

**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 and	Second Applicant
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

INDEX - PLEADINGS

NO	DOCUMENT	PAGES
PART A		
VOLUME 1		
1.	Notice of Motion	1-11
2.	First Applicant's Founding Affidavit deposed to by Professor Leslie London	12-103
3.	LL1 – Resolution of the Observatory Civic Association	104-106
4.	LL2 – Cullinan and Associates letter to the Liesbeek Leisure Property Trust, dated 11 May 2021	107-109
5.	LL3 – Cullinan and Associates letter to Nick Smith Attorneys, dated 21 July 2021	110-112
6.	LL4 – Nick Smith Attorneys letter to Cullinan and Associates, dated 26 July 2021	113-114
7.	LL5 – Aerial photograph of the site	115
8.	LL6 – Conceptual drawings of the River Club Development	116-120
9.	LL7 – Cadastral layout of the site	121
10.	LL8 – Image of the broader Two Rivers Urban Park	122
11.	LL9 – Relevant extracts from the First Heritage Impact Assessment	123-141
12.	LL10 – Heritage Western Cape's Interim comments	142-152
13.	LL11 – Relevant extracts from TRUP heritage study	153-161
14.	LL12 – South African Astronomical Observatory objection to Second Heritage Impact Assessment	162-164

15.	LL13 – Provisional protection notice by Heritage Western Cape	165-166
16.	LL14 – Extracts from Second Heritage Impact Assessment	167-224
17.	LL15 – Extracts from Supplementary Report to the Second HIA	225-255
18.	LL16 – Extracts from AFMAS Report	256-269
19.	LL17 – Heritage Western Cape Final Comments	270-280
20.	LL18 – Cover page of the Executive Summary of the Final Basic Assessment Report	281-288
21.	LL19 – Extract from the Final Basic Impact Assessment Report	289-294
22.	LL20 – Copy of appeal by Heritage Western Cape in terms of section 43 of the National Environmental Management Act, 1998	295-297
23.	LL21 – Copy of letter from Minister of Department of Environmental Affairs and Development Planning to Heritage Western Cape, dated 25 November 2020	298-300
24.	LL22 – Copy of letter from Minister of Department of Environmental Affairs and Development Planning to Heritage Western Cape, dated 26 January 2021	301-302
25.	LL23 – Heritage Western Cape letter to the Minister of Department of Environmental Affairs and Development Planning, dated 3 February 2021	303
26.	LL24 – Liesbeek Leisure Property Trust's Environmental Authorisation, dated 20 August 2020	304-334
27.	LL25 – Extracts from Environmental Management Programme	335-346
28.	LL26 – Section of appeal decision of Minister of Department of Environmental Affairs and Development Planning	347-401

29.	LL27 – Relevant extracts from the Municipal Planning Tribunal's report	402-488
VOLUME 2		
30.	LL27 – Relevant extracts from the Municipal Planning Tribunal's report	489-513
31.	LL28 – Mayor's decision	514-672
32.	LL29 – Email correspondence between Observatory Civic Association and MPT, dated 11 September 2020	673-678
33.	LL30 – City of Cape Town's appeal in terms of section 43 of the National Environmental Management Act, 1998	679-707
34.	Second Applicant's supporting affidavit deposed to by Tauriq Jenkins	708-745
35.	TJ1 – Resolution by the Goringhaicona Khoi Khoi Indigenous Traditional Council	746-747
36.	TJ2 – When it flows it floods, by Tauriq Jenkins	748-754
37.	Expert Affidavit deposed to by Bridget O'Donoghue	755-772
38.	BD1 – Curriculum Vitae of Bridget O'Donoghue	773-778
39.	Expert Affidavit deposed to by Deidre Prins- Solani	779-796
40.	DP1 – Curriculum Vitae of Deidre Prins-Solani	797-802
41.	Western Cape First Nations Collective Joinder Application	803-808
42.	Affidavit deposed to by Charles Jackson in support of joinder application for Eight Respondent	809-816
43.	Draft Order dated 10 August 2021	817-818
VOLUME 3		
44.	First Respondent's answering affidavit deposed to by Jody Aufrichtig	819-962

