

Submission to the Ministerial Appeal Tribunal on the River Club Provisional Protection Order
Leslie London: Chair Observatory Civic Association

Thank you for the opportunity to speak to the matter of the River Club Provisional Protection Order. I acknowledge the Chiefs and the leadership of the various First Nation groups. I speak today as the chair of the Observatory Civic Association, which is an Interested and Affected Party that has been active on heritage matters for many years, to the extent we were given an award for being the most active conservation body in the Province by the Western Cape Department of Arts, Culture and Sport in 2018.

This Tribunal first assembled here in October 2018 after the appeals by the developers, supported by three government departments. In this room, we were witness to convoluted arguments about why there was no imminent threat to heritage that could justify a provisional protection order. One year later, it is clear why HWC Council decided to issue the protection order – the owners of the River Club, despite being warned of the risk, have ploughed ahead with their development application, which has now completed the I&AP consultation phase. HWC IACOM have completely rejected the Heritage Impact Assessment for reasons known to everyone in this room. DEADP must make a decision on whether to permit this huge and intense development. But the River Club and the TRUP area remain ungraded for heritage despite many indications that the area should enjoy Provincial if not National Heritage status. Instead, HWC has been sucked into an appeal that has dragged on for more than a year, with no progress in grading as a result. But the BAR decision now lies with DEADP. Clearly, there is, as was originally argued, an immediate threat to heritage, which justifies the protection order.

Secondly, this Appeal process is part of the democratic dispensation under a new Constitution in South Africa. Inasmuch as appellants have their rights to fair administrative processes, the public, interested and affected parties, have their right to participate in decisions that affect them. On this count, I want to bring to the Tribunal's attention the sustained interference experienced over the past few months by those I&APs who have publicly opposed this development and who have called for the heritage grading of the entire TRUP, including the River Club. As Chief Kleynhans earlier commented, this is part of the processes orchestrated to distract.

You have heard earlier about threats made, including the claims by Chief Zenzile Khoisan that he was threatened but also of the court order obtained by Mr Tauriq Jenkins in response to how he has been harassed and subjected to vilification and threats designed to intimidate him. How exactly is he to exercise his democratic right to object to the development or to express support for the protection order if he is under threat of war? Moreover, in the past month, we have seen emerge faceless, nameless and anonymous documents using a false letterhead of the Xarra Aboriginal Restorative Justice Forum which seek to discredit anyone and everyone who has stood up against the development or been associated with any Heritage Western Cape processes and who is seen to put up obstacles to the development. I am aware of three such documents. These documents were authored on the 18th Feb, 4th March and 9th March. The documents include increasing vitriolic defamations of individuals who the anonymous authors perceive as a threat to their objectives. I am one of 20 such persons named in the most recent version of the document.

The accusations made in the documents are false and malignant, and designed to discredit us. For example, individuals are labelled as thieves, fakes, gay dogs, descendants of colonialists, collaborators, perpetrators of institutional violence who will be held to account, fabricators, misfits, inkuipers,

conmen, fugitives, fronts, snake oil salesmen, desperados, extortionist, scam artist, fraud, hypocrite and hijackers.

We are purportedly guilty of abusing and misusing statutory heritage processes with malicious intent to deny First Nation heritage and Indigenous Rights.

We are warned we will be held accountable.

The documents, all of similar format, a jumbled mixture of pictures, WhatsApp images, screenshots, and sections of documents quoted selectively, as well as wildly inflammatory text, are anonymous. Although the heading purports to be from the Xarra Aboriginal Restorative Justice Forum, it clearly a fake. This has been confirmed by the Forum itself. The layout and design are crude, reminiscent of apartheid StratCom disinformation put out so as to discredit anti-apartheid activist through crude propaganda. As Kai b'a Hennie van Wyk noted in his comments, we have all come through the period of apartheid dirty tricks and are familiar with what these fake documents look like. Moreover, like these stratCom documents, the email address from which the last document has been widely disseminated is a concocted gmail address created with the impression it is the Xarra Aboriginal Restorative Justice Forum.

