

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

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AFFIDAVIT

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I, the undersigned

**Petrus Windvogel**

do hereby make oath and say as follows:

1. I am an adult male and am the Paramount Chief of the Sonqua-|Xam.
2. As the paramount chief of the Sonqua-|Xam I am mandated to speak on behalf of the Sonqua-|Xam.
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 position I hold as leader of the Sonqua-|Xam.
5. As I explain more fully below, both the Sonqua-|Xam 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 Rudewaann Arendse in connection with the preparation of his reported 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 Rudewaann Arendse of AFMAS**

6. I understand that Mr Rudewaann 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 or the Sonqua-Xam during the preparation of that report [as indicated in his acknowledgements at the start of that report.
8. 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

*"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)*

9. I confirm that neither I nor the Sonqua-Xam 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 Sonqua-Xam were consulted by Mr Arendse in relation to the AFMAS Report.
  
10. The Developer and Mr Arendse of AFMAS were well aware that both I and the Sonqua-Xam 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.
  - 10.1. I represented the Sonqua-Xama 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 at page 49 of the Final Directive of the Heritage Appeal Tribunal.
  - 10.2. My contact details were given to HWC when I completed the attendance register.



11. Despite the Sonqua-|Xam being represented in the Ministerial Appeal Tribunal proceedings and my contact details being available through the Register, neither I nor the Sonqua-|Xam were consulted by Mr Arendse or the Developer in relation to the proposed development. We do not approve of or support the development by the First Respondent, nor are we represented by the Eighth Respondent (the Western Cape First Nations Collective also known as the "FNC").
12. 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, not only were results of consultation with myself and the Sonqua-|Xam omitted from the AFMAS Report, but our comments 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**

13. The site at which the River Club development will take place and the larger TRUP, is of significant cultural and heritage significance to the Sonqua-|Xam. The site and the TRUP area is sacred to us and a significant part of our intangible cultural heritage.



- 14. 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.
  
- 15. Had I or the Sonqua-Xam 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).

EK sertifiseer dat hierdie dokument 'n ware afdruk/afskrif is  
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 van die oorspronklike wat deur my persoonlik besigtig is  
 original which was examined by me and that, from my  
 en dat, volgens my waarnemings, die oorspronklike nie op  
 observations, the original has not been altered in any  
 enige wyle gewysig is.  
 manner

*[Signature]*  
 Name/akroning / Signature

*[Signature]*

Petrus Windvogel

SUID-AFRIKAANSE POLISIEDIENS  
 AANKLAGKANTOOR  
 26 JUN 2022  
 CHARGE OFFICE  
 RIEBEEK KASTEEL / WES  
 SOUTH AFRICAN POLICE SERVICE

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 **Riebeeck Wes** on  
**26 June 2022.**

*[Signature]*

*J. Wilkens*  
J. Wilkens

COMMISSIONER OF OATHS

NAME: *J. Wilkens*  
CAPACITY: *Sergeant*  
ADDRESS: *Hof Dr.*  
AREA: *RIEBEEK WEST*

SUID-AFRIKAANSE POLISIEDIENS  
AANKLAGKANTOOR  
26 JUN 2022  
CHARGE OFFICE  
RIEBEEK KASTEEL / WES  
SOUTH AFRICAN POLICE SERVICE