that should be imposed in order to promote what we regard as a restorative imperative aimed at reshaping and revitalising the Liesbeek riverine corridor. In other words, the wide open flood plain does not have a meaningful sense of place, but the narrower riverine corridor is of considerable conservation value.

There is, however, one likely, even certain, future intervention on land within the Liesbeek River floodplain and immediately abutting the River Club site that will transform the perception of the floodplain, the sense of place, and the significances that we have just described: to the immediate north of the site is a long-planned arterial road connecting the Malta Road-Liesbeek Parkway junction across the floodplain, over the Salt River-Black River-Liesbeek River confluence and to Berkley Road in Maitland; this roadway must be built at a level approximately 2m above the current levels but rising to the levels of the Malta Road railway bridge and the necessary bridge over the Salt River establishing, in effect, a 30m-wide causeway of varying height across the entire width of the floodplain. This roadway will be a very



considerable imposition on the floodplain and will have a marked impact on its reading and its sense of place.⁵⁶

It is also true that the SAAO owns a piece of land abutting the River Club property which has been considered for development: to the immediate south of the site is the abutting SAAO-owned Remainder Erf 26423 which is bounded by the River itself, the Station Road extension leading to the Observatory complex and Valkenberg Hospital, Liesbeek Parkway, and the River Club site: the SAAO has previously proposed a bulky 8300sqm building (of several storeys) for the SKA on this site, but this process has been terminated and it now seems improbable that the SKA building will be built on the SAAO site. However, it is possible that the erf Erf 26423 will be developed in due course: and any building in this position would have an impact on the floodplain and on its reading and sense of place.

However, the arterial road intervention must be taken into account because it will affect the reading and significance of the floodplain, of the surrounds and, in particular, the River Club site.

B HERITAGE-SIGNIFICANCE RELATED DESIGN INDICATORS - CRITERIA FOR DECISION-MAKING:

First, we hold the view that all interventions on heritage resources should respect and even enhance the significance of those heritage resources rather than ignore or diminish the significance: in other words, we focus on the effects on significance rather than on the resource/object itself.

Second, given this, we argue that what are often described as "heritage-related design indicators" should be carefully devised to assist and even ensure that designers understand the significances (in kind and degree) and how those significances should be protected or enhanced. Such design advice must serve to outline criteria for decision-making by the responsible authorities. We also hope that this step-by-step methodology has assisted in the process of designing the "preferred alternative" and will serve the same purpose in the final steps of scrutiny and decision-making by the authorities.

Further, given that the cultural significances of the River Club site and its context are of the highest order but are ephemeral and without clear or obvious form or of form-giving specificity, we argue that the heritage-related design indicators (or criteria for decision-making in respect of any proposed intervention on the River Club site) must first enable a 'concretising' of the articulated cultural significance and may not

⁵⁶ The CoCT's Public Right of Way – Road Network Plan, which is included in the Comprehensive Integrated Transport Plan (CITP) 2013–2018, maps the existing and future planned road network in Cape Town, and identifies a future Class 2 road immediately adjacent to the northern boundary of the River Club site (this road is referred to throughout this report as the "Berkley Road Extension").

necessarily influence the shapeform of the development. We also contend that, in this kind of case, it is inappropriate to invent non-heritage-related specifics.

That said, we propose the following heritage-related design indicators-criteria for decision-making that should be met by any development proposed on this important site:

8.1 The Restored River Criterion/Indicator:

The canalised Liesbeek River should be 'rehabilitated' and repaired, even 'restored', so that it is read and experienced as a river with its floodplain rather than as a canal. But 'restoration' does not imply a literal recreation or remaking in its old bed nor does it imply an intention or wish to preserve the current sense of place: in this case, 'restoration' means to reform the extant river course, removing the 1952 canal-sides and bottom, giving it banks and a corridor-width at least as wide as that immediately above the canalized 1952 diversion, and a new and real sense of 'river-ness', extending a sense of river and its immediate floodplain/banks down to the confluence. This means sacrificing a broad band of the River Club site on the eastern side of the site.

The intantion of this design indicator is to ensure the rendering of the lower reaches of the Liesbeek River as a properly ecologically functional and visually convincing river course with adequate banks and space to enable both the ecological systems for faunal and floral well-being and the continuation of the recreational amenity of walking and cycle-tracks that already exist upstream of the site and, most importantly, to enable a reestablishment of the Liesbeek as historical site and symbol. Indeed, recognising that the flood plain is already much transformed by urban development and recognising that its reading and sense of space will be even more radically transformed by the Berkley Road 'causeway', we argue that this improved/restored river course and riverine comidor must in future signal itself as the floodplain.

The floodplain above the 1952 diversion (and 'legible' as floodplain) seems to us to rely on a river-bank-to-road or to built-form dimension of about 40m; and we have recommended that this dimension at least be adhered to in the urban design framework and in the development proposal itself

8.2 The Scale/Height Criterion/Indicator:

Given our argument regarding the scales, dimensions of the site, and the distances between elements in the environs, and the screening by trees, we have found it difficult to definitively quantify heights and built-form of future development of the River Club site that would not damage/impact negatively on the heritage-significances. The topography and natural and built components of the low ridge/spur that the Observatory occupies are all determining factors (in our view, the most important) and we argue simply that any new development should step back to

an appropriate height, echoing the shape established by the banks, trees and buildings of the Observatory and lower than the height of the trees.

Indeed, we think that the 2-3m gradual rise from the river banks over 40m to a 'new ground level' will not be perceptible and we contend that a three or four storey height restriction above the new ground level of the southern part of the site alongside the Observatory ridge/spur (with one or two buildings rising a storey or two or even three above this further away from the SAAO) will enable a built form that will not impact negatively on the surrounds or, most importantly, on the SAAO campus or its sense of place and its significances. Such a restriction would also ensure that the built-form on this part of the site would, for the most part, be lower than the parallel Black River Office Park complex to the west of the River Club site.

The northern part of the site lining the future Berkley Road Extension is both distant from the Observatory spur and campus and masking the industrial complex of the railways yards and those often large bulky buildings to the north. In our view, the pre-colonial crossing site and the Bird Sanctuary across the proposed riverine corridor apart, this part of the site is sufficiently distanced from any heritage resource whose significance could be affected; and we leave any argument about height and/or bulk to the urban design framework.

8.3 The Colonial Crossing:

The west bank of the Black River immediately below the confluence of the Liesbeek and Black Rivers at the northern-most point of the River Club site is the closest site (or river bank) to a likely siting of a crossing point of the Black River (previously thought most likely to be at the crossing of the current Voortrekker Road) by the that may have in earlier years been used by indigenous people and their cattle. Given that there is no verifiable crossing site but, given the necessity for the establishing of a site, however symbolic, we argue that a substantial setback from the river bank be left to enable an imagined river-crossing of the indigenous First People and that this land be set aside for the siting of some form of identification and celebration of that pre-colonial history. Indeed, we understand that one of the State's Heritage Legacy Projects is a First People's Legacy Project: and we have suggested that space be left for such realisation in due course.

8.4 The Old Pre-1952 River Course:

The river course, although straightened, regularly dredged and 'managed' throughout the 20th century, is historically interesting and, at least the section along the western edge of the River Club site, flowed along that *approximate* course from pre-colonial times until 1952. Its significance is historical though of relatively low order and, given the 1952 canalisation of the waters, the future implications the Berkley Road Extension and its intersection with the Liesbeek Parkway at the Malta Road bridge, its restoration is simply not possible. It is, however, in our view,

necessary that its historical presence be reflected in future development and that it be adapted/used as a component of the eco-system.

8.5 Conclusions in respect of Design Indicators-Criteria for Decision-Making:

We note that the preliminary studies referred to earlier listed several 'design indicators' intending to guide the development of the River Club site in rather more prescriptive detail including heights, scale, density, retention of trees, etc. We do not think that such prescriptions follow from the heritage-related cultural significances of the site (as articulated above); and we think that such direction should flow out of the urban design framework articulated by the urban designer as outlined below (and attached as an Appendix A).

Also, as noted earlier, the factors determining the position of the then Royal Observatory included sightlines to the roadstead in Table Bay, to the Castle and to Signal Hill. The views to the sea and Castle are no longer extant; but there are potential views from the Observatory to Signal Hill and the gun emplacement. However, these glimpses are only from the lower banks of the land spur which are not frequently accessed. Given this, we contend that it is unnecessary to attempt to preserve a view over the River Club site.

We note also that, the view from the Observatory to Signal Hill apart, the criteria for approval/design indicators articulated here echo the "heritage-related design informants" for this site argued by Attwell/Jacobs in their 2016 baseline study of the TRUP.⁵⁷

We also reiterate an argument made earlier that many, even most commentators seem to recognise the necessity for some form of development to proceed; and we hope that those commentators will accept the design criteria articulated here as enabling and as heritage-protecting. On the other hand, we recognise that many commentators think that this site should be limited to the current uses and built-form and not be developed: while there are circumstances where development is or will be damaging to the significance of a place, we think that this development does provide an opportunity for the revitalisation or recovery of a heritage lost and hidden.

In conclusion, we regard these four design indicators to be sufficient, not only to ensure that the development of the River Club site does not damage any significant heritage resource, but to ensure that the very high significance of this place and of the Liesbeek River more generally is not just protected but enhanced. Indeed, we argue that these design indicators enable precisely what is alluded to/hoped for in the Preamble of the Act:

⁵⁷ Attwell and Jacobs, 2016, pp82-83

This legislation aims to promote good management of the national estate, and to enable and encourage communities to nurture and conserve their legacy so that it may be bequeathed to future generations. Our heritage is unique and precious and it cannot be renewed. It helps us to define our cultural identity and therefore lies at the heart of our spiritual well-being and has the power to build our nation. It has the potential to affirm our diverse cultures, and in so doing shape our national character.

Our heritage celebrates our achievements and contributes to redressing past inequities. It educates, it deepens our understanding of society and encourages us to empathise with the experience of others. It facilitates healing and material and symbolic restitution and it promotes new and previously neglected research into our rich oral traditions and customs.⁵⁹

We add that, in our view, heritage resource management should, whenever it can, be directed to enrich the making of our cities, recognising the significances of the places and, where applicable and possible, the necessity of shaping the place to articulate and make tangible lost or hidden cultural significance, in particular in those cases where the recognition of past inequities can lead to symbolic restitution and healing. We argue that this is possible in this instance

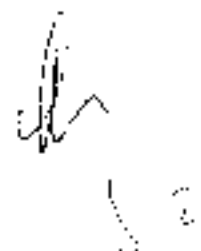
9 THE PROPOSED DEVELOPMENT

9.1 The Urban Design Framework

Given the historical and environmental significances of the riverine corridors of the Liesbeek and Black Rivers and their floodplains abutting and comprising the site, the enhancement and preservation of the continuity of the ecological and open space systems and the recapturing of historical meaning is the key informant for the development of this site. The rivers and the adjacent Raapenberg Bird Sanctuary are singularly important ecological and cultural resources which should be celebrated, protected and sensitively managed.

Both the freshwater specialist (Day, 2017) and we, as the heritage practitioners responsible for guiding design, have recommended the rehabilitation of the canalized section of the Liesbeek River and the restoration of the natural riverine corridor removing the concrete canal-sides and widening the river bed and its ecological corridor to an approximate 40m which echoes the up-stream circumstances; and we note that the earlier river course to the west of the site no longer functions as a river and carries stormwater and backflow from the confluence only. An extensive flood study has been completed by the water engineers, Aurecon, which has found no negative impacts of high significance from raising the ground level to a level a little less than 6m above Mean Sea Level, a change of approximately 2-3m across the site.

⁵⁹ NHRA Preamble.



The preferred and alternative development proposals designed by the architects, Vivid Architects, have had numerous complex informants including advice regarding freshwater and eco-systems from Dr Liz Day, a floodwater study by Aurecon, a first archaeological study conducted by Kaplan, initial input from the heritage practitioner, Bridget O'Donoghue, our own preliminary statement of significance and preliminary design indicators (as outlined in this *Draft HIA Prepared for IAP Consultation*), a visual impact assessment by SRK, and the *Urban Design Framework: Indicators and Recommendations* dated December 2017 by Urban Concepts.

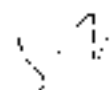
The *Urban Design Framework* is, with the heritage-related significances and design indicators, described briefly here:

- an overview of the broader context and contextual informants and of the site itself;
- identification of key observations and design indicators for the spatial systems of the site, the built form aspects such as scale, height and gateways, and aspects related to the connectivity of the site;
- integration of the heritage-related design indicators articulated by the heritage consultants;
- urban design recommendations for the spatial systems, built form components, connectivity and accessibility; and
- the main arguments and recommendations for the interpretation of the indicators on site. (p5)

This section, however, repeats the Recommendations which rely on and imply the numerous urban-design-related design-indicators of the *Urban Design Framework*:

9.1.1 Integration of environmental aspects and view corridors:

- Rehabilitate the canalized river course, and include the experience of this, the Raapenberg Bird Sanctuary and the Observatory complex as an integral part of a continuous public space system that already exists upstream of the River Club site;
- Enhance the physical connection with the Liesbeek River – both the earlier course and the rehabilitated canal – and the Raapenberg Sanctuary by creating and defining spaces for people;
- Maintain a substantial open green space at the heart of the site as a pedestrian and ecological link between the earlier and current to-be-restored river corridors, to celebrate the experience of Devil's Peak and maintain visual permeability and a sense of openness;
- Locate publicly accessible amenities along the edges of the central open space and the green riverine corridors; and
- Ensure a legible, integrated pedestrian movement system aligned with the NMT networks and plans for the surrounding areas and which is part of the river interface. (p.32).



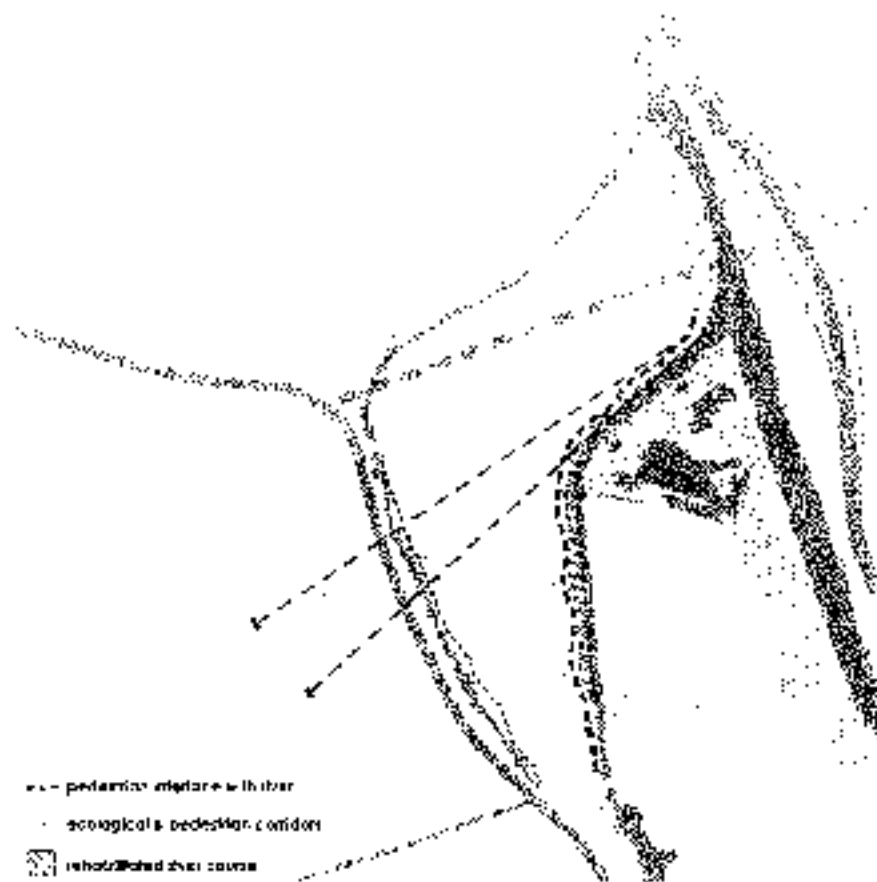


Figure 16 Diagram showing the integration of environmental aspects and view corridors (Urban Concepts, p32)

9.1.2 Public Realm Continuation:

A significant publicly accessible open space system is recommended in order to welcome people into the site, maintain the site's sense of openness and continuity, and to add value to the broader urban realm to be achieved by the following:

- Providing public space along the edge of the rehabilitated canal as well as the earlier river course, for walking, cycling and leisure, as a continuation of the existing public space network south of the site by using staggered building footprints to define spaces along the rehabilitated river course
- Extending this space across the site, connecting the two river corridors, bringing people into the development. The central area has the potential to be used for public recreation, as it is less ecologically sensitive than the river edges;
- Development parcels should be visually and physically permeable to pedestrians, to help integrate the different spaces within and around the site;
- Land uses should include a combination of commercial, residential, retail, as well as public facilities. (p.33)

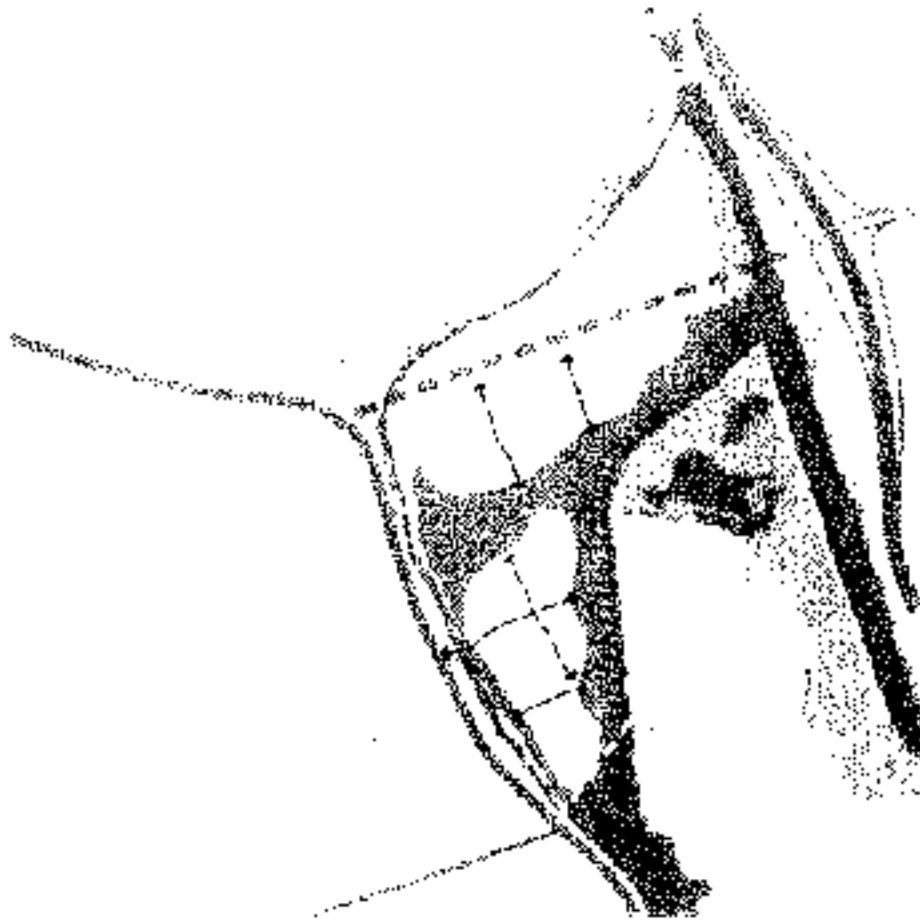


Figure 19 Diagram showing the public realm continuation (Urban Concepts, p33)

9.1.3 Fragmentation of building form:

A variety of building forms should be introduced to ensure varied grain and fragmentation:

- It is recommended that the larger building forms be located to the north of the site. The street grid proposed for this area of the site relates to the rectilinear grid of surrounding urban fabric. It is however important to create another level of fragmentation with a variety of roofs, at varying heights;
- A finer grain in building form is proposed to the south opposite the Observatory
- Buildings adjacent to the restored river (opposite the Observatory) are to be free-standing with small footprints. No continuous perimeter block buildings are recommended along this edge;
- Buildings along the public open space along the earlier and restored river courses and central open space to have a level of continuity in façade treatment to ensure a well-defined edge condition, enabling active edges. (p.34)

[Handwritten signature]



Figure 7. Diagram showing the fragmentation of building form (Urban Concepts, p34)

9.1.4 Building heights:

The recommended height envelope for the site was mainly derived from the following indicators. height and scale of buildings in immediate context (PRASA Rail Yards, Black River Park, the Observatory and its enveloping trees), as well as the significant visual and noise impacts of the M5 freeway. The height and scale of built form further away was also considered, but its impact on urban design recommendations is mainly dealt with under land uses, scale and fragmentation.

- It is recommended that the taller building forms be located to the north of the site. This will assist in defining the Berkley Road edge, and will play a role in defining public areas on what will be this exposed noisier part of the site.
- Lower buildings are recommended to the south (opposite the Observatory). The tree canopy of the Royal Observatory site is prominent, and should not be overshadowed (the Observatory itself is not visible from the site or from the west at all).
- The opportunity to include "focus buildings" (slightly taller than adjacent built form) is suggested in two key positions: the first is to signal the entrance point from Berkley Road: the second is suggested close to the entrance to the site from Liesbeek Parkway, perhaps abutting the new public park (it is recommended that this building has a mix of uses, for example retail and hotel/conferencing). (p 35)



Figure 21, Diagram showing the building heights (Urban Concepts, p35)

9.1.5 Site integration and accessibility:

The diagram below identifies key routes to ensure an accessible, integrated structure (though a primary system of pedestrian routes will be necessary and will be a key component in the detail design development phase).

It is recommended that the following objectives be achieved in the design of the site's movement system:

- The ability to traverse the site, and integrate the site with surroundings, without creating a 'rat-run' for vehicles;
- Continuity of public access and pedestrian movement throughout the site
- The vehicular system to include public transport node(s) to alleviate private transport pressures;
- Access points: the proposed Berkley Road extension has been identified as a class 2 road in the transport & planning frameworks. From a planning and urban design perspective it is recommended that multiple intersections be considered into the site, as this will encourage more of an activity-type road (Integrator). Other access points include the proposed Liesbeek access, and the existing site access from the Station Rd extension. This entrance is not guaranteed as it crosses the neighbouring property, but is desirable as it integrates the site with its surroundings. (p.37)

[Handwritten signature]

[Handwritten mark]



Figure 22. Diagram showing site integration and accessibility (Urban Concepts, p37)

9.2 Urban design framework conclusions

The indicators and recommendations in this Urban Design Framework are designed to establish guidelines for the responsible development of this important site:

The spatial recommendations seek to provide a coherent urban form which relates to its surroundings while retaining the site's unique sense of place, and enhancing the views from, into, and through the site. Emphasis is placed on well-defined public space allowing pedestrians access to the rivers and through the site, with commercial and other activity considered to increase safety and vibrancy.

The most important recommendation from urban design, heritage and environmental perspectives, is the restoration and revitalization of the Liesbeek River by removing the concrete canal, reintroducing planted banks and widening its course to create natural riverine environment. This is an opportunity to improve its ecology and the surrounding ecosystems, as well as to create a special place for pedestrians to experience the river. Also, directly associated with this is the recommendation of the ecologist, Liz Day, that there be a connecting 'ecological corridor-open space' between the restored riverine corridor across the River Club site to the earlier river course.

The interpretation of heritage indicators is intended to respect and enhance the major historical and cultural significance of this resource, most notably the Liesbeek River as a riverine corridor and historic landscape element. The experience of this



landscape should be made more accessible to the public, and its historical importance made legible.

In addition to the above indicators, it is suggested that space be provided for a resource or interpretation centre on the site, ideally at the confluence of the Liesbeek and Black Rivers. This could educate the public on the significance of the site and of the broader precinct, including nearby sites such as SAAO, the SKA and Valkenberg, as well as the rivers and wetlands as cultural and ecological resources (Urban Concepts, p38)

9.3 The Alternative Development Proposals

The consulting town planners, Planning Partners, have assessed five development alternatives in their report, *The River Club: Overview of Development Alternatives*, dated June 2019. This section is in large part reliant on Planning Partners' report but is heavily edited and includes a brief description of the architectural concept by Vivid Architects (cf. *The River Club - Architectural Report*). We note also that only two of the alternatives are described here, and the preferred Riverine Corridor Alternative most fully. This is because one of the five is the "do-nothing" or "existing rights" alternative which they have called the "No-Go" Alternative; and two of the alternatives are not financially viable (and are, therefore, not comparatively assessed in the NEMA process). Full details of the five alternatives can be found in Planning Partners' report, *The River Club: Overview of Development Alternatives*, dated June 2019.⁵⁹

The site occupied by the River Club was established by the South African Railways & Harbours (SAR&H) as the Liesbeek Park Recreation Club in the 1920s and was subsidized by SAR&H for the benefit of its employees. The site has more recently been administered by Propnet, a division of Transnet.

The original facilities of the club were built in the 1930s, with the main building completed in 1939 (this is still the main building on the property). When Transnet moved to Bellville in the 1980s, most staff moved to the northern suburbs, leading to a decline in patronage at the club; and by 1993 the property had been abandoned by Transnet as a sports club and leased to a series of tenants and the River Club was established in November 1993, primarily as a golf driving range with the main building having various uses.

At that time, the property was zoned for Community Facilities use in terms of the City of Cape Town's Zoning Scheme. For the first seven years of operation the activities for which the River Club was originally developed – the bar and restaurant, the conference venue and the golf driving range – were considered "non-conforming

⁵⁹ Planning Partners, June 2019, *The River Club: Overview of Development Alternatives*, a report commissioned by Liesbeek Leisure Properties Trust.

uses". However, these use rights were approved by the City Council in May 2001 and still apply. In addition, permission to build a 9-hole mashie golf course was granted in 2002 and operation commenced in 2003.

During the last two years the facility has been improved with numerous upgrades of the buildings, the parking area and the grounds having taken place, while the golf driving range is much improved. Notwithstanding these improvements, the owners contend that the current use is not financially sustainable and is an underutilization of well-located land within the urban area. Accordingly, they have undertaken a comprehensive process over the past three years to investigate a feasible development proposal for the site.

The River Club professional team has formulated a preferred development plan following an iterative design process and input from various specialists engaged in the environmental and heritage process. However, both NEMA and the NHRA require that development alternatives are evaluated; and that the alternatives be reasonable and feasible and must include one option that does not involve the granting of new development rights.⁶⁰

We note that this Alternatives Report includes a detailed reprise of Urban Concepts' *Urban Design Framework* and its indicators and recommendations.⁶¹

The alternatives are as follows:

9.3.1 The "No-Go" Alternative:

This is the base situation, the Existing Rights Alternative, which Planning Partners have called the "No-Go" Alternative, for evaluation purposes; and it assumes that the existing activities and uses will continue in terms of existing rights, although substantial new development could occur within the new (since 2013) zoning, Open Space Zoning 2, but with consent. The existing uses on the site include:

Golf driving range (including golf retail shop)	63 000sqm	56% of site
Mashie golf course	34 000	23%
Parking	16 000	11%
Ancillary open space (including roads)	12 000	8%
Conference facility/events & banqueting/restaurant	2 800	2%
Cycling retail shop	350	0.2%
Chiropractor	250	0.1%

⁶⁰ Planning Partners p1
⁶¹ Ibid. pp4-23.



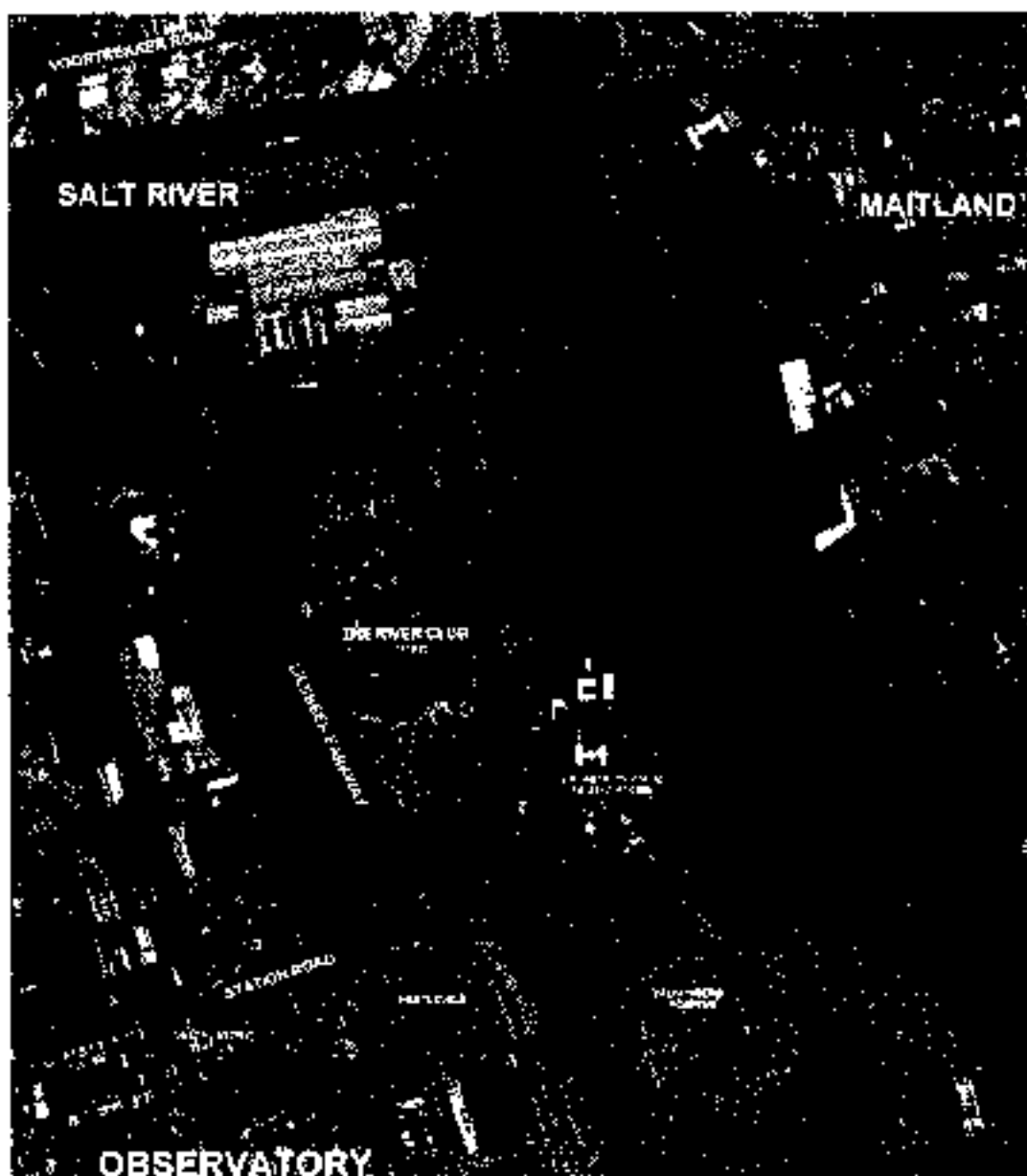


Figure 23. The River Club site as at present: The "existing rights" or "no-go" alternative

9.3.2 The Riverine Corridor Alternative, the Preferred Alternative

This alternative, the preferred alternative, proposes approximately 150 000m² of floor space be developed, including retail, office, residential (including inclusionary housing), hotel and community uses.

All developed areas of the site (including roadways) are to be raised above the 100-year flood level of approximately 6m above MSL (2-3m above the existing ground levels), and the proposal includes restoring the Liesbeek River with a wide (with a minimum width of 40m) riverine corridor along the route of the existing canal on the eastern boundary of the site, while the old Liesbeek River channel on the western edge of the site will be largely in-filled and landscaped with a vegetated stormwater swale with an 'ecological corridor'/open space crossing the site and connecting the

rehabilitated riverine corridor and the storm water swale. The restored Liesbeek riverine corridor will include pedestrian and cycle paths, viewing and seating areas where the public can enjoy the amenity of the rehabilitated water course; and the Raapenberg Wetland and Bird Sanctuary and the well-treed Royal Observatory site across the river will become visible as a result of the riverine corridor upgrade.⁵²

This Preferred Alternative includes 41% of the site as 'soft open space', 5% of hard open space (including roads and sidewalks), with the built-form arranged into two precincts separated by a large open wetland/parkland (approximately 75m x 220m) and bounded by extensive landscaped river corridors and areas of landscaped open space. Both precincts are intended to be mixed use, but the overall distribution of uses needs to be flexible enough to respond to the market demand at the time of development. Sustainable design principles will be incorporated where possible, including renewable energy generation, grey water harvesting, energy efficiency etc.

The floor space summary for this alternative is as follows:

Retail (including restaurants, etc)	30 000sqm
Office	60 000
Residential (including subsidised inclusionary housing)	30 000
Hotel	8 000
Ancillary (including gym/conference facility, etc)	22 000
	150 000sqm

The architectural concept, which has been amended in several substantial ways since last circulated for public comment (24 March-26 April 2019), articulates the urban design intentions or indicators is as follows:

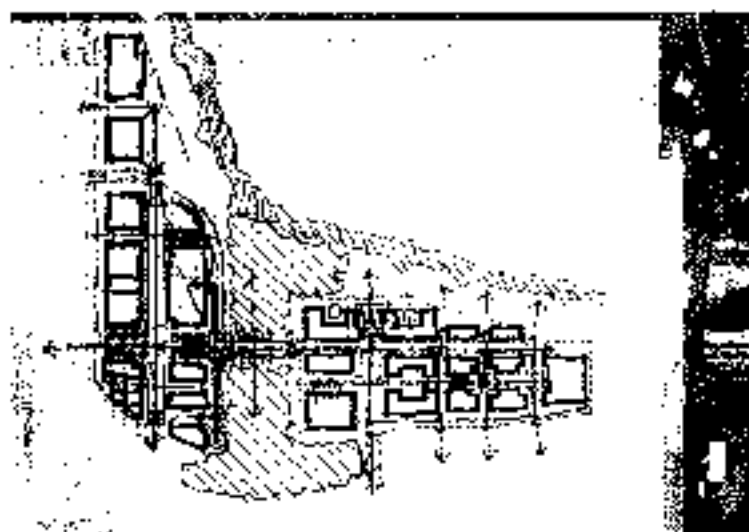


Illustration 24. The architectural concept (Vivid Architects)

⁵² Ibid. p26

[Handwritten signature]
99

The key characteristics of this, the Preferred Alternative, include the following:

- Construction of a substantial section of the Berkley Road Extension to the north of the site by the developer providing access onto the site and a key component of the wider transportation network;
- access to the site across the old pre-1952 Liesbeek river-course (now stormwater channel) via a bridge from Liesbeek Parkway;
- an orthogonal urban form and road network echoing the nearby developed urban form;
- medium/high-rise retail, hotel and residential buildings (approximately 4-9 storeys) located in the southern portion of the development (Precinct 1);
- medium-rise office/residential buildings (approximately 6-10 storeys) located along the Berkley Road extension in the northern portion of the site (Precinct 2);
- approximately 150 000m² of floor space;
- approximately 140 inclusionary housing units;
- parking accommodated in basement structures underneath the developed portions of the site (one level below Precinct 1 and two below Precinct 2);
- restoring of the existing Liesbeek River canal into a rehabilitated riverine corridor;
- in-filling of the old Liesbeek channel and remodelling of this channel into a vegetated stormwater swale;
- a central park of approximately 75m x 220m, that functions as a public space as well as an east-west ecological corridor across the development;
- non-motorised transport to include pedestrian paths and running and cycling tracks throughout the development; and
- facilities for future MyCITI bus and taxi services⁶³

⁶² Ibid. pp28-29.

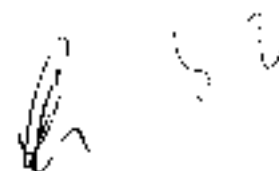




Illustration 29: View of the proposed development across the restored Liesbeek from the SAAO with Devil's Peak in the background (Vivid Architects)

The main implications of the Preferred Alternative are:

- with a projected annual return of 9.01% (pre-tax), the project is considered to be financially viable;
- approximately 80 000m² (± 55%) of the site will be raised above the 100-year flood elevation to approximately 6m above MSL in order to accommodate development;
- a catalytic, mixed use development will be implemented at the western gateway into TRUP;
- densification and diversification of residential stock will occur in line with the City of Cape Town's Densification Policy
- inclusionary housing will be provided (140 units) satisfying an important social need;
- supply of retail and office space in this location will satisfy proven market demand;
- the development will assist to cross subsidize the Berkley Road extension, which has been identified by the City's Transport and Urban Development Authority's (TDA) as a key road network intervention;
- intense urban development will occur within a 500m radius from higher order public transport stations (Observatory and Koeberg train stations) in line with the City's Transit Oriented Development Strategy;
- the existing canalized Liesbeek River course will be restored and rehabilitated allowing for a continuation of the lower Liesbeek River as a visually congruent

and publicly accessible riverine corridor with resulting ecological and social benefits,

- the long diverted course of the pre-1952 Liesbeek River-course to the west of the site will be converted into a landscaped storm water swale;
- an ecological corridor/parkland area will extend through the site in an east-west direction allowing for faunal movement and recreational activities; and
- the development will yield a substantial income for the Municipality in terms of rates to assist with service delivery in areas of need elsewhere in the city.⁶⁴

9.3.3 Alternative 2: The Island Concept Alternative:

This alternative, the Island Concept Alternative, has an architectural arrangement that is similar in scale and arrangement to that of the preferred Riverine Corridor Alternative, but proposes the upgrading and attempted reestablishment of the old pre-1952 Liesbeek River course on the western boundary of the site along Liesbeek Parkway and the retention of the current Liesbeek canal. In other words, the current watercourses adjacent to the site will remain, by and large, unchanged. This Alternative is proposed to have relatively similar massing and volumes, though shifted slightly closer to the extant canalized River, and similar architecture, and vehicular and pedestrian movement systems as are proposed in the Preferred Riverine Corridor Alternative (though the vehicular way through the site is shown here as circulated in previous versions of the Alternatives Report and the HIA).

The key characteristics of this, the Island Concept Alternative, include the following:

- All of the key characteristics in respect of the funding and construction of the Berkley Road Extension, the vehicular access, parking, built form and accommodation, and the central park outlined in the Preferred Riverine Corridor Alternative are similar; however,
- the existing Liesbeek canal carrying all of its water remains but now with an approximate 15m wide ecological buffer,
- the earlier pre-1952 Liesbeek River course is retained and its rehabilitation is attempted with an approximate 25m buffer;
- non-motorised transport including pedestrian paths and running and cycling tracks throughout the development are provided but with rather less amenity and connection between the River Club site and the Liesbeek itself.⁶⁵

⁶⁴ Ibid p36.

⁶⁵ Ibid p38.






Figure 30. The Island Concept Alternative showing the two precincts, the retained canalized River, and the unrehabilitated earlier River course (Vivid Architects)

The implications of this Alternative are:

- All of the implications in respect of the financial viability, rates income, the improvements to the transportation network, the City's strategies in respect of transport, densification, provision of inclusionary housing, built form, etc remain as for the Preferred Riverine Corridor Alternative: however
- at present, the Liesbeek River and its associated riverine corridor, is disrupted by this hard concrete edged canal and the legibility and functionality of the river is compromised, and not choosing the Riverine Corridor Alternative would forego the potential benefits of restoring/rehabilitating the canal into a riverine corridor which would have negative implications for environmental sustainability, heritage significance and public amenity, and
- the earlier pre-1952 course of the Liesbeek River cannot be convincingly rehabilitated and will remain without true identity in the wider context ensuring the island-appearance of the River Club site and its development in the landscape.⁶⁶

⁶⁶ Ibid. pp41-42.

h

52

9.3.4 Alternatives 3 and 4: The Mixed-Use Affordable Alternative and the Reduced Floor Space Alternative:

As pointed out earlier, neither of these alternatives are economically feasible and are, therefore, not acceptable as alternatives under NEMA. As a consequence, we are not describing them in any detail here; but they can be seen in Planning Partners' report, *The River Club Development Alternatives*, dated June 2019.

The Mixed-Use Affordable Alternative assumes that a large part of Precinct 1 is directed at the affordable and inclusionary housing market, with Precinct 2 accommodating a mix of office, retail and residential use. The total floor area presumed is approximately 110 000sqm.

The Reduced Floor Space Alternative includes less intense development of the site with a mix of uses of roughly the same ratio of uses as in the preferred alternative but with the floor space reduced to approximately 102 000 m² and the provision of larger areas of green open space.

In addition to being economically unfeasible, these alternatives do not enable the improvements to the Liesbeek River generated by the preferred alternative and nor can they fund the Berkley Road Extension in the way necessary.⁵⁷

NEMA requires that alternatives must be "reasonable" and "feasible". Given that alternatives 3 and 4 are not financially viable to the proponent, these alternatives will be screened out when the alternatives are assessed in the Basic Assessment Report.

Alternatives 1 and 2 are considered the most feasible alternatives and these will be assessed during the Basic Assessment process in terms of NEMA. Alternative 1 is ultimately the preferred alternative because it is believed that it provides an appropriate and sustainable balance between environmental needs, heritage needs and optimal urban development.

9.4 Commentary of JAPs on the Development Proposal:

We note that although most commentators articulated strongly objecting views to the scale of the proposed development, the feasibility of the project does not enable flexibility in this regard and, as a consequence, the owner has argued that it is not possible to satisfy such objections and realise the development with its several public goods, not least the restored Liesbeek and the Berkley Road connection.

Indeed, almost all of the commentators argue that the scale of the development is simply too great; and they argue, for example, that they do not oppose smart and sensitive development of the area, but... far from convinced that the concerns

⁵⁷ Ibid pp35-40

raised... are properly addressed" and that the development proposes "dense and high buildings in the area, in close proximity to the SAAO".⁶⁸ We note, however, that most commentators recognise or imply a recognition that the site could or even should be developed, but they do not like the scale proposed.

On the other hand, some commentators argue that no development is acceptable: RAMPAC argued that "there is [in the *Draft HIA*] a lack of appreciation of the importance of the topographical landscape as a fundamental heritage informant in determining the appropriateness of development on the site",⁶⁹ that "the preferred Alternative concept constitutes a hugely negative visual imposition on the topographic landscape of the riverine corridor"⁷⁰ and, more recently, that "to place any development (particularly that of the mass and height contemplated) in the 'throat' of the valley (floodplain) would be wrong and an injustice to good environmental, heritage and urban planning decision-making".⁷¹

Most commentators are critical of the scale (especially the heights) of the proposed development; and they have been critical of the HIA because, they argue, inadequate guidance (through 'design indicators') is given in respect of scale. However, the primary heritage significances here are associational rather than visual: whether development is two, three, four or more storeys high is not a 'heritage-issue'. We do argue, however, that the scale of the development, especially along the Liesbeek River opposite the Observatory, should not be such that it overwhelms the riverine corridor and the important Observatory ridge and SAAO campus across the river.

It is accepted that the heights of some of the components of the design presented in the *Draft Prepared for Interested Party Consultation* were not clearly presented in the illustrations; and it appears that some commentators have mis-construed the Urban Design Framework to be the proposed development. Accordingly, the architect's drawings in this, the second *Draft for Public Comment HIA*, now show very a clear height of each 'envelope' and heights being applied for are described in storeys (the potential storey-heights in metres, relying on the heights required for different uses, are also given).

Second, as a consequence of the commentary, the development team has looked carefully at envelopes proposed and have amended some of these, in particular those in the southern precinct and along the riverine corridor; and some have been set back further than shown previously. The amended drawings included in this Final HIA show the proposed southern precinct to be significantly lower than the parallel Black River Park office development and set well back from the Liesbeek River enabling a more persuasive relationship between elements in the landscape. The

⁶⁸ SAAO, 2 May 2019, p3

⁶⁹ RAMPAC, 6/3/2018, p1.

⁷⁰ *Ibid* p2

⁷¹ RAMPAC, 2 May 2019, p2.

northern precinct along the proposed Berkley Road Extension is higher and bulkier⁷² but is some distance from the Liesbeek River and from the Observatory spur.

The amended proposal now more clearly advances the restoration of the riverine corridor, re-establishing the Liesbeek River as a viable ecologically functioning and historically meaningful component of the environment, establishes a locus for the memorialisation of the historical events played out in these environs at the beginnings of the colonial era, enables the realisation of these public goods, and contributes to the organic growth of the city.

Also, we note that the artificial raising of the apparent ground level of parts of the site will make those parts consistent with the level of the Berkley Road Extension, establishing a new if altered 'natural-looking' ground level. It must be noted too that this raising of ground level will not require the volumes of fill that some parties fear (with thousands of truckloads fill damaging and dirtying the roads) as the greater part of the raised volume will be occupied by basement parking.

We note also that when questioned directly by the chair of the MEC's Tribunal at a hearing in November 2018, some of the representatives of the First Peoples groups were ambivalent about development of the site, while others were clear that they thought that no development should take place. However, in the most recent advertising for comment the Goringhaicona have responded rather more angrily, saying:

"This HIA has proposed a memorial site for the Khoi history. This is contradicted by the fact that the river coursing round the site will be an artificially created one, to be created by developers. The Goringhaicona rejects fake rivers as a celebratory canvas of our history. This is a deep insult. It is the kind of thinking that is devoid of the understanding of the practice of Khoi ritual or any other first indigenous practice of remembrance. With high buildings next to the site, what a fantastic view it would be for people in their apartments and for those in cars passing by. This is creating more of Disneyland spectacle than a sacred space honouring the dead.

"Our ancestors are not to be commodified into a tourist trap of commercialised observation. The Goringhaicona vehemently objects to this. We once again consider this second edition by the author, similarly determined in our first submission, as a deliberate act of ethnocide."⁷³

We hesitate to address words as angrily phrased: but we must. We are sorry to insult any party, but we must insist that the anger and hurt is not our making and,

⁷² In order to include residential (of which 20% is to be 'inclusive housing') and educational uses.

⁷³ Goringhaicona, 2 May 2019, p11.

SUPPLEMENT
to
A HERITAGE IMPACT ASSESSMENT
regarding
THE PROPOSED DEVELOPMENT
of
**THE RIVER CLUB SITE,
OBSERVATORY, CAPE TOWN**
for consideration by
HERITAGE WESTERN CAPE
and
**THE DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND DEVELOPMENT
PLANNING**
in terms of Section 38(8) of the National Heritage Resources Act
and
the National Environmental Management Act and Its Regulations

Timothy JG Hart

MA, Cape Town
Archaeologist
and

Stephen Townsend

B Arch, Cape Town; Dipl in the Study and Restoration of Monuments, Rome; PhD, Cape Town
Architect, Statutory Planner, Conservationist

4 December 2019



CONTENTS

1	Introduction	p3
2	Engagements with First Nations Groupings	p4
3	Land-Use Planning in the Two Rivers Area	p9
4	Identification and Mapping of Heritage Resources	p12
5	Assessment of Significances	p15
6	The Revised Development Proposal	p20
7	Alternatives and Mitigation of Impacts	p26
8	The Rationality of the <i>Interim Comment</i>	p28
9	Conclusions	p29

1 Introduction:

This document is a *Supplement to the Heritage Impact Assessment* dated 2 July 2019 which was submitted to Heritage Western Cape in July, discussed by HWC's Impact Assessment Committee on 22 August 2019, and commented on in the written *Interim Comment* from HWC dated 13 September 2019.

By way of introduction we note that, while explicitly under NEMA (and, therefore, section 38(8)), a NID was submitted by Bridget O'Donoghue on behalf of Leisbeek Leisure Properties Trust to HWC in December 2015; and HWC responded in January 2016 confirming that an HIA "that satisfies the provisions of section 38(3) of the NHRA" was necessary and that it should include "an archaeological study and highlighting the urban design framework of the proposed development".¹

In due course, O'Donoghue submitted a *Phase I HIA* to HWC with an attached peer review by Dr Nicolas Baumann in February 2017.

However, given that a *Phase I HIA* by Melanie Attwell and Graham Jacobs and a draft *Situational Analysis Report* by Nisa Mammon dealing with the wider TRUP area (henceforth, "the Two Rivers area" or "TR-area") were being considered at the same time, the O'Donoghue *Phase I HIA* was withdrawn before being considered by HWC.

After this interruption, in September 2017, we, Townsend and Hart, took over the responsibility of compiling the HIA.

Subsequently, we presume prompted by these submissions in the first half of the year, in November 2017 HWC announced its intention to provisionally protect the entire Two Rivers area and invited comment. However, later, in March 2018 HWC provisionally protected the River Club site *only* under section 29 of the Act. This led to a separate appeal process (to the MEC who appointed a Tribunal to address this) which is still under way.

Also, in October 2018 and referring to the River Club provisional protection as "background", HWC sought an external service provider to conduct a "heritage assessment" of the wider TRUP area.² We note that those terms of reference made no reference to the interest of First Nations or to the TR-area as the site of a "National Khoisan Legacy Project"; and we note also that HWC was unable to find and appropriate "external service provider"; we note also that although it is now more than two years since HWC announced its intention to provisionally protect the entire TR-area, it has not yet begun any investigation or any negotiation/consultation which could lead to the alleviation of any threat, real or imagined.

Initially, the provisional protection by HWC interrupted the process of researching and drafting the HIA (and seeking comment from IAPs); but, in July 2019, the HIA was ultimately submitted to HWC, the IA Comm considered the matter at a meeting on 22 August 2019 and commented in an *Interim Comment* dated 13 September 2019.

¹ HWC, *Response to NID*, 7 January 2016.

² HWC, *Terms of Reference: Appointment of a Service Provider to Undertake a Heritage Assessment of the Two Rivers Urban Park, etc.*, undated.

This brief skeleton of the steps in the process of compiling the HIA is sketched to orient the reader and to give a framework for some of our responses to argument made by HWC in its *Interim Comment*.

While the *Interim Comment* contains a great number of statements and arguments (with one apparently central and reiterated argument) rationalising the comment as "interim", it seems to us that the matter is rather simpler. Indeed, it seems to us that there are just two issues which could reasonably be cited as reasons for the HIA to be deemed to be "inadequate" or "incomplete". These are: first, an incomplete engagement with and representation of First Nations' interests and views; and, second, the contradictions and inconsistencies of the land-use planning development frameworks and policies for the wider environs.

In this *Supplement to the Heritage Impact Assessment of 2 July 2019* we deal with these two issues in sufficient detail (we hope and trust) for HWC to articulate a "final comment" in respect of the development proposed; we also deal with a variety of other issues which HWC has contested and which might otherwise be argued to be unresolved (or incompletely or inadequately dealt with); and, finally, we give up-to-date details of the development proposal³ as refined in response to commentary made in the NEMA, NHRA and MPB-L processes including, of course, responses to the input and effects of two reports by Rudewaam Arendse (of AFMAS Solutions) dealing with the views of several First Nations groupings, first, in respect of the wider Two Rivers area (eight groupings) and, second, in respect of the River Club site (five groupings).

2 Engagement with First Nations Groupings:

HWC says in the *Interim Comment* that "(i)t is clear to HWC, however, that there has been a lack of, or avoidance, of a meaningful consultation with the First Nation groups".⁴

In this regard, we note the following:

- HWC did not make any reference to the First Nations in its response to the NID in early 2016 or to the Phase I HIA compiled by Bridget O'Donoghue and submitted to HWC in March 2017 which did not make reference to any such engagement;
- HWC's own attempts in late 2018 to find an "external service provider" to assess the wider TR area makes no reference to the First Nations or the necessity of their interests in either the wider Two Rivers area or to the isolated River Club site and nor could they find an appropriate external service provider;
- the HIA does, however, describe the history of the site and the wider environs and its historical importance;
- the HIA also details the numerous attempts to engage with representatives of and/or with First Nations groupings;

³ The section on the revisions to the development proposal, section xx of this *Supplement to the HIA*, are derived from *The River Club, Observatory: Supplementary Information*, a report of November 2019 by Planning Partners, Paragon Architects and Vivid Architects, submitted on behalf of Prop to the City of Cape Town

⁴ HWC, *Interim Comment*, 13 September 2019, p9.

- the HIA does also allude to the extensive endeavours of the owners over the past several years to meet First Nations groupings and HWC was aware of the support for the development of the site from the Goringhaiqua Cultural Council received just before the IA Comm meeting;⁵ and
- while the HIA does not include an account of the endeavours made to find an expert on intangible heritage to assist in this regard, these efforts included conversations with numerous potentially appropriate parties over much of the period between the first comment made by the Goringhaicona Traditional Council in late 2018 on the provisional protection of the River Club and the completion of the HIA in July 2019.

Given these endeavours and given the iterative processes described in section 5. **Consultation and Commentary of Interested Parties** of the *HIA* and given that HWC recognises that the "formal notice and commenting procedure" has been "completed with",⁶ HWC's accusation that engagement with First Nations groupings was "avoided" is denied.

That said, we turn now to two recently completed reports by Rudewaan Arendse of AFMAS Solutions: the first is the *TRUP First Nations Report* dated 25 September 2019⁷ which was prepared for incorporation into the recently released (on 12 November) draft land-use planning local area spatial development framework being prepared by the City Council and the Western Cape Provincial Government (more about this LSDF below); and the second is the *River Club First Nation Report* dated November 2019⁸ which was commissioned by Liesbeek Leisure Properties Trust specifically to add to the efforts made to date and, given Arendse's success in interacting with several First Nations groupings in the process of the preparation of the land-use planning local area spatial development framework just referred to, to contribute to this *Supplement*.

The first of Arendse's reports referred to, *TRUP First Nations Report*, is rather more generally framed and addresses what has been raised by eight First Nations groupings in connection with the wider Two Rivers-area and, indeed, an even wider area including the entire length of the Liesbeek and its confluence with the Black River and the Salt River all the way to the sea. We do not refer to it in detail but, because it is the background to the second of his reports, we note the following:

- that the landscape referred to as "indigenous" and made numinous by the First Nations' understandings is much wider than the Two Rivers area (to say nothing of the River Club site):

"the indigenous landscape, is not circumscribed by precinct boundaries - considered by indigenous custodians as value-laden lines that designate formal political and economic divisions between outsider-designated and

⁵ Jeremy Jackson, Chief Counsel to Chief Zenzile Kholsan, Goringhaiqua Cultural Council, Letter dated 20 August 2019 submitted to the IA Comm.

⁶ HWC, *Interim Comment*, 13 September 2019, p9.

⁷ Arendse, Rudewaan, 25 September 2019, *TRUP First Nations Report*, a report prepared by AFMAS Solutions for the Provincial Government of the Western Cape (Transport and Public Works).

⁸ Arendse, Rudewaan, November 2019, *River Club First Nation Report*, a report prepared by AFMAS Solutions for Liesbeek Leisure Properties Trust.

*imposed territorial units, which are viewed by First Nations as zones of contestation between the establishment and the subaltern. For the purposes of this report, the boundary of the indigenous landscape is defined as a line instantiated by the indigenous collective memory of the footprints of the ancestors.*¹⁰

- that the First Nations seek recognition of their history or "narrative" and its importance through an "indigenizing" of the TR-area and its "transformation to a commemorative landscape":

"It's the collective aspiration and contention of the First Nations, that this remaining - fragmented - landscape, be authenticated as an indigenous commemorative landscape with distributed spaces of engagement and indigenous place-making, spanning different precincts (whilst acknowledging the co-existence of other, non-indigenous layers of heritage). Indigenizing the TRUP landscape and transformation to a commemorative landscape, can be achieved by using land, space and physicality, to give form, structure and functional expression, to the intangible cultural heritage of the Khoi and San. This materialized indigenous landscape would then be activated and enlivened through negotiated and enshrined indigenous cultural practices and heritage activities."¹¹

- that these aspirations can be implemented by structuring the narrative into the UNESCO intangible heritage 'domains' which can then be made tangible through "embodying" the narrative in the landscape and through "enshrining" access to this landscape:

"This task involves embodying of the intangible/s in each of the ICH domains; which is achieved through using land, space and physicality to give it form, structure and functional expression."

"Embodied intangibles allow for the landscape to be activated and enlivened (culturally cultivated) through indigenous cultural practices and heritage activities."

"Enshrining indigenous people's physical access to a TRUP landscape, as field of materialized intangible cultural heritage, facilitates ensoulment and reconstituting of indigenous identity through the First Nations reconnecting their identity with place-based indigenous spirituality and the ancestral domain."¹¹

This report, Arendse's first report, also introduces a number of precedents which he uses to imply or suggest some mechanisms or strategies for spacializing the 'indigenous narrative' and embodying the indigenous narrative within the landscape. These strategies are given more 'substance' in Arendse's second report which deals specifically with the River Club site as a part or precinct within the TR-area and

¹⁰ Arendse, 25 September 2019, p3.

¹¹ Ibid p32.

¹² Ibid. p33.

within the wider locality frequented and occupied by the pre-colonial indigenous people and within which the historical events of the early years of colonial settlement took place.

While parts of the indigenous narrative presented by Arendse in both reports, repeating the words of the leaders and representatives of the First Nations groupings, read as autochthonous, even 'popular', histories and are perhaps relatively free interpretations of documented events, it would serve no purpose to argue the details of those interpretations here. Indeed, it is our hope that the River Club development will provide a meaningful locus/place for and of the realisation of the First Peoples' greatest desire, a proper and formal recognition and articulation of *their* narrative(s).

Arendse's second report, the *River Club First Nation Report*, sets out to:

- understand the significance of the River Club site to the First Nations by identifying indigenous intangible cultural heritage specific to the River Club.
- locate the River Club site within the indigenous narrative of the broader TR cultural landscape;
- identify First Nation aspirations with regard to indigenous cultural heritage and the River Club site; and
- implement the recommendation of the TR report that "*acknowledging, embracing, protecting and celebrating the indigenous narrative be a heritage related design informant that informs*" precinct and site planning and development of the River Club property.¹²

Arendse's second report, of some 90 pages, is an independent 'stand-alone' report and we do not attempt to summarise it here; and we argue that the authorities, both the DEADP and HWC, should read and take account of its contents and argument and, in particular, the aspirations of the First Nations in respect of its proposals for the implementation of the strategies for actualising or realising the First Nations' narrative(s) in the planning and development of the River Club property. As alluded to earlier, we stand by our articulation of the history of the site and environs described in section 4, **The History of the Place**, pp34-49, and that articulated by Attwell and Jacobs in their *Phase 1 HIA for the TR-area* and their supplementary study on the history of the D'Almeida event; but we do not contest the account of the First Nations and we suggest rather that this history is a true *heteroglossia*.¹³

However, we accept and support Arendse's views on implementing the indigenous imperative at the River Club site and we propose that they present a real opportunity for the realisation of First Nation aspirations.

These views, which have been articulated and developed in engagements between the First Nations collective and the developer, have been agreed to and have been explored in some detail in revisions to the proposal. In essence, this comprises "indigenizing the site through the following place-making mechanisms:

¹² Arendse, November 2019, p1.

¹³ Bakhtin, Mikhail, 1981 [1954], *The Dialogic Imagination*, p291.

1. Establishing an Indigenous Garden for medicinal plants used by the First Nations;
2. Establishing a Cultural, Heritage and Media centre at the location of the Heritage information hub;
3. Establishing a Heritage-Eco trail that goes around the site;
4. An Amphitheater for use and cultural performances by both the First Nations and the general public.
5. Commemorating the history of the First Nations in the area, by:
 - a. Establishing a Gateway Feature inspired by symbols central to the First Nations narrative at the road crossing the eco-corridor, and
 - b. Incorporating symbols central to the First Nations narrative in detailed design of buildings (e.g. pillars / supports, facades, building names, etc.); and
 - c. Naming internal roads inspired by people or symbols central to the First Nations narrative."¹⁴

And the implementation of these mechanisms is to be assured through the following institutional arrangement which has been agreed to in principle by the developer:

"The First Nations Collective led by the Goringhaiqua Cultural Council, in discharging its traditional duty of custody over not only the River Club site, but all of the precincts of the Two Rivers area; and in exercising its internationally recognized right of Indigenous cultural agency, is in the process of establishing a legal entity that will be responsible for the post-establishment governance, planning, management, operations, maintenance and sustainability of the aforementioned indigenous place making mechanisms. This entity will be a fully autonomous Indigenous entity, whose Indigenous access and negotiated rights as, articulated above as the elements of the First Nations Imperative, will be enshrined in a formal agreement between the envisaged First Nations legal entity led by the Goringhaiqua Cultural Council, and the Community Property Association of the development."¹⁵

We note in concluding this section that several First Nations groupings and the First Nations Collective led by the Goringhaiqua Cultural Council explicitly and clearly support the development proposal for example, a five-page letter from the Goringhaiqua Cultural Council signed by Chief !Garu Zenzile Khoisan¹⁶ articulates its support clearly and cites the concurrence of several other leaders of different groupings;¹⁷ another letter from the Goringhaiqua signed by Kai bi'a Hennie van Wyk articulates their position; and Chief !Garu Zenzile Khoisan has responded publicly in the media to articles attacking the application and proposal explaining the reasons for the support of "the majority of senior indigenous leaders and their councils in the Peninsula" unambiguously.¹⁸

¹⁴ Arendse, November 2019, p85-87.

¹⁵ Ibid p87.

¹⁶ Khoisan, Chief !Garu Zenzile, 7 November, 2019, Letter addressed to Heritage Western Cape, contained in Arendse, November 2019, pp48-52.

¹⁷ Ibid, p5 (of the Letter), in Arendse, November 2019, p52.

¹⁸ Khoisan, Chief !Garu Zenzile, Right of Reply Letter in *The Citizen*, 28 November 2019.

While it is apparent that there are some First Nations groupings who do not share this view, this First Nations Collective is authoritative; and Arendse's report is persuasive in its method, its argument and in its conclusions; and we hope and trust that Arendse's report and the incorporation of its conclusions/recommendations here in this *Supplement to the HIA* and in the revised development proposal will satisfy HWC at least insofar as there has been 'meaningful engagement' with First Nations groupings. Indeed, we think that the interactions have been more than "meaningful".

3 Land-Use Planning in the Two Rivers Area:

In its *Interim Comment* HWC argues ambiguously that (a) there is no reason for the property owners of the River Club not to compile and submit an HIA in respect of a development proposal for the River Club site and (b), notwithstanding the absence of clear land-use planning frameworks for the area, that it, HWC, has iteratively (at various times during the steps outlined above) contended that development of the River Club site should necessarily not be planned or assessed "in isolation from" the wider TR-area.

The *HIA* does deal with this issue and it describes the extant land-use planning frameworks under two heads: **5.2.3. Spatial Development Frameworks** and **5.2.5. Planning for the Two Rivers Urban Park** (see pp57-58 and 59-60).

However, given the recent release by the City Council ('the City') of a draft local area spatial development framework (LSDF) in terms of the MPB-L, we re-state the land-use planning mechanisms pertinent in an assessment of the development proposed at the River Club site now including this new local area SDF. While outlining the most important (from a heritage management point of view) components of their assessment here, we refer the reader to Planning Partners' recent submission to the City in respect of the land-use planning applications.¹⁴

First, the *Two Rivers Urban Park Contextual Framework and Phase 1 Environmental Management Plan* compiled by the City's Environmental Management Branch in 2003, while 'adopted' by the Council itself in August 2003, is not legally binding. Indeed, the City's Legal Services has explained that while the report was, at least in part, prepared to fulfill the Provincial Administration's requirement for a management plan in proclaiming the bird sanctuary inside the TRUP, it was not adopted as a structure plan in terms of LUPO and does not have formal status as such and that, in the absence of formal structure-plan status, it must be regarded as a guideline only.

Second, the 2012 formally adopted *Municipal Spatial Development Framework* (MSDF), the land-use mechanism for the guiding and managing of urban growth and the balancing of competing demands, designates most of the River Club site as "Urban Development" and it makes no reference to the 2003 *Two Rivers Urban Park Contextual Framework and Phase 1 Environmental Management Plan*.

In 2018 the MSDF was revised and updated, and the River Club site was designated as part of the "Urban Inner Core" where the City is committed to targeting investment

¹⁴ Planning Partners (with Paragon Architects and Vivid Architects), November 2019, *The River Club, Observatory: Supplementary Information*, a report submitted on behalf of Zenprop to the City of Cape Town

and development.

Third, the *Table Bay District Plan* (TBDP), prepared in 2012 as part of more detailed planning associated with the 2012 MSDF, designates the River Club site as "open space". This designation was based on information known at the time before the more detailed hydrological studies associated with the River Club had been undertaken and it was assumed that the site had limited development potential due to flood risk. Also, this TBDP contains anomalies including the designation of the neighbouring PRASA site, with its rail yards and sheds, as a green open space, questioning this plan's accuracy and relevance; and, finally, with the promulgation of the 2018 MSDF, the relevance of the 2012 *Table Bay District Plan* was further diminished as the "Consistency Principle" set out in the Technical Supplement of the MSDF requires lower order (district or local area) spatial plans and policies to be consistent with higher order (municipal) spatial plans and policies. Given that the MSDF identifies the River Club site as "Urban Inner Core", the lower order *Table Bay District Plan*, which is inconsistent with the higher order MSDF, cannot be invoked to inhibit development at this site.

Fourth, subsequent to the completion of the HIA (and of the *Interim Comment*) the City has recently released the draft *Two Rivers Local Spatial Development Framework* ("Draft LSDF")²⁰ for public comment. It is intended that this will have the status of an LSDF under Section 12 of the MPB-L; and it deals with the land previously known as the Two Rivers Urban Park ("TRUP"), now to be known as the "Two Rivers area" that extends from the PRASA land in the north to the N2 freeway in the south and from the sports fields lining the Liesbeek Parkway in the west to the industrial area of Ndabeni and parts of Pinelands in the east.

Importantly, this *Draft LSDF* changes the vision of and for the area: while "(t)he previous vision... promoted a New York style Urban Park, or 'doughnut' with a green/park core and high rise buildings on the edges" this new *Draft LSDF* argues that "this somewhat utopian vision does not deal with the reality on the ground or with the current mandate and current National imperatives in SPLUMA",²¹ In the revised vision, the *Draft LSDF* identifies the area as "a significant area of underutilized, state owned and private land, strategically placed within the Urban Inner Core of the City" with opportunities to promote public transport and urban integration and to unlock development potential where, "(a)t the same time, the ecological role of the river corridors, the importance as a regional amenity and significance placed on the cultural and built heritage must be enhanced",²²

The findings and conclusions of the *Draft Two Rivers LSDF* are represented in two diagrams.²³

²⁰ ARG, Oct 2019, *Two Rivers (LSDF) Local Spatial Development Framework (Draft October 2019)*, a spatial development framework prepared jointly by the City Council, the Western Cape Government, and a team of transport, civil engineering, environmental, heritage, urban design and land-use planning consultants headed by ARG, Architects and Planners

²¹ *Ibid.* p8.

²² *Ibid.* p11.

²³ *Ibid.* p111 and 112.

Assessment for the Site 'Two Rivers' dated September 2019²⁴ and Rudewaan Arendse's *TRUP First Nations Report* dated 25 September 2019;²⁵ and we note that the more detailed and focused conclusions and recommendations regarding the 'implementation of the indigenous imperative' of Arendse's River Club First Nation Report dated November 2019 outlined in section 2 above are perfectly consistent with this draft LSDF.

With respect to the River Club site, the following provisions in the *Draft Two Rivers Local Spatial Development Framework* are significant:

- the Berkley Road extension is identified both as a new mobility route and as an activity corridor;
- the continuity of the Liesbeek River is promoted along the eastern side of the site with the canal transformed into an eco-corridor;
- the pre-1952 river course between Liesbeek Parkway and the western side of the site is identified as public open space with a green-space-related pedestrian route;
- a significant open space corridor is provided across the River Club site running east - west between the newly restored Liesbeek River and the old pre-1952 course; and
- the remainder of the River Club site is identified for mixed use Intensification in two precincts on either side of this east - west open space corridor.

Given this, it seems to us that the proposal analyzed in the *HIA* is generally in accordance with these recent land-use planning developments, that is, the preparation of and public circulation of these three land-use planning and heritage studies; and we trust that HWC will now accept that the River Club site and its development is not being planned or assessed "in isolation from" the wider TR area. Indeed, it appears to us that the River Club proposal and these various land-use planning and heritage planning endeavours are consistent with and 'in synch' with each other.

While we have dealt with this issue comprehensively both in the *HIA* and in this *Supplement*, we argue that this is not a statutorily required component of HIAs; and HWC's implied claims that the *HIA* is *inadequate* in this respect are mistaken.

4 Identification and Mapping of Heritage Resources:

In the *Interim Comment*, HWC states that it "is of the view that this requirement (to identify and map all heritage resources in the area affected) has only been partly complied with".²⁶ Noting that the *HIA* includes a lengthy section describing the heritage resources on the site and in the area (section 6. **Identification of Heritage Resources**, pp70-80), we trust that the following will make good any perceived inadequacy:

²⁴ Postlethwayt, C ndy, September 2019, *Draft Two Rivers Heritage Impact Assessment for the Site 'Two Rivers' (formerly TRUP)*, a report prepared for the Provincial Government of the Western Cape (Transport and Public Works).

²⁵ Arendse, Rudewaan, 25 September 2019, *TRUP First Nations Report*, a report prepared by AFMAS Solutions for the Provincial Government of the Western Cape (Transport and Public Works)

²⁶ HWC, *Interim Comment*, p4.

First, we copy here the City Council's grading map which we note ordinarily serves as adequate "identification and mapping of the heritage resources in the area affected":



Illustration 3: City Council grading map: the River Club site is roughly circled (CoCT, Zoning Map viewer)

This diagram was not included in the HIA because several of the gradings near to the site are wrong or outdated, for example, the so-called Black River Office Park site is shown as a sports ground and the SAAO site, a grade I and declared national heritage site, is shown to be ungraded and, the River Club buildings apart, the River Club site itself is ungraded (although we concur that its grading should be a low one).

Second, we copy here Attwell and Jacobs' "composite diagram of heritage areas, potentially sensitive sites and heritage resources" which implies a rather different set of criteria.²⁷

²⁷ Attwell, Melaine and Graham Jacobs, October 2016, *Two Rivers Urban Park, Cape Town: Rhythmic Heritage Study*, a study commissioned by Western Cape Provincial Government, Diagram 05, p103.

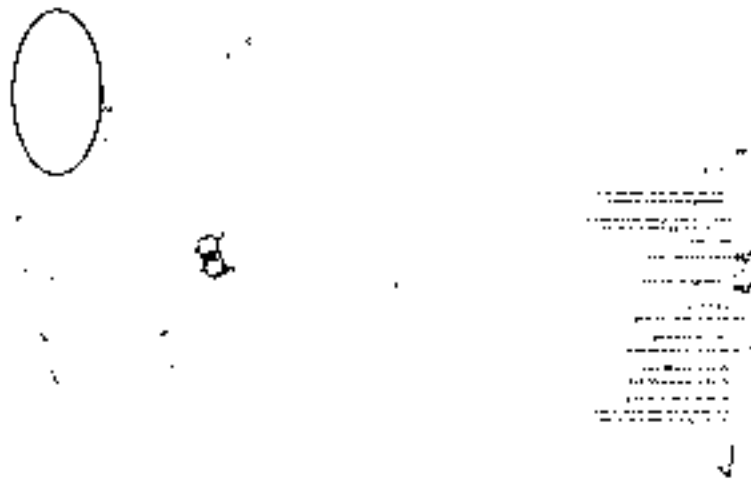


Illustration 4: Identification of heritage resources (Attwell and Jacobs, Diag.5, p103); the roughly circled River Club site is added to orientate the reader

This diagram was not included or referred to in the HIA because we think that the diagram does not identify or capture the significances of the heritage resources in the area.

Third, we copy here Cindy Postlethwayt's composite diagram of "tangible and some intangible heritage resources":²⁶

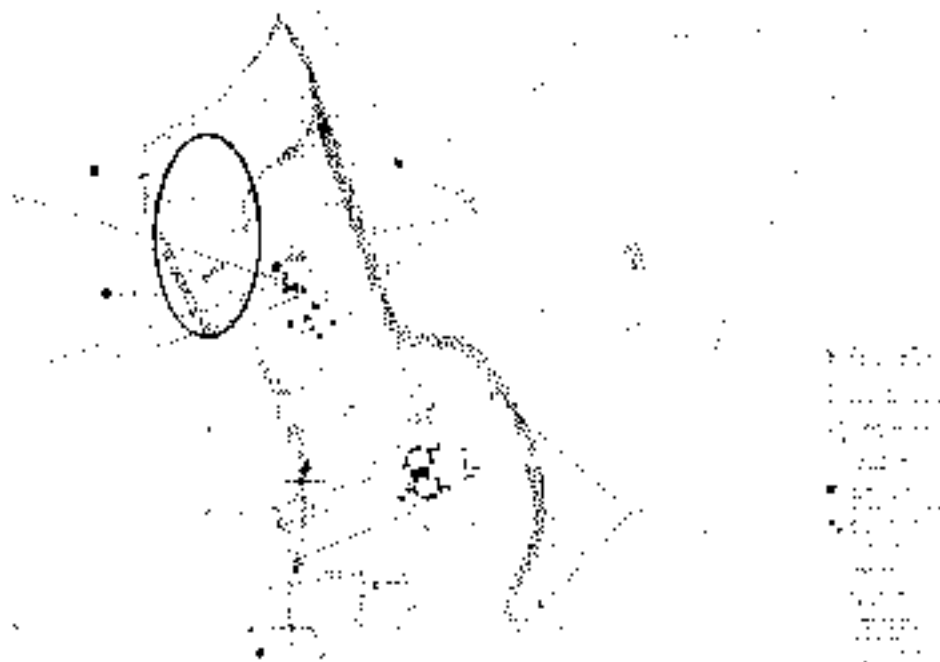


Illustration 5: Tangible and some intangible heritage resources (Postlethwayt, Fig.28, p36); the roughly circled River Club site is added to orientate the reader

²⁶ Postlethwayt, op.cit. Fig.28, p36.

As Postlethway's study dates from September 2019, it is self-evident that its findings could not be included in our *HIA* of 2 July 2019. However, we note that, the addition of some "viewlines and corridor sightlines" and the large amorphous area covering parts of the floodplains of the Liesbeek and Black Rivers and described as "notional river corridor as area to acknowledge and integrate First Nations" apart, this diagram follows Attwell and Jacobs' diagram closely. We will explain our disagreements later in the discussion on significances.

Given these three illustrations from three different sources and our summarizing diagram on p117 of the *HIA* (mapping our view of the "current significances of the riverine topography as cultural landscape"), we trust that it is not necessary to repeat or devise a fourth diagram (even if we do not agree with the identifications in the CoCT grading map or in Attwell/Jacobs' or Postlethway's diagrams) and we trust that HWC will accept that the heritage resources in the area affected are adequately identified and mapped (notwithstanding any differences in opinion). In any event, we will further address this issue in the following section when discussing the significances of the tangible heritage resources on the site and in the affected area.

5 Assessment of Significances:

In the *Interim Comment*, HWC states that it "is of the view that the assessment of significance is inadequate". We dispute this for the following reasons:

- given that we discuss significance at great length in several lengthy sections, **7. Significances**, pp79-84, **8. Heritage-Significance Related Design Indicators – Criteria for Decision-Making**, pp85-106, and **10. Assessment of Impacts on Heritage**, pp109-117, totaling approximately 35 pages in the *HIA*, it is difficult to accept that the assessment of significance is "inadequate": HWC can, of course, disagree with our articulations and conclusions regarding the significances, but in this instance it is difficult to understand how this could be described as "inadequate";
- it is clear that the writers of the *Interim Comment* have not recognized (or they disagree with) the range of scales which we have taken into account in describing the range of significances of the site, the immediate environs, the wider environs, and of the whole length of the Liesbeek River as a heritage resource and/or resources;
- it is clear too that HWC often elides the wider site (including both rivers and their floodplains) with the site in question;
- it seems that HWC has not recognized (or they disagree with) the essential underpinning logic or argument of the *HIA* regarding or assigning relatively low *current* significances and/or value of the lower reaches of the Liesbeek floodplain (and of the site in particular) and the two river courses (stormwater ditch and canalized river) as place and/or as a (tangible) heritage resource despite the high *historical* significance of the immediate and wider environs; and
- in this last respect, it seems that HWC has an incomplete grasp of the relationship between "significance" and "authenticity" arguing that "(t)he concept of significance is broadly underpinned by authenticity".²⁹ This is a curious formulation of the relationships between the two concepts: indeed, our

²⁹ HWC, *Interim Comment*, p6.

argument is precisely that significance has two 'dimensions', a dimension of quality or type³⁰ and a dimension of quantity or extent.³¹ whereas authenticity (in respect of places like the case at hand) has a number of dimensions (or attributes) including form, substance, function, location/setting, traditions and practices;³² and, importantly, we argue that in the case of the River Club site significance and authenticity are considerably affected by its "integrity", a "measure of the wholeness and intactness of the natural and cultural heritage and its attributes".³³

Briefly, the first part of our argument is that the historical significance of the site is high but that the ecological, topographical, visual significances are (currently) low from a heritage perspective as a consequence of the loss of authenticity (location apart) and of a reduced integrity. The second part of our argument has it that the recovered integrity of the Liesbaek River course as an ecologically functioning riverine-corridor is also (or would be) a recovery of several attributes of authenticity and, therefore, a recovery/restoration of several attributes of significance.

This has been argued at great length in the HIA; and, indeed, it seems that all parties are agreed that the River club site is a part of a much larger highly significant cultural landscape. It is clear, however, that we are not agreed about the implications of related questions about the authenticity and/or integrity of the (actual/ physical) place and its components and surrounds as it is today.

In this regard, we include an aerial photograph of 1934 which shows the following:

- the Black River is canalised (presumably concrete-sided and floored) to a point more or less in line with an extension of Station Road;
- the Liesbaek River-bed is a simple narrow and straight ditch or artificially created canal;
- all of the land to the immediate west of the Liesbaek has already been filled and is being used for sporting activities;
- all of the River Club site if filled is in part a island or promontory projecting into the water-filled wetland to the north and east 'protected by drainage canals;
- the wetlands to the north and east have the marks of a drag-line excavator that has taken soil from the estuary to create the reclaimed land of the River Club site; and
- the only as yet (relatively) 'natural area is the SAR&H land to the north which is be gradually reclaimed and encroached on by the railways sheds.

³⁰ As listed, for example, in s 3(3) of the NHRA.

³¹ High, medium, low; or, for example, as described in the grading system articulated in s.7(1) of the NHRA.

³² UNESCO, World Heritage Centre, 2013, *Operational Guidelines for the Implementation of the World Heritage Convention*, paras 79-86, in particular para.82.

³³ *Ibid* paras 87-95, in particular para.85.





Illustration 6: 1934 Aerial photograph (Department of Land and Measures, 100-004-09517); the roughly circled River Club site is added to orientate the reader

Given this, we argue that the pre-1952 river-course, which is claimed by some commentators (apparently concurred with by HWC) to be the "authentic" river course, is not authentic and has little integrity as such.

We also point out that the lower reaches of rivers, especially where flowing very slowly through very flat floodplains, are inclined to change their course periodically through sudden flooding, thus establishing a series of 'authentic' river-beds over time. In other words, it is apparent that an 'authentic' course of the Liesbeek is uncertain, even labile and liable to displacement or change; and, given this, we argue that the current canalised bed of the Liesbeek is a legitimate and feasible course for the recovered riverine corridor, the ecological-, visual-, cultural-, amenity-significance of which can be enhanced without damaging its historical or locational significance and authenticity.

We hesitate to complicate an already complex argument about significances but, given the range of opinions, this is unavoidable; and it is the range of opinions regarding what has been variously referred to as "landscape character" that we must touch on in order to illustrate the differences of perception (and opinion)

Attwell and Jacobs have argued that there are nine distinct 'character-areas' in the TR-area as shown in their map, Landscape Character Areas:³¹

³¹ Attwell and Jacobs, 2010, pp63-73

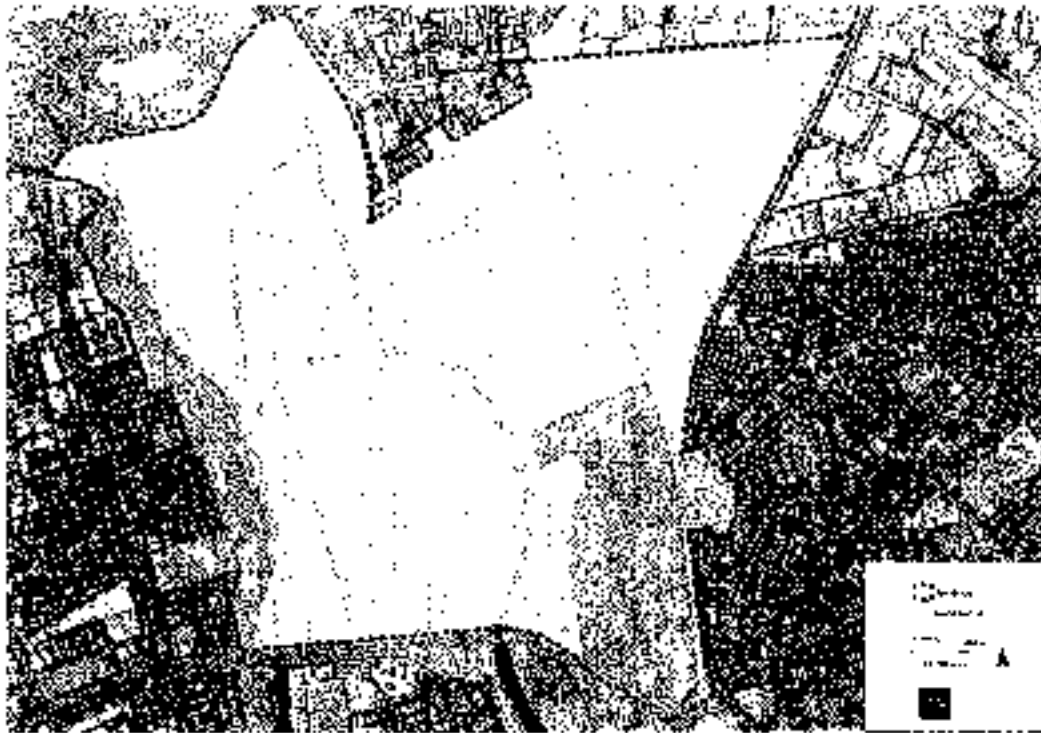


Illustration 8: ARG, Structuring of LSDF into eight precincts (ARG, Fig. 4.35, p88)



Illustration 9: ARG, Heritage related constraints and opportunities, etc (ARG, p25)

We point this out to emphasise the different experiences of the landscape and the consequences of these different experiences and the consequential *heteroglossia* of views, perceptions and assessments of the topography itself and its characters and of the significance(s) of the characters of the component parts. In other words, we return HWC to our assessment and evaluation of the significances of the River Club site and its immediate surrounds as articulated in section 10. **Assessment of Impacts on Significance** in the *HIA* (pp109-118) and to our summarising diagrams:

Handwritten signature



Illustration 10: Diagram of current significances of the riverine topography as cultural landscape (HIA, Fig.31, p117)



Illustration 11: Diagram of future significances of the riverine topography as cultural landscape after the restoration of the Liesbeek River (HIA, Fig.32, p118)

6 The Revised Development Proposal:

As explained earlier, the development proposal has been refined in response to commentary made in the NEMA, NHRA and MPB-L processes including:³⁷

³⁷ This section on the revisions to the development proposal is derived in large part from *The River Club, Observatory: Supplementary Information*, a report of November 2019 by Planning Partners, Paragon Architects and Vivid Architects, submitted on behalf of Zenprop to the City of Cape Town, relying, in particular, on pp5-6

- comments and objections received from relevant government authorities and the public (not only in relation to the MPBL application, but also from the ongoing NHRA and NEMA application processes);
- further engagement with pre-eminent members of the First Nations groupings; and
- specific requirements of the developer following engagements with prospective tenants.

Noteworthy changes from the submitted development proposal are

- The diagonal road dissecting the central 'ecological corridor' has been replaced by a road that crosses the green open space in a more orthogonal orientation, with the intention to mimic the orientation of the buildings, as well as reduce the impact on the amenity and functioning of the 'ecological corridor' space.
- The setback of the buildings from the rehabilitated Liesbeek River is now a minimum of 40 metres (this setback previously ranged between 24 – 40 m).
- The buildings closest to the SA Astronomical Observatory have been lowered in height to reduce the impact on this precinct.
- Vehicle access in Precinct 1 is no longer on the 'outside' of the precinct adjacent to the rehabilitated Liesbeek Canal and vegetated swale, but is now via a central road servicing the precinct; and the buildings overlook landscaped areas providing a better interface with these areas.
- The western half of Precinct 2 has been earmarked for the offices of a global company that has very specific requirements for their buildings (for example, standard floor plates which result in very specific building footprints). This campus is located next to Berkley Road extension where greater heights are appropriate, although the heights are staggered to articulate the massing.
- The inclusion of First Nations heritage as a design informant which now includes the following:
 - establishing an indigenous garden for medicinal plants used by the First Nations;
 - establishing a cultural centre;
 - establishing a heritage-eco trail;
 - establishing an amphitheatre for use by both the First Nations and the general public;
 - commemorating the history of the First Nations by: establishing a Gateway Feature inspired by symbols central to the First Nations narrative at the road crossing the eco-corridor; incorporating symbols central to the First Nations narrative in detailed design of buildings; and naming internal roads inspired by people or symbols central to the First Nations narrative;
 - the implementation of these mechanisms is to be assured through an institutional arrangement which establishes within the Property Owners Association (or similar) an autonomous legal entity led by the Gorinhaliqua



Illustration 14: View looking west (Planning Partners. Fig. 5a, p15); circled area shows the position of the proposed cultural centre, amphitheatre and gateway



Illustration 15: View looking east (Planning Partners. Fig. 5d, p18); circled area shows the position of the proposed cultural centre, amphitheatre and gateway

Handwritten signature and date
2



View from SAAG admin building roof

by building to

Handwritten signature or initials in black ink, appearing to be 'K. S. B.' or similar.



Illustration 19: East-west section through Precinct 1 looking north with the Liesbeeck Parkway to the left and the Lisbeek River to the right (Planning Partners, Flg.7b,p21)



Illustration 20: Section through rehabilitated Liesbeeck canal looking west from the SAAO (Vivid Architects, Fig.7d, p23)

A number of refinements and amendments have been made to the development proposal (listed on p21 above). All of these are, we argue improvements to what was discussed in the HIA dated 2 July 2019. Many of these changes are refinements and will, we presume, not satisfy all commentators; however, we suggest that several of the changes are significant from a 'heritage point of view'. These latter changes include, most importantly:

- reducing the height of the buildings in Precinct 1 opposite the SAAO in order that their presence, already minimised by the distance is further reduced and so that Lions Head and Signal Hill can be seen from the roof of the old Royal Observatory building;
- improving the vehicular-bridge-crossing of the eco-corridor; and
- introducing the several strategies discussed for "indigenizing the site through place-making mechanisms" as outlined on pages 8 and 21 above.

A handwritten signature in the bottom right corner of the page.

Given our presumption that many commentators will still object to the scale or height of certain of the buildings, particularly those in Precinct 2, we point out that most commentators do not object to development of the site implying a recognition, even acceptance, that the site could, even should, be developed, but just not with buildings of the heights proposed. In our view, any development that covers the site, even of single-storeyed development, will transform the floodplain's current (already much debased and uncertain) sense of place. On the other hand, the creation of an eco-corridor across the site and, in particular, the recovery (or rearticulation) of the Liesbeek riverine corridor will have a marked positive impact on this sense of place and on the perception of the Liesbeek River as a whole.

7 Alternatives and Mitigation of Impacts:

HWC claims that "there is no meaningful consideration of alternatives whatsoever"³⁸ and the "reduction of the Heritage Significance... is not something that can be mitigated, as it wholly ignores the broader issues pertaining to a highly significant cultural landscape".³⁹

The cost of the installation of services to this unserviced site (which will benefit a greater area than just the site in question) will be high as will the ecological restoration of the riverine corridor, of the old pre-1952 river course and of the connecting ecological corridor between the two courses; and certain portions of the site must be filled to above the 1:100 flood-line which will also entail significant cost. Also, the provision of Inclusionary housing and of the implementation of the mechanisms for the realisation of the First Nations indigenous narrative, while recognised (even embraced) by the developer as appropriate, will have considerable costs.

The proponent, an experienced developer of international standing, has presented two financially feasible and distinctly different alternatives: the Riverine Corridor Alternative and the Island Concept Alternative (as well as the No-Go Alternative).

Although, in terms of NEMA and the NEMA EIA Regulations (2014), alternatives identified by stakeholders should be considered in the EIA process, the proponent is permitted to provide a reasoned explanation why alternatives are not found (through an investigation) to be reasonable and/or feasible. In this regard, the (financial) returns of the preferred Riverine Corridor alternative, the Island Concept alternative, and the two alternatives suggested by stakeholders ((a) a lower density / reduced floor-space alternative and (b) an alternative which incorporated ~20% of the GLA for affordable housing) were investigated by MLC Quantity Surveyors to determine the expected first year returns on investment.

Noting that market capitalisation rates below 9% are not considered commercially viable to the proponent or to other property developers, the investigation demonstrates that neither the lower density/reduced floor-space alternative nor an alternative which incorporates ~20% of the GLA for affordable housing are financially viable to the proponent. In other words, given the cost of developing the site, the proponent does not view these alternatives to be (financially) reasonable or feasible

³⁶ *Ib.d.*, p9.

³⁷ *Ib.d.*, p10.

and have excluded these from further analysis.

The proponent has further calculated that the floor area currently proposed is the minimum required to ensure financial feasibility, and as such, impacts associated with the change in character of the site cannot be avoided completely through layout or functional alternatives, or other mitigation. In other words, negative impacts on the character of the site, the historical setting of the SAAO, and sense of place are anticipated should the development proceed. Should the No Go Alternative be selected, these impacts would be forgone, as would a number of significant economic, ecological and cultural benefits.

It should also be noted that the same or very similar negative impacts would be experienced should an alternative with reduced floor space or one with 20% of the GLA devoted to affordable housing be selected. Furthermore, it is now apparent that the proposed alternative is consistent with the latest spatial framework plan for the environs, the *Draft Two Rivers Local Spatial Development Framework*.

In terms of NEMA, the best practicable environmental option is the option that provides the most benefit and causes the least damage to the environment as a whole, at a cost acceptable to society, in the long-term as well as in the short-term.

The proponent has calculated that a minimum floor area is required to make the development financially viable and has selected two viable layouts designed to mitigate the anticipated visual and cultural impacts as far as possible (and to enhance both ecological and heritage benefits). Layouts were selected in consultation with the specialists on the project team including the urban designer, the visual impact assessor and the architect. Nevertheless, the development will alter the sense of place (see Impact V2 in Appendix J of the BAR), reduce certain of the heritage values of the site (Impact H3), impact on the setting of the SAAO (Impact H5) and, importantly, increase significantly other heritage values. The project will also entail significant socio-economic (Section 2.7 of Appendix J) and ecological benefits (Sections 2.4 and 2.5). Therefore, the preferred alternative involves trade-offs.

Negative impacts can be mitigated to acceptable levels if the Riverine Concept Alternative is selected, and a significant heritage benefit is anticipated from restoring the Liesbeek River Corridor at the site (Impact H4). This alternative has therefore been selected as the preferred development alternative by the proponent. The site is privately owned and has been the subject of unsuccessful revitalisation initiatives for over a quarter of a century, and it is therefore reasonable to assume that should the development not be approved the site will continue to be inaccessible to the public and used as a commercial recreational and conferencing facility. The benefits (and impacts) of the development would be forgone at a site that is considered by the City and the Provincial Government of the Western Cape (and, of course, proponent) as a site that is suitable for development.

Given that the two realistic and viable outcomes for the future of the site are either (a) the preferred Riverine Corridor alternative which re-envisioned the site or (b) the No-Go Alternative, it is our view that the preferred development alternative provides

more benefit at a tolerable cost to society and is therefore considered an acceptable option for the site, *ceteris paribus*.⁴⁰

Given this, it would seem that HWC's opinions regarding both the consideration of alternatives and the mitigations incorporated into the preferred alternative are not sustained by rational argument. We note too that in the sixteen years that HWC has been operating, it has seldom required that alternatives be assessed and has not, in our experience, ever argued that an HIA was inadequate for the want of an 'adequate' assessment of alternatives.

8 The Rationality of the Interim Comment:

HWC has relied on what seems to be a central and simple linear argument in the *Interim Comment*, underpinning its reasoning and its conclusions, namely: "if the grading of significance is wrong, then the conclusions will certainly be wrong".⁴¹

This kind of argument is fallacious for the following reasons: first, the subject site and the environs more generally are complex in every sense with overlapping kinds of significances of varying degrees of value; second, some of these significances do not have visual or physical manifestation or any impact on the perception or experience of the site or environs as heritage; and, third, the significances of the site and environs have been much affected and transformed by their use and development during the past hundred years or more, radically affecting their authenticity and integrity and, therefore, their potential as recognisable/identifiable heritage resources.

Simple linear equations of the sort argued by HWC can be broken into pieces, analysed separately and solved, and eventually reassembled giving a straightforward directly resulting conclusion; in a linear equation of the sort argued by HWC, the whole is exactly equal to the sum of the parts.

However, the real world of the complexities in play here cannot be understood through linear equations of this sort but rather as a nonlinear open-system of iterative internal feedback and multiple alternate understandings and conclusions.⁴² This is the case in all analysis of this sort: and, especially when change which will affect primary components of the system further complicates or transforms characteristics of the system being analysed, predictive analysis must turn to creative and even inventive thinking.

In other words, a simplistic linear argument is inadequate; and we hope that the analysis and argument implied in the HIA and made clearer here is now more persuasive.

⁴⁰ The details of this response rely on the expert advice of the EAP, Matthew Law of SKR, and the impacts referred to are those articulated in the BAR; email, 7/11/2019.

⁴¹ HWC, *Interim Comment*, p.7 (twice), p10.

⁴² This discussion of linear and nonlinear analysis relies on the writings of mathematicians and analysts like Melanie Mitchell, 2009, *Complexity: A Guided Tour*, and Steven Strogatz, 2003, *Sync*, as discussed by Sennett, Richard, 2018, *Building and Dwelling: Ethics for the City*, pp4-12.

Also, HWC relies on an iteratively stated argument that the proposal is reliant on a "preconceived development concept"⁴³ which, variously, was "prepared by Urban Concepts in 2016" and "pre-dates this HIA" and that the argument and conclusions of the HIA are, therefore, a "post-rationalisation" of this preconceived development proposal.

This argument is fallacious for the following reasons:

- first, an impact study is, in essence, simply to assess the impact of a proposed development: a development proposal must rationally precede a study of its impacts;
- second, given that the process of compiling an HIA must be commenced "at the very earliest stages of initiating such a development",⁴⁴ it is clear that the Act intends that the compilation of an HIA is to have an 'internal' effect on the design of the proposed development;
- third, HWC did in January 2016 specifically require an "urban design framework of the proposed development",⁴⁵ and an *Urban Design Indicators Draft 2*⁴⁶ did inform the initial design of the proposal and was included in the Phase 1 HIA submitted to HWC in February 2017 ;
- fourth, the concept of the proposed or preferred development was changed radically in late 2017 from the Island Concept to the Riverline Corridor Concept and the urban design framework report was expanded to incorporate the insights of the HIA-compiling process;⁴⁷
- fifth, the preferred Riverline Corridor alternative has been iteratively amended in several steps since late-2017.

In other words, HWC's contentions regarding a "preconceived" or "post-rationalised" development proposal is both irrelevant and wrong.

9 Conclusions:

Given the above, we hope that HWC's criticisms have now been addressed and that the HIA with this Supplement will be accepted by HWC to satisfy its requirements as specified under section 38, subsections (3) and (8) and that differences in opinion regarding the assessment of heritage resources on or near the site do not render the HIA and this Supplement "inadequate" or "incomplete". In other words, we trust:

- (a) That all heritage resources in the affected area are adequately identified, described and mapped in the Executive Summary, Preface and section 6. Identification of Heritage Resources of the HIA (respectively pp3-5, 19-21 and pp70-79), and section 4. Identification and Mapping of Heritage Resources of this Supplement (pp12-15);
- (b) That the significances of these heritage resources have been adequately described and assessed in the Executive Summary and sections 7. Significances of the HIA (respectively pp3-5 and pp79-89) and 5. Assessment of Significances of this Supplement (pp15-20)

⁴³ HWC, Interim Comment, p5 (twice), p6

⁴⁴ NHRA, s.38(1).

⁴⁵ HWC, *Response to NID*, 7 Jan 2016.

⁴⁶ Urban Concepts, 2016, *Urban Design Indicators Draft 2*

⁴⁷ Urban Concepts, December 2017, *Urban Design Framework: Indicators and Recommendations*.



- (c) That the impacts of the proposed development on these heritage resources and their significances have been adequately described and evaluated in the Executive Summary and sections 9.3. The Alternative Development Proposals and 10. Assessment of Impacts on Significance of the HIA (respectively pp3-4, pp96-109 and pp109-118) and section 5. Assessment of Significances of this Supplement (pp15-20);
- (d) That the impact of the proposed development on these heritage resources relative to the sustainable benefits has been adequately evaluated in section 10. Assessment of Impacts on Significance of the HIA (pp109-118) and section 7. Alternatives and Mitigation of Impacts of this Supplement (pp26-27);
- (e) That the results of consultation with parties claiming to be affected by the proposed development have been adequately reported in sections 5. Consultation and Commentary of Interested Parties and 9.4. Commentary of IAPs on the Development Proposal of the HIA (respectively pp52-70 and pp106-109) and sections 2. Engagements with First Nations Groupings and 6. The Revised Development Proposal of this Supplement (respectively pp4-9 and pp20-25);
- (f) Given that certain heritage resource will be adversely affected, that alternatives and have been adequately considered in sections 9.3. The Alternative Development Proposals and 10. Assessment of Impacts on Significance of the HIA (respectively pp96-106 and pp109-117) and section 8. Alternatives and Mitigation of this Supplement (pp26-27); and
- (g) That mitigation of the adverse effects have been incorporated and adequately evaluated in sections 9.3. The Alternative Development Proposals, 10. Assessment of Impacts on Significance, and 11. Mitigations of the HIA (respectively pp96-106, pp109-117 and 118-119) and section 8. Alternatives and Mitigation of this Supplement (pp26-27).

Finally, as explained earlier, the first part of the underpinning argument of the HIA is that the historical significance of the site is high but the ecological, topographical, visual significances are low as a consequence of the loss of authenticity and of a reduced integrity. The second part of the argument has it that the recovered integrity of the Liesbeek River course as an ecologically functioning riverine-corridor is also a recovery of several attributes of authenticity and, therefore, a recovery/restoration of several attributes of significance.

The third and necessary part of the argument is reliant on our presumption that the recovery of the potentially great significance of the Liesbeek riverine-corridor along the eastern edge of the River Club site is not possible without considerable investment which can only be realised through development of the River Club site. This, of course, applies to other public benefits like the planned improvements to the pre-1952 river course (itself of low significance then), the establishment of a 70m-wide ecological corridor running east-west across the site, and the implementation of the long-planned Berkley Road extension/connection; but we do not set as great store (from a 'heritage' perspective) by these latter improvements.

In our view, the restoration of the Liesbeek River as river, as life-bearing water running in an ecologically complete corridor, is to restore the Liesbeek River itself to completeness and to meaningfully add to the significance of the floodplain and the,

location and setting (even if there are interruptions to the visual completeness of the floodplain).

4 December 2019

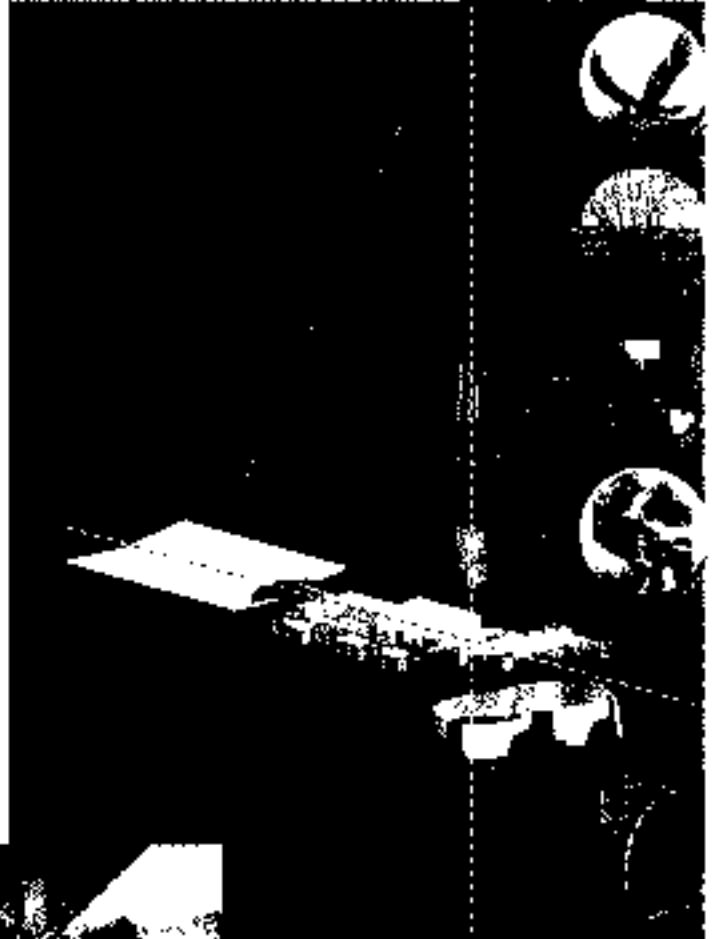
Stephen Townsend
Tim Hart

Handwritten signature and scribble in the bottom right corner of the page.

"L-16"



RIVER CLUB First Nations Report



AFMAS Solutions
November 2019

h 12

Acknowledgement

The author hereby wish to acknowledge the contributions of the Kai Bi'a, Queen, Paramount Chiefs, Chiefs and Representatives of the following First Nations:

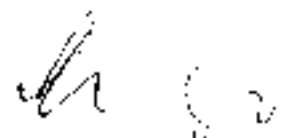
- Gorinhalqua
- Gerachouqua
- Cochoqua
- Griqua Royal Council
- San House of N|n|e

Without them this report would not have been possible.



Table of Contents

INTRODUCTION	1
SECTION 1: FIRST NATIONS NARRATIVE OF TRUP CULTURAL LANDSCAPE	10
SECTION 2: DECONSTRUCTING THE TRUP CULTURAL LANDSCAPE	26
SECTION 3: INDIGENOUS NARRATIVE AND FIRST NATIONS AGENCY	48
SECTION 4: INDIGENOUS ASPIRATIONS	59
SECTION 5: INDIGENOUS IMPERATIVE	61
SECTION 6: PRECEDENTS	79
SECTION 7: IMPLMLNTING THE INDIGENOUS NARRATIVE	86
SECTION 8: CONCLUSIONS AND RECOMMENDATION	94
BIBLIOGRAPHY	
ANNEXURES	



FOREWORD

"Indigenous means of the land. As indigenous people, we have a symbiotic relationship with the land and with each other. Rather than separated from nature, or above nature, we are nature. The spirit of the land flows through all life, including ourselves, and we are governed by natural law."

I am Anishinaabe, and what I learned through my elders was how to regard each individual with respect and care. We extend that to all the herbs, medicines, plants, water, fish, birds and animals, all of which we consider as our relations. With this world view, we have a distinct approach to architecture and planning.

The architecture of the dominant culture reflects the hierarchical world view of power and control over human nature and nature itself. Since it is hierarchical, planning comes from the top-down, where the will of the dominant culture is an imposition on human nature and our natural environment.

The Indigenous planning process is from the bottom-up, where people and their needs are our primary focus. It is the user of the space and the vision of the people who will be served that, from which the architectural form is established. Each cell or space is interconnected to each other, and the study of these connections creates a matrix in which an organism begins to evolve. Placing that organism on the site, it is developed with respect not only to the internal forces of the program that are shaping it, but to the external forces as well, such as the topography, landscaping, sun angles and wind patterns.

When the form naturally takes shape around the needs of all people and the environment, then when it is placed in its natural environment it extends that respect to all the life that surrounds it. If we draw on nature as our source of inspiration and entwine natural forms with our own human forms, then we arrive at works of art that elevate the spirit of all who enter the spaces we create

We must achieve balance and harmony with each other as well as all life around us. We need beauty and harmony around us. As human beings, we all aspire to create or build environment with that in mind."

Douglas Cardinal



Douglas Cardinal is a world-renowned Canadian Indigenous architect who's been at the forefront of Indigenous architecture and design. Some of his projects include: The Smithsonian National Museum of the American Indian, Canadian Museum of History, Discovery Park of America and the First Nations University in Saskatchewan. In recognition of his work, he has received many national and international awards including 20 Honorary Doctorates, Gold Medals of Architecture in Canada and Russia, and an award from the United Nations Educational, Scientific, and Cultural Organization (UNESCO) for best sustainable village. He is also titled an Officer of the Order of Canada, one of the most prestigious awards given to a Canadian, and he was awarded the declaration of being 'World Master of Contemporary Architecture' by the International Association of Architects.

¹ 2018: *The Handbook of Contemporary Indigenous Architecture*

Statement of Independence

The River Club First Nations Report submitted here was conducted by Mr. Rudewaan Arendse of AFMAS Solutions.

The views expressed in the report are the objective, Independent views, assessments and findings of Mr. Arendse. He does not have any business, personal, financial or other interest in the project apart from remuneration for the work submitted. Mr. Arendse have not been influenced by the views and opinions of other parties.

Signed R Arendse



INTRODUCTION

A. Project Preamble

AFMAS Solutions was appointed by the Liesbeck Leisure Properties Trust to engage the First Nations (the Khoi and San)², interchangeably referred to as Indigenous people, or the Indigene, with regard to their intangible cultural heritage in terms of the River Club project site.

The report emanating from this engagement (this document) constitutes a Supplementary Report to the River Club Heritage Impact Assessment.

B. Project Brief

The brief was to:

1. Understand the significance of the River Club site to the First Nations by identifying Indigenous intangible cultural heritage specific to the River Club.
2. Locate the River Club site within the Indigenous narrative of the broader TRUP cultural landscape
3. Identify First Nations aspirations with regard to Indigenous cultural heritage and the River Club site.
4. Implement the recommendation of the TRUP First Nations report that "*acknowledging, embracing, protecting and celebrating the Indigenous narrative be a heritage related design informant that informs*" planning and development of the River Club site.

² As was the case with the TRUP First Nations Report, given the ongoing debate about appropriate terminology to use when referring to the Indigenous people of South Africa, representatives of the First Nations were consulted. It was agreed that South African official parlance will be used, and the First Nations will be considered, and referred to, as the Khoi and San.



C. Assumptions, Limitations and Exclusions

Indigenous informants of this report, self-identified as First Nation peoples.

Indigenous informants were:

1. First Nation representatives who were historically involved in TRUP related processes;
2. First Nation representatives who contributed to the TRUP First Nations Report;
3. So as not to be exclusionary, inputs from other First Nation groupings and representatives with an interest in the Two Rivers and River Club, were also included.

D. Terminology

As a mark respect, terms such as 'Indigenous', 'First Nation', and 'Indigene' are capitalized.

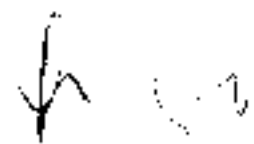
E. Definition of First Nation

The report adopts the following United Nations working definition of 'Indigenous communities, peoples and nations':

"Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing on those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal system.

This historical continuity may consist of the continuation, for an extended period reaching into the present of one or more of the following factors:

- a) Occupation of ancestral lands, or at least of part of them;
- b) Common ancestry with the original occupants of the lands;
- c) Culture in general, or in specific manifestations (such as religion, under a



tribal system, membership of an Indigenous community, dress, means of livelihood, life style, etc.);
d) Language (whether used as the only language, as mother-tongue, as the habitual means of communication at home or in the family, or as the main, preferred, habitual, general or normal language);
e) Residence on certain parts of the country, or in certain regions of the world;
f) Other relevant factors."

"On an individual basis, an Indigenous person is one who belongs to these Indigenous populations through self-identification as Indigenous (group consciousness) and is recognized and accepted by these populations as one of its members (acceptance by the group). This preserves for the communities the sovereign right and power to decide who belongs to them, without external interference (United Nations Permanent Forum on Indigenous issues 2004:7)

According to the South African Traditional and Khoi-San Leadership Bill "*Khoi-San*" means any person who lives in accordance with the customs and customary law of the Cape-Khoi, Griqua, Koranna, Nama or San people, or any subgrouping thereof, and is consequentially a member of a particular Khoi-San community as contemplated in section 5 "

F. Methodology

A phased methodology was used.

Phase One: In order to understand First Nation intangible heritage significance and Indigenous "sense of place and meaning" of the River Club site, key informant interviews were held with First Nation knowledge keepers and traditional custodians of the Goringhaiqua, Gorachouqua, Cochoqua, Griqua Royal Council and the San House of Nǀnǀe.

Phase Two: The Indigenous narrative of the River Club, generated in phase one, was located in the broader TRUP cultural landscape through multi-layered and multi-dimensional contextualizing - spatial, temporal, cognitive (memory and cognitive map of historical Indigenous landscape), epistemological (based on Indigenous knowledge structure), ontological (Indigenous ways of being) and cosmology (world view). This was achieved by deconstructing the TRUP cultural landscape.

Phase Three: To give expression to, and effectuate, First Nation aspirations vis-à-vis the River Club site, precedent studies and state-of-the-art analysis were used to develop Indigenous-inspired

site planning, design and development informants that acknowledge, embrace, protect and celebrate the Indigenous narrative.

G. First Nation Informants

First Nation interviewees and key informants were the Kai Bi'a, the Queen, Paramount Chief, Chiefs and representatives of the Goringhaiqua, Gorachouqua, Cochoqua, Griqua Royal Council and the San House of N|n|e. These informants, as Indigenous knowledge keepers and traditional custodians, constituted a First Nations Collective, whose voice is denoted by italicized verbatim text in quotation marks in the report.

H. First Nations Collective

The First Nations Collective comprise the majority of senior Indigenous Khoi and San leaders and their councils in the Peninsula. This includes the

1. Goringhaiqua (Chief !Garu Zenzile Khoisan, Mr. Ron Martin)
2. Gorachouqua (Kai Bi'a !Kora Hennie van Wyk, Bi'a Jeannette Abrahams)
3. Cochoqua (Chief John Jansen, Chief Tania Kleinhans-Cedras)
4. Griqua Royal Council (High Commissioner and Deputy Secretary General of the Congress of Traditional Leaders of South Africa [Contralesa], His Excellency, Aaron Martin William Messelaar.
5. San Traditional Royal House of N|n|e (Queen Katriena Esau, Prince Titus⁴)
6. National Khoi and San Council (Chief Cecil le Fleur)

The First Nations Collective through Chief Zenzile Khoisan explained to Mr. Tauriq Jenkins, Supreme High Commissioner of the Goringhaicona Khoi Khoi Indigenous Traditional Council and spokesperson for Paramount Chief Delriqwe Dextery Aran (Impose Arendse), the position taken by the Collective, and invited the Goringhaicona to participate and join the Collective. Cautioning the Goringhaicona that refusing to formally engage, would constitute a voluntary extrication from the consultation process. Akin to a self-imposed exile.

The social facilitator, subsequently, twice engaged (met) the Supreme High Commissioner of the Goringhaicona; urging formal engagement, consultation and dialogue. On both occasions the social facilitator was informed that the meetings did not constitute formal engagement or consultation. Consequently, the social facilitator informed the Supreme High Commissioner that the Goringhaicona would not be reflected in the First Nations Collective.

⁴ Prince Titus informed Advocate Erasmus who represented his interest at the Western Cape Heritage Tribunal, that he (Prince Titus) is no longer opposed to development at the River Club site, and that he (Prince Titus) had joined the First Nations Collective, in support of development



Members of the First Nations Collective, Indigenous act vists, and members of the Indigenous Resurgence Movement, alerted the social facilitator to public utterances and social media pronouncements by Paramount Chief Aran of the Goringhaicona Khoi Khoin Indigenous Traditional Council, that called into question the credibility of the Paramount Chief; as leader, as a keeper of Indigenous knowledge and tradition, and as voice of the Indigene. The voice articulated through his spokesperson, the Supreme High Commissioner, Mr. Tauriq Jenkins.

Some of Paramount Chief Aran's public pronouncements include:

- The real Nelson Mandela died on Robben Island, and the person released in 1990 was an imposter.
- That he (Paramount Chief Aran) contacted the Queen of England.
- Jan Van Riebeeck was a prisoner.
- Paramount Chief Aran's grandmother, Elisabeth Dawson, was British Royalty, and the sister of Queen Victoria.
- The Goringhaicona have *"traded the language Khoekhaegowab used on the coat of arms which gives money value."*
- Former President F.W. De Klerk lied under oath to the United Nations.
- Former President Nelson Mandela lied about using his mother's Khoi DNA and passing it off as Xhosa.

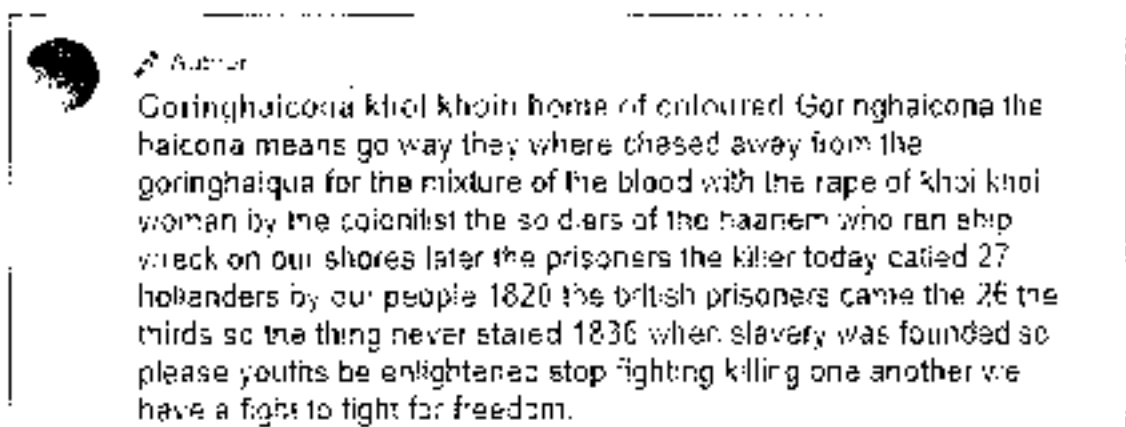


Figure 1 Goringhaicona means "go [a]way."

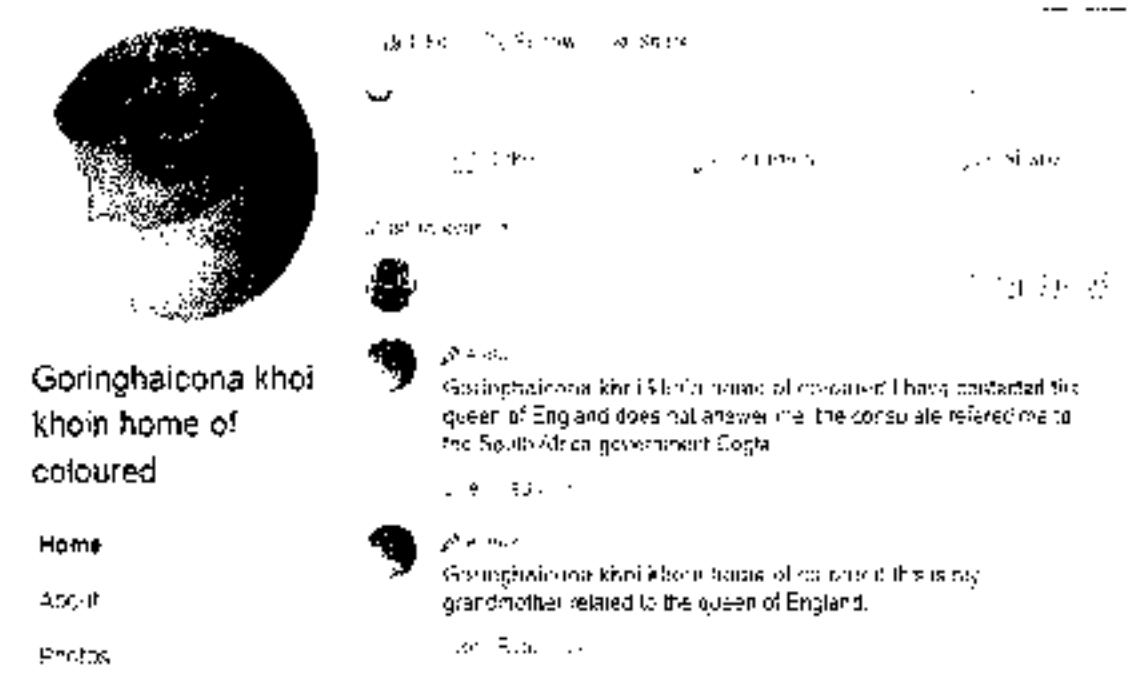


Figure 2 - Paramount Chief Aran contacted the Queen of England and his grandmother is related to the Queen of England.

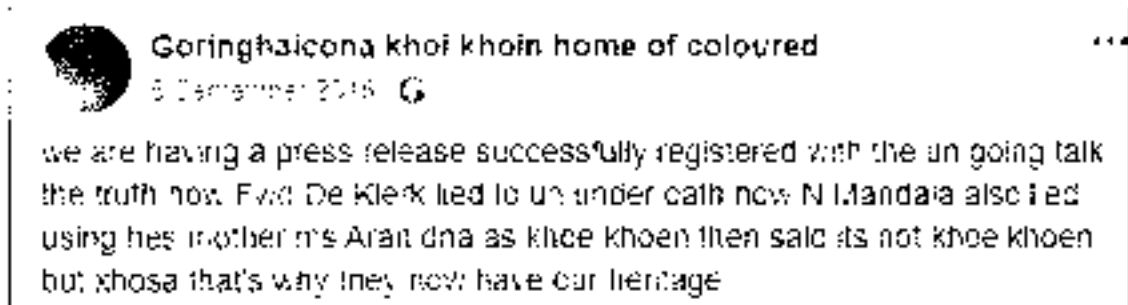


Figure 3 - Former President F. W. De Klerk lied to the United Nations.

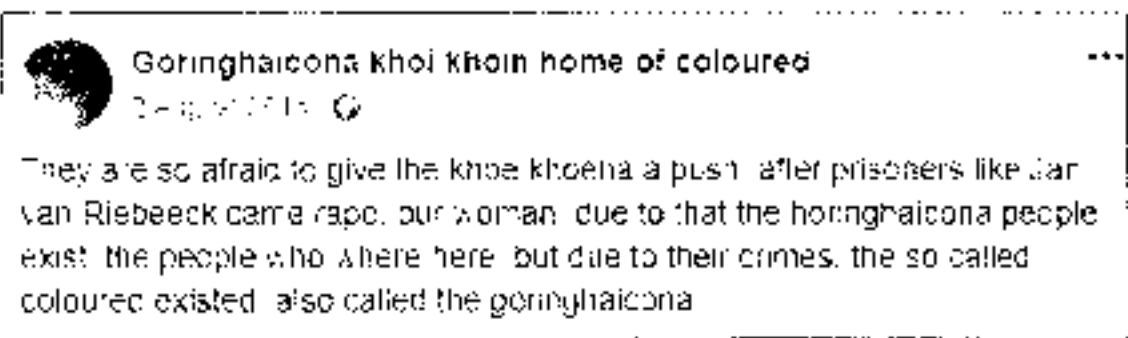


Figure 4 - Jan van Riebeeck was a prisoner.

Handwritten signature or initials

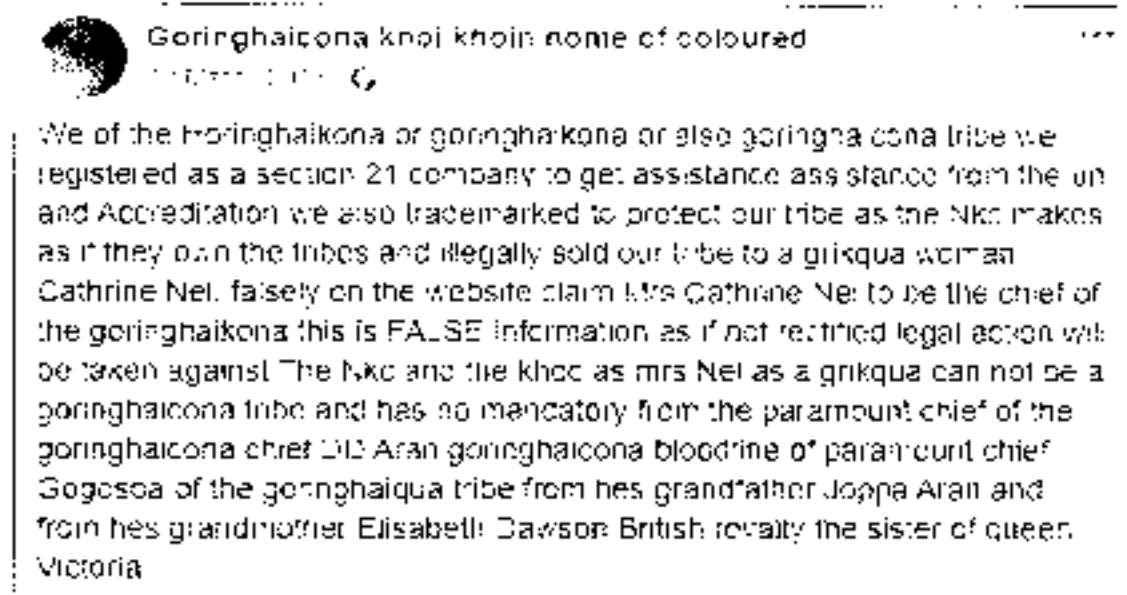


Figure 5 - Paramount Chief Aran's grandmother was the sister of Queen Victoria.

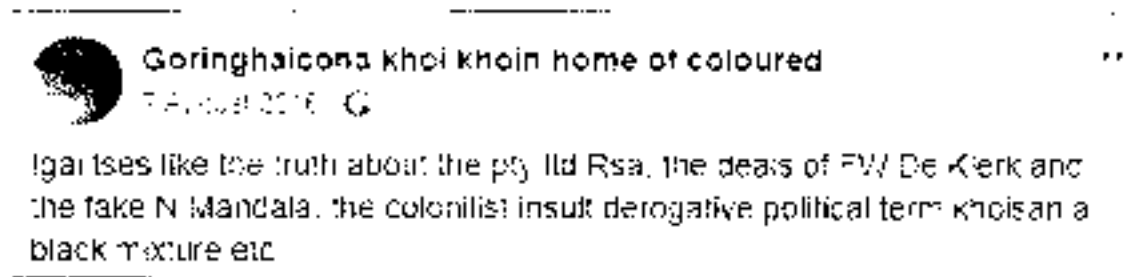


Figure 6 - Fake Nelson Mandela.

<https://www.facebook.com/Goringhaikona-khoi-khoin-home-of-coloured-818871421553844/>

The concern from the First Nations Collective was that the above pronouncements by Paramount Chief Aran of the Goringhaikona will undermine First Nation Interests and cause ridicule of the entire Indigenous narrative.

Handwritten signature/initials

I. Structure

This report is divided into an introduction and 8 sections. The introduction provides a preamble to the study. Section 1 describes the First Nations narrative of the TRUP cultural landscape. Section 2 deconstructs the TRUP cultural landscape in order to understand the temporal and spatial relationships between different tangible and intangible heritage elements and the River Club site. Section 3 deals with the Indigenous narrative and First Nations agency. Section 4 articulates First Nation aspirations. Section 5 converts Indigenous aspirations into an Indigenous Imperative vis-à-vis the River Club site, Section 6 identifies global precedents where Indigenous Intangible cultural heritage informants informed building and site design and development. Section 7 deals with implementing the Indigenous Imperative. The report ends with Section 8, the conclusion and recommendations, which is followed by the bibliography and annexures.

J. Study Area



Figure 7 - Project Study Area

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

K. Locality



Figure 8 - River Club locality

9
h is

"LL17"

Our Ref: H/W/CAPE TOWN METROPOLITAN/ OBSERVATORY/ ERF 151832
Case No.: 15112504WD1217M
Enquiries: Waseefa Dhansay
E-mail: waseefa.dhansay@westerncape.gov.za
Tel: 021 483 9533
Date: 13 February 2020



Liesbeek Leisure Properties Trust
PO Box 786739
Sandton
2146

FINAL COMMENT
In terms of Section 38(B) of the National Heritage Resources Act [Act 25 of 1999] and the Western Cape Provincial Gazette 6061, Notice 298 of 2003

PROPOSED DEVELOPMENT ON ERF 151832 CORNER LIESBEEK PARKWAY AND OBSERVATORY ROAD, THE RIVER CLUB, OBSERVATORY, SUBMITTED IN TERMS OF SECTION 38(B) OF THE NATIONAL HERITAGE RESOURCES ACT (ACT 25 OF 1999)

HWC Case Number: 15112504WD1217E
DEADP Reference Number: 16/3/3/6/7/2/A7/17/3104/16
DWS Reference Number: WUF026 River Club and 16/2/7/G22/A/11

1. The matter above has reference. The matter was heard by the Heritage Western Cape (HWC) Impact Assessment Committee (IACom) on 28 January 2020.
2. The committee is of the opinion that its further requirements contained in its Interim Comment dated 13 September 2019, have not been met and therefore the requirements of Section 38(3) of the NHRA have not been met. Furthermore, within the context of the standard operational procedure with the Department of Environmental Affairs and Development Planning (DEADP) when it is the consenting authority in terms of Section 38(B), the committee requests that DEADP further engages with Heritage Western Cape (HWC) to resolve all heritage related issues prior to DEADP taking a decision on the Final Basic Assessment Report (BAR).
3. Notwithstanding the non-compliance with Section 38(3), the Committee resolved to provide additional comment to the interim comment. The interim comment dated 13 September 2019 is incorporated within this comment in order to make clear the committee's requirements and responses to date.

Final Comment

4. Heritage Western Cape is in receipt of a Supplement to the Heritage Impact Assessment (HIA), submitted on 4 December 2019, under the provisions of Section 38(B) of the National Heritage Resources Act (NHRA) and contained within a Basic Assessment process conducted under the National Environmental Management Act (NEMA), for the redevelopment of the River Club site, Erf 151832 and its bounding riverine banks, the construction of the abutting arterial Berkley Road Extension on Erf 15326, the widening of Liesbeek Parkway, and at the road intersections giving access to Erf 151832, Observatory, Cape Town. The supplementary reports as well as the original reports were considered in forming this comment.

Background summary in the Interim Comment

5. Prior to discussion of the HIA, the following is set out in order to provide a background summary to the application tabled before the Committee, as well as highlight various issues that HWC has already placed on record.

www.westerncape.gov.za/eei



6. The HIA tabled, conducted by Dr Stephen Townsend and Mr Tim Hart, dated 2 July 2019, replaces the Phase 1 HIA submitted to HWC on 22 February 2017, prepared by Ms. Bridget O'Donoghue (including a peer review conducted by Dr Nicolas Bourton), which was tabled at the Impact Assessment Committee meeting of HWC on 8th March 2017.
7. The minutes of the meeting of the 8th March 2017 noted amongst other things that:
"The Committee believes that the entire TRUP precinct must be looked at holistically, it is problematic to consider the specifics of this application in isolation from the broader study".
8. It was also noted by the IACom that:
"On several occasions HWC has been led to believe that development issues for the entire TRUP area would be addressed prior to the development of individual pockets therein".
9. It was understood at the time however, that there was a broader Baseline Study of the Two Rivers Urban Park (TRUP), commissioned by the DT&PW and conducted by Melanie Athwell and Graham Jacobs, and which included the River Club within its area of study, and that this was to be considered by the IACom at its next meeting of 12th April 2017. On this understanding, the Committee resolved to undertake a site inspection of the site, and winter TRUP, prior to any further consideration of the O'Donoghue Phase 1 HIA.
10. The Baseline study for the TRUP, (which included the River Club), and submitted in terms of s38(8), was thereafter tabled at the IACom meeting of 12th April 2017, and, of importance to the comment being provided in respect of the current application, the minutes of that meeting reflected:
11. "On balance it is evident that, based on the heritage resources identified in the baseline study and its supporting documentation, the TRUP is of extremely high heritage significance. The Committee agrees that the overall site is of at least Grade II heritage significance, if not higher", and the IACom recommended that.
12. "Given the strategic importance and high significance of the site, it is a strong recommendation of the Committee, that the Council of HWC gives consideration to the provisional protection of the TRUP area under s29 of the NHRA".
13. The Committee also noted at its meeting of 12th April 2017, that it had concerns that the following issue(s) should also be addressed in the Baseline Study:
"The National Khoisan Legacy Project"; in particular the understanding that this site may form an important aspect thereof. It is further understood that this site has been identified as part of the National Liberation and Resistance Project of Government. These are aspects that cannot be ignored and must be taken into account when framing heritage related informants for the site".
14. Notwithstanding certain of the concerns raised in respect of the baseline study, Ms Athwell and Mr Jacobs were commended for an extremely thorough report, (particularly in respect of the identification of significance of the TRUP), and one which is also noted to have been commended by First Nation representatives at the MEC Maunat Hearings.
15. A number of further meetings were held with respect to the TRUP Baseline Study, and the proposed provisional protection throughout the course of 2017. These include discussion of the TRUP at the Inventories, Grading and Interpretation Committee (IGIC) in May 2017.
16. After receiving feedback from the IGIC meeting, in the form of its minute of 9th June 2017, IACom recorded the following in its minutes:
The Committee is unanimously of the view that based on the information provided for in the consultant's Grading Report tabled before the Committee, the TRUP is of potential Grade II or even Grade I significance. The Committee stands by its previous recommendation that the site should be provisionally protected so that the matter is fully investigated. The Committee recommends that a recommendation for the provisional protection of the TRUP is sent to the Council of HWC for its consideration.
17. A wider public meeting was held on 29th August 2017 in order to discuss the proposed boundaries of a wider Section 29 provisional protection for the entire TRUP area.

Handwritten signature and initials, possibly 'Ji' and 'S 2'.

18. The Athwell and Jacobs Baseline Study, along with a supplementary report, was resubmitted to HWC for consideration at its IACOM meeting of 8th November 2017. The minutes of the meeting reflect that neither the Heritage Practitioners, nor Town Planner were at the meeting, and that the IACOM were informed that a representative of the DT&PW would answer any heritage related questions.
19. The IACOM was however informed, that interested and Affected parties had not been given sight of the supplementary report. The Committee therefore removed the item from the agenda, and resolved that:
20. The applicant must circulate all supplementary information to I&AP's for comment. Any additional comments from I&AP's and the Heritage practitioners' response thereto, must be included with the resubmission of the supplementary report.
21. It is important to note that it was during the course of this meeting that in response to a query by the DT&PW representative, the Committee verbally informed that it could not prevent a separate application being submitted by any individual land owner, but that this would be at the risk of the applicant, should the broader TRUP Baseline Study, which provides information for the whole TRUP, not be completed, as HWC has been explicit previously in this regard.
22. In or around February/March 2018, HWC Management was made aware of the intent of the River Club to submit a new NIA. Following this and noting concerns raised by the IACOM, and recommendations made previously, a decision was taken at HWC Council in March 2018 to provisionally protect the site in terms of the provisions of s29 of the NHA and the provisional protection was formally gazetted in the Provincial Gazette, No 7916, on 20th April 2018. The Notice records the significance of the site, and the wider TRUP area as follows:

Significance:

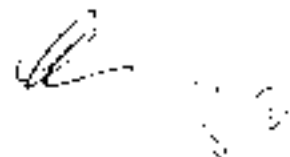
23. The River Club forms part of the wider Two Rivers Urban Park (TRUP) and represents a microcosm of Cape history. It reflects the pattern of South Africa's social, architectural and political history spanning across the pre-colonial, colonial, apartheid and more recent history.
24. The Two Rivers Urban Park landscape has high cultural values of historical, social, aesthetic, architectural, scientific and environmental significances. It contributes to an understanding of past attitudes, beliefs, uses, events, persons, periods, techniques and design. It has associated links with past events, persons, uses, community memory, identity and oral history. It possesses a strong sense of place.
25. The Two Rivers Urban Park landscape is a complex composite of natural, cultivated and built landscape elements. It is a cultural landscape, transformed by thousands of years of settlement history. The landscape expresses both artistic and innovative qualities in terms of its natural setting, architecture and planting patterns. It also has narrative qualities, possessing a rich layering of physical evidence brought alive by the oral histories of the people who lived and worked in institutions, amongst other things, the Valkenberg Hospital and the South African Astronomical Observatory.
26. Different historical narratives create a story of pioneering and philanthropy, social reform and identity, self-sufficiency, farming and institutionalization.
27. The Two Rivers Urban Park possesses many distinctive and interrelated precincts which clearly demonstrates or are strongly associated with its various historical roles and uses as a place for indigenous hunter-gatherers, grazing grounds for herders, colonial farms, scientific research, reformatory and hospitals.
28. This decision was appealed to the MEC Tribunal, by a number of parties, namely the owners of the River Club, the DEA&DP, the DT&PW, as well as the City of Cape Town. However, as there was a procedural flaw in the HWC Council's decision to provisionally protect, (not provisionally proclaim) the River Club as a PHS, as stated in the current NIA), the Tribunal ordered on 29th January 2019, that this be rectified and must include consultation and negotiation with the appellants and I&AP's that HWC must invite the owners of the River Club to an oral hearing held by its Council within three months, that HWC must submit a report to the Tribunal within two

months of the pro-hearing, and that the parties will then be given thirty days in which to make final submissions and the Tribunal will then hold a final hearing and finalise the appeal.

29. Whilst this process has been completed, the MEC Tribunal has yet to meet and take a final decision in this regard. It is accepted that the s29 provisional protection remains in place.
30. However, as noted, and communicated to representatives of the DT&PW, applicant, DEA&DP and the City at the IACom meeting of December 2017. This does not preclude any party making a NEMA / NHRA s38(8) application in the interim. HWC is somewhat confused therefore by the contention on page 23 of the HIA that it was the interim ruling of the MEC Tribunal released on 5th February 2019, which enabled the integrated NEMA and NHRA process to continue. This was never the case.
31. What is noted is that a s29 provisional protection does not preclude an applicant from making an application, (indeed s29(10) of the NHRA makes provision for this).
32. It is finally noted that there has been no further submission of the TRUP Baseline Study, since the IACom meeting of 8th November 2017.
33. Representation was however made to the IACom, by the DT&PW at its meeting of 12th June 2019, (some two years after the initial Baseline Study was submitted), where the Committee was informed by the DT&PW that:
34. "The DT&PW had, during the process of the s29 protection of the River Club, become aware of a real need for public engagement. In this regard, DT&PW had resolved to undertake a further public participation process for the wider Two River Urban Park. This is primarily to address the role that the First Nations groups have in commenting on the wider process".
35. The above has been set out in order to provide a broad background to the current application, and particularly to inform that HWC have continually informed all parties, and demonstrated via the provisional protection that it is of the opinion that the site, and the wider TRUP area is of exceedingly high cultural significance, (of Provincial or even National significance), and that until the Basic Assessment Report, which addresses concerns already ventilated by HWC, and in particular meaningful consultation with representatives of the First Nation and Cape Indigene groups in order to better understand the significance of the site to these groups, has been incorporated into the study, any application for development of a property within the TRUP area is in danger of being compromised.
36. That the applicant has chosen to proceed with the application, without meaningful reference to any of the previous studies is regarded as unfortunate.
37. HWC remains of the opinion that the River Club is an integral part of a highly significant cultural landscape, that is at the very least of Provincial significance, but more realistically and given South Africa's history, is one of National significance. Indeed, the TRUP as a whole could be regarded as one of the single most historically significant sites in the Country.

Processes since August 2019:

38. In response to the interim comment dated 13 September 2019, the applicant and their consultants submitted supplementary material to HWC on 4 December 2019. IACom heard representations from parties present at the meeting on 26 January 2020.
39. On the basis of the foregoing, the committee formulated the following response:
40. In terms of the provisions of Section 38(8) of the National Heritage Resources Act, (NHRA), it is the responsibility of HWC to give consideration as to whether the evaluation of the impact of the development on heritage resources fulfils the requirements of the relevant heritage resources authority in terms of Section 38(3) of the NHRA.



41. It is the unanimous view of the IACOM, being the delegated authority to issue comment on behalf of HWC in terms of Section 38(3), that the HIA and supplementary reports as tabled do not comply with the provisions of Section 38(3).
42. For ease of reference, the comment which follows is structured under the subsections of Section 38(3).
- (a) The identification and mapping of all heritage resources in the area affected.
43. HWC remains of the view that this requirement has only been partially complied with.
44. It is noted that the HIA has been very well researched, and that the historical background is well articulated. This includes the history of planning and development as it relates to the 20th Century.
45. What is considered unfortunate however, is the disjunction between the initial acknowledgement of the historic significance of the site and wider environs and the actual identification and mapping of the heritage resources, specifically the intangible heritage significances.
46. The committee remains of the opinion that the identification and mapping of heritage resources is something that should be addressed in the first part of the report, and should form the basis of the report, rather than being relegated to a conclusion. The supplementary reports fail to adequately address this concern.
47. The mapping continues to base significance on ecological rather than cultural values, and reduces the acknowledged and far wider cultural landscape of the valley to just the river(s). Arguing that the "river itself is the only tangible visual element which survives as a resource which warrants protection", negates in its entirety the exceedingly high historic, and symbolic significance of the site identified in all previous studies, and submitted continuously throughout the process by the relevant I&APs.
48. The tangible aspects of the river, confined to their current extent, while certainly important, are not the only heritage resources which should be mapped and identified. They are an integral part of a much wider and highly significant system, as indeed is the River Club properly itself.
49. Notwithstanding that HWC has consistently advised against this, the HIA has still not placed the River Club site within the context of the wider CRUP, and has downplayed the open, low-lying, green, riverine character of the site which contributes to the intangible heritage experience. Representations of interested and affected parties underscored this by noting the intertwined roles of people and place in the historic landscape layers.
50. The notion that the 20th Century disturbance has resulted in a degraded site is, from a heritage point of view, rejected.
51. The HIA notes that:
"This wider site is the historically significant place, a 'frontier zone' (if for a short period); but its meaning and persuasiveness as heritage site has been eroded by the 19th century institutional use and development of the spur, by the growing transformation of the floodplain for sporting uses and facilities and for railway-related functions during the second half of the 20th century, by the gradual creep of the suburb and business quarter below the railway line throughout the 20th century, and by the late 20th century growth of the transportation network of arterials and motorways".
52. The supplement to the HIA does not depart from this standpoint.
53. HWC remains of the view that the HIA errs in this contention and the fact that the site has been considerably disturbed in the latter half of the 20th Century does not in any way take away the meaning of the site as a historic frontier or point of containment, conflict and contact, or its significance to the region.

54. As indicated in the interim comment dated 13 September 2015, the identification and mapping of heritage resources is incomplete and thus does not comply with Section 38(3)(a) of the NHRRA.
- (b) Assessment of the significance of such resources in terms of the heritage assessment criteria set out in section 4(2) or prescribed under section 7, (of the NHRRA).
55. HWC remains of the view that the assessment of significance is inadequate.
56. The committee remains of the opinion that the disconnect between the various stakeholders' understanding of what comprises the heritage resources of the area, and that of the HIA, is already problematic. It stands to reason therefore, that given the absence of a complete identification and mapping of the heritage resources pertaining to the wider valley, that the grading of these resources will also be flawed.
57. indeed, it is the opinion of the committee that the fundamental grading of significance is wrong and therefore, of that follows, including the conclusions of the HIA, is wrong.
58. Section 3(3) of the NHRRA sets out, amongst others, the following criteria, in determining whether or not a site:
- is considered to have cultural significance to the community,
 - could yield information about heritage;
 - is important in exhibiting particular aesthetic characteristics valued by a cultural group;
59. the HIA has not taken the above into account in the assessment of significance, and as noted, has merely reduced the identification of heritage resources, and subsequently significance to tangibly based ecological values rather than cultural heritage values.
60. The supplement to the HIA and the First Nations report has not fully impacted the significance of the site to a broad Community that has a recognized and direct, deep and sacred linkage to the site through lineage and collective memory. The findings of the supplementary reports assess the significance of the site as limited. The committee does not concur with that finding.
61. The concept of significance is broadly underpinned by authenticity. The values attributed to the site by the stakeholders have not been carried through into the report and have therefore not adequately informed the unique significance of the site and appropriate development indicators. This is a methodological problem that the HIA does not address.
62. The HIA undervalues the significance of the heritage resources generally.
63. It is not just the riverine corridor, (unrehabilitated or not), but the entire TRUP valley including the riparian corridor which is noted as highly significant and is expressed in both its tangible and intangible qualities. This has been recognized and assessed in previous reports considered by HWC, a significant number of other stakeholders, and indeed the IACom, and HWC itself in taking the step to provisionally protect the site in terms of s29 of the NHRRA.
64. The fact of recognition of the grounds of the River Club itself is also noted by the DT&PW in its comment on the HIA, and, as previously stated, the River Club building itself, an integral component of the grounds, and one which at the least is of contributory, (and historic), significance, is contrary to previous studies conducted, now deemed of no value.
65. In general, and in spite of HWC having previously advised that whilst individual land owners are entitled to proceed with an HIA for their own development, to ignore the existing studies and the bigger TRUP picture could be 'at their own peril'.
66. In this instance, the assessment of heritage resources continues to ignore both the existing studies, and the wider picture, and as such has attempted to grade significance in the isolation of a much wider system.
67. It would appear that the assessment of significance has been tailored to arrive at mitigation for the development rather than an assessment of significance that would assist in informing an appropriate development. It is as a result of this that the report contends that 'the heritage-

Handwritten signature and initials in the bottom right corner of the page.

helped criteria-for-decision-making/design indicators are relatively limited in guiding the architectural and urban character of the proposed development itself." In other words the authors contend that there are hardly any heritage indicators for development. The committee does not concur with this view.

68. It is considered short sighted to relegate the significance of the site, which is an integral part of a broader area which has a recognised and acknowledged high cultural significance, to a set of post-rationalised and confined areas of significance, primarily based on ecological rather than cultural values and to isolate the subject site from the broader cultural landscape.
69. As indicated in the interim comment dated 13 September 2019, the assessment of significance and grading in the HIA is flawed and thus does not comply with Section 38(3) (b) of the NHRA.

(c) Assessment of the impact of the development on such heritage resources.

70. As noted above, and given that the heritage resources themselves have not been fully identified or mapped, and that the assessment, or grading, of the heritage resources is flawed, then it follows that any assessment of the impact of the development must also be flawed.
71. Amongst other things, HWC notes that:
72. The report wholly downplays the irreversible impacts of transforming a green lung at the heart of the ERUP into a mega project. These irreversible impacts are hardly interrogated at all.
73. The HIA appears not to regard the built form of the proposed development as affecting the significant heritage resources present, neither does it recommend heritage related built form restrictions. Unlike the TRUP Baseline Study and the Phase 1 HIA for the River Club (both of which provide some well-considered, qualified indicators), this HIA practically gives the development carte blanche i.e. heights and massing.
74. The HIA does not motivate for, or critically interrogate the proposed heights, or their impacts on the heritage resources identified in the report itself.
75. The statement that the impact on the site's sense of place is "dependent of the personal aesthetic and values of the observer" is not supported.
76. Indeed, this demotes (or avoids) the 'observations' previously stated by HWC, those contained within the Allwell, Bauman, and O'Donoghue reports, as well as that of a considerable number of public and governmental stakeholders, which includes the SAO, DTPW, and the CoCT EMB. The considered comment and concerns raised by these bodies must surely be regarded as something more than "a difference of opinion"? These concerns remain.
77. Importantly, the HIA fails to assess the impact of the development on the most important heritage resource: the site's open, green qualities as a remnant of landscape that has considerable intangible historic and cultural heritage significance.
78. It is agreed that the current private rail corridor is not the ideal land use for such a significant site. However, instead of the recovery of both significance and sense of place, the proposal precludes this.
79. The statement that the sense of place has already been transformed iteratively over the past 60 years, does not make it acceptable to destroy what remains.
80. It is finally noted that the Visual Impact Assessment (VIA) is inadequate in its assessment of the cultural landscape and definition of the sense of place. The supplementary VIA merely provides better imagery of the same view points and the photomontages provided remain unhelpful as tools to assess impacts.
81. Furthermore, while the VIA and the supplementary report finds that "a loss of sense of place is expected" (p37) and "new built structures will be visually intrusive" it simply echoes the HIA, by concluding that the judgement of visual impacts depends on "receptor perceptions".



This is neither conclusive nor useful.

- B2. HWC notes that it is only a commenting body in respect of this application, and that consideration of the VIA is DSA&OP's concern as the consenting body, however it is noted that HWC requires an independent practitioner who HWC recognizes as having the requisite expertise for heritage related work to undertake the VIA. The VIA should establish a sense of place and landscape character and assess the development against these criteria.
- B3. As indicated in the interim comment dated 13 September 2019, the assessment of impact of the development on significance in the HIA and VIA is flawed and thus does not comply with Section 38(3) (c) of the NHRA.
- (d) **Evaluation of the impact of the development on heritage resources relative to the sustainable social and economic benefits to be derived from the development.**
- B4. Whilst it is acknowledged that there may well be a potential economic benefit to developing the site, it is noted that there has been an attempt to develop an argument or acknowledge the impact of the development balanced against a site which has been recognized previously by HWC as being of Provincial (if not national) significance.
- B5. It is further noted that other than an acknowledgement of process followed thus far, the HIA and supplementary reports have not acknowledged or interrogated the significance that HWC and previous reports have attributed to the wider valley context.
- B6. As a result, and in attempting to define or limit significance to the riverine corridor only, meaningful discussion of the impact of the development on the significance of the wider TRUP cultural landscape is avoided altogether, this is in direct conflict with the advice HWC has previously given that the River Club cannot be looked at in isolation of the wider system.
- B7. Noting that the proposed development is in line with the City of Cape Town's new Metropolitan Spatial Development Framework (MSDF), is not an evaluation of the impact of the development on heritage resources. It is noted that the revised MSDF designates the River Club and TRUP area as part of the 'Urban Inner Core', and that urban development within these areas is unconstrained in principle. A high-level spatial planning tool which supports development in principle, does not override heritage considerations, or indeed mean that a mega project is appropriate on this particular site, in comparison with an upgrade to the Vaartrekker Road Corridor for example.
- B8. Notwithstanding the above, it is also noted that the Table Bay Spatial District Plan (SDP) and Environmental Management Framework (EMF) 2012 is still the most relevant planning and policy framework applicable to the site, and that from a heritage point of view, the following amongst other things, must be taken into account:
- Preserve the qualities of the various areas of the City, which exhibit a range of diverse character zones;
 - Protect the historical built fabric, scale and texture of the historical areas of the City;
 - Maintain the interface between the City and Table Mountain, retaining view corridors and scenic vistas and avoiding monolithic structures that block views;
 - Ensure that proposed development is in keeping with and appropriate to the historical nature of the City;
 - Ensure the retention and protection of historical areas, sites and features both above and underground;
 - Ensure that construction activities within the district and specifically within heritage and conservation areas do not negatively impact on the historical character of the area or fabric;
- B9. It is the view of HWC that the HIA has ignored this. The adopted spatial planning policies should take preference over proposed policies which have not as yet been adopted, or are still within the consultation phase.
- B10. The viability argument is regarded by HWC as unconvincing and inadequate. That there appears to be a cross subsidy of the development to help fund the City's proposed Berkeley Road extension should in no way be used as mitigation to argue for sustainable and economic



benefits, the heritage significance of the site should be the primary informant of any development, and not linked to civic sensitisation opportunities.

91. The IIA argues that "a lesser development would not generate adequate funds for the great public good that we argue for, the restoration of the Ciespeck riverine corridor".
92. The report repeatedly extols the benefits of the "restoration" of the Liesbeeck riverine corridor (a notion considered by some as inauthentic and contrived), but it is clear that it is also the substantial earthworks required to artificially raise the site some 2 to 3 metres out of the 302-year floodplain and the Beakley Road extension that contribute to the high capital costs that underpin the motivation for the high bulk development scenario.
93. HWC queries whether the proposed earthworks and infrastructure indeed constituted a greater public good.
94. In fact, it is problematic that the character of the site is changed from a "low-lying green riverine character as part of a larger, if fragmented, natural system", as noted in the O'Donoghue report.
95. As indicated in the interim comment dated 13 September 2019, the assessment of socio-economic benefits of the development does not take adequate cognisance of the significance of the site, and therefore the IIA does not comply with Section 38(3) (d) of the NHRA.
- (e) **Results of consultation with communities affected by the proposed development and other interested parties regarding the impact of the development on heritage resources.**
96. It is noted that the applicants have conducted an engagement with First Nations groupings which culminated in the First Nations report submitted to HWC on 4 December 2019.
97. There are a number of issues with this report, namely:
- (a) The scope of engagement resulted in a number of groups electing to not participate fully
 - (b) The research process was controlled by participants in the engagements.
 - (c) The impartiality of the research questions is not clear to the committee
 - (d) The methodology for the engagement does not appear to follow accepted oral history interviewing protocols (for example, no ethical clearance forms were supplied)
 - (e) The confusion between this report and the DT&PW-commissioned report brings the ethics around the engagement into question.
98. The issue of confusion with regard to TRUP and First Nation reports was raised by DT&PW at the meeting of 28 January 2020 and in a follow up letter to HWC. DT&PW are concerned at the conflation of what should be two separate reports and processes. The following (quoted from the interim comment dated 13 September 2019), indicates this committee's knowledge of DT&PW's intended engagements prior to the requirement for a First Nations report.
- It is noted that the DT&PW has now identified the lack of meaningful engagement with the First Nation Groups as being problematic in the wider TRUP Baseline Study, and has resolved to correct this, by entering into a new stakeholder process. It is a strong recommendation that in order to correct the inherent flaws in the report in this regard, that the River Club does the same or awaits the outcomes of that stakeholder process.*
99. As previously noted, the DT&PW itself has entered into a stakeholder engagement with First Nation Communities, as it has recognized that the Baseline Study first tabled at the IACom on 12th April 2017 was deficient in this regard, and it now seeks to rectify this. HWC queries as to what would be the point of this exercise, if the development of the most critical undeveloped land parcel is proceeding ahead of this process?
100. The engagement of interested and affected parties, while undertaken in response to the interim comment dated 13 September 2017, still does not comply with Section 38(3) (e) of the NHRA.



(f) If heritage resources will be adversely affected by the proposed development, the consideration of alternatives.

103. The HIA fails in this regard, as there is no meaningful consideration of alternatives whatsoever.
102. The HIA only assesses the preferred 'Riverine Corridor Alternative' and 'Island Concept Alternative' (both 150 000m² of built) and simply dismisses the lower built alternatives such as the 'Mixed-Use Affordable Alternative' (110 000m²) and the 'Reduced Floor Space Alternative' (102 000m²), as these have been considered economically unviable by the town planners.
103. A 'third rightly', green-dominated, recreational or educational alternative, without substantial filling in of the floodplain is not even considered and nor indeed is the no-go option or the adaptive re-use of the site and buildings.
104. A discussion of alternatives should include a meaningful discussion of the no development option. Although the No Go Option is tabled in the HIA as well as the Planning Partners Report, in *The River Club: Overview of Development Alternatives* dated June 2019 there is no consideration whatsoever, which would weigh this against the potential benefit, or otherwise, of this option to identified heritage resources.
105. The above comments in the interim comment are still applicable, despite the supplementary reports. It is unfortunate that the engagement with First Nations groupings did not materially change the design approach in a manner which is reflective of the intangible heritage significances identified.
106. Therefore, the committee is of the opinion that the reports demonstrate insufficient exploration and interrogation of a range of alternatives; thus the report still does not comply with Section 38(3) (f) of the NHRA.

(g) Plans for mitigation of any adverse effects during and after the completion of the proposed development.

107. The reports submitted do not adequately address mitigation of the impacts of this development, the report fails to identify heritage resources adequately, which results in an inability to adequately assess the potential impact on heritage resources. As a result, it is not possible to assess mitigation measures.
108. Therefore, the committee is of the opinion that the reports demonstrate insufficient exploration and interrogation of a range of impacts and possible mitigation measures, thus the report still does not comply with Section 38(3) (g) of the NHRA.

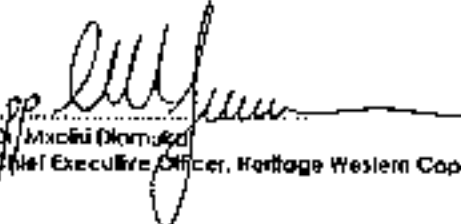
In conclusion:

109. SWC regards the wider TRUP, of which the River Club site is an integral component, as a highly significant cultural landscape in the City with a significant interplay between natural and man-made landscapes. It is the interplay that defines cultural landscapes. SWC is of the opinion that this area is of at least provincial significance, if not of national significance.
110. It is a site which is recognized as a sacred place. The open, largely undeveloped floodplain is a tangible reminder of intangible heritage.
111. It is recognized through historic record, as well as Cultural Memory, as being a place of conflict for over 150 years. It is recognized as the place where, in 1657, Colonial Settlement of South Africa truly took root with the establishment of the first settler farms along the Usabset Valley, and the place where the Cape Indigene were first truly dispossessed of, and excluded from, access to their ancestral land.



112. It is a place where almost all of the stages of South Africa's developmental history and policies are either embedded deep within the cultural landscape, or is viewed from it. It is a place where Calshwayo and Lungabala were exiled to. It is a place which speaks to who we are now, and from where we have come, not just as a City, or a Province but as a Nation.
113. The HIA has unfortunately reduced the significance to a set of ecological values provided for the most part to post-rationalize a wholly intrusive development model rather than inform appropriate development.
114. The Committee also noted that a 'memorial' / 'museum' and recreated river courses are inadequate in commemorating the significance of the site and appear to be designed to create meaning rather than attempt to enhance identified heritage significances. It is the opinion of the committee that the site is of sufficient significance within itself and does not need to be imbued with meaning. The bulk and mids of the development proposal does not respond to the site as a living heritage.
115. The discussion above illustrates that the HIA still does not comply with the provisions of Section 30(3) of the NHR Act, and it is noted that until the issues as identified above are addressed, the committee is not in a position to endorse the reports or the development proposal.
116. The committee reiterates the need for DEADP as the consenting authority to engage with HWC as the consenting Heritage authority on this matter before DEADP takes a decision on the Final BAR.

Should you have any further queries, please contact the official above and quote the case number


 Mxolisi Dlamini
 Chief Executive Officer, Heritage Western Cape



#LL204



13 September 2020

HERITAGE WESTERN CAPE

RE: APPEAL AGAINST ENVIRONMENTAL AUTHORISATION IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO 107 OF 1998 AND THE ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS, 2014 (AS AMENDED): PROPOSED REDEVELOPMENT OF THE RIVER CLUB FOR MIXED USE DEVELOPMENT AND ASSOCIATED INFRASTRUCTURE ON THE REMAINDER OF ERF 15326 AND ERVEN 26169 – 26175, 26426-26427, 108936 AND 151832 OBSERVATORY

Appeal is made against the granting of the Environmental Authorisation on 20 August 2020 in respect of the above authorisation

GROUND(S) FOR APPEAL:

1. FAILURE TO COMPLY WITH THE PROVISIONS OF THE NATIONAL HERITAGE RESOURCES ACT, ACT 25 OF 1999, (THE NHRA)

1.1 Section 36(2) of the National Heritage Resources Act, Act 25 of 1999, (the NHRA) provides that:

*The provisions of this section do not apply to a development as described in subsection (1) if an evaluation of the impact of such development on heritage resources is required in terms of the Environment Conservation Act, 1989 (Act No. 73 of 1989), or the integrated environmental management guidelines issued by the Department of Environment Affairs and Tourism, or the Minerals Act, 1991 (Act No. 50 of 1991), or any other legislation: **Provided that the consenting authority must ensure that the evaluation fulfils the requirements of the relevant heritage resources authority in terms of subsection (3), and any comments and recommendations of the relevant heritage resources authority with regard to such development have been taken into account prior to the granting of the consent***

1.2. It is common cause that Heritage Western Cape (HWC) is the relevant heritage resources authority. The Impact Assessment committee of HWC considered the draft Heritage Impact Assessment in 28 January 2020 and responded with an Interim Comment, as the HIA was not considered to comply with 538(3) of the NHRA.

