

**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

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**EXPERT'S REPLYING AFFIDAVIT**

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I, the undersigned,

**BRIDGET ELIZABETH O'DONOGHUE**



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do hereby make oath and state as follows:

1. I deposed to the expert affidavit which was filed on behalf of the First Applicant as part of the founding papers in these proceedings ("my expert affidavit").
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 first 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. It is not my intention to deal with each of the Respondents' allegations. Any allegation that is not specifically dealt with herein should be taken as denied, unless that denial is inconsistent with what is set out elsewhere in this affidavit.
4. In this affidavit I reply to those aspects of the Respondents' answering affidavits that relate to me or the contents of my expert affidavit.

In this affidavit, I:

- 4.1. refute Mr Aufrichtig's allegation that the LLPT terminated my engagement as a heritage expert and explain that I resigned due to professional misgivings about how important heritage informants were being ignored in order to justify an inappropriately large development on the River Club site;

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- 4.2. confirm that my views regarding the deficiencies of the HIAs considered by both the Provincial decision-makers and the decision-maker in the City remain unchanged and are unaffected by:
- 4.2.1. the content of the 2019 AFMAS Report (the "AFMAS Report") prepared by Mr Arendse; or
- 4.2.2. the March 2020 rebuttal of Mr Hart and Dr Townsend to HWC's final comment (JA15, page 1210 of the record) and the September 2020 rebuttal by Dr Townsend and Mr Hart of HWC's appeal against the environmental authorisation (JA16, page 1217 of the record) (collectively referred to as the "Townsend / Hart rebuttals"); and
- 4.3. confirm that in my expert opinion the deficiencies in the heritage information provided to the decision-makers in the Province (i.e. the Fourth and Fifth Respondents) and the City (i.e. the Fourth to Seventh Respondents) by the First Respondent's heritage impact assessors meant that relevant and material heritage information was not before those decision-makers when they made the decisions being reviewed in this litigation.

## **REPLY TO FIRST RESPONDENT**

### **AD PARAGRAPH 246**

5. Mr Aufrichtig, on the say so of Dr Townsend, is suggesting that I knew and accepted that I was "*engaged in the process of finding the appropriate form for a development*" (to quote Mr Aufrichtig). If Mr Aufrichtig's version is accepted,

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it would imply that I abandoned my independence which is required as a specialist, and also under the Environmental Impact Assessment Regulations, 2014<sup>1</sup>, in order to ensure his desired development is enabled by "*finding the appropriate form*" for the First Respondent's proposed development. This would be contrary to what is required from an independent assessment and independent specialist.

6. When I am instructed to assess the heritage impacts of a development, the purposes of my assessment is to independently assess the positive and negative impacts of the proposed development on the heritage resources associated with a specific environment and community and make recommendations as to whether measures could be implemented to make the impacts of the development acceptable (if possible). It is not my duty as an independent specialist to ensure an "*appropriate form*" for a specific development or to ensure that development would be approved by the relevant authorities and/or be economically successful. As an independent specialist, I provide the same standard of assessment of the significance of the heritage resources, potential impacts, recommended mitigation measures and the recommendations, irrespective of the clients preferred alternative development proposal. Therefore, I can confirm that I did not accept that I am merely trying to write reports and find the "*appropriate form*" which would allow the proposed development of the First Respondent to proceed, and abandoned my independence in the process, as Mr Aufrichtig would suggest. It is my view, that

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<sup>1</sup> GNR. 982 of 4 December 2014: Environmental Impact Assessment Regulations, 2014 (as amended).

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it is exactly because I retained my independence that the working relationship between myself, SRK and the First Respondent came to an end.

7. I would argue in any event, that such assessments and specialist which are solely aimed at "*finding the appropriate form for a development*" should be disregarded due to the lack of independence on the part of the specialist. I respectfully submit that Dr Townsend's assertions on which Mr Aufrichtig relies, reflects poorly on Dr Townsend's independence in assessing the heritage impacts of the proposed development.
8. Mr Aufrichtig also confirms that according to Dr Townsend I had differences of opinion with several colleagues in 2016-2017 with respect to the proposed development. The differences of opinions which I had with colleagues, arose when the development, after the submission of my Phase 1 HIA, was not being designed in a manner which responds to the design indicators as contained in the Phase 1 HIA which I prepared, which design indicators the client approved. It is important to the Honourable Court to have insight to the context within which the difference of opinion arose in this regard and also to understand why I deemed it appropriate (amongst other considerations) to resign from the proposed development, since neither my colleagues or the First Respondent were applying their mind to my assessments and proposed mitigation measures, because it did not suite the scale of the development being envisioned by the First Respondent.
9. In essence, during the time of my contract as a specialist for the First Respondent, the scale of the proposed development was increased to such an extent that I simply could not see how the potential negative impacts on the



