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13a St Michaels Rd, Observatory, Cape Town, 7925

17th December 2019

Dear Ms Postlethwayt

Draft Phase 1 Heritage Impact Assessment for the Site 'Two Rivers' (formerly Two Rivers Urban Park)

I write as Chair of the Observatory Civic Association to lodge my comments as an Interested and Affected Party with respect to the Draft Phase 1 Heritage Impact Assessment for the Site 'Two Rivers' (formerly Two Rivers Urban Park) as advertised for comment by December 17th 2019.

The main priority recommendation to emerge from the HIA must surely be for the urgent grading of the TRUP site for heritage status. Yet the HIA make no such recommendation, which is a great disappointment.

We tabulate below detailed comments on the HIA.

Please confirm receipt.

Thank you for the opportunity to submit comments on this policy

Yours

Leslie London
OCA Chairperson



Comment on the Draft Phase 1 Heritage Impact Assessment for the site 'Two Rivers' (formally TRUP) in terms of section 38(8) of the NHRA (HWC Case number: 16071903WD0721M)

Location	Focus area	Comment
Title of the document	The HIA refers to the site as "Two Rivers (formally TRUP)."	It is unclear if the HIA means to state "formerly" or "formally". If the reference is to "formerly", then we query what process changed that name. If the reference is to "formally", then it is incorrect to refer to the HIA as being for the Two Rivers LSDF. The Municipal Spatial Development Framework continued to refer to the area as the Two Rivers Urban Park, as recently as 2018. The MSDF was adopted by Council on 25 th April 2018. Should the proponents wish to change the name of the precinct, this could be proposed for public consultation. It is unacceptable that this name change can be effected by sleuth, without public comment and contrary to previous policy and LSDF planning processes.
Page 5	Previous reports	We note that the HIA is informed by all previous submissions to HWC in respect of this area. This is appreciated. However, it is not always clear that these previous reports have been fully integrated.
Page 8	It is noted that "the area is a very large and complex one, of high heritage significance."	We agree completely with this assessment. For that reason, we believe the areas should be properly graded by HWC following suitable investigations. The rush to complete the LSDF before such a grading is completed is not appropriate.
Page 8	The current planning team are of the opinion that this (the name Two Rivers Urban Park) is misleading.	On what basis can the current planning team make the decision to change the name of a precinct recognised in policy as the Two Rivers Urban Park? This has been done in a non-transparent manner without any public consultation. Notwithstanding argument that there are non-park elements within the precinct as defined, it is the case that the largest component of the zoning in the precinct is for Open Space and for uses entirely compatible with an



		Urban Park concept. The HIA is introducing confusion where there should be none.
Page 8	An 'uncomfortable' narrative?	<p>It is unclear why reference to the First People whose "narrative sits uncomfortably next to later colonial and apartheid history" can be linked to justification of the name change for the Park. If anything, the dense history would emphasise the importance of retaining the notion of the area being recognised as a park. Further, it is unclear what is implied by a history being 'uncomfortable'? The entire history of South Africa, post-colonially, sits uncomfortably with pre-colonial history. That is exactly what constitutes the South African condition today. One cannot see how this justified changing the name of the park.</p> <p>One would imagine it is the job of the Heritage Consultant to lead the planning team on matters of history and heritage and not be led in accepting the interpretation of people who are experts in fields other than heritage.</p>
Page 10	The First Nations Collective	<p>The account of First Nations history on the site appears to rely heavily on and frequently references "The First Nation Collective." However, nowhere in the HIA nor the accompanying First Nation Report is there any explanation of what the First Nation Collective is or when it was formed and what authority it has to speak on behalf of all First Nations, as is implied in both reports. This is odd because when a number of first nation Chiefs attended the first Heritage Appeal Tribunal Hearings over the HWC decision to provisionally protect the River Club, no mention was made of the existence of a First Nations Collective, either by the appellants or the chiefs present in the room. If the AFMAS report wishes to elevate the First Nations Collective to a special place in narrating Khoi</p>



