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DECLARATIONS OF INDEPENDENCE


PROJECT: Proposed redevelopment of the River Club, Observatory, Cape Town

We, **Tim Hart and Stephen Townsend**, as the appointed independent specialists, hereby declare that we acted as the independent specialists in this application; and that we

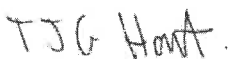
- regard the information contained in this report as it relates to our specialist input/study to be true and correct, and
- do not have and will not have any financial interest in the undertaking of the activity, other than remuneration for work performed in terms of the NEMA, the Environmental Impact Assessment Regulations, 2010 and any specific environmental management Act, and in terms of the National Heritage Resources Act;
- have and will not have any vested interest in the proposed activity proceeding;
- have disclosed, to the applicant, EAP and competent authorities, any material information that have or may have the potential to influence the decision of the competent authority or the objectivity of any report, plan or document required in terms of the NEMA, the Environmental Impact Assessment Regulations, 2010 and any specific environmental management Act, and in terms of the National Heritage Resources Act;
- are fully aware of and meet the responsibilities in terms of NEMA, the Environmental Impact Assessment Regulations, 2010 (specifically in terms of regulation 17 of GN No. R. 543) and any specific environmental management Act, and that failure to comply with these requirements may constitute and result in disqualification;
- have ensured that information containing all relevant facts in respect of the specialist input/study was distributed or made available to interested and affected parties and the public and that participation by interested and affected parties was facilitated in such a manner that all interested and affected parties were provided with a reasonable opportunity to participate and to provide comments on the specialist input/study;
- have ensured that the comments of all interested and affected parties on the specialist input/study were considered, recorded and submitted to the competent authority in respect of the application;
- have ensured that the names of all interested and affected parties that participated in terms of the specialist input/study were recorded in the register of interested and affected parties who participated in the public participation process;
- have provided the competent authority with access to all information at our disposal regarding the application, whether such information is favourable to the applicant or not; and
- are aware that a false declaration is an offence in terms of regulation 71 of GN No. R. 543.

Note: The terms of reference must be attached.

Signatures of the specialists:



Stephen Townsend (Architect, Statutory Planner, Conservationist)



TJG Hart, for ACO Associates cc

Date: 2 July 2019

GLOSSARY

Archaeology: *Remains resulting from human activity which are in a state of disuse and are in or on land and which are older than 100 years, including artefacts, human and hominid remains and artificial features and structures.*

Cultural landscape: *The combined works of people and natural processes as manifested in the form of a landscape.*

Early Stone Age: *The archaeology of the Stone Age between 700 000 and 2 500 000 years ago.*

Fossil: *Mineralised bones of animals, shellfish, plants and marine animals. A trace fossil is the track or footprint of a fossil animal that is preserved in stone or consolidated sediment.*

Heritage: *That which is inherited and forms part of the National Estate (Historical places, objects, fossils as defined by the National Heritage Resources Act 25 of 1999).*

Holocene: *The most recent geological time period which commenced 10 000 years ago.*

Late Stone Age: *The archaeology of the last 20 000 years associated with fully modern people.*

National Estate: *The collective heritage assets of the Nation.*

Palaeontology: *Any fossilised remains or fossil trace of animals or plants which lived in the geological past, other than fossil fuels or fossiliferous rock intended for industrial use, and any site which contains such fossilised remains or trace.*

SAHRA: *South African Heritage Resources Agency – the compliance authority which protects national heritage.*

Structure (historic): *Any building, works, device or other facility made by people and which is fixed to land, and includes any fixtures, fittings and equipment associated therewith. Protected structures are those which are over 60 years old.*

ACRONYMS

DEAT	Department of Environmental Affairs and Tourism
ESA	Early Stone Age
GPS	Global Positioning System
HIA	Heritage Impact Assessment
HWC	Heritage Western Cape
LSA	Late Stone Age
MSA	Middle Stone Age
NHRA	National Heritage Resources Act
SAHRA	South African Heritage Resources Agency

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PREFACE

The proposal to redevelop the River Club property has become increasingly controversial. The River Club site is extremely important historically and there are a wide range of interest groups arguing different significances and claiming different if related 'ownerships' including arguments about some matters that are not ordinarily recognised to be 'heritage-related'.

It is also true that the complex framework of laws regulating development in these circumstances demand iterative public and interested party commenting processes; and these repeated requests for comment have angered some parties while others have accused us, the authors of this heritage impact assessment, of what have been claimed are unreflective views that fuel ethnocide.

Given the increasingly inflammatory attacks on the process and on us as the authors of this heritage impact assessment, it seems sensible to articulate our position by making clear at the outset what we think the primary issues are, what we think our professional role is, and what we think can be achieved in this instance.

First, the primary issues, as we see them, are as follows:

- indigenous First Peoples groups have legitimate claims to an 'ownership' of the wider environs as their pre-colonial heritage and as a place where early steps in the process of the destruction of their pre-colonial way of life took place;
- the subject property, within the 'frontier zone' of the first settler-indigenous peoples conflict, is important historically;
- the wider area is transformed by radical changes made to the Liesbeek River and by the establishment of the observatory, the hospital, the levelling of sportsfields, and the growing inner-city suburb of Observatory;
- the Liesbeek itself had by the 1950s become little more than a stormwater channel and a number of stretches of the river were then canalised;
- the subject property, a small part of the Liesbeek floodplain and since the late-1920s the SAR&H recreational club, had been subject to decades of dredging, dumping and reshaping and in 1952 the course of the Liesbeek was changed decommissioning the course on the western side of the floodplain (hence only carrying stormwater from the abutting suburb) and cutting a new canalised course along the base of the low spur occupied by the Observatory;
- the old defunct section of the river is of ecological value (but, from a heritage point of view, we regard this as incidental);
- the subject property is privately owned, used for restaurants, conferences and golfing practices, and is not meaningfully accessible to the public or, most importantly we think, to the First Peoples groups;
- there is an opportunity for the realisation of several public goods through development of the site which are most unlikely to be achieved in any other set of circumstances;



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- not dealt with directly are aspects that are not central to what we regard as the heritage-related significances of the property: these aspects include, for example, the purchase of the property, flooding, environmental protections and traffic generation.

Second, our professional role is to undertake an investigation that enables (a) the articulation of the heritage-related significances associated with the site and its environs and (b) the identification of heritage, both tangible heritage resources and intangible practices and beliefs, that comprise or are associated with the site and its environs, and (c) that also enables us to advise and assist the owners to propose development that responds to and respects the articulated significances, mitigates recognised potential damage to heritage both tangible and intangible and, ideally, that enables the recovery and even enhancement of heritage resources.

The manner in which we approach these tasks is not, of course, value free; but we do self-consciously approach them in as open and as transparent a way as we are able. And, given the submissions of the Goringhaicona Khoi Khoin Indigenous Traditional Council, given in particular their belief that, "The HIA downplays our history for what we feel are for purposes of greed and avarice. Trust has been broken with the HIA author and the applicant", we emphasize the context and dilemmas faced here and in circumstances like these more generally: yes, the significance of this place and of the particular subject site within the wider environs is great; and, yes, the rights of indigenous peoples should be affirmed and promoted. However, it must be recognized that the significances associated with this particular site are also associated with the wider environs; and that these significances are difficult to attach directly to this particular property and, perhaps most starkly, it is always difficult to see how intangible cultural heritage, practices and beliefs, can be 'brought to ground' in the practical world of property ownerships, legal frameworks, and the making of the modern city in a context of urbanisation, growth and development; and it must be said that the submissions of the First Peoples groups have not given us grounded reasons or evidence enabling us to promote greater or more tangible restitution or access.

Third, despite the controversy raised and the heat of the resistance articulated by most of the parties responding in the commenting processes and recognising the current degraded state and use of the site and its very great significance, we have also recognised the potential for the creation of a public good of the highest order through the recovery and restoration of the Liesbeek River/canal as a historically and spatially meaningful and ecologically functional Liesbeek riverine corridor.

In this regard, we note that most of the commentators (the First Peoples groups excepted) seem, implicitly at least, to accept that some form of development should/will proceed but most also argue that the current proposal is simply too great: we think that this, from a heritage management perspective, is contradictory; and we think this because any development of the subject property, even single storey row-houses like those in nearby Observatory would transform the site and the floodplain



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affecting the wider environs in the same way (from a heritage management perspective); but, importantly, a lesser development would not generate adequate funds for the great public good that we argue for, the restoration of the Liesbeek riverine corridor. In other words, we think that the choice is stark but clear: accept the currently proposed Riverine Corridor Alternative with what we think are very considerable public benefits or accept that the River Club property will remain as it is.

Finally, we must also point out that neither of us sought the roles we have accepted: given the then already growing controversy, we did so reluctantly; but we have embarked on this because we believe that, if the potential for enhancement of the riverine corridor and for meaningful public access is recognised by the heritage-claimants and if the authorities recognise the opportunities presented here, a significant gain for all parties can be realised. We are, of course, paid for our professional endeavours; but we are independent professional advisers and we have nothing to gain or lose from the success or failure of the development proposal.



1 INTRODUCTION

The Liesbeek Leisure Properties Trust has appointed Dr Stephen Townsend and Tim Hart (ACO) to conduct a Heritage Impact Assessment satisfying Section 38(8) of the National Heritage Resources Act (NHRA) in conjunction with a Basic Assessment process conducted under the National Environmental Management Act (NEMA) for the redevelopment of the River Club site, Erf 151832, and its bounding riverine banks, the construction of the abutting long-planned arterial Berkley Road Extension on Erf 15326, the widening of Liesbeek Parkway, and of the road intersections giving access to Erf 151832, Observatory, Cape Town.¹ Although use of the site has been gradually intensified over the years, Liesbeek Leisure Properties Trust have explored the possibility of developing the site as the land is under-used in this urban context close to Cape Town where land for urban densification is needed and desired.

The size of the property and its proximity to protected riverine and wetland systems has triggered both an impact assessment report in terms of the NHRA and a Basic Assessment in terms of NEMA. This document is the Heritage Impact Assessment (HIA) contribution to the Basic Assessment Report (which includes biodiversity studies and a visual impact assessment). SRK Consulting is driving this Basic Assessment process. While this HIA is ultimately decided on under NEMA, it is devised to satisfy Section 38(8) of the NHRA and it includes the studies and information required by the provincial heritage resources authority, Heritage Western Cape (HWC); and HWC's final comments must be taken into account by the NEMA authority, the provincial Department of Environmental Affairs and Development Planning (DEA&DP).

We note that an earlier report (described as a "phase one HIA")² was compiled on behalf of Liesbeek Leisure Properties Trust and submitted to HWC in early 2017. This report was, however, withdrawn before being considered by HWC as a consequence of two related factors: first, when considering the related Two Rivers Urban Park "base line studies"³ submitted at roughly the same time in early 2017 on behalf of the WC Provincial Government, HWC's Impact Assessment Review Committee (IAComm) was critical of what its members perceived as un-argued assumptions about the potential scale of development in the TRUP-area; second, similar assumptions to those just referred to had been included in O'Donoghue's "phase one HIA". Following the IAComm comments on these baseline studies, it was recognised by the owners that the development of Erf 151832, the study site of this report, provided an opportunity for a radically different alternative which could transform the Liesbeek River, a concrete-lined canal, into a restored ecological

¹ The land involved bounding Erf 151832 owned by the City of Cape Town is included in this process with the consent of the City; see attached as an annexure.

² O'Donoghue, Bridget, 22 February 2017, *Heritage Impact Assessment Phase One: River Club*, which had a peer review report by Nicolas Baumann attached.

³ By the heritage practitioner, Melanie Attwell, and the town planner, Nisa Mammon.



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element and a historically numinous and iconic section of the Liesbeek River. As a consequence, a rather differently argued *Draft HIA* (which rebuts some assumptions of the “phase one HIA”) by us, Townsend and Hart, was circulated for public and interested party comment in January-March of 2018. That draft report, while recognising the research carried out for the “phase one HIA”, also took account of the previous consultative steps under both NEMA and the NHRA, but dealt with a rather different preferred alternative to that presumed in the “phase one HIA”.

We also note here that in late-March 2018 (immediately after the end of the period in which the *Draft HIA for Public Consultation* dated 18 January 2018 had been advertised for comment) HWC provisionally proclaimed the River Club property to be a provincial heritage site (PHS) in terms of Section 29 of the NHRA. This led to appeals against this decision by four parties including the owners (described in more detail in the following section on the Legal and Procedural Framework). This process interrupted the compilation of the *HIA* and, as a consequence, it was not possible to continue with the process until the interim ruling of the appeal authority, the MEC’s Tribunal, released on 5 February 2019 which enabled the integrated NEMA and NHRA processes under section 38(8) to continue. However, given the time since the consultation period last January-March 2018 and given the engagement of the First Peoples groups in the provisional proclamation process, a second *Draft HIA* was re-advertised for stakeholder, interested party and public engagement during the period, 22 March to 2 May 2019. This final HIA is now submitted to HWC for its comments; and it will also accompany a Basic Assessment Report circulated for pre-application stakeholder engagement in terms of regulation 19(1)(a) of the NEMA EIA Regulations of 2014.

1.1 The Site and Receiving Environment

The River Club site, although at the confluence of the Liesbeek and Black Rivers, borders the Liesbeek River, a relatively short river with a long history and significant place in the early interactions between indigenous First Peoples and the VOC (*Vereenigde Oost-Indische Compagnie*) and its early 17th century settlers. Today the Liesbeek runs in a green corridor through well-developed suburbs of Cape Town. It reaches the inner-city suburb of Observatory and the River Club site at its lowest reach and at its confluence with the Black River.

More precisely, the site lies between a canal cut in 1952 to carry the waters of the Liesbeek and the older course, itself much altered by its own meanderings and early 20th century wetland infill and reclamation. Since 1952, this older course has not carried river water but serves as a component of the suburb’s stormwater system, sometimes receiving water backing up from the slow-moving Salt River below the confluence. We will refer to these two courses as “***the new, post-1952, canalized Liesbeek River course***” and “***the old, pre-1952, course***” (or variations to suit the context).



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The River Club itself has its origins in the 1920s when part of the old Salt River estuary was reclaimed for the construction of shunting yards and railway sheds. as well as the development of recreational facilities for employees of South African Railways and Harbours Company. The latter became known as the Liesbeek Park Recreation Club. The main buildings which exist today were completed in 1939 after the playing fields had been in place for a few years. In 1993, the property was leased to various tenants who let it fall into disrepair. The entity known as the River Club was established in 1993 on the basis of a long-term (75 years) development lease and has since become a popular local venue with a restaurant, conference facilities, bar, driving range, and a 'mashie' golf course (which was developed in 2002).

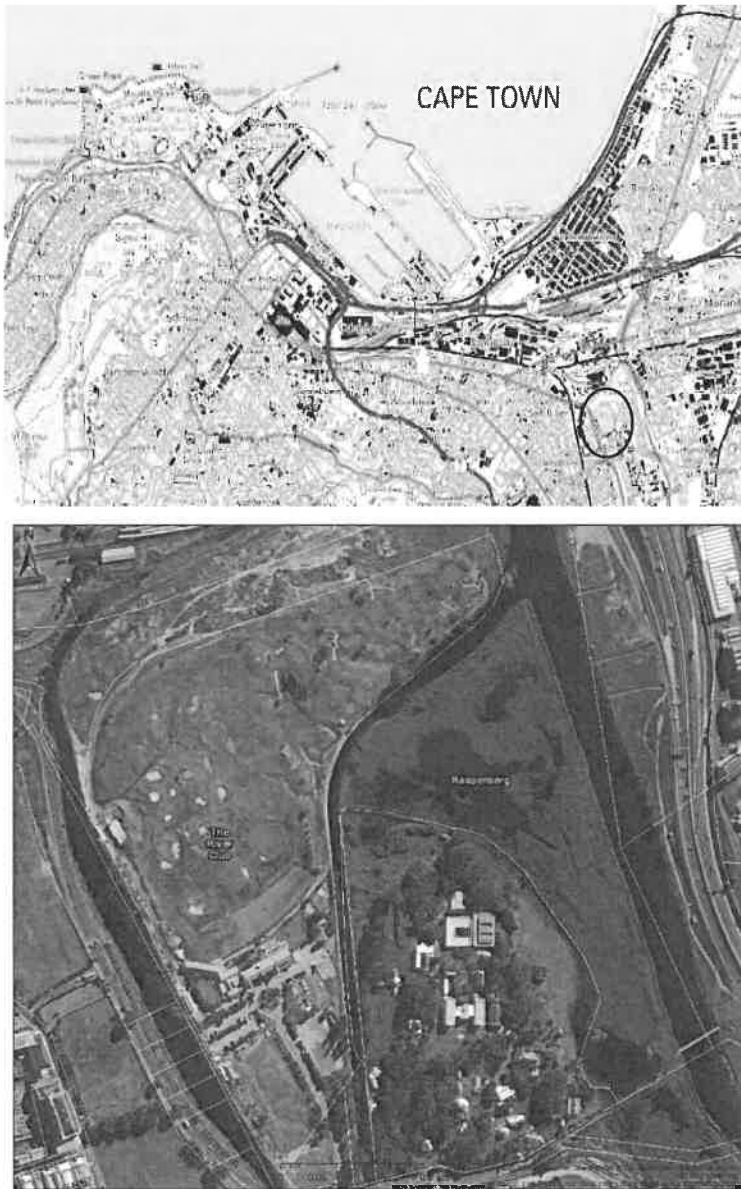


Figure 1 The project area.

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This site, Erf 151832, while privately owned, is within the Two Rivers Urban Park (TRUP) area. This is a wide area of 240 hectares around the confluence of the Liesbeek and Black Rivers which includes a range of significant institutions like the SAAO, the Valkenberg Hospital, the Valkenberg homestead and hotel, the Oude Molen eco-village, and Maitland Garden Village. The TRUP was initiated in 1998 as a joint project of the major land-owners, that is, the WC Provincial Government and the Cape Town City Council;⁴ but progress to any kind of realisation has been slow; although during 2016 the WC Provincial Government initiated the process of compiling heritage and land-use planning and heritage baseline studies⁵ which were submitted to HWC in early 2017.



Figure 2: Aerial view of the site and environs

1.2 The proposed development

The owner's appointed professional team has developed five development proposals that are assessed: these include a no-go alternative that would see the site remain as is; a preferred alternative referred to as the 'riverine corridor alternative'; and three other alternatives of varying density and use including the previously preferred alternative referred to here as the 'island alternative'. Briefly, the owners are seeking to develop a mixed-use development of approximately 150 000sqm which will be urban in character, although considerable green space is included and the

⁴ See, for example, City of Cape Town, Environmental Management Branch, August 2003, *Two Rivers Urban Park Contextual Framework and Phase 1 Environmental Management Plan: Final Report*.

⁵ By Nisa Mamon and by Melanie Attwell/Graham Jacobs.

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transformation of the canalised, post-1952 Liesbeek River course, into an ecologically viable riverine corridor is a key component of the preferred alternative.

1.3 The Structure of this HIA

There are several factors which make this *Final HIA* unusually complex; these include:

- the physical location of the River Club site within the Two Rivers Urban Park area;
- the similarity in the names of the two areas;
- the complexity of the legal regime (with separate and only partially integrated NHRA, NEMA and MPB-L scrutiny and decision-making processes) which has meant that interested parties have often elided concerns;
- the proposal of HWC, first, to provisionally proclaim, first, the TRUP area to be a PHS and then, later, its decision and the gazetting of the provisional proclamation of just the River Club site to be a PHS;
- the over-lapping and iteration of the several public consultation processes in respect of the NHRA, NEMA and MPB-L processes (these are detailed in section 5. Consultation and Commentary of Interested Parties of this HIA); and
- the relatively 'late arrival' of comments from the First Peoples groups during the appeal-process against the HWC decision to provisionally proclaim the River Club as a PHS despite our attempts to meet/consult them earlier in this assessment process.⁶

Given these complications and given the rationale adopted in undertaking this heritage impact assessment, it is necessary to spell out the structure of this report, noting that we have an essential presumption: this presumption is that the underlying task of an impact assessment is to uncover and articulate heritage-related significance associated with the site in question and its surrounds, describe the heritage resources identified through this process, and analyse and assess any impacts of the development proposed on the significances of the heritage resources in question. As a consequence, this description of the structure of the report is, in effect, an account of the method of the assessment:

- immediately following this brief introduction to the primary issues addressed is a brief outline of the **legal framework** regulating development in these circumstances which explains the scrutiny and decision-making processes

⁶ We note that First Peoples representatives have objected to our reference to the "relatively 'late arrival' of comments from the First Peoples groups" in this process: this is, however, a simple factual description with respect to the processes of commenting on this River Club development proposal rather than a comment on the First Peoples or their long history or their claims.



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- under the environmental, heritage and land-use planning regimes, including HWC's decision to provisionally proclaim the property in question as a PHS;
- this is followed by a brief explanation of our **sources of information** and a brief reference to the interest, input and comment received from the many parties who have shown interest in the River Club site and in the TRUP area;
 - we then give a fairly detailed outline of the **history** of the site focussing on the conflict between indigenous people who occupied these flat-lands seasonally and the first settlers as farming commenced, how the Liesbeek floodplain has been used and transformed over time, and concluding with a history of the planning of the Berkley Road Extension which is to cross the floodplain linking transportation systems across the Salt River and floodplain;
 - following this history we then give a detailed account of the **consultation processes and of the commentaries** received in these processes and we address each of the major heritage resource-related issues, in particular in as much as these comments refer to the significances of the site and the surrounds (we do not, however, discuss comments on the development proposal in this section but deal with those comments on and criticism of the proposal itself in the section dealing with the impacts of the proposal on the site and environs);
 - then, having addressed the issues raised and the opinions articulated in these consultation processes, we then **identify the heritage resources** on and surrounding the site;
 - following this identification and description of the heritage resources, we then explain **our assessments of the significances**, both the kinds of significance and the degree or strength of each of these kinds of significance, taking into account the views of the commenting parties;
 - having identified the heritage resources in play and articulated their significances, we then turn to articulating what we argue are or should be the primary **criteria for decision-making** in respect of the development proposed. [These criteria are, in practice, often referred to a "heritage-related design indicators" and are, or should be, adopted by the developer and architect in designing the proposed development and should be referred to in the authorities' decision-making, noting agreement or otherwise.]
 - we then turn to the **descriptions of the proposal**, the alternatives, and in greatest detail, of the preferred 'riverine corridor' alternative;
 - we conclude with an **assessment of the impacts** on the significances and, although the preferred alternative incorporates what we think is the most important 'mitigation' or, rather, what we argue is an improvement to the primary heritage, the Liesbeek River,



- then we recommend some mitigations; and, finally,
- given the argument and assessments as described, we draw conclusions and **recommend** that HWC support the preferred riverine corridor alternative and that the WC DEA&DP approve this proposal.

2 LEGAL AND PROCEDURAL FRAMEWORK

2.1 National Heritage Resources Act (NHR Act) and National Environmental Management Act (NEMA)

Section 38(1) of the National Heritage Resources Act of 1999 (“the NHR Act”) requires that “any person who intends to undertake”, *inter alia*, “any development... which will change the character of a site... exceeding 5000m² in extent” must “notify the responsible heritage resources authority and furnish it with the details... of the proposed development”. Section 38(2) requires that “if there is reason to believe that heritage resources will be affected by such development” the developer shall be required to submit “an impact assessment report” (HIA) compiled by a person approved by the responsible heritage resources authority.

The development proposed in this case will change the character of this site which exceeds 5000m². As a consequence, Heritage Western Cape was formally notified of the intended development in December 2015;⁷ and Heritage Western Cape confirmed that an HIA is required (letter dated 7 January 2016) which includes:

- “an archaeological study”; and
- must “(highlight) the urban design framework of the proposed development”.

This process was initiated with a “phase one HIA”; and two draft versions of this report were circulated for public comment during two phases of public consultation under the NEMA process. That work was, however, considerably revised and incorporated into a *Draft HIA Prepared for Interested Party Consultation* by us, Townsend and Hart, which was circulated widely in January-March 2018 for comment and a second *Draft HIA Prepared for Interested Party Consultation* was circulated again March-May 2019. The comments received during those processes are described or referred to in several sections of this report but primarily sections 5. Consultation and Commentary of Interested Parties and 9.4 Commentary of the IAPs on the Development Proposal. We note also that comments and arguments submitted to the MEC’s Tribunal during its hearings in October, November and December of 2018 regarding the appeals against HWC’s decision to provisionally proclaim the River Club site as a Provincial Heritage Site are also addressed, in the main, in these sections of this report.

⁷ By the heritage practitioner, Bridget O’Donoghue.

