

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

Case No.: 12994 / 2021

In the matter between:

OBSERVATORY CIVIC ASSOCIATION First Applicant

**GORINGHAICONA KHOI KHOIN
INDIGENOUS TRADITIONAL COUNCIL** Second Applicant

and

**TRUSTEES FOR THE TIME BEING OF
LIESBEEK LEISURE PROPERTIES TRUST** First Respondent

HERITAGE WESTERN CAPE Second Respondent

CITY OF CAPE TOWN Third Respondent

**THE DIRECTOR: DEVELOPMENT MANAGEMENT
(REGION 1), LOCAL GOVERNMENT, ENVIRONMENTAL
AFFAIRS & DEVELOPMENT PLANNING, WESTERN
CAPE PROVINCIAL GOVERNMENT** Fourth Respondent

**THE MINISTER FOR LOCAL GOVERNMENT,
ENVIRONMENTAL AFFAIRS & DEVELOPMENT
PLANNING, WESTERN CAPE PROVINCIAL GOVERNMENT** Fifth Respondent

**CHAIRPERSON OF THE MUNICIPAL PLANNING
TRIBUNAL OF THE CITY OF CAPE TOWN** Sixth Respondent

EXECUTIVE MAYOR, CITY OF CAPE TOWN Seventh Respondent

WESTERN CAPE FIRST NATIONS COLLECTIVE Eight Respondent

CONFIRMATORY AFFIDAVIT



I, the undersigned

Paramount Chief Shedrick Kleinschmidt (Sedas)

do hereby make oath and say as follows:

1. I am an adult male, also known as Paramount Chief Sedas of the Hawequa IXam and am the National Chair of the National House of IXam Bushmen Nation. There are 11 IXam Bushmen Tribes of the IXam Nation. They are Komani-San, Khwe Bushmen, //Xegwi/ IXam, Guriqua, Hawequa, IXau-Sakwa, Sonqua-IXam, Karoo-IXam, Kalahari-IXam, IXun and Ubiqua.
2. I have been elected and appointed by the National House of IXam Bushmen Nation to hold this position and to speak on behalf of the San Bushmen IXam Nations.
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 to on 30th of July, 2021 and confirm the contents thereof in so far as they relate to me, and the position I hold in the Hawequa and the National House of IXam Bushmen Nation.
5. As I explain more fully below, both the National House of IXam Bushmen Nation 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;

- 5.2. are opposed to the Development;
- 5.3. were not consulted by Mr Rudewaan 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 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 House 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 House 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 House 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 House 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. My Nations' House is very well known nationally, has contact details which are easily traceable. AFMAS and Mr Arendse should have used this information to communicate with us and arranged for us to participate in the consultation which culminated in his AFMAS Report.
11. I confirm that neither the National House of IXam Bushmen Nation nor myself approve of or support the development by the First Respondent, nor are we represented by the Eighth Respondent (the Western Cape First Nations Collective also known as the "FNC").



Cultural and heritage significance of the site and TRUP area

12. The site at which the River Club development will take place and the larger TRUP, is of significant cultural and heritage significance to my House. 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:

12.1 Before and during the early arrival of the colonialists, it was a gathering and living space for the First Peoples and animals. It was a ceremonial place. It was the start and finishing point of spiritual journeys and ceremonies to and from the mountains and the caves of the Cape. The area was filled with herbs and food for people and animals alike. Very important was the available fresh water. The plants were medicinally rich and used by the Bushmen. Some materials growing there were used to build temporary huts from time to time. Inau ceremonies were practiced here. In 1657 land on both sides of the Liesbeek River was taken and given to the Freeburghers by the Dutch East India Company because the area was behind the mountain and was more protected from the wind, had fresh water, and the grazing space was identified to be re-used for farming. This resulted in many clashes between the Dutch and indigenous people. The indigenous people were chased away and Jan Van Riebeeck who 'owned' what is today land that includes the River Club brought in a military component to protect the stolen property to keep out the indigenous people of the area. Jan Van Riebeeck put up from this place the first fence that alienated our people from their place of belonging. Although we won the Battle of 1510 against the Portuguese which was fought in the TRUP, we to this day are still fighting the



war that started on that site in 1659, where we were totally dispossessed. This is the impact that forced our people to seek refuge in the mountains, that forced our people to be enslaved, the impact that forced our people to run to the Kalahari. Losing ceremonial sites broke our people's spirituality. Every time we lose a sacred site we lose humanity, our values, our family structure. The spirituality of our people is the most important thing in our communities. It keeps our communities together, and our families together, our nation together. Because our people were in disarray, and were fragmented due of loss of spiritual sites, we became more vulnerable to attack and genocide followed.

12.2 It was a historical place of the IXam.

12.3 The confluence of the rivers is a sacred ceremonial place. The water and rivers carry messages of people and animals. Each river carries with it the experience and the wisdom of the places they run through. At the confluence these messages would meet, as would people, and here rites would be practiced, and weddings would take place. It was a real and true meeting point of spirituality and ceremonial communities.

12.4 Because of the filling in of the River, the place for the healing of our people is lost. The opportunity for regaining spirituality, and for communities to rebuild our sense of being, our sense of who we are, is now being destroyed. The cycle of violence and separation which started in 1652 is repeating itself. We are afraid that this destruction limits our opportunity to heal and to be together again.

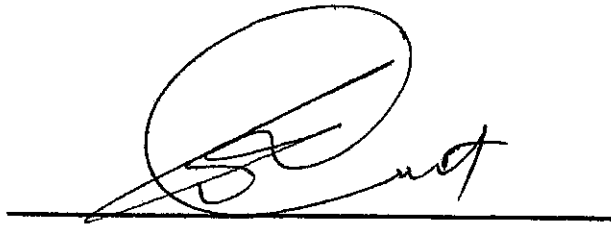


12.5 The mountain, the water, the moon, and the wind must be in harmony with one another for a spiritual site. The high density buildings and the concrete disturb and create a disconnection and kills the spirituality that makes it a sacred site. There will be no seasons in such a landscape.

12.6 We have fixed ceremonial times, according to the weather, however, this development is destructive to the climate. This means that it disturbs the consistency of seasons as we have known them for ages, and breaks the spirituality and connection to the place.

13. 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.
14. Had I or my House 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).

A handwritten signature in black ink, consisting of a large, stylized 'S' or 'F' shape with a loop at the bottom, enclosed within a large, irregular oval.

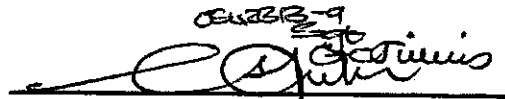


Shedrick Kleinschmidt

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 **Paarl** on **19th May 2022**.



COMMISSIONER OF OATHS

NAME: *Cx Julius*

CAPACITY: *Sergeant.*

ADDRESS: *Paarl SAPS, Bergriver Blvd.*

AREA: *Paarl.*