1.3. The reasons that the HIA did not fulfil the requirements of HWC were fully set out in the final comment of HWC dated 13 February 2020

www.heritagewesterncape.org.za/en

Street Address: Tel: Fax: Email: Website: Postal Address: Post Office: Post Office Box: Postal Code: Country:	Telephone: Fax: Email: Website: Postal Address: Post Office: Post Office Box: Postal Code: Country:
--	---



- 1.4. It is contended that it is clearly unlawful for the Department of Environmental Affairs and Development Planning to issue the Environment Authorisation as it has not complied with section 38(B) of the NHRA. HWC, which is the relevant heritage resources authority, has stated that the EIA which was considered did not fulfil its requirements, and requested that further information be supplied in order for it to make final comments.
 - 1.5. The Supplementary Report to the HIA which purported to respond to HWC's comments dated 13 September 2019 merely re-stated the initial findings of the HIA.
 - 1.6. Likewise the response to the final comment which was prepared in response to HWC'S final comment dated 13 February 2020 was a further re-statement of the views of the applicant, with no true evaluation of HWC'S concerns. As such HWC could not see the purpose in having further meetings with the applicant and the applicant's representatives whose views on the matter appeared to be intractable.
 - 1.7. The blanket acceptance of the responses by the consenting authority are accordingly unlawful as it is clear that 53B(8) requires the endorsement of the HIA as complying with its requirements to be made by HWC and no other party.
2. EMPHASIS MISPLACED ON RECENT HISTORY AND TANGIBLE REMAINS
- 2.1. On page 22 of the reasons for the decisions supplied by the consenting authority, the statement is made that the "site has its origins in the 1920s" which is evidence of the erroneous emphasis placed by the EIA and the consenting authority on recent history and tangible remnants to which value may be attributed.
 - 2.2. The consenting authority is ignoring the large body of information which was put before it as to the intangible significance of the site as being at the confluence of the three rivers. This confluence is of great significance to a wider representation of the first nations than just the First Nations Collective, on whose inputs the applicants most heavily rely.
 - 2.3. While the insistence that there must be tangible traces of historical events does recognise the value that communities have attributed to the site as part of their history, it sets an impossible requirement that is inconsistent with international heritage practice. It is not necessary for intangible heritage resources to be expressed in tangible traces in order for them to be considered to be of heritage significance.

www.environment.gov.za/ENR

Street Address	Postal Address
City	Country
Suburb	Province
Zip Code	Telephone
Mobile Number	Other Contact



- 2.4. The consenting authority then again considers the South African Astronomical Observatory which is a National Heritage Site. (The consenting authority refers to "Grade I status", but the site has been declared a National Heritage Site). This is further evidence of considering issues which are not relevant to the impact of the development on the full scope of heritage significances both on the site and in the receiving environment. The setback is a minimal issue in a development which has a high and unacceptable impact on a range of heritage significances

For the above reasons, the Environmental Authorisation is ultra vires and should accordingly be set aside.

Penelope Meyer
 Deputy Director: Heritage Western Cape Legal Support
 HERITAGE WESTERN CAPE

www.westerncape.gov.za



"LL18"

The Redevelopment of the River Club, Observatory, Cape Town

Final Basic Assessment Report

Report Prepared for

Liesbeek Leisure Properties Trust

Report Number 478320/05

DEA&DP Reference Number: 16/3/3/1/A7/17/3001/20

DWS Reference Number: 16/27/G22/A/11

HWC Case Number: 15112504WD1217E



Report Prepared by



April 2020

h *83*

The Redevelopment of the River Club, Observatory, Cape Town

Final Basic Assessment Report

Liesbeek Leisure Properties Trust

DEA&DP Reference Number: 16/3/3/1/A7/17/3001/20

DWS Reference Number: 16/2/7/G22/A/11

HWC Case Number: 15112504WD1217E

SRK Consulting (South Africa) (Pty) Ltd.
The Administrative Building
Albion Spring
183 Main Rd
Rondebosch 7700
Cape Town
South Africa

Tel: +27 (0) 21 659 3060

Fax: +27 (0) 21 685 7105

e-mail: mlaw@srk.co.za

website: www.srk.co.za

SRK Project Number 478320/04

April 2020

Compiled by:

Matthew Law
Principal Environmental Consultant

Email: mlaw@srk.com

Author:

Matthew Law

Peer Reviewed by:

Chris Dalgliesh
SRK Partner



Handwritten signature and initials in black ink, located in the bottom right area of the page.



**BASIC ASSESSMENT REPORT
IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107
OF 1998) AND ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS, 2014 (AS
AMENDED)**

October 2017

PROJECT TITLE

The Redevelopment of the River Club

April 2020

Changes made to the Draft BA Report are underlined and italicised for ease of reference.

REPORT TYPE CATEGORY	REPORT REFERENCE NUMBER	DATE OF REPORT
Notice of Intent	16/3/3/6/7/2/A7/17/3104/16	19/04/2016
Draft Scoping Report	16/3/3/6/7/2/A7/17/3104/16	02/08/2016
Revised Draft Scoping Report	16/3/3/6/7/2/A7/17/3104/16	09/01/2017
Pre-Application Basic Assessment Report (BAR) ¹	16/3/3/6/7/2/A7/17/3104/16	11 July 2019
Draft BAR ²	16/3/3/1/A7/17/3001/20	13 January 2019
Final BAR ² or, if applicable BAR ³	16/3/3/1/A7/17/3001/20	6 April 2020

Notes:

- In terms of Regulation 40(3) potential or registered interested and affected parties, including the Competent Authority, may be provided with an opportunity to comment on the Basic Assessment Report prior to submission of the application, but must again be provided an opportunity to comment on such reports once an application has been submitted to the Competent Authority. The Basic Assessment Report released for comment prior to submission of the application is referred to as the "Pre-Application Basic Assessment Report". The Basic Assessment Report made available for comment after submission of the application is referred to as the "Draft Basic Assessment Report". The Basic Assessment Report together with all the comments received on the report which is submitted to the Competent Authority for decision-making is referred to as the "Final Basic Assessment Report".
- In terms of Regulation 19(1)(b) if significant changes have been made or significant new information has been added to the Draft Basic Assessment Report, which changes or information was not contained in the Draft Basic Assessment Report consulted on during the initial public participation process, then a Final Basic Assessment Report will not be submitted, but rather a "Revised Basic Assessment Report", which must be subjected to another public participation process of at least 30 days, must be submitted to the Competent Authority together with all the comments received.

DEPARTMENTAL REFERENCE NUMBER(S)

Pre-application reference number	Draft Scoping Report: 16/3/3/6/7/2/A7/17/3 CA/16 Revised Draft Scoping Report: 16/3/3/6/7/2/A7/17/3004/17 Pre application Basic Assessment Report: 16/3/3/6/7/2/A7/17/3217/19
File reference number (EIA):	16/3/3/1/A2/17/3001/20
NEAS reference number (EIA):	N/A
File reference number (Waste):	N/A
NEAS reference number (Waste):	N/A
File reference number (Air Quality):	N/A
NEAS reference number (Air Quality):	N/A
File reference number (Water):	16/2/1/G22/A/1 and WJ9026 River Club
NEAS reference number (Other):	None provided

52

CONTENT AND GENERAL REQUIREMENTS

Note that:

- The content of the Department's Circular EADP 0026/2014 (dated 9 December 2014) on the "One Environmental Management System" and the Environmental Impact Assessment ("EIA") Regulations, 2014 (as amended), and subsequent Circulars, and guidelines must be taken into account when completing this Basic Assessment Report Form.
- This Basic Assessment Report is the standard report format which, in terms of Regulation 4(3) of the EIA Regulations, 2014 (as amended) must be used in all instances when preparing a Basic Assessment Report for Basic Assessment applications for an environmental authorisation in terms of the National Environmental Management Act, 1998 (Act No. 107 of 1998) ["NEMA"] and the EIA Regulations, 2014 (as amended) and/or a waste management licence in terms of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008) ["NEM:WA"], and/or an atmospheric emission licence in terms of the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004) ["NEM:AQA"] when the Western Cape Government: Environmental Affairs and Development Planning ("EAD&DP") is the Competent Authority/licensing Authority.
- This report form is current as of October 2017. It is the responsibility of the Applicant/ Environmental Assessment Practitioner ("EAP") to ascertain whether subsequent versions of the report form have been released by the Department. Visit the Department's website at <http://www.westerncape.gov.za/eodp> to check for the latest version of this checklist.
- The required information must be typed within the spaces provided in the form. The size of the spaces provided is not necessarily indicative of the amount of information to be provided. The tables may be expanded where necessary.
- The use of "not applicable" in the report must be done with circumspection. All applicable sections of this report form must be completed. Where "not applicable" is used, this may result in the refusal of the application.
- While the different sections of the report form only provide space for provision of information related to one alternative, if more than one feasible and reasonable alternative is considered, the relevant section must be copied and completed for each alternative.
- Unless protected by law, all information contained in, and attached to this report, will become public information on receipt by the competent authority. If information is not submitted with this report due to such information being protected by law, the applicant and/or EAP must declare such non-disclosure and provide the reasons for believing that the information is protected.
- Unless otherwise indicated by the Department, one hard copy and one electronic copy of this report must be submitted to the Department at the postal address given below or by delivery thereof to the Registry Office of the Department. Reasonable access to copies of this report must be provided to the relevant Organs of State for consultation on purposes which may, if so indicated by the Department, include providing a printed copy to a specific Organ of State.
- This Report must be submitted to the Department and the contact details for doing so are provided below.
- Where the Department is also identified as the Licensing Authority to decide applications under NEM:WA or NEM:AQA, the submission of the Report must also be made as follows, for:
 - Waste management licence applications, this report must also (i.e. another hard copy and electronic copy) be submitted for the attention of the Department's Waste Management Directorate (tel: 021-483-2756 and fax: 021-483-4425) at the same postal address as the Cape Town Office.
 - Atmospheric emissions licence applications, this report must also be (i.e. another hard copy and electronic copy) submitted for the attention of the Licensing Authority or this Department's Air Quality Management Directorate (tel: 021-483-2798 and fax: 021-483-3254) at the same postal address as the Cape Town Office.

DEPARTMENTAL DETAILS

CAPE TOWN OFFICE		REGIONAL OFFICES
REGION 1 (City of Cape Town & West Coast District)	REGION 2 (Garden of Eden District, West Coast District, Namaqualand District)	REGION 3 (Garden of Eden District, West Coast District, Namaqualand District)
Department of Environmental Affairs and Development Planning Attention: Directorate: Development Management (Region 1) Private Bag X 9086 Cape Town, 8000	Department of Environmental Affairs and Development Planning Attention: Directorate: Development Management (Region 2) Private Bag X 1000 Cape Town, 8000	Department of Environmental Affairs and Development Planning Attention: Directorate: Development Management (Region 3) Private Bag X 1000 Cape Town, 8000
Registry Office 1 st Floor Philips Building 1 Dorp Street, Cape Town	Registry Office 1 st Floor Philips Building 1 Dorp Street, Cape Town	Registry Office 1 st Floor Philips Building 1 Dorp Street, Cape Town
Queries should be directed to the Directorate: Development Management (Region 1) at: Tel.: (021) 483-5829 Fax: (021) 483-4372	Queries should be directed to the Directorate: Development Management (Region 2) at: Tel.: (021) 483-5829 Fax: (021) 483-4372	Queries should be directed to the Directorate: Development Management (Region 3) at: Tel.: (021) 483-5829 Fax: (021) 483-4372

TABLE OF CONTENTS:

Section	Page(s)
Section A: Project Information	6
Section B: Description of the Receiving Environment	82
Section C: Public Participation	135
Section D: Need and Desirability	140
Section E: Details of all the Alternatives considered	152
Section F: Environmental Aspects Associated with the Alternatives	166
Section G: Impact Assessment, Impact Avoidance, Management, Mitigation and Monitoring Measures	174
Section H: Recommendations of the EAP	182
Section I: Appendices	192
Section J: Declarations	194

ACRONYMS USED IN THIS BASIC ASSESSMENT REPORT AND APPENDICES:

ADWF	Average Dry Weather Flow
BAR	Basic Assessment Report
CBA	Critical Biodiversity Area
CBD	Central Business District
CFR	Coastal Fiscal Region
CoCT	City of Cape Town
DEA	National Department of Environmental Affairs
DEASDP	Western Cape Government: Environmental Affairs and Development Planning
DPZs	Development Priority Zones
DMS	Development Management Scheme
DWS	National Department of Water and Sanitation
ECO	Environmental Control Officer
EGS	Economic Growth Strategy (2013)
EIA	Environmental Impact Assessment
EMF	Environmental Management Framework
EMPr	Environmental Management Programme
EN	Endangered
ESA	Ecological Support Area
FIA	Faunal Importance Assessment
GLA	Grass Leaseable Area
HWC	Heritage Western Cape
I&APs	Interested and Affected Parties
IACOM	Impact Assessment Committee
IDP	Integrated Development Plan
LC	Least Concern
LEPT	Lesbeek Leisure Properties Trust
LUPA	Land Use Planning Act
LUPO	Land Use Planning Ordinance
Mamsl	Metres above mean sea level
MPBL	Municipal Planning Bylaw (2015)
NEMA	National Environmental Management Act 107 of 1998
NEMA:QA	National Environmental Management, Air Quality Act 39 of 2004
NEMBA	National Environmental Management Biodiversity Act 10 of 2004
NEMA:ICMA	National Environmental Management, Integrated Coastal Management Act 24 of 2008
NEMA:WA	National Environmental Management, Waste Act No. 59 of 2008
NI-RA	National Heritage Resources Act 25 of 1999
NID	Notice of Intent to Develop
NMT	Non-motorised Transport
NT	Near Threatened
NWA	National Water Act 36 of 1998
NRF	National Research Foundation
PDWF	Peak Dry Weather Flow
PES	Present Ecological State
PRASA	Passenger Rail Agency of South Africa
PSDF	Provincial Spatial Development Framework
PWWF	Peak Wet Weather Flow
PPP	Public Participation Process
S&ER	Scoping and Environmental Impact Reporting
SAAO	South Africa's Astronomical Observatory
SDF	Spatial Development Framework
SDP	Spatial Development Plan
SoW	Scope of Work

TBDP	Table Bay District Plan (2012)
TCT	Transport for Cape Town
TDA	Transport and Urban Development Authority
TOD	Transport Oriented Development
TMNP	Table Mountain National Park
TRJP	Two Rivers Urban Park
TRJPC	Two Rivers Urban Park Contextual Framework and Phase 1 Environmental Management Plan
VJ	Vulnerable
WLT	Western Leopard Toad
WUL	Water Use Licence
WULA	Water Use Licence Application
WWTW	Waste Water Treatment Works

DETAILS OF THE APPLICANT

Applicant / Organisation / Organ of State:	Liesbosk Leisure Properties Trust (LLPT)		
Contact person:	Jody Auflichig		
Postal address:	P.O. Box 786739, Sandton		
Telephone:	(021) 486 5999	Postal Code:	2164
Cellular:	083 356 8084	Fax:	021 421 0219
Email:	jody@omagestrust.co.za		

DETAILS OF THE ENVIRONMENTAL ASSESSMENT PRACTITIONER ("EAP")

Name of the EAP organisation:	SRK Consulting (South Africa) (Pty) Ltd		
Person who compiled this Report:	Matthew Law		
EAP Reg. No.:	CEAPSA (Certified Environmental Assessment Practitioner of South Africa)		
Contact Person (if not author):	Matthew Law		
Postal address:	P Bag X18 Rondebosch		
Telephone:	(021) 6593088	Postal Code:	7701
Cellular:	082 471 7544	Fax:	021 485 7 05
Email:	mlaw@srk.co.za		
EAP Qualifications:	MCom. Resource Economics, 2007 BSc (Hons), Economics, 2005 BSc, Environmental Science and Economics, 2004		

Please provide details of the lead EAP, including details on the expertise of the lead EAP responsible for the Basic Assessment process. Also attach his/her Curriculum Vitae to this BAR.

<p>Matthew Law is a principal consultant with more than 18 years' experience in the environmental field. He has significant experience in Environmental Impact Assessment (throughout Southern Africa), the drafting of Environmental Management Plans and as an Environmental Control Officer. Matthew has detailed knowledge of and practical experience with legislation governing applications relating to environmental authorisations, mining right applications and waste management and water use licensing. Matthew is also a qualified and experienced environmental economist.</p>

EXECUTIVE SUMMARY OF THE BASIC ASSESSMENT REPORT:

Please see Appendix K7.

SECTION C: PUBLIC PARTICIPATION

The PPF must fulfil the requirements outlined in the NEMA, the EA Regulations, 2014 (as amended) and if applicable, the NEM: WA and/or the NEM: AGA. This Department's Circular EADP 3028/2014 (dated 9 December 2014) on the "Ons Environmental Management System" and the EA Regulations, any subsequent Circulars, and guidelines must also be taken into account.

1. Please highlight the appropriate box to indicate whether the specific requirement was undertaken or whether there was an exemption applied for.

In terms of Regulation 41 of the EA Regulations, 2014 (as amended)			
(a) fixing a notice board of a place conspicuous to and accessible by the public at the boundary, on the fence or along the corridor of -			
(i) the site where the activity to which the application relates, is or is to be undertaken; and	YES	EXEMPTION	
(ii) any alternative site	YES	EXEMPTION	N/A
(b) giving written notice, in any manner provided for in Section 47D of the NEMA, to -			
(i) the occupiers of the site and, if the applicant is not the owner or person in control of the site on which the activity is to be undertaken, the owner or person in control of the site where the activity is or is to be undertaken or to any alternative site where the activity is to be undertaken;	YES	EXEMPTION	N/A
(ii) owners, persons in control of, and occupiers of land adjacent to the site where the activity is or is to be undertaken or to any alternative site where the activity is to be undertaken;	YES	EXEMPTION	
(iii) the municipal councilor of the ward in which the site or alternative site is situated and any organisation of ratepayers that represent the community in the area;	YES	EXEMPTION	
(iv) the municipality (Local and District Municipality) which has jurisdiction in the area;	YES	EXEMPTION	
(v) any organ of state having jurisdiction in respect of any aspect of the activity; and	YES	EXEMPTION	
(vi) any other party as required by the Department;	YES	EXEMPTION	N/A
(c) placing an advertisement in -			
(i) one local newspaper; or	YES	EXEMPTION	
(ii) any official Gazette that is published specifically for the purpose of providing public notice of applications or other submissions made in terms of these Regulations;	YES	EXEMPTION	N/A
(d) placing an advertisement in at least one provincial newspaper or national newspaper, if the activity has or may have an impact that extends beyond the boundaries of the metropolitan or district municipality in which it is or will be undertaken	YES	EXEMPTION	N/A
(e) using reasonable alternative methods, as agreed to by the Department, in those instances where a person is desirous of but unable to participate in the process due to -	YES	EXEMPTION	N/A
(i) illiteracy;			
(ii) disability; or			
(iii) any other disadvantage.			
If you have indicated that "EXEMPTION" is applicable to any of the above, proof of the exemption decision must be appended to this report.			
Please note that for the NEM: WA and NEM: AGA, a notice must be placed in at least two newspapers circulating in the area where the activity applied for is proposed.			
If applicable, has/will an advertisement be placed in at least two newspapers?	YES	NO	
If "NO", then proof of the exemption decision must be appended to this report.			

2. Provide a list of all the State Departments and Organs of State that were consulted:

State Department / Organ of State	Date request was sent	Date comment received	Support / not in support
Cooperation	By 15 July 2019	23 September	
CoCT departments:	By 15 July 2019	16 September	
City Parks	By 15 July 2019		
Catchment, Stormwater and River Management	By 15 July 2019		
Disaster Risk Management	By 15 July 2019		
Electricity	By 15 July 2019		
Environmental Resource Management	By 15 July 2019		
Heritage Management	By 15 July 2019		
Planning and Building	By 15 July 2019		
Development Management	By 15 July 2019		
Refuse	By 15 July 2019		
Spatial Planning and Urban Design	By 15 July 2019		

[Handwritten signature]
52

Sport and Recreation	By 15 July 2019		
Tourism	By 15 July 2019		
Transport	By 15 July 2019		
Water and Sanitation	By 15 July 2019		
DEA&DF	By 15 July 2019	16 September 2019	
DWS	By 15 July 2019	15 August 2019	
HWC	By 15 July 2019	13 September 2019	

State Department / Organ of State	Date request was sent	Date comment received	Support / not in support
CapeNature	By 15 July 2019	13 February 2020	Support of specialist findings
CoCI departments	By 15 July 2019	14 February 2020	
City Parks	By 15 July 2019		N/A
Catchment, Stormwater and River Management	By 15 July 2019		Accept modelling, not in support based on policy
Disaster Risk Management	By 15 July 2019		N/A
Electricity	By 15 July 2019		Accept
Environmental Resource Management	By 15 July 2019		Not in support other than rehabilitation of the canal
Heritage Management	By 15 July 2019		Not in support
Planning and Building Development Management	By 15 July 2019		N/A
Rebuse	By 15 July 2019		Accept
Spatial Planning and Urban Design	By 15 July 2019		Accept development - design needs to be considered
Sport and Recreation	By 15 July 2019		N/A
Tourism	By 15 July 2019		N/A
Transport	By 15 July 2019		Transport
Water and Sanitation	By 15 July 2019		Accept
DEA&DF	By 15 July 2019	17 February 2020	N/A
DWS	By 15 July 2019	None	N/A
HWC	By 15 July 2019	13 February 2020	Not in support

3. Provide a summary of the issues raised by I&APs and an indication of the manner in which the issues were incorporated, or the reasons for not including them.

(The detailed outcomes of this process, including copies of the supporting documents and inputs must be included in a Comments and Response Report to be attached to the BAR (see note below) as **Appendix F**.)

Previous pre-application stakeholder engagement was undertaken for the project on Draft Scoping, and Revised Draft Scoping Reports for the project in furtherance of a Scoping and Environmental Impact Reporting (S&EIR) Process as was required at the initiation of the pre-application phase.

However, the EIA Regulations, 2014 were amended by GN R324 - GN 4327 on 7 April 2017. As part of these changes, Activity 27 of Listing Notice 2 (the only "listing Notice 2" activity previously applicable to the project) was amended to exclude its applicability in urban areas. The project, as currently contemplated, therefore only triggers Activities listed in Listing Notice 1 and Listing Notice 3, requiring a BA Process.

The activities undertaken during the Pre-application Phase of the assessment and subsequently are outlined below:

Task	Objective	Timeline
Notified identified stakeholders, including authorities, neighbouring property owners and residents	To notify IAPs of the commencement of the EIA process and to provide a description of the proposed project and the affected environment, as well as a description of potential environmental issues, and the proposed approach to the Impact Assessment Phase.	By 4 August 2016
Conducted an extended letter drop was conducted in the broader community inviting stakeholders to register on the project database		3 August 2016
Placed posters with details of the project and EIA process and EAP contact details at the site boundary fence, at the club house at the River Club, the Peninsula Diving Range, Mowbray Library and the Sharks Ayras Nursery		4 August 2016
Advertised commencement of EIA process and released Draft Scoping Report for public and authority comment period (including registered heritage conservation bodies)		4 August 2016
Public comment period	To provide stakeholders with the opportunity to review and comment on the results of the Scoping Phase.	5 August 2016 – 5 September 2016
Compiled Comments and Responses Summary and revised Draft Scoping Report	To record all issues and concerns raised and collate these comments in the revised report	5 September – 11 November 2016
Released revised Draft Scoping Report and Issues and Responses Summary	To provide IAPs an opportunity to review the revised Draft Scoping Report and Issues and Responses Summary and to provide further comment.	11 January 2017 – 10 February 2017
Held Public Open Day	To present the findings of the revised Draft Scoping Report to stakeholders and provide an opportunity for questions and discussion.	25 January 2017
Presented Specialist baseline findings	To present specialist baseline findings for the site and for the proponent to demonstrate how any constraints have been addressed in the progression of the development proposal.	1 February 2017
Placed additional adverts	To advertise the EIA process, and comment opportunities on versions of the Heritage Impact Assessment for the project	25 January 2018 and 22 March 2019
Placed poster with details of the project and EIA process and EAP contact details at the site boundary fence	To notify IAPs of the date and venue of the Public Open Day, and of the availability of the Pre-Application BAR for public review and comment.	11 July 2019
Advertise the EIA process and comment opportunity on the pre-application BAR		11 July 2019
Released BA Report to the public	To provide IAPs an opportunity to review the Pre-application BAR to provide further comment.	By 15 July 2019
Public Meeting	To present the findings of the Pre-Application BAR to stakeholders and provide an opportunity for questions and discussion.	15 August 2019
Public comment period	To provide stakeholders with the opportunity to review and comment on the results of Basic Assessment	15 July 2019 – 16 September 2019
Compile Issues and Responses Summary and revise BAR	To record all issues and concerns raised and collate these comments in the revised report.	16 September 2019 – 20 December 2019
Released revised BA Report to the public	To provide IAPs an opportunity to review the revised BAR to provide further comment.	By 13 January 2020
Public comment period	To provide stakeholders with the opportunity to review and comment on revisions to the BAR.	13 January 2020 – 14 February 2020
Updated Issues and Responses Summary	To record all issues and concerns raised and collate these comments in the revised report.	14 February 2020 – 6 April 2020

Note that the development proposal was amended significantly since initial engagement processes, partially in response to stakeholder comments, as well as input from specialists (most notably, a new approach to rehabilitation, a more significant setback at the SAO boundary and the inclusion of a component of social housing at the development).

Issues raised during the stakeholder engagement processes during Scoping are summarised as follows (refer to Appendices F6, F7 and F8):

- The Need and Desirability and (in)appropriateness of the proposed land use for the site;
- The opportunity cost of not developing the site for alternative low intensity land uses;
- The need to consider reasonable alternatives;
- The need for integration with the Two Rivers local area planning process and the impact of the development on the Two Rivers local area;
- The efficiency / inefficiency of the urban form that will be created if the development is authorised;
- Flooding of adjacent properties;
- The Impact on the WLI;
- The Impact on adjacent freshwater and botanical resources;
- The loss of the site as part of an open space resource;
- A change to the sense of place of the area;
- A decline in the cultural and historic value of the site, and adjacent sites of cultural and historical significance (and in particular, the view from the SAAC to Signal Hill);
- The exclusivity of the development proposal / lack of affordable and / or social housing component, and
- Increased private vehicles on the local road network.

These issues are all comprehensively addressed in the issues and responses summaries for the pre-application BAR (Appendices F2 and F2c).

During engagement on the pre-application BAR, 454 comments were received from the public (many of which guided by a pro-forma comments / objections supplied to stakeholders), and 22 comments were received from authorities and institutional stakeholders (Appendix F5). During engagement on the draft BAR, 22 comments were received from public stakeholders, and 8 comments were received from authorities and institutional stakeholders (Appendix F5b).

The frequency of public comments in each of the various issues categories is reflected in Figure 58. It is evident that the majority of public issues stem from potential heritage, biodiversity, socio-economic, alternatives / appropriateness of the development for the site and planning.

Summary of Public Stakeholder Issues

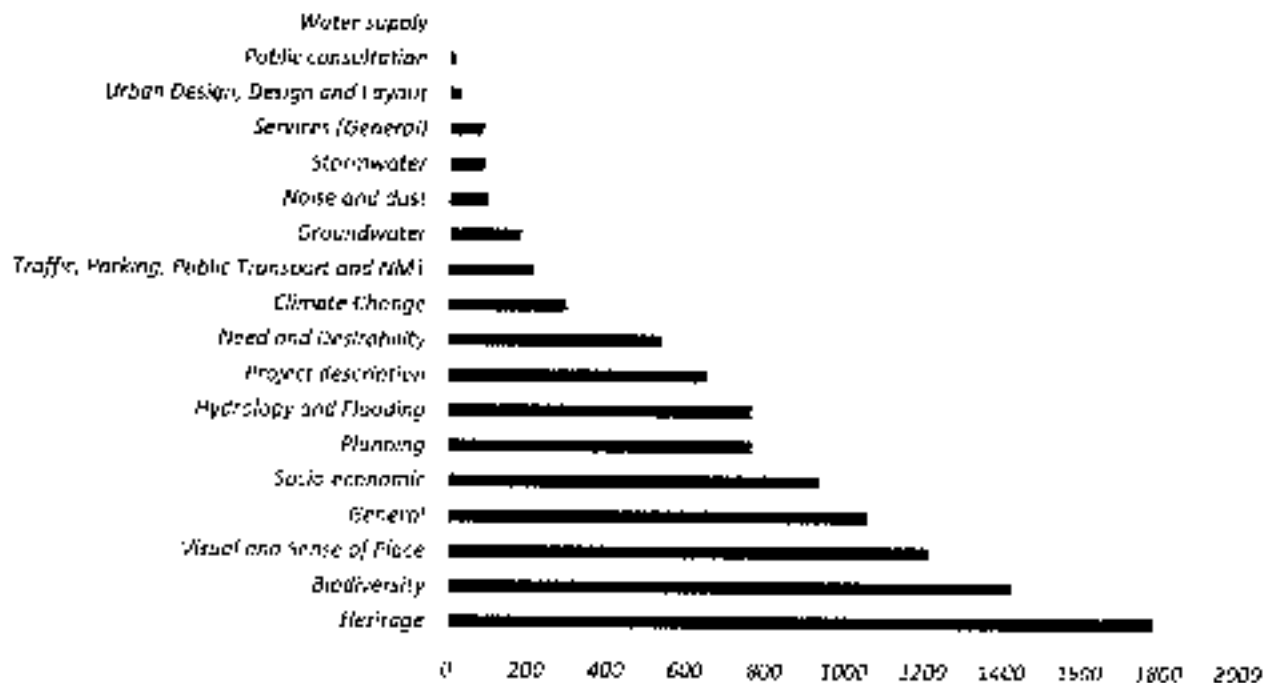


Figure 58: Graphic depicting key public stakeholder issues

Key issues raised by authorities, institutions and public stakeholders are summarised as follows and responded to comprehensively in Appendices F9 and F2c):

- The heritage impact of the built form of the development, and the identification of heritage resources on the site;
- The impact on the history of the site to First Nations groups / the intangible heritage value of the site;
- The impact on the historical landscape of the SAAC;

[Handwritten signature and initials]

- The perception that the development will lead to a net ecological impact (as opposed to the benefit assessed by the specialists).
- The impact of the development on sensitive fauna and flora (particularly the Western Leopard Toad);
- A change to the sense of place of the area;
- The loss of the site as part of an open space (visual) resource;
- The interruption of views, of, from, and through the site;
- The need and desirability of the development / social justification to develop the site;
- The impact of the development on the City's resilience to climate change;
- The calculation of financial feasibility by the proponent;
- The independence of specialists on the project team;
- The perceived lack / inadequacy of the inclusionary housing component;
- The decline in public amenity by developing the site which is currently zoned as private open space;
- The (in)appropriateness of the proposed land use for the site / preference for other (mostly lower-density) alternatives not proposed by the LIPT;
- The planning implications of developing a site which is zoned for (often misconceived to be "public") open space;
- The conflict of the development proposal with spatial planning for the area;
- Flooding of adjacent properties; and
- Increased private vehicles on the local road network.

Most public stakeholders that submitted comments on the BAR objected to the development proposal, and approximately two thirds of public comments were submitted on templates distributed by local civic bodies.

The Constitution and numerous national laws and policies make it clear that South Africa is a developmental state. Furthermore, sustainable development requires both inter, and intra-generational equality, and the South African economy is characterized by a very high level of intra-generational inequality. In other words, development that does not affect the ability of future generations (especially non-abstractive development) should be prioritised in the South African context.

People are opposed to development for all sorts of reasons, as is their prerogative in a democratic society where participation is encouraged. At the same time, developers are allowed to make development applications and these applications should be considered on merit in a balanced and fair manner.

The BAR (including Planning Policy overview – Appendix K1) outlines certain factors suggest that intense development may be reasonable, or appropriate, at this location (which are listed in Section B.11 of this report). These factors are substantiated by specialist studies and have been formulated after much research and careful planning by highly qualified professionals. Potential impacts and benefits of the development are also described in detail (Appendix J to the BAR).

It is also pertinent that the City of Cape Town, which is the responsible statutory authority for planning of the municipal scale, has adopted a Municipal Spatial Development Framework (MSDF) and development of the River Club site is consistent with the MSDF. Furthermore, the City of Cape Town and the Provincial Department of Transport and Public Works have prepared a Draft Local Spatial Development Framework (dated October 2019) which makes provision for development of the River Club site. The development proposals respond to, and are broadly consistent with, these latest spatial planning instruments prepared by the CoCT and DTPW.

4. Provide a summary of any conditional aspects identified / highlighted by any Organs of State, which have jurisdiction in respect of any aspect of the relevant activity.

The DWS and CoCT are the only other authorities with jurisdiction with regard to the activity, and neither of these organs have identified any conditional aspects to the development to date (as these authorities are yet to decide on the relevant applications, and these decisions are only likely to be taken following the decision on EA).

Note:

Even if pre-application public participation is undertaken as allowed for by Regulation 40(3), it must be undertaken in accordance with the requirements set out in Regulations 3(3), 3(4), 3(8), 7(2), 7(5), 19, 40, 41, 42, 43 and 44.

If the "exemption" option is selected above and no proof of the exemption decision is attached to this BAR, the application will be refused.

A list of all the potential I&APs, including the Organs of State, notified and a list of all the registered I&APs must be submitted with the BAR. The list of registered I&APs must be opened, maintained and made available to any person requesting access to the register in writing.

The BAR must be submitted to the Department when being made available to I&APs, including the relevant Organs of State and State Departments which have jurisdiction with regard to any aspect of the activity, for a commenting period of at least 30 days. Unless agreement to the contrary has been reached between the Competent Authority and the FAP, the EAP will be responsible for the consultation with the relevant State Departments in terms of Section 24D and Regulation 7(2) – which consultation must happen simultaneously with the consultation with the I&APs and other Organs of State.

All the comments received from I&APs on the BAR must be recorded, responded to and included in the Comments and Responses Report included as **Appendix F** of the BAR. If necessary, any amendments made in response to comments received must be effected in the BAR itself. The Comments and Responses Report must also include a description of the PPP followed.

The minutes of any meetings held by the EAP with I&APs and other role players wherein the views of the participants are recorded, must also be submitted as part of the public participation information to be attached to the final BAR as **Appendix F**.

Proof of all the notices given as indicated, as well as notice to I&APs of the availability of the Pre-Application BAR (if applicable), Draft BAR, and Revised BAR (if applicable) must be submitted as part of the public participation information to be attached to the BAR as **Appendix F**. In terms of the required "proof" the following must be submitted to the Department:

- a site map showing where the site notice was displayed, a dated photograph showing the notice displayed on site and a copy of the text displayed on the notice;
- in terms of the written notices given, a copy of the written notice sent, as well as:
 - o if registered mail was sent, a list of the registered mail sent (showing the registered mail number, the name of the person the mail was sent to, the address of the person and the date the registered mail was sent);
 - o if normal mail was sent, a list of the mail sent (showing the name of the person the mail was sent to, the address of the person, the date the mail was sent, and the signature of the post office worker or the post office stamp indicating that the letter was sent);
 - o if a facsimile was sent, a copy of the facsimile report;
 - o if an electronic mail was sent, a copy of the electronic mail sent; and
 - o if a "mail drop" was done, a signed register of "mail drops" received (showing the name of the person the notice was handed to, the address of the person, the date, and the signature of the person); and
- a copy of the newspaper advertisement ("newspaper clipping") that was placed, indicating the name of the newspaper and date of publication (of such quality that the wording in the advertisement is legible).

SECTION D: NEED AND DESIRABILITY

Note: Before completing this section, first consult this Department's Circular EACP 0025/2014 (dated 9 December 2014) on the "One Environmental Management System" and the EIA Regulations, 2014 (as amended), any subsequent Circulars, and guidelines available on the Department's website: <http://www.westerncape.gov.za/egdp>. In this regard, it must be noted that the Guideline on Need and Desirability in terms of the Environmental Impact Assessment (EIA) Regulations, 2014 published by the national Department of Environmental Affairs on 20 October 2014 (GN No. 891 in Government Gazette No. 38108 refer) (available at: http://www.gov.za/sites/www.gov.za/files/891/GP_891.pdf) also applied to EAs in terms of the EIA Regulations, 2014 (as amended).

1. Is the development permitted in terms of the property's existing land use rights?	YES	NO	Please explain
The property is currently zoned Special Open Space: Open Space S in terms of the CoCT's Development Management Scheme, which does not convey the necessary development rights to accommodate the proposed development. It is therefore necessary to rezone the property in order to permit the proposed development. The planning motivation report submitted in connection with the River Cub provides detailed reasons as to why development on this site should be considered (refer to 9 below).			
2. Will the development be in line with the following?			
(a) Provincial Spatial Development Framework ("PSDF").	YES	NO	Please explain
Also refer to Section B1: The Planning Policy Overview – Appendix K.			
Although the PSDF is a broad-based document that does not provide specific guidance for development or land use proposals at a micro-scale (e.g. individual properties), it does contain overarching planning policy guidelines adopted by the Provincial Government, and major development applications need to be evaluated in terms of these policy guidelines. In terms of environmental integrity, the WCSDF contains policies and guidelines pertaining to the "sustainable use of the Western Cape's spatial assets", which include inter alia environmental assets such as biodiversity, freshwater resources, clean sources of energy, and cultural and scenic assets.			
While the development is in line with a number of policies contained in the PSDF such as opening-up opportunities in the urban space-economy, improving accessibility, the promotion of a mixed use development, and the promotion of densification, it is in conflict with others that relate to the protection of cultural assets.			
The development will aim to be consistent with the policies and guidelines contained in the PSDF. However, there is a certain minimum level of built leasable area required in order to make the development financially viable, and there will need to be a trade-off between e.g. ecological mitigation and protection, cultural and visual impacts and economic viability.			
(b) Urban edge / edge of built environment for the area.	YES	NO	Please explain
The property falls within the urban edge.			
(c) Integrated Development Plan and Spatial Development Framework of the Local Municipality (e.g. would the approval of this application compromise the integrity of the existing approved and credible municipal IDP and SDF?).	YES	NO	Please explain

Reference: HW/
Enquiries: Penelope Meyer
Telephone: 021 483 9691
E-mail: Penelope.Meyer@westerncape.gov.za
Date: 10 September 2020



HERITAGE WESTERN CAPE

RE: APPEAL AGAINST ENVIRONMENTAL AUTHORISATION IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO 107 OF 1998 AND THE ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS, 2014 (AS AMENDED); PROPOSED REDEVELOPMENT OF THE RIVER CLUB FOR MIXED USE DEVELOPMENT AND ASSOCIATED INFRASTRUCTURE ON THE REMAINDER OF ERF 16326 AND ERVEN 26169 – 26175, 26426-26427, 108936 AND 151832 OBSERVATORY

Appeal is made against the granting of the Environmental Authorisation on 20 August 2020 in respect of the above authorisation.

GROUNDS FOR APPEAL:

1. FAILURE TO COMPLY WITH THE PROVISIONS OF THE NATIONAL HERITAGE RESOURCES ACT, ACT 25 OF 1999. (THE NHRA)

1.1 Section 38(B) of the National Heritage Resources Act, Act 25 of 1999, (the NHRA) provides that:

The provisions of this section do not apply to a development as described in subsection (1) if an evaluation of the impact of such development on heritage resources is required in terms of the Environment Conservation Act, 1989 (Act No. 73 of 1989), or the integrated environmental management guidelines issued by the Department of Environment Affairs and Tourism, or the Minerals Act, 1991 (Act No. 50 of 1991), or any other legislation: Provided that the consenting authority must ensure that the evaluation fulfils the requirements of the relevant heritage resources authority in terms of subsection (3), and any comments and recommendations of the relevant heritage resources authority with regard to such development have been taken into account prior to the granting of the consent

1.2 It is common cause that Heritage Western Cape (HWC) is the relevant heritage resources authority. The Impact Assessment committee of HWC considered the draft Heritage Impact Assessment in 28 January 2020 and responded with an interim Comment, as the HIA was not considered to comply with 53B(3) of the NHRA

1.3. The reasons that the HIA did not fulfil the requirements of HWC were fully set out in the final comment of HWC dated 13 February 2020

Handwritten signature





- 1.4. It is contended that it is clearly unlawful for the Department of Environmental Affairs and Development Planning to issue the Environment Authorisation as it has not complied with section 38(8) of the NHRA. HWC, which is the relevant heritage resources authority, has stated that the HIA which was considered did not fulfil its requirements, and requested that further information be supplied in order for it to make final comments.
 - 1.5. The Supplementary Report to the HIA which purported to respond to HWC's comments dated 13 September 2019 merely re-stated the initial findings of the HIA.
 - 1.6. Likewise the response to the final comment which was prepared in response to HWC'S final comment dated 13 February 2020 was a further re-statement of the views of the applicant, with no true evaluation of HWC's concerns. As such HWC could not see the purpose in having further meetings with the applicant and the applicant's representatives, whose views on the matter appeared to be intractable.
 - 1.7. The blanket acceptance of the responses by the consenting authority are accordingly unlawful as it is clear that S38(8) requires the endorsement of the HIA as complying with its requirements to be made by HWC and no other party.
2. . EMPHASIS MISPLACED ON RECENT HISTORY AND TANGIBLE REMAINS
- 2.1. On page 22 of the reasons for the decisions supplied by the consenting authority, the statement is made that the "site has its origins in the 1920s" which is evidence of the erroneous emphasis placed by the HIA and the consenting authority on recent history and tangible remnants to which value may be attributed.
 - 2.2. The consenting authority is ignoring the large body of information which was put before it as to the intangible significance of the site as being at the confluence of the three rivers. This confluence is of great significance to a wider representation of the first nations than just the First Nations Collective, on whose inputs the applicants most heavily rely.
 - 2.3. While the insistence that there must be tangible traces of historical events does recognise the value that communities have attributed to the site as part of their history, it sets an impossible requirement that is inconsistent with International heritage practice. It is not necessary for intangible heritage resources to be expressed in tangible traces in order for them to be considered to be of heritage significance.

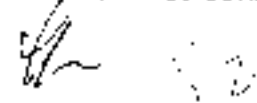


- 2.4. The consenting authority then again considers the South African Astronomical Observatory which is a National Heritage Site. (The consenting authority refers to "Grade I status", but the site has been declared a National Heritage Site). This is further evidence of considering issues which are not relevant to the impact of the development on the full scope of heritage significances both on the site and in the receiving environment. The setback is a minimal issue in a development which has a high and unacceptable impact on a range of heritage significances.

For the above reasons, the Environmental Authorisation is ultra vires and should accordingly be set aside.

Penelope Meyer
Deputy Director: Heritage Western Cape Legal Support
HERITAGE WESTERN CAPE

- submit an impact assessment report). Such report must be compiled at the cost of the person proposing the development, by a person or persons approved by the responsible heritage resources authority with relevant qualifications and experience and professional standing in heritage resources management; or
- (b) notify the person concerned that this section does not apply.
- (2) The responsible heritage resources authority must specify the information to be provided in a report required in terms of subsection (1)(a). Provided that the following must be included:
- (a) the identification and mapping of all heritage resources in the area affected;
- (b) an assessment of the significance of such resources in terms of the heritage assessment criteria set out in section 6(2) or prescribed under section 7;
- (c) an assessment of the impact of the development on such heritage resources;
- (d) an evaluation of the impact of the development on heritage resources relative to the sustainable social and economic benefits to be derived from the development;
- (e) the results of consultation with communities affected by the proposed development and other interested parties regarding the impact of the development on heritage resources;
- (f) if heritage resources will be adversely affected by the proposed development, the consideration of alternatives; and
- (g) plans for mitigation of any adverse effects during and after the completion of the proposed development.
- (4) The report must be considered timeously by the responsible heritage resources authority which must, after consultation with the person proposing the development, decide—
- (a) whether or not the development may proceed;
- (b) any limitations or conditions to be applied to the development;
- (c) what general protections in terms of this Act apply and what formal protections may be applied, to such heritage resources;
- (d) whether compensatory action is required in respect of any heritage resources damaged or destroyed as a result of the development; and
- (e) whether the appointment of specialists is required as a condition of approval of the proposal...
- (8) The provisions of this section do not apply to a development as described in subsection (1) if an evaluation of the impact of such development on heritage resources is required in terms of the Environment Conservation Act, 1989 (Act No. 73 of 1989), or the integrated environmental management guidelines issued by the Department of Environment Affairs and Tourism, or the Minerals Act, 1991 (Act No. 50 of 1991), or any other legislation. Provided that the consenting authority must ensure that the evaluation fulfils the requirements of the relevant heritage resources authority in terms of subsection (3), and any comments and recommendations of the relevant heritage resources authority with regard to such development have been taken into account prior to the granting of the consent."
3. Kindly be advised that I am considering requesting the Applicant, Liesbeek Leisure Properties Trust, to submit additional information.
4. In your Appeal you state *inter alia* the following:
- 4.1. It is common cause that Heritage Western Cape ("HWC") is the relevant heritage resources authority. The Impact Assessment committee of HWC considered the draft Heritage Impact Assessment ("HIA") and responded with an interim comment, as the HIA was not considered compliant with section 38(3) of the NHRA.
- 4.2. The reasons that the HIA did not fulfil the requirements of HWC were fully set out in the final comment of HWC dated 13 February 2020.
- 4.3. It is unlawful for the Department of Environmental Affairs and Development Planning to issue the EA as it has not complied with section 38(8) of the NHRA. HWC, which is the relevant heritage resources authority, has stated that the HIA which was considered

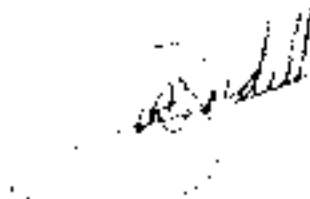


did not fulfil its requirements and requested that further information be supplied in order for it to make final comments.

- 4.4. The Supplementary Report to the HIA which purported to respond to HWC's comments dated 13 September 2019 merely re-stated the initial findings of the HIA.
5. Considering HWC comments during the EA process and that HWC could not see the purpose in having further meetings with the applicant and the applicant's representatives as stated in your appeal:
"Likewise the response to the final comment which was prepared in response to HWC'S final comment dated 13 February 2020 was a further re-statement of the views of the applicant, with no true evaluation of HWC's concerns. As such HWC could not see the purpose in having further meetings with the applicant and the applicant's representatives, whose views on the matter appeared to be intractable."
6. HWC is thus requested to provide the Appeal Authority with the information/HIA requirements to supplement the current HIA that will enable HWC to consider that the HIA fulfils the requirements of the HWC and NHRA. This information must be submitted to the Ministry (Attention: Mr Marcus Venter; e-mail: DEADP.Appeals@westerncape.gov.za, Tel: 071 483 3721/2659) before the end of day on 11 **December 2020**. This is a reasonable timeframe given the fact that HWC has intimate knowledge of the project and the requirements of the NHRA.

Your interest in the future of our environment and cooperative governance is appreciated.

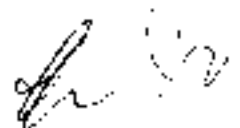
Yours faithfully,



ANTON BRUFELL
PROVINCIAL MINISTER OF LOCAL GOVERNMENT,
ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING
DATE: 25/11/2020

Copied to:

- 1 Mr. J. Africhtig (Lesbent Leisure Properties Trust) Email: jody@orangestreet.co.za
- 2 Mr Andrew Whaley Email: glaynakerabroad@yahoo.co.uk
- 3 Ms Barbara Caroline Amel Email: bounique@telkom.net
- 4 Ms Frances Bridget GREENE Email: fbgreeneg@mweb.co.za
- 5 Ms Catherine Palmer Email: catalpalmer@hotmail.co.uk
- 6 Ms Chris Hart Email: edgyral@poko.co.za
- 7 City of Cape Town (Mr Keith Wiseman) Email: keith.wiseman@capetown.gov.za
- 8 Ms Claire Everatt Email: ceveratt@qis.co.za
- 9 Ms Caterin Jane Hart Email: cjkeen.ed@yhan@gmail.com
- 10 Heritage Western Cape (Ms Penelope Meyer) Email: Penelope.Meyer@westerncape.gov.za
- 11 Ms Karen Heona Cousins Email: project.k@sirifofafrica.co.za
- 12 Ms Lziwe McDaird (The Green Connection) Email: lziwe@mweb.co.za
- 13 Observatory Civic Association (Mr Leslie Lorson) Email: leslie.lorson@uct.ac.za / chair@obs.org.za
- 14 South African Astronomical Observatory (Prof Pelti Väisänen) Email: pelti@sao.ac.za & p.vaisanen@sao.ac.za
- 15 Sarah Driver-Jowitt Email: sarah_jowitt@hotmail.com
- 16 Rosebank & Mowbray Planning & Architectural Committee (Mr Simon Birch) Email: simon@vissor.arch
- 17 Cape Institute for Architecture (Saraya Rakieb) Email: saraya@caia.co.za
- 18 Goringhaikona Khosi Khosi Traditional Council (Tauriq Jenkins) Email: Jenkins@kxh.co.za
- 19 Temo Gyus Email: atsilund@gmail.com
- 20 Mr Tony Greenwald Email: tonygreenwald@oldmujusa.com





"2.2.22"

REFERENCE NO: 14/3/1/A7/17/0478/20

CEO Heritage Western Cape
Heritage Western Cape
Private Bag X9067
CAPE TOWN
8000

Tel: 021 483 9598
Email: ceoheritage@westerncape.gov.za

Dear Ms Scheermeyer

REQUEST FOR FINAL COMMENTS FROM HERITAGE WESTERN CAPE: APPEALS LODGED IN TERMS OF SECTION 43(2) OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998) AGAINST THE ENVIRONMENTAL AUTHORISATION GRANTED FOR THE PROPOSED REDEVELOPMENT OF THE RIVER CLUB FOR MIXED USE DEVELOPMENT AND ASSOCIATED INFRASTRUCTURE ON THE REMAINDER OF ERF NO. 15326 AND ERVEN NO. 26169 – 26175, 26426 – 26427, 108936 AND 151832, OBSERVATORY

1. I refer to your comments dated 11 December 2020 (your reference: HM/CAPE METROPOLITAN/OBSERVATORY/ERF 15326 & ERVEN 26169 – 26175, 26426 – 26427, 108936 AND 151832).
2. I note your comments stating inter alia that:

"2. HWC (Heritage Western Cape) is of the opinion that all the information was supplied in the comments prepared by our Impact Assessment Committee which were appended to the Appeal and is appended again for ease of reference.

3. Your attention is drawn to paragraph 43 onward thereof, in which the committee detailed with specific reference to the provisions of §38(3) of the National Heritage Resources Act, 1999 (Act No. 25 of 1999) ("NHRA") the information required in order to comply with said section.

4. HWC is concerned that, should certain of these requirements be highlighted, it would result in the impression being created that these are the only issues which must be addressed. It is re-iterated that all the issues stand to be addressed."
3. I have reviewed your comments dated 13 February 2020 and 11 December 2020 as well as the information provided in the Supplementary Report to the HIA Report dated 4 December 2019, as well as the Applicant's Responding Statement dated 12 October 2020. I am of the view that the issues you raised in your response dated 11 December 2020, have been addressed in the Applicant's Supplementary Report to the HIA Report, as well as the Responding Statement.

4. Should you wish to clarify and provide additional information on the HIA requirements to supplement the current HIA and Supplementary Report, please submit this to the Ministry of Local Government, Environmental Affairs and Development Planning (for the attention of Mr Marius Venter, email: DEADP.Appeals@westerncape.gov.za), by close of business on **Wednesday, 3 February 2021**.
5. Should you not provide me with an indication of such information, I will then surmise that the Supplementary Report to the HIA Report does satisfy the NHRA and HWC requirements and that all issues raised by yourself have been adequately addressed.

Your interest in the future of our environment and cooperative governance is appreciated.

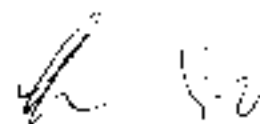
Yours faithfully,



ANTON BREDELL
PROVINCIAL MINISTER OF LOCAL GOVERNMENT,
ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING
DATE: 26/01/2021

Copied to:

- | | |
|---|--|
| 1 Mr. J. Auhrichtig (Liesbeek Leisure Properties Trust) | Email: jacv@orangestreet.co.za |
| 2 Mr Andrew Whaley | Email: playmakerabroad@yahoo.co.uk |
| 3 Ms Barbara Caroline Aurel | Email: barrieaurel@telkom.net |
| 4 Ms Frances Bridget GREENE | Email: f.green@web.co.za |
| 5 Ms Catherine Palmer | Email: c.palmer@bt.com |
| 6 Ms Chris Hart | Email: edgwhart@ppk.co.za |
| 7 City of Cape Town (Mr Keith Wiseman) | Email: keith.wiseman@capetown.gov.za |
| 8 Ms Claire Everatt | Email: c.everatt@eris.co.za |
| 9 Ms Colleen Jane Hart | Email: colleen.edgwhart@gmail.com |
| 10 Heritage Western Cape (Ms Penelope Meyer) | Email: Penelope.Meyer@westerncape.gov.za |
| 11 Ms Karen Helena Cousins | Email: projects@spiritofafrica.co.za |
| 12 Ms Lizwe McDaid (The Green Connection) | Email: lizwe@web.co.za |
| 13 Observatory Civic Association (Mr Leslie London) | Email: leslie.london@uct.ac.za / chair@obs.org.za |
| 14 South African Astronomical Observatory (Prof Petri Vaisanen) | Email: petri@sao.ac.za & enquiries@sao.ac.za |
| 15 Sarah Driver-Jowitt | Email: driver_jowitt@hotmail.com |
| 16 Rosebank & Mowbray Planning & Architectural Committee (Mr Simon Birch) | Email: simon@veser.co.za |
| 17 Cape Institute for Architecture (Soraya Rakiep) | Email: info@cia.org.za |
| 18 Goringhondo Khoi Khoi Traditional Council (Tauriq Jenkins) | Email: tauriqj@icloud.com |
| 19 Tema Gyuse | Email: gyuse@gmail.com |
| 20 Mr Tony Greenwood | Email: greenwood@oldmutual.com |
| 21 Friends of the Liesbeek (Mr Trevor Hughes) | Email: thughes@gmail.com |
| 22 Two Rivers Urban Park Association (Mr Marc Turok) | Email: marcturok@gmail.com |



#423

Reference: HWC/CAPE METROPOLITAN/REM OF ERF 15326 & ERVEN 26169 - 26175, 26426
26427, 108936 & 151832 OBSERVATORY
Enquirer: Colette Scheermeyer
Telephone: 021 483 5559
e-mail: ce@heritagewesterncape.gov.za
Date: 03 February 2021



Ministry Local Government
Environmental Affairs and Development Planning
8th Floor, Utilitas Building
1 Dorp Street
Cape Town
8000

Per e-mail to: DFADP.Appeals@westerncape.gov.za
Your reference No: 14/3/1/A7/17/0478/20

Dear Mr Venter

REQUEST FOR FINAL COMMENTS FROM HERITAGE WESTERN CAPE: APPEALS LODGED IN TERMS OF SECTION 43(2) OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998) AGAINST THE ENVIRONMENTAL AUTHORISATION GRANTED FOR THE PROPOSED REDEVELOPMENT OF THE RIVER CLUB FOR MIXED USE DEVELOPMENT AND ASSOCIATED INFRASTRUCTURE ON THE REMAINDER OF ERF NO. 15326 AND ERVEN NO. 26169 - 26175, 26426 - 26427, 108936 AND 151832, OBSERVATORY

Your letter dated 26 January 2021 in the above refers.

Heritage Western Cape (HWC) cannot agree with your contentions as stated in paragraph 3 thereof. It is re-iterated that HWC is of the strong opinion that Supplementary Report to the HIA report dated 4 December 2019 and the Responding statement dated 12 October 2020 merely re-state the initial opinions expressed in the original HIA and do not in fact address the issues that HWC raised in its Final Comment.

We can accordingly not also agree with the sentiments expressed in paragraph 5 thereof.

Ms Colette Scheermeyer
ACTING CHIEF EXECUTIVE OFFICER
HERITAGE WESTERN CAPE

www.westerncape.gov.za/cas



"LL24"



Directorate: Development Management
(Region 1)

REFERENCE: 16/3/3/1/A7/17/3001/20
NEAS REFERENCE: WCP/EIA/CO00719/2020
ENQUIRIES: M.S. K. ADRIAANSE
DATE OF ISSUE: 20 AUGUST 2020

ENVIRONMENTAL AUTHORISATION

APPLICATION FOR ENVIRONMENTAL AUTHORISATION IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO.107 OF 1998) AND THE ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS, 2014 (AS AMENDED): PROPOSED REDEVELOPMENT OF THE RIVER CLUB FOR MIXED USE DEVELOPMENT AND ASSOCIATED INFRASTRUCTURE ON THE REMAINDER OF ERF 15326 AND ERVEN 26169-26175, 26426-26427, 108936 AND 151832, OBSERVATORY.

With reference to your application for the abovementioned, find below the outcome with respect to this application.

DECISION

By virtue of the powers conferred on it by the National Environmental Management Act, 1998 (Act No. 107 of 1998) ("NEMA") and the Environmental Impact Assessment ("EIA") Regulations, 2014 (as amended), the Competent Authority herewith **grants Environmental Authorisation** to the applicant to undertake the listed activities specified in section B below with respect to the Riverine Corridor Alternative (i.e. the Preferred Alternative), described in the Basic Assessment Report ("BAR"), dated 06 April 2020 received by the competent authority on 08 June 2020.

The applicant for this Environmental Authorisation is required to comply with the conditions set out in section E below.

A. DETAILS OF THE APPLICANT FOR THIS ENVIRONMENTAL AUTHORISATION

The Director
c/o Mr. J. Aufrechtig
Liesbeek Leisure Properties Trust
P.O. Box 786739
SANDTON
2146

Tel: (021) 486 5999
Email: jody@orangesteel.co.za

The abovementioned applicant is the holder of this Environmental Authorisation and is hereinafter referred to as **"the holder"**.

B. LIST OF ACTIVITIES AUTHORISED

Listed Activity	Activity/Project Description
<p>Listing Notice 1 of the NEMA EIA Regulations, 2014 (as amended):</p> <p>Activity Number: 19 Activity Description:</p> <p><i>The infilling or depositing of any material of more than 10 cubic metres into, or the dredging, excavation, removal or moving of soil, sand, shells, shell grit, pebbles or rock of more than 10 cubic metres from a watercourse:</i></p> <p><i>but excluding where such infilling, depositing, dredging, excavation, removal or moving –</i></p> <ul style="list-style-type: none"> <i>(a) will occur behind a development setback;</i> <i>(b) is for maintenance purposes undertaken in accordance with a maintenance management plan;</i> <i>(c) falls within the ambit of activity 21 in this Notice, in which case that activity applies;</i> <i>(d) occurs within existing ports or harbours that will not increase the development footprint of the port or harbor; or</i> <i>(e) where such development is related to the development of a port or harbor, in which case activity 26 in Listing Notice 2 of 2014 applies.</i> 	<p>The proposed development will include the infilling of the unlined/natural channel of the Liesbeek River, the rehabilitation of the Liesbeek Canal, the partial infilling of the excavated channel at the Roopenberg Wetlands and associated infrastructure of more than 10m³ of soil from a watercourse.</p>
<p>Activity Number: 27 Activity Description:</p> <p><i>The clearance of an area of 1 hectares or more, but less than 20 hectares of indigenous vegetation, except where such clearance of indigenous vegetation is required for –</i></p> <ul style="list-style-type: none"> <i>(i) the undertaking of a linear activity; or</i> <i>(ii) maintenance purposes undertaken in accordance with a maintenance management plan.</i> 	<p>The proposed development entails the clearance of an area of 1ha or more of indigenous vegetation.</p>
<p>Listing Notice 3 of the NEMA EIA Regulations, 2014 (as amended):</p> <p>Activity Number: 15 Activity Description:</p> <p><i>The transformation of land bigger than 1000 square metres in size, to residential, retail, commercial, industrial or institutional use, where, such land was zoned open space, conservation or had an equivalent zoning, on or after 02 August 2010.</i></p> <p>f. Western Cape</p> <p><i>i. Outside urban areas, or</i></p>	<p>The proposed development entails the transformation of land bigger than 1000m² in size to residential use where such land was zoned open space on or after 02 August 2010.</p>

<p>ii. Inside urban areas:</p> <p>(aa) Areas zoned for conservation use or equivalent zoning, on or after 02 August 2010;</p> <p>(bb) A protected area identified in terms of NEMPAA, excluding conservancies; or</p> <p>(cc) Sensitive areas as identified in an environmental management framework as contemplated in chapter 5 of the Act as adopted by the competent authority.</p> <p>Activity Number: 18 Activity Description:</p> <p>The widening of a road by more than 4 metres, or the lengthening of a road by more than 1 kilometre.</p> <p>I. Western Cape</p> <p>i. Areas zoned for use as public open space or equivalent zoning:</p> <p>ii. All areas outside urban areas:</p> <p>(aa) Areas containing indigenous vegetation;</p> <p>(bb) Areas on the estuary side of the development setback line or in an estuarine functional zone where no such setback line has been determined; or</p> <p>iii. Inside urban areas:</p> <p>(aa) Areas zoned for conservation use; or</p> <p>(bb) Areas designated for conservation use in Spatial Development Frameworks adopted by the competent authority.</p>	<p>The proposed development and widening of the road infrastructure on a portion of the Remainder of Erf 15326 and zoned as Open Space 2.</p>
--	---

The abovementioned list is hereinafter referred to as "the listed activities".

The holder is herein authorised to undertake the following alternative that includes the listed activities as it relates to the proposed development:

The proposed development entails the redevelopment of the River Club for the establishment of a mixed-use development and associated infrastructure on the Remainder of Erf 15326, Erven 26169 – 26175, Erven 26426, 26427, 108936 and 151832, Observatory.

The proposed development will comprise of the following components:

- Retail;
- Commercial;
- Residential;
- Institutional;
- Rehabilitation of the Liesbeek River Canal and associated infrastructure;
- An ecological corridor, ecological setbacks and associated Open Spaces;
- The infilling of the unlined/natural channel of the Liesbeek River and associated stormwater infrastructure;
- Roads and Service infrastructure; and
- Associated infrastructure

The proposed development will be divided into two precincts. Precinct 1 will be developed in the south of the proposed site and Precinct 2 will be developed in the north of the proposed site. Portions of the proposed site fall below the 1:100 year floodline, which is approximately 5.81m above mean sea level. The ground level of the proposed buildings will therefore be raised to approximately 6.4m above mean sea level.

Handwritten signature and number 5.2

Basement parking at Precinct 1 and Precinct 2 will be developed at the current ground level to create a podium at each precinct. 20% of the development will be for residential purposes. 20% of the residential component will be for inclusionary housing opportunities. The development footprint of the buildings will be approximately 3,4ha in extent.

The following has been incorporated in the proposed development in view of the heritage significance of the site and associations to the First Nations Groups:

- An Indigenous garden for medicinal plants used by the First Nations will be established at the site;
- A cultural, heritage and media centre at the location of the heritage information hub will be established;
- A heritage eco-trail around the site will be established;
- An amphitheatre for use and cultural performances will be established, and
- Commemorating the history of the First Nations in the area through establishing a gateway feature inspired symbols at the road crossing of the ecological park/corridor, incorporating symbols into the detailed design of buildings and the naming of internal roads.

More than 60% of the proposed site will be retained as open space. The open spaces will include, *inter alia*, the ecological corridor, ecological setbacks, recreational facilities such as foot and cycle paths, footbridges and service infrastructure. Ecological setbacks will be established, as the proposed development will be set back from the watercourses and the interfaces between the development and adjacent freshwater ecosystems will be rehabilitated. An ecological corridor will be included as part of the proposed development to allow faunal movement. Roads through ecological setbacks will incorporate box culverts to allow faunal movements. The bridge over the ecological corridor will span at least 15 m.

Ecological setbacks will consist of a bank with a maximum average slope of 1:5, planted with suitable wetland vegetation. Abutting this zone, a locally indigenous vegetation planted buffer strip, followed by park space with amenities such as pedestrian and cycle pathways, extensive tree planting and large lawned banks will be established. Stormwater detention and treatment facilities will also be positioned in setbacks.


Approximately 15,6 ha of open space will be provided in a number of open space areas throughout the site. These areas will include a park (the ecological corridor), open spaces adjacent to the access routes at the site and in the ecological setbacks abutting the unlined/natural channel of the Liesbeek River or the Liesbeek Canal. The development will be publicly accessible, and provision will be made available for recreational activities in open space areas.

Rehabilitation work

An existing channel leading to the Raapenberg Wetland, which is currently increasing the frequency of inundation and is decreasing the time that the wetland takes to drain, will be infilled. The channel is approximately 90m in length, 3m in width and 1m in depth. A berm (as recommended by the freshwater specialist) will be reinstated. The unlined channel of the Liesbeek River will be infilled to accommodate for the proposed widening of Liesbeek Parkway and for the installation of stormwater infrastructure. The stormwater infrastructure within the unlined/natural channel of the Liesbeek River will consist of vegetated swales and the creation of wetland pockets. The Liesbeek Canal will be rehabilitated in accordance with a rehabilitation/restoration plan to be developed.

Roads and access to the site

Access to the River Club is currently from Observatory Road and will be used to allow emergency access in the short term. Access to the proposed development will be gained off Liesbeek Parkway and Berkley Road. The access off Liesbeek Parkway will be developed adjacent to Link Road and over the unlined/natural channel of the Liesbeek River, using box culverts. The crossing will be approximately 530m in length.



A two-lane bridge of approximately 80m in length and approximately 450m in width will be developed from Berkley Road and over the Black River to provide access to the proposed development. To accommodate the potential additional traffic associated with the proposed development, Liesbeek Parkway will be widened between Station Road and Link Road. A portion of the unlined/natural channel of the Liesbeek River will be infilled to accommodate the widening of Liesbeek Parkway between Station Road and Link Road. The development footprint of the proposed roads will be approximately 1.5ha in extent.

As part of the future road upgrades on Liesbeek Parkway and Berkley Road and although not currently required for the proposed development, the following upgrades will be undertaken by the City of Cape Town:

- The widening of Liesbeek Parkway between Malta Road and Link Road. A portion of the unlined/natural channel of Liesbeek Parkway will be infilled to accommodate the widening of this section of the Liesbeek Parkway;
- The widening of the Berkley Road bridge over the Black River;
- The widening of the Berkley Road extension;
- The extension of the Berkley Road from the site entrance, over the unlined/natural channel of the Liesbeek River to connect to Malta Road and the Liesbeek Parkway.

All services for the proposed development will connect to the municipal services. Upgrades to the bulk sewer reticulation will be required and will be for the applicant's cost.

The total development footprint will be approximately 24.8ha in extent.

C. SITE DESCRIPTION AND LOCATION

The authorised listed activities will be undertaken on the Remainder of Erf 15326 and Erfen 26169-26175, 26426-26427, 108936 and 151832, Observatory, which is located off Observatory Road, Observatory and has the following co ordinates:

Point	Latitude	Longitude
Middle	33°55' 58.20" South	18°28'28.18" East

The SG 21-digit codes are:

The Remainder of Erf 15326	C0160070001532600030
Erf 26169	C01600070002616900030
Erf 26170	C01600070002617000030
Erf 26171	C01600070002617100030
Erf 26172	C01600070002617200030
Erf 26173	C01600070002617300030
Erf 26174	C01600070002617400030
Erf 26175	C01600070002617500030
Erf 26426	C01600070002642600030
Erf 26427	C01600070002642700030
Erf 108936	C01600070010893600030
Erf 151832	C01600070015183200030

Refer to Annexure 1: Locality Map and Annexure 2: Site Plan.

The above is hereinafter referred to as "the site".

D. DETAILS OF THE ENVIRONMENTAL ASSESSMENT PRACTITIONER

SRK Consulting (Pty) Ltd.
c/o Mr. M. Law
Postnet Suite 206
Private Bag X18
RONDEBOSCH
7701

Tel: (021) 659 3060
Fax: (021) 685 7105
Email: MLaw@srk.co.za / capetown@srk.co.za

E. CONDITIONS OF AUTHORISATION

Scope of authorisation

1. The holder is authorised to undertake the listed activities specified in Section B above in accordance with and restricted to the Riverine Corridor Alternative (i.e. the Preferred Alternative) described in the BAR dated 06 April 2020 on the site as described in Section C above.
2. The holder must commence with the listed activities on site within a period of **ten (10) years** from the date of issue of this Environmental Authorisation.
3. The development must be **concluded within ten (10) years** from the date of commencement of the listed activities.
4. The holder shall be responsible for ensuring compliance with the conditions by any person acting on his/her behalf, including an agent, sub-contractor, employee or any person rendering a service to the holder.
5. Any changes to, or deviations from the scope of the alternative described in section B above must be accepted or approved, in writing, by the Competent Authority before such changes or deviations may be implemented. In assessing whether to grant such acceptance/approval or not, the Competent Authority may request information in order to evaluate the significance and impacts of such changes or deviations, and it may be necessary for the holder to apply for further authorisation in terms of the applicable legislation.

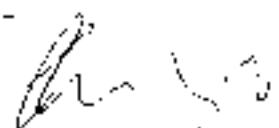
Written notice to the Competent Authority

6. A minimum of 7 (seven) calendar days' notice, in writing, must be given to the Competent Authority before commencement of development activities.
 - 6.1. The notice must make clear reference to the site details and EIA Reference number given above.
 - 6.2. The notice must also include proof of compliance with the following conditions described herein:

Conditions: 6, 7, 9, 1 and 11.

Notification and administration of appeal

7. The holder must in writing, within 14 (fourteen) calendar days of the date of this decision—
 - 7.1. Notify all registered Interested and Affected Parties ("I&APs") of –
 - 7.1.1. the outcome of the application;



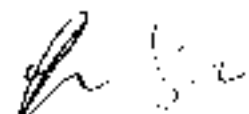
- 7.1.2. the reasons for the decision as included in Annexure 3;
 - 7.1.3. the date of the decision; and
 - 7.1.4. the date when the decision was issued.
- 7.2. Draw the attention of all registered I&APs to the fact that an appeal may be lodged against the decision in terms of the National Appeal Regulations, 2014 (as amended) detailed in Section G below;
- 7.3. Draw the attention of all registered I&APs to the manner in which they may access the decision; and
- 7.4. Provide the registered I&APs with:
- 7.4.1. the name of the holder (entity) of this Environmental Authorisation,
 - 7.4.2. name of the responsible person for this Environmental Authorisation,
 - 7.4.3. postal address of the holder,
 - 7.4.4. telephonic and fax details of the holder,
 - 7.4.5. e-mail address, if any, of the holder,
 - 7.4.6. the contact details (postal and/or physical address, contact number, facsimile and e-mail address) of the decision-maker and all registered I&APs in the event that an appeal is lodged in terms of the National Appeal Regulations, 2014 (as amended).
8. The listed activities, including site preparation, must not commence within 20 (twenty) calendar days from the date the holder notifies the registered I&APs of this decision. In the event that an appeal is lodged with the Appeal Authority, the effect of this Environmental Authorisation is suspended until the appeal is decided i.e. the listed activities, including site preparation, must not commence until the appeal is decided.

Management of activity

9. The draft Environmental Management Programme ("EMPr") dated April 2020 and submitted as part of the application for Environmental Authorisation is hereby approved, on condition that the following amendments are made, and must be implemented.
- 9.1. The Stormwater Management Plan, to be compiled, must be included in the EMPr. A copy of the Stormwater Management Plan must be submitted to this Department prior to the commencement of construction for record purposes.
 - 9.2. A rehabilitation/restoration plan for the rehabilitation of the Lesbeek Canal must be compiled in consultation with CapeNature prior to the commencement of rehabilitation work to be undertaken. A copy of the final rehabilitation/restoration plan must be submitted to this Directorate prior to the commencement of the rehabilitation work for record purposes.
 - 9.3. The recommendations provided in the Geotechnical Report (compiled by Kamey and Templer and dated February 2016) must be included in the EMPr and must be implemented.
10. The EMPr must be included in all contract documentation for all phases of implementation.

Monitoring

- 11. The holder must appoint a suitably experienced environmental control officer ("ECO"), or site agent where appropriate, before the commencement of development activities to ensure compliance with the provisions of the EMPr and the conditions contained in this Environmental Authorisation.



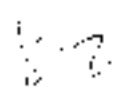
12. A copy of the Environmental Authorisation, EMPr, Environmental Audit Reports and compliance monitoring reports must be kept at the site where the listed activities will be undertaken and must be made available to any authorised official on request.
13. Access to the site referred to in Section C above must be granted, and the environmental reports mentioned above must be produced, to any authorised official representing the Competent Authority who requests to see it for the purposes of assessing and/or monitoring compliance with the conditions contained herein.

Auditing

14. In terms of Regulation 34 of the NEMA EIA Regulations, 2014 (as amended), the holder must conduct environmental audits to determine compliance with the conditions of the Environmental Authorisation and the EMPr and submit Environmental Audit Reports to the Competent Authority. The Environmental Audit Reports must be prepared by an independent person and must contain all the information required in Appendix 7 of the NEMA EIA Regulations, 2014 (as amended).
 - 14.1. The holder must undertake an environmental audit within 6 (six) months of the commencement of the development/construction activities and submit an Environmental Audit Report to the Competent Authority upon the completion of the environmental audit.
 - 14.2. An Environmental Audit Report must be submitted to the Competent Authority every two years for the duration of the construction phase.
 - 14.3. A final Environmental Audit Report must be submitted to the Competent Authority 1 (one) month after the completion of the development/construction activities.
 - 14.4. The holder must, within 7 (seven) calendar days of the submission of an Environmental Audit Report to the Competent Authority, notify all potential and registered I&APs of the submission and make the Environmental Audit Report available to an authorised person on request.

Specific Conditions

15. An integrated waste management approach, which is based on waste minimisation and incorporates reduction, recycling, re-use and disposal, where appropriate, must be employed. Any solid waste must be disposed of at a landfill licensed in terms of the applicable legislation.
16. Should any heritage remains be exposed during excavations or any other actions on the site, these must immediately be reported to the Provincial Heritage Resources Authority of the Western Cape, Heritage Western Cape. Heritage remains uncovered or disturbed during earthworks must not be further disturbed until the necessary approval has been obtained from Heritage Western Cape. Heritage remains include: meteorites, archaeological and/or palaeontological remains (including fossil shells and trace fossils); coins; indigenous and/or colonial ceramics; any articles of value or antiquity, marine shell heaps; stone artifacts and bone remains; structures and other built features with heritage significance; rock art and rock engravings; and/or graves or unmarked human burials including grave goods and/or associated burial material.
 - 16.1. The recommendations provided in the Heritage Impact Assessment (compiled by Mr. T. Hart and Mr. S. Townsend and dated 02 July 2019) and the Supplementary Report (compiled by Mr. T. Hart and Mr. S. Townsend and dated 04 December 2019), as included in the EMPr, must be implemented.
17. The recommendations provided in the Visual Impact Assessment (compiled by SRK Consulting and dated July 2019), as included in the EMPr, must be implemented.



18. The recommendations provided in the Biodiversity Impact Assessment (compiled by Freshwater Consulting cc and dated December 2019), as included in the EMPr, must be implemented.
19. The holder must at its own cost upgrade the gravity main located upstream of the Raapenberg pump station and associated sewer pipeline infrastructure for the balance of the floor space prior to the construction of the floor area relying on such additional capacity.
20. The holder must implement the recommendations of the Traffic Impact Assessment (conducted by Aurecon and 07 March 2018), as included in the EMPr, must be implemented.
21. Employment opportunities must be afforded to the local community (as far as practically possible) during all phases of the proposed development.
 - 21.1. Employment opportunities must be afforded to the First Nations Communities (as far as practically possible) for the operational phase of the heritage components of the proposed development.

Recommendations

22. It is recommended that the holder facilitate a discussion between the City of Cape Town and CapeNature in order to amend the current Biodiversity Agreement for those properties along the unlined/natural channel of the Liesbeek River, Black River and the Liesbeek Canal.

F. GENERAL MATTERS

1. Notwithstanding this Environmental Authorisation, the holder must comply with any other statutory requirements that may be applicable when undertaking the listed activities.
2. Non-compliance with a condition of this Environmental Authorisation or EMPr may render the holder liable to criminal prosecution.
3. If the holder does not commence with the listed activities within the period referred to in Condition 2, this Environmental Authorisation shall lapse for those activities, and a new application for Environmental Authorisation must be submitted to the Competent Authority. If the holder wishes to extend the validity period of the Environmental Authorisation, an application for amendment in this regard must be made to the Competent Authority prior to the expiry date of the Environmental Authorisation.
4. The holder must submit an application for amendment of the Environmental Authorisation to the Competent Authority where any detail with respect to the Environmental Authorisation must be amended, added, substituted, corrected, removed or updated. If a new holder is proposed, an application for Amendment in terms of Part 1 of the NEMA EIA Regulations, 2014 (as amended) must be submitted.

Please note that an amendment is not required if there is a change in the contact details of the holder. In this case, the Competent Authority must only be notified of such changes.

5. The manner and frequency for updating the EMPr is as follows:

Amendments to the EMPr must be done in accordance with Regulations 35 to 37 of the NEMA EIA Regulations, 2014 (as amended) or any relevant legislation that may be applicable at the time.

The image shows two handwritten marks in black ink. On the left is a cursive signature, and on the right are the initials 'S.S.'.

G. APPEALS

Appeals must comply with the provisions contained in the National Appeal Regulations, 2014 (as amended).

1. An appellant (if the holder of the decision) must, within 20 (twenty) calendar days from the date the notification of the decision was sent to the holder by the Competent Authority –
 - 1.1. Submit an appeal in accordance with Regulation 4 of the National Appeal Regulations, 2014 (as amended) to the Appeal Administrator; and
 - 1.2. Submit a copy of the appeal to any registered I&APs, any Organ of State with interest in the matter and the decision-maker i.e. the Competent Authority that issued the decision.
2. An appellant (if NOT the holder of the decision) must, within 20 (twenty) calendar days from the date the holder of the decision sent notification of the decision to the registered I&APs-
 - 2.1. Submit an appeal in accordance with Regulation 4 of the National Appeal Regulations, 2014 (as amended) to the Appeal Administrator; and
 - 2.2. Submit a copy of the appeal to the holder of the decision, any registered I&AP, any Organ of State with interest in the matter and the decision-maker i.e. the Competent Authority that issued the decision.
3. The holder of the decision (if not the appellant), the decision-maker that issued the decision, the registered I&AP and the Organ of State must submit their responding statements, if any, to the appeal authority and the appellant within 20 (twenty) calendar days from the date of receipt of the appeal submission.
4. The appeal form/s must be submitted by means of one of the following methods:

By post: Attention: Marlus Venter
Western Cape Ministry of Local Government, Environmental Affairs and
Development Planning
Private Bag X9186
CAPETOWN
8000

By facsimile: (021) 483 4174; or

By hand: Attention: Mr. M. Venter (Tel: 021 483 2659/5116)
Room 809
8th Floor Utilities Building, 1 Dorp Street, Cape Town, 8001
5. The prescribed appeal form, as well as assistance regarding the appeal processes is obtainable from the office of the appeal authority/ at: Tel. (021) 483 2659/5116, E-mail DEADF.Appeals@westerncape.gov.za or URL <http://www.westerncape.gov.za/eadp>.



H. DISCLAIMER

The Western Cape Government, the holder, committees or any other public authority or organisation appointed in terms of the conditions of this Environmental Authorisation shall not be responsible for any damages or losses suffered by the holder, developer or his/her successor in any instance where construction or operation subsequent to construction is temporarily or permanently stopped for reasons of non-compliance with the conditions as set out herein or any other subsequent document or legal action emanating from this decision.

Your interest in the future of our environment is appreciated

Yours faithfully



MR. ZAAHIR TOEFY
DIRECTOR: DEVELOPMENT MANAGEMENT (REGION 1)

DATE OF DECISION: 20 AUGUST 2020

Copies to: (1) Mr. M. Law (SRK Consulting)
(2) Mr. D. Georgiadis (City of Cape Town: FRM)
(3) Mr. A. Oosthuizen (DEASDP - DDF)
(4) Mr. M. Olanuka (Heritage Western Cape)
(5) Mr. B. Daniels (DWS)

Email: mlaw@srk.co.za
Email: Dimitri.Georgiadis@capetown.gov.za
Email: Angie.Oosthuizen@westerncape.gov.za
Email: Cachemilaga@westerncape.gov.za
E-mail: DanielsB@dws.gov.za



ANNEXURE 3: REASONS FOR THE DECISION

In reaching its decision, the Competent Authority considered, inter alia, the following:

- a) The information contained in the Application Form dated 19 December 2019, the BAR received by the Competent Authority on 08 June 2020 and the EMPr received by the Competent Authority on 08 June 2020;
- b) Relevant information contained in the Departmental information base, including the Guidelines on Public Participation, Alternatives and Need and Desirability (dated March 2013);
- c) The objectives and requirements of relevant legislation, policies and guidelines, including section 2 of the National Environmental Management Act, 1998 (Act No. 107 of 1998);
- d) The comments received from I&APs and responses to these, included in the BAR dated 06 April 2020;
- e) The balancing of negative and positive impacts and proposed mitigation measures; and
- f) A site visit was conducted by officials of this Department on 29 August 2019.

All information presented to the Competent Authority was taken into account in the consideration of the application for Environmental Authorisation. A summary of the issues that were considered to be the most significant for the decision is set out below.

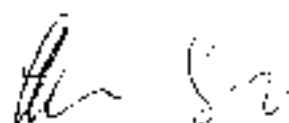
1. Public Participation

The public participation process included:

- identification of and engagement with I&APs;
- fixing a notice board on the site where the listed activities is to be undertaken on 15 July 2019;
- giving written notice to the owners and occupiers of land adjacent to the site where the listed activities is to be undertaken, the municipality and ward councillor, and the various organs of state having jurisdiction in respect of any aspect of the listed activities on 12 January 2020;
- the placing of a newspaper advertisement in the 'Cape Times' and 'Tatler' on 11 July 2019; and
- making the BAR available to I&APs for public review from 13 January 2020 to 14 February 2020.

Due to the nature and scale of the proposed development within the context of the Two Rivers Urban Park, initial public engagement commenced in 2016 with the release of the pre-application draft scoping report. Various concerns regarding the heritage of the site, potential ecological impacts, services for the proposed development and the need and desirability of the proposed development in light of the planning policies applicable to the area were received. On 7 April 2017, the EIA Regulations, 2014 were amended and the proposed development triggered listed activities in terms of Listing Notice 1 and Listing Notice 3 of the EIA Regulations, 2014 (as amended). As such, a Basic Assessment Process was required. A pre-application BAR was made available for comment between 15 July 2019 and 16 September 2019, in order to address the concerns raised by I&APs, the recommendations of the various specialist reports submitted along with the BAR (dated 06 April 2020) were incorporated into the development of the Riverine Corridor Alternative/Preferred Alternative.

All the concerns raised by I&APs were responded to and adequately addressed during the public participation process. The Department is satisfied that the PPP that was followed met the minimum legal requirements and all the comments and responses thereto were included in the comments and responses report. Specific management and mitigation measures have been considered in this Environmental Authorisation and in the EMPr to adequately address the concerns raised.



2. Alternatives

Various layout alternatives were identified and assessed in response to a number of aspects, including, the ecological status of the proposed site, the potential for flooding, cultural and heritage concerns, potential traffic and access concerns, the relevant planning policies applicable to the proposed site, concerns raised by I&APs and commercial and technical considerations. The layout concepts were therefore identified and screened out as follows:

The initial layout was based on the assumption that the servitude for the extension of Berkley Road could be obtained for development and that the existing buildings on the proposed site would be retained.

The revised layout concept 1 was screened out based on the fact that the servitude for the extension of Berkley Road could not be obtained for development. The revised layout concept 2 was screened out based on the fact that the findings of the heritage specialist that assessed the existing buildings on the proposed site indicated that the existing building could be demolished. A further refinement of the revised layout concept 2 included initial input from the freshwater ecologist to include ecological setbacks along the Liesbeek Canal and the unlined/natural channel of the Liesbeek River. The revised layout concept 3 was screened out based on the fact that the findings of the hydrology specialist indicated that a new water body connected the Liesbeek Canal and the unlined/natural channel of the Liesbeek River is not required to abate floodwaters. A further refinement of the revised layout concept 3 included the removal of the new water body and to reduce the number of buildings located on the northern edge of the proposed site. The revised layout concepts 4, 5 and 6 are further refined versions of each concept as the information and input from the various specialists were considered and included in the preferred layout alternative.

Alternatives with respect to the inclusion of affordable and inclusionary housing and reduced floor space were assessed. However, these alternatives were not deemed feasible from a financial perspective.

The Layout Alternatives identified and assessed in the BAR, have been informed by comments received from the I&APs and Authorities. It is further noted that the heights of buildings were reduced in order to reduce the potential visual impacts and to maintain the view sheds towards Table Mountain. Therefore, only two Layout Alternatives have been deemed reasonable and feasible.

The Riverine Corridor Alternative (i.e. the Preferred Alternative), and the Island Concept Alternative were therefore identified and assessed along with the "No-Go" alternative as part of the proposed development.

The Riverine Corridor Alternative (the Preferred Alternative - herewith authorised)

The Riverine Corridor Alternative entails the redevelopment of the River Club for the establishment of a mixed-use development and associated infrastructure on the Remainder of Erf 15326, Even 26169 - 26175, Even 26426, 26427, 108936 and 151832, Observatory.

The proposed development will comprise of the following components:

- Retail;
- Commercial;
- Residential;
- Institutional;
- Rehabilitation of the Liesbeek River Canal and associated infrastructure;
- An ecological corridor, ecological setbacks and associated Open Spaces;
- The infilling of the unlined/natural channel of the Liesbeek River and associated stormwater infrastructure;
- Roads and Service infrastructure; and

- Associated infrastructure

The proposed development will be divided into two precincts. Precinct 1 will be developed in the south of the proposed site and Precinct 2 will be developed in the north of the proposed site. Portions of the proposed site fall below the 1:100 year floodline, which is approximately 5.81m above mean sea level. The ground level of the proposed buildings will therefore be raised to approximately 6.4m above mean sea level. Basement parking at Precinct 1 and Precinct 2 will be developed at the current ground level to create a podium at each precinct. 20% of the development will be for residential purposes, 20% of the residential component will be for inclusionary housing opportunities. The development footprint of the buildings will be approximately 3.4ha in extent.

The following has been incorporated in the proposed development in view of the heritage significance of the site and associations to the First Nations Groups;

- An indigenous garden for medicinal plants used by the First Nations will be established at the site;
- A cultural, heritage and media centre at the location of the heritage information hub will be established;
- A heritage eco-trail around the site will be established;
- An amphitheatre for use and cultural performances will be established; and
- Commemorating the history of the First Nations in the area through establishing a gateway feature inspired symbols at the road crossing of the ecological park/corridor, incorporating symbols into the detailed design of buildings and the naming of internal roads.


More than 60% of the proposed site will be retained as open space. The open spaces will include, inter alia, the ecological corridor, ecological setbacks, recreational facilities such as foot and cycle paths, footbridges and service infrastructure. Ecological setbacks will be established, as the proposed development will be set back from the watercourses and the interfaces between the development and adjacent freshwater ecosystems will be rehabilitated. An ecological corridor will be included as part of the proposed development to allow faunal movement. Roads through ecological setbacks will incorporate box culverts to allow faunal movements. The bridge over the ecological corridor will span at least 15 m.

Ecological setbacks will consist of a bank with a maximum average slope of 1:5, planted with suitable wetland vegetation. Abutting this zone, a locally indigenous vegetation planted buffer strip, followed by park space with amenities such as pedestrian and cycle pathways, extensive tree planting and large lawned banks will be established. Stormwater detention and treatment facilities will also be positioned in setbacks.

Approximately 15.6 ha of open space will be provided in a number of open space areas throughout the site. These areas will include a park (the ecological corridor), open spaces adjacent to the access routes at the site and in the ecological setbacks abutting the unlined/natural channel of the Liesbeek River and the Liesbeek Canal. The development will be publicly accessible, and provision will be made available for recreational activities in open space areas.

Rehabilitation work

An existing channel leading to the Raapenberg Wetland, which is currently increasing the frequency of inundation and is decreasing the time that the wetland takes to drain, will be infilled. The channel is approximately 90m in length, 3m in width and 1m in depth. A berm (as recommended by the freshwater specialist) will be reinstated. The unlined/natural channel of the Liesbeek River will be infilled to accommodate for the proposed widening of Liesbeek Parkway and for the installation of stormwater infrastructure. The stormwater infrastructure within the unlined/natural channel of the Liesbeek River will consist of vegetated swales and the creation of wetland pockets. The Liesbeek Canal will be rehabilitated in accordance with a rehabilitation/restoration plan to be developed.

 5/2

Roads and access to the site

Access to the River Club is currently from Observatory Road and will be used to allow emergency access in the short term. Access to the proposed development will be gained off Liesbeek Parkway and Berkley Road. The access off Liesbeek Parkway will be developed adjacent to Link Road and over the unlined/natural channel of the Liesbeek River, using box culverts. The crossing will be approximately 530m in length. A two-lane bridge of approximately 80m in length and approximately 450m in width will be developed from Berkley Road and over the Black River to provide access to the proposed development. To accommodate the potential additional traffic associated with the proposed development, Liesbeek Parkway will be widened between Station Road and Link Road. A portion of the unlined/natural channel of the Liesbeek River will be infilled to accommodate the widening of Liesbeek Parkway between Station Road and Link Road. The development footprint of the proposed roads will be approximately 1.5ha in extent.

As part of the future road upgrades on Liesbeek Parkway and Berkley Road and although not currently required for the proposed development, the following upgrades will be undertaken by the City of Cape Town:

- The widening of Liesbeek Parkway between Malta Road and Link Road. A portion of the unlined/natural channel of Liesbeek Parkway will be infilled to accommodate the widening of this section of the Liesbeek Parkway;
- The widening of the Berkley Road bridge over the Black River.
- The widening of the Berkley Road extension;
- The extension of the Berkley Road from the site entrance, over the unlined/natural channel of the Liesbeek River to connect to Malta Road and the Liesbeek Parkway.

All services for the proposed development will connect to the municipal services. Upgrades to the bulk sewer reticulation will be required and will be for the applicant's cost.

The total development footprint will be approximately 24.8ha in extent.

The Riverine Corridor Alternative incorporates the recommendations of all the specialist studies undertaken for the proposed development and has been designed in order to address the concerns raised by I&APs and based on the site attributes. The proposed ecological park/corridor and open space infrastructure will connect the rehabilitated Liesbeek Canal and the stormwater swales located in the unlined/natural channel of the Liesbeek River and will contain pedestrian and cycle paths, which will be a public recreational open space. The Riverine Corridor Alternative also incorporates the heritage Informants into the design of the proposed development. Further, Precinct 1 is located closer to the unlined/natural channel of the Liesbeek River, which creates a larger open space along the Liesbeek Canal.

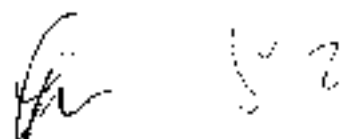
The Island Concept Alternative

This alternative is largely the same as the Riverine Corridor Alternative (i.e. the Preferred Alternative), except that the rehabilitation of the Liesbeek Canal and the ecological setback along the unlined/natural channel of the Liesbeek River will not be implemented.

Although the Island Concept Alternative is feasible from a financial perspective, this alternative is not deemed the preferred from an ecological perspective.

"No-Go" Alternative

The "No-Go" alternative would result in maintaining the "status quo". However, since the Preferred Alternative will not result in unacceptable environmental impacts, the "No-Go" alternative was not warranted.



3. Impact Assessment and Mitigation measures

3.1. Activity Need and Desirability

The proposed site is currently zoned Open Space 3 (i.e. Erf 151832), Open Space 2 (i.e. Erven 26426, 26427 and 108936), Community 1 / Open Space 2 and Transport 2 (i.e. the Remainder of 15326) and Transport 2 (i.e. Erven 26169-26175) and will require rezoning approval in terms of the relevant planning legislation.

To evaluate the environmental impact of the proposed development, and specifically need and desirability, it is important to contextualize the environmental setting within which the application must be considered. It is essential to consider the relevant regional and local planning framework, and in this regard to evaluate and measure the development against sustainability and bioregional planning principles. According to the BAR (dated 06 April 2020), although the proposed development is in line with a number of policies contained in the Provincial Spatial Development Framework (2014), it is in conflict with other policies that relate to the protection of natural assets. According to the City of Cape Town's Municipal Spatial Development Framework ("MSDF") (2018), the proposed site is designated as 'Urban Inner Core'. The 'Urban Inner Core' represents the priority development and investment focus for the City at a metropolitan scale. The MSDF (2018) further maps the proposed site as a proposed heritage area. According to the "Consistency principles and post-2012 amendments, as contained in Technical Supplement D" of the MSDF (2018), lower order spatial plans and policies must be consistent with higher order spatial plans and policies. The MSDF identifies the land as 'Urban Inner Core' and therefore the lower order Table Bay District Plan is inconsistent with the higher order MSDF (which needs to be updated by the City of Cape Town).

The existing site is currently used as a 9-hole golf course and provides venue conferencing facilities. Limited access to the recreational open space is available to the general public. Limited to no access is currently available to allow access to the Raapenberg Wetlands area. The proposed development will provide greater public access to the open space areas. The ecological corridor would provide a social amenity that would be accessible to the public, as the proposed site is strategically located in close proximity to the Cape Town Central Business District. It is close to the Voortrekker Road activity corridor and Paarden Eiland and close to public transport networks. The aim of the proposed development is to develop the site as a "destination place" and is regarded as a gateway into the Two Rivers Urban Park, which supports the vision of 'live, work, play', while still retaining recreational and ecological aspects. The proposed development therefore promotes sustainable development based on the three pillars, namely ecological integrity, social benefit and financial viability (the triple bottom-line) as indicated in the bioregional planning for the area.

The proposed development is largely consistent with the draft Two Rivers Local Spatial Development Framework ("LSDF") (dated October 2019). The Two River LSDF identified the area as a significant area of under-utilised state owned and private land. The ecological role of the river corridors and the cultural and built heritage of the area must be enhanced.

The City of Cape Town's Climate Change Policy has been considered in the need and desirability of the proposed development. The BAR (dated 06 April 2020) states that the proposed development is largely consistent with the said policy. It is imperative that the "triple bottom-line" argument is considered in a balanced manner and within its regional context. If not considered in a balanced manner and if not evaluated within its regional or strategic context, it will result in significant cumulative negative environmental impacts and in unsustainable development.

In addition, and as a broad principle, need and desirability must be consistent with the principles of sustainability as contained in Section 2 of the National Environmental Management Act, Act 107 of 1998 ("NEMA"). In this context, EIAs play an important role by evaluating the need and desirability of development proposals, appropriateness of alternatives and cumulative implications. These aspects are integrally linked and must be informed by the strategic context within which the site/ development proposal is situated. NEMA requires that decisions taken must take into account environmental, social and economic impacts of the activities applied for, including the benefits and disadvantages. The negative impacts are to be minimised and the beneficial impacts are to be maximised. In this regard the Department is satisfied that the application through the EIA process has sufficiently demonstrated that all of the above criteria have been met.

3.2. Heritage Impacts

Given that Section 38 of the National Heritage Resources Act, 1999 (Act No. 25 of 1999) is triggered by the proposed development, a Notice of Intent to Develop was submitted to Heritage Western Cape ("HWC"). In their response to the Notice of Intent to Develop, HWC indicated that a Heritage Impact Assessment, including an archaeological study and an urban design framework, be undertaken.

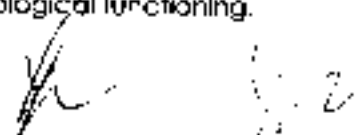
A Heritage Impact Assessment ("HIA") (compiled by Mr. T. Hart and Mr. S. Townsend and dated 02 July 2019) was undertaken to determine the potential heritage impacts associated with the proposed development. The specialists noted that a phase 1 HIA was compiled by Ms. B. O'Donoghue (and peer reviewed by Dr. N. Baumann) and submitted to HWC in 2017, but was withdrawn. Since then, the preferred alternative of the proposed development has changed in order to address the concerns relating to *inter alia*, the heritage significance of the site and the visual impacts associated with the proposed development. A draft HIA was circulated in 2018 for public consultation.

On 20 April 2018, the proposed site was provisionally proclaimed as a Provincial Heritage Site in terms of Section 29 of the National Heritage Resources Act, 1999 (Act No. 25 of 1999). A second draft HIA was released for public comment in 2019. HWC confirmed in their final comment dated 13 February 2020 "What is noted is that a s29 provisional protection does not preclude an applicant from making an application (indeed s29(10) of the NHRA makes provision for this)". The Section 29 Provisional Protection Declaration issued by HWC on 20 April 2018 was valid for two years and expired on 20 April 2020.

The proposed site has its origins in the 1920s. The main buildings, which exist on the proposed site today, were completed in 1939. The existing River Club development was established in 1993 and has since become a local venue with a 9-hole golf course and associated conferencing facilities. The proposed site is located within the Two Rivers Urban Park area, which is an area of approximately 240ha in extent.

The specialist indicated that the lower reaches of the Liesbeek River and its surrounds were the earliest sites of settler farming during the starting years of the Vereenigde Oost-Indische Compagnie ("VOC") occupation and the loss of land, which has been used by the Khoikhoi pastoralists. The specialist noted that no tangible remnants of the actual events have been found thus far. The Liesbeek River corridor and its confluence have been identified as a highly significant heritage feature. The specialist indicated that the Liesbeek River corridor and its confluence are powerful historical symbols of the early landscape of pre-colonial transhumance use, colonial settlement and agriculture, which is claimed as a living heritage site by the First Peoples groups.

However, no tangible traces of early pre-colonial or colonial historic events have been found on the proposed site. The existing buildings on the proposed site are of low heritage significance. The specialist noted that while the landscape remains, it is in a transformed state. Although no heritage resources that require intervention are located on the site, the specialists note that the Liesbeek River corridor should be recognised as a heritage resource if the Liesbeek River corridor is restored to its full ecological functioning.



According to the BAR, the 'most significant' heritage resource close to the site is the South African Astronomical Observatory ("SAAO"), which has Grade I heritage status due to its scientific history. The core historic structure at the SAAO (built in 1822) is centrally situated, and is surrounded by a number of structures of ages ranging from 19th century staff buildings, telescope domes, to late 20th century structures. The setback of the development from the SAAO boundary was one of the key informants of the alternative evolution of the Riverine Corridor Alternative. This alternative mitigates impacts on the SAAO as far as practically possible by stepping back development by approximately 40m from the existing canal and rehabilitating (and therefore softening) the river course, while ensuring the financial viability of the development (i.e. developing the minimum amount of floor area, or bulk required). The potential impacts on the SAAO have been assessed as being of high negative significance, as the site is of national heritage significance. However, the current layout design is compliant with all of the urban design indicators identified in the Urban Design Indicators and recommendations produced by Urban Concepts and has taken account of local sensitivities as far as practicably possible.

The specialist further notes that the proposed development will result in a change in the appearance and character of the site, which is considered as a negative impact. Although the potential impacts are difficult to mitigate, the specialist recommended that the visual impact of the proposed development on the southern portion of the site are minimised. This has been addressed as the height of the buildings was reduced and is limited to a height of four storeys. The specialist further recommended that a range of building heights be applied and that an avenue of trees be planted along the edge of the riverine corridor. Mitigation measures with respect to the restoration of the Liesbeek River corridor and public open space corridor were recommended by the specialist. The recommendations of the specialist have been included in the Riverine Corridor Alternative (i.e. the Preferred Alternative) and in the EMP.

HWC indicated (in their comment dated 13 September 2019) that the HIA (dated 02 July 2019) does not comply with the provisions of Section 38(8) of the National Heritage Resources Act, 1999 (Act No. 25 of 1999). HWC indicated, *inter alia*, that the identification and mapping of all heritage resources in the area affected was partially complied with, the assessment of the significance of the resources was inadequate, the assessment of the potential impacts of the proposed development was not fully identified or mapped and the failure of the consideration of alternatives. A supplementary report was therefore requested.

A Supplementary Report to the HIA (dated 02 July 2019) (compiled by Mr. T. Hart and Mr. S. Townsend and dated 04 December 2019) was therefore compiled in response to HWC correspondence dated 13 September 2019. Since the release of the HIA (dated 02 July 2019) two reports (compiled by Afmos Solutions and dated November 2019), which dealt with the views of several First Nations groupings regarding the wider Two Rivers Urban Park area and regarding the proposed site. The views of the First Nations groupings to 'indigenise' the proposed site have been incorporated into the proposed development. This includes, *inter alia*, the establishment of an indigenous garden, the establishment of a cultural, heritage and media centre, the establishment of a heritage eco trail, an amphitheatre for cultural performances and the use of symbols and names throughout the proposed development.

HWC indicated (in their final comment dated 13 February 2020) "HWC regards the wider TRUP of which the River Club site is an integral component, as a highly significant cultural landscape in the City with a significant interplay between natural and manmade landscapes. It is this interplay that defines cultural landscapes. HWC is of the opinion that this area is of at least provincial significance if not national significance" and that "the requirements contained in HWC's comment (dated 13 September 2019) have not been met and therefore the requirements of Section 38(3) of the National Heritage Resources Act, 1999 (Act No. 25 of 1999) have not been met.



According to the heritage specialists, although HWC's assessment of "National or Provincial" significance of the Two Rivers Urban Park is noted (albeit without any Section 29 investigation), it should be borne in mind that this is a planning boundary, and with the exception of the river courses (which themselves are much changed), much of the history that drives the cultural significance of the site extends over a far broader area. The heritage specialists have however indicated that they recognise that the River Club site has high historical significance, but also that this significance is not visible or apparent. The recovery of the Liesbeek riverine corridor could restore visible and apparent meaning and as a consequence of development, there is a reduction of a "sense of openness".

A meeting was held on 4 March 2020 between officials of HWC, officials of this Department, the applicant, the Environmental Assessment Practitioner and the Heritage specialists to discuss HWC's final comment dated 13 February 2020 and this Directorate's comments on the draft BAR dated 17 February 2020 (requesting that the revision of the HIA and the external review of the VIA, in light of HWC's final comments dated 13 February 2020) it was agreed that further engagement with HWC, in the form of a meeting with the relevant HWC officials and the HWC IACOM committee and a written response to HWC's correspondence (dated 13 February 2020) was required. On 10 March 2020, the heritage practitioner and the EAP met with HWC officials and discussed the way forward. However, the scheduled HWC IACOM meeting never materialised. A written response to HWC's correspondence (dated 13 February 2020) was provided by the heritage specialists. The specialists' response (dated 31 March 2020) indicates that the proposed site creates a real and immediate opportunity, which could trigger meaningful planning of a much larger heritage site. Although the visual openness of the proposed site is highly valued, the existing development on the proposed site does not signal any heritage or cultural significance. An opportunity to commemorate and incorporate the views of the First Nations Collective exists in a space that currently displays no heritage significance. Given that significant input, research and engagement with the First Nations has been undertaken and that the views of the First Nations have been incorporated into the proposed development, the potential heritage impacts have been adequately assessed and concerns raised have been adequately responded to.

The Directorate's comments on the draft BAR dated 17 February 2020, regarding the revision of the HIA and external review of the VIA, were adequately addressed in the heritage specialists written response, dated 31 March 2020 (appended to the final BAR).

3.3. Visual impacts

A Visual Impact Assessment (compiled by SRK Consulting and dated July 2019) was conducted to determine the potential visual impacts associated with the proposed development. The proposed site is located between the unlined/natural channel of the Liesbeek River, the Liesbeek Canal and the Back River. The proposed site is approximately 3m to 8m above mean sea level and is relatively flat. The proposed site is surrounded by residential, commercial, institutional and industrial land uses interspersed with open space for passive and recreational activities. The Passenger Rail Agency of South Africa rail yard is located north of the proposed site, the Liesbeek Parkway is located on the western boundary of the proposed site, the Raapenberg Wetlands, the Back River and the SAO is located along the eastern border of the proposed site. The visual character of the proposed site is described by the specialist as an isolated transition landscape associated with the interface between highly developed urban areas and modified natural elements. The visual quality of the area can be experienced through the views towards Devils Peak, the views across the open, green site, the views toward the Observatory Hill, the views across the Raapenberg Wetlands and the views along Liesbeek River. According to the specialist, "the site itself does not necessarily have an immediately recognisable sense of place although the River Club building is a distinguishable landmark on the site. The sense of place of the study area is strongly influenced by the rivers, and an "island" of green open space in a highly developed and evolving urban environment of mixed land use. The dramatic views of Devils Peak and the dominant east-facing ridge line also add to the sense of place of the study area." The specialist analysed the visual exposure of the proposed development.



Given that buildings are located adjacent to the proposed site, the buildings will provide a visual screening of the proposed development. In terms of visibility, the specialist indicated that the visibility of the proposed development will be very high to receptors in the foreground and will reduce in the middle and background. Recommendations were therefore provided by the specialist to mitigate these impacts. These recommended mitigation measures include inter alia, locating larger buildings to the north of the site and providing a "green" setback along the banks of the Liesbeek River and the Black/Sall River. These mitigation measures have been incorporated in the preferred alternative and are included in the EMP.

The specialist further indicated that the loss of sense of place is anticipated since the development will result in the change of the current nature of the site, which is green open space and used for recreation. The impact for both alternatives was assessed to be of high significance and with the implementation of mitigation, is reduced to medium. The potential visual impacts during the construction phase are anticipated to be of medium negative significance prior to the implementation of mitigation and anticipated to be of low negative significance after the implementation of mitigation measures. Mitigation measures with respect to general construction related impacts have been provided by the specialist.

The potential visual impacts during the operational phase are anticipated to be of high negative significance prior to the implementation of mitigation and anticipated to be of medium negative significance after the implementation of mitigation measures. Mitigation measures with respect to the ecological setbacks, the views towards Devils Peak and across the Raapenberg Wetlands, the use of tree planting palettes and the design of road ways have been provided by the specialist. The recommendations of the specialist have been included as conditions set in this Environmental Authorisation and in the EMP.

The specialist indicated that although the significance rating for both layout alternatives are the same, the Riverine Corridor Alternative (i.e. the Preferred Alternative) is preferred from a visual perspective, as more green open space is accessible.

3.4. Botanical Impacts

A Botanical Impact Assessment (compiled by Coastec and dated December 2016) was undertaken to determine the potential botanical impacts associated with the proposed development. Although the proposed site contains limited indigenous vegetation, concerns regarding the botany of the site and whether the proposed development would have an impact on the terrestrial ecology of the neighbouring SAAO were highlighted by interested and affected parties.

The specialist indicated that approximately ninety-six (96) species were recorded on the SAAO site of which 9 were endemic or near endemic to wetlands. Red listed species were also recorded. The specialist indicated that most of the indigenous vegetation located on the SAAO site were located in the central west, northern and central eastern parts of the SAAO site. The Observatory Landscape Framework, 2010 designates 3 conservation areas for the SAAO, where 2 of the 3 conservation areas occur along the canal of the Liesbeek River. Three conservation actions were recommended by the specialist. The first conservation action is to consolidate and revegetate the renosterveld vegetation of the SAAO site. The second conservation action, is to establish and rehabilitate the links to the north and south along the Black River. The third conservation action is to strategically select the shale soil and overburden required for the infilling of the proposed site, which could provide additional renosterveld substrate on the proposed site and would enable the extension of these habits along the Black River. The linkage between the proposed site and the SAAO could be considered if the two sites are connected by wetland/riverine habitat. The findings of the botanical specialist were incorporated into the Biodiversity Impact Assessment (compiled by Freshwater Consulting cc and dated December 2019).

3.5. Faunal Impacts

A Baseline Faunal Report (compiled by Mr. M. Burger and dated December 2017) was compiled to determine the baseline assessment of mammals, reptiles and amphibians at the confluence of the Liesbeek and Black Rivers with specific focus on the local Western Leopard Toad. The purpose of assessing the faunal importance of each vertebrate faunal group was to obtain an appropriate impression of each group's value at a regional and national scale.

The specialist indicated that habitat variation, habitat quality and the size of a site are significant determining factors in respect of the likely faunal species composition of a site. The proposed site is surrounded by a few key environmental aspects, such as, the unlined/natural channel of the Liesbeek River (west of the proposed site), the Liesbeek Canal (east of the proposed site), the Black River, the Raapenberg Bird Sanctuary wetlands, artificial wetlands on the existing site and the adjacent wetlands located on the SAAD site. Based on the findings of a freshwater ecology baseline report (Day, 2015), the specialist noted that the unlined/natural channel of the Liesbeek River appears to be partially suited as breeding habitat for the Western Leopard Toad, the Liesbeek Canal and the Black River are not suitable as a breeding habitat for the Western Leopard Toad, the Raapenberg Bird Sanctuary Wetlands is confirmed as a breeding habitat for the Western Leopard Toad, two of the three artificial wetlands seem ideal as a breeding habitat for the Western Leopard Toad and the adjacent wetlands has a moderate to low potential as a breeding habitat for the Western Leopard Toad.

In terms of mammal species richness, the specialist anticipated that approximately twenty-nine (29) species are likely to inhabit or utilise the proposed site. None of the potential species are classified as threatened. The specialist therefore anticipated that the Faunal Importance Assessment ("FIA") score for mammals is therefore low at a regional and national scale.



In terms of reptile species richness, the specialist anticipated that approximately thirty-one (31) species are likely to inhabit or utilise the proposed site. One threatened species (i.e. *Bradypodion pumilum*) occurs within the broader study area and is classified as Vulnerable. The FIA score for reptiles is therefore moderate at a regional scale and low to moderate at a national scale.

In terms of amphibian species richness, the specialist anticipated that approximately eight (8) frog species are likely to occur on the proposed site. The Western Leopard Toad (classified as Endangered) is one of the species that utilises the proposed site. The FIA score for amphibians is therefore moderate at a regional scale and low to moderate as a national scale.

Although the FIA score is moderate at a regional scale, specific mitigation measures with respect to the Western Leopard Toad has been provided by the specialist. This includes the proposed changes to the unlined/natural channel of the Liesbeek River to serve as a potential breeding habitat, the east/west ecological corridor, which will serve as shelter/forage habitat, the incorporation of 'road-friendly' infrastructure such as exclusion barriers and underpasses. The specialist further recommended that a Western Leopard Toad management and monitoring plan be compiled. The faunal specialist indicated (in correspondence dated 18 November 2019) remain valid. The recommendations of the specialist have been incorporated into the Biodiversity Impact Assessment (dated December 2019).

3.6. Groundwater Impacts

A comment on the underlying geohydrology of the proposed site (compiled by SRK Consulting and dated 08 November 2017) was provided to specific issues related to the groundwater hydrology of the proposed site. The degree to which the Raapenberg Bird Sanctuary Wetlands are fed by the groundwater table and to comment on the potential changes to the groundwater flow regime as a result of the proposed development.



Data from previous studies on the proposed site was used to formulate the specialist input. Based on the data obtained from four boreholes drilled at the proposed site, the groundwater levels at the proposed site measured at the deeper boreholes are higher in elevation than the water levels in the Liesbeek and Black Rivers. This indicated that the groundwater flow is toward the Liesbeek and Black Rivers. The electrical conductivity of the groundwater, wetlands and the Liesbeek and Black Rivers were measured. The data suggested that the water in the wetlands is mainly groundwater since the electrical conductivity of the groundwater and wetlands are substantially high when compared to the two rivers.

The specialist concluded that the water level and electrical conductivity indicate that the water in the Raapenberg Bird Sanctuary Wetlands is mainly groundwater and that the flow from the rivers towards the wetlands is minor.

3.7. Avifaunal Impacts

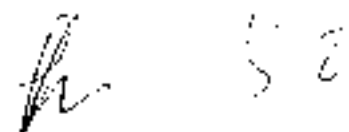
An Avifaunal Report (compiled by Dr. Williams Bird Surveys and dated July 2015) was undertaken to determine the potential avifaunal impacts associated with the proposed development. More than forty (40) bird species were recorded during the various site visits that were undertaken by the specialist. Most of the bird species recorded were water or wetland habitat related. The availability of wetland habitats in the Raapenberg Bird Sanctuary Wetlands influences the use of the area by water birds. The important areas for birds within the proposed site is the open water and abutting waters edge habitats. Although avifaunal impacts were assessed in 2015, the avifaunal specialist indicated (in correspondence dated 19 November 2019) that since no substantive bird impacting changes have occurred since the initial assessment in 2015, the Avifaunal Report (dated July 2015) remains valid. The recommendations of the specialist have been incorporated into the Biodiversity Impact Assessment (dated December 2019).

3.8. Ecological and freshwater Impacts

A Biodiversity Impact Assessment (compiled by Freshwater Consulting cc and dated December 2019) was undertaken to assess the potential ecological impacts associated with the proposed development and incorporates the findings of the aquatic ecosystems (i.e. rivers and wetlands), botanical, faunal, avifaunal and groundwater specialists. The botanical report (compiled by Coastea and dated December 2016), the baseline faunal report (compiled by Sungazer Faunal Surveys and dated December 2017), the geohydrological report (compiled by SRK Consulting and dated 08 November 2017), the avifaunal report (compiled by Dr. Williams Bird Surveys and dated July 2015) and the surface water hydrology assessment (compiled by Aurecon and dated 12 March 2018) were therefore appended to the Biodiversity Impact Assessment (dated December 2019).

The proposed site is surrounded by wetlands and rivers. The western border of the proposed site is bordered by an unlined/natural channel of the Liesbeek River. Liesbeek Parkway is located to the west of the unlined/natural channel of the Liesbeek River. The eastern border of the proposed site is bordered by the Liesbeek Canal. The Liesbeek Canal separates the proposed site and the adjacent South African Astronomical Observatory ("SAAO") and the Raapenberg Wetlands. The Black River forms the southern boundary of the proposed site, between the confluence of the Liesbeek Canal and the unlined/natural channel of the Liesbeek River. The road reserve of the proposed Berkley Road extension is located north of the proposed site. Berms are located along the western and eastern channels of the Liesbeek River.

According to the Western Cape Biodiversity Spatial Plan, 2017, the unlined/natural channel of the Liesbeek River, the Liesbeek Canal, the Black River and the Raapenberg Wetlands are mapped as a Protected Area in terms of the National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003).



In terms of the National Freshwater Ecosystems Priority Area, 2011, the Liesbeek River (as a whole) is classified as a fish support area / fish corridor. In terms of water quality, the Black River is classified as Category F+, which is the most impacted category for river water quality, and water quality in the Liesbeek is classified as Category D. In terms of Present Ecological Status ("PES"), the Black River is classified as Category F, which indicates a system that has undergone extreme changes from its natural condition, the unlined/natural channel of the Liesbeek River is classified as Category E, and the Liesbeek Canal is classified as Category F. The Ecological Importance and Sensitivity ("EIS") ratings were determined by the freshwater specialist. The specialist indicated that the EIS for the Black River was low to moderate, the EIS for the unlined/natural channel of the Liesbeek River was moderate to high, the EIS for the Liesbeek Canal was low and the EIS for the Raapenberg Wetlands was high.

The floodplain north of the proposed site is considered of extremely low sensitivity from an ecological perspective. The channel provides a transformed and disturbed aquatic habitat, which would not be sensitive to slight changes in water quality. The specialist further noted that the unlined/channel of the Liesbeek River is partially suited as breeding habitat for the Western Leopard Toad. The unlined/natural channel of the Liesbeek River no longer receives flow from the Liesbeek River. The Liesbeek Canal is mostly canalised on both sides. Within the canalised section, habitat diversity and sensitivity is low. Hydrological connectivity from the Liesbeek Canal to the Raapenberg Wetlands is important and could potentially result in significant degradation of wetland function, should the proposed development result in a change in the hydrological connectivity. An excavated channel from the Liesbeek Canal into the Raapenberg Wetlands, which may have implications on the functioning of the wetland, was noted by the freshwater specialists.

The specialist identified and assessed the potential impacts associated with Alternative 1 (i.e. the preferred alternative / the Riverine Corridor Alternative) and Alternative 2. The proposed rehabilitation of the Liesbeek Canal into a functional river channel would result in a high positive significance prior to the implementation of mitigation. The river habitat would improve from a PES Category F to at least a PES Category D.

Although the proposed site contains limited Indigenous vegetation and the potential botanical impacts are negligible prior to the implementation of mitigation, the recommendations with respect to the import of fill material to actively rehabilitate the renostervald habitat have been provided. Faunal connectivity throughout the proposed development was assessed to be of low positive significance with the implementation of mitigation measures. The recommendations of the specialist have been included in the EMP. The potential impacts on the Western Leopard Toad was assessed to be of high negative significance prior to the implementation of mitigation measures. In addition to the mitigation measures included in the Riverine Corridor Alternative, the specialist provided additional mitigation measures to be implemented. The potential impacts on the Western Leopard Toad are anticipated to be of low positive significance with the implementation of the specialist's recommendations. The recommendations of the specialist have been included in the EMP.

The potential loss of wetland vegetation along the Black River was assessed to be of medium negative significance prior to the implementation of the recommended mitigation measures and very low negative significance after the implementation of the recommended mitigation measures. The mitigation measures have been included in the EMP. The potential impacts on the unlined/natural channel of the Liesbeek River was assessed to be of medium negative significance prior to the implementation of mitigation measures. Mitigation measures with respect to the creation of additional wetland ponds, retaining and developing the banks of the unlined/natural channel of the Liesbeek River to facilitate nesting areas and the planting of vegetation have been provided by the specialist. These mitigation measures have been included in the EMP. The potential impacts in the unlined/natural channel of the Liesbeek River are therefore anticipated to be of low negative significance post mitigation. The specialist recommended mitigation measures to be implemented during the construction phase and operational phase. The recommendations of the specialist have been included in the EMP.



The specialist indicated that Alternative 1 (i.e. the applicant's preferred alternative / the Riverine Corridor Alternative) is preferred from a biodiversity and general aquatic ecosystems perspective since the overall impact is anticipated to be positive.

CapeNature indicated (in their correspondence dated 05 February 2020) that an existing Biodiversity Agreement exists between CapeNature and the City of Cape Town, which includes the properties along the unlined/natural channel of the Liesbeek River, the Black River and the Liesbeek Canal. The holder will facilitate a discussion between the City of Cape Town and CapeNature in order to amend the current Biodiversity Agreement.

CapeNature further indicated that they agree with the proposed rehabilitation of the Liesbeek Canal. However, CapeNature recommended that a rehabilitation/restoration plan or detailed method statement is required prior to the approval of the proposed development. This recommendation has been included as a condition set in this Environmental Authorisation and in the EMP. The Department of Water and Sanitation has confirmed (in their correspondence dated 15 August 2019) that an application in terms of the National Water Act, 1998 (Act No. 36 of 1998) has been lodged on the Electronic Water Use Licence Application and Authorisation System. The requirements of the National Water Act, 1998 (Act No. 36 of 1998) will be met.

3.9. Geotechnical considerations

A Geotechnical Report (compiled by Kantley and Temple and dated February 2016) was undertaken to determine the suitability of the site for the proposed development. Approximately 4 boreholes and eleven (11) trial holes were drilled. The rock encountered in the boreholes were generally slightly to unweathered very hard rock. Further, very soft rock was encountered in the borehole located within close proximity to the unlined/natural channel of the Liesbeek River and fill material was also encountered. The fill generally consisted of highly variable mixtures of refuse and rubble. Groundwater was encountered in the boreholes and trial holes at varying depths. It is therefore anticipated that dewatering may be required during the construction phase. Mitigation measures with respect to dewatering and the design of the basements have been provided by the specialist. The recommendations of the specialist have been included as conditions set in this Environmental Authorisation and in the EMP.

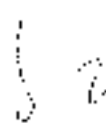

3.10. Surface Water Hydrology Impacts

An Investigation into the impact of the proposed redevelopment of the River Club on flooding and flood abatement in the Salt River Catchment (compiled by Aurecon and dated 12 March 2018) was undertaken.

The literature review done by the specialist indicated that the proposed site is prone to flooding events with a frequency of recurrence of once in every 2 to 5 years. The specialist further noted that there are a significant number of studies that incorporate the proposed site and that some of these studies provide contradictory results.

Approximately thirty-five (35) scenarios were modelled by the specialist. Twelve (12) key monitoring points were selected for comparison purposes. The monitoring points were selected to represent areas where any impacts of the proposed developments are most likely to be of concern.

The specialist indicated that based on the review of the available studies undertaken and the modelling results, the potential impacts on flood levels as a result of the proposed development (including the potential development of surrounding properties) is likely to have an impact on flood levels, in the order of 0.01m to 0.15m depending on the storm recurrence interval and the location.



The potential impacts on flood levels as a result of the proposed development (excluding the potential development of surrounding properties) would be of similar magnitude for all recurrence intervals, but less by approximately 0.00m to 0.03m. The potential impacts are therefore considered to be insignificant. The specialist however provided recommendations regarding, *inter alia*, the design of the Liesbeek Canal, the excavated channels in the Raapenberg Wetlands and the extension of Berdey Road to reduce the potential impacts of the proposed development. The recommendations of the specialists were considered and incorporated into the Riverine Corridor Alternative (i.e. the Preferred Alternative) in this regard.

3.11. Services / Bulk Infrastructure

3.11.1. Electrical supply

According to the Bulk Electrical Services Report (compiled by Sands Engineering Solutions and dated 15 July 2019) the proposed development will require approximately 7MVA supply. The City of Cape Town have confirmed (in their correspondence dated 16 August 2019) that sufficient, spare and unallocated electrical capacity to service the proposed development is available.

3.11.2 Potable water supply

The Civil Engineering Report (compiled by Aurecon and dated 02 March 2018) indicated that no additional bulk potable water infrastructure upgrades are required to service the proposed development. The proposed development will connect to an existing water main located within Liesbeek Parkway.

The City of Cape Town indicated (in their correspondence dated 27 June 2019) that the water network has sufficient capacity to accommodate the peak demand flow of the proposed development. The City of Cape Town further indicated (in their correspondence dated 19 December 2019) that the bulk supply system has sufficient water resource, treatment, bulk storage and conveyance capacity to service the proposed development.

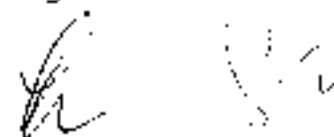
3.11.3. Solid waste removal

The City of Cape Town have confirmed (in their correspondence dated 06 September 2019) that sufficient, spare and unallocated capacity to accept, collect and dispose of all types of waste is available.

3.11.4. Stormwater

The Civil Engineering Report (dated 02 March 2018) indicated that a system of vegetated swales underlain by a formalised piped drainage network will convey stormwater from the 2 precincts to various retention ponds. Stormwater infrastructure will be required as part of the proposed development.

A Stormwater Management Strategy Report (compiled by Aurecon and dated 19 December 2019) provides a strategy for the proposed stormwater infrastructure. It is proposed that stormwater be managed through the installation of dry swales, bioretention basins and constructed wetland areas. The dry swales are proposed to be located within the unfined/natural channel of the Liesbeek River and within the ecological corridor of the proposed development, the bioretention basins are proposed to be located within the Liesbeek Canal and the constructed wetland areas are proposed to be located within the unfined/natural channel of the Liesbeek River. A more detailed Stormwater Management Plan will be compiled in consultation with the City of Cape Town in this regard.



A copy of the Stormwater Management Plan will be submitted to the Directorate prior to the commencement of the construction phase.

3.11.5. Sewage treatment and disposal

The Civil Engineering Report (dated 02 March 2018) indicated that the proposed development falls within the Athlone Waste Water Treatment Works ("WWTW") catchment area and within a sub catchment that drains to the Raapenberg Pump Station, which pumps sewage to the Athlone WWTW. Given the additional flows that are expected as a result of the proposed development, the existing pipeline infrastructure will not have sufficient spare capacity to serve the proposed development. Currently, the existing bulk sewer capacity can only accommodate for 120 000 m² of the proposed development. The City of Cape Town has indicated (in their correspondence dated 27 June 2019) that for the full development to be accommodated, the 1350mm gravity main located upstream of the Raapenberg pump station must be upgraded. The SAR (dated 06 April 2020) indicates that the reticulation capacity for the balance of the floor area proposed (30 000 m²) will be created at the cost of the developer prior to the construction of the floor area relying on such additional capacity. The City of Cape Town has further indicated (in their correspondence dated 27 June 2019) that the Athlone WWTW is operating at capacity, however, wastewater can be diverted to the Cape Flats WWTW, which has sufficient unallocated treatment capacity.

3.12. Socio-Economic Impacts

A Socio-Economic Impact Assessment (compiled by SRK Consulting and dated July 2019) was undertaken to determine the potential socio-economic impacts associated with the proposed development.

The potential socio-economic impact in relation to the investment in the economy was assessed by the specialist. The specialist indicated that the construction sector provides significant employment opportunities and generated further investment in other sectors of the economy through the multiplier effect. The specialist indicated that economic growth in Cape Town has slowed since 2010 and is concerning, given the high unemployment, poverty and population growth rates. It is anticipated that the proposed development would contribute significantly to maintaining or increasing growth rates for the duration of the construction phase. The specialist therefore assessed the potential impact to be of high positive significance with the implementation of measures to further enhance the associated benefits.

The specialist indicated that approximately 5239 direct employment opportunities are anticipated during the construction phase. The potential impacts of the employment opportunities are anticipated to be of medium positive significance. To ensure that this benefit is enhanced, the specialist recommended that local labour and contractors be employed as far as practically possible. Approximately 860 direct employment opportunities are anticipated during the development phase. The potential impact is anticipated to be of medium positive significance.

The provision of inclusionary housing was also assessed by the specialist. It is anticipated that 20% of the residential component of the proposed development will be set aside for inclusionary housing opportunities. With the growing need for housing in Cape Town, the proposed development will aid in providing housing opportunities. The provision for inclusionary housing was deemed to be of low positive significance.

The loss of private open space and the creation of public open space was assessed by the specialist. The existing private open space is largely used by patrons of the River Club and public access to the site is limited.



The proposed development will include a large open space area that will be accessible to the public and will provide for public amenities such as landscaped areas, pathways, river walks. The potential impact is therefore deemed to be of medium positive significance. The potential impacts of property values were assessed to be of low positive significance since the proposed development will attract potential investment into the area.

The specialist indicated that the socio-economic benefits of the proposed development are anticipated to significantly outweigh the potential negative socio-economic impacts in this regard. The enhancement measures of the specialist have been included in the EMPr.

3.13. Traffic Impacts

A Traffic Impact Assessment (conducted by Aurecon and 07 March 2018) was undertaken to determine the potential traffic impacts associated with the proposed development.

Four (4) scenarios were considered by the specialist. This included the 2017 base year (without the proposed development), the 2017 base year (with Precinct 1 of the proposed development), the 2017 base year (with both phases of the proposed development) and the 2032 future pragmatic densification and use scenario (with the proposed development).

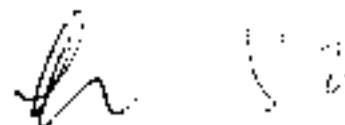
Nine intersections included in the study and modelled according to the four scenarios. The nine intersections were the Liesbeek Parkway/Settlers Way on and off ramps, the Liesbeek Parkway/Observatory Road/Station Road, the Observatory Road/Existing access to the site, the Liesbeek Parkway/Link Road/New access, the Liesbeek Parkway/Maita Road/Berkley Road, the M5 North/Berkeley Road Ramp Terminal, the M5 South/Berkley Road Ramp Terminal and the internal intersection of Precinct 1.

Based on the modelling results for the four scenarios, the specialist indicated that although the existing road network is congested during peak hours, the status quo of the road network is currently operating at an acceptable level of service. The road upgrades associated with the development of Precinct 1 includes, *inter alia*, the upgrading of the Liesbeek Parkway/Station Road intersection, the dualing of Liesbeek Parkway between Station Road and Link Road, the provision of access on the Berkley Road extension and the extension of the Berkley Road from the M5 to the proposed development access. The recommendations of the traffic specialist have been included in the proposed development. The provision of non-motorised transport infrastructure have been included in the Riverine Corridor Alternative (i.e. the Preferred Alternative). It is anticipated that the future road network will operate at an acceptable level of service provided that the recommendations for the development of Precincts 1 and 2 are implemented. The proposed development is therefore supported from a traffic perspective.

The traffic specialist indicated (in their correspondence dated 03 April 2020) that although an update to the estimated traffic counts were provided and that the modelling results for the full development scenario have slightly changed, the specialist confirmed that the assessment of the traffic impacts (as stated in the 3AR (dated 06 April 2020)) remain valid and applicable. The potential traffic impacts are anticipated to be of high negative significance prior to the implementation of the recommended mitigation measures and of medium negative significance after the implementation of the recommended mitigation measures. The mitigation measures have been included in the EMPr.

3.14. Dust and Noise Impacts

No significant dust and noise impacts are anticipated. Potential dust, noise and visual impacts associated with the proposed development will be mitigated by the implementation of the mitigation measures included in the EMPr.

Handwritten signature and initials in black ink.

The Department acknowledges that the proposed site is a valuable asset and is sensitive from an ecological, cultural, social and economic perspective. Various specialist studies were conducted to ensure that the proposed development would as far as possible satisfy the requirements of the various sectors mentioned above. Some of these studies included studies on the ecological status and functioning of the rivers within the site, botanical, faunal and avi-faunal assessments, a visual impact assessment, a heritage impact assessment, ground water, hydrological and floodline investigations. Other specialist studies included urban design guidelines, a traffic impact assessment, general services investigations and a socio-economic impact assessment. In principle, none of the specialist studies conducted have found the proposed development to be unacceptable. The specialist reports provided recommendations and/or mitigation measures to ensure that the proposed development is acceptable from an ecological, cultural and socio-economic perspective. Specialist studies were conducted and/or reviewed by independent specialists to ensure that the requirements of the NEMA EIA Regulations, 2014 (as amended) were met. In addition to taking the environmental constraints into account, the preferred alternative was influenced by the responses from First Nations Groups. Further, the BAR meets the requirements of Appendix 1 of the EIA Regulations, 2014 (as amended).

The Department is therefore satisfied that the EAP adequately identified and assessed all potential impacts both positive and negative that may be associated with the proposed development.

The development will result in both negative and positive impacts.

Negative impacts include:

- Potential impacts on heritage resources;
- Potential visual impacts;
- Loss of some open space;
- The infilling of the unlined/natural channel of the Liesbeek River;
- Potential impacts on fauna, especially the Western Leopard Toad;
- Potential traffic impacts during the construction phase; and
- Potential dust and noise impacts during the construction phase.

Positive impacts include:

- The inclusion of the heritage significance of the site and its historical associations to the First Nations Groups;
- The rehabilitation of a portion of the Liesbeek Canal;
- The creation of wetland pockets to serve as potential breeding habits for the Western Leopard Toad;
- The creation of an ecological park/corridor;
- The creation of functional public open space and associated public amenities;
- The provision of inclusionary housing opportunities;
- The improvement and upgrades to road infrastructure;
- The potential investment and economic growth into the surrounding area; and
- Employment opportunities during all phases of the proposed development.

4. National Environmental Management Act Principles

The National Environmental Management Principles (set out in section 2 of the NEMA, which apply to the actions of all organs of state, serve as guidelines by reference to which any organ of state must exercise any function when taking any decision, and which must guide the interpretation, administration and implementation of any other law concerned with the protection or management of the environment*), *inter alia*, provides for:

- the effects of decisions on all aspects of the environment to be taken into account;
- the consideration, assessment and evaluation of the social, economic and environmental impacts of activities (disadvantages and benefits), and for decisions to be appropriate in the light of such consideration and assessment;



- the co-ordination and harmonisation of policies, legislation and actions relating to the environment,
- the resolving of actual or potential conflicts of interest between organs of state through conflict resolution procedures; and
- the selection of the best practicable environmental option.

5. Conclusion

In view of the above, the NEMA principles, compliance with the conditions stipulated in this Environmental Authorisation, and compliance with the EMP, the Competent Authority is satisfied that the proposed listed activities will not conflict with the general objectives of Integrated environmental management stipulated in Chapter 5 of the National Environmental Management Act, 1998 (Act No. 107 of 1998) and that any potentially detrimental environmental impacts resulting from the listed activities can be mitigated to acceptable levels.

The Holder is reminded of the general duty of care towards the environment in terms of Section 28(1) of the NEMA which states: "Every person who causes, has caused or may cause significant pollution or degradation of the environment must take reasonable measures to prevent such pollution or degradation from occurring, continuing or recurring, or, in so far as such harm to the environment is authorised by law or cannot reasonably be avoided or stopped, to minimise and rectify such pollution or degradation of the environment."

-----END-----



Table 2-1: Environmental management and mitigation measures that must be implemented during the Design Phase

Aspect	Mitigation measure / Procedure	Design Phase Responsible	Implementation Triggers	Monitoring Methods	Performance Indicators
Authorisations	1. Ensure that all required licences and permits have been obtained before the start of construction. These include, but may not be limited to: • Water Use Authorisations.	• LLPT	• Before construction commences	• Keep record of all permits, licences and authorisations	• Required licences/permits on file
Environmental Compliance	2. Appoint an independent EGO with experience in freshwater ecology to oversee construction activities	• LLPT	• Before construction commences	• Review appointment documentation	• EGO appointment documents
	3. Compile a detailed costing for implementation of rehabilitation efforts, landscaping and riparian management, including allowance for acquisition and planting areas / or nursery propagation of sufficient local indigenous plants to achieve the required landscaping objectives and emergency rehabilitation (e.g. in the event of a flood)	• Consultants	• Before construction commences	• Review rehabilitation plan and financial provisions	• Rehabilitation plan and financial provisions
	4. Include the EMP in all tender documents to ensure that sufficient resources are allocated to environmental management by Contractors	• LLPT and consultants		• LLPT to check tender documents and contract	• Incorporated in tender documents
	5. Get sign-off of any pertinent changes to the project description that will affect ecological resources by a botanist, freshwater ecologist and/or faunal ecologist	• LLPT		• Review signed off designs	• Changes to the project description with / without sign-off
	6. Complete a River Corridor Management Plan for the portion of the Liesbeeck River fronting the site for submission to the CoCT	• LLPT		• Audit	• River Corridor Management Plan compiled
Employment	7. Obtain approval of the River Corridor Management Plan from the CoCT				• River Corridor Management Plan approved by the CoCT
	8. Account a freshwater ecologist to compile a restoration plan for the Liesbeeck Canal	• LLPT	• Before construction commences	• Audit	• Restoration Plan completed
	9. Provide an opportunity for Contractors to comment on the restoration plan				
	10. Submit the restoration plan for CoCT sign-off (together with Contractor's comments)				• Restoration Plan approved by CoCT
	11. Get sign-off of the restoration plan from CoCT prior to the start of construction	• LLPT			• Restoration Plan approved by CoCT
	12. Set targets for the use of local labour based on the needs of the proponent and the availability of existing skills and people that are willing to undergo training	• LLPT	• Call for tenders	• LLPT to check tender documents and contract	• Incorporated in tender documents

* Unless otherwise indicated, monitoring will be undertaken by LLPT, supported by the author/ies where the requirement is specifically stipulated in a licence or permit.

"LLPT"

Aspect	Measures / Procedures	Design Phase Measures Responsibility	Implementation Phases	Measuring Methods	Performance Indicators	
Waste Management	13. Ensure that Contractors from outside the local area that tender for work meet the required targets for how many local are given employment				<ul style="list-style-type: none"> Percentage of local staff Percentage of BEE staff 	
	14. Consider implementing labour-intensive rather than capital-intensive work methods wherever possible				<ul style="list-style-type: none"> Keep record of how targets were determined Keep record of staff by origin Keep record of training provided 	
	15. Consider purchasing resources from local sources wherever possible					
	16. Develop a waste management plan, describing: <ul style="list-style-type: none"> Expected type and amount of waste. Measures to reduce waste; Type and expected volume of recyclable waste; Recycling facilities that will collect / receive waste; Type of storage for different waste types, and Waste Contractors that will collect waste. 	<ul style="list-style-type: none"> Consultant team 	<ul style="list-style-type: none"> During Design Phase 	<ul style="list-style-type: none"> Adequate provision for waste disposal 		
	17. Retain an ecological corridor of at least 10 m along the southern property boundary of the site		<ul style="list-style-type: none"> LLPT and consultants 	<ul style="list-style-type: none"> During Design Phase 	<ul style="list-style-type: none"> Review final designs and project implementation 	<ul style="list-style-type: none"> Final design and implementation incorporates design mitigation
	18. Retain an ecological corridor of at least 10 m between the Berkeley Road Extension and the northern building line of the site (with the exception of a single choke-point at the north western corner of the development)					
	19. Retain a recreational buffer area of at least 60 m wide between Precinct 1 and Precinct 2 (the park)					
	20. Install culverts for faunal movements with a height of at least 1 600 mm or provide light sources in culverts where required.					
	21. Rehabilitate the canalized river course, and include the essence of this, the Raubenberg Bird Sanctuary and the Observatory complex as an integral part of a continuous public space system that already exists upstream of the River Club site on the banks of the Lyssbeek River	<ul style="list-style-type: none"> LLPT and consultants 	<ul style="list-style-type: none"> During Design Phase 	<ul style="list-style-type: none"> Review final designs and project implementation 	<ul style="list-style-type: none"> Final design and implementation incorporates design mitigation 	
	22. Remove the western wall of the canal and its base					
23. Install equipped gabions on the remaining eastern canal wall to a depth slightly lower than the wet season base-flow level						
24. Provide an ecological corridor of at least 25 m for channel flow (other than at the pinch-point in the south-eastern corner of the development), including a silted low bank, shaped roughly to a slope of 1:4 to create a slightly elevated floodplain to accommodate within-year (winter high-flow) floods						

Aspect	Design Phase Deliverables			Monitoring Methods	Performance Indicators
	Mitigation Measure / Procedure	Responsible Party	Timing		
Planning and Design - Vegetated Swale at original course of Liesbeck River	25.	Retain an ecological corridor of at least 15 m from uplope of the 1 year flooding at the pinch-point where the link road encroaches into this setback, and vegetate this area with appropriate low-growing vegetation for the first 7.5 m and other riparian vegetation thereafter			
	26.	Allow the river to meander in this corridor naturally			
	27.	Extend the ecological corridor further to the west where opportunities do exist			
	28.	Retain a substantial setback immediately north of the confluence of the Liesbeck and Black Rivers to celebrate the lively location of a precolonial river crossing			
	29.	Install a 1 m high gabion wall at the eastern boundary of the ecological corridor to restrict the movement of Western Leopards into the development area			
	30.	Include a recreational buffer area (where space allows) and pathways to east of the ecological corridor			
	31.	Install a 1 m high gabion wall at the eastern boundary of the recreational buffer area to restrict the movement of Western Leopards into the development area			
	32.	Install slight curves under the bridge crossing the swale to allow for faunal movement			
	33.	Pipe stormwater flows that currently enter the channel from urban areas to the west of Liesbeck Parkway under the swale			
	34.	Step the eastern (development) side of the swale up steeply using gabions to discourage western leopard foot passage into the development			
35.	Use fixed barriers adjoining the rehabilitated swale as the foundations for pathways				
36.	Create at least two artificial wetland ponds, each with a diameter of at least 10 m, in the proposed swale				
37.	Ensure artificial wetland ponds in the swale retain moisture throughout the year (by excavating these below the summer water table or by lining these artificial features)				
38.	Allow stormwater to daylight in open channel vegetated bio-retention swales				
29.	Specify slope the sides of artificial wetland ponds (at a gradient of 1:3 or less steep)				
40.	Get sign-off of the final design of artificial wetland ponds by a faunal and aquatic ecologist				

• Final design and implementation incorporates design mitigation

• Review final designs and project implementation

• During Design Phase

• LLPT and consultants

		Design Phase Activities				
Aspect	ID	Mitigation measure / Procedure	Responsible	Implementation Timeline	Mitigation Methods	Performance Indicators
Planning and Design - Park between Precinct 1 and 2	41.	Retain a section of steep bank on the western bank of the original course of the Liesbeeck River or install WLT barriers on the western bank of the original course of the Liesbeeck River				
	42	Get sign off from a faunal specialist on the final location of culverts under the bridge through the swals				
	43	Extend the open space network across the site to connect the two river corridors	• LEPT and consultants	• During Design Phase	• Review final designs and project implementation	• Final design and implementation incorporates design mitigation
	44.	Install the culverts for faunal movement under the road that crosses this area				
	45.	Manage at least 40% of this corridor as an indigenous planted habitat without lawns or pathways				
	46	Shape the side slopes of the road running through the recreational buffer area between Precinct 1 and Precinct 2 to be as steep as possible for introduce physical WLT barriers to prevent WLTs from entering the road surface)				
	47.	Incorporate planted swales in the east-west recreational buffer zone between Precinct 1 and Precinct 2, and integrate these into the rehabilitated canal corridor below the forest footpath (e.g. by revising the paths in this area)				
	48	Ensure that 20% of Gross Leasable Area is residential, and that 20% of residential units are dedicated to the (inclusive) housing market and integrated into the residential component				
Planning and Design - Buildings	49.	Acquire precinct plan approval from the CoC prior to the approval of building plans	• LEPT and consultants	• During Design Phase	• Review final designs and project implementation	• Final design and implementation incorporates design mitigation

Aspect	Mitigation Measures / Procedures	Design Phase Milestones / Responsibilities	Implementation Timetable	Monitoring Methods	Performance Indicators
50	<p>Design buildings in terms of the following principles:</p> <ul style="list-style-type: none"> • Buildings on the Boundary Road (northern) part of the development should have greater bulk and height than the southern part opposite the SAAO site. • Buildings at precinct entrances should be designed to reflect gateways and emphasise the hierarchy of spaces in the precinct. • Buildings on prominent corners and edges should contain architectural features that highlight the significance of these buildings. • Along internal streets, emphasis shall be placed on the interface between buildings and the public realm in order to promote an attractive and pedestrian friendly urban environment. • The design of buildings around public accessible spaces shall be appropriately scaled and contribute to the creation of safe spaces. • Any parking structures that are above finished ground level shall be screened or shall incorporate an active interface so that hard edges and blank walls are avoided. • Locate larger buildings to the north of the site. 				
51.	Locate larger buildings to the north of the site				
52.	Utilise (vacant) views across Raarpenberg Blvd Sanctuary				
53	Express each building unit individually where buildings are linked together (with architectural details – insets, overhangs, range of visually compatible materials)				
54.	Introduce a variety of building forms and heights to ensure varied grain and fragmentation				
55.	Create a visual link with the natural character of Raarpenberg Blvd Sanctuary with the portion of the site bordering the Sanctuary				
56	Ensure visual and physical pedestrian permeability through development parcels				
57.	Plan for, and design, the raising of the portion of the Liesbeek Parkway that will be vulnerable to high hazard flooding following infilling of the lake			<ul style="list-style-type: none"> • Review final design and project implementation 	<ul style="list-style-type: none"> • Final design and implementation incorporates design mitigation • Duvalling of Liesbeek Parkway
58.	Optimise signals at the intersection of Station Road and Liesbeek Parkway		<ul style="list-style-type: none"> • During Design Phase 	<ul style="list-style-type: none"> • LLPT and consultants 	
59	Upgrade Liesbeek Parkway to a 4-lane dual carriageway road between Link Road and Station Road				
60.	Upgrade Liesbeek Parkway Between Link Road and Maitia Road to a 4-lane when required by subsequent developments				

Planning and Design – Liesbeek Parkway

Aspect	Design Phase Milestone	Responsible	Implementation Timeline	Monitoring Methods	Performance Indicators	
	Mitigation measures / Procedures					
	<p>61. Upgrade the Link Road and Liesbeek Parkway intersection during Phase 1 by:</p> <ul style="list-style-type: none"> Northern leg: Adding an additional lane and shared turning on approach, and fully extend the merging lane on departure; Eastern leg: Adding a new approach into the development; and Southern leg: Adding an additional turning lane on approach, and adding an additional through lane and merging lane on departure. 					
Planning and Design - Barkley Road	62. I-stand Barkley Road over the Black and Liesbeek Rivers to link with Mella Road / Liesbeek Parkway to accommodate one lane of traffic in each direction	<ul style="list-style-type: none"> LLPT and consultants 	<ul style="list-style-type: none"> During Design Phase 	<ul style="list-style-type: none"> Review final design and project implementation 	<ul style="list-style-type: none"> Final design and implementation incorporates design mitigation 	
	63. Include multiple intersections to access the site off Barkley Road, subject to approval from the City					
	64. Install two 1500 mm x 1500 mm box culverts above the 1:50 year floodline on each bank of the Black River to facilitate faunal passage through the road structure					
	65. Include three additional culverts at the Liesbeek walls creating on the eastern terrestrial margins of the swales to allow faunal movements during flood events (i.e. seven culverts in total)					
	66. Install unlined grassed channels to channel stormwater from Barkley Road into the Black River, where possible					
	67. Ensure that a 5 m corridor is retained between the built development edge on the north-western corner of the development and the Renfney Road Extension road reserve (which may occur in the road reserve)					
	68. Include culverts under the extension of Barkley Road onto the site (one between each of the access roads onto the site)					
	69. Put the extent of the fill platform of the Barkley Road Bridge on the eastern bank of the Black River back to at least 5 m from the top of the bank to retain a faunal movement corridor at this structure					
	70. Upgrade the M5 and Barkley Road intersection to a single point interchange during Phase 1					
	71. Undertake further upgrades to the intersection between the M5 and Barkley Road during subsequent phases subject to a Services Agreement with the City					
72. Utilise (wherever) views towards David Peak in movement routes where possible	<ul style="list-style-type: none"> LLPT and consultants 	<ul style="list-style-type: none"> During Design Phase 	<ul style="list-style-type: none"> Final design and implementation 			

Aspect	Design Phase Measures			Monitoring Methods	Performance Indicators		
	ID	Mitigation Measure / Procedure	Responsible				
Planning and Design - Internal Roads and Parking	73.	Implement traffic calming measures on the link road through the development during Phase 1.		<ul style="list-style-type: none"> Review final designs and project implementation 	<ul style="list-style-type: none"> Incorporates design mitigation 		
	74.	Design roadways to be as narrow as practicably possible.					
	75.	Establish and/or retain screening avenues of trees along internal roads to prevent light trespass					
	76.	Install gabions (or similar structures) with a minimum height of 0.5m on the edges of roads on the outer perimeter of each development precinct in line with load protection measures					
	77.	Pave access roads with reflective materials that meet functional requirements and local specifications					
	78.	Upgrade the intersection at the main entrance to the development on Bentley Road during subsequent phases subject to a Services Agreement with the City					
	79.	Arrange above-ground parking bays (if required) in small groups rather than in large, unbroken lots					
	80.	Screen parking bays with buildings and vegetation as far as possible					
	81.	Install sewerage pump stations with a 2 hour overflow capacity within building footprints, and provide submersible pumps, stand-by pumps, and back-up power capacity	<ul style="list-style-type: none"> LLPT and consultants 			<ul style="list-style-type: none"> During Design Phase 	<ul style="list-style-type: none"> Final design and implementation incorporates design mitigation
	Planning and Design - Public and Non-motorised Transport	82.	Make allowance in the layout for a future potential high quality non-motorised transport (NMT) network			<ul style="list-style-type: none"> LLPT and consultants 	<ul style="list-style-type: none"> During Design Phase
83.		Provide tad drop-off points					
Planning and Design - Heritage	84.	Establish an Indigenous Garden for medicinal plants used by the First Nations	<ul style="list-style-type: none"> LLPT and consultants 	<ul style="list-style-type: none"> During Design Phase 	<ul style="list-style-type: none"> Final design and implementation incorporates design mitigation 		
	85.	Establish a Cultural, Heritage and Media centre at the location of the Heritage information hub					
	86.	Establish a Heritage-Eco trail that goes around the site					
	87.	Establish an Amphitheatre for use and cultural performances by both the First Nations and the general public					

Aspect	Design Phase Milestones			Monitoring Methods	Performance Indicators
	Sub-Item / Measure / Procedure	Responsible	Implementation Phase		
Planning and Design - Other	88. Commemorate the history of the First Nations in the area, by: <ul style="list-style-type: none"> Establishing a Gateway Feature inspired by symbols central to the First Nations narrative of the road crossing the eco-corridor; Incorporating symbols central to the First Nations narrative in detailed design of buildings (e.g. pillars / supports, facades, building names, etc.) and Naming internal roads inspired by people or symbols central to the First Nations narrative 				
	89. Integrate the site with surroundings without creating a 'island' for vehicles	• LLPT and consultants	• During Design Phase	• Review final designs and project implementation	• Final design and implementation incorporates design mitigation
	90. Retain visual links to the Black River				
	91. Provide a publicly accessible open space system				
	92. Incorporate visually permeable green or black fencing (if required) into low walls				
	93. Install culverts for faunal movements with a height of at least 1.50m or provide light enclosures in culverts where required.				
	94. Any sewer manholes in open space areas should be located where overflows can be easily detected				
	95. Design pitfall-type structures (drains, stormwater canals, channels, water features and all manhole type structures) to limit access and allow road escape options, where required				
	96. Design fencing (if required) to allow faunal movements (i.e. create 300 mm high x 100 mm wide access holes at least every 10m along a length of fence, and do not electrically fence within 300 mm of the ground)				
	97. Locate emergency generator fuel storage tanks (up to a maximum capacity of 25 m ³) above the 100 year flood level in bunds with a capacity to contain 110% of the capacity of the largest tank within each bund				
Landscape and Rehabilitation Plan	98. Appoint landscape architects with a proven ability to create landscapes that adequately mimic natural river and wetland environments to complete a landscaping and rehabilitation plan	• LLPT	• During Design Phase	• Review appointment of landscape architects	• Landscape architects appointment
	99. Compile a landscaping and rehabilitation plan including detailed annotations regarding the ecological landscaping requirements, dimensions and minimum requirements (incorporating essential mitigation for the development)	• Landscape architects	• During Design Phase	• Review landscaping plan and project implementation	• Landscaping plan produced and includes all necessary design mitigation

Aspect	Design Phase Measures				Performance Indicators
	Mitigation Measure / Procedure	Responsible	Implementation Timeline	Monitoring Methods	
	100	Incorporate a detailed implementation programme into the landscaping and rehabilitation plan taking ecological considerations into account	Landscaping architects	During Design Phase	<ul style="list-style-type: none"> Landscaping plan produced and includes all incorporates design mitigation
Landscaping and Rehabilitation - Ecological Corridors and Buffer Areas	*01	Get sign-off of the landscaping and rehabilitation plan by a botanist, freshwater ecologist and faunal ecologist	LLPT	During Design Phase	<ul style="list-style-type: none"> Landscaping plan signed off by specialists prior to construction
	107	Landscapes ecological corridors and recreational buffer areas to provide high quality cover for WLTs, including low and medium height vegetation cover with mixed plant species	LLPT	During Design Phase	<ul style="list-style-type: none"> Landscaping plan produced and incorporates design mitigation Landscaping plan implemented
	103	Link landscaped areas to create continuous ecological corridors as far as possible			
	104	Integrate Remotely-sited habitat into ecological setbacks and corridors			
	105	Landscapes the ecological corridor on the southern property boundary with indigenous vegetation to provide a diversity of heights and densities of plants			
Landscaping and Rehabilitation - Vegetated Swale at Original Course of Liesbeek River	106	Integrate physical shelters for WLTs into landscaped areas (such as natural logs, or artificial structures such as pieces of broken pots or ceramic piping cut lengthwise)			
	107	Install the channel to create a wide vegetated open swale with ecological amenity and stormwater polishing functions			
	108	Provide terrestrial and breeding season habitat for WLTs in this area	LLPT	During Design Phase	<ul style="list-style-type: none"> Landscaping plan produced and incorporates design mitigation Landscaping plan implemented
	109	Connect artificial wetland ponds to the main east-west faunal corridors with planted landscaped swales			
	110	Vegetate artificial wetland ponds with indigenous wetland vegetation with a range of textures, height and densities			
Landscaping and Rehabilitation - Liesbeek Canal	111	Shape the eastern bank of the Black River (at a gradient of 1:4 or flatter) to a distance of 10 m up and downstream of the Barkley Road Bridge, and vegetate this zone			
	*12	Vegetate gabions along the eastern canal wall with appropriate species and provide areas of higher spatial diversity (e.g. by adjusting riparian marginality)	LLPT	During Design Phase	<ul style="list-style-type: none"> Landscaping plan produced and incorporates design mitigation Landscaping plan implemented
	113	Vegetate the short low western bank with Phragmites suitable meadow and other indigenous plant species typical of lowland rivers in this area			

Aspect	Design Phase Activities		Monitoring Methods	Performance Indicators
	Mitigation measures / Procedures	Implementation Treatments		
Landscaping and Rehabilitation - Park between Precinct 1 and 2	114. Vegetate the western floodplain with a range of indigenous plant species (it is likely that <i>Phragmites australis</i> reeds and possibly <i>Typha capensis</i> brush would dominate)			
	115. Reshape the eastern bank of the earth channel downstream of the existing canal at the way to the Black River to mimic the rehabilitated profile upstream, and plant this area accordingly			
	116. Replace existing willow trees along on the eastern bank of the earth channel downstream of the existing canal with indigenous riverine trees that will supply roosting and/or nesting areas to riverine birds			
Landscaping and Rehabilitation - Buildings	117. Landscapes the recreational buffer area between Precinct 1 and Precinct 2 with wide swaths of indigenous planted vegetation that ensure continuous vegetated, unlitened cover along the length of the corridor for road motorists	• LLPT	• During Design Phase	• Landscaping plan produced and incorporates design mitigation • Landscaping plan implemented
	118. Use large trees and vegetated berms to soften the interface between open spaces and buildings on site.	• LLPT	• During Design Phase	• Landscaping plan produced and incorporates design mitigation • Landscaping plan implemented
	119. Use vegetation to break up large expanses of hard surface.			
Landscaping and Rehabilitation - Berkeley Road	120. Reshape the eastern bank of the Black River where it fronts the site to the approval of an aquatic specialist	• LLPT	• During Design Phase	• Landscaping plan produced and incorporates design mitigation • Landscaping plan implemented
	121. Select water wise indigenous plants for landscaping in open spaces and private gardens			
	122. Design pathways / walkways to prevent the passage of VLT's into the main development area.			
Landscaping and Rehabilitation - General	123. Limit the extent of signs	• LLPT	• During Design Phase	• Landscaping plan produced and incorporates design mitigation • Landscaping plan implemented
	124. Limit the extent of signs in the avia as far as possible			
	125. Investigate the material and tree planting palettes used for the landscaping along Leesbeek Parkway to extend the green movement corridor along Leesbeek Parkway adjacent to the s/b			

		Design Phase Milestones				
Aspect	ID	Mitigation Measure / Procedure	Responsible	Implementation Phase	Monitoring Methods	Performance Indicators
Method Statements	126	Compile detailed method statements for watercourse construction and flow diversion demonstrating how downstream sedimentation and/or turbidity would be avoided, making allowance for emergency rehabilitation of the Rappenberg Weiland should the Liesbeck River flood during construction	Consultants	During Design Phase	Review signed off method statements	Method statements in place and signed off by a freshwater ecologist
	127	Get sign off of method statements for watercourse construction and flow diversion from a freshwater ecologist				
Stormwater Management	128	Develop a final stormwater management plan for the entire development area, to promote infiltration and reduce run-off from the development	Consultants	During Design Phase	Review detailed layout plans	Approval of final design Stormwater infrastructure included in final design
	129, 130, 131	Get CoCT approval of the final stormwater management plan Ensure that designs include the installation of erosion control and abatement structures at stormwater outlets Supply door flood barriers at properties at Number 1 and Number 3 Oublan Road.	LLPT	Prior to the commencement of construction	Interview owners of 1 and 3 Oublan Road	Flood barriers supplied
Lighting	132	Limit high intensity lighting (e.g. make use of low-level lighting fixtures such as bollards, where possible, to avoid light spillage)	Consultants	During Design Phase	Review detailed layout plans	Lighting included in detailed design and compliant with measuring
	133, 134, 135	Where possible direct lighting upwards and downwards to avoid light spillage and trespass Reduce the height of lighting masts as far as practicable Install down light luminaires to illuminate vertical structures or surfaces such as signs if the only alternative is to light the element, the correct luminaire must be fitted to avoid light spillage				
Dust Management	136	Inform all registered local stakeholders of the impending construction, including the presence of the complaints register and potential for dust abatement, at least 4 weeks before construction commences	LLPT	4 weeks prior to the commencement of construction	Check notices	Proof of stakeholder notifications

Aspect	Design Phase Milestones			Performance Indicators
	Mitigation Measures / Procedures	Responsible	Implementation Timeline	
ID *37	<p>Complete a Dust Management Plan(s) for construction that includes</p> <ul style="list-style-type: none"> • A site map with: <ul style="list-style-type: none"> - Prevailing wind directions during construction period (i.e. relevant season); - Property boundaries; - Areas to be cleared; - Barriers to be installed; - Location and timing of bulk earthworks; - Location of stockpiles; and - Location of unsurfaced access roads; • Routine dust control measures; • 3-emergency dust control measures; • Resources required for dust management (equipment, staff and financial); and <p>A contact number for reporting complaints and concerns regarding dust from construction activities.</p>	<ul style="list-style-type: none"> • Consultants 		



"LL26"

APPEAL DECISION

REFERENCE NO: 14/3/1/A7/17/0478/20

In the matter between:

Heritage Western Cape and 20 Others:

The Appellants

Director: Development Management (Region 1) (Western Cape Department of Environmental Affairs and Development Planning):

First Respondent

Liesbeek Leisure Properties Trust:

Second Respondent

APPEALS LODGED IN TERMS OF SECTION 43(2) OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998) AGAINST THE ENVIRONMENTAL AUTHORISATION GRANTED FOR THE PROPOSED REDEVELOPMENT OF THE RIVER CLUB FOR MIXED USE DEVELOPMENT AND ASSOCIATED INFRASTRUCTURE ON THE REMAINDER OF ERF NO. 15326 AND ERVEN NO. 26169 – 26175, 26426 – 26427, 10B936 AND 151832, OBSERVATORY

1. The Appeals lodged against the Environmental Authorisation ("EA") granted by the Department of Environmental Affairs and Development Planning's ("DEA&DP") Director: Development Management (Region 1) on 20 August 2020, refers.
2. After careful consideration of the Appeals, as well as supporting documentation received, in terms of section 43(2) of the *National Environmental Management Act, 1998 (Act No. 107 of 1998)* ("NEMA") and regulation 7(3) of the *2014 National Appeal Regulations*, I have decided to **dismiss** the Appeals and **vary** the abovementioned decision of the Competent Authority granted on 20 August 2020 in respect of the following conditions:

Condition E9.1:

"The Stormwater Management Plan, to be compiled must be approved by the City of Cape Town's Catchment Stormwater and River Management Branch and must be included in the EMP. A copy of the Stormwater Management Plan must be submitted to the Ministry of Local Government, Environmental Affairs and Development Planning ("Ministry") (for the attention of Mr Marius Venter, email: DEA&DP.Appeals@westerncape.gov.za) prior to the commencement of the construction for record purposes."

