



OBSERVATORY
Civic Association

60 Trill Road
Observatory
7925
14th February 2020

Ms Amy Hill
SRK Consulting
Rondebosch

Dear Ms Hill

Comments on the River Club Basic Assessment Report

DEA&DP Reference Number: 16/3/3/6/7/1/A7/17/3217/19

HWC Case Number: 15112504WD1217E

DWS Reference Number: WU9026 River Club and 16/2/7/G22/A/11

Please find below comments on the revised Basic Assessment Report (BAR) we have been able to assemble for the deadline of the 14th February (today). As indicated, the OCA believes the time allotted to this important Impact Assessment is far too short to do justice to the issues or to fulfil the expectations for meaningful public participation. Accordingly, we are submitting one set of comments today to include in the final report, but we reserve the right to submit additional comments in the next two weeks, which I understand from your email of 10th February, you would forward to the DEADP as the decision-maker in this matter. While we appreciate there are timelines for a BAR process, we feel that SRK should have planned ahead to allow more time for the public to study these documents and formulate a considered response. Thirty days is insufficient for communities to examine the complex documents in the required depth. We want this point to be made very strongly to DEADP – we live in a constitutional democracy where people’s participation should be valued. For that to happen, there has to be meaningful participation. Expecting IAPs to respond in unreasonable timelines is not consistent with intent and spirit of our Constitution. Please make sure this point is conveyed to DEADP along with substantive comments below.

The Observatory Civic Association remains very strongly opposed to this development at the River Club. We outline the basis for our concerns, referring to our objections submitted in September 2019 and how these have, or have not been handled.

1. Firstly, we make the overall point that the River Club and much of the Two Rivers Urban Park (TRUP) is a unique Heritage site, a flood plain and an open space for Conservation that should be preserved as such. The site is not one suited for this type of development.
2. We remain of the view that the scale and density of the development is inappropriate to the area. We note that the Issues and Responses document acknowledges that “new built structures will be visually intrusive” but we disagree with the statement that “...this impact is clearly addressed in the VIA.” To the contrary, it is not addressed at all – the VIA simply documents the grotesque and imposing building sizes likely to destroy any sense of open space. The claim that “the proposed development is in fact consistent with the commercial, industrial and institutional land use of the surrounding area” is simply untrue and it is unclear how such a fabrication can be permitted in the documentation. The surrounding land use is predominantly Open Space and the River Club abuts a Grade I heritage site, the South African Astronomical Observatory (SAAO). The only abutting property with industrial use zoning is on the narrow strip to the north across the Liesbeek but most of the periphery of the site is located adjacent to land zoned for Open Space. As we pointed out in our previous objection to the BAR, the heights of the buildings proposed are at minimum equal to the heights of the tallest permitted buildings in Observatory (25m), and at maximum, **double the size**. They will be an eyesore standing out of the river plain when viewed from afar. It is one thing to think that a grain silo might be 50m high, but the grain silo is a single building 100’s of metres towards the North and hardly visible in the precinct. What is being proposed is a set of high-rise buildings where there are none at the moment. The Revised BAR has not dealt with this concern at all.
3. Our previous objection included a concern about the desolation of the precinct at night if 80% of the footprint is non-residential and does not provide social amenities. This concern has not been noted, nor addressed in the revision.
4. Our previous objection included a concern that the proposal has not recognised that massive earthworks are needed to elevate the development above the flood plain only because the developers are seeking to build in an area that is not meant to have such dense development – precisely because of the site’s role as a flood plain. This concern has not been noted, nor addressed in the revision.
5. Our previous objection included a concern that many of the proposed benefits (e.g. better walkability, public access) could be achieved by a different kind of development

with a less dense footprint. This concern has not been noted, nor addressed in the revision.

