

Reference: HM/
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HERITAGE WESTERN CAPE

RE: APPEAL AGAINST ENVIRONMENTAL AUTHORISATION IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO 107 OF 1998 AND THE ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS, 2014 (AS AMENDED): 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

Appeal is made against the granting of the Environmental Authorisation on 20 August 2020 in respect of the above authorisation.

GROUNDS FOR APPEAL:

1. FAILURE TO COMPLY WITH THE PROVISIONS OF THE NATIONAL HERITAGE RESOURCES ACT, ACT 25 OF 1999, (THE NHRA)

- 1.1 Section 38(8) of the National Heritage Resources Act, Act 25 of 1999, (the NHRA) provides that:

*The provisions of this section do not apply to a development as described in subsection (1) if an evaluation of the impact of such development on heritage resources is required in terms of the Environment Conservation Act, 1989 (Act No. 73 of 1989), or the integrated environmental management guidelines issued by the Department of Environment Affairs and Tourism, or the Minerals Act, 1991 (Act No. 50 of 1991), or any other legislation: **Provided that the consenting authority must ensure that the evaluation fulfils the requirements of the relevant heritage resources authority in terms of subsection (3), and any comments and recommendations of the relevant heritage resources authority with regard to such development have been taken into account prior to the granting of the consent***

- 1.2. It is common cause that Heritage Western Cape (HWC) is the relevant heritage resources authority. The Impact Assessment committee of HWC considered the draft Heritage Impact Assessment in 28 January 2020 and responded with an Interim Comment, as the HIA was not considered to comply with S38(3) of the NHRA.
 - 1.3. The reasons that the HIA did not fulfil the requirements of HWC were fully set out in the final comment of HWC dated 13 February 2020

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- 1.4. It is contended that it is clearly unlawful for the Department of Environmental Affairs and Development Planning to issue the Environment Authorisation as it has not complied with section 38(8) of the NHRA. HWC, which is the relevant heritage resources authority, has stated that the HIA which was considered did not fulfil its requirements, and requested that further information be supplied in order for it to make final comments.
 - 1.5. The Supplementary Report to the HIA which purported to respond to HWC's comments dated 13 September 2019 merely re-stated the initial findings of the HIA.
 - 1.6. Likewise the response to the final comment which was prepared in response to HWC'S final comment dated 13 February 2020 was a further re-statement of the views of the applicant, with no true evaluation of HWC's concerns. As such HWC could not see the purpose in having further meetings with the applicant and the applicant's representatives, whose views on the matter appeared to be intractable.
 - 1.7. The blanket acceptance of the responses by the consenting authority are accordingly unlawful as it is clear that S38(8) requires the endorsement of the HIA as complying with its requirements to be made by HWC and no other party.
2. . EMPHASIS MISPLACED ON RECENT HISTORY AND TANGIBLE REMAINS
- 2.1. On page 22 of the reasons for the decisions supplied by the consenting authority, the statement is made that the "site has its origins in the 1920s" which is evidence of the erroneous emphasis placed by the HIA and the consenting authority on recent history and tangible remnants to which value may be attributed.
 - 2.2. The consenting authority is ignoring the large body of information which was put before it as to the intangible significance of the site as being at the confluence of the three rivers. This confluence is of great significance to a wider representation of the first nations than just the First Nations Collective, on whose inputs the applicants most heavily rely.
 - 2.3. While the insistence that there must be tangible traces of historical events does recognise the value that communities have attributed to the site as part of their history, it sets an impossible requirement that is inconsistent with international heritage practice. It is not necessary for intangible heritage resources to be expressed in tangible traces in order for them to be considered to be of heritage significance.

- 2.4. The consenting authority then again considers the South African Astronomical Observatory which is a National Heritage Site. (The consenting authority refers to "Grade I status", but the site has been declared a National Heritage Site). This is further evidence of considering issues which are not relevant to the impact of the development on the full scope of heritage significances both on the site and in the receiving environment. The setback is a minimal issue in a development which has a high and unacceptable impact on a range of heritage significances.

For the above reasons, the Environmental Authorisation is *ultra vires* and should accordingly be set aside.

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