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This final *HIA* will accompany a Basic Assessment Report circulated for pre-application stakeholder engagement in terms of Regulation 19(1)(a) of the NEMA EIA Regulations of 2014 dated July 2018 as a component of the integrated NHRA-NEMA process.

It is also now submitted to HWC for its “final comment” which the decision-maker, the provincial DEA&DP, must take into account when deciding on the matter (and, thus, satisfy section 38(8) of the NHRA).

The process is designed to satisfy both the National Heritage Resources Act (NHRA) and the National Environmental Management Act (NEMA) and its regulations: that is, Sections 24 and 44 of NEMA which make provision for the promulgation of regulations, and the 2014 EIA Regulations which identify activities (“NEMA listed activities”) that may not commence without an Environmental Authorisation (EA) issued by the competent authority (DEA&DP). The proposed project includes activities that are listed in terms of these EIA Regulations, as confirmed by DEA&DP on 22 April 2016. At that date, the project triggered a listed activity that required a Scoping and Environmental Impact Reporting (S&EIR) process in order to inform an application for EA, and in this regard, the following notices and reports were prepared and released for public comment:

- Initial notification of identified stakeholders, including release Draft Scoping Report – released on 4 August 2016.
- A Revised Draft Scoping Report - released on 11 January 2017.

However, on 7 April 2017, the EIA Regulations, 2014, were amended. An aspect of these amendments was that certain listed activities were excluded in urban areas, including the only activity that was applicable to the River Club that required a S&EIR process to inform the application for EA. Given this, the proponent/applicant is now obliged to undertake Basic Assessment (BA) process in support of the application for EA only. In this regard, a BA Report is currently being prepared and will include this final version of the *HIA*.

The application for Environmental Authorisation for the development will be submitted to the DEA&DP following final comment from HWC on this the final *HIA*; thereafter, the BA Report may be released for final stakeholder engagement. However, unless significant changes are required to the BA Report, it is unlikely that that report will be released for a second round of engagement before being submitted to DEA&DP for decision making.

2.2 Land Use Planning Act and the Municipal Planning By-Law:

The Land Use Planning Act and, more pertinently, the Municipal Planning By-Law (MPB-L) comprise the mechanisms for regulating land-use; and the site (Erf 151832 of 148 425 sqm) is currently zoned Open Space 3: Special Open Space in terms of the Cape Town Development Management Scheme (DMS).

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According to item 104 of the DMS, the following uses are permitted on land zoned *Open Space 3*:

- (a) **Primary uses:** *open space, private road and environmental conservation use.*
- (b) **Consent uses:** *environmental facilities, tourist facilities, place of instruction, place of assembly, place of entertainment, plant nursery, utility service, cemetery, rooftop base telecommunication station, freestanding base telecommunication station, wind turbine infrastructure, cultural and social ceremonies, urban agriculture, informal trading and harvesting of natural resources.*

It is evident that, while a range of relatively high-intensity uses are permitted, the current zoning does not permit the urban uses proposed on the site and it is therefore necessary to rezone the land in order to permit the proposed development.

Given this, a land use planning application has been submitted in terms of the provisions of the MPB-L, including the DMS, for the approval of the following:

- a. **Deviation from the Table Bay District Plan**, to permit urban development on land designated as "open space", "core 2" and "buffer 1", in accordance with section 16(2)(b) of the MPB-L including:
 - o Deviation from the Floodplain and River Corridor Management Policy (2009) seeking permission to:
 - develop/ obstruct the free flow of water within the 20-year floodplain; and
 - infill within the 50-year floodplain.
 - o Deviation from the Management of Urban Stormwater Impacts Policy (2009) seeking permission to:
 - Deviate from the annexure table requiring 24 hour extended detention of the 1-year Recurrence Interval, 24h storm event in a greenfield development greater than 50 000sqm;
 - Deviation from the annexure table requiring up to 10-year Recurrence Interval peak flow to be reduced to pre-development level in a greenfield development greater than 50 000sqm; and
- b. **Rezoning** of the property from *Open Space Zoning 3: Special Open Space (OS3)*⁸ to *Subdivisional Area Overlay Zoning (SAO)*, in terms of section 42(a) of the MPBL.
- c. **Approval to construct retaining structures greater than 2,0m in height** in terms of section 42(i) of the MPBL and in accordance with item 126 of the DMS.

However, as discussed in more detail in section 5.3.2 below, a revised Cape Town Municipal Spatial Development Framework (MSDF) has recently been approved by the City of Cape Town's Council which designates these environs as part of the

⁸ Land zoned as open Space Zoning 3 may be owned by private or public bodies but does not have the status of Public Open Space which requires particular protection. In the case of the River Club, the land is privately owned and the right of admission can be reserved/limited.

Handwritten signature and initials in blue ink, consisting of a large stylized 'A' and 'R' and the initials 'TR' in a circle below it.

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Urban Inner Core, a priority investment area where urban development is, in principle, supported. The implications of this are that it may not be necessary to apply to amend the District Plan because, in effect, the MSDF trumps the District Plan.

Be that as it may, as part of this application process, the City Council may (or more likely, will) require a detailed Site Development Plan and negotiate many aspects of the proposal in detail.

This final version of the *HIA*, including all of the comments from the interested parties and the associated HWC Final Comment, will in due course be included with the BAR documentation for decision by DEA&DP and with the land-use planning application submitted to the City Council.

2.3 The Provisional Proclamation of the River Club Site as a PHS and the MEC's Tribunal:

As a consequence of what appears to have been a growing un-ease within HWC regarding the heritage and planning "baseline studies" submitted by the provincial government for TRUP and the pending proposal for the River Club site, in October 2017, HWC invited comment from certain of the property owners inside the TRUP area for their views on HWC's intention to provisionally proclaim the entire TRUP area as a PHS in terms of Section 29 of the NHRA. Subsequently, notwithstanding objections from the owners of the River Club and from the provincial and local authorities, in March 2018 HWC provisionally proclaimed only the River Club property as a PHS.

This provoked appeals from four parties (the River Club owners, two provincial government departments and the Cape Town City Council) and, in turn, comments from various interested parties who supported the provisional proclamation and formal protection of the property and of the TRUP area as a whole. We note that although the various public consultative processes under both NEMA and the NHRA had provoked considerable comment, no input had yet been made by First Peoples groups (despite our attempts).

The MEC appointed a three-person Tribunal which met at two hearings in October and November 2018 and again at a site inspection in December 2019. At these meetings the parties (now also including representations from First Peoples groups) were heard at length and on 29 January 2019 the Tribunal released what it termed a "Directive". It found that the HWC decision had not been properly made and required:

- that HWC must consult and negotiate with the appellants and the interested and affected parties "in an effort to find common ground on the implications of the provisional protection";



- that HWC must invite the owners of the River Club to an oral hearing held by its Council within three months (of 29 January 2019);
- that HWC must submit a report to the Tribunal within two months of the oral hearing; and
- that the parties will then be given thirty days in which to make final submissions and the Tribunal will then hold a final hearing and finalise the appeal.

This process is underway and will take some months. However, and importantly, both HWC (in its submissions to the Tribunal) and the Tribunal (in its Directive) have conceded that the NEMA and NHRA/s.38(8) processes may continue in the interim.

3 SOURCES OF INFORMATION

3.1 Sources of Information i.r.o. the Site History

Archival information was mainly obtained from primary sources like the VOC records and archives. The most important sources consulted were the Resolutions of the Council of Policy accessed through the TANAP website⁹ (the resolutions have been transcribed and made digitally available in a searchable format) and Jan van Riebeeck's journal transcription by Moodie (1838). Moodie's publication focuses on the interactions between the Dutch and the Khoekhoe, so some degree of selection has taken place that is beyond our control. Some of the excerpts of the resolutions were also taken from Moodie as they were translated into English already. The third strand of archival research are the historical maps. These are available through the websites of the Rijksmuseum in Amsterdam, the Atlas of Mutual Heritage, where they collate maps and images from several sources, and the Brommer Atlas (2009) which provides the maps in high quality print.

Secondary sources used are Dan Sleight's publications, especially *Buitepost* (2004), and Raven-Hart (1967) who produced a work that describes the early encounters and observations of European mariners who called in at the Cape before it fell under Dutch rule

The environmental and archaeological study has relied on the work of Andrew Smith, a researcher of the archaeology of pastoralism, who has spent a life-time trying to understand the nature of early pastoralism at the Cape (Smith 1984). The study also draws on the work of Elphick, Giliomee (1977, 1989), T. Hart (1991) as well as the early works of Goodwin (1952).

For the more recent history there is a large body of information available about the area due to studies that have been completed on Valkenburg Hospital, Oude Molen and the TRUP project by Attwell, Baumann, Winter and O'Donoghue.

⁹ <http://databases.tanap.net/cqh/>



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3.2 Information restrictions

It must be considered that the place names in the historic record are open to question. Before 1652, there was no formal standard by which place names were derived. Often explorers renamed places with a name of their own. Only once the Dutch settled, did standardisation of place names begin, but even so it is noted that names such as the Salt River, Liesbeek and Black Rivers tended to be used interchangeably in the early days. Thus the early historic spatial record is unsure and caution must be exercised using it. A few scholars have tried to geo-rectify early maps and had great difficulty – this has been tried by UCT's Department of Geomatics, by the City of Cape Town and by ACO with only limited success due to the massive inaccuracy and inconsistencies in the drawings. Some later maps of the 19th century have been geo-rectified successfully.

Restrictions of the written archival record have been pointed out above: contemporary selection, modern selection, bias and interpretation. Records written by Europeans reflect their point of view of events which is a major factor that has to be considered continuously.

The archaeological record has restrictions which are inherent. In particular, with respect to highly mobile herding communities who seldom spent enough time in one place to leave an identifiable archaeological signature (Smith *et al.* 1991, Hart 1984).

In compiling the HIA it must be noted that the planning process for the Two Rivers Urban Park (which includes the River Club site) is partial and incomplete at this time. We have, however, taken note of the interests and views expressed by HWC and by interested parties on the draft heritage resource and land-use baseline studies submitted to and considered by HWC.

Furthermore, the final details of the long-planned major arterial connector, the Berkley Road Extension (which is to be completed in due course on the northern edge of the River Club site) are not available as yet. General specifications for the road are that it must be at a grade approximately 2m above the present ground level so as to satisfy the flood line requirements but also rising in the west to meet the Malta Road bridge and Liesbeek Parkway in a signalized T-junction and in the east to bridge over the Salt River. In addition, the proposed construction of research offices for the Square Kilometre Array (SKA) project on the abutting SAAO land (Rem Erf 26423) will, if developed, have implications for the environs and this development site. However, neither confirmation of its eventual development here, nor its appearance and specifications are available at this time but it has over the time that this process has been under seemed increasingly unlikely.

3.3 Assumptions

This impact assessment makes the assumption that the Berkley Road extension abutting this site will be built in the future; and this assumption is made because it

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has obvious implications for the both the development proposal and for the assessment of heritage impacts.

3.4 Interested Party Consultation

Numerous interested parties and the public more generally have shown considerable interest in the 'base-line studies' for the TRUP and River Club projects and the drafts of this HIA that have been circulated for public and IAP comment in the past few years. While crucial to our evaluations of several aspects, we do not include every detail of the comments made in all of the opportunities that there have been for commenting although we recognise this as a demonstration of the considerable interest shown in the TRUP as a whole and the River Club site as a significant site inside the TRUP area. We hope, however, that we have described and addressed more directly the comments of the parties received during the consultative periods advertised specifically as a part of this HIA process (25 January- 6 March 2018 and 22 March- 2May 2019) and those received by the MEC's Tribunal during the appeal against HWC's decision to provisionally proclaim the site in question as a PHS (during October, November and December 2018) in Section 5, Consultation of Interested Parties; and we include the comments and criticisms of the proposal itself in section 9. The Proposed Development.

4 THE HISTORY OF THE PLACE

4.1 The Historical and Geographical Context

What is clear from the historic record is that a number of the Khoekhoe groups were wealthy in terms of the number of cattle they owned: herds of several hundred to more than 1000 head were recorded. Farming and moving a herd of this size is no simple task. It requires an excellent knowledge of the land, the seasonal availability of grazing and water resources. The Khoekhoe had this knowledge. They were not "nomadic" as described in many history books but would alternate the landscapes they used according to season and grazing quality. This is known as *transhumance* – an adaptive and generally well formulated strategy used by most pastoralist groups in the more arid areas of the world. In the Cape, this deep knowledge of the landscape and seasons was the key to survival and prosperity. Indeed, it was the huge herds of cattle that attracted European mariners to the Cape. The chance of bartering a few for slaughter was irresistible to the foreign travellers, who by the time they reached the Cape, were starving and disease ridden.

The early inhabitants of the Cape Peninsula farmed with cattle. Cattle need good quality soil, good grass and fresh water, therefore understanding the environmental resources that were available is a key to understanding the way indigenous people used the landscape. The geology of the Cape is as highly varied as the climate. The summers are relatively long and dry, becoming increasingly more so to the northwest. While good winter rains often create a lush landscape, in summer only the most southern areas (Southern Cape and Peninsula) get occasional rain, as



once in a while South Atlantic cold fronts clip the African landmass. These weather factors played an important role in how the Khoekhoen used the land; cattle need to drink at least once a day to survive. Cycling one's movements between rainfall areas would have been important (Smith 1984).

The Cape's unique geology means that in certain areas the soils contain the necessary trace elements – copper and molybdenum - to raise cattle. While in other areas with apparent good grazing, stock gets ill over time from a lack of these trace elements (Smith 1984, Hart 1984). The Table Mountain Sandstone derived soils of the Cape are depleted and do not contain the necessary elements for the maintenance of a good herd for a long period. Farmers who keep stock in these areas today have to supplement their animals' feed. In contrast, the shale derived soils of the Swartland and the granites of the Vredenberg Peninsula give rise to good grazing. In the past, these areas carried the abundance of game, and are now used for wheat farming (Table Mountain Sandstone-derived soils will not support more than 2-3 wheat harvests).

Smith (1984), in analysing the historic record, observed that major visits to Table Bay by powerful groups of Khoekhoe such as the Cochoqua, "the Saldanhas" took place almost exclusively in the summer months – records attest to huge herds of animals and people camping in the Salt River area. This was because if there was any rainfall at this time of year in the southwest Cape, it would fall on the Peninsula. The permanent aquifers under Table Mountain (such as the Newlands and Albion springs) supplied the Liesbeek River with pure water year round. The huge marshlands at the confluence of the Liesbeek, Salt and Black Rivers would have been extremely important for Khoekhoe herders, especially for those with large herds when they visited from the north-west on their summer visits.

2 December 1652 "In the evening we perceived the whole country covered with fires, from which, as well as from Herry, we learnt that there are thousands of people hereabouts ..." (Moodie p20).

6 December 1652 "meanwhile observed that on the ascent of Table Mountain the pasture was everywhere crowded with cattle and sheep like grass on the fields." (Moodie p22).

7 December 1653 "The Saldaniers, who lay in thousands about Salt River with their cattle in countless numbers, having indeed grazed 2,000 sheep and cattle within half a cannon-shot of our fort." (Moodie p22).

7 April 1654 "On advancing about 1,5 mile from the Fort, behind the mountain, saw several herds of cattle and sheep, and a little further a whole encampment of inhabitants, with women and children, about 100 in numbertheir camp, which consisted of 16 tolerably large dwellings, neatly disposed in a circle and enclosed with brushwood fastened together as a breastwork, with two openings or passages, for the cattle to be driven out and in ..." (Moodie p47)

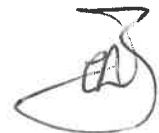
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24 November 1655 "Near and beyond the Redoubt Duynhoop (Duynhoop was close to the Salt River mouth), we found the country everywhere so full of cattle and sheep, as far as the wood, where our people lie, fully 3 mylen from this, and fully ½ myl broad, that we could hardly get along the road, and the cattle required to be constantly driven out of our way by the Hottentoots, otherwise it seemed impossible to get through; not only were the numbers of cattle impossible to be counted, but the same might be said of the number of herds of cattle; and it was just the same with the people, of whom we could see at one look around us, probably 5000 or 6000, young and old, for their curiosity to see us was such that we were so enclosed by them, that we could scarcely see over them from horseback; there were also 4 to 500 houses, rather large, and pitched in circles close to each other, within which the cattle are kept at night, the circles could scarcely be walked round in a half hour, and looked like regular camps." (Moodie p76).

It is hypothesised that while van Riebeeck believed that these large groups came down south from Saldanha and further north, specifically to trade with the Dutch, this was not the case. It was just a leg of a seasonal round that had been practised since the Khoekhoe acquired cattle – possibly more than 1000 years ago. After fattening up their cattle on the greener pastures around the Peninsula's permanent rivers, groups such as the Cochoqua from Saldanha would break camp after summer and return to the nutritious winter grazing of the Swartland and the Vredenberg Peninsula. These large groups of Khoekhoe had well trained riding and pack oxen, and woven mat houses (*matjieshuise*) that could be quickly taken down and packed at short notice when the community moved to the next grazing area.

Cattle, to the Khoekhoe, were not simply beef on the hoof to be traded in large volumes to the Dutch. They were a way of life; wealth, transport and milk – the key nutritional contribution that could be relied on at all times. Cattle were almost never slaughtered, apart from for serious ritual purposes – they were simply too valuable. Hence, trading away one's cattle meant severely compromising one's security, wealth and social status. This was something the Dutch did not understand. It was a source of great resentment to the Dutch they were unable to trade the volume of livestock they required and the Khoekhoe were not prepared to offer them their most valuable possessions.

While according to Elphic (1977, 1989), large groups of Khoekhoe lived further north in the Swartland, the Vredenberg Peninsula (Cochoqua, Namaqua) and in the South Cape (Chainoqua, Gouriqua, Hessequa), the Cape Peninsula supported its own groups of Khoekhoen. Generally, the soils of much of the Peninsula are poor for raising cattle, but there were enclaves within the Peninsula geology that would have supported small herding communities. The City Bowl and Green Point are underlain by good shales, as are parts of Observatory, Rondebosch and Wynberg. The Camps Bay slopes would also have been suitable, as were the granites of Hout Bay, which offered the additional blessing of good water in the valley. Further south, the



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Peninsula Mountain chain was poor and supported only mountain Fynbos and wildlife specifically adapted to live off the nutrient depleted soils.¹⁰

Autshumato (known as Herri to the Dutch or Harry to the British) made a good living out of serving as a trader and middleman and at the same time had alliances with the Khoekhoe (the Goringhaicona, Capemen, Peninsulars or "Strandlopers") who made the Peninsula their home. These groups filled the Peninsula niche. Provided they circulated round the Peninsula grazing their stock in the areas where there was good bedrock, they would have been able to support a moderate herding community. Any loss of these limited good grazing areas within the Peninsula geological microcosm would have caused the Peninsula Khoekhoen groups considerable economic, social, and nutritional stress.

4.2 The importance of the rivers

The land's appearance in the past was very different to that of today. While the valleys of the Liesbeek and Black Rivers remain quite well defined (used as a conduit for some of Cape Town's major roads) and essentially have not changed, the rivers themselves have been straightened and canalised, in places draining what were significant areas of marshland. The river valleys on the eastern side of Table Mountain were wooded with afro-montane forests and the streams, fed by numerous prolific springs between Wynberg and Mowbray, would have flowed year round. The Salt, Liesbeek and Black Rivers had a common confluence flowing into a large lagoon and wetland that extended all the way northwards to Rietvlei. Paarden Eiland was essentially a very large sand bar and a true island. The river broke through Paarden Eiland, close to where the eastern side of Duncan Dock is today, and also further north, closer to Milnerton (and probably at other places in the height of winter). This estuary was a huge natural resource, not only for grazing cattle on grasses and young reeds but it also served as a rich fishing ground.

In the early 20th century, much of this estuary was drained to make way for the Salt River and Culemborg shunting yards and railway workshop. Previously, this estuary cut off Table Valley from the northern coastline and interior, with only one point of entry and exit via *Varschedrift*, a point of limited access which was used for the Union Rail network (circa 1870) and for the Voortrekker Road crossing into the hinterland. In prehistoric and early historic times this was the only easy access to Table Valley. The sandy dune lands known as the Cape Flats, were full of lakes and muddy dune slacks that were very difficult to cross. Hence, the Peninsula was, in effect, a geographically contained area – relatively easily fortified and almost viable as a self-contained unit. The present day wetland, at the confluence of the Liesbeek and Black Rivers, with the small area of high ground occupied by the Royal Observatory and the River Club, amount to the last surviving elements of this historical landscape. On the northern side of the Varschedrift was a large flat plain

¹⁰ This is why the current Cape Point Nature Reserve only has small herds of wild grazers

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where, in the early days, the Cochoqua would lay out their kraals and people intent on entering the Peninsula would outspan and camp.



Figure 3 An excerpt from the Van Der Graaff compilation map of 1786. (Brommer Atlas, 2009). The confluence of the Liesbeek, Black River and Salt River estuaries is depicted along with associated farms.



Figure 4. Excerpt from 1880 - 1900 map series (Chief Directorate: Surveys and Mapping) which depicts most of the early farms before major subdivision, but also the Liesbeek and Black Rivers before canalisation. The Salt River estuary is clearly visible. It was reclaimed in the early 20th century for railway yards.



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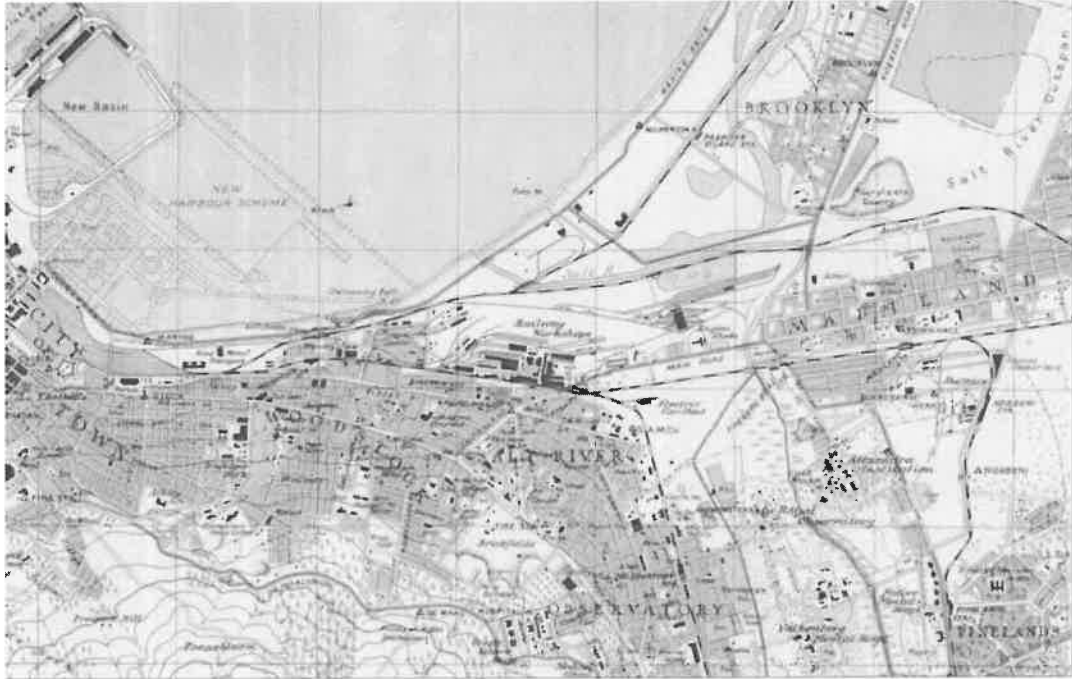


Figure 5. An excerpt from the 1935 topographic series (Chief Directorate: National Geospatial Information) which reveals that by 1935 a large portion of the Salt River estuary had been filled for railway development and the river diverted. Also, it is clear that the Liesbeek had been straightened for a significant amount of its length. The River Club site is already being used for recreation.

4.3 Roots of conflict and the commencement of farming

The relationship between the Khoekhoe and mariners from Europe was not always peaceful, although it would seem that respectful trade was generally the norm. While the balance of power rested with Khoekhoe groups, a relationship based on peaceful trade was advantageous as the Europeans needed the Cape's resources for survival, if their fleets were to reach the Indonesian archipelago. The Khoekhoe did not tolerate unfair conduct, as was demonstrated in 1510 CE. Francisco D'Almeida, the Portuguese Viceroy of India, had conducted peaceful trade with the Khoekhoe at *Saldanha Bay* (the name by which Table Bay was known at that time) but it would seem that D'Almeida overstepped the mark by sending a group of his men back on a punishment mission during which cattle were driven from the village and some children were taken as hostages. The Khoekhoe attacked and killed the Viceroy and more than fifty of his men. The account of his death indicates that the Khoekhoe made great use of their cattle as weapons of intimidation to stampede over the Portuguese, the animals being apparently highly trained and responsive to whistling of the Khoekhoe. Lightly armed and not weighed down by heavy clothes/armor, they vigorously attacked the Portuguese as they tried to flee across soft beach sand.

