

**IN THE HIGH COURT OF SOUTH AFRICA  
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No.: 12994 / 2021

In the matter between:

<b>OBSERVATORY CIVIC ASSOCIATION</b>	First Applicant
<b>GORINGHAICONA KHOI KHOIN INDIGENOUS TRADITIONAL COUNCIL</b> and	Second Applicant
<b>TRUSTEES FOR THE TIME BEING OF LIESBEEK LEISURE PROPERTIES TRUST</b>	First Respondent
<b>HERITAGE WESTERN CAPE</b>	Second Respondent
<b>CITY OF CAPE TOWN</b>	Third Respondent
<b>THE DIRECTOR: DEVELOPMENT MANAGEMENT (REGION 1), LOCAL GOVERNMENT, ENVIRONMENTAL AFFAIRS &amp; DEVELOPMENT PLANNING, WESTERN CAPE PROVINCIAL GOVERNMENT</b>	Fourth Respondent
<b>THE MINISTER FOR LOCAL GOVERNMENT, ENVIRONMENTAL AFFAIRS &amp; DEVELOPMENT PLANNING, WESTERN CAPE PROVINCIAL GOVERNMENT</b>	Fifth Respondent
<b>CHAIRPERSON OF THE MUNICIPAL PLANNING TRIBUNAL OF THE CITY OF CAPE TOWN</b>	Sixth Respondent
<b>EXECUTIVE MAYOR, CITY OF CAPE TOWN</b>	Seventh Respondent
<b>WESTERN CAPE FIRST NATIONS COLLECTIVE</b>	Eight Respondent

**AFFIDAVIT**



I, the undersigned



**Lanville Edward Cupido**

*Cupido*

do hereby make oath and say as follows:

1. I am an adult male and am the Paramount Chief of the Hessequa Traditional Authority, with the address of 31 TREUSTREET, Swellendam  
6740
2. As the Paramount Chief, I am mandated to speak on behalf of the Hessequa Traditional Authority.
3. The facts contained in this affidavit are within my personal knowledge, except where the context indicates otherwise, and are to the best of my belief both true and correct.
4. I have read the supporting and replying affidavits of Tauriq Jenkins which he deposed to on 30 July 2021 and 17 September 2021. I confirm the contents thereof in so far as they relate to me, and the position I hold in the Hessequa Traditional Authority.
5. Both the the Hessequa Traditional Authority and I:
  - 5.1. are deeply concerned about the negative impacts and affects that the development of the River Club site by the First Respondent ("the Development") will have on our intangible cultural heritage;
  - 5.2. are opposed to the Development;

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- 5.3. were not consulted by Mr Rudewaann Arendse in connection with the preparation of his reported titled "River Club First Nations Report" dated November 2019 ("the AFMAS Report"); and
- 5.4. are not members the Western Cape First Nations Collective ("the FNC") which is the Eighth Respondent in this matter, and the FNC is not authorised to speak on our behalf, whether in relation to the Development or any other matters.

### **Consultations undertaken by Rudewaann Arendse of AFMAS**

6. I understand that Mr Rudewaann Arendse was commissioned by the Western Cape Provincial Department of Transport and Public Works to prepare a report on:
  - 6.1. the significance of the Two Rivers Urban Park ("TRUP") to First Nations by identifying intangible cultural heritage ("ICH") specific to the TRUP, through Khoi and San oral history, as articulated by indigenous custodians;
  - 6.2. the collective First Nations aspirations for celebrating First Nation ICH at the TRUP; and
  - 6.3. how the indigenous narrative of the First Nation's ICH can be incorporated into the spatial governance of the TRUP, by developing heritage related design informants (as informed by the indigenous narrative).

*Spick*

*MvdH*

7. This report prepared the TRUP First Nations Report ("the TRUP Report") of 25 September 2019. Mr Rudewaan Arendse did not consult the Hessequa Traditional Authority during the preparation of that report.
8. According to his brief in the River Club First Nations Report ("the AFMAS Report"), Mr Rudewaan Arendse was subsequently commissioned by the First Respondent ("the Developer") to:

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

and

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

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

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

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

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

9. I confirm that neither I nor the Hessequa Traditional Authority were notified by Mr Rudewaan Arendse or engaged or consulted with regarding our intangible cultural heritage associated with the River Club site nor how the development will affect my intangible cultural heritage associated with the TRUP. As a result:

9.1. neither I nor the Hessequa Traditional Authority were consulted by Mr Arendse in relation to the AFMAS Report;

9.2. our indigenous narrative was not recorded as part of this process; and

9.3. neither the City nor the Province were able to consider how the River Club development affects my and the Hessequa Traditional Authority's intangible cultural heritage associated with the site and the TRUP.