Condition E9.2:

"A rehabilitation/ restoration plan for the rehabilitation of the Liesbeek Canal must be compiled in consultation with CapeNature and the relevant City of Cape Town's Biodiversity Management Branch prior to the commencement of rehabilitation work to be undertaken. A copy of the final rehabilitation/ restoration plan must be submitted to the Ministry (for the attention of Mr Marius Venter, email: DEA&DP.Appeals@westerncape.gov.za) prior to the commencement of the rehabilitation work for record purposes."

3. The abovementioned EA and the conditions under which the authorisation was granted must be complied with.

4. **AMENDMENTS/EXCLUSIONS TO THE ENVIRONMENTAL AUTHORISATION:**

4.1 Section G of the EA and Condition E8 are excluded from this authorisation.

4.2 The following conditions of the EA are substituted and must be complied with:

SECTION E: CONDITIONS

Condition E2:

"The holder must **commence** with the listed activities on site within a period of **ten (10) years** from the date of issue of this Appeal Environmental Authorisation."

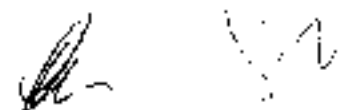
Condition E7:

"The holder must, in writing, within 14 (fourteen) calendar days of the date of this decision notify registered Interested and Affected Parties ("I&APs") of-

7.1 The outcome of the Appeal;

7.2 The reasons for the decision, and

7.3 The date of the decision."

Two handwritten signatures in black ink, one on the left and one on the right, appearing to be initials or names.

5. REASONS FOR THIS APPEAL DECISION:

The reasons for dismissing the Appeals and varying the Appeal EA are contained in the EA and the following additional reasons:

Appeal ground 1: The decision does not adequately take into account the previous comments on the issues set out below and the public was not afforded an opportunity to comment on the Basic Assessment Report ("BAR") of April 2020

- 5.1 The general objectives of integrated environmental management, under sub-section 23(2) of the NEMA, is to: "(d) ensure adequate and appropriate opportunity for public participation in decisions that may affect the environment;"
- 5.2 The 2014 EIA Regulations state that:
"40(1) The public participation process to which the—
(a) basic assessment report and EMPr [Environmental Management Programme], and where applicable the closure plan, submitted in terms of regulation 19; and ...
was subjected to must give all potential or registered interested and affected parties, including the competent authority, a period of at least 30 days to submit comments on each of the basic assessment report, EMPr, scoping report and environmental impact assessment report, and where applicable the closure plan, as well as the report contemplated in regulation 32, if such reports or plans are submitted at different times...
43(1) A registered interested and affected party is entitled to comment, in writing, on all reports or plans submitted to such party during the public participation process contemplated in these Regulations and to bring to the attention of the proponent or applicant any issues which that party believes may be of significance to the consideration of the application, provided that the interested and affected party discloses any direct business, financial, personal or other interest which that party may have in the approval or refusal of the application."
- 5.3 In terms of Regulation 41 of the 2014 EIA Regulations a 30 days public participation process must be conducted to provide an opportunity to the Interested and Affected Parties ("I&APs") to submit comments on the proposed development.
- 5.4 To give effect to the NEMA and regulations 40 to 44 of the 2014 EIA Regulations, the public participation process detailed in the reasons for the EA was undertaken.
- 5.5 It is noted that "[t]he City of Cape Town provided comments on both the Draft BAR (January 2019) and the Final BAR (January 2020)..." On page 136 of the Final BAR it is confirmed that various departments of the City of Cape Town commented on 15 July 2019 and 14 February 2020. When I&APs stated that the time allowed for review and comment on the BAR is short to do justice to the issues, the Environmental Assessment Practitioner ("EAP") responded that:
- 5.5.1 A 30-day comment period on the BAR was allowed, as required in terms of the EIA Regulations. It is also relevant that a 60-day pre-application comment period was allowed for on the BAR – this pre-application engagement period is not a requirement of legislation / exceeds legislative requirements.
- 5.5.2 All comments received up until the 1 March 2020 have been recorded and responded to, and all comments received by SRK were submitted to the Department of Environmental Affairs and Development Planning ("DEA&DP") with the revised Final BAR.



- 5.19.21 The proposed development represents an alternative way in which sustainable development of the site is imagined, considered, assessed, and then decided upon, based on recent and detailed technical studies. The current zoning is based on the previous understanding of the site and its limitations. The process of rezoning is a regular practice of town planning and urban development and rezoning of land is not unusual in municipal planning and land use management.
- 5.19.22 An application to rezone the River Club property from Open Space 3: Special Open Space to Subdivisional Area was approved unanimously by the City of Cape Town's Municipal Planning Tribunal on 18 September 2020.
- 5.19.23 The Rezoning Decision of the City of Cape Town's Municipal Planning Tribunal, dated 30 September 2020, states that:
- 5.19.23.1 Portion 3 of the subdivision shall be zoned for Open Space Zoning 3: Special Open Space purposes and shall be a minimum of 49,535m² in extent.
 - 5.19.23.2 Portion 3 shall comprise servitude rights of way registered in favour of the general public and shall be to the satisfaction of the authorized official (Development Management).
- 5.19.24 The Appellants do not indicate how the regional and strategic context of the site is overlooked in the BAR and the EA, other than to cite hydrological and ecological impacts (which the Appellants have assessed without specialist input) and alleged non-compliance with City of Cape Town policy.
- 5.19.25 The record of the Municipal Planning Tribunal's decision of 18 September 2020 is instructive in this regard.
- 5.19.26 The BAR interrogates the regional and strategic context of the site in great detail.
- 5.20 Considering the above, the need and desirability aspects have been adequately addressed.

Appeal ground 4: Insufficient consideration was given to heritage informants and the relevant heritage resources authority's comments and there was non-compliance with section 38(8) and section 36(3) of the NHRA

Introduction

- 5.21 In terms of section 24(2) of the NEMA, certain activities have been identified which may not commence without EA from the environmental authority and which must be subjected to EA.
- 5.22 Section 38 of the NHRA lists certain development activities and requires that any person who intends to undertake such development activities must first give notice to the heritage resources authority to determine if a HIA will be required. If a heritage assessment is required, then the person may only proceed once the approval of the heritage authority has been obtained.
- 5.23 In order to avoid duplication and allow for coordination in terms of the requirements in terms of NEMA and the NHRA, section 38(8) of the NHRA states that if the development activities listed in Section 38(1) must be subjected to EIA in terms of NEMA, then a separate HIA and approval from the heritage resources authority are not required, provided that the environmental authority must ensure that if the relevant heritage resources authority requires an HIA it fulfils the requirements of the heritage resources authority and any comments and recommendations of the relevant heritage resources authority with regard to such development have been taken into account prior to the granting of the environmental authority's consent.

Handwritten signature and initials, possibly 'A. J. J.' or similar, in black ink.

5.24 As such, if a NEMA EIA is required for the development activities listed in terms of section 38 of the NHR Act, then it is not permissible for a separate HIA and EIA process to be followed and separate decisions to be followed. An EIA process will be followed and if the heritage resources authority requires a HIA, then the HIA will be undertaken as one of the EIA specialist studies, but the environmental authority must ensure that the heritage resources authority's requirements in terms of the assessment are met. In such instances, it is also not permissible for a separate heritage approval to be issued, but the environmental authority must take into account the comments and recommendation of the heritage resources authority prior to granting or refusing EA.

5.25 To comply with the applicable requirements of the NEMA and the NHR Act, the following were undertaken / considered:

5.25.1 A Basic Assessment process which culminated into a BAR.

5.25.2 The following specialist studies (amongst others):

5.25.2.1 Visual impact assessment

5.25.2.2 HIA and a Supplementary HIA

5.25.2.3 Biodiversity impact assessment

5.25.2.4 Traffic impact assessment

5.25.2.5 Services report

5.25.2.6 Socio-economic impact assessment

5.25.3 A public participation process was conducted in terms of section 24Q of the NEMA and the 2014 EIA Regulations.

5.25.4 All relevant factors were taken into account, which include—

5.25.4.1 Any pollution, environmental impacts or environmental degradation likely to be caused if the application is approved or refused.

5.25.4.2 Measures that must be taken—

5.25.4.2.1 To protect the environment from harm as a result of the activity which is the subject of the application.

5.25.4.2.2 To prevent, control, abate or mitigate any pollution, substantially detrimental environmental impacts or environmental degradation.

5.25.4.3 Where appropriate, any feasible and reasonable alternatives to the activity which is the subject of the application and any feasible and reasonable modifications or changes to the activity that may minimise harm to the environment.

5.25.4.4 Any information and maps compiled in terms of section 24(3), including any prescribed environmental management frameworks, to the extent that such information, maps and frameworks are relevant to the application.

5.25.4.5 Information contained in the application form, reports, comments, representations and other documents submitted in connection with the application.

5.25.4.6 Any comments received from organs of state that have jurisdiction over any aspect of the activity which is the subject of the application.

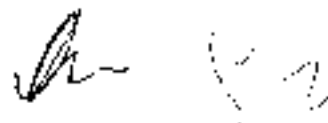
5.25.4.7 Any guidelines, departmental policies, and environmental management instruments that have been adopted in the prescribed manner and any other information in the possession of the competent authority that are relevant to the application.

5.25.4.8 The comments of any organ of state charged with the administration of any law which relates to the activity in question.

5.26 The HIA conducted by Mr Timothy JG Hall and Dr Stephen Townsend, which was submitted to inform the BAR, stated inter alia the following:

Introduction

- 5.26.1 The HIA dated 2 July 2019, was conducted to satisfy section 38(8) of the NHRA in conjunction with a Basic Assessment process conducted under the NEMA for the redevelopment of the River Club site, Erf 151832, and its bounding riverine banks, the construction of the abutting long-planned aerial Berkley Road Extension on Erf 15326, the widening of Liesbeek Parkway, and of the road intersections giving access to Erf No. 151832, Observatory, Cape Town. Although the use of the site has been gradually intensified over the years, Liesbeek Leisure Properties Trust have explored the possibility of developing the site as the land is underutilised in this urban context close to central Cape Town where land for urban densification is needed and desired.
- 5.26.2 The size of the property and its proximity to protected riverine and wetland systems have triggered both an impact assessment report in terms of the NHRA and a Basic Assessment in terms of the NEMA.
- 5.26.3 This HIA includes studies and information required by the provincial heritage resources authority, HWC and HWC's final comments must be taken into account by the NEMA authority, the Provincial DEA&DP.
- 5.26.4 It was noted that an earlier report (described as a "phase one HIA") was compiled on behalf of Liesbeek Leisure Properties Trust and submitted to HWC in early 2017. This report was, however, withdrawn before being considered by HWC as a consequence of two related factors: first, when considering the related Two Rivers Urban Park "base line studies" submitted at roughly the same time in early 2017 on behalf of the WC Provincial Government, HWC's Impact Assessment Review Committee ("IACom") was critical of what its members perceived as un-argued assumptions about the potential scale of development in the TRUP-area; and second similar assumptions to those just referred to had been included in O'Donoghue's "phase one HIA". Following the IACom comments on these baseline studies, it was recognised by the owners that the development of Erf 151832, the study site of this report, provided an opportunity for a radically different alternative which could transform the Liesbeek River, a concrete-lined canal, into a restored ecological element and a historically rich and iconic section of the Liesbeek River. As a consequence, a rather differently argued Draft HIA (which rebuts some assumptions of the "phase one HIA") by Townsend and Hart, was circulated for public and interested party comment in January-March of 2018. That draft report, while recognising the research carried out for the "phase one HIA", also took account of the previous consultative steps under both the NEMA and the NHRA but dealt with a rather different preferred alternative to that presumed in the "phase one HIA".
- 5.26.5 It was also noted that in late-March 2018 (immediately after the end of the period in which the Draft HIA for Public Consultation dated 18 January 2018 had been advertised for comment) HWC provisionally proclaimed the River Club property to be a provincial heritage site in terms of section 29 of the NHRA. This led to appeals against this decision by four parties including the Applicant (described in more detail in the following section on the Legal and Procedural Framework). This process interrupted the compilation of the HIA and, as a consequence, it was not possible to continue with the process until the interim ruling of the HWC's appeal authority. This was released on 5 February 2019 and enabled the integrated NEMA and NHRA processes under section 32(b) to continue. However, given the time since the consultation period last January-March 2018 and given the engagement of the First Peoples groups in the provisional proclamation process, a second Draft HIA was readvertised for stakeholder, interested party and public engagement during the period, 22 March to 2 May 2019. This final HIA was submitted to HWC



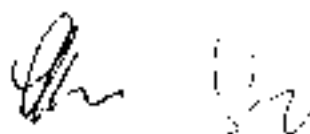
for its comments; and it was also to accompany and inform a BAR circulated for pre-application stakeholder engagement in terms of regulation 19(1)(a) of the NEMA EIA Regulations of 2014.

NHRA and NEMA

- 5.26.6 Section 38(1) of the NHRA requires that "any person who intends to undertake", *inter alia*, "any development... which will change the character of a site... exceeding 5000m² in extent" must "notify the responsible heritage resources authority and furnish it with the details... of the proposed development". Section 38(2) requires that "if there is reason to believe that heritage resources will be affected by such development" the developer shall be required to submit "an impact assessment report" (HIA) compiled by a person approved by the responsible heritage resources authority.
- 5.26.7 The development proposed in this case will change the character of this site which exceeds 5 000m². As a consequence, Heritage Western Cape was formally notified of the intended development in December 2015; and Heritage Western Cape confirmed that an HIA is required (letter dated 7 January 2016) which includes:
- 5.26.7.1 "an archaeological study".
- 5.26.7.2 "The urban design framework of the proposed development".
- 5.26.8 It is noted that comments and arguments submitted to the MEC for Cultural Affairs and Sport's Heritage Tribunal during its hearings in October, November and December 2018 regarding the appeals against HWC's decision to provisionally proclaim the River Club site as a Provincial Heritage Site are also addressed, in the main, in the HIA report.
- 5.26.9 This HIA was submitted to accompany a BAR circulated for pre-application stakeholder engagement in terms of Regulation 19(1)(a) of the NEMA EIA Regulations, 2014 dated July 2018 as a component of the integrated NHRA and NEMA process.
- 5.26.10 It was also submitted to HWC for its "final comment" which the decision-maker, the provincial DLA&DP was required to consider when deciding on the matter (and, thus, satisfy section 38(8) of the NHRA).
- 5.26.11 The process is designed to satisfy both the NHRA and the NEMA and its regulations: that is, sections 24 and 44 of NEMA which make provision for the promulgation of regulations, and the 2014 EIA Regulations which identify activities ("NEMA listed activities") that may not commence without an EA issued by the competent authority (DLA&DP). The proposed project includes activities that are listed in terms of these EIA Regulations, as confirmed by DLA&DP on 22 April 2016. At that date, the project triggered a listed activity that required a Scoping and Environmental Impact Reporting ("S&EIR") process in order to inform an application for EA, and in this regard, the following notices and reports were prepared and released for public comment:
- 5.26.11.1 Initial notification of identified stakeholders, including release Draft Scoping Report –released on 4 August 2016.
- 5.26.11.2 A Revised Draft Scoping Report –released on 11 January 2017.

Interested Party Consultation

- 5.26.12 Numerous interested parties and the public more generally have shown considerable interest in the 'base-line studies' for the TRJP and River Club projects and the drafts of this HIA that have been circulated for public and



I&APs' comments in the past few years. While crucial to their evaluations of several aspects, they do not include every detail of the comments made in all of the opportunities that there have been for commenting although they recognise this as a demonstration of the considerable interest shown in the TRUP as a whole and the River Club site as a significant site inside the TRUP area. They have attempted to describe and address more directly the comments of the parties received during the consultative periods advertised specifically as a part of this HIA process (25 January to 6 March 2018 and 22 March to 2 May 2019) and those received by the MEC's Tribunal during the appeal against HWC's decision to provisionally proclaim the site in question as a provincial heritage site (during October, November and December 2018) in Section 5 Consultation of Interested Parties; and they include the comments and criticisms of the proposal itself in section 9, The Proposed Development.

Conclusion regarding Commentary on the Floodplain as Heritage Resource

- 5.26.13 The site, as a component of the floodplain, is a significant heritage resource of ecological, historical and socio-political importance despite the general recognition that, in words of the ecology-specialist, "both terrestrial and natural ecosystems are considered degraded, having suffered a long history of manipulation, including (in the case of aquatic ecosystems) variously, diversion, channelization, fragmentation and consolidation"
- 5.26.14 The site is a component of a neglected and much-transformed landscape with ecological and heritage significances that are potential rather than actual but which can be recovered.
- 5.26.15 The proposed development of this degraded, under-used and under-valued site presents an opportunity for ecological, environmental, and heritage recovery and for the transformation and enhancement of the Liesbeek Canal as a riverine corridor.

Commentary on Heritage Resources on or near the Site

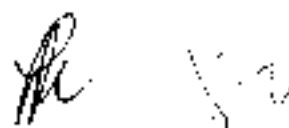
- 5.26.16 Several commentators have commented on heritage resources on the site and nearby:

The River Club Building on the Site

- 5.26.17 Several Appellants have questioned their dismissal of the significance of the River Club building built in 1939, implying that they think that the building is significant as a heritage resource. Put simply, they do not think that it is significant at all: it is a straight forward building of the late-1930s with little architectural pretension, its history as a sports club for employees of the SAR&H is incidental, and it fails to meet the criteria for conservation or protection.

The South African Observatory

- 5.26.18 The SAOC, as a Grade I site and declared as a National Heritage Site in December 2018, is certainly the most (and only) significant heritage site near enough to the River Club to be affected by the development; and therefore, requires deeper consideration.
- 5.26.19 The SAOC is a very significant site; and this significance relies on its location on the low spur or ridge between the Liesbeek and Black Rivers, its wooded



setting, its architectural interest and, most importantly, on its historical/scientific *raison d'être*.

"The South African Astronomical Observatory in Cape Town has played a highly significant scientific role over time as the oldest permanent observatory in the Southern Hemisphere. The site offers an overview of the history of astronomy both locally and internationally. It is a "living site" with almost 200 years of history while still retaining its prominence in the international astronomical community.

Contributions to astronomy from the site range from some of the first accurate measurements of the distance to a star (Alpha Centauri), first catalogues of the principal southern stars, the first photographic survey of the sky, accurate measurements of the distance to the Sun (a value that became the benchmark to measure all other cosmic distance and represented a paradigm shift in astronomy), development of spectroscopy, re-measurement of

Lacaille's Arc of Meridian, establishment of the true shape of the Earth in the Southern Hemisphere and the first accurate geodetic surveys of southern Africa.

Architecturally, there are several buildings of historical value which not only reflect the changing architectural styles over the nineteenth century but also have a considerable scientific value due to their contributions to the field of astronomy. Some examples are: the Main Building (a Georgian Building) - designed by the British naval architect, John Rennie, and completed in 1828;

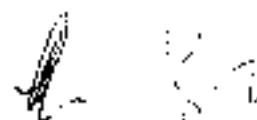
the heliograph - the oldest dome on the site and which runs on cannon balls,

and the McClean Telescope Building - designed by Herbert Baker.'

- 5.26.20 However, the comments on the SAAO notwithstanding, as pointed out by Winter, the campus is well screened by the fairly dense collection of trees surrounding the campus, on its western side facing the River Club in particular. These trees and their screening of both the River Club and the west more generally, demonstrate the insignificance of the views to the west even if the very choice of this site depended on a view to the Castle (long hidden by taller buildings between the Castle and the Observatory) and Signal Hill (which will still be visible from the Observatory). They have argued this point in a little more detail in the section on Significance. It also noted that the campus of the main Observatory buildings is a considerable distance, approximately 155m, from the nearest buildings included in the proposal; and the taller buildings in the northern end of Precinct 1 and in Precinct 2 are approximately 300m from the old Royal Observatory building and its campus.

Other Nearby Heritage Resources


- 5.26.21 A number of other relatively nearby heritage sites and resources are referred to by some commentators, but these are, notwithstanding the very considerable significance of some of them, out of sight and will not be affected by the development. These include several sites of early homesteads all but one are 'buried' within the urban townscape of Observatory. The exception, the Valkenberg homestead, is 'too distant' from the site to regard it



as 'affected' by the proposed development although it is regarded as significant to be improved by restoring the riverine corridor.

The River Club Site as a Heritage Resource

- 5.26.22 While the area in which the River Club is situated is historically important for the role it played in the past, no tangible heritage relics or resources have survived on the site. The only element on or immediately abutting the site that has been constant through both pre-colonial and colonial periods is the Liesbeek River itself.
- 5.26.23 However, although its alignment and function has been altered to the point that not much of the original course survives, the main elements and a confluence exist today. But the river is a strong symbol of past events, even if with intangible and imprecise associations; and it gives a sense of deep time reflecting the history and significance of the area. The Liesbeek River is therefore identified as the surviving physical heritage resource that deserves significant celebration.
- 5.26.24 In the "phase one HIA" of the River Club, O'Donoghue (2017) regarded the River Club as part of the TRUP and argued that the heritage indicators for the River Club should be synchronised with those determined in the TRUP process. Importantly, she also argued that the site's "island character" should be retained. Baumann (2016), in his review of O'Donoghue's "draft phase one report", pointed out that the TRUP is comprised of a variety of precincts of very different topographies, histories of use, of development-type, each with its own qualities and a variety of potential heritage significances; and he questioned the "island character" idea of the development.
- 5.26.25 The River Club is a privately owned conference facility, sports club, golf driving range and nine hole golf course. The site itself has very little obvious heritage significance of which the only apparently significant qualities are the architecture of the unremarkable Grade IIIc structures (which they dismiss) and its sense of place as a part of the Liesbeek floodplain (which, although much transformed, damaged and degraded, they regard as potentially significant). They argue that the Liesbeek River is the common thread and the significant heritage resource that links the River Club, the TRUP and the environs more generally; and they argue that the potential significance of the flood plain can only be realised by restoring the riverine corridor.
- 5.26.26 The archaeological survey by Kaplan (in O'Donoghue 2017) shows that much of the land that makes up the site has been subject to considerable disturbance and has very little archaeological potential which they confirm. While it can be argued that the golf-course contributes to the sense of open space, it is a man-made and spoiled landscape that contributes little to the natural qualities of the confluence. The heritage practitioners, therefore, insist that the river is the primary physical and symbolic heritage resource in proximity to the site. It is this that needs to be celebrated and enhanced. Provided this is done adequately, and the Raubenberg wetlands conserved, development of the site is justifiable.
- 5.26.27 The difficulty in articulating the heritage-sensitivity of the River Club site is that although the site is historically important in terms of the role this area played in the history of the Cape, there is no or very little physical heritage on the site – it has been transformed and reclaimed from estuary mud; and the course and nature of the Liesbeek has been dramatically altered.
- 5.26.28 While the entire Liesbeek River valley has not been surveyed, many parts of the Observatory section have been examined. The River Club itself was previously surveyed by Kaplan, while Hart has checked excavations for new



[Handwritten signature]
2022

structures on the neighboring SAAO site. Comprehensive trial excavations have taken place at Valkenberg, Varsche River as well as checking of excavations for renovation of the Hospital. The archaeological material that has been found to date relates entirely to the VOC period and thereafter. Despite the major works that have involved canalization of the river, no graves or human remains have been reported or are lodged according to the skeleton register at either Ziko Museum or the UCT medical school which have been the official repositories of such finds since both institutions were established. The nearest recorded remains of pre-colonial people and archaeological sites are from close to the Salt River estuary in Milneron. Cremation among Khoikhoi people has not been described in any known historical ethnography. However, burial methods are described and are archaeologically well documented. The emailed assertion by Hornsick (who believes that the Khoikhoi people were migrants from India) is disputed.

- 5.26.29 The records from the register are as follows:
- 5.26.29.1 SAM 6019 - found in Salt River by the SAPS in 1972 from the excavation for a building - a cranium and mandible.
 - 5.26.29.2 SAM 6070 - found at Site B in Alfred Road in 1983 - a complete cranium, mandible and other minor human remains.
 - 5.26.29.3 UCT 263 - found beside the old Cape Town infirmary in a street excavation at the site of an old graveyard - 2 crania.
 - 5.26.29.4 UCT 145 - Hiddingh Estate in Newlands - a colonial coffin burial, complete skeleton.
- 5.26.30 Contrasting with the above observations, the archaeological signature of pre-colonial people is strong on the Cape Peninsula - the sites of numerous middens are well known particularly in Hout Bay, the western shore and the greater Peninsula, which are a clear indicator of where people were living. Shell middens were plentiful all the way up the West Coast. However, what is noticeable is the high frequency of them on the Vredenberg Peninsula which is historically known to be a center of Khoikhoi stock-keeping. One site which was clearly of significance for Khoikhoi was the rocky massif known as Kasteelberg which has been extensively studied and radiocarbon dated. The massive shell middens around the Kasteelberg massif contain layers of human occupation including bone from indigenous domesticated sheep and early domesticated cattle as well as grinding groves in the granite.⁵¹ Radiocarbon dates confirm an occupation sequence that goes back almost 2000 years since the first advent of herding people in South Africa. It must be noted that many of the archaeological sites on the Vredenberg Peninsula have been obliterated over many times, yet the archaeology of the area remains visible.
- 5.26.31 The Liesbeek valley has no sequences of human occupation such as described above. In fact, to date no San or Khoikhoi archaeological sites have been identified. This does not mean that people were not living here as stock-keeping people were very mobile following available grazing. It does, however, mean that there was no focus in the project area that attracted repeated visits or long-term occupation of any kind, as would be the case with sacred places and capital settlements.
- 5.26.32 The historic records the heritage practitioners have used in this assessment refer extensively to the vast encampments of the Khoikhoi on the other side of the Salt River - that is Milneron, Ysterpad-Wingfield. These large tracts of landscape which contained extensive wetlands were accepted as the common grazing lands outside Cape Town, which represented the end of the cattle trading route from the interior. In the 1800s they were designated as common or outspan land in continuation of a long tradition of cattle herding which dates back to pre-colonial times. In the early 20th century this land

- which was owned by no-one was appropriated by the government for the construction of military facilities and have retained this status to this day.
- 5.26.32 Archaeological evidence has been used several times to corroborate oral history in court of law. The matter of the Salem Commonage (20kms south of Grahamstown) has contributed to legal precedent in terms of the way in which oral history is considered, particularly in the context of land claims. The judgment in this case took into account the oral history of the claimants, evidence provided by expert witnesses and, importantly, sort the verification of oral history through the employment of archaeologists to verify the physical evidence of previous settlement through material remains. This means that although oral history was considered in the judgment, physical evidence played a decisive role.
- 5.26.34 However, returning to the case at hand, while First People's representatives have made claims about burials in the environs, there is no physical evidence in this regard.
- 5.26.35 The heritage resources on the site are summarised thus:
- 5.26.35.1 The Liesbeek River and the confluence are important as a place in the landscape (its 'physicality' is too transformed, however, to be argued to be anything like it may have been during its historically important moments) and the historical and symbolic significance of the river is very high.
- 5.26.35.2 River Club land was possibly the site of an early crossing point where an informal route passed along and over the confluence to a point to the west (near where the bird hide is today) before continuing into the hinterland.
- 5.26.36 Although this spot may be at the northern boundary of the property where the Berkley Road Extension is planned, it is also possible it may have been where the current Station Road axis crosses the Liesbeek. There is no evidence of this crossing today.
- 5.26.37 Although the River Club site is effectively a recreational area and a golf course and has a green open-space quality which is shared with the reaches of the Liesbeek corridor immediately upstream of the site, this belies its degeneration and impairment as a heritage resource.
- 5.26.38 The current landscape qualities of the site are a consequence of the history and context as summarised above. The context is historic and symbolic. The site has several significant heritage sites relatively nearby, but the physical properties of the site, with its club house and sports-related facilities, its managed, landfilled and bland landscape for sporting activity, are of low significance; and it contains very little else which we argue can be accepted as significant.
- 5.26.39 In other words, the Liesbeek River (both the pre-1952 and the post-1952 canalised channels), the confluence, the banks, and the riverine corridor generally comprise the significant heritage resource associated with the site.

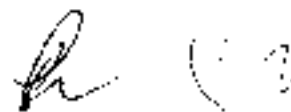
Heritage resources in the surrounding area

- 5.26.40 The most significant heritage resource close to the project area is the SAAG, confirmed as a National Heritage Site in December 2015 and which is situated on a rise, what they have called the 'spine' or 'spur' between or at the confluence of the Liesbeek and Back Rivers. It is to the east of the project site across the canalised course of the Liesbeek River. The core historic structure (built in 1820) is centrally situated with a 'campus' of significant structures to its immediate south. To the north and surrounding the 'campus' the complex is, however, extended by a plethora of structures of various ages – these range

The image shows a handwritten signature on the left and the initials 'J.G.' on the right, both in black ink.

from 19th century staff buildings as well as some recent late-20th century structures. The area is well-treed and most structures are obscured from view by a combination of oak, eucalyptus and pine trees. In other words, the old Royal Observatory and the SAAC campus is barely visible from its surrounds, including from the River Club itself, due to the dense tree cover.

- 5.26.41 As Sarah Wimer has stated: "(l)ocated at the centre of TRUP, the wooded setting of the SAAC provides a protective tree canopy and visual screening element from the Black River Parkway", it has "very high historical significance as a scientific institute dating to the early 19th century and the first permanent observatory in the southern hemisphere", its association "with a number of astronomical advances of international significance from the 1830s", housing "a range of objects and instruments associated with major advances in astronomy during the 19th and 20th centuries", and with "a number of astronomers who were pre eminent in the field during the 19th and 20th centuries. It has considerable aesthetic significance in terms of the dispersion of a number of architecturally significant buildings and a distinctive dome typology set within a wooded landscape, between the Liesbeek and the Black Rivers, and at the centre of TRUP" and that, as "a centre of excellence, the site continues to have associational significance as one of the country's most internationally acclaimed scientific institutions".
- 5.26.42 The Observatory was built on this raised spine of land that was visible from the Castle (where the 12 o'clock signal gun was/s located) as well as from Table Bay where mariners could observe the fall of the time-ball for chronometer setting. These views from the Observatory to the Castle and Table Bay, which were but no longer are central to the functioning of the Observatory, are now obscured by development. Lions Head, Signal Hill and Devils Peak remain visible, but the view has to be sought from vantage points below the trees and is clearly not of any importance in the day-to-day life of the SAAC. Furthermore, and these vistas have not been of importance since the beginning of the 20th century. The line of sight between the SAAC and Signal Hill is of no current relevance although it is historically interesting since the noon day gun (previously at the Castle, at the Lion Battery on Signal Hill has been electronically triggered for most of the 20th century.
- 5.26.43 It is noted that Atwell and Jacobs, in their baseline study of the TRUP as an entity, argue that the view from the 1820 Observatory building to Signal Hill is still important and, by implication, is a heritage resource that should be protected. Over that the SAAC itself has not needed or attempted to sustain or recapture that view, they regard this view/axis as interesting but not demanding a response in design.
- 5.27 When HWC stated that it "is of the view that this requirement (to identify and map all heritage resources in the area affected) has only been partly complied with". The Supplement to a H.A. dated 4 December 2019, stated *inter alia* that:
- 5.27.1 A lengthy section of the HIA describes the heritage resources on the site and in the area (section 6, Identification of Heritage Resources, pp70-80).
- 5.27.2 First, they provided a copy of the City Council's grading map which serves as "identification and mapping of the heritage resources in the area affected". However, this diagram was not included in the HIA because several of the gradings near to the site are wrong or outdated, for example, the Black River Office Park site is shown as a sports ground and the SAAC site, a grade I and declared national heritage site, is shown to be ungraded and, the River Club buildings apart, the River Club site itself is ungraded (although they conclude that its grading should be a low one).
- 5.27.3 Second, they copied Atwell and Jacobs' "composite diagram of heritage areas, potentially sensitive sites and heritage resources" which implies a rather



different set of criteria. This diagram was not included or referred to in the HIA because they thought that the diagram does not identify or capture the significances of the heritage resources in the area.

5.27.4 Third, they provided a copy of Cindy Postlethwayt's composite diagram of "tangible and some intangible heritage resources".

5.27.5 As Postlethwayt's study dates from September 2019, it is self-evident that its findings could not be included in the heritage practitioners' HIA of 2 July 2019. However, they note that, the addition of some "viewlines and corridor sightlines" and the large amorphous area covering parts of the floodplains of the Liesbeek and Black Rivers and described as "national river corridor as area to acknowledge and integrate First Nations" apart, this diagram follows Allwell and Jacobs' diagram closely. However, they disagree in the discussion on significances.

Assessment of the significance of such resources in terms of the heritage assessment criteria set out in section 1(2) or prescribed under section 7 of the NHRA

5.26 As detailed above, section 3(3) of the NHRA outlines the criteria for the determination of the significance of a heritage resource. However, the 2014 EIA Regulations state that the potential impacts must be assessed and rated based on the methodology and rating criteria including the nature, significance, consequences, extent, duration and probability of potential environmental impacts and risks associated with the proposed development and alternatives. Regulation 19(8) of the 2014 EIA Regulations states that: "A specialist report must contain all information set out in Appendix 6 to these Regulations or comply with a protocol or minimum information requirement relevant to the application as identified and gazetted by the Minister in a government notice."

5.29 Regulation 3(1) of the 2014 EIA Regulations further states that: "A basic assessment report must contain the information that is necessary for the competent authority to consider and come to a decision on the application, and must include—...

(v) the impacts and risks identified for each alternative, including the nature, significance, consequence, extent, duration and probability of the impacts, including the degree to which these impacts—

(aa) can be reversed;

(bb) may cause irreplaceable loss of resources, and

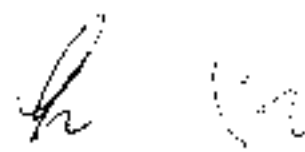
(cc) can be avoided, managed or mitigated,

(vi) the methodology used in determining and ranking the nature, significance, consequences, extent, duration and probability of potential environmental impacts and risks associated with the alternatives;

(vii) positive and negative impacts that the proposed activity and alternatives will have on the environment and on the community that may be affected focusing on the geographical, physical, biological, social, economic, heritage and cultural aspects;

(viii) the possible mitigation measures that could be applied and level of residual risk;

(ix) the outcome of the site selection matrix,



(x) if no alternatives, including alternative locations for the activity were investigated, the motivation for not considering such; and

(xi) a concluding statement indicating the preferred alternatives, including preferred location of the activity.

(j) a full description of the process undertaken to identify, assess and rank the impacts the activity will impose on the preferred location through the life of the activity, including ...

(i) a description of all environmental issues and risks that were identified during the environmental impact assessment process; and

(ii) an assessment of the significance of each issue and risk and an indication of the extent to which the issue and risk could be avoided or addressed by the adoption of mitigation measures.”

Assessment of Impacts: Construction Phase

5.30 Two potential direct construction phase impacts on heritage resources were identified:

5.30.1 H1: Loss or damage to palaeontological and archaeological resources

5.30.2 I2: Loss of structures on the site with heritage value.

Potential Impact H1: Loss or Damage to Palaeontological or Archaeological Resources

5.31 While the entire Lesbeek River valley has not been surveyed for archaeological material, many parts of the Observatory section have been examined. The River Club itself was previously surveyed by the ACO, who have also observed excavations for new structures on the neighboring SAAC site. Furthermore, comprehensive trial excavations have taken place at Valkenberg and at the Varscho River, and excavations for renovation of the Hospital were monitored.

5.32 The archaeological material that has been found during these excavations relates entirely to the VOC period and thereafter.

5.33 Despite the major works near the site (including canalisation of the river), no graves or human remains have been reported or are lodged according to the skeleton register at either Iziko Museum or the UCT medical school which have been the official repositories of such finds since both institutions were established. The nearest recorded remains of pre-colonial people and archaeological sites are from close to the Salt River estuary in Milneron. The First Nations Collective have confirmed that:

5.33.1 No cross-cutting, narrative-defining event for any of the strands of the indigenous narrative can be attributed specifically to the River Club site.

5.33.2 No tangible or intangible reference has been made to the Górnaiqua having settled specifically on the River Club site.

5.33.3 No specific act of resistance, battle or encounter, whether tangibly manifested or intangibly articulated, have been attributed specifically to the River Club site.

5.33.4 The site is not a burial ground.

5.33.5 The site was not used as a pre-colonial river crossing.

5.34 Furthermore, Khoikhoi people burial methods are described and are archaeologically well documented. Therefore, if the site and surrounding area were once used as a burial ground (as is claimed by certain stakeholders) it is likely that remains would have already been discovered during previous excavations in the area.

5.35 The site has undergone extensive surface disturbances (e.g. it has been filled), and was previously either mostly, or entirely, a wetland.

5.36 It is therefore very unlikely that any significant archaeological or palaeontological resources will be uncovered during construction. It is however possible, although still

unlikely, that during excavation of the western wall of the Lesbeek Canal (Riverine Concept Alternative only) and foundations of the Berkeley Road bridge archaeological or palaeontological resources may be uncovered – but the discovery of human remains is extremely unlikely.

The Riverine Corridor Alternative

5.37 The impact is assessed to be of **very low** significance with and without the implementation of mitigation. This impact can be managed to a high degree and is irreversible.

The Island Concept Alternative

5.38 The impact is assessed to be **insignificant** and no mitigation is necessary. This impact does not require management and is irreversible.

No-Go Alternative

5.39 In the case of the No-Go Alternative, excavation of the western bank of the Lesbeek Canal would not take place, and low probability, low intensity impacts associated with the loss of or damage to palaeontological and archaeological artefacts would not arise.

Potential Impact H2: Loss of Structures at the Site with Potential Heritage Value

The Riverine Corridor Alternative and the Island Concept Alternative

5.40 Although the main River Club building and approach to it play an important part in the overall setting of the site, it has been added to and changed considerably, and is of low heritage significance.

5.41 Buildings at the site are assigned Heritage Grade III C – buildings and/or sites whose significance contributes to the character or significance of the environs that should only be protected if the significance of the environs is sufficient to warrant protective measures. The heritage consultants do not believe that the site, or buildings at the site, warrant protective measures.

5.42 The impact is assessed to be of low significance with and without the implementation of mitigation. Although the main River Club building and approach to it play an important part in the overall setting of the site, it has been added to and changed considerably, and is of low heritage significance.

5.43 Buildings at the site are assigned Heritage Grade III C – buildings and/or sites whose significance contributes to the character or significance of the environs that should only be protected if the significance of the environs is sufficient to warrant protective measures. The heritage consultants do not believe that the site, or buildings at the site, warrant protective measures.

5.44 The impact is assessed to be of low significance with and without the implementation of mitigation. This impact cannot be managed and is irreversible.

No-Go Alternative

5.45 In the case of the No-Go Alternative, the site will continue to be used as a commercial recreational and conference facility, and buildings at the site will be retained.



Assessment of Impacts: Operational Phase

5.46 Three potential direct operational phase impacts on heritage resources were identified:

Change in historical character of the site.

- 5.46.1 With regard to the broader area, the following is of historical significance:
- 5.46.1.1 The Two Rivers local area (and beyond) is the historic landscape of the indigenous First Nations;
 - 5.46.1.2 The Liesbeek River was a partially fortified early frontier;
 - 5.46.1.3 An important pre-colonial river crossing (the Vaarsche Duij) was located close to the site but downstream of the confluence of the Liesbeek and Black Rivers;
 - 5.46.1.4 The confluence with the Black River is thought to be the site of early confrontations that signaled the eventual fragmentation of the Khoikhoi nation; and
 - 5.46.1.5 Although the site was entirely or mostly a wetland area, the broader floodplain was a key site in early farming.
- 5.46.2 The area, including the site, is therefore historically significant, but is comprised of a variety of precincts of very different topographies, histories of use, of development-type, each with its own qualities and a variety of potential heritage significances. The extent to which each site or precinct bears testimony to the cultural heritage of the broader area is determined by the amount of indigenous cultural capital assigned to each site. In this context, with regard to the River Club property itself, the First Nations Collective has indicated (prior to Section 310 of the BAR):
- 5.46.2.1 No cross-cutting narrative-defining event for any of the strands of the indigenous narrative: be it, the dominion of the Corinhaiqua, Battle of Gorinhaiqua, Colonial-settler 'grilagem', or resistance to 'grilagem', can be attributed specifically to the River Club site;
 - 5.46.2.2 No tangible or intangible reference has been made to any First Nations groups having settled specifically on the River Club site;
 - 5.46.2.3 No specific act of resistance, battle or encounter, whether tangibly manifested or intangibly articulated, have been attributed specifically to the River Club site;
 - 5.46.2.4 Although mostly a wetland and therefore of low functional use value, the River Club site was most likely part of an early pre-colonial landscape from which the Indigene was displaced and/or barred;
 - 5.46.2.5 The site is not a burial ground;
 - 5.46.2.6 The site was not used as a pre-colonial river crossing; and
 - 5.46.2.7 The Liesbeek River is an important heritage resource in the broader landscape, and its rehabilitation / naturalisation is supported by the First Nations Collective / would be a cultural benefit.
- 5.46.3 Nevertheless, the floodplain, Liesbeek and Black Rivers, their confluence and the remnants of the Salt River estuary still exist today. Topographically, the current sense of place at and along this section of the Liesbeek River at the site is that of a wide flat floodplain, greatly transformed by the frequent changes in land-use. Wetlands have been transformed to farmland, then to various institutional uses and to modern suburbia.
- 5.46.4 Locally the floodplain between the spine to the east of the site (the SAAC) and the foot slopes of Devils Peak can be divided into three parallel strips:
- 5.46.4.1 To the far west (of the site), a strip of sports fields interrupted by roadways, major sports facilities/structures, avenues of trees and vehicular bridges;



Handwritten signature and date: 1/1/20

- 5.46.4.2 The wide Liesbeek Parkway running through the middle of the floodplain; and
 - 5.46.4.3 The Liesbeek River floodplain that widens and splits into a (now defunct) natural channel, and an artificial canalised reach to create the River Club site
- 5.46.5 Although no tangible remnants of the actual places of conflict, fords, outposts or groves survive, the Liesbeek River and floodplain are of ecological importance, and the topography of the area remains. People experience utility from the character, ecology, history, and awareness of the historical import of the floodplain and Liesbeek River.

The Riverine Corridor Alternative and the Island Concept Alternative

- 5.46.6 The site, although transformed, is one of the last open remnants of the floodplain. The character of the site will be transformed by the development. This transformation is seen by the heritage consultants as predominantly a visual impact, and of low intensity from a heritage perspective in the context of:
- 5.46.6.1 The absence of any cross-cutting or narrative-defining event having taken place (or attributed to have taken place) at the River Club site;
 - 5.46.6.2 The absence of any tangible heritage resources located at the site;
 - 5.46.6.3 The already significantly transformed floodplain;
 - 5.46.6.4 The degraded nature of the site; and
 - 5.46.6.5 The future development of the Berkeley Road extension, which will radically affect the reading and character of the site regardless of the proposed development.
- 5.46.7 The impact is therefore assessed to be of low significance with or without the implementation of essential mitigation.
- 5.46.8 This impact cannot be managed and is irreversible.

No-Go Alternative

- 5.46.9 In the case of the No-Go Alternative, the rehabilitation of the canalised portion of the Liesbeek River would not take place, and the heritage value of the site would not be affected.

Change in heritage value Liesbeek River floodplain at the site.

- 5.46.10 South of the site, the Liesbeek River floodplain is relatively narrow, but has both ecological value and public amenity value as a more natural and publicly accessible corridor. Immediately south of the site the river has been diverted into an ecologically sterile canalised reach that flows to the east of the site. The public movement corridor along the river also terminates here. The artificial channel merges with the Black River immediately north-east of the site. The original course of the river is located to the west of the site, was infilled (-1952), dredged (-1990) and is now fed by backwaters of the Black River and stormwater, and is ecologically degraded. The site forms an artificial island between the old and new reaches of the Liesbeek River in a transformed landscape.

The Riverine Corridor Alternative

- 5.46.11 By rehabilitating the canalised reach of the Liesbeek River to the east of the site, providing an ecologically viable floodplain, and extending the public:

Handwritten signature and date: 15/11/2023

movement corridor along the river through the site, the riverine corridor as a historical, topographical and ecological determinant of the current urban townscape is extended and reinforced. Furthermore, the public amenity derived from the river is enhanced.

- 5.46.12 Although the sense of place of the site will be transformed, by extending the riverine corridor to the south of the site the heritage value of the site (and corridor itself) will be enhanced in a number of ways.
- 5.46.12.1 The historical significance of the river would be restored by defining and enhancing it's (albeit "new") course.
- 5.46.12.2 The ecological functioning of the river would be improved.
- 5.46.12.3 The public amenity value of the river course would be extended and enhanced, and the public would be exposed to the SAAC
- 5.46.12.4 The impact is assessed to be of medium (+ve) significance and no further mitigation is necessary.
- 5.46.13 This impact cannot be managed and is irreversible.

The Island Concept Alternative

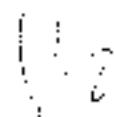
- 5.46.14 For the Island Concept Alternative, the ecological and cultural benefits of defining and enhancing the Liesbeek River Corridor will be foregone.
- 5.46.15 The impact is therefore assessed to be *not significant*.

No-Go Alternative

- 5.46.16 In the case of the No-Go Alternative, the rehabilitation of the canalised portion of the Liesbeek River would not take place, and the heritage value of the riverine corridor would not be enhanced (Riverine Corridor Alternative only).

Changes in historical setting of the SAAC.

- 5.46.17 The most significant heritage resource close to the site is the SAAC, which has Grade I heritage status due to its scientific history. The core historic structure of the SAAC (built 1822) is centrally situated on the site and is surrounded by a number of structures of ages ranging from 19th century staff buildings, telescope domes, to late 20th century structures.
- 5.46.18 The SAAC was built on this raised spine of land (east of the site) so that it could visually signal midday to the Castle of Good Hope (where the 12 O'clock signal gun was located before 1900) and Table Bay where mariners could observe the fall of the time ball in order to set their chronometers. After 1900 when the signal gun was relocated to Signal Hill, this view-line also became functionally important. Views from the SAAC to the Castle and Table Bay, which were central to the functioning of the Observatory, are now obscured by development. Signal Hill remains visible from certain vantage points of the SAAC, though have not been of any functional importance to the operation of the SAAC since the beginning of the 20th century. The line of sight between the SAAC and Signal Hill is therefore of no current functional value, although it is historically interesting.
- 5.46.19 Although the SAAC's heritage significance derives mainly from its scientific history, and most structures at the SAAC are obscured from the River Club by trees (the best views of the SAAC complex are from across the Black River further to the east) the boundary of the SAAC with the site, as well the historic



landscape within which the SAAC is located, is considered to be sensitive to development.

The Riverine Corridor Alternative

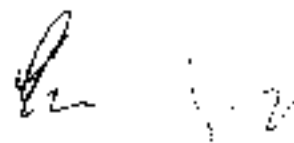
- 5.46.20 The setback of the development from the SAAC boundary was one of the key informants of the alternative evolution of the Riverine Corridor Alternative. This alternative mitigates impacts on the SAAC as far as practically possible by stepping back development by ~40m from the existing canal and rehabilitating (and therefore softening) the river course, while ensuring the financial viability of the development (i.e. developing the minimum amount of floor area, or bulk required). Nevertheless, substantial development at the River Club site will detract from the historic landscape of this site.
- 5.46.21 In the long-term, the activation of the western bank of the Liesbeek canal and the creation of the movement corridor here may create opportunities for the SAAC to further rehabilitate the river course and the public at the River Club development, with the potential to celebrate the heritage of this historically significant complex.
- 5.46.22 Although the heritage specialists assess a positive impact on the historical setting of the SAAC due to the activation and rehabilitation of the Liesbeek Canal, SRK has conservatively assessed that the development may, on balance, lead to a low-intensity negative impact on the SAAC. Therefore, as the site is of national heritage significance the impact is assessed here to be of high (negative) significance.
- 5.46.23 This impact cannot be managed and is irreversible.

The Island Concept Alternative

- 5.46.24 This alternative allows for the rehabilitation of the eastern bank of the original course of the Liesbeek River, which has inherent, although much diminished, ecological value. In order to setback from this boundary and to remain financially viable, the River Club development would encroach on and dominate the SAAC to a far greater extent than is the case for the Riverine Corridor Alternative. Furthermore, the comprehensive rehabilitation of the river corridor on the SAAC boundary would not take place, and this would largely forgo possible future integration between these two sites.
- 5.46.25 Although the heritage specialists assess that the intensity of the impact on the historical setting of the SAAC is medium, as the site is of national heritage significance the impact is assessed to be of very high significance.
- 5.46.26 This impact cannot be managed and is irreversible.

No-Go Alternative

- 5.46.27 In the case of the No-Go Alternative, further transformation of the historic landscape of the SAAC would not take place, but activation of the river edge on the boundary of the SAAC, and opportunities for integration staff and public at the River Club development would be foregone.
- 5.46.28 The impact is assessed to be of very low significance.
- 5.47 The following are the proposed mitigation measures (which are included in the conditions of the EA and the EMP) in terms of the potential **heritage impacts**:

Handwritten signature and date: 12/1/20

Design phase

- 5.47.1 Commemorate or memorialise the Vaaitsche Drijf.

Construction phase

- 5.47.2 Photograph all structures on site for archive creation.
- 5.47.3 Implement monitoring and chance-find procedures for archaeological and paleontological material during excavations of the western bank of the Liesbeek Canal as it fronts the site (as specified in the EMP).
- 5.47.4 Establish an Indigenous Garden for medicinal plants used by the First Nations.
- 5.47.5 Establish a Cultural Heritage and Media centre.
- 5.47.6 Establish a Heritage-Eco trail that goes around the site and educate tenants and the public accessing the site of the historical significance of the surrounding area (e.g. by erecting information boards at various locations).
- 5.47.7 Establish an Amphitheatre for use and cultural performances by both the First Nations and the general public.
- 5.47.8 Commemorate the history of the First Nations in the area; and Encourage integration of the future development with the SAAD and facilitate opportunities to commemorate this historic facility.

Potential Visual Impacts

Assessment of Impacts: Construction Phase

- 5.48 This assessment is based on the Visual Impact Assessment undertaken by Scott Masson of SRK Consulting. The purpose of the study was to assess the potential impacts of the project on visual resources and recommend practicable mitigation measures to minimise potential impacts and maximise potential benefits.
- 5.49 One potential direct construction phase impacts on visual resources was identified, i.e. Altered sense of place which was assessed as follows:

The Riverine Corridor Alternative and the Island Concept Alternative

- 5.49.1 Visual impacts will be generated by construction activities such as vegetation stripping and earthworks (which can cause scarring), and from construction infrastructure, plant and materials on site (e.g. site camp, cranes and stockpiles). The high number of trucks transporting till material and other construction material to the site will also contribute to an altered sense of place (increased visual clutter, noise). Dust generated at the site will be visually unappealing and may further detract from the visual quality of the area.
- 5.49.2 Such impacts are typically limited to the immediate area surrounding the construction site and the construction period.
- 5.49.3 Loss of sense of place is expected during construction, especially in the foreground i.e. closer to Liesbeek Parkway and the M5, since construction and the change in the state of the site (scarring, construction equipment, construction traffic and dust generation) is incongruent with the current nature of the site viz. green open space and use of the site viz. recreation.
- 5.49.4 Construction will be undertaken in phases, commencing from the south of the site and advancing north. Construction activities will reduce the sense of place over the medium-term due to the duration of construction activities.
- 5.49.5 The impact is assessed to be of low significance with and without the implementation of mitigation.
- 5.49.6 This impact can be managed to a limited degree and is reversible.



No-Go Alternative

- 5.49.7 In the case of the No-Go Alternative, the site will continue to be used as a commercial recreational and conference facility, and no visual impacts are anticipated.

Assessment of Impacts: Operational Phase

- 5.50 Three potential direct operational phase impacts on visual resources were identified;
5.50.1 Altered sense of place caused by the change in character of the site

The Riverine Corridor Alternative and the Island Concept Alternative

- 5.50.2 An area will have a stronger sense of place if it can easily be identified, that is to say if it is unique and distinct from other places. Tourism can sometimes serve as an indicator of sense of place insofar as it is often the uniqueness (and accessibility) of a space/place which attracts tourists.
- 5.50.3 It is often the case that sense of place is linked directly to visual quality and that areas/spaces with high visual quality have a strong sense of place. However, this is not an inviolate relationship and it is plausible that areas of low visual quality may have a strong sense of place.
- 5.50.4 The site itself does not necessarily have an immediately recognisable sense of place although the River Club building is a distinguishable landmark on the site.
- 5.50.5 The sense of place of the study area is strongly influenced by the rivers, and an "island" of green open space in a highly developed and evolving urban environment of mixed land use.
- 5.50.6 The dramatic views of Devils Peak and its dominant east facing ridgeline also add to the sense of place of the study area.
- 5.50.7 The relationship of receptors in the study area to place is likely to be predominantly cognitive or narrative. For example, receptors in the area may have chosen to live or locate their business in the study area because they were enticed by the green open space or scenic characteristics of the area (rivers, mountain views, Raapenberg Sanctuary, Observatory hill) within a wholly transformed urban environment. Or, a person visiting the area may have a narrative connection to the area through the cultural/historic aspects of the landscape. Although these aspects are mostly intangible, the visitors may have learned of their significance through historical accounts or stories (e.g. the history of the Khoikho nation, or the Observatory).
- 5.50.8 It is plausible that many receptors may consider the study area to have a "negative" sense of place (e.g. receptors experience a sense of discomfort in a harsh, windy environment). However, for the purposes of this assessment and taking the precautionary principle into account, it is assumed that the study area has an overall "positive" sense of place to receptors, and that receptors derive significant value from the site as an open space area.
- 5.50.9 The development will change the character of the site to a highly developed site, with pockets of open space. Although the site is surrounded by urban development, due to its size, location at the confluence of the Liesbeek River and Black River, and long-term status as a green open space, the change in character may be experienced as a strong visual contrast for surrounding (urban) receptors and frequent visitors to the area.
- 5.50.10 The impact is assessed to be of high significance and with the implementation of mitigation is reduced to medium.
- 5.50.11 This impact cannot be managed and is irreversible.

A S Z

No-Go Alternative

- 5.50.12 In the case of the No-Go Alternative, the site will continue to be used as a commercial recreational and conference facility, and no visual impacts are anticipated.

Visual Intrusion

The Riverine Corridor Alternative and the Island Concept Alternative

- 5.50.13 Structures at the site will be visually intrusive and, in some cases, obtrude receptors' views of visual resources from surrounding vantage points. Visual resources are features which are aesthetically pleasing and enhance the visual landscape of an area. Visual resources also provide visual / scenic value to receptors.
- 5.50.14 The following visual resources have been identified for the site and surrounds:
- 5.50.14.1 Liesbeek River, the Black/Salt River, and the banks of these rivers;
 - 5.50.14.2 Raapenberg Bird Sanctuary;
 - 5.50.14.3 Observatory hill and the Observatory complex;
 - 5.50.14.4 Alexandra Miff;
 - 5.50.14.5 Existing (large) trees, albeit exotic; and
 - 5.50.14.6 Devils Peak.
- 5.50.15 Views of Devils Peak from the M5 freeway and immediately adjacent vantage points (e.g. M5 Park and Alexandra Institute) may be compromised by new large buildings introduced in the foreground. Similarly, views from Black River Park will likely change from that of an open green expanse across to the Black/Salt River, to large built structures in the foreground. The intrusion or obtrusion of receptor's views may reduce the scenic value of the site and its immediate surrounds to those receptors.
- 5.50.16 Unavoidably, the proposed development will significantly transform the site and very immediate surrounds. The visual impact may be lessened to the extent that the proposed development is congruent with surrounding land uses, mainly the commercial and industrial activities towards the north of the site rather than the more informal layout of the buildings to the south of the site.
- 5.50.17 The proposed development will be highly visible to receptors in the foreground (e.g. people in Black River Park, users of Liesbeek Parkway and the M5), but visibility will reduce substantially in the middle ground and background because of the effective visual screening provided by the buildings adjacent to the site.
- 5.50.18 The impact is assessed to be of high significance and with the implementation of mitigation is reduced to medium.
- 5.50.19 This impact cannot be managed and is irreversible.

No-Go Alternative

- 5.50.20 In the case of the No-Go Alternative, the site will continue to be used as a commercial recreational and conference facility, and no visual impacts are anticipated.

Altered sense of place and visual quality caused by light pollution at night

The Riverine Corridor Alternative and the Island Concept Alternative

A. S. Z.

- 5.50.21 It is assumed that lighting will be extensively used by the proposed development (e.g. street lighting, outdoor lighting etc.). Although existing ambient lighting levels in the area are high, the development will increase light pollution at night or skyglow in the area and may alter night-time sense of place. Skyglow is a form of light pollution and refers to the brightening of the sky above populated areas. Skyglow cannot always be avoided and is always more noticeable in a previously unlit area but is compounded by poor external lighting design and lighting fixtures that allow the upward spread of light into the atmosphere.
- 5.50.22 Lighting is not easily screened by vegetation, and receptors' experience of the impact is more intense.
- 5.50.23 The impact is assessed to be medium and with the implementation of mitigation is reduced to low.
- 5.50.24 This impact can be managed to a limited degree and is reversible.

No-Go Alternative

- 5.51 In the case of the No-Go Alternative, the site will continue to be used as a commercial recreational and conference facility, and no visual impacts are anticipated.
- 5.52 The following are the proposed mitigation measures (which have been included in the conditions of the EA and the EMP) in terms of potential visual impacts:

Design phase

- 5.52.1.1 Investigate the material and tree planting palettes used for the landscaping along Liesbeek Parkway to extend the green movement corridor along Liesbeek Parkway adjacent to the site.
- 5.52.1.2 Utilise (westerly) views towards Devils Peak in building orientation.
- 5.52.1.3 Retain visual links to the Black River by reducing visual clutter.
- 5.52.1.4 Use large trees and vegetated berms to reduce the scale of new buildings on site.
- 5.52.1.5 Express each building unit individually where buildings are linked together (with architectural details – insets, overhangs, range of visually compatible materials).
- 5.52.1.6 Design access roads to be as narrow as possible.
- 5.52.1.7 Pave access roads with attractive materials.
- 5.52.1.8 Arrange above-ground parking bays (if required) in small groups rather than in large, unbroken lots.
- 5.52.1.9 Screen parking bays with buildings and vegetation as far as possible.
- 5.52.1.10 Avoid the use of glass or material with a high reflectivity in building designs.
- 5.52.1.11 Incorporate visually permeable green or black fencing (if required) into low walls.

Construction phase

- 5.52.1.12 Limit and phase vegetation clearance and the footprint of construction activities to what is absolutely essential.
- 5.52.1.13 Consolidate the footprint of the construction camp(s) to a functional minimum. Screen the construction site camps with materials that blend into the surrounding area.
- 5.52.1.14 Clearly demarcate construction areas and dedicated access points to minimize disturbance to surrounding receptors.

- 5.52.1.15 Avoid excavation, handling and transport of materials which may generate dust under high wind conditions.
- 5.52.1.16 Keep construction sites tidy and confine all activities, material and machinery to as small an area as possible.

Operations phase

- 5.52.1.17 Use vegetation to break up large expanses of hard surface.
- 5.52.1.18 Plant trees to reduce the perceived heights of buildings.
- 5.52.1.19 Avoid visual clutter: o Minimise commercial signage;
- 5.52.1.20 Fix signs to walls of buildings rather than be free-standing;
- 5.52.1.21 Utilise low signs as they are less visually intrusive, and
- 5.52.1.22 Situate utilities (pipelines, cables) underground.

5.52.2 The following cumulative impacts in terms of the visual and heritage impacts were also identified and assessed:

Cumulative Visual Impacts

- 5.52.3 The area has experienced an increase in high density development (commercial and residential) in recent years, owing to the proximity of the site to the CBD and good connectivity to a number of highways and major roads. Recent developments include the Black River Park and the redevelopment of the M5 Business Park.
- 5.52.4 Although some densification is expected to occur locally (e.g. TRUP), which will continue to alter the visual landscape, the relatively limited availability of developable areas this close to the CBD will limit the intensity of the impact in the long term.
- 5.52.5 The severity of cumulative visual impact in the area is rated as moderate and is assessed to be of a restricted extent.
- 5.52.6 The cumulative impact is thus assessed to be of low significance.

Cumulative Heritage Impacts

- 5.52.7 The floodplain of the Liesbeek River is recognised to have heritage significance because of its agricultural history and history of conflict. The sense of place of the floodplain between Kirstenbosch and the confluence with the Black River has been almost entirely transformed by the iterative changes of land-use. Wetlands have been transformed to farmland, then to various institutional uses and to modern suburbia, and the site, although of no known specific significance, is one of the last remnants of the wide open floodplain.
- 5.52.8 Similar to cumulative visual impacts, some development is expected to occur locally (e.g. TRUP), which will continue to alter the (already transformed) heritage landscape, but the relatively limited availability of developable areas in the Liesbeek River floodplain and immediately surrounding areas will limit the intensity of the cumulative impact in the long term.
- 5.52.9 The severity of cumulative heritage impact in the area is rated as moderate and is assessed to be of a restricted extent.
- 5.52.10 The cumulative impact is thus assessed to be of low significance.

5.53 The BAR was informed by the HIA which stated *inter alia* that:

- 5.53.1 The significances of the River Club site and its context argued in earlier preliminary studies (a phase one HIA by O'Donoghue, a review of that study by Saumann, and Atwell and Jacobs' baseline study of the wider TRUP area)

were argued in relatively broad terms and, although several commentators on our earlier Draft HIA Prepared for Interested Party Consultation referred to O'Donoghue's phase one report seem to prefer those opinions, they emphasize two major differences with those opinions:

- 5.53.1.1 Previously no recognition has been given to the possibility of transforming the Liesbeek canal into a riverine corridor as a potentially functional ecological system and, therefore, no recognition has been given to the potential of recovered heritage significance (those views apparently preferring a "historical" course much altered through the 20th century and effectively defunct as a river course since 1952).
- 5.53.1.2 Previously heritage indicators and development limitations that are not directly heritage-related were articulated (echoing preliminary views articulated in the TRUP land-use study).
- 5.53.2 The difficulty in assigning heritage-related significance to the subject site and its context demands rather more clarity; and they hope to be more precise or, at least, explicit, even if their view is one that contradicts the view held by most commentators.
- 5.53.3 That said, relying on the description of the topography, the account of the historical making and layering of the site and its context above, they articulate the cultural significances of the site.

Conclusions regarding significances

- 5.53.4 The River Club site and its surrounds to be of very high environmental/topographical/ecological and historical significance both as the floodplain of the Liesbeek River and as a part of the place of early confrontations between indigenous peoples and settlers. Indeed, this significance, taken as a single complex of significance and symbolic meaning, is of the highest order in the current sociopolitical climate.
- 5.53.5 These significances, however, while both visual and bound/tied to this land and because of both the nature of these significances and because of the scales/ distances involved, can be protected and even enhanced by celebrating the riverine corridor and floodplain. Indeed, the nature of these significances does, in our minds, suggest obvious and direct protective/managerial measures that should be imposed in order to promote what we regard as a restorative imperative aimed at reshaping and revitalising the Liesbeek riverine corridor. In other words, the wide-open flood plain does not have a meaningful sense of place, but the narrower riverine corridor is of considerable conservation value.
- 5.53.6 There is, however, one likely, even certain, future intervention on land within the Liesbeek River floodplain and immediately abutting the River Club site that will transform the perception of the floodplain, the sense of place, and the significances that they have described: to the immediate north of the site is a long-planned arterial road connecting the Malta Road-Liesbeek Parkway junction across the floodplain, over the Salt River-Black River-Liesbeek River confluence and to Berkeley Road in Maitland; this roadway must be built at a level approximately 2m above the current levels but rising to the levels of the Malta Road railway bridge and the necessary bridge over the Salt River establishing, in effect, a 30m-wide causeway of varying height across the entire width of the floodplain. This roadway will be a very considerable imposition on the floodplain and will have a marked impact on its reading and its sense of place.



- 5.53.7 It is also true that the SAAG owns a piece of and abutting the River Club property which has been considered for development: to the immediate south of the site is the abutting SAAG-owned Remainder Erf 26423 which is bounded by the River itself, the Station Road extension leading to the Observatory complex and Valkenberg Hospital, Lesbeek Parkway, and the River Club site: the SAAG has previously proposed a bulky 8 300 m² building 'of several storeys' for the Square Kilometer Array ("SKA") on this site: but this process has been terminated and it now seems improbable that the SKA building will be built on the SAAG site. However, it is possible that the Erf 26423 will be developed in due course, and any building in this position would have an impact on the floodplain and on its reading and sense of place.
- 5.53.8 However, the arterial road intervention must be taken into account because it will affect the reading and significance of the floodplain, of the surrounds and, in particular, the River Club site. All interventions on heritage resources should respect and even enhance the significance of those heritage resources rather than ignore or diminish the significance: in other words, we focus on the effects on significance rather than on the resource/object itself.
- 5.53.9 Second, given this, they argue that what are often described as "heritage-related design indicators" should be carefully devised to assist and even ensure that designers understand the significances (in kind and degree) and how those significances should be protected or enhanced. Such design advice must serve to outline criteria for decision-making by the responsible authorities. We also hope that this step-by-step methodology has assisted in the process of designing the "preferred alternative" and will serve the same purpose in the final steps of scrutiny and decision-making by the authorities.
- 5.53.10 Further, given that the cultural significances of the River Club site and its context are of the highest order but are ephemeral and without clear or obvious form or of form giving specificity, they argue that the heritage-related design indicators (or criteria for decision-making in respect of any proposed intervention on the River Club site) must first enable a 'concretising' of the articulated cultural significance and may not necessarily influence the shape/form of the development. It is also contended that, in this kind of case, it is inappropriate to invent non-heritage-related specifics.

Conclusions in respect of Design Indicators-Criteria for Decision-Making


- 5.53.10.1 The preliminary studies referred to earlier listed several 'design indicators' intending to guide the development of the River Club site in rather more prescriptive detail including heights, scale, density, retention of trees, etc. They do not think that such prescriptions flow from the heritage-related cultural significances of the site (as articulated above); and we think that such direction should flow out of the urban design framework articulated by the urban designer.
- 5.53.10.2 Also, as noted earlier, the factors determining the position of the then Royal Observatory included sightlines to the roadstead in Table Bay, to the Castle and to Signal Hill. The views to the sea and Castle are no longer extant: but there are potential views from the Observatory to Signal Hill and the gun emplacement.
- 5.53.10.3 However, these glimpses are only from the lower banks of the land spur which are not frequently accessed. Given this, we contend that it is unnecessary to attempt to preserve a view over the River Club site.

- 5.53.10.4 They note also that, the view from the Observatory to Signal Hill apart, the criteria for approval/design indicators articulated here echo the "heritage-related design informants" for this site argued by Attwell/Jacobs in their 2016 baseline study of the TRUP.
- 5.53.10.5 They also reiterate an argument made earlier that many, even most commentators seem to recognise the necessity for some form of development to proceed, and we hope that those commentators will accept the design criteria articulated here as enabling and as heritage-protecting. On the other hand, they recognise that many commentators think that this site should be limited to the current uses and built-form and not be developed: while there are circumstances where development is or will be damaging to the significance of a place, we think that this development does provide an opportunity for the revitalisation or recovery of a heritage lost and hidden.
- 5.53.10.6 In conclusion, they regard these four design indicators to be sufficient, not only to ensure that the development of the River Club site does not damage any significant heritage resource, but to ensure that the very high significance of this place and of the Liesbeek River more generally is not just protected but enhanced.
- 5.53.10.7 In their view, heritage resource management should, whenever it can, be directed to enrich the making of our cities, recognising the significances of the places and, where applicable and possible, the necessity of shaping the place to articulate and make tangible lost or hidden cultural significance, in particular in those cases where the recognition of past iniquities can lead to symbolic restitution and healing. They argue that this is possible in this instance.
- 5.53.11 During the public participation process conducted as part of the HIA, several commentators have complained that this application and process conflicts with the now lengthy planning and consultative processes (since 1998) intended to lead to a vision for the Two Rivers Urban Park.
- 5.53.12 In their view, the Preferred Riverine Corridor Alternative with its focus on the restoration of the Liesbeek River does, for the first time since 1998, enable a positive and realistic step towards the realisation of several of the goals of the TRUP, in particular, the goals outlined in the ten-point TRU-Park Manifesto included in the 2017 TRUP co-designing workshop resource sketchbook. The recovery and restoration of the Liesbeek proposed on the River Club site does, for the first time, suggest that several of the TRUP goals could be achieved.
- 5.53.13 The River Club site is a relatively small, if important, site within the overall TRUP area. TRUP is approximately 300 ha in extent, whereas the River Club site measures 14.8 ha, or 5 % of the TRUP. The proposed development will not be compliant with all of the objectives of the TRUP initiative. However, it is believed that the development will add significant value to TRUP in that significant pieces of land will be more publicly accessible, including recreation spaces associated with the rehabilitated riverine edges and the approximately 70m x 220m 'eco-corridor', which in turn will connect into the wider TRUP: a portion of land is proposed as a place of remembrance/celebration, where heritage on this land can be recognised and memorialised; and the site is the western gateway into TRUP and the development will assist to establish TRUP as a place of metropolitan significance.
- 5.53.14 The 'baseline studies' of Nisa Mammon and Melanie Attwell both deal with the TRUP as a whole but do not give commentary on the River Club site as a

Handwritten signature and date: 1/12

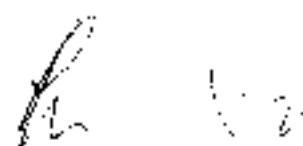
component of the TRUP. The heritage practitioners acknowledge and refer to these studies.

- 5.53.15 The Two Rivers Urban Park Association and its members ("TRUPA") refer to the TRUP as a "declared Park" however, they understand that there is no special declaration of TRUP in terms of any national, provincial or municipal legislation as a park or nature reserve. The term refers to a general area of land defined for the purpose of various planning studies. There was a Two Rivers Urban Park Contextual Framework and Phase 1 Environmental Management Plan prepared by the City of Cape Town in 2003. This was not formally approved in terms of planning law; but could be regarded as a form of local policy plan. There was subsequently an initiative by the Western Cape Provincial Government and the City of Cape Town to formulate a new plan and many documents were produced, but none were officially released or approved.
- 5.53.16 The boundaries of TRUP have changed over time to include and exclude certain parcels of land and it includes land with several different zonings, including Open Space 2, Community 1, Community 2, Transport 2, Residential and Industry (depending on which TRUP boundary is used). The Raapenberg Wetland and Bird Sanctuary has a proclaimed status as a Municipal Nature Reserve.
- 5.53.17 The City Council and Western Cape Government ("WCG"), both of whom own various properties within TRUP, have entered into a Memorandum of Cooperation to work together on the TRUP project, which is envisaged as a mixed-use, transit oriented development within a connected landscape for sustainable living, together with areas for nature, conservation and environmental management. An environmental, heritage and planning process was initiated by WCG and the City of Cape Town, which investigated opportunities, constraints and development options. The aim of the current TRUP process is to update the 2003 contextual framework and formulate a Local Spatial Development Framework in terms of section 12 of the MPB-L.
- 5.53.18 The land-use planning application referred to earlier notes that the current development proposal for the River Club would constitute a deviation from zoning currently associated with the site, and motivation for this deviation is contained in that report. It is noted in the rezoning report that a TRUP Local Spatial Development Framework process is being run in tandem by the Western Cape Government and City of Cape Town and will result in new development initiatives and planning guidelines for the TRUP area. They understand that the LSPDF will no longer make use of the term "urban park" due to public misunderstanding about this term.
- 5.54 When HWC stated in their comments that it is of the view that the assessment of significance is inadequate", the Supplement to the HIA disputed this for the following reasons:
- 5.54.1 Given that the authors discuss significance at great length in several lengthy sections, **Significances**, pp79-84, **8. Heritage Significance Related Design Indicators – Criteria for Decision-Making**, pp85-106, and **10. Assessment of Impacts on Heritage**, pp109-117, totaling approximately 35 pages in the HIA, it is difficult to accept that the assessment of significance is "inadequate"; HWC can, of course, disagree with our articulations and conclusions regarding the significances, but in this instance it is difficult to understand how this could be described as "inadequate".
- 5.54.2 It is clear that the writers of the HWC interim comment have not recognized (or they disagree with) the range of scales which they have taken into account in describing the range of significances of the site, the immediate

 10

environs, the wider environs, and at the whole length of the Liesbeek River as a heritage resource and/or resources;

- 5.54.3 It is clear too that HWC often elides the wider site (including both rivers and their floodplains) with the site in question;
- 5.54.4 It seems that HWC has not recognized (or they disagree with) the essential underpinning logic or argument of the HIA regarding or assigning relatively low current significances and/or value of the lower reaches of the Liesbeek floodplain (and of the site in particular) and the two river courses (stormwater drain and canalized river) as place and/or as a (tangible) heritage resource despite the high historical significance of the immediate and wider environs;
- 5.54.5 In this last respect, the heritage practitioners note that it seems that HWC has an incomplete grasp of the relationship between "significance" and "authenticity" arguing that "*(t)he concept of significance is broadly underpinned by authenticity*". This is a curious formulation of the relationships between the two concepts: indeed, their argument is precisely that significance has two "dimensions", a dimension of quality or type³⁰ and a dimension of quantity or extent, whereas authenticity (in respect of places like the case at hand) has a number of dimensions (or attributes) including form, substance, function, location/setting, traditions and practices; and, importantly, they argue that in the case of the River Club site significance and authenticity are considerably affected by its "integrity", a "measure of the wholeness and intactness of the natural and cultural heritage and its attributes".
- 5.54.6 Briefly, the first part of the heritage practitioners' argument is that the historical significance of the site is high but that the ecological, topographical, visual significances are (currently) low from a heritage perspective as a consequence of the loss of authenticity (location apart) and of a reduced integrity. The second part of the heritage practitioners' argument has it that the recovered integrity of the Liesbeek River course as an ecologically functioning riverine-corridor is also (or would be) a recovery of several attributes of authenticity and, therefore, a recovery/restoration of several attributes of significance.
- 5.54.7 This has been argued at great length in the HIA; and, indeed, it seems that all parties are agreed that the River Club site is a part of a much larger highly significant cultural landscape. It's clear, however, that all parties do not agree about the implications of related questions about the authenticity and/or integrity of the (actual/ physical) place and its components and surrounds as it is today.
- 5.54.8 In this regard, the heritage practitioners included an aerial photograph of 1934 which shows the following:
- 5.54.8.1 The Black River is canalised (presumably concrete-sided and floored) to a point more or less in line with an extension of Station Road;
- 5.54.8.2 The Liesbeek River-bed is a simple narrow and straight ditch or artificially created canal;
- 5.54.8.3 All of the land to the immediate west of the Liesbeek has already been filled and is being used for sporting activities;
- 5.54.8.4 All of the River Club site that filled is in part an island or promontory projecting into the water-filled wetlands to the north and east 'protected by drainage canals;
- 5.54.8.5 The wetlands to the north and east have the marks of a drag-line excavator that has taken soil from the estuary to create the reclaimed land of the River Club site; and



A handwritten signature and the date '1/2' are visible at the bottom right of the page.

- 5.54.8.6 The only as yet (relatively) 'natural area' is the SAR&H land to the north which is being gradually reclaimed and encroached on by the railway sheds.
- 5.54.9 Given this, the heritage practitioners argue that the pre-1952 river-course, which is claimed by some commentators (apparently concurred with by HWC) to be the "authentic" river course, is not authentic and has little integrity as such.
- 5.54.10 It is also pointed out that the lower reaches of rivers, especially where flowing very slowly through very flat floodplains, are inclined to change their course periodically through sudden flooding, thus establishing a series of 'authentic' river-beds over time. In other words, it is apparent that an 'authentic' course of the Liesbeek is uncertain, even liable and liable to displacement or change; and, given this, they argue that the current canalised bed of the Liesbeek is a legitimate and feasible course for the recovered riverine corridor, the ecological, visual, cultural, amenity significance of which can be enhanced without damaging its historical or locational significance and authenticity.
- 5.54.11 The heritage practitioners hesitate to complicate an already complex argument about significances but, given the range of opinions, this is unavoidable and it is the range of opinions regarding what has been variously referred to as "landscape character" that they touch on in order to illustrate the differences of perception (and opinion):
- 5.54.11.1 Attwell and Jacobs have argued that there are nine distinct 'character-areas' in the TR-area as shown in their map, Landscape Character Areas
- 5.54.11.2 However, their 'character-areas' do not identify the two rivers and their courses/ corridors/floodplains as 'character areas' implying a view of the rivers as dividers between 'character areas' rather than as the generators of character (which is how they see them)
- 5.54.11.3 Postlethwayt takes view similar to that of Attwell and Jacobs
- 5.54.11.4 The authors of the LSDP, however, take a rather different view, recognising the two rivers as central 'character makers' of two of their eight separate precincts; and their diagram of "heritage related constraints and opportunities for redevelopment, repurposing, restoring, re-imagining" emphasises the rivers as the primary 'heritage informants'. This is much closer to their own view and, they argue, this is how most people see the area (indeed, the area has been known as the "Two Rivers urban park" or area for decades).
- 5.54.11.5 This is pointed out to emphasise the different experiences of the landscape and the consequences of these different experiences and the consequential heteroglossia of views, perceptions and assessments of the topography itself and its characters and of the significance(s) of the characters of the component parts

5.55 The Visual Impact Assessment conducted by Mr. Scott Mason of SRK Consulting stated *inter alia* the following:

Findings and Recommendations

- 5.55.1 The VIA describes and interprets the visual context or affected environment in which the project is located; this provides a visual baseline or template and aims to ascertain the aesthetic uniqueness of the project area, to better understand the magnitude or intensity of visual and sense of place impacts.

AS

the capacity of the project area and receptors to accommodate, attenuate and absorb impacts was analysed in considerable detail. To assess impact significance, the River Club development was "introduced" into the baseline, taking account of the attenuating capacity of the project area.

5.5.5.2 The following findings are pertinent:

5.5.5.2.1 The Applicant is proposing to redevelop the River Club property for commercial, residential and institutional use.

5.5.5.2.2 The basis for the visual character of the area is provided by the topography, vegetation and land use of the area giving rise to a predominantly urban environment of mixed land use surrounding a large, isolated open space with low intensity activities, influenced by the rivers traversing the space and vehicular and rail routes delineating and confining the site.

5.5.5.2.3 The visual quality of the overall area is largely ascribable to the built-up urban environment with an island of green open space.

5.5.5.2.4 The rivers provide interest in the landscape thereby enhancing the visual quality. Views of Devil's Peak and the Observatory complex contribute to the visual quality of the area.

5.5.5.2.5 The sense of place of the study area is strongly influenced by the rivers, and an "island" of open space in a highly developed and evolving urban environment of mixed land use. The dramatic views of Devil's Peak and the dominant east-facing ridge/line also add to the sense of place of the study area, while surrounding industrial areas and transport corridors detract.

5.5.5.2.6 The visual exposure analysis indicates that buildings adjacent to the site will provide very effective visual screening of the development.

5.5.5.2.7 The VAC is increased by the built fabric of the surrounding areas particularly the PRASA rail yard to the north, the commercial buildings of Black River Park to the west, and the industrial buildings and M5 Park (on a raised platform) to the east, as well as local variations in topography.

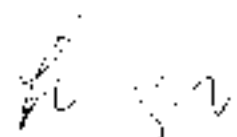
5.5.5.2.8 Receptors include users travelling past the site on Liesbeeck Parkway and the M5, residents of surrounding suburbs, employees of adjacent business parks and visitors to the Observatory complex, the Raapenberg Sanctuary and passive users of the open space.

5.5.5.2.9 Visibility of the development will be very high to receptors in the foreground, but visibility will reduce substantially in the middle ground and background because of screening provided by urban fabric.

5.5.5.2.10 Landscape integrity refers to the compatibility of the development with the existing landscape or cityscape. The proposed development is consistent with the existing land use of the surrounding area (commercial, industrial, institutional) although the scale and size of the development will be considerably larger than neighbouring developments.

5.5.5.2.11 During construction, loss of sense of place is expected, especially in the foreground i.e. closer to Liesbeeck Parkway and the M5, since construction and the change in the state of the site (scarring, construction equipment, construction traffic and dust generation) is incongruent with the current nature of the site viz. green open space and use of the site viz. recreation.

5.5.5.2.12 During operations, Loss of sense of place is expected since the development and the change in the state of the site is mostly



incongruent with the current nature of the site viz. green open space and use of the site viz. recreation

- 5.55.2.13 New built structures will be visually intrusive and, in some cases, obtrude receptors' views of visual resources from surrounding vantage points. The visual impact may be lessened by the congruency of the proposed development with the surrounding land uses, mainly the commercial and industrial activities towards the north of the site rather than the more informal layout of the buildings to the south of the site.
- 5.55.2.14 Lighting will be extensively used to illuminate the proposed development which may drastically alter night-time sense of place.

Conclusion

- 5.55.3 Although the significance rating for both layout alternatives is the same, Alternative 1 is marginally preferred from a visual impact and sense of place perspective as greener (and landscaped) open space is accessible. During parts of the year, the original (western) channel of the Lesbeek River can be visually unappealing (when water levels are low the channel can appear polluted).
- 5.55.4 For Alternative 1, the shift of Precinct 1 towards the western channel unlocks more open space along the eastern channel, which has the potential to become a visual amenity to the public if rehabilitated correctly. The ecological corridor for Alternative 1 is marginally wider than for Alternative 2, thereby increasing the green visual corridor across the site. Though tools are available to more scientifically and dispassionately assess visual and sense of place impacts, VIAs require a large degree of professional, subjective judgment. This is more difficult for a project such as the River Club development, which is located in the midst of a wholly transformed urban environment on land very well located for development, but which has remained undeveloped and conferred a natural sense of place to surrounding (urban) receptors. In many respects, the visual impact is pronounced, but not inconsistent with a cityscape. However, the sense of place impact is more significant and difficult to mitigate. Receptor perceptions are also important; for some, retention of the open space might be critical to retaining the sense of place; for others, urban development, especially if celebrated by iconic structures, may be valued. The development could both alter sense of place and, at the same time, deliver a functional development with interesting structures with their own visual appeal.

Evaluation of the impact of the development on heritage resources relative to the sustainable social and economic benefits to be derived from the development

- 5.56 The balancing of environmental impacts in light of sustainable development is the heart of the EIA process. The NEMA principles state that "[t]he social, economic and environmental impacts of activities, including disadvantages and benefits, must be considered, assessed and evaluated, and decisions must be appropriate in the light of such consideration and assessment." As such, a Basic Assessment process which culminated into the Final BAR which detailed various environmental impacts which included both positive and negative environmental impacts was undertaken by an independent EAP and informed by studies of also independent specialists.



5.57 When the Interested and Affected Parties ("I&APs") were afforded opportunities to comment on the social, economic and environmental impacts of activities, the following responses were provided by the EAF:

5.57.1 The history of the broader area is comprehensively described in Section 4 of the HIA, and includes a history of:

5.57.1.1 Khoekhoe groups occupation and use of the area for grazing,

5.57.1.2 The importance of the rivers to the history of the area,

5.57.1.3 Conflict between Khoekhoe groups and European settlers,

5.57.1.4 The defensive line established by the Dutch,

5.57.1.5 The agricultural use of the Liesbeek River catchment by the Dutch,

5.57.1.6 Residential, commercial, and industrial encroachment on the agricultural and riverine floodplain and landscape.

5.57.2 Remaining heritage resources in the broader landscape are also documented (see Section 6 of the HIA).

5.57.3 The HIA confirms that the cultural significance of the area is derived from "the history of and concentration of historic elements in this landscape as well as the symbolic values of the Black and Liesbeek Rivers".

5.57.4 Although HWC's assessment of "National or Provincial" significance of the "TRUP" is noted, it should be borne in mind that this is a planning boundary, and with the exception of the river courses (which themselves are much changed), much of the history that derives the cultural significance of the site extends over a far broader area. In this regard, on 15 October 2019, the Draft Two Rivers Local Spatial Development Framework ("LSDF") was released for public comment. This report included a Phase 1 HIA and a "TRUP First Nations Report" (AFMAS Solutions, 2019). Following the TRUP First Nations Report, AFMAS Solutions were appointed to build on the "TRUP First Nations Report" (AFMAS Solutions, 2019) to:

5.57.4.1 Understand the significance of the River Club site to the First Nations by identifying indigenous intangible cultural heritage specific to the River Club.

5.57.4.2 Locate the River Club site within the indigenous narrative of the broader TRUP cultural landscape.

5.57.4.3 Identify First Nation aspirations with regard to Indigenous cultural heritage and the River Club site.

5.57.4.4 Make recommendations for the implementation of the key recommendation of the TRUP First Nations report, specifically: "Acknowledge, embrace, protect and celebrate the indigenous narrative in design and planning"

5.57.5 Key findings of these studies, as they relate to the River Club, are as follows:

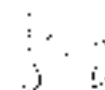
5.57.5.1 Given that the entire TRUP project area was part of the historic indigenous landscape, each of the precincts that make up TRUP has a measure of indigenous cultural heritage.

5.57.5.2 The River Club site is a small part of a much larger TRUP cultural landscape that extends to approximately 300 hectares.

5.57.5.3 The extent to which the site bears testimony to its indigenous cultural heritage, is determined by the amount of indigenous cultural capital assigned to the site.

5.57.5.4 First Nation informants concurred that the Two Rivers local area was the dominion of the Gorinhaliqua.

5.57.5.5 No cross-cutting, narrative-defining event for any of the strands of the indigenous narrative; be it, the dominion of the Gorinhaliqua, Battle of Gorinhaliqua, Colonia settler 'gilagem', or resistance to 'gilagem', can be attributed specifically to the River Club site.



- 5.57.5.6 No tangible or intangible reference has been made to the Gorinḡqua having settled specifically on the River Club site.
- 5.57.5.7 No specific act of resistance, battle or encounter, whether tangibly manifested or intangibly articulated, have been attributed specifically to the River Club site.
- 5.57.5.8 Although mostly a wetland and therefore of low functional use value, the River Club site was most likely part of an early precolonial landscape from which the indigene was displaced and/or precluded from having access to.
- 5.57.5.9 The site is not a burial ground.
- 5.57.5.10 The site was not used as a pre-colonial river crossing.
- 5.57.5.11 The Liesbeek River is an important heritage resource in the broader landscape, and its rehabilitation / naturalisation is supported by the First Nations Collective / would be a cultural benefit.
- 5.57.5.12 The First Nations narrative should be acknowledged, embraced and celebrated in design and planning for the River Club.
- 5.57.5.13 The heritage specialists on the project team therefore attest that the heritage resources identified in the HIA for the River Club site do include the broader area and are mirrored / confirmed by the First Nations historical account / narrative.
- 5.57.6 After reporting the history of the broader area, the HIA,
 - 5.57.6.1 Confirms that "the area in which the River Club is situated is historically important for the role it played in the distant past"; and
 - 5.57.6.2 Places the site "within the core of this early contested landscape" (see Section 4.5 of the HIA) and within an "associative cultural landscape" with definable/known historical associations of great socio-political import.
- 5.57.7 In addition, on 15 October 2019, the Draft Two Rivers Local Spatial Development Framework (LSDF) was released for public comment. This report included a Phase 1 HIA and a "TRUP First Nations Report" (AFMAS Solutions, 2019). Following TRUP First Nations Report, AFMAS Solutions were appointed to build on the "TRUP First Nations Report" (AFMAS Solutions, 2019) to:
 - 5.57.7.1 Understand the significance of the River Club site to the First Nations by identifying indigenous intangible cultural heritage specific to the River Club.
 - 5.57.7.2 Locate the River Club site within the indigenous narrative of the broader TRUP cultural landscape;
 - 5.57.7.3 Identify First Nation aspirations with regard to indigenous cultural heritage and the River Club site.
 - 5.57.7.4 Make recommendations for the implementation of the key recommendation of the TRUP First Nations report, specifically "Acknowledge, embrace, protect and celebrate the indigenous narrative in design and planning".
- 5.57.8 Following these studies, the heritage specialists remain of the opinion that the Two River local area is comprised of a variety of precincts of very different topographies, histories of use, of development-type, each with its own qualities and a variety of potential heritage significances. In this context, the HIA finds that, apart from the Liesbeek River, the site itself has little obvious heritage significance, noting that:
 - 5.57.8.1 The site is entirely an infill site; and certainly, reclaimed from wetlands before 1934 and iteratively reshaped since then.
 - 5.57.8.2 The valley (or floodplain) in which the site is located, although an important component of the Liesbeek River as a landscape, has been transformed by urban development of various sorts.

A handwritten signature and the initials 'G.S.' are present at the bottom right of the page.

- 5.57.8.3 The site is relatively small, comprising only 5% of the Two River local area.
- 5.57.8.4 No tangible heritage relics or resources occur on the site.
- 5.57.8.5 No historic events are attributed to have occurred at the site.
- 5.57.9 The HIA found, however, that the Liesbeek River is a tangible heritage resource that remains in this transformed landscape, is a potentially strong symbol of past events, reflects the history and significance of the area, is a common thread and the significant heritage resource **that links the River Club, the Two River local area and the broader environs more generally**, and is worthy of heritage protection. The HIA recommends the restoration and memorialisation of the river course and confluence.
- 5.57.10 The HIA acknowledges stakeholders' views on the significance of the landscape as a heritage resource but argues that but this significance is associative and has no clear or defined place or locus, or even any physical characteristics other than being rooted here in this general location on the floodplain of the Liesbeek River, and that the heritage of the area cannot be destroyed. Rather, and in this context, the HIA suggests that the development of the River Club site is an opportunity for the articulation or making public, even celebration, of the significance of the place and of its historical associations. This opinion is shared by the First Nations Collective.
- 5.57.11 No tangible elements of the history of the broader area remain at the site, and the site is either entirely or almost entirely an infill site, it is therefore unlikely that the site could yield information about heritage.
- 5.57.12 Nevertheless, chance-find procedures would be implemented should construction proceed.
- 5.57.13 The HIA acknowledges that stakeholders value the 'openness' in the sense of place of the floodplain, as well as the views from within and across the floodplain, but noting that no cross-cutting, narrative defining event, battle or encounter is attributed to have taken place at the site, and that no tangible reference to such an event having taken place at the site is made, the authors of the HIA argue that while the development may lead to a significant visual impact, is of relatively low heritage significance: "whether the site is developed or otherwise, it will always have a history which not manifested on the ground and cannot be destroyed by physical changes".
- 5.57.14 The site is located in a significantly transformed floodplain between even more radically transformed land, is degraded and will be further affected by the future development of the Berkley Road extension. Nevertheless, the HIA acknowledges the role that the 'openness' of the site plays in determining the current sense of place, as well as the importance of views from within and across the floodplain, but argues that while this may be a significant visual impact, is of relatively low heritage significance: "whether the site is developed or otherwise, it will always have a history which not manifested on the ground and cannot be destroyed by physical changes".
- 5.57.15 The HIA suggests that the development of the River Club site is an opportunity for the articulation or making public, even celebration, of the significance of the place and of its historical associations (i.e. its intangible heritage).
- 5.57.16 Regarding the visual impact on sense of place, it is acknowledged that although ~65% of the site will be retained as open space, due to its location at the confluence of the Liesbeek River and Black River, and long term status of the site as a green open space, the change in character may be experienced as a strong visual contrast for surrounding (urban) receptors and the (negative) impact of a change in sense of place will be significant.
- 5.57.17 It is assumed that people derive a positive sense of place from the site, and it is acknowledged that although ~65% of the site will be retained as open

space, due to its location at the confluence of the Liesbeek River and Back River, and long-term status of the site as a green open space, the change in character may be experienced as a strong visual contrast for surrounding (urban) receptors, and the (negative) impact of a change in sense of place will be significant. It is also significant that almost all commentators, including the First Nations collective, accept that the River Club site could, even should, be developed; and any form of development will transform the sense of place referred to.

5.57.18 Most academic studies attribute sense of place to the history, values, perceptions and preferences of the observer. The VIA for the development reports the relationship to place on the following basis:

5.57.18.1 Biographical (historical and familial).

5.57.18.2 Spiritual (emotional, intangible).

5.57.18.3 Ideological (moral and ethical).

5.57.18.4 Cognitive (based on choice and desirability).

5.57.18.5 Narrative.

5.57.18.6 Dependent.

5.57.19 Although a change in sense of place is anticipated and has been assessed as a negative impact of the project, the opinion that the development will destroy the sense of place of the broader area is rejected on the following grounds:

5.57.19.1 Whether the site is developed or otherwise, it will always have a history which not manifested on the ground and cannot be destroyed by physical changes.

5.57.19.2 The development will include high quality open spaces (approximately 65% of the site), and views through the site have been retained where possible.

5.57.19.3 There are very extensive open space areas in the immediate vicinity, comprising active open spaces such as sports fields and passive open spaces including parks and environmental areas.

5.57.19.4 Within the greater the Two Rivers local area there remain very large areas in public ownership which cannot be developed and (along with open spaces that have been included in the development proposal) will continue to form part of the public open space system.

5.57.19.5 The proposal is to restore and celebrate the history of the Liesbeek River and site, and to celebrate the history of the First Nations people (enhancing the narrative sense of place to these people and the broader public).

5.57.19.6 The very sense of place referred to is degraded and the development proposed enables the restoration of the sense of place referred to, even if significantly interrupted.

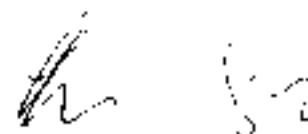
5.57.20 Although an ecological benefit from the development is anticipated (i.e. habitat quality and connectivity in this "fragmented natural system" would be enhanced), impacts on the sense of place and historical character of the site have been assessed in the HIA and found to be significant.

5.57.21 Notwithstanding the site's current role in the open space system and anticipated change in character as assessed, it does not necessarily mean to say that development of the site should be precluded. In this regard,

5.57.22 And relating to open space specifically, it should further be noted that:

5.57.22.1 The heritage specialists argue that while the development may lead to significant visual impacts, transformation of the site's character is of relatively low heritage significance.

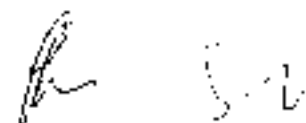
5.57.22.2 The development will be publicly accessible, approximately 65% of the site would be retained as open space if developed as proposed,



- and - 25% of the site would made available for recreational activities in open space areas - the open space provided is considered sufficient for a development* of this nature.
- 5.57.22.3 The development would allow the public to enjoy open space vistas associated with the Raapenberg Bird Sanctuary more meaningfully.
- 5.57.22.4 The wider open space system of which the site forms part contains campus style development (e.g. Observatory and Valkenberg). These institutions illustrate that development* can be accommodated within the Two Rivers local area, provided that pockets of green space and ecological connectivity are retained (as per the development proposal).
- 5.57.22.5 There are very extensive open space areas in the immediate vicinity, comprising active open spaces such as sports fields and passive open spaces including parks and environmental areas.
- 5.57.22.6 Within the greater the Two Rivers local area there remain very large areas in public ownership which cannot be developed and (along with open spaces that have been included in the development proposal) will continue to form part of the public open space system.
- 5.57.22.7 Considerable social (as well as heritage and ecological) benefits are anticipated from extending the public movement corridor along the "new" Liesbeek River corridor should the Riverine Corridor Alternative be selected for development.
- 5.57.22.8 Considerable heritage benefits are anticipated by memorialising the history of the First Nations people at the site.
- 5.57.23 While a difference in opinion between First Nations groupings is noted, the historical record for the broader area presented in the HIA is generally not contested, and aligns with the heritage significance of the area reported by the First Nations Collective (Section 1 (f) of River Club First Nations Report):
- 5.57.23.1 First Nations people resided (most unlikely on the site) in or grazed their herds in the area prior to European colonialization; and
- 5.57.23.2 That the broader area is a site of contestation, dispossession and resistance.
- 5.57.24 Based on interviews, it is evident that the First Nations collective concur with the authors of the HIA that the entire two rivers area was part of the historic indigenous landscape, and that each of the precincts that make up the two rivers area have a measure of inherent indigenous cultural heritage - but that the heritage significance of each precinct that makes up the TR area is not universal, but is determined by the tangible and intangible cultural elements which are precinct specific, or cul across two or more precincts. In this regard, engagement with the First Nations Collective has confirmed that "no cross-cutting, narrative-defining event for any of the strands of the indigenous narrative... can be attributed specifically to the River Club site" (Section 2(D) of River Club First Nations Report and see response to item 46), but that the Liesbeek River is an important heritage element in the broader landscape (see Section 2(G) of River Club First Nations Report).
- 5.57.25 The assertion that there is a disconnect between First Nations' understanding of heritage resources (and significance) is therefore rejected by the specialist team.
- 5.57.26 After reporting the history of the broader area, the HIA:
- 5.57.26.1 Confirms that "the area in which the River Club is situated is historically important for the role it played in the distant past"; and
- 5.57.26.2 Places the site "within the core of this early contested landscape" (see Section 4.5 of the HIA) and within an "associative cultural

landscape" with definable/know historical associations of great socio-political import.

- 5.57.27 Nevertheless, it is the opinion of the heritage practitioners who compiled the HIA (and others) that the Two Rivers local area is comprised of a variety of precincts of very different topographies, histories of use, of development-type, each with its own qualities and a variety of potential heritage significances. In this context, the HIA finds that, apart from the Liesbeek River, **the site itself has little obvious tangible heritage significance**, noting that:
- 5.57.27.1 The site is either entirely or mostly an 'infill site' reclaimed from wetlands;
 - 5.57.27.2 Much of the history that derives the cultural significance of the Two Rivers local area extends over a far broader spatial scale;
 - 5.57.27.3 The valley (or floodplain) in which the site is located, although an important component of the Liesbeek River as a landscape, has been transformed by urban development upstream and downstream of the site;
 - 5.57.27.4 No tangible heritage relics or resources occur on the site;
 - 5.57.27.5 No historic events are attributed to have occurred at the site.
- 5.57.28 Therefore, while the HIA acknowledges the role that the 'openness' of the site plays in determining the current sense of place, as well as the importance of views from within and across the floodplain (which are comprehensively assessed in the VIA), it argues that this openness and these views are of low heritage significance: "whether the site is developed or otherwise, it will always have a history which does not manifest on the ground and cannot be destroyed by physical changes". This view is supported by the First Nations Collective: "no cross-cutting, narrative-defining event for any of the strands of the indigenous narrative... can be attributed specifically to the River Club site" (Section 2[D] of River Club First Nations Report).
- 5.57.29 It is on this basis that the heritage practitioners defend their assessment (and mapping) of heritage significance of the site and immediately adjacent areas (also refer to Sections 4 and 5 of the HIA Supplementary Report).
- 5.57.30 There are no tangible elements of the history of the site which remain, and therefore all heritage significance attributed to the site (with the exception of the Liesbeek River) derives from its intangible history.
- 5.57.31 The assessment and mapping of heritage significance of the site is provided under Sections 4 and 5 of the HIA Supplementary Report.
- 5.57.32 The high historic and symbolic significance of the broader area is not contested, what is contested is the "heritage capital" that can and should be attributed to the River Club site itself. In this context the HIA finds that, apart from the Liesbeek River, **the site itself has little obvious heritage significance**, noting that:
- 5.57.32.1 The site is either entirely or mostly an 'infill site';
 - 5.57.32.2 Much of the history that derives the cultural significance of the Two Rivers local area extends over a far broader spatial scale;
 - 5.57.32.3 The valley (or floodplain) in which the site is located, although an important component of the Liesbeek River as a landscape, has been transformed by urban development upstream and downstream of the site;
 - 5.57.32.4 No tangible heritage relics or resources occur on the site;
 - 5.57.32.5 No historic events are attributed to have occurred at the site.
- 5.57.33 Therefore, while the HIA acknowledges the role that the 'openness' of the site plays in determining the current sense of place, as well as the importance of views from within and across the floodplain (which are comprehensively

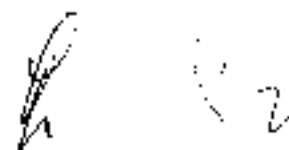


- assessed in the VIA), it argues that this openness and these views are of low (but not of "no") heritage significance.
- 5.57.34 The heritage practitioners argue that the development of the site will not destroy its history – to the contrary, they see the development as an opportunity to celebrate it.
- 5.57.35 Engagement with the First Nations Collective has confirmed that "no cross-cutting, narrative-defining event for any of the strands of the indigenous narrative... can be attributed specifically to the River Club site" (Section 7(D) of River Club First Nations Report), but that the Liesbock River is an important heritage element in the broader landscape (see Section 2(G) of River Club First Nations Report).
- 5.57.36 The proponent seeks to develop a mixed use, "live, work and play" facility at the site, and this development must be financially viable for the proponent to proceed. Nevertheless, the development proposal has been formulated in collaboration with a multi-disciplinary team that has responded to independent environmental and specialist input. In this context there have been more than 250 iterations to the development proposal / layout, and the assertion that the HIA post-rationalises a pre-conceived development concept is therefore rejected.
- 5.57.37 Development responses have included:
- 5.57.37.1 Reducing the heights of building directly opposite the SAAO and locating taller buildings to the north of the site - the visual effect will be that buildings opposite the SAAO will appear as 3 - 4 storey buildings.
 - 5.57.37.2 Setting back from the SAAO as far as practically possible.
 - 5.57.37.3 Splitting the development into two precincts to retain a formal movement corridor and views through the site.
 - 5.57.37.4 Rehabilitating the Liesbock Canal and infilling the unlined, western course of the Liesbock River (in line with detailed specialist design input, with associated ecological and cultural benefits).
 - 5.57.37.5 Providing a cultural centre and memorialising the history of the First Nations People in the design of the development.
 - 5.57.37.6 Realigning the link road between Precinct 1 and Precinct 2 to an orthogonal geometry instead of a diagonal geometry to create a better "fit" in terms of urban design and a better functioning central ecological corridor and park.
 - 5.57.37.7 Realigning of other internal roads (to improve views from the through the site)
 - 5.57.37.8 The argument about "post-rationalising" is irrelevant (see Section 8 of the HIA Supplement).
- 5.57.38 There is a difference in opinion as to how this heritage manifests, and should be memorialised at a precinct level, or even more local scale. The heritage practitioners have presented a well-researched and motivated opinion on the heritage significance of the site which is confirmed by the First Nations Collective, and the specialists argue that sense of place concerns of certain stakeholders, while being valid, are mostly visual in nature. It is acknowledged that this opinion is contested, the specialists reject that the assessment of significance has been tailored for any reason.

5.56 The Supplement Report to the HIA, dated 4 December 2019 which was conducted by Mr Timothy JC Hart and Dr Stephen Townsend as required by FWC stated *inter alia* that:

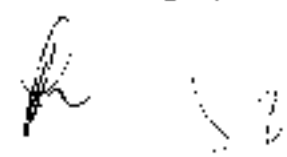
Introduction

- 5.58.1 This document is a Supplement to the *Heritage Impact Assessment* dated 2 July 2019 which was submitted to Heritage Western Cape in July, discussed by HWC's Impact Assessment Committee on 22 August 2019, and commented on in the written *Interim Comment* from HWC dated 13 September 2019.
- 5.58.2 By way of Introduction they note that, while explicitly under NEMA (and, therefore, section 38(8)), a NID was submitted by Bridget O'Donoghue on behalf of Liesbeek Leisure Properties Trust to HWC in December 2015; and HWC responded in January 2016 confirming that an HIA "that satisfies the provisions of section 38(3) of the NHRA" was necessary and that it should include "an archaeological study and highlighting the urban design framework of the proposed development".
- 5.58.3 In due course, O'Donoghue submitted a Phase I HIA to HWC with an attached peer review by Dr Nicolas Baumann in February 2017.
- 5.58.4 However, given that a Phase I HIA by Malanie Athwell and Graham Jacobs and a draft *Situational Analysis Report* by Niso Mamma dealing with the wider TRUP area (henceforth, "the Two Rivers area" or "TR-area") were being considered at the same time, the O'Donoghue Phase I HIA was withdrawn before being considered by HWC.
- 5.58.5 After this interruption, in September 2017, they, Townsend and Hart, took over the responsibility of compiling the HIA.
- 5.58.6 Subsequently, their presume prompted by these submissions in the first half of the year, in November 2017 HWC announced its intention to provisionally protect the entire Two Rivers area and invited comment. However, later, in March 2018 HWC provisionally protected the River Club site only under section 29 of the Act. This led to a separate appeal process (to the MEC who appointed a tribunal to address this) which has been finalized in April 2020.
- 5.58.7 Also, in October 2018 and referring to the River Club provisional protection as "background", HWC sought an external service provider to conduct a "heritage assessment" of the wider TRUP area. They note that these terms of reference made no reference to the interest of First Nations or to the TRUP-area as the site of a "National Khoisan Legacy Project"; and it is noted also that HWC was unable to find an appropriate "external service provider"; we note also that although it is now more than two years since HWC announced its intention to provisionally protect the entire TRUP-area, it has not yet begun any investigation or any negotiation/consultation which could lead to the alleviation of any threat, real or imagined.
- 5.58.8 Initially, the provisional protection by HWC interrupted the process of researching and drafting the HIA (and seeking comment from IAPs); but, in July 2019, the HIA was ultimately submitted to HWC, the IA Comm considered the matter at a meeting on 22 August 2019 and commented in an *Interim Comment* dated 13 September 2019.
- 5.58.9 In this Supplement to the *Heritage Impact Assessment* of 2 July 2019 they deal with these two issues in sufficient detail (we hope and trust) for HWC to articulate a "final comment" in respect of the development proposed; they also deal with a variety of other issues which HWC has contested and which might otherwise be argued to be unresolved (or incompletely or inadequately dealt with); and, finally, they give us to date details of the development proposal as refined in response to commentary made in the NEMA, NHRA and MPB-L processes including, of course, responses to the input and effects of two reports by Rudewaan Arendse (of AFMAS Solutions) dealing with the views of several First Nations groupings, first, in respect of the wider Two Rivers area (eight groupings) and, second, in respect of the River Club site (five groupings).



Engagement with First Nations Groupings:

- 5.58.10 HWC says in the Interim Comment that "(i)t is clear to HWC, however, that there has been a lack of, or avoidance, of a meaningful consultation with the First Nations groups".
- 5.58.11 In this regard, they note the following:
- 5.58.11.1 HWC did not make any reference to the First Nations in its response to the ND in early 2016 or to the Phase I HIA compiled by Bridget O'Donoghue and submitted to HWC in March 2017 which did not make reference to any such engagement;
 - 5.58.11.2 HWC's own attempts in late 2018 to find an "external service provider" to assess the wider TR area makes no reference to the First Nations or the necessity of their interests in either the wider Two Rivers area or to the isolated River Club site and nor could they find an appropriate external service provider;
 - 5.58.11.3 The HIA does, however, describe the history of the site and the wider environs and its historical importance;
 - 5.58.11.4 The HIA also details the numerous attempts to engage with representatives of and/or with First Nations groupings;
 - 5.58.11.5 The HIA does also allude to the extensive endeavours of the owners over the past several years to meet First Nations groupings and HWC was aware of the support for the development of the site from the Gorinthaqua Cultural Council received just before the IA Comm meeting; and
 - 5.58.11.6 While the HIA does not include an account of the endeavours made to find an expert on intangible heritage to assist in this regard, these efforts included conversations with numerous potentially appropriate parties over much of the period between the first comment made by the Gorinthaqua Traditional Council in late 2018 on the provisional protection of the River Club and the completion of the HIA in July 2019.
- 5.58.12 Given these endeavours and given the iterative processes described in section 5, **Consultation and Commentary of Interested Parties** of the HIA and given that HWC recognises that the "formal notice and commenting procedure" has been "complied with", HWC's accusation that engagement with First Nations groupings was "avoided" is denied.
- 5.58.13 The heritage specialists refer to two recently completed reports by Rudawan Arendse of ALMAS Solutions: the first is the TRUP First Nations Report dated 25 September 2019 which was prepared for incorporation into the draft land-use planning local area spatial development framework being prepared by the City Council and the Western Cape Provincial Government; and the second is the River Club First Nation Report dated November 2019 which was commissioned by Liesbeek Leisure Properties Trust specifically to add to the efforts made to date and given Arendse's success in interacting with several First Nations groupings in the process of the preparation of the land-use planning local area spatial development framework just referred to contribute to this Supplement*.
- 5.58.14 The first of Arendse's reports referred to, TRUP First Nations Report, is more generally framed and addresses what has been raised by eight First Nations groupings in connection with the wider Two Rivers-area and, indeed, an even wider area including the entire length of the Liesbeek and its confluence with the Black River and the Salt River all the way to the sea. The heritage specialists note the following:



5.58.14.1 That the landscape referred to as "indigenous" and made luminous by the first Nations' understandings is much wider than the Two Rivers area (to say nothing of the River Club site):

"The indigenous landscape is not circumscribed by precinct boundaries - considered by indigenous custodians as value-laden lines that designate formal political and economic divisions between outsider-designated and imposed territorial units, which are viewed by First Nations as zones of contestation between the establishment and the subaltern.

For the purposes of this report, the boundary of the indigenous landscape is

defined as a line inscribed by the indigenous collective memory of the footprints of the ancestors."

5.58.14.2 That the First Nations seek recognition of their history or "narrative" and its importance through an "indigenizing" of the TR-area and its "transformation to a commemorative landscape": "It's the collective aspiration and contention of the First Nations, that this remaining - fragmented - landscape, be authenticated as an indigenous commemorative landscape with distributed spaces of engagement and indigenous place-making, spanning different precincts (whilst acknowledging the co-existence of other, non-indigenous layers of heritage).

Indigenizing the TRUP landscape and transformation to a commemorative landscape, can be achieved by using land, space and physicality, to give form, structure and functional expression, to the intangible cultural heritage of the Khoi and San. This materialized indigenous landscape would then be

activated and enlivened through negotiated and enshrined indigenous cultural practices and heritage activities."

5.58.14.3 That these aspirations can be inscribed by structuring the narrative into the United Nations Educational, Scientific and Cultural Organization ("UNESCO") intangible heritage "domains" which can then be made tangible through "embodying" the narrative in the landscape and through "enshrining" access to this landscape:

"This task involves embodying of the intangible/s in each of the ICH domains:

which is achieved through using land, space and physicality to give it form, structure and functional expression."

"Embodied intangibles allow for the landscape to be activated and enlivened

(culturally cultivated) through indigenous cultural practices and heritage activities."

"Enshrining indigenous people's physical access to a TRUP landscape, as field of materialized intangible cultural heritage, facilitates encoument and reconstituting of indigenous identity through the First Nations reconnecting their identity with place-based indigenous spirituality and the ancestral domain."

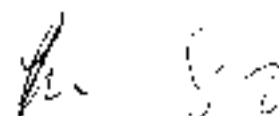
- 5.58.14.4 This report, Arendse's first report, also introduces a number of precedents which he uses to imply or suggest some mechanisms or strategies for specializing the "indigenous narrative" and embodying the indigenous narrative within the landscape. These strategies are given more 'substance' in Arendse's second report which deals specifically with the River Club site as a part or precinct within the TR-area and within the wider locality frequented and occupied by the pre-colonial indigenous people and within which the historical events of the early years of colonial settlement took place.
- 5.58.15 While parts of the indigenous narrative presented by Arendse in both reports, repeating the words of the leaders and representatives of the First Nations groupings, read as authentic, even "popular", histories and are perhaps relatively free interpretations of documented events, it would serve no purpose to argue the details of these interpretations here. Indeed, it is their hope that the River Club development will provide a meaningful locus/place for and of the realisation of the First Peoples' greatest desire, a proper and formal recognition and articulation of **their** narrative(s)
- 5.58.16 Arendse's second report, the River Club First Nation Report, sets out to:
- 5.58.16.1 Understand the significance of the River Club site to the First Nations by identifying indigenous intangible cultural heritage specific to the River Club;
- 5.58.16.2 Locate the River Club site within the indigenous narrative of the broader TR cultural landscape;
- 5.58.16.3 Identify First Nation aspirations with regard to indigenous cultural heritage and the River Club site; and
- 5.58.16.4 Implement the recommendation of the TR report that "acknowledging, embracing, protecting and celebrating the indigenous narrative be a heritage related design informant that informs" precinct and site planning and development of the River Club property.
- 5.58.17 The heritage specialists noted that they stand by their articulation of the history of the site and environs described in section 4. The History of the Place, page 34-49, and that articulated by Atfwell and Jacobs in their Phase 1 HIA for the TR-area and their supplementary study on the history of the D'Almeida event.
- 5.58.18 The heritage practitioners therefore record that the views which have been articulated and developed in engagements between the First Nations collective and the Applicant, have been agreed to and have been explored in some detail in revisions to the development proposal. In essence, this comprises "indigenizing" the site through the following place-making mechanisms:
- 5.58.18.1 Establishing an Indigenous Garden for medicinal plants used by the First Nations;
- 5.58.18.2 Establishing a Cultural, Heritage and Media centre at the location of the Heritage information hub;
- 5.58.18.3 Establishing a Heritage-Loop trail that goes around the site;
- 5.58.18.4 An Amphitheater for use and cultural performances by both the First Nations and the general public;
- 5.58.18.5 Commemorating the history of the First Nations in the area, by:
- 5.58.18.5.1 Establishing a Gateway Feature inspired by symbols central to the First Nations narrative at the road crossing the eco-corridor;
- 5.58.18.5.2 Incorporating symbols central to the First Nations narrative in detailed design of buildings (e.g. pillars / supports, facades, building names, etc.); and

5.58.18.5.3 Naming internal roads inspired by people or symbols central to the First Nations narrative."

- 5.58.19 The implementation of these mechanisms is to be assured through the following institutional arrangement which has been agreed to in principle by the Applicant: "The First Nations Collective led by **the Gorinhalqua Cultural Council**, in discharging its traditional duty of custody over not only the River Club site, but all of the precincts of the Two Rivers area; and in exercising its internationally recognized right of Indigenous cultural agency, is in the process of establishing a legal entity that will be responsible for the post-establishment governance, planning, management, operations, maintenance and sustainability of the aforementioned indigenous place making mechanisms.
- 5.58.20 This entity will be a fully autonomous indigenous entity, whose Indigenous access and negotiated rights as articulated above as the elements of the First Nations imperative, will be enshrined in a formal agreement between the envisaged First Nations legal entity led by the Gorinhalqua Cultural Council, and the Community Property Association of the development."
- 5.58.21 They note in concluding this section that several First Nations groupings and the First Nations Collective led by the Gorinhalqua Cultural Council explicitly and clearly support the development proposal: for example, a five-page letter from the Gorinhalqua Cultural Council signed by Chief Garu Zenzile Khoisan articulates its support clearly and cites the concurrence of several other leaders of different groupings; another letter from the Goragouqua signed by Kaibifa Hennie van Wyk articulates their position; and Chief Garu Zenzile Khoisan has responded publicly in the media to articles attacking the application and proposal explaining the reasons for the support of "the majority of senior indigenous leaders and their councils in the Peninsula" unambiguously.
- 5.58.22 While it is apparent that there are some First Nations groupings who do not share this view, this First Nations Collective is authoritative and Aronson's report is persuasive in its method, its argument and in its conclusions. The heritage practitioners express the hope and trust that Aronson's report and the incorporation of its conclusions/recommendations in the revised development proposal will satisfy HWC, at least insofar as there has been "meaningful engagement" with First Nations groupings. Indeed, they think that the interactions have been more than "meaningful".

Land-Use Planning in the Two Rivers Area:

- 5.58.23 In its *Interim Comment* HWC argues ambiguously that (a) there is no reason for the property owners of the River Club not to compile and submit an HIA in respect of a development proposal for the River Club site and (b), notwithstanding the absence of clear land-use planning frameworks for the area, that it, HWC, has iteratively (at various times during the steps outlined above) contended that development of the River Club site should necessarily not be planned or assessed "in isolation from" the wider TR-area.
- 5.58.24 The HIA does deal with this issue and it describes the extent and-use planning frameworks under two headings: **5.2.3. Spatial Development Frameworks** and **5.2.5. Planning for the Two Rivers Urban Park**.
- 5.58.25 However, given the recent release by the City Council ("the City") of a draft local area spatial development framework (LSDF) in terms of the MPB-L, they re-state the land use planning mechanisms pertinent in an assessment of the development proposed at the River Club site now including this new local area SDF. While outlining the most important (from a heritage management point of view) components of their assessment here, they refer the reader to



Planning Partners' recent submission to the City in respect of the land-use planning applications

- 5.58.26 First, the *Two Rivers Urban Park Contextual Framework and Phase 1 Environmental Management Plan* compiled by the City's Environmental Management Branch in 2003, while 'adopted' by the Council itself in August 2003 is not legally binding. Indeed, the City's Legal Services has explained that while the report was, at least in part, prepared to fulfill the Provincial Administration's requirement for a management plan in proclaiming the bird sanctuary inside the TRUP, it was not adopted as a structure plan in terms of LUPC and does not have formal status as such and that, in the absence of formal structure-plan status, it must be regarded as a guideline only.
- 5.58.27 Second, the 2012 formally adopted Municipal Spatial Development Framework (MSDF), the land-use mechanism for the guiding and managing of urban growth and the balancing of competing demands, designates most of the River Club site as "Urban Development" and it makes no reference to the 2003 *Two Rivers Urban Park Contextual Framework and Phase 1 Environmental Management Plan*.
- 5.58.28 In 2018 the MSDF was revised and updated; and the River Club site was designated as part of the "Urban Inner Core" where the City is committed to targeting investment and development.
- 5.58.29 Third, the Table Bay District Plan, prepared in 2012 as part of more detailed planning associated with the 2012 MSDF designates the River Club site as "open space". This designation was based on information known at the time before the more detailed hydrological studies associated with the River Club had been undertaken and it was assumed that the site had limited development potential due to flood risk. Also, this TBDP contains anomalies including the designation of the neighbouring PRASA site, with its rail yards and sheds, as a green open space, questioning this plan's accuracy and relevance, and, finally, with the promulgation of the 2018 MSDF, the relevance of the 2012 Table Bay District Plan was further diminished as the "Consistency Principle" set out in the Technical Supplement of the MSDF requires lower order (district or local area) spatial plans and policies to be consistent with higher order (municipal) spatial plans and policies. Given that the MSDF identifies the River Club site as "Urban Inner Core", the lower order Table Bay District Plan, which is inconsistent with the higher order MSDF, cannot be invoked to inhibit development at this site.
- 5.58.30 Fourth, subsequent to the completion of the HIA (and of the Inform Comment) the City has recently released the draft Two Rivers Local Spatial Development Framework ("Draft LSDF") for public comment. It is intended that this will have the status of an LSDF under Section 12 of the MPR-L; and it deals with the (and previously known as the Two Rivers Urban Park ("TRUP"), now to be known as the "Two Rivers area" that extends from the PRASA land in the north to the N2 freeway in the south; and from the sports fields lining the Liesbeek Parkway in the west to the industrial area of Ndabeni and parts of Pinelands in the east.
- 5.58.31 Importantly, this Draft LSDF changes the vision of and for the area: while "(t)he previous vision... promoted a New York style Urban Park, or 'doughnut' with a green/park core and high rise buildings on the edges" this new Draft LSDF argues that "this somewhat utopian vision does not deal with the reality on the ground or with the current mandate and current National imperatives in SPLUMA". In the revised vision, the Draft LSDF identifies the area as "a significant area of underutilized, state owned and private land, strategically placed within the Urban Inner Core of the City" with opportunities to promote public transport and urban integration and to unlock development potential where, "(a) the same time, the ecological role of the river corridors, the

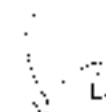



importance as a regional amenity and significance placed on the cultural and built heritage must be enhanced"

- 5.58.32 The findings and conclusions of the Draft Two Rivers LSDF are represented in two diagrams. Although this Draft LSDF is a draft, it nevertheless reflects the current views and land-use planning intentions of the two authorities. We note too that this Draft Two Rivers Local Spatial Development Framework includes the explicit and detailed contributions and input of Cindy Postlethwayt's Draft Phase I Heritage Impact Assessment for the Site 'Two Rivers' dated September 2019²⁴ and Rudewaar Arendse's TRUP First Nations Report dated 25 September 2019 and we note that the more detailed and focused conclusions and recommendations regarding the "implementation of the indigenous imperative" of Arendse's River Club First Nation Report dated November 2019 outlined in section 2 above are perfectly consistent with this draft LSDF.
- 5.58.33 With respect to the River Club site, the following provisions in the Draft Two Rivers LSDF are significant:
- 5.58.33.1 The Barkley Road extension is identified both as a new mobility route and as an activity corridor;
- 5.58.33.2 The continuity of the Liesbeek River is promoted along the eastern side of the site with the canal transformed into an eco-corridor;
- 5.58.33.3 The pre-1952 river course between Liesbeek Parkway and the western side of the site is identified as public open space with a green-space-related pedestrian route;
- 5.58.33.4 A significant open space corridor is provided across the River Club site running east - west between the newly restored Liesbeek River and the old pre-1952 course; and
- 5.58.33.5 The remainder of the River Club site is identified for mixed use intensification in two precincts on either side of this east - west open space corridor.
- 5.58.34 Given this, it seems that the proposal analyzed in the HIA is generally in accordance with these recent land-use planning developments. That is, the preparation of and public circulation of these three land-use planning and heritage studies; and they trust that FWC will now accept that the River Club site and its development is not being planned or assessed "in isolation from" the wider TR area. Indeed, it appears to us that the River Club proposal and these various land-use planning and heritage planning endeavours are consistent with and "in synch" with each other.
- 5.58.35 While they have dealt with this issue comprehensively both in the HIA and in this Supplement, they argue that this is not a statutorily required component of HIAs; and FWC's implied claims that the HIA is inadequate in this respect are mistaken.
- 5.59 Considering the above, it is considered that this ground of appeal has been adequately addressed.

Results of consultation with communities affected by the proposed development and other interested parties regarding the impact of the development on heritage resources

- 5.60 The application for the proposed redevelopment of the River Club for mixed use development and associated infrastructure on the remainder of Erf 15326 and Erven 26169 – 26175, 26426 – 26427, 108936 and 151832, Observatory and the TRUP matter are completely separate processes. The EA under appeal relates to the proposed redevelopment of the River Club and is not concerned with the TRUP relating to the investigation of the protection of the TRUP as a heritage resource. It is noted from the



ruling of the Heritage Appeal Tribunal dated, 14 April 2020 that parties, including the First Nations, are to be consulted meaningfully but this is a completely separate process which is under the jurisdiction of HWC in terms of the NHRA. However, the Supplementary to the HIA Report dealt with the engagement of the First Nations under **"Appeal ground 5: Evaluation of the impact of the development on heritage resources relative to the sustainable social and economic benefits to be derived from the development"**, although this is separate process from the EA under appeal. The issues with regards to the TRUP matter cannot be resolved under this EA appeal process.

- 5.61 The public participation process conducted for this EA application, detailed in the reasons for the decision, is deemed satisfactory to meet the requirements of the applicable legislation.
- 5.62 The suggestion that this EA process should await the outcome of the consultation process required in terms of the TRUP matter is noted. However, the NLMA and 2014 EA Regulations do not empower the Competent Authority to suspend the EA process pending the outcome of the engagement regarding the TRUP matter.
- 5.63 Considering the above, this ground of appeal has been adequately addressed.

Plans for mitigation of any adverse effects during and after the completion of the proposed development

- 5.64 It is not concurred that the Applicant's specialist HIA reports do not adequately address the impacts of the development. Two HIA reports have been submitted to inform the Final BAK which resulted in the granting of the EA.
- 5.65 The HIA reports have adequately responded and/or addressed the concerns of HWC as required in terms of the empowering legislation.
- 5.66 Considering the above, this ground of appeal has been adequately addressed.

Conclusion:

- 5.67 The declaration of the River Club site to be of at least Provincial heritage significance or National heritage significance is beyond the scope of this EIA process.
- 5.68 It is not concurred that the floodplain is undeveloped when the following, amongst other developments, have taken place on the site:
- 5.68.1 The River Club itself has its origins in the 1920s when part of the old Salt River estuary was reclaimed for the construction of shunting yards and railway sheds.
 - 5.68.2 The main buildings which exist today were completed in 1939 after the playing fields had been in place for a few years.
 - 5.68.3 In 1993, the property was leased to various tenants who let it fall into disrepair.
 - 5.68.4 The entity known as the River Club was established in 1993 on the basis of a long-term (75 years) development lease and has since become a popular local venue with a restaurant, conference facilities, bar, golf driving range, and a 'mashie' golf course (which was developed in 2002).
- 5.69 Considering the history of development or disturbance on the site, the Heritage Appeal Tribunal dated, 14 April 2020, acknowledged that:
- "28. in the absence of evidence of tangible heritage resources in the context of these appeal proceedings, the focus shifted to the intangible heritage resources, and more specifically, -*
- 28.1 the multifaceted exercise of identifying cultural heritage resources; how these resources have been protected internationally; and*



28.2 Recent developments in the acknowledgement and conservation of South African heritage in terms of the indigenous cultural practices and structures "

- 5.70 The applicant has made provision in the proposed development to commemorate the intangible heritage of the River Club site within the context of the greater TRUP area.
- 5.71 In order to avoid duplication and allow for coordination in terms of the requirements in terms of the NEMA and the NHRA, section 38(8) of the NHRA states that if the development activities listed in section 38(1), must be subjected to EIA in terms of the NEMA, then a separate HIA and approval from the heritage resources authority are not required, provided that the environmental authority must:
- 5.71.1 Ensure that if the relevant heritage resources require a HIA it fulfils the requirements of the heritage resources authority.
- 5.71.2 Any comments and recommendations of the relevant heritage resources authority with regard to such development have been taken into account prior to the granting of the environmental authority's consent.
- 5.72 As such, if a NEMA EIA is required for the development activities listed in terms of section 38 of the NHRA, then separate HIA and EIA processes may not be followed and separate decisions may not be issued in terms of the NHRA and the NEMA. An EIA process is followed and if the heritage resources requires an HIA, then the HIA must be undertaken as one of the EIA specialist studies, but the environmental authority must ensure that the heritage resources authority's requirements in terms of the assessment are met. A separate heritage approval may also not be issued, but the environmental authority must take into account the comments and recommendations of the heritage resources authority prior to granting or refusing the EA.
- 5.73 The DFA&DP's Directorate: Development Management (Region 1) stated that:
- 5.73.1 The heritage specialists' written response (dated 31 March 2020) was included in the Final BAR submitted to the Competent Authority on 8 June 2020.
- 5.73.2 The heritage specialists' written response (dated 31 March 2020) did not result in significant changes made to the EIA, where the need for additional public participation was not warranted. The requirements of Regulation 41 of the NEMA EIA Regulations, 2014 (as amended) were therefore met.
- 5.74 Based on the information contained in the Final BAR, the meeting that was agreed to between the DFA&DP and HWC did not take place before the granting of the EA although:
- 5.74.1 On 2 July 2019, a HIA was conducted by Mr. Timothy JG Han and Dr. Stephen Townsenia to identify, assess and communicate the impacts of the proposed development on the heritage resources on the site and its environs.
- 5.74.2 On 13 September 2019, HWC provided interim comments objecting to the proposed development on the site due inter alia to the following comments:
- 5.74.2.1 The River Club forms part of the wider Two Rivers Urban Park ("TRUP") and represents a microcosm of Cape history.
- 5.74.2.2 The HIA has been well researched but the actual mapping of identified heritage resources is illogical and flawed and is relegated to two diagrams in section 10.8 of the HIA report which is titled "Conclusions regarding impacts on significance".
- 5.74.2.3 The assessment of the significance of the heritage resources in terms of the heritage assessment criteria set in out in section 6(2) or prescribed under section 7 of the NHRA is inadequate.
- 5.74.2.4 The HIA Report downplays that the irreversible impacts of transforming a green lung at the heart of the TRUP into a mega project.


S. J.

- 5.74.2.5 While there may be economic benefits to developing the site, there has been no acknowledgement of the impact of the development balanced against a site which has been recognised previously by HWC as being of provincial or national significance.
- 5.74.2.6 There has been a lack of, or avoidance of a meaningful consultation with the First Nations Groups.
- 5.74.2.7 There is no meaningful consideration of alternatives although heritage resources will be adversely affected by the proposed development.
- 5.74.3 On 4 December 2019, HWC was provided with a Supplementary Report to the HIA which was undertaken *inter alia* to mainly respond to the concerns/ address the comments of HWC as detailed in their interim comments dated 13 September 2020. This Supplementary Report to the HIA provided information in terms of the following requirements of section 38 of the NHRA.
- 5.74.3.1 The identification and mapping of all heritage resources in the area affected.
- 5.74.3.2 An assessment of the significance of resources in terms of the heritage assessment criteria set out in section 6(2) or prescribed under section 7 of the NHRA.
- 5.74.3.3 An assessment of the impact of the development on heritage resources.
- 5.74.3.4 An evaluation of the impact of the development on heritage resources relative to the sustainable social and economic benefits to be derived from the development.
- 5.74.3.5 The results of consultation with communities affected by the proposed development and other interested parties regarding the impact of the development on heritage resources.
- 5.74.3.6 If heritage resources will be adversely affected by the proposed development, the consideration of alternatives.
- 5.74.3.7 Plans for mitigation of any adverse effects during and after the completion of the proposed development.
- 5.74.4 On 13 February 2020, HWC provided written final comments still objecting to the proposed development on the site.
- 5.74.5 In their Appeal lodged against the EA, HWC continues to object to the proposed development despite the HIA and the Supplementary Report to the HIA conducted to address their concerns.
- 5.74.6 On 25 November 2020, the Appeal Authority, as part of the Appeal process, requested HWC to supply the information/HIA requirements to supplement the current HIA that will enable HWC to consider that the HIA fulfils the requirements of the HWC and the NHRA.
- 5.74.7 On 11 December 2020, HWC responded as follows:
- "2. HWC is of the opinion that all the information was supplied in the comments prepared by our Impact Assessment Committee which were appended to the Appeal and is appended again for ease of reference.
3. Your attention is drawn to paragraph 43 onward thereof, in which the committee detailed with specific reference to the provisions of S38(3) of the National Heritage Resources Act, 1999 (Act No. 25 of 1999) ("NHRA") the information required in order to comply with said section.
4. HWC is concerned that, should certain of these requirements be highlighted, it would result in the impression being created that these are the only issues which must be addressed. It is re-iterated that all the issues stand to be addressed."

A handwritten signature and initials, possibly 'HWC', are written in the bottom right corner of the page.

5.75 On 26 January 2021, the Appeal Authority wrote a further letter to HWC stating inter alia the following:

1. I refer to your comments dated 11 December 2020 (your reference HM/CAPE METROPOLITAN/OBSERVATORY/IRT 15326 & FRVEN 26169 – 25175, 26426 – 26427 108936 AND 151832).
2. I note your comments stating inter alia that:
"2 HWC [Heritage Western Cape] is of the opinion that all the information was supplied in the comments prepared by our Impact Assessment Committee which were appended to the Appeal and is appended again for ease of reference.
3. Your attention is drawn to paragraph 43 or word thereof, in which the committee detailed with specific reference to the provisions of S38(3) of the National Heritage Resources Act, 1999 (Act No. 25 of 1999) ("NHRA") the information required in order to comply with said section.
4. HWC is concerned that, should certain of these requirements be highlighted, it would result in the impression being created that these are the only issues which must be addressed. It is re-iterated that all the issues stand to be addressed."
3. I have reviewed your comments dated 13 February 2020 and 11 December 2020 as well as the information provided in the Supplementary Report to the HIA Report dated 4 December 2019, as well as the Applicant's Responding Statement dated 12 October 2020. I am of the view that the issues you raised in your response dated 11 December 2020, have been addressed in the Applicant's Supplementary Report to the HIA Report, as well as the Responding Statement.
4. Should you wish to clarify and provide additional information on the HIA requirements to supplement the current HIA and Supplementary Report, please submit this to the Ministry of Local Government, Environmental Affairs and Development Planning ... on 10 February 2021.
5. Should you not provide me with an indication of such information, I will then surmise that the Supplementary Report to the HIA Report does satisfy the NHRA and HWC requirements and that all issues raised by yourself have been adequately addressed."

5.76 On 31 February 2021, HWC responded that
"Your letter dated 26 January 2021 in the above refers.

Heritage Western Cape (HWC) cannot agree with your contentions as stated in paragraph 3 thereof, it is re-iterated that HWC is of the strong opinion that Supplementary Report to the HIA report dated 4 December 2019 and the Responding statement dated 12 October 2020 merely re-state the initial opinions expressed in the original HIA and do not in fact address the issues that HWC raised in its Final Comment.

We can accordingly not also agree with the sentiments expressed in paragraph 5 thereof."

5.77 As required by the 2014 HIA Regulations SRK Consulting was appointed as an independent EAP to conduct the basic assessment process and various independent specialists were also appointed to conduct specialist studies which informed the basic assessment process which informed the granting of the EA. Independence is defined



in the 2014 EIA Regulations that, in relation to an EAP, a specialist or the person responsible for the preparation of an environmental audit report, means—
(a) that such EAP, specialist or person has no business, financial, personal or other interest in the activity or application in respect of which that EAP, specialist or person is appointed in terms of these Regulations; or

(b) that there are no circumstances that may compromise the objectivity of that EAP, specialist or person in performing such work; excluding—

(i) normal remuneration for a specialist permanently employed by the EAP; or

(ii) fair remuneration for work performed in connection with that activity, application or environmental audit;”

5.78 I concurred with the Responding Statements that:

5.78.1 The Appellant’s statement that “the decision-maker was biased in the decision and that the decision maker had decided long before the BA was finalised to get the proposal approved” is refuted based on the lack of evidence provided. The Competent Authority based his decision on the information contained in the BAR (dated 06 April 2020).

5.78.2 The DEA&DP did not pre-empt the decision to grant an EA in its comments on the draft reports that were available for comment.

5.78.3 The Applicant, EAP and all the specialists who conducted a specialist study for this EIA process have signed and dated the declaration to confirm that the information provided in the BAR (dated 6 Apr 2020) is true and correct.

5.78.4 The LA takes cognizance of the fact that HWC indicated (in their correspondence dated 13 February 2020) that the requirements of Section 38(3) of the NHRA have not been met.

5.78.5 The Basic Assessment process is based on the findings of research undertaken by independent specialists, and not the “interpretations and assertions” of the developer.

5.78.6 Specialist independence is assured by the fact that EAPs and specialists must confirm that they do not have any material present or contingent interest in the outcome of the environmental assessment process, nor do they have any pecuniary or other interest that could be reasonably regarded as being capable of affecting their independence.

5.78.7 Applicants have not demonstrated any conflict of interest of any members of the basic assessment process project team and specialists.

5.79 Considering the above, HWC was adamant that the information provided was not sufficient. However, the Applicant’s heritage specialist was of the opinion that the information was more than sufficient. After repeated requests from the Appeal Authority to HWC by the Appeal Authority to clarify what was still required in terms of the EIA, no answer was forthcoming except that their original comment remained the same. I have to however, make a decision on this matter, I thus took into consideration all the different facets of the development as it also has an impact on the environment. The conclusion I came to was that the holistic overall need and desirability of the development supports the granting of the Appeal Environmental Authorisation.

Meeting between DEA&DP and HWC

5.80 A workshop was scheduled on 4 March 2020 by DEA&DP in the offices of HWC at which it had been agreed that HWC’s senior officials and the members of IACom, officials of DIPW and DEA&DP, and the Applicant’s EIA team would attend in order to develop any further clarity that might be required regarding HWC’s IACom

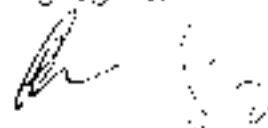
- arguments that the HIA and its supplementary documentation did not adequately comply with the requirements of section 38(3) of the NHRA.
- 5.81 The updated *Issues and Responses Report* and 6-page summary was provided to the IACom one week prior to the date of the proposed workshop.
 - 5.82 The IACom's members did not attend this workshop despite the apparent agreement of the Committee's Chairman.
 - 5.83 As a consequence, although attended by HWC, DIPW and DEA&DP officials, the outcomes of the workshop were inconclusive resulting in the HWC CEO inviting one of the heritage practitioners and the EAP to meet the following week, first with the HWC officials, and then with the IACom at its regular monthly meeting (which was scheduled for 11 March 2020).
 - 5.84 The IACom again refused to meet the specialist and EAP when called upon to do so nor did they provide any explanation as to why they did not want to meet.
 - 5.85 The Applicant submits that HWC's refusal to meet or engage further regarding the Section 38(3) information requirements, demonstrates that the IACom's final comment is not rational, most importantly in their finding that the HIA and supporting documentation do not meet the information requirements of Section 38(3) of the NHRA – as to any objective observer, it must be clear that the information requirements are demonstrably met.

Appeal ground 5: Hydrological impacts

- 5.86 The flooding of adjacent properties was identified as one of the main potential impacts of the proposed development. It was also one of the major issues raised during the stakeholder engagement processes during the Basic Assessment process. It was acknowledged that the site and surrounding area is prone to regular flooding. As such, the hydrologist on the project team conducted a detailed modelling of floodwater conditions in the local area. The study, which informed the Final BAR, established that the most achievable mitigation measure to prevent flooding of the site is to raise the ground surface at the River Club to an elevation slightly above the 100-year flood elevation. Therefore, this measure will have limited detrimental effects on neighbouring properties (following specific mitigation), which is a key criterion for determining whether or not the raising of the site is a viable proposal.
- 5.87 The Final BAR states *inter alia* that:
 - 5.87.1 Twelve key monitoring points were selected to represent areas where any impacts of the proposed developments would be realised / be of concern. These monitoring points were used to assess the potential effects on surface water hydrology of raising the site under the following scenarios (for various flood return intervals):
 - 5.87.1.1 Status quo (no development);
 - 5.87.1.2 Status quo with widened Salt River Canal;
 - 5.87.1.3 Status quo with sea level rise;
 - 5.87.1.4 Status quo with PRASA overland route closed;
 - 5.87.1.5 Status quo with PRASA overland route closed and bridges obstructed;
 - 5.87.1.6 Post-development (River Club only);
 - 5.87.1.7 Post-development with TRUP and the PRASA upgrades implemented;
 - 5.87.1.8 Post-development with TRUP and the PRASA upgrades implemented with widened Salt River Canal;
 - 5.87.1.9 Post-development with TRUP and the PRASA upgrades implemented with the PRASA overland escape route blocked;
 - 5.87.1.10 Post-development with TRUP and the PRASA upgrades implemented with the PRASA overland escape route blocked and bridges obstructed and

5.87.7.11 Post development with TRUP and the PRASA upgrades implemented with sea level rise.

- 5.88 The study reached the following conclusions that are pertinent to the development of the River Club (assuming TRUP and the PRASA upgrades have been implemented):
- 5.88.1 The runoff from the site will have no impact on the flood levels as peak runoff from the site will occur between one and three hours before the peak flowing the adjacent rivers (Liesbeek and Block Rivers). Therefore, runoff has an insignificant impact on the flows in the adjacent rivers.
 - 5.88.2 Flooding currently occurs (i.e. regardless of the redevelopment of the River Club) in the adjacent urban areas for storms more frequent than 1:5 to 1:10-year return interval flood events from local overland flows only (that occur when the local stormwater runoff exceeds the capacity of the stormwater system).
 - 5.88.3 The development of the River Club (as well as the TRUP and the PRASA upgrades) may increase the extent of inundation from overland flow at the:
 - 5.88.3.1 SAAO;
 - 5.88.3.2 Valkenberg wetland; and
 - 5.88.3.3 Malla Sports Fields (including at two residential properties, Number 1 and Number 3 Ossian Road) to a limited extent.
 - 5.88.4 Regarding the SAAO:
 - 5.88.4.1 Buildings at the SAAO would not be flooded during a 1-year return interval flood event;
 - 5.88.4.2 Some buildings at the SAAO lie within the 1:5-year flood plain, and are therefore expected to flood periodically;
 - 5.88.4.3 During a 1:2-year return interval flood event, water elevations would increase by less than 5cm, and surrounding buildings at the SAAO would be flooded, including a building on the south-west of the property that is not currently flooded by an event of this frequency;
 - 5.88.4.4 During a 1:5-year return interval flood event, three buildings at the south-west west of the SAAO are flooded under current conditions. However, floodwater elevations would increase by approximately 12cm following development in the catchment; and
 - 5.88.4.5 For the 1:0.5-year and 1:1-year return interval flood events, the combined effect of the development, the TRUP and the PRASA upgrades on increased flood elevations will be small throughout the catchment.
 - 5.88.5 The greatest increases in water levels will be in the immediate vicinity of the River Club at monitoring Points 5 to 12 – with the maximum expected increase in water level of up to 13cm for all 1:5 year to 1:100-year return interval floods - noting modelling uncertainties. Aurecon conclude that this increase is relatively small;
 - 5.88.6 For the 1:50 to 1:100-year return interval floods, flood levels (elevations) will increase at properties that will be affected by flooding to some extent whether the additional developments take place or not;
 - 5.88.7 The increase of flood levels will lead to a limited increase in the extent of inundation for flood events between the 1:50 and 1:100-year return intervals at the following locations only:
 - 5.88.7.1 The PRASA site; and
 - 5.88.7.2 Near the Observatory Swimming Pool south of the site.
 - 5.88.8 The increase in the extent of flooding at the PRASA site (which is expected to occur less than once every 50 years) is unlikely to compromise any infrastructure that is not already affected by flooding, other than railway lines;
 - 5.88.9 The increase in flood levels at the Observatory Swimming Pool would not be significantly different to the existing flooding regime;



- 5.88.10 Volumetric flow would increase from increased discharge volume from the Liesbeek Canal at the following locations only:
- 5.88.10.1 Peak flow and total flow will increase at the western bank of the Salt River by 7% and 4% respectively; and
 - 5.88.10.2 Peak flow will increase at the western bank of the Black River at the site by 24%;
- 5.88.11 The increase in flow volume at the western bank of the Salt River will take place a few minutes earlier than the current situation, and will have little effect on the extent of inundation (and is therefore considered to be insignificant by Aurecon);
- 5.88.12 The anticipated increase in peak flow at the Black River at the site is from stormwater currently directed over the site from the Liesbeek River, down the original course of the Liesbeek which will be directed into the rehabilitated Liesbeek Canal after the site is infilled. The increase in flow is significant, will take place over a few hours, and will increase flood levels locally along the (rehabilitated) Liesbeek Canal;
- 5.88.13 Closing of an existing overland floodwater escape route over the PRASA site will have an insignificant effect on the extent of inundation during a storm event, unless downstream bridges were obstructed (in which case closing the escape route over PRASA will increase inundation);
- 5.88.14 The extent of flooding is not significantly affected by tidal influence (assuming a 1:10 year storm surge with a 1:100-year flood event);
- 5.88.15 The sea level rise will lead to flooding in the lower parts of the catchment during (major) storm events regardless of whether the development went ahead or not; and
- 5.88.16 The widening of the Salt River Canal and removing the hydraulic constraints posed by the bridges will reduce the maximum water surface level by between 10cm and 80cm but will have a little impact on the extent of inundation, except at the Malta Sports Fields and at the PRASA site.
- 5.89 Two potential direct operational phase impacts related to flooding were identified:

Change in flood hazard at surrounding properties

The Riverine Corridor Alternative and the Island Concept Alternative

- 5.89.1 The City of Cape Town's 'Floodplain and River Corridor Management Policy' (CSRM, 2009) considers the hazard that flooding may pose to life and property. The hazard posed by floodwaters is determined by the ability of the public to wade or gain vehicular access, and the stability of structures such as dwellings or boundary walls. If these are likely to be seriously compromised, the area is considered to be in the "High Hazard Zone" (and floods pose a risk to people and structures here). An area is considered to be located within the High Hazard Zone if water depth exceeds 0.8 m and water velocity exceeds 2 m/s.
- 5.89.2 Development at the River Club will increase flood depths and / or velocity at the following locations:
- 5.89.2.1 The PRASA site;
 - 5.89.2.2 SAAO;
 - 5.89.2.3 Vaalenberg Wetland;
 - 5.89.2.4 Malta Sports Fields / Hartleyvale Sports Complex;
 - 5.89.2.5 Near the Observatory Swimming Pool south of the site;
 - 5.89.2.6 Western bank of the Salt River; and
 - 5.89.2.7 Western bank of the Black River (Riverine Corridor Alternative only);

Handwritten signature and initials in blue ink, located at the bottom right of the page.



CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

REPORT TO: MUNICIPAL PLANNING TRIBUNAL

ITEM NO MPTNW 60920

WARD 57: APPLICATION FOR REZONING, APPROVAL OF COUNCIL AND DEVIATIONS FROM CITY POLICIES IN TERMS OF THE MUNICIPAL PLANNING BY-LAW, 2015: ERF 151832, 6 LIESBEECK PARKWAY (BOUNDED BY LIEBEECK PARKWAY AND OBSERVATORY ROADS), OBSERVATORY

Case ID	70396369
Case Officer	JOY SAN GIORGIO
Case Officer phone number	021 444 9538
District	TABLE BAY
Ward	57
Ward Councillor	PADDY CHAPPLE
Report date	SEPTEMBER 2020
Acceptance date	27-03-2018
Applicable legislation	Pre Feb 2020 MPBL amendment

1. EXECUTIVE SUMMARY

Property description	Erf No 151832, Observatory
Property address	6 Liesbeeck Parkway (bounded by Liesbeeck Parkway and Observatory Roads)
Application components / description	<p>It is proposed to redevelop the property to accommodate a mixed use development of 150 000m² comprising</p> <ul style="list-style-type: none"> • Shops and Restaurants (retail uses). • Offices. • Dwelling units (approximately 20% of the total floor space will be residential and of that approximately 20% will be allotted to inclusionary housing). • a Hotel and Places of Instruction (and associated uses). <p>The proposal will entail the construction of retaining structures so that roads and habitable spaces are raised above the 1:100 year flood plain.</p>

Application components / description	<p>It is intended for buildings to range in height from 15.39m to 45.56m above base level.</p> <p>The initial phase of the development proposal will entail partial construction of the Berkley Road extension, which in future phases will be further extended to provide access from Berkley Road to Malta Road/Liesbeek Paroway.</p> <p>The Liesbeek Canal on the eastern boundary of the site will be rehabilitated into a river course, while the 'old' Liesbeek River Channel on the western boundary of the site will largely be filled, landscaped and accommodate a vegetated stormwater swale.</p>				
Site extent	14.843ha				
Current zoning	Open Space 3: Private Open Space				
Current land use	<ul style="list-style-type: none"> • Open Space (comprising a golf course with ancillary uses such as a driving range and golf shop), • Conference Facilities • Restaurants • Occasional use – this will be applied for on an ad hoc basis 				
Overlay zone applicable	None				
PHRA or SAHRA heritage	None				
Public participation outcome summary	The application was advertised and 180 objections were received. The objections are summarised in 4.1 below.				
Recommended decision					
Approval	✓	Refusal		Approval in part & Refusal in part	

2. BACKGROUND FACTS

- 2.1. The property has been used for recreational purposes for a number of decades. It was previously owned by South African Rail Commuter Corporation/TRANSNET Limited and was used as a recreation club for their staff. Subsequent thereto, the property was leased to Liesbeek Leisure Properties (Pty) Ltd from 2000 for a period of 75 years. The lease at the time permitted the use for recreational purposes to continue or any commercial activity as approved by the City of Cape Town.

The company was subsequently sold while the land was still in the ownership of TRANSNET. TRANSNET later sold the land to the Liesbeek Leisure Properties Pty Ltd. (later became Liesbeek Leisure Properties Trust).

- 2.2. In 1999 an application was submitted in which it was requested that certain uses considered to be non-conforming be confirmed. The following land uses were confirmed as non-conforming, having existed on the property since the 1930's

ANNEXURE B

SUMMARY TABLE OF CONFIRMED USE RIGHTS

Category of use	Prior to 1980 (see Table 1 of application)	Current (see Table 3 of application)	Proposed Non-conforming use rights to be confirmed (see Table 4 of application)
	Total area	Total Area	Total Area
1. Places of Assembly (non-residential club) Ancillary Facilities Function Rooms Meeting Hall Pool Room Snooker/Billard Room	810	809	845
2. Shops**	-	86	0**
3. Ancillary Store Areas & Kitchens	111	220	220
4. Bar Areas	176	335	335
5. Restaurant Dining Rooms	170	89	89
6. Administration Offices	28	108	105
7. Corridors Verandas	588	324	314
8. Toilets Change Rooms Cloak Rooms	174	170	170
9. Residential**	110	-	0**
10. Golf driving range and associated infrastructure (previously sports grounds and associated infrastructure)	50550	36839	36839
Total sports area (m ²)	50550	36839	36839
Total Developed Area (m ²)	2114	2248	2099

NOTE: ** 86 m² shop was approved as a temporary departure on plan 433006 on 1999-09-23
 ** The residential component is not accepted in the main building

- 2.3 The golf driving range was supported with the provision of a mashie (9-hole golf course). An application was submitted and eventually approved to accommodate the latter mentioned golf course. A golf shop also exists on the property as an appurtenant use to the golf course. While an application was submitted and approved to extend the golf course to an 18-hole golf course, that application lapsed as it was not acted on. However, the 9-hole golf course is used as an 18-hole course by double up play.
- 2.4 Although events have been hosted occasionally on the property, each event that is not permitted as of right, required a separate land use permission. An application was later submitted and approved in 2011 to host events for a temporary period of 5 years. That permission has since lapsed

While the property continues to host events, each application requires land use approval to accommodate each event, hence the ad hoc submission and approval of Occasional use applications for specific events.

- 2.5 Although the MPBL amendments came into effect on the 03 February 2020, the transitional arrangements make provision for an application that was accepted prior to the commencement date of the now amended MPBL to be processed and considered in accordance with the MPBL that pre-dated 03 February 2020. It is for this reason that this application refers to base level as the datum from which height is determined.
- 2.6 After the application was circulated to branches for comment, certain clarification was requested from the applicant and the applicant subsequently provided further information regarding building designs, treatment of facades etc., which was not material to warrant re-advertising the application. The information submitted by the applicant in response to comments received from commenting branches is attached as Annexure G1 and forms part of the applicant's response to comments/objections received.
- 2.7 The application is subject to a EA process and an Environmental Authorisation that is attached as Annexure C11 was issued on 20 August 2020.

3. SUMMARY OF APPLICANT'S MOTIVATION

- 3.1. The applicant's motivation of the proposed development (see Annexure C) may be summarised as follows:
- Historically the use of the site has been limited.
 - The property is positioned in a floodplain.
 - Various studies have now been undertaken to establish the feasibility of developing the site.
 - The property is strategically located.
 - The property is located close to employment opportunities, amenities and social facilities.
 - The redevelopment of the site is an opportunity address some of the socio-economic disparities that exist.
 - The development will not be an exclusive enclave but must provide opportunities across the socio-economic spectrum.
 - There is an opportunity to provide inclusionary housing on-site
 - Developing the site as knuckle can reinforce surrounding corridors.
 - The property is located close to public transport routes.
 - For this reason, land use intensification of the site should be encouraged.
 - Development of the site will result in opportunities for rehabilitation of sensitive ecological areas and therefore the functions that it serves.
 - The proposal places great emphasis on the rehabilitation of portions of the site.
 - The development will also promote the ecological connectivity of the site which will allow it to remain connected to the wider open space system.

- The canalisation of the river has negative implications for the environmental sustainability, heritage significance and public amenity.
- The best way to celebrate the Liesbeek River is to ensure that it is rehabilitated.
- While the site often floods, redevelopment thereof will have an insignificant impact in the vicinity of the property.
- The developer will incur the cost of the construction of a portion of the Berkley Road extension which will be off-set against the development levy.
- The construction of Berkley Road extension will have a significant benefit to the area.
- The abutting erf 26423 will be redeveloped and compliment to the proposed River Club development.
- The property is presently isolated given barriers that abut onto the property.
- The proposal is to make the site commercially viable.
- The proposal will make the site a destination place.
- The development will result in the site being a gateway into the Two Rivers Urban Park (TRUP).
- The proposal will be an asset to the area.
- The development complies with the principles of the MPBL in that it will result in:
 - Increased densities;
 - Reduced travel distances and is close to public transport;
 - Rehabilitation of ecosystems;
 - Enhance the heritage value of the site;
 - Generate employment and access to economic opportunities;
 - Diversification of housing types;
 - Optimal use of the service infrastructure;
 - Becoming a destination place.
- The proposal largely complies with various provincial and city policies.

Comment on City policy

- Deviations are being sought from certain policies.
- Permission is being sought to
 - obstruct the free flow of the 20-year flood line,
 - permit development within the 50 year flood plain,
 - permit stormwater flows for 20 year and 50 year intervals for a development of greater than 50 000m² not be reduced as required.

Surface water hydrology

- The proposal will not have an impact on flood levels.
- The proposal will incorporate a system of swales to attenuate and treat the flow of stormwater.
- Additionally, it must be noted that large storm event result in runoff from the property well in advance of peak flows of the Black River during those instances.
- Despite the negligible impact on the development on flood levels, the deviation from the policy as mentioned is required.

Handwritten signature and initials, possibly 'S. J. 2'.

- The Hydrology Study included understanding the impact of changes to the Liesbeek Canal – as far possible any changes to have minimal impact on wetlands.
- Additionally, PRASA should not be permitted to close any overland flooding routes that accommodate overflow.
- The bridge extension to Berkley Road should be designed to have limited to no impact on water levels.