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heritage resources, could be adequately mitigated considering the heritage design indicators I had identified, juxtaposed to the scale, form and massing of the proposed development. (See section 6 of the Phase 1 HIA, annexed as "BD2", containing the heritage design indicators which I had identified.)

10. For purposes of clarity, I remain of the view that even with the development conditions which impose height restrictions and require the inclusion of the cultural media centre, eco-trail, etc, the approved development has an unacceptable high level of negative impacts on both the tangible and intangible heritage resources associated with the site, site context and the larger TRUP area.

**AD PARAGRAPH 256 to 258**

11. It is not true, as Mr Law of SRK informed Mr Aufrichtig, that my mandate was terminated after I "*repeatedly missed deadlines and failed to attend scheduled project meetings*" (see paragraph 258 of the First Respondent's answering affidavit, page 895 of the record). Mr Law may have had to terminate my mandate as I informed him that I was resigning from the project. I resigned from the project predominantly because:

- 11.1. I did not want to work with Dr Townsend (as we have differences in professional ethos); and

- 11.2. I was of the view that the preferred "concept" design of the First Respondent was not guided by the HIA Phase 1 which I had prepared which included the Heritage Design Guidelines and therefore there would be a high level of probability that the HIA Phase 2 assessment

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would result in unacceptably high negative impacts on the significant heritage resources associated with the site, site context and TRUP.

12. I could have proceeded to complete the HIA assessment phase (i.e. the HIA Phase 2), but given that I had to work with Dr Townsend who I had determined through personal communications did not agree with my HIA Phase 1 heritage design indicators, I resigned from the project.
13. On 4 February 2019 in response from an email enquiry by the journalist, Mr Angus Begg of African Storybook, Mr Law wrote to Mr Begg the following (email correspondence attached as “**BD3**”):

*“Dear Angus*

*SRK was appointed in May 2015 to conduct an Environmental Impact Assessment (EIA - in this case a Basic Assessment as is prescribed by legislation) for the redevelopment of the River Club, a component of the much larger proposed TRUP development. There is no other EIA for the River Club (although another, separate EIA is being conducted for the broader TRUP development – we are not sure of the status this assessment). In furtherance of the River Club EIA process, a comprehensive assessment report has been prepared which acknowledges all relevant information pertaining to the River Club proposal.*

*The EIA is informed by a number of specialist studies, including surface water hydrology, biodiversity, traffic, heritage, socio-economic, etc.. Although largely transformed (for example, the site was at one stage used as a landfill) the site and environs have heritage value, and Bridget O’Donoghue was appointed as*

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*the heritage specialist on the project team in June 2015. In February 2017 she compiled a Draft Phase 1 Heritage Impact Assessment (HIA), with a strong focus on built form issues. However, it became apparent that historical landscape and Indigenous Peoples were important heritage informants, and Zenprop appointed other heritage consultants with this expertise to advise and assist the project team, including Ms O'Donoghue.*

*At the time, SRK was working to tight deadlines which required all specialists to produce deliverables on time and be available to engage with the project team at short notice. Bridget was not always in a position to do this, and the other team of independent heritage consultants was, therefore, appointed to build on the baseline compiled by Ms O'Donoghue and to continue the HIA for the proposed development.*

*With regard to heritage issues specifically, the draft EIA has found that there would be a significant heritage benefit from the restoration of the Liesbeek Floodplain and the memorialisation of the history of the site; but that there will also be significant heritage impacts from the change in historical character of the site, and the historical setting of the South African Astronomical Observatory.*

*More broadly, and although not a final document, the EIA has considered the outcomes of all specialist studies, and has found that through effective implementation of detailed design and the stipulated mitigation measures, the adverse impacts of the project can be reduced to tolerable levels; but that the decision makers will ultimately need to weigh up whether the project (which will*

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*bring significant economic and ecological benefits, but will lead to irreversible heritage [see paragraph above] and visual impacts) should proceed.*