It is not entirely clear where this event took place – drawings of the event were done after the time and depict a location more like Buffels Bay near Cape Point (Raven-Hart 1967). Furthermore, the actual account (translated ACO 2016) indicates that the



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event took place at a point “behind the Cape” or after “doubling the Cape” – could this have been False Bay, or even present-day Saldanha Bay? Theories abound, however, the truth may never be known until physical evidence of this event is found. What is clearly mentioned in the account is that the conflict took place on a beach where there seems to have been an estuary (boats were moved to avoid rising water) – the Salt River Mouth being a possible candidate.¹¹ D’Almeida and his men’s deaths did not take place within the context of a battle over land, but it does demonstrate that the Khoekhoe held their cattle and their independence in great regard. Given D’Almeida’s defeat, Portuguese mariners were thereafter wary of stopping at the Cape.

The experience of the *Haarlem* wreck survivors more than a hundred years later resulted in the reporting of more favourable circumstances to the VOC with regards to good farming and grazing land and trade opportunities (Raven-Hart 1967). This favourable news was instrumental in prompting the VOC to set up a permanent station at the Cape for the purposes of cattle trading, crop farming, and provision of water to passing ships.

When Van Riebeeck established the Fort at Table Bay in 1652, he did so on very different premises to those of the earlier mariners who landed at the Cape. At the same time, he did not understand the value of cattle to the Khoekhoe. These two elements were at the base of the inevitable clash of interests which was to follow in future years. Before 1652, ships landed occasionally at the Cape to obtain fresh provisions for themselves, whereas Van Riebeeck’s intentions and orders were to set up a provision station able to supply an entire fleet which would be scheduled to arrive on every outbound and inbound journey. His aim was to obtain a herd large enough to be able to provide for the fleet from its natural increase without having to sacrifice the ‘base stock’. On previous landings at the Cape, and during the stay of the *Haarlem* survivors, large herds of cattle were noted. While the Europeans obtained what they needed, they never appreciated the value cattle had to the Khoekhoe and that they would not be willing to part with a substantial part of their herd, no matter how much copper, beads or tobacco was offered in return.

The failure to obtain large amounts of cattle for supplying beef to ships in part motivated the Europeans to try to develop their own herds. When Van Riebeeck commenced farming within the present-day city bowl, the VOC began to infringe on the grazing resources, which until that time were occupied by the Goringhaicona and the various Peninsula groups. Autshumato had for many years maintained a balancing act serving as a middleman between the Khoekhoe and mariners from Europe. He was worldly wise, spoke two European languages and played both a mischievous and key role in the early days of the VOC at the Cape. Indications are that he and the Peninsula Khoekhoe did not enjoy entirely good relations with other

¹¹ We note that Attwell and Jacobs, October 2017, have dealt with this question in some detail, pp51-63.

more powerful Khoekhoe groups like the Cochoqua from the north and so did not have the freedom of movement to relocate into areas under the control of those other Khoekhoe "Kapteins". On several occasions, the Peninsula groups came to ask Van Riebeeck for protection against these larger groups, at which occasions they were permitted to bring their cattle 'under the fort' or move them to Green Point or Hout Bay. From the account of events in Van Riebeeck's journal, one gets a sense that during summer time when the inland groups moved onto the Cape Flats and into the Salt River area to let their cattle graze, the local Khoekhoe avoided them by moving to the south of the peninsula (Green Point, Hout Bay, Muizenberg), areas not as accessible for large herds.

In Van Riebeeck's journal, one recognizes his frustration at knowing of and seeing these large herds of cattle and sheep and not being able to obtain the amount he wanted. In the early years, the large groups of Khoekhoe would come in summer from inland like they had always done and barter some animals with the Europeans like they had 'always' done. But from 1657 onwards, the herds were no longer brought down to the river area. In a conversation with Oedasoa one of the "Kapteins", it was explained that they thought that the Dutch were in alliance with the Peninsula groups as they "were residing here upon their land" (Moodie 1838: 172).

This points to a situation where the Peninsula Khoekhoe were caught between two fires: the Dutch on the one side and the more powerful Khoekhoe groups on the other side.

The land that Van Riebeeck identified in 1652 for farming was the best grazing land in terms of the limited resources that the Peninsula had to offer, especially for grazing cattle. At first the bartered cattle would graze near the fort, side by side with the Khoekhoe herds. But it was not long before Van Riebeeck identified the fertile strip behind Table Mountain for the expansion of agricultural activities. The Liesbeek River valley and tributaries were the best land on the Peninsula. Slowly but surely, the Peninsula Khoekhoe were shunted from the vicinity of the fort or from being too close to the VOC herd: the land could not sustain two herds and there were worries that VOC cattle would 'by mistake' get mingled in the Khoekhoe herd.

The uneasy relationship between the VOC and the Peninsula Khoekhoe was clear from the beginning: the Khoekhoe enjoyed the benefits of being closely associated with the VOC (protection, food, drink and tobacco) but at the same time were worried about the permanency the settlement seemed to take. As early as 19 October 1653, Autshumato and his people led the VOC cattle away while grazing at Green Point and killed the herd boy looking after them. They stayed away from the fort for a long time, but returned after the cattle had been raided by another Peninsula group. This to-ing and fro-ing continued for years and in the meantime the Dutch continued to absorb more and more of what was seen by the Khoekhoe to be communal grazing land, which given the limited resources of the Peninsula, threatened their very existence.



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Van Riebeeck had to revise his strategy to build enough supplies for the fleet, rather than continue trying to trade for supplies himself. To this end, he released Company employees to farm and supply the VOC at set prices with the needed produce. The VOC was heavily involved in setting these "Freeburghers" up and belittled the concerns of the Peninsula Khoekhoe.

20 Feb 1657. *"Some persons having desired their freedom, and land for cultivation, the Commander went out with them again, in order, as yesterday, to inspect the parcels which they might select, and then to agree upon the preliminary conditions. As was the case yesterday, he visited the camps of Herry and some of the Caepmans, and held with them a conversation of no particular importance, giving them tobacco and brandy etc. ... Herry and the fat Caepman with some of their chief men seeing us looking on, and hearing us talk of building houses here and there ... asked us, if we built houses, and broke up the ground there, which they observed to be our intention, where should they live? We replied that they might live under our protection, and that there was room enough everywhere for them to graze their cattle; that we were going to employ this land to grow bread and tobacco, when we would, like good friends, give them a share etc on which they expressed themselves satisfied, but it might be easily seen that it was not quite to their mind".* (Moodie 1838: 93)

The granting of farm land to *freeburghers* was a concept that was completely foreign to the Khoekhoe who viewed land as a shared resource over which the concept of ownership did not apply. Within a short while, the best and most well-watered land of the Cape Peninsula in the Liesbeek Valley was no longer available. The failure to reach an understanding with the Dutch caused tensions to rise.

The Khoekhoe stole ploughing oxen from the VOC in an attempt to halt the turning of the soil and the Dutch of course retaliated, resulting in a conflict with the Khoekhoe consisting of a few violent confrontations. Doman (also a trader and middleman with language skills) of the Goringhaicona instigated much of the action, being fully aware by this time that a process of permanent land loss had commenced. On 17 May 1659, after the Khoekhoe again stole cattle from one of the *freeburghers*, the Dutch withdrew to the Fort where they remained secure under a force of arms. In time, the frequency of Khoekhoe attacks abated and in September 1659, a small delegation came to enquire if Van Riebeeck would be prepared to talk about peace. In reality it was a one-way conversation that resulted in a peace agreement in words, but not in the hearts. The balance of power had shifted to the Dutch with the local Khoekhoe being very wary of Dutch firearms.

18 January 1660. *"... the reason why they had made war upon us, was, that we everywhere broke up the best land with the plough, and they thought to prevent that by taking away the oxen with which we did it, That now, seeing that we were strengthening ourselves against their attacks, and as they consequently found it impossible to drive the Dutch from the Cape, they wished again to make peace with*



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us, and to live as before. ... When they were asked why they wished to come to the Cape and make peace, they said it was their birth place, and their own land, full of pure water, after which their hearts always longed, that in Saldanha Bay all was dry and brakish; and that Oedasoia would not allow them to lie on the best places and rivers, and had told them that they must arrange with us, so that they might live in peace and quiet in their own country." (Moodie 1838: 198)

6 April 1660. "This day peace was renewed at the Fort with the captain and chief of the Caepmans, Herry, and all the principal and oldest of the tribe; it was promised, upon both sides, no longer to molest each other, but, of the stolen cattle, there was none remaining that could be restored; They dwelt long upon our taking every day for our own use more of the land, which had belonged to them from all ages, and on which they were accustomed to depasture their cattle etc. They also asked, whether, if they were to come into Holland, they would be permitted to act in a similar manner, saying 'what would it signify if you remained here at the Fort, but you come quite into the interior, selecting the best for yourselves, and never once asking whether we like it, or whether it will put us to any inconvenience.' They therefore insisted very strenuously that they should be again allowed free access to the pasture." (Moodie 1838: 205)

Van Riebeeck decided that the best course of action was to build a physical barrier around the VOC agricultural lands. It is of interest to note that the Council of Policy Resolutions clearly reveals that the initial intent was to build a cattle-proof barrier to stop the Khoekhoe from driving away Company cattle. Parts of the Liesbeek River that were too deep or swampy to drive cattle across were also strategically identified to form a combination of physical and natural barriers. Using natural features, palisade fences and in some areas a wild almond hedge (part of which still survives in the Kirstenbosch Botanical Gardens; although Dan Sleight argues that this surviving remnant is rather a remnant of a wild almond thicket and was not a hedge and was not ever part of these 'defences') a barrier was constructed to control the movement of cattle from areas under VOC hegemony. The barrier was supplemented with a series of small forts or lookout posts strategically situated on points of high ground close on either side of the Liesbeek River. Work gangs were sent out to steepen the banks of the Liesbeek, and furthermore the *freeburghers* were ordered to secure the eastern borders of their land with thorn and brushwood barriers, to prevent the movement of cattle.

4.4 The defended boundary

From the earliest occupation, the VOC had erected watch towers at strategic places along the coast, always fearing an invasion by other European nations. The exact location of these is hard to reconstruct: maps are rather inaccurate and descriptions that might have seemed detailed at the time, but with a completely transformed landscape today, are of very little help. These early outposts were an extension of



the fort into the interior and a warning towards the Khoekhoe. They were later incorporated into the defensive line around the VOC and *freeburgher's* land.

Two of these early redoubts of interest to this report are Duynhoop and Coornhoop.

Wednesday 2 October 1652. *"It has also been decided to position the traenketels (train-oil boilers) at the Salt River ... And, to protect these kettles and equipment, build a small redoubt on a certain high dune just in from the mouth / just in the mouth [as if on an island?] of said river on this side [meaning fort side] ..."* (Resolutions, C. 1, pp 22-24)

Tuesday 17 July 1657. *"They have identified a very suitable and well positioned area for the construction of the principal and strongest redoubt at about 4 to 5 hours from the fort, behind Table Mountain, on a high hill in the plain between Steven and Jan Reijniersz' houses or buildings, where it is very well positioned to protect the Company's planted orchard as well as the Company's and the freeburghers' buildings and sown land parcels. ... So that the mentioned redoubt will have a view from the beach of Table Bay over the cultivated land and the Company's orchard all the way to the Bosheuvel which is situated in the centre of the nek between the bays, with exception of the Company's fields situated in a valley behind another hill below the forest opposite Harmans' brewery... . Further we thought about the name of the redoubt, which because of its location we approved to name Coorn-hoop."* (Resolutions, C.1, pp 238-241)

Because of the skirmishes between the Dutch and the Peninsula Khoekhoe, Van Riebeeck decided to build a physical border. This is quite well documented in the archival sources.

On 4 August 1659, it is decided to build a fence: *"The commander went out accompanied as on Thursday and Saturday, and for the same purpose, and found, that from the crooked tree between the dwelling of Harman and Brinckman, to the wood of the sawyer Leendert Cornelis van Zeevenhysen, (lying close by the Kloof Pass) a wooden railing, as before described, could be very easily made, so as to prevent the Hottentoes from driving any cattle away, much better than any ditch or intrenchement"* (Moodie 1838: 186-187)

9 August 1659. *"After great trouble it has been ascertained that the Fresh River Liesbeek is so deep, and the banks so steep, from the house of Jan Reyniers to the crooked tree above that of Jan Martens of Vrielants, inclusive, if only cleared of the rushes, that no cattle can be driven through, except at three or four narrow places, which may easily be deepened, and the Hottentoes thus compelled to cross between the sea coast and Reynier's house (a measured distance of about 500 roods) or betwixt the said crooked tree and the wood of the free sawyer Leendert Cornelis van Sevenhuysen (an estimated distance of 11 or 12000 roods) to be enclosed by embankment or otherwise. In some place the digging seemed of uncertain*

advantage It was at length found out ... that ... the cheapest mode would be to enclose the said distances with a fence, like the cattle markets in the Fatherland, that is to say a paling with two rails.... To stop the cattle. ... it will include no other corn land than the Company's, Stevens', Vredens', Boomtien's, and Jan Reyniers' – in all about 170 morgen In the line of this fence, 100 roods from the Liesbeek and Salt River, and also at the Sand Hills on the coast, it is also resolved to erect two wooden guard houses of 12 feet square, for at those spots is the best look out, and the greatest thoroughfare of the Hottentoots and Saldanhars ; a third guard house shall be placed near the crooked tree between L. Cornelis and the farmers of Vasagie's party, opposite to the Cleyheuvelds and the Bosbergen, under the protection of which the greater part of the free men, and the Company may graze their ploughing oxen. It was next week discovered that the Company might save 1000 Spanish Dollars in nails etc by adopting a different plan for one portion of the line, i.e. a hedge of dead bushes, pega pega, on the 7th Nov the colonists living beyond it were ordered to make a similar fence each along his own land; along the paling was planted a hedge of "bitter almond trees". p.187 – ." (Moodie 1838: 187)

15 Sep 1659. "The Commander went out to examine the fence of dead bushes or pega pega ; some of the heaviest cattle were driven against it to test its efficiency, but they could not break through – 1150 roods had been made by 30 men in 20 days, the greatest difficulty its liability to fire, 3 persons were accordingly appointed to guard it against fire ... a third guard house was ordered to be erected and to be called Hout den bul." (Moodie 1838: 191).

30 Sep 1659. "The Commander, after the usual round of inspection ... fixed the site of the third guard house, for which the timber was now ready, and named it Houd den Bul ; 21 men were employed scarping the banks of the river, so as to make it more difficult for Hottentoots to drive cattle over." (Moodie 1838: 193)

25 February 1660. "This day we measured the circuit of the Cape settlement (omslag) and found that from the sea shore to the first guard house, the Kuyk Uit, round outside all the Company's and free men's arable land, and over the height of the Bosheuvel to the sawyer Leendert Cornelis, at the Bosberg, was a distance of 3673 roods, that is, from the shore to the principal projected station of the mounted guard, 1320 roods, and the other portion 2353 roods ; along this line it is intended to plough, to the breadth of one roe, for the purpose of planting and sowing, as thickly as possible, bitter almond trees, and all kinds of thorns and brambles of rapid growth ; so that no cattle nor sheep can be driven through ; like the divisions of jurisdiction betwixt the territories of some dukes and lords in Cologne and Germany, with here and there guard houses and watch towers with bars, to protect the farmers from external attacks, for which the guard houses and bars already made, will answer" (Moodie 1838: 199)

An un-transcribed map of 1661, gives some clues as to the position of parts of the early defensive line. It extended from the Salt River Mouth where the redoubts, Keert De Koe and Duinhoop, were built to keep watch over the northern cattle



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crossing at Varsche Drift. The term *Keert De Koe* means "Turn the Cow" a direct reference to the need to control the movement of cattle from the VOC held area. It is thought that *Keert De Koe* was built in Maitland, which makes sense because it was close to the crossing point to Table Bay. Cannon Road in Maitland may be a direct reference to the outpost. Until just before 1900, Maitland consisted of a very large outspan (see Figure 1) that lay just beyond *Varsche Drift*. Outspans can have histories that go back for centuries, in this case the land use probably dates back to when Khoekhoe herdsman mustered their cattle on the outskirts of the VOC held area by the Salt River. It is of interest to note that this land now forms part of Ysterplaat Airforce Base.

The City of Cape Town has attempted to geo-rectify the 1661 map which places the outpost known as *Coornhoop* on the site of the Mowbray Maternity Hospital. Interestingly the late amateur archaeologist and historian, M. Emms, before the benefit of GIS systems and digital technology also determined that the hospital was the most likely site of *Coornhoop* (Emms n.d.). This however conflicts with a description contained in the Resolutions, as the Mowbray site does not enjoy a view of the Table Bay shoreline (obscured by Devil's Peak) nor is it on a hill (anymore). The 1661 map also makes reference to a palisade fence (*schutpaling*), possibly indicated as a faint line on the document. This is clearly placed on land between the Black and Liesbeek Rivers.

If we are to assume that the City of Cape Town and M. Emms are correct in the placing of *Coornhoop*, the next outpost in the line known as *Ruiterwacht* (Horsemen's Outpost) would have been placed on what is today, Rondebosch Common or very near to it. Dr Dan Sleight (2004) has produced a plausible map of possible locations of the early VOC forts which may be considered consistent with the balance of evidence in the historic records. He is also in agreement that *Coornhoop* was in Mowbray, *Ruiterwacht II* was on the Observatory site and *Ruiterwacht I* was further towards where Rondebosch common is today.

It is clear from the archival excerpts that the fence was intended to keep cattle in, and not primarily to keep Khoekhoe out. But nevertheless, the effect of this barrier was the exclusion of Peninsula Khoekhoe from their main grazing lands that the VOC reserved exclusively for the use of the Company and *freeburghers*. Still available to them was more marginal grazing, along the edge of the Cape Flats, the eastern edge of the Black River estuary and possibly the outskirts of Green Point and Hout Bay. As a result of the conflict Autshumato was imprisoned on Robben Island (from which he escaped), and Doman was badly injured and died in 1660. Autshumato's niece, Krotoa, alienated and isolated, succumbed to illness and addiction. Essentially, within eight years of Van Riebeeck landing at the Cape, the structure of Khoekhoe society on the Peninsula had all but collapsed. Relegated to a marginal existence on the fringes of the VOC, the Peninsula groups either broke up and joined other groups in the interior or became assimilated into an acculturated existence within the VOC hegemony.



It seems that a real tangible fence did not demarcate the expansion of the VOC and *freeburghers* into the land beyond it or certainly not for very long. Rather, it seems that this expansion happened at quite a pace, so much so that in 1661, the *Coornhoop* redoubt was obsolete and demolished, its building material used for the construction of farm houses. The River Club site was part of the land that was first farmed by Wouter Cornelis Mostert from 1657 in the shelter of the adjacent hill (now the SAAO). The farm was named „Den Uitwijk“. Mostert failed to grow grain and after four years of trying, and distracted by war fighting the evicted Khoikhoi, he gave the land up and built a mill known as “Mosterts Mill” in Rosebank. Jan Van Riebeek, took over “Den Uitwijk” in 1659, and with the use of the garrison was able to chase the Khoikhoi out the area. With the use of slaves, Van Riebeek managed to farm grain on the site.¹²

4.5 19th and 20th century history of the site

All of the Dutch farms along the Liesbeek River have been the subject of a complex sequence of land transfers. The character of this part of the Liesbeek River catchment remained rural until well into the 20th century (O’Donoghue 2017). Valkenberg was converted into a reformatory in the late 19th century but still functioned as a farm during this time. Shortly after this, Valkenberg Hospital was built accommodating patients newly transferred from the Robben Island infirmary (Deacon 1996). By as late as 1937, there were still extensive cultivated lands on the on the east side of the Liesbeek River. On the west side, suburban development and sports fields had encroached on previously cultivated land. It is not by accident that the very first VOC farms were located on the best land that the Cape Peninsula had to offer – good grazing and perennial water were as important to the Dutch as the local Khoekhoen. The site and its context are located within the core of this early contested landscape.¹³

The general history of the Observatory area has been considered in some detail by O’ Donoghue in the phase 1 HIA for the site:

“From the beginning of the 19th century, residential, commercial, and industrial development began to encroach on the agricultural landscape. Land within the vicinity of the study area was largely unaffected by these processes. Road networks grew significantly and so did the 19th century rail network. At the beginning of the 19th century there were two main routes, Main Road to the south and present day Voortrekker Road to the north. Residential subdivision, commercial and industrial development led to the development of a more complex road system but this still left the study area intact. The surrounding landscape of the Observatory between the two rivers remained distinctly agricultural – with the farm of Valkenberg as a distinctive agricultural entity. Although the study area continued to remain an agricultural entity well into the 20th century it began to take on a distinctly

¹² O’Donoghue, 2017.

¹³ Ibid. Hart, 2016.

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institutional role. In 1821 a portion of Valkenberg was sold for the establishment of the Royal Observatory. From 1881, the institutional role of the study area grew in emphasis although the agricultural character was largely retained. Valkenberg was bought by the Cape Colonial government with money from the Porter Bequest Fund for the establishment of the Cape Colony's first reformatory. The Valkenberg manor house and outbuildings were used to house staff and young offenders. The farming activity continued at the reformatory. Porter Reformatory strove to be largely self-sufficient with farm work as the main training emphasis of the system.

"The suburb of Observatory derives its name from the RO established in 1821. The area became increasingly built up during the last quarter of the 19th century, especially around the railway station. Its development took off at the end of the 19th century accelerated by the arrival of people leaving the Transvaal due to the outbreak of hostilities in 1899. Development occurred largely on three farms. Onderneming (once part of Coornhoop) was subdivided into two major parts. One was developed into fairly high class villa complexes. The other part became the property of JC Wrench that was developed into an area known as 'Wrench Town'. The farm Belleviet was subdivided in the 1880s. The lower part of Observatory, closer to the Liesbeek, was badly drained, and thus never urbanized (Fransen 2004). Observatory represents one of the largest and coherent concentrations of late 'Victorian' architecture and is now situated within a declared Heritage Protection Overlay Zone (HPOZ)".

A careful examination of the topo-maps between 1930 and 1960 suggests that the lower reaches of the Liesbeek, at least below the new line of what is still called Settlers' Way, were iteratively straightened, in-filled, moved to accommodate the arterial Liesbeek Parkway, to improve stormwater reticulation and to accommodate sports fields.

The site currently occupied by the River Club was used by the South African Railways & Harbours (SAR&H) as the Liesbeek Park Recreation Club, which was established in the late 1920s and was subsidized by SAR&H, for the benefit of its employees. The site was more recently administered by Propnet, a division of Transnet. The original facilities of the club which consisted of playing fields and some small structures were built towards the end of the 1920s, with the main building completed in 1939 (Planning Partners, 2017). The nature of the site has been transformed with the original wetland that made up much of the site being gradually reclaimed, the Liesbeek River was diverted into a new concrete-sided canal in 1952, and overburden added to the site to raise it above flood levels. Interestingly, between 1960 and 1980 the old Liesbeek course is depicted on topo-maps of the time as being fully reclaimed and filled; but later, shortly before 1990, it seems that some dredging was done to allow water to backflow from the Salt River into a deep ditch approximating the old river-course (See figures 5-9 below).

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Figure 6. By 1935 recreational grounds were in place and the Liesbeek had been straightened and its confluence with the Black River moved



Figure 9. In 1980 there is no water course shown along the old Liesbeek course.



Figure 7. By 1940 the site enjoyed the same configuration.



Figure 10. By 1990 the Old Liesbeek River course had been partially restored, albeit without the straightness of the 1934 alignment.



Figure 8. By 1960, the old course of the Liesbeek had been diverted and filled. A new canal was built on the east side. The River Club house is visible.

All maps after: Chief Directorate: National and Geospatial information.