		history, it needs to provide evidence for why it does so. No such evidence can be identified from the report.
Page 14	The Infographic (figure 8) summarises the Cultural Landscape of the area.	We think this infographic is an excellent summary and commend the consultants on this. It is, however, striking, that there are no entries after 1994. This may partly reflect the neglect of Khoi and other first nations in public politics post-1994 but it also seems to omit some important developments such as the development of the Traditional and Khoi-San Leadership Bill (adopted in 2019) and the fact that DA&C identified TRUP as one of the three sites for the Western Cape Legacy and Resistance route.
Pages 15 and 16	<p>On pages 15 and 16, the argument is made that the HIA should only focus on the highest and most abstract level of understanding of the area and leave determination of detailed layers of significance to precinct level studies.</p> <p>A further version of this position is articulated on page 37 where it is argued that integrating heritage into design decisions “is most appropriately conducted at a precinct planning or project level.”</p> <p>This thread is then further elaborated in the AFMSA report.</p>	<p>It is unclear how this HIA can hope to do justice to assessing the heritage resource that is the whole site if it leaves analysis of heritage significance to separate precincts. For example, it would seem obvious that a first step would be to undertake a heritage grading of the core of the Two Rivers Urban Park site. If you don’t ensure this grading is done for the whole site before any concrete is laid down, how on earth can one leave it to precinct studies to claim back protections?</p> <p>For example, with the River Club development, the HIA commissioned by the developer has completely ignored the very dense development imposed on the area and relegated questions of height and bulk to the later planning process, as if these were not material to the question of heritage protection on this site. So, we think precinct level planning processes should be informed by higher level principles – and these should ensure that, for example, a precinct level plan, cannot dispense with mandating height and bulk of a development to be considered relevant at project level.</p>



		<p>Given that the HIA recognises that “in many respects, the intangible heritage factors could be regarded as being of at least Grade II significance, probably of the highest order,” (page 19) it is particularly puzzling why grading of the site is not prioritised as a recommendation. We believe the whole TR site should be graded by Heritage Western Cape before a Development Framework is put in place.</p> <p>Parts of the TRUP have been identified by the Department of Arts and Culture as part of a likely Liberation Heritage Route. A proposal has also been made within the Reference Group on State Land to the Minister of Public Works that the Two Rivers Urban Park (TRUP) should be recognised as a National and World Heritage Site. This is based on the recognition that development within the centre of TRUP will threaten the area’s heritage and environmental potential and fail to provide for social inclusion. It is inconceivable that the City’s LSDF should ride roughshod over heritage considerations.</p> <p>Grading of TRUP must therefore be a priority.</p>
Page 16	The HIA notes “it is important that the processes of further planning and implementation of projects in the study area are as collaborative and multi-vocal as possible.”	We draw attention to the fact that the City initiated a co-design process for the TRUP in 2015. Instead of ensuring the expansion of that process to include as many voices as possible, the City closed down that process and has initiated a different process with limited participation. We are continually reminded by City officials that what they doing now is what they are legally obliged to do but there is no obligation on them to pursue anything that is more meaningful in terms of participation (this is very far down Arnstein’s ladder of participation ¹). There is a major disjuncture between what this HIA claims

¹ Arnstein, Sherry R. "A Ladder of Citizen Participation," JAIP, Vol. 35, No. 4, July 1969, pp. 216-224 – see <https://lithgow-schmidt.dk/sherry-arnstein/ladder-of-citizen-participation.html>



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		should be done and what is actually being pursued by the City, with its 60 days to comment approach.
Page 16	The HIA notes that tangible heritage is easier to define than intangible heritage, which should be integrated “into later design and development planning.”	It is unclear why the HIA accepts that intangible heritage should only be integrated into later design and development planning. Surely the purpose of a high level HIA is to ensure that intangible heritage is not treated as an afterthought but directly informs the overall SDF for the site?
Page 19	In discussing the different heritage processes taking place simultaneously, the HIA offers the view that the HIA is independent of the HIA for the River Club development.	<p>It is puzzling that the TR LSDF HIA can take such a view, since HWC itself has repeatedly noted the importance of finalising the TRUP heritage grading before dealing piecemeal with developments within the broader precinct. It seems that it is very likely that a LSDF process under the City will preempt a decision by HWC with respect to protecting heritage resources in the site. This will be extremely unfortunate.</p> <p>If the intent of the HIA under the LSDF is to “ensure consistency and to comprehensively address the cultural and built heritage of the area” (as per TR LSDF) it is unclear why the City is not accommodating the fact that Heritage Western Cape intend to grade the area for Heritage status. Thus, while the LSDF and a Phase 1 Heritage Impact Assessment are being developed simultaneously, the City is also active obstructing Heritage Western Cape from protecting the River Club site in order to grade the area. This is inconsistent. The HIA should happen in tandem with a HWC investigation with respect to consider grading the site.</p>
Page 22	The report makes the statement that the reason the site still exists with its intense history and identity is “one of those happy	Nothing can be further from the truth. It is not an accident that development has not destroyed the site and planted concrete over any riverine open space. The reason is that planners recognised the importance of the site as open space and the fact that much of it lies in a flood plain and zoned it