*SRK looks forward to embarking on the formal EIA process once the Heritage Tribunal has ruled on the provisional protection of the site, and Heritage Western Cape provides comment on the final HIA for the development.*

*Regards,*

*Matthew”*

14. I was informed by Mr Begg of Mr Law’s statement pertaining to reasons for my exit from the proposed development, and on 5 February 2019 I informed Mr Dalgleish of SRK of Mr Law’s statement and confirmed that the primary reason I elected to leave the project was that I was asked to collaborate on a revised HIA with Dr Townsend, and in response to this request, I confirmed that I am not available to do so (see annex BD3).
15. Mr Law subsequently wrote to Mr Begg on 6 February 2019, in respect of the “real reasons” which purportedly explains why I left the project (see annex “BD4”), and the altered reasons read as follow:

*“Hi Angus*

*I’ve chatted to Bridget and altered our response below:*

*SRK was appointed in May 2015 to conduct an Environmental Impact Assessment (EIA - in this case a Basic Assessment as is prescribed by legislation) for the redevelopment of the River Club, a component of the much larger proposed TRUP development. There is no other EIA for the River Club*

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*(although another, separate EIA is being conducted for the broader TRUP development – we are not sure of the status this assessment). In furtherance of the River Club EIA process, a comprehensive assessment report has been prepared which acknowledges all relevant information pertaining to the River Club proposal.*

*The EIA is informed by a number of specialist studies, including surface water hydrology, biodiversity, traffic, heritage, socio-economic, etc.. Although largely transformed (for example, the site was at one stage used as a landfill) the site and environs have heritage value, and Bridget O'Donoghue was appointed as the heritage specialist on the project team in June 2015. In February 2017 she compiled a Draft Phase 1 Heritage Impact Assessment (HIA), with a strong focus on built form issues. However, it became apparent that historical landscape and Indigenous Peoples were important heritage informants, and Zenprop appointed other heritage consultants with this expertise to advise and assist the project team, including Ms O'Donoghue. Ms O'Donoghue was asked to collaborate on a revised HIA with the other heritage consultant, but indicated she was not available to do so.*

*With regard to heritage issues specifically, the draft EIA has found that there would be a significant heritage benefit from the restoration of the Liesbeek Floodplain and the memorialisation of the history of the site; but that there will also be significant heritage impacts from the change in historical character of the site, and the historical setting of the South African Astronomical Observatory.*

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*More broadly, and although not a final document, the EIA has considered the outcomes of all specialist studies, and has found that through effective implementation of detailed design and the stipulated mitigation measures, the adverse impacts of the project can be reduced to tolerable levels; but that the decision makers will ultimately need to weigh up whether the project (which will bring significant economic and ecological benefits, but will lead to irreversible heritage [see paragraph above] and visual impacts) should proceed.*

*SRK looks forward to embarking on the formal EIA process once the Heritage Tribunal has ruled on the provisional protection of the site, and Heritage Western Cape provides comment on the final HIA for the development.*

*Regards,*

*Matthew*

16. It is important to note that Mr Law's altered reasons did not purport to make any statements regarding my position to meet "*tight deadlines*", nor did he allege that I missed deadlines or project meetings (as Mr Aufrichtig is currently alleging), but rather that I informed SRK that I am not available to collaborate with the other heritage consultant (being Dr Townsend).
17. On 13 February 2019 Mr Dalgleish of SRK replied to me and confirmed that "*[t]his appears to have sorted itself out*", "*this*" referring to the situation caused by Mr Law's inaccurate account of why I have left the project and my availability to assist with the project, as he conveyed initially to Mr Begg on 4 February 2019.

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18. When Mr Aufrichtig's version regarding my departure from the project, as he alleges in his affidavit on the strength of the advises of Mr Law, is compared to the correspondence between myself and the SRK consultants, the degree of disingenuousness is striking. My mandate was not terminated because I missed deadlines and failed to attend scheduled project meetings. This is simply not true and not what Mr Law had even told Mr Begg. It appears that Mr Law was under the impression, on 4 February 2019, that my mandate was terminated due to a lack of availability and the ability to meet deadlines, as this is evident from his correspondence with Mr Begg on 4 February 2019, but after I informed him that it is not correct, he changed his version and informed Mr Begg accordingly on 6 February 2019. Yet, in 2021 Mr Law is not saying that my mandate was terminated because I resigned or that I was not available to collaborate with Dr Townsend, rather, he has informed Mr Aufrichtig that my mandate was terminated because I missed deadlines and missed project meetings. It appears he has once again changed his account of the circumstances pertaining to how I left the project. As mentioned, this is simply not true.
19. It is important to note that Messrs Townsend, Hart and Arendse did not share my concern in relation to the scale of the development encroaching upon the heritage design indicators, this much is evident considering the scale of the development which is currently being constructed. It is therefore worthy to note the contents of Mr Law's confirmatory affidavit. At paragraph 8 thereof Mr Law confirms that SRK terminated my appointment at the behest of the First Respondent and subsequently the First Respondent appointed Messrs