Biodiversity

- The proposed development is acceptable from an ecological perspective as it addresses key concerns.
- Terrestrial ecosystems have been highly altered and natural ecosystems are degraded given the long history of manipulation including channelization, diversion, etc.
- Findings of the Biodiversity impacts report indicate that the filling of the site will have a minimal impact on the Raapenberg wetland flood level.
- The canalized Liesbeek River will be rehabilitated.
- The rehabilitation thereof will create an unlined vegetated channel, and the river will function as a natural river to support the biodiversity and general aquatic ecosystem.
- The rehabilitation of the canalized river will see the creation of vegetated swales and is considered suitable for the colonization thereof by the western leopard toad.
- This an acceptable use of this space with little negative biodiversity and ecological impacts.

Visual implications

- The visibility of the site is dependent on the point from which the site is viewed.
- In some instances, obstructions impede views to the site.
- Existing suburbs and denseness of development in those suburbs will also determine the likelihood of viewing the site from various perspectives.
- Those likely to view the site/development will include residents, passers by such as motorists/pedestrians and visitors to surrounding properties.
- The distance to the property will also determine the visibility of the site/development.
- It is accepted that the site will be highly visible from various points given the magnitude of the development.
- The proposal is consistent with development in the surrounding area and cityscape.
- The proposal can be argued to be sensitive to the surrounding degraded environment given the rehabilitation that will occur as a consequence.
- It is accepted that the degree of visual intrusion that will occur during the construction phase will be of medium significance – some mitigating measures may reduce this impact.
- The operational phase of the site will result in an altered sense of place.
- Views of Devils Peak from the M5 and surrounding vantage points will be impacted on given the scale of buildings proposed.
- Views of the site will change given the proposed development.

- Various mitigating measures will be imposed to reduce the impact of visual intrusion.
- Development that has occurred around the site created an island effect given the open space nature of the site.
- The development will result in a dense development of the site and an opportunity to transform a smaller extent of the site to private open space for the general public.
- The cumulative impact is considered to be of medium impact.
- While mitigating measures cover various phases of the development, it is accepted that the development will have a significant visual impact upon completion.
- The impact will essentially result from the fact the site is presently an open space within the cityscape.
- The visual impacts will therefore be pronounced; the experience of which will be subjective.

Heritage

- The site has a complex history.
- Early inhabitants to the property used it for farming.
- The arrival of European brought about conflict that resulted in the local people being excluded from the use of the land.
- A series of land transfers saw part of the uses across the area change to include a reformatory, hospital, continued farming in parts and the eventual transfer to permit parts to be used for sporting purposes.
- The property was used by the South African rail services as a recreational club which is now the River Club.
- Marshlands existed at the confluence of the rivers and the Royal Observatory occupied space on higher land.
- The Liesbeek River is a significant cultural symbolic and historical feature.
- An informal crossing existed across the property going into the hinterland – no trace of this road exists any longer.
- The site is a green open (recreational) space which is experienced by the Black-Liesbeek River corridor.
- The South African Astronomical Observatory (SAAO) has some historic significance in the area.
- Visibility to the SAAO is obstructed by a row of trees and other development in the surrounds that obstruct views.
- The Two Rivers Urban Park (TRUP) comprises a number of historic elements.
- TRUP covers a large extent with ranging uses and areas of significance.
- The property is regarded by some to be environmentally, ecologically, historical and topographical significance.
- Two developments will transform perceptions of the floodplain i.e. the development of Erf 26423 and the Berkley Road extension each abut onto the site.
- A number of design related interventions must occur:
 - The Liesbeek Canal should be rehabilitated so that it can be experienced as part of the river floodplain.
 - Development should respond to the low hill along the edge of the site with the SAAO.

Handwritten signature

- o The pre-1952 river course is neither desirable nor is it possible, however its presence should be reflected in any future development.
- o A substantial setback must be provided from the river to enable one to imagine a river crossing along the west bank of the Black River should be incorporated into the development. A feature must be incorporated which supports the celebration of the pre-colonial status thereof.
- o Certain guidelines have been offered in respect of the design indicators to inform the form of development on the site.
- o Views from the SAAO to Signal Hill are almost non-existent and therefore not considered necessary to retain.
- Archaeological monitoring will occur during the construction phase of development.
- The buildings on-site have no heritage significance.
- The loss of these structures will have little to no impact on heritage.
- The sense of place experienced in the area will be radically transformed by the proposal and other development in the surrounds.
- The northern end of the River Club site is the likely location of a pre-colonial river crossing and where future commemorative installations can occur.
- The site has limited aspects of heritage significance.
- The Liesbeek River corridor is one heritage feature that will be enhanced.
- A riverine pedestrian friendly buffer positioned along the old and new river courses will enhance the space and views to other features on and around the site.
- At the confluence of the Black and Liesbeek Rivers a green/open space zone could be created as this is also the point where a commemorative area can be created.

Socio-economic

- The development will offer a number of key socio-economic benefits which include increase in investment, employment, state revenue and housing.
- Property values will also be enhanced as a consequence of the development.
- Assuming that the development will increase attractiveness to investors, the development may result in gentrification.
- The development may act as catalyst for the development of the Two Rivers Urban Park.
- Development in the surrounding area, comprising mixed use, dense development will occur in the vicinity regardless of the proposal.
- The nature of the impact of the proposal will largely be dependent on the quality of life surrounding residents experience/have.
- The socio-economic benefits of the development to the local and wider area may outweigh the impacts.

Urban Design Indicators/Recommendation

- A number of factors will inform the urban design indicators for the site.
- These include scale, height, gateways, connectivity spatial systems, heritage significance and will inform the built form across the site.

- Spatial recommendations seek to retain the site's sense of place, enhance views across the site each of which will contribute toward a coherent urban form.
- Emphasis will be placed on public spaces.
- Pedestrian access to rivers and through the site will be maintained.
- Commercial and other activities will enhance safety across the site.
- Urban design, heritage and environmental perspectives encourage the removal of the concrete canal structures along the Liesbeek River.
- The reintroduction of planted banks and widening the river course will create a natural river like environment.
- The built form will therefore be important in preserving the historic value of the reinstated river.
- The ecology of the area will be greatly improved.
- Special places will be created along the river course for pedestrians/the public.
- The heritage and cultural significance of the Liesbeek River must be respected.

Development proposal

- Approximately 150 000m² of mixed use development is proposed.
- The proposal will comprise two precincts of 65 000m² and 85 000m² in extent.
- Building heights in each precinct is proposed to vary from 16m – 45m above base level in one precinct and 27m – 46m in height above base level in the other.
- In each instance basement parking will be provided in superbasements.
- The existing site access will be retained.
- Additional accesses will be created via Liesbeek Parkway and Berkley Road.
- The riverine habitat will be reinstated and will include a buffer of approximately 25 – 40m in extent.
- The riverine buffer will extend along the Liesbeek River to merge with the confluence of the Black River.
- The old Liesbeek River channel on the western boundary of the site will be filled to create a vegetated stormwater swale.
- The development of the site will be phased.
- Precinct 1 and 2 will comprise consecutive phases of development.
- Phase 1 will also comprise the construction of a portion of the Berkley Road extension.
- Phase 3 will comprise the remainder of the Berkley Road extension.
- The proposal includes the rezoning of the property to Subdivisional Area.
- The subdivisional area will comprise General Business zoned portions comprising GB3 and GB7 sub-zones.
- Portions of the site will also be zoned for OS3 purposes.
- An open space system will be retained across the site.
- High quality landscaping will also be introduced.
- NMT paths will meander through the site.
- Various uses will be accommodated within the development comprising Shops, Offices, Restaurants, Hotels, conference facilities, Places of Instruction and residential uses.
- Various road upgrades will occur in the vicinity of the property.

- The built form on the site will likely mimic the built form found in the area.
- Buildings will have varied form but harmonious.
- Building forms and facades will be varied, articulated and of differing scales.
- The buildings will be centred around a pedestrian access.
- Buildings of varying heights and landscaped spaces will emphasize gateways and significant locations.
- Parking for each of the precincts will be provided on two levels.
- Limited excavation will occur.
- Parking is designed to enable conversion thereof at a later stage.
- Rehabilitated river edges and connectivity will be used to enhance public access and amenity in relation to the water features, the canal and Raapenberg Wetlands.
- Irrigation and soft landscaping will be installed on common areas.
- Alternate sources of irrigation will be incorporated in the development.
- An EIA has that is accompanied by various specialist studies was undertaken and its outcome will inform the development on the property.

Engineering services

- The site is situated within an urban area.
- Any connections to the bulk service infrastructure will be to the developer's account.
- **Water**
 - No upgrades to the service infrastructure is required.
 - It appears that sufficient capacity exists
 - Detailed modelling will confirm at the time when flow demand to buildings is clarified.
 - Various measures will be introduced and explored to ensure water re-use across the site.
 - Abstraction and grey-water recycling is being considered.
 - Water demand and management will be required to ensure efficient use of this resource.
 - Alternate sources of water will be used for irrigation.
- **Sewage**
 - The property catchment is connected to the Raapenberg Pump Station that in turn is connected to the Athlone Waste Water Treatment Works.
 - It is anticipated that a new direct connection will be required as the existing connection does not have sufficient capacity.
 - Link connections will have to be installed to supply the site.
- **Electricity**
 - Various interventions will be employed to ensure a sustainable supply of energy to the site.
 - A bulk mains supply will be provided on-site.
 - Solar panels will also be used.
 - Sufficient capacity exists in the City's demand supply to accommodate the development.

- Stormwater

- A detailed stormwater management plan will be required.
- The site has no known connection to the municipal stormwater network; rather water drains overland into the canal and rivers.
- Swales will treat water before entering the river and provide additional storage capacity as well as improve the quality of waterways downstream.
- Based on City policy relating to Floodplain and River Management no development can occur below the 1:20 floodplain which affects much of the site.
- Finished floor levels will be situated above 1:100 year flood levels.
- Stormwater flows will be managed with an egress on eastern portion of the site to reduce impact of flooding.
- In addition to swales, the stormwater system will also be supported by the provision of a piped drainage network.
- Bioretention swales provide a process of filtration and slowing down of stormwater runoff.
- Ponds will be accommodated across the site to reduce the eroding effects of stormwater.
- As far as possible, the velocity of stormwater flow will be reduced to avoid the corrosive effect of stormwater run-off.
- Sustainable urban drainage systems will be used to reduce the impact of new and existing developments in respect of existing surface water drainage discharge.

- Transport

- Primary access and egress point into and from the property will be via Berkley Road extension and Liesbeek Parkway.
- The existing access is taken across an abutting property, Erf 26483.
- The right of way across that property will be retained.
- Various modeling scenarios were employed to understand likely traffic patterns.
- In the modelling scenarios other prospective developments in the vicinity were also taken into consideration.
- The conclusion was that the road network has sufficient carrying capacity to accommodate the proposed development.
- Anticipated increased use of public transport is believed will result in very similar traffic patterns to that experienced presently.
- Various upgrades to existing intersections and link roads will need to be constructed to accommodate the development.
- Public transport services available in the immediate area will need to be enhanced and possibly new services introduced.
- NMT facilities leading to public transport should be provided.
- Golden Arrow Bus Service (GABS) routes existing along Liesbeek Parkway albeit that no stops are accommodated.
- Station Road accommodates GABS and stops.
- No MyCiti stops exist along Liesbeek Parkway.
- The closest MyCiti busstop is more than 1km, too far to consider acceptable for the development.

- o Improving access of each GABS and MyCiti routes to the site must be explored and these may be developed in accordance with the needs of each precinct as it is developed.
- o NMT routes to and on the site will need to be improved given the increased pedestrian traffic that will traverse the site.
- o Approximately 4800 parking bays will be provided on the property.
- o The minimum parking requirements were applied.
- o There will be a shortfall of 1048 parking bays, given the number of parking bays that will be provided.
- o Travel Demand Measures should be employed to minimize reliance on private motor vehicles.
- o Use of private motor vehicles should also be monitored.

Motivation for the development of the site

- The site is strategically located given its proximity to the CBD, Paarden Eiland and its accessibility to the metro south-east.
- The location of the site relative to the Main Road corridor, Voortrekker Road corridor and Klipfontein Road corridor means it can be a generator of people economic activity.
- The property is therefore located at a point of high accessibility.
- Development on the property will therefore not be dependent on the support of the local community only.
- The convergence of various access points at this location makes the site ideal for the development proposal.
- International precedent exists to show that corridors such as this could integrate cities.
- The site is also well located in relation to the public transport network.
- The degraded nature of the property presents the opportunity for rehabilitation of the ecological functioning thereof.
- Despite the proposed development, the site will remain connected to the wider open space system.
- From a biodiversity and aquatic ecosystems perspective, the proposal will have a positive impact.
- Flooding of the site has occurred frequently as a result of inadequate drainage system which have not been maintained or has failed structurally.
- Impacts that result from filling is negligible.
- Berkley Road extension will remove spatial barriers that impede physical linkages between western and eastern portions of TRUP.
- The new road will enhance access to the site.
- The development of the site could be catalytic and could become a destination place as well as a gateway into TRUP.
- The site is strategically located in relation to employment opportunities and social amenities amongst others.
- It is intended that at least 20% (about 30 000m²) of the floor space will be used for housing, while 20% (about 6000m²) of that will be inclusionary housing.
- The development of the site therefore may not be an exclusive enclave.



The proposal

- The proposal will see the property rezoned to subdivisional area comprising General Business and Open Space 3. Additionally, the ground level will be raised by 5.7m and 5.9m in precincts 1 and 2 respectively.
- The proposal also includes deviations from City policy.
- The proposal is the first range of applications that are submitted.
- The development will be phased.
- SDPs will include details relating to land uses, floor space, parking, floor space, etc.

Motivation for approval

- The proposal is policy compliant.
- It satisfies the requirements of the MPBL.
- The proposal will have no impact on the public at large and will minimally impact on the SAAD.
- The proposal will deliver significant socio-economic benefits.
- The mixed use development will promote the vision of live, work, play.
- Given the location, mixed use development in this location is considered appropriate.
- The proposal will not have adverse impacts on engineering services.
- The development will see increased surveillance introduced on the site.
- Contrary to general perception, flooding on the site will not lead to added flooding in the immediate surrounds.
- The changes to the canalized river will enhance awareness of the experience of the river.
- The findings of the EIA revealed that the development is acceptable.
- Traffic impacts will be minimized as a consequence of the road upgrades that will occur.
- Conditions will be imposed that will help to manage the process of development of the site.
- The requirements of SPLUMA and LJPA are complied with.
- For reasons stated the proposal has considerable merit and should be approved.

4. PUBLIC PARTICIPATION

		Applicable	Dates / Comments
Advertising	Notice in the media (s81)	✓	14-09-2018
	Notice to a person (s82)	✓	10-09-2018
	Notice to Community organization (s83)	✓	10-09-2018
	Notice to Ward Councillor (s83)	✓	10-09-2018
	Notice of no objection (s84)		
	Notice to Provincial Government (s86)		
	Notice to an Organ of State (s87)		
	Public meeting		
	On-site display	✓	13-09-2018
Outcome	Objections	✓	166 objections, 18 late objections (17 late objections (submitted 16 - 18 October 2018 have been

- 4.5.2 Asset Management and Maintenance indicated their no objection to the proposal. They indicate their requirements which will be imposed as conditions.
- 4.5.3 CSRMs state the following in the response:
- Catchment Stormwater and River Management are largely satisfied with work done by the applicant's consultant team.
 - The Stormwater policy prohibits exercising development rights in a high hazard zone and 1:50 year floodline.
 - The old Liesbeek River has a polishing effect for stormwater coming from Observatory.
 - The proposal to fill in the old Liesbeek River will further degrade the river and adversely impact on the river ecology. This proposal therefore should not be supported.
 - A buffer of at least 40m should be provided from the river.
 - Further submissions will enable additional opportunities for input on the proposed development.
 - Practical interventions to prevent flooding of the SAAO and mitigation measures against other properties should be undertaken.
 - On-site attenuation will likely be counterproductive.
- 4.5.4 The Recreation and Parks department supports the proposal albeit that greater level of detail will be required. A landscape master plan must be furnished as that provided is inadequate.
- 4.5.5 T.A and Development Control indicate their no objection to the proposal stating that their previous requirements still stand.
- 4.5.6 Environment and Heritage Resources Management state:
- They oppose the application in its current form as the submission for a rezoning is considered incomplete - more detail is required.
 - They do not oppose some development on the site beyond what the OS3 zoning permits.
 - Any development must not detract from the conservation functioning of the Liesbeek River, Black River and Raapenberg Bird Sanctuary.
 - Any development must include the submission of a SDP.
 - It is premature to support the floor factor as proposed as more detailed information must be furnished.
 - The infilling of the Liesbeek River is opposed.
 - The rehabilitation of the Liesbeek canal and Lis supported.

5. BACKGROUND TO PROPOSAL

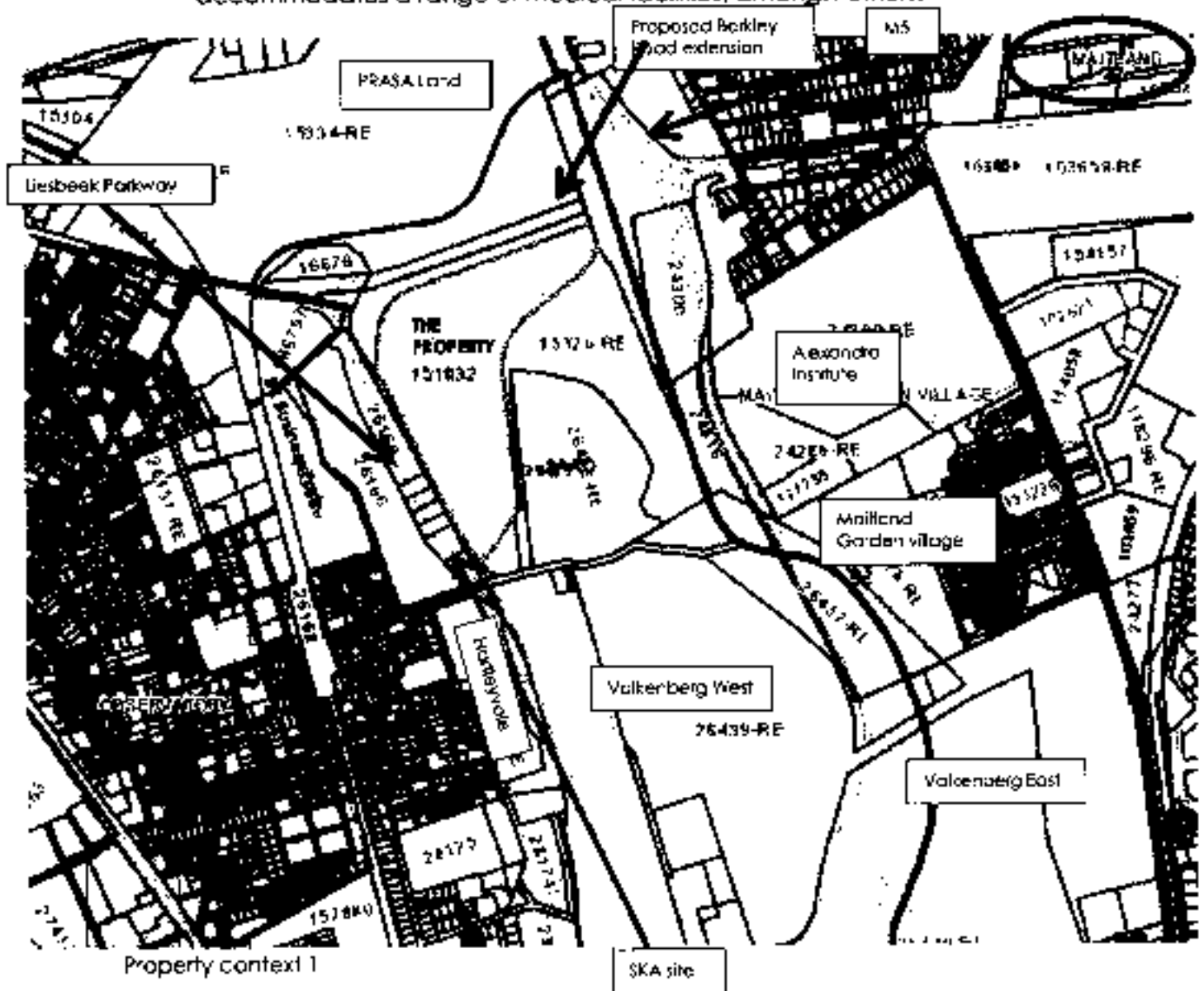
Description of the area / surrounding land uses

- 5.1. The property is located within close proximity to major routes such as Main Road, the N2 and M5.

The area has diverse land uses comprising various types of

- residential accommodation comprising mainly Dwelling Houses, Flats, two storey walk-ups and row houses and also guest accommodation;

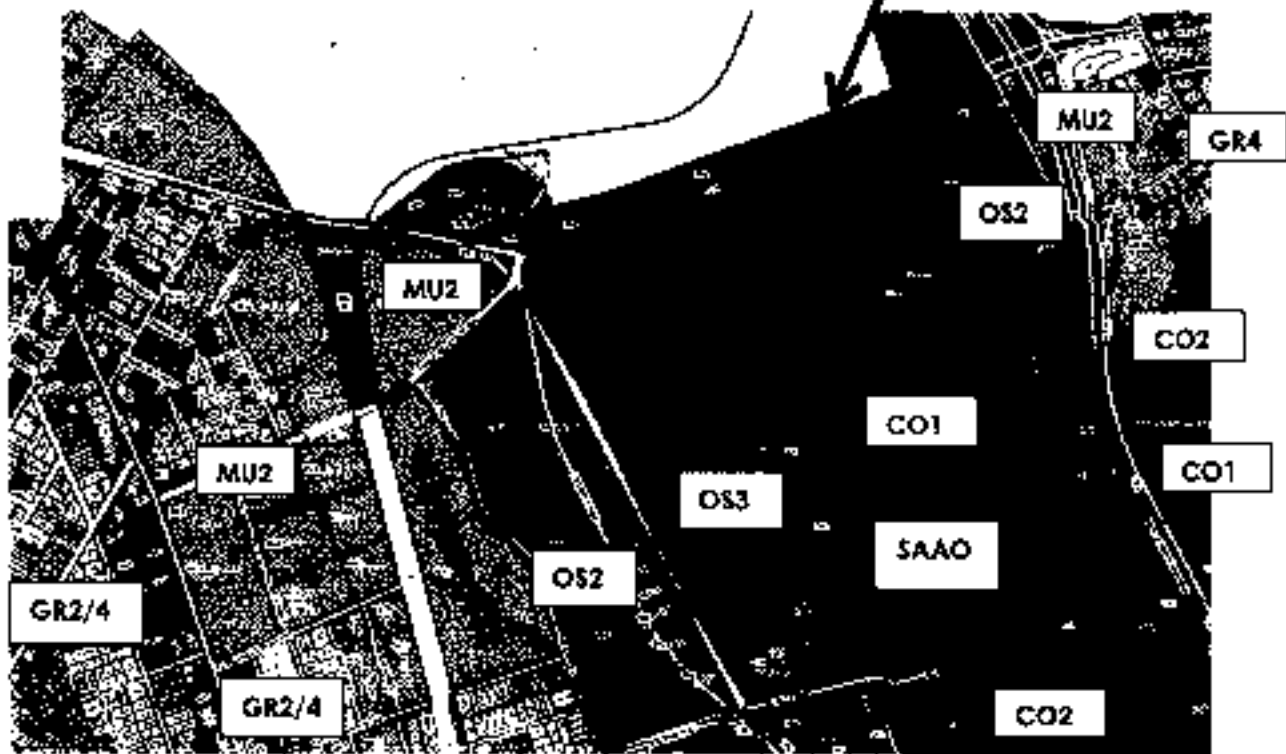
- institutional uses such as rehabilitation centres and homes offering transition for those leaving rehabilitation centres, places of learning, medical research are located in the nearby suburb;
- business premises such as office and other business activities opposite Liesbeek Parkway to the west, also to the north-west toward Salt River and to the north-east toward Maitland, amongst others, and
- institutions such as the Alexandra Institute treating mental conditions, drug rehabilitation centres, Valkenberg West and Valkenberg East which accommodates a range of medical facilities, amongst others.



The immediate surrounding properties are zoned for General Residential (comprising mainly dwelling houses but also includes Flats), Mixed Use (comprising a range of business uses on the opposite Liesbeek Parkway in the Black River Business Park, to the north-west and then also to the north-east toward Maitland), Community Zone and Open Space purposes.

h 50

Proposed Berkley Road extension

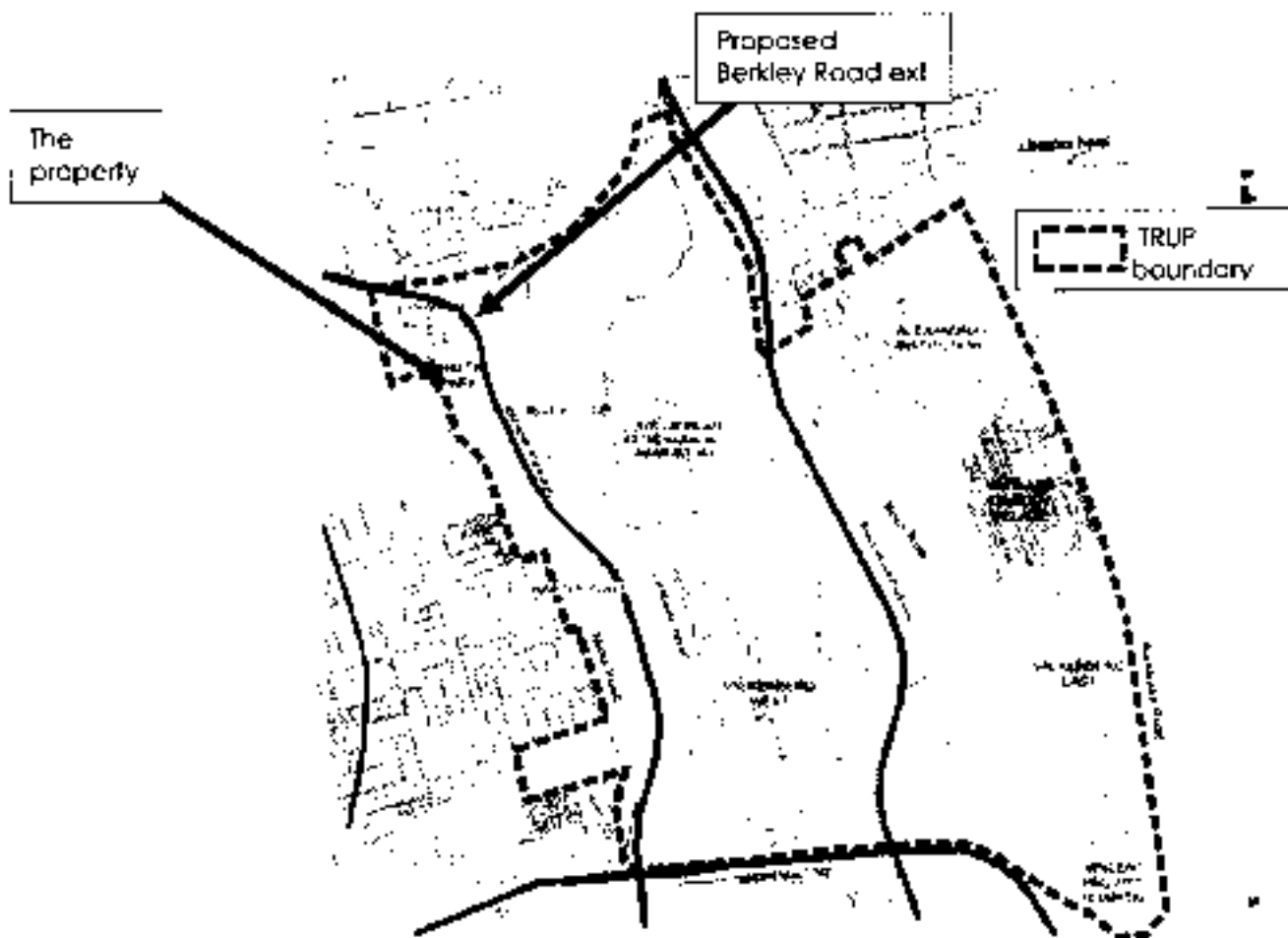


Surrounding property zones

Property description

- 5.2 The property is located within the Two Rivers Urban Park (TRUP). The TRUP extends more or less to the
- North just beyond the Berkley Road extension, along the M5 to Annexure Road;
 - East along Alexandra Road and includes Vincent Pallotti hospital;
 - South along the N2/Settlers Way and
 - To the east along Willow, Ossian and Firs Roads.

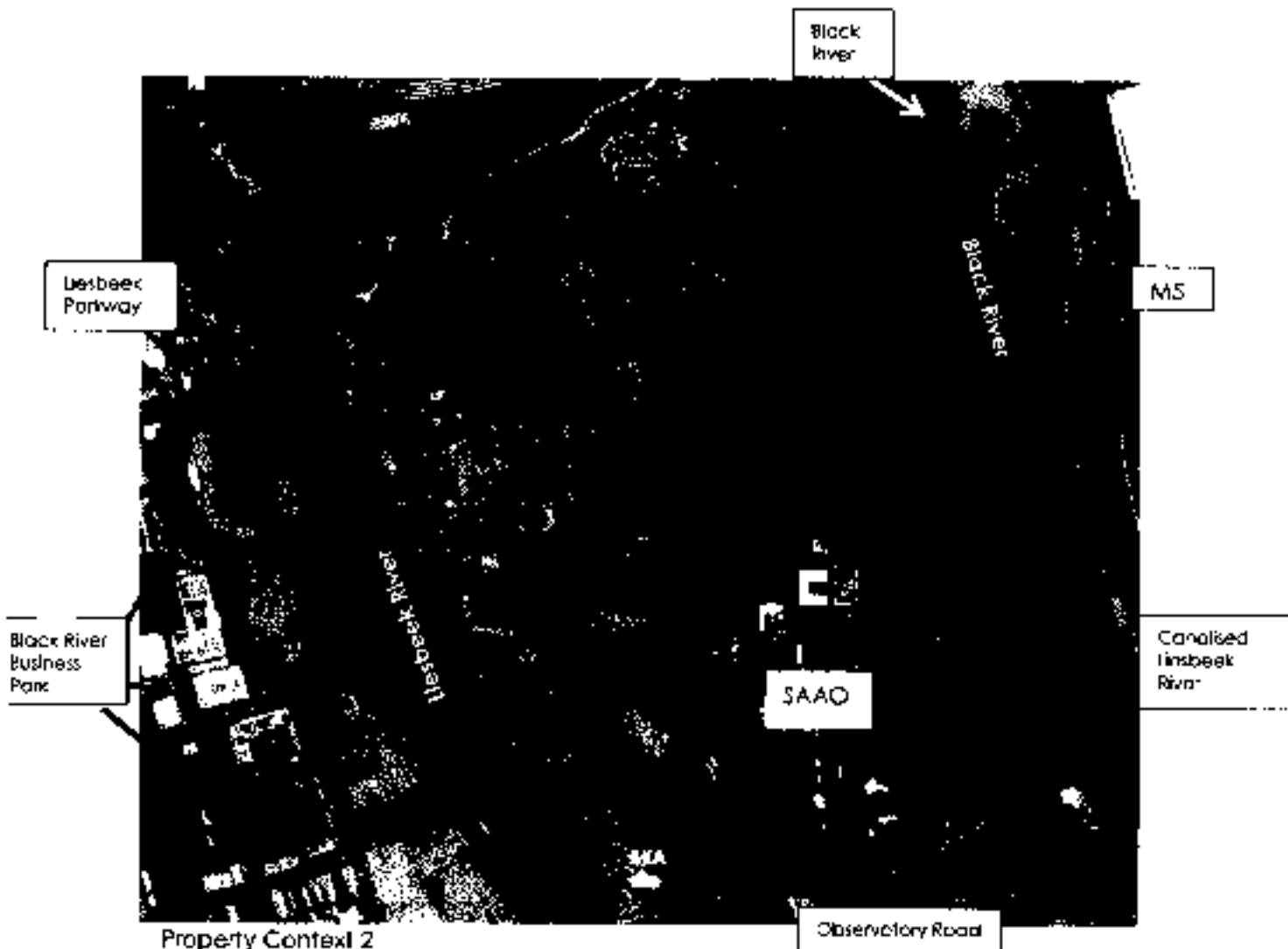
[Handwritten signature]



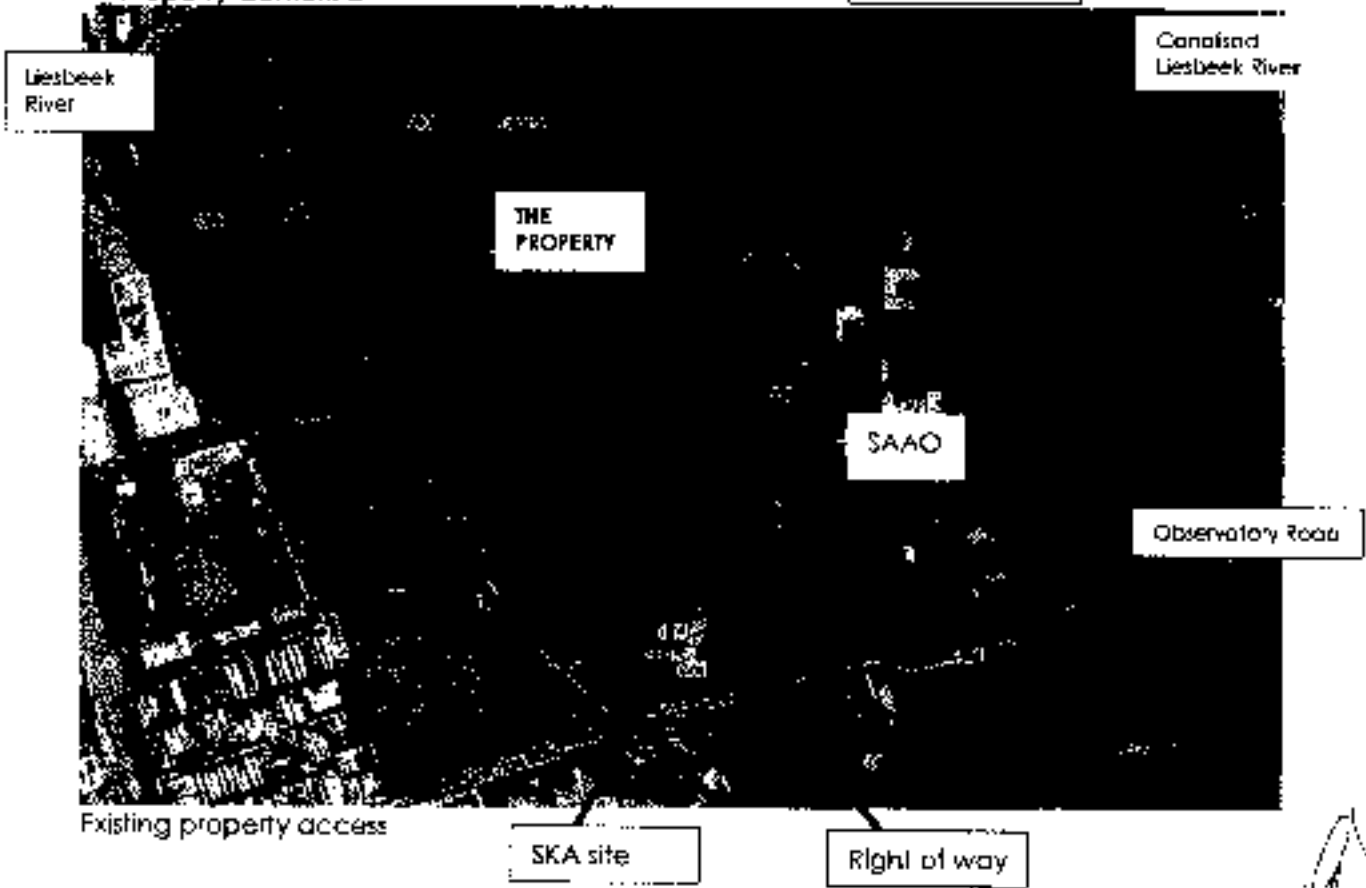
Location of property within TRUP

The property is located to the south of the proposed Berkley Road extension, at the north-west point of the TRUP.

- 5.3 The property is bounded by Liesbeeke Parkway and the Liesbeeke River to the west, remainder Erf 26423 and Observatory Road to the south, the Liesbeeke River canal, SAAO and Black River to the east and the proposed Berkley Road extension and PRASA land to the north. The property is landlocked. A right of way is registered across remainder Erf 26423 in favour of the property for it to gain access via Observatory Road.



Property Context 2



Handwritten signature or initials

Much of the property is located within a floodplain and is prone to regular flooding. [Most of the property is situated below the 1:50yr, 1:20yr and 1:10yr floodplains. A small component is located above the 1:100yr floodplain.] While the property accommodates a certain range of uses, it has an existing flood warning system to alert staff and patrons alike in the event of flooding.

A range of uses such as a golf driving range, mashie golf course and ancillary uses are accommodated on the property. It further also accommodates conferencing activities and is used to accommodate events such as music concerts, weddings, etc from time to time.

A further range of uses are accommodated on the property - the full suite of uses is described in point 2 (Background) of this report.

Proposed development

- 5.4 It is proposed to rezone the property to accommodate a mixed use development comprising 150 000m² of floor space (bulk). Shops, Restaurants, Offices, a Hotel, Place of Instruction (and associated uses), amongst others. It is also proposed to provide residential accommodation which will comprise approximately 20% of the total floor space of the proposal. A portion of the residential accommodation will be reserved for inclusionary housing. The inclusionary housing will equate to approximately 4% of the overall floor space.

Building heights will range from approximately 15m to approximately 46m (2 to 9 storeys) above base level. The proposal will entail the construction of retaining structures so that roads and habitable spaces are raised above the 1:100 year flood plain. The application includes the intention to accommodate retaining structures exceeding the permissible height of 2.0m. [While the ground floor is not being raised, earth will be positioned alongside the first and second storeys or first, second and third storeys so that habitable spaces are raised above the 1:100 year floodplain. In most, if not all instances, ground floor will be used to accommodate parking.]

The development proposed will necessitate the construction of the Berkley Road extension. The applicant will incur the cost of a portion of the construction of Berkley Road while the City will be responsible for the construction of the remainder.

It is also proposed to decanalise the Liesbeek River canal on the eastern boundary of the property to rehabilitate it into a river course. It is proposed to fill and landscape the 'old' Liesbeek River channel on the western boundary of the property for it to serve as a vegetated stormwater swale to hold flood waters.

The application is accompanied by applications to permit the

- Rezoning of the property;
- Raise the level of the ground above the 1:100 year floodplain so that development can take place and
- The deviation from the
 - Table Bay District Plan to permit development within an area demarcated as open space;
 - Floodplain and River Management Corridor and the Management of Urban Stormwater policies to permit the development in a floodplain.

to fill the Liesbeek River and decanalise the Liesbeek River canal permitting a development exceeding 50 000m² in extent.

A full list of the applications applied for is contained in Annexure A attached.

6. PROPOSAL ASSESSMENT

Criteria for deciding application

6.1. Consideration of criteria in terms of Section 99(1);

6.1.1. Compliance with the requirements of the MPBL

- Compliance with the requirements of the MPBL have been met.

The application proposes the rezoning of the property to a subdivisinal area. The rezoning to subdivisinal area is ordinarily accompanied by a subdivision plan illustrating each zone, sub-zone and the extent of each. This application was accompanied by a plan showing the extent of the open space and general business zones – the subzones was not denoted on the subdivision plan. The information submitted is therefore sufficient to enable consideration of this application, as advertised, even though a detailed subdivisinal area plan showing the portions and their corresponding sub-zones will be submitted at the time of precinct plan submission.

The application motivation makes references to the possibility of fewer parking bays being provided than what is required given the range uses and the extent of each use in relation to parking requirements as stipulated in in terms of Item 137 of the DMS. Given the level of detail provided at this stage of the application, no application for a parking departure was submitted, and any such application will be submitted and processed accordingly should the total number of parking bays provided not meet the minimum required in terms of the DMS.

- All the applications in respect of this proposal have been processed and advertised in accordance with applicable laws.

As legally required, the application was advertised in the newspaper, by registered and additionally an on-site notice was displayed. As an additional measure, which is not a legal requirement, the application was also advertised in community newspapers. There is no legal requirement for a public meeting to be held.

The application process yielded a total of 166 letters of objections. 1 letter of no objection and 18 late objections. All the late objections, apart from one, was submitted between 16 – 18 October 2018. Given this, 17 late objections were condoned. These late objections accompanied those referred to the applicant for comment. One late objection was submitted on the 05 January 2019. This late objection was not condoned given as it was submitted in excess of two months late. Notwithstanding this, the issues raised by the late objection was

addressed by the applicant in their response to objections as other objectors raise the same issues.

An amendment to the extent of the portions that will be reserved for General Business and Open Space 3 (OS3) has been made. The portion zoned for OS3 has been reduced by almost 1865m². It equates to a variance of less than 1% from that originally indicated. The difference in the drop in the portion zoned for OS3 does not warrant the re-advertising of the application as the reduced extent is not considered to be significant within the context. Additionally, while the actual portion of land zoned for OS3 was finite in extent, the extent and portions of the property that will be landscaped and therefore present as being open space will be much greater than the variance mentioned above. This aspect is discussed further in point 6.3(1) below.

Objectors appear to misunderstand the process of notification. They state that

- o insufficient information has been furnished;
- o the departmental report was not attached to the letter of notification;
- o the City is proposing the deviation from City policy;
- o the application is premature as neither the HIA nor the EIA has been adjudicated;
- o because the HIA and EIA has not been adjudicated the rights of the public is compromised given the land use application now under consideration;
- o greater levels of public engagement are required for developments of this scale;
- o the submission suggests that the HIA and EIA objections were disregarded;
- o the application should be informed by the draft TRUP LSDP;
- o the application has a different closing date to the HIA process;
- o the proposal contravenes the National Water Act;
- o the proposal does not satisfy the SPLUMA principles and
- o the on-site notice did not make reference to the property.

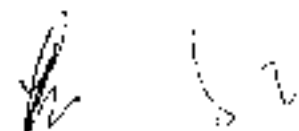
Each of the above points are addressed in the table contained in Section 4.2 of this report.

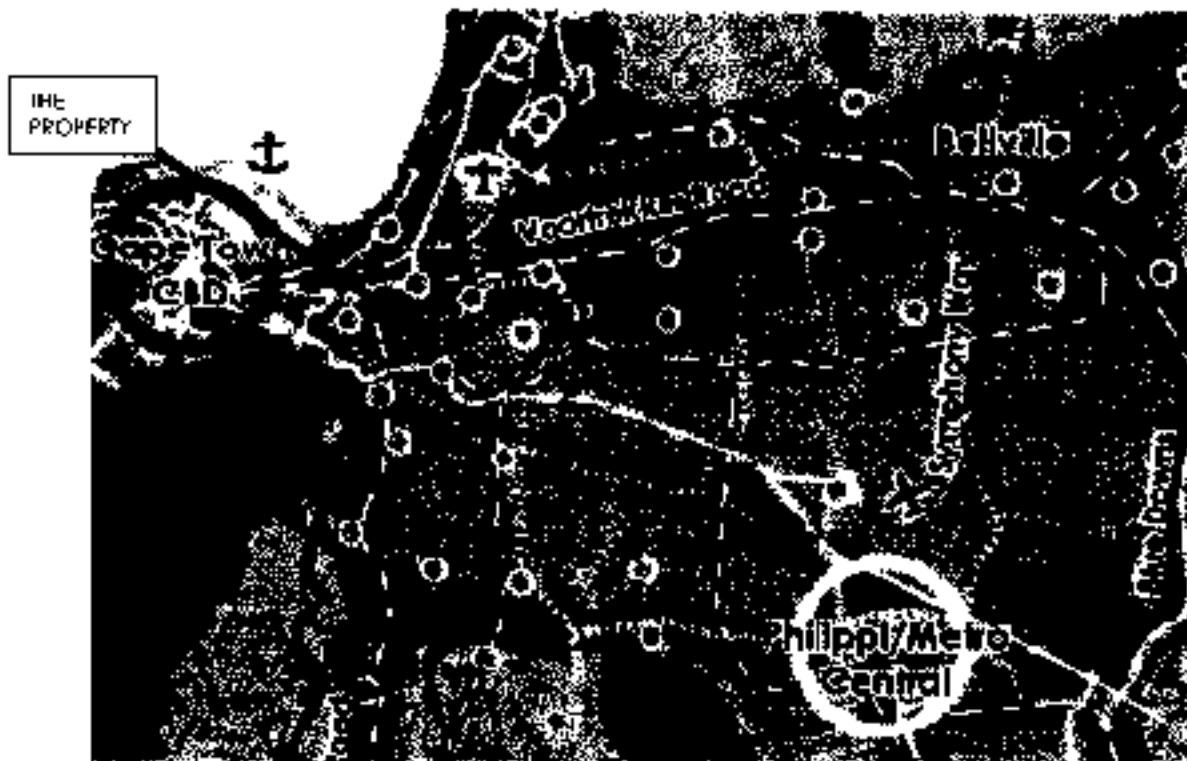
It must be noted that the proposal required an HIA and EIA in terms of the National Heritage Resources Act and National Environmental Management Act, respectively. The HIA is included in the EIA process, HWC therefore becoming a commenting party in the EIA process to DEA&DP. Even though an Environmental Authorisation was issued on 20 August 2020, there is no requirement in law that each of these processes have to be advertised simultaneously or in one advert.

- The proposal was not the subject of an administrative penalty.

6.1.2 Compliance or consistence with the municipal spatial development framework

The site (shown by the arrow on the diagram below) is located within the "Urban Inner Core" and within an integration zone. The metro south east integration zone is one of two integrations zones that is targeted to receive public investment to promote spatial transformation within the city. Nearby, the north-east is the Voortrekker Road corridor, the second integration zone.





The emphasis in the MSDP is on "inward growth" within the "existing built urban footprint."

This is discussed further in point 6.2 below.

6.1.3 Consideration in terms of Section 99(3) of the desirability of the following criteria:
The application is desirable as it facilitates

- local economic opportunities and job-creation;
- the mixed use development proposed will not be dissimilar to the range of uses found in the immediate vicinity of the property.
- A component of residential, a portion of which will comprise inclusionary houses, is also proposed.
- The proposal will see a more efficient use of the city's service infrastructure.
- Heritage elements around and on the site must be acknowledged through design and as per the conditions imposed when the environmental authorisation was issued.
- The unique biophysical elements of the site will see the rehabilitation of degraded habitats and increased opportunity for the public at large to enjoy the use of the property.
- The proposal will facilitate the continuation of NMT facilities on the property and within the development.
- Conditions to mitigate the impact of the development are recommended.

6.1.4 Would approval of the application have the effect of granting the property the development rules of the next subzone within a zone?

No, as the it is proposed to rezone the property to enable the development thereof.

I am satisfied that the decision making criteria in Section 99(1) have been complied with.

I am satisfied that the considerations in Section 99(3) have been assessed and that the proposed land use is desirable.

6.2 Consideration of criteria in terms of Section 99(2):

6.2.1 Integrated Development Plan 2017-2022

The IDP informs the City's key strategies being the opportunity city, safe city, caring city, inclusive city and well-run city. The inclusive city focuses on economic opportunities, safety of its citizens and integration of communities. Focusing development to attain inclusivity aids in achieving at least three of the strategic objectives. Incorporating all five objectives in a development is key.

Eleven priorities stem from the five strategic objectives of the City. These include but are not limited to, positioning Cape Town to be a globally competitive business city, economic inclusion, resource efficiency, safe communities, dense and transit oriented urban growth, efficient and integrated transport systems, building integrated communities. These priorities are elevated in significance as a transversa approach to the planning of developments of this nature and scale is required to ensure the development is sustainable. Interdependencies between disciplines highlight the importance in achieving a successful development.

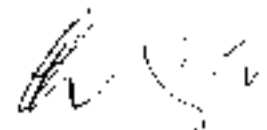
The inclusive and opportunity city is achieved through economic inclusion. Job and income creation provides the opportunity for an improved quality of life which in turn once again feeds into and stimulates economic growth. The proposal provides an opportunity to simultaneously bring investment into the city and once more stimulate job creation. In the instance of this submission, inclusivity is further enhanced through the provision of a small component of inclusionary housing within the proposal. (This is expounded on further on in this report.)

The benefit of the development must also be extended to the wider Cape Town through the agglomeration of a mix of land uses, the location and level of density. These qualities contribute toward the spatial transformation of the City. The IDP encourages spatial transformation by employing the use of Transit Orient Development Strategy (TOD) principles that encourage new development to positively influence the urban form and be positioned around existing and planned public transport links. Such development must be sufficiently dense to promote the use of public transport in conjunction with reduced parking ratios.

The proposed dense mixed use development located in such a highly favourable location and between train stations, with other modes of public transport further endeavours to incorporate the principles mentioned.

6.2.2 Economic Growth, 2013 and Social Development Strategies

Cape Town is experiencing rapid urbanisation and increased population growth. This places significant strain on the existing service infrastructure, the economy and consequently the need for jobs.



Many of the City's citizens are separated from the city's economic hubs which are located significant distances away from places of residence. Location of new developments within established areas must therefore be encouraged as they improve access to opportunities and amenities as well as offer opportunity to contain urban sprawl. This, in turn, limits the cost associated with the provision of additional services as is usually associated with new developments on the periphery of the City.

Where existing communities are located great distances from amenities, places of employment, etc., high levels of congestion and lengthy commuting times are experienced. Expanding its BRT system and focusing on public transport will provide greater accessibility to various opportunities within the greater city area. Greater thresholds are required to justify or cover the cost of such service provision. Intensification, densification and diversification of uses become the cornerstone to this end.

Proposed road improvements arising from this development will benefit both the recipient and wider communities as it will connect the east and west. Investment such as that proposed may also, in the long term, result in investment in public transport resulting in further benefits to the recipient community and wider Cape Town.

The property is located between two train stations. Just beyond that access is offered to other modes of transport. The development therefore will have a favourable impact on the area both in the short and long term.

The site will continue to have private open space that will be maintained by the developer. Pedestrian walkways along the river's edge will continue to be provided. The elements of open space will offer the opportunity for the public to have continued access to the river's edge.

6.2.3 Integrated Human Settlement Framework (IHSF)

While the Integrated Human Settlement Framework relates to the City's provision of housing, it acknowledges the need to change the way in which housing is provided in the city by the City. One of the core programmes of the IHSF influencing is fostering partnerships as one of the key requirements to achieve the City's medium to long term goals.

The property has not been identified in the policy for housing provision or as a catalytic project. While the location of the site is strategic, the primary intention of the development is not housing provision. Notwithstanding this, it is proposed that 20% of the floor space (about 30 000m²) will be reserved for housing provision of which 20% (about 6000m², i.e. approximately 4% of the overall floor space of development) be reserved for inclusionary housing. The City has not sought to establish a partnership with the relevant developer for the provision of housing. Neither has said developer entered into discussions with the City's housing department regarding inclusionary housing provision.

6.2.4 Transport Orientated Development Strategic Framework, 2017

TOD seeks to change, stimulate and develop the built environment in such a way that movement patterns of people and goods optimize urban efficiencies and create social equity as economic development is promoted.

TOD principles require that

- Public transport cost to commuters and the provision thereof must be reduced;
- Development should be located strategically to make it equally accessible socially and economically;
- Level of service must be efficient to reduce trip distances and dependence on private motor vehicles;
- Land use development must be intensified and densified to achieve the desired form, and
- mix of uses in the right location to make it accessible, affordable and ensure the efficient use of public transport.

At a metropolitan level TOD should try to consolidate the relationship between land use and travel patterns across the City. It must therefore be used as a tool to inform the ideal location of new development. Various role players have a collective contribution to make to achieve the TOD vision. Additionally, it should seek to integrate different communities.

Although the current OS3 zoning generally limits development to active or passive recreation and open spaces, the proposal must be assessed against the likelihood of the status thereof changing to a developable site. The Environmental Authorisation issued permits the development of the site. To this end, consideration must be given to the context of the proposed development that presently exists in its surrounds with its associated desired development/threshold outcomes. Furthermore, the property forms of the metro south east integration zone.

It is accepted that land development attracts trips with varying characteristics depending on the location. A public transport network plan (the Integrated Public Transport Network i.e. IPTN) intended to guide public transport intervention was approved by the city. It encourages a strategic approach to public transport improvements. Development scenarios must adhere to the core principles of sustainable development that ensures that public transport movement is affordable, accessible and efficient. The IPTN therefore was devised to direct TODC principles by simultaneously promoting public transport provision with sufficient thresholds to promote the use and reduce the cost thereof to end users while also promoting intense, more sustainable levels of development.

PTN identified locations that are under resourced in previously disadvantaged areas where public transport intervention must be made. These interventions are aimed at connecting such communities with places of opportunity. The current IPTN was approved in 2017 and is in the process of being implemented. It is however under constant review to refine the plan to improve connectivity between the disadvantaged and places of opportunity.

While the property or area in question is not amongst those identified for public transport upgrade, it is acknowledged that the development may impact future planning and highlight the need for public transport provision in this area. The fact that the property falls within an integration zone (discussed further below) may provide further impetus for Liesbeeck Parkway and Berkley Road extension to be identified as suitable for road based public transport investment/intervention.

According to the TODC (Transit Oriented Development Comprehensive) when assessing the property against Transit Accessible Precincts (TAPs) criteria, the property should see no residential development while non-residential activities is encouraged to not exceed 5000m². However, this in itself is not an end state because of the dynamic nature of cities and how they are transformed.

TAPs has regard for the location of the site given proximity to existing and proposed public transport facilities. In this instance, neither Liesbeeck Parkway nor Berkley Road or any of the surrounding roads within 500m of the site, are earmarked for public transport upgrades. Having said this, and as stated above, developments of this nature generally tend to serve as catalysts and may therefore cause a re-evaluation of the IPTN, which is presently under review so that the roll-out of public transport may be re-considered within the context of the dynamic nature of the city.

The City's Transport Planning Department indicating no objection to the proposals and the TIA which addresses the matter of private and public transport and related access arrangements to the site. Therefore, the existing network and future civil engineering and infra-structure interventions would likely meet any public transport needs, especially given the proposal that at least 40% of vehicle trips to the development will be dependent on public transport. (This is discussed further in point 6.3 g) below.)

TOD comprehensive is viewed as the desired end state of urban form to address the public transport inefficiencies. New land use and transport interventions must support the desired end state notwithstanding the IPTN and TAPs. The objective of TOD comprehensive is to

- Reduce travel distances by intensifying, diversifying urban development close to public transport;
- Optimise bi-directional flows by promoting an appropriate mix of land uses and from near high order public transport corridors
- Generate a greater level of seats by promoting an appropriate mix of land uses within district and local nodes.

Notwithstanding the above, the property forms part of the metro south-east where trip attracting land uses comprising both social and economic opportunities should be located. It should ideally be dominated by residential development. The metro south-east forms part of one of two integration zones that must be prioritized based on their public transport links that must be established between existing and emerging urban nodes. Integration zones are areas identified to best transform the spatial structure of the City and therefore promote integration. These areas are earmarked to receive targeted funding where catalytic projects that will facilitate TOD opportunities must be encouraged.

The proposed density as well overall design supports the principles in the City's "Transit Orientated Development Strategic Framework (TOD) as the development":

- is high density mixed use with more than double the density threshold for the provision of viable public transport system.

- is located close to existing and planned public transport stations and stops, which includes a 10 minutes or less walk/cycle to train stations and future integrated public transport network routes. (IPTN).
- has reduced parking ratios and which encourages the use of public transport.
- is designed to discourage the use of motor vehicles in support of other modes of transport (walking, bicycles/scooters, trains, buses and trams).
- promotes walking through design that prioritizes surveillance thereby creating a safe neighborhood.
- has both trip generating and trip attracting land uses by virtue of it being mixed use-high density.
- reduces travel distances by intensifying and diversifying urban development close to public transport systems
- represents appropriate land use mix, residential development and social and economic activity at and between, urban nodes along higher-order transport corridors
- is a departure from low density single use developments that perpetuates the legacy of the apartheid spatial planning system.
- represents a good example of compact and livable human settlement planning that meaningfully signals the City's intent to curb urban sprawl.

6.2.5 Cape Town Spatial Development Framework, 2018(MSDF)

At the outset, the Section 9(4) of the MPBL states that,

"The municipal spatial development framework does not confer or take away rights."

Instead, the Section 3(3) of the MPBL explains that the purposes of the City's spatial development frameworks include –

- (a) providing a longer-term spatial depiction of the desired form and structure of the geographic area to which it applies;
- (b) providing land use management guidelines regarding the appropriate nature, form, scale and location of development;
- (c) contributing to spatial co-ordination;
- (d) guiding investment and planning of municipal departments and where appropriate other spheres of government;
- (e) guiding investment for the private sector;
- (f) reflecting relevant provisions of strategies adopted by the Municipal Council; and
- (g) guiding decision making on applications.

Additionally, the Section 9(5) of the MPBL states that,

"If there is a conflict between the municipal spatial development framework and a district spatial development framework or local spatial development framework, the municipal spatial development framework prevails over other development frameworks to the extent of the conflict."

As mentioned, the property is located in the urban inner core. The proposals are consistent with the MSDF for the following reasons:

The MSDP identifies four Spatial Transformation Areas (STAs), the urban inner core is one of the spatial transformation areas. Here public investment and growth must be prioritised.

Spatial transformation and resource allocation should be anchored in the principles established in transit oriented development (TOD) supported by various policies and strategies which aim to intensify, density and diversify land uses. An efficient transport system that integrates all communities is an imperative in achieving the abovementioned goals. The City's capital budget therefore must be aligned to achieve these ends.

The City is committed to spatially transform and integrate the city through targeted investment. The urban inner core is where spatial transformation must be encouraged, amongst others.

The property is located within the urban inner core though being identified as being located outside of the urban footprint. [The urban footprint in this instance is considered to be the total spatial extent of existing urban development {p.100}.] The urban inner core represents the priority development and investment area of the City. It is here where infrastructure needs to be upgraded and intensification of land use should be supported.

The City must focus spatial priorities on inward growth to promote the urban economy, sustained job creation which will in turn have a knock-on effect.

Additionally, the MSDP identifies three "Integration Zones" which, amongst others, promotes both public and private investment to transform Cape Town's spatial landscape through establishing effective transport links, linking economic opportunities and settlement patterns and to invest in infrastructure and catalytic urban development projects. One of these is the Metro South-East Integration Zone - the Two Rivers Urban Park sits within the Metro South-East Integration Zone.

The objectives for the MSEIZ include -

- Compact, efficient developments that integrate the City;
- Public transport restructuring must occur in conformance with TOD principles to unlock growth and promote development in appropriate locations; TRUP is identified as one of these areas;
- Public-private sector working alongside each other to achieve investment into infrastructure, amongst others is also acknowledged as important.

The proposal will be located on Liesbeek Parkway and is positioned between Observatory, Koeberg, Salt River and Maitland train stations. Bus and taxi routes are located further afield. The intended development of the TRUP and the strategic identification of this precinct may stimulate improved and focussed public transport links into the area.

In addition to the above, the property is borders river corridors and wetlands and is located below the 1:100 year floodplain. It acknowledges the need for a balance between development and environmental protection.



Additionally, the property was protected in terms of the National Heritage Resources Act and therefore would have been considered to be amongst the critical natural assets in terms of the MSDP. That protection status however lapsed in April 2020.

The applications will ensure a development that is compatible with the wider receiving urban context given the general residential and mixed use zones located in the vicinity and the related range of uses. Some open space components will be retained as part of the proposal.

Besides the uses mentioned, the proposal includes an element of inclusionary housing. The MSDP defines affordable and inclusionary housing as a:

"Policy directive and approach that seeks to leverage the development application process for new residential or commercial developments to secure the construction and perpetual availability of affordable housing in an integrated manner."

The MSDP in turn defines affordable housing as "Traditionally affordable housing refers to housing with prices or values below the overall open market value which targets below-average incomes. In this MSDP affordable housing refers to the household income brackets of R3501-R18000 per month, and is inclusive of social, G.A.P, and inclusionary housing. It also refers to residential units valued at R500 000 or less."

The MSDP sees Spatial transformation as reversing the impact of previous apartheid spatial planning by encouraging more opportunities for people who were previously disadvantaged to be located in areas that are "highly connected" and where public sector investment will be focused.

While an inclusionary housing element will comprise a small component of development, focused public sector investment into public transport facilities could serve to widen the accessibility of the site by improving public transport connections between previously disadvantaged communities and this proposal. Additionally, the proposed development is located in close proximity to established public transport, employment and commercial development opportunities and other amenities.

6.2.6 Table Bay District Plan, 2012

The property is located within the metropolitan node in Sub-district 3 of the Table Bay District Plan. The proposal seeks to deviate from the Table Bay District Plan (TBDP) which identifies the Two Rivers Urban Park as a multipurpose metropolitan urban park. It is designated as buffer 1 and core 2. It is regarded to be a precautionary area given the location of the site within a floodplain. A precautionary area are those areas that may pose a risk or have limited capacity for development.

[Buffer 1 areas are generally farmlands and natural vegetated sites, amongst others. It could accommodate utility services. These properties usually do not form part of core areas. Core 2 areas are generally ecological areas and areas that offer ecological support. In this instance it accommodates water bodies and rivers.]

The TBDP argues that such facilities as TRUP should be rehabilitated and upgraded. It should be used for passive and active recreation based on the Open Space 3

zoning. According to the TBDP a limited range of development could be encouraged such as residential, some institutional uses and appropriate limited commercial development. Public access should be permitted along the edges of the site where appropriate. As far as possible mountain to sea linkages must be retained as well as maintaining access to the waters edge.

As is evidenced from the preceding comment, the district plan does not accord with the MSDP. The district plan was approved in 2012 while the MSDP was amended and approved in 2018. For this reason, district plans are presently being reviewed to ensure consistency with the MSDP. The review of district plans are still the initial stages of review.

The MSDP requires that lower order policies are consistent with the findings thereof. This principle is reiterated in the district plan. All lower level policies are informed by the higher order policies. The MSDP states that where lower order spatial plans conflict with the MSDP, the findings of the MSDP must take precedence.

When assessing deviations for the district plan regard must be had for compliance with the PSDP and the MSDP (previously the CTSDP). If the proposal conforms with these policies, then consideration must further be given to whether the proposal

- conforms with overall goals for local area policy;
- gives effect to the general compatibility or appropriateness with the surrounding urban landscape;
- impacts on safety, health and well being of the local community;
- is likely to have unacceptable environmental impacts;
- be informed by any new information that may warrant a different development and
- is appropriately located within context of this point i.e. have regard to growth informants, for example such as bulk service infrastructure availability amongst others.

A number of these issues are pertinent to the assessment of the application and will be discussed further in the assessment of the departmental report.

6.2.7 Environmental Strategy, 2017 and Cultural Heritage Strategy

While it is acknowledged that the development will continue within an urban area the impacts on the natural environment and cultural heritage should be minimized and managed.

The Environmental Strategy (ES) argues that the natural environment is held in trust for all. Access to natural open spaces has been inequitable over the years. Developments should therefore not hamper or impede equitable access to the environment. Changes in land use in terms of potential impacts should be minimized or mitigated.

The ES argues that the City's heritage assets comprise both natural and cultural (which includes both tangible and intangible) heritage. Each of these should be recognized, protected and promoted. It contributes toward a strong sense of place. It also holds economic benefit to the City. Given the city's diverse cultures the city's heritage should be celebrated. Any changes in land use should be sensitive and as

far as possible not adversely impact on the natural/cultural heritage. Where adverse impacts cannot be avoided, interventions should be employed to minimize/reduce impacts so that positive impacts are pronounced and maximized.

The Cultural and Heritage Strategy identifies heritage resources as "any place or object of cultural significance" which can be both tangible objects but may also comprise intangible heritage such as "traditions, oral history, ritual, ceremonies, language, popular memory and indigenous knowledge systems". Both places and objects of cultural significance are considered to be important because they connect society through memory to a sense of social and individual identity. Heritage resources are important because they allow future generations to understand past struggles and developments that shaped history and society. The protection of heritage resources has the ability to play a significant role in social and economic upliftment of the people.

The property is located in a cultural environment that some may regard to be of environmental significance, yet others will argue is environmentally degraded. This is evident in comments from the applicant and objectors.

The river corridors are home to various species of fauna and flora. While some of the spaces may be degraded, it does not by implication mean that they cannot be transformed through intervention measures that restore the environments.

The proposals include the intention to develop approximately two-thirds of the site and to retain approximately one-third as open space within the larger open space. The open space will provide a public right of way for the general public to have access to the river in the form of pedestrian walkways and cycle paths.

While it is acknowledged that the property includes elements of heritage significances, these are to be incorporated into the proposal by various means, such as, memorializing the history by means of story boards that tell of past experiences and the provision of architectural elements such as an amphitheatre in the shape of an indigenous kraal, spaces that enable display of traditional crafts, amongst others.

6.2.8 TRUP Contextual Framework (CF), 2003

The TRUP Contextual Framework (CF) was approved in 2003. It was devised to guide development within TRUP. The CF encourages the property to be used for commercialised recreation which would include a limited extent of development that would mimic existing buildings on the property. It did not discount the likelihood of further development but acknowledges that the further development of the site should be subject to guidance offered by the Stormwater and the Catchment Management departments.

While the CF remains in force, it is presently under review. In accordance with the Section 99(5) of the MPBL consideration of the application cannot be held in abeyance while awaiting policy approval.

[It must further be noted that no reference is made to the draft policy due to its status.]

6.2.9 Floodplain and river corridor management policy, 2009 (FRCM)

The application includes the intention to deviate from the mentioned policy. It is proposed to permit the obstruction of the free flow of water in a 1:20 year flood plain and to provide fill below the 1:50 year floodplain. This deviation is required as it is proposed to develop the property as well as to fill the Liesbeek River.

Generally, the aim of this policy is to manage the flow of water in the floodplains and river corridors and to avoid high risk floods or hazard zones. High hazard zones are areas where the ability for vehicles to wade through flood waters is impacted and where the stability of buildings/structures is compromised by flooding. It is also linked to the frequency of flood events. The policy asserts that no development should take place in high hazard zones.

Within the context of the proposals, this now includes the placement of buildings within the floodplains and river corridors and filling of the Liesbeek River. Based on this, the applicant undertook a hydrology study. The environmental authorisation process undertaken concludes that it supports development within the floodplains and river corridors and the filling of the Liesbeek River.

On the other hand, based on the guidance in the applicable policy, the custodian City department only supports development within the floodplains and river corridors while it does not support the filling of the Liesbeek River.

According to the policy, areas above the 1:50 year floodplain could permit a certain very limited extent of development (development meaning any man-made change to property) – see the table below. All development should ideally be located above the 1:100 year floodplain though. In instances where development is permitted in floodplains, development methodologies must be employed to reduce flood risks to people and properties. Permitted development must therefore be designed in accordance with best practice methods and conditions as set out in the policy. Any development near to watercourses must anticipate a degree of flood risk in particular when below the 1:100 year floodplain. To this end the proposal acknowledges some flood level rise.

Handwritten signature and initials, likely representing the applicant or a representative of the applicant.

Table Shading Key	
Colour Coding	Description
Clear	Permitted
Light Grey	Conditionally Permitted
Dark Grey	Not Permitted

Additional Requirement Key	
Code	Requirement
R1	<p>A registered Engineering Professional must be engaged by the developer to satisfactorily demonstrate and certify that the activity / development will not materially increase flood hazards for other property owners or adversely affect flood behaviour or the stability of river channels.</p> <ul style="list-style-type: none"> Any structure can withstand the forces and effects of flowing floodwaters, including scour of foundations, debris forces and buoyancy forces.
R2	Floors above 1:100 year flood level. Basements (non-habitable purposes) to be flood-proofed to 1:50-year flood level.
R3	Floors above 1:50 year flood level
R4	<p>A registered Environmental Professional (Aquatic Ecologist) must be engaged by the developer to determine the ecological buffer (if not available) and to satisfactorily demonstrate and certify that:</p> <ul style="list-style-type: none"> The activity / development will not negatively impact on the present condition of the watercourse or wetland OR The activity or development will improve the condition of the watercourse or wetland from its present state.

The land use / development / activity must be set back beyond the greater of the applicable floodplain zone / geomorphological or ecological buffer requirements

Land use / Development / Activity	Requirements and Conditions						Ecological Buffer (Width in meters)	Explanatory Notes
	Floodplain Zone (Flood Recurrence Interval in Years)							
Category	< 2	2-20	20-50	50-100	>100 (Note 1)	Explanatory Notes	Up to 7.5m (Note 2,3)	
Industrial Development	Typical Examples							
	Light General High Risk							
Business Development	Extractive (Mining)							
	General							
	Commercial (CBO)							
Residential Development	Service Stations							
	Formal							
Community & Public Facilities	Informal							
	Hospitals, Clinics, Nursing Homes, Old Age Homes							

FRCM assessment framework for proposals

Development permitted between the 1:50 year and 1:100 year flood levels is subject to certain conditions. Any habitable space must be flood proofed and certain compensatory measures must be instituted to address flooding - these measures must be undertaken by the applicant to safeguard properties impacted by flood

level rise as a consequence of the proposal (whether these properties presently experience flooding or not presently). This view is reiterated by CSR/M.

Elsewhere, the policy states that habitable spaces should ideally be accommodated above the 1:100 year floodplain. The proposal intends providing all habitable space above the 1:100 year floodplain. Super box-like structures will be placed on the land to accommodate parking that will raise the levels of habitable floors above the 1:100 year floodplain.

Land use / Development / Activity	Requirements and Conditions						Ecological Buffer (Width in meters)	
	Floodplain Zone (Flood Recurrence Interval in Years)							
	< 2	2-30	30-50	50-100	>100 (More 1)	Explanatory Notes		
Category							Up to 75m (Note 2.3)	Explanatory Notes
Typical Examples								
Agricultural Processing / Industry								
Feedlots, Piggeries and Battery Farming								Subject to Conservation of Agricultural Resources Act (CARA) Regulations
Hotels, Holiday Resorts and Banglows								
Caravan and Camping Sites								All outdoor facilities to be located above the 30 year floodline
Roads and Railways elevated above HGL								
Marine Interchanges, Bus Depots, Railway Stations								
Parking Areas								
Recreation, Training Works, Levees								
Dams, Weirs, Bridges								Design analysis to be performed where required in terms of National Water Act
Bank Protection Works, Pile Diversion Structures, Earthworks								In exceptional circumstances more "protection" of the 50/100 year floodline may be considered, provided equivalent compensatory storage volume is provided within the development period
Fencing								

FRCM assessment for proposals

The abovementioned tables show that in addition to infrastructure, parking could be accommodated in areas between the 1:20 and 1:50 year floodplain, amongst others. The property is located within the 1:50, 1:20 and 1:10 floodplain. The superstructures that will serve as the plinths on which buildings will be erected although the superstructures will comprise only parking.

Although the hydrology study suggests that the development will not cause a significant rise in flood waters, entrance levels to parking areas will be located above the 1:100 year flood plain. This may obviate the need for any flood warning system.

Watercourses/wetlands and their riparian landscapes must be buffered from impacts of development. Buffer zones for watercourses and wetlands must range between 10m and 40m, depending on their significance of the watercourse and whether they have been canalised. Buffer zones must be adjusted to accommodate wetlands. It is intended for buildings to adhere to the suggested 10 - 40m buffer zone. Of importance and what cannot be revealed at this juncture are the interface activities between watercourses and the proposal. [To this end, the Urban Design Policy guidelines must be employed.]

The policy encourages that buffer zones should be protected so that the ecology of such areas and watercourses are not compromised. Upon confirming the exact placement of buildings the appropriate buffer zones and their widths across the site could then be confirmed. However, CSRМ has yet to approve these. Where ecological buffers are accommodated on the site, servitudes may need to be registered in favour of the City.

Importantly, the hydrology study does not confirm the placement of buildings. The CSRМ has indicated that there is no reason to refute the findings of the study. However, the placement of buildings must be revealed for any concerns regarding the findings of said study to be allayed while simultaneously confirming the findings of their studies. The final determination of building placements, buffer areas and widths (comprising the watercourses with associated wetlands, ecological buffer, aesthetic treatment of any interface area and the building that will abut onto the watercourse), and the appropriateness of each of these, amongst others, is still to be confirmed. CSRМ's response to the proposed buffer zones will be confirmed at a subsequent stage of the application process. Conditions are proposed as part of the recommendation.

With regard to the filling of the Liesbeek River, CSRМ did have regard to the hydrology study which states, amongst others, that the filtration function is not significant and that filling the River will enhance its ecological effects. CSRМ holds a different opinion in that that department argues the River holds an important filtration function while filling will also adversely impact and change the existing ecology around the river. Additionally, CSRМ maintains that the River holds important historical and cultural significance. This aspect is addressed in the paragraph referring to "Impact on Heritage". Last, it must be noted that the Liesbeek River falls beyond the cadastral boundary of the site. CSRМ as the custodians of land on behalf of the City, is required to endorse this proposal. Therefore, filling of the River is not supported.

6.2.10 Management of Urban Stormwater Impacts Policy, 2009

The application proposes the deviation from the

- 24hr extended detention of the 1-year recurrence interval for a 24hours storm event relating to the quantity and rate of run-off;
- up to 10 year recurrence interval to be reduced to pre-development level in respect of quality, quantity and rate of run-off and
- up to 50 year recurrence interval peak flow to be reduced to existing development level in respect of quality, quantity and rate of run-off.

Generally, these three points relate to the volume of stormwater run-off and the quality of the water.

The applicant's hydrology study concludes in favour of this deviation and the environmental authorization concludes similarly.

On the other hand, the custodian CSRM department merely agrees with the deviation from attenuating water within a 24hr flood event on-site for an extended period but it does not support the aspects relating to (b) and (c) above.

The applicant argues that attenuation of stormwater adds no value as surrounding sites are flooded even during low storm events and it makes no difference given the proximity to the sea i.e. water will be released quickly into the sea. CSRM argues that releasing directly into the sea is more effective than attenuation. However, CSRM argues that properties downstream must be safeguarded from the impacts of flooding.

In addition to the above, and based on water quality considerations, the policy states that watercourses and wetlands are considered to be an integral part of the City's biodiversity network and they play an important role in recreational and economic activities. Principles guiding design of urban areas that are water sensitive to address the impacts of urban development is known as Water Sensitive Design (WSUD).

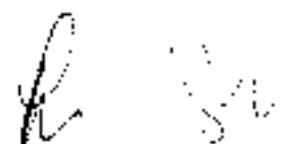
WSUD acknowledges that the primary reason for the deterioration of urban water is due to disruption of the natural water cycle which does not permit absorption and quality improvement to runoff through filtration, for example. Also the increased amount of impervious surfaces contributes toward increased runoff which is concentrated and often accelerated. The stormwater often runs into canals and drainage systems and is not absorbed through natural processes.

For these reasons, developments must employ Sustainable Urban Design Systems (SUDS). This will either maintain or mimic natural water processes to minimise the impacts of urbanization on water quality and quantity. These measures are referred to as Best Management Practices (BMPs). They comprise

- structured controls such as infiltration devices, bioretention cells, constructed wetland and detention ponds, amongst others and
- Non-structured controls which are institutional and pollution prevention practices designed to reduce or prevent pollutants from entering stormwater runoff and to reduce the volume of stormwater and management thereof.

The policy states that in many instances multiple measures could be employed to achieve water quality and quantity of an acceptable standard because these measures seek to arrest pollutants and improve the quality of natural water assets as part of the stormwater system of the City. Furthermore, measures employed must ensure that long-term impacts are averted and communities, present and future, are not adversely affected. CSRM states that the provision of stormwater master planning for developments such as that proposed is therefore important.

Given the above, the applicant states that various measures will be employed to minimize impacts of stormwater runoff and on hydrological processes. These include permeable paving, stormwater infiltration, the use of stormwater detention through the use of bioretention areas and reconstructed wetlands, source control. Accordingly, the applicant argues that deviation from policy relating the water quality and quantity requirements as listed in the table contained can be supported.



ANNEXURE: INTERIM CRITERIA FOR ACHIEVING SUSTAINABLE URBAN DRAINAGE SYSTEM OBJECTIVES IN VARIOUS DEVELOPMENT SCENARIOS

<p>SUB- OBJECTIVES</p>	<p>Greenfield Developments and Brownfield and Existing Development Sites located in catchments of sensitive receiving water systems</p>	<p>Brownfield and Existing Development Sites > 50 000 m²</p>	<p>Brownfield and Existing Development Sites 4000 m² – 50 000 m² and Total impervious area (exist & new) > 15% of site</p>	<p>Brownfield and Existing Development Sites < 4000 m² and Total impervious area (exist and new) > 600m²</p>
<p><u>IMPROVE QUALITY OF RUNOFF</u> Remove pollutants through combination of reducing and/or disconnecting impervious areas, and the use of BMPs which infiltrate or capture and treat stormwater runoff</p>	<p>Pollutant removal target: Reduction of post-development annual stormwater pollutant load discharged from dev. site SS & TP - reduce to undeveloped catchment levels. or SS - 80% reduction TP - 45% reduction whichever requires higher level of treatment</p>	<p>Pollutant removal target: On-site reduction of post- development annual stormwater pollutant load discharged from development site: SS - 80% reduction TP - 45% reduction</p>	<p>Pollutant removal target: Combination of on-site and regional off-site measures to achieve target reductions: SS - 80% reduction TP - 45% reduction</p>	<p>On-site stormwater treatment not required but encouraged where practicable. Regional off-site treatment measures to achieve target reductions: SS - 80% reduction TP - 45% reduction</p>
<p>Design storm event for water quality treatment 1/2-year Rt, 24 h storm</p> <p>All developments are required to trap litter, oil, grease at source</p>				

Table continued on next page ...

SUDS OBJECTIVES	Greenfield Developments and Brownfield and Existing Development Sites located in catchments of sensitive receiving water systems	Brownfield and Existing Development Sites > 68 688 m ²	Brownfield and Existing Development Sites 4908 m ² – 50 000 m ² and Total impervious area (exist & new) > 15% of site	Brownfield and Existing Development Sites < 4908 m ² and Total impervious area (exist and new) > 600m ²
Protect the stability of downstream channels	24 hour extended detention of the 1-year RI, 24h storm event	24 hour extended detention of the 1-year RI, 24h storm event		
Protect downstream properties from fairly frequent nuisance floods	Up to 10-year RI peak flow reduced to pre-development level	Up to 10-year RI peak flow reduced to pre-development level	Up to 10-year RI peak flow reduced to pre-development level	On-site runoff control measures not required but encouraged where practicable
Protect floodplain developments and floodplains from adverse impacts of extreme floods	Up to 50-year RI peak flow reduced to existing development levels. Evaluate the effects of the 100-year RI storm event on the stormwater management system, adjacent property, and downstream facilities and property	Up to 50-year RI peak flow reduced to existing development levels. Evaluate the effects of the 100-year RI storm event on the stormwater management system, adjacent property, and downstream facilities and property	Up to 50-year RI peak flow reduced to existing development levels. Evaluate the effects of the 100-year RI storm event on the stormwater management system, adjacent property, and downstream facilities and property	Regional off-site runoff control measures to be provided to achieve requirements as for development sites > 50 000m ²
CONTROL QUANTITY AND RATE OF RUNOFF	Up to 100-year RI peak flow reduced to existing development levels. Evaluate the effects of the 100-year RI storm event on the stormwater management system, adjacent property, and downstream facilities and property	Up to 100-year RI peak flow reduced to existing development levels. Evaluate the effects of the 100-year RI storm event on the stormwater management system, adjacent property, and downstream facilities and property	Up to 100-year RI peak flow reduced to existing development levels. Evaluate the effects of the 100-year RI storm event on the stormwater management system, adjacent property, and downstream facilities and property	Combination of on-site and regional off-site measures to achieve requirements as for development sites > 50 000m ²
ENCOURAGE NATURAL GROUNDWATER RECHARGE	Developments adjacent to floodplains must adhere to the requirements of the Floodplain and River Corridor Management Policy	Developments adjacent to floodplains must adhere to the requirements of the Floodplain and River Corridor Management Policy	Developments adjacent to floodplains must adhere to the requirements of the Floodplain and River Corridor Management Policy	Developments adjacent to floodplains must adhere to the requirements of the Floodplain and River Corridor Management Policy
	Where appropriate, site specific requirements to be considered in consultation with Council	Where appropriate, site specific requirements to be considered in consultation with Council	Where appropriate, site specific requirements to be considered in consultation with Council	Where appropriate, site specific requirements to be considered in consultation with Council

As already stated, the applicants are not required to have a series of detention ponds to detain water on-site. As is understood the proximity of the property to the sea means that flood water should be permitted to enter the water ways so that it reaches the ocean quickly – this has been supported by CSR. It is considered better for flood water to reach the ocean quickly so that the rise in flood water is as minimal as possible. Measures however must be employed to minimize the impacts of flood level rise on downstream properties. The measures employed and how it will be effected must be contained in a Stormwater Management Plan.

At the outset, development of the site must ensure, as a matter of course, that best management practice (BMP), which is an international standard, is employed with respect to water quality and reduced levels of run-off. These would need to be demonstrated and accompany said study.

However, the proposal to deviate from policy requirements in respect of water quality seeks to obviate the requirement to satisfy BMP. For this reasons, this deviation is opposed by CSR.

In response, the applicant acknowledges this and that water quality standards in (b) and (c) above must be adhered to. Therefore, related measures employed must be the satisfaction of the mentioned department. This will have to accompany the precinct plan submission.

The CSR Department has indicated that the findings of the applicant's hydrology study in respect of flood level rise as a consequence of the proposal, is accepted. The detail surrounding this will be furnished and contained in a Stormwater Management Plan. However, aspects related to water quality is not supported.

6.2.11 Tall Buildings Policy, 2013

In terms of the Tall Buildings Policy a building is considered a tall building when:

- o It is assessed in relation to its context, and is distinctly taller than surrounding buildings;
- o A tall building is considered to be taller than 35.0m and is located along a higher order street; and
- o A tall building is considered to be 1.5 times higher than the permissible height the permitted in the base zone.

According to the abovementioned criteria, some of the proposed building heights will be tall buildings given building heights in the prevailing landscape. Some buildings will conform to building heights found in the area. An agglomeration of factors will influence heights, such as

- the location of buildings in relation to the prevailing landscape,
- proximity to the river's edge,
- proximity to heritage buildings/areas,
- location in relation to the site edges

Taller buildings and the positioning will have to comply with the policy as well as the urban design policy, the MSDP, TOD strategy, amongst others. This information will need to be submitted at the time of SDP submission.

6.2.12 Urban Design Policy, 2013

The detail of the proposal must give effect to the Urban Design Policy. The scale and level of the development proposal is such that the ability to show detail and therefore illustrate principles is restricted. More detail will be provided at the point of submission of SDPs. The application therefore will be conditioned accordingly.

Principles such as

- overlooking public spaces,
- building built closer to edges of an erf to frame public spaces
- access to amenities on-site
- intensification of the use of land,

must be employed as the detail of the overall design unfolds.

Notwithstanding the preceding point, it is proposed that the lower levels of the building will compromise parking only. In terms of developing sites, it is encouraged that levels that are at grade are in fact used as active edges to offer not only interest to the passer-by but provide eyes onto the public domain. Active edges at grade also offer passers-by an element of safety/security.

Parking of vehicles at lower levels result in sterile edges that are generally not encouraged. In the instance, the ability to respond to such design informants as recommended by the policy is hindered by the location of the property within a floodplain located below the 1:100 year floodplain. The applicant therefore has elected to introduce landscaping along the edges of buildings all of which will accommodate parking on the lower 1 to 2 levels. It is intended to introduce earth against the outer walls of parking levels to enable landscaping to be provided. This measure is intended to mitigate against the impacts that will result as a consequence of providing parking at the lower levels. (This element is discussed further in 6.3.b below.)

The policy also encourages floor-to-ceiling heights that promote later conversion of parking levels to habitable space. As public transport improvements are made it is anticipated that the demand for public transport will increase over time resulting in the decrease use of and need for the private motor vehicle. In this instance such measures will not be possible since parking levels are proposed to be positioned below the 1:100 year floodplain.

6.2.13 Densification Policy

It is proposed to develop the site with a mixed use development including residential accommodation. (The proposal will see 45du/ha being provided.) Densification of the City is vital in terms of social, economic and environmental sustainability.

Densification ensures the gradual restructuring of the City which will contribute toward a more efficient city structure and built form.

The proposal is consistent with this policy's objectives for the following reasons:

- It ensures the optimal and efficient use of infrastructure, services, facilities and land.
- It will enhance the built environment.
- The scale of the proposal is appropriate in the immediate context.
- It provides a mix of land uses, opportunities and integrated living environments.
- It contributes to place-making and the development of attractive safe urban environment.

6.2.14 Parking Policy

The proposal must give effect to the guidance offered in the City's Parking Policy. The property is located in a standard parking area. The applicant indicated that reduced parking is intended so that a departure would be required. The applicant proposes to address this at a later stage in accordance with the level of detail that will unfold. My department agrees with this approach, noting that any such application will be processed in terms of the MPBL.

6.3 **Consideration in terms of Section 99(3) of the desirability of the following criteria**

a) Socio-economic impact

The proposal will provide investment into the area and could be catalytic and stimulate further economic opportunities. The proposal will provide employment opportunities in the short and long term and during and after construction.

On a smaller scale the proposal will also offer a limited number of residential opportunities with access to various opportunities. The proposal includes the intention to accommodate a small component of inclusionary housing that is proposed to comprise about 4% of the overall development although total residential accommodation will be about 20%. The provision of inclusionary housing will provide some previously disadvantaged people with access to opportunities in on the site and in the wider area although the provision of business uses on the site will also provide access to economic opportunities.

Employment opportunities created will have an indirect, positive social impact as a consequence of employment that will be created and the opportunity for employment that will result.

The rehabilitation and upgrade of the open space components of the development seek to broaden access, in comparison to what currently happens, to improved recreation and open space for a wider variety of people.

b) Compatibility with surrounding uses

b.1) Compatibility with surrounding land uses and zones

Various actions are required in order to implement and enable the aims of TOD to be achieved

It is proposed to accommodate approximately 150 000m² of development. The development of the site will occur in two phases or precincts. These phases/precincts are intended to accommodate the following range of activities with associated floor space as mentioned below:

<p>PRECINCT 1</p> <p>Approximately 68 000 m² total floor space (Mixed Use: retail, office and residential)</p> <p>PRECINCT 2</p> <p>Approximately 90 000 m² total floor space</p> <p>Residence: ± 70 000 m²</p> <p>Private School: ± 10 000 m²</p> <p>Office: ± 10 000 m²</p>
--

The property is located in a locale comprising properties with varying uses and zones. As is evident from the illustration below the nearby suburbs of Observatory and Maitland comprise properties zoned for General Residential, Mixed Use, Open Space and Community Zones are located.

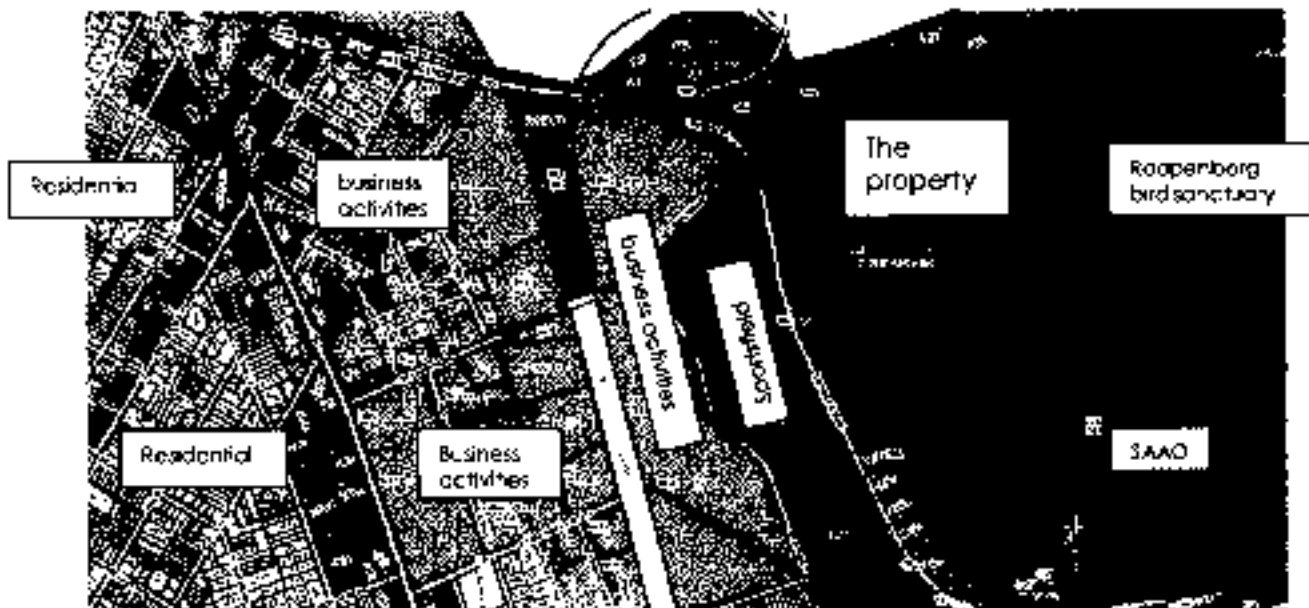


Figure relating to range of Zones found in Observatory

It is also evident that portions of Maitland comprise properties zoned for Single Residential purposes.

The range of uses located in the vicinity comprise offices, retail activities, residential accommodation, educational and recreational activities, factories, medical related uses, amongst others. Similarly, Salt River, to the north-west of the property, also comprises business activities including mainly retail activities with some offices and industry related uses.

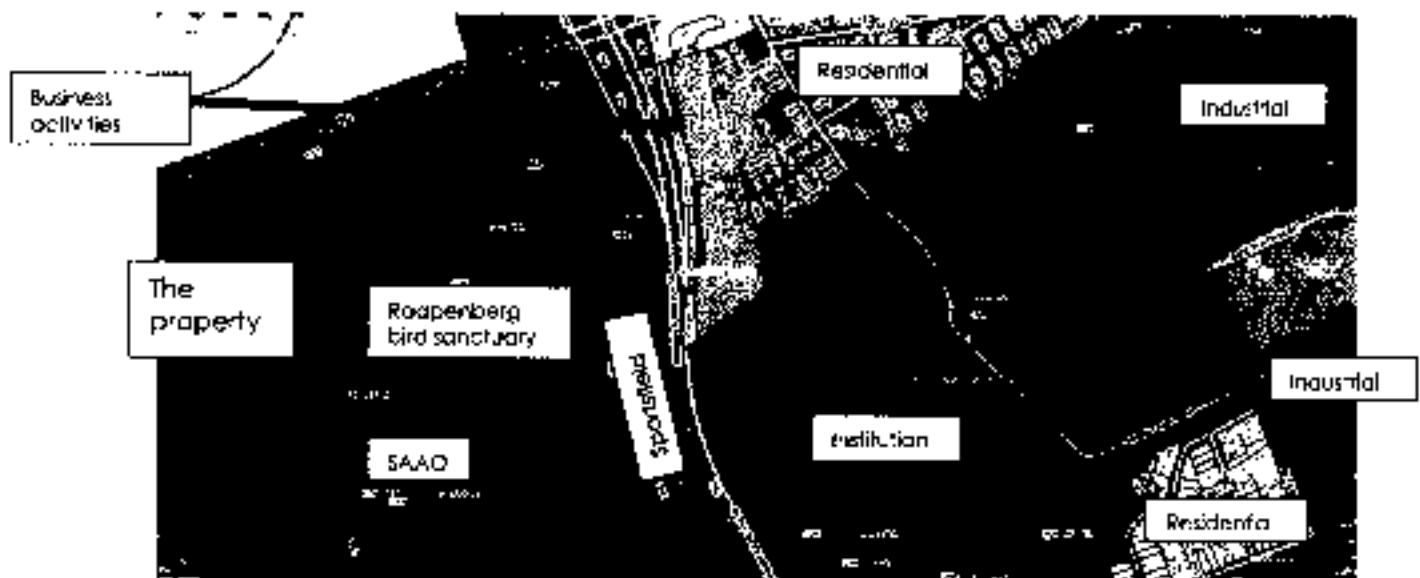


Figure relating to range of zones found in Maitland

Some recreational activities/open space also surround the property.

The range of uses proposed to be accommodated within the development will therefore compliment that found in the surrounding area.

As mentioned earlier the property is located in one of two integration zones identified where investment and development must be encouraged. (The second integration zone is the Voortrekker Road corridor.) The proposal is catalytic in nature and targets development within the metro south-east, a strategic location situated between established urban nodes.

The proposed buildings on the site will be more visible to the SAAD than that presently experienced. Of concern is the likely impact of light pollution on the SAAD being an observatory.

According to the applicant the functioning of the SAAD has changed overtime. It is presently not used for astronomical research. Part of the reason for this is the increased amount of light pollution experienced given the location within a densely populated urban setting. The proposal will therefore not alter this situation.

It is also intended to accommodate 6000m² or 4% of residential uses with a component of inclusionary housing. This equates to approximately 140 dwelling unit available as rental stock. Although the applicant acknowledges the strategic site location of the strategic the number/percentage of inclusionary housing stock is low when compared against overall floor space/development rights sought. Related aspects are addressed elsewhere in this report. However, the intention to provide affordable/inclusionary housing is commensurate with the spatial transformation agenda of the various city policies, strategies and similar types of recent mixed use developments approved. The application will consequently be conditioned.

b.2) Built form compatibility

Sense of place no doubt will be impacted. The existing open space landscape will be altered by the proposal although the proposal may create a new sense of place

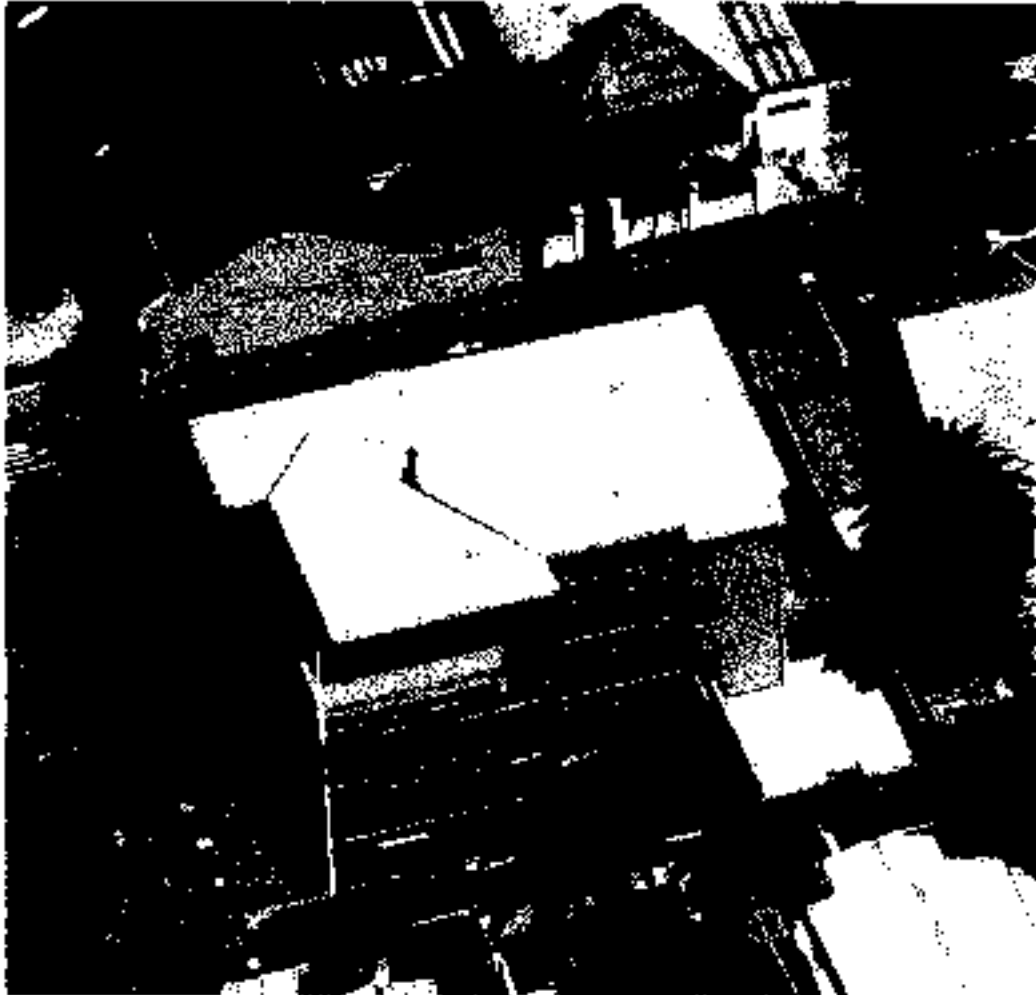
due to the proposed built form comprising building heights, stepping of buildings, roofscape, skylines and recreation spaces.

The prevailing architectural vernacular is varied. Building heights range from single storeys of about 3.0m to multi-storeys of approximately 20m to 30m in height. Further afield in Salt River the highest buildings are generally approximately 15m in height, the only exception being Premier Foods where the silo bins and abutting offices are approximately 49m and 36m respectively.

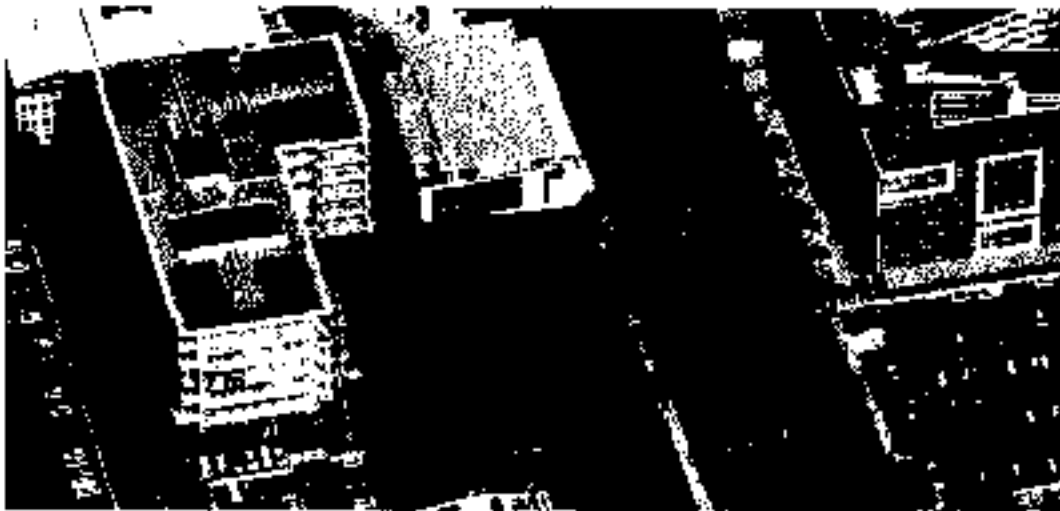


Building heights in the vicinity of the property

[Handwritten signature]



Building heights in residential south of Black River Business Park ±4 – 14m.

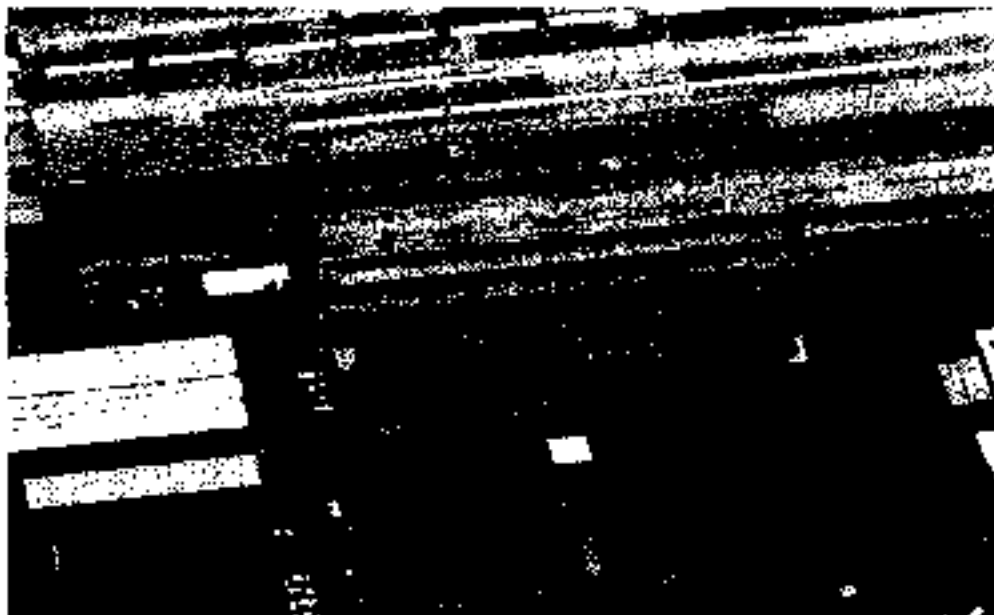


Black River Business Park buildings heights approximately 23m

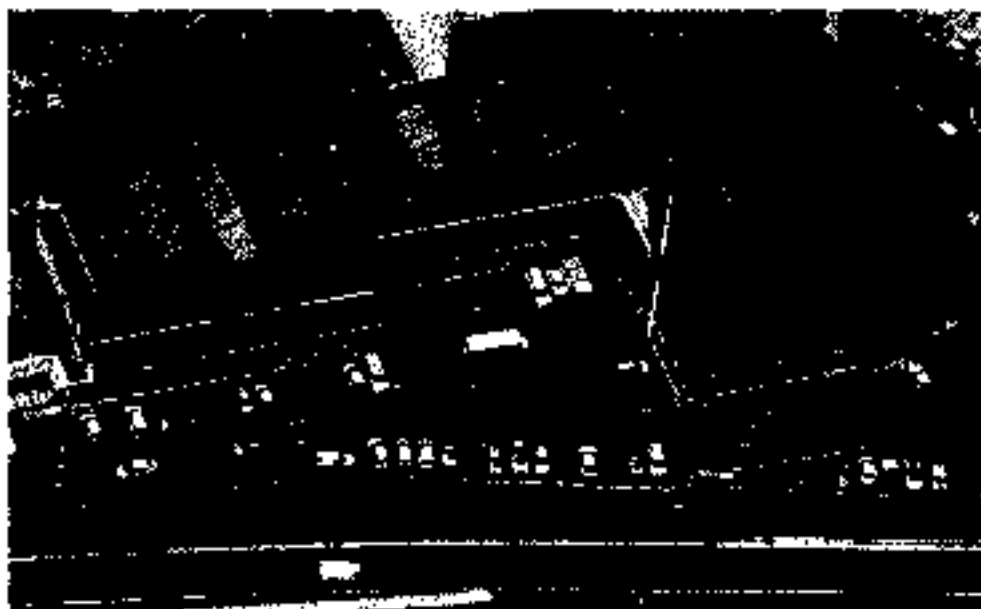
Handwritten signature or initials.



Black River Business Park buildings heights approximately 18m – 21m

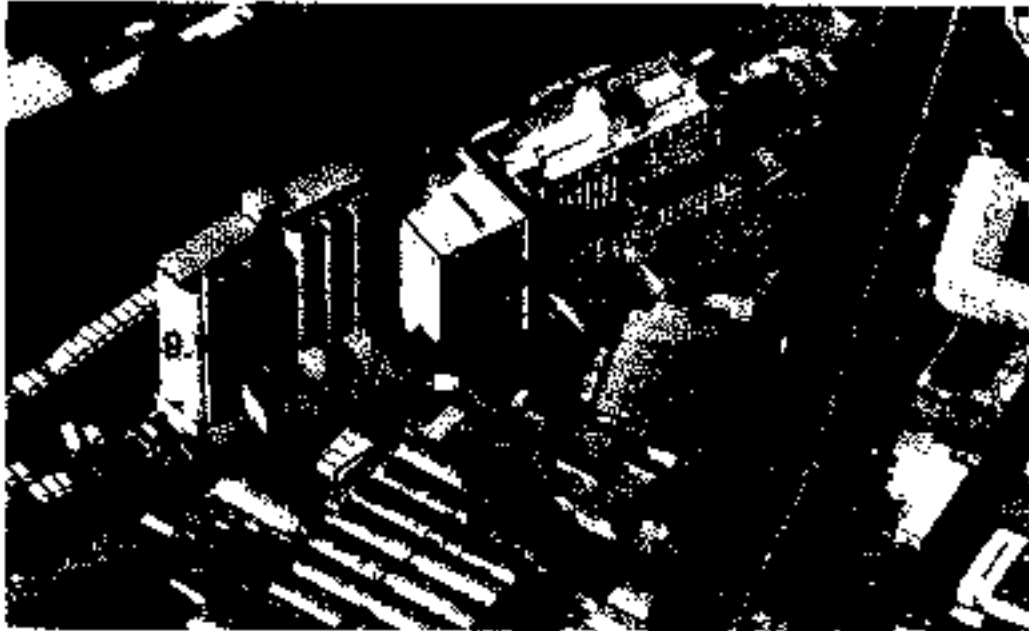


Building heights on PRASA land approximately 15 - 18m



Buildings heights of building is M5 business park approximately 21m:

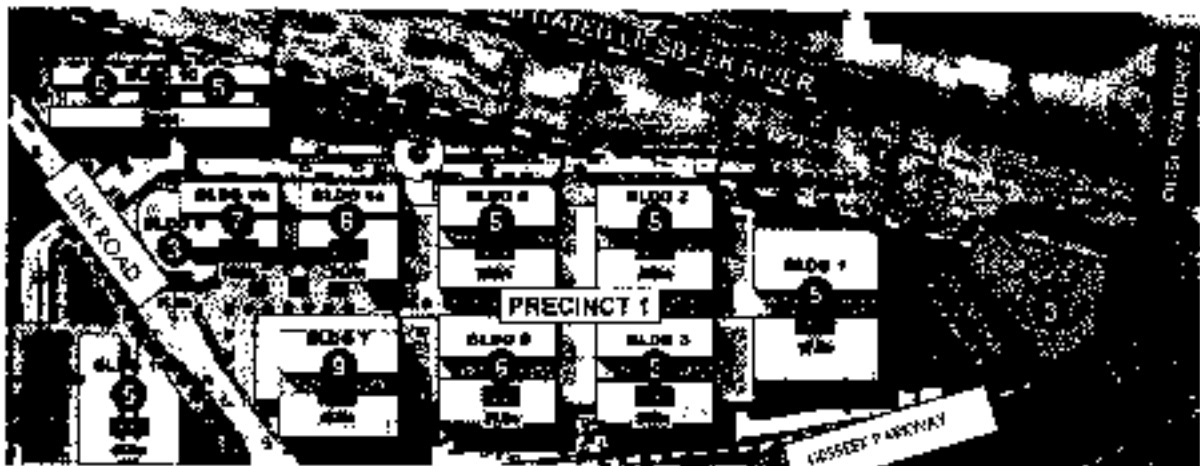
h *21*



Premier foods building heights in Salt River approximately 36m (bins about 49m)

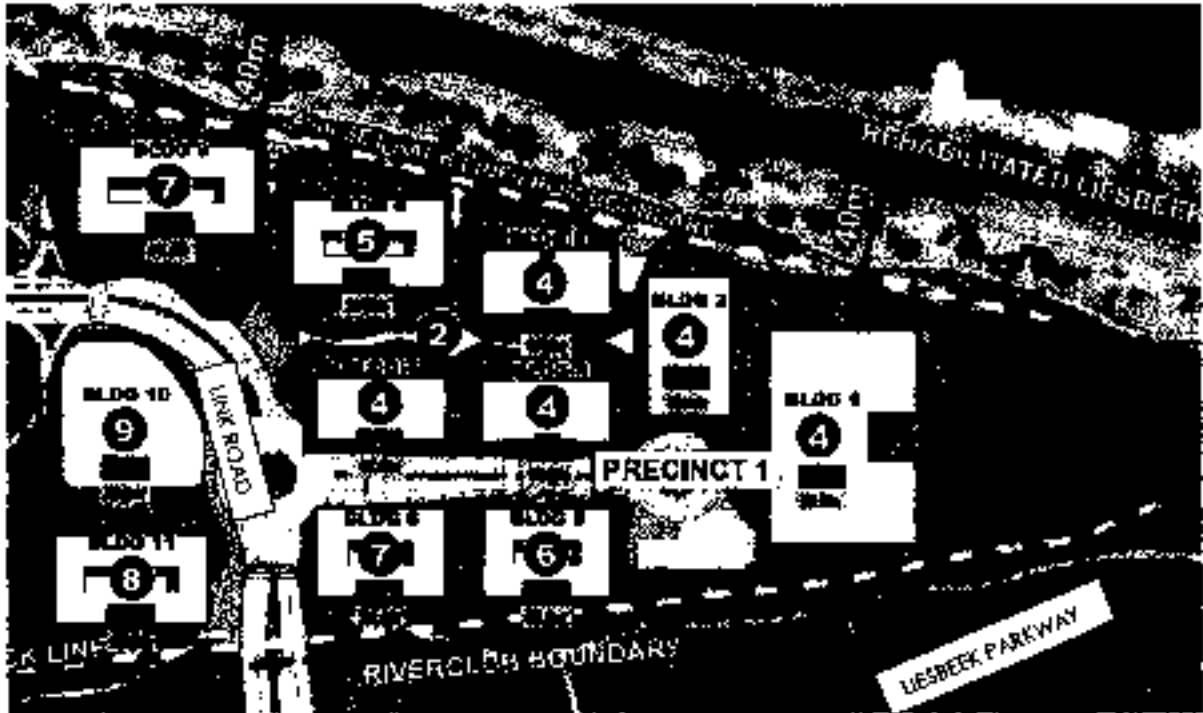
The proposal refers to accommodating buildings ranging in height from about 15m to about 46m in height above base level. Lower buildings are largely proposed to be accommodated near to the existing entrance of the property. Buildings to be located along the Liesbeek Parkway extent of the property will gradually rise as one moves toward Salt River i.e. the northern extent of the property. Buildings located along Berkley Road extension are proposed to be the highest on the site. Buildings oriented toward the SAAO are proposed to range in height from about 11m to about 33m (the 33m high building being positioned closer to Berkley Road extension). These buildings will be located in Precinct 1 and will be bounded by the link road to the west, rehabilitated Liesbeek River and SAAO to the north, the SKA site (Erf 26423) to the east and Liesbeek Parkway to the south.

The initial submission suggested a certain built form. After the applicant responded to branch comments received, it was suggested that the built form will largely remain the same with certain aspects that would change.



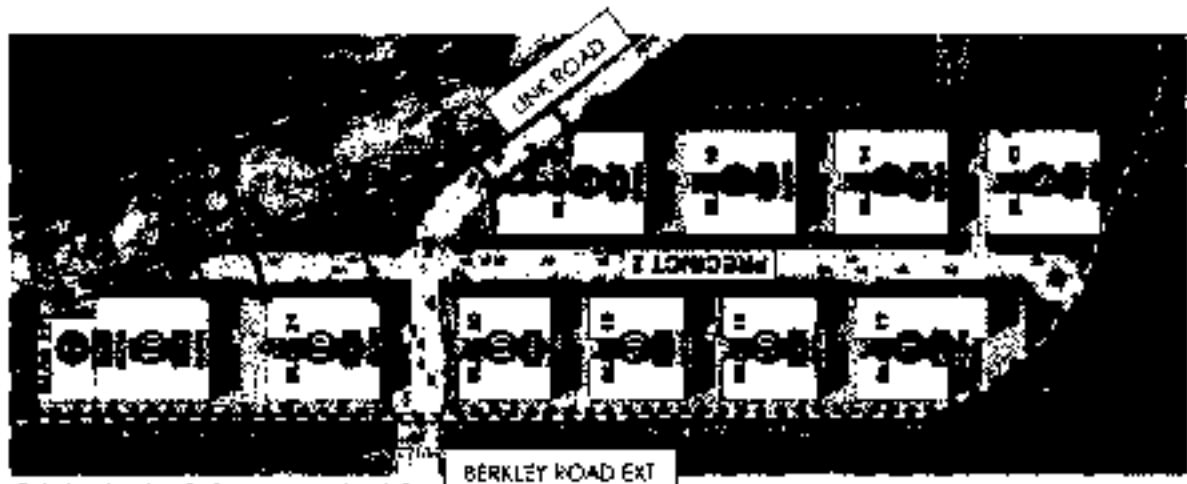
Original submission - precinct 1

[Handwritten signature]



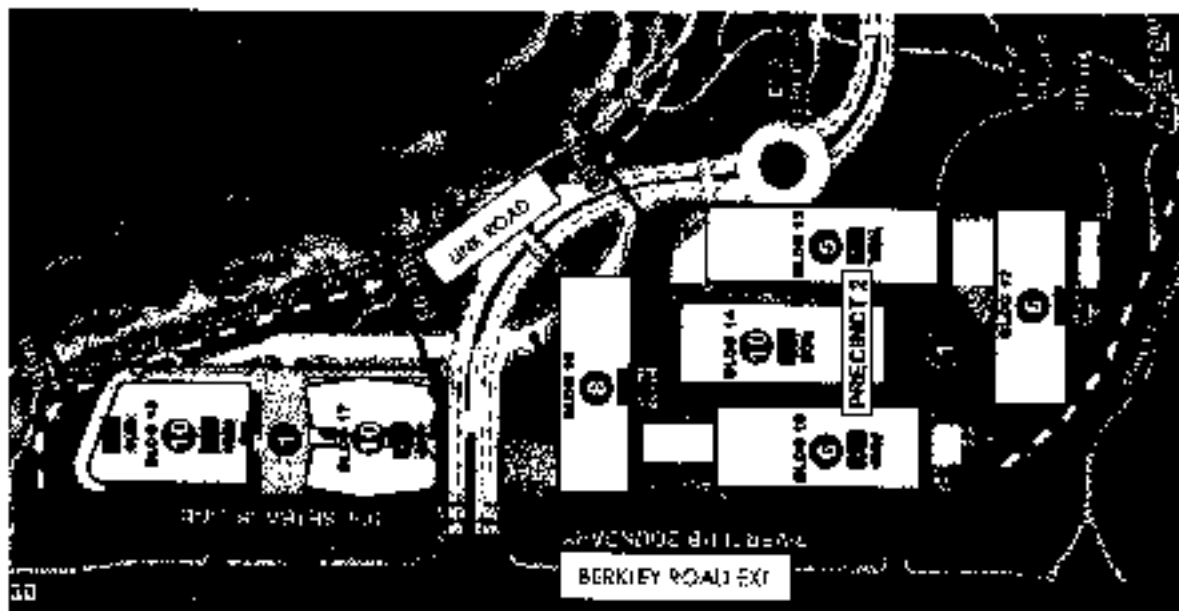
Suggested change to building form – precinct 1

Building heights toward the SAAO are also proposed to be lowered. Building heights experienced along Liesbeek Parkway are similar to that originally proposed. It will appear that buildings are disaggregated to a greater degree. Planting will be provided between buildings. As the proposal enters the final design stages it is imperative that cognisance is taken of the significance of the SAAO being a national heritage site. Some views to the SAAO may be retained even if through view corridors. These will be addressed at the Precinct Plan stage.



Original submission – precinct 2

[Handwritten signature]



Suggested change to building form – precinct 2

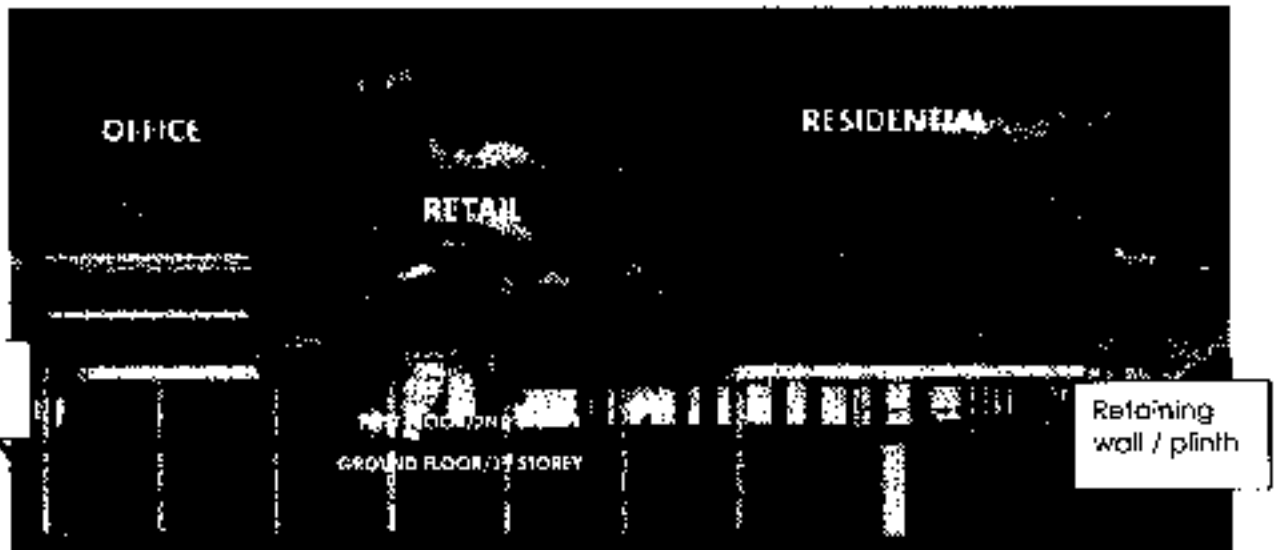
As is evident from the illustrations above, the building massing for precinct 2 has changed from that originally presented. Originally buildings were markedly more disaggregated than that now presented. View lines across the site appear to be somewhat reduced from the original submission. Other design interventions may need to be employed to explore alternate types of massing and form. Whether alternate forms can be explored is uncertain as the applicant has indicated that their desired anchor tenant has largely influenced the change in building massing. While this may be the case, other design interventions could potentially be employed to ensure a better/improved built form.

Buildings along Berkley Road extension are proposed to be about 46m high in certain instances and will define the public realm/edges of the site and overlook the public domain. This may be commensurate with the future prominence of Berkley Road as a main thoroughfare.

Building heights across the site are varied which lends interest to the urban landscape. This is encouraged.

The extent to which views across the site can be preserved is debatable noting that the property is located within an urban environment. Buildings in the instance of both precincts 1 and 2 will be located on a plinth estimated at about 2 storeys high that will accommodate parking. A third plinth accommodated in precinct 2 is the smaller of the three plinths given the link road that gives access to the property Berkley Road.

[Handwritten signature]



The massing as depicted above will be placed on top of each plinth changing the landscape significantly from that presently experienced and the sense of place. The plinths will be masked by placing mounds of earth against retaining walls to reduce the height of structures that otherwise would be very imposing blank facades. The provision of earth mounds or berms provides the opportunity to landscape these spaces. While the landscaping will not reduce its prominence, it is an attempt to present it as more appealing aesthetically.

The Urban Design department has indicated no objection to the proposal. They indicated the need to adhere to requirements related to various city policies which will need to be demonstrated for each precinct and applied at SDP stage. The precinct plan will need to be accompanied by relevant studies.

c) Impact on the external engineering services

The application was circulated to various service branches. These departments largely have no objection subject to meeting certain requirements.

The Electricity Department has indicated that sufficient capacity exists to accommodate the proposal. However, the proposal will use all spare electricity capacity; for this reason, an electrical substation must be provided on-site.

The consequent impact of the development must not compromise electrical supply to the area. This must be considered within the context of the fact that many properties that feed off the existing supply that have as yet not fully taken up existing rights – capacity must therefore be available in the event of those rights being taken up in full. For this reason, an electrical substation must be provided on-site as is required by the Department: Utility Services (Electricity).

However, the applicant has expressed an opposition to this requirement stating that the latter department confirmed that sufficient capacity exists to accommodate the proposal. However, the proposal will take up all existing available electrical supply. Further, since the development seeks additional rights, the requirement for the provision of the electrical substation will compensate of the take-up of electrical supply attributable to that no longer available to the area.

[Handwritten signature]

The electrical substation required will not come on line for a few years. In the process of planning for electrical service provision, said department must anticipate likely demand where existing rights may be taken up. This is important to ensure economic development is not scuppered due to the lack of planning. The Department: Utility Services (Electricity) requires that the electrical substation is provided on-site and that the land is ceded to the City upon the provision of said facility.

According to Bulk Services Water and Sanitation there is no City of Cape Town bulk water connection near the site. Having said this, the City has sufficient water bulk services capacity to accommodate the development. While sufficient water reticulation exists, the relevant department has indicated that the developer will need to provide additional provision for firefighting. The water supply/provision will need to be provided to said department's approval.

The sewer reticulation will see an initial connection being provided on the property that the developer will have to maintain. Sufficient storage capacity must be ensured so that discharge can be undertaken later in the day (possibly at night) when demand has dissipated. While the site should discharge to the Athlone Water Works Treatment plant, no spare capacity exists. In order to accommodate the demand generated by the proposal said department has indicated that it is possible to provisionally connect to the Cape Flats catchment area. Upon upgrading the Athlone Water Works Treatment plant the property could then be connected there. The relevant department has indicated that the developer was advised that a service level agreement is required. The services level agreement will outline the responsibilities of the developer in respect of upgrades and timing of phasing with associated connections.

The Catchment, Stormwater and River Management Department (CSR/M) has indicated that they accept the findings of the hydrology study. The study indicates that while flooding will increase, the increased flood levels are deemed not to be significant and are within acceptable levels. The deviation from the Floodplain and River Corridor Policy is not opposed. They do believe that negative impacts must be mitigated against. Notwithstanding this, the placement of buildings as well as the extent with associated degree of fill must confirm the findings of impact studies undertaken. The submission of any precinct plan must therefore reinforce the findings of the hydrology and hydraulic study undertaken.

It is believed that run-off from the site will have no impact on flood levels as small stormwater events will be attenuated in a series of swales while large stormwater events peak flows off the site approximately 1 – 3 hours before peak flows in the adjacent rivers. As is understood, the CSR/M department has indicated that it is not onerous to the measures given the proximity of the property to the sea to which water will escape.

Escape routes for the development during flooding will be accommodated via Berkley Road toward the M5. An escape route over Liesbeek Parkway cannot be considered as the level of the culvert at that point is too low.

The Floodplain and River Corridor Policy however does not permit development below the 1:50 year floodplain. Said policy promote development above the 1:100 year floodplain. Various measures are proposed to safeguard buildings and life to

ensure development can be accommodated, noting that no habitable spaces will be accommodated below the 1:100 year floodplain. This is explained in detail in preceding sections and is further supported by various studies undertaken during the environmental assessment process and the resultant ROD concludes that the development can be supported.

The development of the site and measures proposed to mitigate against flood level rise will see bio-retention areas, vegetated swales and reconstructed wetlands incorporated into the landscaping. This will ensure that holding a limited amount of run-off from the development is accommodated on-site. These measures must be incorporated into the development as landscaped elements. Buffer zones that will abut onto the rivers also present an opportunity to accommodate flood waters.

PRASA land located to the north of the property, also holds some flood waters. The applicant has indicated that these areas of detention should be retained. Land owned by another entity to assist with addressing flooding on land other than the particular development site (it was suggested that PRASA land possibly be considered to hold some flood waters) cannot be considered as a measure to address the requirements of the proposal. In fact, the Management of Stormwater Impacts Policy expressly states this. Any amelioratory measures employed by the applicant/developer (such as bioretention areas, vegetated swales and reconstructed wetlands) cannot be provided on the abutting City land without the permission of the competent department. Said permission is still to be obtained. Said permission may also include the leasing of City land to achieve measures proposed. However, this would have to be addressed at the Precinct Plan stage.

The studies undertaken suggest that the present rise in flood water is compounded by blockages that occur at the pipe to the weir at the crossing of the railway bridge along the Black River. According to the CSRSM blockages that occur are not intentional and could just as easily be unblocked. It will therefore require regular maintenance by the City to ensure that this problem does not further compound flooding.

Flooding events are likely to increase significantly in the vicinity of the property. The most significant level of flooding will impact the South African Astronomical Observatory (SAAO). The rise in flood waters will likely impact a few buildings positioned closest to that boundary with the Liesbeek River canal. While these buildings are located within a floodplain one of them have some heritage significance and should be protected. In order to compensate for the impacts of flooding it is proposed that the berm along the western boundary of the SAAO (i.e. with the Liesbeek River canal) should be raised by between 0.7m and 1.2m. The applicant states that the existing berm was constructed without the permission of the CSRSM and that the developer will not assume the responsibility for the raising of the berm. However, responsibility for raising the berm cannot be placed on that land owner to safeguard their property against the development now being proposed. The applicant has suggested that the developer will flood proof the one building that has heritage significance while the remaining two buildings should be dismantled and removed. However, contrary to the applicant's suggestion this cannot be imposed on the SAAO. Rather, should other structures require flood proofing, this will be to the account of the developer.

The CSRМ indicates that they are not able to support the deviation from the policy relating to the filling of the old Liesbeek River to accommodate a swale on said land to compensate for flood waters stemming from the development proposed. The old Liesbeek River acts as a filtration system for stormwater coming from Observatory. Additionally, if the Liesbeek River is accommodated beyond the site boundary. Any measures proposed off-site to respond to stormwater retention as suggested will require the permission of the competent department i.e. Catchment Stormwater and River Management Department. Said department has indicated their opposition to this proposal. The applicant would have to pursue alternative measures in consultation with the relevant department.

Various requirements specified by the service departments in respect of engineering services will be imposed as conditions of this application.

d) Impact on safety, health and well-being of the surrounding community

The property is located within a floodplain as described in 5.3 above. Development within the floodplain will displace flood waters. As mentioned earlier, based on modelling the level of flood water rise as a consequence of the proposal is marginal and is therefore deemed to be within acceptable limits. This finding was accepted and confirmed by the CSRМ.

The above impact does not change the manner in which flooding is dealt with. For example, Hartleyvale will be affected by the marginal rise in flood waters. This however does not present a concern. At present in the event of flooding no sporting events take place on the property. The status quo, it is believed, will remain as the sportsfield is rendered unusable during flooding in any event. While Liesbeek Parkway may already experience flooding, the applicant has indicated that signage will need to be displayed along Liesbeek Parkway alerting motorists to possible flooding. Since minimal change will occur as a result of the proposed development, no amelioratory measures are proposed.

In other instances, the marginal rise in water may result in some action/response. During flooding, floodwater spills over onto the roadway. The rise in floodwaters as a result of the proposal will result in additional waters escaping to Liesbeek Parkway. The applicant suggests that warning signs will need to be included along the roadway to inform motorists of the likelihood of flooding during winter months. The applicant suggests that the road may need to be raised marginally as well. CSRМ have said that practical measures should be pursued to prevent flooding of Liesbeek Parkway. Amelioratory measures are proposed in consultation with the relevant department.

One residential property was identified as being affected by flooding as a consequence of the proposal. The developer has indicated that it will bear the burden of any amelioratory measures.

Other properties affected by the rise in flood waters and which already experience flooding, should not be worse off in spite of the rise in floodwater being considered acceptable. A number of properties, in the vicinity, including the subject property, were developed prior to the determination of the consequence of flooding and the City approving policies relating to stormwater and floodplains. These properties have existing rights by way of approved buildings.

Under these circumstances, the onus cannot be placed on those properties to safeguard themselves against the rise in flood levels due to the proposal. The owner/developer acknowledged the need in one instance to intercede to mitigate against flood impacts. The developer cannot place the burden on the affected properties to safeguard themselves against the consequence of flood level rise, albeit marginal, as a consequence of the proposal. Rather the owner/developer should seek to mitigate against such impacts. This may include securing insurances in any eventuality of impacts associated with flooding.

The rise in flood water, it is argued will have the greatest impact close to the property and impact the SAAO. A portion of the SAAO site (located to the east of the property, see figure 5 above) is located below the 1:50 year floodplain. At least 3 buildings located along the edge of the site with the Liesbeek River canal will be impacted by the proposed development.



Figure showing 3 buildings positioned below the 1:50 year floodplain

Buildings 1, 2 and 3 as illustrated above, are all located within the floodplain and as a consequence will be affected by flooding. Building 3 is considered to have heritage value. Modelling undertaken indicated that flood water will rise enough to cause damage to, at the very least, building 1. However, all three buildings should be protected and flood proofed.

In order to protect these buildings, it is suggested that the berm, located along the western edge of the SAAO property should be raised by 0.7m to 1.2m. The berm height could increase to as high as between 3.13m to 4.8m.

However, in order to achieve this outcome, the SAAO must consent to the raising of the berm located on the SAAO site.

The applicant has also indicated that they could flood proof one of the affected buildings while the others could be relocated.

As previously stated, the owner/developer must provide flood proofing of the buildings mentioned. The SAAO cannot be compelled to move buildings due to worsened flood levels resulting from the development. It is however unclear from the study provided what the threshold of the development must be before the impacts mentioned will be experienced. A stormwater management plan will be need to be commissioned that may elucidate this point.

The applicant has indicated that two of the three buildings on the SAAO properties are prefabricated structures. All three buildings appear to exist for longer than 30 years. Each was therefore constructed prior to the existence of current city policy relating to floodplains. The applicant has suggested that the prefabricated structures should be relocated to above the 1:100 year floodplain while the remaining heritage building could receive a floodgate to protect it against flooding. It is imperative that the applicant ensure that the affected properties consent to the measures they propose. Further should the affected property owner not agree for the two structures to move, the developer must seek alternate means to safeguard those buildings. The burden is placed on the developer as the proposal sees flood waters rising, the effect of which will be experienced on said property.

The application will be conditioned accordingly. Further, the applicant will have to incur the cost of raising the berm only after receiving the consent of the affected party or institute other flood proofing measures as agreed to by the property owner, in consultation with the Director: Catchment, Stormwater and River Management.

The development must also have regard to the impact of flooding on prospective occupants of the site. The parking levels will be positioned below the 1:100 year flood plain. The risk to cars and potentially life will be addressed by positioning the entrance to parking levels and habitable spaces above the 1:100 year flood levels. This is intended to reduce the likelihood of these levels flooding. The applicant has also stated that the basements will be designed to accommodate infiltration. Warning systems that presently exist may have to be retained to protect occupants of the site.

e) Impact on heritage

The property is located in a proposed heritage protection overlay zone. While no application is required in terms of the DMS to accommodate the proposal, an HIA was submitted to Heritage Western Cape (PWC) for consideration given the size of the property and scale of the development. A submission was also made to the Department of Environment and Development Planning (DEADP) who have adjudicated the submission.

HWC issued a protection order over the property. While it prohibited the development of the site, that protection order lapsed on the 20 April 2020.

The Liesbeek River, confluence of the Liesbeek River and Black River, is a significant of the property. The significance of the Liesbeek River dates back to pre-colonial times having been used for the Khoikhoi for cattle grazing, the confluence with the Black River. It also gave access to area beyond the Black River and the Liesbeek River and was an area of conflict after the Cape was colonised. The property therefore holds cultural significance to the Khoikhoi/First Nations people.

For reasons stated, the Liesbeek River holds cultural significance. Given this, amongst other reasons, the proposal to infill the Old Liesbeek River is not supported.

This is refuted by the applicant.

It must also be noted that the Department of Environment and Development Planning (DEA&DP) have approved this component of the application. In spite of this, the relevant city department has also opposed this component of the application for reasons stated in 6.3 d) above and 6.3 f) below.

It is proposed to decanalise the Liesbeek River canal and rehabilitate the banks to restore it as far as possible to a natural river system with associated riverine habitat. The area at the confluence of the Liesbeek and Black Rivers should be an area of open space being the point at which an informal bridge was located serving as a crossing toward the east historically. The intention therefore to decanalise the Liesbeek River canal could be incorporated into the memorializing in this vicinity of the site.

The SAAO to the immediate east of the property was declared a grade 1 national heritage site for its scientific significance. The manner in which the proposal interfaces with the SAAO is also important given the heritage status thereof. The positioning of generous buffer zones and planting along the eastern edges of the site could minimize the impact of the proposal on this national heritage site. As part of the response by the applicant to objections, additional information was provided to elucidate some of the intentions of the proposal. Amongst these includes an indication that an increased buffer and lower buildings along that edge will be accommodated. It is acknowledged that views across to the SAAO will be impacted. The proposed increase buffer zone and lowered building heights may serve to reduce such impacts. This sentiment, amongst others, have also been expressed in the Environmental Authorisation.

The TBDP encourages heritage resources to be incorporated into a development such as this. In instances where development is proposed, heritage resources should be optimised. It could serve as a tool to integrate communities. Where heritage resources exist, view corridors to the heritage resource should be provided. As far as possible heritage resources should be commemorated by creating places of memory. The river's edge and the manner in which the Liesbeek River will be memorialised must become a destination place to draw people to other heritage features.

The City's Environment and Heritage Resources Department indicated no objection to the redevelopment of the site although the proposal as presented is opposed. The reasons for this is that it is not considered to be consistent with, amongst others, the Heritage Strategy stating that it does not sufficiently protect and preserve the sense of place, the cultural and heritage elements of the site and its surroundings.

The applicant responded by providing more detail relating to -

- Lowered building heights fronting onto the SAAO;
- Greater buffer and therefore distance between buildings and the SAAO;
- Greater level of integration of the link road through the site;
- Incorporating various elements or ways in which the First Nation history is memorialised;
- The bulk of the site being open space to create a park-like setting;

The proposed decanalising of the Liesbeek River canal and associated landscaping should be accompanied by massing and bulk of a lesser scale than that proposed. Greater levels of openness could be encouraged to preserve the cultural history of the site. The visual impact of the development is pronounced. This is particularly so when considering the intention to raise the level of the ground by 3.0m and more to raise habitable spaces of buildings above the floodplain. The filling in of the Liesbeek River also removes an element of the cultural landscape.

It is acknowledged that the development of the site will change the landscape and therefore alter the sense of place that is experienced regardless of the scale of development. (see point b) above. Having said this, the proposal seeks to have a development form and bulk that exceeds that experienced in the surrounding area. Therefore, consideration must be given to the most appropriate built form for the site.

In this regard, the City's Environment and Heritage Resources Department's suggestion referring to exploring the no-go option or development within the permissible zoning parameters is not admissible since the submitted application has to be assessed on its merits. [Development alternatives are ordinarily considered and submitted with EIA and HIA submission so that nothing precludes the no-go option and development within permissible rights as necessary components of the NEMA and NHRA processes. This consideration is therefore beyond the ambit of this submission]

While some elements of the application furnished when responding to branch comments addressed some concerns, it is acknowledged that the detailed design such as building heights, position of higher buildings in relation to public spaces, etc. of the proposal requires further assessment. The detail is still to be submitted for consideration and consequently the applicant will be required to provide a greater level of detail at a later stage. Therefore, the manner in which the proposal responds to the cultural and heritage elements on and around the property will need to be demonstrated as these features must be celebrated and not overshadowed by the proposal. The need to raise habitable spaces above the ground and the need to mitigate the impacts of possible blank facades (the parking levels), the ability for the development not to have a looming presence over heritage site such as the SAAO, is limited. The landscaping along the common boundary with the SAAO will mitigate this concern. The EA addresses this component.

f) Impact on the biophysical environment

As explained earlier, the property abuts onto two rivers and has ostensibly been used as an open space for many decades despite its location within an urban area. It has served as attenuation during periods of flooding for some time now. In the early 1900's the property was used as a recreational club with limited development to support that function. Much of the land remains open space and has been mainly used for golfing and golfing activities.

The proposal includes the intention for a portion of the development to retain the site's OS3 zoning. The advertised application along with the accompanying subdivisional plan referred to an extent of approximately 51700m² of land that would be zoned for Open Space 3 (OS3).

The applicant, while not amending the application submission but rather responding to branch comments, indicated that this extent would in fact be smaller i.e. 49835m² – this extent relates to land that will be zoned for OS3 purposes. Elsewhere in the response to branch comments the applicant states that in fact 109 520m² will be open space. This will include land zoned for OS3 and General Business purposes.

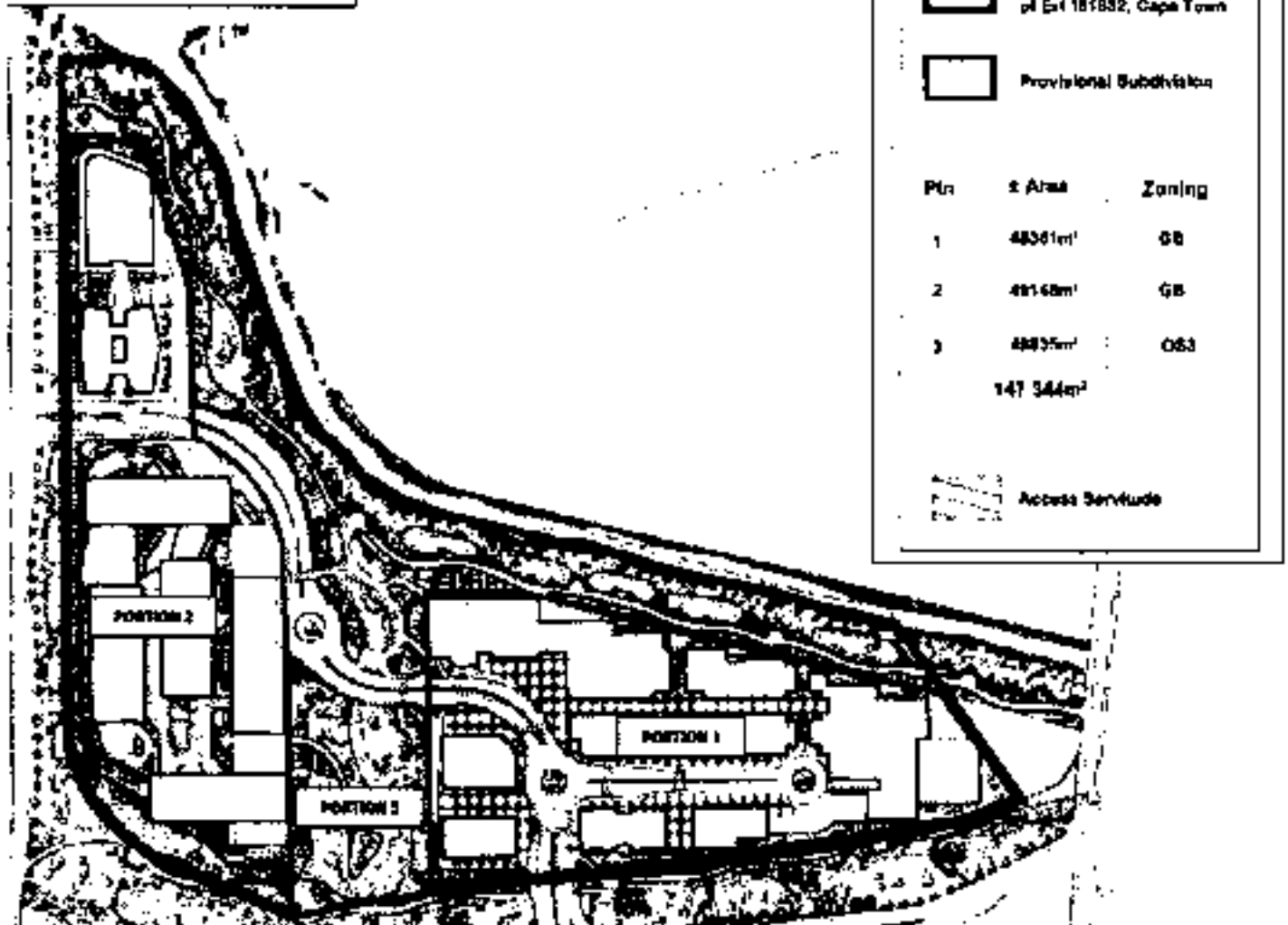
Reference is made to an extent of 109 520m² being open space. It is unclear what is being referred to in this instance. It must be noted that the EA issued incorporates components of into the development that extends beyond the property boundary. It is therefore unclear whether the additional extent referred to relates to the property and landscaping elements within the business precincts or whether the addition extent in fact includes City land.

The landscaping of the site will extend beyond those portions proposed to be zoned for OS3 purposes. Portions of the property comprising precinct 1 and 2 will also be landscaped. It is therefore conceivable that landscaping that will ultimately be undertaken will possibly see the greening of more than 5ha.

The reduction in the extent of land indicated as being zoned for public open space by almost 1865m² is not considered significant. It equates to a variance of less than 1% from that originally indicated, and mentioned previously. The application will be conditioned accordingly to limit the extent of OS3 to the minimum figure indicated above. It must be noted that since the extent of the buffer that must be provided along the old Liesbeek River must be increased, the actual extent of the portion zoned for OS3 may in fact increase.




Provisional Plan of Subdivision



The Recreation and Parks department indicated a no objection to the proposal having had site of the original submission and supplementary information. They require the submission of a master landscape plan – the information furnished is conceptual in nature and does not provide sufficient detail to be considered to be a master landscape plan. The application will be conditioned accordingly.

The Liesbeek River to the east of the property still exists in its natural state while to the west of the site it has been canalised. Canalising the river alters the state of the rivers' natural processes and does not allow for infiltration or riverine habitats to form. The proposal includes the intention to decanalise the river. The decanalised river will see river banks being created. A buffer zone, in accordance with City policy, will be provided along the river's edge. Buffer zones are generally provided to protect riverine habitats and as far as possible reduce the polluting and other negative effects of developments. The width of buffer zones is suggested to be between 10 – 40m depending on the significance of the river system – in this instance it is proposed to be 40m. Wetlands may result in additional buffer strips required. These widths specify the minimum – buffer zones may therefore be greater. The width of the buffer

zone will be determined by the importance or sensitivity of the river and its associated habitat.

Buffer zones protect aquatic life. The buffer zones are important as they provide corridors for fauna and flora to thrive. Buffer zones could become areas used for recreational activity. They could comprise pedestrian walkways and cycle paths. Pedestrian walkways and cycle paths will be provided – the general public will be able to access the site and enjoy the benefit of such facilities. The creation of these paths will enable a wider range of people to have access to the open space than that presently experienced. A public right of way must be registered in favour of the general public across the site to enable this to happen.

At least a 1/3 of the development will comprise open space. In addition to buffer zones, water features, as mentioned above, will also be incorporated into the development. These will be areas where flood waters can be captured during high levels of flooding though water will be directed toward the Black River to drain toward the ocean. During dry periods these spaces will continue to form part of the landscaping within the development.

Amongst the landscaped spaces within the development, open spaces must be included as places where the past is memorialised. This is particularly important to the First Nations people whose ancestors used the land for grazing, as an access point into the interior. It is also the point where skirmishes occurred. They were dispossessed of the land upon colonialization. Keeping areas around the Liesbeek River open as well as at the confluence of the Liesbeek and Black Rivers will be important as places to commemorate past events. Development of the site therefore must be sensitive to this and offer spaces of memorialisation.

New planting will have to be provided to ensure that riverbeds and riverine habitats are preserved despite the development.

Filling in of the old Liesbeek River course is opposed by the CSRM as mentioned earlier on. This will change the ecology of the landscape impacting the biota in the vicinity. In addition to the river having certain historic importance, CSRM states that the old Liesbeek River channel that abuts onto the Liesbeek Parkway is the last remains of the old Liesbeek River. They believe that any further development or proposal that will further degrade the old Liesbeek River channel should not be supported.

However, the applicant believes that the polishing effect referred to by CSRM will not be lost as the new planting will enable filtration and removal of pollutants. The applicant argues that infilling of the river will offer an opportunity for new planting and result in a rehabilitated space. Notwithstanding the applicant's comments, the proposal assumes that the infilling of the river is a fait accompli and will be supported. An alternate has not been considered but will need to be addressed at the Precinct Plan stage.

In response to this concern, the applicant indicates that if a buffer larger than 10m is required or if infilling of the river is not permitted, the rehabilitation of the canal will be lost. Alternates to that proposed must be considered and presented to the CSRM department. As state earlier said department opposes the loss of the existing Liesbeek River given its present function. Additionally, it must be noted that the

infilled river will act as one of the swales to the development. The river however is accommodated off-site and not on the property. Notwithstanding the EA issued, the mandated department therefore would have to consent to the measures now being proposed.

The CSRMs has expressed a concern that the development will result in the loss of an opportunity to rehabilitate the open space.

The Catchment Management policies do not address the infilling of rivers outright but addresses the water quality and detention of water. A certain degree of filling is proposed to provide landscaped edges. The infilling will not raise the level. The findings of the hydrology study have been accepted by the Catchment, Stormwater and River Management department.

Buffer zones range in extent from 10 – 40m and is determined by the competent department i.e. Catchment, Stormwater and River Management. The submission of an SDP will be accompanied by information in the form of Stormwater Management Plan and Landscape plan. CSRMs will comment on said submission at that juncture.

As part of the development proposal, the wildlife on, and stemming from, the riverine habitats and river habitat is noted and therefore the process of construction must be sensitive to this. As far as possible impacts of the development during construction should be minimised – the habitat should therefore be protected. A construction phase environmental management plan (CEMP) will need to be provided which must demonstrate how habitats will be protected.

The applicant will be required to incorporate the sporting, walking, running and cycle paths into the landscaped areas and provide a landscape plan for consideration by this department. The application will be conditioned accordingly.

g) Traffic impacts, parking, access and other transport related considerations

The property is bounded by Liesbeek Parkway which provides access to -

- Malta, Albert and Voorrekker roads in a north-westerly direction;
- N2, M5 and N1 in a southerly direction and
- Station Road that in turn gives access to Nelson Mandela Boulevard and the CT city centre.

The site presently takes access from Observatory Road and gains access via a servitude right of way across remainder Erf 26423. While the servitude right of way will remain in place, it is proposed to provide access from Liesbeek Parkway.

The Department of Transport and Public Works has no objection to the proposal although various road upgrades are required, including:

- Liesbeek Parkway,
- Malta Road,
- Berkley Road,
- Black River Parkway, and
- Settlers Way (N2).

These are all proclaimed Main Roads each of which will be impacted by the proposal. Given the status of these roads the Department of Transport and Public Works (DTPW) will need to be involved in the design of roads. Additionally, the upgrade of certain roads has not been budgeted for by the DTPW and consequently, the City has to ensure that provision is made for said road upgrades. The DTPW also has certain requirements that must be met that will be imposed as conditions to this application. The owner/developer will incur the cost of road upgrades required as a consequence of the proposal. While a development contribution (DC) has been levied for improvements to engineering services, it is anticipated that the cost to road improvements as a consequence of the proposal will likely exceed the DC levied and as a consequence the cost of road improvements may be off-set against the DC charged.

With regard to the provision of parking, the different uses may generate a need for 5849 bays. As is evident from the figures above, it is proposed to accommodate 4801 parking bays on-site.

Precinct	Land Use	GIA (m ²)	Standard Area Ratio	Minimum Parking Bays Required
Precinct 1	Conferencing	1 020 (400 seats)	6 bays / 10 seats	240
	Hotel	6 970	0.75 bays / bedroom + 20	140
	Retail	19 345	8 / 100 m ²	801
	Restaurant	7 820	2 / 25 m ²	626
	Offices	12 835	4 / 100 m ²	513
	Gym	3 465	10 / 100 m ²	346
	Ancillary	1 785	n/a	0
	Education	850	5 / 100 m ²	43
	Residential	7 140	2 / unit	510
Total	55 250		3 221	
Precinct 2	Office	37 825	4 / 100 m ²	1 513
	Residential	19 975	2 / unit	800
	Place of instruction	8 500	1 / classroom	60
	Retail	4 250	6 / 100 m ²	255
	Ancillary	1 700	n/a	0
Total	72 250		2 628	
Minimum Parking Bays Required for Precinct 1 & Precinct 2				5 849

The development will comprise two phases. Phase 1 will comprise approximately 1829 parking bays while phase 2 will comprise 2972 parking bays. A shortfall of 1048 parking bays will exist.

Level	Precinct 1 Parking Bays	Precinct 2 Parking Bays
Level P1	210	1 372
Level P2	210	0
Level P2-basement ²³	0	1 540
Level P3-basement ²⁴	1 349	0
Surface	60	60
Total	1 629	2 972
Combined Total	4 601	

The property is located within a standard parking area and therefore parking must be calculated based on the upper limit of parking provision. Notwithstanding the shortfall of parking, no parking departure has been applied for. A parking departure can only be applied for when the detail of parking and those aspects required to enable access to parking is provided. The detail of the parking layout, access areas and carriage-way-crossings are still to be provided. The detail of aspects of the proposal will be assessed at the time of submission which may be subject to further MPBL processes including public participation.

Various mechanisms can be employed to compensate for the shortfall of parking such as shared parking. The MPBL encourages shared parking. Since the proposal will see reduced parking ratios, shared parking may be possible given the provision of residential accommodation on-site, other uses where the hours of operation may not overlap and the proximity and accessibility to public transport. In those instances, the opportunity for shared parking exists. That requirement must be encouraged and potentially conditioned accordingly.

[At the time of the submission the property was not located in or near to any PT zones. However, in March 2020 the area to the north of the subject property was designated a PT2 zone while the area to the west was designated a PT1 zone.]

It is also proposed that almost 40% of the proposal trip generation is ascribed to accessibility to public transport. As mentioned earlier, even though the site is located within a 500m of two train stations, the walking distance to the train stations is greater. These walking distances must respond to the need of the weakest users i.e. the elderly, disabled and children.

Liesbeek Parkway is not an IRT or BRT route, further there are no plans for it to be established as an IRT or BRT route. These routes have already been determined. The role out of the current IPTN routes is currently underway/in process. Having said this the IPTN is presently under review and consideration, may be given to the benefits of developments of this nature. The location of the site within an integration zone, may also serve as impetus to focus attention on improving access of the site and its surrounds to public transport.

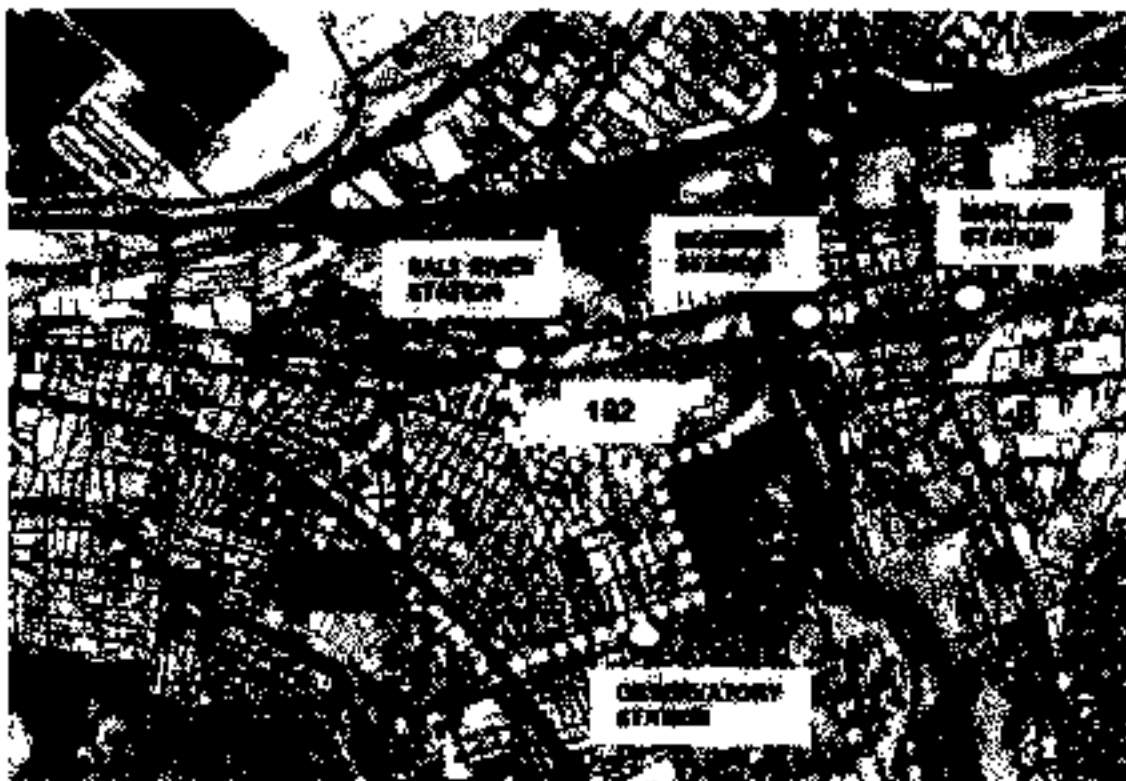
The table below indicates findings from the TIA. According to the TIA Golden Arrow Bus Services (GABS) services are situated close to the site. Upon assessing the information based on the City's viewer, GABS services are in fact located along Main Road Observatory and Station Road - no bus stops appear to be located between

Observatory Station and Liesbeek Parkway. It is therefore unclear how the proximity to GABS bus services was determined in the TIA as this service, [according to the City's information and checking on bus timetables] appears to be defunct. The location of GABS routes is therefore much further than the suggested 2 minutes. GABS routes are located along Voortrekker Road and also Canon Road in Maitland and extend along Berkley Road toward Ndabeni Circle and toward Voortrekker from Berkley Road. The shortest walking distances to bus stops are approximately 15mins from the property when heading toward Maitland.

GABS	±100m	±2mins
MyCiti (closest feeder stop)	>1000m	>10mins
Metrorail (Observatory)	550 – 600m	8-10 mins
Metrorail (Salt River)	>1000m	>10mins
Minibus taxi	±100m	±2min

The nearest MyCiti route is located in Salt River along Albert/Spencer Roads. Mini-bus taxi stops are more accessible with them having more sporadic stops.

Observatory, Salt River, Koeberg and Maitland train stations are located nearest to the site.



Proximity to train stations

Mini-bus taxi routes evolve more organically responding quickly to the needs of commuters. Presently mini-bus taxis travel along Station Road, which is located just

metres away from the property. As mini-bus taxi routes are established it may serve as a catalyst to establish a BRT or IRT route on/along Liesbeek Parkway as demand quickly rises.

Consideration may need to be given by the applicant to accommodate embayments for mini bus taxis to permit commuters to board and disembark. It appears that no provision has been made to accommodate such a facility. The potential may exist to accommodate these on the shoulder of roadways both internal to the development as well as to be incorporated into road improvements around the site as is needed.

While the City's IPTN does not indicate the intention to accommodate a BRT along Liesbeek Parkway, the IPTN is presently under review providing the opportunity for consideration to incorporate routes along Liesbeek Parkway in future planning.

Phase 1 of the development, comprising approximately 65000m² of floor space, will require the construction of a portion of Berkley Road extension to ensure access to Maitland and onto the M5. Berkley Road extension will need to be constructed given existing capacity constraints. It is understood that the extension of Berkley Road has been anticipated for some time. Traffic generated by the proposal will further compound traffic congestion.

For this reason, the developer has acknowledged the need for the construction of Berkley Road and will incur the cost of the construction of a portion thereof so as not to compromise the development. This portion of road must be constructed prior to the completion of phase 1 of the development.

The City may align the construction of the remainder of Berkley Road simultaneous with the developer to complete the whole of the construction thereof to minimise impacts on traffic movement. Other road improvements have been outlined in the TIA which the Director: Transport Forward Planning (Transport Planning) has accepted and requires to be implemented in accordance with the T.A. The application has been conditioned accordingly.

The Link Road that will be constructed through the development between Berkley Road and Liesbeek Parkway will limit access to the development only initially. This will be done to ensure that sufficient capacity exists to accommodate the development. Access control measures will be removed later when the full extent of the Berkley Road extension is constructed. It is anticipated that traffic stemming from outside the development will mainly by-pass Link Road and use a more direct route via Malta onto Berkley to either access the M5 or Maitland. A right of way will be registered in favour of the general public to permit access across the site by the general public.

In addition to the above, surrounding intersections will also need upgrades, including

- Station Road and Liesbeek Parkway – changes to traffic signals;
- Liesbeek Parkway and Link Road – access onto the property from Liesbeek Parkway;

- Berkley Road and the M5 – single lane (in each direction) access from the property via Link Road onto Berkley Road and the M5. Various improvements will be required to said intersection.

In addition, Liesbeek Parkway would need to be widened to enable two lanes in both directions. This only exists for a short distance in the vicinity of the intersection of the site.