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	<p>accidents of historical development.”</p>	<p>such that no outsize development could destroy the remaining integrity of the site. Far from accident, it is was an act of human planning that foresaw the need to protect this space. The unseemly rush to undo those protections is also not accidental, but harbours very deliberate intentions which may not serve the protection of heritage well.</p>
	<p>The HIA appears to be silent on design indicators for development in the site.</p>	<p>This is a problem. For example, on page 23, the HIA recognises that a first nation respondent in the AFMAS report highlights the importance of the location of ceremonies at particular points on the river when the sun sets on Lion’s Head during the equinox (page 23). For that to preserved, any bulk developments on the River Club need to ensure that visual connections between different points on the river and the mountain are not interfered with by tall buildings. However, there is no comment on the fact that a number of large buildings as high as 47m are planned in proximity to any ceremonial site in the report. The proposed ecological corridor might address the faunal specialists’ requirements but does not respond to heritage informants that make reference to the need to maintain visual connections through to the Observatory Hill. One of the key gateways should be on the Vaarschdrift corner of the site where people will approach from the City. If the First Nation narrative is to be taken seriously, why does the report not insist that bulk cannot be maximised (as desired in the LSDF) for the sake of development in areas ‘where development can take place’? This is a very serious oversight.</p>
	<p>Similarly, on page 37, it is argued that a network of <i>public spaces, landscapes and cultural spaces could most appropriately provide</i></p>	<p>How is it possible to conceive of such a network being able to function as signifiers of heritage if no attention is given to the developments taking place around such public spaces and landscapes? For example, the River Club development is planning to juxtapose buildings that are 25m, 32m and 47m tall</p>



	<p><i>the opportunity to link the intangible and tangible heritage related to the site, and would be sufficiently open-ended to accommodate any future, more considered and consultative project input from any relevant parties.”</i></p>	<p>in proximity to a memorialising space for first nation heritage. The HIA appears to skirt around these issues without wanting to set down clear criteria for design that would protect intangible heritage. If a small amphitheatre is located between two 32m and 47m high buildings, it is a completely different sense of place to one where there is a tangible feeling of Open Space.</p>
Page 29	<p>The River Club and Vaarschedrift site is noted to be “of very high symbolic and associational significance” and “should be investigated for archaeological potential.” Later, on page 42, the HIA notes that “sites identified as being of archaeological significance will need potential further archaeological investigation and input in terms of S 35 of the NHRA.”</p>	<p>However, it is not clear how such sites will be identified if a comprehensive assessment of the site is not launched at the start. Are we expected to wait until front-end loaders turn up evidence of human remains? It is surely impossible to understand what archaeological findings would be impacted on by proposed developments unless a comprehensive archaeological survey is completed. This should be an urgent priority recommendation. It is unclear why this vitally important work has not been undertaken, given that the process of drafting this framework has been ongoing for nearly 4 years. This is a major flaw of the TR LSDF and is not highlighted as a problem in the HIA, which it surely should be.</p>
Page 37	<p>The HIA notes that “The Two Rivers site is of outstanding cultural significance in terms of living memory” and emphasises the importance of their confluence as “a substantial, authentic indigenous landscape</p>	<p>If this is the case, it is puzzling why no comment is made by the HIA about the fact that the River Club development proposed to create an artificial river course out of the canalised diversion of the Liesbeek and plans to fill in the old course of the Liebseek north of station road. The confluence of the canal with the Black River is not the real confluence of the rivers. Can one reinvent an authentic connection to the river by redesigning an artificial canal as a river (page 43)? One would</p>



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	memory that has to be celebrated.”	expect the HIA would engage more profoundly with such question rather than accept the kind of conjured heritage manufacturing proposed at the River Club.
Page 40	The HIA notes that that “explorations of significance and culture do not preserve a landscape absolutely or prevent appropriate development but use the unique cultural qualities of the area and the narratives which shaped it to enrich an understanding of the diversity of Cape culture and history.”	This is all well and good, but what exactly is ‘appropriate development’ and what design criteria can be put in place to ensure that the so-called SPLUMA priorities for access to jobs and affordable housing, cannot be used as an excuse to destroy heritage for private gain or for short-term public good. For example, rather than timidly suggesting that heights and densities “ should be sensitive ” to the various important views on site, the HIA should categorically insist that heights and densities must be respectful of local, indigenous heritage considerations.
Page 44	Comments on Open Space linked to the Black River	The HIA argues for retaining the Green Open space and context to the Oude Molen complex, retention of its ‘rural’ historical quality, providing opportunities for current recreational and social/cultural uses and using land toward indigenous allotment gardens. This is much welcomed. Even Valkenberg receives a recommendation to retain the green landscape. Yet such considerations appear to completely absent when discussing developments on the Liesbeek in relation to the River Club. Notwithstanding the fact that the owners have proposed a very dense and high set of buildings, we would still expect the HIA to independently set parameters for what could be supported.
P48	Vision	The HIA repeats the assertion made in main LSDF document that the previous vision for TRUPA was no longer appropriate but does not substantiate this argument and most certainly not on heritage grounds.



