

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

Case No.: 12994 / 2021

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
WESTERN CAPE FIRST NATIONS COLLECTIVE	Eight Respondent

SECOND APPLICANT'S REPLYING AFFIDAVIT

I, the undersigned,

TAURIQ JENKINS



do hereby make oath and state as follows:

1. I deposed to the supporting affidavit which was filed on behalf of the second applicant as part of the founding papers in these proceedings and am authorised to depose to this affidavit on behalf of the second applicant.
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. The legal submissions in this affidavit 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.
3. I have read the replying affidavit deposed to by Leslie London in response to the answering affidavits filed by the First to Seventh Respondents and confirm that the averments made in that affidavit concerning the Second Applicant are correct, and that the Second Applicant adopts that affidavit as its own reply to the answering affidavits filed by the First to Seventh Respondents.
4. In this affidavit I reply to those aspects of the First and Seventh Respondents' answering affidavits that specifically concern the Second Applicant and to the Eight Respondent's answering affidavit since it is directed primarily at the Second Applicant and myself.

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REPLY TO FIRST RESPONDENT

AD PARAGRAPH 23 to 27 Authority

5. Paragraphs 23 to 27 of the First Respondent's answering affidavit are irrelevant because they related to a company that is not a party to this litigation, namely the Goringhaicona Khoi-Khoen Indigenous and Traditional Council Non Profit Company ("Goringhaicona NPC"), with registration number K2011131755.

5.1. As stated in paragraph 4 of the First Applicant's founding affidavit, the Second Applicant is a voluntary association set up as a structure to promote the cohesion of the Goringhaicona people (see page 13 of the record). I confirm that this application has been duly authorised by the Second Applicant.

5.2. The Goringhaicona NPC is a non-profit company duly registered in accordance with the laws of South Africa, with the object of undertaking projects pertaining to the upliftment of the Goringhaicona's kraal, which is currently situated in Oude Molen, and to raise funds for the development thereof. Consequently the averments made by the First Applicant in relation to whether or not this litigation was properly authorised by the Goringhaicona NPC, and its request for the memorandum of incorporation of the Goringhaicona NPC, have no bearing on this litigation.

REPLY TO SEVENTH RESPONDENT

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AD PARAGRAPH 164 and 249

6. The Second Applicant has never participated in the Eight Respondent (First Nations Collective) or were part of the FNC, and therefore the Mayor's statement in this regard is incorrect and misleading.
7. Any decisions the Mayor or the MPT made on the basis of this information, which is factually incorrect, are judicially reviewable in my opinion, as he made the decision by taking into account irrelevant information and the decision is therefore influenced by an error of fact.

REPLY TO EIGHTH RESPONDENT

8. I have read the answering affidavit deposed to by Charles Jackson (aka Chief !Garu Zenzile Khoisan) in answer to the Applicants' application for interdictory relief (Part A), and filed on behalf of the Eight Respondent, namely the Western Cape First Nations Collective ("FNC").
9. The FNC's answering affidavit does not make any averments that are relevant to the determination of the matters in dispute in relation to the relief sought by the Applicants in Part A (i.e. the application for an interim interdict.) Given the limited time available, it would not serve any purpose to reply to each of the allegations in that affidavit, one by one (i.e. seriatim).
10. I deny allegations which are inconsistent with the affidavits already filed by the First and Second Applicants (including the supporting affidavit that I deposed to). Where I have not dealt with any allegations which are not expressly admitted or self-evidently common cause, they are denied.

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11. In essence the FNC's answering affidavit:
 - 11.1. provides details about the FNC and its members (para. 7);
 - 11.2. explains the River Club Development (para. 8), expresses satisfaction with the consultation process and design and layout of the development (paras 8.6 and 8.7) and states that the FNC supports the development because it believes that it "*presents an enormous opportunity for the protection and advancement of the socio-economic rights, benefits and interests of the Khoi and the San into perpetuity*" (para 8.2);
 - 11.3. explains the process that lead to the environmental authorisation and land use authorisation for the project being granted (para 8.8 to 8.27);
 - 11.4. explains the requirements for an interim interdict and why it believes that the Applicants have not satisfied these requirements (para 9);
 - 11.5. explains the cultural heritage associated with the Two Rivers Urban Park area (which includes the River Club site), the cultural heritage associated with this area and the measures taken to protect it (paras 10.1 to 10.14);
 - 11.6. discusses the consultation processes that took place in relation to the TRUP site (para 10.15); and
 - 11.7. deals seriatim with the Second Applicant's averments (paras 11 to 34).
12. It is material to note that the FNC concurs with the Applicants' views that:
 - 12.1. the Two River Urban Park ("TRUP") area, which includes the site of the River Club Development, is an area of high heritage significance for a