But the document is not truly anonymous. Someone went to a keyboard and assembled it. It did not come out of thin air.

Why do I say the document is not anonymous? Because the properties of the document give away the identity of the Computer on which the documents were authored. Here, I will pass around a page which shows the metadata for all three documents. I am informed, and believe this information to be correct, that this indicates that all three documents were authored on a computer registered to Mr Rudewaan Arendse, the person hired as heritage consultant by the River Club to ensure their Khoe credibility as they plough ahead despite widespread opposition from both First Nation groups and Civics and NGOs.

The appellant will have to explain how it is that their heritage consultant is associated with, if not the author of anonymous material, likely defamatory, which have been circulated widely with the purpose of damaging the integrity of those defamed.

The timing of these documents is notable. I will address each document separately. The first was written 4 days after IAPs submitted comments to SRK on the Basic Assessment Report. This first document tries to create an impression that Tauriq Jenkins has major conflicts of interest. How ironic that part of our OCA submissions four days earlier points to Mr Arendse's deep conflict of interest in working both for DTPW and the River Club, and in partisan activity in favour of the River Club development. The second document was written 6 days after we submitted to DEADP a petition with over 10 000 signatures opposing the development and an application to Heritage Western Cape for grading the TRUP as a provincial heritage site, supported by 15 First Nation groups and 46 civics. This second document is furious that the three amigos, as we are labelled, could mess with the author's intentions for the River Club. The third document appears 4 days before this Tribunal meets. Its accusations are even more egregious and it implies a slur on the Tribunal Chair. I believe they are intended to undermine this Tribunal.

I am putting it to the Tribunal that these dates are not coincidental. They are responsive to the setbacks experienced by the developer. And the metadata indicate they come from the computer of the man hired to solve the developer's lack of credibility over Khoe heritage matters. More importantly, this is a concerted attack on the ability of I&APs to participate freely in the Tribunal

process. It undermines the authority and standing of the Tribunal if I&APs are being intimidated by defamatory statements and implicit and sometimes explicit threats. For example, I am labelled as Abusing Statutory Processes and Seeking to Deny First Nations Their Indigenous Rights, Heritage and Culture. I will be held to account whatever that means. Why is it that being an active citizen is an abuse, when nameless, faceless, baseless accusations are not abuse? This kind of bullying has no place in a democracy and it has no place in a Heritage Appeal Tribunal. I ask the Tribunal to consider carefully what remedial action in this regard should be taken. I also ask the Tribunal to ask the appellants what role they played in the genesis and distribution of these documents, solely intended to undermine the objectors to the development.

Further, I believe this information finally puts to rest any pretence that Mr Arendse is acting as an independent consultant. Whether he wrote these documents or not, he is clearly implicated in their writing. The metadata indicate they were written on his computer and the contents of the documents clearly respond to actions taken by I&APs to lodge their objections. I believe this confirms he is biased in favour of the development as we argued in our submission to the BAR. On matters relating to the Tribunal, therefore, any of his reports and utterances he made should be regarded as flawed and treated as suspect. I refer here to paragraph 52 of the submission of LLPT's legal representative, Mr Smith, which urges the Tribunal to 'consider the report in discharging its responsibility.' To us, this means that the Heritage Impact Assessment for the River Club development, which is built upon the veracity of Mr Arendse's reports, must now surely be under question.

We therefore ask that that Tribunal note Mr Arendse's role in this matter which involve the undermining of I&APs and his impartiality should be carefully scrutinised.

Thirdly, we are concerned about Mr Gerber's role in relation to these documents. Mr Gerber is here to represent the Department of Transport and Public Works. As Advocate Petersen knows, it was Mr Gerber who brought the first of the three documents to the attention of Heritage Western Cape. This was on the 18th February. The document was written just after midnight and about 6 hours later it was sent to HWC by Mr Gerber. Mr Gerber did not say who he received it from, but he chose to pass it on to Advocate Petersen, copying in the same email parties from the developer, their financing partners, the City and officials not directly involved in the hearing. He did not copy any of the I&APs implicated in the document. The document was not distributed at the time to I&APs. However, that document has now been superseded by other documents, similar in style, but much more egregious in content, all intended to discredit opponents of the development, and widely distributed. It is one of the two documents most recently circulated publicly.