6. Our previous objection included a concern that only 4% of the entire footprint would be allocated to affordable housing. The response is to say that allocating 20% of the footprint to affordable housing is not financially acceptable to the developer. This should not be the basis for deciding feasibility and appropriateness. The National Environmental Management Act does not reduce considerations of feasibility to simple financial feasibility – all social and environmental factors must be taken into account, not just the profit to be made by the proponent. The Revised BAR has not dealt with this concern at all.
7. The facts of the matter are that the current Table Bay Development Plan does not permit development in the flood plain (for good reason). Any “deviation from a local spatial development framework may only be permitted if site specific circumstances justify the deviation.” The specific circumstances have not been demonstrated. Instead, the response is to argue “that the proposed development is in line with the latest spatial policy plan relating to the site, the Draft Two Rivers Local Spatial Development Framework.” The Draft Two Rivers LSDF is just that – a Draft out for public comment. It is not the accepted LSDF for the River Club. Moreover, if the proponents wish to use the Draft TR LSDF as justification, that draft LSDF makes it quite clear that any development in the River Club precinct would need to deliver at least 20% affordable housing – this proposal delivers only 4%. So, it not true that there is a LSDF that supports the development. This concern has not been addressed in the revision.
8. Our previous objection noted concerns about the flat property market and that the River Club development would not be responding to local housing and mixed land use demand. We presented evidence for this concern. In response, the Issues and Responses document merely repeats the assertions made in the Impact Assessment (Appendix J) dated 2019. This means that no new information was presented to argue why “the demand for housing in this area is robust.” This concern has therefore not been addressed in the revision but merely dismissed by repeating what we had criticised in September 2019.
9. Our previous objection noted that the category for affordable housing in the proposal was somewhat narrow, being linked to incomes within the salary bracket of R 6000 to R 18000 per month. In response, the Issues and Responses document now notes that inclusive housing will be targeted at households earning a combined income of between R22 000 per month and R30 000. This is an even more narrow band and less likely to achieve the goal of redress of spatial inequality. This concern has not been addressed adequately in the revision.

10. Our previous objection noted the reliance of the hydrology study on PRASA lands being available to receive flood water and that, should PRASA decide to develop their land, this will change the opportunities for run-off of the water and therefore impact on the likelihood and severity of flooding affecting Observatory. This concern has not been addressed in the revision.
11. We also note the disjuncture between the assertion by the hydrologists that the additional flooding risk is minimal and the revelation in the Issues and Responses document that “mitigation is required at ... two properties at Ossian Road to mitigate the risk of superficial (sic) damage, and the owners of these properties have been engaged directly in order to agree on flood mitigation measures required at these properties to be implemented at the cost of the developer.” This is a tacit admission that there will be flooding of houses as a result and the flooding will be sufficient to motivate the developer to underwrite mitigation measures. If a house is to be flooded to the extent that a developer will pay for mitigation, that is not minor. Secondly, the hydrologists assured Observatory residents that there was nothing to worry about regarding flooding. However, they have now changed their tune (without changing their report). Why is it that there was no acknowledgement in the first draft or in the Scoping Report of the material risk to houses in Ossian Rd? And why is it only two houses in Ossian Rd? There are 8 houses in Ossian Rd and there are houses in Willow Rd closer to the River. We have been told that the two owners approached by the hydrologists did not agree with the flood mitigation measures proposed by the consultants. This disjuncture has made I&APs suspicious that the hydrologists are not being honest about the risks.
12. This perception is reinforced by the behaviour of the hydrology consultants who approached an Observatory resident in Ossian Road to but did not address the material risk of flooding. The resident informed the OCA that the hydrology consultants approached him “wanting to meet to discuss new measurements they have made relating to Ossian Rd ... and possible flooding as a result of the River Club development. He was wanting to meet so we 'knew what was going on' and were not misinformed about anything.” The resident was told about ‘new measurements’ but no new measurements are reflected in the report, which is still dated 2018.
13. When the resident invited the consultants to approach the OCA to explain to an OCA meeting, the hydrologists did not follow up, despite claiming to indicate interest in meeting the OCA (see attached pdf Annex 1). Moreover, there is no transparency about ‘new measurements’ and why these were made after objections received to the BAR. Did the specialists overlook key assumptions? What prompted them to persuade the developers to pay for mitigation? None of this is made clear in the documentation. This is not behaviour that inspires trust amongst I&APs. Put simply, we believe the hydrologists contacted some residents they could persuade to agree, did not contact others, and are hiding evidence that the risks of flooding are material. This is aggravated

by the fact that the hydrology report does not make explicit its assumptions and parameters, as we previously pointed out and to which there is no response.

