

Our Ref: HM/ CAPE TOWN METROPOLITAN/ OBSERVATORY/ ERF 151832
Case No.: 15112504WD1217M
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FINAL COMMENT

In terms of Section 38(8) of the National Heritage Resources Act (Act 25 of 1999) and the Western Cape Provincial Gazette 6061, Notice 298 of 2003

PROPOSED DEVELOPMENT ON ERF 151832 CORNER LIESBEEK PARKWAY AND OBSERVATORY ROAD, THE RIVER CLUB, OBSERVATORY, SUBMITTED IN TERMS OF SECTION 38(8) OF THE NATIONAL HERITAGE RESOURCES ACT (ACT 25 OF 1999)

HWC Case Number: 15112504WD1217E
DEA&DP Reference Number: 16/3/3/6/7/2/A7/17/3104/16
DWS Reference Number: WU9026 River Club and 16/2/7/G22/A/11

1. The matter above has reference. The matter was heard by the Heritage Western Cape (HWC) Impact Assessment Committee (IACom) on 28 January 2020.
2. The committee is of the opinion that its further requirements contained in its Interim Comment dated 13 September 2019, have not been met and therefore the requirements of Section 38(3) of the NHRA have not been met. Furthermore, within the context of the standard operational procedure with the Department of Environmental Affairs and Development Planning (DEADP) when it is the consenting authority in terms of Section 38(8), the committee requests that DEADP further engages with Heritage Western Cape (HWC) to resolve all heritage related issues prior to DEADP taking a decision on the Final Basic Assessment Report (BAR).
3. Notwithstanding the non-compliance with Section 38(3), the Committee resolved to provide additional comment to the interim comment. The interim comment dated 13 September 2019 is incorporated within this comment in order make clear the committee's requirements and responses to date.

Final Comment

4. Heritage Western Cape is in receipt of a Supplement to the Heritage Impact Assessment, (HIA), submitted on 4 December 2019, under the provisions of Section 38(8) of the National Heritage Resources Act (NHRA) and contained within a Basic Assessment process conducted under the National Environmental Management Act (NEMA), for the redevelopment of the River Club site, Erf 151832 and its bounding riverine banks, the construction of the abutting arterial Berkley Road Extension on Erf 15326, the widening of Liesbeek Parkway, and of the road intersections giving access to Erf 151832, Observatory, Cape Town. The supplementary reports as well as the original reports were considered in framing this comment.

Background summary in the Interim Comment

5. *Prior to discussion of the HIA, the following is set out in order to provide a background summary to the application tabled before the Committee, as well as highlight various issues that HWC has already placed on record.*