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variety of reasons, including its association with the 1510 battle in which the Portuguese Viceroy Dom Francisco de Almeida was killed (paras 8.3; 10.9 to 10.13.1); and

- 12.2. that the TRUP site is linked with important intangible cultural heritage, including "past histories and narratives extending back to pre-colonial times" (para. 10.10).
13. The River Club Development will transform the landscape of this important part of the TRUP area to such an extent that the sense of place (including the sense of wide open space, the vistas to the mountains and stars, and the course of the Liesbeek River) will be irreversibly transformed, and the restoration of valuable cultural landscape as envisaged by the TRUP initiative, will become impossible. If the development is allowed to proceed, the landscape will be dominated by towering commercial and residential buildings and the beautiful place that was sacred to First Nation's peoples will be effectively lost. It is this physical landscape that evokes and connects contemporary people to the rich histories of the TRUP area (i.e. to intangible heritage). The physical landscape and the intangible heritage values associated with it, are inseparable.
14. It is apparent from the FNC's answering affidavit that these losses are acceptable to the FNC because the new buildings will include symbols and spaces within which cultural events can occur, and will provide temporary employment for some of its members. For example, the various leaders of First Nations Groups associated with the FNC whose statements are attached to the FNC's answering affidavit all state that: *"We recognize that this River Club Development project will, for the first time after many decades of*

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disenfranchisement, once again bring world-wide recognition to the First Nation Heritage and Cultural significance as this development is sensitive to and incorporates the symbols, sacred grounds of the First Nations and the preservation thereof." (See the documents marked "ZK1" to "ZK5" annexed to the FNC answering affidavit.)

15. The main purpose of the FNC's answering affidavit appears to be to disparage the Goringhaicona people and to attack me personally. For example, the FNC alleges in relation to the Goringhaicona (which the FNC affidavit repeatedly incorrectly refers to as the "Goringoicona" or "Gorinhaicona"), that they:

15.1. are not a tribe (para 19.3) – an averment that is contradicted in para 29.3 which states "without detracting from the importance and existence of the Gorinhaicona (*sic*) tribe";

15.2. never traversed the "Liesbeek River Park" (para 14.7);

15.3. "are known to have been an outcast of the Gorinhaiqua people and have been "*strandlopers*"(para.14.7); and

15.4. were not warriors and did not participate in the 1510 battle against Viceroy Dom Francisco de Almeida, also referred to as "Admiral Francisco d'Almeida" (para. 17.2).

16. I do not propose to deal in this affidavit with the FNC's gratuitous speculation about my ancestry and the ad hominem attacks on my qualifications, integrity and motives because they are not relevant to the interim interdict application. However, I would like to clarify that the reason that I have the title of "Supreme High Commissioner" is because I am the High Commissioner of the Supreme

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Council of the Second Respondent. The FNC's answering affidavit speculates that this is evidence of the fact that I am an individualist concerned with self-glorification who has set himself up as an authoritarian leader (see para 11 and the introduction which precedes it). This speculation is gratuitous, offensive and false.

17. I specifically deny the following averments made in the FNC's answering affidavit.

AD PARAGRAPH 9.9 Apprehension of irreparable harm

18. The Applicants deny the averment in paragraph (b) that the granting of an interim interdict would cause irreparable harm to the FNC by "frustrating the aspirations of old, frail and tired Khoi and San descendants" to be alive to celebrate their heritage and culture on the site. On the contrary, if the interim interdict is not granted the First Respondent will transform the physical landscape of the site to such an extent that it will not be possible to recover the sense of place, vistas and landscape which connect and give meaning to the rich intangible heritage associated with this place. The Second Applicant wishes to prevent this happening so that current and future generations may enjoy the sense of place and maintain those connections with intangible heritage.

AD PARAGRAPH 9.12 Urgency and delay

19. The Applicants deny that they delayed unreasonably in applying for an interim interdict. This issue is addressed in the replying affidavit deposed to by Leslie London, filed with this affidavit.

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AD UNNUMBERED "INTRODUCTION" PARAGRAPH PRECEDING PARA 11

20. The Eight Respondent states that my deposing to the Second Applicant's affidavit was not in the interests of the Khoi and San nation, and implies that I did so in order to further my own interests (see the unnumbered paragraph that appears under the heading "Introduction" on page 2546 of the record). I deny these averments, and would like to draw the Court's attention to the following.