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Townsend, Hart and Arendse. This affirmation by Mr Law is revealing when one considers the following sequence of events:

- 19.1. I was commissioned for the HIA Phase 1 setting out various heritage design indicators (which indicators would not have recommended the scale of the development which was eventually approved and currently being constructed);
- 19.2. I was requested to collaborate with Dr Townsend on HIA Phase 2, but elected to not do so and as I strongly believed that I had a difference of opinion regarding the heritage significance of the site and the future scale of the development considering the heritage design indicators I identified;
- 19.3. I resigned (for reasons explained above);
- 19.4. subsequent to my resignation, the First Respondent (on its own version) appointed Messrs Townsend, Hart and Arendse;
- 19.5. Messrs Townsend, Hart and Arendse conducted their studies for the EIA which was not guided by the heritage design indicators I identified;
- 19.6. the First Respondent obtained various authorisations to enable its development, and the scale of the development which is now being constructed is not in accordance with the heritage design indicators which I have identified (and therefore the development is much larger in scale).

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I respectfully submit that the First Respondent's claim that my mandate was terminated because of my alleged poor performance is not true or supported by the facts, but rather, that I resigned and the First Respondent sought me to work with a heritage specialist, Dr Townsend. In the circumstances, it is also clear that Dr Townsend's assessment of impacts of the development is not guided by the heritage indicators I identified, and this enabled the First Respondent's desired scale for the development.

20. I pause to note that the First Respondent's statement that the commencement of construction will not cause any irreparable harm to the intangible heritage associated with the site is contradicted by the First Respondent's EAP (Mr Law of SRK) who states in his email to Mr Begg, (confirmed in both his versions of 4 February 2019 and 5 February 2019) that if the development will proceed it "will lead to irreversible heritage... and visual impacts..." ..

**AD PARAGRAPH 319.1, 319.4, 319.6, 319.7,319.8, 319.9**

21. I confirm that I considered the AFMAS Report prepared by Mr Arendse in the course of reviewing documents to prepare my expert affidavit that was filed with the founding affidavit in this matter. I did not mention it specifically in that expert affidavit because I considered it part of the December 2019 Supplemented HIA of Townsend and Hart (which I did refer to).
22. I have subsequently considered the Townsend / Hart rebuttals. Similar to Mr Hart and Dr Townsend's December 2019 supplementary report, the Townsend / Hart rebuttals do not include any new research or information to address the concerns identified by HWC. Those rebuttals primarily repeats their arguments

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and assessments contained in the previous submissions and continues to dismiss the HWC comments in insulting terms, for example:

22.1. '*...the omissions, errors, vagueness and incompleteness of HWC Final Comment*'...( paragraph 3, page 1210 of the record, annex JA 15)'

22.2. *HWC reference in the Final Comment to the 2018 provision protection is at best, lazy and, at worst, illustrative of the inadequacy of its thinking, and any disinterested observer must be surprised by it'* ( bullet 4, page 1211 of the record, annex JA15 ).

23. I respectfully submit that none of the statements made in Mr Arendse's November 2019 report or in the Townsend / Hart rebuttals:

23.1. changes my assessment of the July 2019 HIA;

23.2. changes my assessment of the December 2019 Supplementary HIA;

23.3. fully resolved the inadequacies of the July 2019 HIA and the Supplementary HIA of December 2019; nor

23.4. changes the conclusions reached in my initial affidavit in respect of the inadequacy of the heritage impact assessment by the specialists of the First Respondent, as set out in paragraph 32 of my initial affidavit (page 771 of the record).