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

*D. Spick*

*Mudfi*

- 10.1. I understand that in his submission to the Ministerial Appeal Tribunal dealing with the provisional protection of the River Club, under case number 1511 2504 WD 1217E, High Commissioner Jenkins of the Goringhaicona Khoi Khoin Indigenous Traditional Council noted the Hessequa as one of a number of affected Indigenous groups. Mr Arendse had available to him all the documentation from the Tribunal meetings. He should therefore have been aware that we have an interest in protecting Khoi heritage.
- 10.2. The Hessequa Traditional Authority is registered as a Section 21 non-profit company and can be traced through the internet. Mr Arendse should have used this information to communicate with us and arranged for us to participate in the consultation which culminated in his AFMAS Reports.
11. Despite the Hessequa Traditional Authority being cited in the record of the Ministerial Appeal Tribunal proceedings and having accessible contact details as explained above, neither I nor the Hessequa Traditional Authority were consulted by Mr Arendse or the Developer in relation to the proposed development. We do not approve of or support the development by the First Respondent, nor are we represented by the Eighth Respondent (the Western Cape First Nations Collective also known as the "FNC").
12. I received no invitation from the Developer to participate as an Interested and Affected Party (I&AP) in the developer's re-zoning application to the City and the application for Environmental Authorisation to the Province, or any processes in relation to this development, nor did I get any notifications of



any such meetings in relation to these processes. Consequently, not only were results of consultation with myself and the Hessequa Traditional Authority omitted from the AFMAS Report, but our comments and objections in the relation to the applications by the Developer to the City and Province were not taken into consideration and were not before the City or Province when they decided to grant the respective authorisations to the Developer.

### **Cultural and heritage significance of the site and TRUP area**

13. The Hessequa Traditional Authority is very active in preserving Khoi history and culture. For example, we have overseen the inclusion of Khoi history in the Lang Elsie's Kraal heritage site in the Bontebok National Park, situated at Swellendam, and conducted many other heritage activities. Similarly, the TRUP and River Club site are areas to which we associate Khoi history, culture and intangible cultural heritage, and therefore we have an interest in ensuring that Khoi history, culture and intangible cultural heritage associated with the site and TRUP is adequately preserved and celebrated.
  
14. The site at which the River Club development will take place and the larger TRUP, is of significant cultural and heritage significance to the Hessequa Traditional Authority. This is because it was a site where the Khoi would bring their cattle to pasture in pre-colonial times. The Hessequa were known for rearing sheep and cattle in pre-colonial history. The majority of the cattle that were brought to the River Club area would have been cattle reared or descended from the flocks of the Hessequa that had been traded amongst Khoi tribes.

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15. The Hessequa people therefore have a common history with the Peninsula Khoi indigenous groups. The site and the TRUP area is therefore sacred to us as part of this history we share.
16. We understand that conditions were attached to the respective authorisations, which were intended to safeguard our intangible heritage associated with the site. These include a proposed indigenous garden, a cultural and media centre, an amphitheatre, and a "heritage eco-trail". The Developer claims these measures will give expression to, and celebrate, our intangible cultural heritage. In our view, these do not safeguard our intangible heritage associated with the site.
17. Had I or the Hessequa Traditional Authority been meaningfully consulted by Mr. Arendse in respect of the River Club development, we would have contributed important information relevant to the decision-making process (including the information in this affidavit) which should have been made available to the decision-makers (whether by inclusion in the AFMAS Report or otherwise).

LANVILLE EDWARD Cupido  
Lanville Edward Cupido  
ID: 6806115030086  
Cupido  
Wra4

I hereby certify that the deponent has acknowledged that she:

- (a) knows and understands the contents of this affidavit;
- (b) has no objection to taking the oath;
- (c) considers the oath to be binding on her conscience.

Cupido