While the owner/developer will largely be responsible for incurring the cost of road improvements required as a consequence of the proposal. The extension of Berkley Road will in part be constructed and paid for by the owner/developer. The cost thereof will be off-set against the development contribution as this improvement to the road infrastructure has long since been planned by the City.

For Phase 2 further improvements will be needed to the Berkley Road extension to accommodate the additional floor space and vehicle trips. As mentioned above, while the developer will assume the cost of construction of a portion of Berkley Road, the City will be responsible for the remainder thereof. The necessary service level agreements will be entered into. Therefore, a portion of the DC may be off set against such cost.

In the longer term other road improvements will be required in surrounding roads as well as the N2 and Stefan Roads.

Existing NMT facilities are provided along Liesbeek Parkway up to Observatory Road. While it is intended to provide both pedestrian routes and bicycle paths internal to the development, existing pedestrian and cycle paths external to the development should be integrated with the development. According to the proposal this is intended together with the provision of facilities where bicycles can be secured internal to the development to encourage the use of bicycles.

The application was advised to the City Transport Planning Department and the Asset Management and Maintenance (Roads) Department. Both departments issued their no objection to the application. They each issued certain requirements to accommodate the development. These include various road improvements as mentioned in the TIA. These requirements will be imposed as conditions of approval to the application.

h) Conditions that can mitigate any adverse impacts of the proposed land uses
Conditions will be imposed relating to, amongst others -

- Built form addressing, specifically, the interface of buildings at grade and in relation to the public realm.
- Maximum floor area with a register that accompany future submissions that keep a record of floor space development.
- The provision of a landscape master plan and landscape plan dealing with planting, hard surfacing, in relation to structuring elements like pedestrian walk ways, running and cycle tracks. The location and design details relating to public spaces and vehicular movement. The detail would need to be addressed at SDP stage.

- A transport plan showing the provision of roads, pedestrian sidewalks, cycle paths and the provision of public transport collection points internal to the development and on the perimeter of the development.
- A stormwater master plan is required to address stormwater run-off and flood management and how this will be dealt with in detail.
- Development contributions.
- Service provision prior to registering the subdivision.
- Servitudes to be registered in favour of the general public.

6.4 Impact on existing rights (other than the right to be protected against trade competition)

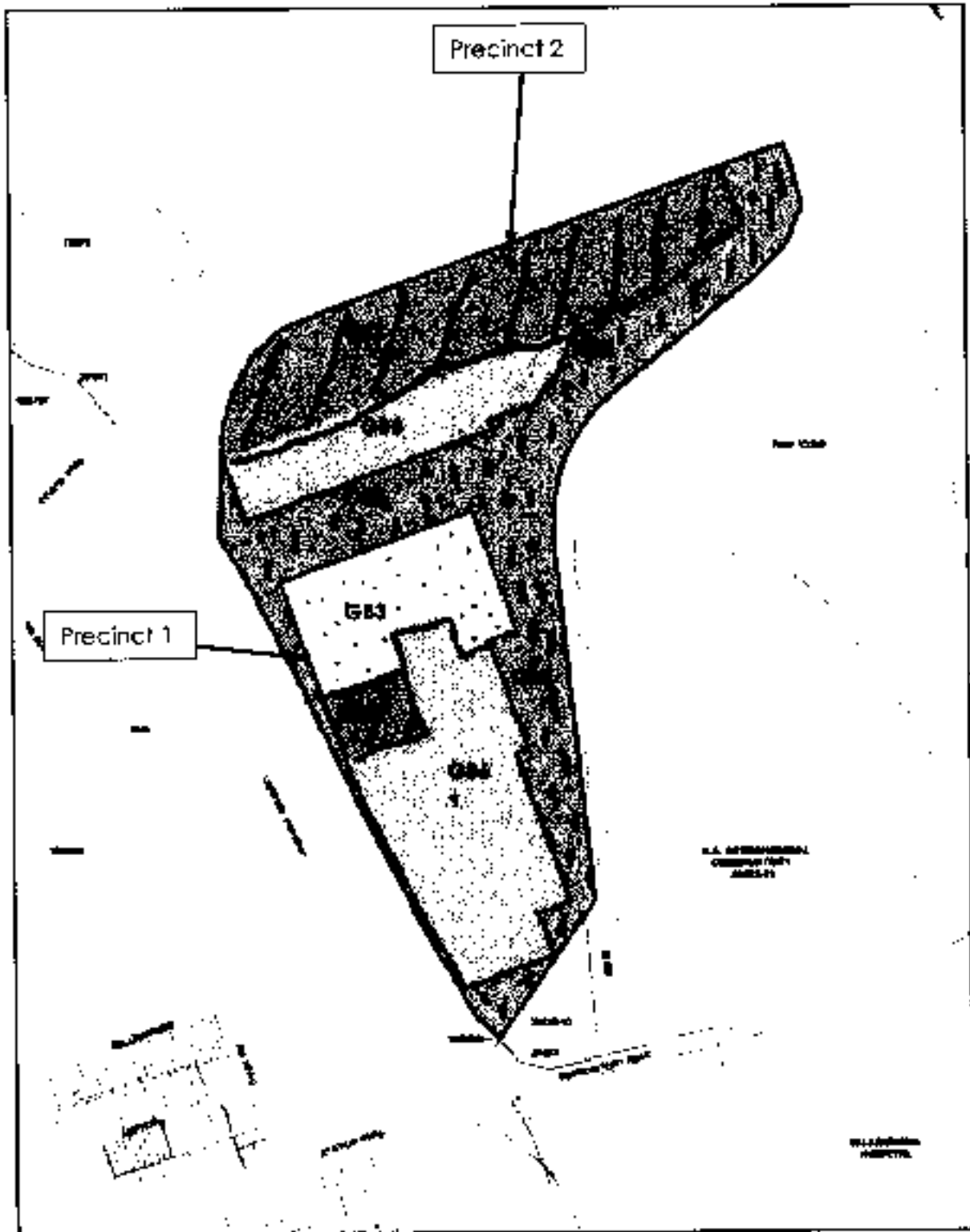
The application submission comprises three components i.e.

- Rezoning to Subdivision area
- Raising of the ground and
- Deviation from policy.

These will each be addressed in turn.

6.4.1 Appropriateness of the rezoning of the property to subdivisional area

The current OS3 zoning permits only open space and environmental conservation as of right. Uses such as Places of Assembly, Places of Entertainment, Place of instruction, tourist facilities, environmental facilities and plant nurseries, amongst others are permitted with Consent in the mentioned zone. As mentioned earlier the property is located within the metro-south east where mixed use intensification is encouraged. The rezoning of the property will enable the redevelopment in accordance with this demarcation in terms of the MSDF.



It is proposed to rezone much of the property to a General Business use zone. In accordance with the abovementioned illustration it is intended that approximately 98 500m² of the property is zoned for GB3, GB6, GB7 while OS3 zoning will be retained for about 49 835m² of the property.

The subdivision plan provided does not define the extent of each sub-zone. The extent for each should have been furnished with the submission. An application will

need to accompany the precinct plan showing the relevant detail of each sub-zone as advertised and applied for.

The prevailing zonings in the area and properties in the vicinity of the subject property comprise GR2, GR4, MU2, OS2, CO1 and CO2. To the east of the M5 properties are zoned for MU1, GB1, GR4, CO1, CO2 and SR1. The development envelope for the General Residential, General Business and Mixed Use zones for each of the properties is indicated in the table below.

Table of rights for surrounding zones:

Sub-zoning	Coverage	Floor factor	Maximum height above base level to top of roof
GR2	60%	1.0	15.0 m
GR4	60%	1.5	24.0 m
GB1	100%	1.5	15.0 m
MU1	75%	1.5	15.0 m
MU2	100%	4.0	25.0 m

Sub-zoning	Street building line and common building line			
Points on a building above base level:				
up to 10.0 m	over 10.0 m and up to 25.0 m	over 25.0 m and up to 38.0 m	over 38.0 m	
GB1	0.0 m	4.5 m (0.0 m for common boundary)	N/a	N/a

Sub-zoning	Street building line and common building line		
Points on a building above base level:			
up to 10.0m	over 10.0 m and up to 25.0 m	over 25.0 m and up to 38.0 m	
MU1	0.0 m	4.5 m	N/a
MU2	0.0 m	4.5 m	N/a

As is evident from the tables above, and when compared with the tables below, the only point of overlap or similarity exists between the MU2 and GB3 sub-zones. One could argue that the GR4 sub-zone is largely comparable given the permissible building heights, floor factor and to some extent coverage. This zone only differs from the aforementioned two zones in that it does not permit non-residential uses apart from a shop comprising a limited extent.

Table of rights for proposed zones

Sub-zoning	Coverage	Floor factor	Maximum height above base level to top of roof
GB3	100%	2,0	25,0 m
GB6	100%	6,0	38,0 m
GB7	100%	12,0	60,0 m

Sub-zoning	Street building line and common building line			
	Points on a building above base level			
	up to 10,0 m	over 10,0 m and up to 25,0 m	over 25,0 m and up to 38,0 m	over 38,0 m
GB3	0,0 m	4,5 m (0,0 m for common boundary)	N/a	N/a
GB6	0,0 m	0,0 m	(H minus 25,0 m) divided by 2 (0,0 m for common boundary)	N/a
GB7	0,0 m	0,0 m	0,0 m	(H minus 38,0 m) divided by 2 (0,0 m for common boundary)

The GB3, GB6 and GB7 sub-zones will be unique to this property and this context. While, as stated the GB3 zone is comparable with the MU2 zone, it too will be unique to this location. Many properties in the vicinity of the subject property have not been developed to the full extent of their rights. Many buildings do not exceed a height of 15m, some extending to 18.0m while the "taller" buildings that are much lesser in number, in the vicinity are approximately 24m in height. As is evident from the table above properties in the vicinity are zoned for GB1 and MU1 and properties zoned for MU2 purposes are permitted to have 100% coverage but are not permitted to exceed a height of 15.0m and 25.0m each, respectively. The GB3 zoning is very similar is not opposed.

The proposed GB6 and GB7 zones is proposed to be accommodated in both precinct 1 and precinct 2. A third sub-zone, GB3, is proposed to be accommodated in precinct 1, see below.

Cape Town CBD could be argued to be the economic hub of Cape Town metropolitan area. This area uniquely accommodates tall buildings with greater areas of floors space and a wide range of uses. The vertical and horizontal intensification of uses and development is unique to this location when compared against the wider metropole. While other CBDs such as Claremont and Bellville experience zones of lesser intensity, and as a consequence, are not comparable to Cape Town CBD in respect of the presence or prevalence of GB6 and GB7 zones. Claremont CBD is generally characterised by GB5 and MU2 zones while Bellville CBD mainly has GB4, GB1 sub-zones. One property in Bellville CBD has a GB6 zone which exists as an anomaly amongst the latter mentioned zones. Other than this only four other instances exist in the Cape Town metropolitan area where a GB7 is located which are exceptions being:

- One appears to be a zoning conversion error;

- One is located in an industrial area, and
- The remaining two are both located in or on the fringe of CBD areas.

The property is not located

- near or on the edge of a CBD or for that matter near to or on the edge of Cape Town CBD;
- near properties where developments with a similar built form exists, or
- in an area of transition where the stepping of buildings create a buffer between areas.

Therefore, the rezoning of the property to a GB7 zone could be argued to be undesirable. It is located on the back of Main and Lower Main Roads – each of the latter being linear corridors that should be greater levels of intensification. They are established corridors with associated support infrastructure such as established public transport routes, amongst others. The rezoning to GB7 is an anomaly with this context especially given the floor factor of 12.0 and maximum permissible height of 60.0m. While it is proposed in this instance to accommodate buildings of up to 46.0m in height above base level even said height is excessive given the prevailing landscape. Therefore, the proposed 46.0m buildings height as proposed will be peculiar to this location. Much the same can be said for the GB6 zoning proposed as well. In planning the principle generally is that existing nodes and corridors are generally reinforced through processes of intensification. This property is not located in or near a CBD that may justify the zoning proposed for reasons stated earlier. While the desire may be to accommodate signature buildings in certain instances on the site to create a renewed sense of place, this can easily be achieved with buildings not higher than 38.0m given the prevailing landscape. This may therefore justify the GB6 zoning especially since additional height above 25.0m can only be achieved through a rezoning application. It is however acknowledged, as stated above, that even the GB6 sub-zone will be peculiar in this context. A precinct plan submission will be required to give effect to the built form within the context that is proposed. It will afford departments the opportunity to give further input where needed.


The location of the property on Liesbeek Parkway as the one boundary and Berkley Road as the other, will justify taller buildings along these edges. The intention to accommodate taller buildings along portions of Liesbeek Parkway and Berkley Road may be understood given the significance of these roads. Additionally, taller buildings will frame public spaces. However, having said this, other factors such as

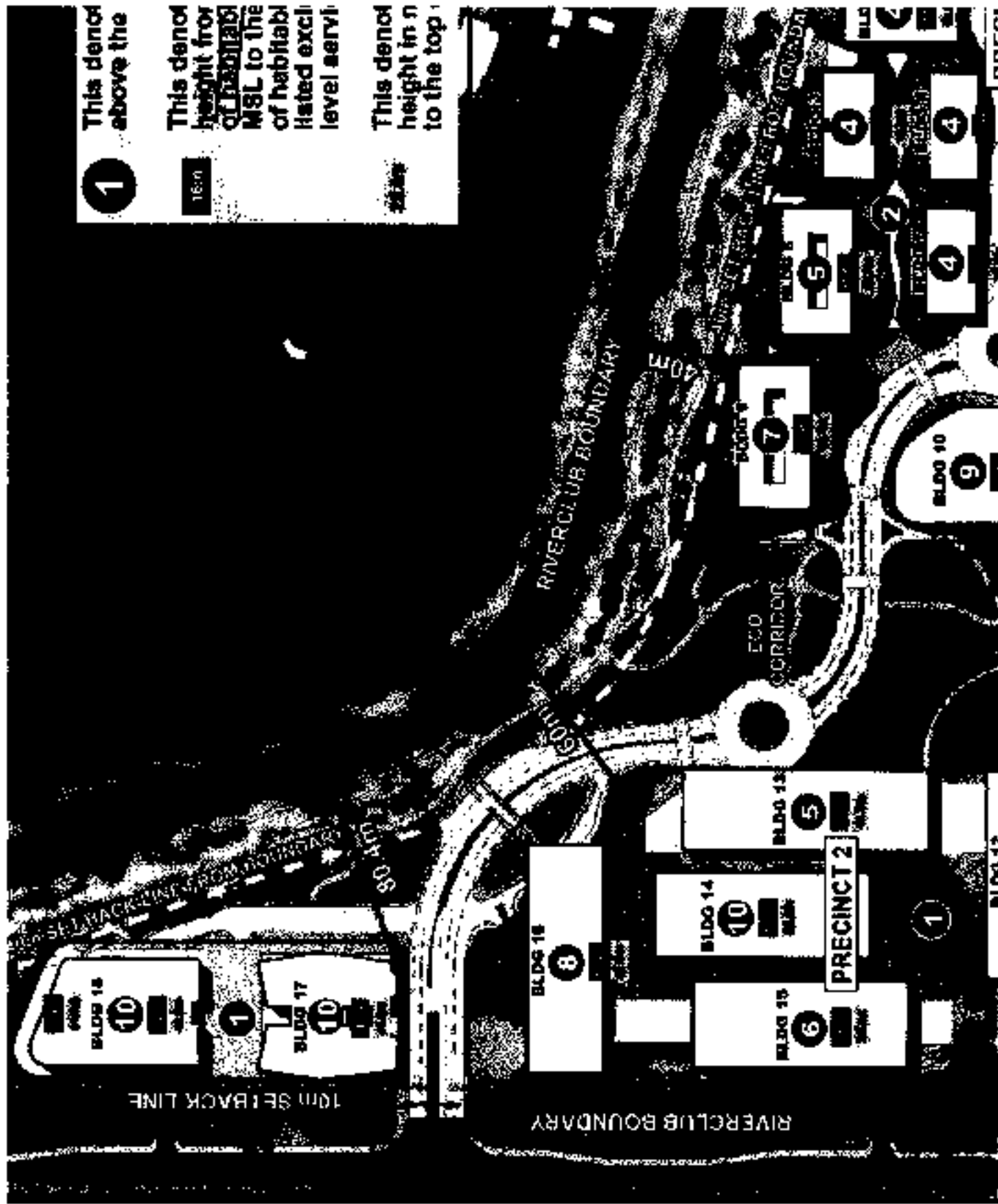
- the historic significance of the SAAO and the need for view lines to be preserved across the site to view these buildings;
- the significance of the Liesbeek River and need to respect the heritage importance that it holds for certain cultures and communities, and
- provide views to the mountain

will influence the final form of buildings on the property.

Properties in the area are generally not developed to their maximum permissible rights. While some properties may, as a consequence of this proposal, be developed further, they will still not reach building heights, or floor factors as proposed.

Heights shown on illustrations further also denote height above base level. Two different heights are indicated being the height to the uppermost habitable space and height to the top of roof according to illustrations contained in the motivation, see note below.





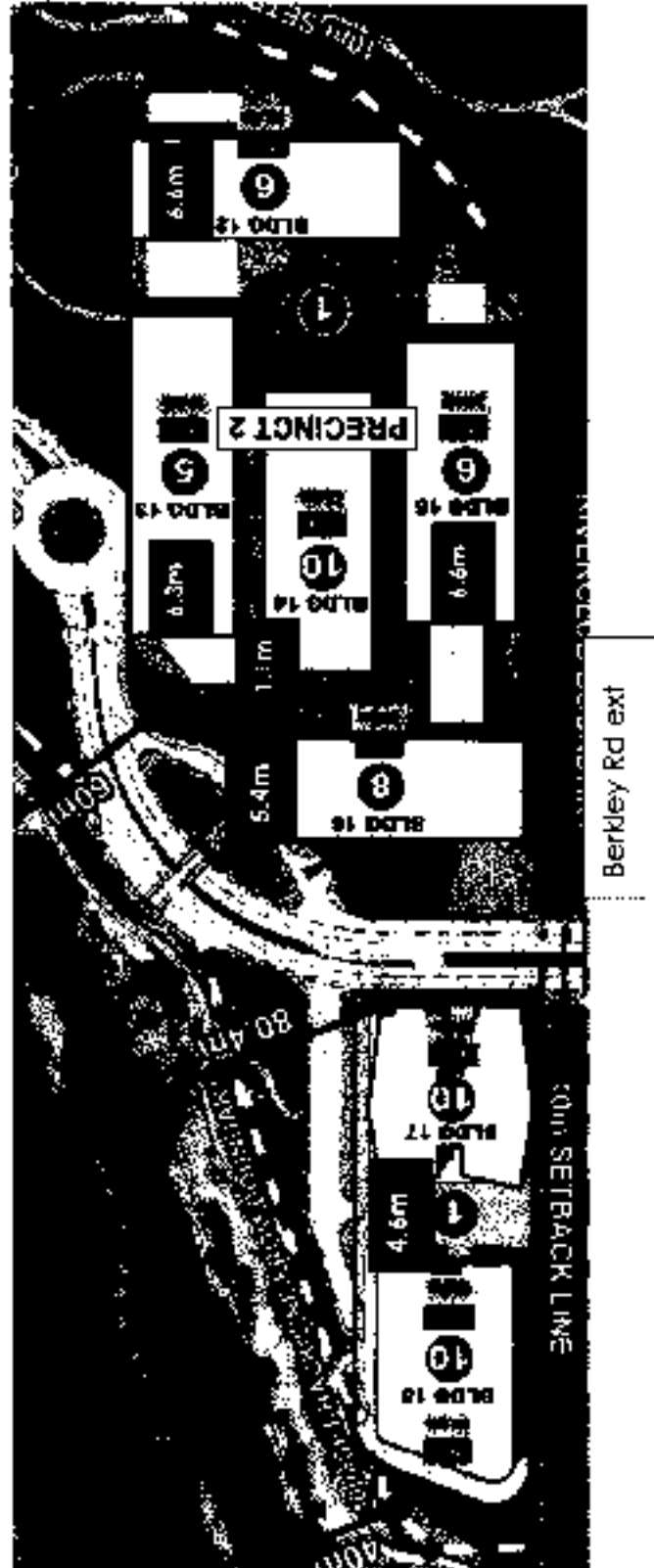
1 This denotes the height above the

This denotes the height from the top of the MSL to the highest existing level

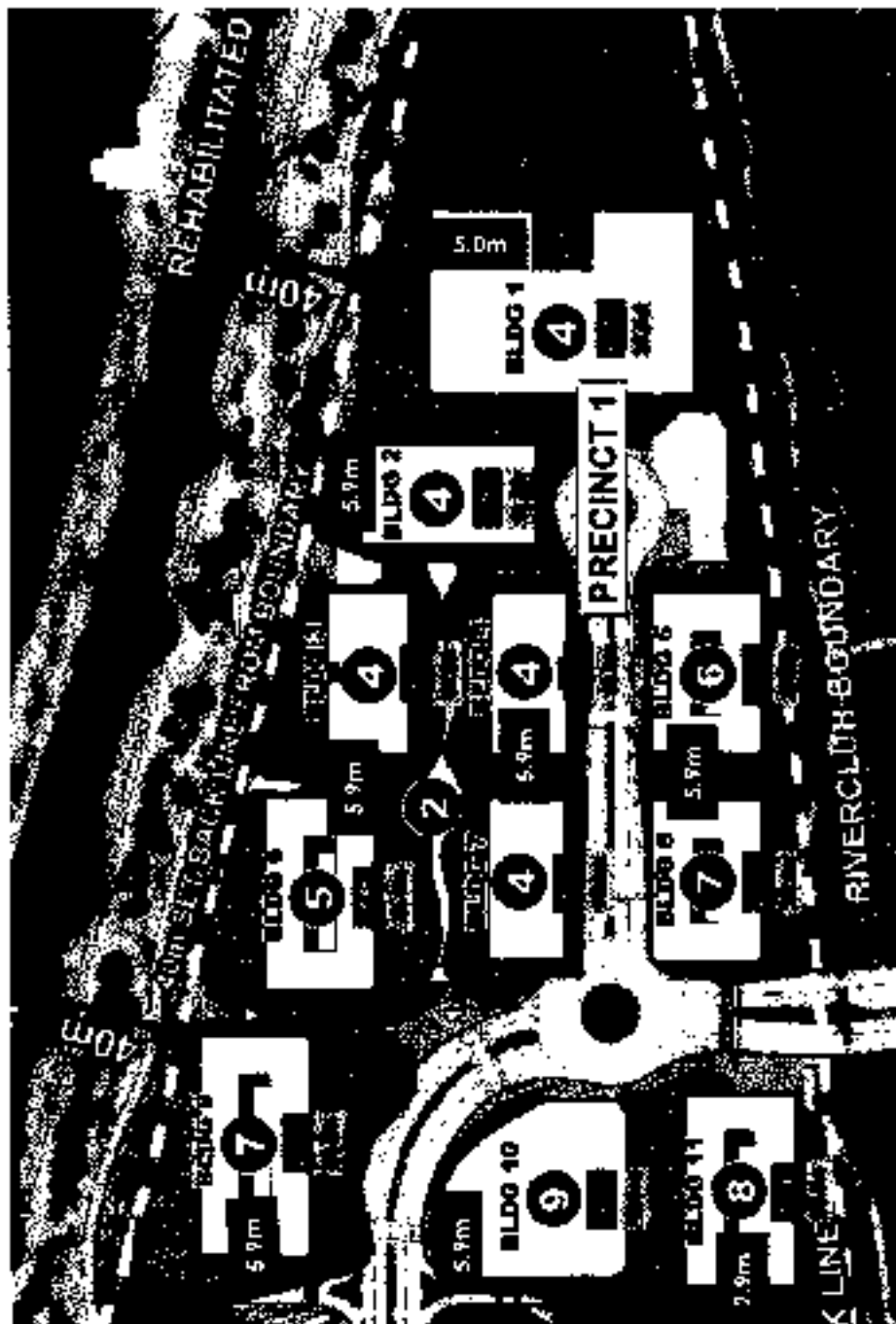
This denotes the height in meters to the top of the

Handwritten signature or initials

Services will be provided on top of the roof. Heights between highest habitable spaces (i.e. top floor) and roof height vary from 1.1m to 6.6m. (The figure in black illustrating the heights from top of highest habitable floor to top of roof height. Any height exceeding 2.4m enables the opportunity for additional floors to be inserted beyond that proposed.)



Handwritten signature



It is unclear why such significant differences exist between top of habitable floor and top of roof height. In fact, such a significant difference in height further supports the argument that building heights to top of roof could be lowered. Generous roof heights as proposed supports the argument that building heights can in fact be lowered.

As described above in point b) buildings will be placed on plinths. Mounds of earth will be placed alongside what may otherwise appear to be large blank facades with heights of 5.7m and 5.9m. The mounds of earth offer the opportunity for landscaping. The earth mounds will appear to raise the level of the landscape. The openness

presently experienced, one accepts will change and therefore will no longer be experienced. The presence of the earth mounds will raise the level of the landscape. Added to this the presence of buildings taller than that presently will be significant. Providing 38m high buildings within this context will be unique to this location. As mentioned earlier building heights in the immediate context is considerably lower. A single taller building exists further field and is not experienced in the vicinity of the property. The provision of buildings at 38m in height therefore will adequately fulfil the function of enabling signature buildings on the property at a gateway point traveling along Berkley or Malla Roads. These will also serve a landmark function and therefore a renewed sense of place.

A base level certificate was furnished. Additionally, illustrations provided show base levels for each precinct. A building footprint on which the base levels were determined must be used as the basis for the building envelope in each instance. The base level certificate provided makes reference to a building envelope for the determination of height. Building heights in this instance will be determined from the calculated base level.

While precinct 1 has a superblock on which buildings will be placed and served as the basis for the determination of that base level it is unclear how this determination was made for precinct 2. Precinct 2 appears to have 2 super structures that will accommodate parking. The base level in that instance must be determined for each superstructure separately. Heights of buildings therefore can only be determined based on that. In the absence of a correct base level certificate for precinct 2 any future submission will require height to be determined based on existing ground level as is required in terms of the amended MPBL that came into effect on the 3 February 2020.

Portions of the property that will retain the OS3 zoning will be landscaped and comprise buffers to river corridors and wetlands. These spaces will need to be registered in favour of the general public to enable access to the water's edge and for people to enjoy these spaces. Given the heritage significance of the Liesbeek River, access to the river and also to the point at the confluence of the Black and Liesbeek Rivers is important in respecting the heritage value of these spaces to others. As stated previously, a right of way in favour of the public will be registered. This will enable a greater number of people to use the space than is presently experienced.

The property will be subdivided into three portions, i.e. two portions comprise mixed use activities including mainly business activity with some residential activity. The third portion will be zoned for Open Space 3 purposes.

Figure 18: Provisional Plan of Subdivision

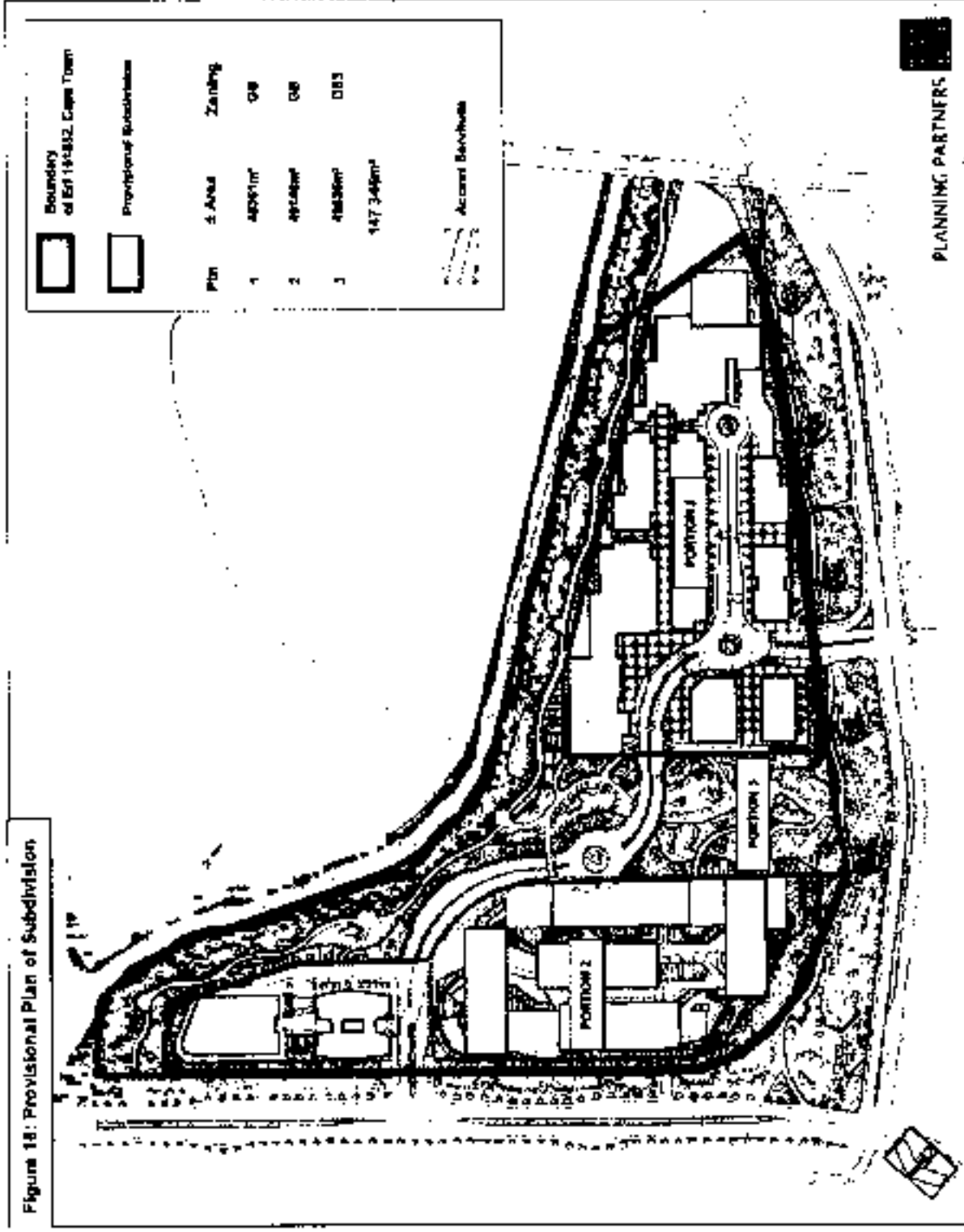


Figure illustrating Subdivision and rezoning proposed

The portion zoned for OS3 purposes will comprise pedestrian paths, walking and cycle paths and must give access to the general public. As mentioned previously, despite the subdivision into the portions mentioned, the property will comprise a public right way that will enable vehicular access across the site between Liesbeek Parkway and Berkley Road extension in addition to given access to the public across the open space. While a 1/3 of the property will accommodate the OS3 zoning, some spaces comprising the general business zoning will comprise planting and hard and soft landscaping to give as much as is possible of this space too to greening.

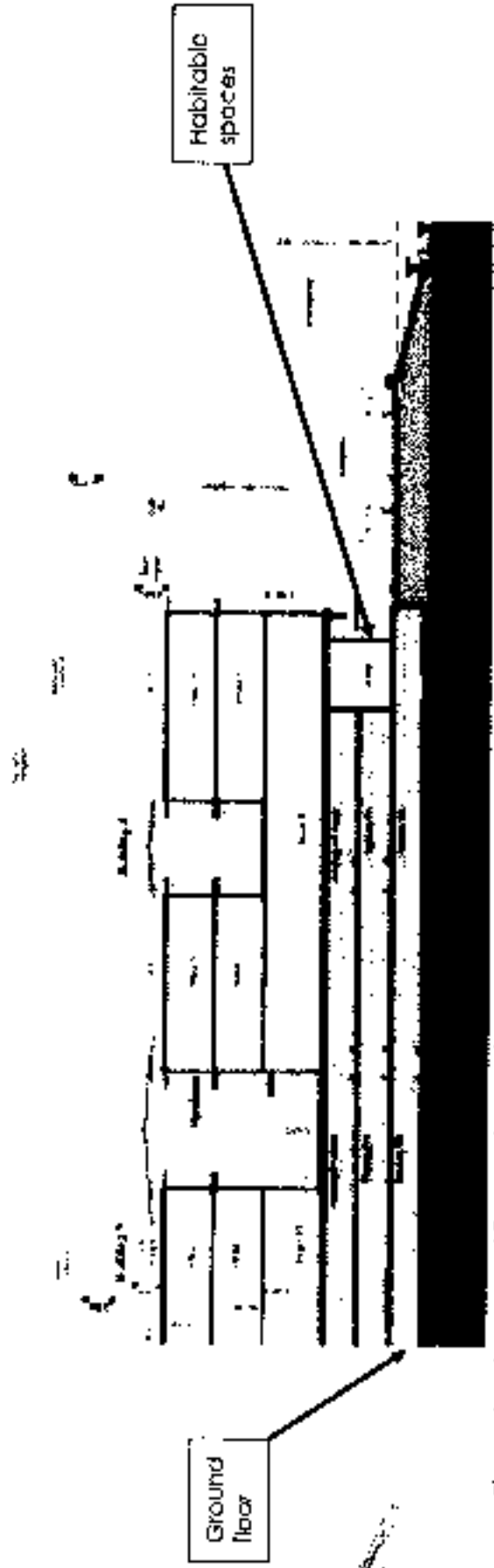
A subdivision plan must be submitted illustrating the exact cadastral extent of each of the portions mentioned as well as indicating the zoning of each portion. That subdivision plan will have to be the subject of a subdivision application that will be considered at the time of submission. The application will be conditioned accordingly.

6.4.2 Retaining structures exceeding 2.0m above EG:

It is proposed to accommodate retaining structures above 2.0m in order to ensure that habitable spaces are positioned above the 1:100 year floodplain. For reasons mentioned in 6.2.9 above habitable spaces must be raised above the 1:100 year floodplain. For this reason, the application includes the intention to accommodate retaining structures of 5.7m and 5.9m exceeding the permissible height of retaining structures by 3.7m and 3.9m for precinct 1 and precinct 2 respectively.



Inset



Ground floor

Habitable spaces

Figure showing ground floor and the point at which habitable spaces raised above 1:100 year floodplain

Sections are provided to illustrate how the retaining structures will be positioned on a relatively flat landscape. In this instance the retaining structures will hold back earth imported onto the site from elsewhere and do not arise from excavating the site. The structures are in fact rectangular "boxes" that will be placed on the landscape to raise the level of habitable floors as mentioned above. The profile provided below illustrates this point.

6.4.3 Deviation from City Policy

The details relating to the deviation from various City policy are discussed in 6.2.9, 6.2.10, 6.3 c) and 6.3 f) above. These are supported as mentioned except where water quality is impacted that will arise as a consequence of filling the Liasbeek River for reasons stated in the latter sections of this report as well as 6.3 e) of this report.

6.5 Other considerations prescribed in relevant national or provincial legislation

The Land Use Planning Act of 2014 and the Spatial Planning and Land Use Management Act of 2013 require that land development must have regard for certain principles/guidelines when development is considered. These relate, in essence to

- Spatial justice;
- Sustainability principles;
- Efficiency;
- Spatial resilience and
- Good administration,

among others.

6.5.1 SPLUMA and LUPA principles

6.5.1.1 Spatial Justice

The proposal addresses this aspect as it provides inclusionary housing and business and economic opportunities. Spatial justice also finds expression in that development will be -

- Significantly different to that presently permitted,
- Located within an established setting,
- Located close to a wide range of opportunities, and
- Accessible to various public transport modes.

One of the reasons that SPLUMA was enacted was to give effect to the government's constitutional obligations to, amongst others, redress apartheid spatial planning through spatial transformation. In doing so, the aim is to improve equitable access to land, provide access to adequate housing (including equitable spatial patterns and sustainable human settlements), and facilitate sustainable development. As a result, the Section 7 of SPLUMA establishes five development principles related to spatial justice, spatial sustainability, efficiency, spatial resilience and good administration. The LUPA reiterates these principles.

Within the context of the City's constitutional municipal planning obligations, spatial transformation finds expression in the MSDP and subordinate policies. These are explained in preceding paragraphs. In the MSDP policy statement no. 3 a guideline

is to support inclusionary housing in well-located areas. The MSDP defines inclusionary housing and affordable housing as:

Inclusionary housing: 'Policy directive and approach that seeks to leverage the development application process for new residential or commercial developments to secure the construction and perpetual availability of affordable housing in an integrated manner. (See also Affordable Housing).'

Affordable housing: 'Traditionally affordable housing refers to housing with prices or values below the overall open market value which targets below-average incomes. In this MSDP affordable housing refers to the household income brackets of R3 501 – R18 000 per month, and is inclusive of social, GAP, and inclusionary housing. It also refers to residential units valued at R500 000 or less.'

Changes to the National Housing Code have increased the upper limit of the Finance-Linked Individual Subsidy Programme (FLISP) to R22 000 monthly household income. The FLISP programme provides access to a subsidy for first time home buyers. Thus this guideline aligns the affordable housing income bracket with FLISP to be a monthly household income of R3 501 – R22 000.

Other than the above, there is no current City policy to guide the provision, allocation and enforcement of inclusionary or affordable housing within private developments although the MSDP and IDP talk to its provision typically in public sector developments. In this regard, the City has in the recent past approved a number of applications within proximity to the development site containing housing including at the Salt River station, Pine Road, Brickfield Road, Observatory. Other similar types of proposals in these areas are also currently being considered.

Various recent City development approvals in relative close proximity to the development site have imposed conditions relating to the imposition of affordable / inclusionary housing on-site within private sector developments where such conditions were seen as reasonable and rational based on the Section 100(1) of the MPBL. Other than this section, the MPBL and DMS are silent on the issue of inclusionary or affordable housing.

With regard to the application in hand, significant development rights are sought while the property is suitably located accessible to public transport and economic and social opportunities to promote spatial justice. The various infra-structure upgrades will enhance this through improved access to and from areas further afield that form part of the metro-south east.

The inclusion of affordable or inclusionary housing units within the development was discussed with the applicant in early application interactions with City officials. In response, the developer proposed a limited amount of affordable housing units (4% being approximately 6000m² of the total floor space) based on economic viability of the current proposal. In spite of this department's desire to propose a condition requiring a larger percentage of affordable housing, the rationale or reasonableness cannot be clearly ascertained. Further, the imposition of such a condition could negatively impact on the financial viability of the project. As a result, the proposal is considered to be adequate and contributes to the broader spatial justice objective within this highly favourable location for reasons explained above.



6.5.1.2 Sustainability and Efficiency

The proposal is considered to meet this principle to the extent that it is spatially compact and limits urban sprawl. The development is proposed within an existing established urban setting. The cost of the outlay of service infrastructure is reduced considerably because of the location of the site within an existing urban area. Various infra-structure upgrades are proposed to further integrate the development into the immediate and surrounding area. This will also facilitate accessibility to opportunities within the immediate and wider City.

6.5.1.3 Spatial resilience

The site is currently largely used as an open space with recreation and ecological systems. Despite the proposal to develop the site with mixed uses and multi-storey buildings it also retains and upgrades approximately 33% of the current site with open space and ecological components. In fact, various amelioratory measures will aim to assist in integrating the development into the much larger open space and ecological systems within an established urban setting. Similarly, heritage elements associated with the history of the site are proposed to be memorialised in various ways within the development.

6.5.1.4 Good administration

All required applications have been made including deviation from certain policies. These applications have followed due process and have been widely advertised as explained in preceding paragraphs.

Relevant government departments have provided the required inputs while the DEA&DP and HWC have considered applications within their competencies. The development will be subject to the related decisions and conditions imposed.

In the instance of this application, development will follow the package of plans process and it will be phased. Other applications that may be required will be administered and processed in terms of the MPBL, including possible further public participation. Justification for these deviations have been explained and are supported.

I am satisfied that the requirements in Section 99(3) of the MPBL have been complied with.

7 REASONS FOR DECISION

7.1 The reasons for the recommended **decisions for approval** of the applications for the **rezoning** from an Open Space 3 to a General Business, GB3 and GB6 and **Approval of Council** may be summarized as follows:

- The application complies with Sections 99(1) – (3) of the MPBL.
- The application complies with the MSDP as the property is within the urban inner core where development is encouraged. The applications will result in intensification and diversification of the land uses and densification.
- Densification and intensification of land contributes to the restructuring of the City and ensures better utilization of the service infrastructure.

- The proposals and applications will have positive economic and social impacts due to the mix of business, commercial and residential land uses.
- The applications and proposals are desirable.
- The proposals will be compatible with the surrounding area and will not significantly adversely impact on the character of the area. The mixed use development is suitably located being surrounded by residential, business and industrial uses.
- The site is appropriately located and accessible to various modes of transport, economic opportunities and social facilities and amenities.
- The proposal will not have a significant adverse impact on rights of the surrounding properties or general community.
- The applications and proposals will not adversely affect heritage resources. Heritage components will be incorporated into the development.
- Various transport, civil engineering and infra-structure improvements will be implemented in support of the re-development of the site.
- The reduced parking ratio is considered rational as the site is located within close proximity to a public transport corridor. Reduced parking provision ensures improved thresholds for public transport use.
- The proposals and applications satisfy LUPA and SPLUMA principles.

7.2 The reasons to deviate from the following policies –

7.2.1 the Table Bay District Plan,

7.2.2 the Floodplain and River corridor management policy, 2009 (FRCM) to permit the obstruction of the free flow of water in a 1:20 year flood plain and to provide fill below the 1:50 year floodplain in order to develop the property, and

7.2.3 the Management of Urban Stormwater Impacts Policy, 2009 to permit the 24hr extended detention of the 1-year recurrence interval for a 24hours storm event relating to the quantity and rate of run-off.

may be summarised as follows:

- The proposals comply with the MSDP which encourages development within the urban inner core.
- The proposals will result in intensification of the use of the land and densification of the land in a favourable location close to social and economic opportunities.
- The development of the land will create employment opportunities.
- Various technical studies undertaken as part of the separate environmental authorization process provide technical explanations which address the similar issues raised in the policy.

7.3 The reasons for the refusal of the rezoning from an Open Space 3 to a General Business, GB7 may be summarized as follows:

- The proposed General Business, GB7 rezoning will result in development which is out of context with regard to the height and floor factor.
- The increased height is not undesirable within its context.

- 7.4 The reasons for **not supporting the deviation from the following policies** relating to -
- 7.4.1 the Floodplain and River corridor management policy, 2009 (FRCM) to permit the filling of the Liesbeek River, and
- 7.4.2 the Management of Urban Stormwater Impacts Policy, 2009 to permit the up to 10 year recurrence interval to be reduced to pre-development level in respect of quality, quantity and rate of run-off and the up to 50 year recurrence interval peak flow to be reduced to existing development level in respect of quality, quantity and rate of run-off,

may be summarized as follows:

- The hydrology study relating to this aspect is not supported,
- Filling of the Liesbeek River will result in its filtration function being lost,
- Ecology relating to the River will be adversely affected,
- Water quality will be negatively impacted, and
- Its historical and cultural significance will be adversely impacted.

8 RECOMMENDATION

In view of the above, it is recommended that:

- 8.1 The application for the rezoning of the property from an Open Space 3: OS3 zone to a Subdivisional Area comprising General Business, sub-zones GB3 and GB6 and Open Space, Sub-zone OS3 in respect of **Erf 151832, 6 Liesbeek Parkway Observatory be approved** in terms of section 98(b) of the Municipal Planning By-Law subject to conditions contained in Annexure A1 and A2 attached.
- 8.2 The application for the Approval of Council to permit retaining structures to be 3.7m in precinct 1 and 3.9m in precinct 2 in lieu of 2.0m in respect of **Erf 151832, 6 Liesbeek Parkway Observatory be approved** in terms of section 98(a) of the Municipal Planning By-Law subject to conditions contained in Annexure A1 and A2 attached.
- 8.3 The deviations from -
- 8.3.1 the Table Bay District Plan,
- 8.3.2 the Floodplain and River Corridor Management Policy (2009), and
- 8.3.3 the Management of Urban Stormwater Impacts Policy (2009)
- in respect of **Erf 151832, 6 Liesbeek Parkway Observatory be supported** in terms of section 98(d) of the Municipal Planning By-Law.
- 8.4 The application for the rezoning of the property from an Open Space 3: OS3 zone to a Subdivisional Area accommodating a General Business Sub-zone GB7 in respect of **Erf 151832, 6 Liesbeek Parkway Observatory be refused** in terms of section 98(c) of the Municipal Planning By-Law.
- 8.5 The deviations from -
- 8.5.1 the Floodplain and River Corridor Management Policy (2009), and

8.5.2 the Management of Urban Stormwater Impacts Policy (2009)

In respect of **Erf 151832, 6 Liesbeek Parkway Observatory** not be supported in terms of section 98(d) of the Municipal Planning By-Law.

ANNEXURES

Annexure A	Application details and approval conditions to be imposed
Annexure B1	Locality plan
Annexure B2	Public participation map / Extent of advertising
Annexure C1	Motivation
Annexure C2	Urban Design Framework
Annexure C3	Environmental Authorisation
Annexure C4	Environmental impact assessment
Annexure C5	Environmental Management programme
Annexure C6	Biodiversity Impact Study
Annexure C7	Botanical Impact Study
Annexure C8a	HIA draft 2018 as advertised with LUMS application.
Annexure C8b	HIA Final July 2019
Annexure C8c	HIA Supplementary info Dec 2019
Annexure C8d	HIA final comment March 2020
Annexure C9	VIA
Annexure C10	TIA
Annexure C11	Geotechnical report
Annexure C12	Hydrology Report
Annexure C13	Stormwater Management Strategy Report
Annexure C14	Socio-economic Impact Assessment
Annexure C15	Civil Engineering report
Annexure C16	Electrical services report
Annexure C17:	Base levels
Annexure D1	Concept subdivisinal area plan
Annexure D2	Conceptual landscape plan
Annexure E	Objections / comments received
Annexure F1	Internal departmental comments (Sept 2018)
Annexure F2	Internal departmental comments (December 2019)
Annexure G1	Applicant's response to objections / comments/support received
Annexure G2	Further response by the applicant to branch comments
Annexure H	Conveyancer's certificate
Annexure I	Title deed
Annexure J	List of objectors / comment parties / late objection

Registered Planner

Name:

SACPLAN NO:

Gregory September

Section Head

Name: Gregory September

Tel no: 021 400 6447

Date: 4 September 2020

Marx Mupfwa

District Manager

Name: Marx Mupfwa

Tel no: 021 400 6443

Date: 4 September

h s

Annexure A:

Application details and approval conditions to be imposed

ANNEXURE A1

REF: Case ID: 70396369

In this annexure:

"City" means the City of Cape Town

"The owner" means the registered owner of the property

"The property" means **Erf 151832, 6 Liesbeek Parkway Observatory**

"By law" and "Development Management Scheme" has the meaning assigned thereto by the City of Cape Town Municipal Planning Bylaw, 2015

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

"Commissioner: TDA" means Commissioner: Transport and Urban Development Authority or his/her delegatee.

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

1. REZONING GRANTED IN TERMS OF SECTION 98(b) OF THE MUNICIPAL PLANNING BY-LAW:

- 1.1. Rezoning of the property from Open Space 3: Private Open Space zone to a Subdivisional Area (i.e. general business and open space zones).

2. APPROVAL GRANTED IN TERMS OF SECTION 98(b) OF THE MUNICIPAL PLANNING BY-LAW:

- 2.1. To permit the Approval of Council in terms of Item 126 of the DMS to enable retaining structures to be constructed to a height of more than the permitted 2.0m above the existing level of the ground in lieu of 2.0m.

3. DEVIATIONS FROM THE FOLLOWING CITY POLICIES SUPPORTED IN TERMS OF SECTION 98(d) OF THE MUNICIPAL PLANNING BY-LAW:

- 3.1. With respect to the Table Bay District Plan in order to permit urban development on land designated as "open space", "core 2" and "buffer 1".
- 3.2. With respect to the Floodplain and River Corridor Management Policy (2009) to develop/ obstruct the free of water within the 20-year and 50-year floodplain (excluding the in-filling of the Liesbeek River).
- 3.3. With respect to the Management of Urban Stormwater Impacts Policy (2009) to enable deviation from the annexure table requiring 24hour extended detention of the 1-year Recurrence Interval, 24h storm event in a greenfield development greater than 50 000m².

4. REZONING REFUSED IN TERMS OF SECTION 98(c) OF THE MUNICIPAL PLANNING BY-LAW:

- 4.1. Rezoning of the property from Open Space 3: Private Open Space zone to a Subdivisional Area (General Business, Sub-zone GB7).

5. DEVIATIONS FROM CITY POLICY IS NOT SUPPORTED IN TERMS OF SECTION 98(d) OF THE MUNICIPAL PLANNING BY-LAW RELATING TO:

- 5.1. The Floodplain and River Corridor Management Policy (2009) the in-filling of the Liesbeek River.
- 5.2. The Management of Urban Stormwater Impacts Policy (2009) seeking deviations from:
- 5.2.1. The requirement to improve the quality of run-off relating to the annexure table requiring up to 10-year Recurrence Interval peak flow to be reduced to pre-development level in a greenfield development greater than 50 000m², and
- 5.2.2. The requirement to improve the quality of run-off relating annexure table requiring up to 50-year Recurrence Interval peak flow to be reduced to existing development levels in a greenfield development greater than 50 000m².

4 CONDITIONS IMPOSED IN TERM OF SECTION 100 OF THE MUNICIPAL PLANNING BY-LAW:

- 6.1 The property shall accommodate two precincts (Precinct 1 and Precinct 2) comprising areas designated for General Business purposes and the overall combined floor space for the two precincts shall not exceed 150 000m².
- 6.1.1 Precinct 1 shall not exceed a floor space of 60 000m² and Precinct 2 shall not exceed a floor space of 90 000m².

Subdivision

- 6.2 The subdivision plan required pursuant to in 6.1 above, shall –
- 6.2.1 Accompany the precinct plan submissions,
- 6.2.2 Be in accordance with the indicative subdivision plan attached in Annexure D1 attached, and
- 6.2.3 Be to the prior approval of the delegated authority (Development Management).
- 6.3 The submission of a subdivision plan clearly identifying the
- Cadastral boundary of the site and each portion
 - Extent of each portion
 - Zone of each portion including the sub-zone as approved herein
 - Servitude right of ways registered in favour of the general public
 - Services.
- 6.3.1 The subdivision plan shall show the subdivision of the property into three portions comprising:
- Portion 1 being 48361m² in extent,
 - Portion 2 being 49148m² in extent, and
 - Portion 3 being 49835m² in extent.
- 6.3.1.1 Portion 3 of the subdivision shall be zoned for Open Space 3: Special Open Space purposes and shall be a minimum of 49835m² in extent.

6.3.1.2 Portion 3 shall comprise servitude rights of way registered in favour the general public and shall be to the satisfaction of the delegated authority (Development Management).

6.3.2 A servitude right of way to permit the general public access across any internal private roads shall be registered prior to the first occupancy certificate being issued for the portion 2 in accordance with the Annexure D1.

6.3.3 Subject to the prior approval of the delegated authority (Development Management), servitude rights of way to permit the general public access across any internal private roads shall be registered for portions 1 and 3.

6.3.4

Development Framework

6.4 Prior to any development, the applicant/owner/developer shall prepare and submit a development framework for the property detailing the development of the site.

6.4.1 The development framework mentioned in 6.4 above shall be informed by the HIA/EIA and principles established in the Urban Design Study, Visual Impact Assessment, Hydrology Study (which may be amended to meet further requirements of relevant City departments).

6.4.2 The development framework shall, furthermore, include –

- The two precincts mentioned in condition 6.2.
- Overall site design;
- Spatial distribution of land uses within each precinct;
- Phasing of development across the site;
- Vehicular movement and access arrangements;
- NMT movement and linkages to NMT routes external to the development
- Areas of historic significance with specific regard to areas on the property where the history of the property will be memorialised;
- Public and private spaces;
- Open spaces with associated linkages external to the development;
- Edges of the site.
- Character precincts identified in the HIA/EIA, Visual Impact Study and Urban Design Study.

6.4.3 The development framework shall be to the approval of the delegated authority (Development Management).

Precinct Plans

6.5 Each character precinct referred to in 6.4.2 above shall

6.5.1 Ensure that buildings located along Berkley Road extension shall be higher than those located along the southern edge of the eco-corridor identified in the EIA.

- 6.5.2 Have regard for the heights of buildings and display a hierarchy of spaces, demonstrate the treatment of corners and edges, internal roads and building being stepped to accommodate light penetration.
- 6.5.3 Identify appropriate locations where foreground and background buildings are to be situated.
- 6.6 Prior to the submission of site development plans, Precinct plans shall be submitted for each precinct and shall include –
- 6.6.1 Urban design and development guidelines for the entire development in general accordance with 6.4 above.
- 6.6.2 The design of each precinct shall show –
- The extent of each precinct;
 - Character areas;
 - Appropriately located bulk, including for example: - hierarchy of spaces; - light penetration; and - foreground and background buildings;
 - Visual/view corridors;
 - Road / built form interfaces;
 - Any boundary treatments
 - Floor space ratio per precinct;
 - Land use mix,
 - Number of parking bays,
 - Gateway buildings;
 - Landscaping interventions.
 - NMT;
 - Maximum heights building heights measured from base level;
 - Floor space per precinct;
 - Ranges of uses having regard to the permissible floor space;
 - The number of parking bays provided;
 - Public, semi-public and private spaces
 - Interface conditions with the public realm having specific regard to the Urban Design policy demonstrating compliance with the principles contained therein;
 - Holding areas for public transport stops.
- 6.6.3 The Precinct plans shall be to the approval by the delegated authority [Development Management].
- 6.7 In respect of Precinct 1:
- 6.7.1 Building heights shall ensure that the lowest buildings observe the heritage indicators in relation to the SAAO (Erf 26493 – to the east of the property).
- 6.7.2 East/west pedestrian access into the retail component shall be open-to-the-sky and shall permit public access that links to the wider NMT network and surrounds.
- 6.7.3 Gateway buildings shall be reflected in height and architectural treatment.
- 6.7.4 Buildings shall be designed to interface with the surroundings.

6.8 In respect of Precinct 2:

6.8.1 The built form shall be separated to a greater degree than that proposed with greater levels of articulation to break up the monolithic form still experienced.

6.8.2 Highest buildings are to respond to the higher order Berkley Road. The height, mass, and bulk of buildings needs to be carefully considered to avoid conditions that may cause a 'walled development response'.

6.9 Each precinct plan and all subsequent site development plans shall be accompanied by a bulk registered detailing

- Floor space per land use within each precinct utilised and residual available;
- Overall floor space for the property utilised and residual available;
- Parking provision per precinct required and that constructed.

6.10 The floor space allocated per precinct shall not be transferable between precincts.

6.11 The area proposed as OS3 on Erf 151832, and the remaining full development area shall be registered as a public right of way servitude in perpetuity.

6.12 The proposed link road alignment and form shall be designed to further reduce the negative visual impact on the "sense of place" experienced so as not to detract from the public and NMT users' experience, especially within and adjacent to, the ecological corridors.

6.13 Traffic circles provided on the property shall endeavour to accommodate a NMT prioritised environment which will facilitate the accessibility of the OS3 as part of the NMT route.

6.14 Detailed design of any vehicular or pedestrian control measures introduced on the property shall accompany the SDP for each phase.

Site Development Plan

6.15 Site Development Plans (SDP) shall be submitted for each individual development within the Precinct Plans and Character Areas and with the corresponding Landscape SDP Plans.

6.16 All SDP's shall be accordance with the development framework and precinct plans.

6.17 The base level indicated for buildings and structures shown on each SDP shall accord with that indicated in Annexure C17.

Land uses

6.18 The land uses accommodated on-site shall be limited to

- Business Premises (Shops, Offices, Restaurants)
- Flats (including a minimum of 6000m² of inclusionary house)
- Hotel
- Place of entertainment (gym, conference facility, events pavilion)
- Place of Instruction
- Parking apourtenant to the abovementioned uses and

- Ancillary uses appurtenant to uses accommodated on the property.

6.19 Notwithstanding the provisions of the DMS, coverage on the property (after subdivision) shall not exceed 35%.

6.20 The provision of inclusionary housing shall be interspersed with the open market dwelling units and other activities.

6.21 Housing typologies within the River Club shall be varied in typology and nature.

6.22 With respect to the overall maintenance and management responsibilities for the property, the applicant/owner/developer shall enter into any necessary agreements with the City prior to issuance of any occupancy certificate/s.

Landscape plan

6.23 A master landscape plan, drafted by a suitably qualified landscape architect, shall be included in the development framework referred to above. Furthermore, the master landscape plan shall -

6.23.1 Conform to the associated guidelines and principles set out in the landscape guidelines accompanying this application and shall be generally in accordance with the landscape concept plan submitted.

6.23.2 The master landscape plan shall detail

- Planting, terrestrial and riverine amongst others that will be removed, retained, transplanted and new planting;
- The provision of buffer areas along the river/canal edges;
- Servitude rights of way;
- Hard and soft landscaping
- Areas of historic significance and the memorialising the history of the site
- Street furniture
- Lighting and light fixtures across the site
- Provision of attenuation measures (including vegetated swales, bioretention areas, source control, etc.) which shall have regard to the stormwater flood management plan referred to below
- NMT routes comprising pedestrian and cycle paths, amongst others and links to existing NMT routes and networks;
- NMT routes shall have connections with existing, and
- A plan for the phased development of the site.
- Flood attenuation measures

6.23.3 The master landscape plan referred to in above shall be to the satisfaction of the delegated authority (Development Management).

6.23.4 A detailed landscape plan shall accompany each precinct plan which shall be generally in accordance with the master landscape plan and shall be to the satisfaction of the delegated authority (Development Management).

6.23.5 All corresponding and adjacent open spaces details of the development area shall correspond, and be integrated, with the City of Cape Town's open space in addition.

to having regard to the streets, pedestrian walkways, amongst others and shall be to the satisfaction of the delegated authority (Development Management).

- 6.23.6 An open space register shall be submitted with each application submitted with each precinct plan showing
- 6.23.6.1 Hard and soft landscaping
 - 6.23.6.2 Ecological areas
 - 6.23.6.3 Space of active play and
 - 6.23.6.4 Heritage spaces.
- 6.24 The developer/owner shall be responsible for implementation of the approved master landscape plan and landscape plans (including all costs) in accordance with the landscape phasing plan.
- 6.25 The applicant shall ensure the maintenance and upkeep of the riverine habitat in respect of portions of the Liesbeek River canal that has been decanalised.
- 6.26 The developer shall be responsible for all costs associated with implementation of landscaping.
- 6.27 The applicant/owner/developer shall submit a Construction Phase Environmental Management Plan prior to commencement of construction demonstrating how habitats will be protected during the construction phase of the development to the approval of the delegated authority (Development Management) in consultation with the Directors: Environment and Heritage Resources Management and Catchment Stormwater and River Management.
- 6.28 All habitable spaces shall be provided above the 1:100 year floodplain in accordance with various City policies.

Catchment and Stormwater Management

- 6.29 A Stormwater Management Plan for the property shall be submitted for the approval of the delegated authority (Development Management) in consultation with the Director: Catchment Stormwater and River Management in accordance with their requirements which may include further studies or modelling to be undertaken.
- 6.30 The developer/owner shall ensure that the necessary measures in mitigation of impacts as a consequence of flood level rise, including any necessary insurances, to safeguard properties affected by flood level rise as a consequence of this submission.
- 6.30.1 Any measures proposed in mitigation of the submission, shall be to the approval of the delegated authority (Development Management) in consultation with the Director: Catchment, Stormwater and River Management.
- 6.31 Buildings on the South African Astronomical Observatory shall be flood proofed where necessary and in consultation with that land owner and shall be to the approval of the delegated authority (Development Management) in consultation with the Director: Catchment Stormwater and River Management.

- 6.31.1 Unless determined otherwise by the delegated authority (Development Management), the flood proofing mentioned in 6.31 above shall be implemented prior to the issuing of the first occupancy certificate for the development proposed and shall be to the owner/developers account.
- 6.32 The applicant/owner/developer shall provide a detailed river corridor management plan (as per requirements of Catchment Stormwater and River Management).
- 6.32.1 The plan referred to in 6.32 above, shall show measures to enhance water quality and restoration of water flows to the natural Liesbeek River, in addition to the management of the quality of the stormwater discharging into the Liesbeek River.
- 6.32.2 The plan shall be submitted simultaneously with the submission of the Stormwater Management Plan.
- 6.32.3 Any implementation measures referred to in 6.32.1 and 6.32.2 shall be to the account of the owner/developer.
- 6.33 The proposed upgrade of the Liesbeek River Canal on the eastern side of the property shall be subject to detailed Construction and Operational Environmental Management Plans (including plans, elevations and sections) for the design and management of the future rehabilitated environment to the approval of the delegated authority (Development Management) in consultation with the Director: Catchment Stormwater and River Management.
- 6.34 The rehabilitation of the canalised section of the eastern Liesbeek River shall accord with international best practice trends and is not to be regarded as a substitution of habitat for filling in the historic Liesbeek River channel.
- 6.35 A report drafted by a suitably qualified professionally registered engineer shall accompany the first SDP submission and shall demonstrate that all (proposed) new and existing structures on the property, on the unsubdivided remainder Erf 151832, can withstand the forces and effects of floodwaters to the satisfaction of the delegated authority (Development Management) in consultation with the Director: Water and Waste (Catchment Stormwater and River Management).
- 6.36 The determination of the buffer width along each river and riparian landscape shall be to the satisfaction of the Director: Development Management in consultation with the Director: Water and Waste (Catchment, Stormwater River Management).
- 6.37 Flood attenuation measures for the development as proposed and contained in the Hydrologic Study or any revision or amendment thereof that may be required resulting from this approval, including but not limited to alternate measures to filling in of the Liesbeek River, shall be approved by the Catchment Stormwater and River Management.
- 6.38 Upon the advice of the Director: Catchment, Stormwater and River Management, should it be so deemed necessary by said department, flood warning systems shall be installed and to the developer/owner/ home owner's association's account.

Transport

- 6.39 The proposed road infrastructure and intersections as recommended in the TIA is implemented and that Malta/ Berkley / Liesbeek intersection shall be design option 2 as indicated in the TIA drafted by Aurecon.
- 6.40 Improvements to Liesbeek Parkway to prevent flooding of the Liesbeek Parkway shall be implemented to the owner/developer's account and shall be to the approval of the Director: Road Infrastructure and Management and Director: Transport Forward Planning (Transport Planning).
- 6.41 Detailed civil engineering plans shall provide for the road upgrades along with the associated costs which shall be to the developer/owners account.
- 6.42 The proposed Public Transport routes and infrastructure facilities shall be provided to the satisfaction of the Director: Transport Forward Planning (Transport Planning).
- 6.43 No trapped low points are created with the geometric design of all roads, parking areas and overland escape routes.
- 6.44 The developer shall be responsible for the reinstatement of all damaged municipal infrastructure after completion of the construction work to the full municipal standards.
- 6.45 At least 4801 parking bays shall be provided on the property where precinct 1 shall accommodate 1829 parking bays and precinct 2 shall accommodate 2972 parking bays.
- 6.46 Shared parking shall be encouraged.
- 6.47 In the event that parking is provided above the 1:100 year floodplain provision shall be made for future conversion thereof to enable the conversions to habitable space in the future.
- 6.48 Signage shall be displayed along Liesbeek Parkway and any other road identified by Director: Catchment, Stormwater and River Management and/or Director: Transport Forward Planning (Transport Planning) warning motorists of the likelihood of flooding.
- 6.49 Provision shall be made internal to the development for shared parking to occur between businesses and residential uses to prevent the underutilisation of parking.
- 6.50 Provision shall be made internal the development for holding area to accommodate stop and drop facilities internal to the development to the approval of the Director: Transport Forward Planning (Transport Planning).
- 6.51 Prior to the approval of a site development plan, any further permissions and approvals of Heritage Western Cape and/or the Department of Environment and Development Planning shall be obtained.

Note:

1. *in accordance with the Item 136 of the development management scheme, the submission of any further land use applications whether as a consequence of*

conditions imposed or not shall be subject to further comment and may be subject further conditions to ensure the appropriate development of the property.

2. The conditions of the Provincial Administration; Western Cape (Department of Transport) shall be adhered to.
3. The requirements of the Director: Asset Management and Maintenance.
4. Various requirements of the National Water Act must be complied with in order to provide for certain water uses.
5. The requirements of various service branches in respect of water and sanitation, water and sewer, solid waste and electrical connections to the site.
6. These conditions shall be read in conjunction with the Record of Decision as submitted by the Heritage Western Cape dated January 2012 attached as Annexure I.
7. In respect of the subdivision; The conditions referred to be shall relate only to the subdivision of the consolidated property into portions 2 and 3. The further subdivision of portions 2 and 3 shall necessitate circulation to branches for comment and further service related conditions in respect of the subdivisions to be imposed.
8. A home owners' association constitution shall be submitted after the further subdivision of each superblock for approval the approval of the Director: Development Management.

A2. SUBDIVISION CONDITIONS

1 CONDITIONS IMPOSED IN TERMS OF SECTION 100 OF THE MUNICIPAL PLANNING BY-LAW 2015 WHICH MUST BE COMPLIED WITH AT THE COST OF THE DEVELOPER AND TO THE SATISFACTION AND ACCEPTANCE OF THE COUNCIL PRIOR TO THE TRANSFER OR SEPARATE REGISTRATION IN THE DEEDS REGISTRY OF ANY LAND UNIT ARISING FROM THIS SUBDIVISION APPROVAL:

2. CLEARANCE CERTIFICATE: Once conditions of subdivision have been met the applicant must apply for a subdivision clearance certificate and such application must be accompanied by the original survey diagrams and/or general plan approved by the Office of the Surveyor General.

3. RATES CLEARANCE: Applications for rates clearance to the City Treasurer for the individual portions of the subdivision must be accompanied by the subdivision clearance certificates. In the case where servitudes are created the Powers of Attorney to pass transfer must be submitted to this office and the clearance certificates will be endorsed on those documents. The rates clearances will be endorsed on the same documents. In terms of Section 137 of the Municipal Planning By-Law, the City Treasurer will not issue a rate's clearance for any portion of the subdivision until such time as he is supplied with proof of compliance with the conditions of subdivision [i.e. the subdivision clearance certificate]. **Documents to be lodged on 4th Floor Podium: Enquiries: (021) 400 2965**

4. ELECTRICITY:

NB: The following electricity conditions must be complied with unless such requirements are waived in writing by the Director: Electricity Services or his/her delegatee:

4.1 The existing authorised capacity to the development area shall be deemed to not exceed **400 A**.

4.2 The estimated bulk capacity as specified for this development in order to supply phase 1 and phase 2 shall not exceed **7 MVA**.

4.3 A new 132/11 kV Main Switching station on the development site along Observatory Road measuring 40m by 40m shall be provided. This new Main Switching station will only be operational within 3 years after the land is sub-divided and zoned and shall be transferred to the City free of charge and shall be subject to the availability of funds.

4.4 A master site development plan, indicating the phasing with proposed dates of the development plans of the individual sites, shall be provided. Note that the electricity infrastructure serving each erf shall not be dedicated to that site alone. Infrastructure such as substation sites may be required to serve a wider area or future phases of the project as well as other adjacent projects.

4.5 Individual site development plans are required prior to or concurrently with subdivision applications for each phase and shall not be provided after subdivision.



- 4.6 A Shared-Network Charge and the connection fee, as well as specific conditions of supply shall be applicable to this development before subdivision clearance may be given.
- 4.7 Additional substation sites besides the Main Switching Station will be required in locations approved by this department. These properties shall be directly accessible from public road and shall not be traversed by any other services. Basement substation sites is not permitted. Sites required may take the form of a combination of the following:
- Multiple outdoor substations on 5 m x 4 m free standing sites and
 - Multiple substation buildings on 20 m x 14 m free-standing sites.
- These substations shall be appropriately subdivided and zoned in the sub-division plan approved by the Surveyor General as well as transferred to the City free of charge.
- 4.8 The electricity reticulation network shall be installed in the public road reserve with a sidewalk width sufficiently wide to accommodate the electricity network required. Special attention will be required where high voltage cables are to be accommodated. An electrical servitude of sufficient shall be registered to the satisfaction of the Director; Utility Services (Electricity).
- 4.9 Where road widening is required that affects installed electricity infrastructure, these services will be relocated at the applicants' expense. Electrical wayleaves must be applied for from our Drawing and Records Centre office.
- 4.10 The Applicant shall provide and install in an approved manner and at his own cost all pipe ducts required across roads and access ways for electricity cables for both internal services and future bulk services. The position of each of these duct crossings shall be permanently marked on the kerb edge.
- 4.11 The applicant shall provide, at his own cost, the internal electrical reticulation and street lighting networks serving the specific subdivision. To this end, the applicant shall appoint a consulting electrical engineering practitioner registered with ECSA to carry out the design and to supervise the installation of the internal electrical reticulation and street lighting networks to City of Cape Town standards and specifications. On completion, the electrical reticulation and street lighting networks shall be handed over to the Department for operation and maintenance.
- 4.12 Electricity distribution and street lighting infrastructure in private roads will not be taken over by the City but will remain the responsibility of the property owner.
- 4.13 The existing Liesbeek Park substation on erf 26423-RE is to be subdivided off from the parent erf, registered and transferred to the City at the applicant's cost.
- 4.14 Solar power generation per erf will be limited and thus be dependent on final supply arrangement to either 25% or 75% of the erf's notified maximum demand. Application for each solar installation must be made to the Electricity Generation and Distribution department for approval.

- 4.15 Any one solar plant on an erf exceeding 1 MVA will require a generating license from the National Electricity Regulator of South Africa (NERSA) as a condition prior to the City approving the installation.

5 SOLID WASTE

- 5.1 The various requirements of solid waste shall be adhered in accordance with their requirements and standards for the different phases of development and shall be undertaken to the satisfaction of the Director: Utility Services (Solid Waste Management).

6 WATER AND SANITATION


- 6.1 Development contributions are payable as per the DC policy, to be qualified by the Reticulation Regional Operations Manager.
- 6.2 A maximum of 16l/s will be accommodated prior to the upgrade of 1050mm and 1350mm bulk sewers.
- 6.3 All costs relating to service connections, alteration to or provision of new water meter and sewerage services shall be to the account of the applicant/owner/developer.
- 6.4 A construction programme to be provided by the developer/owner with the submission of civil services design drawings. Engagement of the City operation staff on the construction programme prior to submission will assist in operational decisions.
- 6.5 All link services to be in place prior to any building//dwelling being occupied.
- 6.6 Evidence of water saving measures implemented will have to be shown prior to occupation.
- 6.7 Emergency measures to prevent sewer spillage is required.
- 6.8 Measures to mitigate the impact flooding of the civil infrastructure.

Additional Technical Requirements

- 6.9 Water and Sanitation municipal service designs to be designed according to Departmental Service Standards and be approved prior to construction.
- 6.10 Application must be made for any new water metered connections to the Reticulation Regional Operation Manager.
- 6.11 The water and sewer capacities allocated according to this document, if not taken up, shall not be reserved beyond the lesser of 5 years or the approved development period.
- 6.12 Services infrastructure is subject to quality control during construction and testing prior to approval.

General/ Disclaimer

Information provided is based on best available data. The flows and pressures provided in this comment are theoretical and not measured.

7 ROADS AND STORMWATER: (Enquiry Marlissa Adams 400 6424)

7.1 The developer/owner shall be responsible for the payment of development contribution toward the provision of bulk civil engineering services, in accordance with Council's policies. An overall figure calculated from the proposed uses in the report calculates to R73 612 448,06. This figure will be refined when future applications are submitted which contain more detail. In the absence of detail, the residential component was calculated as flats less than 100m² each. Ancillary was added to GB use.

7.2 The development contribution levy figure shall be subject to an annual escalation equal to the construction price adjustment (CPA) from civil engineering services and the amount payable will be the amount calculated at the time that the infrastructure is implemented or the development contribution is paid.

7.3 A separate Services Agreement with the City shall be entered into for the installation of bulk municipal services with respect to Roads and Transport in lieu of development contributions. The upgrade to roads shall be to the approval of the satisfaction of the Director: Development Management in consultation with the Director: Asset Management and Maintenance (Roads and Transport Planning).

7.4 The maximum permissible floors space/GLA in terms of the proposal shall be restricted to:

- Retail 20 700m²
- Office 59 600m²
- Restaurant 9 200m²
- Residential 31 900m²
- Hotel 8 200m²
- Gym 4 100m²
- Ancillary 4 100m²
- Conference 1 200m
- Events pavilion 1 000m²
- Place of Instruction 10 000m²

7.5 Any increase in units or floor space shall require an additional development contribution which shall be calculated by the Manager: Asset Management and Maintenance or the department to who the development contribution is applicable.

7.6 Prior to the completion of precinct 1 of development the portion of Berkley Road extension traversing the M5 shall be constructed to the satisfaction of the Directors: Asset Management and Maintenance and Transport Planning.

7.7 Development contributions are payable

- Prior to the approval of any building plans or
- Prior to transfer, whichever comes first and

shall be to the approval of the Director: Asset Management and Maintenance.

7.8 The proposed NMT facilities/routes shall be provided to the approval to the Directors: Asset Management and Maintenance and TDA: Universal Access and NMT.




- 7.9 The developer/owner shall be responsible for all design and construction costs to implement the road upgrades to full municipal standards, including blacktop, kerbing, sidewalks, street lighting, ducts, pedestrian crossing, stormwater infrastructure and signals.
- 7.10 Detailed engineering services plans, prepared by a registered Civil Engineering Professional shall be submitted for approval by the Director: Asset Management and Maintenance or relevant service department prior to building plan approval and prior to commencement of any works. All services shall comply with the "Minimum Standards of Civil Engineering Services in Townships (as amended) document". The Engineer shall monitor all construction activities and maintain an adequate level of supervision of the works. Upon completion and prior to Transfer Clearance (Section 137 clearance), the services shall be inspected by Council. The Engineer shall provide a completion certificate as well as all construction test results required in terms of SANES.
- 7.11 All services shall be handed over to /inspected by the Director: Asset Management and Maintenance or relevant service department, on completion of works and a completion certificate shall be obtained prior to the transfer of individual erven.
- 7.12 On completion of the Engineering Services the developer/owner shall supply the Council with a 12 month maintenance guarantee equal to 5% of the value of the infrastructure constructed.
- 7.13 A fully descriptive site development plan indicating parking, traffic flow, various land use areas, refuse collection, etc. shall be submitted prior to subdivision clearance being issued.
- 7.14 Splays shall be provided at intersections/accesses and that sight triangles be achieved, free of obstructions (landscaping, electrical/telecommunications, etc).
- 7.15 A comprehensive traffic accommodation plan for the construction phases be approved by the relevant departments within Council prior to commencement of any works and the cost of accommodating traffic be for the developer's cost.
- 7.16 Detailed services plans of all services (access layout, traffic circulation, parking, refuse, civil services, etc.) be submitted to the Director: Asset Management and Maintenance and Transport Planning and any other relevant department responsible for the provision of service infrastructure, for approval prior to commence of any works. All municipal services must comply with the "Minimum Standards of Civil Engineering Services in Townships" document.
- 7.17 The Owner/developer at their cost provide all the required internal and link engineering services to the satisfaction of the Director: Asset Management and Maintenance prior to transfer of individual units or utilisation of buildings.
- 7.18 All engineering services shall comply with the standards and policies of Council and services be in accordance with the approved site development plan / subdivision plans.
- 7.19 Where municipal services traverse private properties or fall outside a public road reserve, a 3.0m wide servitude shall be registered in favour of the Council and shall

be to the developer/owner's account.

- 7.20 The owner/developer shall be responsible for all costs incurred in respect of the upgrading, extension, deviations, connection or removal of any engineering services arising from the development.
- 7.21 All stormwater run-off shall be managed in accordance with an approved stormwater management plan and the management plan shall conform to the overall master planning of the area. Further comments shall be obtained from the Director: Catchment Stormwater and River Management in respect hereof.
- 7.22 The final design of the decanalised river shall be to the approval of the Director: Catchment Stormwater and River Management.
- 7.23 The geometric design of roads, parking areas and overland escape routes shall ensure that no trapped low points are created.
- 7.24 A property owner's association shall be established which addresses maintenance of all internal services as well as the swale, if approved, and the banks of the riverine corridor, if approved. This maintenance plan relating to the swale and the banks, either of which or if both are approved, to be provided to the City for its records, (the record of which shall be retained by the Director: Catchment Stormwater and River Management). The river (ex-Canal) being part of the City's Stormwater system shall be maintained by the City or if otherwise required by the competent department, excluding the banks.

8 STREET NUMBERING:

- 8.1 Copies of the diagrams or General Plan shall be submitted to the Street Numbering /GIS Section when approved by the Surveyor General. The street numbers shall be noted on the said copies of the diagrams or General Plan.

9 GIS / DATA CAPTURE:

- 9.1 An electronic copy (in either dxf, shp or dwg format) of the Surveyor General's Diagram must be submitted to Council's GIS Section after the Surveyor General approves the survey records.
- 10.0 The abovementioned conditions shall be applicable to the subdivision, unless determined otherwise by the delegated authority (Development Management).

Note: This information can also be e-mailed to Moahsin.Wagge@capetown.gov.za. Copy of the email must be attached to diagram clearance documentation. A copy of the e-mail shall be attached to diagram clearance documentation.


Note: Any further subdivisions may be subject to further services and related technical requirements.

MUNICIPAL SERVICES

Note: The owner shall be responsible for all the costs incurred in respect of the upgrading, extension, deviation or removal of any existing stormwater, sewerage, electricity or



other services or works whether on the property of the Council or any other body, whether public or private, which may be requested by the Council or any other body having the authority so to require as a result of the development of the property concerned and for any connection costs in respect of such services or works.



IMPORTANT INFORMATION AND STANDARD ADMINISTRATIVE REQUIREMENTS IN RESPECT OF SUBDIVISION APPROVAL, ESSENTIAL TO EFFECT REGISTRATION AND/OR TRANSFER OF SUBDIVIDED PORTIONS

In addition to the conditions of approval listed in Annexure A, the following further processes and standard administrative requirements are to be noted and complied with in full timeously.

Further processes

- 1 Generally, the further processes following subdivision approval involve the following sequence of events:
 - Actual site surveying and preparation of a survey diagram or General Plan by the owner / applicant's appointed land surveyor
 - Submission to and approval by the Surveyor General (SG) of the diagram or General Plan
 - Once services infrastructure have been instated and all conditions of subdivision have been complied with, upon application, subdivision clearance certification issued by Council in terms of Section 137 of the MPBL.
 - Once Section 137 subdivision clearance issued, upon application, rates clearance certification issued by the City Treasurer in terms of Section 118 of the Municipal Systems Act, No 32 of 2000
 - Supported by the above clearances, conveyancer application to the Registrar of Deeds for separate registration and/or transfer of newly subdivided portions
 - Upon individual registration, building plan approval, followed by construction, subsequent building completion certification by Council and eventual occupation

- 2 Kindly note, the subdivision approval in the accompanying decision letter will lapse unless separate registration of at least one land unit is effected in the Deed's office within 5 years of the date of Council's final notification letter of this approval (which letter will follow in due course), unless extension of the validity thereof has been granted by the Director: Development Management in terms of Section 137 of the MPBL prior to such lapsing.

- 3 After final Council notification of this subdivision approval, the SG will require preparation of a diagram or General Plan (illustrating any servitudes where applicable) of the newly created land unit(s) for its approval. Such diagram or General Plan is to be prepared by a land surveyor appointed by the owner / applicant. The owner / applicant or its surveyor is required to liaise directly with the SG in this regard. Upon approval thereof, the SG will indicate by means of an endorsement the date and reference number of this subdivision approval on the back of the diagram(s) of the newly created even or on the front of the General Plan, whichever are applicable.

- 4 Upon or prior to submission to the SG office of such diagram(s) or General Plan for approval, an electronic copy thereof must be e-mailed to the Senior GIS technician in the district Planning office where the approval was issued at the relevant address reflected below. Proof of such e-mail transmission must accompany any subdivision clearance application or building plan submission to the Planning & Building Development Management Department, whichever may occur first.

District	e-mail address
Table Bay	p&bdev.tablebay@capetown.gov.za
Blaauwberg	p&bdev.blaauwberg@capetown.gov.za
Northern	p&bdev.northern@capetown.gov.za
Tygerberg	p&bdev.tygerberg@capetown.gov.za
Helderberg	p&bdev.east@capetown.gov.za
Mitchell's Plan / Khayelitsha	p&bdev.mitchellsplainkhayelitsha@capetown.gov.za
Cape Flats	p&bdev.capeflats@capetown.gov.za
Southern	p&bdev.southern@capetown.gov.za

- 5 Once the diagram(s) or a General Plan has been approved by the SG and all the conditions of subdivision have been met by the developer, application may be made by the owner (or his appointed conveyancing attorney) to the Director: Development Management at your nearest district Planning office for subdivision clearance certification in terms of Section 137 of the MPBL. Such application must be accompanied by the following:

- Completed and signed application form
- Information sheet (partially completed)
- Draft Power of Attorney (where necessary)
- SG approved General Plan / diagram(s) (original)
- Copy of original Council approval letter (including conditions of approval and approved plan of subdivision)
- Application fee / payment receipt
- Proof of e-mail transmission of electronic copy of General Plan / diagram to the district Senior GIS technician
- Any other supporting evidence necessary to substantiate condition compliance

Where servitudes are to be created as part of the subdivision or there is a requirement for a Home / Property Owners' Association to be established of which new owners are required to be members, a copy of the draft Power of Attorney to pass registration / transfer must be submitted to the Director : Development Management as part of the above application.

- 6 Required to effect registration and/or transfer, a rates clearance certificate in terms of Section 118 of the Municipal Systems Act, No 32 of 2000 may only be applied for to the City Treasurer once the Director : Development Management has certified that all conditions of subdivision have been complied with to its satisfaction, as per the foregoing paragraphs. Such applications for rates clearance certificates must therefore be accompanied by the above subdivision clearance (condition compliance) certificate in terms of Section 137 of the MPBL.

- 7 The Registrar of Deeds will not permit registration of individual portion(s) or servitude area(s) and/or transfer of such new land unit(s) unless the City Treasurer has issued the above rates clearance certificate in terms of Section 118 of the Municipal Systems Act, No 32 of 2000 in respect of such land unit(s).

Geographic Information System (GIS) data capturing standards

- 8 In drawing up the General Plan or diagram(s) relating to this subdivision, the land surveyor must create the following separate layers in ESRI .shp or .dxf electronic file format in order for the data to reflect spatially correct:

Layer name	Content
TITLE	Title information, including any encroachments and references
NOTES	All noted information, both from the owner / surveyor and SG
PARENT_PROPLINES	Parent property lines
PARENT_PROPNUM	Parent erf number (or portion number)
PROPLINES	New portion boundaries
PROPNUM	New erf numbers
SERVLINES	Servitude polygons
SERVTYPE	Servitude type
STREET_NAMES	Road centre lines with street names
STREET_NUMBERS	Points with street numbers
COMPLEX BOUNDARIES	Where applicable, polygon with complex name (mention whether gated or not and if so, where gates are)
SUBURB	Polygon with suburb name, where new suburb / township extension created
ESTATE	Where applicable, polygon with estate name (mention whether gated or not and if so, where gates are)

- 9 Such drawing of the approved subdivision must include the following information:
- property boundaries
 - co-ordinates
 - parent erf number(s)
 - newly allocated erf number(s)
 - approved street name(s), including whether public or private
 - approved street number(s) and/or unit numbers (if applicable)
 - complex name (in case of a complex development, eg group housing or flats)
 - suburb name (in case of creation of a new suburb / township)

No additional information other than that described above may be included with the different layers / features. Should it be necessary to include any additional information with the diagram / General Plan, such information may not be included with any of the layers described above, but should rather be included in any other separately named layer.

- 10 It is important that each portion / servitude boundary is complete and forms a closed polygon, i.e. the line endpoints must touch each other (eg no undershoots or overshoots). In addition, each property number anchor must be located within the respective property's boundaries. Kindly also note, split remainders are not permitted and except for a single remainder, each cadastral unit should have a separate erf number.

In addition to being geo-referenced and in WGS 1984 Geographic Coordinate System, the drawing must be completed using real world coordinates based on the City of Cape Town Standard as follows:

- Datum : Hartbeeshoek WGS 84
- Projection : Transverse Mercator
- False easting : 0.00000000
- False northing : 0.00000000
- Central meridian : 19.00000000
- Scale factor : 1.00000000
- Origin latitude : 0.00000000
- Linear unit : Metre

- 11 The above electronic data must be delivered (preferably by e-mail to the address supplied above) to the Senior GIS technician in the district Planning office where the subdivision approval was issued in standard dxf or shapefile format. If the data is to be supplied in shapefile format, then separate shapefiles are required for street names and numbers.



Annexure B

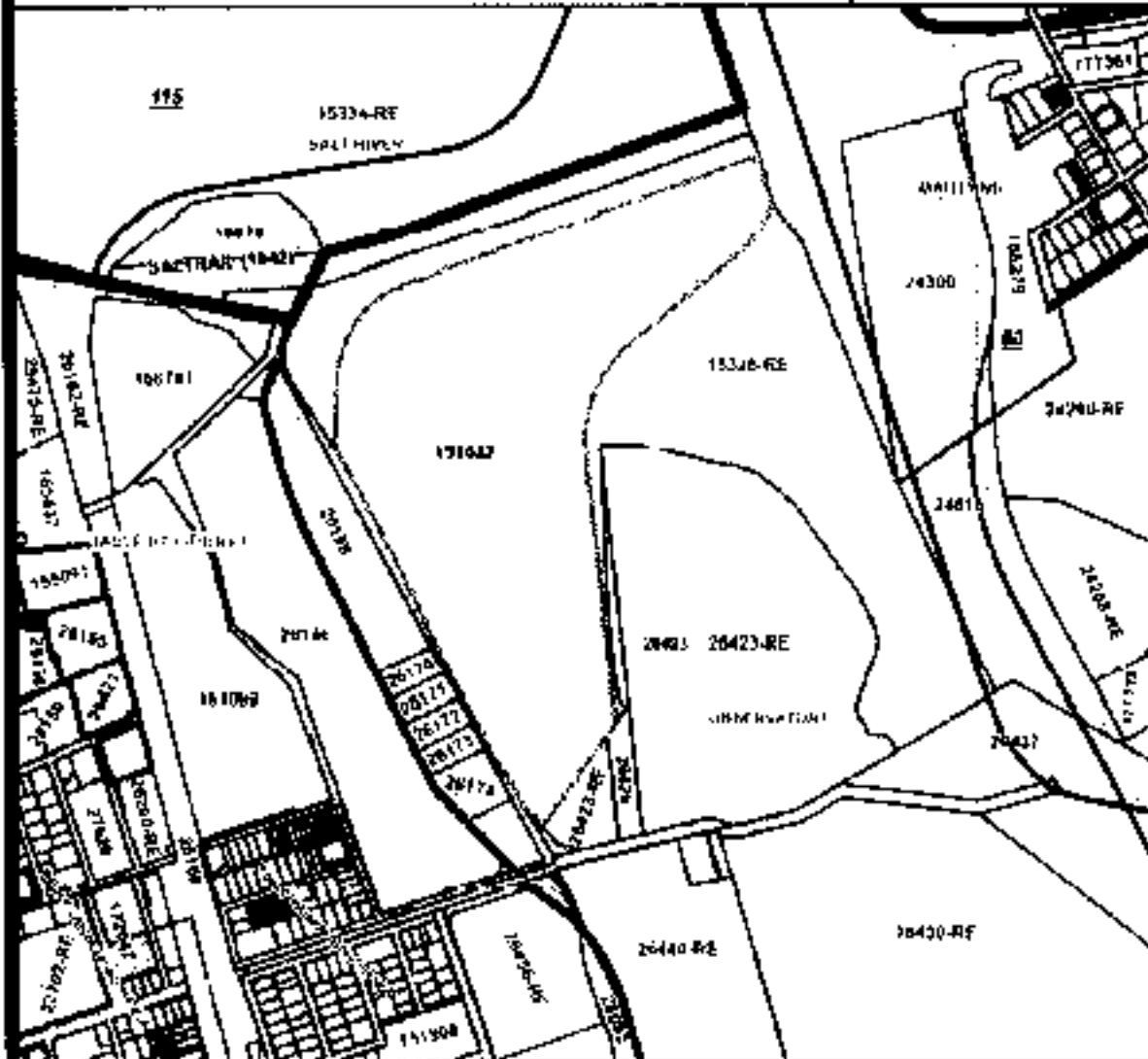
Locality map /

Extent of
advertising

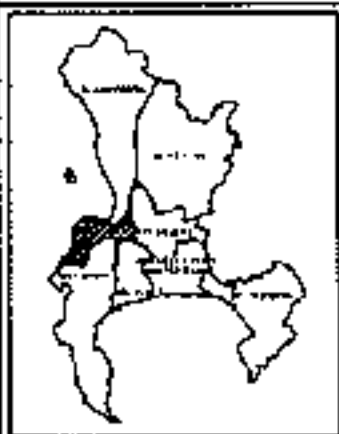
LOCALITY

PLANNING AND BUILDING DEVELOPMENT MANAGEMENT
LOCALITY MAP

ANNEXURE :



Overview



Ext: 151832
 ALDERSMITH CAPE TOWN
 Ward: E7
 DUBOIS TABLE BAY
 SUBURB: OBSERVATORY
 THE COUNCIL: SUBURB: 15



1:5 175

Nodes Served



Support Received



Further Signatory



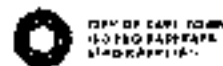
Objections Received



Generated by:

Date:

File Reference:



EXTENT OF ADVERTISING



The extent of public participation shown above must be read in conjunction with notices served and placed in the press.

11/LL28 11



CITY OF CAPE TOWN
ISEXEKO SASÉKAPA
STAD KAAPSTAD

DEVELOPMENT MANAGEMENT

J SAN GIORGIO
SENIOR PROFESSIONAL OFFICER

T: 021 400 6444
E: JOY.SANGIORGIO@CAPETOWN.GOV.ZA

BLUM022

19 APRIL 2021

CASE ID : 70396369

PLANNING PARTNERS (PTY) LTD
16 BREE STREET
CAPE TOWN
8001

FINAL NOTIFICATION LETTER

Dear Sir / Madam

PROPOSED APPLICATION FOR REZONING, APPROVAL OF COUNCIL AND DEVIATIONS FROM CITY POLICIES IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL BY-LAW IN RESPECT OF ERF 151832, 6 LIESBEEK PARKWAY (BOUNDED BY LIESBEEK PARKWAY AND OBSERVATORY ROADS), OBSERVATORY, CAPE TOWN

My abovementioned application has reference.

I wish to advise that the appeal process has now been concluded. The Appeal Authority has **approved** the Rezoning and Deviations applied for and **granted** the Approval of Council (i.e. Item 126-approval) see the decision attached. Accordingly, the decision may now be acted upon, subject to compliance with the conditions contained in the attached decision.

Kindly note, the approval of this application (i.e. the Rezoning, Approval of Council and Deviations) will lapse within 5 years from the date of this letter if not acted on, unless the property owner is granted an extension of time upon application to the City.

Note that in the case of a rezoning, the owner must notify the City in writing within the lapsing period or extended lapsing period that the land is being used in accordance with the approval, failing which the rezoning is presumed to have lapsed.

Kindly also note where applicable, the above approval does not guarantee approval of any related building plan application in terms of the National Building Regulations and Building Standards Act, No 103 of 1977 and that building work may therefore only commence once such plans are formally approved by the City.

Yours faithfully

For **DIRECTOR; DEVELOPMENT MANAGEMENT**

cc GIS officer
Director: Valuations

**MEDIA CITY BUILDING, 2ND FLOOR,
CNR ADDERLY STREET AND HERTZOG BOLLEVAARD CAPE TOWN, 8001**



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

Our Reference: PAAP 26/02/21

To: Noelle Mary Murphy

Jonty Cogger (Ndifuna Ukwazi – 'NU')

Cullinan and Associates (Observatory Civic Association – 'OCA')

Mark Jacobs (Redefine Properties Ltd – 'Redefine')

Mark Callaghan and Simon Birch (Rosebank and Mowbray Planning and Architectural
Committee – 'RAMPAC')

Legal Resources Centre (Goringaichona Traditional Khoi Council – 'GTKC')

Trevor Lea

Marc Turok ('TRJP Association')

Riad Davids (Pinelands Ratepayers and Residents' Association – 'PRRA')

Tim Florence (Planning Partners)

NOTICE OF DECISION AND REASONS

APPEALS SUBMITTED IN TERMS OF THE MUNICIPAL PLANNING BY-LAW, 2015 REGARDING THE
DECISION BY THE MUNICIPAL PLANNING TRIBUNAL OF 18 SEPTEMBER 2020 IN RESPECT OF ERF
151832, 6 LIESBEEK PARKWAY, OBSERVATORY

A. INTRODUCTION

1. The subject property is located between the Liesbeek Parkway in Observatory and the M5. It measures approximately 15 ha. Two of the property's borders lie along different channels of the Liesbeek River, although only the eastern channel carries waters from the Liesbeek itself. The western channel carries stormwater runoff from the surrounding urban area. The north-eastern portion of the property is near the confluence of the Liesbeek and Black Rivers. The Raapenberg Wetlands and Bird Sanctuary and the SA Astronomical Observatory complex lie to the east of the site; the Black River Business Park and

¹ The name of this appellant has different spelling variations in its appeal document. Use the spelling that appears first in the appeal submissions.

Hartleyvale sports complex to the west and south-west respectively; vacant land and rail yards owned by the Passenger Rail Agency of South Africa (PRASA) to the north; and the Volkerberg medical complex to the south.

2. The property is zoned Open Space Zoning 3: Special Open Space (OS3). It currently houses the River Club Golf and Conference Centre which features, among other things, a golf course, offices, conference facilities and restaurants. Most of the site is taken up by the golf greens.
 - 2.1. The developer has proposed an ambitious 150,000 m² mixed-use development that will feature housing and commercial uses in two precincts. The developer intends at least 31,900 m² to be devoted to residential uses, of which approximately 20% will accommodate affordable housing.
 - 2.2. Additionally, the development will comprise office space; retail space; a place of instruction; restaurant space; a hotel; a gymnasium; conference space; an events pavilion; and ancillary uses.
 - 2.3. Building heights will range between 15 and 44.7 metres and ground levels for the buildings will be raised between 5.7 and 5.9 metres to mitigate flooding concerns.
3. To the immediate north of the subject property lies a road reserve that for some time has been earmarked for the extension of Berkley Road from its current terminus in Ndabeni to Liesbeek Parkway. The road reserve is on City property. Along with the development of the subject property, the developer has proposed assuming responsibility for implementing 2 lanes of the Berkley Road extension, which will provide several access points to the development's northern precinct.
4. The developer's proposal includes significant improvements to the area's natural assets. The Liesbeek River canal along the east of the property will be decanalised and rehabilitated into a naturalised riverine corridor. The Liesbeek River channel along the property's western boundary will be transformed into a vegetated swale (i.e. sunken ground that will be covered with plants and absorb and filter stormwater).
5. To this end, the developer has sought: a rezoning of the property from OS3 to Subdivisional Area Overlay Zoning that will permit general-business uses (GB3, GB6 and GB7) and open-space zoning; approval for retaining structures to be built more than two metres high; and permission to depart from various City frameworks and policies. The rezoning is required to permit the abovementioned land uses and the subdivision into smaller land units. The approval for retaining structures is required to raise the structures

on the site above the 1:100 year floodline. The reasons for the policy deviations are discussed in greater detail below.

6. If authorised to proceed, the development will take place in phases. These phases will include the development of Precinct 1 (with mixed uses and a floor space of approximately 60,000 m²); the landscaping of the open-space corridor running from west to east across the site; and the development of Precinct 2 (with mixed uses and a floor space of approximately 90,000 m²).
7. The implementation of the proposed development will require the approval of further detailed plans.
8. When first published for public comment, the development proposal attracted approximately 180 objections. Nine parties have appealed against the decision of the Municipal Planning Tribunal (MPT) to authorise the development.
9. Various issues have arisen during the consideration of the development proposal. Among them are: the property's location on a floodplain; the proposed decanalisation of one portion of the Liesbeek River and the proposed transformation of another portion; the site's heritage, which includes the violent historical displacement and exclusion of indigenous people; the property's interaction with the SA Astronomical Observatory; the availability of sufficient external engineering services; the provision of affordable housing; the capacity of the surrounding road network; the developer's parking provision; and the extent of the proposed development's deviation from City frameworks and policies. The appellants have also raised concerns about the process followed when the application was determined by the MPT.
10. I address these issues below, in the context of the analysis required by section 99 of the By-Law.²

B. DOCUMENTS

11. The following documents were considered when determining the appeal:
 - 11.1. the report to me dated 3 February 2021 (including annexures);
 - 11.2. the appeal decision by the Minister of Local Government, Environmental Affairs and Development Planning in respect of the environmental authorisation sought

² The City accepted the application on 27 March 2018 and regarded it as complete and formally submitted on 8 August 2018. Accordingly, the application and this appeal are governed by the By-Law as amended on 12 May 2017 (and it does not include the amendments which came into operation on 3 February 2021).

by the developer, dated 22 February 2021 (including correspondence issued by the Minister);

- 11.3. copies of the presentations made to the Planning Appeals Advisory Panel (PAAP) that took place on 23 February 2021;
 - 11.4. the transcript of that meeting, including the deliberations of PAAP;
 - 11.5. the written rebuttal from the Goringaichona Traditional Khoi Council in respect of the developer's presentation to the PAAP;
 - 11.6. the resolution of the PAAP in respect of the appeals, together with its reasons and proposed amendments to the conditions of approval;
 - 11.7. the other documents mentioned in these reasons; and
 - 11.8. information obtained from officials of the City.
12. In addition, on 7 Apr. 2021, I conducted a site inspection of the subject property and the adjoining SA Astronomical Observatory site. I walked the perimeter of the subject property and noted the features which are relevant to the determination of this appeal. On the SA Astronomical Observatory site, I observed, among other things, the extent to which the subject property is visible through the trees along their common boundary.

C. APPEAL SUBMISSIONS

13. The appellants set out their appeal grounds in written submissions. They also made oral presentations to the PAAP supported by additional documentation.
14. The developer responded to the various appeal grounds. Its representatives made their own written and oral presentations to the PAAP.
15. The City's Department of Development Management prepared a report dealing with the submissions on appeal.
16. I considered the above information in the process of determining these appeals.

D. PLANNING APPEALS ADVISORY PANEL

17. On 23 February 2021 the PAAP convened to consider the appeals and hear oral representations.

18. Following that meeting, the PAAF recommended that the development should proceed and the appeals be dismissed. The PAAP recommended that some of the conditions of approval be amended.

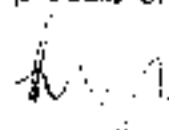
E. REASONS

19. I confirm that the development should proceed. Considering the issues raised in the appeals, I regard it necessary to issue a new set of conditions to regulate the development and to mitigate what might otherwise be adverse impacts of development. Accordingly, I intend to vary the decision of the MPT as set out in Annexure A.
20. Subject to what follows, I am generally in agreement with the reasons set out in the MPT Report and the reasons given by the MPT, and the analysis in the Appeal Report. To the extent that the appellants have repeated their initial objections during this appeal process, or raised appeal grounds not referenced below, I am generally satisfied that those have been adequately addressed by the MPT Report, the MPT's decision and the Appeal Report.
21. In reaching my decision, I considered all the relevant considerations raised in the application and in the appeals. Below, I address the main issues raised on appeal. The fact that a relevant consideration is not discussed in these reasons does not mean that I failed to consider it.
22. Below, I follow the structure of section 99 of the By-Law.

Procedural requirements of the By-Law and process-related concerns (s 99(1)(a))

Description of the process

23. The developer held a pre-application consultation with the City in October 2017.
24. When the application was first advertised in 2018, more than 160 timeous objections were received, as were various late objections. Only one of the late objections was not condoned and, in that case, the MPT Report records that the issues it raised were in any event addressed by the developer.
25. The developer has engaged several specialists to prepare analyses in respect of the subject property. Their reports have, in turn, informed the development proposal. Those reports have also been submitted to and considered by the City in the process of deciding the development application and the appeals.



26. While making application under the By-Law, the developer engaged with environmental and heritage authorities in terms of the national legislation regulating those competences. Where relevant and available, the inputs and outputs from those processes have also been considered by the City.
27. I am satisfied that the development proposal complies with the By-Law's requirements and was processed and advertised as required.
28. Following the MPT's conditional approval of the development proposal, the City received nine appeals. Seven appeals were received from persons who submitted written objections when the development was first advertised.
29. The GTKC and the PRRA submitted appeals even though they did not submit written comments or objections. Nonetheless, the MPT permitted the GTKC to make oral representations and PAAP permitted both to make representations. I have accordingly considered and addressed their submissions.
30. Apart from what I have said above, for the reasons in the Appeal Report, I am satisfied that the remaining appeals were validly submitted and that there is no merit to the developer's objections to their admission. I am satisfied that the appeals have been processed and notified in accordance with the By-Law, and in accordance with the development principle of good administration.

Applications of issue in the appeal and floor-space requirements

31. The developer has applied to rezone the subject property to Subdivisional Area Overlay Zoning. In accordance with a general subdivision plan, the MPT granted the rezoning, which makes provision for subdivision into three portions: Portion 1, which measures approximately 4.84 ha and will have GB3, GB6 and GB7 zoning; Portion 2, which measures approximately 4.91 ha and will have GB6 and GB7 zoning; and Portion 3, which comprises the balance of the subject property (approximately 4.58 ha), will be zoned OS3 to accommodate First Nations heritage features, the green open spaces and the riverine corridor/buffer.
32. Subdivision approval has not been sought in these proceedings and the developer intends to lodge a further application in due course. If the subdivision application is approved, the subject property will be subdivided into three large blocks in accordance with the abovementioned three portions. Those blocks may then be the subject of further subdivisions, which will necessitate additional applications and approvals under the By-Law.

33. To ensure that appropriate provision is made for the proposed development to be properly serviced, the City's officials recommended maximum floor-space requirements for each land use, noting that any increases above those thresholds would require, among other things, an additional development contribution. The MPT did not include those floor-space thresholds as a condition of approval, as it was of the view that they could be imposed when the developer seeks subdivision approval in due course.
34. However, the rezoning to Subdivisional Area Overlay Zoning will authorise different zones for the various precincts. As set out in the DMS, it will confirm 'the principle of development and acceptance of future subdivision of land' and designate 'land for future subdivision with development rights'. The Subdivisional Area Overlay Zoning rezoning requires the City to provide 'development directives through specific conditions'. I am accordingly satisfied that, as proposed in the Appeal Report, a condition should be imposed setting out the following floor-space limits for the built components of Precincts 1 and 2 (determined on the basis of the developer's various submissions and the evaluation thereof by the City's departments):
- 34.1. 59,600 m² of office space;
 - 34.2. 31,900 m² of residential space;
 - 34.3. 20,700 m² of retail space;
 - 34.4. 10,000 m² for a place of instruction;
 - 34.5. 9,200 m² of restaurant space;
 - 34.6. 8,200 m² for a hotel;
 - 34.7. 4,100 m² for a gymnasium;
 - 34.8. 4,100 m² for ancillary uses;
 - 34.9. 1,200 m² of conference space; and
 - 34.10. 1,000 m² for an events pavilion.

Process-related appeal grounds

35. The TRUP Association contends that '[e]ach sensitive precinct in TRUP needs to be consulted on' to ensure policy compliance and proper engagement. That is precisely what has happened in the present case: aside from engagements in respect of environmental and heritage approvals undertaken in terms of national legislation, the developer's land-use and development application was published for comment in accordance with the prescribed requirements, written submissions were received from a

sk 1/2

large number of interested parties, further oral submissions were heard by the MPT, aggrieved parties were permitted to lodge written appeals, and those parties were further allowed opportunities to make representations to the PAAP. Parties have been consulted about all of the intended portions i.e. both the built General Business areas in Precincts 1 and 2 and the development's open space. I am satisfied that there has been thorough consultation in respect of the proposed development, in line with the development principle of good administration and the requirements of the By-Law.

36. The TRUP Association alleges that the MPT approved the rezoning without the indicative subdivision plan being made available to it. However, that is not true. The plan was compiled in June 2018 and was submitted to the City well before the MPT's decision. Indeed, it is expressly referenced in the conditions of approval and made an annexure thereto.
37. Redefine argues that the developer should have made use of the By-Law's package-of-plans mechanism, and that it has failed to provide for the necessary sequence of increasingly detailed plans, including precinct plans, subdivision plans and site development plans (SDPs). The TRUP Association argues that the MPT could not grant the approvals sought without SDPs. The City's environmental and heritage officials also supported the package-of-plans approach and questioned whether a rezoning to Subdivisional Area Overlay Zoning was appropriate.
- 37.1. These complaints are unfounded. It was not necessary to follow the package-of-plans approach in the present case. Item 136 of the By-Law's Development Management Scheme (DMS) grants the City a discretion to require a package of plans. It is up to the City to determine whether such an approach is required in respect of a particular development. The DMS only prescribes that a package of plans must be utilised in respect of certain designated properties. The subject property is not thus designated.
- 37.2. In regulating the process going forward, the MPT required a series of plans that will have the necessary level of detail to allow the City to discharge its functions under the By-Law. In essence, the MPT approved the concept of the proposed development; the detail must still be addressed. The developer's motivation anticipates that further submissions will include detailed plans regarding particular aspects of the site, including SDPs. In the revised conditions of approval, I have clarified the plans that will be required and their sequencing.
- 37.3. The conditions of approval require (at the very least) a subdivision plan, SDPs, engineering reports on flood resilience, phasing details, a master landscape

plan, further detailed landscaping plans accompanying each SDP, an open space register for each precinct, a construction-phase environmental management plan, a stormwater management plan, a river corridor management plan, detailed construction and operational environmental management plans for the alteration of the Liesbeek canal and civil engineering plans for the road upgrades. These requirements cover both spatial and land-use concerns, and will provide the requisite level of detail at the appropriate stage of the development process.

- 37.4. The developer has explained that, given the amount of preparatory work that has gone into producing the proposal, it has not been necessary to follow an incremental package-of-plans approach. Instead, sufficient information is available, and sufficient detail has been imposed through the conditions of approval, to allow the developer to move from the current rezoning application to the preparation of plans for the subdivision of the site into the three major portions. As is evident from the content of the developer's submissions to the City, sufficiently detailed plans and motivations have been made available to allow a proper determination of whether to grant the rezoning and other authorisations sought. At this stage, contrary to the TRUP Association's claims, it is not yet necessary for the City to consider detailed SDPs.
38. Redefine contends that the MPT should not have omitted the requirement to submit precinct plans, given the scale of the proposed development and the need to confirm some precinct details before SDPs are submitted. It argues that the precinct plans are needed to deal with the split bulk allowance, 'Character Areas' and maximum heights.
- 38.1. However, those requirements are catered for in the conditions of approval, which impose a number of constraints on the two precincts and the open-space portion, and require precinct designs to be formulated in respect of various details, from bulk allocations to parking bays to land-use mixes to maximum heights.
- 38.2. To clarify the plans that will be required, and the content they will be required to specify, I have reformulated various conditions of approval.
39. The TRUP Association argues that the MPT had no authority to grant the approvals sought by the developer because it was not empowered to 'disregard applicable Planning Policy, Heritage issues that they have no knowledge or concern nor Environmental sensitivities that are not within their expertise of authority.' However, I am satisfied that the

MPT had the power to issue the decision it did, and that it had sufficient information and expertise to do so.

40. The appellants argue that objections have been ignored or discarded or responded to inappropriately, and that the wishes of the people have been disregarded in this decision-making process.
- 40.1. Those claims are not true. Various interested parties have put their submissions forward. Those submissions have been given due consideration in the decision-making process. They have also been considered by the developer. In some instances, the input from interested parties has led to the amendment of the development proposal. In other cases, it has led to the imposition of conditions of approval.
- 40.2. The mere fact that the City has not agreed with a particular objection, or has not agreed that a particular concern should result in the development being refused, does not mean that that concern was disregarded.
41. Mr Lea questions whether it was acceptable for the developer's hydrologists to be absent from an information session held with stakeholders. However, the developer included its hydrology study, and proposed mitigation measures, in its first submission to the City. The relevant hydrology information has been available to interested parties since the public notice process began. Moreover, any hydrology questions at the information session could have been addressed to the developer's representatives who were present; they would have been able to relay the relevant contents of the proposal to the interested parties. If necessary, they would have been able to note a particular question for the hydrologists to consider when available, and returned the answer to the interested party in due course.
42. The TRUP Association argues that the proposed development has (to the ignorance of the MPT) changed from a 14.8 ha development to 'a multi erf 25 ha development that spills over onto even that is under the custodianship of our City'.
- 42.1. However, the MPT granted approvals only in respect of the subject property – which is not owned by the City. The approvals to allow that property to be subdivided into three portions so that the development can proceed.
- 42.2. In addition to the development of the subject property, the developer has proposed to upgrade various surrounding sites, viz the Berkley Road reserve and the surrounding watercourses. Those sites are owned by the City. The City and the developer will enter into a services agreement, and the developer will be

required to submit various plans in respect of the watercourses, to regulate the developer's obligations in respect of City property. As recommended in the Appeal Report, I will impose an additional condition of approval regarding the services agreement.

- 42.3 Since inception the developer has proposed developing the subject property and upgrading surrounding City property. These features were known to the MPT and have at all times been made apparent to the City.
43. RAMPAC is concerned that the size of the proposed development has grown from 137,000 m² to 150,000 m². It contends that: the developer has refused to consider a smaller footprint, claiming it would not be viable; the developer, the City and the Western Cape Provincial Government have already agreed on the size of the proposed development; the developer acquired the subject property knowing that it was zoned for open space and fell within a floodplain; and a 'clear message' has been communicated that 'this development is going to take place regardless of any concerns raised.'
- 43.1. The development does not have a small footprint and will bring change, both to the subject property and to the surrounding area. That is not inherently bad. The motivation for the proposed changes must be measured against the requirements of the By-Law. As set out below, this has been done in considerable detail. The City does not have an absolute prohibition on the development of land zoned open space and land within floodplains. In respect of private land, when a developer seeks a rezoning, it is for the developer to show that its proposal is permissible under by the By-Law, and aligns with the City's spatial goals and other policies or, where required, that policy deviations are warranted.
- 43.2. The City engaged in pre-application consultation with the developer. That accords with good practice (as it helps to focus attention on areas that need to be addressed and information that needs to be provided) and is specifically authorised by section 70 of the By-Law.
- 43.3. There was no agreement that the development would be approved. Any such 'agreement' would have been unenforceable. The MPT was not party to any of the pre-application engagements, and only it had the power to determine whether to refuse or approve the proposed development. The MPT considered the concerns raised. Both the developer and the City have engaged extensively with the multitude of objections and submissions. In some instances, they have

resulted in changes to the development concept or in the imposition of conditions.

- 43.4. At no stage has the approval of the proposed development by the City been a foregone conclusion.
44. The TRUP Association alleges that the City and the Province are 'the largest self-interested land owners throughout Two Rivers Urban Park' and implies that the City has not discharged its regulatory functions in an impartial manner.
- 44.1. The City does own land within the TRUP. However, that has not affected how either the MPT or I have evaluated the proposed development, or how the City's officials have assessed it.
- 44.2. The MPT is a specialised body that is dedicated to considering development and land-use applications. It is not involved with the City's affairs more generally, and is not the custodian of the City's immovable property interests.
- 44.3. Both the MPT and the City more broadly exercise their regulatory functions under the By-Law strictly in accordance with section 99.
- 44.4. As is evident from the documentary record, there is a variety of opinions within the City as to the merits and de-merits of the proposal. All those perspectives have been considered in coming to a balanced and holistic determination, which determination is in no way influenced by the City's ownership of land within the TRUP or elsewhere.
- 44.5. The decisions in this matter have been made fairly, on the merits and in accordance with the law.
45. The TRUP Association placed much emphasis on an agreement between the City, the Province and the Kingdom of the Netherlands, alleging that the proposed development conflicts with the agreement in that the Netherlands only supports 'brownfield development' and not 'greenfield development'.
- 45.1. That is not the case. The agreement does not differentiate between the two types of development. In any event, the subject property has already been developed and extensively disturbed with the construction of buildings, a contoured golf course and the parking lot.
- 45.2. In fact, the proposed development is entirely consistent with the agreement. The proposed development will contribute to aspects contemplated in the agreement including 'urban regeneration' and is aligned with the

conceptualisation of the TRUP as *'a programme of projects and ... a high density, large-scale, sustainable, mixed use development with a residential and health "theme" located around a central park with two rivers based upon a "live-work-play" philosophy and transit orientated design (TOD).'*

46. The TRUP Association argues that the development proposal *'totally changed'* after the public-comment process, such that a fresh consultation process was required.
- 46.1. After the initial public-comment procedure, the developer did make further submissions regarding the development proposal, including some revisions. Those revisions did not constitute material amendments and did not require the application to be re-advertised. The further submissions to the City expressly record that *'the statutory planning application remains unchanged'*.
- 46.2. Furthermore, the further information did not adversely affect any person – it simply provided more detail to enable the City to determine whether to approve the concept of the development. Throughout the process the developer consistently sought the same rezoning, the same item-126 approval and the same series of policy deviations, and the development concept remained a two-precinct, 150,000 m² mixed-use development within the River Club floodplain that entails significant road upgrades, the rehabilitation of the Liesbeek canal and the transformation of the western Liesbeek channel into a vegetated swale.
47. Although NU does not represent any First Nation grouping in these proceedings, it argues that the development should have been re-advertised after it was revised to include input from the First Nations Collective. It argues that it was not appropriate *'for the developer to engage in "private negotiations" with one First Nations group "behind closed doors", and that the agreed revisions should be re-advertised to "give the public and relevant government departments a fair opportunity to comment on the revised proposal.'* According to NU, *'meaningful contributions'* regarding cultural symbolism have now been lost because the developer's proposal was not re-advertised.
- 47.1. However, there is nothing illegal or untoward in a developer engaging with interested and affected parties regarding the content of a development proposal. This is particularly so in respect of sensitive cultural matters, where the engagement process allows for the reaching of a more meaningful understanding of the concerns and the dissemination of information that would otherwise be inaccessible.

h *52*

- 47.2. In November 2019, the developer made various supplementary submissions to the City, following the public-comment process that took place towards the end of 2018. The submissions were aimed at addressing concerns that had arisen, including concerns in respect of the proposed development's impact on heritage. The supplementary submissions included positive revisions to the development proposal, setting out various steps to memorialise and institutionalise respect for the site's heritage. Those revisions did not have any adverse or material effects that warranted re-advertisement.
- 47.3. Furthermore, the revisions were very much conceptual. The MPT was not being requested to approve the detail of the proposed development, or to approve a materially different development concept. Detailed approval will happen in due course, when various more focused plans are considered (particularly the detailed SDPs and landscaping plans). When those plans are presented for approval, the City will undertake closer consideration of, among other things, individual memorialisation proposals. I have included a condition to ensure the developer invites further representations.
- 47.4. In any event, the developer's efforts at memorialisation are apparent from the various submissions that have been put forward. NU, organs of state and interested parties have all been afforded an opportunity to comment thereon during the current appeal. Any person who did not initially submit an objection could have petitioned the City to intervene during the appeal process. To the extent that NU – or any other person – thinks that better forms of memorialisation could be implemented, or that there are preferable ways of respecting the site's heritage, or had any other 'meaningful contribution' to make, those options could have been put forward in these appeal proceedings. That constitutes a fair and sufficient opportunity to make representations to the City before the final decision is made.
48. NU argues that the developer should restart a meaningful engagement process in respect of its affordable-housing contribution. However, the developer's proposal in this regard has been clear since inception. Any interested party has been free to comment, object or submit a proposed revision. There is no need for the process to date to be cast aside and recommenced.
49. The OCA alleges that the right to fair administrative action has been affected and that the City's decision not to require re-advertising was unlawful. It contends that it was not allowed to comment on 'new and material information that was placed before the MPT'

after the public-comment process concluded but before the MPT convened to consider the application. It complains that between 2018 and 2020 building heights and development configuration changed. The OCA and Redefine argue that the development proposal should have been readvertised because: more than 24 months passed between the public notice of the application and the MPT's decision; after the public-comment procedure the developer made material amendments to the proposal; there was a significant degree of opposition to the proposed development; the development is prominent and complex; and various reports and comments from Heritage Western Cape (HWC) and City departments were submitted, to which interested parties should have been allowed to respond.

- 49.1. Some of these concerns have been addressed above.
- 49.2. Under the By-Law, an objector is not entitled to submit written responses to comments of other interested parties or departments. The objector is only entitled to lodge a comment or objection in respect of the application as put forward by the developer.
- 49.3. Furthermore, when a developer amends a development proposal to accommodate feedback that has been received from objectors or other parties, or makes further submissions or procures further reports, subject to what I say below, that does not necessarily require a further notice-and-comment procedure. If it did, there would be an endless cycle of public participation, which would undermine the requirements of efficient administration and disincentivise developers from ever accommodating objectors.
- 49.4. If a developer makes a material amendment to its proposal after the public-comment period, the City may require additional notification. In respect of the proposed development, upon receipt of the developer's supplementary information, the City elected to exercise its discretion not to require such notification. The additional information was submitted in response to queries and issues that had been raised. The information was not regarded as a material amendment. Rather, the developer submitted further information to flesh out existing aspects of the proposal (e.g. in relation to design detail). To the extent that changes were incorporated, they were not material. For example, the developer initially proposed that Precinct 1 would comprise 65,000 m² and Precinct 2 would comprise 85,000 m². The developer later decreased Precinct 1 to 60,000 m² and increased Precinct 2 to 90,000 m². Overall, however, the proposed development's floorspace remained the same.

- 49.5. Building heights changed to provide for more sensitive treatment of the SA Astronomica Observatory precinct. Even if configurations changed, overall bulk remained the same. Furthermore, the detail of the precincts will be addressed in due course, when precinct and SDPs are considered.
- 49.6. To the extent that objectors were concerned with changes to the environmental impact assessment, those concerns could have been raised in the processes under the National Environmental Management Act 107 of 1996 (NEMA) and addressed by the competent authority.
- 49.7. If an objector was concerned that an issue that arose in the NEMA process could have land-use or development implications that should be taken into consideration under the By-Law, those issues could have been raised either before the MPT or in this appeal. It is evident that, where they so desired, parties and officials have introduced various input from the NEMA process (and processes under other statutes) into the current land-use and development application.
- 49.8. If an application has not been decided more than 24 months after the first public notice, the City may require that a fresh notice be published. The public notice in respect of the proposed development was first issued between 10 and 14 September 2018 and the MPT convened to decide the application on 18 September 2020. The City elected not to require fresh publication, given that this was only just outside the two-year period and sufficient information from interested and affected parties was on record. Some of the time between the publication and the MPT meeting was attributable to the complexity of the application and the volume of information that the City had to process. Some was attributable to the developer's decision to pend the land-use application until the conclusion of the application for an environmental authorisation. The Covid-19 pandemic and the associated national lockdown had significant impacts on various municipal functions and caused delays in the processing of the application. None of these causes required the application to be re-advertised in the second half of 2020. The objections received in 2018 did not contain information that required to be updated immediately before the MPT made its decision; the concerns raised by the objectors retained their currency. Allowing an additional notice-and-comment procedure would have caused an unnecessary and undue delay in an already protracted process.

Handwritten signature and initials.

- 49.9. In any event, any information that was not available to the objectors before the MPT hearing has been made available on appeal. Those objectors who remain interested in opposing the proposed development have been at liberty to address the content that they could not respond to at an earlier stage. I have considered all such submissions in making my decision.
50. NU contends that the MPT was 'ill-equipped to deal with the complex relationship between spatial injustice and cultural heritage' because the development proposal was not re-advertised and relevant issues were not properly explored. However, the MPT had volumes of information before it regarding heritage considerations (including further information that HWC directed the developer to obtain). These included various iterations of the Heritage Impact Assessment (HIA) and the First Nations Report, as well as comments from HWC. To the extent that NU wished to introduce further information, it could have done so. I am satisfied that the MPT was fully able to discharge its obligations in terms of section 99 of the By-Law, including the assessment of the proposed development's heritage implications.
51. At the oral submissions before the PAAP, NU's mandate and authority to speak about the effects of colonialism on the Khoi people was disputed. I note that NU's objection before the MPT did not raise any heritage concerns and dealt only with affordable housing. I also note that NU's appeal does not state that it represents any grouping or organisation of indigenous people. However, I do not consider it necessary to make a final determination in this regard. Suffice it to say that NU has not been able to discount the fact that significant indigenous groups support the proposed development or that various indigenous groups (both supportive and opposed) have made submissions in respect of the proposed development.
52. NU complains that it only received seven days' notice to attend the MPT hearing, had limited time to consider a voluminous record and a short period within which to make oral submissions. In addition, it contends that there was a 'short turnaround time to make a decision'. In a similar vein, RAMPAC complains that interested parties were afforded limited time to make oral submissions to the MPT, which meant that they could not make effective representations.
- 52.1. Those complaints are without merit. Under the By-Law, interested parties have no right to make oral submissions. The primary form of engagement is through written representations. Having considered the documentary record, it is clear to me that interested parties had (and made use of) sufficient opportunity to place their submissions before the decision-maker.

- 52.2. By the time NU was notified to attend the MPT hearing, I should already have been well acquainted with the issues at stake.
- 52.3. Objectors were granted an unusually long time for oral submissions. Usually, in an MPT hearing, objectors must share 10 minutes between themselves. However, to allow proper engagement, in this matter, that practice was relaxed, and more time was allowed for oral submissions from objectors. The MPT hearing lasted for seven hours. The MPT made its decision after full and thorough consideration of all issues and submissions.
- 52.4. Furthermore, in the PAAP interviews, each appellant was given 30 minutes to make oral submissions, which was in addition to their written submissions. I have also considered these representations in making my decision.
53. The OCA argues that the MPT failed to account for the development principles set out in the Spatial Planning and Land Use Management Act, No 16 of 2013 (SPLUMA) and the Western Cape Land Use Planning Act, No of 2014 (LUPA). However, the MPT Report contains a detailed analysis of the development principles in the context of the proposed development. As is evident from the transcript of the MPT hearing, the development principles were discussed. And the MPT's reasons expressly reference the development principles. In any event, I address the development principles later in these reasons.
54. The OCA contends that the MPT failed to consider the environmental management principles prescribed by NEMA, the proposed development's climate-change implications and the issues raised by the City's Environmental Management Department. However, all those aspects received extensive treatment in several documents that served before the MPT, including documents setting out the requirements of the City's environmental policies. Furthermore, the MPT imposed a series of conditions related to those concerns. Again, in any event, I have taken the environmental management principles into account. Even where not expressly mentioned, the NEMA principles informed the City's decision making on the environmental impacts, with which I deal with later in these reasons.
55. The OCA alleges that the MPT failed to consider the comment of HWC dated 13 February 2020.
- 55.1. HWC's final comment on the HIA did not serve before the MPT, although that comment was referred to in the developer's submissions.
- 55.2. The MPT was not bound by HWC's analysis of the site's heritage. Rather, it was required to come to its own independent determination of the proposed

Handwritten signature and initials at the bottom of the page.

development's implications for heritage resources. The City's officials supplied the MPT with thorough analyses of various heritage considerations, as did the developer. The MPT was also provided with earlier comments by the HWC, and the various heritage concerns raised by interested parties.

- 55.3. In any event, in determining these appeals I have had regard to HWC's comment of 13 February 2020, over and above the rich body of other heritage-related information that the various parties have put forward.
56. RAMPAC implies that the MPT hearing should not have taken place before the appeal against the environmental authorisation was finally determined and while 'Heritage clearance [was] still not forthcoming'. In a similar vein, the TRUP Association alleges that it was a 'serious Procedural Flaw' for the MPT to have considered the developer's application while the appeal against the environmental authorisation was still pending. It argues that both 'HIA and EIA processes' should have been completed before the City considered proposed land-use changes. The 'HIA' is the developer's Heritage Impact Assessment, and the 'EIA' is its Environmental Impact Assessment.
- 56.1. The submissions misconceive the legal position. There is nothing in NEMA, the National Heritage Resources Act 25 of 1999 (the Heritage Act) or the By-Law which prescribes the sequencing of decision making. Hence, NEMA and the Heritage Act do not preclude the respective competent authorities deciding an application for environmental or heritage authorisation before a necessary planning application has been decided. Likewise, there is nothing in the By-Law which precludes the City from deciding a planning application before an environmental or heritage application is decided.
- 56.2. The MPT is not bound by the determinations of organs of state in other spheres of government, exercising different functions pursuant to different competences. In fact, the MPT is duty-bound to come to its own determination in respect of both heritage and environmental concerns – regardless of the decisions by the environmental and heritage authorities. Furthermore, nothing that the MPT did purported to undermine, or could have undermined, the decisions taken by the environmental and heritage authorities.
- 56.3. Where appropriate, the MPT considered the information that was made available in the environmental and heritage processes, as have I.
57. The OCA alleges that the MPT only considered heritage reports prepared by the developer's consultants, and did not have regard to other perspectives (including those

of the City's officials). However, this allegation is baseless: the MPT considered all perspectives that were put forward. The fact that it did not agree with the OCA's views on heritage, or the weighting that the OCA suggested should be given to heritage considerations, is no indication that the MPT failed to discharge its duties.

58. Having considered all the information that was before the MPT, the transcript of the MPT's proceedings and the MPT's reasons, I am satisfied that the allegation that the MPT failed to apply its mind (made by various appellants) cannot be sustained. It is clear that there was thorough engagement with the information put forward by the various parties, and that the MPT diligently applied itself as required by section 99 of the By-Law.
59. The FRRRA claims that the proceedings leading up to the MPT decision were a 'farce'. The TRUP Association alleges that the MPT's decision shows that it was biased, and highlights the fact that the developer's planner (Mr Underwood) is a member of the MPT. It also alleges that 'pro-developer corruption has become pervasive in [the] MPT', as is evident from its 'track record in disregarding policy limits'.
- 59.1. These allegations are unsubstantiated and are without foundation. There is no evidence of corruption. The fact that the MPT's consideration of the various objections did not result in the refusal of the development is not evidence of bias or corruption.
- 59.2. The MPT comprises, among others, persons from the land-use professions who are appointed on the basis of their knowledge and experience. Its members include persons who are active in their professions. All members are required to observe requirements of accountability, transparency and fairness, and to make public disclosure of their personal interest in a particular application. In the present case it was clear to all involved that Mr Underwood was acting for the developer and therefore had no role to play on the panel of the MPT which decided the application.
- 59.3. It is evident to me that the members of the MPT brought an open and fair mind to the voluminous record and all the varied submissions from interested parties. There is nothing to indicate that Mr Underwood unduly influenced the members of the MPT, or attempted to influence them, to act other than in accordance with their duties under the By-Law. Mr Underwood did not even attend the MPT hearing.
60. The various considerations, information and documentation that the appellants allege were not taken into account by the MPT are part of the record before me. I have taken

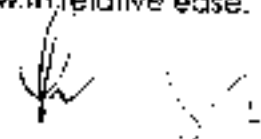
them into account in making this decision. The fact that I have not reached the same conclusions as the appellant's does not mean that I have not considered their arguments, or the facts upon which they are based.

61. I am satisfied that the procedural concerns that have been raised on appeal have been adequately addressed.
62. I am satisfied that the developer has submitted the necessary information, that the application has received sufficient notification and advertisement, that affected parties have had sufficient opportunity to make representations and that the necessary officials have considered and provided input in respect of the proposed development. Furthermore, the information, motivation, responses and objections submitted during these processes have been thoroughly engaged with, both during the initial application and during this appeal process.
63. 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.

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

64. 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 i.e. the densification and diversification of land uses in areas that have good transport infrastructure and are close to economic and other opportunities. To this end, the MSDF has delineated the City's Urban Inner Core as the focal point for public and private urban development. The Urban Inner Core is the priority investment focus at a metropolitan scale.
65. Although the MPT Report records that the subject property is outside of the City's existing urban footprint, the site's location within the Urban Inner Core makes it ideally located for a significant mixed-use development that will provide densification (through increased use of horizontal and vertical space) and diversification (by introducing residential opportunities alongside commercial and other uses, while retaining and revitalising green open space) on a site that is in close proximity to the railway and good roads, employment opportunities and areas of high amenity. Those opportunities and amenities may be found, among other places, in the nearby Cape Town Central Business District (CBD) and Paarden Eiland. The commercial opportunities in Salt River and Woodstock, and the industrial opportunities in Maitland and Ndabeni, are also nearby.

66. The proposed development is therefore aligned with the MSDP's overall investment guidelines.
67. The TRUP Association argues that densification and diversification of land use are only appropriate when not destructive and when they do not occur in a protected heritage park. However, rather than being destructive, the proposed development will rehabilitate the ecology of the site and the surrounding area and introduce various elements to celebrate culture and heritage where currently there are none.
68. RAMPAC argues that there are alternative, well-located sites that can accommodate the form and scale of something akin to the proposed development. The TRUP Association contends that '*[t]here are well located more appropriate areas, with 1,000 times more space for development than the Tsha River Club flood plain*'.
- 68.1. However, there are few opportunities in Cape Town that share the subject property's scale and locational efficiency, or would result in similar development benefits. There are even fewer such opportunities where private developers are willing to make use of private capital to develop a mixed-use precinct that is so well aligned with the City's spatial objectives.
- 68.2. Within the Urban Inner Core, the preferred zonings include GB1 – GB7. Once subdivided, aside from the open spaces, theerven on the subject property will be zoned GB3, GB6 and GB7. The proposed development's intended zonings are therefore consistent with the MSDP's stated preferences.
- 68.3. The MSDP notes the previous trend of locating affordable housing on the City's periphery and seeks to counteract the creation of new communities in similarly remote locations. Among other things, such locations significantly increase transport costs and do not facilitate integration. The proposed development – with its range of residential opportunities, including affordable housing – is well aligned with these objectives of location optimisation and preventing urban sprawl.
69. Even though the subject property is reasonably close to the railway and railway stations, it is not currently well serviced by public-transport infrastructure such as the MyCiti bus service. However, given the subject property's central location, its development will assist in introducing sufficient land uses to the area to justify investment in improved public-transport facilities. Furthermore, in the light of the quality of the supporting road network, bus and taxi routes will be able to service the subject property with relative ease.



70. The MSDP recognises the importance of the City's natural environments and conservation areas, some of which are categorised as Critical Natural Asset areas. The City's natural features have imposed significant constraints on urban development. At the same time, those natural features define Cape Town, are important to quality of life and ongoing environmental functionality. They also assist in mitigating climate change and support tourism. The MSDP's focus is therefore on ensuring appropriate and complementary development: maintaining ecological integrity while maximising the value to be derived by residents and visitors.

71. It is possible that a small portion of the subject property falls within the Critical Natural Asset area.

71.1. There are various forms of Critical Natural Asset areas: areas that have been protected and proclaimed under national or provincial legislation; areas that are subject to a stewardship / biodiversity contractual agreement in association with Cape Nature; areas that are in the process of being protected under legislation or an agreement; and conservation / critical biodiversity areas. The portion of the subject property which is classified as a Critical Natural Asset falls into the last category. The proposed development will also affect properties regulated by an agreement with Cape Nature, which is addressed below.

71.2. Generally, new developments in Critical Natural Asset areas should be limited to tourism-related development, with the ultimate goal being to protect and enhance the City's natural assets. The MSDP states that the preferred zoning is OS1, OS2 or OS3. One of the MSDP's stated goals in respect of Critical Natural Assets is to 'enhance and connect the critical natural assets that support the city and regional environment and ecology'. Specific objectives in respect of critical biodiversity networks include enhancing the networks and reducing the impact of urban development on water resources.


71.3. The developer claims that no portion of the subject property falls within the Critical Natural Asset designation. At most, it applies to the north-eastern tip of the subject property, on which the interface with the Raapenberg Wetlands and the riverine corridor will occur. In any event, buildings will not be placed in this area, and it will retain its open-space zoning. At most, footpaths and cycling paths will be introduced into the green open space. Accordingly, the proposed development will not require the subject property to be utilised contrary to the requirements of the MSDP's spatial transformation areas.

- 71.4. Under the MSDF, one of the overarching goals is sustainable development; balancing the imperatives of ecological conservation and urban development. I am satisfied that the proposed development strikes that balance, with its combination of well-located residential and commercial opportunities, rehabilitation of the degraded riverine corridor, improved linkages to surrounding ecological resources such as the Raapenberg Wetland and establishment of a high-quality publicly-accessible green open space.
72. The MSDF requires that developments in floodplains be carefully managed. This entails avoiding developments in high-risk areas, protecting the integrity of aquatic resources and ensuring that any new development enhances rather than detracts from watercourses. In deciding this appeal, I am therefore sensitive to and cognisant of the risks in developing the subject property – both in respect of the floodplain and in respect of its effects on the riverine ecosystem.
- 72.1. The developer has commissioned several specialist studies to assess these risks and to ensure that its development mitigates them. The hydrology study indicates that the proposed development will not have a significant effect on flooding in the area and the biodiversity report indicates that the proposed development's net ecological effect will be positive.
- 72.2. The MPT granted authorisation for appropriate retaining structures to be erected, to mitigate flooding concerns.
- 72.3. The subject property is located between two channels of the Liesbeek River. The natural riverine ecology is currently degraded because of past environmentally harmful interventions, such as canalisation.
- 72.4. The developer proposes to naturalise the river's course, rehabilitate the natural assets, introduce indigenous flora and enhance the ecosystem's connectivity (including links with the nearby Raapenberg Wetlands). The western Liesbeek River channel will be transformed into a vegetated swale which will fulfil ecological purposes, including assisting in the proper management of stormwater from both the site and the surrounding areas, as well as serve the overall environmental functioning of the site. An extension of these ecological benefits is that the riverine corridor will be more accessible to the public, with various viewing points and pedestrian and cycling routes.
- 72.5. Some of the objections are based on a perception that the proposed development will entail 'simply pouring concrete onto a floodplain'. This is a

mischaracterisation and misunderstanding. Many of the objections are focused on what are perceived as destructive ecological effects. However, these objections fail to appreciate the ecological proposal holistically, outright ignore the benefits that will be derived and exaggerate the harms. Dr Liz Day, an expert and specialist ecologist whose views are based on an extensive biodiversity study, said the following in her oral presentations to the PAAP:

Given all this I find myself perplexed by objections of the proposed development ecologically rounds. The canal rehabilitation coupled with strong ecological corridors and reconfigured swales and wetlands to the west, offer in my opinion, a rare opportunity to achieve actual meaningful river rehabilitation in the City ... It is extremely unlikely that rehabilitation of the Liesbeek canal would be taken by the City with the pressure of other demands on its resources. It would be a pity to lose the current opportunity rehabilitation funded by private development and the outcome of an ecologically sustainable rehabilitated river and a cleaner, functional wetland channel are all achievable.

73. The MSDP sets out the City's Biodiversity Network. The general guideline is that, where areas have been identified to protect natural resources, development should not be considered. Among other things, the City is required to assess development impacts on critical biodiversity areas and endangered species and maintain and improve connections between biodiversity areas.
- 73.1. The Biodiversity Network indicates that the area abutting the northern border of the subject property is an 'Other Natural Area (Buffer 1)'. The City's environmental officials have confirmed that this area is already transformed and not conservation-worthy. Furthermore, it is where the Berkley Road extension will be built, which has long been identified as the site of transport infrastructure and is of critical importance to the functioning of the proposed development and the connectivity of the City.
- 73.2. The City's heritage officials have highlighted the fact that the subject property falls within a biodiversity conservation area. I am satisfied that the proposed development will improve the subject property's ecological functioning and the riverine corridor's contribution to the amenity of the surrounding area.
- 73.3. The Biodiversity Network indicates that the two arms of the Liesbeek are 'Ecological Support Areas (Core 2)'. These properties will not be constructed upon. Rather, they will be transformed into the western swale (with wetland habitat and stormwater functionality) and the eastern rehabilitated riverine

 1/3/2

corridor. I am satisfied that these changes align with the MSDF's requirements for ecological support areas.

74. I am satisfied that the proposed development is sensitive to the surrounding ecosystem and will, in fact, enhance the subject property's environmental functionality.
75. The MSDF recognises the subject property as a strategic site. It records that the TRUP has been identified for affordable housing to support the Urban Inner Core. The TRUP falls within the Metro South East Integration Zone, which is one of three zones that are focused on spatial transformation through transit-oriented development and the implementation of catalytic urban development projects. The proposed development will assist in realising the MSDF's vision of the TRUP being developed through private-sector investment to improve housing opportunities, enhance urban infrastructure and ultimately contribute to a more integrated city.
76. The OCA contends that, because the subject property is zoned OS3, it should not be developed as proposed by means of a 'radical change in the zoning'. However, the OCA fails to appreciate the site's strategic location in the Urban Inner Core and the Metro South East Integration Zone. Furthermore, the development will preserve and enhance significant tranches of publicly-accessible open space.
77. The MSDF focuses on three spatial strategies that are drawn from the City's Integrated Development Plan: (i) building an inclusive, integrated and vibrant City; (ii) responsibly managing urban growth and ensuring an appropriate balance between development and environmental protection; and (iii) planning for employment and improved access to economic opportunities.
78. For the following reasons, I am satisfied that the proposed development aligns with the first spatial strategy of building an inclusive, integrated and vibrant City.
- 78.1. The MSDF sets out a variety of initiatives aimed at 'transforming the apartheid city'. In the context of private developments this includes: creating more opportunities in highly connected areas, particularly in the Urban Inner Core; avoiding urban sprawl at the metropolitan periphery; encouraging dense urban development that is anchored by public transport; increasing the available dwelling units in close proximity to employment and other opportunities; and diversifying land use in development corridors. The proposed development is well aligned with these initiatives.
- 78.2. The OCA contends that the proposed development is inconsistent with the MSDF because it is not within an existing development node. Similarly, the TRUP

Association criticises the proposed development because it does not fall along a transport corridor or within a growth node.

- 78.3. However, the proposed development will capitalise on the subject property's locational efficiency to introduce dense and diverse residential and commercial opportunities near several urban nodes. The proposed development will facilitate greater connectivity between the Metro South East Integration Zone and the Voortrekker Road Integration Zone, which are both significant development corridors.
- 78.4. Private developers (as distinct from organs of state) are encouraged to address various residential needs, including those driven by market forces and those that are not adequately served by the open market. In the present case, the developer has taken up that encouragement to offer a well-located, diverse and integrated development to the Cape Town market. Contrary to the OCA's contentions, the developer is not required to provide social (i.e. State-owned and operated) housing in order to comply with the MSDP.
- 78.5. The proposed development meets the requirements in respect of inclusivity and integration. It will include a combination of mutually supporting land uses and a mix of income groups by offering both market-driven and affordable housing opportunities, as well as introducing a rehabilitated public space that sensitively interacts with the Liesbeek River. The developer has undertaken to ensure that the affordable housing units are physically integrated with the other residential units in the development's apartment complexes. A suitable condition of approval has been imposed in this regard.
- 78.6. The OCA alleges that the proposed development is analogous to enclosing public commons. I disagree. The predominant use of the site at present is for a private golf facility. That space is currently uninhabitable and inaccessible to much of the public. The revitalised riverine habitat and the ecologically sensitive open space that will traverse the development will transform the property from an isolated site with minimal foot traffic to a publicly accessible precinct which draws people in and integrates with surrounding communities. The development will introduce a thoroughly upgraded green corridor with many accessible and inviting features. Public access will be legally secured by a registered servitude.
- 78.7. The OCA alleges that, contrary to Policy Statement 12, the proposed development will not conserve and manage heritage resources, including cultural landscapes. However, the subject property currently does little to

preserve, promote or enhance its storied heritage. As observed on my site visit, it is a relatively exclusive and privately operated golf club, with no visible recognition of heritage, and which has little resonance with the subject property's identity within the First Nations' culture or its history as the locus of colonial dispossession. By contrast, considerable effort – including engagement with various indigenous groups and leaders – has been spent on ensuring that the development will preserve and enhance the site's historical, heritage and cultural value. The developer has undertaken to visibly recognise, elevate and celebrate the site's history and heritage. The development will also optimise economic and social benefits for First Nations communities, who will be involved in the management of an on-site memory centre.

- 78.8. I have considered that the proposed development will substantially change the scale and character of the site. Although tall buildings will be introduced, so will high-quality open spaces and a rehabilitated and naturalised river course. The proposed development will therefore blend urban development with respect for the site's ecology and history. Surrounding heritage resources (such as the SA Astronomical Observatory) have been sensitively treated.
- 78.9. I note that the site is not subject to a Heritage Protection Overlay Zone in terms of the By-Law or any restriction imposed under the national Heritage Act (interim protection under the Heritage Act expired in 2020).
- 78.10. For these reasons and those set out below, I am satisfied that the proposed development will appropriately manage and conserve the relevant heritage resources.
79. For the following reasons, I am satisfied that the proposed development aligns with the second spatial strategy of responsibly managing urban growth and ensuring an appropriate balance between development and environmental protection.
- 79.1. The proposed development will be dense, diverse and will support the rollout of public-transport infrastructure.
- 79.2. It will enhance access to quality public places that offer recreational and non-motorised transport opportunities. At least one third of the subject property will be devoted to an accessible open-space system.
- 79.3. It will contribute to the rehabilitation of the degraded and canalised Liesbeek River, thus boosting the subject property's ecological functions. Significant effort has gone into assessing the environmental impact, maximising benefits and

minimising adverse consequences. Although the western Liesbeek channel will no longer be present as a river, it will be transformed to retain ecological and stormwater and functionality.

- 79.4. To mitigate the danger of flooding, the surface level for buildings on the proposed development will be raised above the subject property's 100-year floodline.
- 79.5. The requirements of the City's Bioregional Plan are addressed below.
- 79.6. The OCA alleges that the proposed land use intensity is inappropriate when assessed in terms of Policy Statement 19. Having regard to the policy, I disagree. The policy requires context appropriate intensification, particularly mixed uses and urban rather than suburban forms within the Urban Inner Core. In these reasons, I explain why I consider that the development proposal is appropriate for the strategically located subject property. The proposed development will feature both mixed land uses and urban rather than suburban land forms.
- 79.7. The OCA emphasises Policy Statement 22, which discourages urban growth in areas at risk from natural hazards that could be amplified by climate change. However, as required by the Policy Statement, the proposed development has been informed by specialist studies, to the satisfaction of the City, and appropriate risk-mitigation measures have been or will be put in place. I address climate-change considerations below.
- 79.8. The OCA has also drawn attention to Policy Statement 24, which requires that urban development's impact on river systems, wetlands and water resources to be reduced. The relevant considerations are addressed below. I am satisfied that, although the proposed development may alter the subject property's water resources, those alterations will result in positive outcomes for the associated fauna and flora and for the efficacy of the Liesbeek watercourse more generally, and will integrate the watercourse with surrounding and uses.
80. For the following reasons, I am satisfied that the proposed development aligns with the third spatial strategy of planning for employment and improved access to economic opportunities.
- 80.1. As discussed further below, with its combination of land uses, integration of income groups and proximity to various social and economic opportunities, the proposed development will establish a liveable, vibrant and productive urban environment which capitalises on the subject property's strategic location and

Handwritten signature and date: 15/03

will generate considerable employment opportunities. The proposed development has been expressly conceptualised as a 'Live Work Play' environment.

- 80.2. The proposed development will entail substantial private investments once approved. Furthermore, it will support highly desirable commercial opportunities and will assist the City in attracting and retaining desirable investment. The developer has indicated that the business uses will be able to accommodate, amongst others, tourism and hospitality uses, financial services and flexible office space.
- 80.3. It will respond to prevailing needs for both residential and business uses within the metropolitan area.
81. As addressed in greater detail below, the proposed development's affordable-housing contribution will further contribute to spatial justice and, more broadly, spatial transformation in the City.
82. I am accordingly satisfied that the proposed development is sufficiently and appropriately aligned with the MSDF.
83. The PRRA contends that 'HWC is currently setting the SDF for the entire area, this process has still to be concluded based on the HWC Meeting of 09 October 2020. A Moratorium of new builds should be in place until this process is completed.' It is not clear to me what this means.
- 83.1. Heritage Western Cape (i.e. 'HWC') is not responsible for determining spatial development frameworks. It is not the competent authority in that regard.
- 83.2. The applicable spatial development frameworks are addressed in these reasons, and this is being done by the City as the law requires.
- 83.3. It is neither necessary nor appropriate to pend the proposed development, or any other development, while HWC revises heritage policy.

Desirability (s 99(3) read with ss (1)(c) and 2(d))

Socio-economic impact (s 99(3)(a))

84. The developer commissioned SRK Consulting, an independent consulting firm, to assess the proposed development's socio-economic impact. SRK's report states the following:

- 84.1. The proposed development will result in investment in the local economy of approximately **R3,9 billion over three to five years**. This is highly significant for a single project. It is equivalent to 35.5% of the entire Cape Town construction sector's contribution to regional production in 2015.
- 84.2. The South African construction multiplier in respect of economic output is 1.9, meaning that the developer's investment will translate into an increase in economic output of **R7,4 billion over the three- to five-year period**.
- 84.3. The construction of the development will directly **employ 5,239 workers** across various skill levels (and may employ more at particular stages).
- 84.4. The South African construction multiplier in respect of employment opportunities is 4.9 jobs per R1 million of construction spend, meaning that the proposed development would provide up to **19,000 (direct, indirect and induced) employment opportunities**. Approximately 13,700 would be indirect jobs (such as sub-contractors) and induced jobs (such as those supported by increased spending of businesses).
- 84.5. The average wage for these jobs will be 'well above the South African minimum wage'.
- 84.6. Once the development has been completed, the commercial uses **operating** from the subject property will house retail and office-based businesses that support approximately **5,460 jobs**. In addition, the operations of the development itself will directly sustain between 550 and 631 direct jobs, with an estimated annual wage bill of more than R130 million.
- 84.7. The City will levy approximately R46,5 million in annual property rates.
- 84.8. At least **31,900 m²** of the developed area will be devoted to centrally located **residential opportunities**. **20%** of the residential floor space will be allocated to **affordable housing**. These opportunities will meet the demand for well-located housing in the City.
- 84.9. The proposed development will improve connectivity by creating pedestrian access to the TRUP and constructing new road infrastructure that will facilitate east-west movement across the Black River.
- 84.10. The development will see the loss of the private open space currently enjoyed by golfers. However, it will be replaced by significantly improved open space that is more accessible to the public.

- 84.11. The proposed development might increase property values in neighbouring areas, although the impact will be limited.
- 84.12. The proposed development could lead to **some gentrification**. This is unlikely to be significant, given that the closest surrounding areas are populated by middle- and high-income earners, many of whom will benefit from any property-price increases rather than be forced out by rising prices. Areas with more price-sensitive residents (such as Salt River) are further away and less likely to be impacted by the proposed development. Nevertheless, over time, these residents might also experience some gentrification.
- 84.13. The proposed development's increased densities will require upgrades to services infrastructure.
85. On appeal, the developer stated that the project's development value in the local economy over three to five years has increased from **R3,9 billion to R4,5 billion**; the number of direct jobs during the operational stage has increased from between **550 and 631 to 860**; and the estimated annual wage bill for those **direct jobs** has increased from R130 million to R200 million. These increased direct benefits are subject to the multipliers mentioned in the previous paragraph.
86. The appellants have not provided any alternative information concerning the project's socio-economic benefits, or any reason for doubting SRK's professional assessment. I see no reason for disbelieving it.
87. The OCA has flagged several risks associated with the construction jobs that will be created. The developer will be required to mitigate those risks in accordance with prevailing occupational health and safety standards.
88. The proposed development will see substantial private investment in the local economy. It will create jobs not merely in the construction industry, but also in the various industries that provide professional and other forms of support to construction operations. It will include significant investment in infrastructure that benefits the public, including the Berkley Road extension (the details of which will be regulated in the services agreement to be concluded with the City).
89. An appropriate development charge has been formulated by the City's officials, based on the intended land uses and in accordance with City policy. I will impose conditions to levy the development charge – more than R73 million – from the developer.
90. Precinct 2 is intended to house Amazon's headquarters, which will require approximately 70,000 m² of floor space. Amazon, a multinational technology and retail company,

selected the proposed development as its headquarters from a range of options across South Africa, following a competitive tender process. As the Chairperson of the MPT stated during the MPT hearing, it will be highly beneficial to the local economy to have a corporate of Amazon's profile headquartered in Cape Town. Furthermore, as global interconnectivity improves, so does competitiveness for the African market. South Africa is no longer seen as the automatic gateway or starting point. It is therefore important to seize the opportunity that has been presented.

91. The developer has committed to ensuring that 20% of the development's floor space is used to supply housing opportunities to the Cape Town market. Such a significant residential contribution will address the existing need within the City and assist in combatting upward pressure on rentals and property prices. The developer will allocate at least 20% of the residential floor space to affordable housing, which constitutes a substantial offering to those individuals and families who are not ordinarily able to access residential opportunities through the private market. Including opportunities for various income groups in this fashion will contribute towards achieving an integrated human settlement.
92. The subject property is near the CBD and Paarden Eiland. Furthermore, with the development of the Berkley Road extension, it will support various development corridors along Voortrekker Road and Main Road. This will reinforce both the Metro South East Integration Zone and the Voortrekker Road Integration Zone. Given the site's proximity to economic opportunities and social amenities, the development's proposed residential units will benefit from excellent locational utility. This will enhance its socio-economic functionality.
93. The Covid-19 pandemic's many devastating consequences have included the decimation of economic growth, the cessation of economic activity, the withdrawal of planned investments in urban development and the further worsening of an unemployment crisis. Unemployment has devastating effects on the people affected including a loss of dignity, indebtedness, homelessness, stress-related illness and depression, and family breakdown. It also causes a range of social harm such as greater inequity, gender-based violence and increased poverty. Cape Town has not been spared. In the current economic climate, the city has a scarcity of large new capital investments which promise not only short-term jobs but also long-term employment opportunities, infrastructure upgrades, residential opportunities and affordable housing. These features render the proposed development's socio-economic benefits all the more desirable.

94. In its submissions to the PAAP, the developer highlighted the information from Statistics South Africa indicating that the private building market is in deep trouble, has endured sharp declines and faces a bleak outlook. It has been forecast that investment in the building industry will decline by 28 percent this year. This will be a further deterioration of an already distressed industry. The proposed development will present a much-needed vote of confidence in the local construction industry, at a critical time.
95. All things considered, I am satisfied that the proposed development will have a substantial positive net socio-economic impact, and that any adverse consequences are either addressed by the development's parameters and conditions or outweighed by the substantial benefits that will accrue.

Compatibility with surrounding uses (s. 99(3)(d))

96. Given the subject property's strategic location, it has been recognised as a site of high development potential. The subject property is situated on the north western edge of the TRUP, and is well located to house a development that reflects both the highly urbanised surroundings to the north and west of the site and the less intense, more sensitive uses to the south and east.
97. The subject property falls within the Metro South East Integration Zone, in which investment and development should be encouraged. However, in the light of the site's ecological value and various constraints, any development must be sensitive and context appropriate.
98. Surrounding properties have General Residential, Mixed Use, Community and Open Space zoning. They feature various forms of housing, medical and rehabilitation facilities (including the Valkenberg Hospital complex), places of learning, factories and business premises (including the Black River Business Park), sports facilities (including Hartleyvale) and the SA Astronomical Observatory. The developer rightly contends that the land uses are fragmented; there is no overall sense of urban identity or character.
99. The area's natural assets are also a vital component of the surrounding context. They include the Liesbeek River, the Black River, the confluence of those two rivers and the Roopenberg Wetland and Bird Sanctuary.
100. The property has been used for recreational purposes for decades. From the 1920s to the '980s it housed the South African Railways & Harbours' recreation club for its employees. Since the 1990s it has featured a privately operated golf course, bar, restaurant and conference venue. The developer contends that those uses are financially unsustainable. Hence this application to optimise the use of the site.

h s c

101. The proposed development will bring a significant change to the area, both in respect of densification and diversification. It will introduce a sense of identity and character to the area. Whereas the area currently features scattered land uses with little uniformity or cohesion, the proposed development will introduce a large-scale and well-thought-out mixed-use development that incorporates appropriate interfaces with surrounding uses.
102. RAMPAC argues that the proposed development's form and scale will damage the environmental and heritage importance of the Liesbeek River environment. However, as is addressed in greater detail below, the proposal entails a significant rehabilitation of the riverine environment and a celebration of the site's heritage. It also creates various points of positive interaction with the site's ecological and heritage features.
103. The MPT imposed conditions that require the inclusion of at least 49,835 m² of open space which is accessible to the public. This will ensure an appropriate public interface with the rehabilitated environmental features of the subject property and the surrounding sites. It will also support the functioning of the confluence of the Black and Liesbeek Rivers to the north-east of the site. In addition, the rehabilitated watercourse along the property's eastern boundary will have linkages with the Roopenberg Wetland and Bird Sanctuary, improving interaction between the respective sites.
104. The developer's motivation notes that the open space running through the centre of the development will have visual connections far beyond the site, allowing the vistas of Devil's Peak to be enjoyed.
105. The transformation of the western Liesbeek River channel into a swale will be more compatible with the urban developments and transport routes to the north and west of the site, which developments will be bolstered with the construction of the Berkley Road extension. At present, the experience of the western channel is unpleasantly dominated by the proximity of the busy Liesbeek Parkway.
106. The developer has motivated the proposal as a 'Live Work Play' community. The proposed combination of residential and commercial uses is compatible with the land uses in the surrounding area, which also feature a range of business facilities and different housing typologies. The development will be structured so that taller buildings and higher densities face on to the busy transport route to the north of the site, while smaller structures interface with the more sensitive SA Astronomical Observatory site and the rehabilitated Liesbeek River corridor.
107. The developer's socio-economic impact analysis (which, like the other expert reports submitted by the developer, has not been contradicted or challenged by a comparable

h s i

professional report) notes that the proposed development is most closely associated with the suburb of Observatory and, to that extent, it represents a 'significant departure from the current sense of place'. There can be no doubt that the proposed development will depart significantly from the current land use and identity. However, the subject property is distinct from Observatory, and separated by features such as a major road and sports grounds. While a development with a strong commercial element might feel out of place in the heart of the residential portions of Observatory, the same cannot be said of the subject property, which is surrounded by various business, commercial and industrial uses.

108. The OCA contends that the development footprint will be too large, with buildings that are too tall and too bulky. While the SA Astronomical Observatory did not appeal, it raised concerns regarding the proposed development with the heritage authorities under the Heritage Act, including that the River Club is very visible from the Observatory, which is a Grade I heritage resource. The SA Astronomical Observatory is concerned that the proposed development will be even more visible with tall buildings and more lights.

108.1. The MPT Report notes that the surrounding area has varied architectural expression. Buildings range from 3 – 30 metres in height and there is wide variety in scale. The proposed development will introduce significantly higher buildings. The conditions of approval allow for heights up to 44.7 metres.

108.2. To minimise the impact on the SA Astronomical Observatory, the developer has proposed lowering building heights along the SA Astronomical Observatory border. Furthermore, the lowest buildings will interface with the SA Astronomical Observatory and take account of its heritage indicators. The forthcoming submission of detailed plans will also ensure appropriate treatment of the development's interface with the SA Astronomical Observatory site.


108.3. Importantly, the MPT Report notes that the SA Astronomical Observatory is no longer used for astronomical optical observations due to, among other things, prevailing light pollution from the surrounding suburbs and business uses. Accordingly, the proposed development will not hamper the SA Astronomical Observatory's functioning.

108.4. During my site inspection, I was also taken around the SA Astronomical Observatory precinct. It was apparent that most of the buildings are far from the boundary with the River Club, and that the Observatory buildings are screened by a tall ridge of trees, limiting their views.

109. The proposed development's highest buildings will front onto the new Berkley Road extension. They will define the edge of the site, and prevent the open space from being overwhelmed by the busy vehicular thoroughfare.
110. Given the location of the access points, the construction of the Berkley Road extension, the link between Berkley Road and Liesbeek Parkway and the M5, the placement of the open space and the on-site non-motorised transport infrastructure, the development as a whole will be permeable and accessible to pedestrians, cyclists and vehicles. It will be accessible while demonstrating a strong sense of place.
111. I am accordingly satisfied that, even though the proposed development will introduce change to the subject property and the surrounding area, it will be compatible with the surrounding land uses.