P58	Distributed space for memorialisation	<p>How will such distributed space provide an integrate heritage experience.? A memorial here, a museum there, can be experienced as quite alienating. Experience from other settings in other countries where similar kinds of memorialisation of first nation history was implemented suggest that it was most successful when mainstreamed into wider public experiences and exposures. This HIA appears to conceptualise the Khoi and other first people’s histories as unique and to be savoured in a sequestered experience, when there are many very direct and banal opportunities to reflect.</p>
p58	The HIA report appears ambivalent as to the role HWC should play role in overseeing heritage protections in the area.	<p>It is important the HIA recognise HWC’s statutory responsibilities, which would include overseeing heritage protections in the area. This is exactly what was the intention of HWC issuing a provisional protection order for the use pf the River Club. Yet no comment is made in this HIA on the fact that the City opposed HWC’s Provision Protection Order on the River Club. This is HWC’s mandate and it should not be ‘suggested that HWC play a part in facilitating’ but rather that HWC’s mandate be recognised. Playing a part in facilitating is to disempower a statutory body whose mandate is to do exactly what is proposed in the HIA.</p> <p>Its conclusion (on page 63), the HIA lists HWC as one of three partners in engaging with DCAS to fund and initiate “a proposal for the cultural heritage project for the entire Two Rivers site ... in order to indigenise the study area landscape.” This is a strange conception of how the project should be led. Given that HWC has been blocked from conducting a grading of the site, by the very proposed partners in this project (City and DTPW), we have little confidence of a functional partnership emerging from such a</p>



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		<p>recommendation. A conclusion must surely be that HWC must complete its grading of the site – especially since it is agreed (on page 19) that, “in many respects, the intangible heritage factors could be regarded as being of at least Grade II significance, probably of the highest order.”</p>
p59	<p>It is further suggested that the AFMAS report be ‘built on’ in order to pursue this project.</p>	<p>We want to put on record our concerns about the AFMAS consultant. The same consultant that is part of AFMAS has also been working for the River Club developers as a heritage consultant. There, he has produced a piece of work that seriously undermines one Khoi house (that happens to be highly critical of the River Club development) by inserting WhatsApp images without any context or opportunity to the particular Chief to clear his name. The impact is to exclude that individual from speaking with any authority to represent Khoi perspectives. This is particularly ironic, given his confirmation under Assumptions, Limitations and Exclusions in this report (page 1), that it was not the brief of the project, nor its prerogative, to determine who constitutes the First Nations, and how membership or inclusion in the First Nation community was determined.</p> <p>We believe that the consultant has an irremediable conflict of interest and his professional judgement to provide an impartial assessment for an LSDF cannot be assumed, given his work for the River Club.</p>
Page 60	<p>In assessing the River Club site, the HIA report states that “It is accepted this site is one of the few areas available for re-development.”</p>	<p>It is unclear how the HIA can come to this conclusion since no evidence is presented in the HIA that this is the case. The area is currently zoned Open Space for the reasons identified above. None of the first nation informants distinguished between the River Club and the broader precinct; if anything, the confluence of the Rivers, which is where the River Club is located, is highlighted in their narratives. One</p>



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		would expect a HIA to be independent of the pressures put on the precinct by private property owners to develop their site.
	The HIA goes on to state that if at least 40% of the land use of the developable portion is residential, and if at least 20% of that is social housing, this could be said to “mitigate potential heritage impacts.”	This statement cannot be correct. If a proposed development impacts so severely on heritage that it irrevocably changes the character of a site, no amount of residential development or social housing can restore intangible heritage lost. It seems the HIA is seeking to accommodate the existing proposals for the River Club by using arguments that are not based on what an HIA should be doing. Rather than arguing what would mitigate heritage impacts, the HIA should be pointing what should not be done under any developments in the area in order to protect heritage.
P59	The “restoration of the river corridors, floodplains and wetlands” is proposed as an activity to address heritage concerns, particularly given their being recognised for “outstanding cultural significance” and for which “a substantial, authentic indigenous landscape memory that has to be celebrated.”	No mention is made of the fact that the proposed River Club development intends to fill in the remnant of the Liesbeek River that follows the authentic course original to the Liesbeek. Alternative designs were considered by the developers to retain the original course but have not been adopted. If authenticity were critical, then some engagement with this decision should be expected in the HIA.



