

**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

June Bam

do hereby make oath and say as follows:

1. I am an adult female and a member of the A|Xarra Aboriginal Restorative Justice Forum. From 2018 till the present. I served as the head of the Khoi and San Unit in the Centre for African Studies at the University of Cape Town (UCT) until 2022. I am currently, the Head of Department for the School of African Studies and Linguistics at UCT. The contact details for the A|Xarra Aboriginal Restorative Justice Forum and the Khoi and San Unit are Harry Oppenheimer Building, Upper Campus, UCT, Woolsack Drive, Rondebosch.
2. 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.
3. As a person of indigenous descent and an academic whose research has focused on the history, culture and identity of indigenous peoples in South Africa, I have a keen interest in the protection of heritage resources related to the Khoi and San. I participated in the public participation process as an interested and affected party ("I&AP") during the provisional protection appeal proceedings regarding the River Club development, under case number 1511 2504 WD 1217E.



4. In early 2019, Mr Stephen Townsend, the Heritage consultant for the first respondent approached the A|Xarra Aboriginal Restorative Justice Forum for a meeting to present the development proposals regarding the River Club and his Heritage Impact Assessment (HIA). The meeting took place on the on 25 March 2019, as confirmed in the First Respondent's HIA dated 2 July 2019 on page 54.
5. During the meeting, it was made clear to Mr Townsend that the meeting was an exploratory meeting and did not constitute any form of consultation. Although Mr Townsend in his HIA report lists the meeting under a heading "5.1.1 First and second consultation processes under S.38(8) of the NHRA, 25 January-26 March 2018 and 22 March-2 May 2019", it is incorrect to characterize this meeting as a consultation. We made it clear to Mr Townsend that a proper consultative process should follow.
6. Mr Townsend and the First Respondent should therefore have known that the A|Xarra Aboriginal Restorative Justice Forum should have been consulted on the intangible heritage affected by the development at the River Club.
7. 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 the A|Xarra Aboriginal Restorative Justice Forum.
8. As I explain more fully below, both the A|Xarra Aboriginal Restorative Justice Forum and I:


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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 intangible cultural heritage;

are opposed to the Development;

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

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

9. I understand that Mr Rudewaann Arendse was commissioned by the Western Cape Provincial Department of Transport and Public Works to prepare a report on:

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;

the collective First Nations aspirations for celebrating First Nation ICH at the TRUP; and

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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).

10. This report culminated in the TRUP First Nations Report ("the TRUP Report") of 25 September 2019. Mr Rudewaan Arendse did not consult the A|Xarra Aboriginal Restorative Justice Forum during the preparation of that report as reflected in the Acknowledgements of that report.
11. 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)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)

12. I confirm that neither I nor the A|Xarra Aboriginal Restorative Justice Forum were notified by Mr Rudewaan Arendse or engaged with 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 A|Xarra Aboriginal Restorative Justice Forum were consulted by Mr Arendse in relation to the AFMAS Report.

13. The First Respondent and Mr Arendse were well aware of the existence and interest of the A|Xarra Aboriginal Restorative Justice Forum in the matter; and that our concerns about the Development and its potential negative impacts on the environment and on our cultural heritage had 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.

I represented the A|Xarra Aboriginal Restorative Justice Forum 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

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name appears from the list of I&APs as is evident in the record, at page 50 of the Heritage Appeal Tribunal Final Directive. I was also present at the site visit made by the Tribunal to the River Club on 5th December 2018 and was a participant in the discussions.

Since Mr Townsend sought out the A|Xarra Aboriginal Restorative Justice Forum for a meeting about the River Club development on the 25 March 2019, it is inconceivable that Mr Arendse was not aware of the existence of the A|Xarra Aboriginal Restorative Justice Forum.

The |Xarra Aboriginal Restorative Justice Forum is easily contactable and has a website at <http://www.africanstudies.uct.ac.za/axarra-restorative-justice-forum>. 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.

14. Despite the A|Xarra Aboriginal Restorative Justice Forum participating in the Ministerial Appeal Tribunal proceedings and having accessible contact details as explained above, neither I nor the A|Xarra Aboriginal Restorative Justice Forum were consulted by Mr Arendse or the Developer in relation to the proposed development.
15. 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, our comments


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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

16. The site at which the River Club development will take place and the larger TRUP, is of significant cultural and heritage significance to the A|Xarra Aboriginal Restorative Justice Forum. The site and the TRUP area is a significant part of our intangible cultural heritage is associated with the site and the TRUP, for the following reasons:

Due to the significant matrilineal intangible heritage of the site which I write about in my latest book *Ausi Told Me* (Jacana, 2022) on ecosystems and their significance in African Feminist knowledges on the Cape Flats linked to linguicide and ecocide.

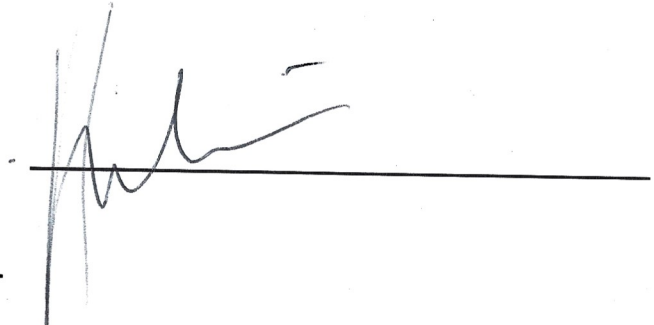
The matrilineal intergenerational knowledge transfer to children took place typically around these wetlands as in the case of Rondevlei and Hardevlei. These are the only landscape traces left for indigenous communities who suffered forced removals.

The opportunities for reconciliation and repair of spiritual damage would be tragically lost at a time of restorative justice through education if the development were to proceed].



17. 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.

18. Had I or the A\Xarra Aboriginal Restorative Justice Forum 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 several loops and a long horizontal stroke, positioned above a solid horizontal line. To the left of the signature, there is a dotted horizontal line.

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.

Thus signed and sworn to before me, at **[Place]** RONDEBOSCH on 06 **[day]** JUNE **[and month]** 2022.



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