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Figure 11. 1941 aerial photograph showing the River Club site and the lower course of the Liesbeek effectively canalised (Lex Stewart, 1941; Townsend-Stewart Family Archive)

When Transnet activities shifted to Bellville in the 1980s, most of the staff moved to the northern suburbs, leading to a decline in patronage at the club. By November 1993 the property had been abandoned by Transnet as a sports club and had been leased to a progression of tenants who apparently neglected the buildings and fields. The River Club was established in November 1993, primarily as a golf driving range, and the entire property and building was leased by the former proprietors of the River Club, Liesbeek Leisure Club (Pty) Ltd on a long-lease of 75 years. For the initial 7 years of operation the activities for which the River Club was originally developed – the bar and restaurant, the conference venue and the golf driving range – were considered “non-conforming uses”. However, these use rights were approved by Council in May 2001 and still apply to this day. In addition, permission to build a 9-hole mashie golf course was granted in 2002 (operation commenced in 2003); and the River Club owners continue to use and improve the property.

4.6 The History of the Berkley Road Extension:

Although the topographical maps and the aerial photograph above do not show the Berkley Road Extension, it has a history that dates from the 1940s:

It is clear that the State had assembled land for the Berkley Road extension-connection when it subdivided a large number of properties and consolidated those pieces into Erf 15326 as early as 1945.¹⁴ This very large and curiously shaped erf

¹⁴ See the Certificate of Amended Title on Consolidation, T16749/1945, and the SG Diagram of Erf 15326.

A handwritten signature or mark, possibly initials, written in dark ink.

Handwritten initials 'TK' inside a circle.

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was to enable a connection between the extant Albert-Malta Road axis (the Salt River area) and Berkley Road (and Maitland-Ndabeni) allowing a cloverleaf intersection for the start of the planned Liesbeek Parkway and the crossing of Salt River to an intersection with the planned Black River Parkway. It is apparent that there is no trace of the Malta Road Bridge over the railway line, the Liesbeek Parkway or the Black River Parkway in the 1941 photograph above.

Later, in 1968, this connection was gazetted as a Provincial Main Road and zoned for Street Purposes on the zoning map;¹⁵ and in due course this erf, then minus the land for the Liesbeek Parkway cloverleaf and now called Remainder Erf 15326, was transferred to the City Council in 1989.¹⁶ Although the City Council has still not constructed this connecting road, it is described as a “Class 2: Proposed Major Arterial” in the City’s current *Public Right of Way Network Report* of July 2017 and the *Comprehensive Integrated Transport Plan* of 2018 also includes the road.¹⁷

The road design has not been finalised but the conceptual design is shown below:



Figure 12: Proposed layout of the Berkley Road Extension and the proposed T-junction with Liesbeek Parkway (Aurecon in consultation with the City of Cape Town’s TDA)¹⁸

¹⁵ See Provincial Gazette No. 385 dated 26 Nov 1968.

¹⁶ See the Title Deed, 21836/1989, and the SG Diagram Rem Erf 15326.

¹⁷ See Planning Partners Report, pp118-121, for greater detail of the planning and implementation of this major arterial.

¹⁸ This diagram indicates the extension, improvements to the Liesbeek Parkway and the access-egress points to the River Club site only.



5 CONSULTATION AND COMMENTARY OF INTERESTED PARTIES

In this section, we describe several consultation and commenting processes in which interested parties have expressed views on the site as heritage and on the development proposal in as much as the development may impact on heritage resources. There have been several such processes carried out in order to satisfy different laws and we outline these briefly as follows:

- the TRUP base-line studies during 2016/2017;
- the two consultation processes in respect of the NEMA Basic Assessment process (itself complicated by a change in regulations early in this process) in respect of the River Club proposal during August-September and January-February 2016/2017;
- the consultation process in January-March 2018 regarding the NHRA HIA-process in respect of the River Club proposal;
- the consultation process in August-September 2018 regarding the MPB-L rezoning process in respect of the River Club proposal;
- the opportunity to comment on HWC's intention of provisionally proclaiming the TRUP to be a PHS in late 2017;
- the opportunity to comment in September 2018 on the appeals against the HWC decision to provisionally proclaim the River Club and at the Tribunal hearings in this regard in October, November and December 2018; and
- given the passage of time since the January-March 2018 advertising, a second consultation process in March-May 2019 regarding the NHRA HIA-process in respect of the River Club proposal.

This is an exhaustive set of processes and it is not possible (nor, given the iterations of the finite range of issues raised, is it necessary) to include every comment made in all of these processes. However, we do give emphasis to the views expressed in the three processes explicitly devised to deal with heritage resources, that is the two consultation processes of this HIA-process under Section 38(8) of the NHRA and the commentary submitted to the MEC's Tribunal while it was dealing with four appeals *contra* the HWC decision to provisionally proclaim the River Club property to be a PHS under Section 49 of the NHRA. The issues raised are discussed in greater or lesser detail, depending on our assessment of their relevance in this discussion. We do not claim this discussion to be exhaustive and we refer the reader to Appendix B containing, firstly, all of the comments received in the Section 38(8) processes in January-March 2018 and March-April 2019 and, secondly, as much of the written comment received in the Section 49-appeal process in respect of the provisional proclamation as we have been given by the Tribunal's secretariat.

In this account, commentators are not addressed individually; but we hope that every heritage-related issue and concern raised, is discussed and addressed even if our

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responses are broadly phrased and do not satisfy every commentator.¹⁹ It will be apparent that we agree with certain of the concerns and criticisms raised by commentators; but that there is an essential difference of view reflected in this study regarding the Preferred Riverine Corridor Alternative which is expected by us to result in a marked improvement of this stretch of the Liesbeek River as amenity, as ecological system and as heritage resource.

We note that the commentary of the parties on the development itself is included in the section describing the proposal, 9 The Proposed Development.

We note also that this iterative set of opportunities to comment has been extremely frustrating to many of the parties who experience the process as one in which they are iteratively ignored: we sympathise with (and share) those frustrations which are the consequence of (a) the legal framework and (b) an essential difference in view points (which we hope is explained here).

5.1 The Consultation and Commenting Processes Dealt with Here:

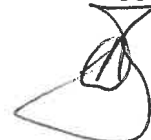
5.1.1 First and second consultation processes under S.38(8) of the NHRA, 25 January-26 March 2018 and 22 March-2 May 2019:

As pointed out above, there have been two prior calls to register on the project stakeholder database and there have also been two separate earlier requests for interested parties to comment on the development being proposed in the NEMA-process (including opportunities for stakeholders to comment on earlier Draft Phase 1 HIAs); and, as a consequence, there is a lengthy list of parties that are formally registered as interested and affected parties (IAPs). All of these registered IAPs were sent notice of the availability of the two drafts HIAs, the *Draft Heritage Impact Assessment Prepared for Interested Party Consultation* dated 18 January 2018 and the second dated 19 March 2019; and their comments were invited.

The period for comment from 25 January until 6 March 2018 and the availability of the *Draft HIA for IAP Consultation* was advertised in the *Cape Times* on 25 January 2018. Any parties who may have an interest were invited to request that the *Draft Heritage Impact Assessment Prepared for Interested Party Consultation* be sent to them. Also, copies of the *Draft HIA* were available at four locations:

- the River Club itself;
- the Observatory Public Library;

¹⁹ We note that several commentators on the *Draft HIA* have misread the quoting of other studies as though the words were ours (for example the Visual Statement and the Urban Design Framework). We do not attempt to correct these mis-assigning of words or arguments; and hope that the commentators will, on a closer reading of this *Draft HIA*, recognise their mis-reading.



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- the Mowbray Public Library; and
- the SRK offices in Rondebosch.

Furthermore, several parties were offered presentations; and presentations were made to the following parties:

- the Cape Institute for Architecture on 8 February 2018;
- the Observatory Civic Association and TRUPA on 14 February 2018; and
- the First People's Museum Foundation on 19 February 2018.

Twenty-five parties responded by the closing date of the commenting period; and another four were received after that date. In other words twenty-nine comments were received; and these include comments from Provincial and City Council departments. The commentators are listed in Appendix A and the written comments themselves are included in Appendix B.

The period for comment from 22 March to 2 May 2019 was not advertised in newspapers but all parties who had registered previously in any of the NEMA or NHRA processes were informed of the process and given access to the Draft HIA and the associated documentation. In this instance 49 parties responded (interestingly, 26 of these are from the SAAO or from its present or past employees); and these parties are also listed in Appendix A and the comments themselves are included in Appendix B.

During the first period in January-March 2018 we did also communicate directly with and endeavoured to engage with First Peoples groups; and we met with one group and tried to set up further meetings with another. One group did ask for an extension of time to comment (which was granted) but, in the event, neither group submitted written comment. More recently we have made overtures to the groups we are aware of; and we did meet with the /Xarra Restorative Justice Forum on 25 March 2019. Also, given the designation of the SAAO as a National Heritage Site, SAHRA was approached directly and asked to comment; and a short explanation of the *Draft HIA* dated 19 March 2019 was given to SAHRA officials on 27 June 2019. We have, however, been informed by SAHRA that they will comment during the NEMA BAR process.²⁰

All parties who commented and all of those who are listed in the project stakeholder database will be sent this final *HIA* and will be advised of the date of the meeting at which we anticipate that the matter will be considered by HWC's Impact Assessment Committee so that, if they so wish, they can attend that meeting. They will also, of course, be informed of the BAR process.

²⁰ Email response from SAHRA dated 2/7/2019.

Handwritten signature and initials, possibly 'TRK', located at the bottom right of the page.

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5.1.2 Heritage resource-related comments made during the Municipal Planning By-Law rezoning process: 14 Sept-15 Oct 2018:

The City Council was responsible for the advertising process and followed the regulations contained in the Municipal Planning By-Law. Advertising took place between 14 September 2018 and 15 October 2018 using three mediums (as per the regulations), that is, notices were sent to the surrounding land owners by registered letter (to approximately 1285 I&APs), notices were published in *Cape Argus* and *Die Burger*, and notices were erected in three positions on the site.

One hundred and eighty comments were received (which are addressed in the consulting planners' formal response to the City Council). We recognise these comments here in as much as they address heritage-related concerns.

5.1.3 Commentary volunteered under the provisional proclamation appeal process:

In November 2017, HWC notified certain of the property owners in the TRUP that it intended provisionally proclaiming the whole of the TRUP to be a PHS; and two of these owners responded. Later, in March 2018, without further notice HWC provisionally proclaimed the River Club property to be a PHS; and, after appeals to the MEC who appointed a Tribunal, the Tribunal's secretariat informed a wide range of stakeholders of their proclamation and the appeals.²¹ Given this advice, a number of parties commented on this process, for the most part, supporting HWC's decision to proclaim the site as a PHS. Most of these comments reiterate comments made in the earlier processes but, importantly, representatives of First Peoples groups gave, for the first time, comment on this particular site as a heritage site and on the development proposal being assessed here. These comments and our responses are included in the discussion of the various issues raised in the following sections.

5.2 The Over-Lapping Heritage, Environmental and Land-Use Processes:

Many of the comments received during these several processes include issues which are not heritage-related and cannot be addressed in a heritage assessment: these are, for example, engineering and ecological matters which the heritage resource authorities ordinarily cannot resolve on. However, while our analysis of the comments received concentrates on the heritage-related issues and concerns raised, we have summarised the environmental and land-use issues, if briefly, where they touch on heritage-related concerns so that the heritage resources authority, Heritage Western Cape, is aware of the issues raised.

As already pointed out, the proposed development triggers Section 38 of the NHR Act requiring an impact assessment to be compiled which, because the proposal is already the subject of a NEMA process, must be commented on by HWC and

²¹ We do not know when or how this was done.

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decided by the Provincial Government's Department of Environmental Affairs and Development Planning (DEA&DP). The proposed development also requires a rezoning in terms of the Municipal Planning By-Law which must be decided on by the City of Cape Town. The details of these three legislative requirements are described in more detail in section 2 Legal and Procedural Framework.

This is a complicated decision-making process, in particular because the responsibilities and criteria for commenting and for decision-making are, while related, not identical. The HWC comment must deal with heritage resource-related issues; the provincial environmental authority must take account of a much wider range of environmental matters; and the City Council must deal with issues pertaining to more ordinary land-use planning matters like use, the details of permissible built-form, regional transport, local traffic, parking, stormwater, and so forth. Our comments/responses here rely on advice of the town planning, environmental and engineering consultants to the owners.

The issues raised through these processes, in as much as they are heritage-related and/or must be addressed here, are as follows:

5.2.1 Higher Order Planning Issues:

Several commentators have raised a number of issues which they think are relevant in thinking about this site but which are either outside the purview of a heritage impact assessment and outside the responsibilities and powers of the provincial heritage resources authority or, in some cases, even those of the environmental and land-use authorities. These include the following:

5.2.2 Ownership/Title:

Given the history of ownership by the State, several commentators have questioned the form of tenure and the process by which it was purchased:

Erf 151832, Cape Town (the property) was registered in the name of the South African Rail Commuter Corporation Limited and subsequently vested in Transnet Limited by virtue of the Legal Succession to South African Transport Services Act 9/1989 which property was ceded and transferred to Transnet SOC Limited in June 1993 in the deeds office.

Liesbeek Leisure Properties Pty (Ltd) (LLP Pty Ltd) had a long term development lease over the property since March 2002, 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 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 Transnet valued the property at R12 million (being the bare dominium value in the property). LLP Pty Limited exercised its right of first refusal (as long term tenant) and

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acquired the property at the bare dominium value in May 2015. As a result of the sale and transfer of the property to the long term tenant the long term lease lapsed by operation of law.

LLP Pty Ltd in turn on-sold the River Club business and future development rights, together with the land to Liesbeek Leisure Properties Trust (LLPT) in 2015 in order to facilitate development and its funding. A purchase price for the current River Club business was paid in addition to an initial price of R12 million. Further payment is payable at market value when the development rights are established and as and when the property is developed (in phases). Since acquiring the property and business, LLPT have progressively improved the existing River Club facilities, with numerous upgrades of the buildings, parking area and grounds having taken place. The owner is currently in the process of applying for further development rights as detailed in its planning application submitted to the City in terms of the provisions of the City of Cape Town Municipal Planning Amendment By-Law (MPBL), including the Cape Town Development Management Scheme (DMS), in March 2018.²²

In other words, the land is in private ownership which establishes rights and responsibilities. This current process under the NHRA and NEMA and Municipal Planning by-Law, initiated by the property owner, is the process required by the legal framework in order to develop the site.

5.2.3 Spatial Development Frameworks:

It has been argued by some commentators that it is inappropriate for the development proposal to be assessed under the heritage law (and, by implication, under the environmental law) before such development is permitted by the spatial development frameworks adopted by the City of Cape Town and enabled in terms of the Municipal Planning By-Law. In this case, the owner recognises the risks and seeks to demonstrate the feasibility of this particular proposal and its congruity with wider metropolitan and district policies to the authorities; and declines, as is their right, to wait for the potentially lengthy local authority-led spatial framework processes to unfold.

The owner, through its town planners, Planning Partners, has applied to the City of Cape Town for a deviation from the Table Bay District Plan (as well as for the rezoning of the property and for permission to raise the ground level and implementation of retaining structures). Importantly, this composite land-use planning process will, at a later stage, take into account and rely on the heritage and environmental assessment processes currently under way.

²² Email from Michelle Couzyn-Rademeyer, Zenprop Property Holdings, dated 13/3/2018 (and as edited more recently). The LLPT trustees have appointed the Zenprop Group to manage the development.

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However, a revised Cape Town Municipal Spatial Development Framework (MSDF) was approved by the City of Cape Town's Council on 25 April 2018 with an effective date of 1 July 2018. In this revised MSDF the River Club is designated as part of the Urban Inner Core. This is a priority investment area where urban development is, in principle, supported. This revised MSDF report states that "the MSDF will be implemented in accordance with the consistency principle that applies to the plans and policies of different spheres of government. In terms of the consistency principle, lower-order spatial plans and policies must be consistent with higher-order spatial plans and policies. Should the provisions of spatial plans of a lower order in the hierarchy (including district and local spatial development frameworks) be deemed to be inconsistent with the MSDF, the MSDF will take precedence".²³ It is recognized that there may be local features which apply to a particular site, such as floodlines, that could influence development, but the presumption is that property inside the Urban Inner Core is a priority investment and development area.

During the transition to this new MSDF many lower order plans, such as District Spatial Development Frameworks, will be inconsistent with the new Metro Framework; and the Municipality is currently going through a process to iron out these inconsistencies. Until the applicable District Spatial Development Framework is repealed or amended, it will be necessary to motivate for a deviation and to demonstrate "circumstances" or motivations for such deviation. The test of "circumstances" justifying a deviation will be rather less onerous than the test of "site specific circumstances" required for consent to deviate from the higher-order MSDF. Furthermore, planning policy is clearly shifting to prioritize development in the Urban Inner Core; and other statutory processes, such as heritage processes, will need to acknowledge this.²⁴

5.2.4 Traffic and its effects:

A number of commentators have argued that the traffic generated by this development would result in greater congestion around the site and in the general vicinity.

Traffic is not a factor that ordinarily affects heritage resources directly; and it does not do so here. More importantly, a traffic impact assessment has been compiled and will be made available to stakeholders during the NEMA stakeholder engagement process and during the land-use planning process.

We note also that the provincial department of Road Network Management has no objection to the development proposal but emphasizes that formal comment on the TIA and any requirements will be the responsibility of the local authority which will be dealt with in the land-use planning process.

²³ City of Cape Town, 25 April 2018, *Municipal Spatial Development Framework*; see Technical Supplement D, Regulatory Requirements and Informants, p173.

²⁴ Advice from Geoff Underwood, senior consulting planner; email dated 28/5/2018.



5.2.5 Planning for the Two Rivers Urban Park (TRUP):

Several commentators have complained that this application and process conflicts with the now lengthy planning and consultative processes (since 1998) intended to lead to a vision for the Two Rivers Urban Park. However, notwithstanding the disappointment that the Two Rivers Urban Park Association (TRUPA) and others may feel, individual property owners cannot be expected to submit themselves and their property to the desires and/or designs (however carefully made) of other parties. The use of land is, in the first instance, proposed by the property owner and, in the second instance, is permitted (or refused/limited) by the appropriate legally-determined authorities. This applies, of course, to all of the land in the TRUP; and the TRUPA and other interested parties are stakeholders in such processes.

We add that, in our view, the Preferred Riverine Corridor Alternative with its focus on the restoration of the Liesbeek River does, for the first time since 1998, enable a positive and realistic step towards the realisation of several of the goals of the TRUP, in particular, the goals outlined in the ten-point TRU-Park Manifesto included in the 2017 TRUP co-designing workshop resource sketchbook.²⁵ Indeed, in our view, the recovery and restoration of the Liesbeek proposed on the River Club site does, for the first time, suggest that several of the TRUP goals could be achieved.

The River Club site is a relatively small, if important, site within the TRUP area. TRUP is approximately 300 ha in extent, whereas the River Club site measures 14.8 ha, or 5 % of the TRUP. The proposed development will not be compliant with all of the objectives of the TRUP initiative. However, it is believed that the development will add significant value to TRUP in that significant pieces of land will be publicly accessible, including recreation spaces associated with the rehabilitated riverine edges and the approximately 70m x 220m 'eco-corridor', which in turn will connect into the wider TRUP; a portion of land is proposed as a place of remembrance/celebration, where heritage on this land can be recognised and memorialised; and the site is the western gateway into TRUP and the development will assist to establish TRUP as a place of metropolitan significance.

The 'baseline studies' of Nisa Mammon and Melanie Attwell both deal with the TRUP as a whole but do also give commentary on the River Club site as a component of the TRUP. We acknowledge and refer to these studies.

The Two Rivers Urban Park Association and its members (TRUPA) refer to the TRUP as a "declared Park": however, we understand that there is no special declaration of TRUP in terms of any national, provincial or municipal legislation as a park or nature reserve. The term refers to a general area of land defined for the purpose of various planning studies. There was a Two Rivers Urban Park Contextual Framework and Phase 1 Environmental Management Plan prepared by the City of

²⁵ *Co-Designing a TRU[e] Park: Workshop Resource Sketchbook*, a resource of the co-design workshop, 18 February 2017.



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Cape Town in 2003. This was not formally approved in terms of planning law; but could be regarded as a form of local policy plan. There was subsequently an initiative by Province and the City to formulate a new plan, and many documents were produced, but none were officially released or approved.

The boundaries of TRUP have changed over time to include and exclude certain parcels of land; and it includes land with several different zonings, including Open Space 2, Community 1, Community 2, Transport 2, Residential and Industry (depending on which TRUP boundary is used). The Raapenburg Wetland and Bird Sanctuary has status as a Municipal Nature Reserve.

The City Council and Western Cape Government (WCG), both of whom own various properties within TRUP, have entered into a Memorandum of Cooperation to work together on the TRUP project, which is envisaged as a mixed-use, transit-oriented development within a connected landscape for sustainable living, together with areas for leisure, conservation and environmental management. An environmental, heritage and planning process was initiated by WCG and the CoCT, which investigated opportunities, constraints and development options. The aim of the current TRUP process is to update the 2003 contextual framework and formulate a Local Spatial Development Framework (LSDF) in terms of section 12 of the MPB-L.

The land-use planning application referred to earlier notes that the current development proposal for the River Club would constitute a deviation from policy currently associated with the site, and motivation for this deviation is contained in that report. It is noted in the rezoning report that a TRUP Local Spatial Development Framework (LSDF) is being run in tandem by the Western Cape Government and City of Cape Town and will result in new development initiatives and planning guidelines for the TRUP area. We understand that the LSDF will no longer make use of the term "urban park" due to public misunderstanding about this term.²⁶

5.2.6 Alternatives and the question of feasibility:

A number of commentators have argued that only a much lower density development is acceptable: however, numerous alternatives (including lower density development of the site) have been investigated by the owner (a requirement of both the NHRA and of NEMA), and have been found to be not financially viable. The only alternatives feasible to the developers are those described in section 9 of this report.

Several commentators have argued that feasibility should not be the gift of the owners and must take factors other than financial feasibility into account.²⁷

²⁶ These paragraphs rely on advice from Geoff Underwood, senior consulting planner; email dated 12/6/2019

²⁷ These commentators often add the words "profit" and "greed" when they refer to feasibility.



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Although alternatives identified by stakeholders must be considered in the EIA process, the proponent is enabled/required to provide a reasoned explanation why an alternative was not found (through an investigation) to be reasonable and/or feasible. In this regard, the (financial) returns of the two preferred development alternatives and two other alternatives suggested by stakeholders ((1) a lower density/reduced floor-space alternative and (2) an alternative which incorporated ~20% of the GLA for affordable housing) were investigated by the owners' consulting quantity surveyors, MLC, to determine the expected first year returns on investment (this investigation is incorporated into Planning Partners' Alternatives Report).

Noting that market capitalisation rates below 9% are not considered commercially viable to the proponent (or to other property developers),²⁸ the investigation by MLC demonstrated that neither the lower density/reduced floor-space alternative nor the alternative which incorporated ~20% of the GLA for affordable housing are financially viable. In other words, the proponents do not view these alternatives to be (financially) reasonable or feasible, and have excluded them from further analysis.²⁹

5.2.7 Flooding:

A number of commentators have argued (or feared) that development of the site will lead to or exacerbate flooding:³⁰

Flooding of the lower reaches of the Liesbeek (and the Black River) is caused by restrictions *below* the confluence of Liesbeek and Black Rivers and the flatness of the river beds themselves. Filling the floodplain will result in a negligible rise in flood levels according to the surface water hydrology assessment.

The surface water hydrology impact assessment will be made available to stakeholders for comment during the NEMA stakeholder engagement process. However, an integrated planning and design approach has been followed; and an experienced, multi-disciplinary project team consisting of specialists in a variety of fields (including stormwater, hydrology and freshwater ecology) has been engaged in ongoing work on the development proposal over a significant period of time. In particular sophisticated floodplain modelling was undertaken to identify any implications and potential threats to surrounding properties, and to mitigate these as appropriate.

5.2.8 Presumptions regarding the Intentions of the City Council and the SAAO on Abutting Land:

The *Draft HIA* dated 18 January 2018 articulated two presumptions: one, that the City Council is committed to building the Berkley Road Extension connecting

²⁸ An explanation of this by the property valuer, Allison Stober, is attached to the BAR.

²⁹ These paragraphs rely on advice from Matthew Law of SRK, email dated 18/6/2019.

³⁰ One commentator argues that the "flood study undertaken must be subjected to independent peer review". RAMPAC, p2.



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Maitland/Ndabeni across the Black River to Salt River/Observatory along the northern boundary of the site (on Council-owned land zoned for Transport purposes); and, two, that the SAAO was committed to constructing a 8300sqm office building for the Square Kilometre Array (SKA)³¹ on their Erf 26423 at the south end of the site.