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6. The HIA tabled, conducted by Dr Stephen Townsend and Mr Tim Hart, dated 2 July 2019, replaces the Phase 1 HIA submitted to HWC on 22 February 2017, prepared by Ms. Bridget O'Donoghue, (including a peer review conducted by Dr Nicolas Baumann), which was tabled at the Impact Assessment Committee meeting of HWC on 8th March 2017.
7. The minutes of the meeting of the 8th March 2017 noted amongst other things that:
"The Committee believes that the entire TRUP precinct must be looked at holistically; it is problematic to consider the specifics of this application in isolation from the broader study".
8. It was also noted by the IACom that;
"On several occasions HWC has been led to believe that development issues for the entire TRUP area would be addressed prior to the development of individual pockets therein".
9. It was understood at the time however, that there was a broader Baseline Study of the Two Rivers Urban Park, (TRUP), commissioned by the DT&PW and conducted by Melanie Attwell and Graham Jacobs, and which included the River Club within its area of study, and that this was to be considered by the IACom at its next meeting of 12th April 2017. On this understanding, the Committee resolved to undertake a site inspection of the site, and wider TRUP, prior to any further consideration of the O'Donoghue Phase 1 HIA.
10. The Baseline study for the TRUP, (which included the River Club), and submitted in terms of s38(8), was thereafter tabled at the IACom meeting of 12th April 2017, and, of importance to the comment being provided in respect of the current application, the minutes of that meeting reflected:
11. "On balance it is evident that, based on the heritage resources identified in the baseline study and its supporting documentation, the TRUP is of extremely high heritage significance. The Committee agrees that the overall site is of at least Grade II heritage significance, if not higher", and the IACom recommended that,
12. "Given the strategic importance and high significance of the site, it is a strong recommendation of the Committee, that the Council of HWC gives consideration to the provisional protection of the TRUP area under s29 of the NHRA".
13. The Committee also noted at its meeting of 12th April 2017, that it had concerns that the following issue(s) should also be addressed in the Baseline Study:
"The National Khoisan Legacy Project"; in particular the understanding that this site may form an important aspect thereof. It is further understood that this site has been identified as part of the National Liberation and Resistance Project of Government. These are aspects that cannot be ignored and must be taken into account when framing heritage related informants for the site".
14. Notwithstanding certain of the concerns raised in respect of the baseline study, Ms Attwell and Mr Jacobs were commended for an extremely thorough report, (particularly in respect of the identification of significance of the TRUP), and one which is also noted to have been commended by First Nation representatives at the MEC Tribunal Hearings.
15. A number of further meetings were held with respect to the TRUP Baseline Study, and the proposed provisional protection throughout the course of 2017. These include discussion of the TRUP at the Inventories, Grading and Interpretation Committee (IGIC) in May 2017.
16. After receiving feedback from the IGIC meeting, in the form of its minute of 9th June 2017, IACom recorded the following in its minutes:
The Committee is unanimously of the view that based on the information provided for in the consultant's Baseline Report tabled before this Committee, the TRUP is of potential Grade II or even Grade I significance. The Committee stands by its previous recommendation that the site should be provisionally protected so that the matter is fully investigated. The Committee recommends that a recommendation for the provisional protection of the TRUP is sent to the Council of HWC for its consideration.
17. A wider public meeting was held on 29th August 2017 in order to discuss the proposed boundaries of a wider Section 29 provisional protection for the entire TRUP area.

18. The Attwell and Jacobs Baseline Study, along with a supplementary report, was resubmitted to HWC for consideration at its IACom meeting of 8th November 2017. The minutes of the meeting reflect that neither the Heritage Practitioners, nor Town Planner were at the meeting, and that the IACom were informed that a representative of the DT&PW would answer any heritage related questions.
19. The IACom was however informed, that Interested and Affected parties had not been given sight of the supplementary report. The Committee therefore removed the item from the agenda, and resolved that:
20. The applicant must circulate all supplementary information to I&AP's for comment. Any additional comments from I&AP's and the heritage practitioners' response thereto, must be included with the resubmission of the supplementary report.
21. It is important to note that it was during the course of this meeting that in response to a query by the DT&PW representative, the Committee verbally informed that it could not prevent a separate application being submitted by any individual land owner, but that this would be at the risk of the applicant, should the broader TRUP Baseline Study, which provides informants for the whole TRUP, not be completed, as HWC has been explicit previously in this regard.
22. In, or around February/March 2018, HWC Management was made aware of the intent of the River Club to submit a new HIA. Following this, and noting concerns raised by the IACom, and recommendations made previously, a decision was taken at HWC Council in March 2018 to provisionally protect the site in terms of the provisions of s29 of the NHRA and the provisional protection was formally gazetted in the Provincial Gazette, No 7916, on 20th April 2018. The Notice records the Significance of the site, and the wider TRUP area as follows:

Significance:

23. The River Club forms part of the wider Two Rivers Urban Park (TRUP) and represents a microcosm of Cape history. It reflects the pattern of South Africa's social, architectural and political history spanning across the pre-colonial, colonial, apartheid and more recent history.
24. The Two Rivers Urban Park landscape has high cultural values of historical, social, aesthetic, architectural, scientific and environmental significances. It contributes to an understanding of past attitudes, beliefs, uses, events, persons, periods, techniques and design. It has associated links with past events, persons, uses, community memory, identity and oral history. It possesses a strong sense of place.
25. The Two Rivers Urban Park landscape is a complex composite of natural, cultivated and built landscape elements. It is a cultural landscape, transformed by thousands of years of settlement history. The landscape expresses both artistic and innovative qualities in terms of its natural setting, architecture and planting patterns. It also has narrative qualities, possessing a rich layering of physical evidence brought alive by the oral histories of the people who lived and worked in institutions, amongst other things, the Valkenberg Hospital and the South African Astronomical Observatory.
26. Different historical narratives create a story of pioneering and philanthropy, social reform and identity, self-sufficiency, farming and institutionalization.
27. The Two Rivers Urban Park possesses many distinctive and interrelated precincts which clearly demonstrates or are strongly associated with its various historical roles and uses as a place for indigenous hunter-gatherers, grazing grounds for herders, colonial farms, scientific research, reformatory and hospitals.
28. This decision was appealed to the MEC Tribunal, by a number of parties, namely the owners of the River Club, the DEA&DP, the DT&PW, as well as the City of Cape Town. However, as there was a procedural flaw in the HWC Council's decision to provisionally protect, (not provisionally proclaim the River Club as a PHS, as stated in the current HIA), the Tribunal ordered on 29th January 2019, that this be rectified and must include consultation and negotiation with the appellants and I&APs, that HWC must invite the owners of the River Club to an oral hearing held by its Council within three months, that HWC must submit a report to the Tribunal within two

months of the oral hearing; and that the parties will then be given thirty days in which to make final submissions and the Tribunal will then hold a final hearing and finalise the appeal.

29. Whilst this process has been completed, the MEC Tribunal has yet to meet and take a final decision in this regard. It is accepted that the s29 provisional protection remains in place.
30. However, as noted, and communicated to representatives of the DT&PW, applicant, DEA&DP and the City at the IACom meeting of December 2017, this does not preclude any party making a NEMA / NHRA s38(8) application in the interim. HWC is somewhat confused therefore by the contention on page 23 of the HIA that it was the interim ruling of the MEC Tribunal released on 5th February 2019, which enabled the integrated NEMA and NHRA process to continue. This was never the case.
31. What is noted is that a s29 provisional protection does not preclude an applicant from making an application, (indeed s29(10) of the NHRA makes provision for this).
32. It is finally noted that there has been no further submission of the TRUP Baseline Study, since the IACom meeting of 8th November 2017.
33. Representation was however made to the IACom, by the DT&PW at its meeting of 12th June 2019, (some two years after the initial Baseline Study was submitted), where the Committee was informed by the DT&PW that:
34. "The DT&PW had, during the process of the s29 protection of the River Club, become aware of a real need for public engagement. In this regard, DT&PW had resolved to undertake a further public participation process for the wider Two Rivers Urban Park. This is primarily to address the role that the First Nation groups have in commenting on the wider process".
35. The above has been set out in order to provide a broad background to the current application, and particularly to inform that HWC have continually informed all parties, and demonstrated via the provisional protection, that it is of the opinion that the site, and the wider TRUP area is of exceedingly high cultural significance, (of Provincial or even National significance), and that until the Basic Assessment Report, which addresses concerns already ventilated by HWC, and in particular meaningful consultation with representatives of the First Nation and Cape Indigene groups in order to better understand the significance of the site to these groups, has been incorporated into the study; any application for development of a property within the TRUP area is in danger of being compromised.
36. That the applicant has chosen to proceed with the application, without meaningful reference to any of the previous studies is regarded as unfortunate.
37. HWC remains of the opinion that the River Club is an integral part of a highly significant cultural landscape, that is at the very least of Provincial significance, but more realistically and given South Africa's history, is one of National significance. Indeed, the TRUP as a whole could be regarded as one of the single most historically significant sites in the Country.