20.1. The Eight Respondent is self-evidently not in a position to speak on behalf of, or to determine the interests of the Khoi and San nations, but consistently claims to be the authentic voice of Khoi and San peoples in relation to the TRUP area and is intolerant of the views of representatives of Khoi or San people who are not members of the FNC.

20.2. In the Second Applicant's affidavit I sought to counter the misleading impression promoted by the FNC to the effect that it speaks on behalf of the majority of the First Nations organisations, and that they support the development. For example, I listed various First Nations groups that are opposed to the proposed development (see paragraph 78 and 79 of the Second Applicant's affidavit at pages 739 – 741 of the record). Since filing that affidavit I have obtained confirmatory affidavits from several of the groups that I mention in paragraph 78 of my supplementary affidavit. I attach marked "TJ3" confirmatory affidavits deposed to by:

20.2.1. Martinis Fredericks in his respective capacities as Paramount Chief of the !Aman Traditional Council and the Chair of the Khoi and San Kingdom of Southern Africa;

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20.2.2. Danny Bolton, also known as Chief Danny Bolton, in his capacity as Senior Advisor to Paramount Johannes of the Cochoqua Traditional Authority;

20.2.3. Edmund Stuurman, also known as Paramount Chief Edmund Stuurman, in his capacity of the Paramount Chief of the House of Klaas and Dawid Stuurman; and

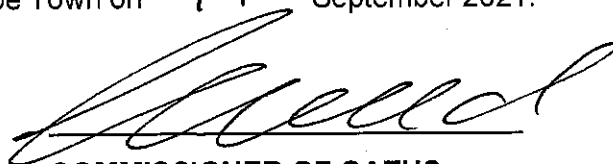
20.2.4. Professor Gertrud Fester, in her capacity as Chair of the Gender and Women's Commission of the Aboriginal /XARRA Restorative Justice Forum.


TAURIQ JENKINS

I hereby certify that the deponent has acknowledged that he:

- (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 his conscience.

Thus signed and sworn to before me, at Cape Town on 17th September 2021.


COMMISSIONER OF OATHS

NAME:

CAPACITY:

ADDRESS:

AREA:

LISA KATE WOOD
COMMISSIONER OF OATHS
PRACTISING ATTORNEY
FIRST FLOOR, UNIT C
4 ASCOT ROAD, KENILWORTH
CAPE TOWN

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HERITAGE WESTERN CAPE	Second Respondent
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EXECUTIVE MAYOR, CITY OF CAPE TOWN	Seventh Respondent
WESTERN CAPE FIRST NATIONS COLLECTIVE	Eight Respondent

CONFIRMATORY AFFIDAVIT

CG




I, the undersigned

Martinus Fredericks :

do hereby make oath and say as follows:

1. I am an adult male, also known as and the Paramount Chief of the !Aman Traditional Council as referred to in paragraph 78.2 of the supporting affidavit of Tauriq Jenkins.
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.
3. I have read the supporting affidavit of Tauriq Jenkins and confirm the contents thereof in so far as they relate to me, and the position I hold in the !Aman Traditional Council further confirm that neither the !Aman Traditional Council or myself approve of or support the proposed development by the First Respondent, nor are we represented by the Eight Respondent (the Western Cape First Nations Collective also known as the "FNC").

C.G

(M)

D.W

M Fredericks

Martinus Fredericks

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 **Place** on **day**
and month **2021**.

S. ...

COMMISSIONER OF OATHS

NAME: *Chadien*
CAPACITY: *CS1*
ADDRESS: *Wesfleur Circle*
AREA: *ATLANTIS*



Chadien

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WESTERN CAPE FIRST NATIONS COLLECTIVE	Eight Respondent

CONFIRMATORY AFFIDAVIT

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I, the undersigned

Martinus Federicks

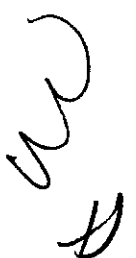
do hereby make oath and say as follows:

1. I am an adult male, also known as and the Paramount Chief of the !Aman Traditional Council and Chair of the Khoi and San Kingdom Council of Southern Africa, as referred to in paragraph 78.2 of the supporting affidavit of Tauriq Jenkins.
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.
3. I have read the supporting affidavit of Tauriq Jenkins and confirm the contents thereof in so far as they relate to me, and the position I hold in the Khoi and San Kingdom Council of Southern Africa.
4. I further confirm that neither the Khoi and San Kingdom Council of Southern Africa or myself approve of or support the proposed development by the First Respondent, nor are we represented by the Eight Respondent (the Western Cape First Nations Collective also known as the "FNC").



