

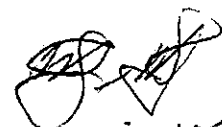
**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

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, Chief ||Autshumao Francisco MacKenzie

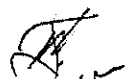
do hereby make oath and say as follows:

1. I am an adult male also known as Chief Mackie and am the designated Chair of the Western Cape Legislative Khoi/San Council.
2. I have been elected by the organisation to hold this position and to speak on behalf of the Western Cape Legislative Khoi/San Council (WCLKSC).
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 July 30th 2021 and confirm the contents thereof in so far as they relate to me, and the position I hold in the WCLKSC.
5. As I explain more fully below, both the WCLKSC and I:
 - 5.1. are deeply concerned about the negative impacts that the development of the River Club site by the First Respondent ("the Development") 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 report 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 the WCLKSC during the preparation of that report. 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").
8. I confirm that neither myself nor the WCLKSC 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 the WCLKSC were consulted by Mr Arendse in relation to the AFMAS Report.

9. The Developer and/or Mr Arendse / AFMAS were well aware that both myself and the WCLKSC 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.

- 9.1. I represented the WCLKSC 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 from the list of I&APs as is evident in the record.

- 9.2. 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.

10. I confirm that neither the WCLKSC 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

11. The site at which the River Club development will take place and the larger TRUP, is of significant cultural and heritage significance to the WCLKSC.



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:

- 11.1. The Battle of 1510 took place in the TRUP. That battle clearly shows that our ancestors were not in support of land dispossession at all. Land was taken here in 1657 with the establishment of the Freeburgher farms by the Dutch East India Company. It is the site of the First Frontier Wars in 1659. It is where the concept of 'trespassing' came to pass where our people were no longer welcome on their own land, treated as strangers, and were eventually massacred and exiled, and forced into indentured labour. These wars clearly show that our ancestors were not in support of land dispossession at all. It is the site that holds the agony of genocide.
- 11.2. For many years, I would go to conduct sacred spiritual ceremonies on the River Club site. I conducted sacred cleansing water ceremonies, including praying, and chanting and the burning of sacred herbs for the restoration of the land and the rivers, as well as the acknowledgement of our ancestors who fought and died for our freedom and for the land. However, six years ago I was disrespectfully forbidden to enter the site and told that I could not go there. I have also recently been to the entrance of site numerous times and was told that it is private property, and I am not allowed on site.
- 11.3. Rivers signify life and fertility of the land. These rivers, the Black and the Liesbeek are very sacred to us. The confluence signifies the link between water and land. It is the sacred link between us and the ani-



...imals because we both share the water for sustenance and life. This confluence is a place that holds the memory of the very traumatic events that took place for the protection of the land which is a sacred site. This place holds hope for restoration and healing to replace the trauma and the agony. We can identify this place as the start of the loss of self of the First People.

11.4. It is unambiguously received as the erasure of our memory of what we hold most dear and sacred. It is an intentional, violent and vicious assault on who we are intrinsically. Especially when the developer, the City and Provincial government ignored our supplication not to destroy the river or the floodplain.


11.5. How the high buildings and construction affects sense of place and memories / culture associated with the place and TRUP: This is a lewd commercialisation of our sacred heritage. Nature replaced by concrete of this magnitude is a spiritual crime and blasphemy.

12. 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.

13. Had I or the WCLKSC 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 informa-



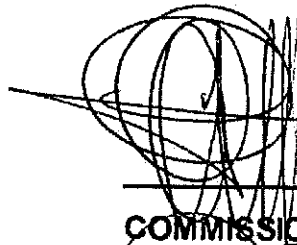
tion in this affidavit) which should have been made available to the decision-makers (whether by inclusion in the AFMAS Report or otherwise).

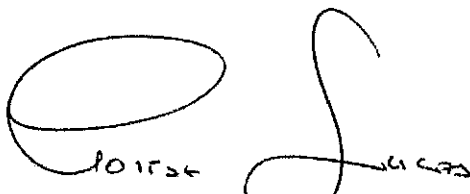

Francisco MacKenzie

I hereby certify that the deponent has acknowledged that he:


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

Thus signed and sworn to before me, at **Mowbray** on **18th May 2022**.

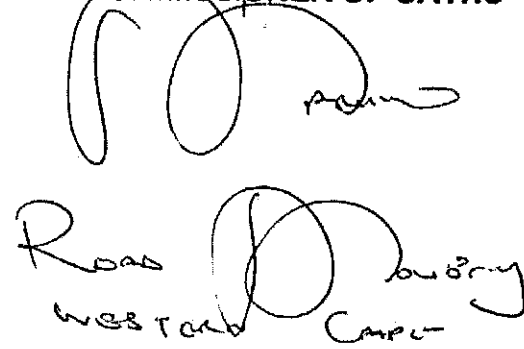

70034471
Commissioner of Oaths
Francis Manku
COMMISSIONER OF OATHS

NAME: 

CAPACITY: 

ADDRESS: 32 

AREA: EAST TOWN


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WEST TOWN CAMP

SOUTH AFRICAN POLICE SERVICE
COMMUNITY SERVICE CENTRE
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MOWBRAY
SUID-AFRIKAANSE POLISIEDIENS