Both of these presumptions have been questioned; so, given this and the additional information that has been provided by the SAAO subsequent to the circulation of the first *Draft HIA for Interested Party Consultation*, we amend these assumptions as follows:

First, the City of Cape Town's Transport and Urban Development Authority has indicated unequivocally that the Extension will be built to connect the parts of the arterial system separated by the Black and Liesbeek Rivers and relieve/distribute the loads on the existing system; that there are no feasible route alternatives; and that this will be done in accordance with the City's budgeting programme and from development contributions made available. The history of this intention, dating back to before 1945, has been outlined in section 4.5 above. The scale of this roadway will significantly alter the landscape irrespective of any development on the River Club site and will have a considerable visual impact. This is effectively a causeway stretching across the floodplain. Several parties have argued that this presumption is wrong and that the connection will not be built; but, until we are advised otherwise by the City's transport authority, we must accept that the connection, planned since the 1940s, will be constructed in due course.

While the Extension 'causeway' will be (relatively) low and, because it spans the entire floodplain, would not be incongruent (relatively) with the sense of place, we do also see this as an un-mitigate-able imposition; and, in our view, any suggestion that mitigations will or could make it less visible or make it go away³² is simply wrong.

We note also that there has been comment about a view from the bridge which connects Malta Road with the Liesbeek Parkway of the Nieuwe Molen Mill in the Alexander Hospital site. In our opinion, this is not a significant view: Firstly, the Mill is set in a very cluttered visual field and is barely noticeable from this vantage point. Secondly, the Malta Road bridge will be completely reconfigured when the Berkley Road extension meets it, thus creating a very visually confusing immediate environment of traffic lights, light standards, etc and effectively obviating this already barely noticeable building.

Second, we have been advised that the tender for professional services to design the SKA building has been withdrawn and its construction will not be pursued on this site. Given this, we now presume that the site will not be developed in the foreseeable future, which we welcome; and, if it were ever developed we would

³¹ We accept the correction by the SAAO (comment dated 6 March 2018) that the SKA building should be called the "South African Radio Astronomy Observatory" or "SARAO"; but we will persist with the SKA-appellation because that is its more commonly-known name.

³² RAMPAC, p1.



welcome a use of the site that enabled the restoration/transformation of the canal to riverine corridor as comprehensively (and, at least, of a similar dimension, design and public accessibility) as proposed on the River Club site.

5.3 The Landscape as Heritage:

The landscape, the riverine corridor within its wider floodplain with its historical pre-colonial and early-colonial associations, is identified in this report as the most interesting and most important heritage resource associated with the site and affected by the proposed development; and it is clear that this is the most important set of issues. Indeed, there are several separable headings under which the wider issue is discussed; and we come to an overarching conclusion in this regard:

Some commentators have argued that the site is a part of a 'cultural landscape' and is significant as such, in particular, to the First Peoples.

This is common cause; but, as a cultural landscape, "fashioned from a natural landscape by a culture group" and/or "a tangible manifestation of human interactions and beliefs set against and within the natural landscape", this landscape is not visibly or self-evidently significant and neither is it designed or created intentionally nor organically evolved. However, notwithstanding the absence of material cultural evidence, it is an "associative cultural landscape"³³ with definable/known historical associations of great socio-political import (these historical associations are acknowledged and described at some length in Section 4: The History of the Place, pp34-52 above).

Importantly, the First Peoples groups have in their contributions to the provisional proclamations appeal process³⁴ and in their more recent comment³⁵ claimed an historic sense of ownership of the TRUP area as a whole and of the site in question as heritage; and the High Commissioner of the Goringhaicona Khoi Khoi Indigenous Traditional Council quotes from the recent Attwell/Jacobs Two Rivers Urban Park Baseline Heritage Study, discussing the TRUP as a whole, as follows:

"The history of this landscape is ancient and tragic. Not only does it mark 'the beginning of the end' of Khoikhoi culture but it also symbolises the process and patterns whereby the indigenous inhabitants of Africa, the New World, Asia and Australia-New Zealand, succumbed to the tidal wave of colonial globalisation. Although there are no tangible remnants of the actual places of conflict, forts or outposts or graves, the topography and 'place' survive albeit greatly transformed by more recent layers of development. The valley of the Liesbeek, Black rivers the confluence and remnants of the Salt River estuary

³³ Fowler, pp15-23, on 'the idea of cultural landscape', quoting Sauer, 1926 and Melnick, 1984.

³⁴ In, for example, Jenkins, Tauriq, undated (delivered to the MEC's Tribunal, we think, on 18 September 2017), Letter from the High Commissioner of the Goringhaicona Khoi Khoi Indigenous Traditional Council on behalf of Paramount Chief Aran.

³⁵ Letter (undated, received on 2 May 2019) from Tauriq Jenkins, High Commissioner of the Goringhaicona Khoi Khoi Indigenous Traditional Council, on behalf of Paramount Chief Aran.



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exist today. In the context of the history of South Africa this is an historical place. It is suggested that the Liesbeek River itself is worthy of declaration of a grade II Provincial Heritage Site along with the remaining open land, the confluence and wetlands.”³⁶

Indeed, the site is part of a cultural landscape that has considerable meaning and significance, but this significance is associative and has no clear or defined place or locus or even any physical characteristics other than being rooted here in this general location on the floodplain of the Liesbeek. There has been no identified archaeology of pre-colonial settlement found in the area as yet. The river itself is the only tangible visible element that survives as a resource that warrants safeguarding or, rather, given its current degraded and ambivalent identity, recovery. As argued in the following section on Significances, the Liesbeek River Canal and the old pre-1952 river course (now serving primarily as a component of the stormwater system) have confused the readings, meanings and identity of this landscape as heritage; but we do not contest the claims regarding this place as heritage.

The Goringhaicona have made a number of “recommendations” which we include here as an articulation of their view of the site as heritage:

“That the TRUP precinct be acknowledged as a place of national and international restitution and recognition of the Khoi Khoi

That the precinct encompasses the commemoration of the 1510 battle against the Portuguese Viceroy D’Almeida.

That the precinct recognises the intangible and tangible memory of “first and final frontier” contact.

Archaeological excavation be looked into.

More study and research be committed to the area.

That the area be recognised as a National and International Heritage site.

That area be a place that illustrates the history of the colonial decimation of the indigene and the trajectory of European settler development in South Africa

That it be a site dedicated to the untold history of the genocide of Cape San

That it be a site dedicated to the acknowledgement and commemoration to the cultural ethnocide of Khoi Khoi and San indigenous groups. This would include processes of the language restoration.

A site that would be a symbolic place of reference and utilisation for the purposes of a First Indigenous People’s Conciliation Commission.

A site that celebrates place that connects the world to the DNA of the Khoi as of the oldest people on earth, through the re-engagement of a revived sense of place.

³⁶ I have not been able to find this passage in Attwell’s report; but it is quoted directly from Jenkins’ letter referred in the preceding footnote. See Attwell, Melanie and Arcon, October 2016, *Two Rivers Urban Park Baseline Study*, a report commissioned by the Western Cape Provincial Government.



A site that recognises the Goringhaiqua, Cochoqua, Gorachoqua, and Goringhaicona as the precincts pre-colonial Khoi Khoi historical custodians.

A site that recognises the evolution of and the intermingling of diversities of nationalities and culture as experienced pre and post Apartheid South Africa. These identities are part of a more recent memory and history of the site.

A site committed to a precinct wide recognition of scientific breakthrough and innovation of both the indigene and western technologies which has occurred within its borders.

A site that will recognise the exquisite plant, the sensitivity of the floodplain, the restoration of the Liesbeeck River and Black River, and animal life.

A site that acknowledges the linguistic ethnocide of the how plants in the region have been named and framed outside of their cultural and geo-specific areas.

A site demarcated to restoring the significance of the precolonial peopling of the area that nurtured a coexistence of animal, plant, land, water and the cosmos in ways respectful of each elements dignity and right to live and have a place under the sun.

A site that exemplifies the symbiotic and intrinsic qualities of the Khoi and San culture and people."³⁷

In this regard, we point out that the low spur of raised land on which the Royal Observatory was sited and on which the Valkenberg hospital and Porter's institution followed later in the 19th century is the site of the fences and fortifications which were meant to repel or limit the access of the indigenous peoples to the then newly settled land; and the transformed floodplain and river must, as historical heritage site, be read with this even more developed part of the topography. This wider site is the historically significant place, a 'frontier zone' (if for a short period); but its meaning and persuasiveness as heritage site has been eroded by the 19th century institutional use and development of the spur, by the growing transformation of the floodplain for sporting uses and facilities and for railway-related functions during the second half of the 20th century, by the gradual creep of the suburb and business quarter below the railway line throughout the 20th century, and by the late 20th century growth of the transformation network of arterials and motorways.

Given this, we argue that the development of the River Club site and its development and transformation is, first, an opportunity for the articulation or making public, even celebration, of the significance of the place and of its historical associations and, second, an opportunity to restore ecological life to the Liesbeeck River. These articulations, celebrations, restorations must, however, find form and life in the facts of the modern, constantly changing, constantly growing city-scape. We note that many commentators disagree with this view claiming that their views are "ignored": this is incorrect; we simply have different opinions and see rather the opportunity for

³⁷ Gornghaicona, 2 May 2019, pp29-30.



radical improvements to the environs which are consistent with wider goals and needs. We note also, if with sadness, the antagonism of the First People groups' representatives towards us as authors of the HIA; and we hope that not all of the members of these groups see us in the same light. We do not ignore the antagonism (which we do not understand); but we hope to withstand it with forbearance and quiet dignity.

5.4 The Sense of Place of the Floodplain:

Several commentators have commented on the importance of the 'openness' in the sense of place of the floodplain, as well as on the views from within and across the floodplain. We do not disagree with these remarks as observations on the sense of place however ephemeral and difficult to define that sense of place may be here.

The character of the site will be transformed by the development and this transformation will be of significant visual impact. But we argue that this impact will be of relatively low *heritage* significance: whether the site is developed or otherwise, it will always have a history which not manifested on the ground and cannot be destroyed by physical changes. The site is located in a significantly transformed floodplain between even more radically transformed land, is degraded and will be further affected by the future development of the Berkley Road extension. Although the development will lead to adverse visual impacts (which cannot be entirely mitigated), a very considerable heritage benefit is anticipated from enhancing and restoring the Liesbeek River corridor.

However, in our view, the comments made by some regarding views from within the site are mistaken. Firstly, the urban design study which we have relied on has recognised a view-axis along the bank of the restored river and Devil's Peak which has determined the alignment of the connecting green-space (thus creating or articulating a new view-axis). Secondly, Devil's Peak is so massive and so close that it will be experienced from every part of the site as it is moved through. And, thirdly, the 40m set-back of buildings from the restored Liesbeek River ensures that the Observatory 'ridge' and the SAAO campus, which is 160m from the nearest proposed building, will be visible from within the development.

Furthermore, south of the River Club site, the floodplain is already developed and used for sports facilities of some sort (with considerable visual intrusion) or, to the north, has been occupied by railway- and harbour-related infrastructure (some of it bulky and tall) from some distance up the river all the way down to the sea. Given this, the floodplain as a whole does not have a clearly experienced sense of place. Rather, the reading of the sense of place of the floodplain is of low-lying land comprised of disparately-used, separated units of land without coherence. Indeed, we suspect that few currently recognise the place as a riverine floodplain; and the sense of place of these lower reaches of the Liesbeek as floodplain cannot be meaningfully re-made or recovered.



But a successful recovery of a more clearly identifiable riverine corridor as visual amenity, as ecological resource, as topographical feature, and as historically meaningful feature is, we argue, possible.

5.4.1 The River Club Site, Its Immediate Edges, and Its Ecology:

Several commentators have argued or implied that the ecology of the river and its associated systems, its flora and fauna, all elements of the site as heritage, will be spoiled or damaged by the proposed development of the site in question; and some commentators even suggest that the Bird Sanctuary will be adversely impacted on. None have, however, given any details supporting these claims.

On the other hand, the biodiversity impact assessment has found that the restoration of the Liesbeek canal would, for example, “dramatically improve the river habitat in this reach of the river”³⁸ and that the proposal, with respect to the “indigenous flora” on the site, would have a “negligible” impact.³⁹ Rather, the preferred riverine alternative “hinges on the rehabilitation of the currently canalised reaches of the lower Liesbeek River, and the planned creation of an unlined vegetated channel, that has sufficient space to function as a natural river within a broad connecting riverine corridor, that ensures strong longitudinal and lateral links into natural areas of the site and the adjacent Raapenberg wetlands, and which would significantly improve faunal connectivity and toad migration routes across the site. Implementation of this alternative would, from a biodiversity and general aquatic ecosystems perspective, be a positive impact, and its implementation is recommended” (emphasis in original).⁴⁰ No direct impacts on the Raapenburg Wetland are anticipated.⁴¹

The biodiversity impact assessment, which has informed the BA Report and this HIA, has been released for stakeholder comment as part of the land-use planning process.

5.4.2 The Pre-1952 River Course:

Some commentators have argued that the old, pre-1952 river, course is particularly significant and say, for example, that it “forms an integral part of the environmental/topographical/ecological and historical significance” and that “removing the old Liesbeek River channel’s ability to be perceived as a historical watercourse and thereby severing its role in the story line of the cultural landscape will surely impact negatively on the significance of that resource”.⁴² This argument is, effectively, to support the “Island Alternative” which we address more fully in the section on Alternatives.

³⁸ Day, p80.

³⁹ Ibid. p82.

⁴⁰ Ibid. p123.

⁴¹ Ibid.

⁴² CoCT, EHM, p3.

This concern is met by the preferred alternative. In the preferred alternative the shape and position/alignment of the old pre-1952 course is retained as a more useful, if visually less prominent, feature. Also, through the proposed recreation of a functional (in ecological, amenity and practical terms) and visually stronger restored riverine corridor, the Liesbeek River will be perceived again as a historical water course.

5.4.3 Conclusion regarding Commentary on the Floodplain as Heritage Resource:

Given this argument, the following conclusions are summarised:

- the site, as a component of the floodplain, is a significant heritage resource of ecological, historical and socio-political importance despite the general recognition that, in words of the ecology-specialist, "both terrestrial and natural ecosystems are considered degraded, having suffered a long history of manipulation, including (in the case of aquatic ecosystems) variously, diversion, channelization, fragmentation and canalisation";⁴³
- The site is a component of a neglected and much-transformed landscape with ecological and heritage significances that are potential rather than actual but which can be recovered; and
- The proposed development of this degraded, under-used and under-valued site presents a very real opportunity for ecological, environmental, and heritage recovery and for the transformation and enhancement of the Liesbeek Canal as riverine corridor.

5.5 Commentary on Heritage Resources On or Near the Site:

Several commentators have commented on heritage resources on the site and nearby:

5.5.1 The River Club Building on the Site:

Several parties have questioned our dismissing the significance of the River Club building built in 1939, implying that they think that the building is significant as a heritage resource. Put simply, we do not think that it is significant at all: it is a straight-forward building of the late-1930s with little architectural pretension, its history as a sports club for employees of the SAR&H is incidental, and it fails to meet the criteria for conservation or protection.

5.5.2 The South African Observatory:

The SAAO, as a Grade I site and declared as a National Heritage Site in December 2018, is certainly the most (and only) significant heritage site near enough to the

⁴³ Day, p123.



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River Club to be affected by the development; and therefore requires deeper consideration.

The SAAO is a most significant site; and this significance relies on its location on the low spur or ridge between the Liesbeek and Black Rivers, its wooded setting, its architectural interest and, most importantly, on its historical scientific *raison d'être*:

“The South African Astronomical Observatory in Cape Town has played a highly significant scientific role over time as the oldest permanent observatory in the Southern Hemisphere. The site offers an overview of the history of astronomy both locally and internationally. It is a “living site” with almost 200 years of history while still retaining its prominence in the international astronomical community.

Contributions to astronomy from the site range from some of the first accurate measurements of the distance to a star (Alpha Centauri), first catalogues of the principal southern stars, the first photographic survey of the sky, accurate measurements of the distance to the Sun (a value that became the benchmark to measure all other cosmic distance and represented a paradigm shift in astronomy), development of spectroscopy, remeasurement of Lacaille’s Arc of Meridian, establishment of the true shape of the Earth in the Southern hemisphere and the first accurate geodetic surveys of southern Africa.

Architecturally, there are several buildings of historical value which not only reflect the changing architectural styles over the nineteenth century but also have a considerable scientific value due to their contributions to the field of astronomy. Some examples are: the Main Building (a Georgian Building) – designed by the British naval architect, John Rennie, and completed in 1828; the heliograph – the oldest dome on the site and which runs on cannon balls; and the McClean Telescope Building – designed by Herbert Baker.”⁴⁴

However, the comments of the SAAO⁴⁵ notwithstanding, as pointed out by Winter,⁴⁶ the campus is well screened by the fairly dense collection of trees surrounding the campus, on its western side facing the River Club in particular. These trees and their screening of both the River Club and the west more generally, demonstrate the insignificance of the views to the west even if the very choice of this site depended on a view to the Castle (long hidden by taller buildings between the Castle and the Observatory) and Signal Hill (which will still be visible from the Observatory). We have argued this point in a little more detail in the section on Significances. We note also that the campus of the main Observatory buildings is a considerable distance, approximately 155m, from the nearest buildings included in the proposal; and the taller buildings in the northern end of Precinct 1 and in Precinct 2 are approximately 300m from the old Royal Observatory building and its campus.

⁴⁴ SAAO Press Release, 23 January 2019, quoted from SAHRA’s Statement of Significance.

⁴⁵ SAAO, comment dated 6 March 2018.

⁴⁶ Winter, Sarah, September 2017, *South African Astronomical Observatory: New Office for SAEON, Heritage Impact Assessment*, a report prepared for SAAO, National Research Foundation.



5.5.3 Other Nearby Heritage Resources:

A number of other relatively nearby heritage sites and resources are referred to by some commentators, but these are, notwithstanding the very considerable significance of some of them, out of sight and will not be affected by the development. These include several sites of early homesteads all but one are 'buried' within the urban townscape of Observatory. The exception, the Valkenberg homestead, is too distant from the site to regard it as 'affected' by the proposed development although we do regard its significance to be *improved* by restoring the riverine corridor.

5.6 Miscellaneous Issues Raised by Commentators:

There are a number of miscellaneous issues raised by commentators which are not regarded to be heritage-related. These include arguments about financial feasibility and sustainability, and an anxiety about the loss of the current River Club recreational facilities and, of course, those matters referred to earlier which are not ordinarily dealt with as heritage resource-related aspects.

6 IDENTIFICATION OF HERITAGE RESOURCES

6.1 The Site as Part of the Floodplain

While we are unlikely to ever know the exact positions of Van Riebeeck's defensive line, watch towers and redoubts, there is compelling evidence to suggest that the slightly raised spine or ridge of land between the Liesbeek and Black Rivers, which houses the Royal Observatory and Valkenburg Hospital, played an important role. The site for the Royal Observatory was chosen in 1820 on account of its key location on raised ground that placed it in line of sight of Table Bay, so that the falling of the time ball could be observed from Table Bay and the Castle. Descriptions contained in Moodie and the *Resolutions* indicate that one of the major forts of the VOC – Khoekhoe confrontation (*Fort Ruitervacht II*) was built on the same site as its signals could be observed from the Fort and other watch towers that formed part of the system. Indications are that the defensive barrier would have extended through the grounds of Valkenburg Hospital, then southwards across Rondebosch Common before turning westwards to Kirstenbosch. The exact places where incidents and confrontations occurred can never be known, but what is evident is that the historic landscape between the Black and Liesbeek River marks the site of one of the earliest frontiers that were to eventually herald the fragmentation of the Khoekhoe nation. Although there are no tangible remnants of the actual places of conflict, forts, outposts or graves, the topography and 'place' survive, albeit greatly transformed by more recent layers of development. Wilderness and wetlands were transformed into farm land, and then again to modern suburbia. On the other hand, the Liesbeek and Black rivers, the confluence and remnants of the Salt River estuary, exist and are still



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identifiable as such; and, in the context of the history of South Africa, this is an historic place of considerable significance.

While these early years may be historically remote in terms of issues affecting the project area, they remain relevant as the River Club site falls within this key historic landscape. In the context of the Two Rivers Urban Parks project certain groupings have emerged which identify strongly with Koekhoen culture and are intent on upholding indigenous rights to commemoration within the Liesbeek River Valley. Reference has been made to the early resistance of the Khoekhoen to de Almeida as well as the first Khoekhoen war (Attwell, Supplementary Report, 2017). The De Almeida confrontation took place just a little more than a 'league'⁴⁷ from the anchorage at Cape Town which would place the event in the Salt River-Black River area and, perhaps more decisive, the actual massacre took place on a beach which was, we must presume, most likely in the Salt River mouth area and certainly not in either the surrounding TRUP zone or the River Club site. Hence, we concur with findings of Attwell's detailed supplementary report⁴⁸ on this subject prepared for TRUP.

The landscape of the first Khoekhoen war included the River Club site, however, and in 1659 the entire Liesbeek River Valley as far as Van Riebeeck's own farm on the Bishopscourt side of Wynberg Hill fell within this zone of contestation. Given this, the River Club is a part of this historical 'frontier zone', most of which is now subsumed within the suburbs from Salt River to Bishopscourt.

6.2 Early Crossing Points

The Liesbeek-Black River estuary was an important site, and remains so to this day. Indications are that there were two or more early *drifts* at this point, one of which may well have been a phase of the early Vaarshe Drift crossing point. The significance of these crossing points is that they were the only real point of entry into Cape Town from the hinterland – the combination of the Salt and Black Rivers rendered the Table Bay part of Peninsula an island of sorts. The drifts were guarded and entry into the settlement was regulated by small forts in Maitland and Salt River. This resulted in the use and establishment of a large outspan on the Ysterplaats flats where traditionally the Khoekhoen would have outspanned with their herds, and in later years VOC farmers would wait when bringing cattle to trade in the city. This land was appropriated by the government in the 20th century eventually becoming Ysterplaat Airforce base, Wingfield camp and base.

A mid-18th century map of the project area depicts the riverine system in detail. Noted is the presence of a place of execution, and the drift system. The road system in those times was undeveloped and somewhat *ad hoc* in character, however roads did converge at the river confluence where they crossed both the Liesbeek and

⁴⁷ A "league" has several definitions: but in 16thC Portugal it most likely meant either the distance walked in an hour, 6173m or it was a 'sea-league' measuring 5555m.

⁴⁸ Attwell and Jacobs, pp51-63.



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Black River over the slightly higher ground where the River Club and Observatory land is today. This is probably because it was more viable to cross both rivers with harder ground underfoot than to brave the mudflats and wider waters below the confluence.

In later years, once bridge building had become feasible, the crossing point moved northwards to where Voortrekker Road crosses the Salt River estuary today.

Given this, we presume that the most likely pre-colonial crossing of the Black and Liesbeek Rivers took place more-or-less on the line of the Berkley Road Extension; and we, therefore, regard this site as a potential heritage resource, indeed, in our view, it is one of considerable potential.



Figure 13 One of the early crossing points (circa 1760) at the confluence. Atlas Africa.

6.3 The River Club Site as a Heritage Resource

While the area in which the River Club is situated is historically important for the role it played in the distant past, no tangible heritage relics or resources have survived on the site. The only element on or immediately abutting the site that has been a constant through both pre-colonial and colonial periods is the Liesbeek River itself. However, although its alignment and function has been altered to the point that not much of the original course survives, the main elements and a confluence exist today. But the river is a strong symbol of past events, even if with intangible and imprecise associations; and it gives a sense of deep-time reflecting the history and significance of the area. The Liesbeek River is therefore identified as the surviving physical heritage resource that deserves significant celebration.

In the “phase one HIA” of the River Club, O’Donoghue (2017) regarded the River Club as part of the TRUP and argued that the heritage indicators for the River Club should be synchronised with those determined in the TRUP process. Importantly,



she also argued that the site's "island character" should be retained.⁴⁹ Baumann (2016), in his review of O'Donoghue's "draft phase one report", pointed out that the TRUP is comprised of a variety of precincts of very different topographies, histories of use, of development-type, each with its own qualities and a variety of potential heritage significances; and he questioned the "island character" idea of the development.

The River Club is a privately-owned conference facility, sports club, driving range and nine-hole golf course. The site itself has very little obvious heritage significance of which the only apparently significant qualities are the architecture of the unremarkable Grade III structures (which we dismiss) and its sense of place as a part of the Liesbeek floodplain (which, although much transformed, damaged and degraded, we regard as *potentially* significant). We argue that the Liesbeek River is the common thread and the significant heritage resource that links the River Club, the TRUP and the environs more generally; and we argue that the potential significance of the flood plain can only be realised by restoring the riverine corridor.