Processes since August 2019:

38. In response to the interim comment dated 13 September 2019, the applicant and their consultants submitted supplementary material to HWC on 4 December 2019. IACom heard representations from parties present at the meeting on 28 January 2020.
39. On the basis of the foregoing, the committee formulated the following response:
40. In terms of the provisions of Section 38(8) of the National Heritage Resources Act, (NHRA), it is the responsibility of HWC to give consideration as to whether the evaluation of the impact of the development on heritage resources fulfils the requirements of the relevant heritage resources authority in terms of Section 38(3) of the NHRA.

41. It is the unanimous view of the IACom, being the delegated authority to issue comment on behalf of HWC in terms of Section 38(8), that the HIA and supplementary reports as tabled do not comply with the provisions of Section 38(3).
42. For ease of reference, the comment which follows is structured under the subsections of Section 38(3).
 - (a) **The Identification and mapping of all heritage resources in the area affected.**
43. HWC remains of the view that this requirement has only been partially complied with.
44. It is noted that the HIA has been very well researched, and that the historical background is well articulated. This includes the history of planning and development as it relates to the 20th Century.
45. What is considered unfortunate however, is the disjuncture between the initial acknowledgement of the historic significance of the site and wider environs and the actual identification and mapping of the heritage resources, specifically the intangible heritage significances.
46. The committee remains of the opinion that the identification and mapping of heritage resources is something that should be addressed in the first part of the report, and should form the basis of the report, rather than being relegated to a conclusion. The supplementary reports fail to adequately address this concern.
47. The mapping continues to base significance on ecological rather than cultural values, and reduces the acknowledged and far wider cultural landscape of the valley to just the river(s). Arguing that the "*river itself is the only tangible visual element which survives as a resource which warrants protection*", negates in its entirety the exceedingly high historic, and symbolic significance of the site identified in all previous studies, and submitted continuously throughout the process by the relevant I&APs.
48. The tangible aspects of the river, confined to their current extent, while certainly important, are not the only heritage resources which should be mapped and identified. They are an integral part of a much wider and highly significant system, as indeed is the River Club property itself.
49. Notwithstanding that HWC has consistently advised against this, the HIA has still not placed the River Club site within the context of the wider TRUP, and has downplayed the open, low-lying, green, riverine character of the site which contributes to the intangible heritage experience. Representations of interested and affected parties underscored this by noting the intertwined roles of people and place in the historic landscape layers.
50. The notion that the 20th Century disturbance has resulted in a degraded site is, from a heritage point of view, rejected.
51. The HIA notes that:

"This wider site is the historically significant place, a 'frontier zone' (if for a short period); but its meaning and persuasiveness as heritage site has been eroded by the 19th century institutional use and development of the spur, by the growing transformation of the floodplain for sporting uses and facilities and for railway-related functions during the second half of the 20th century, by the gradual creep of the suburb and business quarter below the railway line throughout the 20th century, and by the late 20th century growth of the transportation network of arterials and motorways".
52. The supplement to the HIA does not depart from this standpoint.
53. HWC remains of the view that the HIA errs in this contention and the fact that the site has been considerably disturbed in the latter half of the 20th Century does not in any way take away the meaning of the site as a historic frontier or point of containment, conflict and contact, or its significance to the region.

