

**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

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

Sixth Respondent

**EXECUTIVE MAYOR, CITY OF CAPE TOWN**

Seventh Respondent

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**NOTICE OF MOTION**

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## **PART A**

**BE PLEASED TO TAKE NOTICE** that the above-named Applicants intend to make application to this Honourable Court on an urgent date to be arranged with the Registrar, for an order in the following terms:

1. That this application be heard as one of urgency in terms of Rule 6(12)(a) and condoning the Applicants' failure to comply with the time limits and forms of service.
  
2. Interdicting the First Respondent from undertaking any construction, earthworks or other works on erf 151832, Observatory, Western Cape ("the property") to implement the River Club development as authorised by an environmental authorisation issued in terms of the National Environmental Management Act, 107 of 1998 ("NEMA") on 22 February 2021 and various development permissions issued in terms of the City of Cape Town's Municipal Planning By-Law, 2015 ("MPB"), pending:
  - 2.1 The final determination of the application brought in terms of Part B hereof; and
  
  - 2.2 The grant of a permit by Heritage Western Cape in terms of section 29(1) of the National Heritage Resources Act, 25 of 1999 authorising the defacement, alteration and excavation of the property (which paragraph shall be operative until 8 April 2022).

3. Granting the Applicants such further and/or alternative relief as this Honourable Court deems fit.
4. That the costs of this application be paid by the First Respondent, alternatively by the First Respondent and any other respondents opposing this relief, jointly and severally.

**BE PLEASED TO TAKE NOTICE FURTHER** that if any of the Respondents oppose the relief sought in Part A above, then they are required to deliver a notice of opposition on **3 August 2021**; answering affidavits by close of business on **10 August 2021**; whereupon the Applicants will file replying affidavits, if any, by **16 August 2021**.

**TAKE NOTICE FURTHER** that if no such notice of intention to oppose is given, the application will be made at 10h00 on **6 August 2021** or as soon thereafter as counsel may be heard.

## **PART B**

**BE PLEASED TO TAKE NOTICE** that the above named Applicants intend to make application to this Honourable Court in terms of Rule 53, on a date to be arranged with the Registrar, for an order in the following terms:

1. Reviewing and setting aside the following decisions:
  - 1.1 The decision taken by the Fourth Respondent on 20 August 2020 to grant an environmental authorisation in terms of regulation 25 of the

Environmental Impact Assessment Regulations 2014 (GN R. 982 of 4 December 2014), read with section 24 of the National Environmental Management Act 107 of 1998 (“NEMA”), for the listed activities associated with the proposed River Club Development (“the proposed development”) on erf 151832, Observatory (“the property”) (“the first decision”); and

- 1.2 the decision taken by the Fifth Respondent on 22 February 2021 in terms of section 43(6) of NEMA to dismiss the appeals against the first decision and to issue an amended environmental authorisation for the proposed development.
2. Remitting the first decision to the Fourth Respondent for his reconsideration.
3. Reviewing and setting aside the following decisions:
  - 3.1 the decision by the Municipal Planning Tribunal in terms of section 98(2) of the City of Cape Town Municipal Planning By-Law (“MPB”) to approve (“the development approval”) the First Respondent’s application for: rezoning of the property to a subdivisional area; permission to construct retaining structures to a height of more than 2.0 metres above the

existing level of the ground; and deviation from the Table Bay District Plan (“the development application”); and

- 3.2 the decision by the Executive Mayor in terms of section 108(7) of the MPB to dismiss the appeals against the development approval and to grant the First Respondent’s development application.
4. Remitting the development approval to the Municipal Planning Tribunal for its reconsideration.
5. Granting the Applicants such further and/or alternative relief as this Honourable Court deems fit.
6. Ordering the First Respondent to restore the property to the state in which it existed as at 26 July 2021, at its cost and to the satisfaction of the Second Respondent.
7. That the costs of this application be paid by the Fourth, Fifth, Sixth and Seventh Respondents, jointly and severally, alternatively, in the event of opposition by the First Respondent, by the First, Fourth, Fifth Sixth and Seventh Respondents, jointly and severally.

**TAKE NOTICE FURTHER** that in terms of Rule 53(1)(b) the Fourth, Fifth, Sixth and Seventh Respondents are required within 15 days of receipt of the notice of motion to dispatch to the Registrar of this Honourable Court the record of the proceedings sought to be reviewed and set aside, together with such reasons as they are required by law or desire to give, and to notify the Applicants that it has done so.

**TAKE NOTICE FURTHER** that the Applicants may, within 10 days of receipt of the record from the Registrar, by delivery of a notice and accompanying affidavit or affidavits, amend, add to or vary the terms of their notice of motion and supplement their founding papers in terms of Rule 53(4).

