



11 September 2020

To: The Western Cape Ministry of Local Government, Environmental Affairs & Development Planning

For the Attention of: The Appeal Administrator
Mr Marius Venter

Per Email: DEADP.Appeals@westerncape.gov.za

APPLICATION FOR CONDONATION FOR THE LATE SUBMISSION OF APPEAL IN TERMS OF SECTION 47C OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 107 OF 1998 (NEMA):

Appeal of the Environmental Authorisation Granted in Terms of NEMA and the Environmental Impact Assessment Regulations, 2014 (as amended) for the proposed redevelopment of the River Club for Mixed Use Development and Associated Infrastructure on the Remainder of Erf 15326 and Erven 26169 – 26175, 26426 – 26427, 108936 and 151832, Observatory

Your Reference: 16/3/3/1/A7/17/3001/20

INTRODUCTION

The Goringhaicona Khoi Khoin Indigenous Traditional Council (GKKITC) submits this application for condonation for the late filing of the above appeal. The due date for the submission of the appeal was yesterday, 10 September 2020. Unfortunately, with great regret, the GKKITC was not able to meet this deadline despite our best efforts. In what follows, we set out the following:

In light of the below submissions, and given the very short period of lateness (i.e. less than 24 hours), it is respectfully requested that the decision-maker consider this application for condonation favourably.

Registered as the Goringhaicona First Nation Indigenous Trust IT 51/2017

Contact Person: Paramount Chief Delrique Dextery Aran (Impose Arendse)

Tel: 021 696 3663 / 021 839 4093 **Fax:** 086 516 0702 / 021 696 3663 **Cell:** 081 311 3382/ 081 308 4945

Email: wckhoi.koin.cil@gmail.com **Address:** No 2 Birdwood Street, Athlone, 7764 P.O. Box 345, Athlone, 7760

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GOOD CAUSE

Custodial Mandate

GKKITC is an important Interested and Affected Party in this matter. The proposed development has significant heritage impacts on traditional lands of the Khoi and San Indigenous peoples. It's the GKKITC's responsibility to protect and promote Khoi Indigenous culture which is under direct threat due to the proposed redevelopment. It is therefore critical the GKKITC appeal be properly considered given the custodial nature of our mandate and utmost duty in bringing the voice of the mandate given by the fragile communities we also represent. The proposal grapples with strong questions on the future of tangible and intangible heritage, our unity as a people, and holds in its vestige, an important history that has defined the trajectory of development itself for all South Africans, the region and the world. It is a sacred place, and what is proposed poses an imminent and immediate threat to our deepest knowing as a nation. As a traditional and indigenous council we assert our cultural agency in response to this issue. It matters deeply to us and to many. We believe the site holds an intensity meaning that goes to the root of the first colonial land dispossession in our history. The Goringhaicona shares a traditional lineage across a vast spectrum of the Western Cape and beyond.

National Khoi and San Significance

The Goringhaicona Khoi Khoin Traditional Indigenous Council has a profound interest in the matter. As one of the custodial Khoena bodies endemic to the site since pre colonial times, we also carry a mandate of numerous sovereign Khoi and san houses which covers a traditional and cultural footprint from across South Africa, and Southern Africa. The significance of this site is manifest in being part of the footprint of The Two Rivers Urban Park set to be graded, with applications received for PHS, and beyond being considered as a UNESCO site of global significance. The site is within an area now acknowledged as part of the National Khoi and San Liberation and Resistance Routes which was approved by President Cyril Ramaphosa and his Cabinet on June 10th 2020.

Meaningful engagement

The GKKITC continued engagement at this level, i.e. comments, appeals, tribunals, etc contributes to the constitutional premise of participatory democracy that we hold dearly. As such and since GKKITC has been part of ongoing participation in this case, we respectfully request that dec

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REASONS FOR THE LATE SUBMISSION

The GKKITC as a Council, given the importance of this matter, the appeal had to go through assessment and agreement via various traditional structures, not just our own. You would appreciate the time and effort this has taken within the limitations of time allocated to submit this appeal protocol and agreed mandates.

These considerations take place via meetings, often in person, which typifies the traditional protocols. The submission represents a large spectrum of Khoi and San leadership structures and as such the necessary engagements which on this matter. I am sure you would appreciate this appeal touches a sensitive nerve, and as such we have to respect that decisions and feedback from the leadership may take time. We have been working extremely hard to overcome these nuanced challenges. Today, confirmations of vitality important mandates were confirmed, which are critical to the custodial legitimacy of the appeal.

The C19 environment has been inhibitive to what would have been more ordinary physical circumstances. Coupled with this were challenges with electronic glitches and technical capacity since yesterday.

The Goringhaicona Council footprint includes communities and areas of extremely difficult and low -resourced circumstances. Limited access to the internet, email, data and connectivity all contribute to the long delays in checking emails, subsequent consultation and drafting of our response under a very tight deadline.

In addition, working under crisis conditions under Covid-19 restrictions, compounded by loadshedding in the lead in days, have all added to the pressure of remote consultation with our constituencies.

We trust you understand the mammoth effort put into trying to meet this deadline under the extremely tenuous situations we all find ourselves in, especially those with least resources.

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PREJUDICE

The GKKITC submits that there will be no prejudice to the EA Holder, any registered interested and affected parties or the decision-maker given the minimal delay in submission. Given that less than 24 hours have passed since the deadline and given that several appeals have been submitted to the decision-maker in this matter, it is unlikely that the decision-maker has been able to complete consideration of the already submitted appeals.

Furthermore, this is not a material delay. The EA holder and its anchor tenants will not suffer any prejudice. No construction processes will be delayed as a result of the late submission.

PROSPECTS OF SUCCESS

Given the minimal delay in this appeal being submitted (i.e., less than 24 hours) and the justified reasons therefore, the GKKITC believes its application for condonation should be considered favourably.

EVALUATION OF THE IMPORTANCE OF THE MATTER

The Two Rivers Urban Park is a precinct of world heritage importance for the Khoi and San First Indigenous Peoples, and the River Club redevelopment is therefore at the heart of this discussion. At the heart of the matter is the crucial story of our country's heritage and sacred environment to the Khoi and San. It holds a space of meaning and immense healing. The perspective of First Nations and related appeals is paramount for a rigorous and meaningful engagement of Interested and Affected Parties, especially First Nations groups that have previously been omitted from such engagements historically and currently.

“Nothing for us, without us”.

At the centre of the redevelopment are important heritage concerns (of which environment plays a pivotal role i.e. Our sacred Liesbeek River and environs). Our appeal is critical in giving a meaningful perspective on the proposed redevelopment from a First Nations' perspective.

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CONCLUSION

The GKKITC submits that based on the above, condonation in this case is warranted. There will be no prejudice to any party if the GKKITC's appeal is accepted given the minimal delay in submission of the appeal. As is evident from the above, despite all efforts, resource barriers prevented the timely submission of the appeal. However, given the significant heritage and environmental impact of the scale of this development to the First Nations People, it would be the right thing to do, to allow our appeal to be submitted for consideration.

We look forward to your favourable consideration of this application for condonation.

Yours faithfully
Tauriq Jenkins

**Supreme High Commissioner
Goringhaicona Khoi Khoin Indigenous Traditional Council**

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