54. As indicated in the interim comment dated 13 September 2019, the identification and mapping of heritage resources is incomplete and thus does not comply with Section 38(3) (a) of the NHRA.
- (b) **Assessment of the significance of such resources in terms of the heritage assessment criteria set out in section 4(2) or prescribed under section 7, (of the NHRA).**
55. HWC remains of the view that the assessment of significance is inadequate.
56. The committee remains of the opinion *that the disconnect between the various stakeholders' understanding of what comprises the heritage resources of the area, and that of the HIA, is already problematic. It stands to reason therefore, that given the absence of a complete identification and mapping of the heritage resources pertaining to the wider 'valley', that the grading of these resources will also be flawed.*
57. Indeed, it is the opinion of the committee that the fundamental grading of significance is wrong and therefore, all that follows, including the conclusions of the HIA, is wrong.
58. Section 3(3) of the NHRA sets out, amongst others, the following criteria, in determining whether or not a site;
- i) is considered to have cultural significance to the community;
 - ii) could yield information about heritage;
 - iii) is important in exhibiting particular aesthetic characteristics valued by a cultural group;
59. The HIA has not taken the above into account in the assessment of significance, and as noted, has merely reduced the identification of heritage resources, and subsequently significance to tangibly based ecological values rather than cultural heritage values.
60. The supplement to the HIA and the First Nations report has not fully unpacked the significance of the site to a broad Community that has a recognized and direct, deep and sacred linkage to the site through lineage and collective memory. The findings of the supplementary reports assess the significance of the site as limited. The committee does not concur with that finding.
61. The concept of significance is broadly underpinned by authenticity. The values attributed to the site by the stakeholders have not been carried through into the report and have therefore not adequately informed the unique significance of the site and appropriate development indicators. This is a methodological problem that the HIA does not address.
62. The HIA undervalues the significance of the heritage resources generally.
63. 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. This has been recognized and assessed in previous reports considered by HWC, a significant number of other stakeholders, and indeed the IACOM, and HWC itself in taking the step to provisionally protect the site in terms of s29 of the NHRA.
64. The lack of recognition of the grounds of the River Club itself is also noted by the DT&PW in its comment on the HIA, and, as previously stated, the River Club building itself, an integral component of the grounds, and one which at the least is of contributory, (and historic), significance, is contrary to previous studies conducted, now deemed of no value.
65. In general, and in spite of HWC having previously advised that whilst individual land owners are entitled to proceed with an HIA for their own development, to ignore the existing studies and the bigger TRUP picture could be "*at their own peril*".
66. In this instance, the assessment of heritage resources continues to ignore both the existing studies, and the wider picture, and as such has attempted to grade significance in the isolation of a much wider system.
67. It would appear that the assessment of significance has been tailored to arrive at mitigation for the development rather than an assessment of significance that would assist in informing an appropriate development. It is as a result of this that the report contends that "*the heritage-*

related criteria-for-decision-making/design indicators are relatively limited in guiding the architectural and urban character of the proposed development itself." In other words the authors contend that there are hardly any heritage indicators for development. The committee does not concur with this view.

68. It is considered short sighted to relegate the significance of the site, which is an integral part of a broader area which has a recognized and acknowledged high cultural significance, to a set of post-rationalized and confined areas of significance, primarily based on ecological rather than cultural values and to isolate the subject site from the broader cultural landscape.
69. As indicated in the interim comment dated 13 September 2019, the assessment of significance and grading in the HIA is flawed and thus does not comply with Section 38(3) (b) of the NHRA

(c) Assessment of the impact of the development on such heritage resources.

