

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

Case No.: 12994 / 2021

In the matter between:

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

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**AFFIDAVIT**

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I, the undersigned

**Gertrude Magdalene Nethania FESTER**

do hereby make oath and say as follows:

I am an adult female and am the coordinator of the /Xarra Restorative Justice Forum Women's Group . I have been nominated by the /Xarra Restorative Justice Forum to hold this position and to speak on behalf of women of this group. I am also an honorary professor at the Centre for African Studies and the Khoi and San Research Unit, University of Cape Town. In this position I actively do research, public lectures and publications and actively work with descendants of Khoi and San communities. We also work with descendants of slaves.

1. 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.
  
2. 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 position I hold in /Xarra Restorative Justice Forum Women's Group.

3. As I explain more fully below, both the /Xarra Restorative Justice Forum Women's Group and I:

3.1. 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 intangible cultural heritage;

3.2. are opposed to the Development;

3.3. 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

3.4. 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 Rudewaann Arendse of AFMAS**

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

4.1. 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;

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

4.3. 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).

5. This report culminated in the TRUP First Nations Report ("the TRUP Report") of 25 September 2019. Mr Rudewaan Arendse did not consult my organisation, /Xarra Restorative Justice Forum Women's Group during the preparation of that report as indicated in that report.

6. 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)<sup>2</sup>, 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

4

*“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)*

7. I confirm that neither I nor my organisation, /Xarra Women’s Restorative Justice Forum Women’s Group 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 my /Xarra Women’s Restorative Justice Forum Women’s Group were consulted by Mr Arendse in relation to the AFMAS Report.

8. The Developer and/or Mr Arendse / AFMAS were well aware that both I and /Xarra Women’s Restorative Justice Forum Women’s Group 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.

- 8.1. I represent the /Xarra Women's Restorative Justice Forum Women's Group 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 records
- 8.2. My group has a website at [www.africanstudies.uct.ac.za/axarra-restrative-justice-forum](http://www.africanstudies.uct.ac.za/axarra-restrative-justice-forum) which are easily traceable. 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.
9. I confirm that neither I nor the /Xarra Women's Restorative Justice Forum Women's Group were consulted by Mr Arendse. Nor do we 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**

10. The site at which the River Club development will take place and the larger TRUP, is of significant cultural and heritage significance to the /Xarra Restorative Justice Forum Women's Group. 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:

10.1 This place is sacred to the descendants of Khoi and San.


It was the centre of the first resistance against colonialism. It is argued to be the place where the Gorinhaiqua fought and killed Portuguese Viceroy Francisco D' Almeida in 1510. Later it also became the first land usurped by colonial powers. Furthermore, a frontier of displacement and four centuries later codified into law through apartheid. To many descendants of Khoi and San it is also a sacred site of remembrance and heralding the ancestors.

10.2 Currently it is regularly used by indigenous groups for the commemoration and celebration of our indigenous heritage.

11 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.

12 Had my /Xarra Women's Restorative Justice Forum Women's Group or I 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).

  
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**Gertrude M. N. Fester**

7/06/2022  
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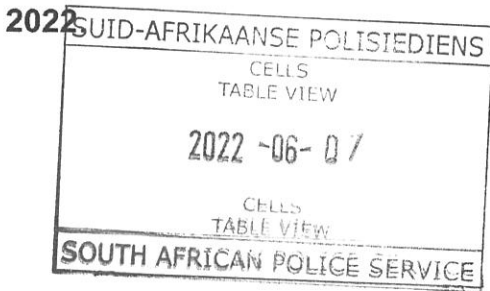
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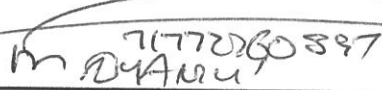
**ID number: 5207040022085**

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 TABLE VIEW on 07 a JUNE



  
7177060397  
M. DYANU  
COMMISSIONER OF OATHS

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CAPACITY: Sgt  
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