External engineering services (s 99(3)(e))

112. The MPT imposed a series of conditions regarding engineering services for the proposed development. These include requirements in respect of: a stormwater management plan; flood mitigation measures; a river corridor management plan; and road infrastructure and new intersections as recommend in the traffic impact assessment (TIA). I have retained these conditions, with appropriate modification for clarity.
113. As set out above, I will impose additional conditions to levy an appropriate development charge (more than R73 million) from the developer based on the approved rezoning to General Business land uses. The development charge has been formulated in accordance with City policy and makes provision for significant contributions to infrastructure for roads, transport, sewerage, water and solid waste.
114. The revised conditions will make provision for the conclusion of a services agreement for the construction of the Berkley Road extension, and the setoff of those construction costs against a portion of the development charge (being the portion that would otherwise have been used for roads and transport infrastructure).
115. Redefine is the owner of various properties in the area, including the Block River Business Park, the Observatory Business Park and The Old Match Factory. I contend that significant proportions of its development 'rights' have not yet been taken up. It intends to take up those 'rights' incrementally and requires certainty as to available engineering services and transport infrastructure. Redefine is concerned that the proposed development will take up spare sewerage reticulation capacity that is already constrained.

 15/2

- 115.1. The City's Development Management Scheme (DMS) prescribes development rules to which property owners are required to adhere.
- 115.2. The developer will be required to pay a significant development charge, to ensure that adequate infrastructure is in place to service the proposed development within the constraints of the surrounding area.
- 115.3. I am satisfied that the conditions for the proposed development are appropriate, and that sufficient provision has already been made, or will be made, to ensure that sufficient services are available without jeopardising existing capacity.

Water and sanitation

116. The City's water and sanitation officials considered the development proposal. They reported that: the water network has sufficient capacity to accommodate the proposed development; the City has sufficient capacity to supply the estimated water demand, but no infrastructure currently exists to supply the proposed development; existing sewer infrastructure is insufficient – the proposed development will therefore either require a new on-site pump station or for the Raapenberg pump station to be upgraded in time to meet the development's requirements; and sufficient capacity exists in the Cape Flats 3 Wastewater Treatment Works to deal with the proposed development's anticipated wastewater.
- 116.1. The Water and Sanitation Department offered no objection to the proposed development, subject to the imposition of conditions to, among other things, address the abovementioned infrastructural inadequacies. Those conditions will be imposed should the subdivision of the site in accordance with the Subdivisional Area Overlay Zoning be approved in due course.
- 116.2. The developer has undertaken to provide the necessary bulk water metered connection in accordance with municipal standards, to ensure that the proposed development can connect to the City's water reticulation network. The developer has also undertaken to provide two on-site sewer pump stations, as well as infrastructure linking the stations to the City's sewer infrastructure. The City remains engaged with the developer's consulting engineer to determine the most efficient drainage and reticulation solutions for the proposed development. Once those solutions have been determined, the subdivision authorisation (without which no development onsite can proceed) will be appropriately conditioned.




116.3. The Appeal Report records that approximately R10,5 million of the development charge will be reserved for improvements to the water and sewerage reticulation system.

116.4. I am accordingly satisfied that sufficient water and sanitation infrastructure will be in place to service the proposed development.

Solid Waste Management

117. The City's Solid Waste Management Department offered no objection to the proposed development.

Electricity

118. The City's Electricity Department supported the application, subject to the imposition of various conditions.

119. The Department noted that, while there is sufficient capacity to supply the proposed development's anticipated energy demands, the development will utilise all spare capacity in the area. This will mean that there is insufficient capacity to supply other developments in the area. Accordingly, the Department recommended that the developer be required to install a new Main Switching Station, to be transferred to the City in due course. It also recorded, among other things, that additional substation sites would be required on locations to be approved by the City, and that the Liesbeek Park substation would need to be subdivided and transferred to the City.

120. The developer engaged with the City to reduce the size of the required Main Switching Station. The City's Energy Directorate, after consultation with the Recreation and Parks Department, has secured a site for the construction of the main station along Liesbeek Parkway, which station will supplement electricity supply in the surrounding area. The developer will be required to formally reserve that land for purposes of the main station.

121. The Department has further indicated that the developer will have to subdivide and transfer at least one on-site portion (20 metres by 14 metres) for a protected substation to service the proposed development. Depending on the outcome of load-flow studies and further evaluation processes, additional substations may be required.

122. The necessary conditions regarding electricity infrastructure will be imposed should the subdivision of the site in accordance with the Subdivisional Area Overlay Zoning be approved in due course, at which point the relevant details about anticipated electricity demand will be available.

A handwritten signature and the initials 'S-2' are present at the bottom right of the page.

123. I am accordingly satisfied that sufficient electricity infrastructure will be in place to service the proposed development.

Stormwater

124. The subject property is currently prone to flooding. The developer has accordingly proposed increasing the relevant portions of the subject property's ground level so that the buildings will rise above the various floodlines. Furthermore, the MPT imposed a condition, which I have retained, requiring all habitable spaces to be constructed above the 1:100 year floodline.

125. The OCA contends that the proposed development will exacerbate the risk of flooding and that there is no viable stormwater management plan. Redefine is also concerned about the proposed development's stormwater management, and the extent to which surrounding properties will be affected by increased flood levels. The TRUP Association describes the allegation of a viable flooding solution as 'absurd'. The SA Astronomical Observatory is also concerned that the development will cause more flooding on the lower lying areas of the SA Astronomical Observatory site.

125.1. The City's stormwater officials reported that flooding in the area surrounding the subject property is caused by the bridges over the Salt River canal and that the extent of flooding is primarily determined by the water's escape route over the PRASA land to the north of the site. In other words, flooding in the area is not caused by the features of the subject property. The risk of flooding could be ameliorated by widening the Salt River canal and constructing drainage routes along the PRASA land. Those, however, are not requirements that can be imposed in respect of the current application because they do not relate to the subject property or the developer.

125.2. The developer's hydrology assessment concluded that runoff from the subject property (once developed) would have little impact on flood levels. The assessment addressed various possible sources of flooding. The proposed development was not identified as a significant cause of flooding. Although some impact on water levels in the Liesbeek and Black Rivers is anticipated, the expert reports indicate that the impact is not significant. I am satisfied that the appellants' claims of a material increase in flood hazards are unfounded.

126. The City's stormwater officials have noted that the proposed development will not significantly increase local flood risk and that the extent to which the proposed development would increase the risk of flooding was 'probably statistically negligible'.

K S

The officials therefore did not oppose the application to develop within the floodplain, but called for mitigation measures in any event.

127. To this end, the MPT imposed conditions, which I have retained, requiring: stormwater attenuation measures in the site's landscaping plan; the formulation of a stormwater management plan, to be approved by the City; the implementation of measures to mitigate the risk and consequences of flooding, as approved by the City, including the measures proposed in the hydrology assessment (as amended); and reports by professional engineers to show that the proposed structures will have the necessary flood resilience.
128. Furthermore, the development will incorporate bio-retention areas, vegetated swales, riverine buffers and wetlands, each of which will assist in holding stormwater and preventing flooding. Those features will be supported by a piped drainage network. The swales will slow stormwater flow and perform a filtration / treatment function.
129. As noted in the developer's stormwater management strategy report, the primary strategy should not be onsite attenuation, given the stormwater infrastructure and drainage network in the surrounding area. Instead, the focus (in respect of preventing flooding) should be on appropriately discharging runoff. The abovementioned bio-retention areas, swales, buffers and wetlands will facilitate the discharge of excess stormwater into the surrounding river network. The report therefore indicates that the proposed development will entail an appropriate balance between onsite attenuation and discharge offsite.
130. The MPT Report notes that flooding in the area is attributable (at least in part) to blockages in the Black River. These blockages are unintentional and can be unblocked as required if they are regularly maintained.
131. The MPT Report recommended that a berm be constructed along the subject property's boundary, to protect the SA Astronomical Observatory site from flood risks. This was opposed by the developer. The developer is still required to submit, among other things, a detailed stormwater management plan that includes measures to manage and mitigate flood risks. If the City determines that a berm is appropriate, it may impose the necessary condition when approving the plan. Where necessary, the developer will have to engage with, and secure agreement from, the surrounding landowners to erect infrastructure if changes are required on neighbouring properties.
132. Similarly, a concern has been raised that, although the proposed development will only result in marginal stormwater level increases, those increases will be felt on Liesbeek

Parkway. When the City considers the detailed stormwater plan, it can determine what measures, if any, are required in respect of Liesbeek Parkway, including a mooted raising of the road.

133. Contrary to the OCA's claims, I am satisfied that viable stormwater strategies do exist for the site and that the conditions of approval will be effective in ensuring that they are timeously implemented.
134. The City's stormwater officials noted that transforming the western channel of the Liesbeek River would be 'hydraulically unimportant' and would otherwise have a 'limited effect' in respect of stormwater management. The officials opposed the transformation, but did so largely out of concern for the anticipated 'ecological and eco-historical' impact. I have addressed those impacts elsewhere in these reasons.
135. The stormwater officials were insistent that the riparian areas should be appropriately buffered. Accordingly, the MPT imposed a condition, which I have retained, requiring that when detailed SDPs are formulated, buffer width must be approved by the City.
136. The stormwater officials noted that the City should be guided by the expert studies and reports procured by the developer. They also noted that the developer could be allowed to deviate from runoff attenuation requirements, but did not support the application to deviate from the 24-hour detention requirement. On appeal, the developer has indicated that it will, in fact, comply with the 24-hour detention requirement in respect of the annual 24-hour storm event. Accordingly, I will not be granting a deviation from that aspect of the policy objectives.
137. The OCA placed much emphasis on the Environmental Management Department's assessment of the proposed development's stormwater implications. I have taken that assessment into account. However, as is clear from the above, I have also duly engaged with the various assessments undertaken by the specialised department i.e. Catchment and Stormwater Management.
138. I am accordingly satisfied that adequate provision has been made for the management of stormwater in the development proposal, and that the necessary aspects will be appropriately and sufficiently addressed as detailed development plans are prepared and considered.

Conclusion regarding services

139. I am accordingly satisfied that the necessary measures have been put in place, or will be put in place in due course, to ensure that the proposed development is serviced as

required and to mitigate against flood risks. I am satisfied that the appellants' allegations that the development will not be adequately serviced are without merit.

Impact on safety, health and well-being of the surrounding community (s 99(3)(f))

140. The City's Health Directorate evaluated the proposed development and offered no objection, subject to the developer obtaining approvals under other relevant statutes (e.g. the building-plan approval under the National Building Regulations and Building Standards Act). The City's Water Pollution officials also offered no objection.
141. Much of the subject property is currently inaccessible to the public, due to existing private operations, constrained access points, institutional uses and physical barriers. The proposed development – with its publicly accessible open spaces – will change that. Similarly, the introduction of residential opportunities and the expansion of commercial facilities will greatly increase the number of people on site. That, in turn, will boost surveillance and enhance security on the subject property.
142. Ms Murphy contends that the development 'poses the real danger of damage to property, my property.' Her appeal does not elaborate beyond that statement. Mr Lea alleges that Aurecon's hydrology report is biased, but does not set out any basis for the alleged bias. Similarly, the TRUP Association contends that the developer's specialists have misrepresented the development impact and understated the 'huge additional risk' posed, without providing any details of the alleged misrepresentations.
- 142.1. I am satisfied that Aurecon and the other professionals contracted by the developer are appropriate professional experts to have rendered the various reports.
- 142.2. None of the appellants have put forward comparable studies or reports undermining the developer's contentions, or even raised concerns that seriously and objectively call the contents of the developer's reports into question.
- 142.3. Questions of possible damage to property were considered and appropriate design controls and conditions have been put in place.
143. Mr Lea is concerned that various properties and roads stand to be affected by the modelled 15-centimetre possible increase in floodwater levels caused by raising land on subject property proposed development, 'particularly in the light of global warming'. He contends that the developer's approach is to divert flood waters 'to properties within the same flood plain', which will cause flood damage and may increase insurance costs. Mr Lea also takes issue with the hydrology report's reasoning in respect of properties already

built within the floodplain. He argues that landowners could not have been expected, 100 years ago, to foresee that the City would allow development within a floodplain.

143.1. As addressed in greater detail elsewhere in these reasons, the proposed development may result in only a marginal increase in floodwater levels. Where flooding risks are apparent, they have been or will be sufficiently mitigated. I have imposed the following condition to mitigate the risk and possible impact of flooding caused by the development:

The owner/developer shall, at their own cost, implement the necessary measures to safeguard properties affected by flood level rise because of the development and to mitigate the impacts of flooding, as set out in the approved Stormwater Management Plan.

143.2. Some properties in the area have buildings that fall within the floodplain and that will be exposed to flood risks irrespective of what occurs on the subject property. The developer cannot be required to mitigate those risks, or be held accountable for flooding that would occur even if the development does not proceed.

144. I am satisfied that the development will not substantially adversely impact on the safety, health or well-being of the surrounding community and that, where risks are present, appropriate conditions have been imposed.

Heritage (s 99(3)(a))

Provisional protection under the Heritage Act

145. In April 2018, acting under the Heritage Act, HWC granted provisional protection to heritage resources on the subject property for two years. That provisional protection lapsed on 19 April 2020. No further heritage protections have been issued by national or provincial authorities.

Developer's initial submission to the City

146. The developer submitted its motivation to the City in September 2018. It addressed, among other things, the subject property's heritage. It annexed the HIA that had been prepared for consideration by HWC and the Western Cape Department of Environmental Affairs and Development Planning (DEADP) in terms of the national heritage and environmental legislation. The motivation noted that the HIA was subject to a public-comment process under the NEMA and would be finalised in due course.

147. The motivation described the subject property as having historically been used by indigenous farmers, who were later excluded by European settlers wishing to make use of the best grazing land at the Cape. It identified the Liesbeek River as the sole vestige

H. S. J.

of physical heritage on the site, but noted the *'intangible and imprecise associations, the sense of deep-time that the history of the area gives.'* The current River Club buildings were described as having *'very low significance'*.

148. Other heritage resources identified by the developer included: the confluence of the Liesbeek and Black Rivers (which is near but not on the subject property); the no-longer-extant river-crossing point; the site's open-space character, shared by the broader Liesbeek and Black River corridor; and features of a cultural / historic landscape. The motivation also stated that the subject property's topography and environment could bear heritage significance, both as the Liesbeek River's floodplain and *'as the site of the early confrontations between indigenous people and settlers.'*
149. Beyond the site but within the area, the motivation also recorded other heritage resources, including the SA Astronomical Observatory, the Volkenberg Hospital complex, the Oude Molen space and the Alexandria Institute and historic mill.
150. The developer noted that the subject property is currently devoted to a golf course and will be significantly affected by future developments in the surrounding area.
151. The motivation proposed six heritage-related development considerations: (i) rehabilitating the Liesbeek canal; (ii) naturalising the river corridor but not reintroducing the pre-1952 river course; (iii) lowering building heights on the border with the SA Astronomical Observatory; (iv) introducing a significant setback from the west bank of the Black River (to recreate the pre-colonial river crossing); (v) allowing the design of the development (heights, scale etc) to be determined by urban design rather than heritage indicators; and (vi) accepting that it is unnecessary to preserve a view cone from the SA Astronomical Observatory to Signal Hill.
152. The motivation therefore proposed:
- 152.1. establishing a *'commemorative and celebratory area'* close to the historic crossing point;
- 152.2. rehabilitating the Liesbeek River by removing the canal to introduce a sense of genuine *'river-ness'* and support biodiversity. The expressed intent was to recreate *'the lower reaches of the Liesbeek River as a properly ecologically functional and visually convincing river course'*; and
- 152.3. introducing appropriate riverine buffers to support fauna and flora and pedestrian and cycling activities.

Responses to the initial submission

153. The land-use and development application was published for comment in September 2018. Several comments were received in respect of the subject property's heritage, including criticisms of the adequacy of the HIA and concerns about the proposed development's impact on the cultural landscape.
154. In October 2018, the City's Heritage officials submitted their first set of comments in respect of the proposed development. They:
- 154.1. emphasised the importance of the topographical, ecological and historical cultural landscape, both in respect of the Liesbeek's floodplain and as the site of conflict between indigenous inhabitants and settlers. The officials underscored the importance of the western Liesbeek channel and opposed its infilling, although they noted that this could be mitigated by including a watercourse within a transformed riverine corridor;
 - 154.2. highlighted the need to ensure an appropriate interface with the SA Astronomical Observatory, which is a site of outstanding heritage, having architectural, scientific and historical significance;
 - 154.3. described the subject property as having an urban threshold role, with its openness and watercourses contrasting with the surrounding urban fabric. The proposed development will result in significant visual change, given the site's 'long-term status as a green open space';
 - 154.4. supported landscaping green open areas, but suggested reductions in bulk and height of the intended buildings; and
 - 154.5. did not oppose the development of the subject property *per se*, provided due cognisance was given to the relevant heritage resources. However, they opposed the developer's proposal, given the mooted bulk and heights and lack of alignment with the Tall Building Policy, Environmental Strategy and Cultural Heritage Strategy.
155. In July 2019 the developer's consultants revised the HIA. They noted, among other things, that while the subject property has much significant history dating back to the pre-colonial and colonial periods, there are few tangible remains. The topography survives, but the land is much changed; wilderness and wetlands became farms, which became institutions and suburbs. The rivers, however, remain powerful historical symbols.
156. The July 2019 HIA stated that the proposed development's most fundamental heritage impact would be the change in appearance and character of the site, and that it would

also affect the experience of and from the SA Astronomical Observatory. In addition to the aspects mentioned in paragraph 152 above, the HA recommended implementing archaeological monitoring procedures on-site and limiting to four storeys the height of the buildings in Precinct 1 that line the river corridor.

157. In September 2019, HWC (acting under the Heritage Act) requested the developer to further engage with First Nations groups.
158. Outside the parameters of the By-Law and the present development application, the Western Cape Department of Transport and Public Works appointed AFMAS Solutions (Afmas) to facilitate engagements with the indigenous people with an interest in the TRUP, to establish the oral history of the Two Rivers Local Area. As a result of those engagements, the First Nations Collective came into being, comprising various leaders of indigenous groups. According to the November 2019 *River Club First Nations Report* (RC First Nations Report) mentioned below, the First Nations Collective comprises the majority of senior indigenous Khoi and San leaders and their councils in the Peninsula. The GTKC initially participated in the First Nations Collective.
159. Following HWC's request, the developer appointed Afmas to engage with the First Nations Collective to ascertain the intangible heritage of the subject property. The result was the production of the RC First Nations Report. It followed the 'TRUP First Nations Report', delivered in September 2019.
160. The RC First Nations Report runs to 97 pages (excluding its annexures). Its salient points regarding the heritage of area of the TRUP (i.e. the area as a whole, not just the subject property) include the following:
- 160.1. The site is sacred and a place of memory. Its significance cannot be dislocated from the TRUP.
 - 160.2. Indigenous people have a symbiotic relationship with the land and great respect for fauna and flora. The Khoi and the San have that relationship with the soil, the river, the stars and IKággén, the mountains. The land and the watercourses are part of Khoi consciousness. Colonialists' conduct in separating the Khoi from their land and the Liesbeek amounted to ripping out their soul.
 - 160.3. Land is not owned by people, but by God. Instead, people are custodians of the land with a duty to safeguard it.
 - 160.4. Plants can be used for food, medicines and rituals. Animals have roles in cosmology, folklore and rituals.

- 160.5. The confluence of rivers is a special and ceremonial place, with a connection to memory because water holds memory. Rituals have taken place at the confluence of the Liesbeek and Black Rivers: marriages, burials and cremations. Political events have also taken place there.
- 160.6. The Goringhaiqua, Gorachouqua and Cochoqua (groups within the Khoi) became permanently settled in what is now Mowbray and Rondebosch, and along the Liesbeek River. These areas had earlier been traversed by the San. The Goringhaicona were also present, and they had early interactions with Jan van Riebeeck.
- 160.7. Leaders of the amaZulu and amaXhosa were brought to the TRUP, but it remained a Khoi site.
- 160.8. The TRUP saw the first land grab by European settlers and the commencement of the first Khoi war, which began after the Dutch started seizing land and introduced an exclusionary fence. This led to the annihilation of the Cape San over more than 100 years.
- 160.9. The TRUP saw the first anti-colonial battle, against the Portuguese led by D'Almeida (who had been the fiercest opponent of indigenous people). It also saw the first grant of land to Jan van Riebeeck by Dutch authorities, which led to the battle of 1659 and much further conflict.
- 160.10. The Europeans brought environmental destruction, as various animals were killed or driven from the land. Previously there were leopard toads, black-maned lions, hippopotami and elephants in the TRUP. Given the close links between the Khoi and nature, the devastation of local fauna caused great pain.
161. The First Nations Collective is of the view that intangible cultural heritage comprises oral traditions, performing arts, social practices and rituals, knowledge of nature and the universe (and related practices) and traditional craftsmanship. It subscribes to the view that the indigenous planning process is focused on meeting people's primary needs, recognising the interconnectedness between people and their environment.
162. The RC First Nations Report records the following 'aspirations' for the TRUP:
- 162.1. developing authentic indigenous commemorative landscapes, including spaces for engagement, place-making, healing and memorialisation;
- 162.2. acknowledgements of the indigenous people's history on the land, including: the defeat of D'Almeida in 1510; the TRUP's central role both in the dispossession by

settlers and as a site of resistance to colonialism; and remembering the narratives of heroes and heroines such as Doman, Autshmao and Krotoa;

- 162.3. providing a gathering place for cultural performances (such as an open-air amphitheatre with traditional configuration) and a ceremonial site / circuit;
- 162.4. incorporating indigenous plants to be managed by members of the Khoi and San communities. The 'intangible heritage of landscape use (will be) embodied in vernacular practice (Khoi and San use of indigenous plants)'. An important part of the process going forward is 'understanding indigeneity and indigenous knowledge systems interwoven with indigenous fauna and flora';
- 162.5. reconnection of indigenous people with the site through the cultivation of indigenous plants and associated practices, which is a manifestation of the necessary 'indigenous usufruct';
- 162.6. establishing an indigenous heritage and art training centre and gallery. Among other things, the centre will serve as a cultural hub where 'local indigenous groups can describe and celebrate their history, display indigenous art and teach indigenous languages' in order to revitalize First Nation living heritage. The centre will also include heritage and media components;
- 162.7. using land and accessible internal space to tell the history of the site; and
- 162.8. a renaming process.

163. The RC First Nations Report records the following in respect of the subject property.

- 163.1. Contrary to the GTKC's claim, the battle of 1510 did not occur on the subject property. Although the site is a part of the TRUP, no 'narrative-defining event... can be attributed specifically to the River Club site.'
- 163.2. There is no 'tangible or intangible reference' to the Gorinhaiqua having settled on the subject property. However, the indigenous people were excluded from the site as part of the colonial 'geniagem' i.e. programme of violent and illegal displacement, land seizure and exploitation.
- 163.3. There are no indigenous sacred burial grounds on the subject property, which would not have been placed in a wetland. This is supported by a 2015 archaeological assessment.
- 163.4. What is 'referred to as the old Liesbeek is not a river of old but an early artificial drainage canal'. The whole of the River Club is 'at most all an artificial island.

it's not grazing land and it's very much not a burial ground. It is an engineered landscape'.

163.5. It is not possible to determine whether the subject property housed a river-crossing site. It is likely that this crossing point was north of the TRUP and the river-confluence point.

164. The RC First Nations Report states that it seeks to assert indigenous control over indigenous narratives. It rejects the role of the OCA and the TRUP Association in seeking to assert First Nations heritage, as well as the idea that indigenous people are opposed to development. The Report states the First Nations Collective's intention of placing indigenous narratives at the centre of the proposed development instead of protesting from the margins and includes letters of support from various leaders. The report includes the following quote:

We can't return to Eden, because Eden happened a long time ago, but we can give vision. This site must be the optic realization of a vision of realization, restitution, reconciliation and recognition. We bless this development by ensuring that the wells that were poisoned, the waters that were poisoned, once again regenerate life and reflect as close as possible as we can come to what gave life to that sweet water.

165. The RC First Nations Report expresses the First Nations Collective's assertion of its agency. It also explains that assertion of the indigenous narrative, and the incorporation of the abovementioned interventions, are important elements of spatial justice in the contemporary urban context. It records a social compact with the developer to include indigenous place-making mechanisms at the site, comprising:

165.1. an indigenous garden for use by the First Nations,

165.2. a cultural, heritage and media centre;

165.3. a heritage-eco trail;

165.4. an amphitheatre to be used for cultural performances; and

165.5. commemoration initiatives such as the use of First Nation symbols and naming internal roads after indigenous leaders,

166. The report includes depictions of possible architectural expressions reflecting First Nations culture and a 'Concept Landscape Plan'.

167. Following the compilation of the RC First Nations Report, a supplement to the HIA was prepared. It addressed the contents and aspirations as formulated by Afmas. It also noted that 'there are some First Nations groupings who do not share [the First Nations

Collective's support for the development}'. It recorded various proposed revisions to the development concept, including increased building setbacks along the Liesbeek River, reduced building heights along the SA Astronomical Observatory border and incorporating the First Nations Collective's aspirations (as set out in paragraph 161 above) into the development. The supplement also addressed the feasibility of different iterations of the proposed development and explained the minimum floorspace necessary to make the project financially viable.

168. In November 2019, the developer submitted 'Supplementary Information' to the City in respect of the proposed development, primarily in respect of design concepts. It reiterated the RC First Nations Report. The developer provided the following images of what it proposes.

Handwritten signature or initials in black ink, appearing to be 'A. S. i'.



Proposed rehabilitation of the eastern Liesbeek canal into a naturalised river

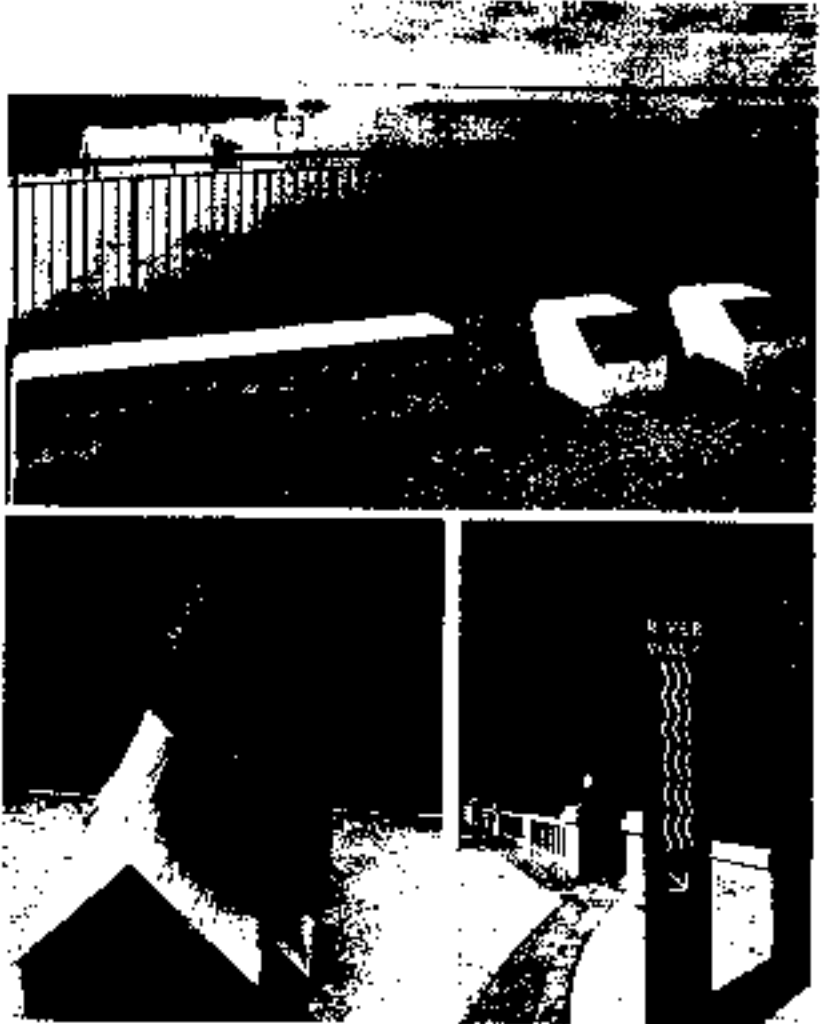


Cross section through the proposed transformed vegetated swale along the western channel:

2/5/20



Proposed eco-corridor linking the eastern naturalised Liesbeek River with the western vegetated swale



Proposed interpretive information boards and sculptures to be positioned along the Ecological / Heritage Trail

52 JB

169. In January 2020, the City's heritage officials again considered the proposed development (including the supplementary information discussed above). Their comments included the following:
- 169.1. The site falls within a proposed heritage protection overlay zone and a provisional protection area under the Heritage Act.³
 - 169.2. The developer should have submitted more detailed planning at the outset. The lack of SDPs / more detailed spatial plans makes even the most basic heritage assessment 'impossible to do in a meaningful way'. The developer is seeking approvals without binding itself to the concepts and designs set out in the supplementary information.
 - 169.3. Building footprints will be too close to the Liesbeek River.
 - 169.4. The proposal extends onto City land, such as roads and swales, and across land owned by the SA Astronomical Observatory.⁴
 - 169.5. The site's character and sense of place are interlinked with its history. The proposed development's impact on these features will be significantly negative.
 - 169.6. Although a reduction in building heights has been incorporated, concerns remain about the buildings' impact on the cultural landscape and the SA Astronomical Observatory. The visual impact will be highly negative, given the scale, height and footprint of the proposal.
 - 169.7. The work with the First Nations Collective is 'highly commended'. However, there are still concerns about how inclusionary the process has been.
 - 169.8. A previous project recommended that the indigenous people's relationship with the environment should be presented as a park rather than buildings and sculptures.
 - 169.9. The pre-1952 river course is an integral part of the site's cultural landscape, has a very high level of heritage significance and will be impacted negatively. Transforming the western Liesbeek channel into a vegetated swale will impact negatively on the cultural landscape.
 - 169.10. The proposed development does not acknowledge the unique threshold role that the site plays, or sufficiently conserve the site's historic and cultural value.

³ As mentioned, the provisional protection has since ended

⁴ The buildings comprising the development do not extend onto City land nor SA Astronomical Observatory land. The transformation of the river and the Berkley Road extension will take place on City land with permission of the City.

169.11. Although the officials are not opposed to on-site development as a concept, and even though the developer has introduced various mitigation measures, *'the overall impact on the heritage resources identified, sense of place and cultural landscape is still perceived to be negative.'*

170. On 13 February 2020, the HWC issued its *'Final Comment'* in terms of section 38(8) of the Heritage Act. Importantly, I note that HWC did not object to the development application before the MPT and has not appealed the MPT's decision. The Final Comment states the following.

170.1. HWC's view is that both the TRUP and the subject property are *'of extremely high heritage significance'* and could receive Grade II, possibly Grade I, listing. Under the Heritage Act, a Grade I resource has *'qualities so exceptional that [it is] of special national significance'* and a Grade II resource *'although forming part of the national estate, can be considered to have special qualities which [makes it] significant within the context of a province or a region'*.

170.2. In 2017, HWC was considering provisional protection for the TRUP. It then became aware of the developer's intention to develop the subject property. In response, the HWC decided to provisionally protect the subject property (i.e. just the River Club site) as from 20 April 2018, because the property represented a *'microcosm of Cape history'* with social, architectural and political significance. However, HWC noted (correctly) that the provisional protection did not prevent the developer from making other development applications in respect of the site.

170.3. HWC's view is that the developer's heritage submissions did not meet the minimum requirements prescribed by section 38(3) of the Heritage Act. HWC contends that:

170.3.1. The developer failed to identify and map all heritage resources, especially the intangible resources. The developer focused on ecological heritage, and negated the site's high cultural, historic and symbolic significance. The HIA failed to locate the site within the context of the TRUP and the significance of the *'open, low-lying, green, riverine character'* of the subject property.

170.3.2. Modern disturbances have not degraded the heritage of the site.

170.3.3. The developer's significance assessment was inadequate: it undervalued the heritage resources generally, which adversely affected the HIA's conclusions. It has not *'fully unpacked the*

significance of the site to a broad Community'. The *'values attributed to the site by the stakeholders have not been carried through into the report'* and have not adequately informed the development. The developer failed to appreciate the heritage of the River Club grounds and the River Club building. It ignored *'both the existing studies and the wider picture'*. Instead of engaging in a genuine heritage assessment, the HIA *'has been tailored to arrive at mitigation for the development'*.

- 170.3.4. The entire TRUP valley, not just the river corridor, has high significance, which is not adequately reflected in the development proposal.
- 170.3.5. The assessment of the development's impact was flawed. The developer downplayed the *'irreversible impacts of transforming a green lung at the heart of the TRUP into a mega project'*. It did not give proper consideration to the impact of the proposed built form or critically interrogate heights. It failed to assess the most important heritage resource: the site's open green qualities as a remnant of a significant landscape. Even if the current private golf course is not ideal, the proposed development prevents recovery of significance.
- 170.3.6. The Visual Impact Assessment is inadequate.
- 170.3.7. The developer failed to balance the possible economic benefits of development against the heritage value of a site that has provincial, if not national, significance. The fact that the proposed development falls within the Urban Inner Core does not mean that the MSDP can override heritage considerations or that *'a mega project is appropriate on this particular site'*. Furthermore, the Table Bay District Plan is the most relevant planning framework that is applicable.
- 170.3.8. The developer's viability argument is *'unconvincing and inadequate'*.
- 170.3.9. The developer's subsidisation of the Berkley Road extension should not be used *'as mitigation to argue for sustainable and economic development'* when heritage significance should be the primary informant.
- 170.3.10. It is problematic that the development will require significant earthworks to move from being a low-lying green and riverine space to an artificially raised development platform.

170.3.11. There are concerns about the manner in which engagements with the First Nations grouping have proceeded, including their inclusivity and the methodology of preparing the report. The provincial government has indicated that it is revisiting its stakeholder-engagement process. However, 'the point will be served if the development of the most critical undeveloped land parcel is proceeding ahead of this process'.

170.3.12. The HIA failed to meaningfully consider alternatives, most of which were dismissed as 'economically unviable', or to address mitigation of impacts.

171. The developer responded to HWC's Final Comment in March 2020 and sought to refute most of the critical findings in the Final Comment.

172. As mentioned, on 19 April 2020 provisional protection under the Heritage Act lapsed and no further heritage protections have been issued by national or provincial authorities.

173. The MPT Report (completed in September 2020):

173.1. recorded that the subject property is within a proposed heritage protection overlay zone;

173.2. noted that HWC had issued a protection order in respect of the site, which came to an end in April 2020, and that, notwithstanding HWC's input, DEADP had issued an environmental authorisation;

173.3. described various aspects of the subject property's heritage, including the Liesbeek River, the confluence of the Black and Liesbeek Rivers, the historical use of the site by the Khoi, and the site's history of violence and colonial oppression;

173.4. did not support the infilling of the western Liesbeek channel, believing it would infringe the river's cultural significance;

173.5. supported other aspects of the proposal, such as decanalising the river and using open space and the crossing point as a memorial;

173.6. emphasised the importance of treating the SA Astronomical Observatory interface sensitively, with generous buffers, planted edges and lowered building heights;

173.7. noted that smaller massing, less bulk and greater open spaces should be incorporated to ameliorate the visual impact, in the light of the open space's heritage function; and

h. 5.2

173.8. recorded, however, that many such details will be finalised only in due course, when more detailed plans are considered.

174. The MPT ultimately authorised the developer's proposal, including the transformation of the western Liesbeek channel and the establishment of two precincts with various iterations of GB development rules. It recorded, among other things, that *'(h)eritage impacts have been carefully considered and heritage components will be incorporated into the development.'*

The subject property's heritage

175. The GTKC describes some of the subject property's heritage as follows:

175.1. The subject property is within the Goringaichona's traditional jurisdictions. The Goringaichona have a diverse bloodline; their name means *'the kin who drifted from the Goringhaiqua'*. Among the Goringaichona was Kro'oa, a convert to the Dutch Reformed Church whose narrative has been misrepresented to characterise Jan van Riebeeck as a messiah.

175.2. Heritage includes intangible aspects such as cultural traditions, oral history, performance, popular memory and indigenous knowledge systems.

175.3. The confluence of rivers is special and a ceremonial place. The confluence of the Black and Liesbeek Rivers holds *'a huge memory'*, and is also *'a political hotspot, because that's where the tribes would gather'*.

175.4. The TRUP is a sacred place. Much of its significance lies in the *'interplay between natural and man-made landscapes'*. The subject property has deep spiritual meaning, being a nexus of the Khoi's *'relationship with the stars, the river, and sacred animals.'*

175.5. The brutal colonial actions of dispossession cannot be redressed. Separating the Khoi from the land and the river was a *'physical, visceral dislocation'*. The Khoi fought 16 frontier wars, some alongside the amaXhosa. At the confluence of the Black and Liesbeek Rivers they sustained the longest resistance to colonial oppression. The subject property is *'where colonial conquest began. And where it was defeated.'*

175.6. The Khoi have also *'shown an immeasurable openness to neighbours and visitors from other shores.'* Among other things, the Goringaichona applied their medicines to visitors and serviced more than 1,000 ships. They embraced seamen, slaves and non-conformist Europeans.

K. S.

- 175.7. Many sacred animals were hunted to extinction soon after the Khoi were denied access to the Liesbeek River. Since the Liesbeek Valley was occupied in 1659, it has gone through various oppressive dispensations.
- 175.8. The full extent of the subject property has great heritage significance: much of that lies in the site's open space.
176. The TRUP Association places great emphasis on the fact that HWC has not approved the HIA for the site. In addition to some of the aspects highlighted above, it contends that the subject property's heritage informants also include the floodplain; existing view cones to and from the SA Astronomical Observatory and the confluence point; the '10 Point manifesto for TRUP'; while TRUP measures approximately 240 ha, it has 'limited Core open space' and the subject property is approximately '20% of the Core Open space to be accessible to all'; the confluence area was part of the sacred journey to and from Table Mountain, 'with its life-saving sacred Comissa watering place'; and in 1510, D'Almeida led a 'mad attack' by the Portuguese against the Khoena. The Portuguese were defeated and fled along a dry narrow path. This occurred inside the TRUP. This shows 'how we managed to defeat the aggressive colonial forces as they tried to retreat to their ships.'
177. The OCA contends that the subject property's heritage has several informants. It is a cultural landscape with interplay between natural and man-made features. It is a sacred place with intangible heritage, of which the undeveloped floodplain is a reminder. It has been a place of conflict for centuries. It is the site where the first dispossession of indigenous people by colonial settlers took place. It reflects almost all stages of South Africa's history, including the exile of Cetshwayo and Langalibalele. Its heritage is concerned with more than just its ecological value.
178. While there is much contestation regarding heritage in this matter, it seems to me that there is a large degree of overlap between various parties' understanding of the subject property's heritage. The following appears to be a fair description of the relevant heritage considerations:
- 178.1. In indigenous cosmology and practice, the land and the watercourses have a spiritual element. The subject property itself is regarded as sacred.
- 178.2. The Liesbeek River and the Black River are fundamental, both as features of the site and as holders of memory.

- 178.3. Their confluence point, adjacent to the subject property, is also significant. That significance has layers. It is cultural, in that the confluence point has hosted various significant ceremonies. It is also political.
- 178.4. Various indigenous groups had significant presence in the wider area before they were driven off by European settlers. Among other things, those groups used the area to graze their cattle.
- 178.5. The area is a focus point for historical acts of dispossession and violence that indigenous people suffered at the hands of European settlers. Significant historical confrontations took place there, including the 1510 battle with D'Almeida and the 1659 war with the Dutch.
- 178.6. Sacred animals were hunted to extinction, or driven from the area, by European settlers.
- 178.7. The European settlers were later replaced by, or became, colonialists.
- 178.8. The subject property has no tangible representations of the area's heritage in the form of buildings, graves or the artifacts from battles. However, the physical aspect of the subject property – its open space, topography and physical features – is a reminder of the site's heritage. The open space is what is most notable about the subject property today.
- 178.9. The subject property must be understood in the context of the wider area.
- 178.10. The subject property is surrounded by other heritage resources that could be affected by the proposed development, prominent among which is the SA Astronomical Observatory.
179. I accept that these features are important and relevant components of the subject property's heritage.

Appellants' heritage process and other concerns

180. The GTKC argues that: the developer's engagements with the First Nations have not been inclusive of all groups; the developer has created a supposedly authoritative group – many of the members of that group are well known Khoi leaders, but they do not have the authority to consent to the proposed development; there has been divisiveness and dissent amongst the First Nations groupings, as a result of 'the "politics of divide and rule"'; the developer broke trust with the GTKC by using a consultant (i.e. Afras) of questionable independence; the proposed media centre is 'a private and autonomously brokered package that was never broadly consulted'; and the First

Nations Collective will now benefit from the media centre it asked for. In further written submissions dated 25 February 2021, the GTKC reiterate their rejection of the RC First Nations Report. In a similar vein, NU argues that the developer sought to negotiate with some indigenous groups and to marginalise other groups that disagreed with its approach.

- 180.1. The record shows that the Provincial Department of Transport and Public Works appointed Afmas to facilitate engagements with the indigenous people and leaders of the area regarding the subject property and the wider area. Following that appointment, the First Nations Collective was established, with which the developer engaged in preparing and revising the development proposal.
 - 180.2. There is no dispute that the First Nations Collective is an authentic grouping of indigenous people and leaders. It was therefore reasonable of the developer to engage with the First Nations Collective, to better understand, incorporate and respect indigenous culture and heritage on the site. It was also reasonable of the developer to rely on Afmas and the First Nations Collective, bearing in mind the purpose for which they have been constituted and the functions they had recently performed (i.e. the production of the TRJP First Nations Report).
 - 180.3. Initially, the GTKC was associated with the First Nations Collective. Later it broke away. Both courses of action were open to it, as a free association with its own agency. However, having broken away from the group with which the developer was consulting, the GTKC cannot bemoan its self-exclusion from the consultation process.
 - 180.4. Furthermore, the GTKC has fully participated in the statutory development and land-use application process.
 - 180.5. The appellants' attempts to question the legitimacy of the developer's engagements with groupings of indigenous people and leaders can be dismissed. Those engagements were aimed at achieving valuable goals. There is nothing to substantiate the claims of 'divide and conquer' politics.
181. To the extent that any indigenous person, group or representative structure felt marginalised by the First Nations Collective, they were free to submit comments and objections directly to the City and to appeal the decision of the MPT. This approach has been adopted by the GTKC, which fully used those participation processes. Any such grouping or person was also free to participate in the public-participation proceedings

that took place under the Heritage Act and the NEMA (bearing in mind that the HIA was initially compiled for purposes of those statutes).

182. The GTKC points out that the developer's HIA's outcomes have been contested, and (like with the RC First Nations Report), it submits that there are ethical questions about the way the HIA was conducted. The GTKC contends that the HIA is 'an act of *ethnocide* and *epistemicide*'.

182.1. However, I am satisfied that the HIA may be accepted for what it purports to be: a professional assessment of the subject property's heritage resources and the proposed development's impact on those resources, performed by appropriately qualified professionals. What ethical questions may have arisen in respect of the Afmas' formulation of the First Nations Report do not appear to apply to the HIA.

182.2. The HIA is neither 'ethnocide' nor 'epistemicide'. The use of those appellations, rather than engagement with the substance of the HIA, is of limited value.

182.3. I note the concerns which have been raised about the RC First Nation Report and how it was produced. Nevertheless, both the Report and the various submissions from objectors contain valuable indicators of the site's heritage resources.

183. Echoing the concerns about the HIA raised by HWC, the GTKC argues that the HIA: does not adequately identify heritage resources; reduced the site's heritage to a set of ecological values; and cannot recommend adequate mitigation measures. Those concerns were reiterated by the City's heritage officials.

183.1. I disagree. The development proposal has not focused exclusively on ecological heritage. Since inception, it has shown an understanding that, among other things, the site has a complex history rooted in many of the injustices of the South African past.

183.2. Following engagements with the First Nations Collective, this understanding deepened and the developer undertook to include a memory centre and other measures that will assist in preserving and enhancing the site's cultural, heritage and political history. The development proposal also reflects the subject property's intangible heritage, to which it seeks to respond by including places of expression for that heritage (such as the amphitheatre and the indigenous garden).

184. The GTKC argues that the RC First Nations Report cannot be trusted as it *'strategically delimits particular heritage resources'* to justify the proposed development. This is like the AWC's conclusion that the HIA *'has been tailored to arrive at mitigation for the development'*.
- 184.1. However, the developer has not avoided a genuine assessment to justify proceeding with the development. Instead, it has considered five options, from the *'no-go alternative'* in which the site is not developed at all, to the preferred river-corridor alternative.
- 184.2. The developer's assessment has been informed by various studies (including several iterations of the HIA) and updated based on engagements with contemporary custodians of indigenous knowledge and history.
- 184.3. The developer has not disclaimed any significant heritage resource that another party has claimed. Even the heritage resources that are most affected by the proposed development – the openness of the site as a continuation of the openness of other parts of the wider area – were admitted from the get-go.
185. The GTKC also complains that the RC First Nations Report attempts to *'write out of history the Goringaichona'*. Further, it is of the view that: the RC First Nations Report *'does not adequately reflect the symbiotic relationship that the Khoi and San have with the cosmos, land, and water and the spiritual self'*; relies on experiences in other countries and omits specific traits of the site; does not address relevant heritage concerns or other areas of significance such as the slave narrative, the establishment of the first Freeburgher farms and the emergence of Afrikaans; and relies on the *'colonialist and criminal'*, Jan van Riebeeck.
- 185.1. It seems to me that the expressed complaints are overstated and do not fairly reflect the content of the report. A comparative perspective can be useful, provided that its lessons are appropriately contextualised. I am satisfied that the lessons from other jurisdictions have been viewed through the requisite South African lens.
- 185.2. In any event, the GTKC has been fully able to participate in these proceedings to put forward its own narrative, and it has done so. The City has considered the GTKC's submissions. So there is no question of its history being ignored, or relevant informants being excluded, in the assessment of the proposed development.
186. The GTKC argues that the RC First Nations Report *'set out to diminish and smear the leadership of the Goringaichona Council for purposes we believe are motivated by the*

fact that the Goringaichona, unashamedly rejects the proposal.' Rather than an inclusionary instrument, it contends that the report excludes and attempts to humiliate those who see things differently.

- 186.1. According to the RC First Nations Report, its aims are not those alleged by the GTKC.
- 186.2. However, I acknowledge that the report contains allegations against certain persons that, for purposes of the By-Law, are unnecessary and irrelevant. I have accordingly disregarded those comments. The remarks about the GTKC do not detract from the other valuable content that the RC First Nations Report presents.
187. The GTKC emphasises that HWC has rejected both the H.A. and the RC First Nations Report. The OCA makes much of the HWC's findings in respect of the subject property's heritage, and the MPT's supposed failure to take those findings into account.
- 187.1. While the City must consider the views of HWC, it is not required to, and should not, follow HWC's opinion blindly. Instead, the City must make its own assessment of the proposed development's heritage impact, based on its independent evaluation of the relevant information from a planning perspective.
- 187.2. As mentioned, HWC did not object to the development application before the MPT and has not appealed the MPT's decision. Nonetheless, it has been helpful to have regard to both the information that was submitted to HWC and to HWC's responses thereto for purposes of understanding the relevant heritage concerns.
- 187.3. I have considered the HIA and the RC First Nations Report and come to my own conclusions about their contents. As is evident from these reasons, I do not agree with all HWC's views.
- 187.4. It bears emphasising that HWC is a statutory body that exercises functions under national heritage legislation. It is not a decision-maker under the By-Law or in respect of municipal planning. To the extent that HWC was of the view that the subject property's heritage resources required protection, it could have engaged the mechanisms in the legislation which it administers. Indeed, that is precisely what it did when it conferred the provisional protection.
- 187.5. The City is required to make its own independent determination regarding the proposed development's heritage implications. I am satisfied that the MPT did so, considering the relevant information. Similarly, in these appeal proceedings, I have independently evaluated the subject property's heritage and the

Handwritten signature and initials, possibly 'V.~' and 'S.~', located at the bottom right of the page.

proposed development's implications, having considered all available relevant information.

188. The OCA emphasises that the City's heritage officials oppose the proposed development.

188.1. I note the opposition of the City's heritage officials and have therefore carefully considered their comments on the heritage considerations, as did the MPT. The officials' assessments are valuable, but are not determinative, not even in respect of assessing the heritage impact.

188.2. The heritage officials are not decision-makers under the By-Law. They have not necessarily considered all relevant information on record before me in this appeal concerning heritage. And in any event, they could not, and did not purport to, consider relevant considerations other than heritage, which under section 99, the decision maker must also consider.

188.3. I do not agree with the heritage officials that insufficient information has been provided by the developer. A significant amount of detail has been supplied, including in respect of design parameters. Certainly, sufficient information has been supplied to allow the proper assessment of heritage informants and how those informants impact the development concept that has been put forward.

189. The TRUP Association implies that steps have been taken to prevent the site from receiving heritage protection and to hold up the heritage grading of the site. It contends that 'despite two years of appeals against grading', the "Ministerial Appeals Committee" dismissed all appeals' and conferred heritage protection, which has 'objective validity in law' and 'remains on the legal record'.

189.1. That is not an accurate record of events. The two years were not taken up by parties prolonging the appeals process. Instead, it took two years for the Appeals Committee under the Heritage Act to determine the dispute. And while the Appeals Committee ultimately granted heritage protection, it only did so for the abovementioned two-year period.

189.2. No authorisation granted under the By-Law could or would purport to override any restrictions imposed under the Heritage Act. For its part, the City has evaluated the proposed development's heritage concerns to discharge its function under section 99 of the By-Law.

190. The GTRC contends that there is a strong likelihood that the subject property will be declared a national or world heritage site and the OCA contends that a process is

[Handwritten initials]

underway to have the TRUP declared a Provincial Heritage Resource and a National Heritage Site. The GIKC notes that the National Cabinet has approved the National Khoi and San Heritage Route and the OCA has emphasised that the subject property might form part of the National Khoisan Legacy Project. The appellants have also recorded that an application for heritage grading has been submitted to HWC. Given the pending applications under the Heritage Act, it is argued that it would be undesirable to proceed with the proposed development.

190.1. There is, however, no requirement to stall the City's municipal planning decision-making process until the finalisation of processes under other legislation administered by a different sphere of government.

190.2. Our courts have held that it is proper for one sphere of government to take a decision whose implementation may not take place until consent is granted by another sphere, within whose area of jurisdiction the decision is to be executed.

190.3. It seems to me that, unlike what is currently featured on the subject property, the proposed development will not only protect but celebrate the site's First Nations heritage.

191. The TRUP Association alleges that '[t]here is evidence that shows that City of Cape Town has intention to change the status of TRUP, even as it is a sensitive Heritage Environment with a set policy'.

191.1. It is not apparent to me what this nebulous statement might mean for the proposed development.

191.2. The City is in the process of preparing a local spatial development framework for the Two Rivers area. This is especially important, among other reasons, because the 2003 Two Rivers Urban Park Contextual Framework is now dated. The City needs an updated policy which takes account of changes over the past 18 years. Since the new local spatial development framework has not yet been finalised, I have decided this appeal in light of the prevailing TRUP Contextual Framework.

191.3. However, as explained paragraph 336 below, policies are guidelines for decision making and cannot fetter the discretion which the law gives a decision maker. To the extent that the proposed development is inconsistent with the TRUP Contextual Framework, and might need to be departed from, I must consider whether the Contextual Framework is still relevant in 2021. I deal with this from paragraph 337 below.

192. As mentioned, after various engagements with the First Nations Collective, the RC First Nations Report was produced. It sets out considerations and proposals regarding preserving, respecting and promoting the subject property's indigenous heritage. As a result, in a supplementary submission on the development proposal, the developer has undertaken to incorporate various forms of tribute and memorialisation. These include a First Nations heritage, cultural and media centre that will be managed and administered by the First Nations Collective; an indigenous medicinal garden; and a heritage eco-trail. NU complains that the public has not had an opportunity to comment on those revisions.

192.1. As this is a wide appeal, NU and the other involved parties have been at liberty to make whatever submissions they wished regarding the revisions. Furthermore, any other person could have applied to intervene in these appeal proceedings, to make their views known.

192.2. The revisions were a positive change, designed to address heritage-related concerns that were initially raised. I am satisfied that it was not necessary for the development proposal to be re-advertised following the revisions under consideration.

193. In summary regarding the process, the developer has meaningfully and sensitively addressed all significant heritage resources and concerns which have been raised. The fact that some parties disapprove of the heritage proposal does not mean that the heritage resource in question has not been identified or addressed. The developer has committed to significant mitigation measures. For example, while it acknowledges that the development proposal will result in the loss of open space on the site, the developer has committed to retaining a large portion of open space and devoting substantial resources to upgrading it and maintaining its quality. The participation requirements under the By-Law have more than merely been complied with. The consultation process and the revision of the development proposal in response to it displays a laudable commitment to engagement with indigenous groupings and an impressive endeavour to ensure that the site's indigenous heritage is sensitively treated and promoted. This is an approach which is to be welcomed and encouraged.

Objections founded on claims about heritage impact

194. The GTKC contends that its objection 'walks in the footsteps of our ancestors who defended the sacred terrain of the Two Rivers Urban Park' and that the proposed development is 'an act of spiritual and heritage genocide'.

- 194.1. I accept that the area of which the subject property is part is associated with the pain and trauma of colonisation and earlier forms of violence and exclusion. That much is evident from the heritage discussions set out above.
- 194.2. However, the proposed development does not represent anything akin to genocide, whether actual or metaphorical: it does not entail death or destruction, but change, modernisation, revitalisation and improvement; it does not affect any tangible heritage resource; a feature of the proposal is the visible recognition, elevation and celebration of the site's history and heritage; it is occurring lawfully, peacefully and legitimately; and it is proceeding in a participatory manner, with the GTKC having had the opportunity and choice to participate or to exclude itself.
195. NU emphasises the site's history of violent displacement of indigenous people by Europeans. It argues that '*(t)he development of River Club, on sacred ancestral Khoi and San grazing lands (some of the most prime land in Cape Town), constitutes a re-wounding of colonial pain and trauma.*' It also contends that '*redevelopment approval of the site has been equally complex*', as the developer acquired the property from Transnet, seeks to maximise its economic returns and has included an affordable housing component as a '*gesture*' towards spatial justice.
- 195.1. However, there is nothing equivalent between the violent displacement of indigenous people by European settlers and the developer's acquisition of the subject property or its development application. In my view, equating the two inappropriately demeans and devalues the historical injustice of colonisation.
- 195.2. The development application has been peaceful and is characterised by compliance with the law. It has not involved the eviction of any indigenous people (or anyone else), let alone through violent or racist means. The application has included detailed and considered specialist studies. It has been open to all interested and affected parties, including indigenous people, to make their own submissions on their own terms.
196. The following are further aspects of the objectors' claims about the heritage impact of the proposed development. For the moment, I set out the objectors' submissions. I discuss the substance of the heritage-related objections under the relevant headings below.
- 196.1. The GTKC contends that, '*like previous acts of dispossession and violence*', the proposed development is '*[a]nother threat to our rivers and another to our sense of place.*' It argues that: '*the proposed development will change the form of the*

land and distort the site's heritage; and its bulk and mass do not respond to the site's living heritage, and that the MPT's decision disregards the site's intangible heritage. The GTKC contends that the developer's proposed heritage components are inadequate. According to the GTKC, the Khai and the San should be reconnected to the subject property *'through Indigenous usufruct that can take different forms.'*

- 196.2. The TRUP Association argues that the proposed development will *'completely destroy'* the site's heritage, including the Liesbeek and the *'Sacred Historical Confluence Flood Plain'*, by introducing a *'mega development and a very destructive set of wide highways and much traffic'*. Its view is that the proposed development will remove an opportunity for *'healing our previously divided apartheid City'* and fails to preserve rivers and an open-space environment. Instead, the TRUP Association contends that the site should be a protected area that is accessible *'to all, with restored rivers and conserved open space.'*
- 196.3. RAMPAC asserts that the entire site is a commemoration of the First Nations' history, and that the developer's attempts at commemoration are *'faken gestures'* in circumstances where the proposed development will *'totally overwhelm'* the site's significance and meaning. It contends that excessive focus has been placed on the river corridor, when the site's topography is also a critical heritage component. In this regard, RAMPAC contends that *'it is unacceptable to locate a large development in the middle of a valley'*.
- 196.4. The OCA expresses concern that a *'highly intrusive, large-scale development that is largely commercial in nature'* will completely transform the subject property and *'infringe a highly culturally significant landscape'*. In the OCA's view: the proposed memorialisation is inadequate – it attempts to create meaning, rather than enhancing the extant heritage; the proposed bulk and massing do not respond appropriately to the site's living heritage; the development proposal does not acknowledge *'the threshold role'* that layout and scale of the site play or sufficiently conserve the site's historical and cultural value; raising the site's ground level will adversely affect heritage; and *'the tall buildings in Precinct 2 will adversely impact on views of Lion's Head and will dominate the confluence of the Liesbeek and Black Rivers, which has spiritual and ceremonial significance.'*

A. N.

Heritage significance of the two rivers

197. The City's heritage officials are opposed to transforming the Liesbeek channel. The GTKC says that there should be an 'ecological symbiotic relationship with riverine systems, land, animals and the cosmos.' It argues that the Liesbeek rehabilitation will downgrade the original river course west of the subject property and turn it into a swale with 'deadly faunal impact', and to the east, create 'an artificial river' in the place of the canal. The GTKC regards it as insulting to conceive of the 'sacred Liesbeek River [as] a "storm water gutter"'.

197.1. In my view, these perceptions are inconsistent with what is in fact proposed for the rehabilitation of the Liesbeek and the expert evidence of the likely positive ecological and heritage impacts of the rehabilitation. The positive bio-physical environmental impacts of the planned transformation, which I describe in more detail later in these reasons, are also relevant to the heritage considerations since to some extent the heritage and environmental considerations are intertwined.

197.2. East of the subject property, the Liesbeek canal will be transformed from an artificial, degraded and highly constrained artificial canal into a naturalised and ecologically functional watercourse that supports indigenous fauna and flora. This will allow it to function as a genuine riparian habitat, thereby substantially enhancing the respect and recognition of the site's heritage. The watercourse will also benefit from a generous buffer, to ensure that the development's buildings are not too close.

197.3. It is a misconception that there is one original and definitive river course on the site: with time and various human interventions, the river has manifested in different ways. As the City's heritage officials have noted, '[i]t is indeed likely that the river meandered before the floodplain was infilled over... 100 years ago.' At present, and for a considerable time, the western channel has not been watered by the Liesbeek River itself. That is not to say that the western channel does not have historical significance, but it is factually incorrect to imagine that it is still part of the river.

197.4. The western channel will be transformed from what is currently a canal into a vegetated swale, which will serve important habitat-supporting and stormwater functions. Watercourses perform many functions: ecological, aesthetic, spiritual and practical. The proposed development will ensure that the western channel discharges those functions simultaneously. It is not degrading to recognise and

enhance its role in carrying stormwater. After all, that is part of a river's natural function. Far from having a 'deadly faunal impact', the site's open space will be structured to operate as a habitat for indigenous fauna, including the Western Leopard Toad. I am satisfied that the transformation of the western channel will enhance the heritage significance of the site.

198. The OCA contends that the proposed development will result in a major road passing near the confluence point.

198.1. However, the M5 – a much larger road than the planned Berkley Road extension – already runs near the confluence point. It is no longer possible to experience pristine or undisturbed enjoyment of the spiritual and ceremonial significance of the confluence.

198.2. I am satisfied that the proposed development will reduce disturbance by sensitively treating the confluence point in its interface with the riverine buffer and will enhance and celebrate the Liesbeek River.

199. The material before me shows that the development proposal is properly cognisant of the importance of the Liesbeek River to the heritage of the site. The developer has planned a substantial positive intervention in the Liesbeek watercourse. The proposal is appropriately sensitive to, and honours, the fact that the Liesbeek River and floodplains are central to the First Nations' heritage.

Heritage significance of open space and views

200. The City's heritage officials rightly emphasise the site's heritage value as a cultural landscape, with important historical and topographic features. As has been pointed out, much of the site's history is, today, intangible: there are no physical remnants of battles, settlements, trade, agriculture or other human activities. However, the site's physical features, including its openness and its interaction with the watercourses, are imbued with historical value: they recall how generations past would have experienced and used the subject property, and so remind us of its long-standing heritage.

201. I accept that the proposed development will fundamentally change the physical experience of the subject property and its sense of place. A modern, mixed-use precinct with large residential and commercial structures, raised above the 1:100 year floodline, will change the open spaces of the golfing greens.

202. The concern about the reduction in zoned open space must be seen in context. While the development will reduce the amount of open space formally zoned as such, the development will still retain a substantial portion of zoned open space, and if one

Dr. J. J.

includes hard and soft landscaping. The proportion of open spaces will not be reduced. Moreover, the reduction in quantity must be weighed against the improvement in quality.

202.1. Currently, only about 57% of the subject property is open space in the form of a private golf course. A further 13% is for parking. Without counting the two river courses (which are not on the subject property), the development will retain at least 34% of the subject property formally zoned as open space (OS3) – in the form of naturalised riverine buffers and the indigenous green corridor. Hence, compared with just the golf course, the reduction in zoned open space is less than a quarter (23%) of the subject property.⁵

202.2. However, if one includes the proposed hard and soft landscaping open spaces between the buildings in Precincts 1 and 2, then 74% of the subject property will be retained as open space.⁶ This is 4% more open space than the 70% currently in the form of the golf course and parking.

202.3. In practical terms, it will feel like there is even more open space if one considers that the naturalised Liesbeek River and the transformed western channel outside the subject property will be integrated into, and experienced seamlessly with, the open spaces to be created by the development.

202.4. Moreover, the development will substantially improve the quality of open space from both ecological and heritage perspectives. Rather than an inaccessible, private golf course with its alien lawns, straddled by an artificial canal which is hostile to indigenous fauna and flora, the transformed habitat will be accessible, environmentally harmonious, and undoubtedly more reflective of, and consistent with, the site's heritage.

202.5. In my view, the enhancement in the quality of open space more than compensates for the reduction in quantity of formally zoned open space.

203. Contrary to the HWC's view, I am satisfied that the subject property has been properly understood and located within the context of the TRUP. This has informed, among other

⁵ The subject property is 747,344 m² in extent. In approximate terms, currently the golf course occupies 84,600 m² (57%), the designated paved and overflow grass car parks comprise 18,500 m² (13%) and the balance of 44,221 m² (30%) is buildings and waste land. The development will dedicate at least 49,835 m² (34%) as open space in Portion 3, comprising the riverine buffers and the green corridor, while buildings will be situated on Portion 1 comprising 48,361 m² (33%) and Portion 2 comprising 49,148 m² (33%). (These three subdivision Portions and their extents are depicted in Appendix 2 of the accompanying Annexure A.)

⁶ Figure 4c in Annexure G2 to the MP² Report (the developer's further responses to Branch comment, F4283), the buildings will comprise 37,800 m² (26%) and open space will comprise 109,520 m² (74%) of the subject property.

things, the developer's commitment to maintaining high-quality open space, which the conditions of approval ensure. It is also worth noting that, while the subject property must be assessed as a component of the TRUP, it cannot be made to bear the entirety of the TRUP's heritage. As the developer points out, the subject property is 'a very small part (under 5%) of the much larger Two Rivers Local Area that comprises approximately 300 hectares)'.

204. Concern has also been expressed that the proposed development does not respond to the site's 'urban threshold' role.

204.1. I disagree. The proposed development has been intentionally structured as a 'gateway' to the TRUP. It will feature appropriately dense commercial and residential uses where it interfaces with busy transport thoroughfares and businesses.

204.2. It will also ensure that the sensitive aspects of its surrounding context – including the Raapenberg Wetland, the confluence point of the Liesbeek and Black Rivers and the SA Astronomical Observatory – are appropriately buffered and less exposed to the development's concrete bulk. And it will introduce a significantly upgraded indigenous open space that encourages the presence of members of the public. It will therefore play a well-thought-out threshold role between its surrounding uses.

205. There can be no denying that the proposed development – with its tall buildings – will change the views enjoyed from the subject property, particularly the mountain vistas of Signal Hill, Lion's Head and Devil's Peak. The TRUP Association argues that no footprint or height beyond the current River Club buildings should be allowed.

205.1. However, that restriction seems to be an arbitrary delineation, as it is not informed by any of the heritage resources that are of value in this matter. Furthermore, it constitutes a disproportionate emphasis on one particular concern, when section 99 of the By-Law enjoins the City to have a holistic view of the development proposal.

205.2. The mountain views will not be completely negated, and the design will ensure that they are still accessible to members of the public utilising the green corridor. While Precinct 2 will be adjacent to the confluence point of the two rivers, they will be separated by the naturalised and rehabilitated watercourse, the riparian buffer zone and the upgraded open space. I am satisfied that Precinct 2 will not have an undesirable domineering effect.

- 205.3. The subject property must also be understood in its prevailing context i.e. in the heartland of an urban metropolis. Features such as proximate business activities, industrial uses, highways and traffic are already a part of its reality.
- 205.4. Although the proposed development's impact on heritage resources could notionally be further mitigated by additional reductions in bulk, the developer has calculated that any further reduction will compromise the project's viability and is not feasible. The City accepts that a developer cannot implement an unworkable alternative.

Impact on the SA Astronomical Observatory

206. As the SA Astronomical Observatory points out, it has high historical significance as a scientific institute dating to the early 19th century and the first permanent observatory in the southern hemisphere. It is associated with several astronomical advances of international significance from the 1830s. It has considerable aesthetic significance with several architecturally significant buildings and a distinctive dome typology set within a wooded landscape at the confluence of the Liesbeek and the Black Rivers. The Observatory will not be unaffected by the proposed development, given its proximity to the subject property. For instance, historically, the SA Astronomical Observatory had a line of sight to Signal Hill and the noon gun, which is an important part of its heritage. To the extent that the proposed development will interfere with that sight line, the development will have a negative heritage impact.
207. The SA Astronomical Observatory has not submitted an objection to the City in respect of proposed development. However, some of the appellants have raised concerns about the impact of the development on the Observatory. The TRUP Associations argues that the MSDP cannot override the SA Astronomical Observatory's importance as a 'Grade One National Monument'. The OCA contends that the SA Astronomical Observatory is of the view that the proposed development will affect the visual spatial field currently enjoyed from the Observatory site. RAMPAC argues that the proposed development will 'massively damage' the SA Astronomical Observatory's heritage. Given these concerns, I have considered the potential impact of the development on the SA Astronomical Observatory.
208. In March 2018 the SA Astronomical Observatory submitted a comment on the HIA which had been circulated to the public and 'the plan dated November 2017'. The comment states that SA Astronomical Observatory had 'many concerns'. It noted the SA Astronomical Observatory's 'historical, scientific, aesthetic, architectural and social significance', having been established in 1820, associated with the 'Xhokhae resistance

during the mid-17th century' and received a Grade I designation under the Heritage Act. The SA Astronomical Observatory pointed out that it is not irrelevant to the context of the surrounding area. It stated that it is visible from the subject property and has views of the River Club site. The SA Astronomical Observatory suggested that alternative development options should be considered to maintain 'a green open area for breathing in the middle of the growing Observatory, Salt River, Maitland, and Paarden Eiland areas', existing sense of place and space and the 'sight lines to the surrounding areas from our historic hill'.

209. That comment was not submitted to the City under the By-Law. Rather it was a comment on the first iteration of the HIA in the NEMA process. Once that public-comment process was completed, the development proposal was revised, as was the HIA. The HIA explains the following efforts by the developer to address the SA Astronomical Observatory's concerns:

{D}evelopment of this site will affect the experience of the SA Astronomical Observatory from within and without even though the nearest buildings of the development will be as much as 160m from the main Observatory building and its campus; and such change is difficult to mitigate (although we regard the restoration of the Liesbeek River to have a positive overall impact on the SA Astronomical Observatory). As a consequence, it is recommended that the visual impact of the development of the southern portion of the site closest to the SA Astronomical Observatory be mitigated by keeping its height rather lower than that of the bank of trees on the SA Astronomical Observatory ridge and include a range of building heights, variation in building form, and an avenue of trees lining the development along the edge of the riverine corridor.

210. The HIA accordingly proposed the following mitigation measures:

- *A pedestrian walk along the buffer zone will provide an enhanced view of the SA Astronomical Observatory site, the river itself, wetlands and the bird sanctuary.*
- *Ensure that the buildings of the southern precinct, Precinct 1, lining the riverine corridor are limited to a height of four storeys above the new ground level.*

211. Since inception, the developer has evinced an understanding of the importance of the SA Astronomical Observatory as a high-quality heritage site, and the need for the proposed development to avoid unnecessarily infringing on its amenity. One of the non-ecological goals of the riverine rehabilitation was 'to establish an appropriate boundary between the Observatory precinct and the new development. Following the public-comment process, the developer incorporated further measures in respect of the

Observatory, including expanding the green buffers along the rehabilitated Liesbeek River corridor, which serves as a border between the subject property and the Observatory, lowering the proposed heights of the buildings adjacent to the Observatory precinct and moving the taller buildings to other portions of the site.

212. I am satisfied that the developer has included adequate measures (as set out in the supplementary information, following the revision of the HIA) to address the proposed development's impact on the SA Astronomical Observatory.
213. The OCA has indicated that the SA Astronomical Observatory maintained its position in respect of the proposed development even after the mitigating design measures were proposed by the developer. However, I am satisfied that the expressed concerns have been adequately addressed. As mentioned, the Observatory has not objected to this application. Furthermore, the proposed development will retain a significant portion of open space, which will provide breathing room in the surrounding urban environment. It will also establish a space that is much more aligned with the cultural and political heritage of the subject property and the surrounding area, including the SA Astronomical Observatory, than a private golf course.
214. One of the astronomers who works at the SA Astronomical Observatory in her personal capacity submitted an objection to the proposal (but did not persist with that objection on appeal). She contended that: commercialising the River Club site would be disrespectful to the site's heritage; the proposed development will fundamentally change the character of the area; and *'historical views from the Astronomical Observatory and its sense of history will be lost with a development of this size.'*
- 214.1. However, the subject property is already utilised for commercial purposes. While the development will further change the character of the area, I am satisfied that that change will be positive. The developer has taken steps to ensure that the proposed development's interface with the subject property is sensitively treated. There will be more than 150 metres between the many of the structures at the SA Astronomical Observatory and the buildings on the subject property.
- 214.2. It was apparent from my site visit to the SA Astronomical Observatory that most of the SA Astronomical Observatory's buildings are relatively short and are situated behind a screen of tall trees along the common boundary with the subject property. Little of the subject property is visible through the line of trees.
- 214.3. Given that the buildings in Precinct 3 of the development, closest to the SA Astronomical Observatory, will be lower than the trees along the boundary, the

development will have a minimal visual impact on the SA Astronomical Observatory.

Proposed heritage commemoration

215. The developer's motivation proposes establishing a 'cultural heritage celebration on the site, where local heritage such as First Nation related activities on this land can be celebrated.' This was subsequently fleshed out with the provision of supplementary information. In its appeal submissions, the developer explained with reference to the participation process to which I have referred above:

The outcome of these engagements, as communicated via the First Nations Collective, is a social compact between the First Nations Collective and the Developer, that comprises indigenising the site through place-making mechanisms, including the creation of a first-of-its kind First Nations heritage, cultural and media centre. The heritage, cultural and media centre will be operated by the members of the First Nations through a formal structure established and operated by the First Nations Collective. The development project will provide critical job opportunities to members of these communities. The First Nations Collective will, in consultation with the Developer, decide upon the uses to which the heritage, cultural and media centre will be put. ... Other place-making mechanisms giving recognition to First Nations heritage will include an indigenous medicinal garden, a Heritage-Eco trail and an amphitheatre for use by the members of the First Nations and the general public. ... Further, the rehabilitation of the canalised course of the existing Liesbeek River as an indigenous riverine environment (i.e. by removing the concrete canal), forms part of the celebration of the First Nations' heritage.

216. The features are aimed at enhancing and celebrating the subject property's heritage.
- 216.1. The sense of openness will be respected by the dedication of approximately one third of the site to high-quality and pedestrian friendly zoned open space: more than 49,000 m² will feature a green corridor with indigenous vegetation, interfaces with the amphitheatre and the culture centre, interactions with the revitalised river corridor, and vantage points from which to enjoy the surrounding views (including vistas of Devil's Peak). The open spaces will also include various features to support indigenous fauna on the site.
- 216.2. As mentioned, in my view, the reduction in the extent of openness will be more than made up for by the marked improvement in its quality. Importantly, in a marked departure from current uses, the open spaces will become publicly accessible, and will invite the public in to experience the river corridor and the development's amenities by, for example, including pedestrian paths, viewing points and cycling routes.

216.3. Much of the First Nations' intangible heritage will be accommodated in other aspects of the development. The heritage trail will align with the indigenous respect for the site's ecology and allow pedestrians to experience that ecology on foot. The indigenous garden will allow the First Nations' knowledge of food and medicine to be put into practice. The media and culture centre will allow their history to be recorded and taught. The developer has undertaken that the centre will be *'located prominently in the centre of the development, with direct views to Lion's Head, a landmark with great symbolism to and significance for the First Nations'*. And the amphitheatre will allow for various modes of expression. These features will operate to materially enhance the subject property's heritage.

217. The City's heritage officer's expressed concern that the developer cannot be held bound by its undertaking in its supplementary information to implement the heritage commemoration features.

217.1. That concern is unfounded. The MPT imposed a condition requiring the developer to submit a master landscape plan that includes details of areas of historical significance and memorialisation, to the satisfaction of the Department of Development Management.

217.2. I intend to impose a further condition which requires the developer to incorporate a minimum list of heritage commemoration features. These are: an indigenous garden; a cultural, heritage and media centre for the First Nations; a heritage-eco trail; a garden amphitheatre for use by both the First Nations and the public; symbols central to the First Nations' narrative; and the naming of internal roads inspired by the First Nations' narrative.

217.3. A further condition requires that the developer must implement each of these heritage commemoration features only after inviting further representations.

218. While the objectors have not proposed any credible and feasible alternative tangible way to commemorate the subject property's heritage, some have criticised the commemoration proposals. The GTKC describes the proposed heritage components as lacking *'any serious curatorial, archival, or historical considerations'* and amounting to a *'white elephant on a concrete-filled desecrated floodplain [that is] hardly an alternative to a world heritage site that commemorates open space and the eternal'*. The GTKC recalls that, in the past, museums were used to house the remains of ancestors that were taken away and that heritage should not be sold or subject to *'extortive exhibition'*. In its view, the proposed buildings are an attempt to create meaning rather than enhance

H. S. S.

heritage, whereas the site has sufficient meaning. They will also 'pour more concrete onto the floodplain, when less is required'. HWC's argues that the proposed development precludes 'the recovery of both significance and sense of place'.

218.1. That is not a fair or accurate description of what is planned. The creation and the important upgrading of accessible open space with indigenous fauna and flora will be genuine and significant heritage benefits of the development. The First Nations heritage, cultural and media centre will assist in ensuring that the intangible heritage is not lost to future generations. The eco-trail will allow pedestrians to experience some of the site's heritage first-hand. The medicinal garden will be a living reminder of an important component of the First Nations' legacy and a manifestation of otherwise intangible heritage components. And the rehabilitation of the river corridor will align with the indigenous beliefs in valuing nature, ensuring environmental functionality and respecting watercourses.

218.2. I considered the following submissions of Chief !Garu Zenzile Khoisan in support of the development which are expressed in a letter on behalf of the Goringhauqua Cultural Council annexed to the RC First Nations Report.

Our support for the project does not come lightly, as the area under consideration for the proposed development is a most sensitive location both in terms of its ecology, as also its deep heritage significance. Our support for this project has been extensively pondered and is primarily a strategic act of indigenous cultural agency where we, as an integral part of the Khoi and San resurgence, act in our own interest to secure a legacy for us and for seven generations into the future for which we are responsible.

...

We have arrived at this position after much consideration and consultation with many of the senior indigenous leaders and their councils in the Peninsula, as also with prominent national leaders of the Khoi and the San.

218.3. After setting out the significance and importance of the areas' history to First Nation heritage, Chief Khoisan recounts frustrating and futile efforts to engage with several state entities to obtain recognition of his peoples' national culture, political, social and economic narrative. Under the heading 'breaking the cycle of invisibility', Chief Khoisan writes:

the Khoi and the San, particularly those in this Peninsula, whose forebears bore the most severe blows of colonial aggression, are refusing to hand over our destiny to others. ... It is with the knowledge

of having been trivialised, silenced and bludgeoned into invisibility that we as the Goringhova Cultural Council, have elected to directly engage the entity involved in the proposed River Club Development.

- 218.4. Chief Khoisan explains that the following two results of the discussions persuaded them to support the development.

The first is that we believe that the developer has grasped the intense pain that has been associated with the bludgeoning of our narrative. As such, this developer, unlike any other government, corporate, or social entities with which we have engaged, has made a firm commitment to ensure that the footprint of the Khoi and San's history of resistance, and its modern day resurgence is incorporated into the development plan.

...

The second point that ... both at the level of the ecology of the area which the developer had committed to cleaning up and indigenising – and in terms of ensuring that the spiritual and cultural symbols of the Khoi and the San finds resonance within the proposed development plan.

- 218.5. Finally, in relation to 'detractors ... who believe that indigenous people stand diametrically opposed to development and are best served by being relegated to an anthropoid fetishised state where they roam perpetually in antiquity without the tools to navigate the modern world', Chief Khoisan states:

it is our view that such paternalistic notions must by themselves be put to the sword, because we, the ones who had been at the frontline of fighting for recognition, restitution and restoration, have elected to exercise agency in our own interest and our progeny.

- 218.6. It is clear to me that the developer has placed great value on the site's heritage. This is evident from, among other things, the resources devoted to engaging with the First Nations Collective and the willingness to incorporate most of its reported proposals into the development. The development will represent a genuine and meaningful instance of indigenous place-making. It will provide various opportunities for the First Nations to record, teach, express and celebrate their culture and history. It will also allow for other residents to experience that culture and history. I do not consider the developer's proposals to be mere tokens or vehicles for commercial exploitation.

Other heritage issues raised

219. The GTKC is of the view that the proposed development affects the constitutional rights to human dignity, heritage and culture, as well as the international-law rights to freedom

from forced assimilation, free determination for colonised or oppressed people, the right to protect the environment, the right to determine priorities for the development of their land and resources, and the right to economic, social and cultural development. In its view, governments are required to protect and preserve cultural expressions that are at risk and cultural expression and the preservation of heritage are basic human rights, not luxuries. The OCA argues that the MPT failed to comply with South Africa's international obligations under the United Nations Guidelines on Indigenous Peoples, the United Nations Declaration on the Rights of Indigenous Peoples and the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

219.1. However, particularly in the light of the developer's engagement with the First Nations Collective, and the various submissions made in respect of the proposed development during the land-use and development process, I am satisfied that the requirements of these instruments have been met and that the various fundamental rights and freedoms have been respected.

219.2. I have had due regard to the First Nations Collective's emphasis on asserting indigenous agency.

220. FWC has expressed the view that heritage should be the 'primary informant' of a development proposal. That is inconsistent with the legal duty on the City imposed by the binding decision-making criteria in section 99 of the By-Law. That section prescribes a range of considerations that must be considered when evaluating the desirability of an application. Heritage does not have primacy over other relevant considerations such as socio-economic impact. Different factors may take on greater or lesser weight depending on the circumstances. Certainly, in the present case, heritage is factor of considerable significance. However, it cannot be considered in isolation and is not an automatic trump card.

221. While the subject property has been proposed for inclusion in a heritage protection overlay zone under the DMS, it is currently not in such a zone. However, I have not let that fact diminish the fundamental importance of heritage considerations in deciding this application.

222. I do not agree with the HWC that the River Club's golf lawns or its buildings have much heritage significance. Neither their aesthetics nor their historical use have significant conservation-worthy heritage value; this was borne out by my site inspection. Certainly, they are incongruent with and bear no relationship to the subject property's First Nation political and historical profile.

223. The City's heritage officials requested further investigation of development alternatives. However, those alternatives are not economically viable, so little value would be derived from spending resources on such investigations.
224. The City's heritage officials expressed concern that issues of 'cultural appropriation and social impact' have 'not been expounded on sufficiently'. However, there have been three iterations of the HIA as well as the production of an extensive and thoughtful report by Atmos following a series of engagements with First Nations groups and leaders. The content produced as a result of those processes has been illuminating. The GTKC had the opportunity to participate as part of the First Nations Collective. It elected not to, as was its entitlement. It has subsequently made extensive representations during the processes under the By-Law. I am therefore satisfied that the process has been sufficiently and appropriately inclusive, and that there is sufficient heritage-related information to decide the application.

Heritage impact conclusion

225. The development will allow much positive change from a heritage perspective: the Liesbeek River will be naturalised and rehabilitated, introducing a more authentic environment that supports indigenous fauna and flora; a significant portion of open space will be retained, upgraded and made far more accessible to the general public; various components of the development have been informed by a genuine engagement with custodians of First Nations heritage, which engagements have resulted in a variety of substantive initiatives to indigenise the site. I have imposed conditions which require the developer to incorporate at least the heritage commemoration features listed in Annexure A to these reasons. The conditions also require the developer to invite and consider representations in respect of the details of each of these heritage commemoration features.
226. Some adverse impacts will be experienced, most prominent of which are a reduction in the extent of zoned open space. However, various reasonable and adequate mitigating measures have been put in place.
227. In my view, the value of the subject property's heritage is one of the reasons why this development should go ahead. The First Nations narrative is deserving of celebration and recognition. The status quo of an inaccessible, private golf course with its alien vegetation is not a fitting or dignified tribute to the area's political history and the First Nations' experiences on the subject property. By contrast, the proposed heritage commemoration features will meaningfully celebrate the First Nations' narrative and give visible and due recognition to this part of our nation's heritage on a site which currently

has no tangible signs of its important history. These heritage commemoration features outweigh and mitigate any negative heritage impacts of the development.

Bio-physical environment (s 99(3)(h))

228. Notwithstanding the subject property's utilisation as a golf course, conference centre and parking lot, the proposed development has various environmental informants. It is located on a floodplain, between two 'branches' of the Liesbeek River (even though only one of them carries the Liesbeek's waters). It is a green open space that is otherwise surrounded by various farms and degrees of urban development. It has links to other environmental resources, including the Black River and the Raapenberg Wetland. It is a habitat for indigenous fauna, including the endangered Western Leopard Toad.
229. The developer has proposed:
- 229.1. utilising substantial fill material and basement levels to raise the built environment above the 1:100 year floodline. The open spaces, ecological areas and riverine corridor, however, will generally remain at natural ground level;
 - 229.2. rehabilitating the Liesbeek canal that runs along the eastern boundary of the subject property, by removing the existing concrete canal, naturalising the river-course, introducing river banks and indigenous flora and implementing a buffer zone of at least 40 metres between the river-course and the closest buildings on the site (the developer's graphical representations of its proposals are in paragraph 168 above);
 - 229.3. transforming the Liesbeek channel that runs along the subject property's western boundary into a vegetated stormwater swale. There will be a buffer of between 10 to 20 metres between the swale and the new buildings. Low weirs will be placed to allow seasonally inundated water build-ups (see the image in paragraph 168 above);
 - 229.4. retaining a green open-space corridor that runs from east to west through the centre of the subject property and links the rehabilitated riverine corridor to the transformed swale (see the image in paragraph 168 above);
 - 229.5. while the open-space corridor will lie on property owned by the developer, the changes to the riverine habitats (both the rehabilitation of the eastern canal and the transformation of the western channel) will largely take place on City property;
 - 229.6. protecting loads from moving onto roads and building platforms by employing gabions at road edgings; and

Handwritten signature and initials in the bottom right corner of the page.

229.7. constructing culverts at the Black River bridge, where the internal road crosses the open space and at other points on the site to facilitate safe faunal movement and water flows.

230. The developer sought and obtained an environmental authorisation to proceed with the development under the NEMA. That authorisation was taken on appeal and confirmed by the Western Cape Minister of Local Government, Environmental Affairs and Development Planning ('Provincial Minister') on 22 February 2021. Nevertheless, in the process of determining the current appeals, I am required to reach my own independent determination in respect of the proposed development's environmental impact, in accordance with section 99 of the By-Law.

231. Several specialist studies have been undertaken in respect of various environmental components of the development proposal. They have informed the intended design, the environmental authorisation and the conditions imposed by the City.

Flooding

232. Aurecon undertook an 'Investigation into the impact of the proposed redevelopment of the River Club on flooding and flood abatement in the Salt River Catchment', which resulted in the hydrology report that has been discussed above. Among other things, it concluded that the 'impact of the proposed development on flood levels and the areal extent of the additional flooding are considered to be negligible' and that the 'combined impacts on flood levels of the proposed development together with the proposed development of the Two Rivers Urban Park and their extent are considered to be negligible.'

233. The hydrology report summarised its main conclusion as follows:

[T]he proposed development would have an insignificant effect on flooding in the vicinity of the existing River Club site. Although the development would have some limited localised effects on flows and water levels in the Liesbeek and Black Rivers, the modelled impacts in terms of increased hazard and potential damage to properties are insignificant and can be considered to be negligible – provided that the above-mentioned findings are adhered to.

234. The hydrology report contained a range of recommendations that have informed the design proposal. As per the conditions of approval which I intend to impose, its conclusions will be required to inform both the formulation of the SDPs and the implementation of the necessary flood attenuation measures.

235. The OCA contends that the subject property's role must be understood in its larger context, and that catchment-scale studies are required. It argues that the developer's

hydrology report is based on 'risky assumptions' and has failed to consider other studies and relevant facts (such as downstream blockages).

235.1. However, the OCA mischaracterises the hydrology report. It was formulated by reputable consultants and engineers, using accepted modeling tools and techniques. The authors incorporated the findings of two different modelling techniques.

235.2. The hydrology report is a study in respect of the 'Salt River catchment' and was undertaken to include upstream and downstream considerations. Its express purpose is not limited to the subject property, but aimed at the cumulative impacts of the proposed development on areas affected by the Salt and Liesbeek Rivers. The Salt River Catchment area described in the report extends across swathes of the Peninsula, far beyond the subject property or even the TRUP.

235.3. The report does not only address adjacent features (such as the Raapenberg Wetlands), but areas further afield. The report is premised on an extensive literature review. Upstream and downstream considerations have been taken into account. For example, the City is aware that watercourse blockages will require careful management to prevent flooding.

236. I also refer to what I have said under the heading of 'stormwater' (from paragraph 124 above) about flooding, and the related mitigation measures and conditions imposed.

Biodiversity

237. Freshwater Consulting CC conducted an 'Assessment of potential biodiversity impacts – incorporating the findings of the aquatic systems (rivers and wetlands), botanical, faunal, avifaunal and groundwater specialists'. The assessment was informed by input from various specialists, including a freshwater ecologist, a faunal specialist, a botanical specialist, an avifaunal specialist and a groundwater specialist.

238. The resultant biodiversity report's analysis of the subject property and its ecological informants includes the following.

238.1. The subject property lies within the Salt River catchment. Various environmental features surround the site, including the Raapenberg Wetlands, the eastern Liesbeek canal, the western Liesbeek channel (along the west and north of the site) and the Black River. The confluence of the Liesbeek and Black Rivers is

adjacent to the subject property. After that confluence point, water flows into the Salt River canal and then into the Atlantic Ocean.

- 238.2. Many of these environmental features have seen significant human interference over the preceding decades: urbanisation in the catchment area, the development of Paarden Eiland, the separation of Diep River from the Salt River system, the canalisation of the Black and Salt Rivers, the infilling of wetlands to accommodate road infrastructure, the inflow of effluent from wastewater facilities etc.
- 238.3. The Raapenberg Wetlands feature seasonal, clay renosterveld wetland and comprise a 'mosaic of different wetland habitats' with at least nine (near) endemic flora. They support a diversity of waterfowl and provide a breeding habitat for the endangered Western Leopard Toad. The floral and water-quality variety within the wetland facilitates faunal diversity.
- 238.4. The wetlands are sensitive to, among other things, changes in water flows, channelisation, removal of existing structures and diversion of freshwater into the wetlands. They have a high 'Ecological Importance and Sensitivity'; they are the most valuable and most sensitive of the water resources that will be affected by the proposed development. Given this sensitivity, 'it is recommended that no changes in hydroperiod, flow regime or water quality should be encouraged'.
- 238.5. Despite their proximity to the two rivers, the wetlands are mostly fed by groundwater. They are not as affected by changes in the river flows as might otherwise be expected. The proposed development would accordingly 'exert a negligible effect on the hydrological regime of the Raapenberg wetlands'.
- 238.6. The Friends of the Liesbeek River Society recently dug a channel to convey water from the Liesbeek Canal into the wetlands. This channel in fact endangers the wetlands and should be removed.
- 238.7. The SA Astronomical Observatory site also features threatened renosterveld vegetation.
- 238.8. Both the western Liesbeek channel and the eastern Liesbeek canal 'have undergone changes from their natural alignment / linkages'.
- 238.9. The western channel likely follows part of the Liesbeek's historic course. However, it has 'been diverted sharply into the Black River', away from its original drainage into the Salt River Lagoon. The channel is also disconnected from the Liesbeek

River; it captures mostly stormwater runoff and subsurface seepage; a pipe connecting the channel to a Liesbeek weir has been blocked for years.

- 238.10. The western channel has a moderate to high 'Ecological Importance and Sensitivity'. It has undergone 'Serious change' and is in a poor condition as a result of impacts from surrounding urban land uses, alterations to its natural flow regime, 'extensive loss of indigenous vegetation and invasion of the river channel by alien plants'. It has steep banks, parts of which feature mature alien trees.
- 238.11. However, the watercourse functions as a 'backwater wetland' and is used by waterfowl and Giant Kingfishers. It might also provide breeding ground for the Western Leopard Toad. There is a reedbed wetland that is adjacent to a portion of the watercourse, which could be sensitive to even slight changes in flood heights.
- 238.12. The eastern Liesbeek Canal conveys most, if not all, of the Liesbeek's waters. It 'has lost almost all natural stream function'. It is not sensitive as a riverine habitat. Due to the canalisation, the ecosystem is sterile. Past rehabilitation projects have failed due to cost implications and space constraints. The right side of the canal has a berm with various forms of alien vegetation.
- 238.13. There is a short portion of the eastern river channel that is uncanalised. That portion could be more sensitive to development-related activities. Furthermore:
- Hydrological connectivity from the canal to the Raapenberg wetland is a critically important issue from a biodiversity perspective and one that, if altered, could potentially result in significant degradation of wetland function and structure.*
- 238.14. Both the eastern canal and the western channel of the Liesbeek support Cape Galaxias (endemic to the Western Cape) and other macroinvertebrates.
- 238.15. The Black River has seen 'Extreme changes from its natural condition', including channelisation, sewerage inflow, course changes, loss of indigenous flora and alien invasion. The portions of the Black River that are close to the subject property are degraded, sterile and filled with alien flora.
- 238.16. However, there is a small, treed island near the confluence point that merits preservation, as do the willow trees along the canal.
- 238.17. The Black River has very poor quality, which is one of the area's most significant ecological problems. The Liesbeek's water quality is 'considerably less impacted' and it functions to 'dilute poor water quality in the Black River' downstream of the confluence point. However, even in the Liesbeek, bacterial contamination

levels are 'frequently higher than the maximum thresholds for intermediate recreation.'

- 238.18. The subject property itself is highly disturbed and features no indigenous terrestrial vegetation; large portions have already been infilled. The golf course has several artificial water features that may provide amphibian breeding habitats, but can easily be replaced. The subject property (as opposed to surrounding features) is '*of no importance from a botanical or avifaunal perspective*'.
- 238.19. The subject property may have up to 29 indigenous mammal species, as many as 32 indigenous reptile species and between six and eight indigenous amphibian species. Generally, connectivity across the site – from the Raapenberg Wetlands in the east to the Liesbeek channel in the west – is important for fauna. The '*most important consideration in respect of local mammal assemblages is the maintenance and/or rehabilitation of the ecological integrity of the Liesbeek and Black rivers, including a buffer region along the banks of these rivers and corridors between them.*'
- 238.20. In respect of global conservation rankings, most of the abovementioned species are 'Least Concern'. However, among the mammals, the African Clawless Otter is 'Near Threatened'. Although the site is unlikely to have resident otters, there are probably some individuals that move in and out of the subject property. Out of the reptiles, only the Cape Dwarf Chameleon is 'Vulnerable'. The chameleon's presence could be supported by tailoring the proposed development's green areas to its habitat needs.
- 238.21. Of the amphibians, the Western Leopard Toad is 'Endangered'. It is '*the most significant faunal concern*' and calls for '*special considerations to accommodate this species*'. These considerations include:
- 238.21.1. suitable breeding habitats, with due regard for the importance of the Raapenberg Wetlands;
 - 238.21.2. habitat for shelter and forage in close proximity to the breeding habitat, in the form of substantial green belts;
 - 238.21.3. '*dispersal corridors*' between breeding and non-breeding habitats, with the western Liesbeek channel retained either as a wetland habitat or a terrestrial habitat with retaining ponds and a broad east-west belt linking the channel habitat to the riverine corridor and the wetlands; and

h 5.2

- 238.21.4. Limiting hazards and risks by erecting toad-exclusion barriers.
- 238.22. Within the subject property itself there are currently few viable avian habitats, mostly due to the lack of safe breeding habitat. However, some of the surrounding watercourses support various species, including those of conservation value such as Greater Flamingos and Great White Pelicans. The Liesbeek canal has largely been sterilised by concrete. The western Liesbeek channel's slow flow and concentration of aquatic plants inhibit most bird use, although the Giant Kingfisher nests on its steep banks.
- 238.23. The Liesbeek and Black Rivers' confluence point support a wetland that is linked to various other wetland systems. This wetland attracts a significant portion of the avifauna that are present on and around the site; it is of great value for waterbirds. Avian fauna in the adjacent wetlands are unlikely to be affected by the proposed development, given their distance from the site and their existing proximity to the M5.
239. The biodiversity report sets out rehabilitation opportunities in respect of the Liesbeek River. Regarding the western channel, it notes that the developer could 'provide a substantially better quality of habitat' by re-grading the banks to a gentler slope, replacing alien vegetation with indigenous riverine and wetland flora and including 'seasonally inundated off-channel zones'. Regarding the eastern canal, the report notes that, although expensive and design intensive, the removal of the canal and its replacement with a more natural river channel 'would be a major (but highly beneficial) intervention'.
240. The biodiversity report sets out the following assessment of the proposed development's biodiversity impacts (with accompanying recommendations):⁷
- 240.1. The eastern arm of the Liesbeek will be rehabilitated into a functional river corridor, featuring: a low-flow channel with an earth bed and indigenous vegetation; a high-flow channel with indigenous vegetation that could support fish larvae, aquatic larvae and insect nymphs; gabions on the right-hand side, which could be sterile but could be adjusted for plant establishment; an indigenously vegetated flood channel providing floodplain habitat for wading birds and other fauna; and pedestrian / cycle paths with reduced biodiversity value.

⁷ The report assesses different development alternatives, including one that retains the eastern canal and rehabilitates the western channel. Unless relevant, I have not referred to this alternative as it is not the development proposal that has been put forward for the City to consider.

- 240.2. These changes are 'considered positive and would dramatically improve [the] river habitat'.
- 240.3. The proposed development will entail loss of substantial areas of terrestrial habitat for various fauna, including Western Leopard Toads. However, the quality of that habitat is currently poor, and will be replaced with large open-space areas that are safe and of high quality. Accordingly, the 'loss of degraded terrestrial habitat is considered of low negative significance'.
- 240.4. The subject property features no areas of floral importance. The proposed development will be unlikely to impact the renosterveld vegetation or the SA Astronomical Observatory site.
- 240.5. At present, the quality of faunal connectivity between the western and eastern channels on the site is poor and dangerous. The proposed development will include substantial faunal corridors, including longitudinal links (the rehabilitated river and the vegetated swale), latitudinal links (primarily the west-east open-space corridor) and links under roads and bridges. The removal of the canal and its replacement with a naturalised river-course with shallower banks will extend connectivity between the site, the SA Astronomical Observatory property and the Roopenberg Wetlands.
- 240.6. Various additional elements are required to improve faunal connectivity, including: wide swathes of indigenous vegetation on the west-east open-space corridor, additional culverts, a steep slope to Berkley Road, a 5 to 10 metre vegetated buffer zone at the north-western point of the development, indigenous vegetation across the site and the use of road-grids to ensure sufficient lighting in the culverts. Faunal sensitivity components are also required at the Black River bridge.
- 240.7. The Western Leopard Toad could be negatively impacted by a number of activities, including fatalities as a result of roads and vehicles, pitfalls (e.g. getting trapped in stormwater drains) and harsh terrain. Various design elements have already been incorporated to address these risks e.g. toad barriers, culverts and the avoidance of obstructions to dispersal options.
- 240.8. However, some risks remain e.g. the possibility of toads being drawn up to the roads. The following additional features would contribute to the sustainability of the Western Leopard Toad on-site:

Handwritten signature and initials, likely belonging to the author or reviewer of the document.

- 240.8.1. The gentle slope towards Liesbeek Parkway could allow toads to move onto the busy road, increasing mortality significantly. The side slopes of roads should be as steep as possible. If steep slopes are not employed, toad barriers must be installed. Open spaces below roads and at toad barriers should not be well vegetated (so as to minimise attractiveness to fauna).
- 240.8.2. Various stormwater and infrastructural features could trap toads, leading to mortalities. These should include design elements to allow escape options and limit access.
- 240.8.3. Harsh terrain can lead to mortalities from dehydration, fatigue and predator exposure. This can be addressed through a planting plan that provides a high quality of low- and medium height vegetation for coverage and physical shelters (such as logs) integrated within the landscape.
- 240.8.4. Where fencing is required, it should not limit small faunal movement e.g. limited electrification and sufficient holes to allow terrestrial movement.
- 240.8.5. Toad awareness campaigns should be launched once the development is operational.
- 240.9. Although increases in water flows into the Raapenberg Wetlands could affect their ecology, the proposed development will have a negligible effect on the wetlands because they are not hydrologically connected to the Liesbeek. However, the Friends of the Liesbeek River Society' linking channel should be filled in.
- 240.10. The construction of the Black River bridge will disturb the surrounding environment. Accordingly, the extent of the fill platform should be pulled back; disturbed marginal wetlands should be reinstated; and indigenous trees should be planted along the river corridor to create roosting / nesting habitats.
- 240.11. The transformation of the western Liesbeek channel into a vegetated swale will have several habitat quality impacts, including: loss of permanent standing-water habitats (which may presently be used as breeding areas by the toads); loss of Cape Galaxias habitat; loss of steep earth banks (used for Kingfisher nests); and loss of stormwater amelioration function. These effects can be mitigated by:

- 240.11.1. creating additional ponds, with gentle slopes and indigenous vegetation, to serve a wetland habitat function;
- 240.11.2. retaining steep earth banks, both to support avian nesting and prevent toad road mortalities;
- 240.11.3. planting appropriate indigenous vegetation; and
- 240.11.4. the rehabilitation of the eastern canal, which will provide additional habitat space.

241. The biodiversity report concludes that environmental damage will be highest during the proposed development's construction phase. It recommends various mitigation measures, including the following:

- 241.1. establishing no-go areas on the site with appropriate fencing and safe movement corridors for fauna during the various phases of construction;
- 241.2. maintaining the Raopenberg Wetlands as a no-go area;
- 241.3. conducting search-and-rescue operations for the toads at various points during construction;
- 241.4. formulating and following a detailed Construction Phase Environmental Management Programme that regulates various activities that could impact the surrounding environment;
- 241.5. formulating and adhering to a phasing plan to ensure: the rehabilitation of the Liesbeek canal takes place before construction of the rest of the development; landscaping of the west-east open-space corridor occurs in summer and early winter, within one year of the canal corridor's landscaping, infilling and reshaping the western Liesbeek channel takes place during summer, after establishing the rehabilitated eastern corridor and the west-east open-space corridor; landscaping the additional west-east corridors once the adjacent developments have been constructed; excavation of watercourses takes place during the dry season and outside of toad migration periods; the timely construction of culverts; allowances are made for contingencies and rehabilitation of disturbed areas (including areas accidentally disturbed);
- 241.6. rehabilitating portions of the Black River that are affected by the construction of the Berkley Road bridge;
- 241.7. developing a detailed watercourse construction plan;
- 241.8. preventing deliberate inflows into the Raopenberg Wetlands;

- 241.9. taking input from various specialists where appropriate;
- 241.10. early establishment of good quality plant cover; and
- 241.11. observing a waste management programme.
242. The biodiversity report identifies a range of possible ecological impacts that the proposed development will have during its operational phase. It recommends various mitigation measures, including:
- 242.1. the formulation of and compliance with an Operational Phase Environmental Management Programme;
- 242.2. ensuring the long-term management of the open spaces;
- 242.3. regular audits to determine compliance with design and management objectives;
- 242.4. restrictions on the use of treated sewage water, greywater and swimming pool effluent; and
- 242.5. the planting of indigenous and waterwise plants.
243. The biodiversity report raises the risk of failing to achieve the environmental goals due to failures in landscape implementation, under-estimating the scale of the required intervention and under-estimating long-term operational and maintenance costs. In this regard it recommends a range of possible mitigation measures, including a detailed landscape plan, proper management of operational management costs, appropriately qualified landscaping personnel and various particular recommendations in respect of the watercourses (e.g. allowing a wide river corridor with greater flood resilience).
244. The biodiversity report sets out the following overall assessment of the proposed development.
- 244.1. The proposed development would have positive impacts e.g. improved connectivity with the Roopenberg Wetlands, the establishment of large indigenously vegetated open-space areas the riverine buffers, augmenting renosterveld conservation, and the rehabilitation of the eastern canal.
- 244.2. Negative impacts included possible toad fatalities due to increased exposure to hazards such as traffic on Liesbeek Parkway. However, these impacts are 'readily mitigable' through design interventions. Another concern is the loss of open-space areas as a non-breeding habitat.

Handwritten signature and initials, possibly 'R S'.

- 244.3. Not developing the subject properly would allow the site to maintain its current ecological functionality. However, due to prevailing uses (e.g. the driving range), that functionality is limited. Also, not proceeding with the development would result in the loss of the bold opportunity to rehabilitate the Liesbeek canal.
- 244.4. While birds may be moderately sensitive to increase disturbance at the site, they would mostly adjust to increased human proximity, provided that adequate shelters are in place.
- 244.5. Overall, the proposed development would be 'acceptable from an ecological perspective, and preferable to the no-development alternative', given the various measures to support fauna, improve water resources, rehabilitate terrestrial and natural habitats and increase connectivity. 'In fact, implementing the developer's preferred option [i.e. rehabilitating rather than retaining the canal] 'would, from a biodiversity and general aquatic ecosystems perspective, be a positive impact'.
- 244.6. Nevertheless, regard must be had for the risks of implementing a proposal of this scale, the impacts on sensitive natural ecosystems and 'the infilling and landscaping of the remnant... "natural" channel of the Liesbeek River.' The latter concern is 'considered ecologically acceptable in the context of substantial river rehabilitation, and the proposed development of vegetated swales in landscaped terrestrial areas suitable for colonisation by western leopard toads', which amounts to 'an acceptable use of this space without significant negative biodiversity or other ecological costs.'

245. The biodiversity report notes that the development proposal was formulated in an iterative fashion, such that various environmental concerns and ecological mitigations were incorporated as the proposal was refined.

The NEMA processes

246. The developer completed an EIA for purposes of NEMA. The EIA considers the environmental impact, as well as various heritage, socio-economic, infrastructure and other aspects of the proposed development.
247. On 20 August 2020 the Western Cape Director: Development Management (Region 1) granted the developer an environmental authorisation under the NEMA to proceed with the proposed development, including rehabilitation of the Liesbeek canal, infilling of the western Liesbeek channel and implementing the Berkley Road extension.

248. The environmental authorisation was appealed by, among others, the City's Acting Director: Environmental Management Department. On 22 February 2021 the Western Cape Minister of Local Government, Environmental Affairs and Development Planning dismissed the appeals, confirmed the environmental authorisation and varied the conditions of approval.
249. The Acting Director's appeal has been determined by the competent authority under the NEMA. However, those appeal grounds have been referred to and reiterated by the appellants in the context of the development application under the By-Law. It is therefore necessary for me to consider them, where relevant,⁸ in the context of the analysis required under section 99 of the By-Law.
250. The Acting Director was concerned that the proposed development's bulk, scale and footprint were undesirable in the context of the Liesbeek River, the floodplain, the site's open space and green infrastructure, as well as its recreational and visual amenity. He emphasised the river's role in the coast-to-coast greenway, the Salt Catchment and the broader ecosystem, as well as the subject property's importance in managing floods and water quality.
- 250.1. Those concerns do not apply to the City. Throughout the developer's proposal, the various specialist studies and the City's decision-making processes, the subject property and the proposed development have been understood in their broader ecological context. The hydrology report addresses stormwater functionality and flooding concerns in the context of the greater Salt Catchment. The biodiversity report emphasises connectivity to the Raapenberg Wetlands and the Black River, among other natural resources. These factors have informed both the development design and the conditions imposed.
- 250.2. The site's current open spaces must be properly understood: they comprise a parking lot and a private golf course; they are hazardous for indigenous flora and host almost no indigenous flora. Both the ecological and recreational value of the open spaces are, at best, limited. During my site inspection I observed first-hand how degraded, sterile and unsafe many of the subject property's open spaces are.

⁸ For example, the Acting Director complained that the decision-maker under NEMA had failed to conduct a site inspection before granting the environmental authorisation. That obviously does not apply to this appeal, as the complaint was directed at a different decision-maker and I have undertaken a site inspection. As another example, the Acting Director was concerned that the environmental authorisation had failed to take account of the City's previous comments on the Basic Assessment Report. That concern was particular to the NEMA process and need not be addressed here.

- 250.3. The proposed development will introduce significant urban development to the site, which will bring about permanent changes. Some of the environmental impacts associated with the development will be highly beneficial: the sterile canal will be rehabilitated into a naturalised environment that both looks like and functions as riverine corridor; the alien vegetation will be removed and replaced with indigenous, fauna-supporting plant-life; the golf greens – which are alien, inaccessible to the general public and dangerous for fauna – will be replaced with a green corridor that has been intentionally designed to support the area's animals and to welcome members of the public.
- 250.4. The Acting Director was of the view that it 'is inappropriate to fill in a river to compensate for the loss of open space on the River Club' given the Liesbeek's stormwater and ecological functions. However, the western channel is not a river and the developer's proposal to transform it is not to make up for lost open space. That misunderstands the planned transformation.
- 250.5. Under the proposal, the western Liesbeek channel will, like at present, not be a river course. However, it will be reshaped to continue performing a stormwater function and will also provide habitable wetland spaces for Western Leopard Toads and other fauna. Again, it is important to recall that the western channel is polluted, infested and uninviting. Its transformation will address these undesirable aspects and will be positive, particularly when understood in the context of the rehabilitated eastern Liesbeek corridor, the west-east green corridor, the improved linkages with the Raapenberg Wetlands and the ecological functioning of the site and the adjacent properties as a whole. As the developer has emphasised, with regard to the hydrology report, the western swale will 'act as a long, shallow biofiltration linear wetland treatment system... [that] will improve stormwater quality from Observatory, as opposed to losing the amelioration function of the unlined course'.
251. The Acting Director noted that the City's latest data indicated that a 35-metre buffer was required along watercourses and wetlands in the TRUP. That concern has been met. The developer updated its proposal to incorporate a 40-metre along the rehabilitated Liesbeek River corridor. There will also be a more than sufficient buffer between the proposed development and the adjacent Raapenberg Wetlands.
252. The Acting Director was concerned that the proposed development's stormwater impacts and flood risks had not been properly considered or adequately mitigated. These concerns have been addressed above. In addition:

- 252.1. regard has been paid to the western Liesbeek channel's current stormwater polishing function. The vegetated swale has been expressly designed to meet the prevailing stormwater management needs;
- 252.2. I address the requirements of the City's Floodplain and River Corridor Management Policy below. I am satisfied that the proposed development represents an appropriate balance between managing flood risks, protecting and enhancing environmental resources, and meeting socio-economic needs; and
- 252.3. conditions have been imposed to prohibit habitable structures within the 1:100 year floodline.
253. The Acting Director expressed a concern that the environmental rehabilitation might not take place. However, conditions have been imposed to ensure that the City approves an enforceable set of environmental management plans before construction commences, which will regulate in detail how and when the various rehabilitation and transformation initiatives are implemented.
254. The Acting Director was concerned that the 'loss of open space' has not been adequately described or addressed. I disagree:
- 254.1. As set out above, at present, approximately 57% of the subject property is made up of the private golf course. While that might be considered green open space, it is of low quality, dangerous to fauna, exclusive of indigenous flora and not accessible to most of the general public.
- 254.2. Another 13% of the site is the parking lot. That has no environmental utility.
- 254.3. Once the proposed development is implemented, at least 34% of the subject property will be devoted to green spaces and river corridors: not golf lawns, asphalt and concrete canals, but indigenous vegetation and naturalised riparian habitats.
- 254.4. Furthermore, the developer has committed to transforming the adjacent western Liesbeek channel into a wetland swale and the eastern Liesbeek canal into a rehabilitated riverine corridor. These features will integrate with the subject property's green spaces seamlessly. Together, they will be experienced as far more than the approximately 5 ha of on-site open space, and will form part of the coast-to-coast green space.
- 254.5. Having undertaken a site inspection, I have seen for myself the degraded nature of the current open spaces, as reported in the various studies

K S. Z.

- 254.6. The Acting Director seems to have taken issue with the developer's proposed changes to the open space, with its modifications and increased height, however, many of those modifications – such as the rehabilitation of the riverine corridor, the planting of indigenous vegetation and the creation of faunal habitats – are extremely valuable from an ecological perspective.
- 254.7. The raising of the base structure is necessary to keep habitable spaces above the 1:100 year floodline. I am satisfied that the proposed development will feature appropriate interfaces between the built and natural environments, both on-site and adjacent.
- 254.8. The Acting Director claimed that there will be a 'loss of publicly accessible City owned land' along the western Liesbeek channel. However, he misdirected himself in this regard as no land will be lost: to the extent that it will not be used for open space, it will be used for purposes of roads infrastructure, which serves an important public purpose and the community at large. I am, furthermore, satisfied that sufficient green open space will be created along the subject property's western boundary, bearing in mind that the public will experience the City-owned land and the subject property as one green corridor. Contrary to this concern, the development will considerably increase public access to the City owned land. The public will be afforded secure access to access the Liesbeek River.
- 254.9. The biodiversity report recommended a range of design parameters to ensure the functionality to various ecological corridors, including the north-south corridor along the subject property's western boundary. Those recommendations were incorporated in the environmental authorisation's conditions of approval. They will address some of the concerns about buffers and ecological functionality.
255. The Acting Director was concerned that insufficient attention had been paid to issues of biodiversity impact, habitat loss and faunal sensitivity. However, as is evident from the biodiversity report discussed from paragraph 237 above, these aspects have been addressed at length. Contrary to what was stated or implied in the appeal, I am satisfied of the following:
- 255.1. The Acting Director indicated that the proposed development would result in 'the river and its associated wetlands (being) filled in and a mound of earth 6m high lies on top of the previous 30m wide river'. This is incorrect. No 30-metre wide river will be filled in, and both a rehabilitated riverine corridor and a series of small

of global warming by cooling the atmosphere through evaporation, keeping waterways and floodplains open and unobstructed to provide resilience to flood risk in heavy rainfall events, and recharging ground water and the aquifer through natural percolation. Infilling a river course and developing within the floodplain are not consistent with the stated objectives of the City's Climate Change Policy. Furthermore, no consideration appears to have been given to the concerns expressed in the City's Climate Change comment for the loss of climate resilience caused by infilling the floodplain, the heat island effect that is already evident in this area, the uncertainty of the assumed 15% increase in rainfall intensity and the more recent projections of significant sea level rise.

- 6.6 Section 2 (4) (a) (vii) of NEMA states that sustainable development requires "that a risk-averse and cautious approach is applied, which takes into account the limits of current knowledge about the consequences of decisions and actions". This is commonly known as "the precautionary principle".
- 6.7 The comments submitted by the City on the BAR noted that "climate models inherently incorporate a certain amount of uncertainty due to the nature of model design and this uncertainty is magnified the further forward the model looks" and that as such there should be additional caution applied to this proposed development, due to the likelihood of the proposed infilling of the Liesbeek River and its floodplain exacerbating these flooding impacts on surrounding properties and City infrastructure.
- 6.8 The comments noted that the projected 15% increase in rainfall intensity in the Surface Water Impact Assessment was based on a single study and should not be assumed to account for all likely climate futures, particularly in the far future.
- 6.9 The comments also noted that key studies, namely the "Stormwater Infrastructure Asset Management Plan (Phase 2A) Rainfall Analysis and High Level Master planning" (SRK, 2012) and "Marine Inputs to Salt River Flood Model:94" (PRDW, 2010) were 8 and 10 years old respectively. The comments noted that clarity on the risks of using data that is a decade old and what this means for confidence levels in modelled outputs, and hence flood risk determinations, was required.
- 6.10 The comments also noted that, due to recent updates to IPCC projections regarding sea level rise in the context of continued global failure to meet climate change mitigation targets, the eustatic sea level rise upper limit of 0.55cm which was used in the report, and from which additional modelling was based in terms of hydrology and storm surge, was a significant underestimate in respect of applying the precautionary principle approach. Newer IPCC modelling shows a potential upper limit of 0.84cm by 2100.
- 6.11 No reference to risk, the precautionary principle, or a "risk-averse and cautious approach" was made in the EA. This indicates that the decision-maker had not adequately applied the precautionary principle, as it relates to climate change, in this decision.

7. THE DECISION DOES NOT APPROPRIATELY DESCRIBE OR MITIGATE THE LOSS OF OPEN SPACE

- 7.1 The EA fails to differentiate between the use, quality, accessibility and nature of the open space, the actual loss of open space, the allocation of public open space (OS2) and special open space (OS3), and publicly accessible areas of City land along the Liesbeek River (currently zoned TR2). The EA states that 60% of the site will be retained as POS but, importantly, the BAR needed to show what percentage of POS allocation is on City land and what percentage is on private land.
- 7.2 The calculations for open space retention in the BAR do not apply to the River Club site (erf 151632) only but to the adjacent open space and river corridors which would have been retained as such without the development and road schemes. It would be a more accurate reflection to indicate the retention of open space on the River Club site itself given that this erf is proposed to be rezoned from its current Open Space 3 zoning to Subdivis onal area.
- 7.3 The actual open space allocation on the River Club site (5.17ha of 14.75ha) equates to one third of open space being retained as open space of some sort. However, this open space is modified (i.e. not retained in its natural state), it is increased in height by 6m to cover the sides of the double basement parking beneath the ground floor at a slope of 1:5 gradient and some of the open space is above parking garages.
- 7.4 The quality of open space on the privately owned River Club site is jeopardised by the road infrastructure and numerous buildings fragmenting the open space, and the infilling of the Liesbeek River, creating a bermed open space. These issues and impacts have not been clearly described nor quantified in the BAR and have not been addressed in the EA.

- 7.5 The EA states that "The open spaces will include, *inter alia*, the ecological corridor, ecological setbacks, recreational facilities such as foot and cycle paths, footbridges and service infrastructure". Ecological setbacks will consist of a bank with a maximum average slope of 1:5, planted with suitable wetland vegetation." It is the City's considered view that the inclusion of 1:5 gradient slopes and embankments and service infrastructure would not yield high quality publically accessible spaces. Hence, it could not reasonably be assumed that 60% of the site will translate into high quality public open space amenity with information presented to date as stated in the EA. The illustration below indicates the two building footprints of the parking garages on the site, and the low proportion of land remaining for open space.

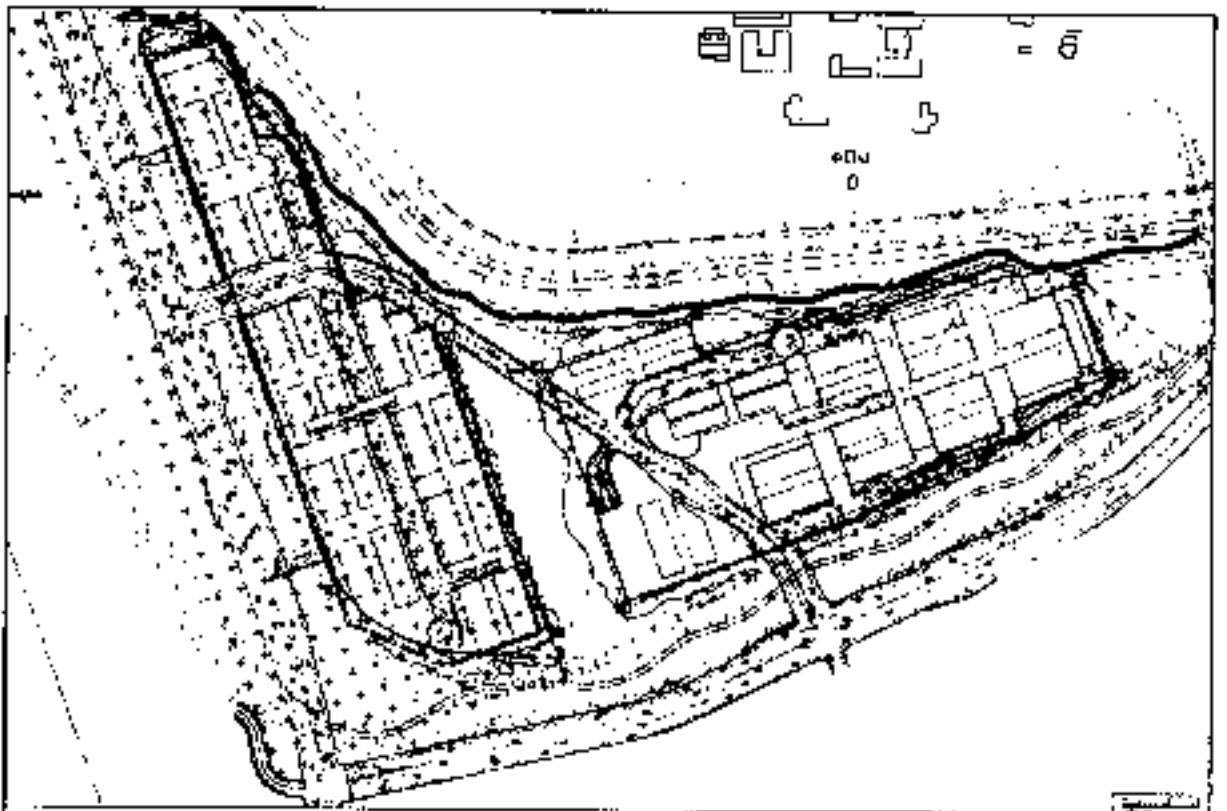


Figure 1: Plan showing proposed building footprint in red, hard on the Liesbeek River, with no ecological setback, and remaining open space on the river club site – within the dashed orange line

- 7.6 The loss of publicly accessible City owned land (zoned TR2, not zoned OS, and included in the current Liesbeek River Conservation Area) located on the western bank of the historic Liesbeek River, as a pedestrian / cycle trail, should be factored into the impacts on the loss of publicly accessible open space, in order to provide for the widening of Liesbeek Parkway as part of the proposed development.
- 7.7 It would be reasonable for the decision-maker to require a breakdown of the nature of the open spaces being proposed (percentages for hard and soft, recreational, ecological, and functional (e.g. detention ponds, embankments and slopes) as well as the percentage provision for what will be deemed accessible to the public in each case.
- 7.8 The EA states that "Approximately 15.6Ha of open space will be provided in a number of open space areas throughout the site." This statement is inaccurate because nothing

[Handwritten signature]

new will be provided in these areas outside the River Club site on City land. These areas already constitute publicly owned open space. Accordingly, there will be a net loss of open space across the site.

- 7.9 Open space areas provided throughout the park are to be provided in what is referred to as the "ecological setbacks abutting the unlined / natural channel of the Liesbeek River". It should be noted that there will be no ecological setbacks given the proposal to pipe the Liesbeek River underground. Ecological setbacks and corridors are associated with natural rivers that exist above ground, with wetlands and river banks, and riparian vegetation and habitat, and not for underground pipelines. This gives a false impression that the 35-40m wide ecological setbacks from the Liesbeek River, recommended by the City for ecological functioning of the Liesbeek River, will be provided for.
- 7.10 The City requires that the Liesbeek River must remain in its natural state with 35-40m wide ecological setbacks to ensure protection of the existing riverine and wetland ecology. Instead of setting back the development from the watercourse, the development is located hard on the boundary of the River Club site, hard up against the bank of the Liesbeek River, which is proposed to be infilled. As evident from the diagram above, the proposed parking garage footprint extends virtually to the edges of the River Club site. Hence there are no ecological setbacks from the river as stated. These ecological corridors would have been one type of open space with an ecological function, retaining wildlife and visual amenity for the community and the general public, and providing some flood protection.

8. THE DECISION DOES NOT APPROPRIATELY DESCRIBE, OR MITIGATE THE BIODIVERSITY IMPACT OR HABITAT LOSS OF THE HIGH FAUNAL SENSITIVITY PROTECTED AREA AND ASSUMES A WILLINGNESS ON THE CITY'S PART TO RELINQUISH SUCH PROTECTED AREA

- 8.1 Reliance by the Decision Maker on ill-conceived or flawed information relating to Annexure 3: Biodiversity Impacts and Mitigation Measures, has led to an underestimation of the high negative impacts of permanent duration on the Liesbeek River Conservation Area:

8.1.1 The Faunal Specialist based the Faunal Importance Assessment ("FIA") score for mammals, reptile and amphibians on what was anticipated to occur on site not on site evidence (see Faunal Impacts on page 23 of 31). Given the status of the conservation area, it is unacceptable that the Faunal Specialist relied on a desktop study and not on actual site assessments. This was raised in the City's comments on the BAR.

8.1.2 The Faunal Specialist assigned an FIA score of "moderate at a regional scale", but only applied "specific mitigation measures with respect to the Western Leopard Toad". These mitigation measures fail to account for mitigation measures for other threatened species, such as the Cape Dwarf Chameleon (*Bradypodion parvum*), which is nationally listed as Vulnerable and known to

occur in the broader study area. It also fails to account for impacts to charismatic, Near-Threatened mammals such as the African clawless otter (*Aonyx capensis*), which would lose forage (fish, crabs and molluscs) and potential burrow sites if the unlined/natural channel of the Liesbeek River is infilled.

- 8.1.3 The faunal specialist failed to disclose that the Western Leopard Toads (WLTs) are breeding on the River Club Site itself, even though he had allegedly observed them himself. This led to the decision-maker relying on flawed information in that it was led to believe that the River Club site is less significant to fauna than it actually is. See Annexure D: Confirmation of the presence of western leopard toads (WLTs) near the natural Liesbeek River channel, of WLTs breeding on the River Club site and observed by the herpetologist.
- 8.1.4 Infilling of the unlined/natural channel of the Liesbeek River will have significant negative impacts on the wetland habitat available for numerous bird species. Support for this view is provided under the Avifaunal Impacts on page 24 of 31: **"More than forty (40) bird species were recorded during the various site visits that were undertaken by the specialist. Most of the bird species recorded were water or wetland habitat related."** This appears to have been overlooked under the Ecological and Freshwater Impacts on page 25 of 31 of the EA.
- 8.1.5 The Ecological and Freshwater Impacts state that: *"The specialist identified and assessed the potential impacts associated with Alternative 1 (i.e. the preferred alternative / the Riverine Corridor Alternative) and Alternative 2. The proposed rehabilitation of the Liesbeek Canal into a functional river channel would result in a high positive significance prior to the implementation of mitigation. The river habitat would improve from a PES Category F to at least a PES Category D."* This recommendation is flawed, because it ignores the significant negative impacts of infilling the unlined/natural channel of the Liesbeek River.
- 8.1.6 With reference to the following statement in the Ecological and Freshwater Impacts on page 25 of 31: *"The unlined/natural channel of the Liesbeek River no longer receives flow from the Liesbeek River."* It is submitted that this statement is misleadingly, because it was based on drought conditions when the sluice gate to this unlined/natural channel was kept closed. Stormwater from the surrounding catchment still enters this unlined/natural channel.
- 8.1.7 The Ecological and Freshwater Impacts on page 25 of 31 of the EA conclude that: *"The potential impacts in the unlined/natural channel of the Liesbeek River are therefore anticipated to be of low negative significance post mitigation."* This fails to account for the loss of habitat for indigenous fish such as Cape Galaxias (*Galaxia zebratus* species complex). Morphological taxonomic revision and genetic studies are underway for this species complex, and thus the population occurring in the Liesbeek River may be a genetically distinct subspecies.

- 8.1.8 The Ecological and Freshwater Impacts on page 26 of 31 states that: "The specialist indicated that Alternative 1 (i.e. the Applicant's preferred alternative / the Riverine Corridor Alternative) is preferred from a biodiversity and general aquatic ecosystems perspective since the overall impact is anticipated to be positive." The infilling of a natural river channel cannot be considered positive from an environmental perspective.
- 8.1.9 The Ecological Corridor referred to on Page 7 of 34 of the EA is a misrepresentation of facts. Once the habitat of the Liesbeek River Conservation Area has been destroyed through infilling, there will be no movement of animals from there anymore. The paths across the River Club site they used to traverse, will be empty and unused. The need for the ecological corridor arises from the significance of the habitat of the Liesbeek River, and the need to maintain the ecological linkages across the River Club site, for frogs, otters and birds which move to and from the Liesbeek River and the Raapenberg wetlands, noted by various specialists and members of the public. With no life left in the Liesbeek River, the *raison d'être* for the ecological corridor falls away.
- 8.1.10 The EA states, "Ecological setbacks will consist of a bank with a maximum average slope of 1:5 planted with suitable wetland vegetation." This is a misconception of creating wetland habitat once the river and its associated wetlands have been filled in and a mound of earth 6m high lies on top of the previous 30m wide river. The decision-maker does not appear to discern that wetland vegetation grows on level areas or depressions, not on banks as steep as 1:5 gradients. There will be no wetlands growing on the banks which are quick draining topographical features.
- 8.2 **Biodiversity Management and Conservation Areas Agreement:** The decision-maker failed to adequately consider various City of Cape Town Policies that recognise the biodiversity significance of the conservation area (Biodiversity Agreement site) on the City even. This is despite attention drawn to the fact that this Biodiversity Agreement site is recognised under both Municipal and Provincial Government Policy, and in terms of National Environmental Legislation:
- 8.2.1 The EA Annexure 3 Reasons for Decision (under 3.8. Ecological and Freshwater Impacts on page 25 of 31) states that: "According to the Western Cape Biodiversity Spatial Plan, 2017, the unlined/natural channel of the Liesbeek River, the Liesbeek Canal, the Black River and the Raapenberg Wetlands are mapped as a Protected Area in terms of the National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003)."
- 8.2.2 The Western Cape Biodiversity Spatial Plan incorporates the BioNet (Cape Town's fine-scale systematic biodiversity plan). The BioNet is adopted as City of Cape Town Policy in the Bioregional Plan 2015. The BioNet is also aligned with and adopted in other City Policy, most notably the Integrated Development Plan (IDP 2017-2022) and the Municipal Spatial Development Framework (MSDF 2017-2022). The IDP and MSDF recognise Cape Town's critical environmental

assets and its globally important biodiversity. The MSDP's often misquoted "Consolidated Spatial Plan Concept" (also known as "The Blue Turtle" owing to the shape of the "Urban Inner Core") does not override the MSDP's Biodiversity Network as if development were more important than conserving biodiversity. The MSDP comprises 4 main maps, and notes that this is "A series of maps that collectively indicate a metropolitan-scale interpretation of the City's spatial vision, development directives, land use informants and investment priority areas." This clearly shows that the MSDP is to be read as a collection of maps of equal standing, rather than the 'consolidated spatial plan concept' overriding all other layers of spatial informants.

8.3 **Reliance by the Decision-Maker on a Misconception relating to amending the Biodiversity Agreement to exclude the Liesbeek River:**

8.3.1 In the EA, the decision-maker has included one recommendation for City land (point 22 on page 9 of 31 of the EA): "The holder will facilitate a discussion between the City of Cape Town and CapeNature in order to amend the current Biodiversity Agreement."

8.3.2 It is submitted that this recommendation is based on a misconception. The City does not intend to amend the current Biodiversity Agreement on erven 15326-RE, 24300, 26426, 26129, 26170, 26171, 26172, 26173, 26174 and 26175, Observatory. This Biodiversity Agreement was signed in 2014 between City and CapeNature and is legally binding on both parties. The City's position regarding the biodiversity and conservation significance of this site remains unchanged.

8.3.3 The words 'facilitate discussion' in the recommendation (point 22 on page 9 of 31 of the EA) does not require a conclusion to be reached, thereby allowing the Applicant to proceed without resolution or mitigation for the loss of and impacts to the Biodiversity Agreement conservation erven. If engagement is required, this will not be meaningful unless there is an outcome.

9. **FAILURE TO CONSIDER APPROPRIATE ALTERNATIVES, INCLUDING THE NO-GO ALTERNATIVE**

9.1 In the EA, the decision-maker states that, in reaching its decision, it considered its guidelines on alternatives as per its EIA Guideline and Information Document Series, Guideline on Alternatives, March 2013. These Guidelines state the following:

"The identification of alternatives should be broad, objectively done and well documented. Key criteria when identifying and investigating alternatives are that they should be "feasible" and "reasonable". The alternatives identified must serve to achieve the triple bottom-line of sustainability i.e. they must meet the social, economic and ecological needs of the public. The alternatives must also aim to address the key impacts of the proposed project by maximising benefits and avoiding or minimising the negative impacts. The primary objective must be to avoid all negative impacts, rather than

to minimise them. Detailed information on the consideration of alternatives must, however, be provided in the relevant reports.
(emphasis supplied).

The City submits that these Guidelines were not followed in this regard.

- 9.2 The City recommended that another alternative be investigated. This alternative was both feasible and reasonable and provided an alternative to the infilling of the historic river course and proposed a minimum setback of 30m from the natura. Liesbeek River and from the Liesbeek River canal, to enable ecological riverine buffers for faunal habitat and for recreational and visual amenity. This appropriate alternative should have been investigated in the BAR, most importantly to satisfy the triple bottom line of sustainability, that includes ecological, social and economic needs. Furthermore, the No-Go alternative, as explored in the BAR did not include detailed information, thereby making it impossible to be properly considered. It is therefore submitted that there was a failure to consider appropriate alternatives, including the No-Go alternative. Further detail of the City's requirements for an appropriate alternative are contained in its comments on the BAR.

10. THE DECISION-MAKER FAILED TO CONDUCT A SITE INSPECTION UPON RECEIPT OF THE CITY'S COMMENTS TO ASCERTAIN THEIR VERACITY, AND THE DECISION REFERS TO FEATURES THAT ARE NOT PRESENT ON THE SITE

- 10.1 The Decision-Maker's site visit, on 29 August 2019, preceded the City's submission of inter-departmental comments on the BAR in February 2020, which indicates that the decision-maker did not interrogate the City's findings and recommendations with conditions on site, or interrogate certain of the flawed specialist information by checking on site.
- 10.2 Despite a City official, having offered to accompany the decision-maker's officials on the site inspection, this was declined telephonically. Given the extensive and concerning comments submitted by the City, a site inspection was warranted.
- 10.3 HWC's Final Comment was dated 13 February 2020 in which information regarding the identification of resources, including the Cultural Landscape and Sense of Place, their heritage significance, impacts thereon and mitigation measures were described in detail. This information should have played a vital role at a site inspection by the decision-maker in order for a thorough assessment of heritage resources to be made.
- 10.4 Furthermore, the decision-maker did not check on site for all the relevant habitats and animal species that had been brought to their attention by the City or by the I&APs, following their receipt of the comments on the BAR. They relied on their earlier site visit only.
- 10.5 The City pointed out various issues in its comments on the BAR, such as discrepancies in the specialist information, that could have been confirmed by means of a site inspection by the decision-maker. The failure to undertake a further inspection prior to

The decision being made resulted in the decision-maker not being able to interrogate the veracity of comments made by both the City, HWC and I&APs.

11 THERE IS A LACK OF CLARITY REGARDING THE BOUNDARIES OF 'THE SITE'

11.1 The EA that has been granted includes City land. However, these City areas were not addressed as the "proposed site" by several of the Specialists. Two examples of this inconsistency in what constitutes the "proposed site" are provided in the site descriptions below for reference:

11.1.1 The Faunal Impacts on page 23 of 31: "The proposed site is surrounded by a few key environmental aspects, such as, the unlined/natural channel of the Liesbeek River (west of the proposed site), the Liesbeek Canal (east of the proposed site), the Black River, the Raapenberg Bird Sanctuary wetlands, artificial wetlands on the existing site and the adjacent wetlands located on the SAAO site."

11.1.2 The Ecological and Freshwater Impacts on page 24 of 31: "The proposed site is surrounded by wetlands and rivers. The western border of the proposed site is bordered by an unlined/natural channel of the Liesbeek River." Furthermore, "The road reserve of the proposed Berkley Road extension is located north of the proposed site."

11.2 Certain faunal specialists did not inspect the City land and did not consider the impacts of infilling the Liesbeek River on biodiversity habitats. The Avifauna study of 2015 predated the proposal to infill the Liesbeek River, because the development proposal was at that stage confined to the River Club site only. Hence the impacts of infilling the Liesbeek River, on the avifauna, were not assessed by the avifaunal specialist.

11.3 It is submitted that if a fundamental issue such as the proper boundaries of the site is inaccurate then the specialist input relied on by the decision-maker is flawed in that impacts were not accurately assessed further resulting in the decision being flawed for reason of being based on inaccurate information.

12. TECHNICAL ERRORS, DISCREPANCIES AND OMISSIONS IN THE EA RESULTING IN VAGUENESS

See **Annexure A**: Technical Errors, Discrepancies and Omissions in the Environmental Authorisation Resulting in Vagueness.

13. IMPRACTICAL AND INADEQUATE CONDITIONS IN THE ENVIRONMENTAL AUTHORISATION

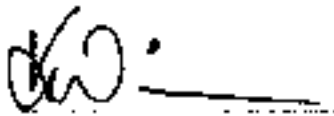
See **Annexure B**: Impractical and inadequate conditions in the Environmental Authorisation.

Conclusion

Based on the above grounds, the City appeals the decision to grant Environmental Authorisation in the above matter and requests the setting aside of the decision.

If the EA is upheld, it will result in further degradation of the historic Liesbeek River natural channel and an unacceptable loss of habitat.

The City suggests the appointment of a panel of experts to reassess the BAR and to consider alternative development footprints and 30m ecological setbacks from both riverine corridors, including the application of approved policy to the site.



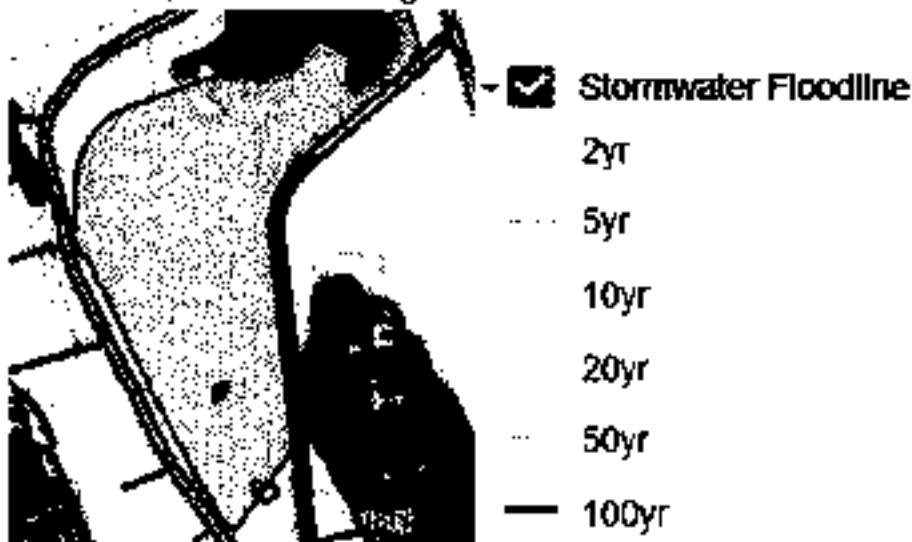
K. Wiseman
Acting Director: Environmental Management Department
Date: 11 September 2020



ANNEXURE A**TECHNICAL ERRORS, DISCREPANCIES AND OMISSIONS IN THE ENVIRONMENTAL AUTHORISATION RESULTING IN VAGUENESS**

It is submitted that the following technical errors and discrepancies render the EA vague. Given that the EA constitutes the decision of the decision-maker, it should contain no doubt as to the decision-maker's decision and the holder's rights and obligations. That is clearly not the case in the present matter. Where there are clear uncertainties and significant errors as pointed out below, then the decision stands to be set aside on this basis.

1. Extent of proposed development below the 1:10year floodline on Page 3 of 31: The last paragraph states that **"Portions of the proposed site fall below the 1:100year floodline."** This statement is misleading because 90% of the River Club site is beneath the 1:100yr floodline and not only 'portions' of the site as stated in the EA. In fact, more accurately, most of the River Club site is below the **1:10year** floodline. This is therefore an error and a misrepresentation of the facts. The remaining City land is not affected by a development footprint, so this statement is not pertinent to those portions. See map below, which indicates the 1:10year floodline in green.



As is evident, approximately 90% of the River Club site is below the 1:10year floodline, and even more of the site is beneath the 1:100year floodline, pointing to the unsuitability of the site for development. This fact is downplayed in the EA.

2. Although the EA states on page 4 and 5 of 31 that a channel of 3m x 90m in length would be infilled, it is not clear where such a feature exists on the site. A site development plan should have indicated the location of all features referred to in the EA.
3. incorrect terminology on Page 3 of 31: a term, 'the ground level of the building' is used. A building has 'finished floor levels', and 'ground levels' are for existing and proposed ground levels outside / around a building.

4. In this case, the EA states the 'ground level' of the proposed building will be raised 600mm above the 1:100year flood level. It is not clear what is being referred to here and whether the finished floor level of the proposed building will be raised, or whether the existing ground level beneath the building will be raised.
5. A building has a ground floor and ground storey, but not ground level.
6. There are 2 levels of parking, beneath the first storey (actually the 3rd storey).
7. Ground level is not a term for the building, but for the ground levels around the building – existing or average 'ground levels'. Whereas, 'Ground floor' is the lowest floor of a building that is not a basement. The ground floor is going to be 600mm plus 2 storeys of so called "basement" parking above the existing ground level, i.e. ground floor will be about 6.6m above the existing ground level.
8. Basement parking: Further the term 'basement' parking is misleading because the 'basement' parking at Precincts 1 & 2 is above ground. In terms of the Municipal Planning By-law, basements may only project 1.5m above natural / existing ground level. So these parking garages cannot be considered basements as they project about 6m above the current ground level. They are actually 2storey parking garages beneath the proposed buildings above. The attempt to conceal them behind a 6.6m high embankment does not render the parking garages as basements.
9. There are disparate ground levels on page 3 of 31 of the EA compared to what is shown on the colour illustration on page 13 of 31 of the EA. The following is a snip from the colour illustration:

PRECINCT 1:

The base level (i.e. average ground level) of the building proposed in Precinct 1 is 3.10m above msl.

PRECINCT 2:

The base level (i.e. average ground level) of the building proposed in Precinct 2 is 4.19m above msl.

These levels above differ from the following snip below, which is stated on page 3 of the EA:

Portions of the proposed site fall below the 1:100 year floodline, which is approximately 5.81m above mean sea level. The ground level of the proposed buildings will therefore be raised to approximately 6.4m above mean sea level.

10. There are discrepancies between the levels indicated in the proposal and those contained in the EA. A building does not have a ground level, but a finished floor level, or a ground floor / ground storey. The existing ground level beneath the building could be proposed to be raised to 6.4m above mean sea level (msl), which is neither 3.10 nor 4.19m above msl,

11. **Rehabilitation Work:** Under the inappropriate wording of 'rehabilitation work' on page 4 of 31, the EA includes the highly inappropriate infilling of the Liesbeek River, one of the City's high faunal sensitivity riverine Conservation Areas. The EA uses the word rehabilitation, but the word should have been 'landscaping', because it's impossible to mitigate the loss of a natural habitat such as the Liesbeek River.
12. **Omission of the Liesbeek River:** The decision-maker relied on maps submitted by the Applicant in which the Liesbeek River was omitted.
13. The proposed building footprints shown below, extend up to the river bank of the natural Liesbeek River, with no ecological setback as required by the City's Catchment, Stormwater and River Management Branch and Environmental Management Department in terms of the City's approved Flood plain and river corridor management policy.



14. The EA authorises a development shown to the public that authorises 8 and 10 storey buildings with a certain floor to ceiling height. The floor to ceiling height for each storey is excessive for certain uses - being 6m for retail, 4.5m for office and conference, and 3.5m for residential. This implies that for a 10storey building, the height of the building may be 51m in height, including the 2storey car park beneath, the visual impacts of which may not necessarily have been assessed.

h 52

ANNEXURE B**IMPRACTICAL AND INADEQUATE CONDITIONS IN THE ENVIRONMENTAL AUTHORISATION**

It is evident that the following conditions are either impractical or inadequate to have the desired effect. It is respectfully submitted that the EA stands to be set aside for reason of these conditions. The City fails to see how the EA can be regarded as a legally sound decision in light of the deficiencies pointed out in the following conditions.

1. Section 11: Monitoring on Page 7 of 31, requires that the 'holder' of the EA must appoint a suitably experienced Environmental Control Officer (ECO) to ensure compliance with the provisions of the EMPr and the conditions contained in the EA. The implications of the holder of the EA having the responsibility to appoint a suitably experienced ECO is inappropriate for public and, given that the City is responsible for having to do road schemes, and yet a private property owner is being held accountable to provide ECOs for the City's road projects, which the EA states are not necessary for the development scheme. The City would have to provide its own contractors via its own tenders, and yet the private property owner is responsible for appointing ECOs for this work in terms of the EA. This has not been thought through by the decision-maker.
2. Auditing on Page 8 of 31: The environmental audit every 6 months is insufficient for the City's purposes of auditing a development on a river where pollution of the fresh water in the Liesbeek needs to be guarded against. The protection of fish, WLTs, bird habitat, breeding birds on the Liesbeek River, wetlands, etc., needs weekly audits initially, and monthly audits thereafter.
3. Environmental Audit Reports every two years, as per Section 14.2 is not sufficient for such a sensitive site. This system will not promote accountability of the contractor if the audit reports are only required every two years.
4. Specific condition 16.1 requires that "The recommendations provided in the HIA and the Supplementary Report compiled by Mr. T. Hart and Mr. S. Townsend and dated 04 December 2019, as included in the EMPr, must be implemented." However, HWC found that the HIA did not meet the requirements of S38 of the NHRA. It is therefore inadequate and concerning that the decision-maker would require their recommendations to be implemented.
5. Section 21.1 on Page 9 of 31: There is a requirement that "employment opportunities be afforded to the First Nations Communities (as far as practically possible) for the operational phase of the heritage component of the proposed development. Since there is no requirement for an operational EMP, it will not be possible to provide employment opportunities for First Nation communities for the operational phase of the heritage components, to be monitored in an ongoing manner.
6. Section 9.1 on Page 7 of 31: Management of Activity requires the approval of a Stormwater Management Plan for one of the City's rivers, but this condition does not include the City's

Catchment. Stormwater and River Management Branch in the approval of the Stormwater Management Plan.

7. Section 9.1 on page 7 of 31: A rehabilitation / restoration plan for the rehabilitation of the Liesbeek Canal is required with no requirement for the City's Biodiversity Management Branch to approve such a rehabilitation / restoration plan. This is not in line with co-operative governance with regard to the management of City assets and resources for which Biodiversity Management is responsible.
8. Given that the decision-maker is concerned about stormwater management and rehabilitation of the canal, there would also need to be management of future land use activity impacts on these environments, such as ensuring there is no discharge of contaminated soapy water from car washing activities or oily water from restaurants into the stormwater system, for example. Hence there should also be an Operational Environmental Management Plan (EMP) which should continue to be monitored in perpetuity, for good housekeeping practices of future tenants on the site, given the fact that the development is within a floodplain, and also abuts the Raapenberg Wetlands, and an unlined section of the continuation of the Liesbeek River, and the section of the Liesbeek River that extends into the Black River.

ANNEXURE C**COMMENTS OF THE CITY'S CATCHMENT STORMWATER AND RIVER MANAGEMENT BRANCH ON THE PROPOSED RIVER CLUB LAND USE APPLICATION BEING CONSIDERED BY THE CITY**

**CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD**

**WATER AND SANITATION DEPARTMENT
WATER AND WASTE DIRECTORATE**

**Ben de Wet
Head, Catchment Stormwater & River Management Region 1**

**T. 021 429 5036
E. ben.dewet@capetown.gov.za**

17 January 2020

Joy San Giorgio

Senior Professional Officer, Development Management

RE: COMMENTS ON DAMS CASE 70356369, RIVER CLUB DEVELOPMENT, OBSERVATORY, CAPE TOWN

Several motivation reports have been uploaded to the DAMS system with the most recent one being an application for permission to hold a New Year's Eve party on Dec 31, 2018. This response addresses the Motivation Report Rev 4, Sep 2018, called Application for Deviation from Table Bay District Plan etc.

Furthermore, our comments are informed by the Aurecon report into flooding of the site, Rev 3, dated March 2018 while the report uploaded to DAMS is Rev 2 dated Nov 2017. The earliest flooding report commissioned by the River Club in 2013 and undertaken by ALD, laments the historical mistakes made by City fathers in allowing development of the foreshore and infilling of the salt-water lagoon. This as part of an application to develop the last bit of open green land left in the system.

CCT Stormwater Bylaw and Policies

The CCT Bylaw relating to Stormwater management allows the City to prohibit or impose conditions on developments in areas adjacent to watercourses and wetlands. The CCT Stormwater Policies attempt to give guidance on how and when such conditions should be imposed. The Floodplain and river corridor management policy aims to safeguard aquatic environments and human health in addition to reducing the impact of flooding and maintaining recreational water bodies. It requires balanced consideration of flood risks, environmental impacts and socio-economic needs with one of the policy objectives being the protection and enhancement of environmental goods and services provided by water bodies. The policy considers water bodies to be public resources which need protection by, amongst others, offsetting riparian development. The policy explicitly states that no development rights will be granted in the high hazard zone. The Stormwater Impacts Policy aims to mitigate changes to runoff characteristics brought about by development.

**WATER & SANITATION HEAD OFFICE
2 WOODBROOK ROAD, OFF CAMPUS ROAD, LEYERS MEER, CAPE TOWN, PRIVATE BAG 498, BELLEVILLE 7530
www.capetown.gov.za/mwawater**

Making progress possible. Together.

Deviations Requested

The CSRMB branch is largely satisfied with the work done and findings made by Aurecon in their report of their "Investigation into the Impact of the proposed development of the River Club on flooding and flood abatement in the Salt river catchment" Rev 3 dated 12 March 2018. These are not disputed.

The Stormwater policies prohibit the exercising of development rights in the High Hazard zone and also does not permit housing or business development below the 1:50 year floodline. It is not clear why the application is for deviation from restrictions on development below the 1:20 year floodline.

It is beyond the authority of the branch to authorize the manipulation of ground levels aimed at changing floodlines below the 1:50 year flood line. Furthermore, while infilling of the "old Lesbeek" has been shown to be hydraulically unimportant, it goes against the other aspects of the City's stormwater strategies and policies as discussed above. While it may have a limited effect, the "old Lesbeek" currently acts as polishing facility for stormwater coming from the suburb Observatory.

In addition to the applicant wishing to obtain approval for a departure from the flood related aspects of the Floodplain and River Corridor Management Policy, the developers are in essence also requesting a departure from the need to provide a buffer along the river section (which is proposed to be infilled to create a stormwater swale). A departure from the ecological principles and guidance provided in the latter policy needs to be taken in the context of the wider system and catchment. It needs to be acknowledged that the area that will be infilled represents part of the last remains of the historic Lesbeek River channel which has ecological and eco-historical importance.

There are few opportunities to undertake rehabilitation of degraded rivers in the Cape Town and developers generally seldom actively pursue such positive initiatives. Endorsing the River Club proposals that would essentially result in further degradation of this historic channel should not be supported.

In its current form, the historic river channel should be buffered by at least 40m (in terms of the City's 2002 buffer line spatial informants recommended by Southern Waters). A more recent study undertaken for the entire TRUP site (Blue Science freshwater assessment dated 2016) provides a more accurate assessment of the present status and ecological importance and sensitivity of the watercourses in the TRUP area (which included the watercourses and wetlands of the River Club site). This report recommends at least a 35m buffer along/around these systems (page 52: "A buffer area of approximately 35m should be maintained adjacent to the delineated edge of the aquatic features"). The report made use of the 2015 WRC buffer tool which is regarded to be an acceptable industry standard and thus the 35m buffer which is of similar order of magnitude to the City's earlier 2002 data would be supported by the City's Catchment, Stormwater and River Management Branch.

The branch would not oppose the manipulation of the 1:50 year floodline when other mitigation measures such as raised floor levels and escape routes are taken and when a spatial development framework is also presented for approval. This would enable a more specific discussion of the location and extent of deviations requested. There are places where the models show a small increase in possible flood levels, the applicant should get the

WATER & SANITATION HEAD OFFICE

5 VOGELSTRUKTUR ROAD, ONE OF MIE PENAAR BOULEVARD, ZENKELLE 7515, PRIVATE BAG 498, 31-01, 77015
www.localhost.gov.za/PureWater

Making progress possible. Together.

approval of the affected property owners and/or indemnify the City against claims in this regard. The flooding report should discuss errors and assumptions made and their effect on results in more detail. Practical interventions to prevent flooding of the astronomical observatory and of Liesbeek parkway must be undertaken.

The location of the site is such that on-site generated post development stormwater detention will most likely be counterproductive and this branch supports doing away with the "Control quantity and rate of runoff" requirements of the Management of Urban Stormwater Impacts Policy. The water quality improvement aspects of the policy must still be met.

It has been already pointed out in the City's comments on the draft BAR for this development that the River Club site and nearby sites such as the Roopenburg wetlands, the Observatory, the river corridors themselves etc represent an integrated complex of open space areas with high green infrastructure value. Not only does the area offer value in terms of social/recreational benefits and ecological / biodiversity features, but also represents green infrastructure important for flood, water quality and water provision management. The site should not be viewed alone but within the context of the greater Salt Catchment (213 km²) which, apart from the upper reaches of the Elsieskraal, the extreme upper reaches of the Liesbeek River and the broader TRUP area (and River Club), has already been intensively developed and hardened. These last open space remnants therefore have even greater value. Indeed, Section D of the draft Basic Assessment Report (Need and Desirability) notes that in terms of the City's EMF, the site is listed as a "structuring open space which forms part of the coast to coast greenway". In the Table Bay Spatial Development Plan the site is classified as Open Space and Buffer 1 and thus the proposed development represents a major departure from this. The proposed development will require that the area which is currently zoned "Special Open Space" be rezoned, and thus development of the River Club site will irrevocably change and reduce the green infrastructure and open space value of the area as a whole.

The proposed infilling and conversion of the river channel to a stormwater swale will alter the green infrastructure engineering and ecological value of this site. The Environmental Management Department of the City will also point out that the biota in this system (Western Leopard Toad - confirmed breeding site), fish (indigenous *Gambusia zebra* likely to thrive in this system), frogs and avifauna will be displaced due to the complete loss of habitat in this section.

It seems to be very risky for the City to grant blanket deviations from policy without knowing exactly what development is proposed where and the CSRM branch would be more comfortable discussing relaxation of policy requirements in terms of development plans.

Yours Sincerely

PP 

Ben de Wet

Head: Catchment, Stormwater & River Management

WATER & SANITATION HEAD OFFICE

5 VOOERSTRUKER ROAD, 5TH OF MAY RENAISSANCE BOULEVARD, BELLVILLE 7535 TEL: 021 261 2400 FAX: 021 261 2510
www.capetown.gov.za/infrastructure



ANNEXURE D**CONFIRMATION OF THE PRESENCE OF WESTERN LEOPARD TOADS (WLTs) NEAR THE NATURAL LIESBEEK RIVER CHANNEL, OF WLTs BREEDING ON THE RIVER CLUB SITE AND OBSERVATION BY THE HERPETOLOGIST**

Wed 09/09/2020 09:44:21 PM

jean.s.ramsay <jean.s.ramsay@gmail.com>

RE: the Western Leopard Toads on the River Club site

To: Send a push notification

You forwarded this message on 2020-09-09 7:55 PM

Hi

I confirm that I was with Marius Burger when we found western leopard toads on the river club site. We rescued several young ones that were trapped in the irrigation system - which he said indicated that they were breeding on the site, and found adults near the original Liesbeeck river channel.

Kind regards

Jean Buckley

----- Original message -----

From: Sandra Huswick <Sandra.Huswick@capetown.gov.za>

Date: 2020/09/09 13:20 (GMT+02:00)

To: jean.s.ramsay@gmail.com

Subject: the Western Leopard Toads on the River Club site

Hi Jean

Thanks for all the info so far.

I recall you mentioned that you had been on site with Marius Burger and photographed the WLTs on the River Club site, and yet he didn't mention their presence on the River Club site in the faunal assessments.

Is it possible you could send me an email to this effect, or you could write an affidavit saying that you were with him when you saw the WLTs please?

Thanks

Sandy

**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No.: _____

In the matter between:

OBSERVATORY CIVIC ASSOCIATION

First Applicant

GORINGHAICONA KHOI KHOIN

INDIGENOUS TRADITIONAL COUNCIL

Second Applicant

and

TRUSTEES FOR THE TIME BEING OF

LIESBEEK LEISURE PROPERTIES TRUST

First Respondent

HERITAGE WESTERN CAPE

Second Respondent

CITY OF CAPE TOWN

Third Respondent

THE DIRECTOR: DEVELOPMENT MANAGEMENT

(REGION 1), LOCAL GOVERNMENT, ENVIRONMENTAL

AFFAIRS & DEVELOPMENT PLANNING, WESTERN

CAPE PROVINCIAL GOVERNMENT

Fourth Respondent

THE MINISTER FOR LOCAL GOVERNMENT,

ENVIRONMENTAL AFFAIRS & DEVELOPMENT

PLANNING, WESTERN CAPE PROVINCIAL GOVERNMENT

Fifth Respondent

SUPPORTING AFFIDAVIT

I, the undersigned,

TAURIQ JENKINS

do hereby make oath and state as follows:

1. I am the Supreme High Commissioner of the Goringhaicona Khoi Khoi Traditional Indigenous Council under Paramount Chief Aran.
2. In my capacity as Supreme High Commissioner of the second applicant, I have been duly authorised to depose to this affidavit on behalf of the second applicant. A copy of the relevant resolution dated 27 July 2021 is attached marked "TJ1".
3. I also a member of the management committee of the first applicant. I have lived in Observatory since 2003 and have participated actively in the Observatory Civic Association ("OCA") since about 2009. I currently hold the Arts and Culture Portfolio on the management committee of the OCA but in the past I have held the positions of secretary, vice-chairperson and chairperson.
4. The contents of this affidavit are true and correct. Unless I indicate otherwise, or the contrary appears from the context, they are within my personal knowledge and



belief. Legal submissions contained herein are made on the advice of the second applicants' legal advisors, which advice I believe to be correct. Where I rely upon information conveyed to me by others, I state the source, which information I likewise believe to be true and correct.

5. I am also qualified to speak with authority on issues of oral history and the intangible cultural heritage of the San and Khoi peoples affected by the proposed River Club development by virtue of my academic qualifications and experience.

5.1. I hold a Master of Fine Arts Degree from Columbia University, an alumnus of the International Fellows Program (IFP) at the School of International Public Affairs at Columbia University.