14. Our previous objection drew your attention to the fact that the valuator, whose opinion is used to discount alternatives that are less intrusive, has a major conflict of interest since she is employed predominantly by the financiers of the development. She has a direct interest in the profitability of the development, which she has not declared. This concern has not been noted, nor addressed in the revision.
15. Our previous objection raised the need for an archaeological survey. This is dismissed in the Issues and Responses document with the following statement that “the site has been transformed. The one-day site survey of archaeological material is therefore considered to be more than sufficient to confirm that no archaeological material occurs at the surface.” How exactly does that tally with the recommendation from the TRUP Baseline study, which concluded, after a lengthy investigation, that “The Varsche Drift crossings are worthy of further physical heritage survey and assessment albeit that the area lies within a milieu of railway and freeway crossings; The confluence of the Black and Liesbeek Rivers has special significance as this is possibly the least untransformed wetland in the study area; Any open land within the study area ... **should be considered to be potentially archaeologically sensitive** and should be **screened/surveyed before any transformation or development.**” The confluence of the Black and Liesbeek Rivers is central to the River Club development. We fail to see how the Heritage Consultant can dismiss this concern, echoed in the recommendations of an experienced heritage practitioner, by implying there can be nothing but infill on the site. This concern has not been adequately addressed in the revision.
16. Our previous objection raised a concern with the HIA’s attempt to reduce intangible heritage to the river, the river banks and the confluence of the Rivers. In this, we were echoed in the comments of Heritage Western Cape on the draft HIA that “the HIA gives no significance to the floodplain between the rivers, and supports the redevelopment of the River Club site, which immediately abuts and provides the green setting for this river corridor with a bulk of 150 000m² and heights of 10 storeys... It is not just the riverine corridor, (unrehabilitated or not), but the entire TRUP valley including the riparian corridor which is noted as highly significant and is expressed in both its tangible and intangible qualities.” We agree with the HWC assessment that it is “the post-rationalizing of the development that has resulted in the incongruence in the report.” In response to this, the Table of Issues and Responses merely repeats what is already argued in the HIA – repeating the notion that “the Liesbeek River itself has been found to be the only *tangible* visible element that survives as a heritage resource in the broader landscape, and that this element warrants safeguarding or recovery” and relegating the significant visual impact and its impact on sense of place to be of relatively low *heritage* significance. It is hard to understand how repeating an opinion that is not grounded in evidence is sufficient basis for a response. This concern has not been adequately addressed in the revision.

17. Our previous objection raised our concerns about the lack of engagement with Khoi leaders. Please note that the OCA has been raising this issue since 2016 with the Draft Scoping report in our submission on that report. Even when the first draft of the HIA was presented to the OCA in Feb 2018, it was clear that no meaningful consultation with Khoi leaders had taken place. Only when HWC put a provisional protection order over the River Club did the developers then move to engage with Khoi leaders and the so-called First Nations Collective appears as an actor in this scenario. The opinions and quotes of this Collective are used extensively to respond to a range of criticisms of the HIA and its disregard for heritage. However, it can only be myopic to ignore the fact that (a) this First Nations Collective does not say when it came together and why; (b) is only one set of leaders amongst many, of whom many are very strongly opposed to the concessions and views expressed in the HIA. Nowhere in the Issues and Responses document is it acknowledge that there is a very strong body of Khoi and Nama leaders who vehemently disagree. On what basis, then, can an HIA claim to have addressed concerns by hiding behind this co-called Collective?
18. Moreover, the First Nations report submitted in support of these claims is seriously compromised by (a) an apparent conflict of interest by the author who was simultaneously conducting a First Nations Study for DPWT whilst working for a party who has a direct financial interest in both reports; (b) information was gleaned from at least one First Nation leader for this report without him being told it was being collected for the River Club BAR; (c) the content of the River Club First Nations Report includes a scurrilous attack on a Khoi leader opposed to the development, which we do not see as befitting an independent consultant's report. Moreover, the so-called independent consultant has been present at a press conference for the partisan group supporting the development in a very public manner. He cannot be said to be able to exercise any impartial, independent view on a matter he has clearly taken sides on, a side that happens to be the side of the party paying him. We have very, very, very serious concerns about the polarisation of Khoi positions on this development fuelled by a very problematic report.
19. Our previous objection noted the bulk of the buildings at the confluence of the Liesbeek and Black Rivers. The response given in the Issues and Responses document is simply to 'note' this opinion, dismiss this issue as predominantly a visual issue and further note that "a significance impact on "the change in historical character of the site" has been assessed in the HIA and BAR and reported as such." This is a wholly inadequate response. It was assessed as trivial. This concern has not been adequately addressed in the revision.
20. Since lodging our previous objection, the developer has introduced the idea of a memorial centre and cultural space celebrating Khoi culture. However, this space is not located anywhere near the confluence of the River, which is a key location for Khoi rituals. There will be no view of Lion's Head from the confluence of the rivers. Instead

the confluence will be flanked by a raised road crossing and face onto a set of buildings, including buildings ostensibly to be leased to Amazon, that range in height from 34 to 46m metres in height, and no view of the Lion's Head will be possible from the confluence of the rivers (See Annex 3). However, it has been documented that the view of Lion's Head during equinox is a particularly important component of the traditional Khoi rituals associated with that site. This view will be completely obstructed.