45.	JA1 - Resolution by the Liesbeek Leisure Property Trust	963
46.	JA2 – Copy of Goringhaicona Khoi Khoin Indigenous Traditional Council's notification of interest	964-966
47.	JA3 – Copy of the OCA's resolution, dated 24 November 2020	967-968
48.	JA4 – copy of Ms Couzyn-Rademeyer's email, dated 12 May 2021	969
49.	JA5 – copy of Cullinan & Associates email to Ms Couzyn – Rademeyer, dated 12 May 2021	970-971
50.	JA6 – copy of CIPC search, dated 3 August 2021	972-975
51.	JA7 – extract from Basic Assessment Report	976-1041
52.	JA8 – figure 46 of the Basic Assessment Report	1042
53.	JA9.1 –Supplement to Heritage Impact Assessment, dated 4 December 2019	1043-1073
54.	JA9.2 – River Club First Nations report, dated November 2019	1074-1197
55.	JA10.1 – photo of River Club, dated 11 August 2021	1198
56.	JA10.2 – photo of River Club, dated 11 August 2021	1199
57.	JA10.3 - photo of River Club, dated 11 August 2021	1200
58.	JA11 – figure 3 of the Basic Assessment Report	1201
59.	JA12 – Architect's impression of heritage centre	1202-1204
60.	JA13 – colour copies of artist's impressions of rehabilitated Liesbeek Canal	1205-1208
61.	JA14 – aerial diagram of the development phases of the development	1209
62.	JA15 – heritage practitioners' written response to HWC, dated 31 March 2020	1210-1216
63.	JA16 – heritage practitioners' written response to HWC, dated 22 September 2020	1217-1221

64.	JA17 – figure 66: proposed land uses at the site	1222
65.	JA18 – River Club, Cape Town, Overall Planning Programme	1223-1225
66.	JA19 – email correspondence between Cullinan & Associates Inc and Nicholas Smith Attorneys	1226-1228
67.	JA20 – letter from Minister Sisulu to Nicholas Smith Attorneys, dated 21 July 2021	1229
68.	JA21- letter from Minister Sisulu to Cullinan and Associates, dated 21 July 2021	1230
69.	JA22 – letter from Nicholas Smith Attorneys, dated 26 July 2021	1231-1234
70.	JA23 – extract from Biodiversity Impact Assessment	1235-1271
71.	JA24 – extracts from Atwell / Jacobs report	1272-1285
72.	JA25 – extract from Daily Maverick Article by Pregs Govender, dated 5 August 2021	1286-1289
VOLUME 4		
73.	JA26 – extract from Heritage Impact Phase One: Heritage Independent Review prepared by Baumann	1290-1297
74.	JA27 – OCA letter dated 10 February 2017	1298-1317
75.	JA28 – Updated HWC issues and responses	1318-1358
76.	JA29 – letter from Observatory Civic Association, dated 8 January 2021 to the Western Cape Ministry of Local Government, Environmental Affairs and Development Planning	1359-1362
77.	JA30 – Issues and Responses report prepared by SRK	1363-1386
78.	JA31 – HWC letter to Mr Jenkins, dated 30 July 2021	1387-1388
79.	Affidavit by Graham Robert John Haldane	1389-1393
80.	A – Curriculum vitae of Graham Robert John Haldane	1394-1396

