

**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

AFFIDAVIT

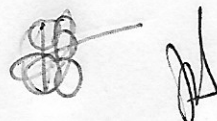
 

I, the undersigned

Gregg Steven Fick

do hereby make oath and say as follows:

1. I am an adult male, also known as Danab Gaob F'im and am the Chair of the FINSA (First Indigenous Nation of Southern Africa) with its address at 113 3rd Ave, Rondebosch East.
2. I am the Chairperson of FINSA and hold this position to speak on behalf of FINSA
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 and replying affidavits of Tauriq Jenkins which he deposed on 30 July 2021 and 17 September 2021 and confirm the contents thereof in so far as they relate to me, and the position I hold in FINSA.
5. As I explain more fully below, both the FINSA and I:
 - 5.1. are deeply concerned about the negative impacts that the development of the River Club site by the First Respondent ("the Developer") will have on our intangible cultural heritage;
 - 5.2. are opposed to the Development;



- 5.3. were not consulted by Mr Rudewaan 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 of 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 and does not represent myself nor FINSA 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 Intangible Cultural Heritage (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).

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7. This report culminated in the TRUP First Nations Report ("the TRUP Report") of 25 September 2019. Mr Rudewaan Arendse never consulted FINSA during the preparation of that report.
8. According to his brief in the River Club First Nations Report ("the AFMAS Report"), Mr Rudewaan Arendse was subsequently commissioned by the First Respondent ("the Developer") to:

"...engage the First Nations (the Khoi and San)², interchangeably referred to as Indigenous people, or the Indigene, with regard to their intangible cultural heritage in terms of the River Club project site."

and

"1. Understand the significance of the River Club site to the First Nations by identifying Indigenous intangible cultural heritage specific to the River Club.

2. Locate the River Club site within the Indigenous narrative of the broader TRUP cultural landscape.

3. Identify First Nations aspirations with regard to Indigenous cultural heritage and the River Club site.

4. Implement the recommendation of the TRUP First Nations report that "acknowledging, embracing, protecting and celebrating the Indigenous narrative be a heritage related design informant that

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informs" planning and development of the River Club site." (Vol: 3, R: 1079)

9. I confirm that neither I nor FINSA were notified by Mr Rudewaan Arendse or engaged with regarding our intangible cultural heritage associated with the River Club site or how the development will affect my intangible cultural heritage associated with the TRUP, and consequently neither myself nor FINSA were consulted by Mr Arendse in relation to the AFMAS Report.

10. I was never notified by Mr Rudewaan Arendse or the developer that he intends engaging First Nations groups regarding their intangible cultural heritage associated with the River Club site. Furthermore, I did not receive notice of either of the Developer's intention to apply for authorisations to the Province or the City of Cape Town. Therefore, I did not receive the opportunity to participate, comment and register as an interested and affected party ("I&AP"):
 - 10.1. in the Developer's environmental impact assessment process, which formed part of the Developer's application to the Province for environmental authorisation; or
 - 10.2. in the process which formed part of the Developer's application to the City for land use approval.

11. The Developer and Mr Arendse were well aware that both I and FINSA 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

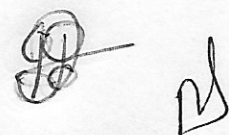
consideration by the authorities responsible for deciding whether or not to authorise the Development. My reasons for saying this appear below.

11.1. I represented FINSA 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. I made several submissions to the Tribunal, both in writing and orally, and these submissions would have been available to Mr Arendse and the Developer. I have attached one of the submissions to this affidavit as FINSA Two Rivers Submission (Annexure A).

11.2. In December 2018, I participated in the site visit at the River Club held by the Tribunal. The developer's heritage consultant, Mr Steven Townsend and the developer's attorney, Mr Nicholas Smith, were present where I spoke about the importance of the site. As I understand, this was recorded by the Tribunal and forms part of the Tribunal record. Neither the developer nor Mr Arendse can say they were unaware of my and FINSA's interest in this matter.

11.3. My name appears on the list of I&APs as is evident in the record, at page 49 of the Final Directive. I also signed every register for the meetings I attended regarding the Provisional Protection of the River Club.

11.4. My group has a Facebook page which is easily traceable. You can also easily locate FINSA on Google. AFMAS and Mr Arendse should

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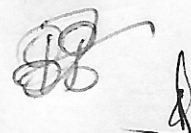
have used this information to communicate with us and arrange for us to participate in the consultation which culminated in his AFMAS Report.

12. I confirm that neither I nor FINSA were consulted by Mr Arendse. Nor do we approve of or support the development by the First Respondent, nor are we represented by the Eighth Respondent (the Western Cape First Nations Collective also known as the "FNC").

Cultural and heritage significance of the site and TRUP area

13. The site at which the River Club development will take place and the larger TRUP, is of significant cultural and heritage significance to FINSA. The site and the TRUP area is sacred to us and a significant part of our intangible cultural heritage is associated with the site and the TRUP, for the following reasons:

- 13.1. Prior to the Battle of 1510, our people lived in a kraal nearby the river where we would participate in various sacred rituals and ceremonies, especially cleansing of new born babies.
- 13.2. Sacred practices and healing ceremonies took place there because the river served a healing function for diseases and injuries.
- 13.3. It's rare to find a confluence of rivers so the confluence of the Black and Liesbeek River is very important to our people.
- 13.4. Whenever you do anything to our rivers, we do not see a river as an object, we know the river is alive, it is a being. We *feel* what happens



to the river. What is happening now is that the Liesbeek river is being killed. It is like losing a mother – the river protects us, loves us, cares for us. So we mourn the same way for the death of a river as we would for the death of our mother.

- 13.5. There are also gravesites near the Black River where we celebrate in remembrance of our ancestors.
- 13.6. Table Mountain is one our sacred mountains. Where our ancestors used to stay, they would look to that mountain when we prayed to our God, called Tsui//Goab. Our men would be on those mountains on look out duty and to perform rituals. Most importantly, they would be able to give signals to those of us below to alert us of dangers, such as intruders, ships, animals or any threats. High buildings and construction takes away the essence of that sense of place and makes that place foreign because it stops us from seeing the mountain. How will we worship if we cannot speak to Tsui//Goab? We would have to move away from the place to see the mountain.
- 13.7. When we build our kraals, we do so in specific places for specific reasons – either with a view of the mountain or a view of the stars, from which Tsui//Goab will speak. That is why the site is significant. In this specific site you have both the view of the mountain and the view of the stars. It is no coincidence that this suburb is called Observatory because this is where we observed the stars.
14. We do not regard any of the conditions to the respective authorisations to be sufficient for purposes of safeguarding our intangible heritage associated

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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 FINSA 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).



Gregg Steven Fick

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 **30 May 2022**.



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SUT

COMMISSIONER OF OATHS

NAME: *PHILISA Sotiwapi*

CAPACITY: *SERGEANT*

ADDRESS: *SAPS RONDEBOSCH
CHURCH STREET*

AREA: *RONDEBOSCH*

SUID-AFRIKAANSE POLISIEDIENS
STASIEBEVELVOERDER
30-05-2022
STATION COMMANDER RONDEBOSCH, K.P./C.P.
SOUTH AFRICAN POLICE SERVICES

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