21. Secondly, flanking the memorial centre will be buildings up to 44m in height. No mention is made of these buildings impacting on the sense of space important for cultural preservation. This concern remains compelling – the developer's own visuals (see, for example, figure 8a in Appendix K1b Supplementary Planning Report Part 1 and Figure 53 of the Main BAR (part 8) which do not correspond with Illustration 17 of the Appendix G5b Supplement to the HIA) suggests that the view of Lion's Head from the amphitheatre will be highly limited. One would have to be standing at the extreme periphery of the amphitheatre (furthest South) to have any view of Lion's Head that is not obstructed by buildings and any foliage and vegetation of any height will further interfere with such views.
22. Thirdly, the application makes no mention of the impact of the massive development on views of the area and the Liesbeek Valley from higher vantage points (see Annex 4). The proposed development will be visible clearly as a very large set of buildings from the mountain, as illustrated by Mark Callaghan at his input to the IACOM meeting on 28th January. These views will be highly intrusive and remove what is currently seen as a lush undeveloped green strip and place an eyesore along the green belt. Please see attached image (Annex 2).
23. Lastly, we point out that the Impact Assessment Committee of Heritage Western Cape, released on 13th February 2020, have firmly rejected the HIA as meeting the requirements of Section 38 of the National Heritage Resources Act. In summary,
 - 23.1 The reasons why IACOM came to this conclusion are as follows:
 - a. While the HIA acknowledged the historical significance of the site, it failed to map the relevant heritage resources of the site, specifically the intangible heritage significances. It relied on what they call "ecological rather than cultural values" because it argues that the "river itself is the only tangible visual element which survives as a resources which warrants protection. IACOM says this "negates in its entirety the exceedingly high historic and symbolic significance of the site identified in all previous studies and submitted continuously through the process by the relevant I&APs." In other words, we kept saying it was wrong to simply reduce heritage to the River and HWC IACOM has resoundingly agreed with us. They have also agreed with us that the HIA has downplayed the open, low-lying, green, riverine character of the whole site. While important, the river is not the only heritage resource to be mapped and identified.
 - b. HWC IACOM have also agreed with us that just because 20th century activities have disturbed the site, it cannot be taken to mean that the site has been degraded in terms of its heritage value. As they say, the disturbance of the soil and use as an infill

“does not take away the meaning of the site as a historic frontier or point of containment, conflict and contact, or its significance to the region.”

- c. Assessment of the significance of the heritage resources is inadequate. The HIA failed to take account of the three criteria contained in the NHRA (considered to have cultural significance of the community; could yield information about heritage; is important for a particular aesthetic valued by a cultural group.). In particular, the HIA and First Nations Report did not unpack the significance of the deep and sacred linkage to the site through lineage and collective memory. The HIA “undervalue the significance of the Heritage Resources generally”, a point the OCA has been making repeatedly.
- d. HWC IACOM also took issue with the HIA regarding the existing River Club building as having no heritage significance.
- e. IACOM also pointed out that the River Club should have been graded as part of a comprehensive consideration of the whole TRUP site. They reminded DEADP that individual landowners were advised to wait, and that if they chose to proceed with an HIA for their own development, “to ignore existing studies and bigger TRUP picture could be at their own peril.”
- f. They conclude this section as follows: “It would appear that the assessment of significance has been tailored to arrive at mitigation for the development rather than an assessment of significant that would assist in informing an appropriate development.”

This is consistent with what the OCA has been saying – the HIA must independently try to provide indicators for any future development rather than try to get the HIA to rationalise the development proposed by the Developer.