81.	B – Copy of report setting out calculations and costings of potential delay damages	1397-1417
82.	Affidavit deposed to by Sue Reuters	1418-1429
83.	Third, Sixth and Seventh Respondents' answering affidavit deposed to by Daniel Plato	1430-1547
84.	DP1 – Independent Appeal Tribunal Ruling	1548-1563
85.	DP2 – Annexure A to appeal to Mayor's appeal decision	1564-1575
86.	DP3 – Extracts from City of Cape Town's Municipal Spatial Development Framework	1576-1615
87.	DP4 – Correspondence from FWJK, dated 13 August 2021	1616-1617
88.	DP5- Application by Liesbeek Leisure Properties Trust	1618-1833
VOLUME 5		
89.	DP6 – Municipal Planning Tribunal report	1834-2085
90.	Supporting affidavit deposed to by Lance Greyling	2086-2103
91.	LG1 – Curriculum vitae of Lance Greyling	2104-2108
92.	LG2 – Report of total estimated capital cost at completion	2109
93.	Confirmatory affidavit by Marx Measure Mupariwa	2110-2111
94.	Fourth and Fifth Respondents' answering affidavit deposed to by Minister Anton Bredell	2112-2197
VOLUME 6		
95.	AB1 – Minister Bredell's appeal decision, dated 22 February 2021	2198-2325
96.	AB2 – Guidelines for Heritage Impact Assessments in terms of section 38 of the National Heritage Resources Act	2326-2329
97.	AB3 – Copy of operational agreement / standard operating procedure for coordination of	2330-2334

	environmental impact assessments & heritage impact assessments, dated December 2015	
98.	AB4 – Letter from Directorate: Development Management (Region 1) to Heritage Western Cape, dated 17 February 2020	2335-2339
99.	AB5 – Liesbeek Leisure Property Trust consultant’s response to Heritage Western Cape comments	2340-2380
100.	AB6 – Summary of responses to HWC comments	2381-2386
101.	AB7 – Action points of Western Cape Economic War Room, dated 4 March 2021	2387-2388
102.	AB8 – Response by Timothy Hart and Stephen Townsend to Heritage Western Cape’s final comments, dated 31 March 2020	2389-2401
103.	AB9 – Heritage Impact Assessment, by Townsend and Hart, dated 2 July 2019	2402-2521
104.	AB10 – Heritage Western Cape letter, dated 30 July 2021	2522
105.	Fourth Respondent’s confirmatory affidavit deposed to by Zaahir Toefy	2523-2526
106.	Eight Respondent’s Founding affidavit deposed to by Charles Jackson	2527-2556
107.	ZK1 – Letter from the Griqua Royal House	2557
108.	ZK2 – Letter from the Congress of Traditional Leaders of South Africa	2558
109.	ZK3 – Letter from the Cochoqua Tribal Council	2559-2560
110.	ZK4 – Letter from the Foundation Nation Restoration	2561
111.	ZK5 – Letter from the combined National Khoi and San Council and Katz Korana Royal House	2562
112.	ZK6 – Court Order	2563-2564
VOLUME 7		

113.	Third, Sixth and Seventh Respondents' confirmatory affidavit deposed to by Lizanne Ryneveldt	2565-2566
114.	First Respondent's confirmatory affidavit deposed to by Stephen Townsend	2567-2570
115.	Abbreviated curriculum vitae of Stephen Townsend	2571-2572
116.	First Respondent's confirmatory affidavit deposed to by Timothy Robb Florence	2573-2575
117.	TF1 – Registration certificate as Professional Planner	2576
118.	TF2 – Masters degree & project experience	2577-2579
119.	First Respondent's confirmatory affidavit deposed to by Rudewaan Arendse	2580-2583
120.	First Respondent's confirmatory affidavit deposed to by Matthew Law	2584-2587
121.	Curriculum Vitae of Matthew Law	2588-2594
122.	First Applicant's replying affidavit deposed to by Professor Leslie London	2595-2670
123.	LL31 – Cullinan and Associates letter to Nicholas Smith Attorneys, dated 12 August 2021	2671-2672
124.	LL32 – Notice of upliftment from Minister Lindiwe Sisulu, dated 21 July 2021 and accompanying email by Minister's advisor, dated 10 August 2021	2673-2674
125.	LL33 – CIPC SearchWorks of the First Nations Collective	2675-2684
126.	LL34 – Comments submitted by City of Cape Town's Environmental Management Department	2685-2693
127.	LL35 – Amazon Development Agreement	2694-2735
128.	LL36 – Amazon Lease Agreement	2736-2780
129.	LL37 – Amazon Lease Agreement	2781-2824

