

**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

CONFIRMATORY AFFIDAVIT



I, the undersigned, **Chief Bradley Van Sitters** – (Indigenous name: !Aokhoeb Danab !Hui !Gaeb di !Huni!nâ !Gûkhoeb)

do hereby make oath and say as follows:

1. I am an adult male, also known as Danab ||Hui !Gaeb di !Huni!nâ !Gûkhoeb and am the Gaob (Chief) of the !Khora||xau||aes.
2. I have been appointed by the Senior Bloodline Lineage in ||Hui !Gaeb (Cape Town), the #Oxollaes (Cochoqua Royal House) Crown Prince David Johannes to hold this position and to speak on behalf of !Khora||xau||aes
3. 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.
4. I have read the supporting affidavit of Tauriq Jenkins which he deposed on 30 July 2021 and confirm the contents thereof in so far as they relate to me, and the position I hold in !Khora||xau||aes.
5. As I explain more fully below, both the !Khora||xau||aes and I:
 - 5.1. are deeply concerned about the negative impacts that the development of the River Club site by the First Respondent ("the Development") will have on our cultural heritage;
 - 5.2. are opposed to the Development;
 - 5.3. were not consulted by Mr Rudewaann Arendse in connection with the preparation of his report titled "River Club First Nations Report" dated November 2019 ("the AFMAS Report"); and



- 5.4. are not members the Western Cape First Nations Collective ("the FNC") which is the Eighth Respondent in this matter, and the FNC is not authorised to speak on our behalf, whether in relation to the Development or any other matters.

Consultations undertaken by Rudewaan Arendse of AFMAS

6. I understand that Mr Rudewaan Arendse was commissioned by the Western Cape Provincial Department of Transport and Public Works to prepare a report on:
- 6.1. the significance of the Two Rivers Urban Park ("TRUP") to First Nations by identifying intangible cultural heritage ("ICH") specific to the TRUP, through Khoi and San oral history, as articulated by indigenous custodians;
 - 6.2. the collective First Nations aspirations for celebrating First Nation ICH at the TRUP; and
 - 6.3. how the indigenous narrative of the First Nation's ICH can be incorporated into the spatial governance of the TRUP, by developing heritage related design informants (as informed by the indigenous narrative).
7. This report culminated in the TRUP First Nations Report ("the TRUP Report") of 25 September 2019. Mr Rudewaan Arendse consulted me at the University of Cape Town, where I work, having been referred to me as having conducted several traditional cleansing and ritualistic ceremonies on the site in dispute; during our discussion Mr Arendse did not produce any ethical release forms. Neither did he have any visible recording device. It is with



concern that details and historical narratives as expressed by me were used verbatim at length in the AFMAS TRUP First Nations Report. My narratives are found in the latter part of page 21, and the entirety of pages 22 and 23 without any form of acknowledgement. This oral account is of an ancient indigenous knowledge and by removing any reference to its source is, in my view, is an act of epistemological violence. This harvesting of my indigenous knowledge was done in an unethical manner. Mr Arendse did not take notes during our discussion and I can be only be left to consider that a recording device must have been concealed since I was quoted verbatim in both the AFMAS TRUP Report for the Department of Public Works as well as the Riverclub First Nations AFMAS Report which was done for the developer.

8. Mr Rudewaan Arendse was subsequently commissioned by the First Respondent ("the Developer") to prepare an assessment of the impacts of the Development on intangible cultural heritage which culminated in the River Club First Nations Report ("the AFMAS Report"). It was with further concern that I was quoted extensively on page 17,18 and 19 without being interviewed for this report, furthermore my indigenous knowledge contribution was unacknowledged.
9. I confirm that neither myself nor my council were notified by Mr Rudewaan Arendse of his assessment of the impacts on intangible cultural heritage of the development at the River Club site, which assessment culminated in the AFMAS Report, and consequently neither myself nor my Council were consulted by Mr Arendse in relation to the AFMAS Report.

10. The Developer and/or Mr Arendse / AFMAS were well aware that both myself and my council wished our view in relation to the Development and its potential negative impacts on the environment and on our cultural heritage, to be taken into consideration by the authorities responsible for deciding whether or not to authorise the Development. My reasons for saying this appear below.

10.1. I represented the !Khora||xau||aes Council as an interested and affected party ("I&AP") during the provisional protection appeal proceedings, under case number 1511 2504 WD 1217E in which the Developer as an appellant [and Mr Arendse?] participated. My name appears from the list of I&APs as is evident in the record.

10.2. My group has contact details which are easily traceable. AFMAS and Mr Arendse should have used this information to communicate with us and arranged for us to participate in the consultation which culminated in his AFMAS Report.

11. I confirm that neither the !Khora||xau||aes nor myself approve of or support the development by the First Respondent, nor are we represented by the Eight Respondent (the Western Cape First Nations Collective also known as the "FNC").