- g. HWC notes that the report ‘wholly downplays the irreversible impacts of transforming a green lung at the heart of the TRUP into a mega project’ and “these irreversible impacts are hardly interrogated at all.’
- h. Consistent with our view that the HIA has been stubbornly ignoring the impact of scale and size of the proposed buildings, the HIA recognises clearly that the built form of the proposed develop will affect significant heritage resources present. As they state “this HIA practically gives the development carte blanche in terms of heights and massing.” IACOM criticises the HIA because It fails to critically engage with the proposed heights or their impacts on heritage resources.
- i. IACOM points out the HIA failed to assess the development’s impact on the site’s open green qualities. Instead of considering ways to recover both significance and sense of place, the HIA dismisses the open space by saying its current use is a golf course. “The statement that the sense of place has already been transformed iteratively over the past 80 years does not make it acceptable to destroy what remains.”
Again, this is a point OCA has been making repeatedly and which the HIA consultant has chosen to ignore.
- j. IACOM notes the inadequacy of the Visual Impact Assessment (VIA). The VIA acknowledges that the visual impacts will be sizeable (‘intrusive’ and cause ‘a loss of a sense of place’), but then simply dismisses these by saying that ‘judgement of visual impacts depends on receptor perceptions.’ This mimics the HIA itself which dismisses objections to the Visual Impacts as ‘differences of opinions.’

- k. IACOM note that HWC previously recognised the site as being of Provincial if not national significance. The HIA ignores this and ignores the fact that River Club must be considered in the context of the whole of TRUP.
 - l. IACOM takes issue with the HIA pretending that the new draft LSDF for TRUP would ‘override heritage considerations, or indeed mean that a mega project is appropriate...’. They point out that a LSDF would support developed in ‘Urban Inner Core’ areas in principle, but it is not a given that any development will be supported. A framework is just that – a framework, not an entitlement to build what you want. And they confirm that the current Table Bay SDP is actually the current framework which speaks to preserving the qualities of the site. They criticise the HIA for giving preference to proposed policies that are still in the consultation phase.
 - m. They dismiss the economic viability argument as “unconvincing and inadequate.” The fact that the development will pay for the Berkeley Road extension “should in no way be used as mitigation to argue for sustainable and economic benefits” but, rather, “the heritage significance of the site should be the primary informant”.
 - n. The engagement with First Nations groupings raised many issues which IACOM were not satisfied about, including the failure to include certain First Nation grouping, lack of clarity on the impartiality of the consultant, the methodology raised concerns (no ethical consent for interviews), overlap and confusion between what the consultant was doing for DTPW and for the River Club. They concluded that the engagement of I&APs did not comply with section 38(3) of the NHRA.
 - o. IACOM really slammed the HIA for failing to consider alternatives meaningfully, a concern we have been raising repeatedly. The HIA stuck to what the Developer said was economically feasible but should have properly assessed lower density developments and the No Go option properly, which was not done. They concluded that “the reports demonstrate insufficient exploration and interrogation of a range of alternatives” and so is not compliant with the Act.
 - p. Lastly, because the HIA fails to identify heritage resources adequately (i.e. it focuses on the river and ignores the flood plain and sense of place), it is inadequate in addressing mitigation.
- 23.2 The conclusions from HWC IACOM are:
- q. The River Club is an integral part of TRUP
 - r. HWC believes TRUP is of Provincial if not national significance
 - s. The River Club site is recognised as a sacred place and the open largely undeveloped floodplain is a tangible reminder of intangible heritage
 - t. The history of the site is immensely important, being a place of conflict, the first colonial settlement and the place where indigenous people were first truly dispossessed of their land.
 - u. “It is a place where almost all of the stage of South Africa’s development history and policies are ... embedded deep ... it is a place which speaks to who we are now, from where we have come, not just as a City, or a province but as a nation.”
 - v. The HIA reduced this incredible significance to a set of ecological values, “... to post-rationalize a wholly intrusive development model, rather than inform appropriate development.”
 - w. The memorial/museum was noted to inadequate because it is designed to create meaning rather than enhance existing significances on the site.
 - x. “The bulk and mass of the development proposal does not respond to the site as a living heritage.”

In sum, HWC IACOM says the HIA does not meet the requirements of the law. We support the position of IACOM and have been pointing out many of these arguments for some time already but the heritage practitioner has consistently not responded to these arguments.

We do not believe the application should be approved as there are flaws in multiple key aspects of this application as outlined above and which have not been addressed in the series of iterations of this application.

We submit these comments as provisional comments, bearing in mind we may still wish to submit further comments by the 28th February.

Yours sincerely

A handwritten signature in black ink, appearing to read "Leslie London". The signature is written in a cursive, flowing style.

Leslie London
Chairperson Observatory Civic Association