The archaeological survey by Kaplan (in O'Donoghue 2017) shows that much of the land that makes up the site has been subject to considerable disturbance and has very little archaeological potential which we confirm. While it can be argued that the golf-course contributes to the sense of open space, it is a man-made and spoiled landscape that contributes little to the natural qualities of the confluence. We, therefore, insist that the river is the primary physical and symbolic heritage resource in proximity to the site. It is this that needs to be celebrated and enhanced. Provided this is done adequately, and the Raapenburg wetlands conserved, development of the site is justifiable.

The difficulty in articulating the heritage-sensitivity of the River Club site is that although the site is historically important in terms of the role this area played in the history of the Cape, there is no or very little physical heritage on the site – it has been transformed and reclaimed from estuary mud; and the course and nature of the Liesbeek has been dramatically altered.

While the entire Liesbeek River valley has not been surveyed, many parts of the Observatory section have been examined. The River Club itself was previously surveyed by Kaplan, while Hart has checked excavations for new structures on the neighbouring SAAO site. Comprehensive trial excavations have taken place at Valkenberg, Varsche River as well as checking of excavations for renovation of the Hospital. The archaeological material that has been found to date relates entirely to the VOC period and thereafter. Despite the major works that have involved canalization of the river, no graves or human remains have been reported or are lodged according to the skeleton register at either Iziko Museum or the UCT medical school which have been the official repositories of such finds since both institutions

⁴⁹ O'Donoghue, p4.



were established. The nearest recorded of remains of pre-colonial people and archaeological sites are from close to the Salt River estuary in Milnerton.

Cremation among Khoikhoi people has not been described in any known historical ethnography; however, burial methods are described and are archaeologically well documented. The emailed assertion by Hromnick (who believes that the Khoikhoi people were migrants from India) is disputed.

The records from the register⁵⁰ are as follows:

SAM 6019 - found in Salt River by the SAPS in 1972; from the excavation for a building - a cranium and mandible.

SAM 6070 - found at Site B in Alfred Road in 1983 - a complete cranium, mandible and other minor human remains.

UCT 263 - found beside the old Cape Town infirmary in a street excavation at the site of an old graveyard - 2 crania.

UCT 145 - Hiddingh Estate in Newlands - a colonial coffin burial, complete skeleton.

Contrasting with the above observations, the archaeological signature of pre-colonial people is strong on the Cape Peninsula – the sites of numerous middens are well-known, particularly in Hout Bay, the western shore and the greater Peninsula, which are a clear indicator of where people were living. Shell middens were plentiful all the way up the West Coast. However, what is noticeable is the high frequency of them on the Vredenberg Peninsula which is historically known to be a center of Khoikhoi stock-keeping. One site which was clearly of significance for Khoikhoi was the rocky massif known as Kasteelberg which has been extensively studied and radiocarbon dated. The massive shell middens around the Kasteelberg massif contain layers of human occupation including bone from indigenous domesticated sheep and early domesticated cattle as well as grinding grooves in the granite.⁵¹ Radiocarbon dates confirm an occupation sequence that goes back almost 2000 years since the first advent of herding people in South Africa. It must be noted that many of the archaeological sites on the Vredenberg Peninsula have been ploughed over many times, yet the archaeology of the area remains visible.

The Liesbeek valley has no sequences of human occupation such as described above. In fact, to date no San or Khoikhoi archaeological sites have been identified. This does not mean that people were not living here as stock-keeping people were very mobile following available grazing. It does, however, mean that there was no focus in the project area that attracted repeated visits or long-term occupation of any kind, as would be the case with sacred places and capital settlements.

The historic records we have used in this assessment refer extensively to the vast encampments of the Khoikhoi on the other side of the Salt River – that is Milnerton, Yesterplaat-Wingfield. These large tracts of landscape which contained extensive

⁵⁰ Morris, 1992.

⁵¹ Smith et al, 1991; Smith, 2006.



wetlands were accepted as the common grazing lands outside Cape Town, which represented the end of the cattle trading route from the interior. In the 1800s they were designated as common or outspan land in continuation of a long tradition of cattle herding which dates back to precolonial times. In the early 20th century this land which was owned by no-one was appropriated by the government for the construction of military facilities and have retained this status to this day.

Archaeological evidence has been used several times to corroborate oral history in court of law. The matter of the Salem Commonage (20kms south of Grahamstown) has contributed to legal precedent in terms of the way in which oral history is considered, particularly in the context of land claims.⁵² The judgment in this case took into account the oral history of the claimants, evidence provided by expert witnesses and, importantly, sort the verification of oral history through the employment of archaeologists to verify the physical evidence of previous settlement through material remains. This means that although oral history was considered in the judgment, physical evidence played a decisive role.

However, returning to the case at hand, while First People's representatives have made claims about burials in the environs, there is no physical evidence in this regard.

The heritage resources on the site are summarised thus:

- 1) The Liesbeek River and the confluence are important as a place in the landscape (its 'physicality' is too transformed, however, to be argued to be anything like it may have been during its historically important moments) and the historical and symbolic significance of the river is very high.
- 2) River Club land was possibly the site of an early crossing point where an informal route passed along and over the confluence to a point to the west (near where the bird hide is today) before continuing into the hinterland. Although this spot may be at the northern boundary of the property where the Berkley Road Extension is planned, it is also possible it may have been where the current Station Road axis crosses the Liesbeek. There is no evidence of this crossing today.
- 3) Although the River Club site is effectively a recreational area and a golf course and has a green open-space quality which is shared with the reaches of the Liesbeek corridor immediately upstream of the site, this belies its degeneration and impairment as a heritage resource.
- 4) The current landscape qualities of the site are a consequence of the history and context as summarised above. The context is historic and symbolic. The site has several significant heritage sites relatively nearby, but the physical properties of the site, with its club house and sports-related facilities, its managed, landfilled and bland landscape for sporting activity, are of low

⁵² *Salem Party Club v Salem Community* (20626/14) [2016] ZASCA 203 (13 December 2016)



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significance; and it contains very little else which we argue can be accepted as significant.

In other words, the Liesbeek River (both the pre-1952 and the post-1952 canalised channels), the confluence, the banks, and the riverine corridor generally comprise the significant heritage resource associated with the site.

6.4 Heritage resources in the surrounding area

6.4.1 The SAAO



Figure 14. A late 19th century view of the Black River in the foreground and the SAAO from where the M5 is today, looking towards Devils Peak with Lions Head in the background (Mike Fortune collection).

The most significant heritage resource close to the project area is the South African Astronomical Observatory (SAAO; recently confirmed as a National Heritage Site in December 2018) which is situated on a rise, what we have called the ‘spine’ or ‘spur’ between or at the confluence of the Liesbeek and Black Rivers. It is to the east of the project site across the canalised course of the Liesbeek River. The core historic structure (built in 1820) is centrally situated with a ‘campus’ of significant structures to its immediate south. To the north and surrounding the ‘campus’ the complex is, however, extended by a plethora of structures of various ages – these range from 19th century staff buildings as well as some recent late-20th century structures. The area is well-treed and most structures are obscured from view by a combination of oak, eucalyptus and pine trees. In other words, the old Royal Observatory and the SAAO campus is barely visible from its surrounds, including from the River Club itself, due to the dense tree cover.

As Sarah Winter has it, “(l)ocated at the centre of TRUP, the wooded setting of the SAAO provides a protective tree canopy and visual screening element from the Black River Parkway”, it has “very high historical significance as a scientific institute dating to the early 19th century and the first permanent observatory in the southern hemisphere”, its association “with a number of astronomical advances of international significance from the 1830s”, housing “a range of objects and

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instruments associated with major advances in astronomy during the 19th and 20th centuries”, and with “a number of astronomers who were pre-eminent in the field during the 19th and 20th centuries. It has considerable aesthetic significance in terms of the dispersion of a number of architecturally significant buildings and a distinctive dome typology set within a wooded landscape, between the Liesbeek and the Black Rivers, and at the centre of TRUP” and that, as “a centre of excellence, the site continues to have associational significance as one of the country’s most internationally acclaimed scientific institutions”.⁵³

The Observatory was built on this raised spine of land that was visible from the Castle (where the 12 o’clock signal gun was/is located) as well as from Table Bay where mariners could observe the fall of the time-ball for chronometer setting. These views from the Observatory to the Castle and Table Bay, which were but no longer are central to the functioning of the Observatory, are now obscured by development. Lions Head, Signal Hill and Devils Peak remain visible, but the view has to be sought from vantage points below the trees, and is clearly not of any importance in the day-to-day life of the SAAO. Furthermore, and these vistas have not been of importance since the beginning of the 20th century. The line of sight between the SAAO and Signal Hill is of no current relevance although it is historically interesting since the noon-day gun (previously at the Castle) at the Lion Battery on Signal Hill has been electronically triggered for most of the 20th century.

We note that Attwell and Jacobs, in their baseline study of the TRUP as an entity, argue that the view from the 1820 Observatory building to Signal Hill is still important and, by implication, is a heritage resource that should be protected. Given that the SAAO itself has not needed or attempted to sustain or recapture that view, we regard this view/axis as interesting but not demanding a response in design.



Figure 15 Views towards Signal Hill from the SAAO obscured by Eucalyptus trees (Tim Hart, 2017)

⁵³ Winter, p24.

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Figure 16 Views across the River Club site towards Observatory suburb and Devil's Peak from the roof of the main SAAO building (Imraan Yo-Hee, June 2019)

6.4.2 The TRUP and nearby elements

The River Club is a large piece of privately-owned land within the proposed Two Rivers Urban Park (TRUP). The TRUP consists in large part of government-owned land within the Black River - Liesbeek River corridor: and it has been subject to an ongoing land-use and spatial planning process (which includes a heritage resource 'baseline' study) to inform a vision for the future for the area. This "urban park"⁵⁴ is comprised of several distinct precincts of widely varying character; and it also contains a variety of heritage resources of varying grades including the neighbouring SAAO, the Valkenburg Hospital complex (noted for the recently restored old hospital) and its various facilities dispersed across the flat ridge, and the Valkenburg homestead site (one of the earliest VOC land grants in 1657, which later became the Porter Reformatory). Across the Black River and, although visible, a considerable distance from the River Club site is the Oude Molen component of Valkenburg Hospital, its mid-early 20th century wards set in an open environment adjacent to the broad open river corridor of the Black River (one of the ancient Oude Molen farm buildings has survived although in very poor condition). Also inside the TRUP is the Alexandra Institute and historic mill as well as Maitland Garden Village which, while visible from the River Club site, is visually insignificant in this context.

The significance of the area is derived from the history of and concentration of historic elements in this landscape as well as the symbolic values of the Black and Liesbeek Rivers. Given this, the TRUP contains components of high significance, not

⁵⁴ It is difficult to understand the use of the word "park" in the name of this planning project.

only on account of its built, cultural environment and setting, but also its place in the very early history of the Cape. It is, however, also clear that the TRUP is a very large area ranging considerably in use, built-form and in significance.

While the River Club shares a geographical context with TRUP, the most significant shared heritage resource is the Liesbeek River – a linear asset that passes through much of the Southern Suburbs all the way from Upper Newlands and Kirstenbosch – within its floodplain of varying width and character. As do the various precincts of TRUP (some of which have distinctive heritage qualities), the River Club has its own character and distinctive history and should be treated as such.

The interests of indigenous First Peoples must feature prominently in discussions with respect to the area and play a significant role in the determination of a high heritage grading for the area. It must, however, be pointed out that the land that forms the TRUP is part of a wider landscape of resistance in the mid-17th century that involved the entire Liesbeek Valley up to its source in Kirstenbosch (O'Donoghue 2017, Attwell and Jacobs 2017, Hart and Schietecatte 2017). These interests, of course, have bearing on the River Club site.

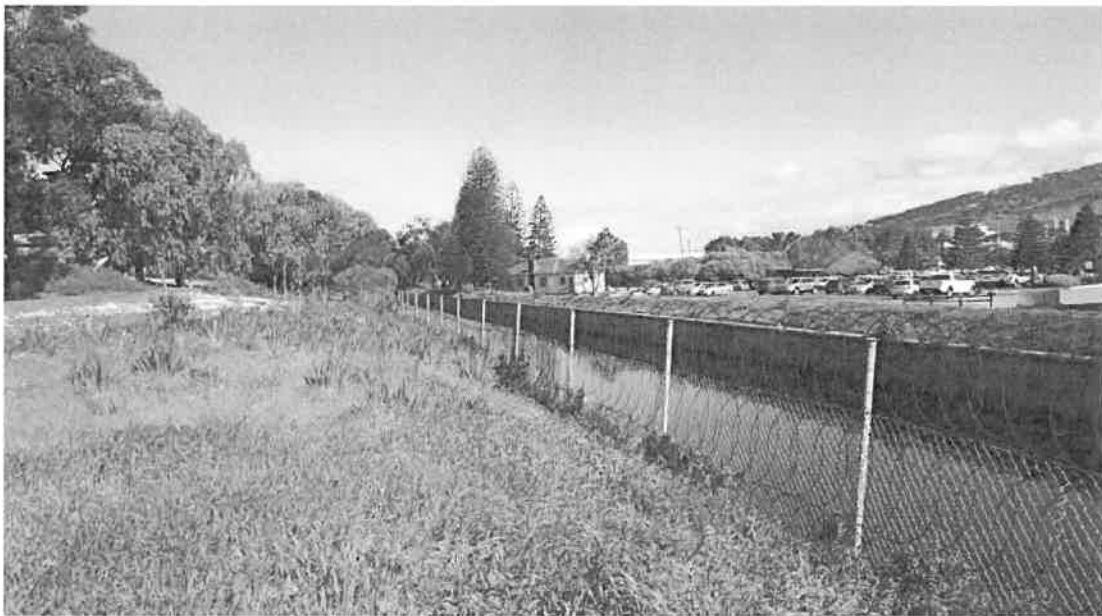


Figure 17. The canalised Liesbeek River (built 1952) viewed from SAAO towards the River Club and to the south (Tim Hart, 2017)

6 SIGNIFICANCES

By way of an introduction to our analysis of the significances of the site and its surrounds, we repeat our differences with certain earlier studies: the significances of the River Club site and its context argued in earlier preliminary studies (a phase one HIA by O'Donoghue, a review of that study by Baumann, and Attwell and Jacobs' baseline study of the wider TRUP area) were argued in relatively broad terms and,

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although several commentators on our earlier *Draft HIA Prepared for Interested Party Consultation* referred to O'Donoghue's phase one report seem to prefer those opinions, we emphasize two major differences with those opinions:

- previously no recognition has been given to the possibility of transforming the Liesbeek canal into a riverine corridor as a potentially functional ecological system and, therefore, no recognition has been given to the potential of recovered heritage significance (those views apparently preferring a "historical" course much altered through the 20th century and effectively defunct as a river course since 1952); and
- previously heritage indicators and development limitations that are not directly heritage-related were articulated (echoing preliminary views articulated in the TRUP land-use study).

The difficulty in assigning heritage-related significance to the subject site and its context demands rather more clarity; and we hope to be more precise or, at least, explicit, even if our view is one that contradicts the view held by most commentators. That said, relying on the description of the topography, the account of the historical making and layering of the site and its context above, we articulate the cultural significances of the site and surrounds as follows:

7.1 High-order cultural significances:

First, there are only two but very closely related high-order significances: one is environmental and the other is historical.

7.1.1 Environmental significances:

First, the ecological value of the Liesbeek River floodplain as a whole has been significantly degraded at the site, and therefore does not require preservation in its current state, but rather presents an opportunity for rehabilitation and enhancement.

The most obvious significance is the environmental and topographical significance which, while often seen as natural or even scientific, in this case we see these as a set of cultural values derived from the site as a floodplain, as the lowest reach of the Liesbeek just before and as it meets the Black River, a singularly important maker and component of the topography, creating a special and strong visually understandable sense of place even if the major roadway, the Liesbeek Parkway running parallel with the river, and the strip of sports fields on the mountainside of the plain (including the old Hartleyvale football ground and the high-tech hockey field and stands) have had a transforming effect on the sense of place.

This visual sense of place also signals both faunal and floral significances which are not immediately apparent but which are intrinsically connected and associated with

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both the old defunct and the new canalized river courses. Each of the river courses, old and new, has meaning and significance; although both courses are currently degraded and diminished.

To the east of the Liesbeek floodplain and bounding it visually is, first, a flatland at the Liesbeek-Black River confluence which is the Raapenburg bird sanctuary which then rises into a low ridge or spur occupied by the Observatory and, south of that, the Valkenberg Hospital. To the west of the floodplain is the urban development of Observatory with Devil's Peak rising sharply behind this townscape.

This floodplain of this, the lowest section of the Liesbeek before it joins the Black River floodplain, is, despite the damage and erosion of its sense of place and its ecological functioning, still a singularly important component of the Liesbeek River as landscape and topographical determinant of the historical and current urban environment/townscape.

Perhaps, in this context, most important is the presence (and potential), along the eastern boundary of the subject site, of the Liesbeek River course itself (now canalised); and, on the western boundary, although off the site, is the remnant of the earlier river course (now serving to drain stormwater): and, in our view, although diverted from its earlier course and canalised in 1952 along the immediate western edge of the low ridge or spur of land housing the Observatory, the current river course is, despite the canalisation, topographically and ecologically the most significant feature of the site and its context. The old river course bounding the western edge of the site is now part of the city's stormwater system and does also, because the land is very low-lying, receive back-flow from the Black River periodically flowing up this course. This old course, despite its own infilling and dredging history during the 20th century and particularly between 1952 and about 1990, remains an important component of the flatland-wetland ecological system of the confluence.

The floodplain, however, the narrow riverine corridor itself apart, has either been occupied by railway- and harbour-related infrastructure (some of it very bulky and tall) or is developed and used for sports facilities of some sort (with considerable visual intrusion)⁵⁵ from some distance up the river and all the way down to the sea. Given this, the floodplain as a whole does not have a clear consistent experience or sense of place. The sense of place of the floodplain is of low-lying land but comprised of disparately-used, separated units of land without coherence. The sense that we have of this site in this landscape is of scruffiness and un-used-ness. Furthermore, as discussed earlier, the construction of the Berkley Road Extension will have a further transforming effect on the experience of the floodplain.

⁵⁵ In this regard, we note the recent controversy regarding the intention of the City Council to permit a football club to redevelop Hartleyvale as an example of the inevitable continued intensification of use and development of the floodplain generally.



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In other words, while we share a view of the environmental and ecological significance of these environs with many commentators in a general sense, we see this primarily as a potential rather than as a present and current significance. In other words, while the Liesbeek's floodplain is significant as a floodplain, this significance has been changed and derogated from. But this significance can be enhanced through recovery of a riverine corridor.

7.1.2 Historical significances:

The great historical significances of this site and its context are not visible at all and have left very little obvious impact on the landscape. Indeed, the greatest historical significance is that this floodplain as a whole is one of the sites of the earliest conflict between the indigenous people and occupying intruders: the floodplain and the adjacent flatlands were used seasonally by the Khoi/Khoekhoen herder-people and then, from 1657, occupied by settler-farmers leading to conflict and confrontation and, soon, to fortifications, fences and the relatively nearby forts of Keert de Koe and Ruitervacht II.

The historical significance of these political confrontations over the use and occupation of the land has as much symbolic and associative meaning today as it has ever had. Indeed, given the failure of the modern democratic state to deliver more than political freedom, this history and significance is perhaps experienced ever more sharply; and we must recognise that these environs are a landscape of memory, a place reverberating with current political meaning. This has, of course, been re-emphasized in the First Peoples groups' submissions; and, while, we recognise these claims and we emphasize our sympathies with respect to these submissions, we do not have the evidence that enables clear identification of characteristics or elements that are or should be feasibly protected. This is not to disagree or contest those submissions; but it underlines the difficulty in locating intangible heritages, practices and beliefs in the physical landscape and built world.

Directly associated with this significance is the presence of the land granted to the early settlers; and, although there are no relics or evidence of their occupation or use of the site itself either, the nearby early homesteads of Vaarschedrift, Malta, Belleviet, Onderneming, Westoe, Coornhoop and Valkenberg are reminders/evidence, on the one hand, of the loss of land and the ultimate success of colonisation/subjugation and, on the other, of the settlement and the establishment of a new colonised outpost/homeland.

The old Royal Observatory, across the currently canalised Liesbeek River and behind its bank of trees, is without question of the highest significance (and SAHRA has recently declared it a national heritage site). We recognise the historical and scientific significance of this neighbouring and over-looking spur of land with its complex of buildings; but this significance is not or need not, we argue, be affected



by its neighbour, the River Club, because of the scale of the sites, and because of their separation (by the distance, by the River/canal/proposed riverine corridor and by the trees).

The early visual 'connections' with the Castle, Signal Hill and the sea, the set of topographical determinants of the selection of the Royal Observatory siting in 1820, have long been lost and no longer have meaning; and given that the sea and the Castle are now no longer visible from the Observatory site at all, and given that even the Signal Hill and time-gun site are, because the Observatory site itself is covered with trees, barely visible, this interest is now of a relatively low order.

7.2 Low-order cultural significances:

There are also various relatively low-order significances associated with a number of nearby places; and there are also higher-order significances associated with other sites/places/complexes but their distance from the River Club site mitigates the reciprocal effects; and, as a consequence, in our view, none of these significances are of sufficient weight to have a bearing on the development of the River Club site itself. These include:

The site itself accommodates a complex of buildings built from the mid-1930s (the main building has a foundation-stone dated 1939), a number of trees, a grassed driving range and a nine-hole short-course for golfers. In our view, none of this has more than passing interest; and certainly not enough significance to be taken into account when devising heritage-related design indicators or to be regarded as factors or criteria in decision-making.

To the east of the River Club site strung along the low spur is the Observatory complex: This low spur is well-treed and screens the entire Observatory complex, rendering it, in effect, invisible and consequently, despite its very high scientific and historical significances, of relatively low *contextual* significance which can be mitigated; and the well-treed western slopes of the Observatory ridge do also contribute to the definition of the floodplain and the potential riverine corridor.

Still on this low spur but south of the Observatory site is the Valkenberg Hospital complex which includes the important 1900 hospital complex. But it is screened by a banal series of late twentieth century buildings rendering it, in effect, invisible and therefore despite its high architectural and medical significances, of low contextual significance. The Valkenberg homestead complex is too distant to be taken into account here.

To the west of the River Club site are the old Liesbeek River course (though, now much altered), the Liesbeek Parkway, the string of sportsfields which are within and

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along the Liesbeek River floodplain described above. However these elements are not of as high an environmental or visual significance and, while still a part of and within the floodplain, are ambivalently and irrecoverably so. Beyond these elements is the so-called five to seven-storey Black River Office Park; and beyond that are the railway line and the inner-city suburb of Observatory.

In other words, these other heritage-related significances and heritage resources are either of relatively low order (in the context of the River Club site) or, despite their high order significance, are screened or distant from the River Club site and have little meaningful effect on the River Club site and, in turn, have significances that will not be affected by the development of the River Club site.

7.3 Conclusions regarding significances:

We regard the River Club site and its surrounds to be of very high environmental/topographical/ecological and historical significance both as the floodplain of the Liesbeek River and as a part of the place of early confrontations between indigenous peoples and settlers. Indeed, this significance, taken as a single complex of significance and symbolic meaning, is of the highest order in the current socio-political climate.

These significances, however, while both visual and bound/tied to this land and because of both the nature of these significances and because of the scales/distances involved, can be protected and even enhanced by celebrating the riverine corridor and floodplain. Indeed, the nature of these significances does, in our minds, suggest obvious and direct protective/managerial measures that should be imposed in order to promote what we regard as a restorative imperative aimed at reshaping and revitalising the Liesbeek riverine corridor. In other words, the wide open flood plain does not have a meaningful sense of place, but the narrower riverine corridor is of considerable conservation value.

There is, however, one likely, even certain, future intervention on land within the Liesbeek River floodplain and immediately abutting the River Club site that will transform the perception of the floodplain, the sense of place, and the significances that we have just described: to the immediate north of the site is a long-planned arterial road connecting the Malta Road-Liesbeek Parkway junction across the floodplain, over the Salt River-Black River-Liesbeek River confluence and to Berkley Road in Maitland: this roadway must be built at a level approximately 2m above the current levels but rising to the levels of the Malta Road railway bridge and the necessary bridge over the Salt River establishing, in effect, a 30m-wide causeway of varying height across the entire width of the floodplain. This roadway will be a very



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considerable imposition on the floodplain and will have a marked impact on its reading and its sense of place.⁵⁶

It is also true that the SAAO owns a piece of land abutting the River Club property which has been considered for development: to the immediate south of the site is the abutting SAAO-owned Remainder Erf 26423 which is bounded by the River itself, the Station Road extension leading to the Observatory complex and Valkenberg Hospital, Liesbeek Parkway, and the River Club site: the SAAO has previously proposed a bulky 8300sqm building (of several storeys) for the SKA on this site; but this process has been terminated and it now seems improbable that the SKA building will be built on the SAAO site. However, it is possible that the erf Erf 26423 will be developed in due course; and any building in this position would have an impact on the floodplain and on its reading and sense of place.