130.	LL38 – Finance Agreement with Rand Merchant Bank	2825-2832
131.	LL39 – Amazon RFP, Project Zola	2833-2842
132.	LL40 – Extract of news article, MyBroadband, dated 3 May 2021	2843-2845
133.	LL41 – Email to Ndifuna Ukwazi regarding Vogue Development, dated 15 July 2020	2846
134.	LL42 – Court Order by Judge President Hlope, under case 15767/2019, dated 8 October 2020	2847-2849
135.	LL43 – Extract from Two Rivers Urban Park Supplementary Report	2850-2851
136.	LL44 – First frontier: An assessment of the pre-colonial and proto-historical significance of the Two Rivers Urban Park site, Cape Town, Western Cape Province, prepared by Atwell & Associates, dated November 2015	2852-2875
137.	LL45 – Biodiversity agreement between Western Cape Nature Conservation Board and the City of Cape Town	2876-2889
138.	LL46 – Heritage Appeal Tribunal directive, dated 29 January 2019	2890-2914
139.	LL47 – Appeal Tribunal Reasons, dated 16 January 2020	2915-2922
140.	LL48 – Heritage Western Cape Report to the Ministerial Tribunal, dated 31 January 2020	2923-2927
141.	LL49 – Letter from Nicholas Smith Attorneys to Chairperson and members of MEC's Appeal Tribunal	2928-2931
142.	LL50 – Research Report on Office Vacancy by SAPOA, dated June 2021	2932-2954
143.	LL51 – News article from IOL, dated 20 July 2021	2955-2957
VOLUME 8		

144.	Second Applicant's replying affidavit deposed to by Tauriq Jenkins	2958-2967
145.	TJ3 – Confirmatory affidavits	2968-2982
146.	Expert's replying affidavit deposed to by Bridget Elizabeth O'Donoghue	2983-2999
147.	BD2 – Extract from Heritage Impact Phase One Report	3000-3006
148.	BD3 – Email correspondence between SRK Consulting and Bridget O'Donoghue	3007-3010
149.	BD4 – Email correspondence between SRK Consulting and Bridget O'Donoghue	3011-3013
150.	Expert's replying affidavit deposed to by Deidre Prins-Solani	3014-3039
151.	Supporting affidavit deposed to by Derick Henstra	3040-3045
152.	Confirmatory affidavit deposed to by Jonathan Cogger	3046-3048
153.	Confirmatory affidavit deposed to by Hercules Wessels	3049-3051
154.	First Respondent's Notice of Application to Strike Out	3052-3055
155.	Affidavit deposed to by Nicholas David Smith	3056-3060
156.	Forest Peoples Programme's Application to be admitted as an amicus curiae	3061-3064
157.	Founding Affidavit by Gordon Bennet	3065-3114
158.	Third, Sixth and Seventh Respondents' Notice of Application to Strike Out	3115-3117
159.	Affidavit supporting City's Strike Out application deposed to by Sabrina De Freitas	3118-3127
160.	Fourth and Firth Respondent's Notice of Application to Strike Out	3128-3131
161.	Affidavit supporting Fourth and Firth Respondents' application to Strike Out	3132-3137
162.	Fourth and Fifth Respondents' affidavit in respect of amicus application	3138-3143