5.2. I am an alumnus of the International Leadership Programme at International House, New York. I was a recipient of the Merit Award in Oral History at the Graduate School of Arts and Sciences at Columbia University.

5.3. I chair the AIXARRA Restorative Justice Forum, which is based at the Centre of African Studies at the University of Cape Town. This forum has various commissions that focus on heritage protection, restorative justice, language recognition, ethics, repatriation of sacred human remains and indigenous human rights. I convene the Indigenous Human Rights (C19 monitoring), Land, Ethics and Sacred Human Remains Commission. I am the Community Engagement Strategist for the San and Khoi Unit at the University of Cape Town. As an oral historian I engage interviews and am responsible for ethical framework of research and community engagement



for the San and Khoi Digital Archive, which focusses on the preservation and restoration of endangered languages of the San and Khoi.

- 5.4. I was a member of the academic review process of the first Khoekhoegowab language course introduced by the University of Cape Town to communities and affiliates of the University
- 5.5. I have represented the Goringhaicona on various regional and national forums dealing with issues of restitution and unity. I am currently engaged in the development of a framework for a truth and reconciliation commission for the San and Khoi.
- 5.6. I am also an accredited Section 11 monitor for the South African Human Rights Commission.
- 5.7. I am a Convener of the C19 People's Coalition, a coalition of 400 civil organizations in Southern Africa responding to the pandemic. I convene the Anti-Repression Working Group which has a focus on monitoring repression, unlawful evictions, police and military brutality, issues on gun control, reporting human rights abuses and data analysis of repression and human rights violations.
- 5.8. On 14 January 2021, as a Convenor of the C19 Peoples' Coalition I made a presentations on *Integrating human rights in sustainable and resilient recovery from the Covid-19 Pandemic*, to the United Nations Inter-sessional

Meeting for Dialogue and Communication on Human Rights and the 2030 Agenda for Sustainable Development.

- 5.9. I have submitted report to parliament and portfolio committees, on considerations around Indigenous Knowledge Systems, examining how heritage assessment should be done for communities that have been subjected to ethnic genocide, and language loss.
6. I have read the founding affidavit of Professor Leslie London and confirm that the statements in that affidavit concerning the second applicant are true and correct.
7. I have also read the expert affidavits of Deirdre Prins-Solani and Bridget O'Donoghue that will be filed with this affidavit and confirm that I concur with their opinions regarding the inadequacies of the heritage impact assessment ("HIA") reports on which the decisions being reviewed, were based. Furthermore, from the perspective of the Goringhaicona People, I confirm:
- 7.1. that the HIA process that was followed in respect of the proposed development did not adequately assess or take account the intangible heritage associated with the site; and
- 7.2. that the HIA reports that were submitted denigrate the Goringhaicona and distort our history (I deal with this more fully in paragraphs 64 to 69, and 69 to 71, below).
8. In this affidavit, as in the founding affidavit:

- 8.1. "the developer" means the First Respondent;
 - 8.2. "the proposed development" means the River Club Development; and
 - 8.3. "the River Club site" means the site on which the developer intends to undertake the proposed development.
9. This affidavit consists of the following five parts:
- 9.1. Part One describes the various Indigenous Peoples groups that claim an interest in the heritage resources affected by the proposed development.
 - 9.2. Part Two gives a brief overview of the world view or cosmology of the Goringhaicona Khoi Khoin and related Indigenous Peoples;
 - 9.3. Part Three sets out a brief overview of the River Club site, the importance of this place to Indigenous Peoples, and the living heritage associated with it,
 - 9.4. Part Four explains why the Goringhaicona Khoi Khoin Indigenous Council and other related First Nations Peoples are concerned about the potential impact of the proposed development on cultural heritage despite the measures that the developer proposes taking to mitigate those impacts and describes the measures that we have taken in an attempt to protect this heritage;
 - 9.5. Part Five deals with our concerns about the HIA process that has been undertaken and the consequences of allowing the proposed development



to proceed without an adequate consideration of the heritage impacts, particularly for Indigenous Peoples.

PART 1: DIRECTLY AFFECTED FIRST NATIONS GROUPS

Khoi and San culture

10. It is important to appreciate that because of the centuries of genocides and ethnocides carried out against Khoi and San Peoples in Southern Africa, and particularly in the Western Cape, and the attempts to obliterate our cultures and histories, the available information about our cultural heritage is incomplete. What remains is derived in part from oral histories, cosmologies and traditions passed down by example and word of mouth from one generation to another, and in part from written archives in which third parties (often European colonials) recorded their interactions with Indigenous Peoples. Most of the written records were compiled by colonial authors and reflect a colonial perspective that is often hostile to Indigenous Peoples. (In paragraphs 60 to 62 below, I cite an example of how these colonial narratives are being used to perpetuate hostility towards the Goringhaicona.)
11. Narratives about the histories and cultures of First Nations Peoples are often contested on various grounds. For example, on the basis that there is insufficient evidence to support or "prove" the narrative, on the basis that the known facts could support different narratives, and for political or other reasons. As I explain later in this affidavit, the heritage impact assessment practitioners engaged by the

developer have used this technique in an attempt to discredit our opposition to the proposed development.

Indigenous Peoples of the Cape Peninsula

12. The Khoikhoi (or Khoekhoe) peoples are usually categorized as falling within either the Northern Khoikhoi (i.e. the Nama or Namaqua) or the Southern Khoikhoi (Cape Khoi). These groups include the Oorlam and Griquas and various diverse Khoi groups that moved from the Western Cape and across the country and into Namibia.
13. The Southern or Cape Khoi inhabit the Western Cape and Eastern Cape Provinces, and are further divided into 4 subgroups: the Eastern Cape Khoi, Central Cape Khoi, Western Cape Khoi and Peninsular Cape Khoi.
 - 13.1. The Peninsular Cape Khoi include the following tribes: the Goringhaicona, the Goringhalqua, the Gorachouqua, the Korana and the Cochoqua.
 - 13.2. The Western Cape Khoi include the Hessequa, Chainoqua and Chairiguriqua.
 - 13.3. Historical and living recognition is owed to the following, the Guriqua, Attaqua, Cauqua, Houtuqua, Omaqua, Chamaqua, Hamcumqua, Cobuqua, Eniqua Damasqua, Gamtoos, Inqua, Gonqua
14. These groups moved around over time and consequently the "footprints" of groups frequently overlap. For example, the territorial footprint of the Korana also includes

- the Cape Peninsula and overlaps with the footprint of the four Peninsular Khoi Tribes referred to above. It is important to note that the San historically share these footprints, and have had a presence in the Cape during and before the arrival of the Khoi.
15. The Peninsula was also inhabited by the San before the Cape San were exterminated. The !Xam San have a number of groups in the Western Cape. Consequently the San also have intangible heritage associated with the River Club site and the wider area now known as the Two Rivers Urban Park ("TRUP") precinct. The genocide of the Cape San has not been fully recognized but is attributable to the process of dispossessing Indigenous Peoples of their land that began on the banks of the Liesbeek and Black Rivers.
 16. The Goringhalcona owe our continued existence to our siblings the Korana, Gorachouqua, Cochoqua, Hessequa and the Goringhaiqua, and to those who fought with us in the 16 Frontier wars. Beginning at the confluence of waters of Black River, and the Liesbeeck River we sustained the longest resistance against colonial oppression which fanned out across the subcontinent for approximately 180 years. This included 16 Khoi wars, the last five of which were fought together with the AmaXhosa in the East. David Stuurman and prophet leader Makhanda fought side by side and were captured and taken to Robben Island.
 17. This history of resistance to colonization strengthened our relationships with other groups, including Nguni-speaking peoples such as the abaThembu and

Mpondomisa, and consequently they too have an interest in the site as a key aspect of that history of resistance.

18. It is also important to appreciate that although we are First Nation Khoi (which means men of man), as with other South Africans, we have ancestors from many other parts of the world. Particularly in the Cape, over the centuries the bloodlines of Indigenous Peoples has intermingled with those of peoples from many places such as Java, Madagascar, South East Asia, India, and Europe. From our perspective, the diversity of the inter-relationships and kinships between all these peoples who share deep connections to this place is something to be celebrated and we reject notions of ethno-nationalism (which we regard as a colonial imposition). In other words, we do not support the view that only people of a particular ethnic group have the right to be the authoritative voice on heritage-related issues in relation to a place such as the River Club site and wider TRUP area.

First Nations groups and organizations

19. There are a number of groupings of Indigenous / First Nations Peoples whose cultural heritage is affected by the proposed development. They include:
- 19.1. groups consisting of direct descendants, or regents, of the tribes and clans of San and Khoi Peoples who inhabited what is now referred to as the Cape Peninsular and adjacent areas, prior to colonization, and who still retain a modified system of chiefs and traditional hierarchies, which I refer to as "sovereign formations" (these include for example, Goringhaicona Khoi

Khoi Traditional Indigenous Council, the Cochoqua, the Hessequa, Nama, the Korana, the Griquas);

- 19.2. cultural organizations which have been established to revive the cultures of First Nations Peoples and advance their interests, but whose emphasis is not necessarily about tracing their ancestry to a specific tribe or clan, rather towards an overarching advocacy for the rights of Indigenous peoples and descendants of the San and Khoi which I refer to as "revivalist cultural organizations" (these include for example, the Institute for the Restoration of Aboriginal South Africa and the Camissa Museum, First Peoples Museum);
- 19.3. collective structures established to represent the interests of their members which I refer to as "revivalist umbrella organizations" (these include, for example: the First Indigenous Nation of Southern Africa (FINSA), the Democratic Federation of Indigenous People SA, the AIXarra Restorative Justice Forum and the Western Cape Khoisan Legislative Council);
- 19.4. more overtly political First Nations organisations with aspirations to contest elections, which I refer to as "political formations" (these include, for example the KKAAP and the New Nation Movement).
20. On 1 April 2021 the Traditional and KhoiSan Leadership Act 23 of 2019 came into effect and a process has commenced to verify and recognize traditional and Khoi and San leadership positions and communities. This process is still to be

commenced and will result in the official recognition of Khoi and San leaders who will serve in the national and provincial houses.

PART 2: COSMOLOGY OF KHOI AND RELATED PEOPLES

21. In order to communicate some sense of why we are so concerned about the proposed development and its impacts on a place that we regard as both sacred and of great historic importance, it is necessary to provide some insight into the worldview or cosmology of the Khoi.
22. The Khoi peoples have a deep and profound relationship with their ancestral lands. These relationships cannot be encompassed within the Roman Dutch law concept of land as inert property which may be bought and sold and which land owners are free to do with as they please subject only to compliance with the law. For Khoi peoples, the landscapes that we inhabit not only have material value as a source of food, water etc. but also have spiritual and cultural significance.
23. According to the oral history and mythologies of the Khoi, the Universe is animate and populated by many beings. For example, stars are regarded as the souls of people. Major stars like the morning star (known as Dawn) and the evening star (Dusk) have a special significance and our ancestral myths tell of how they came into existence and relate them to key figures in our cosmology. Similarly, water, rain, thunder, lightning, are also beings and Tsui!Goab is the personification of the natural forces that produce rain.

24. From our perspective landscapes have a spiritual dimension and our sense of self is so intimately connected with the land, rivers, stars, and animals and the cosmos as whole that they could be characterized as interconnected and inalienable parts of the self. How we live in relationship with these other beings is an essential aspect of Khoi spirituality and impacts on those beings also have impacts on us
25. To give some sense of this, I quote below from what I told Rudewaan Arendse when he interviewed me for the purposes of preparing a report on the Two Rivers Urban Park for the Department of Transport and Public Works. (I refer to this report in more detail in paragraphs 51 and 52 below.)
- 25.1. *"The Khoi and the San have the most exquisite symbiotic relationship with the soil, with the river, with the stars, with [Kaggen], who's the mantis. And, when you look at the Liesbeeck River, the flow of that river and the land next to it. When I talk about a symbiotic relationship, I'm saying that the river is flowing within: it's embodied within the consciousness of the Khoi, and so is the land. You can't separate the two. So, when you separate the Khoi from the land permanently, you separate a part of the body itself. It's disembodiment of the physical body; the physical manifestation that's imbibed in them. By dislocating the Khoi permanently from the land and from its proximity to the river, you're completely; you're ripping the soul out of them. It was physical, visceral dislocation, because of the understanding, the integral understanding of connectivity."*

- 25.2. *"Here you can actually identify for the first time where the act of land grab occurred, and then you can also identify for the first time where, without a leasing arrangement, without brokered arrangement, land was ostensibly stolen. You must also understand, this particular land is layered with a sedimentary pain of the first violation of the fence that was put up, which started the first Khoi war, which started the first forced removal*
- 25.3. *When that first war started, ..it started that process of movement and elimination which over a period of approximately 180 years started from this war...the annihilation and extinction of the Cape San, we trace it back specifically to these people here."*
- 25.4. *"What about the holocaust of the first nations, about the genocide? So it's not just the recognition of this space, because coming with the recognition of this space, comes a responsibility..."*
- 25.5. *"On the broader spectrum it is, to us, a very significant period because of the amount of damage and decimation and destruction that it caused. For thousands of years integration with other groupings didn't result in this. You know that leopard toad, was not extinct, or close to extinction, before the Dutch came. So, when we talk in terms of environmental preservation, we had the black-maned lions here, hippos, and a whole range of elephants. These were shot out, and eventually with the fencing, the elephants just changed their route. The shooting of our animals that were also part of the symbiotic relationship of the Khoi. You can't just place the Khoi outside of*

its environment and say, that's the environment [You can't remove the Khoi from its environment]. The Khoi in itself has an environment.

- 25.6. *There was tremendous pain when there were no more live animals. There was tremendous pain when the hippo colonies were wiped out. There was tremendous pain. Not only were the Khoi dislocated, but the sentient beings around them, with whom they had these kinds of relationships, were also shot..."*

PART 3: SIGNIFICANCE OF THE SITE

26. **The River Club Site and the Two Rivers Urban Park area that it forms part of, has great significance not only for those First Nations Peoples within whose historic footprint these areas fall, but also for all South Africans because of its historic significance. The San and Khoi cosmology is shared in some instances, although distinct. What is undoubtable shared is the acknowledgement of the deep connection between the environment, the cosmos and the expressions of the ritualised self.**

Spiritual and ritual significance to Khoi people

27. **This area has a unique *genius loci* (spirit of place) even to this day. It is known as Igamirodi Ikhaes, which means the place where the stars gather, and the mound from where the early indigenous people would analyse the stars, became the site on which the South African Astronomical Observatory, (previously known as the Royal Observatory) was built. It has an uninterrupted view of a particular aspect of**

Table Mountain (Devil's Peak), and importantly, it is the only place where, from the confluence of the river, during the equinox (when days and nights are equal in length), you can see the sun sitting right on top of the lion's head.

28. It is also significant because it is where the Liesbeek and Black Rivers meet. Water is regarded as holding memory because it moves throughout the world, flowing down rivers, evaporating into clouds and falling as rain. Water is sacred and it may not be desecrated (for example by defecating in a river.) Water is also very important for the rituals of the Goringhaicona. We don't necessarily slaughter animals for rituals and many rituals are related to water and involve the use of water and plants that grow near rivers.
29. Rivers have a special significance, to Khoi people and are particularly important for the rites of passage and cleansing ceremonies performed by and for women. Confluences of rivers are regarded as particularly significant. The areas where rivers met were also used as meeting places for people. The confluence of the Liesbeek and Black Rivers was a place of confluence for the various Peninsula Khoi groups, including the Gorochoqua, Goringhaiqua, and Goringhaicona. The area also has significance to the Korana, and the Coochoqua.
30. The process of land transformation and colonization that began here also resulted in the extirpation and ultimately the extinction of sacred animals: the blue buck, the Cape lion, and the quagga. The eradication of these sacred and spiritually significant animals created another kind of trauma for the San and the Khoi Khoi

people. The canned hunting of hippos and other wildlife distinctly changed the sense of place and meaning. These animals represented important links in the realm of ritual and spirituality. The degradation of the surrounding renoster veld and the pollution of the two rivers are directly linked to the occupation of this territory in the first instance by colonial authorities.

Historical significance

31. The TRUP precinct and River Club site also have great historical significance for all South Africans. This was the site of the first resistance against colonial intrusion, where the Khoi successfully defended their settlements against the predations of the Portuguese admiral d'Almeida in 1510, but were later dispossessed of their land by the Dutch settlers who displaced the Khoi by settling Dutch farmers on land that the Khoi had previously used for their herds. It is the site slaves for brought here for the time for agricultural reasons. Where Afrikaans as language was born. The confluence of the sacred Liesbeeck and Black Rivers is considered to be the birth place of the Khoena Nation.

Resistance to colonialism

32. The River Club site is part of an area that is the epicenter of not just colonial conquest, dispossession and diaspora, but also of resistance. This is a place of deep spiritual meaning, and of revolution. This is a nexus of our heritage, our relationship with the stars, the river, and sacred animals. It is where colonial conquest began - and where it was defeated

33. On 1 March 1510, on the banks of the Black and Liesbeek Rivers, Portugal suffered its greatest defeat at the hands of a resisting Khoi Khoi army. Francisco de Almeida, who was the viceroy to India, had conquered and sacked the Indian Peninsula and was also in control of both East and West Africa.
34. Traditional oral historical accounts speak of the raid at what is today Oude Moulén where De Almeida's men kidnapped some children and abused women. On their way back down the embankments, adjoining across the two rivers, they were encountered by a standing Khoi army that had a symbiotic relationship with their cattle. The cattle formed a phalanx that supported the main thrust of the Khoi. Using bows, arrows and stones, they drove the Portuguese to the shoreline and defeated them, killing De Almeida and 87 of his men, including approximately 14 captains of the mighty Portuguese fleet on what is today's Woodstock Salt river beach. This deep relationship the Khoi had with their animals is exemplified in this piece of history
35. Over the next 150 years, over a thousand ships had docked on our soil and the shoreline was managed by a sophisticated, multilingual community called the Goringhaicona, who were a mix of various Peninsula Khoi groupings, influenced by two leaders, Xhore and Autshumao, under the great chief, Gogosoa. Xhore and Autshumao were educated in London and the Java. Autshumao was termed by Jan van Riebeeck as Harry the Strandloper. This group of Khoi were able to, through the use of very robust diplomacy, not only maintain a form of tacit peace with ships who were carrying slaves, ships who were part of vessels under the ordinance of



powers with clear colonial ambitions, managed to sustain an active trading point at a strategic vantage point of the continent and the world.

36. 1657 was the beginning of the absolute colonial conquest of this country in Southern Africa as we know it. The Dutch East India Company decided to gift to its employees, called the free burghers, farms on the embankments of the sacred river, now known as the Liesbeeck, in what is today modern Observatory.
37. This is the place where land was stolen for the very first time for agricultural purposes and is also the place where the imposition of Roman Dutch law was used as a tool to usurp and justify the theft of land from the indigenous communities. As these occupied territories expanded, the local inhabitants were cut off from the river, and forcefully removed land. This is the site of the very first land theft, forced removals and brutal occupation in our country.
38. The free burgher farmers, once having attained land, needed to yield produce for the Dutch East India Company. The free burgher were at war with the resisting Khoi Khoi, and didn't have any labour to till the land so the Dutch East India Company began importing slaves from its colonies. This resulted in the arrival of enslaved people from Guinea, Angola, Mozambique, East Africa, Madagascar, India, Sri Lanka, Southeast Asia, Indonesia, Malaysia and the Java Archipelago, bringing a large Muslim diaspora. Those who decided to escape their enslavement were welcomed by the Khoi Khoi who shared a common enemy with them, namely the Dutch.

39. This also resulted in the first frontier war in 1659, because of the gradual and purposeful encroachment on indigenous land, the putting up of the fences, and Indigenous Peoples being cut-off from rivers. This precipitated 16 Khoi wars of resistance that fanned over South Africa for the next 180 years. The impact of this Khoi Mfecane (or forced mass-migration) can be felt all across Southern Africa, including Namibia, Botswana, Angola, Zimbabwe and beyond.

Emergence of Afrikaans

40. With the unique entanglement of people, we can trace this area as being the place where Afrikaans emerged, a confluence of languages; a unique creole, born from in "kombuls" area, where people from around the world forged together with local languages, creating for themselves a very unique dialect. The true origins of Afrikaans were erased from their African and creole roots by white supremacy.
41. When indigenous language speakers were forbidden to speak their own languages, colonial authorities went so far as to use very malicious, mutilating devices to stop them from speaking. For example, the removal of front teeth was done to prevent people from clicking. The four major clicks that inform Nguni languages come from San and Khoi influences such as Khoekhoegowab as an example.

PART 4: ATTEMPTS TO PROTECT THIS HERITAGE

42. The River Club precinct may be 'privately owned' but the history it holds belongs to humanity. It also belongs to the Khoi and San who once roamed the area for a millennia. It is a sacred space that holds the opportunity to heal our nation.

Heritage Impact Assessment Process

43. In order for the proposed development to proceed the developer required an environmental authorization under the National Environmental Management Act ("NEMA"). This required the undertaking of an environmental impact assessment ("EIA") process including the preparation of a heritage Impact assessment ("HIA") report that complied with the requirements of section 38(3) of the National Heritage Resources Act ("NHRA") and satisfied the requirements of Heritage Western Cape ("HWC").
44. In the interests of brevity, I do not deal in any detail with the heritage-related aspects of the EIA process as they are addressed in the founding affidavit of Professor Leslie London but attach marked "TJ2" a copy of an article which I wrote explaining my experience of this process and which was published in issue 79 (2021) of New Agenda, the South African Journal of Social and Economic Policy.
45. The expert affidavits of Diedre Prins-Solani and Bridget O'Donoghue filed with the founding affidavit, explain the inadequacies of the developer's HIAs and why HWC was correct to conclude that the HIAs failed to comply with the requirements of section 38(3) of the National Heritage Resources Act, in particular because of the

wholly inadequate consideration of intangible heritage. I confirm and concur with these conclusions.

Genesis of support by First Nations groups for proposed development

46. However, I wish to draw attention to the following aspects of the HIA process in order to explain how some First Nations Peoples who were previously vehemently opposed to the proposed development, came to support it.
47. In April 2018 HWC issued a Provisional Protection Order that required the River Club site to be graded for heritage importance before any development could be considered. The Protection Order was very strongly supported by a range of First Nation groups and no First Nation groups expressed support for the proposed development.
48. The developer then appealed the Provisional Protection Order and the Ministerial Heritage Appeal Tribunal sat over the next 18 months.
49. At the beginning of the appeal process all the First Nation groups participating in the hearings of the Ministerial Heritage Appeals Tribunal were opposed to the proposed development because it would result in the destruction of a sacred site. During the appeals process the Chairperson of the Appeals Tribunal indicated that in his view the developer and the various organs of State involved, had not engaged sufficiently with First Nations regarding the proposed development, and urged them to do so.



50. At this stage it must have been apparent to the developer that there was a very significant risk that the united opposition of all the participating First Nations Groups to the proposed development might well prevent it obtaining the environmental authorization under NEMA that it required to undertake that development.
51. The Western Cape Provincial Government (Department of Public Works) and the City of Cape Town then appointed a Mr. Rudwaan Arendse of AFMAS Solutions to consult with First Nations groups and individuals and to prepare a report for the purposes of preparing a "Local Spatial Development Framework" for the Two Rivers Urban Park ("TRUP") Area. His report dated 25 September 2019 was entitled "TRUP First Nations Report".
52. Mr Arendse interview me in my capacity as the Supreme High Commissioner of the Goringhaicona Khoi Khoi Traditional Indigenous Council, for his report. I was concerned that his interview procedures did not comply with even minimum ethical requirement (for example he did not ask me to sign an ethical clearance form) and I specifically told him that the interview was not to be used in support of the proposed development.
53. After the publication of this report, a number of people whom Mr Arendse had interviewed, formed the "First Nations Collective", led by Chief Zenzile Khoisan, who announced that the FNC intended to engage with the developer. From this point on, people such as me, who opposed the proposed development were

subjected to abuse and vilification. (I eventually had to obtain a protection order to
against Chief Zenzile Khoisan after he threatened me.)

54. On 13 September 2019 HWC's submitted an "interim comment" on the developers
Second HIA. The HWC's overriding concern was that the Second HIA had not
accounted for the intangible significance of the site flowing from the historical
associations and that the assessment was consequently flawed. The interim
comment concluded with the recommendation that a specialist consultant with
experience in intangible heritage should be engaged to give input on the Second
HIA. In response, the developer appointed Mr Rudewaan Arendse to prepare a
report.
55. At or around that time that Mr Arendse presented his "TRUP First Nations Report"
to a stakeholder group at Oude Moulén, as part of the HIA public participation
process, it came to my notice that he had been engaged by the developer. In our
view this meant that Mr Arendse had a conflict of interest. The impetus for the
additional engagement process was because First Nations groups had been
unhappy with the lack of meaningful engagement with them by the developer and
its consultants and now the person facilitating that process was under contract to
the developer. This, coupled with my earlier concerns about the absence of proper
ethical safeguards, convinced me that Mr Arendse was not to be trusted.
Consequently the Goringhaicona refused to engage further with Mr Arendse.



56. Our concerns were vindicated when we saw Mr Arendse's report entitled "River Club First Nations Report" which purports to be an investigation of the "aspirations" for the site on the part of the First Nations people. ("the AFMAS Report").
57. The AFMAS Report:
- 57.1. downplays and obfuscates the significance of the area and its associated intangible heritage to the Goringhaicona and other Indigenous People;
 - 57.2. seeks to de-legitimize the view of the Goringhaicona Khoi Khoi Indigenous Council;
 - 57.3. seeks to undermine the standing of the Chief of Goringhaicona and to portray the Goringhaicona as lacking credibility to speak about the significance of the area;
 - 57.4. elevates the First Nations Collective as the authoritative voice of First Nations peoples in relation to the proposed development; and
 - 57.5. seeks to portray the proposed development as a victory for First Nations Peoples.
58. The AFMAS report includes WhatsApp screenshots to portray the Chief of Goringhaicona as unreliable or unstable. To my knowledge no attempts were made by the author of the report to get the Chief's comments, to verify such screenshots or to place any such comments in context.

59. The AFMAS report also quoted parts of my previous interview by Mr Arendse, without acknowledging me as the source, and despite my having made it clear at the time of the interview that it was not to be used in support of the proposed development.
60. The report characterisee the Goringhaicona as "drifters" and "outcasts" and presents extracts from the diaries of Jan van Riebeeck that describe the Goringhaicona as "this ugly Hottentot race". "a gang" who are "lazy" and who "never set hand to any work until you have promised to give them a good quantity of tobacco or food or drink"; they "live by begging ... stealing and robbing ...".
61. In contrast, the Goringhaiqua, the group currently in support of the proposed development, are presented as "the traditional custodians of the historic landscape that encompasses the River Club site and the broader Two Rivers area."
62. The use of these extracts from colonialist diaries, which are replete with racist assumptions and prejudice, is clearly to attack and undermine the Goringhaicona and our opposition to the proposed development.
63. The AFMAS Report also uses examples from other first Nations Groups around the world and posits them as precedent that can be applied to the River Club Site. This implicitly, but misleadingly, positions other First Nations Groups as being aligned with the proposed development.



Ministerial Heritage Appeals Tribunal

64. In April 2020 the Ministerial Heritage Appeals Tribunal dismissed the appeal and rebuked government departments for their divide-and-rule tactics and for failing to cooperate on a matter of great heritage importance, stating at paragraph 91 of the Heritage Appeal Tribunal Ruling that:

“The policy of maintaining control over one’s subordinates or opponents by encouraging dissent between them, thereby preventing them from uniting in opposition, is evident in this matter. Conservation efforts to preserve the heritage of the Indigenous First Nations people and communities and protect their cultural rights, have been hamstrung by the ‘politics of divide and rule’. In a divided and disparate society that can benefit from and become unified through knowledge of each other’s cultures and heritage, the current situation is not a good scenario to be in and this is unfortunate.”

65. The Department of Public Works subsequently launched legal proceedings to set aside aspects of the findings of the Heritage Appeal Tribunal Ruling but did not challenge its findings in relation to the exceptional heritage value of the River Club site.

Supplementary Report (to HIA report)

66. In response to HWC’s interim comments on the inadequacies of the second heritage Impact assessment (“HIA”) report submitted on behalf of the developer, the developer filed a Supplementary Report which supplemented and was

incorporated into the second HIA report. The Supplementary Report was based on the two reports by Mr Rudewaan Arendse of AFMAS Solutions which I have referred to above..

67. The authors of the Supplementary Report conclude that:

"While it is apparent that there are some First Nations groupings who do not share this view, this First Nations Collective is authoritative; and Arendse's report is persuasive in its method, its argument and in its conclusions: and we hope and trust that Arendse's report and the incorporation of its conclusions / recommendations here in this Supplement to the HIA and in the revised development proposal will satisfy HWC at least insofar as there has been "meaningful engagement" with First Nations groupings. Indeed, we think that the interactions have been more than "meaningful"."

68. I have not included an analysis of the deficiencies of the HIA reports submitted by the developer because these issues are well canvassed in the founding affidavit of Leslie London. However, I wish to draw specific attention to the fact that the HIA consultants have attempted to rebut the claims of First Nation's peoples that the intangible heritage values with which we are concerned relate to the whole TRUP area, and particularly the River Club site. They attempt to isolate particular places or aspects of the landscape as having heritage value while regarding everything in between as not being of heritage significance and consequently available for development. This reductionist perspective is completely at odds with the holistic

AJ

and integrated perspective of the Khoi and with the very heritage that we are seeking to protect.

Attack on Goringhaicona

69. As is apparent from paragraphs 57 to 63 above, these HIA reports attack the Goringhaicona and promote divisions between First Nations groups. The HIA reports (including the AFMAS report) attempt to rewrite history in a manner that questions our legitimacy as a group; denigrates us as "vagabonds" and perpetuates racist colonial prejudices against us; denies our relationship with this place (arguing that our historic "footprint" should be limited to the Castle and the Foreshore area in central Cape Town); and attempts to marginalize us by represents other groups as the genuine custodians of the TRUP area.
70. The distorted narrative reflected in the HIA threatens our ability to defend and to maintain our spiritual relationships with the TRUP area including the River Club site. The proposed development is a threat not only to the physical aspects of the site but also to our identity and legitimacy as a group, our history, and future.
71. These attacks have manifested in response to our resolute resistance to the proposed development.



First Nations Collective and the "social compact"

72. As I have explained above, the "First Nations Collective" ("FNC") only emerged after Mr Arendse had conducted the consultations which culminated in the TRUP First Nations Report.

73. FNC is a group of vocal supporters of the proposed development and appears to have been established for that purpose. Although I do not have personal knowledge of how the group is constituted, it is apparent from their publications and public statements that:

73.1. every one of the members of the FNC are strongly supportive of the proposed development;

73.2. neither the FNC nor any of its members have submitted any objections to the granting of an environmental authorization for the proposed development, nor opposed the reductionist approach to the intangible heritage associated with the sites that is reflected in the HIA reports;

73.3. the FNC claim to be the "authoritative voice" of First Nations Peoples and to speak on behalf of most of the Khoi and San" and is recognized by the developer as the authentic representatives of the First Nations Peoples associated with the Site;

73.4. Mr Zenzile Khoisan is a spokesperson and a leader of the FNC and

73.5. the heritage consultant Rudewaan Arendse is a member of the FNC; and

- 73.6. the developer has entered into a "social compact" with the FNC in which the developer commits to ensuring that members of the First Nations Collective benefit from the procurement processes during the construction of the development.
74. The "social compact" with the FNC will also involve:
- 74.1. establishing an indigenous garden for medicinal plants used by the First Nations;
 - 74.2. establishing a cultural, heritage and media centre;
 - 74.3. establishing a heritage ecoltrail that goes around the site and amphitheatre for use and cultural performances by both the First Nations and the general public;
 - 74.4. commemorating the history of the First Nations in the area, by establishing a gateway feature inspired by symbols central to the First Nations narrative at the road crossing the eco-corridor; and incorporating symbols central to the First Nations narrative in detailed design of buildings (e.g. pillars / supports, facades, building names, etc.); and
 - 74.5. naming internal roads inspired by people or symbols central to the First Nations narrative.
75. The FNC has acquiesced to the irreversible transformation of this sacred place of enormous cultural, spiritual and historical significance into commercial buildings -



purportedly on behalf of the majority of First Nations people who share a connection with this place. They are doing this in return for structures that commemorate the heritage that the proposed development is complicit in destroying, and the financial benefits from the "social compact".

First Nations opposition to proposed development

76. The developer, supported by its heritage consultants Messrs. Clark, Townsend and Arendse, have sought to create the impression that the proposed development is now supported by the majority of First Nations organizations (through the FNC) because they believe that their concerns about the transformation of this unique site will now be adequately addressed
77. The Goringhaicona and most other First Nations groups on the other hand believe that we have a cultural, spiritual and ancestral duty to protect such places from threats of destruction and that the fact that this site has been damaged in the past (e.g. by using it as a landfill and as a golf course) in no way justifies further damage. On the contrary, every effort must be made to restore the landscape and rivers of the TRUP area, to use it as a living expression of Khoi and San culture, to commemorate its historical significance, both as the initial point of impact of the colonial project, and the resistance to land dispossession. The TRUP area is of such value that ultimately we would like to seek World Heritage Site status for it.
78. Despite the narrative disseminated by the FNC, the leaders of the vast majority of First Nations organizations have confirmed in conversations with me, that they remain strongly opposed to the proposed development. Of these traditional



authorities and organisations views the ethics engaged in this process as a violation of the San Code of Ethics These include:

- 78.1. the vast majority the peninsula Khoi sovereign formations, including the Goringhaicona Khoi Khoi Traditional Indigenous Council, the Cochoqua Traditional Authority, the Hessequa Traditional Authority under Chief Larville, and the Gainouqua Traditional Authority under Chief Kenneth Hoffman;
- 78.2. the Khoi and San Kingdom Council of Southern Africa, the Nama, the !Aman Traditional Council under Paramount Chief Martinus Fredericks, !khorallgaulaas Council, !Khowese Nama Traditional Council under its South African representative Kaptein John Cornelius !Kham-aob Witbooi, and the Kai Korana Trans-frontier under Khoabaha Melvin Arendse; and
- 78.3. the National House of |Xam Bushmen Nation which encompass the following 11 |Xam Bushmen Tribes of the |Xam Nation:
 - 78.3.1. the Koman-san led by Petrus Vaalbooi,
 - 78.3.2. the Khwe Bushmen led by King Tier;
 - 78.3.3. the //Xegwil |Xam led by Queen Anette Loots Voster;
 - 78.3.4. the Guriqua led by Paramount Chief Anthony Andrew's
 - 78.3.5. the Hawequa led by Paramount Chief Shedrick Kleinschmidt;
 - 78.3.6. the !Xau-Sakwa led by Paramount Chief Clive Danster.

- 78.3.7 the Sonqua-|Xam led by Paramount Chief Pietrus Windvogel;
- 78.3.8. the Karoo-|Xam led by Paramount Chief Hermanus Baartjies;
- 78.3.9. the Kalahari-|Xam led by Chief Piet Barends;
- 78.3.10. !Xun led by King Tier; and
- 78.3.11. the Ubiqua led by Prins Lieffie.
- 78.4. revivalist umbrella organizations such as the First Indigenous Nation of Southern Africa (FINSAs), the Democratic Federation of Indigenous People SA, the A|Xarra Restorative Justice Forum and the Western Cape Khoisan Legislative Council.
79. Given the urgency with which these proceedings have been launched I have not been able to file confirmatory letters or affidavits from any of these groups with this affidavit but intend to file those with the supplementary founding affidavit that will be filed in the review application.
80. The Goringhaicona Khoi Khoen Indigenous Council has consistently opposed the proposed development and have taken a number of steps in an attempt to ensure that the heritage associated with this site is protected for current and future generations. These steps include:
- 80.1. supported the application for the provisional protection of the site by Heritage Western Cape ("HWC");

A
-A

- 80.2. participating in an Appeals Tribunal hearing concerning the validity of that provisional protection order;
- 80.3. applying to HWC for the Site to be graded as a provincial heritage site (Grade II) and making representations at the HWC hearings;
- 80.4. applying to the South African Heritage Resources Agency (SAHRA) for the Site to be graded as a national heritage site (Grade I);
- 80.5. submitting representations as an interested and affected party during the environmental impact assessment (EIA) process;
- 80.6. submitting an appeal against the granting of the environmental authorisation for the proposed development;
- 80.7. submitting objections in relation to the application for land use planning approvals for the proposed project;
- 80.8. submitting an appeal against the granting of the land use planning for the proposed project; and
- 80.9. making representations to the Planning Appeals Advisory Panel.

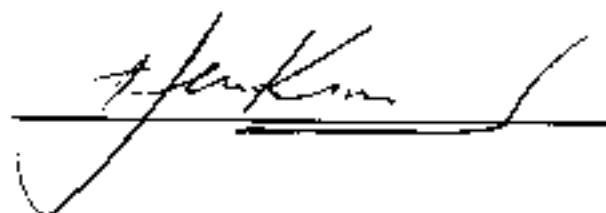
**PART 5: CONSEQUENCES OF ALLOWING DEVELOPMENT TO PROCEED IN
ABSENCE OF ADEQUATE CONSIDERATIONS OF HERITAGE IMPACTS**

81. Despite the fact that a comprehensive HIA that complies with the requirements of section 38(3) of the NHRA has not yet been done for the Site, HWC has recognized

that it is a site of national significance (Grade I) and has referred to SAHRA to grade it as such.

82. It is clear that the decision-makers that granted the environmental authorization and the land use planning approvals for the proposed development, and the Provincial Minister and the mayor who upheld those decisions on appeal, did so without considering an adequate HIA that complied with the mandatory requirements of the NHRA, and must be set aside. In the interim it is essential to prevent irreparable damage to the environment and heritage occurring.
83. Despite the damage that has been done to the site in the past it retains a powerful sense of place and the natural course of the Liesbeek River remains and can be restored to health (in particular by ensuring that the pipe that connects it with the rest of the river is kept clear). The TRUP initiative envisages the River Club site forming part of a biodiversity corridor connecting the mountain to the sea, and would allow this historic site to become central to a new narrative of healing and restitution, based on an acknowledgement of its multi-layered history. If the proposed development goes ahead, those opportunities will be lost forever.
84. The commencement of the development would cause irreparable damage to the Site and the associated cultural heritage.
- 84.1. The infilling in the natural course of the Liesbeek River and of much of the floodplain would be, from our perspective, an unforgivable assault on the River and destroy a key element of this place forever.

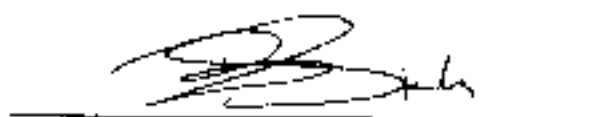
- 84.2. The construction of high buildings would obstruct the sight-lines between the area around the confluence of the Rivers and the Mountains and irretrievable alter the sense of place, and the open vistas.
85. The developer has already commenced the process of developing the Site and has refused to give an undertaking to desist until this review application has been decided. Consequently the second applicant asks the court both to grant the interim interdict (as set out in Part A of the Notice of Motion) and to review and set aside the Impugned decisions as set out in Part B of the Notice of Motion)



TAURIQ JENKINS

I certify that:

- I. the Deponent acknowledged to me that :
 - A. He knows and understands the contents of this declaration;
 - B. He has no objection to taking the prescribed oath;
 - C. He considers the prescribed oath to be binding on his conscience.
- II. the Deponent thereafter uttered the words, "I swear that the contents of this declaration are true. so help me God".
- III. the Deponent signed this declaration in my presence at the address set out hereunder on *30th July 2021*.



BRENDAN STUDT
Practising Advocate
4th Floor
55 Keerom Street
CAPE TOWN

COMMISSIONER OF OATHS

Designation and Area:

Full Names:

Street Address:

BRENDAN STUDDI
Practising Advocate
4th Floor
55 Keerom Street
CAPE TOWN



RESOLUTION

TJ1

OF THE

GORINGHAICONA KHOI KHOIN INDIGENOUS TRADITIONAL COUNCIL

1. **WHEREAS** the Constitution of the Goringhaicona Khoi Khoin Indigenous Traditional Council (GKKITC) states that the GKKITC's mission are (*inter alia*):
- to promote the right of self-determination for the Khoi Khoi people by having access to our natural resources;
 - to provide relevant information and cultural awareness to the Khoi Khoi and restore cultural and linguistic practices;
 - to engage National and Provincial government to secure rights to land, resources and the cultural protection for our indigenous products and practices;
 - to ensure the emancipation and restore the dignity of our women, men, youth and vulnerable groups;
 - to broadly promote socio economic development and address poverty eradication, job creation, skills development, gender equality, safety, peace and stability;
 - to form a legitimate national body of the Khoi and a global first nations body; and
 - to protect our rivers, flood plains, embankments, eco system and generally nature.
2. **WHEREAS** the Liesbeeck Leisure Property Trust ("the Developer") has been granted permission to develop an area adjacent to the confluence of the Liesbeeck and Black River in Cape Town which is of very great heritage significance to the Goringhaicona Khoi Khoin and other Indigenous Peoples ("the River Club Site") and the proposed River Club Development would dramatically change the River Club Site and cause irreparable damage to that heritage.
3. **WHEREAS** in order to prevent the River Club Development from proceeding it will be now necessary to apply to the institute a High Court to set aside the environmental and land use authorisations that allow it to proceed and to appeal to the Water Tribunal against the granting of a water use licence for that development.
4. **NOW THEREFORE** this duly constituted meeting of the National Executive Council held on 27th of ___ July 2021, resolves:
- a. to instruct attorneys to represent the GKKITC in lodging an appeal to the Water Tribunal and in any High Court litigation that may necessary or desirable to prevent the

PL
DDA
PA

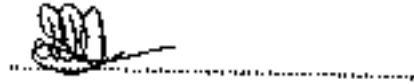
A
H

development of the River Club Site in a manner that is harmful to the cultural heritage associated with it and to the environment ; and

- b. to authorise Mr Tauriq Jenkins, the Supreme High Commissioner of the GKKITC:
- i. to engage the services of the law firm Cullinan and Associates Incorporated; to institute any administrative proceeding (including an appeal to the Water Tribunal) and legal proceedings to stop the River Club Development as may, in his opinion, be expedient and desirable, and to continue with that litigation until it is finally concluded; and to advise on this litigation and any ancillary legal matters which might arise in relation to the GKKITC's opposition to the River Club Development;
 - ii. to grant any power of attorney and sign any affidavits or other documents on behalf of the GKKITC as may be necessary or desirable to give effect to this resolution.

Signed at Oude Molen, Cape Town on this 27th day of July 2021

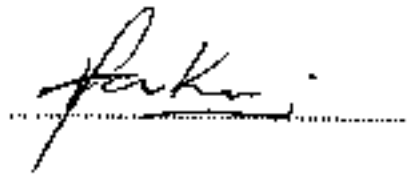
Paramount Chief Aran



Supreme Senior Chief Desmond Dreyer



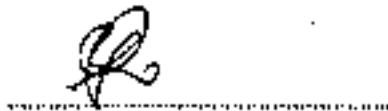
Supreme High Commissioner Tauriq Jenkins



~~Supreme Elder Peter Ludolph~~



Supreme Elder Peter Ludolph



Hamqua Patricia Aran



DDA
J
PA



2021 • ISSUE 79

www.ifaaza.org



NEW AGENDA

The end of

LIBERALISM

CAPITALISM

As we know it?

Also inside:

We need a sensible, participatory debate on central bank independence

Government must support a truly broad base for BEE



When it flows, it floods

By *Tauriq Jenkins*

Tauriq Jenkins is Supreme High Commissioner for the Goringhaicona Khoi Khoi Traditional Indigenous Council under Paramount Chief Aran

In 1996, the Khoi and San were not part of the Constitution. Then President Thabo Mbeki's "I am an African" speech, with the branding of South Africa's Constitution, would remain in its nascent stage until the fullness of the African body was completed.

For it is in the unmistakable lines of a shared history of resistance that we intimately are one nation. Above all else we are African.

At the confluence of the waters of the Black River and the Liesbeek River, the Khoi collectively sustained the longest resistance against colonial oppression which fanned out across the subcontinent for 169 years. It spanned 15 Khoi wars, the last five of which were fought together with the AmaXhosa in the East. David Stuurman and prophet leader Makxandua fought side by side and were captured and taken to Robben Island.

Our matriarchal guide, Koroa, brought with her an umbilical connection with the Dutch. We share a history too with Portuguese, English, Irish, Scottish, German, Flemish, French, Swiss, Russian, Greek and Turkish influences. The intermingling of these groups forged mixed groups, and the etchings of the Afrikaans language began to emerge on the banks of the Liesbeek River as first frontier.

Our claim is the human claim. The controversial development on the floodplains of the oldest urbanised river valley in South Africa is a tale of where

much of what we have become begins. At the foot of Devil's Peak, which forms part of the Hoerikwaggo, a mountain that rose from the sea and is older than the Himalayas, is the Liesbeek river. The memory of it speaks to the root of mankind itself. The Observatory itself was built on a hill where our ancestors navigated the stars and with the kindred and sentient fellowship of the Quagga, Cape Lion and Blue Buck. Their permanent departure from the valley and the face of the earth, together with the Cape San, flowed from the genocidal menace of colonial conquest and theft.

The embankments on what is today's Two Rivers Urban Park (TRUP) are a place of return. It is the place of the first victorious line of defence against a colonial aggressor, Francisco D'Almeida, the Portuguese viceroy who vanquished India in 1510. It is also the place of loss – the First Frontier War in 1659, theft of land, the first evictions of the indigenous Khoi Khoi, the deployment of agricultural slaves in 1667 with the establishment of the Free Burgher Farms. This is where we came undone.

Today, the most significant heritage battle ensues with a threat of a R4.5 billion development on its sacred terrain. It is led by a local developer backed by an enterprise with coffers amassed as the VOC (Dutch East India Company) itself did at its peak 360 years ago. The significant impact of the genocidal smallpox epidemics on the Khoi and San notwithstanding, part of the TRUP is Ndabeni, the first black

township which was built to quarantine migrant (mostly Xhosa speaking) labourers when the city was hit by the bubonic plague.

Contrary to the historical inclusive nature of the site according to the Heritage Appeal Directive, which is being challenged in the High Court by the Western Cape Department of Transport and Public Works (DTPW), "conservation efforts to preserve the heritage of the indigenous First Nations people and communities and protect their cultural rights have been hamstrung by the 'politics of divide and rule'."

Notable and alarming at the same time, is the concern that government officials who are meant to serve the people of this country and should be loyal and respectful towards each other, are perceived to form alliances with other tiers of government and developers, instead of aligning the scarce resources, with experience skills and expertise to cooperatively solve complicated heritage issues, internally, and in good faith.

The Municipal Planning Tribunal's decision to rezone a Public Open Space to use for mixed use development is being appealed by Interested and Affected Parties. So is the Environmental Assessment by the





“

The controversial development on the floodplains of the oldest urbanised river valley in South Africa is a tale of where much of what we have become begins.

Province's Department of Environmental Affairs and Development Planning (DEADP) which found nothing environmentally problematic about 150,000 square metres of concrete on a flood plain. The heritage authority, Heritage Western Cape, outright rejected the Heritage Impact Assessment that was prepared for the developer as part of the River Club proposal. It also rejected the Heritage Impact Assessment (HIA) of the Two Rivers Local Spatial Development Framework, a master craft framework that is critiqued as favouring the bulk development being proposed on the River Club while ignoring the precepts of the existing 2013 Two Rivers Urban Park Local Spatial Development Framework.

The HIA and its supplementary reports erred in the transmutation of its interviewed subjects into an all-encompassing authoritative commenting body claiming to speak on behalf of "most of the Khoi and San". The First Nations Collective (FNC) needs to be challenged on its establishment, constitution, authority and functions. While many are well known leaders within the various Khoi formations, we challenge the extent to which the leaders in this collective carry the mandates of the organisations mentioned in the report.

Further objectors to these rulings include 20,000 people, institutions such as the South African Astronomical Observatory (SAAO), the South African Institute for Architecture, and 60 civic and Khoi and San groups. The City of Cape Town itself has appealed the Environmental Assessment (EA).

How is it, amidst all of these appeals, that the developer is whipping up a narrative of a done deal?

MANUFACTURING CONSENT

The United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration) states:

Article 2. Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

Article 8.1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.

Article 8.2. States shall provide effective mechanisms for prevention of, and redress for: (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities; (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources.

(c) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.]

Liesbeck Leisure Properties Trust (LLPT) said it has "always approached this project with maximum transparency and has remained committed to all planning approval processes as required by law" and would "gladly" make its case in the appeal process.

The developer has in recent articles claimed that this development is supported by the overwhelming leadership of the Khoi and San. The truth is that the majority of the Khoi groups have vehemently objected to his development. The developer states:

'The project will also serve as a first-of-its-kind landmark in the City for the First Nations people to reclaim, memorialise and share their heritage with the greater public. The planned Heritage Cultural and Media Centre will be operated by the First Nations people and will provide critical job opportunities to members of these communities. This initiative follows extensive and constructive engagements with the senior Indigenous Khoi and San leaders comprising the First Nations Collective.'

There has been no open discussion in the formulation of how this "reclaiming" and "memorialising" will be "operated" by the First Nations people. The notion of providing critical job opportunities has no figures, no description, and who exactly the beneficiaries are remains elusive. The developer maintains:

We have had many robust interactions with all of the First Nations representatives, who have an interest in the area, whose histories and inputs have been >>



respectfully incorporated throughout the planning and design of the reimagined River Club space. In fact, the majority of senior indigenous Khoi and San leaders in the Peninsula have expressed their full and unequivocal support for the redevelopment, and we are appreciative of the learnings they have inculcated.'

This is simply not true.

The name of the group mentioned is the First Nations Collective, an unregistered body comprising the interviewees of a report commissioned by the developer in support of the development.

The article in *New Agenda* 78, "Navigating a minefield to assert agency" (speaking for the FNCC) stated:

Having been trivialised and bludgeoned into invisibility we elected to directly approach Jody Aufrichtig, representing the registered owners, about the redevelopment proposal. We have found the developer, Liesbeek Leisare Trust, open and empathetic to our concerns, which were placed on the table in a frank exchange of views. We believe that the developer has grasped the intense pain that has been associated with the bludgeoning of our narrative. As such, this developer, unlike any other government, corporate or social entities with which we have engaged, has made a firm commitment to ensure that the footprint of the Khoi and San's history of resistance, and its modern day resurgence,

is incorporated into the development plan.

Through this engagement, the First Nations Collective has secured an area in the centre of this development, which is of great cultural significance to us. This part of the redevelopment site has been set aside for building a fully-fledged heritage centre, a functional indigenous garden and cultural praxis site, a world-first international indigenous media and communication centre, as well as an amphitheatre where the best of Khoi and San art, culture and music can be showcased.'

The claim that Jody Aufrichtig has done more for the Khoi with his "empathetic" ear than anyone else, including the government, needs to be challenged. What is certain is that since 1994, every single governing administration, including post-1994, has been guilty of the marginalisation and gross disenfranchisement of the Khoi, Khoi and San. The colonial splintering of identities in communities stripped away a connection to the soil, the environment and the notion of being African. This locates the Western Cape, in particular, as a perpetually mined terrain for conquest, manipulation and division.

The report produced by service provider AFMAS Solutions⁸, commissioned by the developer, goes out of its way to discredit the Goringhaicona, and is reminiscent of smear documents that surfaced last year targeting all leaders of organisations that are against the development. It aims to write the Goringhaicona out of history. The Goringhaicona in its various submissions has condemned epistemological violence as an act of attempted ethnocide.

However, the area was signed off by President Cyril Ramaphosa and the cabinet in August 2020 as part of the Khoi and San National Liberation and Resistance Route. The Department of Arts and Culture has also tried to have it added to an updated tentative UNESCO list as a World Heritage Site. The promulgation of the Traditional and Khoi-San Leadership (TKSL) Act 3 of 2019,⁹ although deeply problematic and not close to an answer on key questions on land and restitution indicated a symbolic shift towards further recognition of the Khoi and San. The Protection, Promotion, Development and Management of Indigenous Knowledge Act (IKAP)¹⁰ was signed by the President in 2019. So, in the legislative context, what makes the developer exceptional? His offerings are in two parts:

[The development will include a]... fully-fledged heritage centre, a functional indigenous garden and cultural praxis site, a world-first international indigenous media and communication centre, as well as an amphitheatre where the best of Khoi and San art, culture and music can be showcased.'

The developer has also committed to cleaning up and indigenising the ecology of the area and to ensure that the spiritual and cultural symbols of the Khoi and the San find resonance within the proposed development plan.¹¹

The idea of the cultural media centre is a brokered package, impoverished of material archival or historical considerations. Nor are its custodianship and sustainability plans clear. A wound made for profit. As a 'zwischenzug' it will usurp a complex and hard-earned



“

Today, the most significant heritage battle ensues with a threat of a R4.5 billion development on its sacred terrain

integrated effort towards restorative justice taking place outside of the boardroom of the River Club.

The proposed development is inconsistent with national legislation and provincial and municipal spatial frameworks. The Liesbeek is one of the City's important fish-breeding rivers and should be conserved as such. Part of the City's Biodiversity Network, it is also a Protected Area in terms of the National Environmental Management Protected Areas Act and is also protected by the City's Municipal Spatial Development Framework (MSDF) as a biodiversity conservation area with wetlands and aquatic habitats. An agreement is in place with CapeNature for their ecological management in perpetuity. The proposed development intends to fill in the river and wetland habitats.

Significantly, in spite of the FNC assertions, there has been no downsizing of the concrete of 140,000 square metres of commercial bulk since their engagement. What is worse is that the sacred Liesbeek River is described "as a storm water ditch" by the developer and destined for infill without any objections from the FNC. Notably since their arrival on the scene, the commercial footprint has increased.

Furthermore, the collective has not submitted any comment against the devastating environmental concerns.

It has remained silent on the most salient - on the need to decolonise the framework of how heritage resources are being determined and the principles of true co-design and meaningful engagement.

This begs a deeper analysis of the notion of "agency", referred to in the article in *New Agenda* 78. It would appear the FNC is currently only acting within the parameters of what the developer wants.

The City's Environmental Management Department (EMD) goes on to say in its appeal against the Environment Assessment for DEADP:

The social issues revolving around cultural appropriation and social impact have not been expounded on sufficiently. The first Nations narrative appears to not be totally inclusive of all relative groups (Para 2.2.7 page 29 (3)).

This is further reinforced in the final comments of IFWC (para 57) which state:

... the scope of engagement resulted in a number of groups electing to not participate fully, the research process was contested by participants in the engagements; the impartiality of the research questions is not clear to the committee, the methodology for the engagement does not appear to follow accepted best practice history interviewing protocols (for example no ethical clearance forms were supplied), the conclusion between this report and the IFPW commissioned report brings the ethics around the engagement into question.

Augmenting this observation is the note in the FMD description of the development that:

The implementation of these mechanisms is to be assumed through an institutional arrangement which establishes within the Property Owners Association for simulation an autonomous legal entity led by the Gonihoiqua Cultural Council that will be responsible for the governance, planning, management, operations, maintenance and sustainability of the indigenous place-making mechanisms" (para 2.2. p 2908).

This information is in the 2013 supplementary EIA report which was not circulated for public comment by the Municipal Planning Tribunal.

Paragraph 91 of the Heritage Appeal Tribunal Directive commented that:

The policy of maintaining control over one's subordinates or opponents by encouraging dissent between them, thereby preventing them from uniting in opposition, is evident in this matter. Conservation efforts to preserve the heritage of the Indigenous first Nations people and communities and protect their cultural rights, have been hamstrung by the 'policies of divide and rule'. In a divided and disparate society that can benefit from and become unified through knowledge of each other's cultures and heritage, the current situation is not a good scenario to be in and this is unfortunate. ➔



There is sadly no agency under such conditions. Rather it is turning out to be an injustice for everyone. This is a foil to divide and conquer a complex formation of Khoi and San groupings that continue to seek unity despite insurmountable challenges. The Khoi and San Kingdom Council of Southern Africa, the Nama, the Goringhaicona, !Aman Traditional Council, !KhoratgatiLaes Council, !Khuwese Nama Traditional Council, the entire Korana across all provinces reject the River Club proposal, as do revivalist umbrella organisations such as the First Indigenous Nation of Southern Africa (FINSA), the Democratic Federation of Indigenous People SA, the AlXama Restorative Justice Forum and the Western Cape Khoisan Legislative Council. Of the peninsula Khoi sovereign formations, the vast majority reject this development. Coupled with this are the Abathembu, and the Pondomisa kingdoms that are kin to the Korana, who in an unprecedented act of unity have merged in defiance of the divisive Verwoerdian tropes of the "Nguni threat" that have also entered into the contemporary political discourse on land.

The Congress of Traditional Leaders of South Africa (Contralesa) does not support the AFMAS Solutions report, despite the name of the body appearing in it. The Cochoqua are stated as supporters of the development. However four of the five Cochoqua houses in the Western Cape are confirmed to have rejected the development. The National Khoi and San Council is plagued with perception issues of transparency. In the Western Cape, on a variety of issues, this body has Brexited itself from its own, leaving a trail of bewilderment and dissatisfaction, Boobos being a trigger word. The banks of Liesbeek became an occupied territory in 1657, and since the war fought against the Khoi in 1659, the DNA of the VOC, it appears, has remained. In reality what exists now is an unprecedented united front towards

a World Heritage Site, not the vision of a dystopian Amazon.com Disneyland for tourists and the wealthy to sojourn.

The developer paradoxically has attempted to narrow the 21,629 objectors of a petition heralded by the Observatory Civic Association as a "handful of residents" by publicly decrying how he is "sick of all the lies". The NIMBY (Not In My Back Yard) accusation against the Two Rivers Urban Park Association and the Observatory Civic Association is a strawman built by the same inventors of the Biscuit Mill in nearby Woodstock. Framed as "regenerative" projects, the Biscuit Mill, as well as the Woodstock Exchange, are toe-to-toe with the City's maximal thinking of utilising land close to the CBD "appropriately". The Biscuit Mill has been criticised as a gentrification catalyst. Its primary client base, tenants, as well as beneficiaries, do not reside in Woodstock. Locals increasingly struggle to afford rental hikes, while plans for social housing projects have been mired in controversy.

In Observatory, the developer faces a unified force of environmental, civic and Khoi and San agencies for recognition of a World Heritage Site, a common concern, that recognises this as a Ground Zero predicament that will begin a process of deep healing.

It is a cheap form of racial hypocrisy for him to paint a narrative of Observatory's antagonism for his development as the view of only a handful of selfish white property owners. Observatory is long known as a diverse, bohemian, activist community. In 2020 the OCA objected to the attempted "constructive" eviction by the City of Cape Town (during the lockdown) of the Sangabalapha (We Belong Here) informal settlement in Observatory.¹⁹ Many of these residents are members of the OCA, as are residents of the Willow Arts Collective, formerly known as the Circus, located next to the Hamleysvale Stadium.

Maynral Committee Member CLR

Badioudien in a 1986 Radio interview on Friday 29 January 2021, called residents "land invaders stalling necessary upgrades in the area".

In a debate hosted by the Institute for African Alternatives on 15 October 2020, the closing of the venue Tagore's, which has since closed down, was singled out as proof of racial and class antagonism in the area. The same venue included a gallery for the first exhibition of Khoi and San art with some of the most talented fine arts work by Khoi activist artists.

On some arrangements the developer's documents are more clear. The ILPT in its supplemental Heritage Impact Assessment Report (December 2019) made it clear:

... the implementation of these mechanisms is to be assured through an institutional arrangement which establishes within the Property Owners Association (or similar) an autonomous legal entity led by the Goringhaicona Cultural Council that will be responsible for the governance, planning, management, operations, maintenance and sustainability of the indigenous place-making mechanisms.

The ENC, in fact, only came into being AFTER the Heritage Appeal Tribunal heard the hard facts that First Nation groups had been overlooked by the developer. Through earlier informal contact with the developer by one or two entities did occur. The ENC did not exist when Khoi leaders opposed the development in 2018. In fact, in 2018, some of the ENC sat with us and cried at the Tribunal. The next time we met in the same venue, things had changed. So, while leaders in that effort claim a long history of Khoi activism,

POWER OF ATTORNEY

I the undersigned,

Tauriq Jenkins

by virtue of my office as Supreme High Commissioner of the Goringhaicona Khoi Khoi Traditional Indigenous Council ("the GKKITC"), and duly authorised, hereby appoint the law firm of Cullinan & Associates Incorporated of 18A Ascot Road, Kenilworth, Cape Town (hereinafter referred to as "the agent"), with power of substitution, to be the lawful agent of the GKKITC to do any or all of the following acts or things:

1. To accept service of any summons or other legal process and to enter an appearance to defend or to oppose;
2. to defend any action or other legal proceedings against the GKKITC or in which GKKITC is concerned;
3. to make any counterclaim therein and to consent to judgment or suffer judgment to be given against me by default in such proceedings as the Agent or his advisers may think fit;
4. to commence any action or other legal proceedings for such relief as the Agent or his advisers may think necessary for the recovery or protection of the GKKITC's property or rights and to prosecute, discontinue, abandon or compromise any such action or proceedings, and to appeal against any judgment or decision of any court or tribunal in any such action or proceedings;
5. to sign all documents necessary in connection with any such proceedings;
6. to request information from public or private bodies in terms of applicable legislation, including but not limited to the Promotion of Access to Information Act, No. 2 of 2000, and to appeal any decision from a public or private body to refuse information or part thereof as requested, and if necessary to make the necessary application to court to review such a decision;
7. when necessary, to employ and pay attorneys including correspondent

attorneys and counsel to conduct any such proceedings; and

8. generally to do and cause to be done whatever may be required to achieve the above purposes as fully and effectually as I could do personally.

SIGNED AT _____ ON THE _____ DAY OF _____ 2021.

Witnesses-

1. _____

2. _____

(Principal)

**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No.: _____

In the matter between:

OBSERVATORY CIVIC ASSOCIATION

First Applicant

**GORINGHATCONA KHOI KHOIN
INDIGENOUS TRADITIONAL COUNCIL**

Second Applicant

and

**TRUSTEES FOR THE TIME BEING OF
LIESBEEK LEISURE PROPERTIES TRUST**

First Respondent

HERITAGE WESTERN CAPE

Second Respondent

CITY OF CAPE TOWN

Third Respondent

**THE DIRECTOR: DEVELOPMENT MANAGEMENT
(REGION 1), LOCAL GOVERNMENT, ENVIRONMENTAL
AFFAIRS & DEVELOPMENT PLANNING, WESTERN
CAPE PROVINCIAL GOVERNMENT**

Fourth Respondent

BW

**THE MINISTER FOR LOCAL GOVERNMENT,
ENVIRONMENTAL AFFAIRS & DEVELOPMENT
PLANNING, WESTERN CAPE PROVINCIAL GOVERNMENT** Fifth Respondent

EXPERT AFFIDAVIT

I, the undersigned,

BRIDGET ELIZABETH O'DONOGHUE

do hereby make oath and state as follows:

1. I am an independent heritage consultant and registered heritage assessment practitioner.
2. The facts contained in this affidavit are within my personal knowledge, except where the context indicates otherwise, and are to the best of my belief both true and correct.

INTRODUCTION

3. I have more than 20 years of experience, as a heritage consultant and heritage assessment practitioner. I also have Bachelors degrees of Architectural Studies and Bachelor of Architecture, and a Masters of Philosophy (Environmental) degree from the University of Cape Town, and an Architecture and Urban Conservation

BWO

short course at the University of Cape Town (UCT). Details of my qualifications, training and experience are set out in the attached copy of my *curriculum vitae* (‘**BD1**’). I respectfully submit that I am qualified by my qualifications, training and experience to express the expert opinions which are set out in this affidavit.

4. The first applicant in this matter requested me to review, and provide my expert opinion on, the following reports which form part of the final environmental impact report for the proposed development:
 - 4.1. the October 2016 Draft Baseline Heritage Study for Two River Urban Park prepared by Melanie Atwell and Associates and Arcon Heritage and Design;
 - 4.2. the October 2017 Supplementary Report on Two River Urban Park, submitted to Heritage Western Cape in terms of the additional requirements of HWC’s Interim Comment of 3 May 2017, prepared by Melanie Atwell and Associates and ARCON Heritage and Design for Heritage Western Cape on behalf of the Provincial Government of the Western Cape (Department of Transport and Public Works) in partnership with the City of Cape Town;
 - 4.3. 2 July 2019 Heritage Impact Assessment prepared in terms of Section 38 of the National Heritage Resources Act, by Steven Townsend and Tim Hart, as well as the supplementary report of 4 December 2019 to the Heritage Impact Assessment report of 2 July 2019, also prepared by Townsend and Hart; and

BD1

- 4.4. comments made by Heritage Western Cape during the course of the environmental impact assessment conducted by SRK Consulting on behalf of the developer.
5. And in addition, the environmental authorisation granted by the Third Respondent to the First Respondent as well as the appeal decision of the Fourth Respondent in so far as it is relevant to compliance with the National Heritage Resources Act, 1999,
6. In the course of preparing this affidavit I have also reviewed and considered the National Heritage Resources Act, 1999 and the National Environmental Management Act, 1998, and Deidre Prins-Solani's expert affidavit.
7. At the outset, I make the following disclosures regarding my past and present association with the development in question. I was employed by SRK Consulting on behalf of the First Respondent to prepare a Heritage Impact Assessment (HIA) for the proposed development on the River Club site. Archaeologist Jonathan Kaplan of the Agency for Cultural Resource Management, was a subconsultant to my appointment for the assessment of the site's archaeological resources. The HIA Phase 1 report, prepared by myself and Mr Kaplan, was submitted for public comment and subsequently submitted to Heritage Western Cape (HWC). HWC's Impact Assessment Committee (IACOM) decided to assess the TRUP application before the application for River Club development, and the HIA Phase 1 was therefore not assessed by HWC. Subsequently due to my non-support for the proposed concept design, and that I was asked to work on the HIA with Dr Stephen

BWD

Townsend, I resigned from the project. All my fees were paid in full by the LLPT. I am currently commissioned by SVA International on behalf of their client Western Cape Government, to prepare a HIA for the Oude Molen site which is within the Two Rivers Urban Park ("TRUP").

8. In this affidavit:

- 8.1. "NHRA" means the National Heritage Resources Act, 1999;
- 8.2. "the developer" means the First Respondent;
- 8.3. "the proposed development" means the modern megadevelopment known as 'the River Club' ('the proposed development');
- 8.4. "the 2016 Draft Baseline Heritage Study", unless otherwise indicated, refers to the October 2016 Draft Baseline Heritage Study for Two River Urban Park prepared by Melanie Atwell and Associates and Arcon Heritage and Design;
- 8.5. "the 2017 Supplementary Heritage Report", unless otherwise indicated, refers to the October 2017 Supplementary Report on Two River Urban Park, submitted to Heritage Western Cape in terms of the additional requirements of HWC's Interim Comment of 3 May 2017, prepared by Melanie Atwell and Associates and ARCON Heritage and Design for Heritage Western Cape of behalf of the Provincial Government of the Western Cape (Department of Transport and Public Works) in partnership with the City of Cape Town.

BW

- 8.6. "the 2019 Heritage Impact Assessment or 2019 HIA", unless otherwise indicated, refers to the July 2019 Heritage Impact Assessment prepared in terms of Section 38 of the NHRA by Steven Townsend and Tim Hart on behalf of the LLPT, (including the December 2019 Supplementary Report prepared by Townsend and Hart) which was submitted as part of the Environmental Impact Assessment for approval of the proposed development.
- 8.7. "HWC Interim comments" mean the comments submitted by Heritage Western Cape on 19 September 2019 in respect of the 2019 HIA, and submitted as appendix E1 to the final environmental impact assessment report submitted in June 2020; and
- 8.8. "HWC final comments" means the comments submitted by Heritage Western Cape 13 February 2020 in respect of the 2019 HIA and submitted as appendix E1.b to the final environmental impact assessment report submitted in June 2020.
9. This affidavit consists of the following 5 parts:
- 9.1. Part One confirms the importance of intangible heritage in South African heritage law and practice;
- 9.2. Part Two explains why intangible heritage resources must, in terms of the NHRA, be properly identified and assessed in a HIA prepared in terms of

BTW

Section 3B of the NHRA, as well as the potential impacts on such resources of development;

- 9.3. Part Three considers whether or not the 2019 HIA by Townsend & Hart, submitted by the developer as part of the environmental impact assessment, meets the requirements of an HIA in terms of the NHRA;
- 9.4. Part Four considers and assesses the value of the 2020 comments provided by Heritage Western Cape on the 2019 HIA;
- 9.5. Part Five presents an opinion, in my capacity as an independent expert and qualified and registered heritage assessment practitioner, regarding the lawfulness of the DEA&DP approval of the 2019 Heritage Impact Assessment.

PART 1: INTANGIBLE HERITAGE IN SOUTH AFRICAN HERITAGE LAW AND PRACTICE

10. Definitions of Intangible Cultural Heritage, or Living Heritage, are provided in the expert affidavit of Delndre Pnns-Solani and these definitions and understandings of Intangible Heritage and its value also apply to this affidavit.
11. South African law, as well as international best practice, are clear regarding the critical importance of intangible heritage to the management and safeguarding of the National Estate, as it is defined in Section 3 of the NHRA,

12. The following definitions in terms of Section 2 of the NHRA are particularly relevant to this discussion.

" 'conservation', in relation to heritage resources, includes protection, maintenance, preservation and sustainable use of places or objects so as to safeguard their cultural significance";

" 'cultural significance' means aesthetic, architectural, historical, scientific, social, spiritual, linguistic or technological value or significance";

" 'living heritage' means the intangible aspects of inherited culture, and may include -

(a) cultural tradition

(b) oral history

(c) performance

(d) ritual

(e) popular memory

(f) skills and techniques

(g) indigenous knowledge systems

(h) the holistic approach to nature, society and social relationships.

13. Section 3 of the NHRA deals with the definition of the "National Estate", which Section 3(1) defines as *'those heritage resources of South Africa which are of cultural significance or other special value for the present community and for future generations must be considered part of the national estate'*.

14. Section 3(2) of the NHRA provides a comprehensive list of what (without limitation) comprises the National Estate: In other words, what might qualify as a "heritage" resource. For the purposes of this case, Section 3(2)(a), (b) and (d) are particularly important:

(a) places, buildings, structures and equipment of cultural significance;

(b) places to which oral traditions are attached or which are associated with living heritage; ...

(d) landscapes and natural features of cultural significance.

15. Section 3(3)(a) to (f) of the NHRA further expands the definition of the National Estate to include places or objects which meet the listed criteria for significance. Of particular importance to this case and for this affidavit are Section 3(3)(a), (b), (c) and (g) of the NHRA:

(a) its importance in the community, or pattern of South Africa's history;

(b) its possession of uncommon, rare or endangered aspects of South Africa's natural or cultural heritage;

(c) its potential to yield information that will contribute to an understanding of South Africa's natural or cultural heritage;

(g) its strong or special association with a particular community or cultural group for social, cultural or spiritual reasons.

16. In the 2016 Baseline Heritage Study as well as the 2017 Supplementary Heritage Report, the extraordinarily high intangible heritage significance of the Two Rivers Urban Park area as a whole is recognised and affirmed. These reports are clear that although no physical or tangible remnants of the pre-colonial past (such as human remains, structures or archaeological material) have yet been found here, this does not negate the high heritage significance of the land, including the River Club and surrounds.

PART 2: INTANGIBLE HERITAGE REQUIREMENTS IN TERMS OF THE NHRA

17. In order to be legally compliant with the NHRA, a HIA must meet the minimum requirements of section 38(3). A Heritage Impact Assessment prepared in terms of section 36(6) of the NHRA, while exempt from the provisions of Section 38 in general, must still comply with the minimum standards laid out in Section 38(3). In other words, it must be legally compliant with the NHRA, whether the HIA is being presented to the heritage authority in terms of the NHRA or to the DEA&DP in terms of the National Environmental Management Act, 1996 ("NEMA").
18. Section 38(3) provides seven requirements for an HIA to be considered legally compliant. Of particular interest to this affidavit are requirements (a), (b), and (c):
- (a) The identification and mapping of all heritage resources in the area affected;*
 - (b) an assessment of the significance of such resources in terms of the heritage assessment criteria set out in section 6(2) or prescribed under section 7; and*
 - (c) an assessment of the impact of the development on such heritage resources.*

18/10

19. As noted in Part 1 (paragraph 14), the term "heritage resources" is *not* limited to tangible resources, such as buildings or archaeological resources. The National Estate, also includes places of cultural significance, places to which oral traditions are attached or which are associated with living heritage, and landscapes and natural features of cultural significance. An assessment of "heritage resources", as part of an HIA, which does not comprehensively assess these elements as defined in the NHRA, would not be legally compliant with the provisions of the NHRA.
20. If an HIA does not adequately identify or assess the significance of such intangible resources as allowed for in the legislation, it has not fulfilled the requirements of Section 38(3)(a), and consequently cannot fulfil the requirements of Section 38(3)(b), (c), or indeed the rest of this section of the NHRA.
21. If the heritage resource is not accurately identified, clearly the potential impacts of development on the heritage resource cannot be assessed. This applies to intangible heritage elements as much as it does to buildings, human remains, or archaeological sites.

PART 3: THE 2019 HERITAGE IMPACT ASSESSMENT

22. In the 2019 Heritage Impact Assessment prepared for the developer by Townsend and Hart, the heritage resources on the River Club site are identified, in summary, as follows.
 - 22.1. The area at the confluence and between the Liesbeek and Black Rivers is identified as significant primarily on the basis of its history as an early

colonial frontier; its links to early settler farming; and the consequent loss of "grazing land" by the First Nations/ Khoi pastoralists. The river confluence itself is identified as particularly high in historical significance.

- 22.2. However, Townsend and Hart argue that "the site itself has no tangible traces of early pre-colonial or colonial historic events", other than the presence of the river confluence and the transformed landscape in its surrounds.
- 22.3. On the basis of the above, Townsend and Hart conclude that "there are no heritage resources on the site that require intervention" (see page 4 of the July 2019 HfA, appendix G5, Part 1, to the final EIA). In other words, the primary significance of the site is considered to be vested in its role as a colonial frontier and the site of early Dutch farming activity; and the absence of tangible remnants of this history, or of conflict between the Dutch and the Khoi, means that *no heritage resources are on the site*. In effect, the argument states, there is nothing here to protect, besides possibly the river confluence itself.
- 22.4. As a result of these conclusions regarding the presence of "heritage resources" on the site, Townsend and Hart argue, development on the site is possible, even desirable, provided the riverine corridor is "restored" and that allowance is made for a "commemorative area". With these conditions, the writers argue, there will be no "unacceptable impacts on heritage resources or their significances."

23. Returning to the definitions, stipulations and requirements of the NHRA listed in the sections above, it is clear that the 2019 Heritage Impact Assessment mis-identifies both the nature of what qualifies as a "heritage resource"; and, consequently, does not adequately engage with the remainder of the provisions of Section 38(3).
24. Paragraph 14 above points to the definitions of heritage resources, i.e. 'the national estate', provided by the NHRA. These definitions quite clearly include places of cultural significance, under the definitions of Section 3(3); landscapes of cultural significances; and, specifically, *places associated with living heritage*.
25. Therefore to claim that the absence of material remains indicates that no heritage resources are present, is inconsistent with the NHRA.
26. This is a particularly curious oversight given:
 - 26.1. the attention paid to Intangible heritage in the 2016 and 2017 Baseline Heritage Studies;
 - 26.2. the clear links made by a wide range of Khoi and First Nations groups and individuals of the site to oral history, popular memory, living heritage, and indigenous knowledge systems; and
 - 26.3. the availability, as pointed out in Deirdre Prins-Solani's expert affidavit, of systematic and adaptable international best practice standards for identifying, researching and assessing Intangible heritage.

PART 4: HERITAGE WESTERN CAPE COMMENTS ON THE 2019 HERITAGE IMPACT ASSESSMENT

27. In its final comments, HWC finds that the requirements of Section 38(3) of the NHRA have not been met by the 2019 HIA.
28. The HWC final comment notes that, on the basis of the 2017 Baseline Heritage Study of the broader Two Rivers Urban Park area, it was clear that the entire TRUP area has extremely high heritage significance; and that no one element of this area, such as the River Club, can meaningfully be assessed outside of the context of the broader area.
29. In terms of the heritage significance of the Two Rivers Urban Park landscape, HWC is clear that the broader area possesses multiple and intersecting forms of heritage significance; and that many of these are related to intangible heritage (for example: memory, identity, sense of place and oral history). It also identifies the River Club area as an integral part of a "highly significant cultural landscape", an identification rooted in the idea of a landscape shaped by human activity and imbued with significance by both material change and by intangible practices and associations.
30. HWC further commented that Section 38(3) of the NHRA is not complied with by the 2019 Heritage Impact Assessment. In my expert opinion the comments of HWC are correct.

BTD

- 30.1. Specifically, HWC notes in this comment that the limitation of 'heritage resources' to only tangible resources is inadequate and not in keeping with the provisions of the NHRA (see page 5 of the HWC's interim comments); and that therefore the requirement for identification and mapping of all heritage resources on the site has not been met (also see page 5).
- 30.2. HWC also notes that the HIA does not adequately provide an assessment of the significance of identified heritage resources. Drawing on Section 3(3) of the NHRA, HWC finds that the criteria in this section have not been applied to the assessment of significance; and, in particular, that there has been no assessment of intangible heritage resources in light of these criteria.
- 30.3. A similar critique is levelled at the supplement to the HIA and the associated First Nations report, which HWC finds 'has not fully unpacked the significance of the site to a broad Community that has a recognised and direct, deep and sacred linkage to the site through lineage and collective memory.' (see paragraph 60 of the final comments of HWC).
- 30.4. Also in the final comments of HWC, it found that the HIA tailored the significance of the heritage of the site for the rationalisation of the given design proposed by the developer, and to arrive at mitigation for the development rather than an actual assessment of significance of the site (see paragraph 67).

BWO

- 30.5. HWC also notes that because the sense of place of the site has been transformed over the past 80 years, it does not result in it being acceptable for the proposed development to destroy the remaining degree of sense of place which is left of the site (see paragraph 79 of the HWC final comments).
- 30.6. HWC's comments also note that the 2019 HIA locates the significance of the site primarily in its ecological value, and not in its cultural heritage value; and argue that this limitation is short-sighted and inaccurate, particularly given the existing previous studies and the recognised high significance of the great TRUP area.
- 30.7. The HWC final comments raise several concerns about the 2019 HIA's assessment of the impact of the proposed development on the heritage resources of the site. Critically, HWC notes that "the HIA fails to assess the impact of the development on the most important heritage resource, the site's open, green qualities as a remnant of a landscape that has considerable intangible historic and cultural heritage significance." (see page 7, paragraph 77 of the final comments). Again, the mis-identification of what qualifies as a "heritage resource" in terms of the law has precluded an accurate and legally compliant assessment of impact.
31. The HWC comments on the 2019 HIA are thorough and comprehensive, and I am in agreement with the critiques made of the 2019 HIA by Heritage Western Cape.

PART 5: CONCLUSIONS

32. On the basis of the above, my conclusions and opinion regarding the compliance of the Townsend and Hart 2019 Heritage Impact Assessment are summarised below.
- 32.1. The 2019 HIA misidentifies and limits that nature of a "heritage resource" as defined in the NHRA.
- 32.2. The NHRA makes clear reference to intangible heritage as a critical component of the national estate, and there is nothing in the NHRA itself to exclude this or to limit understandings of heritage significance to physical or material objects or structures.
- 32.3. The Heritage Western Cape assessment of the 2019 HIA is comprehensive and accurate, and I am in general agreement with it.
- 32.4. I concur with HWC's view that the 2019 HIA does not comply with the provisions of Section 38(3) of the NHRA.
- 32.5. The law is clear that an HIA undertaken in terms of Section 38(8) of the NHRA must be compliant with the minimum requirements of Section 38(3). The 2019 Townsend and Hart HIA does not meet these requirements.
33. In my expert opinion, any decision regarding the heritage impacts of the proposed development that is based on the 2019 HIA will be unsound. A new HIA should be undertaken which:

BND

- 33.1.1. fulfils the legal criteria of the NHRA as per Section 38(3)
- 33.1.2. fully and comprehensively engages with the findings of existing previous reports and studies, particularly those dealing with the broader TRUP area; and
- 33.1.3. follows international best practice standards to identify, assess and record the intangible heritage significances of the site, as well as the potential impact on these of development.

Bridget O'Donoghue

BRIDGET ELIZABETH O'DONOGHUE

I certify that:

- I. the Deponent acknowledged to me that :
 - A. He knows and understands the contents of this declaration;
 - B. He has no objection to taking the prescribed oath;
 - C. He considers the prescribed oath to be binding on his conscience.
- II. the Deponent thereafter uttered the words, "I swear that the contents of this declaration are true, so help me God".
- III. the Deponent signed this declaration in my presence at the address set out hereunder on 30 JUL 2021.

[Signature]

COMMISSIONER OF OATHS

Designation and Area: Constable, CLAREMONT

Full Names: Anokama Apojee

Street Address: 60 Ingam Hoven Road
Claremont
Cape Town



CURRICULUM VITAE

TERTIARY EDUCATION

Bachelor of Architectural Studies (UCT) 1983
 Bachelor of Architecture (UCT) 1988
 Masters of Philosophy in Environmental Science (UCT) 1997



PROFESSIONAL QUALIFICATIONS

Institute of South African Architects: Institute Professional Practice Exam 1994
 University of Cape Town: Architectural and Urban Conservation (short course) June 2006

PROFESSIONAL BODIES AND RELEVANT ORGANIZATIONS

Bridget O'Donoghue is a member of the following professional bodies and civic organizations.

- Association of Professional Heritage Practitioners (APHP) Accredited Member no 42 Chair 2011/2012
- International Association of Impact Assessments (IAIAsa)
- Vernacular Architecture Society of South Africa (VASSA)
- Documentation and Conservation of buildings, sites and neighbourhoods of the Modern Movement (DOCOMOMO SA)
- The Society of Architects Planners Engineers Surveyors (Cape Town) (APES+). Chair 2020, committee member 2019 - present

COMPANY PROFILE

Bridget O'Donoghue is a specialist heritage practitioner working as a sole proprietor. She is a specialist in heritage applications and their statutory process for range of project scales and heritage resources. Bridget is experienced in the following types of applications:

- Heritage Impact Assessment,
- Heritage Statement;
- Visual Impact Assessment;
- Heritage Survey;
- Conservation Management Plan,
- Notification for Intent to Develop application;
- Architectural advice for designs in Heritage Protection Overlay Zones (HPOZ) and to significant structures and sites.

EMPLOYMENT HISTORY, POSITION AND RESPONSIBILITIES

Prior to practicing as professional heritage practitioner Bridget was employed by the City of Cape Town (CCT) from 2000 - 2007. Bridget positions at CCT was Head: Environmental and Heritage Management, South and South Eastern Districts: Environmental Management (2005 - 2007) and Senior Planner: Heritage Resources Section Environmental Resources Management (2000 - 2005). As the Environmental Manager of the Southern and South Eastern Areas, Bridget's responsibilities included the management of the Environmental Branch and the assessment of all development and planning applications where heritage and environmental issues needed to be addressed. This work entailed interaction with community representative bodies, professionals, planning officials, Councillors, and ratepayers in order to manage development in sensitive heritage and natural areas. The larger development proposals included the assessment of Heritage Impact Assessments (HIA), Environmental Impact Assessments (EIA), Conservation Management Plans (CMP), and Environmental Management Plans (EMP). As a

self-employed heritage practitioner. Bridget is responsible for heritage impacts assessments, heritage statements, survey of heritage resources and applicable guidelines. Clients include the National and Provincial Government entities, local municipalities in the Western Cape and private companies and individuals

RELEVANT PROJECTS

A selection of the heritage related projects completed by Bridget O'Donoghue in her capacity as the Heritage Practitioner are as follows:

Heritage Impact Assessments

- De Waldorf Multi-Purpose Development, Farm 1310 Stellenbosch 2008 for Horn & De Koning Developments (Pty) Ltd
- Green Market Square Cape Town, January 2009 for City of Cape Town (in association with Peter Buttgers)
- Heritage Impact Assessment: Pedestrian Facility Buitengracht Waterkant Cape Town, for the City of Cape Town, November 2008
- Erf 1337 Simondium Drakenstein Municipality, July 2009 (in association with Peter Buttgers). Assessment of new warehouses on site of original Paarl wine Co- Operation building's site
- Proposed Residential Development on Remainder Farm 1511 (formerly Portion of Platekbof Farm 394) Cape Town Western Cape, 2010 for Arun projects Pty Ltd
- Portion 1 Farm 550 (Erf 11849) Steffenbosch, 2010 For Bouwer Architects
- Proposed Development on Erf 3239 Paarl Drakenstein Magistral District Western Cape 2010 For SRK Consulting
- Phase 1. Do Kaap Quarries for City of Cape Town, April 2010 (in association with Peter Buttgers) Identification and assessment of significance of cultural value for heritage resources on Quarry site. Provision of opportunities and constraints on site for future development
- Proposed socio economic housing on Erf 476 Paarl for Cape Winelands District Municipality, March 2010
- Heritage Impact Assessment for the proposed socio economic housing on Erf 476 Paarl for Cape Winelands District Municipality, March 2010. Assessment of proposed village for farm workers on sensitive cultural landscape in northern Paarl
- Farm 156/2 Worcester for Mr D Jacobs, October 2010
- La Paris Equestrian Estate Paarl, April 2011
- Tafelberg High School Main Road Sea Point 2011 for City Think Space
- Tafelberg Primary School Erven 90, 91, 92, 93, 94, 95, 96, 98, 1092 Kings And Tramways Roads Sea Point Cape Town Western Cape 2011
- Proposed Pipeline on Meerlust Property (Erf 1006/1), Elkhans (Erf 982), Bier Donne (Erf 904), Langerust (Erf 946/5), Nieuwe Sicn (Erf 1223), Watervliet 2 (Erf 1224/2), Watervliet 3 (Erf 1224/3), Berg River Farms (Erf 913) 2012 for Gibb Pty Ltd
- Proposed City of Cape Town proposed multi level residential development with Langa's historic core, various sites Langa, July 2013
- Naval Training Base & South African Military Academy Saldanha Proposed Boundary Wall Saldanha Western Cape South Africa 2013 For Delta Built Environment Consultants
- Proposed relocation of the Cenotaph and proposed construction of CCT IRT Bus Station Adderley Street Cape Town June 2013; Assessment of the impact of the relocation of the Cenotaph due to the proposed IRT route in Adderley Street Cape Town. Selection of alternative sites for the relocated Cenotaph. Public participation process on the heritage assessment and proposal 2013
- Eskom Gamma Kappa 2 and Kappa Omega 2 proposed power lines & related infrastructure 2013- 2014
- Erf 96174 Government 'Top Yard' Garage Precinct for WCPG October 2014
- Erf 95948 Government 'Government Garage' Garage Precinct for WCPG October 2014
- Erf 95829 Gardens Cape Town 'Hope St. GMT' Government Garage Precinct for WCPG October 2014
- Somerset West Public Transport Interchange, Church Street precinct for CCT, October 2014
- Vissershoek Landfill Facility Vissershoek Cape Town for Mott MacDonald PDNA, October 2014

- Proposed 'The Vines' Residential Development on Ptn 12 of Farm Kliprug No. 826 Paarl for Val de Vie Estates, September 2014
- Parol Valley Eucalyptus Avenue Somerset West Cape Town for City of Cape Town November 2014
- Val de Vie farm Kliprug 826 portion 12 Paarl 'The Vines' for Golden Ribbon Trading 416 (Pty) Ltd November 2014
- Sea Point and Moullie Point Promenades for City of Cape Town March 2015
- Mount Prospect Erven 2461 & 2463 Pegasus Road Constantia, Property Development Projects July 2015
- Fraaigalagen Portions 10, 11, 12 and 14 of Hartebaeskraal Farm No. 844 and Remainder of Portion 2 of Hartebaeskraal Farm No. 845, Paarl Western Cape, Khula Environmental Consultancy December 2015
- Levendal Residential Development Portion 5 Of Farm 533 Paarl Western Cape, Terramanti Group Pty Ltd November 2015
- Schaapkraal Erven 558, 609, 610, 612, 615-617, 626 and 628 Phillipi Cape Town For Exclusive Access Trading 570 (Pty) Ltd December 2015
- Ottery Erven 759 Ottery Cape Town Western Cape for NM & Associates Planners and Designers, November 2015 - July 2016
- Table Mountain National Park Head Office Tokai, Cape Town for SanParks October 2016
- Proposed High Rise Building 16 Bree Street Cape Town for Gardner Property Solutions April 2016
- Vergenoegd Farm Somerset West for Livia Winery Proprietary Limited, April 2016
- Boterberg Farm Philadelphia Cape Town for Anton Loubser October 2016 (HIA Phase One)
- ZeroZone Building, Corner Strand and Addeney Streets Cape Town November 2016
- High Rise Building 16 Bree Street Cape Town for FWJK February 2017
- Commercial building, Cnr Main Road and Draper Street Claremont, GrowthPoint Properties March 2017
- Erven 11785, 4347, 9745 & 4339 Cape Town (HIA Phase 1) for Moldex (Pty) Ltd April 2017
- Erf 999† Langebaan for Asha Consulting (Pty) Ltd May 2017
- Da: Josephal Paarl for AECOM June 2017
- R44 Somerset West Cape Town road expansion for H H O Engineers October 2017
- Grootte Springfontein Farm Atlantis for Safdev SSDC (Pty) Ltd February 2018
- Paul Kruger Street Stellenbosch for Moglis (Pty) Ltd April 2018
- 19 Loop Street Cape Town for Atrland (Pty) Ltd April 2018
- Palm House Erf 148055 Wynberg for Pal House Guesthouse August 2018
- Dilon Lane Woodstock Social Housing for CCT October 2018
- E1 326 and 327 Beach Road Melkbosstrand February 2020
- Franschoek Pass Winery Farm No 1545 Paarl Division Franschoek Pass Road Franschoek For Fivefold Investments 1 (Pty) Ltd (November 2020)
- Oude Moutan Precinct Pinelands Cape Town for Western Cape Government (2020 - present)
- Cape Farm 821 Ottery & Erf 106 Knole Park Ottery February 2021
- CCT IRT W2 development in Lansdowne Cape Town for SMEC April 2021
- CCT IRT W1 development in Kenilworth and Claremont Cape Town for SMEC April - present 2021
- CCT IRT W6 development in Kenilworth and Wynberg Cape Town for SMEC July - present 2021

Heritage Statements

- Wynberg Sports Precinct Erven 90470, 90473, 90475, 90481, 90482, 90484, 9048. Wynberg Cape Town, December 2008
- Proposed Housing Development on Erven 38, 3886, 4000 & 4001 Wallacedane Kraifontein Cape Town for EnviroDinamik Environmental Consultants
- Wynberg Park Wynberg Cape Town June 2013
- Erf 2595 Camps Bay Glen Beach Cape Town, Demolition application of residence situated within Provincial Heritage Area 2012 for LCK Architects

- 212 Main Road Muizenberg for Nan and Andrew McCaughey 2013
- Erf 972 and 1039 Bright Street Somersel West Cape Town July 2013
- Erf 176343 Dalebrook Road Kalk Bay for Gamck Rothersey (Pty) Ltd July 2014
- 8 Glen Beach Bungalow Camps Bay Cape Town for LCK Architects 2012
- No. 10 2nd Beach Clifton Cape Town for Antonio Zaninovic Architects December 2014
- Zewenwacht Portion 30 Farm 241 Kuils River for Glændra Propert (Pty) Ltd October 2014
- Zewenwacht Farm Portion 30 Farm 241 Kuils River Cape Town, Glændra Properties (Pty) Ltd Oct 2014
- Hout bay Mainstream Shopping Centre Bridge for Cape Coast Properties (Pty) Ltd November 2014
- No. 9 Faure Road Gordons Bay for Mr John Steuhan December 2014
- 68 Keerom Street Cape Town for Saunders Group January 2015
- The Modern Erf 173153 Cape Town for Ingenuity Properties Ltd April 2015
- Bungalow 35 Clifton for Metropolis Architects April 2015
- Langa Hospital for Blueprint Architects July 2015
- No. 13 Highwick Avenue Kenilworth for Davout Wolhuter December 2015
- Multi use development on 1 Hamington Street Cape Town for NICRO April 2016
- No. 12 and 14 Constantia Road Tamboerskloof Cape Town for Mr O Oosthuizen August 2016
- Erf 155676 'White House' Seane Street Woodstock for owner August 2016
- Erf 758 Prins Western Cape for Francois Odendaal August 2016
- Erf 369 No. 15 Rochester Road Fresnaye Cape Town for owner October 2016
- Erf 1441 No. 10 Loeuwenhof Road Higgovale Cape Town for owners October 2016
- Kruskal Avenue Precinct Belville for City of Cape Town October 2016
- Erf 7297 No. 7 Welner Street Goodwood for Remax Estate Agents October 2016
- Vergenoegd proposed restaurants and landscaping for Livia W. nery Proprietary Limited December 2016
- 18 Kikare Road Newlands for John McMullen March 2017
- Bungalow 23 Clifton for JMA Design, March 2017
- Erf 50317 Newlands for Dr. J McMullen April 2017
- 13 Highwick Road Kenilworth for D Wolhuter June 2017
- SAWAS House Pinelands and Martin Adams Hall for Communicare, August 2017
- Erf 303 & 35639 Milnerton for J Lan September 2017
- Erf 142181 Cape Town proposed 1st building for Spears Riet Limited
- Erf 9644 Cape Town for Wespun 42 (Pty) Ltd October 2017
- Winchester Mansions Sea Point for Winchester Estate Company (Pty) Ltd October 2017
- Simons Town, Town Hall for CCT November 2017
- Farmers Bree Street Cape Town for Ingenuity Property Investments Ltd February 2018
- The YWCA 20 Bellevue Street Gardens August 2019
- Erf 427 Clifton Cape Town August 2019
- Erf 409 Clifton July 2019
- Winchester Mansions Hotel Sea Point for Winchester Estate Company (Pty) Ltd September 2019
- Bree Street no.91 for the Hoffman Property Group September 2019, 2020 and 2021
- Woodstock Hospital Woodstock for CCT September 2019 - present
- ERF 1046 FRESNAYE Demolition application for owners November 2019
- De Poort Paarl Urban Design Framework And Business Models for Aurecon December 2019
- 43 Montague Maitland Demolition and new residential development October 2019
- Milestone and lampost Voortrekker Road Bellville February 2020
- Proposed Demolition Erven 67097 & 67098-Re Wynberg Cape Town February 2020
- Kenilworth Clinic Erf 165995 Kenilworth Cape Town June 2020
- 22 Summerley Road Kenilworth for U Turn June 2020
- Mimosa Court Erf 864 Sea Point Cape Town for Rola Rola properties July 2020
- Erf 649 Green Point Cape Town for owner July 2020
- 23 St Michaels Road Claremont for owner July 2020
- Erven 24514 & 24515 Parow Rd Maitland November 2020
- Nyanga Housing Development Framework for CCT November 2020

- Langa Housing Development Framework for CCT November 2020
- Gugulethu Housing Development Framework for CCT November 2020
- Baptist Church Langa Cape Town February 2021
- Stepping Stones facility Erf 4182-RE Kommetjie HWC submission November 2021
- Erf 60801 Lansdowne Road Cape Town February 2021
- Erf 459 Camps Bay February 2021
- Erf 458 Camps Bay February 2021
- Erf 60801 Lansdowne Cape Town March 2021
- 23 Ednam Road Rondebosch March 2021
- 4 Scott Road Claremont, report for appeal process
- Philippi Opportunty Area Heritage Study for CCT June 2021, Bridget O'Donoghue work on the heritage grading of the project site, within large team project
- Foreshore Gateway Masterplan Phase 1 for CCT June 2021, Bridget O'Donoghue work on the heritage grading and research on the built environment of the project site, within large team project

Notification for Intent to Develop (NID) (if separate from an HIA)

- Erf 2 Spilhaus Avenue Constantia for Mr Paul Theodosiou, November 2012
- Erf 2758 Klein Constantia Road Constantia Cape Town for Cape Town YMCA October 2012
- Erf 928 Diglebij Crescent Kuis River Cape Town Aaron Christian Academy June 2013
- Erf 4330 Langa for NuWay Housing Developments (Pty) Ltd June 2013
- Kapteinshoop Mrandi Precinct Plan Mitchells Plain for City of Cape Town December 2013
- St Joseph's Children's Home Montlana January 2014
- Erf 380 Railby Stellenbosch January 2014
- Farm 1104 & P1.9 Farm 785 Figrove Cape Town for Georgia Avenue Investments 41 (Pty) Ltd, Feb 2014
- Erf 4705 Spanish Farms Somerset West Cape Town For Lashko (Pty) Ltd April 2014
- O'wants River bridge Upgrade for Strategic Environmental Focus, December 2014
- Erf 78542 Diep River South peninsula High School for Makeba Designs July 2015
- Erf 177552 Newlands Cape Town November 2015
- Erf 64999 Kaniworth Cape Town for Michael Oak School March 2016
- Erven 14 & 558 Parel Valley Somerset West April 2016
- IRT Bus Stations Phase 2A East and West for City of Cape Town August 2016
- Whale Rock Simonstown Main Road Simonstown Cape Town for Khula Environmental Consultants Nov 2016
- Erf 48 Faure for Carresea Western Cape (Pty) Ltd February 2017
- Erf 1539 Bakkershoogte Somerset West for Kraaibosch Residential Estate (Pty) Ltd February 2017
- Erf 2244 Somerset West for Kroon Sebastian Beleggings (Pty) Ltd March 2017
- Erf 7936 Somerset West for The Viok Family Trust July 2017
- Erven 934-68, 934-76 Noordhoek for Mason Developments August 2017
- Erf 1148 Bredasdorp for D Halting August 2017
- Sable Square Centre Cape Town for Spears Riet Limited August 2017
- Salt River Market Salt River cape Town for Communicare August 2017
- Hou Hood Road extension Sun Valley for Chand Environmental September 2017
- CCT designation plants Cape Town for Worley Parsons (Pty) Ltd November 2017
- IRT Phase 2 A Road Infrastructure for Gibb November 2017
- Erven 67452/3/4 & 67408 Wynberg Cape Town for Kingshill Developments (Pty) Ltd December 2017
- River farm Val de Vie Paarl for Val de Vie (Pty) Ltd December 2017
- Erf 108 708 Matieland for Eris Property Group (Pty) Ltd
- Langewerwacht Road Kuis Rivier for The Environmental Partnership February 2018
- Portion 65 of the Farm Palmiet River No. 319 Brandweer Stasie August 2019
- Remainder Erf 1 Swellendam August 2019
- Erf 14704 Somerset West October 2020
- Erf 644 Schaaapkraal Mitchells Plain 2020

Visual Impact Assessments

- Naval Training Base & South African Military Academy Saldanha Proposed Boundary Wall Saldanha Western Cape South Africa 2013 For Delta Built Environment Consultants
- Visual Impact Assessment: Proposed Solar Power Energy Facility Portion 10 (Arms) Of Farm No 2 Korridor Wes In Richtersveld Namakwaland Northern Cape Province South Africa for Richtersveld Sunspot (Pty) Ltd, January 2014
- Proposed Solar Power Plant On Portions of Farm Bonnievale (33°55'17.04"S 20° 79.18"E) Cape Province South Africa For Jaffares & Green (Pty) Ltd, 2012;
- Proposed Solar Power Plant on Portion of Farm Klipheuvel (33°41'19.51"S 18°45'45.20"E) Western Cape Province South Africa for Jaffares & Green (Pty) Ltd, 2012;
- Solar Power Plant Pt.Farm (33°58'14.58"S 19°48'18.67"E) McGregor for Jaffares & Green (Pty) Ltd, 2012;
- Misverstand Farm 333 Portion 9, for Jaffares & Green (Pty) Ltd, 2012;
- Visual Impact Assessment: Proposed Photo-Voltaic Solar Power Plant Farm Ysterlorklein, Portion 2 of Farm Zeekeelvlei 107 Clarendon District Western Cape Province South Africa January 2014
- Vissershoek Landfill Facility Vissershoek Cape Town for Motl MacDonald PDNA, August 2014
- Proposed solar power energy facility on portion 10 (arms) of farm no 2 Korridor Wes in Richtersveld Namakwaland Northern Cape Province for Richtersveld SunSpot (Pty) Ltd, November 2014
- Diamant Farm Agter Paarl Western Cape for M Fick Architect July 2016
- ZeroZone Building, Corner Strand and Adderley Streets Cape Town November 2016
- High Rise Building 16 Bree Street Cape Town for FWJK February 2017
- Le Petit Ferme Paarl March 2018
- Erf 49 Faure for Comuseel Western Cape (Pty) Ltd, April 2018
- Picardi Farm Paarl 2020

Heritage Surveys

- Memorials, monuments and sculptures, City of Cape Town, March 2008
- Heritage Resources, Cordoba Farm Stellenbosch, November 2008
- Mamre Conservation Area, September 2009, City of Cape Town
- Urban Conservation Boundaries Woodstock, Salt River and Observatory Cape Town, June 2009 for CCT
- Cultural resources within the CCT Metropole according to the National Heritage Resource Act, 1999 for the CCT Environmental and Heritage Resources Management June 2013 - present. Examples of areas surveyed are Mamre, Peñia, Sir Lowry's Village, Central Business District, Sea Point HPOZ, de Waterkant, Bo Kaap, Claremont, Woodstock, Pinelands, Langa, Observatory, Upper Table Valley, Harfield Village 2013 - 2019;
- Saldanha Bay Municipality Phase One for the Saldanha Bay Municipality in association with Cedar Tower Services (Pty) Ltd and Agency for Cultural Management October 2016
- Greyton Built environment survey for Cedar Tower Services (Pty) Ltd August 2016

Heritage Evaluations

- Design Evaluation Heritage Area Erven 348 and 349 Vredehoeck Cape Town October 2008
- 68 Keerom Street Cape Town for the Saunders Group 2015

Design Guidelines

- Design Guidelines for Uniondale, November 2009 for Eden District Municipality (in association with Peter Buttgens). Provision of opportunities and constraints on site for future development. Development of illustrated design guidelines for specific sites in town.

**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No.: _____

In the matter between:

OBSERVATORY CIVIC ASSOCIATION

Applicant

and

**TRUSTEES FOR THE TIME BEING OF
LIESBEEK LEISURE PROPERTIES TRUST**

First Respondent

HERITAGE WESTERN CAPE

Second Respondent

CITY OF CAPE TOWN

Third Respondent

**THE DIRECTOR: DEVELOPMENT MANAGEMENT
(REGION 1), LOCAL GOVERNMENT, ENVIRONMENTAL
AFFAIRS & DEVELOPMENT PLANNING, WESTERN
CAPE PROVINCIAL GOVERNMENT**

Fourth Respondent

**THE MINISTER FOR LOCAL GOVERNMENT,
ENVIRONMENTAL AFFAIRS & DEVELOPMENT
PLANNING, WESTERN CAPE PROVINCIAL GOVERNMENT**

Fifth Respondent



EXPERT AFFIDAVIT

I, the undersigned,

DEIRDRE PRINS-SOLANI,

do hereby make oath and state as follows:

1. I am an independent consultant and practitioner specialising in the fields of intangible heritage research, education, and community-based inventorying.
2. The facts contained in this affidavit are within my personal knowledge, except where the context indicates otherwise, and are to the best of my belief both true and correct.

INTRODUCTION

3. As an independent consultant and practitioner, I have more than ten years of experience in the fields of Intangible heritage, education and community-based inventorying. I have gained professional experience in my specialist fields in multiple regions and countries. Within the African region I have experience working on heritage issues in Rwanda, Ghana, Kenya, Seychelles, Mauritius and South Africa. I am an active facilitator for the UNESCO 2003 Convention for the safeguarding of intangible cultural heritage and also a member of the UNESCO



2003 global capacity facilitators network. Details of my qualifications, training and experience are set out in the attached copy of my *curriculum vitae* ("DP1"). I respectfully submit that I am qualified by my qualifications, training and experience to express the expert opinions which are set out in this affidavit.

4. The Applicant in this matter requested me to review, and provide my expert opinion on, the following reports which form part of the final environmental impact report ("Final EIR") for the proposed development of the River Club site in Cape Town:

4.1. the 2019 Heritage Impact Assessment prepared in terms of Section 38 of the National Heritage Resources Act, by Steven Townsend and Tim Hart; and

4.2. the Heritage Western Cape's commentary in relation to that Heritage Impact Assessment.

5. In the course of preparing this affidavit I have also reviewed and considered the 2003 UNESCO Convention for the Safeguarding of Intangible Cultural Heritage.

6. In this affidavit, as in the founding affidavit:

6.1. "the developer" means the First Respondent;

6.2. "the proposed development" means the River Club Development;

6.3. "the 2003 Convention" or "the 2003 UNESCO Convention" both refer to the Convention for the Safeguarding of Intangible Heritage adopted by the



United Nations Educational, Scientific and Cultural Organization (UNESCO) in 2003; and

- 6.4. "The Heritage Impact Assessment" or "HIA", unless otherwise indicated, refers to the 2019 Heritage Impact Assessment prepared in terms of Section 38 of the National Heritage Resources Act, by Steven Townsend and Tim Hart on behalf of the LLPT, submitted as part of the Final EIR for approval of the proposed development
7. This affidavit consists of the following 6 parts:
 - 7.1. Part One describes and clarifies the concept of Intangible/ "Living" Heritage and its dynamic nature;
 - 7.2. Part Two describes the links between Intangible Cultural Heritage, urban land issues and related disruptions to social fabric in Cape Town;
 - 7.3. Part Three outlines the relationship between Intangible Cultural Heritage and urban sustainable development, both in general and with specific reference to Cape Town;
 - 7.4. Part Four outlines global best practice for practitioners' engagements with Intangible Cultural Heritage, and considers the extent to which such best practice is evident in HIA;
 - 7.5. Part Five assesses the merits of the arguments and findings of the Heritage Western Cape commentary on the HIA;



7.6. Part Six provides a conclusion and my opinion on the adequacy of the assessment of intangible heritage by the developer and its consultants, on the basis of Parts One, Two, Three, Four and Five above, in my capacity as an independent expert on intangible cultural heritage, its management and safeguarding.

PART 1: INTANGIBLE CULTURAL HERITAGE (ICH)

8. Intangible Cultural Heritage ("ICH"), a term used interchangeably with the term "Living Heritage", is defined as those aspects of a person, group or community's heritage which are not immediately visible. They have no physical or material form, such as buildings or objects or place.
9. However, they may be manifest in material form. Examples of these are:
 - 9.1. objects used for sacred practices or producing crafts;
 - 9.2. a building which manifests the human capacity for thought and writing;
 - 9.3. a space designated and used for rituals; or
 - 9.4. a landscape linked to particular beliefs, practices, or spiritual qualities.
10. The 2003 UNESCO Convention identifies the following particular domains of ICH:
 - 10.1. oral traditions and expressions (and language as a vehicle of ICH);
 - 10.2. performing arts;
 - 10.3. social practices;



- 10.4. rituals and festive events;
 - 10.5. knowledge and practices concerning nature and the universe; and
 - 10.6. traditional craftsmanship.
11. These domains are only a guideline and, in some cases, countries (including for example China and Brazil) have expanded these domains in keeping with their particular contexts and needs.
12. Where there are distinct domains associated with living heritage, there are elements of living heritage which may overlap multiple domains. Similarly, whilst there are cultural values associated with living heritage, ICH elements can be identified in all aspects of human life. These may include among several others: health, knowledge of the world, moral systems, economy, cultural expression and so on. This ever-present nature of living heritage in the everyday is both a challenge to heritage practitioners, as well as processes which attempt to document or inventory living heritage.
13. South Africa is not currently a signatory to the 2003 UNESCO Convention on ICH. However, the definitions of ICH provided in the 2003 Convention as well the mechanisms for its safeguarding are in line with the provisions of the National Heritage Resources Act, 1998 ("NHRA") and are generally accepted as global best practice for understanding, assessing, managing and safeguarding intangible cultural heritage.



14. Intangible heritage is accounted for in South African legislation and in policies at all levels of government. These include, but are not limited to the following laws and policies.

14.1. The National Heritage Resources Act:

14.1.1. Section 2(xxi) provides a definition for 'living heritage' as "the intangible aspects of living culture", to include cultural tradition, oral history, performance, ritual, popular memory, skills and techniques, indigenous knowledge systems, and the holistic approach to nature, society, and social relationships. These definitions overlap with those of the 2003 UNESCO Convention and in certain respects are even broader and more inclusive than those of the 2003 Convention

14.1.2 Section 3(2)(a-d) includes the definition of the National Estate: *places, buildings, structures and equipment of cultural significance; places to which oral traditions are attached or which are associated with living heritage; historical settlements and townscapes; and landscapes and natural features of cultural significance.*

14.1.3. The association of place with living heritage is clearly framed as an indicator of heritage significance in the NHRA. In other words, the heritage significance of a place or landscape is not limited to spaces that contain material relics such as buildings or archaeological material. A "heritage resource" as defined in the NHRA, and used in Section 38(3), may include places, spaces, or landscapes that



are significant because of their association with intangible heritage, oral history, indigenous knowledge systems and so forth, and is not limited to buildings or other material heritage. Such spaces should, according to the provisions of the NHRA, be included in a register of the National Estate which SAHRA is mandated to draw up.

- 14.2. South Africa also has a Draft Policy on Intangible Heritage, intended to provide more explicit tools for the management of intangible heritage than those currently in place within the NHRA.
 - 14.3. The National Department of Science and Technology has had a policy on Indigenous Knowledge Systems ("IKS") in place since 2004. The NHRA defines IKS as one of several elements of intangible heritage.
 - 14.4. The City of Cape Town has had an Arts, Culture and Creative Industries policy in place since 2014, which specifically mentions intangible heritage as a key element of the city's heritage and cultural capital.
15. From the above, it is clear that all levels of government, from national to local, regard intangible heritage as an irrevocable and critical element of the National Estate that intersects with diverse socio-economic interests including urban cultural policy, science and technology, place-making, and the protection of spaces and landscapes.



16. Living heritage is dynamic in nature, changing according to wider social, economic, cultural, environmental and other factors. It either responds to change or serves as a catalyst for change.
- 16.1. An example of this is the practice of female genital mutilation which had been common practice in parts of Kenya, and in response to a changing political and constitutional framework has been changed so as to be in keeping with the Universal Declaration of Human Rights
- 16.2. As an example of intangible heritage being a catalyst for change, we can look to the assignment of land rights ownership and protection in the Republic of Korea to women, so as to continue the agricultural production of *rami*.
17. The inherently dynamic nature of living heritage therefore precludes the valuing of any forms of intangible heritage based purely on the idea that it is "authentic". The concept of "authenticity" is a modality or definition often used in the assessment of significance for tangible heritage such as buildings and material culture. In the application of the 2003 UNESCO Convention on ICH across the globe, States parties are actively discouraged from using notions of "authenticity" in assessing value and importance. In addition, States parties are encouraged to involve communities of practice (those for whom the ICH is identified as a part of their identity) to determine values, condition and safeguarding of the ICH. Global best practice is therefore that heritage significance is to be determined by the groups/



individuals/ communities who identify the living heritage as theirs, and as a part of their identity.

PART 2: ICH AND URBAN LAND ISSUES IN CAPE TOWN

18. The colonial and apartheid histories of South Africa have disrupted conditions for many living heritage practices. In the context of the 2003 UNESCO Convention, a critical element of safeguarding living heritage is the creation and sustainability of a viable environment for intangible heritage practices to continue.
19. "The environment", in this case, includes; the social, political, economic, natural environment, social and cultural conditions necessary for it to be seen to be useful and good for the community of practice.
20. Colonial ideologies of private land ownership, as opposed to an indigenous knowledge system and way of being in the world rooted in the idea of custodianship of land, created historical ruptures which were both economic and social in nature. These historical ruptures deeply affected cultural practices in relation to land and place as well.
21. This disruption is further deepened through the brutal Natives Land Act of 1913 and later Group Areas Act of 1950 under Apartheid. Disruptions of land ownership and settlement in the Cape led to changes in the ways in which living heritage was and is practiced.



22. It can also be safely assumed that much living heritage no longer exists because of these disruptions. However, there is also evidence, through continued investigations of foodways, plant and herbal medicinal knowledge and practices, rites of passage, language ('Afrikaaps') and so on, that there has been both a confluence of cultural influences in the living heritage of the Cape which has emerged over time, as well as living heritage practices which have been sustained through adaptation to context.
23. In South Africa land and conservation issues are further entangled in its colonial and apartheid past, where distinctions have been and continue to be drawn between what is regarded as "natural" and "cultural" heritage with little recognition and affirmation of the interrelationship between these.
24. The prescribed EIA processes administered by the National Department of Forestry, Fisheries and Environment, and in this case the Western Cape Department of Environmental Affairs and Development Planning, includes questions on living heritage which go some way to bridging this divide. It can certainly help in providing a systematic way of identifying, documenting information about living heritage associated with particular natural landscapes.

PART 3: ICH AND URBAN SUSTAINABLE DEVELOPMENT

25. The provisions of the 2003 UNESCO Convention clearly state that no safeguarding measures of living heritage can take place without taking into consideration its role in ensuring sustainable development.



26. In global best practice, the investigation of living heritage aspects within communities need to be coupled with an investigation of their contributions to, and relationship with, the United Nations Sustainable Development Goals. In the disparate and unequal levels of livelihood and economic growth in the city of Cape Town, any investigation of living heritage needs to identify the opportunities for addressing the requirements of the Sustainable Development Goals and particularly those related to building sustainable cities.
27. The diversity of cultures within urban spaces makes for a complex process of identification and documentation of living heritage. Such identification and documentation have however been done successfully in several contexts, some of which I have been personally involved in. These include Marrakesh, Morocco, Zimbabwe, Kingston, Jamaica, Salt River, Cape Town and the development of cultural policy for the Cayman Islands and Jamaica, to name a few.
28. The 2003 UNESCO Convention speaks specifically to the importance of protecting community access to place as a mechanism for safeguarding living heritage.
29. One method of engaging with the complexities of landscapes that are closely linked to intangible heritage practices is through the mechanisms of the Historic Urban Landscape ('HUL') approach. The HUL approach aims to identify places of significance, associated values and the living heritage elements which reside in them and which are associated with them. These elements then inform design and form for any future development, with an emphasis on inclusivity and meaningful community participation.



PART 4: ASSESSING THE HERITAGE IMPACT ASSESSMENT IN TERMS OF GLOBAL BEST PRACTICE FOR ICH ASSESSMENT AND SAFEGUARDING

30. Community-Based Inventorying ('CBI') is a critical and core methodology, created by UNESCO, for the identification and documentation of living heritage.
31. As the name indicates, CBI is led and driven by communities rather than "experts" or academics. The identification of who constitutes "the community" is an important part of this exercise.
32. The 2019 Townsend and Hart HIA only refers specifically to the First Nations. However, historic records of the site indicate that there is a far wider and more complex composition of "community", and that a homogenous concept of "First Nations" does not capture this complexity. This would include users of the site over a lengthy historical period and their descendants, as well as members of the Cape Town community who have been pushed to the margins of the city through Group Areas legislation.
33. The disruption of colonization and apartheid spatial design adds another level of complexity in the identification of community. Nothing in the 2019 HIA reflects an engagement with these levels of complexity.
34. In CBI, the role of experts, the state and academics are largely to serve as resource persons and facilitators of the research. CBI involves:
 - 34.1. the identification of living heritage elements with their given/colloquial names;



- 34.2. a description of what constitutes the living heritage element;
 - 34.3. identification of risks and concerns which affect the safeguarding/protection of the living heritage;
 - 34.4. documentation of the modes of transmission; and
 - 34.5. existing safeguarding mechanisms.
35. This systematic process leads to the creation of an inventory which is made accessible and available to community members, and serves as a resource for planning, research and so on. The spurious reference to oral history and the dependence on archival, expert and archaeological evidence in the 2019 HIA is in conflict with the notion of community driven process.
36. Coupled with the CBI process is the identification of material heritage resources which emerge from this process and are linked with intangible practices: place, landscape, archival material, objects and so on are examples of these.
37. The final component of the CBI is the identification of significance and value of any given element of intangible heritage. While the focus of the CBI could be specifically related to place, it is important to note that there may be other elements which emerge associated with other located sites.
38. There is nothing in the 2019 HIA which indicates that any or all of the above steps have been undertaken.



- 38.1. There is no evidence of a systematic identification and documentation of living heritage associated with the site.
- 38.2. The significance of living heritage which has been outlined in the HIA is limited and does not reflect the levels of complexities explained above, neither does it explicate even some of the historical information shared in the HIA.

PART 5: HERITAGE WESTERN CAPE COMMENTARY ON THE HERITAGE IMPACT ASSESSMENT

39. The HWC response to the HIA is thorough and comprehensive and I agree with the findings. I wish to reiterate the following in the light of the above.
- 39.1. The narrow boundaries of the river courseway proposed for the HIA are not enough as the scope of the site is much larger than the proposed development site and should not be disaggregated. This disaggregation has resulted in significance being lost, and the coherence between existing uses and buildings being ignored. A thorough inventorying of living heritage would reveal meanings, significance and interrelationships between various components of the whole that are not captured in the HIA.;
- 39.2. The visual and sound routes across the proposed site are part of the heritage value – but these aspects are not well explored in the HIA. For



example, there is no Visual Impact Assessment which assesses, compares and overlays living heritage aspects.

39.3. The focus on the river courseway as the only site of significance erases the relationship between land and people and living heritage.

39.4. An adequate living heritage inventorying process should have been undertaken to ensure that the heritage impact assessment complied with the requirements of Section 3(2)(a-d) of the NHRA and met the conditions for ascertaining heritage significance provided in Section 3(3) of the NHRA. Such a process would be in keeping with the provisions of Section 38(3) of the NHRA, particularly:

39.4.1. Section 38(3)(a): 'The identification and mapping of all heritage resources in the area affected'; and

39.4.2. Section 38(3)(b): 'An assessment of the significance of such resources in terms of the heritage assessment criteria set out in section 6(2) or prescribed under Section 7'.

PART 6: CONCLUSIONS

40. Considering the failure of the HIA to adequately assess the impacts of the development on the intangible and living heritage associated with the site, in my expert opinion:

- 40.1. Heritage Western Cape was correct to reject the HIA, on the grounds that it does not meet the requirements of Section 38(3) of the NHRA;
- 40.2. a new heritage impact assessment must be undertaken which includes a careful inventorying of living heritage related to the site, in order to comply with NHRA as well as global best practice;
- 40.3. the significance and values of the living heritage elements associated with the site must fundamentally inform any development plan, as opposed to being last-minute mitigating additions; and
- 40.4. a clearer articulation between the living heritage and heritage resources associated with the site, and the United Nations sustainable development goals should be made and integrated by the developer into a broader business model or plan.






DEIRDRE PRINS-SOLANI

I hereby certify that the deponent has acknowledged that she:

- (a) knows and understands the contents of this affidavit;
- (b) has no objection to taking the oath;
- (c) considers the oath to be binding on her conscience.

Thus signed and sworn to before me, at
 on **July 2021**, the Regulations contained in Government Notice
 No. R1258 of 21 July 1972 (as amended), having been fully complied with.



407682-6
 W/M

COMMISSIONER OF OATHS



CURRICULUM VITAE

1. **Proposed role in the project:** Mentor
2. **Family name:** Prins-Solani
3. **First names:** Deirdre
4. **Date of birth:** 17/07/1970
5. **Nationality:** South African
6. **Civil status:** South African
7. **Education:**

Institute Name [from (date) - to (date)]	Level of Degree(s) or Diploma(s) obtained Title of Studies
University of Cape Town	Bachelor of Arts
University of Cape Town	Diploma in Education
University of Cape Town	Postgraduate Diploma in Organisation Development
University of Cape Town	Postgraduate Diploma in Adult Education
University of Cape Town (Current)	Master's in Southern Urbanism (Environmental and Geographical Sciences)

8. **Language skills:** Indicate competence on a scale of 1 to 5 (1 - excellent; 5 - basic)

Language	Reading	Speaking	Writing
English	1	1	1
Afrikaans	1	1	2

9. **Membership of professional bodies:**

Association of Critical Heritage Studies

Member of the International Council of Museums

Member of board for the Intangible Cultural Heritage subcommittee

UNESCO facilitator for intangible cultural heritage

Past president of South African Museums Association (SAMA)



Founding Member of Board for the African Program in Museums and Heritage Studies (APMHS: University of Western Cape and Robben Island Museum)

Past President of International Council of African Museums (AFRICOM)

10. Other skills: (e.g. Computer literacy, etc.)

Computer literacy, immersive interactive dialogue processes

11. Present position:

Student - Mphil in Southern Urbanism, African Centre for Cities, Environmental and Geographical Sciences, University of Cape Town

Independent Consultant - Education, Culture and Heritage

12. Number of Years within the firm:

7 years

13. List of key qualifications: (Relevant to the project)

Education degree – exceptional skills in facilitating learning processes, mediation and creative research methods

Strategic thinking and planning for organisational development/**UCT Postgraduate diploma**

In service training: - internship at Smithsonian, ICCROM/PREMA (International Centre for the Study of the Preservation and Restoration of Cultural Property, Prevention in Museums of Africa) – design of learning resources and materials

Facilitator for the UNESCO 2003 Convention for the safeguarding of intangible cultural heritage – exceptional high level and community based (inclusive processes) consultation skills for policy reviews, redesign and writing

14. Specific experience in the region:

Country	From (date) - to (date)
Rwanda	2015 to present
Ghana	June 2018 to February 2019
Seychelles	February to June 2017
Mauritius	2012-2015
Kenya	2009-2012
Southern African region	1998 - 2018
South Africa	1998 - 2019
Algeria	March to July 2019
Southern and East Africa	June to December 2018

15. Professional experience

Dates From (date) - to (date) (Total n° months)	Location City, Country	Employer: Firm, Reference Contact, Funding source (EC, USAID, DFID...)	Position Title of Position and Seniority Level (Senior/Junior)	Description Title of Project, main goals, main activities of the expert, (if possible) budget of the project
June 2020- present	Global	International Council of Museums	Co-creator/writer	Development of TICOM MOCOC on building and sustaining inclusive museums
February 2021- June 2021	Global	UNESCO ICH section	Co-creator/writer	Development of (UNESCO) online course modules on gender and living heritage
Part Time lecturer and supervisor Mentor On-going	South Africa	University of Cape Town	Lecturer	Lecturer on world heritage and intangible cultural heritage
February 2020- October 2021	South Africa	University of Cape Town	Facilitator	Introducing community based inventorying to three local communities in Cape Town as part of a broader spatial justice research initiative
August 2020	South Africa	University of Cape Town	Facilitator	Facilitated an ELI-SA dialogue on culture and urbanisation
September 2020	South Africa	University of Cape Town	Lecturer	Facilitating a Masters Degree studio course on film theory and urbanism

2017-2019	Rwanda	Institute of National Museums Rwanda Isidore Ndirikumana +250 738 742 026	Senior consultant	Lead local team in the revision and regeneration of the education, marketing and public programs departments within Rwanda
June 2018 – February 2019	Ghana	UNESCO Ghana, Ghana Ministry of Tourism, Arts and Culture Carl Ampeli +233 27 4219051	Senior Consultant	Lead local team in conducting country wide needs assessment of the culture and heritage sector, draft research report and strategic plan with budget. This included policy review and proposals for revision
February to June 2017	Seychelles	Ministry of Youth, Sports and Culture Julienne Barra +2482724637	Senior Consultant	Lead local team in dialogue sessions and workshop on cultural policy gaps and revisions across three islands
2012 – 2015 (over two week block period)	Mauritius	University of Mauritius George Abungu +254 724462883	Lecturer	MPhil in Heritage Management Studies, taught module on intangible cultural heritage

2009 - June 2012	Kenya	Centre for Heritage Development in Africa (CHIDA) Webber Ndoro +39 06585533	Director	Responsible for capacity building, research and development support to heritage agencies, local communities for English speaking Africa. Remit included: world heritage, national and local heritage site management and intangible cultural heritage
1998 - 2018	Southern African region	UNESCO Danir Djakovic +263 77 722 3323	Senior consultant/Lead facilitator	Research, capacity building and cultural policy review
March - July 2019	Africa region	UNESCO HQ, Paris and CIRESPIAF, UNESCO Category Two Centre, Algeria Susanne Schuurgen +33 603 208368	Lead Facilitator Researcher	Plan, co-facilitate training of trainers for new cohort of global capacity building facilitators in UNESCO 2003 Convention for Africa Conduct monitoring and evaluation of global capacity building program in Africa, analyse data and write up report

1998 - 2019	South Africa	Department of Arts and Culture Robben Island Museum Archival Platform: IACT Western Cape Government Gordon Metz +27 43 2703088	Training for Transformation within Museums (SAMMA/DAC) collaboration Revise policies through consultative processes for the Robben Island Museum as part of development of an Integrated Management Plan 'State of the Archives' national consultation process for policy and planning/budgeting process Deeply consultative process for the Redesign and installation of new exhibition at the Drostyd Museum, Swellendam Facilitate community dialogue sessions for the planning of a Cape Town Museum
-------------	--------------	---	--

16. Other relevant information (e.g., Publications)

Kindly see attached publication list

wetland pools will be introduced. The 6-metre elevation of the buildings will be on land which is currently a golf course and a parking area.

- 255.2. The specialists who compiled the biodiversity report undertook multiple site visits. Furthermore, as explained by the developer, the specialists followed a 'best-practice, conservative approach, consistent with precautionary principle' when assessing fauna, given the constraints under which they operated.
- 255.3. Significant consideration was given to Western Leopard Toads (including their safety, breeding habitats and non-breeding habitats). Mitigation measures were also proposed in respect of various fauna.
- 255.4. Wetland habitat for bird species was not ignored. The western swale will feature weirs to create small wetland pools. The green open space will have improved linkages to the Raapenberg Wetland, which is a notable habitat for waterfowl and other avifauna. And the rehabilitated riverine corridor will offer highly improved habitat for, among others, numerous bird species.
- 255.5. The impact on the western Liesbeek channel has not been ignored. Instead, it has been pointed out that the channel will be transformed. This transformation will have positive and negative ecological impacts, which must be considered holistically. While some habitat will be lost, it is currently degraded. The vegetated swale will include wetland components to introduce new, higher quality habitat areas. The biodiversity report has also recommended that steep banks be employed, both to prevent road mortalities and to maintain avifaunal habitats.
- 255.6. The transformation of the western channel is part of a development which will introduce an open-space green corridor running from west to east, the rehabilitated riverine corridor along the subject property's eastern border and the enhanced linkages to the Raapenberg Wetlands. When all of these considerations are taken into account, I am satisfied that the proposed development's overall ecological impact will be positive. I agree with the various specialists in this regard.
- 255.7. Due regard has also been paid to fish such as the Cape Galaxias. The biodiversity report expressly acknowledges that the 'Liesbeek River (both canalised and uncanalised reaches) supports the Cape Galaxias (*Galaxias zebratus*), a Western Cape endemic fish, as well as a more diverse suite of aquatic macroinvertebrates than those occurring in the Black River'. In its assessment of impacts, the report acknowledges that the western channel 'of the Liesbeek

River might also support Cape Galaxias fish, and [the proposed development] would entail some loss of this habitat - however, rehabilitation of the main canal would in turn provide the vegetated margins required by this species, and loss of some habitat is not considered a severe impact'.

255.8. The Acting Director argued that '[w]ith no life left in the Liesbeek River, the raison d'être for the ecological corridor falls away.' This is, however, significantly overstated. The biodiversity report has recommended various interventions to ensure that the construction phase does not cause excess mortalities. Those interventions have been made mandatory by the environmental authorisation. The City will require a Construction Environmental Management Plan, to protect habitats, flora and fauna during construction. The proposed development will therefore not eradicate plant and animal life from the subject property or its surrounds. Both during and after construction, fauna will be able to utilise the movement corridors and make use of the various breeding and non-breeding habitats.

256. The Acting Director was concerned that inadequate attention had been paid to the Biodiversity Agreement,

256.1. In 2014, the City and the Western Cape Nature Conservation Board ('CapeNature') concluded a biodiversity agreement to regulate, among other properties, certain areas within the TRUP. Those properties do not include the subject property, but do include the City properties on which the Liesbeek watercourses lie

256.2. The objectives of the agreement include: preventing ecological degradation; controlling and eradicating alien species; permitting limited recreational activities such as dog-walking, cycling, nature appreciation and jogging. The proposed development is aligned with all of these objectives, and will take positive steps to achieve them.

256.3. The agreement anticipates the conclusion of a management plan to give effect to its objectives in greater detail, although no such plan has yet been adopted.

256.4. The agreement prohibits the construction of buildings, roads or structures unless expressly provided for in the applicable management plan. That prohibition does not apply in respect of the proposed changes to the river courses; while they will be transformed and rehabilitated, they will not be replaced with buildings, roads or structures.

- 256.5. The agreement prohibits the destruction of indigenous species and the introduction of non-indigenous fauna or flora. The proposed development complies with those requirements. Even if some adverse effects will be experienced during construction, they will be limited as far as possible, and will be more than made up for by the removal of alien vegetation and the increase in indigenous species.
- 256.6. The agreement states that the City shall not 'permit, any act that may adversely affect the natural state, flow, supply, quantity or quality of any water resource'. The proposed development will improve, not adversely affect those aspects.
- 256.7. The environmental authorisation included a recommendation that the City and CapeNature facilitate a discussion regarding the amendment of the biodiversity agreement to address the proposed changes to the Jesbeek canal and channel. On appeal, the Provincial Minister imposed a condition requiring the formulation of a 'rehabilitation / restoration plan' in respect of the Jesbeek, in consultation with the City and Cape Nature. To the extent that any provisions of the biodiversity agreement need to be addressed (for example, to accommodate new road infrastructure and impacts on water resources), they can be addressed during or alongside these processes.
257. The Acting Director was concerned that alternative development concepts had not been adequately considered. However, it is evident from the documentation on record that various alternatives have been explored. Several of those alternatives have been rejected because they are not viable development options. There is no point in the City insisting on an investigation into unfeasible development options.
258. The Acting Director was concerned that there was a lack of clarity on the boundaries of the proposed development, which affected the specialist studies. However, it is clear that the developer has proposed altering both the subject property (which it owns) and various surrounding properties (which the City owns); the former will be developed to create the two mixed-use precincts and the west-east open-space corridor, and the latter will be developed to establish supporting green and built infrastructure (viz the vegetated swale, the riverine corridor and the Berkley Road extension). The various studies have taken all those aspects into account when evaluating the environmental impacts and recommending mitigations.

Climate change

259. The Acting Director was concerned that insufficient attention had been paid to climate change impacts, resilience and the precautionary principle, notwithstanding the City's

'significant concerns regarding climate change impacts both in terms of potential impacts on the proposed development as well as the potential impact of the proposed development on climate risks in the area'. He underscored the importance of a climate change impact assessment, particularly in relation to the risks of the heat island effect, resilience against flooding, the projected 15% increase in rainfall intensity and recharging the aquifer, as well as the developer's reliance on 10-year old data.

260. However, the studies before the City were undertaken as recently as late 2020. They have drawn on data on which the experts have seen fit to rely. I do not think it was necessary for the various experts to have commenced fresh data-gathering procedures to prepare the reports that have informed the development proposal.
261. The developer's final basic assessment report addresses both climate-change considerations and climate-change policies at various points. It emphasises the following:
- 261.1. even taking into account rising sea levels and increased rainfall, flooding risks as a result of the proposed development were not substantial and can be mitigated;
 - 261.2. the proposed development will have ecological net benefits given the upgrades that will be made to various environmental resources;
 - 261.3. emissions will be reduced through encouraged public transport;
 - 261.4. the hardened portions of the proposed development amount to less than 1% of the groundwater catchment area, which will not result in significant impacts on aquifer rechargeability;
 - 261.5. the developer aims to ensure significant decreases in residential and commercial water demand; and
 - 261.6. the proposal constitutes job-creating and investment-boosting sustainability development.
262. I note that these conclusions are supported by expert studies, including the hydrology report, the socio-economic study and the biodiversity report, and input from a range of independent specialists. They are based on information that has not been called into serious doubt.
263. Promethium Carbon, a consultancy that has done work in the public and private sectors, was contracted to review the proposed development's climate-change impacts. It reached the following conclusions:

The image shows two handwritten marks in blue ink. On the left is a cursive signature, and on the right are the initials 'S2'.

- 263.1. the hydrology report has taken into account climate-change effects, including 'an increase of modelled rainfall depth for design storms by 15%', rising sea levels and storm surges;
- 263.2. greenhouse-gas emissions during construction will be minimal;
- 263.3. the developer's stated green building principles 'will contribute to significantly reduced energy emissions' flowing from the proposed development;
- 263.4. the extent to which the proposed development will support the use and expansion of public transport will reduce transport-related greenhouse gases;
- 263.5. in respect of rainfall variability, flood risks, increased temperatures and storm surges, the proposed development will not increase climate-change exposure, either for the subject property or its surrounds;
- 263.6. given the scale of the proposed development in the context of the relevant groundwater catchment area, the hardening of the subject property will not have a material impact on aquifer recharge;
- 263.7. the proposed development's sensitivity to climate change will be reduced through a variety of mechanisms: stormwater management will be improved (including through the rehabilitation of the riverine corridor); and natural vegetation will improve drainage, assist in boosting water quality, improve natural cooling efficiency and enhance biodiversity;
- 263.8. the 'urban heat island effect' will not be materially increased by the proposed development due to the subject property's location and the (relatively) small built footprint; and
- 263.9. the proposed development will be well placed to adapt to climate change consequences.
264. In July 2017 the City adopted its current Climate Change Policy. It provides in relevant part as follows.
- 264.1. The City is facing decreased average rainfall, increased mean temperatures, increased winds, increased intensity and frequency of storms and rising mean sea level (which exacerbates the impact of storm surges), in addition to the possible intrusion of salt water into groundwater sources.
- 264.2. Dense cities tend to have lower emissions than sprawling cities.

- 264.3. Climate change poses a variety of direct and indirect physical, social and psychological risks to humans. It also affects flora and fauna through habitat loss, fragmentation and interruptions to the food web.
- 264.4. The City's objective is to 'enable sustainable and inclusive economic and social development, and environmental sustainability'.
- 264.5. The City's long-term goals include: incorporating climate-change considerations into project design and implementation; using the most up-to-date data and technology; implementing 'a compact urban form, with development that is resource efficient, well located and well connected'; effectively managing climate-change risks in order to optimise social and economic development; and ensuring that 'Cape Town's natural ecosystems are protected, managed and made resilient so that they can act as effective buffers to climate change impacts and provide benefits of ecological infrastructure in support of current and future physical infrastructure'.
- 264.6. In order to achieve these goals and objectives, the City has formulated seven principles and a range of directives to be taken into account when making decisions under the By-Law. I address each climate change principle in turn.
265. I am satisfied that the proposed development aligns with the first climate-change principle: factoring in long-term benefits and impacts.
- 265.1. Through specialist studies, the development design has expressly taken into account a range of climate-change considerations, including bolstering the area's ecological resources (particularly its water resources) in order to buffer the effects of climate change. The Promethium report has confirmed that sufficient attention has been paid to such possibilities as storm surges, temperature increases, flood risks and rainfall variation.
- 265.2. The proposed development reflects sensitive urban design by combining environmental resources and stormwater functionality.
- 265.3. In accordance with the City's Comprehensive Integrated Transport Plan, the proposed development is aligned with transit-oriented development objectives and will contribute densities to support the future roll-out of additional public-transport infrastructure.
- 265.4. Significant ecological buffers will be deployed around the site.
- 265.5. The Acting Director was concerned that the developer had paid insufficient regard to retaining waterways and wetlands as green lungs which reduce the

heat island effect of global warming by cooling the atmosphere through evaporation, keeping waterways and floodplains open and unobstructed to provide resilience to flood risk in heavy rainfall events, and recharging ground water and the aquifer through natural percolation'. However, the Liesbeek River will be rehabilitated and significantly upgraded as a functioning, naturalised watercourse. Through transforming the western channel into a vegetated swale, it will retain wetland functionality. Waterways will not only be kept open and unobstructed – the eastern watercourse will in fact be widened and connectivity across and beyond the site will be significantly enhanced.

266. I am satisfied that the proposed development aligns with the second climate-change principle: improving resilience and reducing vulnerability.

266.1. The proposed development will address vulnerability by increasing access to affordable housing close to the CBD and work opportunities, and by providing a range of socio-economic benefits to the City.

266.2. the proposed development will leverage private capital to provide important municipal infrastructure that is part of the City's long-term planning.

266.3. As per the Promethium report, the rehabilitation of the Liesbeek River and the deployment of indigenous vegetation will significantly enhance the area's ecological infrastructure and reduce the site's sensitivity to climate-change consequences.

266.4. A condition has been imposed to ensure that the proposed development is able to withstand floodwaters.

267. I am satisfied that the proposed development aligns with the third climate-change principle: promoting a lower carbon approach.

267.1. The developer has indicated that it will apply 'Four Star Green Building Principles', which is a rating system developed by the Green Building Council to measure the achievement of environmental objectives in the property industry. Further, at a minimum, it has undertaken to apply 'green building and design principles, in order to reduce energy consumption.'

267.2. The Promethium report indicates that various aspects of the proposed development will contribute to reduced emissions, including energy-saving initiatives and the encouragement of public-transport use.

- 267.3. The proposed development will optimise the subject property's prime location by developing business and residential uses within the Urban Inner Core, thus counteracting sprawl and contributing to a compact urban form.
- 267.4. As dealt with elsewhere in these reasons, the proposed development will be supported by public-transport infrastructure and will, in turn, support the expansion of such infrastructure in the future.
- 267.5. The proposed development will feature infrastructure in support of non-motorised transport.
268. I am satisfied that even though some aspects do not, most aspects of the proposed development align with the fourth climate-change principle: supporting well-functioning ecosystems that enable service delivery and reduce risk.
- 268.1. The proposed development will transform the western Liesbeek channel from a degraded and polluted backwater channel with low ecological value into a swale with stormwater and natural habitat functionality.
- 268.2. The proposed development will protect and significantly enhance other environmental resources, including the west-east green open space and the rehabilitated Liesbeek River corridor.
- 268.3. Given the scale of the groundwater catchment area, both the basic assessment report and the Promethium report confirm that the hardening of the subject property will not have material effects on the aquifer's ability to recharge.
- 268.4. It will include substantial green corridors that are indigenously planted, designed to support endangered and other fauna and structured to encourage access by the general public.
- 268.5. The ecological functioning of the site and surrounding erven as a whole will be improved, thus boosting environmental resilience.
269. The fifth climate-change principle entails promoting socio-economic benefits and their equitable distribution. I have addressed the proposed development's socio-economic aspects from paragraph 84 above. Contrary to what is envisaged by the Climate Change Policy's directives, those aspects (other than alignment with transit-oriented development and densification goals) do not arise from investments or opportunities in climate-change adaptation and mitigation initiatives.

270. I am satisfied that the proposed development aligns with the sixth climate-change principle: ensuring climate compatible urban design, infrastructure development and maintenance.
- 270.1. The developer has undertaken to adhere to environmentally conscious building principles, which the Promethium report indicates will contribute to significantly reduced emissions.
- 270.2. The proposed development reflects the requirements of resource efficiency: it will see the private developer utilise private capital to construct transport infrastructure from which the City as a whole will benefit; it will also see substantial development charges applied to municipal infrastructure that will benefit the broader public.
- 270.3. The proposed development is aligned with various City policies, including the Integrated Human Settlements Framework, as set out below.
271. The seventh climate-change principle [promoting behaviour change and awareness] is less concerned with the proposed development than it is with the City's conduct. To the extent relevant, I am satisfied that its requirements have been observed, as the City has transparently considered climate-change factors in the process of evaluating the proposed development.
272. Even though in some instances the proposed development and the City's Climate Change Policy are not perfectly aligned (for example, in respect of creating economic opportunities in the green economy), those instances do not materially infringe or contradict the policy. On the whole, I am satisfied that the proposed development is compliant with the City's Climate Change Policy and that climate-change considerations have been adequately taken into account in the formulation and conditioning of the proposal.
273. Furthermore, I am satisfied that the precautionary principle has been observed: the development proposal has been based on a variety of conservatively modelled expert studies, and even when impacts have been identified as minimal a variety of mitigation measures have been imposed. As set out in the Promethium report, the proposed development will not only be resilient, but also well-placed to adapt to further climate-change consequences.

Issues on appeal

274. None of the appellants or commenting parties has filed independent expert reports or provided studies contradicting the various specialist reports commissioned by the

developer, including the hydrology report and the biodiversity report. I am satisfied that those reports were prepared by independent experts and that the City should be guided by their conclusions in evaluating the development proposal.

275. The developer contends that, given the extent to which the site has previously been developed and degraded, the subject property currently has negligible ecological value. That value is limited to a buffering function from adjacent noises and disturbances, which is a function of the open space on the site rather than any environmental quality.
276. I accept that the subject property's natural resources have little in the way of environmental value, as it is mostly devoted to recreational buildings, parking facilities and mowed golf lawns. However, as is evident from the biodiversity report, the subject property must be understood in the context of its surrounds, which feature several important ecological resources.
277. The developer points out that the eastern arm of the Liesbeek River was diverted through a concrete canal in the 1950s and that, while the western channel used to be fed through an underground pipe, *this pipe has been blocked for many years (and the western "arm" of the river is therefore no longer fed by the Liesbeek River.* Instead, it comprises backup from the Black River and stormwater from Observatory. Neither the eastern canal nor the western channel represents the original historical course of the river.
278. The developer also states that the current watercourses have limited amenity: they are difficult for the public to access, unpleasant to walk along and have poor water quality. This is attributable to, among other things, the canalisation and the proximity of busy roads such as Liesbeek Parkway.
279. Having undertaken a site inspection, it is clear to me that the subject property and the surrounding watercourses have limited amenity for members of the public. The canal is degraded and visually unappealing while the western channel is choked with alien vegetation. Both are notably polluted. The private golf course dominates one's experience of both waterways.
280. The OCA is concerned that the proposed development will entail environmental harm as it will massively alter watercourses, wetlands and the floodplain in close proximity to the confluence of the Black and Liesbeek Rivers. It contends that this will affect the site's ability to attenuate floods, provide climate-change resilience and house indigenous fauna.
- 280.1. These concerns are contradicted by the evidence. The hydrology report indicates that the proposed development will not, in fact, materially increase

Handwritten signature and date: 1/2

flood risks and has proposed a range of mitigating features. Similarly, the biodiversity report shows that the proposed development will not, in fact, significantly alter the Raapenberg Wetlands. The specialists have identified the importance of not significantly increasing or decreasing flows into the wetland, which has been respected by the proposed changes to the river corridor.

- 280.2. The subject property does not, at present, feature much indigenous flora. By contrast, the various planting initiatives that the developer will undertake will see alien vegetation replaced with indigenous flora across the subject property.
- 280.3. The biodiversity report has confirmed that the proposed development will not negatively affect the adjacent renosterfeld resources.
- 280.4. The proposed development will not 'massively alter' the Liesbeek's course. I agree with the assessment set out in the biodiversity report: this alteration of the Liesbeek - including the rehabilitation of a sterile and concrete canal into a naturalised watercourse with indigenous vegetation, various habitats and faunal connectivity - will be positive.
- 280.5. The western swale will still be able to accommodate stormwater runoff and, through the deployment of weirs, will also feature seasonal pools that can provide faunal wetland habitats.
- 280.6. The various flood-related and climate-change concerns have been addressed elsewhere in these reasons.
281. On appeal the OCA has reiterated concerns raised by the City's Environmental Management Department. I am satisfied that these concerns have been adequately addressed. In addition to what is set out above, I add the following.
- 281.1. The Liesbeek itself will not be filled in. The western Liesbeek channel will be transformed into a vegetated swale. That channel does not carry Liesbeek waters. Furthermore, it will continue to support stormwater functioning, and will feature seasonal pools to maintain a limited wetland function. In addition, given the subject property's proximity to the ocean, the on-site possibilities of aquifer recharge are limited.
- 281.2. As set out in the biodiversity report, the rehabilitation of the eastern Liesbeek canal will substantially improve rather than compromise the riverine corridor's functionality.
- 281.3. The biodiversity report has considered in great detail the proposed development's impact on the area's fauna including the Western Leopard

Toad. Although some habitat will be destroyed, it will be replaced by new habitat of much greater quality and safety. Faunal corridors that are protected from access to dangerous roads and the hazards of golfing activities will be introduced across the subject property and the surrounding erven. Care will be taken to prevent adverse impacts to sensitive surrounding habitats, most particularly the Raapenberg Wetlands. While there will be dangers during the construction period and some extant habitats will be adversely affected, I am satisfied that the net gain for the area's fauna will be positive.

281.4. I agree that it is important to retain waterways and wetlands. The Raapenberg Wetland will be preserved and its connectivity with the subject property will be improved. The Liesbeek canal will be rehabilitated into a naturalised river course. Although transformed, the western Liesbeek channel will retain wetland and stormwater functionality. The subject property's green resources (and those of immediately surrounding erven) will be transformed from golf lawns and alien species to indigenous vegetation that supports indigenous fauna and overall ecological functioning.

281.5. Furthermore, the Raapenberg Wetlands currently have limited access to the public. The proposed development will improve access, ensuring that the wetlands' amenity can be enjoyed and appreciated by people using the pedestrian and cycling paths.

281.6. For the reasons set out above, I am satisfied that sufficient measures will be in place to ensure flood resilience.

282. The appellants contend that the proposed development will ruin a vital green lung. The City's stormwater officials described the subject property as a 'valuable link in the City's Green Infrastructure' and noted that '*Just as the City's forefathers are vilified, in hindsight, for developing Paarden Eiland, so may we be for developing this site.*' However, I am satisfied that the proposed development will significantly improve the subject property's green functionality and connectivity with surrounding environmental resources.

283. RAMPAC states that it is unhappy with the MPT's decision, but is satisfied by the proposed improvement to the riverine environment. The reality is those improvements will not be effected without the rest of the development proposal being approved.

284. RAMPAC is of the view that the Liesbeek restoration project should be the subject of further investigation to restore the river's major route. It questions whether the approved

subdivision plan makes sufficient provision for the required improvements to the riverine habitat without entailing undesirable flood-prevention measures.

284.1. However, the environmental aspects of the proposed development have already been the subject of various statutory processes and multiple independent specialist studies (as have various other aspects). I am satisfied that sufficient information has been made available to allow the City to determine the desirability of the developer's proposals in respect of the Liesbeek.

284.2. I am, furthermore, satisfied that an appropriate balance has been struck between developmental, ecological and flood-prevention objectives. Although the western Liesbeek channel will be transformed into a vegetated swale, it will serve an important ecological function as it will house indigenous vegetation and seasonal ponds that will provide habitat for fauna (including Western Leopard Toads).

284.3. Any loss of riverine ecosystem in the western channel will more than be made up for by the introduction of a rehabilitated riverine corridor along the subject property's eastern boundary.

285. The GTKC and the TRUP Association allege that the Liesbeek River and the subject property are within a declared park and a statutory protected area.

285.1. That is incorrect. Neither the subject property nor the relevant portions of the Liesbeek River have been designated as a 'protected area' under the NEMA suite of legislation.

285.2. The subject property and the affected portions of the Liesbeek River fall within the TRUP. However, that designation does not afford any statutory protection. The consequences of their location within the TRUP have been dealt with elsewhere in these reasons.

286. The GTKC raised various environmental concerns. It contends that: the Liesbeek River should be preserved as an important fish-breeding river and protected as part of the City's Biodiversity Network; the proposed development is required to be consistent with the TRUP Contextual Framework; an agreement is in place with CapeNature for the appropriate management of the riverways in perpetuity; contrary to the developer's claims, the Liesbeek is not badly degraded and has indigenous fish; and the Liesbeek still receives stormwater from the Observatory catchment. The TRUP Association is concerned that the MPT's decision did not display the necessary environmental sensitivity and will destroy the Ancestral Rivers. It has also referenced the CapeNature agreement.

- 286.1. I disagree with the GTKC regarding the current state of the Liesbeek River surrounding the site. Having undertaken a site inspection, it is clear to me that the western channel is polluted and choked with alien vegetation; the eastern canal is sterile; and both arms of the Liesbeek are in an uninviting and a poor state. My assessment is informed and bolstered by the biodiversity report, which stands uncontradicted.
- 286.2. I have addressed the City's Biodiversity Network above.
- 286.3. I agree that the western channel of the Liesbeek receives stormwater: there is no dispute that it has long ceased to carry the Liesbeek's waters. When it is transformed into a vegetated swale the western channel will continue to perform a stormwater function.
- 286.4. The rehabilitated Liesbeek River and associated riverine corridor will be able to support fish and other fauna, thus contributing to the area's biodiversity far more significantly than the current, sterile concrete canal. The proposed rehabilitation will be of great benefit to the subject property and the surrounding area, both in terms of ecology in respect of public amenity and recreation.
- 286.5. The TRUP Contextual Framework is addressed below. That document is not the sole policy informant for the subject property or the TRUP more broadly. Due regard must be had to other instruments, including the more up-to-date MSDP with which, as I have explained above, the proposed development is well aligned.
- 286.6. The proposed development will see significant improvements to the ecological functionality of the Liesbeek River and will serve to bolster the river corridor's resilience.
- 286.7. I have addressed the CapeNature biodiversity agreement above.
287. The TRUP Association alleges that the developer's Basic Assessment Report was 'flawed and contradictory' and the subject of many objections. However numerous the objections may have been, the NEMA process and the various studies undertaken at the developer's instance have produced a wealth of information to enable the City to undertake a properly informed evaluation of the proposed development's environmental impact.
288. The TRUP Association describes the environmental authorisation as flawed, and notes that it has been appealed

- 288.1. That appeal has now been determined, and the environmental authorisation has been confirmed.
- 288.2. The City's environmental officials – who lodged an appeal against the environmental authorisation – have confirmed that they are satisfied with the manner in which the various environmental concerns have been addressed by the appeal authority.
289. The TRUP Association is adamant that '*landscaping is not a remedy to destruction.*' However, this sets up a false dichotomy which does not apply to the proposed development. It is true that the canal will be 'destroyed', and that is a good thing, in its place there will be a naturalised river-course; that is also a good thing. The sterile concrete will be removed and replaced with gentler slopes and indigenous flora. There will be improved faunal connectivity both to the Raapenberg Wetland and to the site's western boundary, which will feature an upgraded habitat. These '*landscaping*' features are welcome components of an ambitious and environmentally positive rehabilitation project.
290. The manner in which the western Liesbeek channel presents will change: it will go from presenting as a river-course to a vegetated swale with a series of weirs and pools. At present, however, the western channel is cut off from the waters of the Liesbeek and frequently choked with hyacinth and other alien vegetation. The new feature will have high ecological significance as a habitat for Western Leopard Toads, over and above its stormwater function. The transformation will also allow the site to have a more appropriate interface with the developed areas to the west, and will prevent it from being viewed as a cut-off island.
291. If the TRUP Association is concerned about the loss of the golf greens, I am satisfied that the open lawns have little biodiversity or other environmental value, or whatever value they do have will be more than made up for in the proposed development.

Conclusion regarding biodiversity impact

292. I am satisfied that concerns of the Acting Director and the biophysical environmental appeal grounds have been adequately addressed, and that, taken as a whole, the proposed development will have a substantial and positive effect on the biophysical environment. I consider it to represent an admirable example of sustainable development.
293. The proposed development will see the subject property transformed from a golf course with a large parking lot into a mixed-use facility with a significant area dedicated to high-

quality green open space that has been intentionally designed to maximise ecological functionality, with particular regard for watercourse functioning, indigenous flora and supporting bird life, the endangered Western Leopard Toad and various other forms of fauna.

294. Having had regard to all relevant considerations, including all relevant NEMA principles, I am satisfied that, considered holistically, the ecological losses flowing from the proposed development will be more than made up for and mitigated by the ecological upgrades and benefits.

Traffic, parking, access and transport (s 99(3)(i))

295. At present, the subject property is inwardly orientated and its land uses are private and isolated. The proposed development will introduce large swathes of open space that are accessible to the public, including pedestrian, cycling and viewing areas that promote positive interaction with the Liesbeek River corridor. The proposal will result in a notably more welcoming and inviting urban precinct.
296. Existing access to the subject property is via Observatory Road. That route will not be used for the development as it would not provide an optimal access point. Instead, the developer will construct a new access point, further north along Liesbeek Parkway and a new access point along the Berkley Road extension. The access points will be signalled. This formulation will allow the access points to operate most efficiently and will minimise impacts on adjacent properties.
297. The TIA recommended that measures to restrict 'rat-running' through the development are required. If necessary, the developer may implement traffic-calming measures. According to the TIA, rat-running will be mitigated once the full Berkley Road extension is complete, allowing direct access onto Liesbeek Parkway without traversing the subject property.
298. The developer procured the services of Aurecon to prepare a TIA. The TIA concluded that:
- 298.1. While existing intersections in the surrounding area have acceptable levels of services, the road network is reasonably congested during peak hours. Any new development will require upgraded road infrastructure and improved public-transport services.
- 298.2. Although the proposed development will require infrastructure upgrades, changes such as the four-lane extension of Berkley Road and the dualing of

Liesbeek Parkway will serve existing metropolitan traffic and therefore should not be for the developer's full account.

- 298.3. Precincts 1 and 2 can be accommodated with the partial extension of Berkley Road as a two-lane road and the upgrading of several interchanges and access points. The TIA stipulates which interchanges and access points should be constructed and erected, and specifies that Berkley Road should be extended to 'the Western Left-In Left-Out intersection.' This is a reference to the intersection between the extension and Liesbeek Parkway.
- 298.4. Additional upgrades (such as the dualling of Liesbeek Parkway and the further expansion of Berkley Road) should be 'implemented progressively as other developments within the TRUP influence area are initiated'.
- 298.5. Existing external public-transport services in the area include a bus service [Golden Arrow, not MyCiti], minibus taxis and Metrorail. The potential exists for further public-transport infrastructure to be rolled out in support of the proposed development.
- 298.6. The developer should provide new non-motorised transport facilities and infrastructure.
- 298.7. The proposed development's minimum off-street parking requirement is 5,849 bays. The developer has proposed reduced parking ratios (an undersupply of 1,048 bays) 'to be in line with the TRUP initiatives'. Furthermore, various initiatives have been proposed to reduce off-street parking needs e.g. public-transport enhancement, shared parking areas etc.
299. The City's transport officials offered no objection to the proposed development, subject to the imposition of various conditions e.g. implementing the road upgrades recommended in the TIA. Those officials later reiterated their lack of objection, given the extent to which the development proposal had provided for access, parking, non-motorised transport and public transport.
300. A road reserve for the Berkley Road extension lies to the north of the subject property, on City-owned land. As part of the proposed development, the developer has undertaken to construct a portion of the Berkley Road extension. This portion is required to be a two-lane road from Berkley Road's current terminus to the intersection with Liesbeek Parkway (including a bridge across the Black River). This will allow easier movement between eastern (Maitland, Pinelands) and western (Salt River, Observatory) portions of the TRUP and its surrounds. It will facilitate connectivity between Voortrekker Road and Liesbeek

Parkway, which will significantly improve movement in the area beyond the requirements of the subject property. The Berkley Road extension has long been identified by the City as a desirable development and an important connector for different parts of the metropolitan area. It will be expanded in due course by the City into a four-lane road, subject to prevailing resource constraints.

301. Redefine is concerned that the Berkley Road extension (with capacity for over 2,000 City-bound vehicles in the morning peak hour) will deliver too much traffic into Malta Road, Albert Road and Salt River, particularly as Liesbeek Parkway is already at capacity during the morning rush hour.

301.1. However, the Berkley Road extension has long been planned by the City to improve connectivity in the area. It will also alleviate some of the pressure on portions of Liesbeek Parkway.

301.2. The City will assess the need for additional road improvements in the area as that need arises. As noted in the TIA, the 'dualling of Liesbeek parkway between Link Road and Malta Road is not required by the development but it will be required once the Malta / Berkley / Liesbeek intersection is upgraded to facilitate turning lanes between the two intersections'.

