

**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

SUPPORTING AFFIDAVIT

I, the undersigned,

DERICK AMBROSE HENSTRA



do hereby make oath and say as follows:

1. I am a founding partner and the executive chairman of dhk Architects (PTY) Ltd, a multi-disciplinary design studio with offices in Cape Town and Johannesburg.
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 worked in the property field for 38 year and over that period have established one of South Africa's largest commercial architectural practices with a vast amount of international experience.
4. During 2018 Amazon sent a request for proposals ("RFP") to a number of property development companies inviting them to submit a proposal for the development of a new regional headquarters for Amazon in Cape Town (referred to as "Project Zola"). Several of those companies then engaged DHK to assist them in preparing their proposals and DHK eventually participated in preparing proposals submitted by Rabie Property Group (Pty) Ltd ("Rabie") for a site at Century City, Conradie Park by Concor, and Site B on the Foreshore by Growthpoint.
5. I have read the paragraphs of the replying affidavit of Professor Leslie London in this matter which appear under the heading "Amazon Regional Headquarters" and the *Developer RFP and Building Specifications* dated 15 October 2018 referred to in those paragraphs. I confirm the contents of

those paragraphs in so far as they relate to the RFP process for Project Zola and the participation of Rabie, Concor and Growthpoint in it, and that to the best of my knowledge and belief the contents of those paragraphs is true and correct.

6. Amazon received a number of responses to its RFP from which it prepared an initial short-list of five proposals. That shortlist included proposals from Rabie Property Group (Pty) Ltd ("Rabie") in Century City, Growthpoint Properties Limited - PIC in the Waterfront , Harbour Arch by Amdec, The Galleria in Tygervalley by Devmark, Site B Foreshore by Growthpoint. The River Club site was not one of the five sites on that shortlist.
7. Of the five shortlisted sites, I have was involved in the proposals submitted by Rabie (Century City) and Growthpoint (Site B Foreshore) and confirm that these proposal met all of Amazon's requirements as set out in the RFP. The shortlist of five was then reduced to three and the Rabie proposal was excluded.
8. When it was announced that the Liesbeek Leisure Properties Trust was the preferred bidder to construct the Amazon headquarters on the River Club site, I was very surprised, first because in my view that site is not appropriate for such a development, and second because proceeding with that site involved a much higher degree of risk than several of the other qualifying sites.
9. I believe that the site is not appropriate for this development because it is a sacred heritage site and a very environmentally sensitive piece of land. There

are other sites in Cape Town that would be more suited and that are imminently available and complaint for this development.

10. In my opinion, selecting the River Club site for the Amazon regional headquarters was risky because of the significant risk that the necessary authorisations would not be granted, and because even if all the authorisations were granted, it was likely that construction would be delayed by challenges to those authorisations (e.g. appeals and high court reviews.)

11. All property development companies and architects are very well aware of the risks and costs associated with delays in obtaining the necessary approvals to develop sites, and property developers factor these into their financial and operational plans, and include appropriate clauses in their construction and other contracts that they enter into. These risks are higher if:

11.1. the site requires rezoning;

11.2. departures from land use planning policies will be necessary in order to obtain the necessary land use planning authorisations;

11.3. the site has specific ecological or heritage qualities which means that additional authorisations will be required (for example, an environmental authorisation under the National Environmental Management Act, a water use licence under the National Water Acts, or an authorisation under the National Heritage Resources Act); and

11.4. there is a high degree of public opposition to the proposed development, which means that it is foreseeable that those opposing

the development will appeal any authorisations that are granted, and if those appeals are dismissed, may litigate.

12. All of these risk factors applied to the River Club site whereas other sites, like the Rabie proposal to develop a large campus for Amazon at Century City, were relatively low risk and could have commenced much sooner. The proposed Century City site already had the correct zoning, met all the requirements specified in the RFP, and is excellently situated from a transport and amenities perspective.

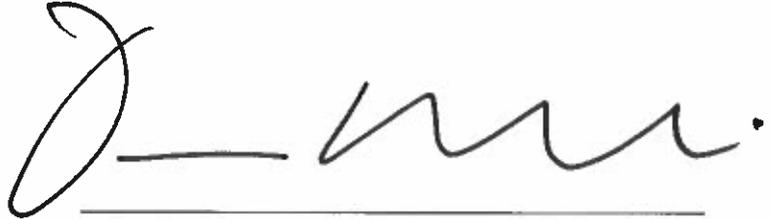
13. On the basis of the content of the RFP, my experience during the shortlisting process, and my knowledge of the commercial property sector and market in Cape Town, I have no doubt that:

13.1. Amazon is committed to employing more people in Cape Town, and to establishing a regional headquarters in Cape Town that will accommodate most of its existing employees and the new employees that it is recruiting;

13.2. there are a number of suitable sites in Cape Town where this could be done and which meet Amazon's requirements;

13.3. there are several large and experienced property development companies, that have the necessary expertise and capacity to undertake such a project and would welcome the opportunity to do so; and

13.4. both Amazon and the LLPT must have been conscious that selecting the River Club site carried with it the risk of substantial delays, first in obtaining the necessary authorisations, and secondly in dealing with the foreseeable appeals and other legal challenges to those authorisations.



DERICK AMBROSE HENSTRA

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 14 September 2021.



COMMISSIONER OF OATHS

NAME: SHIRLEY PASSANAH

CAPACITY: CFP

ADDRESS: WAYERLEY BUSINESS PARK

AREA: CAPE TOWN

Ex Officio COMMISSIONER OF OATHS (RSA)
Shirley Passanah CFP ©
FPI 200601511
Waverley Business Park, Building 4,
Wyecroft Road, Mowbray, Cape Town