Cultural and heritage significance of the site and TRUP area

12. The site at which the River Club development will take place and the larger TRUP, is of significant cultural and heritage significance to my council. The site and the TRUP area is sacred to us and a significant part of our intangi-



ble cultural heritage is associated with the site and the TRUP, for the following reasons:

- 12.1. The site where Ossingkhimma, the son of Gogosoa who was the Paramount Chief of the Peninsular Khoi, was stampeded by elephants. The site where Eykamma was wounded during the First Khoi Dutch war in 1659. He later died of his wounds at the Castle of Good Hope. The TRUP is the site of the 1510 Battle against Portuguese Viceroy Francisco D'Almeida. It is a Frontier Zone where Jan Van Riebeeck established a military barracks to drive out the Khoi on the Eastern shore of Liesbeek. It is where land was stole for the first time and the concept of private property began. The site from where the genocide of the Cape San started. It is where the First Khoi Dutch Frontier Wars broke out. It is a site where Jan Van Riebeeck deployed slaves. The confluence of the rivers is the symbolic birthplace of the Korana through !Kora.
- 12.2. The Inau ceremony of affirmation and dedication has taken place on the site especially during the solstice and equinox. There was a unification ceremony held between the !Khowese Nama Traditional Authority and peninsular Khoi in 2008. In 2020, the national Kai Korana held a unification ceremony in the TRUP hosted by the Goringhaicona Khoi Khoi Traditional Indigenous Council. Water ceremonies, considered one of the most sacred ceremonies are performed here.
13. The !Khora||xau||aes traditionally occupied the area between the foot of Table Mountain and Klapmuts. The primary kraal was located along the banks



of the Liesbeek where after the Winter migrations returned to the site. We wish to re-establish a presence at the TRUP.

13.1. The Black and Liesbeek River confluence is the symbolic birthplace of the Korana through !Kora. This confluence is the place of memory and coming together of the peninsular Khoi polities. Only from the confluence of the Black and Liesbeek can one observe that the sun sets on Lions head during the equinox. This place was a vantage point for the San and Khoi in the naming of the stars.

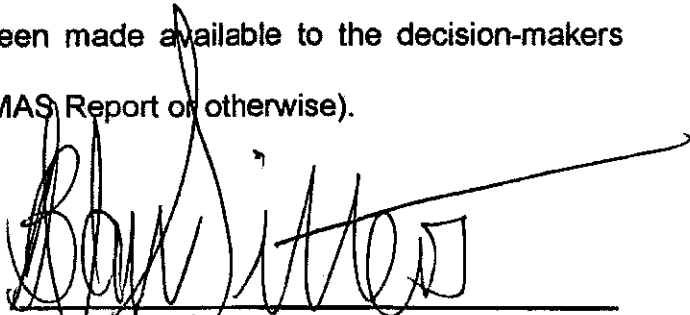
13.2. We are inextricably linked to this site as a life source for many generations. The infilling of the Old Liesbeek Channel has resulted in trauma and resurfacing generational trauma, and a reminder of the pain that was inflicted in 1657. We are connected to this River as a giver of life and a sustainer of life. The destruction of this sacred landscape is a violent rupture to our collective spiritual well being.

13.3. The high buildings and constructions distort and remove the sacred sense of space. Destroying this open green space will destroy the last remnants of this ancient landscape in an urban setting. It is disturbing that this is happening in post Apartheid South Africa.

14. We do not regard any of the conditions to the respective authorisations to be sufficient for purposes of safeguarding our intangible heritage associated with the site. In our view, the aspects of the Development which the Developer claims will give expression to, and celebrate, our intangible cultural heritage (i.e. the proposed indigenous gardens, cultural and media centre, amphitheatre, and "heritage eco-trail") do no such thing.



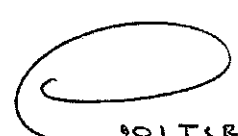
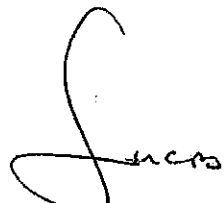
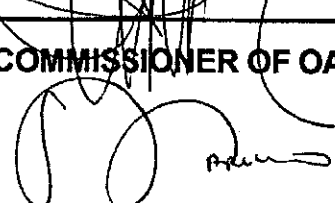
15. Had I or my council been meaningfully consulted by Mr Arendse in respect of the River Club development, we would have contributed important information relevant to the decision-making process (including the information in this affidavit) which should have been made available to the decision-makers (whether by inclusion in the AFMAS Report or otherwise).

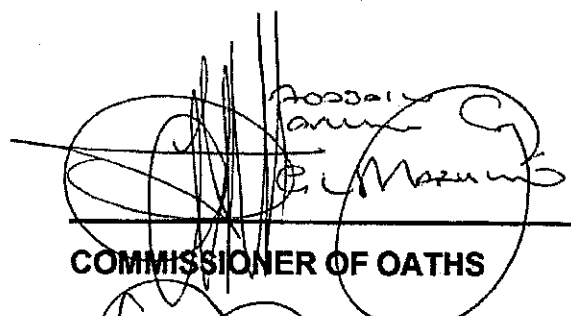

Bradley van Sitters

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 Mowbray on 18th May 2022.


NAME: VOITSE

CAPACITY: SPEAKER

ADDRESS: 32 Main Road Mowbray Spas
AREA: WESTERN CAPE CAPE TOWN


COMMISSIONER OF OATHS