301.3. The TIA – which was prepared by competent and independent professionals – has considered the road network surrounding the subject property and recommended the infrastructure upgrades that are necessary to accommodate the changes in traffic patterns (including changes as a result of the Berkley Road extension).

301.4. As per the report from the City's transport officials, the 'TIA addressed the various road infrastructure and intersection requirements for the functional operation of the site and expected traffic flow.'

302. Redefine argues that there is 'inconsistency' in the officials' reports as to how much of the Berkley Road extension the developer will cover.

302.1. The TIA says that Precincts 1 and 2 require the partial completion of Berkley Road as a two-lane road; that the west-bound carriageway should be extended along the subject property's northern boundary to the western left-in, left-out intersection between Berkley Road and Liesbeek Parkway; and that in the long term Berkley Road should be expanded as a four-lane road.

302.2. The TIA is clear, however, that the four-lane expansion should not be for the developer's account, as it is needed to accommodate general metropolitan

traffic rather than traffic generated by the proposed development. The road will be expanded from two lanes to four, subject to the necessary budget processes and resources being made available.

302.3. The 'portion' of the Berkley Road extension that will be for the developer's account will be the two-lane road from the current terminus in Ndabeni to the intersection with Liesbeek Parkway, including a bridge over the Black River and various intersections along the extension.

302.4. I have imposed a condition which makes it clear that the developer, at its own cost, must implement the road infrastructure improvements recommended in the TIA including two lanes of the Berkley Road extension from the current terminus of Berkley Road to Liesbeek Road.

302.5. Furthermore, detailed civil engineering plans will need to be prepared in respect of the infrastructure upgrades, which will provide clarity on the relevant detail. In addition, a services agreement will be concluded between the City and the developer to regulate the construction of the required road infrastructure.

302.6. I am satisfied that there is sufficient clarity regarding the developer's obligations in respect of the Berkley Road extension.

303. Redefine argues that the proposals in respect of public transport are vague and unrealistic. The OCA contends that the subject property is spatially isolated and not well situated for public transport, and that the proposed development will not have the necessary densities to support transit-oriented development.

303.1. It has been acknowledged that the subject property is not currently as well serviced by public transport (particularly the MyCiti service) as might be desirable. Public transport will be planned and implemented as demand arises. Because of its densities and land uses, the proposed development will contribute to that demand. There are no concrete timelines in this regard because the critical mass of demand has not yet been reached. That may come with time, in which case the City will roll out the necessary infrastructure, subject to its prevailing resource constraints.

303.2. In the meantime, however, rail, minibus and bus services will be available. Furthermore, once developed, the subject property will have direct links onto two excellent roads: Liesbeek Parkway and the Berkley Road extension.

304. Redefine is concerned that the MPT's decision has pre-empted the need for a parking departure: the MPT required at least 4,801 parking bays, when in fact the anticipated land uses require more.
- 304.1. On appeal the developer has indicated that, to date, it has not sought a parking departure.
- 304.2. I am satisfied that it is appropriate for the developer to be held to the requirements of the DMS and that the conditions imposed by the MPT regarding the under-provision of parking bays should be deleted.
305. I am satisfied that the proposed development's traffic, parking, access and transport requirements have been adequately addressed, as has its transport-related impact on the surrounding area. Indeed, the developer will make highly desirable contributions to the district's transport infrastructure and connectivity.

Mitigating conditions (s 99(3)(i))

306. As is evident from what has been set out above, and from Annexure A hereto, many conditions have been imposed to prevent or mitigate undesirable or adverse impacts. I consider those conditions adequate: they weigh in favour of approval of the application.
307. Redefine argues that the approval conditions are inconsistent. The MPT's conditions indicate that Precinct 1 will have 60,000 m² of floor space and Precinct 2 will have 90,000 m². On the other hand, the Provincial Transport Department has stipulated that the bulk for Precinct 2 may not exceed 85,000 m².
- 307.1. Both the City and the provincial authorities are satisfied with the overall floorspace of 150,000 m².
- 307.2. However, the Provincial Transport Department formulated its conditions in October 2018, before the developer slightly reconfigured its proposal to expand Precinct 2's floorspace to 90,000 m².
- 307.3. The provincial conditions will not be imposed by the City. Sufficient conditions have been imposed pursuant to the City's municipal-planning competence to regulate transport aspects of the proposed development.
308. Redefine alleges that paragraph 2.1 of Annexure A as determined by the MPT lacks sufficient detail: it allowed the developer to erect a retaining structure above two metres high, but did not specify 'an actual parameter'. Parameters have been included in the revised conditions of approval.

309. The TRUP Association complains that the conditions imposed by the MPT 'have not yet been met'. That is true. They are not required to have been met yet. They will be complied with in due course, as the developer progresses with the implementation of the development proposal.
310. The TRUP Association alleges that the conditions 'in all likelihood will not be met'. That is entirely speculative. In any event, if the conditions are not met, the development cannot proceed. If the developer attempts to implement the development without complying, the City will be entitled to use the By-Law's enforcement mechanisms to ensure that the conditions are followed.

Conclusion regarding desirability

311. In the light of the foregoing, I am satisfied that the proposed development is desirable as required by section 99(1)(c) of the By-Law.

Other spatial development frameworks (s 99(2)(a))

The Table Bay District Plan

312. The Table Bay District Plan is the district spatial development framework that applies to the subject property.
313. In terms of section 9(5) of the By-Law, if there is a conflict between the MSDP and the district spatial development framework, the MSDP 'prevails over other development frameworks to the extent of the conflict.' While the City must endeavour to read the MSDP and the Table Bay District Plan consistently, in the event of an inconsistency the former must apply.
314. As set out above, the proposed development is aligned with the MSDP, particularly the spatial objectives for the Urban Inner Core and the Metro South East Integration Zone. While the MSDP usually operates at a general level, it has expressly recognised the TRUP as appropriate for mixed use development. That cannot be overruled by the Table Bay District Plan.
315. The developer has applied for a deviation from the guidelines set out in the Table Bay District Plan, specifically in order to permit urban development on land designated as 'open space', 'core 2' and 'buffer 1'. In terms of section 16(2)(b) of the By-Law, a deviation from a district spatial development framework is only permissible 'if the circumstances justify the deviation'.

316. The District Plan has various spatial planning categories, including 'open space', 'core 2' and 'buffer 1'. It sets out different 'district development guidelines' for each of those categories.
317. The river corridors of the Black and Liesbeek Rivers fall within 'Core 2'; although they are not on the subject property, they will be significantly affected as part of the developer's ecological contribution. I am satisfied that the proposed development complies with the prescribed development guidelines or, to the extent that there is a departure from those guidelines, that it will achieve desirable spatial objectives. It will entail conservation management activities such as the clearing of alien vegetation. It will encourage low-impact activities (such as walking and cycling on dedicated paths), subject to management plans. New services infrastructure will largely be located outside of the corridors (although road infrastructure will traverse the rivers). It will significantly enhance the amenity of the Liesbeek River and introduce positive interfaces with the rehabilitated corridor and the vegetated swale. Due regard has been had to flood risks, in respect of which various expert-recommended mitigation measures will be employed. Extensive consideration has been given to conservation and biodiversity issues: as set out above, I am satisfied that the proposed development will yield overall positive biodiversity consequences.
318. The 'small portion of land around the confluence of the Black and Liesbeek Rivers' is how the District Plan describes the Buffer 1 zone in the TRUP area. The land fitting that description which requires particular consideration and biodiversity protection is the Raapenberg Wetlands. As set out above, the Raapenberg Wetlands will not be adversely affected by the proposed development. Care has been taken to ensure that their water flows and salinity levels will not be disrupted. They will benefit from improved connectivity with other green resources, including the naturalised riverine corridor, the east-west open-space corridor and the vegetated swale with wetland habitat features. And they will be better appreciated from the pedestrian paths that will run along the subject property's western boundary.
319. However, the land designated in the District Plan Map for Sub-District 3 as 'Buffer 1' is the land to the north of the subject property, through which a 'proposed development route' will pass. That 'development route' is the Berkley Road extension, of which the District Plan expressly approves as a means to 'promote integration in the area and to strengthen connectivity and general mobility'. The City's officials have confirmed that the Buffer 1 land has no conservation-worthy resources.

320. I am therefore satisfied that the proposed development complies with the Buffer 1 development guidelines, where applicable.
321. The District Plan designates land within the TRUP as 'other structuring open space'. The proposed development complies with some of the associated development guidelines. It will significantly enhance a portion of the site's open space, and provide beneficial linkages to surrounding (also upgraded) open spaces, including the rehabilitated Liesbeek riverine corridor, the western swale and the Raapenberg Wetlands.
322. However, it departs from other guidelines. In particular, much of the subject property will be redeveloped into commercial and residential uses. Given the scale and intensity involved, this will not constitute the 'low impact sustainable use of open spaces' contemplated by the District Plan.
323. The OCA contends that the subject property's location within the Urban Inner Core and Metro South East Integration Zone do not justify a deviation from the Table Bay District Plan, particularly because sites with ecological value in the Urban Inner Core are scarce.
- 323.1. The Table Bay District Plan however acknowledges that '*the Salt River system (including its tributaries the Black, Liesbeek and Etsieskraal Rivers) flows through densely urbanised, industrial and agricultural areas and has mostly been canalised. As a result, these rivers have lost much of their natural riparian habitat and their environmental functioning has been seriously compromised.*'
- 323.2. As already explained, I am satisfied that the proposed development will, in fact, enhance the subject property's ecological functioning, and that it represents an appropriate balance between urban development and maintaining environmental integrity.
324. The OCA further argues that the District Plan emphasises establishing a multipurpose metropolitan urban park with high quality pedestrian and public open space
- 324.1. The Table Bay District Plan acknowledges that the '*existing state of the natural environment means that considerable investment is necessary to enable the establishment of a quality park.*' That investment will be made available as a result of the proposed development. However, it will require some of the existing open space – the asphalt parking lot and the golf greens with alien vegetation – to be redeveloped into mixed-use precincts.
- 324.2. As set out above, I am satisfied that the proposed development will greatly improve the open space that is made available to the public, which will feature not only sensitive interaction with the riverine corridor, but also pedestrian and

non-motorised transport networks while making a significant investment into the TRUP. This open space will improve access to and appreciation of surrounding resources, including the Raapenberg Wetlands.

325. The subject property is located within 'Subdistrict 3: TRUP/Salt River/Observatory/Paarden Eiland'. As contended by the OCA, the relevant spatial planning objective is to 'facilitate the establishment of a multipurpose urban park (Two Rivers Urban Park)'.

325.1. Various guidelines in this regard include conserving and enhancing ecologically sensitive areas and historically significant sites; upgrading and rehabilitating degraded open space and ecological systems; creating a high-quality, multifunctional recreational area that forms part of an ecological system stretching from Table Bay to False Bay; allowing for varied activities including conservation, active and passive recreation as well as more public uses along the edges of the site where appropriate; integrating the park into the fabric of the city by improving edge conditions and facilitating a positive interface with existing adjacent communities and institutions; supporting limited residential and institutional (with some supporting commercial use) development within the edges of the park to provide passive surveillance; formalising a system of pedestrian links across the site; east-west linkages from Alexandra Road as entry points into the park as well as north-south linkages between the Alexandra Institute, Maitland Garden Village and Oude Molen precinct.

325.2. I am satisfied that the proposed development will give effect to the above guidelines by improving the open space on the subject property; vastly rehabilitating the ecologically sensitive areas, including the river channels; commemorating the heritage of the site in various ways, including various methods of memorialisation, namely an eco-trail, symbolism and a media centre, as well as by retaining a vast open space on the site and appropriate interfacing with the river which holds heritage value; configuring the site in order to ensure a positive interface with the neighbouring areas while still achieving passive surveillance of the subject property.

325.3. Of course, the proposed development will not result in a multi-purpose urban park across the entirety of the site. But that notion has proved unfeasible in the years since the District Plan was adopted and is currently outdated.

326. The Table Bay District Plan encourages the retention and improvement of public access and recreational opportunities. It goes on to caution against the loss of significant public open space through private development. I am however satisfied that the area

allocated to OS3 is significant. The proposed development will make provision for a large area of open space with various amenities, including an eco-trail to the benefit of the general public. I have imposed the necessary condition to ensure access to the proposed development, including the open space area, by the general public by way of a right of way servitude. A further servitude must be registered which protects the floodplain and/or ecological buffer in Portion 3 and in the western portions of Portions 1 and 2 from alteration or obstruction. I am accordingly satisfied that the public access to the subject property will not only be retained but improved as the site, specifically the open space area, will no longer only be accessible to golfers and restaurant goers but to the general public at large.

327. The spatial planning categories discussed above (including 'other structuring open space'); and the associated development guidelines were adopted under the predecessor to the MSDF. The same applies to the 'supporting development guidelines' prescribed for Sub-District 3.
328. The MSDF has since been updated to reflect the City's current planning vision and developmental realities. As noted in the MPT Report, the District Plan's guidelines for the TRUP do 'not accord with the MSDF' and the District Plan – along with all other district spatial development frameworks – is currently being updated. As addressed in detail above, the proposed development is, in many respects, exactly the sort of environmentally conscious, mixed-use development on strategically located land that is desirable under the MSDF.
329. Given the various circumstances discussed in the application of section 99(1) and (3) of the By-Law as set out above, the extent to which the proposed development complies with various District Plan guidelines, and the limited (although not insignificant) extent of the intended deviation, I am satisfied that the deviation from the development guidelines set out by the District Plan in order to permit urban development on the subject property is justified.

The Two Rivers Local Spatial Development Framework

330. The Two Rivers Local Spatial Development Framework has not yet been finalised or adopted. There is, accordingly, no need for the proposed development to comply therewith.

The Western Cape Provincial Spatial Development Framework

331. The Provincial Spatial Development Framework (PSDF) has a number of policy objectives. The proposed development promotes these objectives including opening-up

opportunities in the urban space-economy, regional economic infrastructure, improving accessibility, the promotion of a mixed-use development including the provision of facilities and social services, the promotion of densification, and inclusivity. I disagree with the EIA that the proposed development is in conflict with the protection of cultural assets. I am satisfied that the commemoration of the First Nations groupings will enhance the heritage of the area together with the rehabilitation of the river channels and the improvement of the open space. I am also satisfied that the transformation of the river channels will not pose a threat to the ecological integrity of the area but will instead enhance it.

332. I am accordingly satisfied that the proposed development is consistent with the policy statements set out in the PSDF.

The DMS (s 99(2)(b))

333. The TRUP Association complains that the developer 'has no development rights'. As pointed out above, the DMS does not confer development rights. Instead, it imposes rules that determine how even with particular zoning may be used and developed. Furthermore, the DMS does not require prevailing land uses or zoning to remain static. That is why it makes provision for the rezoning and subdivision of land. The fact that the subject property's existing development rules do not accommodate the proposed development does not mean that those rules cannot or should not be changed (through a rezoning). Whether such a change is permissible turns on whether the developer is able to put forward a sufficient justification in accordance with the By-law. As set out in these reasons, I am satisfied that the developer has done so.

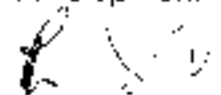
334. The developer seeks a deviation from item 126 of the DMS to construct retaining structures to a maximum height of 5.7m for Precinct 1 and 5.9m for Precinct 2 above existing ground level in lieu of 2.0m above existing ground level. I am satisfied that the deviation from the requirement of the DMS is warranted to ensure that habitable floor space on the subject property is raised above the 1:100 year floodline in accordance with the Floodplain and River Corridor Management Policy. I have imposed a suitable condition of approval limiting the height of the retaining structures to that set out above, and other conditions and mitigation measures have been imposed to protect the environment and other properties which might be affected.

The City's policy framework (s 99(2)(c))

335. The City has adopted various policies to guide various categories of land-use decisions. These policies are often the product of much research, expertise and consultation. They provide valuable guidance.
336. However, policies are not laws. They provide general guidelines, not rules that must be followed and may not be departed from. While it is generally the case that development proposals must adhere to policy norms, it is entirely permissible for those norms to be departed from – provided that the departure is reasonable and justified by context-specific considerations. Ultimately, the City's duty is to evaluate a development proposal on its own terms and assess its compliance with the requirements set out in section 99 of the By-Law. To that end, the City cannot fetter its discretion by blindly or rigidly applying policies without due regard for the exigencies of a particular situation.

The TRUP Contextual Framework and Phase 1 Environmental Management Plan

337. The Two Rivers Urban Park Contextual Framework and Phase 1 Environmental Management Plan (Final Report) (TRUP Report) is not a spatial development framework under the By-Law. However, it was adopted by the City's Municipal Council and must therefore be taken into account where relevant.
338. The TRUP Report defines the TRUP area as extending from the subject property in the north-west to the Valkenberg complex in the south to the Vincent Pallotti Hospital in the south-east to Ndabeni in the north-east. It recognises that the TRUP is a 'special and unique place' comprising, among other things, sensitive ecological systems and habitats, extensive open spaces and cultural landscapes. It describes the TRUP as 'an ideal space for the creation of a park'. To this end, it encourages a proactive and creative approach to protecting and rehabilitating ecological systems and encouraging a mutually beneficial relationship between people and the natural environment.
339. The TRUP Report's overall objective is to ensure the conservation, rehabilitation and management of ecologically sensitive areas, open spaces and cultural landscapes. It aims to do this by creating an 'urban park' to enhance quality of life and improve connectivity within the metropolitan open-space system. The TRUP Report does not envisage that the entire TRUP area will be converted into a conventional park space. Instead, it recognises that its objectives must be achieved within various structural constraints, including existing institutional structures and surrounding developments.
340. The proposed development aligns with many of the opportunities identified in the TRUP Report: it will make use of the site's proximity to the City; it will introduce a development



that combines mixed uses (business and residential) with strong environmental and heritage components; it will make use of the subject property's high level of accessibility; it will not disturb the Raapenberg Bird Sanctuary; it will restore the Liesbeek River and improve its ecological functionality; it will celebrate and support the site's First Nations heritage; it will introduce appropriate development on private, underutilised land at the edge of the TRUP; and it will introduce biodiversity.

341. As detailed above, in accordance with the TRUP Report, the proposed development will conserve and enhance natural habitats and will ensure flood attenuation and appropriate stormwater management.
342. The proposed development also pays due regard to many of the identified constraints: it will see the removal of alien floral species and their replacement with indigenous vegetation; it will naturalise and revitalise the canalised rivercourse; it will improve public access to the wetlands and watercourses; it will optimise the use of land that is currently inaccessible and degraded; it will introduce a distinct sense of urban identity and placemaking; it will introduce surveillance and improve safety; although it will introduce development, that development has been planned with a great degree of environmental sensitivity and supported by various empirical works; it will improve connectivity in the surrounding area by bolstering the public road network; it will improve infrastructure for pedestrians and cyclists; and it will leverage private capital to provide a range of public goods.
343. Although it will entail significant impacts, the proposed development is responsive to the 'Significant Natural Elements' identified in the TRUP Report: it will improve connectivity to the Raapenberg Wetlands; it will significantly upgrade the eastern Liesbeek river corridor; although it will introduce the western swale, that swale will retain both ecological and stormwater functionality; sufficient mitigation measures have been put in place to address the applicable floodlines; and the landscape's topography has been used as a structuring element, with buildings organised around the green open space.
344. The TRUP Report requires a 'balance between the natural and built environment'. In my view, not only will the natural environment be significantly enhanced, the appropriate balance will also be struck.
345. As contemplated in the TRUP Report, the proposed development will introduce a 'relatively dense mixed-use urban development that creates a pedestrian world of many opportunities not unlike that of Observatory'. The report also recognises that appropriate development is needed to fund the preservation and enhancement of ecological

Handwritten signature and initials at the bottom right of the page.

resources; the proposed development represents precisely this combination of sustainable development and environmental rehabilitation.

346. As required by the TRUP Report's specific guidelines in respect of 'The River Club and Observatory', the proposed development will be sensitive to the 'cultural-historical value of Observatory Hill'.
347. The proposed development has been informed by a range of specialist studies, including a hydrology study like what is contemplated in the TRUP Report, and made subject to various flood-mitigation measures, enforced by binding conditions.
348. As contemplated in the TRUP Report, the 'western edge of the River Club (will) be maintained as a green edge, to contribute to the overall visual appearance of the Park, and maintain a green visual corridor along Liesbeek Parkway.' Furthermore, as required, river edges will be made accessible to the public through the appropriate location of public pathways and the Liesbeek River will be rehabilitated and naturalised.
349. The old Liesbeek River course is also required to be rehabilitated and the feasibility of diverting some of the flow from the Liesbeek River into the old river course should be investigated. Further, the reassigning and landscaping of the banks of the canalised section of the Liesbeek River to a more natural state to enhance the amenity value and ecological functioning of the area is required.
350. As set out above, the western channel is cut off from the waters of the Liesbeek and is polluted. I am satisfied that transforming the western channel will have an improved ecological function by providing a habitat for Western Leopard Toads, over and above its stormwater function. Although the proposed development is a deviation from the Management Plan, any ecological losses flowing from the transformation will be catered for by the rehabilitation of the eastern channel which will include the decanalisation of the channel which will significantly improve the natural ecological functioning thereof.
351. The Management Plan further requires that the buffer areas should be planted with appropriate vegetation, including appropriate vegetation along the banks of the Liesbeek. The development achieves this and will be catered for in the submission of the detailed landscaping plan by the developer, including the provision of indigenous plant species. Further, to ensure the diversity of the avifauna, detention ponds will be catered for.
352. There are, however, various aspects of the TRUP Report with which the proposed development does not align:

- 352.1. The TRUP Report records that River Club building and the associated visual corridor as having heritage value. While the building will be demolished, I am satisfied that it has little, if any, heritage value, having been haphazardly modified since it was first constructed. While the views will be altered, the significant visual corridors – being vistas of the mountains – will be retained from the east-west green corridor.
- 352.2. The western arm of the Liesbeek will be transformed from a stormwater channel into a swale with a series of pools. This will be mitigated by, among other things, the rehabilitation of the eastern Liesbeek canal.
- 352.3. The proposed development will introduce a density of residential and business uses not anticipated in the TRUP Report, which expressly states that '*additional buildings are undesirable to the north of the River Club buildings*' and that *most of the River Club should be maintained 'as a green open space'*. However, for the multitude of reasons set out above, I am satisfied that the proposed uses and intensities are highly desirable for the subject property, as are the significant improvements to open space.
- 352.4. The proposed development will not introduce a '*multi-purpose urban park*'. However, it will: introduce much improved green open space; develop ecological and visitor-friendly areas that invite people into the TRUP; and define the north-western edge with an appropriate transition between highly urbanised spaces to the north and west and less intense ecological and other uses to the south and east.
- 352.5. The TRUP Report indicates that '*buildings should not dominate the landscape anywhere within the [TRUP]*'. Many of the buildings in the proposed development will be tall and dense, and will alter the experience of the subject property. They will go beyond the use of the site as '*a place of recreation, relaxation and outdoor education*'. However, they have been configured to ensure that the tallest buildings interface with the areas outside of the TRUP, and that there are sensitive boundaries and generous buffers in respect of properties within the TRUP.
353. On the whole, bearing in mind the extent to which the proposed development aligns with various objectives of the TRUP Report, and the motivations for departing from some of its guidelines, I am satisfied that those departures are warranted and, in the circumstances, desirable.

354. The developer's motivation acknowledges that the proposal is inconsistent with various principles and guidelines set out in the TRUP Report. However, it argues that those principles and guidelines have been superseded by the MSDF and that its development proposal represents a 'paradigm shift' in conceptualising how land in the TRUP can be utilised. To some extent, this is true: the MSDF represents a more up-to-date conceptualisation of the spatial goals for the TRUP. Furthermore, given the experience of the past 20 years since the TRUP Report was first conceptualised, it is evident that its vision of an urban park is not practical.
355. The OCA argues that the TRUP Report has, in fact, been approved as City policy. The City's environmental and heritage officials note that while the TRUP Report is 'not a spatial planning instrument, it is nevertheless an approved policy... [its] principles must be used to guide decision-makers regarding any future development within the area.' I have engaged with and applied those principles above.
356. The TRUP Association contends that it and its constitution were set up by the City, based on the TRUP Report and intended to function in perpetuity. It argues that the City is not entitled to depart from the agreed policies that apply to the TRUP. However, this fundamentally misunderstands the nature of policies, which encapsulate guidelines rather than enshrining rules and which must be approached flexibly. The TRUP Report functions as a guideline to assist the City in realising its spatial planning objectives. As explained above in respect of the deviation by the Table Bay District Plan, the MSDF more appropriately reflects the current spatial planning strategies of the City and therefore the deviation from the TRUP Report is similarly warranted. In addition, the proposed development aligns with many of the TRUP Report's objectives and guidelines.

Integrated Development Plan

357. The requirements of the Integrated Development Plan (IDP) have largely been dealt with above, bearing in mind that they informed the content of the MSDF, and the MSDF forms part of the IDP.
358. I am satisfied that the proposed development meets the requirements of the Opportunity City, as it will facilitate a significant private investment in the local economy that will have various positive effects, including the creation of jobs and the provision of infrastructure that will benefit the residents of the City. It aligns with the requirements of the Safe City: it will transform an isolated site into a hub of activity with much increased activity and surveillance; it will also incorporate various specialist-recommended measures to mitigate flood risks. It is consistent with the concept of a Caring and Inclusive City, given the efforts to ensure that the development is socially integrated and integrated with

various economic opportunities and social amenities, as well as the provision of affordable housing. And it aligns with the concept of the Well-Run City, given the extent to which it has been modelled on the requirements of the MSDP and resources that have gone into ensuring that the development is environmentally sensitive and sustainable.

359. I also agree with the IDP analysis set out in the MPT Report.

360. I am accordingly satisfied that the proposed development is well aligned with the requirements of the IDP.

Economic Growth Strategy

361. I am satisfied that the proposed development aligns with the core objectives of the Economic Growth Strategy.

362. The proposed development has been leveraged to provide public infrastructure that will benefit not just the residents of the proposed development, but the wider metropolitan area. Most significantly, the development charge will be utilised to facilitate the construction of the Berkley Road extension, which the City has long identified as a priority for urban connectivity.

363. The proposed development will create thousands of short-term jobs across the skills spectrum, and will sustain many long-term employment opportunities. It has also attracted Amazon as an anchor tenant, whose presence in Cape Town will be a great developmental boon for the City and mark it as a truly global metropolis.

364. The subject property entails various points of environmental sensitivity. The developer has shown an impressive commitment to enhancing and protecting the site's ecological features, and improving the area's ecological functionality.

Social Development Strategy

365. In accordance with the Social Development Strategy, the proposed development will create many jobs across the skills spectrum, thus boosting income-generating opportunities even for those who are at risk of exclusion.

366. It will improve the safety through significantly increased activity patterns and surveillance and establish well-located residential uses, counteracting urban sprawl and allowing residents to live in close proximity to their places of work. As set out above, it will promote inclusivity and social cohesion through the expressed commitment to integration.

Handwritten signature and initials in the bottom right corner of the page.

Integrated Human Settlements Framework

367. The proposed development is aligned with the objectives of the Integrated Human Settlements Framework. Although there will not be a formal public-private partnership, it will allow the developer to provide a large number of residential opportunities to the Cape Town market, including a component of affordable housing. This will be done without the City having to expend its own resources or introducing a social-housing agent.
368. As already addressed, the subject property is located not only in the Urban Inner Core, but in the Metro South East Integration Zone and within an urban precinct (i.e. the TRUP) that has been repeatedly recognised as ideally suited for mixed-use development. The proposed development will open up a new area for housing development, in close proximity to existing developments, economic opportunities, transport infrastructure and areas of high amenity.

Densification Policy

369. Higher levels of densification are encouraged in areas with good public-transport accessibility, at concentrations of employment and commercial development, and in areas of high amenity. The City's goal is not densification itself, but long-term sustainability where sufficiently high densities support the efficient provision of services and public infrastructure.
370. The OCA contends that the proposed development is not consistent with the Densification Policy because the subject property is not at a concentration of employment opportunities, commercial development or social amenities. However, the proposed development represents appropriate densification in close proximity to the CBD and Paarden Eiland, among other development nodes. It will significantly upgrade existing transport infrastructure, thus boosting connectivity between Integration Zones. It will contribute to the restructuring of the City that is vital in terms of social, economic and environmental sustainability. It will also provide an opportunity for urban place-making and the creation of an attractive and safe urban environment.
371. The OCA argues that the proposed development is inconsistent with the Densification Policy because the location does not support a viable public-transport system even though *'the proposal meets the thresholds required to support public transport'*. However, over the longer term, the proposed development will support the roll out of expanded public-transport services by adding density to a recognised development corridor.

372. A compact urban form is an essential pre-condition for well-performing cities and becomes an important mechanism in improving the current urban structure. Although the proposed development will feature significant open spaces, it will also feature dense commercial concentrations and apartment blocks that are consistent with modern urban form. It is therefore consistent with the objectives set out in the Densification Policy.
373. The OCA argues that the developer has failed to show that the development will meet the required average gross base density of 25 du/ha and that the proposed development is too distant from transportation corridors and stations (particularly given the applicable pedestrian routes).
374. However, the MPT Report records that the proposal will, in fact, see residential densities at 45du/ha. In any event, as the developer emphasises in its appeal submissions, the residential component of the proposed development was computed based on studies of market demand and financial feasibility. It would make little sense to overprovide residential opportunities and risk compromising the viability of the project, simply to meet generic policy thresholds. As the Densification Policy expressly states: 'a "one size fits all" approach will not guide density decisions.'
375. Furthermore, the proposed development must be understood as both a mixed-use enterprise and as a precinct with significant provision of publicly accessible open space in order to ensure, among other things, integration and a desirable interface with the site's environmental features. It therefore cannot be treated as a conventional mono-use residential development.
376. I have addressed the site's proximity to the relevant corridors above.

Transit-oriented Development Strategic Framework

377. Under the MSDP, transit-oriented development is a critical component of spatial transformation. The MSDP expressly recognises that the TRUF has been identified to house priority provincial transit-oriented development projects within the Urban Inner Core.
378. The proposed development gives effect to the transit-oriented development requirement of intensification, as it will both broaden the range of land uses on the subject property and facilitate higher densities and taller buildings. The subject property is not currently in close proximity to MyCiti infrastructure and, at present, is not identified for public-transport investment. In fact, the MPT Report records that, when assessing the subject property against Transit Accessible Precincts criteria, 'the property should see no residential development while non-residential activities [are] encouraged to not exceed 5,000 m².' On the other hand, the MPT Report also states 'ha', given the subject property's

location within the Metro South East Integration Zone, '(i) should ideally be dominated by residential development.' These varied policy informants must all be taken into account in formulating a balanced and comprehensive understanding of the development proposal.

379. Furthermore, the City's investment strategies are continuously updated and the proposed development will introduce densities and land uses that will support future investment in public-transport infrastructure in the area. The MFT Report records that the proposed development features 'more than double the density threshold for the provision of viable public transport'.
380. In addition, given the subject property's accessibility to various well-functioning roads (including Liesbeek Parkway, the M5 and the N2), the site will be adequately serviced by normal modes of public transport. Moreover, the MFT Report records that the subject property is a ten-minute walk or cycle from existing train stations.
381. The proposed development will contribute to achieving the transit-oriented development goal of reducing travel distances and costs, thereby increasing affordability, given its close proximity to a wide variety of economic, institutional and social opportunities. Its strategic location, creation of various residential opportunities (including affordable housing) and establishment of non-motorised transport networks will also facilitate accessibility.
382. As set out above, the proposed development aligns with the transit-oriented development goal of efficiency as it will concentrate growth inwards and manifest a relatively compact urban form.
383. The proposed development will also include both high quality public space and non-motorised transport infrastructure, as contemplated in the transit-oriented development policy framework.

Bioregional Plan

384. The Bioregional Plan provides for the integrated management of the City's aquatic resources, terrestrial vegetation and other resources. It functions to ensure that the NEMA principles are applied in Cape Town in an effective and equitable manner. It is also aimed at preserving the integrity of the City's ecosystems, securing long-term sustainability and mitigating climate-change impacts.
385. For the reasons set out in greater detail above, I am satisfied that, although the proposed development will change the subject property's ecology and the construction process may present various dangers, ultimately the surrounding areas will be substantially

enhanced and encouraged to flourish. Furthermore, through the conditions of approval and the various requirements of the environmental authorisation, the risks to fauna, flora and natural resources during the construction process will be adequately mitigated. With the developer and later the owners' association taking responsibility for maintenance of the green infrastructure on and surrounding the site, long-term sustainability will be ensured. As I have already explained, adequate climate-change considerations have been taken into account, both in the design parameters and the conditions of approval.

Environmental Strategy

386. The Environmental Strategy has four strategic focus areas: managing natural resources and ecosystems; managing the City's natural resources; preventing environmental degradation and enhancing environmental quality; and managing the City's heritage.
387. The City's environmental officials are of the view that the proposed development does not comply with directives 6.11.1 – 6.11.4 because the proposed development does not sufficiently acknowledge the site's unique sense of place. They propose reducing the built form further.
388. I disagree. A great deal of effort has gone into ensuring that the proposed development is cognisant of its place within the wider landscape, including rehabilitating the river corridor, introducing buffers and height reductions along the SA Astronomical Observatory boundary, developing a high-quality open space that is inviting to the public and acting as a gateway to the broader TRUP, with lines of vision to Devil's Peak and indigenous placemaking features.
389. I am satisfied that the proposed development is generally well-aligned with the various principles and directives set out in the Environmental Strategy; it has taken into account, and included mechanisms to ensure, long-term sustainability and environmental sensitivity; it will enhance fair and equitable access to environmental assets; it will leverage private resources to protect and preserve ecological resources and, in fact, proactively restore natural environments; as per the Prometheus report, the rehabilitation of the Liesbeek River and the deployment of indigenous vegetation will significantly enhance the area's ecological infrastructure and reduce the site's sensitivity to climate-change consequences; appropriate mitigation and protection measures have been put in place to address possible adverse impacts on fauna, flora and natural resources; through densification and diversification it will promote resource efficiency; and significant components will be included to protect and celebrate the site's heritage, including the First Nations' storied history within the TRUP.

Climate Change Policy

390. I have dealt with the Climate Change Policy in the context of the proposed development above.

Floodplain and River Corridor Management Policy

391. This policy was developed to assist the City integrate engineering, environmental and socio-economic considerations in respect of developments that are adjacent to watercourses. It focuses on ensuring that developments near watercourses are appropriate, have minimal environmental impacts and contribute to a sense of place and urban form. Under the policy, *'[a]ny new land use, development, activity or building must be appropriate for the anticipated flood risk and geomorphological process requirements and compatible with the ecological buffer and socio-economic requirements, whilst allowing access for maintenance.'*
392. Ecological buffers are required between watercourses and adjacent developments. Buffers of between 10 and 40 metres are generally recommended for watercourses. Developments around watercourses must also focus on integrating the watercourse into the area's urban fabric. The developer has indicated that these recommendations will be adopted in the proposed development. The decanalised river course on the eastern boundary will have a 40-metre buffer from the closest buildings to it on the subject property. The reshaped watercourse on the western boundary will have at least a 10-metre buffer from the closest buildings. I am therefore satisfied with the proposal in that regard.
393. *'Table 1 provides acceptable land use for the various floodplain zones', and in respect of new development rights (section 10.2.1), '[o]nly land uses, developments or activities considered appropriate within the applicable floodplain and ecological buffer (Refer to Table 1) can be contemplated.'*
394. Under the policy, public and private open spaces may occur anywhere on a floodplain, even below the 20-year floodline. Roads may occur anywhere above the two-year floodline, provided they are certified by a registered engineer.
395. The development will entail 'filling' to raise the ground on the subject property to an elevation slightly above the 1:100 year floodline, which means that it will be situated above the floodplain. The policy defines 'floodplain' as 'land susceptible to inundation by floods up to the 100-year recurrence interval. The proposed buildings on the raised ground will not be subject to such inundation. They are accordingly classified as being in the 'clear' coding on Table 1 and hence 'permitted' under the policy. A condition of

for 1/20

approval ensures that all habitable spaces within the proposed development must be constructed above the 1:100 year floodline, in accordance with the policy.

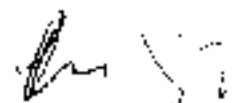
396. The policy requires any proposed development within the floodplain to be supported by a report by a registered professional engineer to ensure that any new or existing structure can withstand the forces and effects of floodwaters. Accordingly, a condition of this approval is that the developer must provide such report with the SDP submission.
397. The fill described above is classified as development and requires a deviation from the policy 'to develop / obstruct the free flow of water within the 20-year flood line area' and a deviation from the guideline which states that only 'In exceptional circumstances minor "smoothing" of the 50 / 100-year flood line may be considered, provided equivalent compensatory stage storage volume is provided within the development precinct'. The developer requires these deviations to develop within the floodplain, and to decanalise the eastern river canal and reshape the western river channel.
398. I am satisfied based on the contents of the hydrology study that the proposed development's impacts on Flood levels will be minimal. I am satisfied that the deviations should be granted to facilitate the fill required to raise the proposed buildings safely above the floodplain, and decanalisation of the eastern river canal and transformation of the western river channel to create a riverine habitat which enhances its functionality and ecological value. Although the proposed development deviates from the policy, I am satisfied that the overarching objectives of the policy will be achieved and that the deviations should be granted.

Management of Urban Stormwater Impacts Policy

399. In terms of the Management of Urban Stormwater Impacts Policy, to reduce impacts of urban stormwater systems on receiving waters, all stormwater management systems shall be planned and designed in accordance with best-practice criteria and guidelines laid down by the City, to support Water Sensitive Urban Design principles and the following specific Sustainable Urban Drainage System objectives:
- 399.1. improve quality of stormwater runoff;
 - 399.2. control quantity and rate of stormwater runoff; and
 - 399.3. encourage natural groundwater recharge.
400. Sustainable Urban Drainage Systems and Water Sensitive Urban Design are mechanisms used to reduce the potential impact of new and existing developments with respect to surface water drainage discharges.



401. A fundamental principle of the Stormwater Urban Impacts Policy is that the person or body who creates a development should do so responsibly and should ensure that such development does not adversely impact on present and future communities and on natural ecosystems.
402. With regard to the Sustainable Urban Drainage System objectives, I am satisfied that the proposed development complies with the quality objective for the reasons set out below. The developer however seeks certain deviations from the interim criteria in respect of the quantity objective.
403. The developer will ensure the protection of the stability of downstream channels by adhering to the '24 hour extended detention of the 1-year RI, 24h storm event' criterion. A deviation from the aforesaid quantity objective is therefore no longer required. As a result, the deviation requested is not being granted. Nevertheless, should the developer have required the deviation, I am satisfied that it would have been appropriate.
404. The developer however still requires a deviation from the remaining two quantity objectives, being 'up to 10-year RI peak flow reduced to pre-development level' and 'up to 50-year RI peak flow reduced to existing development levels. Evaluate the effects of the 100-year RI storm event on the stormwater management system, adjacent property, and downstream facilities and property. Manage the impacts through detention controls and / or floodplain management'. Despite the deviations sought, I am satisfied that the policy objective is satisfied, specifically the proposed development will protect downstream properties from fairly frequent nuisance floods and protect floodplain developments and floodplains from adverse impacts of extreme floods, respectively, for the reason that follows.
405. The surface water hydrology report finds that the impact of the development will be negligible on flooding. Some interventions in respect of the above objective include:
- 405.1. Attenuation of water and protecting and improving the water quality of water draining from the proposed development through the use of bioswales;
 - 405.2. Attempting to restore the urban water balance by maximising the reuse of stormwater, recycled water and grey water;
 - 405.3. Integrating stormwater treatment into the landscaping component so that it offers multiple beneficial uses such as water quality treatment and wildlife habitat (e.g. birds); and
 - 405.4. Reducing peak flows and runoff while simultaneously providing for infiltration and groundwater recharge.



406. I am satisfied that based on the hydrology study, attenuating on site will have no advantage in reducing flooding and no impact on flooding downstream. It would be better to discharge the runoff sooner rather than attenuating on site as attenuating onsite could increase flooding downstream due to the subject property being located low down in the river catchment, although this impact would also be negligible.
407. The proposed development will also provide for natural groundwater recharge.
408. Ultimately, I am satisfied that the development does not adversely impact on communities and on natural ecosystems. Accordingly, the proposed development is aligned with the Sustainable Urban Drainage System objectives set out in the Management of Urban Stormwater Impacts policy.
409. The requirement of a stormwater plan has been imposed as a condition of approval. The Floodplain and River Corridor Management Policy is dealt with above.
410. The OCA contends that the proposed development is inconsistent with the City's Management of Urban Stormwater Policy because: it will have negative knock-on effects on infrastructure that serves the TRUP and the Metro South East; the City's stormwater officials do not support the proposed development or dealing with stormwater off-site; and climate change impacts are difficult to quantify and not fully understood.
- 410.1. The OCA is incorrect about the position of the City's stormwater officials. They have recommended aligning the development with the specialist studies and imposing mitigation measures. Those concerns have been addressed above.
- 410.2. Furthermore, the City's engineering services departments have confirmed that, if the proposed conditions are adhered to, municipal infrastructure will be able to accommodate the proposed development's anticipated demand without adversely affecting other sites.
- 410.3. I have addressed the climate-change considerations above.

Urban Design Policy

411. The developer has commissioned a comprehensive urban design investigation. The outcomes thereof will inform the detail of the development's design, which will be regulated in the SDPs that will be submitted for approval in due course. The design of the buildings is still subject to finalisation.

The extent of desirability (s 99(2)(d))

412. I am satisfied that the proposed development is highly desirable. At the time of a major economic downturn it will bring billions of Rand of investment and thousands of jobs to the local economy. It will assist in meeting the City's demand for housing, including affordable accommodation. It will support commercial activity through the provision of a modern and integrated business precinct. It will optimise the usage of a currently under-utilised, exclusive and isolated property through the introduction of context-appropriate densification and diversification. It will upgrade local infrastructure, including a major transport connection between Maitland and Salt River. That improved connectivity will allow access to a variety of surrounding economic opportunities and development nodes.
413. Informed by a variety of expert studies and input from interested parties, I am satisfied that the proposed development will rehabilitate a degraded riverine environment, improving its ecological functionality, its role within the City's stormwater network and its interface with the public. It will see the transformation of the western arm of the Liesbeek River on the subject property into a swale with ecological and stormwater functionality. These changes will be environmentally positive.
414. Although located on a floodplain, the conditions require the developer to take into account a variety of measures informed by expert studies to mitigate flood risks and protect surrounding properties.
415. I have carefully considered the impact of the proposed development on the important heritage resources of the subject property and the surrounding area. Overall, those impacts will be positive and serve to enhance the site's heritage. Where there will be adverse impacts, appropriate mitigating measures have been employed.
416. The development will also be the subject of ongoing input, as further detailed plans are formulated, published and considered by the City.
417. Although not uncontroversial, I am satisfied that the various concerns raised by interested parties and the City's officials are either unfounded or have been adequately mitigated through a combination of design flexibility and sound conditions of approval.
418. The TRUP Association contends that the focus has been almost exclusively on financial gain, without proper regard for planning policy, history, heritage or environmental sensitivity. It alleges that the City officials have so disregarded their duties that they have become 'Pimps to the Liesbeek River to permit it being filled'. It also argues that insufficient regard has been had to the extent to which the subject property currently

'creates tourism [and] cares for environment'. However, the assessments set out above show how mistaken the TRUP Association is.

419. The OCA acknowledges that the proposed development will 'create some jobs and enhance the City's rate base'. However, it contends that these benefits are 'dwarfed' by what will be lost: heritage resources, a sense of place, scenic beauty, visual connections with and between surrounding sites, flood attenuation, riverine habitats for fauna, climate-change resilience, public open spaces and the establishment of a multi-purpose TRUP. The OCA argues that the site should instead be developed as a public-access park.
420. Both the TRUP Association and the OCA fail to appreciate the manifold benefits I have outlined above. Although the proposed development's economic benefits will be substantial, its positive consequence will be so much more. I am satisfied that the proposed development will, in fact, improve the subject's property's environmental functionality, as well as that of the Liesbeek River. The transformation of the western channel of the Liesbeek will serve ecological and stormwater functions. It will also be accompanied by the introduction of a naturalised river course running the length of the property, supported by ecological buffers to allow the riparian habitat to flourish. All of these features will improve the habitat for fauna and assist in flood attenuation, in addition to introducing a revitalised swathe of open space that is far more accessible to, and welcoming of, the general public.
421. The manner in which the subject property is currently utilised – for a private golf course and conference centre – does little for tourism and less for the environment. The proposed development will feature a high-quality open space, an aesthetically pleasing river corridor, views of Devil's Peak, a hotel and restaurant. That will do much more for tourism than the property currently does. The site's current uses [from the private golf course to the canalised river] do nothing at all to enhance the natural environment.
422. The OCA also argues that it is fallacious to set flood-mitigation measures off against economic benefits. However, that is a mischaracterisation of the City's decision-making processes. I have acknowledged that the proposed development will lead to some increased flood risks. However, I am satisfied that those risks can be appropriately addressed through development design and the imposition of various conditions. Over and above having addressed the flood-risk concerns, the development presents a wide range of positive outcomes that extend beyond economic benefits [although those are substantial and highly desirable].

423. RAMPAC contends that the subject property 'should be re-acquired as "public" land' and alternative usages explored. The TRUP Association similarly suggests that the site 'must be returned to being our Park Commons'.
- 423.1. That is entirely impractical. It would require significant expenditure of public funds that are simply not available, and could entail a lengthy expropriation process.
- 423.2. The developer has the resources and willingness to undertake this large-scale development. It will be far more beneficial, and yield much quicker dividends, for the City to allow that to occur, but to impose the necessary restraints and conditions to ensure that its spatial objectives are met.
424. Viewed holistically, the positive aspects of the proposed development significantly outweigh its negative aspects, which have in any event been substantially mitigated through the approval process. That will continue as the development proceeds through different phases of approval. I am satisfied that the proposed development is highly desirable.

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

425. I have considered the Visual Impact Assessment and the criticisms thereof.
426. The OCA argues that the proposed development will adversely affect views from the SA Astronomical Observatory property and will introduce an urban wall along the Liesbeek River that is out of place in an ecological corridor. The OCA's appeal includes a series of pictorial depictions of the SA Astronomical Observatory's current views across the subject property, and predictions of what those views will look like if the proposed development goes ahead. Given the proposed development's height and bulk, it will disrupt the sightlines between the SA Astronomical Observatory and the mountain vista.
427. However, the SA Astronomical Observatory does not enjoy the right to a view across the subject property. It no longer functions as an active observatory, but is utilised for other purposes. It does not house land uses where views are an important element of the prevailing amenity (e.g. residential uses). When more detailed plans are developed, the developer will be required to ensure that the interface with the SA Astronomical Observatory precinct is sensitively treated. Furthermore, even if not accessible from the SA Astronomical Observatory, the ecological corridor will preserve lines of sight between properties to the east of the development and Devil's Peak. Having inspected both the subject property and the Observatory site, I am satisfied that the tall screen of trees on the boundary between the two properties functions to limit views across the River Club

site from the SA Astronomical Observatory precinct (which, it should be noted, features only low-lying buildings).

428. In a similar vein, RAMPAC contends that there has been a failure to appreciate the extent to which the proposed development will be visible from Devil's Peak. However, much of the City's urban development is visible from Devil's Peak and the slopes of Table Mountain; that is not a negative feature. Even accepting that the site will be visible, the proposed development will not be so aesthetically jarring as to affect the amenity of Devil's Peak. Views of the River Club Golf Course can hardly be considered a central part of the enjoyment to be derived from Cape Town's mountainscape.
429. I am satisfied that all existing rights have been taken into consideration and that they will either not be adversely affected or that, where they will be affected, appropriate mitigating measures and conditions have been put in place.

The development principles (s 99(2)(g))

430. In the City of Cape Town the development principles are largely given effect to through the controlling concept of 'spatial transformation'. As set out above, I am satisfied that the proposed development is aligned with the City's spatial-transformation policies and objectives.
431. The proposed development will transform private, isolated and under-utilised land into a vibrant mixed-use precinct that incorporates significant publicly-accessible open space and memorialises the subject property's deep and complex First Nations heritage. It will therefore improve access to, and use of, the site, as required by the principle of spatial justice.
432. NU argues that there is complex relationship between spatial justice and cultural heritage, and that insufficient provision of affordable housing would perpetuate marginalisation and colonial divisions. The OCA argues that the proposed development will not contribute to spatial justice because it lacks social housing.
433. Spatial justice entails more than building new social housing or providing affordable housing within new developments. Due regard must also be had for the extent to which the proposed development facilitates spatial transformation in accordance with the City's policies and the extent to which it will introduce benefits that will be enjoyed by surrounding communities and contribute to integration. The MSDP provides that spatial justice includes promoting economic opportunities through creating and attracting job-

Handwritten signature and initials, possibly 'A. S.' or similar, located at the bottom right of the page.

rich investment. As set out above, the proposed development will make significant contributions in this regard.

434. It is in the public interest to significantly increase the availability of residential dwelling units, high-quality public open space and commercial opportunities as contemplated in the development proposal. Spatial justice and spatial transformation also include appropriate densification, diversification of land-use due and the establishment of residential opportunities in close proximity to good transport infrastructure, economic opportunities and social facilities. The proposed development will achieve these objectives, thus contributing to an integrated and inclusive urban setting.
435. At present, while private developers may be encouraged to do so, they are not obliged by law or policy to include any affordable housing when utilising private capital to develop private property. Under the MSDP, it is the public sector that is charged with responsibility for addressing the housing needs of those who are not serviced by the open market. It is therefore commendable that the developer has elected to include an affordable housing component in the proposed development.
436. The MPT authorised the developer to construct up to 31,900 m² of residential units. The developer has undertaken that at least 20% of the floor space allocated to residential uses will constitute affordable housing. The developer intends to retain ownership of the units, which will be made available on a rental basis. The approval will be conditioned accordingly, and the developer required to submit an implementation plan. The developer has acknowledged that it will have to subsidise the affordable units in order to maintain their rentals at the necessary levels.
437. The MSDP defines 'affordable housing' as 'housing with prices or values below the overall open market value which targets below average incomes'. The proscribed income bracket is 'R3 501 – R18 000 per month'. The developer has indicated that a number of units will be made available at rentals that are affordable to this income bracket. I am satisfied that this will assist in addressing development imbalances as required by the principle of spatial justice.
438. The OCA contends that the proposed development will make a 'negligible' contribution to affordable housing, given the applicable income bands. However, I do not consider 20% of the total residential floor space to be negligible, particularly when the residential opportunities will fall within the threshold proscribed by the MSDP. Those opportunities will not be accessible to everyone in the City, but they will be accessible to portions of the population that are not conventionally served by the open market. Improving accessibility in this manner will amount to a substantial contribution to spatial justice.

[Handwritten signature] 53

439. Issues of affordability have complex interactions with issues of race and class. However, the development of private property by private developers, and the making available of residential units through the open market, is not a repetition of colonialism. It does not prohibit access on the basis of race or treat human beings as chattel. The Constitution, the SPLUMA and the By-Law all recognise the importance of private property and the role of the free market. NU's appeal fails to appreciate this.

440. NU argues that the provision of affordable housing is disproportionate to the 'desecration of a sacred historical and culturally significant site'. According to NU, the proposal is 'very small' (being only 4% of the total development), the developer has not shown that a higher contribution would not be feasible, and the affordable-housing provision should be larger given the site's 'high cultural historical-political importance'.

440.1. I have addressed the heritage concerns above. NU accepts that heritage – particularly the First Nations' heritage – needs to be 'celebrated and memorialised in some way.' The fact that it has different views (whatever they may be) as to how that celebration should occur does not mean that a failure to adhere to its suggestions amounts to desecration.

440.2. NU has not explained how or why the site's history and culture require a particular number of affordable-housing units. It has not suggested a means for how the number should be computed or put forward a concrete alternative. NU's proposal is so lacking in detail that it is very difficult to engage with. Given the dearth of content, it is not possible to determine whether NU's proposal is lawful or reasonable, let alone feasible.

440.3. Given the extensive modelling and planning that has gone into the computation of the development proposal, I am satisfied that the proposal's parameters have also been dictated by questions of feasibility. There is nothing in the way of objective evidence to indicate that it would be viable for the developer to increase its provision of affordable housing. The developer has explained that the development's entire residential component is 'marginally viable'. Without other sources of funding (including from the public sector), the developer cannot undertake the cost of expanding the affordable-housing component. As NU concedes, the City should only impose feasible conditions. In order to maintain financial viability, the affordable-housing contribution cannot be expanded.

440.4. The proposed development will be mixed use. While the affordable-housing component may be 4% of total floorspace, it will represent 20% of the total residential offering. That is substantial. It is appropriate for affordable-housing to

h *53*

be measured against the proposed residential units, rather than commercial uses: the latter do not give rise to the same spatial-transformation implications or the same questions of fairness and reasonableness in respect of housing.

441. The TRUP Association argues that the number of units that the developer will provide will not make a worthy difference given the City's backlog of 400,000 residences. When compared to the entirety of the backlog, the offering may appear small. However, considering that the offer comes from one private developer in respect of one privately owned erf, in circumstances where the developer was not obliged to make any affordable provision at all, I consider the proposed development's affordable-housing offering to be significant.
442. NU argues that, in order to be spatially just, the developer's affordable-housing contribution must be targeted at vulnerable communities and Black and Coloured residents, and must be able to accommodate a range of household sizes. However, I am satisfied that it will be sufficient for the contribution to comply with the MSDP's requirements in respect of affordability, viz that the units be made available to households within the prescribed monthly income band, so as to ensure that those who are not currently able to access housing through the open market are nevertheless able to access residential opportunities.
443. Furthermore, as noted by the developer, requiring private developers to introduce such eligibility criteria could be divisive. The By-Law and the MSDP do not operate or intend to transform private developers into social-housing institutions. Even when such developers are required to make affordable-housing contributions, their contributions are cognisant of the fact that they operate in the open market and are not organs of state discharging statutory functions. Private developers are not required to make residential units available in accordance with, for example, the City's lists for social and similar housing.
444. Given the subject property's central and highly accessible location, its proximity to economic opportunities and social opportunities, and the developer's proposed mix of land uses (including affordable housing), the proposed development will limit urban sprawl and result in a viable urban community, as required by the principle of spatial sustainability. The developer has undertaken to ensure that the buildings are designed in accordance with green technology and energy efficient principles, which will also contribute to long-term sustainability.
445. Contrary to the principle of spatial sustainability, the proposed development will require a departure from some of the City's environmental management policies. However, those departures will entail significant environmental gains. The developer will rehabilitate

[Handwritten signatures]

the Liesbeek River, which will greatly improve the ecological functioning of the riverine corridor. The proposed development will not only minimise negative environmental impacts as required by the principle of efficiency, but will make a positive contribution to the site's ecology and ensure enhanced environmental functionality in the future.

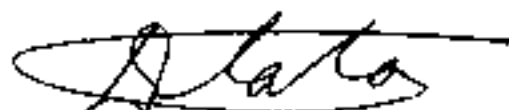
446. The proposed development will leverage private capital to, among other things, construct the Berkley Road extension, which will ensure greater connectivity between the areas to the east and west of the subject property and will benefit much of the Urban Inner Core, not just the developer or the development's residents. This will optimise the use of existing resources and infrastructure, as required by the principle of efficiency.

447. As set out above, the proposed development will include various resilience components.

448. I am accordingly satisfied that the proposed development is consistent with the various development principles.

F. CONCLUSION

449. In terms of section 108(7)(b)(i) of the By-Law, I hereby **CONFIRM** that the development may proceed and, as set out in Annexure A, I accordingly **APPROVE** the rezoning and deviations, **GRANT** the Item-126 approval, and **VARY** the conditions of approval.



ALDERMAN DAN PLATO

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

Date: 18/04/2021



ANNEXURE A

REF: Case ID: 70396369

In this annexure, unless the context indicates otherwise:

"approval" means an approval in writing by the authorised functionary;

"By-law" means the City of Cape Town Municipal Planning By-Law, 2015;

"City" means the City of Cape Town;

"Development Management Scheme" has the meaning assigned in the By-Law;

"item" refers to the relevant item in the Development Management Scheme;

"owner" means the owner of the property as defined in the By-Law; and

"property" means Erf 151832, 6 Liesbeek Parkway Observatory.

REZONING GRANTED IN TERMS OF SECTION 98(b) OF THE BY-LAW

- 1 The property is rezoned from Open Space Zoning 3: Special Open Space to a Subdivisional Area (i.e. general business and open space zones).

APPROVAL GRANTED IN TERMS OF SECTION 98(b) OF THE BY-LAW

- 2 Approval is granted in terms of item 126 of the Development Management Scheme to enable retaining structures to be constructed to a maximum height of 5.7m for Precinct 1 and 5.9m for Precinct 2 each above existing ground level in lieu of 2.0m above existing ground level.

DEVIATIONS GRANTED

- 3 Deviation from the Table Bay District Plan is granted to permit urban development on land designated as "open space", "core 2" and "buffer 1".
- 4 Deviation from the Floodplain and River Corridor Management Policy (2009) is granted to permit development / obstruction of the free flow of water within the 20-year and 50-year floodplain and to allow in-filling below the 1:50 year floodline.
- 5 Deviation from the annexure table to the Management of Urban Stormwater Impacts Policy (2009) is granted in respect of the following requirements:
 - 5.1 up to 10-year recurrence interval peak flow to be reduced to pre-development level; and
 - 5.2 up to 50-year recurrence interval peak flow to be reduced to existing development levels.

CONDITIONS IMPOSED IN TERMS OF SECTION 100 OF THE BY-LAW

The above approvals are subject to the following conditions.

Precincts

- 6 The property shall accommodate two precincts (Precinct 1 and Precinct 2) as shown on Appendix 1 to these conditions, comprising areas designated for General Business purposes and the combined floor space of the two precincts may not exceed 150 000m².
- 7 Precinct 1 shall not exceed a floor space of 60 000m² and Precinct 2 shall not exceed a floor space of 90 000m².
- 8 The maximum height in the GB7 zone shall not exceed 44.7m above base level.
- 9 The owner/developer shall submit a **subdivision plan** giving effect to the precincts referred to in paragraphs 6 – 8 above which must –
 - 9.1 accompany the Site Development Plan submissions;
 - 9.2 be generally in accordance with the indicative subdivision plan attached as Appendix 2 to these conditions;
 - 9.3 clearly identify:
 - 9.3.1 cadastral boundaries of the property and each portion;
 - 9.3.2 the extent of each portion;
 - 9.3.3 the zoning of each portion including the sub-zoning as approved herein;
 - 9.3.4 servitude rights of way registered in favour of the public; and
 - 9.3.5 services.
- 10 The subdivision plan shall show the subdivision of the property into at least three portions, in accordance with appendix 2. One portion shall be zoned Open Space Zoning 3: Special Open Space the extent of which shall be as shown on Appendix 1 and must be a minimum of 49 835 m².
- 11 Portion 3 shall be subject to a servitude in favour of the public that provides a right of reasonable access to the public. The servitude shall be to the approval of the authorised official (Development Management) and shall be registered against the subject property's title deed.
- 12 A servitude right of way to permit the public access across internal private roads shall be registered prior to the first occupancy to the satisfaction of the authorised official.

Site Development Plan

- 13 Prior to the approval of a building plan for the development of any precinct or portion, the owner/developer shall submit a **Site Development Plan (SDP)** for the property as well as an SDP for the relevant phase of development for approval by the authorised official.
- 14 The SDP(s) mentioned in condition 13 above shall address the recommendations of the HIA, EIA, and principles established in the Urban

Design Study, Visual Impact Assessment, Hydralogy Study to the approval of the authorised official (Development Management).

- 15 The **SDP for the property** shall furthermore, include –
- 15.1 the precincts mentioned in condition 6;
 - 15.2 phasing of the development across the site;
 - 15.3 vehicular movement and access arrangements;
 - 15.4 open space system;
 - 15.5 non-motorised transport movement and linkages to non-motorised transport routes external to the development
 - 15.6 areas of historic significance with specific regard to areas on the property where the history of the property will be commemorated;
 - 15.7 public and private spaces;
 - 15.8 open spaces with associated linkages external to the development;
 - 15.9 edges of the site; and
 - 15.10 transport routes.
- 16 Prior to the approval of a building plan in any portion or phase, a **detailed SDP** shall be submitted to the authorised official for such portion or phase, to the approval of the authorised official.
- 17 The detailed SDP referred to in condition 16 above shall include:
- 17.1 floor space per precinct;
 - 17.2 land use mix;
 - 17.3 built form;
 - 17.4 appropriately located bulk;
 - 17.5 hierarchy of open spaces;
 - 17.6 foreground and background buildings;
 - 17.7 road / built form interfaces;
 - 17.8 any boundary treatments;
 - 17.9 number of parking bays;
 - 17.10 gateway buildings;
 - 17.11 landscaping interventions;
 - 17.12 non-motorised transport;
 - 17.13 maximum building heights measured from base level;
 - 17.14 design of east/west pedestrian access into the retail component;
 - 17.15 the intensification of heights and massing (Precinct 2) should be concentrated along Berkeley Road;
 - 17.16 the relationship of Building Heights to the SA Astronomical Observatory on the eastern portion of the property;
 - 17.17 public, semi-public and private spaces;
 - 17.18 interface of development with public realm having specific regard to the Urban Design Policy;
 - 17.19 location of public transport stops; and
 - 17.20 buffer width along each river and riparian landscape.
- 18 All detailed SDPs shall be accompanied by a bulk register (floor space) showing the residual bulk and detailing:
- 18.1 floor space per land use utilised within each Precinct and SDP and residual bulk (floor space); and
 - 18.2 overall floor space utilised for the property and residual bulk.

- 19 the base level indicated for buildings and structures shown on each SDP shall accord with that indicated in Appendix 3 to these conditions.

Heritage commemoration

- 20 To commemorate the heritage significance of the site, on Portion 3, the owner/developer shall incorporate at least the following heritage commemoration features:
- 20.1 an indigenous garden;
 - 20.2 a cultural, heritage and media centre for the First Nations;
 - 20.3 a heritage-eco trail;
 - 20.4 a garden amphitheatre for use by both the First Nations and the public;
 - 20.5 symbols central to the First Nations narrative; and
 - 20.6 naming of internal roads inspired by the First Nations narrative.
- 21 In respect of each of these heritage commemoration features, the owner/developer shall invite and consider representations from at least the First Nations Collective as represented by the Gorinhaliqua Cultural Council, and the Goringaichona Traditional Khai Khai Council. The developer shall invite and consider such representations before submission of the relevant detailed landscape plan and/or building plan for each feature.

Affordable housing

- 22 At least 20% of the residential floor space shall be set aside for affordable housing, as defined in the MSDP.
- 23 The provision of affordable housing shall be interspersed with the open market dwelling units and other activities.
- 24 Prior to the approval of building plans, the owner/developer shall submit an implementation plan for the affordable housing to the City.
- 25 The affordable housing units shall be indicated on the SDP prior to building plan submission for the residential components.

Owners' Association

- 26 The owner/developer shall establish an Owners' Association, as provided for in the By-Law, to be responsible for, among other things, the maintenance and management of the private roads and private open spaces.

Landscape plans

- 27 A **master landscape plan** for the property, drafted by a suitably qualified landscape architect, shall be included in the Site Development Plan referred to above.
- 28 The master landscape plan shall conform to the guidelines and principles in the landscape guidelines which accompanied this application and shall be generally in accordance with the landscape concept plan submitted.
- 29 The master landscape plan shall include the following details:

- 29.1 planting (terrestrial and riverine) among others that may be removed, retained, transplanted and new planting;
 - 29.2 the provision of buffer areas along the river/canal edges;
 - 29.3 servitude rights of way;
 - 29.4 hard and soft landscaping;
 - 29.5 areas of historic significance and the commemoration of the heritage and history of the site;
 - 29.6 street furniture;
 - 29.7 lighting and light fixtures across the site;
 - 29.8 provision of attenuation measures (including vegetated swales, bioretention areas, source control, etc.) which shall have regard to the stormwater flood management plan referred to below;
 - 29.9 non-motorised transport routes comprising pedestrian and cycle paths, among others and links to existing non-motorised transport routes and networks;
 - 29.10 a plan for the phased landscaping of the site; and
 - 29.11 flood attenuation measures.
- 30 The master landscape plan shall be to the approval of the authorised official.
- 31 A **detailed landscape plan** for each portion / phase shall accompany each detailed SDP for the corresponding portion / phase which shall be generally in accordance with the master landscape plan and shall be to the approval of the authorised official, indicating, including among others:
- 31.1 hard and soft landscaping;
 - 31.2 ecological areas;
 - 31.3 space of active play;
 - 31.4 heritage spaces; and
 - 31.5 the open spaces of the development area shall have regard to the City of Cape Town's open space network with regard to the streets and pedestrian walkways.
- 32 The owner/developer shall be responsible for implementation and associated costs of landscaping in accordance with the approved master landscape plan and subsequent detailed landscape plans.
- 33 With respect to the development site as defined in the Environmental Authorisation, the Owners' Association shall ensure the maintenance and upkeep of:
- 33.1 the riverine habitat in respect of the western Liesbeek channel once it has been transformed into a swale, to the satisfaction of the authorised official in consultation with the relevant Department;
 - 33.2 portions of the Liesbeek River canal that have been deconalised, to the satisfaction of the authorised official in consultation with the relevant Department;
 - 33.3 all land zoned for Open Space Zoning 3: Special Open Space on the property; and
 - 33.4 private roads.

Construction Environmental Management Plan

- 34 The owner/developer shall submit a Construction Environmental Management Plan, which shall include measures to protect habitats during the construction phase of the development, for approval by the authorised official prior to commencement of construction.

Catchment and Stormwater Management

- 35 All habitable spaces shall be located above the 1:100 year floodline in accordance with the applicable City policies.
- 36 Prior to building plan approval, the owner/developer shall submit an SDP referred to in condition 13 above which shall be accompanied by a Stormwater Management Plan (which shall include the river corridor management plan) for the approval of the authorised official after consultation with the Director, Catchment Stormwater and River Management.
- 37 The owner/developer shall, at their own cost, implement the necessary measures to safeguard properties affected by flood level rise because of the development and to mitigate the impacts of flooding, as set out in the approved Stormwater Management Plan.
- 38 A report drafted by a registered engineer shall accompany each SDP submission and shall demonstrate that all proposed structures on the relevant SDP area can withstand the forces and effects of floodwaters.
- 39 The implementation of flood attenuation measures for the development shall be as proposed in the Hydrology Study submitted with the application or any revision or amendment thereof and shall be for the account of the owner/developer.

Environmental management

- 40 Prior to building plan approval, the owner/developer shall provide a detailed river corridor management plan in respect of the development site as defined in the Environmental Authorisation, for the approval of the authorised official after consultation with Catchment Stormwater and River Management.
- 41 The detailed river corridor management plan (defined as the development site in the Environmental Authorisation) shall show measures to enhance water quality and restoration of water flows to the decanalised Liesbeek River, in addition to the management of the quality of the stormwater discharging into the Liesbeek River to the approval of the authorised official after consultation with Catchment Stormwater and River Management.
- 42 The proposed upgrade of the Liesbeek River Canal on the eastern side of the property shall be subject to a detailed Construction and Operational Environmental Management Plan which shall accompany the SDP and including plans, elevations and sections for the design and management of the future rehabilitated environment to the satisfaction and approval of the

authorised official after consultation with the Director: Catchment Stormwater and River Management.

- 43 A servitude protecting the floodplain and/or ecological buffer in Portion 3 and in the western portions of Portions 1 and 2 from alteration or obstruction shall be registered in favour of the City by the developer at its own cost. The conditions of servitude must be registered within a year of completion of the development and must allow the City maintenance access where required.
- 44 Any implementation measures required in respect of the river corridor management plan shall be for the account of the owner/developer.

Engineering Services

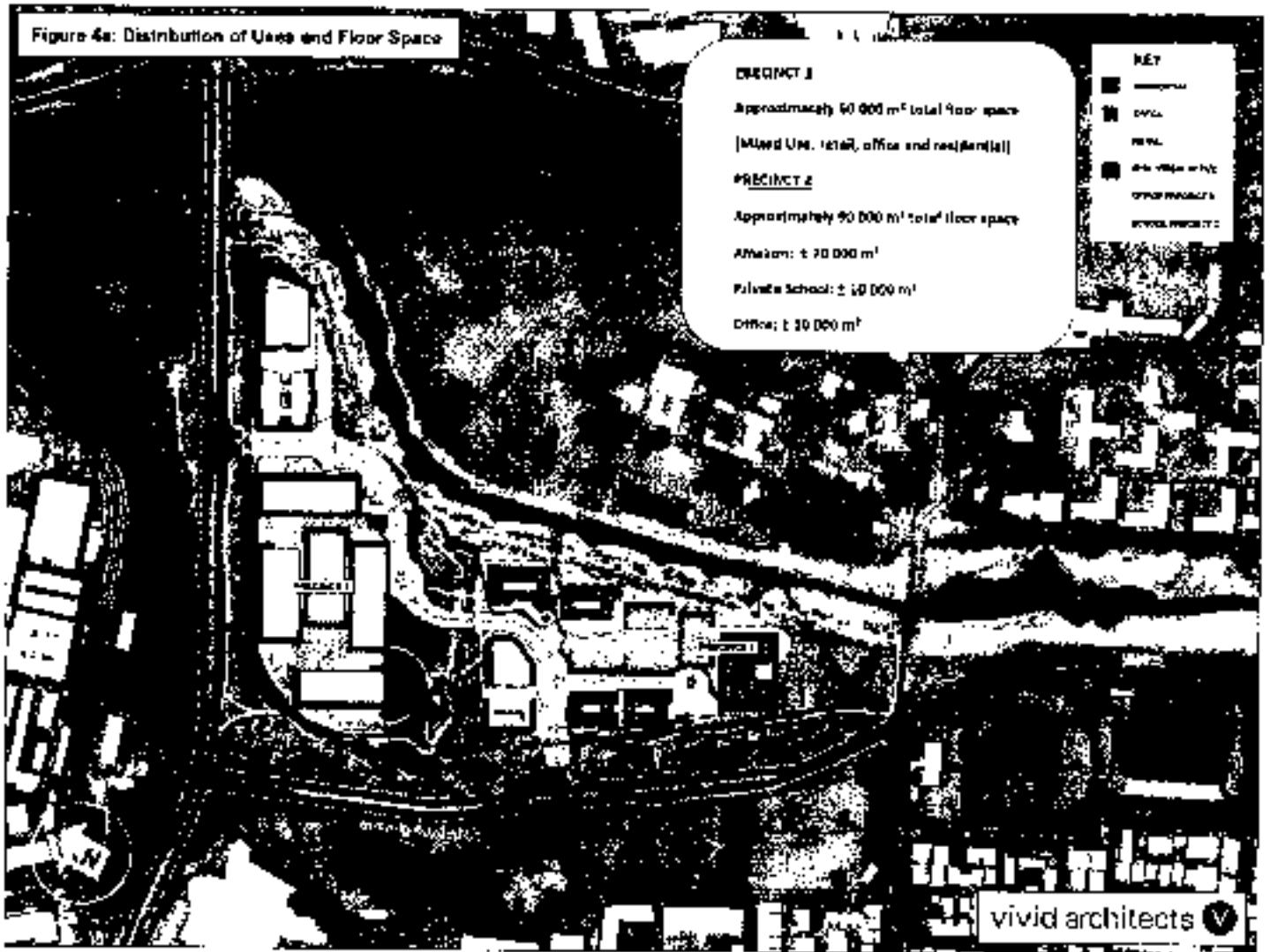
- 45 The maximum permissible floors space/GLA in terms of the proposal shall be restricted to:
- 45.1 59,600 m² of office space;
 - 45.2 31,900 m² of residential space;
 - 45.3 20,700 m² of retail space;
 - 45.4 10,000 m² for a place of instruction;
 - 45.5 9,200 m² of restaurant space;
 - 45.6 8,200 m² for a hotel;
 - 45.7 4,100 m² for a gymnasium;
 - 45.8 4,100 m² for ancillary uses;
 - 45.9 1,200 m² of conference space; and
 - 45.10 1,000 m² for an events pavilion.
- 46 The owner/developer shall be responsible for the payment of a **development charge** in the amount of **R73 612 448.06**, toward the provision of bulk engineering services which shall be paid prior to the first building plan approval.
- 47 Notwithstanding the above amount, the development charge figure shall be revised by the City, in accordance with City policies, should there be a change in the land use mix that was used to calculate the figure.
- 48 The development charge is subject to an annual escalation equal to the construction price adjustment (CPA) from civil engineering services, and the amount payable shall be the amount calculated at the time that the infrastructure is implemented or the development contribution is paid.
- 49 The owner/developer shall enter into a Services Agreement for the installation of bulk municipal services with relevant services departments including external roads and transport by the authorised official (Director: Transport or any other relevant department), which may provide for the cost of those services to be offset against the relevant component of the development charge.
- 50 The owner/developer shall, at its own cost, implement the proposed road infrastructure improvements to the approval of the authorised official, which shall include certain intersections, as recommended in the TIA submitted with the application, and two lanes of the Berkley Road extension from the current terminus of Berkley Road up to Liesbeek Parkway and Malta Road. The Malta /

- Berkley / Liesbeek intersection must be designed in accordance with option 2 indicated in the TIA, unless otherwise approved by the authorised official.
- 51 Should the cost of the bulk engineering services with respect to external Roads and Transport exceed the development charge components for Roads and Transport infrastructure, such cost shall be for the developer/owner's account and shall not be offset against the development charges for other engineering services.
 - 52 The upgrade to roads and related infrastructure shall be to the approval of the authorised official after consultation with the Director: Asset Management and Maintenance (Roads and Transport Planning).
 - 53 The owner/developer must, at her/his cost, upgrade bulk engineering services which shall include the provision of internal engineering services and link engineering services, to the approval of the delegated official after consultation with the Director: Asset Management and Maintenance and any other relevant departments. Where applicable, no transfer of ownership of an erf within a phase may occur before the installation and functioning of all services and/or implementation of external infrastructure upgrades required for that phase.
 - 54 Before the approval of any building plan, the owner/developer shall submit a plan which includes the timing of the implementation of improvements to Liesbeek Parkway to prevent flooding of Liesbeek Parkway. The implementation of such plan shall be at the developer/owner's cost and to the approval of the Director: Asset Management and Maintenance (Road Infrastructure and Management) and Director: Transport Forward Planning (Transport Planning).
 - 55 Prior to the approval of any building plan, the owner/developer shall at his/her cost submit **detailed civil engineering plans for the road upgrades** to the approval of the authorised official (Director: Transport (Roads Infrastructure & Management)). The implementation of such upgrades shall be to the approval of Director: Transport (Roads Infrastructure & Management).
 - 56 The owner/developer shall be responsible for the reinstatement of any damaged municipal infrastructure as directed and to the satisfaction of the relevant authorised official.

NOTES

- a. The rehabilitation of the adjacent canalised section of the eastern Liesbeek River must accord with the Environmental Authorisation.
- b. Any reference to precinct plan in these conditions must be read to mean generally in accordance with Appendix I to these conditions.
- c. The conditions of subdivision will regulate engineering services not dealt with in these conditions.

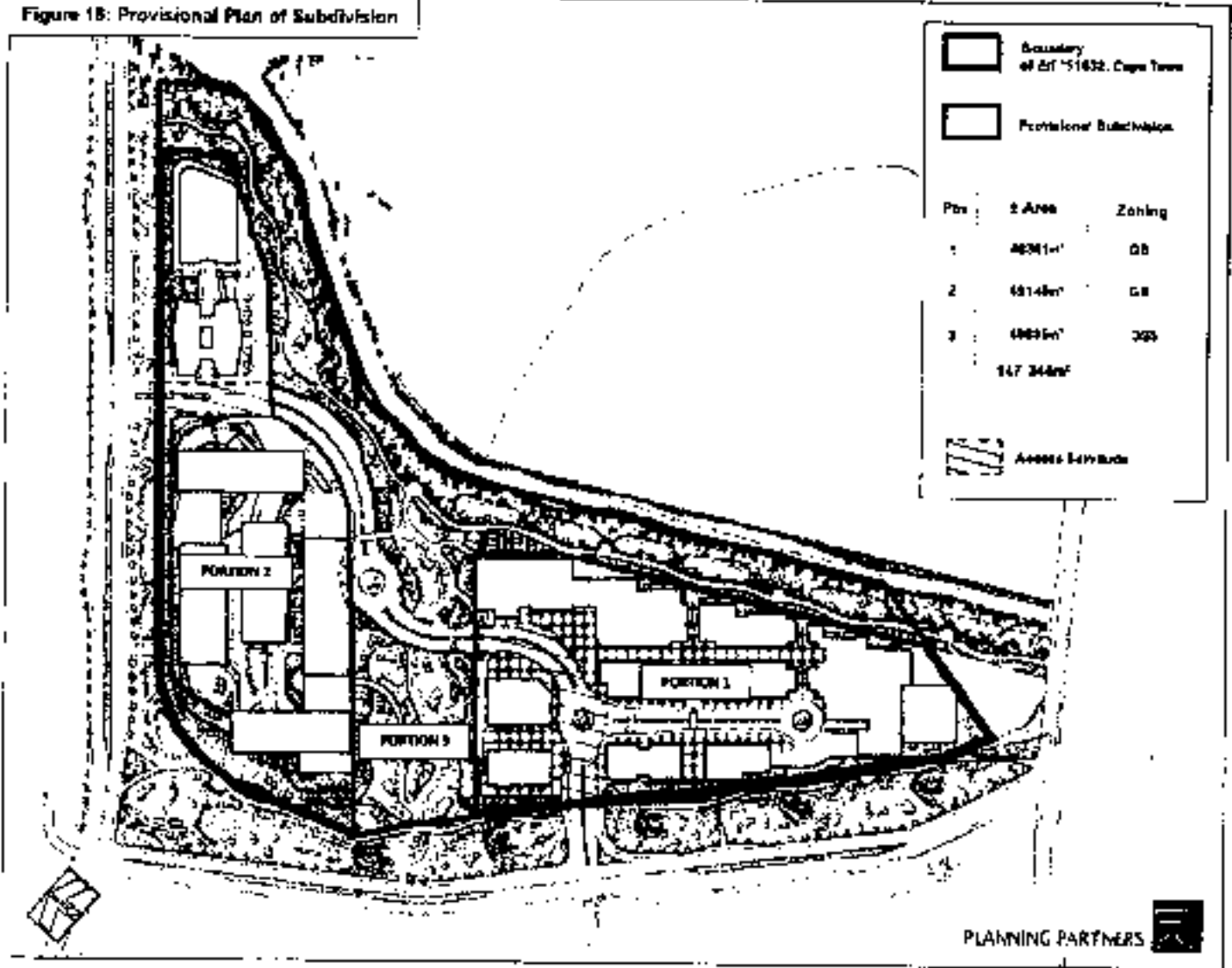
Appendix 1



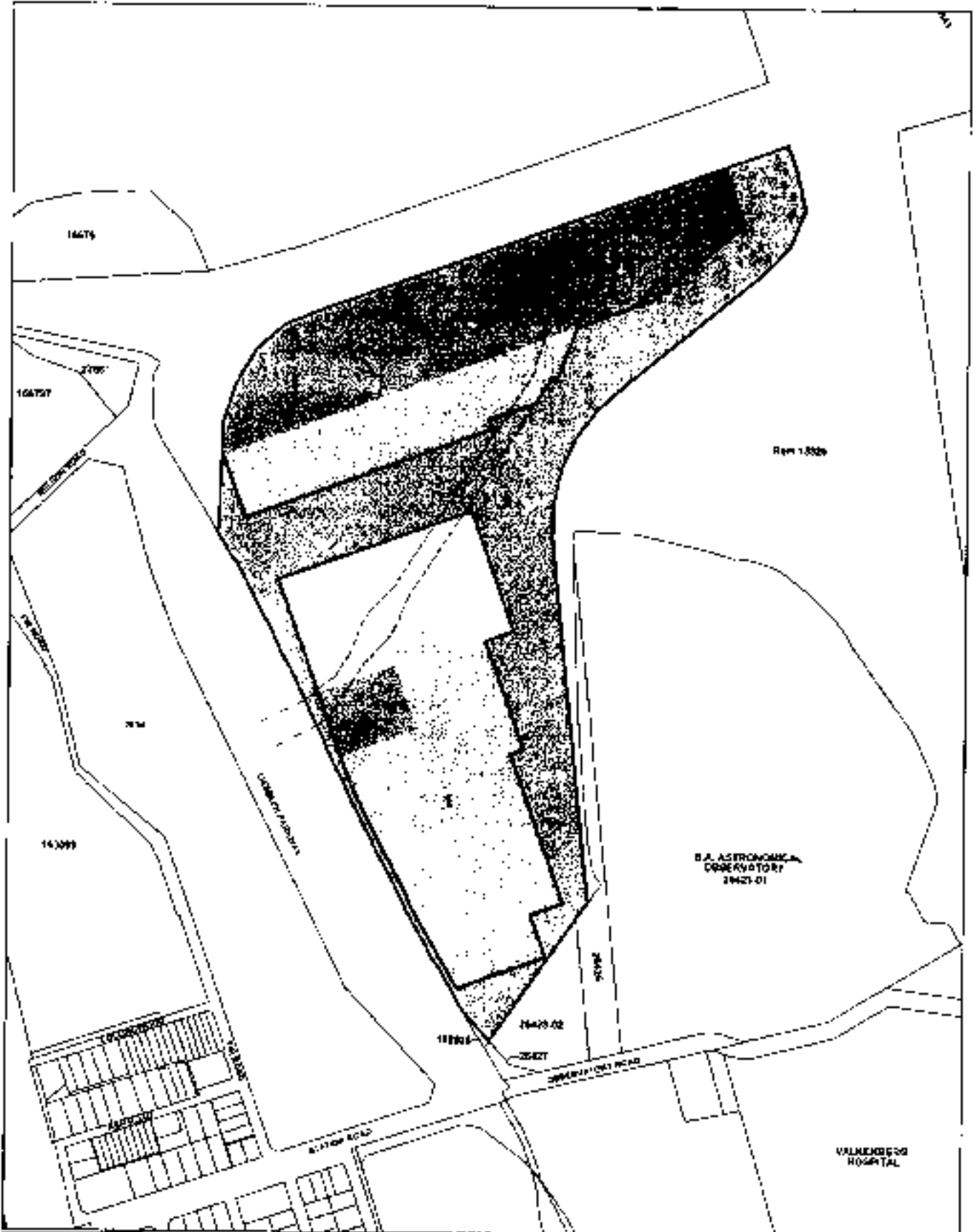
Handwritten signature

Appendix 2

Figure 18: Provisional Plan of Subdivision



[Handwritten signature]



Parcel No.	Proposed Zoning
16420-01	General Business 2
16420-02	General Business 2
16421-01	General Business 2
16421-02	General Business 2
16421-03	General Business 2
16421-04	General Business 2
16421-05	General Business 2
16421-06	General Business 2
16421-07	General Business 2
16421-08	General Business 2
16421-09	General Business 2
16421-10	General Business 2
16421-11	General Business 2
16421-12	General Business 2
16421-13	General Business 2
16421-14	General Business 2
16421-15	General Business 2
16421-16	General Business 2
16421-17	General Business 2
16421-18	General Business 2
16421-19	General Business 2
16421-20	General Business 2
16421-21	General Business 2
16421-22	General Business 2
16421-23	General Business 2
16421-24	General Business 2
16421-25	General Business 2
16421-26	General Business 2
16421-27	General Business 2
16421-28	General Business 2
16421-29	General Business 2
16421-30	General Business 2
16421-31	General Business 2
16421-32	General Business 2
16421-33	General Business 2
16421-34	General Business 2
16421-35	General Business 2
16421-36	General Business 2
16421-37	General Business 2
16421-38	General Business 2
16421-39	General Business 2
16421-40	General Business 2
16421-41	General Business 2
16421-42	General Business 2
16421-43	General Business 2
16421-44	General Business 2
16421-45	General Business 2
16421-46	General Business 2
16421-47	General Business 2
16421-48	General Business 2
16421-49	General Business 2
16421-50	General Business 2
16421-51	General Business 2
16421-52	General Business 2
16421-53	General Business 2
16421-54	General Business 2
16421-55	General Business 2
16421-56	General Business 2
16421-57	General Business 2
16421-58	General Business 2
16421-59	General Business 2
16421-60	General Business 2
16421-61	General Business 2
16421-62	General Business 2
16421-63	General Business 2
16421-64	General Business 2
16421-65	General Business 2
16421-66	General Business 2
16421-67	General Business 2
16421-68	General Business 2
16421-69	General Business 2
16421-70	General Business 2
16421-71	General Business 2
16421-72	General Business 2
16421-73	General Business 2
16421-74	General Business 2
16421-75	General Business 2
16421-76	General Business 2
16421-77	General Business 2
16421-78	General Business 2
16421-79	General Business 2
16421-80	General Business 2
16421-81	General Business 2
16421-82	General Business 2
16421-83	General Business 2
16421-84	General Business 2
16421-85	General Business 2
16421-86	General Business 2
16421-87	General Business 2
16421-88	General Business 2
16421-89	General Business 2
16421-90	General Business 2
16421-91	General Business 2
16421-92	General Business 2
16421-93	General Business 2
16421-94	General Business 2
16421-95	General Business 2
16421-96	General Business 2
16421-97	General Business 2
16421-98	General Business 2
16421-99	General Business 2
16421-00	General Business 2

PROPOSED ZONING

 MAIN STREET (30' WIDE)

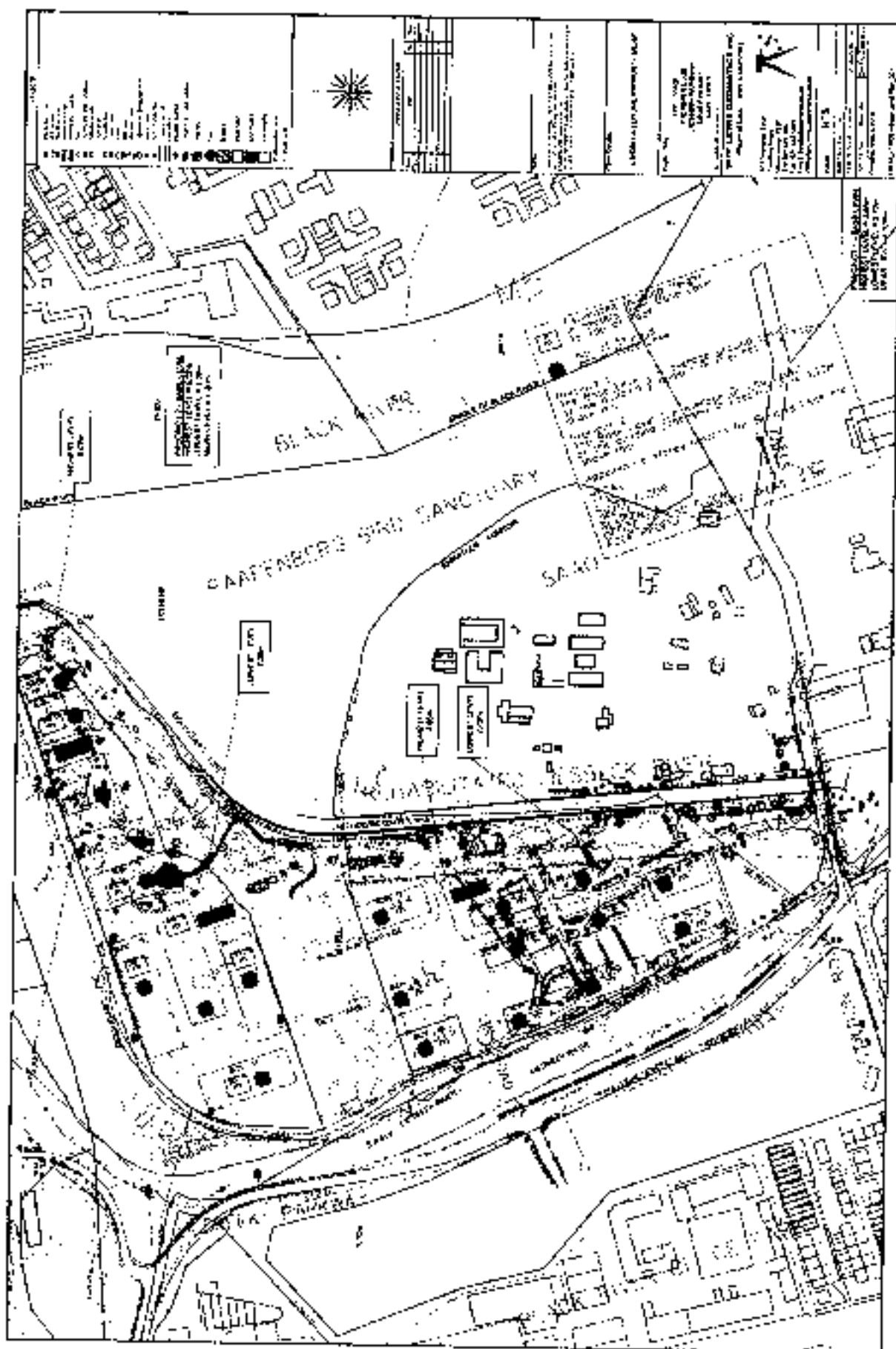
 PRIVATE ROAD (15' WIDE)
 NOTES:
 1. PARCELS & DIMENSIONS ARE APPROXIMATE

RIVER CLUB OBSERVATORY
 INDICATIVE INTERNAL BLOCK SUBDIVISION AND ZONING

 Figure 62

[Handwritten signature]

Appendix 3



Handwritten signature or initials.

Leslie London

From: MPT Oral Hearings <MPT.OralHearings@capetown.gov.za>
Sent: Friday, 11 September 2020 14:03
To: '2020mancomm'; Leslie London
Cc: Joy San Giorgio; telethu@irc.org.za; geoff@planpart.co.za; Robyn Parkross; Jonty Cogger
Subject: Fw: APPLICATION FOR REZONING, APPROVAL OF COUNCIL & DEVIATIONS FROM CITY POLICIES; ERF 151832, 6 LIESBEECK PARKWAY, OBSERVATORY (RIVER CLUB)

CAUTION: This email originated outside the UCT network. Do not click any links or open attachments unless you know and trust the source.

Good day

You are **not permitted** to raise new information at the Municipal Planning Tribunal (MPT), as the applicant would not have had the opportunity to respond to same, nor would the panel of the MPT been given an opportunity to examine said information ahead of the scheduled meeting.

Secondly, an interview request has already been granted to the applicant and objectors who made contact and were informed accordingly. Please consult with the objectors (copied herein) to enquire from them whether they would be willing to either share their time with you, OR whether they would include your concerns into their presentation.

Regards,

René Pieterse

Urban Management:
Municipal Planning Tribunal (MPT)
North Western & South Eastern Regions
Telephone: +27 21 400 1997
Alternative Telephone: +27 21 400 4091
3rd Floor Podium – Foyer H
Civic Centre, Cape Town, South Africa
E-mail: mpt.oralhearings@capetown.gov.za

From: Leslie London <leslie.london@uct.ac.za>
Sent: 11 September 2020 12:43 PM
To: MPT Oral Hearings
Cc: '2020mancomm'
Subject: FW: APPLICATION FOR REZONING, APPROVAL OF COUNCIL & DEVIATIONS FROM CITY POLICIES; ERF 151832, 6 LIESBEECK PARKWAY, OBSERVATORY (RIVER CLUB)

Dear colleague

I write to give notice that the Observatory Civic Association, as an Interested and Affected Party in this application, wishes to present to this MPT hearing

We do so as the Civic representative for one of the communities directly affected by this proposed rezoning.

Our submission at the MPT will raise new information that was not available at the time at which the application was first submitted in September 2018. This is information which we obviously could not bring to the MPTs attention in 2018.

This information relates to

- a. Numerous arguments and processes related to heritage impacts of the development, including the findings of the Heritage Appeal Tribunal and the final comments of Heritage Western Cape on the River Club development under the BAR process;

- b. The principle of the utilisation of public land to enabling private benefit which has been challenged in more recent court matters;
- c. Various statements made by City Councillors in recent months related to the City's views regarding construction in a flood plain, which must surely be relevant as indication of policy priorities in the City leadership.

Moreover, we will draw attention to the fact that the development presented to IAPs when the rezoning application was made has been substantially altered since 2018 and that the MPT will be considering a development which is not the one on which IAPs were given opportunity to comment in 2018.

We will also indicate that the approval for the Environmental Authorisation under NEMA is still under appeal and a final decision, whether by the Appeal authority, or through a High Court Action may have major bearing on facts the MPT should have at hand in order to decide on this matter.

We will therefore argue that there are procedural concerns that the MPT is rushing this rezoning and will provide evidence for such a position.

Please confirm that the OCA will be given opportunity to present its case.
We will confirm who will present on behalf of the OCA once we have heard.

Yours

Leslie London
OCA Chair

From: Jay San Giorgio <Jay.SanGiorgio@capetown.gov.za>
Sent: Wednesday, 09 September 2020 16:45
To: Leslie London <leslie.london@uct.ac.za>
Cc: Mark Mupariwa <Mark.Mupariwa@capetown.gov.za>; Gregory September <Gregory.September@capetown.gov.za>
Subject: RE: APPLICATION FOR REZONING, APPROVAL OF COUNCIL & DEVIATIONS FROM CITY POLICIES: ERF 15-1832, 6 LIESBEECK PARKWAY, OBSERVATORY (RIVER CLUB)

CAUTION: This email originated outside the UCT network. Do not click any links or open attachments unless you know and trust the source.

Dear Sir

We acknowledge receipt of your email requesting me to comment on some procedural issues pertaining to the above application.

As the department has finalised the report for this application and referred it to the MPT for a decision, it would be inappropriate for me to respond to your questions outside the decision making processes. The appropriate platform for you to raise these issues is at the MPT, assuming you requested and was granted an opportunity to make oral representations. Depending on the MPT decision, you may have an opportunity to raise these issues during the appeal process.

Kind regards

Jay San Giorgio
Senior Professional Officer: Development Management
Directorate: Spatial Planning and Environment
Tel: 021 - 444 9538 Email: jay.sanorgio@capetown.gov.za

Development Management Information Hubs: southafricahubs.com

From: Leslie London <leslie.london@uct.ac.za>

Sent: Wednesday, 09 September 2020 16:06

To: Joy San Giorgio <Joy.SanGiorgio@capetown.gov.za>; abicosa@gmail.com; amnee@unicorncafe.co.za; davson@mweb.co.za; venteralex@gmail.com; alexdrulier@gmail.com; alexr@edgegrowth.com; alison.paulin@gmail.com; amienadavids@gmail.com; andrea.couvert@gmail.com; asbowden@gmail.com; anielabb@gmail.com; annakajam@gmail.com; annalisa.za@gmail.com; lgreenwood@oldmutual.com; Ariane.delainoy@gmail.com; arnie.rktc@gmail.com; auke@psychohistorian.org; auke@cfah.org.za; rodriguez.belisa <rodriguez.belisa@gmail.com>; bdivey@gmail.com; Caitlin Sole <Caitlin.Sole@alumni.uct.ac.za>; cebarnes@gmail.com; carinezaayman@icloud.com; caron@nocturnalaffair.co.za; edgyhart@peika.co.za; charlotte@conia.co.za; littlesong1645@gmail.com; chris@magics.co.za; hettlage@saao.ac.za; cirajrassool@gmail.com; everatts@gmail.com; colleen.edgyhart@gmail.com; cor@tommybrunmer.co.za; davesue@mweb.co.za; dlrow@oldmutual.com; dibnob@saao.ac.za; wackeyza@gmail.com; deon.erasmus@optinet.net; dupcan@smallbones.com; dylanbarsby@gmail.com; eiffoster@gmail.com; edwin@obsid.org.za; emma.e.buckley@gmail.com; emstockden@gmail.com; esteemikaeta@gmail.com; tjaila@iafrica.com; farzaneh.behrudi@gmail.com; fggreene@mweb.co.za; frances <frances@communitree.in>; leyman@jaywalk.co.za; pianohammer.gh@gmail.com; capeblueliving@gmail.com; katurduw@telkomsa.net; guynicol@worldonline.co.za; g.dereymucker@gmail.com; lampen@mweb.co.za; hermschle@gmail.com; hifary.alburt@gmail.com; hollyfilday@gmail.com; howard@pb7.capetown; Hugo van der Merwe <hvdmerwe@csyr.org.za>; Glass.ian@gmail.com; ivan@varsams.com; chambersj@rghs.org.za; acqui.karenbeek@gmail.com; johanbeaurain@gmail.com; 123jmbissett@gmail.com; jan@windowline.co.za; jvorster@media24.com; Ms.j.j.matthews@gmail.com; janetcoronie@gmail.com; jeans.ramsay@gmail.com; jen-bader@mweb.co.za; jwveth@gmail.com; joubertjill <joubertjill@gmail.com>; jodial.emele@gmail.com; Terrblanche.christelle@gmail.com; drjoyrobinson@starshine.co.za; jheerden@mweb.co.za; ivanderlugt@mweb.co.za; justin.floer@gmail.com; karawendylev@gmail.com; karen@flipper.co.za; Katharinein7@gmail.com; michael@sundevlopment.co.za; kechik@hotmail.com; lara.pietersen@gmail.com; youngberry48@gmail.com; Lauraschultz8@gmail.com; leighlamb14@gmail.com; leigh.lambrechts@webberwentzel.com; leebenajfield@gmail.com; lenita.dupflessis@gmail.com; ianne@stbb.co.za; louls.stanford@gmail.com; louisetudorjones@gmail.com; lupam.cvicanti@gmail.com; lynetteamunz@gmail.com; marcel@marcel.co.za; margaret@fagan.co.za; malblas@iafrica.com; Marine.febland@gmail.com; marion@smallbones.com; marius@wst.airsty; mark@neville.za.net; mark@jacksonjim.co.za; mark@redefine.co.za; mark@derrickcapetown.com; marthina@oculusinnovations.co.za; mijssj@gmail.com; marykeolivier@gmail.com; melani.alp@gmail.com; mys@gmail.com; michellecollis@gmail.com; mlinafv69@gmail.com; mirandadvoit@gmail.com; miriam.breytenbach@gmail.com; nasimacoovadia@gmail.com; Natalie Leon <natalie.leon@mrc.ac.za>; nnd@ova.co.za; oliviaandrews@yahoo.co.za; pami.britt@wol.co.za; anaikaia@gmail.com; visualhistorywvc@gmail.com; peter.coates@telkomsa.net; peterwilliamsashman@gmail.com; manager@fol.org.za; info@fol.org.za; philippahiggins5789 <philippahiggins5789@gmail.com>; richard.andrew@yahoo.co.uk; stanbridge@gmail.com; robbet@gmail.com; rol.hunter@gmail.com; ros@saao.ac.za; rovashton@gmail.com; russell195@hotmail.com; rhall@uwc.ac.za; sandradupflessis96@gmail.com; driver_jowitt@hotmail.com; sarah@tique.co.za; sarah@sarahrice.co.za; sheilapi <sheilapi@icon.co.za>; shonah@mac.com; simon@visserarchi; simon@visserarchitects.co.za; simon@visserarchi; simon@visserarchitects.co.za; sh@saao.ac.za; vanderspuy38@gmail.com; susanpeddie@gmail.com; moses.sue@gmail.com; telia.meer@gmail.com; tania.mackenzie@gmail.com; Larouin@image.visual.com; terence.visagie@gmail.com; tessatoerfen@gmail.com; hijack@toms-surfboards.com; tracybartay64@gmail.com; hedmekanik@gmail.com; tshughes@gmail.com; trevora@gmail.com; chairperson@trup.org.za; ecretary@trup.org.za; chairperson@trup.org.za; secretary@trup.org.za; Virginia MacKenny <virginia.mackenny@uct.ac.za>; wdm@astro4dev.org; iwerner@mweb.co.za; willem@willembuhrman.co.za; william@frater.co.za; wolfgang@campaignforreducation.org; youvandi@gmail.com; sabina.favaro@gmail.com; nachwarr@waterfront.co.za; torne@telkomsa.net; canteacious@gmail.com; dohniko1@gmail.com; yining.emily@gmail.com; emma.vanderlille@gmail.com; emegoldblatt@gmail.com; eugenie.skilton@gmail.com; urdurhayh@gmail.com; jekemorris01@gmail.com; projects@spiritofafrica.co.za; jonty@nu.org.za; hex8706vics@gmail.com; juk.white16@hotmail.com; Seth.til@gmail.com; somady@lve.co.uk; traceyleghlawson@gmail.com; treva@inote.co.za

Cc: MPT Oral Hearings <MPT.OralHearings@capetown.gov.za>; Marx Mupariwa

<Marx.Mupariwa@capetown.gov.za>; Gregory September <Gregory.September@capetown.gov.za>

Subject: RE: APPLICATION FOR REZONING, APPROVAL OF COUNCIL & DEVIATIONS FROM CITY POLICIES: ERF 151832, 6 LIESBECK PARKWAY, OBSERVATORY (RIVER CLUB)



Dear Joy

Can you advise how the application for Rezoning which was submitted in 2018 can be considered in 2020 when the proposal has changed since it was first submitted?

As per the DEAT Environmental Authorisation "The Layout Alternatives identified and assessed in the BAR, have been informed by comments received from the I&APs and Authorities. It is further noted that the heights of buildings were reduced in order to reduce the potential visual impacts and to maintain the view sheds towards Table Mountain".

Elsewhere in the BAR it is stated that "The layout has been refined through a number of iterations in response to a number of aspects, including, *inter alia*, the ecological status of the site, potential inundation, cultural and heritage factors, traffic and access, urban plans, as well as commercial and technical considerations. Six previous iterations of the preferred development alternative are presented in the BA Report."

It is therefore unclear how the submission in 2018, which has changed over the period to 2020, can be considered without IAPs having opportunity to see the final submission.

Could you advise?

Thanks

Leslie London

From: Joy San Giorgio <Joy.SanGiorgio@capetown.gov.za>

Sent: Wednesday, 09 September 2020 15:42

To: abicase@gmail.com; aimee@unicorncafe.co.za; davson@mweb.co.za; venteralex@gmail.com; alexmailler@gmail.com; alex@edgeworks.com; alison.pavlin@gmail.com; amienadavids@gmail.com; andrea.couvert@gmail.com; asbowden@gmail.com; gnielabb@gmail.com; annakajam@gmail.com; annalisa.za@gmail.com; tgreenwood@oldmutual.com; Ariane.dejanjoo@gmail.com; arrie.rkfr@gmail.com; auke@psychohistoria.org; auke@cfah.org.za; rodrigues.belisa <rodrigues.belisa@gmail.com>; bdivey@gmail.com; Caitlin Sole <Caitlin.Sole@sun.ac.za>; cebarnes@gmail.com; carine.zayman@icloud.com; carol@nocturnalaffair.co.za; edgyhart@potka.co.za; charlotte@sonia.co.za; littlesong1645@gmail.com; chris@magics.co.za; hetliage@saa.ac.za; cira.rassool@gmail.com; everatts@gmail.com; colleen.edgyhart@gmail.com; cor@tommybrummer.co.za; dave.suc@mweb.co.za; dtrow@oldmutual.com; dibnob@saa.ac.za; wuckeyza@gmail.com; deon.erasmus@optinet.net; duncan@smallbones.com; dylanbarsky@gmail.com; eiffoster@gmail.com; edwin@obsid.org.za; emmale.buckley@gmail.com; emstockden@gmail.com; ester.mikaela@gmail.com; njalla@lafrika.com; tarzaneh.behrooz@gmail.com; fgreene@mweb.co.za; frances <frances@communitree.in>; leyman@raywalk.co.za; pianohammer.ph@gmail.com; capeblueliving@gmail.com; kajunduw@telkomsa.net; goynisof@worldonline.co.za; g.dereymacker@gmail.com; lampen@mweb.co.za; hermschle@gmail.com; nilory.aibutt@gmail.com; hollyfilcay@gmail.com; howard@obz.capetown; Hugo van der Merwe <hvdmerwe@csyr.org.za>; Glass.ian@gmail.com; ivan@ivansams.com; chambersi@rghs.org.za; jcoqui.klarenbeek@gmail.com; johar.beuwan@gmail.com; j23jmbisset@gmail.com; jan@windowline.co.za; worster@media24.com; Ms.l.j.matthews@gmail.com; janettronje@gmail.com; leann.s.ramsay@gmail.com; jep.bader@mweb.co.za; jwyeth@gmail.com; joubertjill <joubertjill@gmail.com>; jodial-em-er@gmail.com; TerriBlanche.Christelle@gmail.com; drovrodinson@starshine.co.za; jheerden@mweb.co.za; vandercragt@mweb.co.za; Justin.floor@gmail.com; karawendylevy@gmail.com; karen@hopper.co.za; Katharinem7@gmail.com; michael@sundevelopment.co.za; keuhlk@hotmail.com; fara.pretersen@gmail.com; youngberry48@gmail.com; lauraschufft8@gmail.com; Le.glamh14@gmail.com; eigh.lambrechts@wgbberwenzel.com; leeter.jafeld@gmail.com; lerita.duplessis@gmail.com; Leslie London <leslie.london@un.ac.za>; lianne@stob.co.za; lvia.stanford@gmail.com; louise.udorjonev@gmail.com; luci.americani@gmail.com; lynetteamunro@gmail.com; mcruis@marvel.co.za; margaret@fagen.co.za; maloras@lafrika.com; Marine.leblond@gmail.com;

marion@smallbones.com; marius@visuals.tv; mark@neville.za.net; mark@jacksonfirm.co.za; mark@redefine.co.za; mark@derrickcapetown.com; marthruj@bcvuisinnovations.co.za; mjjssj@gmail.com; marykeolivier@gmail.com; melary_glp@gmail.com; mys@mvs.za.org; michellucolis@gmail.com; minnajv69@gmail.com; mirandadutoit@gmail.com; miriam_breytenbach@gmail.com; nasimacovadla@gmail.com; **Natalie Leon** <natalie.leon@mrc.ac.za>; nodi@ora.co.za; oiviandrews@yahoo.co.za; pam.britt@wpl.co.za; anaisala@gmail.com; yswahistoryuwc@gmail.com; peter.coates@telkomsa.net; peterwilliamsashman@gmail.com; manager@fol.org.za; info@fol.org.za; phippahiggins5789 <phippahiggins5789@gmail.com>; richard.andrew@yahoo.co.uk; rstanbridge@gmail.com; robket@gmail.com; rol.hunter@gmail.com; rcs@sao.ac.za; rovashton@gmail.com; russel196@hotmail.com; rhall@uwc.ac.za; sanraduplessis96@gmail.com; driver_jowitt@hotmail.com; sarah@tigue.co.za; sarali@sarahrice.co.za; sherlapi<sherlapi@con.co.za>; shorah@mac.com; simon@visser.archi; simon@visserarchitects.co.za; simon@visser.archi; simon@visserarchitects.co.za; sh@sao.ac.za; Vanderpuy38@gmail.com; susangredley@gmail.com; moses_sue@gmail.com; tada.meer@gmail.com; lania.mackenzie@gmail.com; tarquin@image-visual.com; terence.visagie@gmail.com; tessatoerlen@gmail.com; hijax@coms_surfboards.com; tracybarclay04@gmail.com; hedmekanik@gmail.com; tglughes@gmail.com; truevora@gmail.com; chairperson@trup.org.za; secretary@trup.org.za; chairperson@trup.org.za; secretary@trup.org.za; **Virginia MacKenny** <virginia.mackenny@uct.ac.za>; wdm@astro4dev.org; werner@mweb.co.za; wilem@willembuhrmann.co.za; william@frater.co.za; wolfgana@campaignforeducation.org; yoavandi@gmail.com; sabina.favaro@gmail.com; nschwartz@waterfront.co.za; tame@telkomsa.net; camelicious@gmail.com; dulrike1@gmail.com; vining_emily@gmail.com; emma.vandervliet@gmail.com; smegoldblatt9@gmail.com; eugene.skeiton@gmail.com; underhavn@gmail.com; jakemorris01@gmail.com; projects@spiritofafrica.co.za; jonty@nu.org.za; bex87davies@gmail.com; rick.white16@hotmail.com; Seth.til@gmail.com; soriadv@live.co.uk; traceyleighlawson@gmail.com; treve@incite.co.za
Cc: MPT Oral Hearings <MPT.OralHearings@capetown.gov.za>; Marx Mupariwa <Marx.Mupariwa@capetown.gov.za>; Gregory September <Gregory.September@capetown.gov.za>
Subject: APPLICATION FOR REZONING, APPROVAL OF COUNCIL & DEVIATIONS FROM CITY POLICIES: ERF 151832, 6 LIESBEECK PARKWAY, OBSERVATORY (RIVER CLUB)

CAUTION: This email originated outside the UCT network. Do not click any links or open attachments unless you know and trust the source.

Good-day Interested parties

The abovementioned application and our letter of notification advertising the abovementioned application, have reference.

You are an identified party who commented on the abovementioned application and who has requested to make oral representations or alternately a person using your email address to submit their objections has made said request. As mentioned previously in our letter of notification that invited comments and objections, the Section 120(1) of the MPBL provides that a person may make a request to the Municipal Planning Tribunal (MPT) to make an oral submission (interview). For such request to be considered it must comply with the following requirements:

1. A written request must be emailed to the following address : MPT.oralhearings@capetown.gov.za
2. Adequate reasons must be given for such request.
3. The request must be received at the above mentioned address at least 5 days before the MPT meeting at which the application(s) will be considered, or closer to the meeting if good cause is shown.
4. The application will be tabled at the MPT meeting on **18 September 2020**.

To determine if you would like to make such request, you are directed to the following web link where the scheduled MPT meeting dates and the agendas are published:

[http://www.capetown.gov.za/Family%20and%20home/mcpl-the-city/city-council/Meeting calendar](http://www.capetown.gov.za/Family%20and%20home/mcpl-the-city/city-council/Meeting%20calendar).

Kindly ensure that your request reaches the relevant parties timeously for your request to be considered. Should you have any queries in respect hereof you may contact **Rene Pieterse** (MPT.oralhearings@capetown.gov.za). Please ensure that parties who used your email address to transmit their objections are notified accordingly.

Kind regards



Joy San Giorgio
Senior Professional Officer: Development Management
Directorate: Spatial Planning and Environment

WORKING FROM HOME DURING COVID-19

Tel: 021 – 444 9538 | Email: joy.sanorgio@capetown.gov.za

Development Management Information Hubs: [Southern](#)

[CCT Contacts](#) | [CCT Media and News](#) | [Report a fault](#) | [Account Queries](#) | [COVID-19](#)



Disclaimer: This e-mail (including attachments) is subject to the disclaimer published at: http://www.capetown.gov.za/general/email_disclaimer Please read the disclaimer before opening any attachment or taking any other action in terms of this e-mail. If you cannot access the disclaimer, kindly send an email to disclaimer@capetown.gov.za and a copy will be provided to you. By replying to this e-mail or opening any attachment you agree to be bound by the provisions of the disclaimer.

Disclaimer - University of Cape Town This email is subject to UCT policies and email disclaimer published on our website at <http://www.uct.ac.za/main/email-disclaimer> or obtainable from +27 21 650 9111. If this email is not related to the business of UCT, it is sent by the sender in an individual capacity. Please report security incidents or abuse via <https://csirt.uct.ac.za/page/report-an-incident.php>.

Disclaimer: This e-mail (including attachments) is subject to the disclaimer published at: http://www.capetown.gov.za/general/email_disclaimer Please read the disclaimer before opening any attachment or taking any other action in terms of this e-mail. If you cannot access the disclaimer, kindly send an email to disclaimer@capetown.gov.za and a copy will be provided to you. By replying to this e-mail or opening any attachment you agree to be bound by the provisions of the disclaimer.

Disclaimer - University of Cape Town This email is subject to UCT policies and email disclaimer published on our website at http://www.uct.ac.za/main/email_disclaimer or obtainable from +27 21 650 9111. If this email is not related to the business of UCT, it is sent by the sender in an individual capacity. Please report security incidents or abuse via <https://csirt.uct.ac.za/page/report-an-incident.php>.

Disclaimer: This e-mail (including attachments) is subject to the disclaimer published at: http://www.capetown.gov.za/general/email_disclaimer Please read the disclaimer before opening any attachment or taking any other action in terms of this e-mail. If you cannot access the disclaimer, kindly send an email to disclaimer@capetown.gov.za and a copy will be provided to you. By replying to this e-mail or opening any attachment you agree to be bound by the provisions of the disclaimer.

A handwritten signature in black ink, appearing to be 'R. San Giorgio'.

"LL29"

Leslie London

From: MPT Oral Hearings <MPT.OralHearings@capetown.gov.za>
Sent: Friday, 11 September 2020 14:03
To: '2020mancomm'; Leslie London
Cc: Joy San Giorgio; lelethu@lrc.org.za; geoff@planpart.co.za; Robyn Parkross; Jonty Cogger
Subject: Fw: APPLICATION FOR REZONING, APPROVAL OF COUNCIL & DEVIATIONS FROM CITY POLICIES: ERF 151832, 6 LIESBEECK PARKWAY, OBSERVATORY (RIVER CLUB)

CAUTION: This email originated outside the UCT network. Do not click any links or open attachments unless you know and trust the source.

Good day

You are **not permitted** to raise new information at the **Municipal Planning Tribunal (MPT)**, as the applicant would not have had the opportunity to respond to same, nor would the panel of the MPT been given an opportunity to examine said information ahead of the scheduled meeting.

Secondly, an interview request has already been granted to the applicant and objectors who made contact and were informed accordingly. Please consult with the objectors (copied herein) to enquire from them whether they would be willing to either share their time with you, OR whether they would include your concerns into their presentation.

Regards,

René Polersen

Urban Management:
Municipal Planning Tribunal (MPT)
North Western & South Eastern Regions
Telephone: +27 21 400 1997
Alternative Telephone: +27 21 400 4091
3rd Floor Podium – Foyer H
Civic Centre, Cape Town, South Africa
E-mail: mpt.oralhearings@capetown.gov.za

From: Leslie London <leslie.london@uct.ac.za>
Sent: 11 September 2020 12:43 PM
To: MPT Oral Hearings
Cc: '2020mancomm'
Subject: FW: APPLICATION FOR REZONING, APPROVAL OF COUNCIL & DEVIATIONS FROM CITY POLICIES: ERF 151832, 6 LIESBEECK PARKWAY, OBSERVATORY (RIVER CLUB)

Dear colleague

I write to give notice that the Observatory Civic Association, as an Interested and Affected Party in this application, wishes to present to this MPT hearing

We do so as the Civic representative for one of the communities directly affected by this proposed rezoning.

Our submission at the MPT will raise new information that was not available at the time at which the application was first submitted in September 2018. This is information which we obviously could not bring to the MPTs attention in 2018

This information relates to

- a. Numerous arguments and processes related to heritage impacts of the development, including the findings of the Heritage Appeal Tribunal and the final comments of Heritage Western Cape on the River Club development under the BAR process;

- b. The principle of the utilisation of public land to enabling private benefit which has been challenged in more recent court matters;
- c. Various statements made by City Councillors in recent months related to the City's views regarding construction in a flood plain, which must surely be relevant as indication of policy priorities in the City leadership.

Moreover, we will draw attention to the fact that the development presented to IAPs when the rezoning application was made has been substantially altered since 2018 and that the MPT will be considering a development which is not the one on which IAPs were given opportunity to comment in 2018.

We will also indicate that the approval for the Environmental Authorisation under NEMA is still under appeal and a final decision, whether by the Appeal authority, or through a High Court Action may have major bearing on facts the MPT should have at hand in order to decide on this matter.

We will therefore argue that there are procedural concerns that the MPT is rushing this rezoning and will provide evidence for such a position.

Please confirm that the DCA will be given opportunity to present its case.
We will confirm who will present on behalf of the DCA once we have heard.

Yours

Leslie London
OCA Chair

From: Joy San Giorgio <Joy.SanGiorgio@capetown.gov.za>
Sent: Wednesday, 09 September 2020 16:45
To: Leslie London <leslie.london@uct.ac.za>
Cc: Marx Mupariwa <Marx.Mupariwa@capetown.gov.za>; Gregory September <Gregory.September@capetown.gov.za>
Subject: RE: APPLICATION FOR REZONING, APPROVAL OF COUNCIL & DEVIATIONS FROM CITY POLICIES; ERF 151832, 6 LESBEECK PARKWAY, OBSERVATORY (RIVER CLUB)

CAUTION: This email originated outside the UCT network. Do not click any links or open attachments unless you know and trust the source.

Dear Sir

We acknowledge receipt of your email requesting me to comment on some procedural issues pertaining to the above application.

As the department has finalised the report for this application and referred it to the MPT for a decision, I would be inappropriate for me to respond to your questions outside the decision making processes. The appropriate platform for you to raise these issues is at the MPT, assuming you requested and was granted an opportunity to make oral representations. Depending on the MPT decision, you may have an opportunity to raise these issues during the appeal process.

Kind regards

Joy San Giorgio
Senior Professional Officer: Development Management
Directorate: Spatial Planning and Environment
Tel: 021 – 444 9538 Email: joy.sangiorgio@capetown.gov.za

Development Management Information Hubs: [Southern](#)

From: Leslie London <leslie.london@uct.ac.za>

Sent: Wednesday, 09 September 2020 16:06

To: Joy San Giorgio <Joy.SanGiorgio@capetown.gov.za>; quruse@gmail.com; airtree@unicorncafe.co.za; dawson@mweb.co.za; ventalex@gmail.com; alexismuller@gmail.com; alexr@edgegrowth.com; alison.paulin@gmail.com; anieradavids@gmail.com; andrea.louven@gmail.com; asbowden@gmail.com; ariela@u@gmail.com; annakajain@gmail.com; annalisa.za@gmail.com; tgreenwood@oldmutual.com; Ariane.delanny@gmail.com; arnie.rkfc@gmail.com; auke@psychohistorian.org; auke@cfah.org.za; rodrigues.belisa <rodrigues.belisa@gmail.com>; bdivvy@gmail.com; Caitlin Sole <Caitlin.Sole@alumni.uct.ac.za>; cebarnes@gmail.com; carniczayman@icloud.com; carol@nocturnalaffair.co.za; edgyhart@polka.co.za; charlotte@cora.co.za; titlesong1645@gmail.com; clris@magics.co.za; hettlage@saap.ac.za; crafassoci@gmail.com; cyrats@gmail.com; colleen.edgyhart@gmail.com; cor@tommybrummer.co.za; davevue@mweb.co.za; dtrow@oldmutual.com; dibrob@saap.ac.za; warkeyya@gmail.com; deon.erasmus@optinet.net; duncan@smallbones.com; dylanbarsby@gmail.com; eiffoster@gmail.com; edwin@obsid.org.za; emma.e.huckley@gmail.com; emstockden@gmail.com; ester.mikaela@gmail.com; sjala@lafrika.com; farzaneh.behrouzi@gmail.com; fbgreen@mweb.co.za; frances <frances@communitree.in>; leyman@jaywalk.co.za; pranohammer.gh@gmail.com; capebucliving@gmail.com; katunduw@telkomsa.net; guynical@worldonline.co.za; g.deeymaeker@gmail.com; lampen@mweb.co.za; hermschle@gmail.com; hllary.albutt@gmail.com; hollyfield@gmail.com; howard@obz.capetown; Hugo van der Merwe <hvdmerwe@usv.org.za>; Glass Jar@gmail.com; ivan@ivansams.com; chambersj@rehs.org.za; jcgui.klarenbeek@gmail.com; johar.beaurain@gmail.com; 123mbissett@gmail.com; jnn@windowline.co.za; jvorster@media24.com; Ms.s.j.mathews@gmail.com; janetcronje@gmail.com; Jean.s.ramsay@gmail.com; jens-bader@mweb.co.za; jlwyeth@gmail.com; joubertjill <joubertjill@gmail.com>; jodiallemeyer@gmail.com; Terrblanche.christele@gmail.com; dtroyrobinson@starshine.co.za; iheerden@mweb.co.za; ivanderluyt@mweb.co.za; Justin.floor@gmail.com; karawendylevy@gmail.com; karen@flipper.co.za; Katharinem7@gmail.com; michael@sundevelopment.co.za; kechik@hotmail.com; lara.pietersen@gmail.com; youngberry48@gmail.com; lauraschultz8@gmail.com; Leighamb14@gmail.com; leigh.lambrechts@webberwenzel.com; leeben.jafield@gmail.com; lenita.duplessis@gmail.com; lianna@stbb.co.za; louis.stanford@gmail.com; louisetadonjones@gmail.com; luciamenicanti@gmail.com; lvetteamunro@gmail.com; marcel@marcel.co.za; margaret@fagan.co.za; maiblas@lafrika.com; Marlene.kelblond@gmail.com; marion@smallbones.com; marius@visuals.tv; mark@neville.za.net; mark@jacksonfillm.co.za; mark@redefine.co.za; mark@derickcapetown.com; marthunaj@oculusinnovations.co.za; mijssj@gmail.com; marykeolvier@gmail.com; meloni.alp@gmail.com; mys@mvs.za.org; michellecolis@gmail.com; minnariv69@gmail.com; mirandaduto@gmail.com; miriam.breytenbach@gmail.com; nasimacnovadio@gmail.com; Natalie Leon <natalie.leon@mrc.ac.za>; nodi@o.a.co.za; oijwaandrews@yahoo.co.za; pam.britt@waf.co.za; anaikala@gmail.com; visualhistoryjwr@gmail.com; peter.coates@telkomsa.net; peterwilliamsashman@gmail.com; manager@fu.org.za; info@fol.org.za; philippahiggins5789 <philippahiggins5789@gmail.com>; richard.andrew@yahoo.co.uk; stanbridge@gmail.com; rubket@gmail.com; rol.hunter@gmail.com; rcs@saap.ac.za; tuyashon@gmail.com; russell195@hotmail.com; rhall@uwc.ac.za; sandraduplessis96@gmail.com; driver.towitt@hotmail.com; sarah@tique.co.za; sarah@sarahrice.co.za; sheilapi <sheilapi@jco.co.za>; shonah@mac.com; simon@visser.archi; simon@visserarchitects.co.za; simon@visser.archi; simon@visserarchitects.co.za; sh@saap.ac.za; Vanderspuy38@gmail.com; susanredfey@gmail.com; moosesue@gmail.com; tania.meer@gmail.com; tania.mackenzie@gmail.com; tarquin@imago-visual.com; terence.visagie@gmail.com; lessatoerien@gmail.com; hijack@toms-surfboards.com; tracybarsby04@gmail.com; hedmekanik@gmail.com; tghughes@gmail.com; leevora@gmail.com; chairperson@trup.org.za; secretary@trup.org.za; chairperson@trup.org.za; secretary@trup.org.za; Virginia Mackenny <virginia.mackenny@uct.ac.za>; wdm@astro4dev.org; werner@mweb.co.za; willem@willenbuhmarh.co.za; william@fiaster.co.za; wolfgang@campaintereducation.org; voavandi@gmail.com; sabina.favao@gmail.com; nachwartz@waterfront.co.za; tume@telkomsa.net; comelacious@gmail.com; dolmikel@gmail.com; vining.emily@gmail.com; grom.vandervliet@gmail.com; esmegoldh@att9@gmail.com; eugenie.skoton@gmail.com; underhavn@gmail.com; jake.morris01@gmail.com; Projects@spiritofafrica.co.za; zenty@ru.org.za; box87cavies@gmail.com; nick.white16@hotmail.com; Suth.lil@gmail.com; sunieov@live.co.uk; tracyleighlawson@gmail.com; treve@incite.co.za

Cc: MPT Oral Hearings <MPT.OralHearings@capetown.gov.za>; Marx Mupariwa

<Marx.Mupariwa@capetown.gov.za>; Gregory September <Gregory.September@capetown.gov.za>

Subject: RE: APPLICATION FOR REZONING, APPROVAL OF COUNCIL & DEVIATIONS FROM CITY POLICIES: ERF 151832, 6 LIESBEEK PARKWAY, OBSERVATORY (RIVER CLUB)

Dear Joy

Can you advise how the application for Rezoning which was submitted in 2018 can be considered in 2020 when the proposal has changed since it was first submitted?

As per the DEAT Environmental Authorisation "The Layout Alternatives identified and assessed in the BAR, have been informed by comments received from the I&APs and Authorities. It is further noted that the heights of buildings were reduced in order to reduce the potential visual impacts and to maintain the view sheds towards Table Mountain".

Elsewhere in the BAR it is stated that "The layout has been refined through a number of iterations in response to a number of aspects, including, *inter alia*, the ecological status of the site, potential inundation, cultural and heritage factors, traffic and access, urban plans, as well as commercial and technical considerations. Six previous iterations of the preferred development alternative are presented in the BA Report."

It is therefore unclear how the submission in 2018, which has changed over the period to 2020, can be considered without IAPs having opportunity to see the final submission.

Could you advise?

Thanks

Leslie London

From: Joy San Giorgio <Joy.SanGiorgio@capetown.gov.za>

Sent: Wednesday, 09 September 2020 15:42

To: abicase@gmail.com; aimee@unikom.co.za; dawson@mweb.co.za; venteralex@gmail.com; alexdmuller@gmail.com; alexr@edgegrowth.com; ailsan.paulin@gmail.com; amieradevids@gmail.com; andrea.couvert@gmail.com; asbowden@gmail.com; anielabb@gmail.com; annakajam@gmail.com; annalisa.za@gmail.com; tgreenwood@oldmutual.com; Arlene.delannoy@gmail.com; arnie.rkfc@gmail.com; auke@psychohistorian.org; auke@cfah.org.za; rodrigues.belisa <rodrigues.belisa@gmail.com>; bdivey@gmail.com; Caitlin Sole <Caitlin.Sole@alumni.uct.ac.za>; cebarnes@gmail.com; carinezayman@icloud.com; carol@nocturnalaffair.co.za; edgyhart@pelka.co.za; charlotte@ccnia.co.za; littlesong1645@gmail.com; chris@magics.co.za; hettlage@saaq.ac.za; cirairassool@gmail.com; everatts@gmail.com; colleen.edgyhart@gmail.com; cus@tommybrummet.co.za; davesue@mweb.co.za; drow@oldmutual.com; dibnob@saaq.ac.za; wackeyza@gmail.com; deon.erasmus@opt.net.net; duncan@smallbones.com; dylanbarsby@gmail.com; eiffoster@gmail.com; edwyn@obsid.org.za; emma.g.buckley@gmail.com; emstuckden@gmail.com; ester.mikaela@gmail.com; traia@iafrica.com; farzaneh.behroozi@gmail.com; tbgreene@mweb.co.za; frances <frances@communitree.in>; leyman@iawwalk.co.za; pianohammer.zh@gmail.com; capeblueliving@gmail.com; katunduw@telkomsa.net; guynico@worldonline.co.za; g.dereymaeker@gmail.com; lan.pen@mweb.co.za; hermschle@gmail.com; hiliaryalbutt@gmail.com; hollyf.liday@gmail.com; howard@obz.capetown; Hugo van der Merwe <hvdmerwe@csvr.org.za>; glass.ian@gmail.com; ivan@vansans.com; chambersj@rghw.org.za; jacqu.klarenbeek@gmail.com; johar.beauzair@gmail.com; 123mbsutt@gmail.com; jan@windowline.co.za; jvorstj@media24.com; Msiuj.matthews@gmail.com; janeteronje@gmail.com; Jean.s.ramsay@gmail.com; jen-bader@mweb.co.za; jlwyth@gmail.com; joubertjill <joubertjill@gmail.com>; jodialencier@gmail.com; len@blanche.christele@gmail.com; drjuyroinson@starsign.co.za; ihearden@mweb.co.za; jvanderlugt@mweb.co.za; Justin.floer@gmail.com; karawendylevy@gmail.com; karen@rippur.co.za; Kathariney7@gmail.com; michael@sundevelopment.co.za; kechik@hotmail.com; tam.petersen@gmail.com; youngbarry48@gmail.com; Lauraschultz8@gmail.com; Leighlamb14@gmail.com; leigh.lambrechts@webberwentzel.com; gaberiafield@gmail.com; lenita.ruggissis@gmail.com; Leslie London <leslie.london@un.ac.za>; lanpe@stbb.co.za; louis.stanford@gmail.com; louisepudjovics@gmail.com; andromedaguidi@gmail.com; lenetteamurn@gmail.com; marcel@marcel.co.za; marzette@lujan.co.za; mablas@iafrica.com; Marine.lejland@gmail.com;

marion@smallbones.com; marius@visuals.tv; mark@neville.za.net; mark@jacksonfirm.co.za; mark@erestine.co.za; mark@derrickcapetown.com; marthinaj@occlusioninnovat.co.za; missi@gmail.com; marykeolivier@gmail.com; melani_jp@gmail.com; mvs@mvs.za.org; michellecollis@gmail.com; minnaiv69@gmail.com; mirandacutoit@gmail.com; miriam_breytenbach@gmail.com; nqslmaccocva@aia@gmail.com; **Natalie Leon** <natalie.leon@mrc.co.za>; nudi@ua.co.za; oliviaandrews@yahoo.co.za; pam.britt@wol.co.za; ana-kaja@gmail.com; visualhistory.wc@gmail.com; peter.coates@telkomsa.net; peter-williams@shmar@gmail.com; manager@fol.org.za; info@fol.org.za; **philippahiggins5789** <philippahiggins5789@gmail.com>; richard.andrew@yahoo.co.uk; rstanbridge@gmail.com; robket@gmail.com; rol.hunter@gmail.com; rus@saad.ac.za; royashon@gmail.com; russe0196@hotmail.com; rhall@awc.co.za; sandraduplessis90@gmail.com; driver_idwitt@hotmail.com; sarah@tique.co.za; sarah@sarahrice.co.za; sheilapi <sheilapi@icon.co.za>; shgnah@max.com; simon@visser.arch; simon@visserarchitects.co.za; simon@visser.arch; simon@visser-architects.co.za; sh@saad.ac.za; Vanderspuy38@gmail.com; susanredley@gmail.com; moses.sua@gmail.com; talja.meer@gmail.com; tania.mackenzie@gmail.com; tarquin@image-visual.com; terence.wisagie@gmail.com; tessetboerien@gmail.com; tjacx@toms-surfbroads.com; tracybarclay04@gmail.com; hecmekanik@gmail.com; tghughes@gmail.com; treevora@gmail.com; chairperson@trup.org.za; secretary@trup.org.za; chairperson@trup.org.za; secretary@trup.org.za; Virginia Mackenry <virginia.mackenry@uct.ac.za>; wdm@astroddew.org; iwerner@mweb.co.za; willem@willembuhrmann.co.za; william@frater.co.za; wolfgang@campaignforeducation.org; yocavandj@gmail.com; zahira.fayaz@gmail.com; nschwartz@waterfront.co.za; tame@te.komsa.net; carmelicious@gmail.com; delnike1@gmail.com; yning.emily@gmail.com; emma.vanderybet@gmail.com; esmegoldblatt9@gmail.com; eugenie.skelton@gmail.com; uadeihayn@gmail.com; jakemorris01@gmail.com; projects@spiriteafrica.co.za; junty@ru.org.za; bex87davis@gmail.com; rick.white16@hotmail.com; Seth.til@gmail.com; soniaqv@live.co.uk; traceyleghlawson@gmail.com; treve@route.co.za
Cc: MPT Oral Hearings <MPT_OralHearings@capetown.gov.za>; Marx Mupariwa <Marx.Mupariwa@capetown.gov.za>; Gregory September <Gregory.September@capetown.gov.za>
Subject: APPLICATION FOR REZONING, APPROVAL OF COUNCIL & DEVIATIONS FROM CITY POLICIES: ERF 151832, 6 LIESBEECK PARKWAY, OBSERVATORY (RIVER CLUB)

CAUTION: This email originated outside the UCT network. Do not click any links or open attachments unless you know and trust the source.

Good-day Interested parties

The abovementioned application and our letter of notification advertising the abovementioned application, have reference.

You are an identified party who commented on the abovementioned application and who has requested to make oral representations or alternately a person using your email address to submit their objections has made said request. As mentioned previously in our letter of notification that invited comments and objections, the Section 120(11) of the MPBL provides that a person may make a request to the Municipal Planning Tribunal (MPT) to make an oral submission (interview). For such request to be considered it must comply with the following requirements:

1. A written request must be emailed to the following address : MPT_oralhearings@capetown.gov.za
2. Adequate reasons must be given for such request.
3. The request must be received at the above mentioned address at least 5 days before the MPT meeting at which the application(s) will be considered, or closer to the meeting if good cause is shown.
4. The application will be tabled at the MPT meeting on **18 September 2020**.

To determine if you would like to make such request, you are directed to the following web link where the scheduled MPT meeting dates and the agendas are published:

<http://www.capetown.gov.za/Family%20and%20home/meet-the-city/city-council/mcels-p-calenda>

Kindly ensure that your request reaches the relevant parties timeously for your request to be considered. Should you have any queries in respect hereof you may contact **Rene Petersen** (MPT_oralhearings@capetown.gov.za). Please ensure that parties who use your email address to transmit their objections are notified accordingly.

Kind regards



Joy San Giorgio
Senior Professional Officer: Development Management
Directorate: Spatial Planning and Environment

WORKING FROM HOME DURING COVID-19

Tel: 021 – 444 9538 | Email: joy.sanorgio@capetown.gov.za

Development Management Information Hubs: Southern

[CCJ Contacts](#) | [CCJ Media and News](#) | [Report a fault](#) | [Account Queries](#) | [COVID-19](#)



Disclaimer: This e-mail (including attachments) is subject to the disclaimer published at: <http://www.capetown.gov.za/general/email-disclaimer> Please read the disclaimer before opening any attachment or taking any other action in terms of this e-mail. If you cannot access the disclaimer, kindly send an email to disclaimer@capetown.gov.za and a copy will be provided to you. By replying to this e-mail or opening any attachment you agree to be bound by the provisions of the disclaimer.

Disclaimer - University of Cape Town This email is subject to UCT policies and email disclaimer published on our website at <http://www.uct.ac.za/main/email-disclaimer> or obtainable from +27 21 650 9111. If this email is not related to the business of UCT, it is sent by the sender in an individual capacity. Please report security incidents or abuse via <https://csirt.uct.ac.za/page/report-an-incident.php>.

Disclaimer: This e-mail (including attachments) is subject to the disclaimer published at: <http://www.capetown.gov.za/general/email-disclaimer> Please read the disclaimer before opening any attachment or taking any other action in terms of this e-mail. If you cannot access the disclaimer, kindly send an email to disclaimer@capetown.gov.za and a copy will be provided to you. By replying to this e-mail or opening any attachment you agree to be bound by the provisions of the disclaimer.

Disclaimer - University of Cape Town This email is subject to UCT policies and email disclaimer published on our website at <http://www.uct.ac.za/main/email-disclaimer> or obtainable from +27 21 650 9111. If this email is not related to the business of UCT, it is sent by the sender in an individual capacity. Please report security incidents or abuse via <https://csirt.uct.ac.za/page/report-an-incident.php>.

Disclaimer: This e-mail (including attachments) is subject to the disclaimer published at: <http://www.capetown.gov.za/general/email-disclaimer> Please read the disclaimer before opening any attachment or taking any other action in terms of this e-mail. If you cannot access the disclaimer, kindly send an email to disclaimer@capetown.gov.za and a copy will be provided to you. By replying to this e-mail or opening any attachment you agree to be bound by the provisions of the disclaimer.

12230



CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

SPATIAL PLANNING AND ENVIRONMENT
ENVIRONMENTAL MANAGEMENT

K. Wiseman
Environmental Management
keith.wiseman@capetown.gov.za
Mobile 084 213 9482

To: The Western Cape Ministry of Local Government, Environmental Affairs & Development Planning

For the Attention of: The Appeal Administrator
Mr Marius Venter

Per Email: DEADP.Appeals@westerncape.gov.za

APPEAL OF THE ENVIRONMENTAL AUTHORISATION GRANTED IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO.107 OF 1998) AND THE ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS, 2014 (AS AMENDED) FOR THE PROPOSED REDEVELOPMENT OF THE RIVER CLUB FOR MIXED USE DEVELOPMENT AND ASSOCIATED INFRASTRUCTURE ON THE REMAINDER OF ERF 15326 AND ERVEN 26169 – 26175, 26426-26427, 108936 AND 151832, OBSERVATORY (YOUR REFERENCE: 16/3/3/1/A7/17/3001/20, NEAS REFERENCE: WCP/EIA/0000719/2020)

Introduction

This appeal is submitted by me, Keith Wiseman, duly authorised by the City of Cape Town (the City). This appeal is against the environmental authorisation (the EA) granted in terms of the National Environmental Management Act, 107 of 1998, [NEMA] for the proposed redevelopment of the River Club for the establishment of a mixed-use development and associated infrastructure on the Remainder of erf 15326, Erven 26169 – 26175, erven 26426, 26427, 108936 and 151832, Observatory.

Application for condonation of the late submission of the appeal is made to the Western Cape Minister of Local Government, Environmental Affairs and Development Planning in terms of section 47C of the NEMA.

The proposed development is intended to be comprised of the following components:

- Retail
- Commercial
- Residential
- Institutional
- Rehabilitation of the Liesbeek River Canal and associated infrastructure



- An ecological corridor, ecological setbacks and associated Open Spaces;
- The infilling of the unlined / natural channel of the Liesbeek River and associated stormwater infrastructure
- Roads and Service infrastructure; and
- Associated infrastructure.

The focus of this appeal is that the EA decision does not give sufficient weight to the environmental impacts that would result from the scale of development and infilling of the river corridor and floodplain associated with the development proposal, most of which is below the 1:10 year floodline. These significant impacts will result in future risks and costs, particularly in the context of climate change and the reduced role of the site as green infrastructure which supports a resilient future. The development proposal is also in conflict with historical planning for the area as predominantly open space and part of the coast to coast greenway.

This appeal is not opposed to any development on the site; it is the nature and scale of the development approved by the EA that is appealed.

In what follows, I set out our grounds for this appeal.

1. The decision does not adequately take into account the City of Cape Town's previous professional and technical comments on the issues set out below.
2. The decision does not align with relevant National and Provincial Legislation, Provincial and City Policy and Spatial Plans and the (Environmental Management Framework (EMF) approved by the Western Cape Government (WCG) MEC for Environmental Affairs & Development Planning (EA&DP).
3. Insufficient consideration was given to the City's comments regarding context, role of the site and desirability of the proposed development.
4. Insufficient consideration was given to heritage informants and the relevant heritage resources authority's comments and there was non-compliance with S38(6) and S38(3) of the National Heritage Resources Act, 25 of 1999 (NHRA).
5. The stormwater impacts, including flooding, are not sufficiently mitigated against, the decision-maker relied on outdated information and the City's Floodplain and River Corridor Management Policy appears to not have been considered.
6. The decision does not give due consideration to climate change impacts and resilience.
7. The decision does not appropriately describe, or mitigate, the loss of open space on site.
8. The decision does not appropriately describe, or mitigate the high negative biodiversity impact or habitat loss of a high faunal sensitivity proclaimed Protected Area and assumes a willingness on the City's part to relinquish such Protected Area.

9. There was a failure to consider appropriate alternatives including the no-go alternative.
10. The decision-maker failed to conduct a site inspection on receipt of the City's comments to ascertain their veracity, and the decision refers to features that are not present on the site.
11. There is lack of clarity regarding the boundaries of 'the site.'
12. Technical Errors, Discrepancies and Omissions in the EA Resulting in Vagueness. See Annexure A.
13. Impractical and inadequate Conditions in the EA. See Annexure B.



Grounds of Appeal

In what follows we set out in detail the City's grounds of appeal.

1. THE DECISION DOES NOT ADEQUATELY TAKE INTO ACCOUNT THE CITY OF CAPE TOWN'S PREVIOUS COMMENTS ON THE ISSUES SET OUT BELOW AND THE CITY WAS NOT AFFORDED AN OPPORTUNITY TO COMMENT ON THE BASIC ASSESSMENT REPORT OF APRIL 2020

1.1 The City of Cape Town provided comments on both the Draft BAR (January 2019) and the Final BAR (January 2020) and the City is of the view that these issues have not been adequately addressed. The City had not seen, or commented on, the version of the Final BAR dated April 2020, referred to in the Environmental Authorisation (EA), and uploaded to the River Club site subsequent to the issuing of the EA. In line with fair administrative process, the City, as the Local Authority, as well as all Interested and Affected Parties (I&APs) should have been afforded the opportunity to comment on the April 2020 BAR. This is particularly so given the extensive comments provided by the City on the preceding BARs.

2. THE DECISION DOES NOT ALIGN WITH THE FOLLOWING RELEVANT NATIONAL AND PROVINCIAL LEGISLATION, PROVINCIAL AND CITY POLICY AND SPATIAL PLANS AND THE EMF APPROVED BY THE WCG MEC FOR EA&DP

- 2.1 National Heritage Resources Act (Refer to Section 4 below).
- 2.2 City of Cape Town Floodplain and River Corridor Management Policy, 2009 and Stormwater By-Law (refer to Section 5 below).
- 2.3 City of Cape Town Climate Change Policy (Refer to Section 6 below).
- 2.4 Western Cape Biodiversity Spatial Plan, 2017, the National Environmental Management: Protected Areas Act No. 57 of 2003 (NEM:PAA) and City of Cape Town Biodiversity Plan, 2015 (Refer to Section 8 below).
- 2.5 Water Sensitive Spatial Planning and Urban Design principles (refer to Section 5 below). In terms of the City's commitment to being "A Water Sensitive City", *"The City will actively facilitate the transition of Cape Town over time into a water sensitive city with diverse water resources, diversified infrastructure and one that make optimal use of stormwater and urban waterways for the purposes of flood control, aquifer recharge, water reuse and recreation, and that is based on sound ecological principles. This will be done through new incentives and regulatory mechanisms as well as through the way the City makes investments in new infrastructure."* Piping a 30m wide river underground is clearly contrary to these principles.
- 2.6 The City's Municipal Spatial Development Framework (MSDF) includes Biodiversity and River and Flood Plain layers (Refer to Section 8) which are consistent with the approved

Table Bay District Spatial Development Plan and the EMF that was approved for the area by the WCG MEC for EA&DP.

- 2.7 The EMF for the area, as contained in the Table Bay District Spatial Development Plan guides conservation of biodiversity, protection of rivers and floodplains, protection of open space (the green lung of the City) and access to public open space and recreational amenities. In terms of the City's EMF, the site is listed as a "structuring open space which forms part of the coast to coast greenway." The EMF is not mentioned in the EA with the result that it appears that this statutory informant for the EA was not taken into account. Alternatively, had it been taken into account, it is not clear on what grounds a departure from the provisions of the EMF was authorised or deemed justified.

3. INSUFFICIENT CONSIDERATION WAS GIVEN TO THE CITY'S COMMENTS REGARDING CONTEXT, ROLE OF THE SITE AND DESIRABILITY OF THE PROPOSED DEVELOPMENT

- 3.1 The EA, under Annexure 3: Reasons for the Decision, states that "*it is imperative that the 'triple bottom-line' argument is considered in a balanced manner and within its regional context. If not considered in a balanced manner and if not evaluated within its regional or strategic context, it will result in significant cumulative negative environmental impacts and in unsustainable development*". The City is concerned that as the regional and strategic context has not been adequately considered by the decision-maker, that there will be significant cumulative negative environmental impacts and risks, particularly to flooding, and that the development will be unsustainable.
- 3.2 The EA refers to desirability in financial terms only, with reference to the COVID 19 pandemic and job creation, rather than to the receiving context of a river and flood plain, open space, green infrastructure and recreational and visual amenity. The City has repeatedly emphasized in its comments on the BAR that the proposed bulk, scale and footprint of the development is not desirable in the receiving context.
- 3.3 The Liesbeek River and floodplains are part of a metropolitan scaled ecological corridor and open space system, linking Table Bay to the north, and False Bay to the south. This is termed the Coast to Coast Greenway and has been reflected in spatial plans for the area for some 30 years. The 30m wide Liesbeek River cannot be seen in isolation as a separate component from the overall ecosystem of which it is a part. Damage to part of the system, would compromise the integrity of the whole system.
- 3.4 The context outlined above is in accordance with the 2003 approved Two River Urban Park (TRUP) Contextual Framework, which includes the trajectory of past City planning aspirations, in which watercourses and floodplains were to be celebrated and enhanced, rather than filled in for development. The EA refers to a draft Two Rivers Local Spatial Development Framework (TRLSDF), which is inconsistent with City policies and with the approved Table Bay District Spatial Development Plan and the Broad Provincial Spatial Planning Categories for Flood Lines, Open Space, and Core Conservation Areas. The decision-maker should have considered only City approved

policy, which is the City approved (TRUP) Contextual Framework (2003) and not the TRLSDF.

- 3.5 In the City's comments on the BAR, it has been pointed out that the River Club site and nearby sites such as the Raapenberg wetlands, the Observatory, the river corridors themselves, etc., represent an integrated complex of open space areas with high green infrastructure value. Not only does the area offer value in terms of social/recreational benefits and ecological / biodiversity features, but also represents a significant area of green infrastructure critical for flood, water quality and water provision management.
- 3.6 The City's Catchment Stormwater and River Management Branch has pointed out in their comments that the site should not be viewed alone but within the context of the greater Salt Catchment (213 km²) which, apart from the upper reaches of the Elsiekraal River, the extreme upper reaches of the Liesbeek River and the broader TRUP area (and River Club), has already been intensively developed and hardened. These last open space remnants therefore have even greater value.
- 3.7 Section D of the draft Basic Assessment Report (Need and Desirability) notes that in terms of the City's EMF, the site is listed as a "structuring open space which forms part of the coast to coast greenway". In the Table Bay District Spatial Development Plan the site is classified as Open Space and Buffer 1 and thus the proposed development is inconsistent with the Table Bay District Spatial Development Plan. The proposed development will require that the area which is currently zoned "Special Open Space" be rezoned, and thus development of the River Club site will irrevocably change and reduce the green infrastructure and open space value of the area as a whole.
- 4. INSUFFICIENT CONSIDERATION WAS GIVEN TO HERITAGE INFORMANTS AND THE RELEVANT HERITAGE RESOURCES AUTHORITY'S COMMENTS AND THERE WAS NON-COMPLIANCE WITH S38(8) AND S38(3) OF THE NHRA.**
- 4.1 The EA is flawed because the decision-maker based their decision on the Heritage Specialist's report and their response dated 31 March 2020 to Heritage Western Cape's (HWC) Final Comment (dated 13 February 2020), rather than considering the authoritative HWC Final Comment itself.
- 4.2 According to the Final Comment, dated 13 February 2020, from HWC (as considered by their Impact Assessment Committee (IACom)), the Heritage Impact Assessment (HIA) that formed part of the information before the decision maker, did not meet the requirements of Section 38(3) of the Heritage Resources Act, 25 of 1999. (The Townsend report was deemed by HWC to constitute a 'post rationalisation for the development'). Hence, the decision-maker was not competent to assess the matter in terms of Section 38(8) which is contingent on the evaluation fulfilling the requirements of the relevant heritage resources authority in terms of section 38(3). Furthermore, Section 38(8) specifically requires that **"any comments and recommendations from the relevant heritage resources authority with regard to such development have been taken into**

account prior to the granting of the consent," as this was contingent on an HIA complying with Section 38(3). It is further pointed out that the decision-maker was urged by HWC, in their Final Comment (dated 13 February 2020), to resolve all heritage related issues prior to taking a decision on the Final BAR, but failed to do so.

- 4.3 The City's comments on the BAR emphasised that the proposed development does not conserve sufficiently the historical and cultural value and significance of the landscape of the area. The importance of the historic and existing spatial context is not adequately recognised in the proposed development in its current form.
- 4.4 The EA is not consistent with the objectives and preamble of the NHRA to empower civil society to nurture and conserve their heritage resources so that they may be bequeathed to future generations. The preamble of the NHRA aims "to encourage communities to nurture and conserve their legacy so that it may be bequeathed to future generations. Our heritage is unique and precious and it cannot be renewed." The historic Liesbeek River and floodplains were identified by First Nation communities as 'a tangible reminder of an intangible heritage.' Yet, this singularly important heritage resource, was not identified or mapped in the HIA, or proposed to be conserved. This natural and historic resource is authorised to be infilled and removed from the landscape, contrary to the recommendations of HWC. The decision-maker overlooked this objective of the NHRA, and authorised development which will impact adversely and permanently on this heritage resource.
- 4.5 Had the requirements of S38(3) of the NHRA been adhered to, this would have facilitated an assessment of impacts on the heritage resources for the decision-maker.

5 THE STORMWATER IMPACTS, INCLUDING FLOODING, ARE NOT SUFFICIENTLY MITIGATED AGAINST, THE DECISION-MAKER RELIED ON OUTDATED INFORMATION AND THE CITY'S FLOODPLAIN AND RIVER CORRIDOR MANAGEMENT POLICY APPEARS TO NOT HAVE BEEN CONSIDERED

- 5.1 The decision-maker relied on specialist reports which failed to fully consider the impacts of possible flooding on private property owners.
- 5.1.1.1 Despite the City's advice when commenting on the BAR (Jan 2020), the decision-maker failed to sufficiently consider the impacts of infilling the natural Liesbeek River and floodplain on adjacent property owners.
- 5.1.1.2 The Catchment, Stormwater and River Management Branch has noted that there are places where the Applicant's consultants' models show an increase in possible flood levels as a consequence of the development. The Applicant was therefore advised in the Land Use Application process, to get the approval of the affected property owners and / or indemnify the City against claims in this regard. The flooding report should have discussed errors and assumptions made and their effect on results in more detail. There is a predicted increase in floods on adjacent properties, especially for more frequent flood intervals. The increase is not

"insignificant" as stated in the EA and the relevant property owners have voiced their objections to and concerns for the proposed development in the public participation process. This is particularly significant in the context of the known risks and future impacts of climate change discussed below.

- 5.2 The loss of the stormwater polishing function of the old Liesbeek River, provided by the plants and reeds, on the stormwater from the Observatory area, was not considered by the decision-maker in the EA.
- 5.3 The EA does not consider the City's Floodplain and River Corridor Management Policy, best practice riverine management principles and design principles for sustainable water management. The above-mentioned policy aims to safeguard aquatic environments and human health in addition to reducing the impact of flooding and maintaining recreational water bodies. It requires balanced consideration of flood risks, environmental impacts and socio-economic needs with one of the policy objectives being the protection and enhancement of environmental goods and services provided by water bodies. The policy considers water bodies to be public resources which need protection by, amongst others, offsetting riparian development. The policy explicitly states that no development rights will be granted in the high hazard zone. It is not acknowledged in the EA that the area of the Liesbeek River that will be infilled to create a stormwater swale, represents part of the last remains of the historic Liesbeek River channel which has ecological and eco-historical importance.
- 5.4 The City's By-Law relating to Stormwater Management allows the City to prohibit or impose conditions on developments in areas adjacent to watercourses and wetlands. The City's Stormwater Management Policy prohibits development in the High Hazard Zone and does not permit housing or business development below the 1:50year flood line – no exemptions or approvals are allowed.
- 5.5 The City points out that there are few opportunities to undertake rehabilitation of degraded rivers in Cape Town and developers generally seldom actively pursue such positive initiatives. The EA essentially results in further degradation of this historic river channel.
- 5.6 It is inappropriate to fill in a river to compensate for the loss of open space on the River Club currently zoned OS3. The existing riverine areas plus ecological setbacks must be removed from any proposed development footprint as the City requires these for the ongoing hydrological (stormwater polishing) and ecological functioning of the Liesbeek River. Diverting a 30m wide river to underground pipes is contrary to Water Sensitive Spatial Planning and Urban Design principles (see 2.5 above).
- 5.7 The EA is further inconsistent with the City's Floodplain and River Corridor Management Policy as follows: -
- 5.7.1. The permissible extent and nature of land use, development or activities within floodplains must be subject to stringent evaluation and control in the interests of public safety. In particular, obstruction to the free flow of water within the 20-year floodline area shall not be permitted (page 7 of the policy).

- 5.7.2. No buildings will be permitted within the high hazard zone (page 11 of the policy).
- 5.7.3. Limitation of all construction / development activity within the ecological buffer (page 11 of the policy).
- 5.7.4. Buildings must be located above the appropriate flood level or buffer zone, or on the upper extremities of the property if the site is entirely located within the relevant floodline, and must front or provide views onto the watercourse or wetland to ensure adequate visual surveillance and integration of the system into the fabric of the development and the City as a whole (page 12 of the policy).
- 5.7.5. In support of the above comments, please find attached hereto as **Annexure C** the comments of the City's Catchment Stormwater and River Management Branch on the proposed River Club land use application being considered by the City.
- 5.8 The decision-maker relied on outdated information relating to Floodplain and River Corridor Management principles for ecological setbacks authorising infilling the natural Liesbeek River unlined channel:
- 5.8.1. The EA decision overlooked the technical information provided by the City derived from studies the City had commissioned to inform the extent of ecological buffers. The City's Catchment, Stormwater and River Management Branch provided comment on the BAR advising that a more recent study undertaken for the entire TRUP site (Blue Science Freshwater Assessment dated 2016) provided a more accurate assessment of the present status and ecological importance and sensitivity of the watercourses in the TRUP area (which included the watercourses and wetlands of the River Club site). This report recommended at least a 35m buffer along/around these systems (**page 62: "A buffer area of approximately 35m should be maintained adjacent to the delineated edge of the aquatic features"**). The report made use of the 2015 WRC buffer tool which is regarded to be an acceptable industry standard and thus the 35m buffer which is of similar order of magnitude to the City's earlier 2002 data would have been supported by the City's Catchment, Stormwater and River Management Branch. However, what was approved in the EA are two large building footprints located hard on the boundary of the River Club, within 2m of the natural Liesbeek River.
- 5.8.2. Specifically, the flood risk mitigation for infilling the floodplain on the River Club site, is taking place on City property, where the majority of the risk will be received and where the City's own resilience to floods will be diminished through infilling the Liesbeek river and floodplain. In addition, neighbouring properties will be at risk of higher flood levels, particularly in terms of frequent floods of 1,2 and 5 year intervals, for example.

6. THE DECISION DOES NOT GIVE DUE CONSIDERATION TO CLIMATE CHANGE IMPACTS AND RESILIENCE AND FAILS TO APPLY THE PRECAUTIONARY PRINCIPLE

- 6.1 Substantial comments were provided by the City on a range of issues relating to climate change. Responses to these comments were not provided by either the Environmental Assessment Practitioner or the decision-maker in the EA.
- 6.2 The only reference to climate change in the EA is an unsupported statement that the City of Cape Town's Climate Change Policy has been considered in the need and desirability of the proposed development and the BAR states that the proposed development is "largely consistent" with the said policy. The comments provided by the City on the BAR indicate that the City has significant concerns regarding climate change impacts both in terms of potential climate impacts on the proposed development as well as the potential impact of the proposed development on climate risks in the area.
- 6.3 The omission of reference to the City's comments regarding climate change in the EA indicates that the decision-maker did not give due consideration to the comments provided regarding climate change. The EA, under Annexure 3 summarises the reasons for the decision and states that *"It is imperative that the 'triple bottom-line' argument is considered in a balanced manner and within its regional context. If not considered in a balanced manner and if not evaluated within its regional or strategic context, it will result in significant cumulative negative environmental impacts and in unsustainable development"*.
- 6.4 In the recent judgement by the Western Cape High Court in *the matter of Philippi Horticultural Area Food & Farming Campaign and Another v MEC for Local Government, Environmental Affairs and Development Planning: Western Cape and Others* (16779/17), it was found that the issue of climate change had not been adequately addressed in the Environmental Impact Assessment process. The court referred to the judgment in *Earthlife Africa Johannesburg v MEC of Environmental Affairs & others* which found that:
- "There was found to have been non-compliance with s 24 (1) of NEMA in that the Chief Director had relied on the statement in the EIR that the climate change impacts of the project were relatively small and low without a climate change impact assessment. As a result, the Chief Director overlooked relevant considerations in terms of s6(2)(e)(ii) of PAJA, with the decisions found not rationally connected to the information before him and without him having applied his mind making the decision reviewable under s 6(2)(f)(ii) of PAJA as well"***
- (emphasis supplied)*
- 6.5 The City believes that without a Climate Change Impact Assessment having been conducted, the EAP's assertion that the City's Climate Change Policy has been addressed, is unsubstantiated and actively countered in the design proposal. The design concept shows disregard for addressing climate change impacts such as retaining waterways and wetlands as green lungs which reduce the heat island effect