163.	Applicants' answering affidavit to First, Third, Fourth, Fifth, Sixth and Seventh Respondents' application to strike out, deposed to by Hercules Wessels	3144-3187
PART B		
VOLUME 9		
164.	Applicants' notice in terms of Rule 53(4)	3188-3191
165.	First Applicants' supplementary founding affidavit deposed to by Professor Leslie London	3192-3324
166.	LL52 – Letters between Cullinan & Associates and Nicholas Smith Attorneys, dated 30 May 2022 and 2 June 2022	3325-3330
167.	LL53 – Pre-Application consultation meeting in terms of section 70 of the City of Cape Town Municipal Planning By-Law	3331-3335
168.	LL54 – Press release by Economic War Room	3336-3337
169.	LL55 – Extracts from Province's record of decision	3338
170.	LL56 – Surface Water Hydrology Impact Assessment	3339-3388
171.	LL57 – Comments from City of Cape Town's Water and Sanitation Department	3389-3391
172.	LL58 – Biodiversity Impact Assessment	3392-3574
VOLUME 10		
173.	LL59 - Municipal Planning Tribunal's decision	3575-3600
174.	LL60 – Memorandum from the City of Cape Town's Environmental Management Department	3601-3647
175.	LL61 – Extracts from the City of Cape Town's Record of Decision	3648-3649

176.	LL62 – Copy of the City of Cape Town's Floodplain and River Corridor Management Policy	3650-3688
177.	Second Applicants supplementary affidavit deposed to by Tauriq Jenkins	3689-3738
178.	TJ4 – Table summarising participation of First Nations groups	3739-3749
179.	TJ5 – I&AP email list from Two Rivers LSDF	3750-3752
180.	TJ6 – Minutes of Special Meeting of the Impact Assessment Committee of 9 October 2020	3753-3757
181.	TJ7 – I&AP database of First Respondent's Environmental Impact Assessment	3758-3771
182.	TJ8 – I&AP list for First Respondent's application to City of Cape Town for Land Use Approval	3772-3779
183.	TJ9 – Comments and Responses report from First Respondent's Environmental Impact Assessment process	3780-3807
184.	TJ10 – Copy of Final Protection Order granted 21 May 2021	3808-3809
185.	TJ11 – Letter from Dr Carine Zaayman, dated 2 June 2022	3810-3811
186.	TJ12 – Second Applicant's comments on Revised HIA for the River Club development	3812-3846
187.	Expert Affidavit deposed to by Deidre Prins-Solani	3847-3879
188.	DP2 – TRUP First Nations Report prepared by AFMAS Solutions, September 2019	3880-3923
VOLUME 11		
189.	DP3 – Letter from Department of Transport and Public Works, 5 March 2020	3924-3926
190.	DP4 – Extract from San Codes of Research Ethics	3927
191.	Expert Affidavit deposed to by Bridget O'Donoghue	3928-3944

192.	BD2 – Extracts from Heritage Impact Assessment Phase One Report	3945-3952
193.	BD3 – Email correspondence between Bridgette O'Donoghue and SRK	3953-3956
194.	BD4 – Email correspondence between Bridgette O'Donoghue and SRK	3957-3959
195.	Expert Affidavit deposed to by James Hallinan	3960-3969
196.	JH1 – Curriculum Vitae of James Joseph Hallinan	3970-3972
197.	JH2 – Report on the cultural historical significance of Varschedrift area of the Cape Peninsula holds for the Khoekhoen and people of Southwestern Cape and Southern Africa more widely	3973-3992
198.	Expert Affidavit deposed to by Professor David Dewar	3993-4006
199.	Curriculum Vitae of Professor David Dewar	4007-4059
200.	Expert Affidavit of Dr Michael Theodore Mentis	4060-4068
201.	MM1 – Curriculum Vitae of Dr M Mike Mentis	4069-4075
202.	MM2 – Proposed River Club development – expert review & opinion	4075-4110
203.	Affidavit deposed to by Chief Autshumao Francisco Mackenzie, Chair of the Western Cape Legislative Khoi and San Council	4111-4117
204.	Affidavit deposed to by Paramount Chief Shedrick Kleinschmidt (Sedas), of the Hawequa Ixam and National Chair of the National House of Ixam Bushmen Nation.	4118-4125
205.	Affidavit deposed to by Chief Bradley Van Sitters, Chief of the !Khorallauxlaes	4126-4133
206.	Affidavit deposed to by Khoebaha Melvin Arendse of the Kai Korana Trans-frontier	4134-4143