Martinus Federicks

C.C



I hereby certify that the deponent has acknowledged that she:

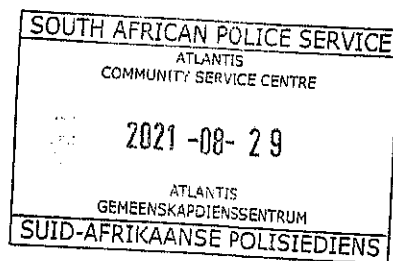
- (a) knows and understands the contents of this affidavit;
- (b) has no objection to taking the oath;
- (c) considers the oath to be binding on her conscience.

Thus signed and sworn to before me, at **Place** on **day**
and month **2021**.



COMMISSIONER OF OATHS

NAME: *Chaven*
CAPACITY: *est*
ADDRESS: *Westmeadow*
AREA: *ATLANTIS*



C.G

[Handwritten signature]

**IN THE HIGH COURT OF SOUTH AFRICA
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CONFIRMATORY AFFIDAVIT

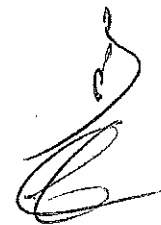



I, the undersigned

Danny Bolton:

do hereby make oath and say as follows:

1. I am an adult male, and also known as Chief Danny Bolton, Senior Advisor to Paramount Johannes of the Cochoqua Traditional Authority, as referred to in paragraph 78.2. of the supporting affidavit of Tauriq Jenkins.
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.
3. I have read the supporting affidavit of Tauriq Jenkins and confirm the contents thereof in so far as they relate to me, and the position I hold in the Cochoqua Traditional Authority further confirm that neither the Cochoqua Traditional Authority or myself approve of or support the proposed development by the First Respondent, nor are we represented by the Eight Respondent (the Western Cape First Nations Collective also known as the "FNC").
4. With reference to Charles Jackson (aka Chief !Garu Zenzile Khoisan) founding affidavit par 4.3. ZK3- Letter from the Cochoqua Tribal Authority NPO 182-077. This NPO is a cultural organization and not a traditional authority ito the TKLA 3 of 2019.

5. This cultural organization is also not affiliated to the the Cochoqua Traditional Authority based in Mamre under traditional leadership of Paramount Chief David Johannes which office is seated in Mamre, Western Cape. This Cochoqua Traditional authority was inaugurated and established ito the TKLA in 2012

6. The Traditional Authority of the Cochoqua Mamre does not sanction or approve of Chief John Jansen's statement.

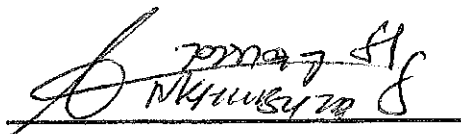


 Danny Bolton

I hereby certify that the deponent has acknowledged that he:

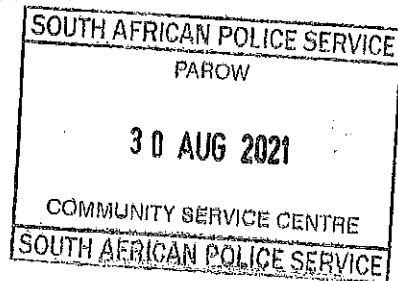
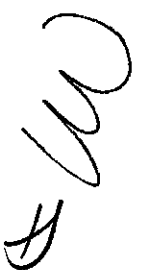
- (a) knows and understands the contents of this affidavit;
- (b) has no objection to taking the oath;
- (c) considers the oath to be binding on his conscience.

Thus signed and sworn to before me, at Place Parow on 30 day
August and month 2021.



COMMISSIONER OF OATHS

NAME: N. Kumburo
 CAPACITY: Jur
 ADDRESS: 01 Parow Wyfield St
 AREA: Parow

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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

WESTERN CAPE FIRST NATIONS COLLECTIVE

Eight Respondent

CONFIRMATORY AFFIDAVIT

Handwritten signature/initials

I, the undersigned

Edmund Stuurman :

do hereby make oath and say as follows:

1. I am an adult male, and also known as Paramount Chief Edmund Stuurman of the House of Klaas and Dawid Stuurman, and confirm that David Stuurman as referred to in paragraph 16 of the supporting affidavit of Tauriq Jenkins as my direct family ancestor.
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.
3. I have read the supporting affidavit of Tauriq Jenkins and confirm the contents thereof in so far as they relate to me, and the position I hold in the House of Klaas and Dawid Stuurman further confirm that neither House of Klaas and Dawid Stuurman or myself approve of or support the proposed development by the First Respondent, nor are we represented by the Eight Respondent (the Western Cape First Nations Collective also known as the "FNC").