We do not know why Mr Gerber saw fit to send a smear document on. He did not bring that document to the attention of the people implicated in the document – namely Tauriq Jenkins, Marc Turok and myself. If he was so concerned about alerting those falsely accused, or giving us a chance to respond, you might imagine that he would alert us as to its existence. But no, he sent it to Mr Petersen at HWC, whose role is to disseminate relevant information to all I&APs and he copied it to multiple third parties. His precise email, as I understand, said "I have no idea whether or not it has also be sent to other parties. [*but note that copies it to other parties*] Please distribute to the relevant parties. Mr Jenkins should also be given an opportunity to be heard in response to the content of the document." So, Mr Gerber was clearly of the opinion that this should be widely disseminated and the target of the smear should be given an opportunity to respond.

Only on the 11th of March, two days before this Tribunal, and almost three weeks after receiving the document does Mr Gerber share the document with us, along with the longer smear document, claiming to believe that we "should be given a right to respond to the allegations/statements made."

We have responded already and made it clear this is a complete waste of the Tribunal's time to spend a minute dissecting the lies and misrepresentations contained.

But more to point, it is our view that Mr Gerber ought to explain some things. Firstly, who did he receive the document from on the 18th, hot off the adobe press, and under what circumstances was he given the document? Remember, it was written at about 20 past midnight and at about 6.30am, Mr Gerber was forwarding the document. What was his purpose for passing this smear document to the Tribunal's Advocate Petersen on the 18th Feb? Why did he not inform the persons who were smeared yet he chose to copy the developer on this matter? A document which contains defamatory matters is not a document that you would treat in a non-private way. We would like to know whether he has any knowledge about the source of the subsequent documents? We also want to know why he thought it fair that Tauriq Jenkins, Leslie London and Marc Turok should be informed about the malicious allegations but not the other parties maligned in the document? After all, at least 20 people are most likely defamed in the latest document.

To us, his belated concern that defamed parties should be able to respond certainly seems to be an insincere pretence of fairness. It also appears to us that he is involving himself in this matter far beyond what a DTPW official should be concerned about and in ways that are to the benefit of the developer.

Mr Gerber is a public servant who works for the Department of Transport and Public Works. He does not work for LLPT but, to us, it seems that this distinction has been blurred by his conduct. We believe the Tribunal should ask for an explanation from Mr Gerber and take appropriate action in this regard if his explanations do not prove to be satisfactory.

Lastly, I return to the question of an immediate threat to the heritage resources and why a Protection Order was necessary. The clearest evidence that we have of such a threat is a recent letter to the Cape Argus, dated only 11 days ago, authored by Mr Jody Aufrichtig of LLPT, in which he responds to the OCA's public campaign by claiming that the River Club site is 'hardly a precious part of our city' but is rather a degraded site, with some parts being used as a rubbish dump. It seems he has not read any of the IACOM's comments or the I&APs comments or even the comment of chief Zenzile Khoisan which acknowledge the whole site, the land, the landscape, the valley and not just the river as significant. If anyone needed a clearer indication of the imminent threat to the heritage resources on site, it is this chilling statement by Mr Aufrichtig that makes us realise that the intangible heritage of the site means nothing to the developer who is only looking for the best way to lay down his outsized, intrusive and destructive development on land that is, at the very least, a provincial, if not national heritage resource. Putting in place a media centre, heritage centre or re-indigenising the vegetation is welcome but in no way is sufficient to compensate for 150 000 m² of concrete which will forever pre-empt any heritage grading of the site. There is absolutely compelling evidence that this protection order should stand and the River Club should be graded before any development decisions are made. I&APs must be protected from intimidation for holding views opposing the development.

