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 Hermanus Baaitjies

do hereby make oath and say as follows:

1. I am an adult male, also known as Paramount Chief Hermanus Baaitjies the Karoo-|Xam House.

2. I have been appointed by the Karoo-IXam House to hold this position and to speak on behalf of the Karoo- IXam House.

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 also the affidavit of Paramount Chief Shedrick Kleinschmidt (Sedas) deposed to on 19 May 2022 and confirm that the statements made about me and my tribe are correct. I also confirm that Paramount Chief Sedas has been elected and appointed by the National House of IXam Bushmen Nation as the National Chair and to speak on behalf of the San Bushmen and our tribe.

5. As I explain more fully below, both the Karoo-IXam House 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 intangible 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 me nor my House during the preparation of that report.

8. I have been advised that Mr Rudewaan Arendse was subsequently commissioned by the First Respondent ("the Developer") to prepare the River Club First Nations Report ("the AFMAS Report").

9. I confirm that neither I nor my House were notified by the Developer or Mr Rudewaan Arendse or engaged with regarding our intangible cultural heritage associated with the River Club site or how the development will affect our intangible cultural heritage associated with the TRUP, 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 I and my tribe 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.

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10.1. My group is part of the National House of IXam Bushmen Nation and as such 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 I nor my House 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

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 tribe. 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 same reasons as mentioned in paragraph 12 of Paramount Chief Sedras' affidavit. My tribe and I share the intangible cultural heritage discussed in paragraph 12 of Paramount Chief Sedras' affidavit and it is for those same reasons that the site and TRUP area is sacred to us and a significant part of our intangible cultural heritage.

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

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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 tribe 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).

Hermanus Baaitjies

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 on **June 2022**.

COMMISSIONER OF OATHS

NAME: A Cooper
CAPACITY: W/O
ADDRESS: Oudshoorn
AREA: SAPS

SUID-AFRIKAANSE POLISIEDIENS
SOUTH AFRICAN POLICE SERVICE
BRIDGTON
2022 -06- 09
COMMUNITY SERVICE CENTRE
GEMEENSKAPDIENSSENTRUM
AFRIKA-OLISA OMZANTSI AFRICA