

**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

AFFIDAVIT

I, the undersigned

Daniel George David Bolton

do hereby make oath and say as follows:

1. I am an adult male, also known as Chief Danny in the position of Chief Administrative Officer of the Cochoqua Royal House Traditional Authority which is seated in the area of Mamre, Western Cape Province 19 Groenekloof Street Mamre 7347. The Cochoqua Royal House is a traditional Khoi-Khoisan authority in terms of the Traditional and Khoisan Leadership Act no 3 of 2019 and Chapter 12 of the South African Constitution relating to Traditional Affairs.
2. I have been mandated the sole legitimate spokesperson for the Cochoqua Royal House Mamre on matters regarding the Two Rivers development. I was duly appointed as Chief Admin Officer of the Cochoqua Royal House by its Paramount Chief David Johannes with effect 1 January 2016 as spokesperson on all juristic matters pertaining to Khoisan administration both locally and nationally. My status as Chief Admin Officer was confirmed in the Royal House minutes dated 23 January 2016.
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 and confirm the contents



thereof in so far as they relate to me and the Cochoqua Royal House Mamre, and the position I hold in the Cochoqua Royal House Mamre.

5. As I explain more fully below, both the Cochoqua Royal House Mamre and I:
 - 5.1. as an interested and affected party, lodged in 2018 its comments with respect to the Draft Phase 1 heritage Impact Assessment for the Site "Two Rivers". In this regard we wish to place on record that we objected to the proposed River club development;
 - 5.2. as an interested and affected party was not listed as such by the City of Cape Town when it advertised the Rezoning LUMS application in 2018;
 - 5.3. as an interested and affected party submitted in October 2019 its comment on the Two Rivers Local Spatial Development Framework but was not consulted by Mr Rudewaan Arendse on the matter;
 - 5.4. as an interested and effected party received notification to attend the Municipal Planning Tribunal in 2020 but was not invited to make a submission;
 - 5.5. are aware that the site of the proposed development is currently on the tentative list of the Department of Art, Culture and Sport proposed to UNESCO as part of a Liberation and Resistance Route commemorating the Frontier wars and the 1510 battle where the Khoi defeated the Portuguese;

- 5.6. are deeply concerned about the negative impacts that the development of the River Club site ("the proposed development") by the First Respondent ("the Developer") will have on our intangible cultural heritage;
- 5.7. are deeply concerned that the proposed development at the River Club is predominantly commercial office blocks with only a 4% affordable housing commitment, with a development footprint of 210 000 m² on a 15 hectare site, twice the density of Century City, and notwithstanding this that the proposed development is supported by the City of Cape Town and the Western Cape Government (This development will place blocks of between 24m and 47m tall onto the floodplain, on land that is yet to be graded for its heritage significance. Once it is concreted over, there is no recovering lost intangible heritage.);
- 5.8. 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") which was submitted by the Developer in support of the proposed development; and
- 5.9. 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 proposed development and its impacts on our intangible cultural heritage 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 Cochoqua Royal House during the preparation of that report, even though I and the Cochoqua Royal House, as an interested and affected party, participated and submitted comments on the development of the Two Rivers Local Spatial Development Framework by the Western Cape Provincial Department of Transport and Public Works.
8. According to his brief in the River Club First Nations Report ("the AFMAS Report"), Mr Rudewaan Arendse was subsequently commissioned by the Developer to:

“...engage the First Nations (the Khoi and San)², 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.

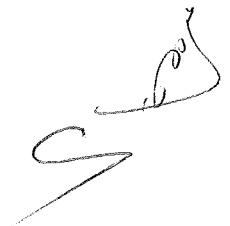
2. Locate the River Club site within the Indigenous narrative of the broader TRUP cultural landscape.

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

Setting the record straight regarding Cultural Organizations

9. Distinction between the membership of the FNC which is the Eighth Respondent in this matter and the Goringhaicona Khoi Khoin Indigenous Traditional Council which is the Second Applicant: The FNC is a group containing Khoisan cultural organizations and Khoisan activists, which, in terms of the Traditional and Khoisan Leadership Act no 3 of 2019, are not



recognized as representing true traditional leadership which are supported by their respective Khoisan communities within a specific geographical area. The FNC favoured the development unilaterally. These “traditional leaders” are:

- 9.1. Chief !Garu Zenzile Khoisan of the Gorinhaiqua Cultural Council;
- 9.2. Chief Hennie of the Gorachoqua Cultural Council;
- 9.3. Chief Johnnie Jansen of the Cochoqua Cultural Council which is **not** linked to the Cochoqua Traditional Authority seated in Mamre; and
- 9.4. Chief Tania Kleinhans-Cedras of the cultural organization titled IRASA which means “Institute for the Restoration of the Aborigines of SA.