**TAKE NOTICE FURTHER** that any opposing respondent may, within 30 days after the expiry of the time referred to in Rule 53(4), deliver any affidavits it may desire in answer to the allegations made by the Applicants.

**TAKE NOTICE FURTHER** that the Applicants have appointed **CULLINAN AND ASSOCIATES INCORPORATED** of 18A Ascot Road, Kenilworth, Cape Town as the address at which it will accept notice and service of all process in these proceedings.

**TAKE NOTICE FURTHER** that such respondents as are intent on opposing the relief set out above: may within 15 five days of receipt of the notice of motion notify the Applicants' attorneys at 18A Ascot Road, Kenilworth, Cape Town, in writing that they intend to oppose the application and in such notice to appoint an address referred to in Rule 6(5)(b) at which it/they will accept notice and service of all documents in these proceedings; and within 30 days' of such date deliver any affidavits they may desire in answer to the allegations made by the Applicants.

**BE PLEASED TO TAKE NOTICE FURTHER** that the affidavit of **LESLIE LONDON, TAURIQ JENKINS, DEIDRE PRINS-SOLANI AND BRIDGET O'DONOGHUE** will be used in support hereof.

**FINALLY, TAKE NOTICE** that if no such notice of intention to oppose is given, the application will be made on a date to be arranged with the registrar.

**KINDLY PLACE THE MATTER ON THE ROLL FOR HEARING ACCORDINGLY.**

**DATED at CAPE TOWN** this        day of **AUGUST 2021.**

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**CULLINAN & ASSOCIATES**

Attorneys for the Applicants

18A Ascot Road

Kenilworth

CAPE TOWN

Ref.: Hercules Wessels

Tel: 021 671 7002

[hercules@greencounsel.co.za](mailto:hercules@greencounsel.co.za)

To:            **THE REGISTRAR**  
Western Cape High Court  
  
CAPE TOWN

And to:        **ALLAN JAMES FLYNN MUNDELL N.O.**  
(in his capacity as a trustee of the Liesbeek Leisure Properties Trust)  
  
41 Grosvenor Crescent  
  
Durban  
  
KWAZULU-NATAL

And to: **JAMES OTTO TANNENBERGER N.O**  
(in his capacity as a trustee of the Liesbeek Leisure Properties Trust)  
26 Albion Road  
Bryanston  
GAUTENG

And to: **NICHOLAS SCOTT FERGUSON N.O**  
(in his capacity as a trustee of the Liesbeek Leisure Properties Trust)  
7 Dawn Road  
Constantia  
CAPE TOWN

And to: **ADAM JOHN BLOW N.O**  
(in his capacity as a trustee of the Liesbeek Leisure Properties Trust)  
16 Valley Road  
Kennilworth  
CAPE TOWN

And to: **JODIE AUFRICHTIG N.O**  
(in his capacity as a trustee of the Liesbeek Leisure Properties Trust)  
1A Logies Bay  
Llundudno  
CAPE TOWN

And to: **HERITAGE WESTERN CAPE**



Second Respondent

c/o

THE STATE ATTORNEY

4th Floor

22 Long Street

CAPE TOWN

And to: **CITY OF CAPE TOWN**

Third Respondent

c/o

The Municipal Manager,

3rd Floor, Tower Block

Civic Centre

12 Hertzog Boulevard

CAPE TOWN

And to: **DIRECTOR: DEVELOPMENT MANAGEMENT**  
**THE DEPARTMENT OF LOCAL GOVERNMENT,  
ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING  
IN THE WESTERN CAPE PROVINCIAL GOVERNMENT**

Fourth Respondent

c/o

THE STATE ATTORNEY

4th Floor

22 Long Street

CAPE TOWN

And to: **MINISTER OF LOCAL GOVERNMENT, ENVIRONMENTAL  
AFFAIRS AND DEVELOPMENT PLANNING IN THE WESTERN  
CAPE PROVINCIAL GOVERNMENT**

Fifth Respondent

c/o

THE STATE ATTORNEY

4th Floor

22 Long Street

CAPE TOWN

And to: **CHAIRPERSON OF THE MUNICIPAL PLANNING TRIBUNAL OF  
THE CITY OF CAPE TOWN**

Sixth Respondent

Civic Centre

12 Hertzog Boulevard

CAPE TOWN

And to: **EXECUTIVE MAYOR OF THE CITY OF CAPE TOWN**

Seventh Respondent

Civic Centre

12 Hertzog Boulevard

CAPE TOWN