#### **REPLY TO THE CITY (THIRD, SIXTH AND SEVENTH RESPONDENTS)**

24. The heritage information in the HIAs as supplemented, and the comments on those HIAs (particularly by HWC and Hart and Townsend's rebuttals to those

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comments) was before the decision makers in the Province. (i.e the Fourth and Fifth Respondents) and those in the City (i.e. the Sixth and Seventh Respondents). Consequently, the opinions that I expressed in my expert opinion regarding the deficiencies in that heritage information apply to all those decision-makers. However, the City's answering affidavit calls my expert report into question because I was not briefed to consider City's decision-making process in respect of the heritage impacts and the consideration which the City gave thereto in both the MPT report and the Mayor's appeal decision. I have now considered the relevant sections of the MPT report which sets out the MPT's decision in respect of the heritage impacts, and the Mayor's appeal decision to the extent which it considers the heritage impacts of the proposed development (as set out in paragraphs 145 to 227 of the Mayor's appeal decision).

25. I submit however, that the City's reasoning in its respective decisions shows that it did not take account of material heritage information due to material information having been omitted from these specialist reports, such as the detailed mapping of the site and site context heritage resources and an adequate identification of the intangible heritage associated with the site.
26. Accordingly, I submit despite the Mayor's assertions in paragraph 348, 352, 353 and 359 (R: 1542 – 1544) of its answering affidavit, the conclusions reached in paragraph 32 of my previous expert affidavit is equally relevant to the decisions it had made.

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*Bridget O'Donoghue*

BRIDGET ELIZABETH O'DONOGHUE

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 CLAREMONT on 17 September 2021.

*M. RAGEZ* 9236062  
CS  
MR RAGEZ

COMMISSIONER OF OATHS

NAME: M. RAGEZ SALIE  
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| SUID-AFRIKAANSE POLISIEDIENS<br>GEMEENSKAPDIENSSENTRUM |
| 17 SEP 2021  |
| COMMUNITY SERVICE CENTRE<br>CLAREMONT K.P / C.P.       |
| SOUTH AFRICAN POLICE SERVICE                           |

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## 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 Vaarschedrift informants are included below (in italics):

WCG Baseline Heritage Study (October 2016) High level design informants<sup>24</sup>

- Retain where possible the open 'rural qualities' of the TRUP and directing compact development strategically to less heritage

<sup>24</sup> WCG October 2016 p 73 & 74

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 follows<sup>25</sup>.

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

<sup>25</sup> WCG October 2016 p 82 & 83

*Handwritten signature/initials*

*MPS*

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 are 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 Corridor<sup>26</sup>

- 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

<sup>26</sup> WCG October 2016 p 83

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 piers 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:

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- 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);
11. 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 Khoikhoi 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 mashie 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.

*Handwritten initials/signature*

*Handwritten number 5211*

**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 Vaarschedrift, 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 selected<sup>27</sup>.

<sup>27</sup> 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 on orthogonally determined erven; 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 17<sup>th</sup> 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, Vaarschedrift 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 Vaarschedrift 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 prevent 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 m<sup>2</sup> 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)<sup>28</sup>;
- Stagger building heights from south to north and across the site. Locate the tallest buildings adjacent to the proposed Berkeley 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;

<sup>28</sup> Note the height limit in the WCG Draft Baseline Heritage Study is for a maximum of 5 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 space/s 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 Berkeley 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 Berkeley 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

DWS

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- Allow new access points (bridges) from Liesbeek 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 finding 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.





**Hercules Wessels**

---

**From:** Bridget O'Donoghue <[bodonoghue@telkomsa.net](mailto:bodonoghue@telkomsa.net)>  
**Sent:** Thursday, 09 September 2021 13:01  
**To:** Hercules Wessels; Naomi Roux  
**Subject:** Fwd: TRUP - SRK COMMENT

FYI

Begin forwarded message:

**From:** Christopher Dalgliesh <[CDalgliesh@srk.co.za](mailto:CDalgliesh@srk.co.za)>  
**Subject:** RE: TRUP - SRK COMMENT  
**Date:** 13 February 2019 at 16:23:08 SAST  
**To:** Bridget O'Donoghue <[bodonoghue@telkomsa.net](mailto:bodonoghue@telkomsa.net)>  
**Cc:** Matthew Law <[MLaw@srk.co.za](mailto:MLaw@srk.co.za)>

Hi Bridget

This appears to have sorted itself out.