70. As noted above, and given that the heritage resources themselves have not been fully identified or mapped, and that the assessment, or grading, of the heritage resources is flawed, then it follows that any assessment of the impact of the development must also be flawed.
71. Amongst other things, HWC notes that:
72. The report wholly downplays the irreversible impacts of transforming a green lung at the heart of the TRUP into a mega project. These irreversible impacts are hardly interrogated at all.
73. The HIA appears not to regard the built form of the proposed development as affecting the significant heritage resources present, neither does it recommend heritage related built form restrictions. Unlike the TRUP Baseline Study and the Phase 1 HIA for the River Club (both of which provide some well-considered, spatialised indicators), this HIA practically gives the development carte blanche i.t.o. heights and massing.
74. The HIA does not motivate for, or critically interrogate the proposed heights, or their impacts on the heritage resources identified in the report itself.
75. The statement that the impact on the site's sense of place is "*dependent of the personal aesthetic and values of the observer*" is not supported.
76. Indeed, this dismisses (or avoids) the '*observations*' previously stated by HWC, those contained within the Attwell, Bauman, and O'Donoghue reports, as well as that of a considerable number of public and governmental stakeholders, which includes the SAAO, DTPW, and the CoCT EMB. The considered comment and concerns raised by these bodies must surely be regarded as something more than "a difference of opinion"? These concerns remain.
77. Importantly, the HIA fails to assess the impact of the development on the most important heritage resource: The site's open, green qualities as a remnant of landscape that has considerable intangible historic and cultural heritage significance.
78. It is agreed that the current private golf course is not the ideal land use for such a significant site. However, instead of the recovery of both significance and sense of place, the proposal precludes this.
79. 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.
80. It is finally noted that the Visual Impact Assessment (VIA) is inadequate in its assessment of the cultural landscape and definition of the sense of place. The supplementary VIA merely provides better imagery of the same view points and the photomontages provided remain unhelpful as tools to assess impacts.
81. Furthermore, while the VIA and the supplementary report finds that "*a loss of sense of place is expected*" (p37) and "*new built structures will be visually intrusive*", it simply echoes the HIA, by concluding that the judgement of visual impacts depends on "*receptor perceptions*".

This is neither conclusive nor useful.

82. HWC notes that it is only a commenting body in respect of this application, and that consideration of the VIA is DEA&DP's concern as the consenting body, however it is noted that HWC requires an independent practitioner who HWC recognizes as having the requisite expertise for heritage related work to undertake the VIA. The VIA should establish a sense of place and landscape character and assess the development against these criteria.
83. As indicated in the interim comment dated 13 September 2019, the assessment of impact of the development on significance in the HIA and VIA is flawed and thus does not comply with Section 38(3) (c) of the NHRA.

(d) Evaluation of the impact of the development on heritage resources relative to the sustainable social and economic benefits to be derived from the development.

84. Whilst it is acknowledged that there may well be a potential economic benefit to developing the site, it is noted that there has been no attempt to develop an argument or acknowledge the impact of the development balanced against a site which has been recognized previously by HWC as being of Provincial, if not national significance.
85. It is further noted that other than an acknowledgement of process followed thus far, the HIA and supplementary reports have not acknowledged or interrogated the significance that HWC and previous reports have attributed to the wider valley context.
86. As a result, and in attempting to define or limit significance to the riverine corridors only, meaningful discussion of the impact of the development on the significance of the wider TRUP cultural landscape is avoided altogether. This is in direct conflict with the advice HWC has previously given that the River Club cannot be looked at in isolation of the wider system.
87. Noting that the proposed development is in line with the City of Cape Town's new Metropolitan Spatial Development Framework (MSDF), is not an evaluation of the impact of the development on heritage resources. It is noted that the revised MSDF designates the River Club and TRUP area as part of the 'Urban Inner Core', and that urban development within these areas is supported in principle. A high-level spatial planning tool which supports development in principle, does not override heritage considerations, or indeed mean that a mega project is appropriate on this particular site, in comparison with an upgrade to the Voortrekker Road Corridor for example.
88. Notwithstanding the above, it is also noted that the *Table Bay Spatial District Plan (SDP) and Environmental Management Framework (EMF) 2012* is still the most relevant planning and policy framework applicable to the site, and that from a heritage point of view, the following, amongst other things, must be taken into account:
 - Preserve the qualities of the various areas of the City, which exhibits a range of diverse character zones;
 - Protect the historical built fabric, scale and texture of the historical areas of the City;
 - Maintain the interface between the City and Table Mountain, retaining view corridors and scenic vistas and avoiding monolithic structures that block views;
 - Ensure that proposed development is in keeping with and appropriate to the historical nature of the City;
 - Ensure the retention and protection of historical areas, sites and features both above and underground;
 - Ensure that construction activities within the district and specifically within heritage and conservation areas do not negatively impact on the historical character of the area or fabric;
89. It is the view of HWC that the HIA has ignored this. The adopted spatial planning policies should take preference over proposed policies which have not as yet been adopted, or are still within the consultation phase.
90. The viability argument is regarded by HWC as unconvincing and inadequate. That there appears to be a cross subsidy of the development to help fund the City's proposed Berkley Road extension should in no way be used as mitigation to argue for sustainable and economic