However, the arterial road intervention must be taken into account because it will affect the reading and significance of the floodplain, of the surrounds and, in particular, the River Club site.

8 HERITAGE-SIGNIFICANCE RELATED DESIGN INDICATORS - CRITERIA FOR DECISION-MAKING:

First, we hold the view that all interventions on heritage resources should respect and even enhance the significance of those heritage resources rather than ignore or diminish the significance: in other words, we focus on the effects on significance rather than on the resource/object itself.

Second, given this, we argue that what are often described as “heritage-related design indicators” should be carefully devised to assist and even ensure that designers understand the significances (in kind and degree) and how those significances should be protected or enhanced. Such design advice must serve to outline criteria for decision-making by the responsible authorities. We also hope that this step-by-step methodology has assisted in the process of designing the “preferred alternative” and will serve the same purpose in the final steps of scrutiny and decision-making by the authorities.

Further, given that the cultural significances of the River Club site and its context are of the highest order but are ephemeral and without clear or obvious form or of form-giving specificity, we argue that the heritage-related design indicators (or criteria for decision-making in respect of any proposed intervention on the River Club site) must first enable a ‘concretising’ of the articulated cultural significance and may not

⁵⁶ The CoCT’s Public Right of Way –Road Network Plan, which is included in the Comprehensive Integrated Transport Plan (CITP) 2013 –2018, maps the existing and future planned road network in Cape Town, and identifies a future Class 2 road immediately adjacent to the northern boundary of the River Club site (this road is referred to throughout this report as the “Berkley Road Extension”).



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necessarily influence the shape/form of the development. We also contend that, in this kind of case, it is inappropriate to invent non-heritage-related specifics.

That said, we propose the following heritage-related design indicators-criteria for decision-making that should be met by any development proposed on this important site:

8.1 The Restored River Criterion/Indicator:

The canalised Liesbeek River should be 'rehabilitated' and repaired, even 'restored', so that it is read and experienced as a river with its floodplain rather than as a canal. But "restoration" does not imply a literal recreation or remaking in its old bed nor does it imply an intention or wish to preserve the current sense of place: in this case, "restoration" means to reform the extant river course, removing the 1952 canal-sides and bottom, giving it banks and a corridor-width at least as wide as that immediately above the canalized 1952 diversion, and a new and real sense of "river-ness", extending a sense of river and its immediate floodplain/banks down to the confluence. This means sacrificing a broad band of the River Club site on the eastern side of the site.

The intention of this design indicator is to ensure the rendering of the lower reaches of the Liesbeek River as a properly ecologically functional and visually convincing river course with adequate banks and space to enable both the ecological systems for faunal and floral well-being and the continuation of the recreational amenity of walking and cycle-tracks that already exist upstream of the site and, most importantly, to enable a reestablishment of the Liesbeek as historical site and symbol. Indeed, recognising that the flood plain is already much transformed by urban development and recognising that its reading and sense of space will be even more radically transformed by the Berkley Road 'causeway', we argue that this improved/restored river course and riverine corridor must in future signal itself as the floodplain.

The floodplain above the 1952 diversion (and 'legible' as floodplain) seems to us to rely on a river-bank-to-road or to built-form dimension of about 40m; and we have recommended that this dimension at least be adhered to in the urban design framework and in the development proposal itself.

8.2 The Scale/Height Criterion/Indicator:

Given our argument regarding the scales, dimensions of the site, and the distances between elements in the environs, and the screening by trees, we have found it difficult to definitively quantify heights and built-form of future development of the River Club site that would not damage/impact negatively on the heritage-significances. The topography and natural and built components of the low ridge/spur that the Observatory occupies are all determining factors (in our view, the most important) and we argue simply that any new development should step back to



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an appropriate height, echoing the shape established by the banks, trees and buildings of the Observatory and lower than the height of the trees.

Indeed, we think that the 2-3m gradual rise from the river banks over 40m to a 'new ground level' will not be perceptible and we contend that a three or four storey height restriction above the new ground level of the southern part of the site alongside the Observatory ridge/spur (with one or two buildings rising a storey or two or even three above this further away from the SAAO) will enable a built form that will not impact negatively on the surrounds or, most importantly, on the SAAO campus or its sense of place and its significances. Such a restriction would also ensure that the built-form on this part of the site would, for the most part, be lower than the parallel Black River Office Park complex to the west of the River Club site.

The northern part of the site lining the future Berkley Road Extension is both distant from the Observatory spur and campus and masking the industrial complex of the railways yards and those often large bulky buildings to the north. In our view, the pre-colonial crossing site and the Bird Sanctuary across the proposed riverine corridor apart, this part of the site is sufficiently distanced from any heritage resource whose significance could be affected; and we leave any argument about height and/or bulk to the urban design framework.

8.3 The Colonial Crossing:

The west bank of the Black River immediately below the confluence of the Liesbeek and Black Rivers at the northern-most point of the River Club site is the closest site (or river bank) to a likely siting of a crossing point of the Black River (previously thought most likely to be at the crossing of the current Voortrekker Road) by the that may have in earlier years been used by indigenous people and their cattle. Given that there is no verifiable crossing site but, given the necessity for the establishing of a site, however symbolic, we argue that a substantial setback from the river bank be left to enable an imagined river-crossing of the indigenous First People and that this land be set aside for the siting of some form of identification and celebration of that pre-colonial history. Indeed, we understand that one of the State's Heritage Legacy Projects is a First People's Legacy Project: and we have suggested that space be left for such realisation in due course.

8.4 The Old Pre-1952 River Course:

The river course, although straightened, regularly dredged and 'managed' throughout the 20th century, is historically interesting and, at least the section along the western edge of the River Club site, flowed along that *approximate* course from pre-colonial times until 1952. Its significance is historical though of relatively low order and, given the 1952 canalisation of the waters, the future implications the Berkley Road Extension and its intersection with the Liesbeek Parkway at the Malta Road bridge, its restoration is simply not possible. It is, however, in our view,



necessary that its historical presence be reflected in future development and that it be adapted/used as a component of the eco-system.

8.5 Conclusions in respect of Design Indicators-Criteria for Decision-Making:

We note that the preliminary studies referred to earlier listed several 'design indicators' intending to guide the development of the River Club site in rather more prescriptive detail including heights, scale, density, retention of trees, etc. We do not think that such prescriptions follow from the heritage-related cultural significances of the site (as articulated above); and we think that such direction should flow out of the urban design framework articulated by the urban designer as outlined below (and attached as an Appendix A).

Also, as noted earlier, the factors determining the position of the then Royal Observatory included sightlines to the roadstead in Table Bay, to the Castle and to Signal Hill. The views to the sea and Castle are no longer extant; but there are potential views from the Observatory to Signal Hill and the gun emplacement. However, these glimpses are only from the lower banks of the land spur which are not frequently accessed. Given this, we contend that it is unnecessary to attempt to preserve a view over the River Club site.

We note also that, the view from the Observatory to Signal Hill apart, the criteria for approval/design indicators articulated here echo the "heritage-related design informants" for this site argued by Attwell/Jacobs in their 2016 baseline study of the TRUP.⁵⁷

We also reiterate an argument made earlier that many, even most commentators seem to recognise the necessity for some form of development to proceed; and we hope that those commentators will accept the design criteria articulated here as enabling and as heritage-protecting. On the other hand, we recognise that many commentators think that this site should be limited to the current uses and built-form and not be developed: while there are circumstances where development is or will be damaging to the significance of a place, we think that this development does provide an opportunity for the revitalisation or recovery of a heritage lost and hidden.

In conclusion, we regard these four design indicators to be sufficient, not only to ensure that the development of the River Club site does not damage any significant heritage resource, but to ensure that the very high significance of this place and of the Liesbeek River more generally is not just protected but enhanced. Indeed, we argue that these design indicators enable precisely what is alluded to/hoped for in the Preamble of the Act:

⁵⁷ Attwell and Jacobs, 2016, pp82-83.

This legislation aims to promote good management of the national estate, and to enable and encourage communities to nurture and conserve their legacy so that it may be bequeathed to future generations. Our heritage is unique and precious and it cannot be renewed. It helps us to define our cultural identity and therefore lies at the heart of our spiritual well-being and has the power to build our nation. It has the potential to affirm our diverse cultures, and in so doing shape our national character.

Our heritage celebrates our achievements and contributes to redressing past inequities. It educates, it deepens our understanding of society and encourages us to empathise with the experience of others. It facilitates healing and material and symbolic restitution and it promotes new and previously neglected research into our rich oral traditions and customs.⁵⁸

We add that, in our view, heritage resource management should, whenever it can, be directed to enrich the making of our cities, recognising the significances of the places and, where applicable and possible, the necessity of shaping the place to articulate and make tangible lost or hidden cultural significance, in particular in those cases where the recognition of past iniquities can lead to symbolic restitution and healing. We argue that this is possible in this instance.

9 THE PROPOSED DEVELOPMENT

9.1 The Urban Design Framework

Given the historical and environmental significances of the riverine corridors of the Liesbeek and Black Rivers and their floodplains abutting and comprising the site, the enhancement and preservation of the continuity of the ecological and open space systems and the recapturing of historical meaning is the key informant for the development of this site. The rivers and the adjacent Raapenberg Bird Sanctuary are singularly important ecological and cultural resources which should be celebrated, protected and sensitively managed.

Both the freshwater specialist (Day, 2017) and we, as the heritage practitioners responsible for guiding design, have recommended the rehabilitation of the canalized section of the Liesbeek River and the restoration of the natural riverine corridor removing the concrete canal-sides and widening the river bed and its ecological corridor to an approximate 40m which echoes the up-stream circumstances; and we note that the earlier river course to the west of the site no longer functions as a river and carries stormwater and backflow from the confluence only. An extensive flood study has been completed by the water engineers, Aurecon, which has found no negative impacts of high significance from raising the ground level to a level a little less than 6m above Mean Sea Level, a change of approximately 2-3m across the site.

⁵⁸ NHRA, Preamble.



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The preferred and alternative development proposals designed by the architects, Vivid Architects, have had numerous complex informants including advice regarding freshwater and eco-systems from Dr Liz Day, a floodwater study by Aurecon, a first archaeological study conducted by Kaplan, initial input from the heritage practitioner, Bridget O'Donoghue, our own preliminary statement of significance and preliminary design indicators (as outlined in this *Draft HIA Prepared for IAP Consultation*), a visual impact assessment by SRK, and the *Urban Design Framework: Indicators and Recommendations* dated December 2017 by Urban Concepts.

The *Urban Design Framework* is, with the heritage-related significances and design indicators, described briefly here:

- an overview of the broader context and contextual informants and of the site itself;
- identification of key observations and design indicators for the spatial systems of the site, the built form aspects such as scale, height and gateways, and aspects related to the connectivity of the site;
- integration of the heritage-related design indicators articulated by the heritage consultants;
- urban design recommendations for the spatial systems, built form components, connectivity and accessibility; and
- the main arguments and recommendations for the interpretation of the indicators on site. (p5)

This section, however, repeats the Recommendations which rely on and imply the numerous urban-design-related design-indicators of the *Urban Design Framework*:

9.1.1 Integration of environmental aspects and view corridors:

- Rehabilitate the canalized river course, and include the experience of this, the Raapenberg Bird Sanctuary and the Observatory complex as an integral part of a continuous public space system that already exists upstream of the River Club site;
- Enhance the physical connection with the Liesbeek River – both the earlier course and the rehabilitated canal – and the Raapenberg Sanctuary by creating and defining spaces for people;
- Maintain a substantial open green space at the heart of the site as a pedestrian and ecological link between the earlier and current to-be-restored river corridors, to celebrate the experience of Devil's Peak and maintain visual permeability and a sense of openness;
- Locate publicly accessible amenities along the edges of the central open space and the green riverine corridors; and
- Ensure a legible, integrated pedestrian movement system aligned with the NMT networks and plans for the surrounding areas and which is part of the river interface. (p.32).



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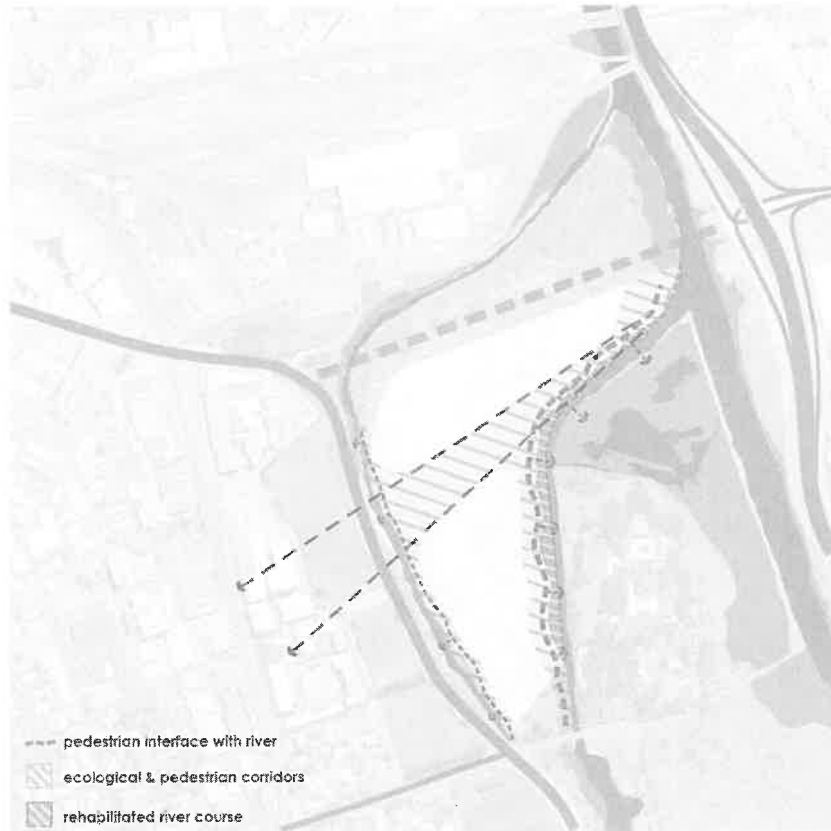


Figure 18 Diagram showing the integration of environmental aspects and view corridors (Urban Concepts, p32)

9.1.2 Public Realm Continuation:

A significant publicly accessible open space system is recommended in order to welcome people into the site, maintain the site's sense of openness and continuity, and to add value to the broader urban realm to be achieved by the following:

- Providing public space along the edge of the rehabilitated canal as well as the earlier river course, for walking, cycling and leisure, as a continuation of the existing public space network south of the site by using staggered building footprints to define spaces along the rehabilitated river course
- Extending this space across the site, connecting the two river corridors, bringing people into the development. The central area has the potential to be used for public recreation, as it is less ecologically sensitive than the river edges;
- Development parcels should be visually and physically permeable to pedestrians, to help integrate the different spaces within and around the site;
- Land uses should include a combination of commercial, residential, retail, as well as public facilities. (p.33)

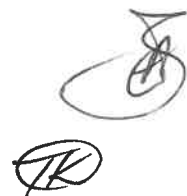




Figure 19 Diagram showing the public realm continuation (Urban Concepts, p33)

9.1.3 Fragmentation of building form:

A variety of building forms should be introduced to ensure varied grain and fragmentation:

- It is recommended that the larger building forms be located to the north of the site. The street grid proposed for this area of the site relates to the rectilinear grid of surrounding urban fabric. It is however important to create another level of fragmentation with a variety of roofs, at varying heights;
- A finer grain in building form is proposed to the south opposite the Observatory
- Buildings adjacent to the restored river (opposite the Observatory) are to be free-standing with small footprints. No continuous perimeter block buildings are recommended along this edge;
- Buildings along the public open space along the earlier and restored river courses and central open space to have a level of continuity in façade treatment to ensure a well-defined edge condition, enabling active edges. (p.34)

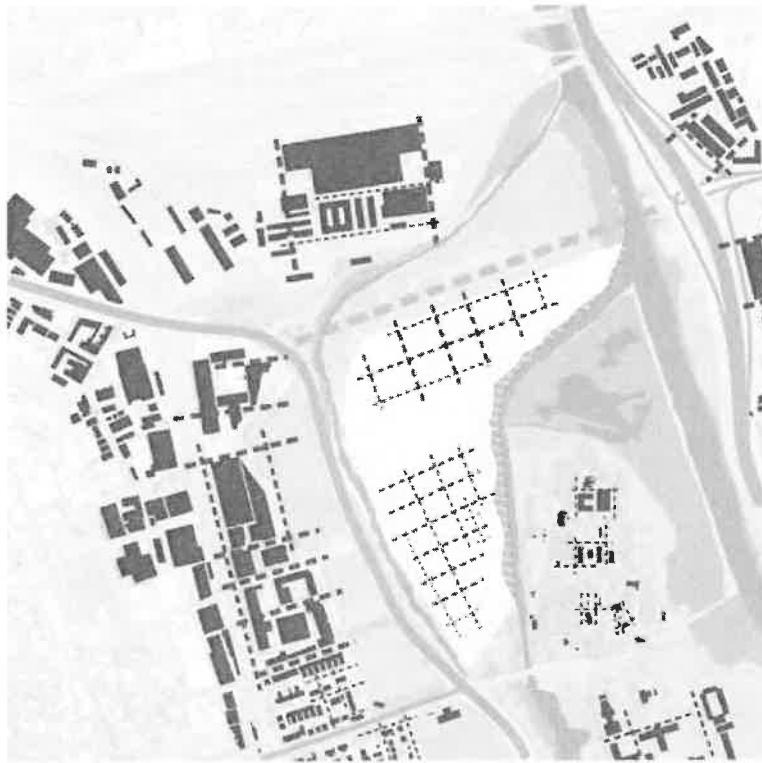


Figure 7. Diagram showing the fragmentation of building form (Urban Concepts, p34)

9.1.4 Building heights:

The recommended height envelope for the site was mainly derived from the following indicators: height and scale of buildings in immediate context (PRASA Rail Yards, Black River Park, the Observatory and its enveloping trees), as well as the significant visual and noise impacts of the M5 freeway. The height and scale of built form further away was also considered, but its impact on urban design recommendations is mainly dealt with under land uses, scale and fragmentation.

- It is recommended that the taller building forms be located to the north of the site. This will assist in defining the Berkley Road edge, and will play a role in defining public areas on what will be this exposed noisier part of the site.
- Lower buildings are recommended to the south (opposite the Observatory). The tree canopy of the Royal Observatory site is prominent, and should not be overshadowed (the Observatory itself is not visible from the site or from the west at all).
- The opportunity to include “focus buildings” (slightly taller than adjacent built form) is suggested in two key positions: the first is to signal the entrance point from Berkley Road; the second is suggested close to the entrance to the site from Liesbeek Parkway, perhaps abutting the new public park (it is recommended that this building has a mix of uses, for example retail and hotel/conferencing). (p.35)

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Figure 21. Diagram showing the building heights (Urban Concepts, p35)

9.1.5 Site integration and accessibility:

The diagram below identifies key routes to ensure an accessible, integrated structure (though a primary system of pedestrian routes will be necessary and will be a key component in the detail design development phase).

It is recommended that the following objectives be achieved in the design of the site's movement system:

- The ability to traverse the site, and integrate the site with surroundings, without creating a 'rat-run' for vehicles;
- Continuity of public access and pedestrian movement throughout the site
- The vehicular system to include public transport node(s) to alleviate private transport pressures;
- Access points: the proposed Berkley Road extension has been identified as a class 2 road in the transport & planning frameworks. From a planning and urban design perspective it is recommended that multiple intersections be considered into the site, as this will encourage more of an activity-type road (integrator). Other access points include the proposed Liesbeek access, and the existing site access from the Station Rd extension. This entrance is not guaranteed as it crosses the neighbouring property, but is desirable as it integrates the site with its surroundings. (p.37)



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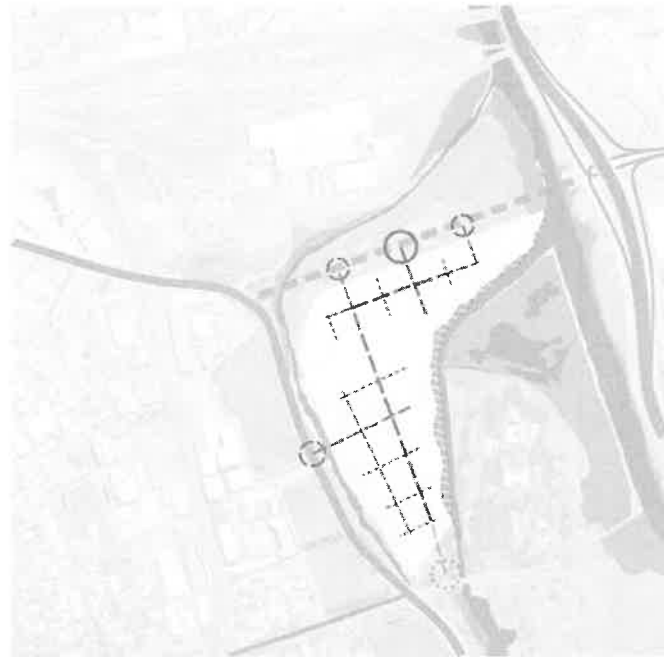


Figure22. Diagram showing site integration and accessibility (Urban Concepts, p37)

9.2 Urban design framework conclusions

The indicators and recommendations in this Urban Design Framework are designed to establish guidelines for the responsible development of this important site:

The spatial recommendations seek to provide a coherent urban form which relates to its surroundings while retaining the site's unique sense of place, and enhancing the views from, into, and through the site. Emphasis is placed on well-defined public space allowing pedestrians access to the rivers and through the site, with commercial and other activity considered to increase safety and vibrancy.

The most important recommendation from urban design, heritage and environmental perspectives, is the restoration and revitalization of the Liesbeek River by removing the concrete canal, reintroducing planted banks and widening its course to create natural riverine environment. This is an opportunity to improve its ecology and the surrounding ecosystems, as well as to create a special place for pedestrians to experience the river. Also, directly associated with this is the recommendation of the ecologist, Liz Day, that there be a connecting 'ecological corridor-open space' between the restored riverine corridor across the River Club site to the earlier river course.

The interpretation of heritage indicators is intended to respect and enhance the major historical and cultural significance of this resource, most notably the Liesbeek River as a riverine corridor and historic landscape element. The experience of this



landscape should be made more accessible to the public, and its historical importance made legible.

In addition to the above indicators, it is suggested that space be provided for a resource or interpretation centre on the site, ideally at the confluence of the Liesbeek and Black Rivers. This could educate the public on the significance of the site and of the broader precinct, including nearby sites such as SAAO, the SKA and Valkenberg, as well as the rivers and wetlands as cultural and ecological resources (Urban Concepts, p38).

9.3 The Alternative Development Proposals

The consulting town planners, Planning Partners, have assessed five development alternatives in their report, *The River Club: Overview of Development Alternatives*, dated June 2019. This section is in large part reliant on Planning Partners' report but is heavily edited and includes a brief description of the architectural concept by Vivid Architects (cf. *The River Club - Architectural Report*). We note also that only two of the alternatives are described here, and the preferred Riverine Corridor Alternative most fully. This is because one of the five is the "do-nothing" or "existing rights" alternative which they have called the "No-Go" Alternative; and two of the alternatives are not financially viable (and are, therefore, not comparatively assessed in the NEMA process). Full details of the five alternatives can be found in Planning Partners' report, *The River Club: Overview of Development Alternatives*, dated June 2019.⁵⁹

The site occupied by the River Club was established by the South African Railways & Harbours (SAR&H) as the Liesbeek Park Recreation Club in the 1920s and was subsidized by SAR&H for the benefit of its employees. The site has more recently been administered by Propnet, a division of Transnet.

The original facilities of the club were built in the 1930s, with the main building completed in 1939 (this is still the main building on the property). When Transnet moved to Bellville in the 1980s, most staff moved to the northern suburbs, leading to a decline in patronage at the club; and by 1993 the property had been abandoned by Transnet as a sports club and leased to a series of tenants and the River Club was established in November 1993, primarily as a golf driving range with the main building having various uses.