Cheers

Chris

**From:** Bridget O'Donoghue <[bodonoghue@telkomsa.net](mailto:bodonoghue@telkomsa.net)>  
**Sent:** Tuesday, 05 February 2019 19:25  
**To:** Christopher Dalgliesh <[CDalgliesh@srk.co.za](mailto:CDalgliesh@srk.co.za)>  
**Cc:** Matthew Law <[MLaw@srk.co.za](mailto:MLaw@srk.co.za)>  
**Subject:** Fwd: TRUP - SRK COMMENT

Dear Chris

I have discussed Matthew's statement to Angus, and voiced my concern with the statement.

The primary reason I elected to leave the project was that I was asked to collaborate on a revised HIA with Steve Townsend which I indicated I was not available to do.

The issue of my availability is therefore incorrect.

regards  
 Bridget

 **Bridget O'Donoghue**

BW

MRES

T 021 761 2355  
C: 071 1090 900  
10 Firs Avenue Claremont Cape Town 7708

**Email Disclaimer:**

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**From:** Matthew Law <[MLaw@srk.co.za](mailto:MLaw@srk.co.za)>  
**Subject:** RE: TRUP - urgent query plse  
**Date:** 04 February 2019 at 20:33:55 SAST  
**To:** "African Storybook (Angus Begg)"  
<[africanstorybook@gmail.com](mailto:africanstorybook@gmail.com)>  
**Cc:** Christopher Dalgliesh <[CDalgliesh@srk.co.za](mailto:CDalgliesh@srk.co.za)>

Dear Angus

SRK was appointed in May 2015 to conduct an Environmental Impact Assessment (EIA - in this case a Basic Assessment as is prescribed by legislation) for the redevelopment of the River Club, a component of the much larger proposed TRUP development. There is no other EIA for the River Club (although another, separate EIA is being conducted for the broader TRUP development – we are not sure of the status this assessment). In furtherance of the River Club EIA process, a comprehensive assessment report has been prepared which acknowledges all relevant information pertaining to the River Club proposal.

The EIA is informed by a number of specialist studies, including surface water hydrology, biodiversity, traffic, heritage, socio-economic, etc.. Although largely transformed (for example, the site was at one stage used as a landfill) the site and environs have heritage value, and Bridget O'Donoghue was appointed as the heritage specialist on the project team in June 2015. In February 2017 she compiled a Draft Phase 1 Heritage Impact Assessment (HIA), with a strong focus on built form issues. However, it became apparent that historical landscape and Indigenous Peoples were important heritage informants, and Zenprop appointed other heritage consultants with this expertise to advise and assist the project team, including Ms O'Donoghue.

At the time, SRK was working to tight deadlines which required all specialists to produce deliverables on time and be available to engage with the project team at short notice. Bridget was not always in a position to do this, and the other team of independent heritage consultants was, therefore, appointed to build on the baseline compiled



MRS

by Ms O'Donoghue and to continue the HIA for the proposed development.

With regard to heritage issues specifically, the draft EIA has found that there would be a significant heritage benefit from the restoration of the Liesbeek Floodplain and the memorialisation of the history of the site; but that there will also be significant heritage impacts from the change in historical character of the site, and the historical setting of the South African Astronomical Observatory.

More broadly, and although not a final document, the EIA has considered the outcomes of all specialist studies, and has found that through effective implementation of detailed design and the stipulated mitigation measures, the adverse impacts of the project can be reduced to tolerable levels; but that the decision makers will ultimately need to weigh up whether the project (which will bring significant economic and ecological benefits, but will lead to irreversible heritage [see paragraph above] and visual impacts) should proceed.

SRK looks forward to embarking on the formal EIA process once the Heritage Tribunal has ruled on the provisional protection of the site, and Heritage Western Cape provides comment on the final HIA for the development.

Regards,

Matthew

P.S. The query regarding the purchase of the property has been raised during the EIA process, and Zenprop have advised SRK that the Liesbeek Leisure Properties (Pty) Ltd (LLP Pty Ltd) had a long term development lease over the property since October 2000, which lease was registered over the property in May 2005. LLP Pty Ltd had all the rights of use to the property, and Transnet only retained the bare dominium in the property. In terms of the registered lease, the LLP Pty Ltd was granted a right of first refusal to purchase the property (bare dominium) if Transnet elected to sell. Transnet independently elected to sell the property in 2014 and valued the property (bare dominium – i.e. excluding rights of use, which it did not own) at R12 million. LLP Pty Ltd exercised its right of first refusal (as long term tenant) and acquired the property at the bare dominium value in May 2015. As a result the sale and transfer of the property to the long term tenant, the long term lease lapsed by operation of law. The on-sale price of the property to the Liesbeek Leisure Properties Trust (LLPT) was done for funding purposes, and included the value of the rights of use of the property, the bare dominium value and other factors.