benefits. The heritage significance of the site should be the primary informant of any development, and not linked to cross subsidisation opportunities.

91. The HIA argues that *"a lesser development would not generate adequate funds for the great public good that we argue for, the restoration of the Liesbeek riverine corridor."*
 92. The report repeatedly extols the benefits of the "restoration" of the Liesbeek riverine corridor (a notion considered by some as inauthentic and contrived), but it is clear that it is also the substantial earthworks required to artificially raise the site some 2 to 3 metres out of the 100-year floodplain and the Berkley Road extension that contribute to the high capital costs that underpin the motivation for the high bulk development scenario.
 93. HWC queries whether the proposed earthworks and infrastructure indeed constituted a greater public good.
 94. In fact, it is problematic that the character of the site is changed from a *"low-lying green riverine character as part of a larger, if fragmented natural system"*, as noted in the O'Donoghue report.
 95. As indicated in the interim comment dated 13 September 2019, the assessment of socio-economic benefits of the development does not take adequate cognisance of the significance of the site, and therefore the HIA does not comply with Section 38(3) (d) of the NHRA
- (e) Results of consultation with communities affected by the proposed development and other interested parties regarding the impact of the development on heritage resources.**
96. It is noted that the applicants have conducted an engagement with First Nations groupings which culminated in the First Nations report submitted to HWC on 4 December 2019.
 97. There are a number of issues with this report, namely:
 - (a) The scope of engagement resulted in a number of groups electing to not participate fully
 - (b) The research process was contested by participants in the engagements.
 - (c) The impartiality of the research questions is not clear to the committee
 - (d) The methodology for the engagement does not appear to follow accepted oral history interviewing protocols (for example, no ethical clearance forms were supplied)
 - (e) The confusion between this report and the DT&PW-commissioned report brings the ethics around the engagement into question.
 98. The issue of confusion with regard to TRUP and First Nation reports was raised by DT&PW at the meeting of 28 January 2020 and in a follow up letter to HWC. DT&PW are concerned at the conflation of what should be two separate reports and processes. The following (quoted from the interim comment dated 13 September 2019), indicates this committee's knowledge of DT&PWs' intended engagements prior to the requirement for a First Nations report:
It is noted that the DT&PW has now identified the lack of meaningful engagement with the First Nation Groups as being problematic in the wider TRUP Baseline Study, and has resolved to correct this, by entering into a new stakeholder process. It is a strong recommendation that in order to correct the inherent flaws in the report in this regard, that the River Club does the same or awaits the outcomes of that stakeholder process.
 99. As previously noted, the DT&PW itself has entered into a stakeholder engagement with First Nation Communities, as it has recognized that the Baseline Study first tabled at the IACom on 12th April 2017 was deficient in this regard, and it now seeks to rectify this. HWC queries as to what would be the point of this exercise, if the development of the most critical undeveloped land parcel is proceeding ahead of this process?
 100. The engagement of interested and affected parties, while undertaken in response to the interim comment dated 13 September 2019, still does not comply with Section 38(3) (e) of the NHRA.

(f) If heritage resources will be adversely affected by the proposed development, the consideration of alternatives.

