

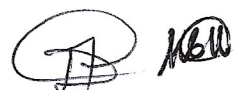
**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No.: 12994 / 2021

In the matter between:

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

AFFIDAVIT



I, the undersigned

Paramount Chief Kenneth Charles Hoffman

do hereby make oath and say as follows:

1. I am an adult male, also known as Paramount Chief Hoffman and am the chair of the Chainaqua Kingdom Council, with address no. 6 Batana Street, Bergsig, Caledon, 7230.
2. I have been appointed by the Chainaqua Kingdom Council to hold this position and to speak on behalf of Chainaqua Kingdom Council.
3. The facts contained in this affidavit are within my personal knowledge, except where the context indicates otherwise, and are to the best of my belief both true and correct.
4. I have read the supporting affidavit of Tauriq Jenkins which he deposed on 30th of July 2021 and confirm the contents thereof in so far as they relate to me, and the position I hold in Chainaqua Kingdom Council and the Chainaqua Kingdom Council.
5. As I explain more fully below, both the Chainaqua Kingdom Council and I:
 - 5.1. are deeply concerned about the negative impacts that the development of the River Club site by the First Respondent ("the Developer") will have on our cultural heritage;

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

Consultations undertaken by Rudewaan Arendse of AFMAS

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



7. This report culminated in the TRUP First Nations Report ("the TRUP Report") of 25 September 2019. Mr Rudewaan Arendse did not consult my Council during the preparation of that report.
8. Mr Rudewaan Arendse was subsequently commissioned by the First Respondent ("the Developer") to prepare an assessment of the impacts of the Development on intangible cultural heritage which culminated in the River Club First Nations Report ("the AFMAS Report").
9. I confirm that neither myself nor my Council were notified by Mr Rudewaan Arendse of his assessment of the impacts on intangible cultural heritage of the development at the River Club site, which assessment culminated in the AFMAS Report, and consequently neither myself nor my Council were consulted by Mr Arendse in relation to the AFMAS Report.
10. The Developer and/or Mr Arendse / AFMAS were well aware that both myself and my Council wished our view in relation to the Development and its potential negative impacts on the environment and on our cultural heritage, to be taken into consideration by the authorities responsible for deciding whether or not to authorise the Development. My reasons for saying this appear below.
 - 10.1. I represented the Chainaqua Kingdom Council as an interested and affected party ("I&AP") during the provisional protection appeal proceedings, under case number 1511 2504 WD 1217E in which the Developer as an appellant, and Mr Arendse participated. My name appears on the list of I&APs as is evident in the record.

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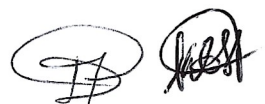
- 10.2. My group has contact details which are easily traceable. AFMAS and Mr Arendse should have used this information to communicate with us and arranged for us to participate in the consultation which culminated in his AFMAS Report.
11. Despite attending the Provisional Protection Tribunal meetings in 2018 and being recorded as having attended in the register I received no invitation to participate as an 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.
12. I confirm that neither the Chainaqua Kingdom Council nor myself approve of or support the development by the First Respondent, nor are we represented by the Eight Respondent (the Western Cape First Nations Collective also known as the "FNC").

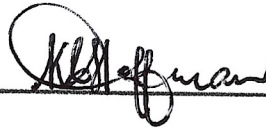
Cultural and heritage significance of the site and TRUP area

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

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- 13.1. Significant wars were fought here, including in 1659 which was the first Khoi – Dutch Frontier War. In 1657, land here was taken from our people by Dutch colonial authorities.
- 13.2. It is a well known place for Inau ceremonial practices for our people, and prayers where these still take place there today.
- 13.3. The phenomena of the sun setting on Lions Head during the equinox takes place from the confluence area. This is sacred importance to us.
14. This development and related processes are an insult to our dignity as San and Khoi people. It is destroying our memory both spiritually and culturally.
15. We do not regard any of the conditions to the respective authorisations to be sufficient for purposes of safeguarding our intangible heritage associated with the site. In our view, the aspects of the Development which the Developer claims will give expression to, and celebrate, our intangible cultural heritage (i.e. the proposed indigenous gardens, cultural and media centre, amphitheatre, and "heritage eco-trail") do no such thing.
16. Had I or my Council been meaningfully consulted by Mr Arendse in respect of the River Club development, we would have contributed important information relevant to the decision-making process (including the information in this affidavit) which should have been made available to the decision-makers (whether by inclusion in the AFMAS Report or otherwise).



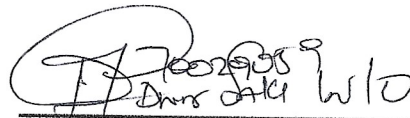


KENNETH CHARLES HOFFMAN

I hereby certify that the deponent has acknowledged that he:

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

Thus signed and sworn to before me, at **Rondebosch** on **31st of May 2022**.



COMMISSIONER OF OATHS

NAME: **DILIGENCE N. N SAKI**

CAPACITY: **WARRANT OFFICER**

ADDRESS: **RONDEBOSCH SAPS**

CHURCH STREET

AREA: **RONDEBOSCH**