**Matthew Law** *CEAPSA, BSc (Hons) MCom - Environmental Economics*  
Principal Environmental Management Consultant

 **srk consulting**

SRK Consulting (South Africa) (Pty) Ltd.





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 Please consider the environment before printing this e-mail.

BM

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**Hercules Wessels**

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**From:** Bridget O'Donoghue <bodonoghue@telkomsa.net>  
**Sent:** Thursday, 09 September 2021 12:55  
**To:** Hercules Wessels; Naomi Roux  
**Subject:** Fwd: River Club: SRK comment

FYI

Begin forwarded message:

**From:** Matthew Law <MLaw@srk.co.za>  
**Subject:** RE: River Club: SRK comment  
**Date:** 06 February 2019 at 08:57:09 SAST  
**To:** "African Storybook (Angus Begg)" <africanstorybook@gmail.com>  
**Cc:** Christopher Dalgliesh <CDalgliesh@srk.co.za>, Bridget O'Donoghue <bodonoghue@telkomsa.net>

Hi Angus

I've chatted to Bridget and altered our response below:

SRK was appointed in May 2015 to conduct an Environmental Impact Assessment (EIA - in this case a Basic Assessment as is prescribed by legislation) for the redevelopment of the River Club, a component of the much larger proposed TRUP development. There is no other EIA for the River Club (although another, separate EIA is being conducted for the broader TRUP development – we are not sure of the status this assessment). In furtherance of the River Club EIA process, a comprehensive assessment report has been prepared which acknowledges all relevant information pertaining to the River Club proposal.

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With regard to heritage issues specifically, the draft EIA has found that there would be a significant heritage benefit from the restoration of the Liesbeek Floodplain and the memorialisation of the history of the site; but that there will also be significant heritage impacts from the change in historical character of the site, and the historical setting of the South African Astronomical Observatory.

More broadly, and although not a final document, the EIA has considered the outcomes of all specialist studies, and has found that through effective implementation of detailed design and the stipulated mitigation measures, the adverse impacts of the project can be reduced to tolerable levels; but that the decision makers will ultimately need to weigh up whether the project (which will bring significant



MRS

economic and ecological benefits, but will lead to irreversible heritage [see paragraph above] and visual impacts) should proceed.

SRK looks forward to embarking on the formal EIA process once the Heritage Tribunal has ruled on the provisional protection of the site, and Heritage Western Cape provides comment on the final HIA for the development.

Regards,

Matthew

**From:** African Storybook (Angus Begg) <[africanstorybook@gmail.com](mailto:africanstorybook@gmail.com)>  
**Sent:** Wednesday, 06 February 2019 08:34  
**To:** Bridget O'Donoghue <[bodonoghue@telkomsa.net](mailto:bodonoghue@telkomsa.net)>  
**Cc:** Christopher Dalglish <[CDalglish@srk.co.za](mailto:CDalglish@srk.co.za)>; Matthew Law <[MLaw@srk.co.za](mailto:MLaw@srk.co.za)>  
**Subject:** Re: River Club: SRK comment  
**Importance:** High

Dear Bridget,

Thank you.

Matthew could you let me know the real reasons ?

I am submitting later this morning.

Kind Regards

Angus Begg

Private Guide  
Media Strategist  
Producer: Carte Blanche TV (2005-14)  
Category Winner: CNN 2006 Africa Journalist of the Year  
Highly Commended: 2008 PICA Publishing Awards  
Finalist: 2014 SA Premier Business Awards  
Shortlisted: 2015 AITO International Travel Writer of the Year  
GIBS Nexus Leadership Programme Alumni

082 451 3828



On 05 Feb 2019, at 19:21, Bridget O'Donoghue <[bodonoghue@telkomsa.net](mailto:bodonoghue@telkomsa.net)> wrote:

A handwritten signature in black ink, appearing to be 'AB' or similar initials.

MRS

Dear Angus

The comment provided by SRK on the reasons for my leaving the project are not correct. I have raised this issue with Matthew Law this afternoon.

In terms of my contract with SRK, I am not at liberty to tell you the correct reasons.

regards  
Bridget

<image001.png>

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Email Disclaimer:  
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BUD

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