9.4.1. Note that Ms Tania Kleinhans-Cedras’s appointment as Cochoqua Chief within the Cochoqua Royal House Mamre was officially withdrawn in 2018 and therefore Ms Tania Kleinhans-Cedras has no mandate to speak on behalf of Paramount Chief David Johannes of the Cochoqua tribe whose royal house is seated in Mamre, Western Cape Province.

10. Only two so-called First Nations leaders and a few Khoi-khoin cultural organizations of the above mentioned “FNC”, unilaterally and without a mandate from the wider Khoi-khoin tribal chiefs listed hereunder, supported the proposed development. The Developer has interacted with a small minority and grouping of “FNC” leaders who have not been mandated by the majority

of authentic tribal Traditional Authorities/Councils in the Western Cape listed hereunder.

11. The Constitution of SA, Act 108 of 1996, Chapter 12, obligates Provincial and Local Governments to take cognisance of the roles of Traditional Leaders and the role which all spheres of Government must play in alignment to the amended Municipal Systems Act (Act of 2000, as amended in 2011).
12. The Traditional and Khoisan Leadership Act no 3 of 2019 compels the three spheres of government to involve acknowledged traditional leaders and constituted traditional authorities in decision making processes regarding service delivery, and economic development and land matters.
13. According to my knowledge only two (2) provinces, namely the Western Cape Provincial Government and Northern Cape Provincial Government have not yet complied with the provisions as provided for in the Traditional and Khoisan Leadership Act no 3 of 2019, such provisions being the recognition of traditional leaders, institution, status and role of traditional leadership according to customary law as directed in Chapter 12 of the Constitution of the Republic of South Africa. Chapter 12 Section 211 (3) directs that *"The courts must apply customary law when that law is applicable, subject to the Constitution and any legislation that specifically deals with customary law"*.
14. The following Traditional Authorities are recognized Tribal leadership structures and are opposed to the Two Rivers Development in its current form:



- 14.1. the Goringhaicona Khoi Khoin Indigenous Traditional Council which is an established traditional authority. It is not a community or cultural organization but is recognised under the Traditional and Khoisan Leadership Act no 3 of 2019;
 - 14.2. the Cochoqua Royal House Traditional Authority Mamre: Paramount Chief David Johannes;
 - 14.3. the Nama Traditional Authority: Paramount Chief Martinus Fredericks;
 - 14.4. the San/Xam Traditional Authority: Chief Cedas Kleinsmith;
 - 14.5. the Hessequa Traditional Authority: Chief Lanville Cupido;
 - 14.6. the Gainoqua Traditional Authority: Paramount Chief Kenneth Hoffman;
 - 14.7. the Kei Korana Transfrontier Traditional Authority: Khoebaha Melvin Arendse.
15. I confirm that I was notified by Mr Rudewaan Arendse on 4 July 2019, by way of email, of an impending participation regarding the River Club and that that he intends engaging First Nations groups regarding their intangible cultural heritage associated with the River Club site. I was not familiar with the abbreviation AFMAS and asked him to explain. He indicated that "*AFMAS was just a name we made up for the company*". I found his explanation rather concerning because I was not sure of his impartiality in the TRUP matter. I attach the email as Appendix A.

16. I can confirm that after that notification, Mr Rudewaan Arendse did not engage me further regarding our intangible cultural heritage associated with the River Club site or how the development will affect my intangible cultural heritage associated with the TRUP, and consequently neither myself nor the Cochoqua Royal House Mamre were consulted by Mr Arendse in relation to the AFMAS Report.
17. I confirm that I made it known to Mr Arendse on 4 July 2019 that both I and my Cochoqua Royal House Mamre want to participate in this process; however, we were not thereafter consulted by Mr Arendse in relation to the AFMAS Report.
18. The Developer and Mr Arendse were well aware that both I and the Cochoqua Royal House Mamre wished our view in relation to the proposed 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 proposed development. My reasons for saying this appear below.
- 18.1. I represented the Cochoqua Royal House Mamre 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.
- 18.2. My group has an email address and contact number which are easily traceable. As explained above, Mr Arendse did, in fact, contact me on

the 4th July 2019 so he did have my contact details. He should have used this information to communicate with us and arrange for us to participate in the consultation which culminated in his AFMAS Report.