At that time, the property was zoned for Community Facilities use in terms of the City of Cape Town's Zoning Scheme. For the first seven years of operation the activities for which the River Club was originally developed – the bar and restaurant, the conference venue and the golf driving range – were considered "non-conforming

⁵⁹ Planning Partners, June 2019, *The River Club: Overview of Development Alternatives*, a report commissioned by Liesbeek Leisure Properties Trust.



uses". However, these use rights were approved by the City Council in May 2001 and still apply. In addition, permission to build a 9-hole mashie golf course was granted in 2002 and operation commenced in 2003.

During the last two years the facility has been improved with numerous upgrades of the buildings, the parking area and the grounds having taken place, while the golf driving range is much improved. Notwithstanding these improvements, the owners contend that the current use is not financially sustainable and is an underutilization of well-located land within the urban area. Accordingly, they have undertaken a comprehensive process over the past three years to investigate a feasible development proposal for the site.

The River Club professional team has formulated a preferred development plan following an iterative design process and input from various specialists engaged in the environmental and heritage process. However, both NEMA and the NHRA require that development alternatives are evaluated; and that the alternatives be reasonable and feasible and must include one option that does not involve the granting of new development rights.⁶⁰

We note that this Alternatives Report includes a detailed reprise of Urban Concepts' *Urban Design Framework* and its indicators and recommendations.⁶¹

The alternatives are as follows:

9.3.1 The "No-Go" Alternative:

This is the base situation, the Existing Rights Alternative, which Planning Partners have called the "No-Go" Alternative, for evaluation purposes; and it assumes that the existing activities and uses will continue in terms of existing rights, although substantial new development could occur within the new (since 2013) zoning, Open Space Zoning 2, but with consent. The existing uses on the site include:

Golf driving range (including golf retail shop)	83 000sqm	56% of site
Mashie golf course	34 000	23%
Parking	16 000	11%
Ancillary open space (including roads)	12 000	8%
Conference facility/events & banqueting/restaurant	2 800	2%
Cycling retail shop	350	0.2%
Chiropractor	250	0.1%

⁶⁰ Planning Partners, p1.

⁶¹ Ibid. pp4-23.





Figure 23. The River Club site as at present: The “existing rights” or “no-go” alternative.

9.3.2 The Riverine Corridor Alternative, the Preferred Alternative

This alternative, the preferred alternative, proposes approximately 150 000m² of floor space be developed, including retail, office, residential (including inclusionary housing), hotel and community uses.

All developed areas of the site (including roadways) are to be raised above the 100-year flood level of approximately 6m above MSL (2-3m above the existing ground levels); and the proposal includes restoring the Liesbeek River with a wide (with a minimum width of 40m) riverine corridor along the route of the existing canal on the eastern boundary of the site, while the old Liesbeek River channel on the western edge of the site will be largely in-filled and landscaped with a vegetated stormwater swale with an ‘ecological corridor’/open space crossing the site and connecting the



rehabilitated riverine corridor and the storm water swale. The restored Liesbeek riverine corridor will include pedestrian and cycle paths, viewing and seating areas where the public can enjoy the amenity of the rehabilitated water course; and the Raapenberg Wetland and Bird Sanctuary and the well-treed Royal Observatory site across the river will become visible as a result of the riverine corridor upgrade.⁶²

This Preferred Alternative includes 41% of the site as 'soft open space', 5% of hard open space (including roads and sidewalks), with the built-form arranged into two precincts separated by a large open wetland/parkland (approximately 75m x 220m) and bounded by extensive landscaped river corridors and areas of landscaped open space. Both precincts are intended to be mixed use; but the overall distribution of uses needs to be flexible enough to respond to the market demand at the time of development. Sustainable design principles will be incorporated where possible, including renewable energy generation, grey water harvesting, energy efficiency etc.

The floor space summary for this alternative is as follows:

Retail (including restaurants, etc)	30 000sqm
Office	60 000
Residential (including subsidised inclusionary housing)	30 000
Hotel	8 000
Ancillary (including gym/conference facility, etc)	<u>22 000</u>
	150 000sqm

The architectural concept, which has been amended in several substantial ways since last circulated for public comment (24 March-26 April 2019), articulates the urban design intentions or indicators is as follows:

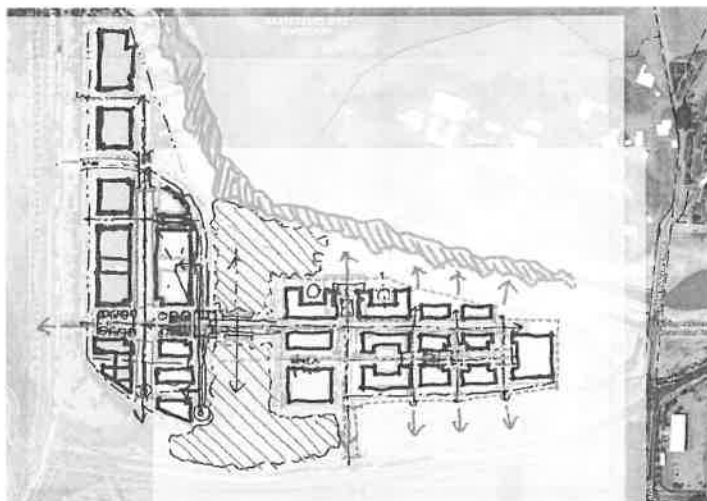


Illustration 24. The architectural concept (Vivid Architects)

⁶² Ibid. p26.

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The key characteristics of this, the Preferred Alternative, include the following:

- Construction of a substantial section of the Berkley Road Extension to the north of the site by the developer providing access onto the site and a key component of the wider transportation network;
- access to the site across the old pre-1952 Liesbeek river-course (now stormwater channel) via a bridge from Liesbeek Parkway;
- an orthogonal urban form and road network echoing the nearby developed urban form;
- medium/high-rise retail, hotel and residential buildings (approximately 4-9 storeys) located in the southern portion of the development (Precinct 1);
- medium-rise office/residential buildings (approximately 6-10 storeys) located along the Berkley Road extension in the northern portion of the site (Precinct 2);
- approximately 150 000m² of floor space;
- approximately 140 inclusionary housing units;
- parking accommodated in basement structures underneath the developed portions of the site (one level below Precinct 1 and two below Precinct 2);
- restoring of the existing Liesbeek River canal into a rehabilitated riverine corridor;
- in-filling of the old Liesbeek channel and remodelling of this channel into a vegetated stormwater swale;
- a central park of approximately 75m x 220m, that functions as a public space as well as an east-west ecological corridor across the development;
- non-motorised transport to include pedestrian paths and running and cycling tracks throughout the development; and
- facilities for future MyCiTi bus and taxi services.⁶³

⁶³ Ibid. pp28-29.



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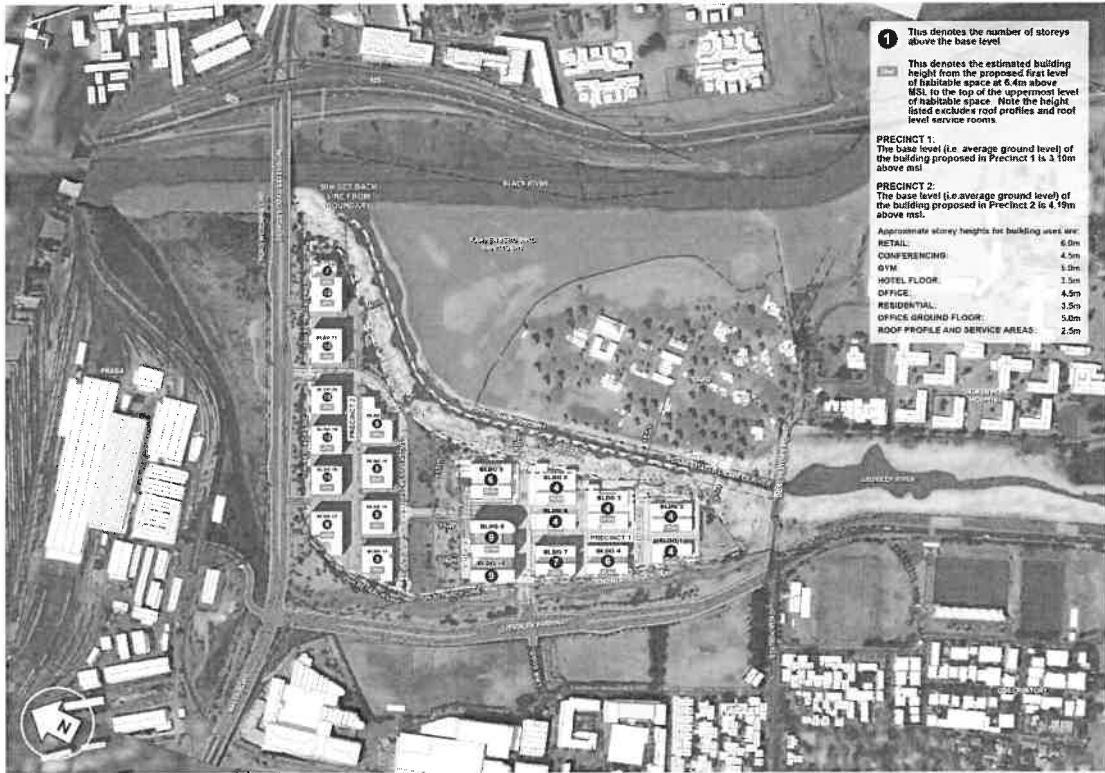


Figure 25. The preferred Riverine Corridor Alternative showing the two precincts and the restored riverine corridor (Vivid Architects)



Figure 8. The preferred Riverine Corridor Alternative from the south (Vivid Architects).

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Figure 27. The preferred Riverine Corridor Alternative from the north-east (Vivid Architects)

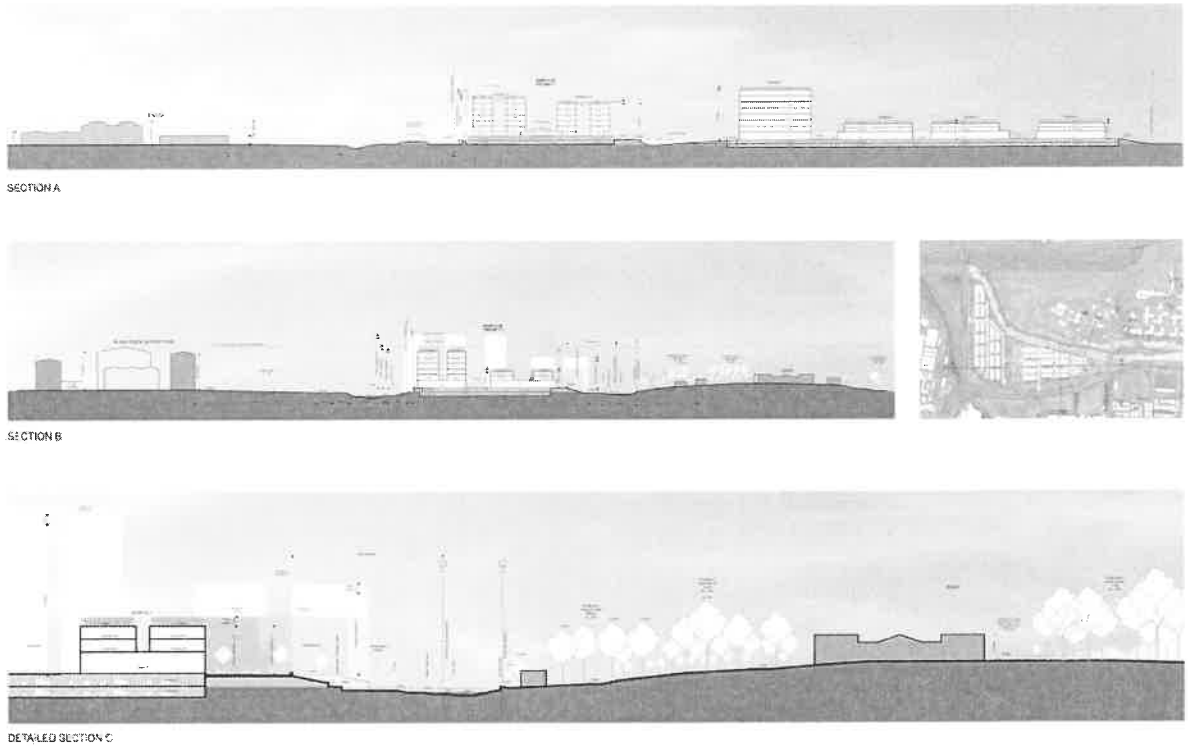


Figure 28. Sections through the intended development and associated topography (Vivid Architects)



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Illustration 29: View of the proposed development across the restored Liesbeek from the SAAO with Devil's Peak in the background (Vivid Architects)

The main implications of the Preferred Alternative are:

- with a projected annual return of 9.01% (pre-tax), the project is considered to be financially viable;
- approximately 80 000m² (± 55%) of the site will be raised above the 100-year flood elevation to approximately 6m above MSL in order to accommodate development;
- a catalytic, mixed use development will be implemented at the western gateway into TRUP;
- densification and diversification of residential stock will occur in line with the City of Cape Town's Densification Policy
- inclusionary housing will be provided (140 units) satisfying an important social need;
- supply of retail and office space in this location will satisfy proven market demand;
- the development will assist to cross subsidize the Berkley Road extension, which has been identified by the City's Transport and Urban Development Authority's (TDA) as a key road network intervention;
- intense urban development will occur within a 500m radius from higher order public transport stations (Observatory and Koeberg train stations) in line with the City's Transit Oriented Development Strategy;
- the existing canalized Liesbeek River course will be restored and rehabilitated allowing for a continuation of the lower Liesbeek River as a visually congruent



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and publicly accessible riverine corridor with resulting ecological and social benefits;

- the long diverted course of the pre-1952 Liesbeek River-course to the west of the site will be converted into a landscaped storm water swale;
- an ecological corridor/parkland area will extend through the site in an east-west direction allowing for faunal movement and recreational activities; and
- the development will yield a substantial income for the Municipality in terms of rates to assist with service delivery in areas of need elsewhere in the city.⁶⁴

9.3.3 Alternative 2: The Island Concept Alternative:

This alternative, the Island Concept Alternative, has an architectural arrangement that is similar in scale and arrangement to that of the preferred Riverine Corridor Alternative, but proposes the upgrading and attempted reestablishment of the old pre-1952 Liesbeek River course on the western boundary of the site along Liesbeek Parkway and the retention of the current Liesbeek canal. In other words, the current watercourses adjacent to the site will remain, by and large, unchanged. This Alternative is proposed to have relatively similar massing and volumes, though shifted slightly closer to the extant canalized River, and similar architecture, and vehicular and pedestrian movement systems as are proposed in the Preferred Riverine Corridor Alternative (though the vehicular way through the site is shown here as circulated in previous versions of the Alternatives Report and the HIA).

The key characteristics of this, the Island Concept Alternative, include the following:

- All of the key characteristics in respect of the funding and construction of the Berkley Road Extension, the vehicular access, parking, built form and accommodation, and the central park outlined in the Preferred Riverine Corridor Alternative are similar; however,
- the existing Liesbeek canal carrying all of its water remains but now with an approximate 15m wide ecological buffer;
- the earlier pre-1952 Liesbeek River course is retained and its rehabilitation is attempted with an approximate 25m buffer;
- non-motorised transport including pedestrian paths and running and cycling tracks throughout the development are provided but with rather less amenity and connection between the River Club site and the Liesbeek itself.⁶⁵

⁶⁴ Ibid. p36.

⁶⁵ Ibid. p38.



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Figure 30. The Island Concept Alternative showing the two precincts, the retained canalized River, and the unrehabilitated earlier River course (Vivid Architects)

The implications of this Alternative are:

- All of the implications in respect of the financial viability, rates income, the improvements to the transportation network, the City's strategies in respect of transport, densification, provision of inclusionary housing, built form, etc remain as for the Preferred Riverine Corridor Alternative; however
- at present, the Liesbeek River and its associated riverine corridor, is disrupted by this hard concrete edged canal and the legibility and functionality of the river is compromised, and not choosing the Riverine Corridor Alternative would forego the potential benefits of restoring/rehabilitating the canal into a riverine corridor which would have negative implications for environmental sustainability, heritage significance and public amenity; and
- the earlier pre-1952 course of the Liesbeek River cannot be convincingly rehabilitated and will remain without true identity in the wider context ensuring the island-appearance of the River Club site and its development in the landscape.⁶⁶

66 Ibid. pp41-42.



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9.3.4 Alternatives 3 and 4: The Mixed-Use Affordable Alternative and the Reduced Floor Space Alternative:

As pointed out earlier, neither of these alternatives are economically feasible and are, therefore, not acceptable as alternatives under NEMA. As a consequence, we are not describing them in any detail here; but they can be seen in Planning Partners' report, *The River Club: Development Alternatives*, dated June 2019.

The Mixed-Use Affordable Alternative assumes that a large part of Precinct 1 is directed at the affordable and inclusionary housing market, with Precinct 2 accommodating a mix of office, retail and residential use. The total floor area presumed is approximately 110 000sqm.

The Reduced Floor Space Alternative includes less intense development of the site with a mix of uses of roughly the same ratio of uses as in the preferred alternative but with the floor space reduced to approximately 102 000 m² and the provision of larger areas of green open space.

In addition to being economically unfeasible, these alternatives do not enable the improvements to the Liesbeek River generated by the preferred alternative and nor can they fund the Berkley Road Extension in the way necessary.⁶⁷

NEMA requires that alternatives must be "reasonable" and "feasible". Given that alternatives 3 and 4 are not financially viable to the proponent, these alternatives will be screened out when the alternatives are assessed in the Basic Assessment Report.

Alternatives 1 and 2 are considered the most feasible alternatives and these will be assessed during the Basic Assessment process in terms of NEMA. Alternative 1 is ultimately the preferred alternative because it is believed that it provides an appropriate and sustainable balance between environmental needs, heritage needs and optimal urban development.

9.4 Commentary of IAPs on the Development Proposal:

We note that although most commentators articulated strongly objecting views to the scale of the proposed development, the feasibility of the project does not enable flexibility in this regard and, as a consequence, the owner has argued that it is not possible to satisfy such objections and realise the development with its several public goods, not least the restored Liesbeek and the Berkley Road connection.

Indeed, almost all of the commentators argue that the scale of the development is simply too great; and they argue, for example, that they do not "oppose smart and sensitive development of the area, but... far from convinced that the concerns

⁶⁷ Ibid. pp35-40.

raised... are properly addressed” and that the development proposes “dense and high buildings in the area, in close proximity to the SAAO”.⁶⁸ We note, however, that most commentators recognise or imply a recognition that the site could or even should be developed, but they do not like the scale proposed.

On the other hand, some commentators argue that no development is acceptable: RAMPAC argued that “there is [in the *Draft HIA*] a lack of appreciation of the importance of the topographical landscape as a fundamental heritage informant in determining the appropriateness of development on the site”,⁶⁹ that “the preferred Alternative concept constitutes a hugely negative visual imposition on the topographic landscape of the riverine corridor”⁷⁰ and, more recently, that “to place any development (particularly that of the mass and height contemplated) in the ‘throat’ of the valley (floodplain) would be wrong and an injustice to good environmental, heritage and urban planning decision-making”.⁷¹

Most commentators are critical of the scale (especially the heights) of the proposed development; and they have been critical of the HIA because, they argue, inadequate guidance (through ‘design indicators’) is given in respect of scale. However, the primary heritage significances here are associational rather than visual: whether development is two, three, four or more storeys high is not a ‘heritage-issue’. We do argue, however, that the scale of the development, especially along the Liesbeek River opposite the Observatory, should not be such that it overwhelms the riverine corridor and the important Observatory ridge and SAAO campus across the river.

It is accepted that the heights of some of the components of the design presented in the *Draft Prepared for Interested Party Consultation* were not clearly presented in the illustrations; and it appears that some commentators have mis-construed the Urban Design Framework to be the proposed development. Accordingly, the architect’s drawings in this, the second *Draft for Public Comment HIA*, now show very a clear height of each ‘envelope’ and heights being applied for are described in storeys (the potential storey-heights in metres, relying on the heights required for different uses, are also given).

Second, as a consequence of the commentary, the development team has looked carefully at envelopes proposed and have amended some of these, in particular those in the southern precinct and along the riverine corridor; and some have been set back further than shown previously. The amended drawings included in this Final HIA show the proposed southern precinct to be significantly lower than the parallel Black River Park office development and set well back from the Liesbeek River enabling a more persuasive relationship between elements in the landscape. The

⁶⁸ SAAO, 2 May 2019, p3.
⁶⁹ RAMPAC, 6/3/2018, p1.
⁷⁰ Ibid. p2.
⁷¹ RAMPAC, 2 May 2019, p2.



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northern precinct along the proposed Berkley Road Extension is higher and bulkier⁷² but is some distance from the Liesbeek River and from the Observatory spur.

The amended proposal now more clearly advances the restoration of the riverine corridor, re-establishing the Liesbeek River as a viable ecologically functioning and historically meaningful component of the environment, establishes a locus for the memorialisation of the historical events played out in these environs at the beginnings of the colonial era, enables the realisation of these public goods, and contributes to the organic growth of the city.

Also, we note that the artificial raising of the apparent ground level of parts of the site will make those parts consistent with the level of the Berkley Road Extension, establishing a new if altered 'natural-looking' ground level. It must be noted too that this raising of ground level will not require the volumes of fill that some parties fear (with thousands of truckloads fill damaging and dirtying the roads) as the greater part of the raised volume will be occupied by basement parking.

We note also that when questioned directly by the chair of the MEC's Tribunal at a hearing in November 2018, some of the representatives of the First Peoples groups were ambivalent about development of the site, while others were clear that they thought that no development should take place. However, in the most recent advertising for comment the Goringhaicona have responded rather more angrily, saying:

"This HIA has proposed a memorial site for the Khoi history. This is contradicted by the fact that the river coursing round the site will be an artificially created one, to be created by developers. The Goringhaicona rejects fake rivers as a celebratory canvas of our history. This is a deep insult. It is the kind of thinking that is devoid of the understanding of the practice of Khoi ritual or any other first indigenous practice of remembrance. With high buildings next to the site, what a fantastic view it would be for people in their apartments and for those in cars passing by. This is creating more of Disneyland spectacle than a sacred space honouring the dead.

"Our ancestors are not to be commodified into a tourist trap of commercialised observation. The Goringhaicona vehemently objects to this. We once again consider this second edition by the author, similarly determined in our first submission, as a deliberate act of ethnocide."⁷³

We hesitate to address words as angrily phrased: but we must. We are sorry to insult any party; but we must insist that the anger and hurt is not our making and,

⁷² In order to include residential (of which 20% is to be 'inclusionary housing') and educational uses.

⁷³ Goringhaicona, 2 May 2019, p11.

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notwithstanding our sympathies, we are constrained by legal and ethical frameworks other than those underpinning these submissions and we are limited to the assessment of evidence as presented to us.

10 ASSESSMENT OF IMPACTS ON SIGNIFICANCE

We have argued in an earlier section of this report that heritage-related design indicators are or should be the primary criteria for assessment of impacts on significance and, so, we need to briefly outline these criteria here:

First, the Liesbeek River (canalised in 1952) should be restored as an ecologically viable riverine corridor, establishing a meaningful sense of 'river-ness' and recreating an appropriate sense of place for this historically significant topography.

Second, the heights of the built-form on the southern portion of the site fronting or lining the restored riverine corridor should be limited, for the most part, to three-to-four storeys above the new ground level in order to acknowledge and 'respect' the significance and scale of the trees and the SAAO campus across the restored riverine corridor.

Third, the northern-most corner of the site, immediately downstream of the confluence of the Liesbeek and Black Rivers, is or is close to the likely site of a pre-colonial crossing, and, given the necessity for the establishing of a 'crossing-site', however symbolic, we argue that a substantial setback from the river bank should be left to enable a celebration of the river-crossing of the indigenous people; and we suggest that space be left for such realisation in due course.

Fourth, the shape/position of the pre-1952 river course (now much altered and *sans* river-water) should be respected/reflected in detailed design.

Fifth, although we do not regard the built-form of the proposed development in this case to adversely affect the heritage-significances present and we do not suggest heritage-related built-form restrictions (other than the distances and heights described), we do regard the urban design indicators devised by Urban Concepts and discussed above to be pertinent.

Sixth, given the topography and history of the site as a part of the floodplain and the significance of the floral and faunal ecosystems, we regard the advice of the water specialists and engineers regarding the increased ground levels and the extent of land (in establishing the new riverine corridor and the park connecting the new riverine corridor with the old) to be devoted to ecological functions to be both an environmental and a heritage gain.