First Nation Report by AFMAS		
Page 6 to 9	Placemaking examples	We note that no South African examples could be identified. This is not surprising given South Africa's long and racist treatment of First Nation peoples. We hope this will start to change now. It is interesting that the international examples cited of how First Nation culture is celebrated are examples of the use of public open space to do such space-making (Pictures 6 to 9). The fact that intensely developed urban spaces do not feature is perhaps a warning that it is much more difficult to do authentic heritage place-making in such an environment.
Page 16	Legal context for addressing intangible heritage	We welcome the attention to UNESCO's Convention for the Safeguarding of the Intangible Cultural Heritage, the provisions of the National Heritage Act and the Draft National Policy on South African Living Heritage.
Pages 21 to 31	Voices of the First Nation respondents	We commend the consultant for presenting the voices directly, which provide a rich narrative on which to draw inferences. The material is very rich and very helpful.
P32	The report notes that "In the indigenous narrative, the entire TRUP landscape is the element of memory" but goes on immediately to speak of "a recognition that much of the original indigenous landscape have been altered" which gives rise to "the present-day fragmented landscape with remnants of colonial heritage."	It is unclear who is recognising this alteration. There is nothing in the quotes presented in the report which suggests this fragmentation is an issue for the First Nations. In fact, the quotes appear to suggest that the respondents want to see the entire precinct linked to the two rivers as one precinct. The fact that the planners and heritage consultants view the site as fragmented may be true but this report is meant to reflect the First Nation perspective.



	<p>Linked to the above, the statement is made that “It’s the collective aspiration and contention of the First Nations, that this remaining - fragmented - landscape, be authenticated as an indigenous commemorative landscape with distributed spaces of engagement and indigenous place-making, spanning different precincts (whist acknowledging the co-existence of other, non-indigenous layers of heritage).</p>	<p>I searched high and low in the text presented in the report for any evidence that the idea of ‘distributed spaces of engagement and indigenous place-making’ is an aspiration or contention of the First Nation respondents. I could find none. In fact, the comments see the entire precinct as a single space for cultural expression, rather than atomising where and how heritage is recognised:</p> <ul style="list-style-type: none">• “This whole area is a space of engagement, a place of memory. A foothold for the indigenous people. There is no other space we can go and engage in...”• “The confluence of the Black River and the Liesbeeck River, that embankment area is the place where the Khoi would engage in marriage ceremonies and burial rites, cremation and these kinds of things. It’s also a political hotspot, because that’s where the tribes would gather and meet... So symbolically, confluences for the Khoi, had a tremendous resonance...”• “The first scene of major conflict of a group that had come to settle, to take over, to usurp occurred in those areas broadly known as the Two Rivers Urban Park. To us the confluence of the Black River and the Liesbeeck River are critical historical spaces.”• "We go to the epicentre of the site which is located at the Oude Molen side. That whole area, that site is heritage laden but our whole fight has been around Oude Molen and its
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		<p>surrounding precinct which now is known as the Two Rivers Urban Park."</p> <p>Distributed spaces of engagement and indigenous place-making may end up being the way to recognise the heritage value of the site, given the existing situation, but it is actually not a sentiment that emerges from the voice of the First Nation respondents. It is important to be authentic to what they say and not impose external perspectives as being the voice of First Nation respondents.</p> <p>Secondly, the sweeping statement that "It's the collective aspiration and contention of the First Nations" is incredibly broad in that it claims authenticity from (all) First Nations. It does not reference the First Nation Collective nor even all First Nation respondents in this report but simply states this is what the First Nations want. Given there is no evidence that this (distributed place-making) is actually what they articulated, this statement is extraordinary in its inaccuracy and sweeping claims.</p>
Page 32	Heritage Related Design Informant - The report argues that the principle of "acknowledging, embracing, protecting and celebrating the indigenous narrative" should inform planning at different scales.	We agree with this important principle but the report cites only planning at local and precinct level planning. It does not recognise the need to establish parameters for the entire LSDF. Why is this important? Because at precinct level, we can see that heritage protections are far weakened – as evidenced by HWC's investigation of a Provisional Protection Order for TRUP and by its subsequent



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		<p>declaration of a Provisional Protection Order for the River Club site – which it did because of the imminent threat to heritage and the need to grade the entire TRUP area. In the latter case for the River Club, the Site Developer HIA completely ignored the very dense development imposed on the area and relegated questions of height and bulk to the later planning process, as if these were not material to the question of heritage protection on this site. So, we disagree that this principle should not be applied at the level of the LSDF itself for the Two Rivers, as implied.</p>
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