19. Consequently, I can confirm that neither I nor the Cochoqua Royal House Mamre were consulted by Mr Arendse regarding the proposed development nor how the proposed development will impact on our intangible cultural heritage. We also do not approve of or support the proposed development by of the Developer, nor are we represented by the FNC.

Cultural and heritage significance of the site and TRUP area

20. The site at which the River Club development will take place and the larger TRUP, has cultural and heritage significance to my traditional authority which is the Cochoqua Royal House Mamre. The site and the TRUP area are sacred to us, and a significant part of our intangible cultural heritage is associated with the site and the TRUP, for the following reasons.

20.1. Indigenous rituals took place at the site and the TRUP, such as coronations (!Nau's), Cultural/religious/political and ceremonial practices such as traditional wedding ceremonies, took place there and still takes place there today.

20.2. The Cochoqua tribe had a seasonal presence and Kraal in the area of the TRUP where their large numbers of livestock would come to graze and, in this regard, it was envisaged to restore and re-establish the historical location of a Kraal close by to the site.

- 20.3. The confluence of the Black and Liesbeek River is important in the sense that was historically a sacred open space with a very important history to our indigenous Khoi and San peoples; At the equinox the sun sets on Lions Head from that spot. It is also situated next to the SAAO which is a significant place in understanding the universe, a place our indigenous people understood to be significant before colonialism.
- 20.4. The confluence of the Black and Liesbeek River is also important because this is the area where land was stolen for the first time after the arrival of Jan van Riebeeck. This is also the area where the Freeburghers farms were established and fenced off. This is the area where the first forced removal took place followed by genocide
- 20.5. The infilling of the Liesbeek River can be regarded as a “heritage crime” and the development of the Two Rivers has already resulted in a reoccurrence of historical trauma and pain at the sight of excavations and infill of the River.
21. 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.

22. Had I or Paramount David Johannes of the Cochoqua Royal House Mamre 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).



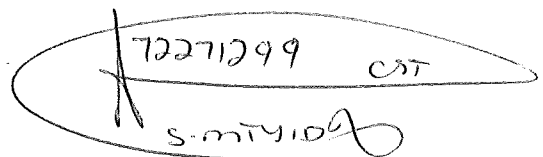
Daniel George David Bolton

I hereby certify that the deponent has acknowledged that he/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.

Thus, signed and sworn to before me, at

on **7 June 2022**



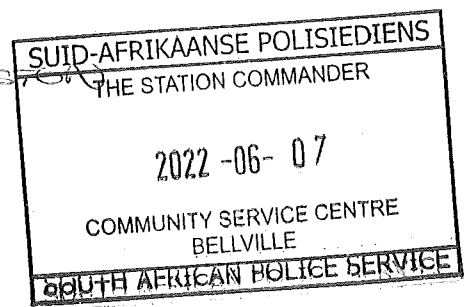
COMMISSIONER OF OATHS

NAME: S. MTSHIDA

CAPACITY: CST

ADDRESS: 08 VOORTREKKER RD BOSTON

AREA: BELLVILLE



dgdbolton@gmail.com

From: Daniel Bolton <dgdbolton@gmail.com>
Sent: Monday, 23 May 2022 00:27
To: dgdbolton@gmail.com
Subject: Invite to TRUP First Nation Workshop

"A"

----- Forwarded message -----

From: < >
Date: 4 Jul 2019 18:50
Subject: Re: Invite to TRUP First Nation Workshop
To: "Rudewaan Arendse" < >
Cc:

Thanks Rudewaan
Sent via my BlackBerry from Vodacom - let your email find you!

From: Rudewaan Arendse < >
Date: Thu, 4 Jul 2019 17:47:08 +0200
To: Daniel Bolton < >
Subject: Re: Invite to TRUP First Nation Workshop

Hi Daniel,

AFMAS is just a name we made up for our company.

Regards,
Rudewaan

On Thu, Jul 4, 2019 at 4:19 PM Daniel Bolton < > wrote:

Dear Rudewaan

Thank you for the invitation received.

Can you please clarify the abbreviation AFMAS?

Regards

Daniel Bolton