VOLUME 12

207.	Affidavit deposed to by Danab Goaob F'um of the First Indigenous Nation of Southern Africa	4144-4159
208.	Affidavit deposed to by Chief Kenneth Hoffman of the Gainouqua Traditional Authority	4160-4166
209.	Affidavit deposed to by Paramount Chief Lanville Cupido of the Hessequa Traditional Authority	4167-4176
210.	Affidavit deposed to by Chief Danny Bolton of the Cochoqua Royal House Traditional Authority	4177-4190
211.	Affidavit deposed to by June Bam of the AlXarra Aboriginal Restorative Justice Forum	4191-4200
212.	Affidavit deposed to by Dr Gertrude Fester of the /Xarra Restorative Justice Forum Women's Group	4201-4208
213.	Affidavit deposed to by Paramount Chief Martinus Fredericks of the !Aman (Nama) Traditional Council and the National Khoi and San Kingdom Council	4209-4217
214.	Affidavit deposed to by Chief Hermanus Baaitjies of the Karoo-!Xam'	4218-4223
215.	Affidavit deposed to by Chief Piet Barends of the Kalahari-!Xam	4224-4229
216.	Affidavit deposed to by Paramount Chief Edmund Stuurman of the House of Klaas and Dawid Stuurman	4230-4238
217.	Affidavit deposed to by Chief Glen Taaibosch of the Taaibosch Korana	4239-4247
218.	Affidavit deposed to by Paramount Chief Anthony Andrews of the Guriqua	4248-4255
219.	Affidavit deposed to by Rassool Snyman director of the Democratic Federation of Indigenous People of SA	4256-4262

220.	Affidavit deposed to by Petrus Windvogel	4263-4270
221.	Affidavit deposed to by Prince Jacobus Titus	4271-4277

DATED at CAPE TOWN this 6th day of JULY 2022.



CULLINAN & ASSOCIATES

Attorneys for the First and Second Applicants

18A Ascot Road

Kenilworth

CAPE TOWN

Ref.: Hercules Wessels / O023
002

Tel: 021 671 7002

hercules@greencounsel.co.za

To: **THE REGISTRAR**
Western Cape High Court
CAPE TOWN

And to: **NICHOLAS SMITH ATTORNEYS**
First Respondent's Attorneys

2nd Floor

114 Bree Street

CAPE TOWN

Tel: 021 424 5826

Fax: 021 424 5825

Email: nicks@nsmithlaw.co.za

Ref.: Mr. N.D Smith / L38 – 001

And to: **HERITAGE WESTERN CAPE**

Second Respondent

c/o

THE STATE ATTORNEY

4th Floor

22 Long Street

CAPE TOWN

Email: penelope.meyer@westerncape.gov.za

And to: **WEBBER WENTZEL ATTORNEYS**

Third, Sixth and Seventh Respondents' Attorneys

15th Floor, Convention Tower

Heerengracht Street, Foreshore

CAPE TOWN

Tel: +27 431 7335

Email: Sabrina.defreitas@webberwentzel.com

Ref: Sabrina De Freitas

And to: **OFFICE OF THE STATE ATTORNEY**

Fourth and Fifth Respondents' Attorneys

Liberty Life Centre, 5th floor

22 Long Street

(Ref: TBC / 21 / P7)

Email: mowen@justice.gov.za

CAPE TOWN

And to: **BASSON & PETERSEN ATTORNEYS INC.**

Eight Respondent's Attorneys

Suite no. 6A, Bellpark Building

De Lange Street, Bellville

Email: Spinc.law@gmail.com

C/O SEBOGODI ATTORNEYS

7th Floor, The Regus

Mandela Rhodes Building

Corner Wale and Burg Street

CAPE TOWN