101. The HIA fails in this regard, as there is no *meaningful* consideration of alternatives whatsoever.
102. The HIA only assesses the preferred 'Riverine Corridor Alternative' and 'Island Concept Alternative' (both 150 000m² of bulk) and simply dismisses the lower bulk alternatives, such as the 'Mixed-Use Affordable Alternative' (110 000m²) and the 'Reduced Floor Space Alternative' (102 000m²), as these have been considered economically unviable by the town planners.
103. A "tread lightly", green-dominated, recreational or educational alternative, without substantial filling in of the floodplain is not even considered, and nor indeed is the no-go option or the adaptive re-use of the site and buildings.
104. A discussion of alternatives should include a meaningful discussion of the no development option. Although the No Go Option is tabled in the HIA as well as the Planning Partners Report, in *The River Club: Overview of Development Alternatives, dated June 2019*, there is no consideration whatsoever, which would weigh this against the potential benefit, or otherwise, of this option to identified heritage resources.
105. The above comments in the interim comment are still applicable, despite the supplementary reports. It is unfortunate that the engagement with First Nations groupings did not materially change the design approach in a manner which is reflective of the intangible heritage significances identified.
106. Therefore, the committee is of the opinion that the reports demonstrate insufficient exploration and interrogation of a range of alternatives; thus the report still does not comply with Section 38(3) (f) of the NHRA.

(g) Plans for mitigation of any adverse effects during and after the completion of the proposed development.


107. The reports submitted do not adequately address mitigation of the impacts of this development. The report fails to identify heritage resources adequately, which results in an inability to adequately assess the potential impact on heritage resources. As a result, it is not possible to assess mitigation measures.
108. Therefore, the committee is of the opinion that the reports demonstrate insufficient exploration and interrogation of a range of impacts and possible mitigation measures, thus the report still does not comply with Section 38(3) (g) of the NHRA.

In conclusion:

109. HWC regards the wider TRUP, of which the River Club site is an integral component, as a highly significant cultural landscape in the City with a significant interplay between natural and man-made landscapes. It is this interplay that defines cultural landscapes. HWC is of the opinion that this area is of at least provincial significance, if not of national significance.
110. It is a site which is recognized as a sacred place. The open, largely undeveloped floodplain is a tangible reminder of intangible heritage.
111. It is recognized through historic record, as well as Cultural Memory, as being a place of conflict for over 150 years. It is recognized as the place where, in 1657, Colonial Settlement of South Africa truly took root with the establishment of the first settler farms along the Liesbeek Valley, and the place where the Cape Indigene were first truly dispossessed of, and excluded from, access to their ancestral land.

112. It is a place where almost all of the stages of South Africa's developmental history and policies are either embedded deep within this cultural landscape, or is viewed from it. It is a place where Cetshwayo and Langalibalele were exiled to. It is a place which speaks to who we are now, and from where we have come, not just as a City, or a Province, but as a Nation.
113. The HIA has unfortunately reduced this significance to a set of ecological values, provided for the most part to post-rationalize a wholly intrusive development model, rather than inform appropriate development.
114. The Committee also noted that a 'memorial' / 'museum' and recreated river courses are inadequate in commemorating the significance of the site and appear to be designed to create meaning rather than attempt to enhance identified heritage significances. It is the opinion of the committee that the site is of sufficient significance within itself and does not need to be imbued with meaning. The bulk and mass of the development proposal does not respond to the site as a living heritage.
115. The discussion above illustrates that the HIA still does not comply with the provisions of Section 38(3) of the NHR Act, and it is noted that until the issues as identified above are addressed, the committee is not in a position to endorse the reports or the development proposal.
116. The committee reiterates the need for DEADP as the consenting authority to engage with HWC as the commenting Heritage authority on this matter before DEADP takes a decision on the Final BAR.

Should you have any further queries, please contact the official above and quote the case number.


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Dr. Mxolisi Dlamuka
Chief Executive Officer, Heritage Western Cape