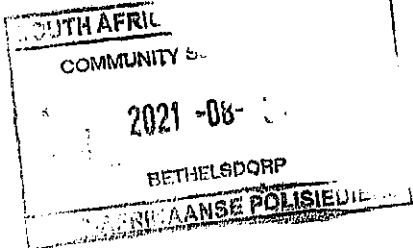
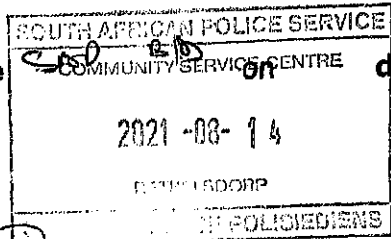


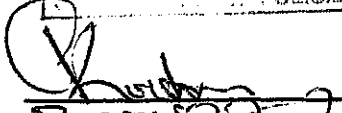
Edmund Stuurman

I hereby certify that the deponent has acknowledged that he:

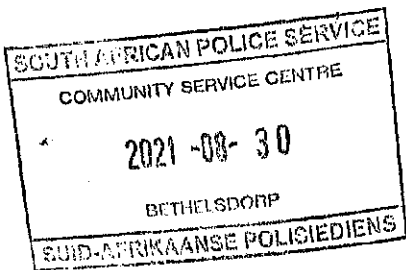
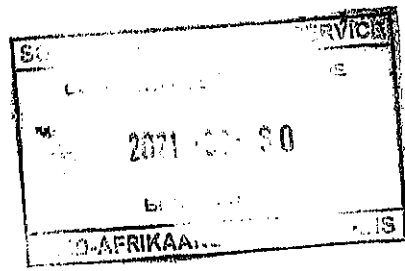
- (a) knows and understands the contents of this affidavit;
- (b) has no objection to taking the oath;
- (c) considers the oath to be binding on his conscience.

Thus signed and sworn to before me, at Place Bethelsdorp on 14 day and 2021-08 month 2021.




COMMISSIONER OF OATHS

NAME:
CAPACITY:
ADDRESS:
AREA:



[Signature]
Prof Gertrude Fester
Date: 30/08/2021

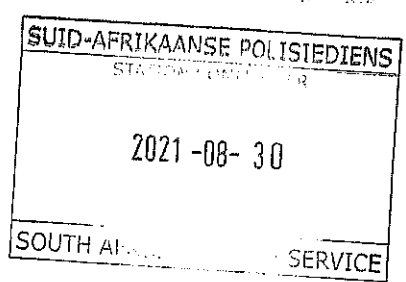
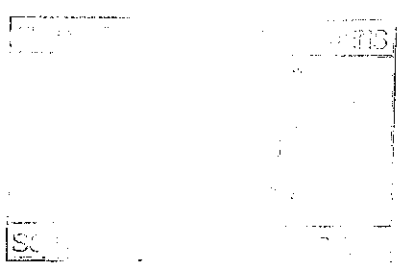
I hereby certify that the deponent has acknowledged that she:

- (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 Place Table View on 30th day and August month 2021.

[Signature] Zondo WIM
7029927-7
COMMISSIONER OF OATHS

NAME: Wideman I.M. Zondo
CAPACITY: pergeant
ADDRESS: 18 Rantz drive, Table View
AREA: Table View



[Handwritten mark]

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EXECUTIVE MAYOR, CITY OF CAPE TOWN	Seventh Respondent
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CONFIRMATORY AFFIDAVIT

[Handwritten signatures]

I, the undersigned

Gertrude Fester:

do hereby make oath and say as follows:

1. I am an adult female, ID Number 5207040022085 domiciled at B03 Dolphin Beach, Table View Cape Town. I am an honorary Professor at the Centre for African Studies (CAS) at the University of Cape Town and Chair of the Gender and Women's Commission of the Aboriginal /XARRA Restorative Justice Forum (h ereafter /Xarra), based at CAS, as referred to in paragraph 78.4. of the supporting affidavit of Tauriq Jenkins.
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.
3. I have read the supporting affidavit of Tauriq Jenkins and confirm the contents thereof in so far as they relate to me, and the position I hold in the A/XARRA Restorative Justice Forum further confirm that neither A/XARRA Restorative Justice Forum or myself approve of or support the proposed development by the First Respondent, nor are we represented by the Eight Respondent (the Western Cape First Nations Collective also known as the "FNC").

