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**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](mailto:DEADP.Appeals@westerncape.gov.za)

**APPEAL OF THE ENVIRONMENTAL AUTHORISATION GRANTED IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO.107 OF 1998) 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, NEAS REFERENCE: WCP/EIA/0000719/2020)**

## Introduction

This appeal is submitted by me, Keith Wiseman, duly authorised by the City of Cape Town (the City). This appeal is against the environmental authorisation (the EA) granted in terms of the National Environmental Management Act, 107 of 1998, (NEMA) for the proposed redevelopment of the River Club for the establishment of a mixed-use development and associated infrastructure on the Remainder of erf 15326, Erven 26169 – 26175, erven 26426, 26427, 108936 and 151832, Observatory.

Application for condonation of the late submission of the appeal is made to the Western Cape Minister of Local Government, Environmental Affairs and Development Planning in terms of section 47C of the NEMA.

The proposed development is intended to be comprised of the following components:

- Retail
- Commercial
- Residential
- Institutional
- Rehabilitation of the Liesbeek River Canal and associated infrastructure

- An ecological corridor, ecological setbacks and associated Open Spaces;
- The infilling of the unlined / natural channel of the Liesbeek River and associated stormwater infrastructure
- Roads and Service infrastructure; and
- Associated infrastructure.

The focus of this appeal is that the EA decision does not give sufficient weight to the environmental impacts that would result from the scale of development and infilling of the river corridor and floodplain associated with the development proposal, most of which is below the 1:10 year floodline. These significant impacts will result in future risks and costs, particularly in the context of climate change and the reduced role of the site as green infrastructure which supports a resilient future. The development proposal is also in conflict with historical planning for the area as predominantly open space and part of the coast to coast greenway.

This appeal is not opposed to any development on the site: it is the nature and scale of the development approved by the EA that is appealed.

In what follows, I set out our **grounds for this appeal**.

1. The decision does not adequately take into account the City of Cape Town's previous professional and technical comments on the issues set out below.
2. The decision does not align with relevant National and Provincial Legislation, Provincial and City Policy and Spatial Plans and the (Environmental Management Framework (EMF) approved by the Western Cape Government (WCG) MEC for Environmental Affairs & Development Planning (EA&DP).
3. Insufficient consideration was given to the City's comments regarding context, role of the site and desirability of the proposed development.
4. Insufficient consideration was given to heritage informants and the relevant heritage resources authority's comments and there was non-compliance with S38(8) and S38(3) of the National Heritage Resources Act, 25 of 1999 (NHRA).
5. The stormwater impacts, including flooding, are not sufficiently mitigated against, the decision-maker relied on outdated information and the City's Floodplain and River Corridor Management Policy appears to not have been considered.
6. The decision does not give due consideration to climate change impacts and resilience.
7. The decision does not appropriately describe, or mitigate, the loss of open space on site.
8. The decision does not appropriately describe, or mitigate the high negative biodiversity impact or habitat loss of a high faunal sensitivity proclaimed Protected Area and assumes a willingness on the City's part to relinquish such Protected Area.

9. There was a failure to consider appropriate alternatives including the no-go alternative.
10. The decision-maker failed to conduct a site inspection on receipt of the City's comments to ascertain their veracity, and the decision refers to features that are not present on the site.
11. There is lack of clarity regarding the boundaries of 'the site.'
12. Technical Errors, Discrepancies and Omissions in the EA Resulting in Vagueness. See Annexure A.
13. Impractical and Inadequate Conditions in the EA. See Annexure B.

## Grounds of Appeal

In what follows we set out in detail the City's grounds of appeal.

### **1. THE DECISION DOES NOT ADEQUATELY TAKE INTO ACCOUNT THE CITY OF CAPE TOWN'S PREVIOUS COMMENTS ON THE ISSUES SET OUT BELOW AND THE CITY WAS NOT AFFORDED AN OPPORTUNITY TO COMMENT ON THE BASIC ASSESSMENT REPORT OF APRIL 2020**

1.1 The City of Cape Town provided comments on both the Draft BAR (January 2019) and the Final BAR (January 2020) and the City is of the view that these issues have not been adequately addressed. The City had not seen, or commented on, the version of the Final BAR dated April 2020, referred to in the Environmental Authorisation (EA), and uploaded to the River Club site subsequent to the issuing of the EA. In line with fair administrative process, the City, as the Local Authority, as well as all Interested and Affected Parties (I&APs) should have been afforded the opportunity to comment on the April 2020 BAR. This is particularly so given the extensive comments provided by the City on the preceding BARs.

### **2. THE DECISION DOES NOT ALIGN WITH THE FOLLOWING RELEVANT NATIONAL AND PROVINCIAL LEGISLATION, PROVINCIAL AND CITY POLICY AND SPATIAL PLANS AND THE EMF APPROVED BY THE WCG MEC FOR EA&DP**

2.1 National Heritage Resources Act (Refer to Section 4 below).

2.2 City of Cape Town Floodplain and River Corridor Management Policy, 2009 and Stormwater By-Law (refer to Section 5 below).

2.3 City of Cape Town Climate Change Policy (Refer to Section 6 below).

2.4 Western Cape Biodiversity Spatial Plan, 2017, the National Environmental Management: Protected Areas Act No. 57 of 2003 (NEM:PAA) and City of Cape Town Bionet, 2015 (Refer to Section 8 below).

2.5 Water Sensitive Spatial Planning and Urban Design principles (refer to Section 5 below). In terms of the City's commitment to being "A Water Sensitive City", *"The City will actively facilitate the transition of Cape Town over time into a water sensitive city with diverse water resources, diversified infrastructure and one that make optimal use of stormwater and urban waterways for the purposes of flood control, aquifer recharge, water reuse and recreation, and that is based on sound ecological principles. This will be done through new incentives and regulatory mechanisms as well as through the way the City makes investments in new infrastructure."* Piping a 30m wide river underground is clearly contrary to these principles.

2.6 The City's Municipal Spatial Development Framework (MSDF) includes Biodiversity and River and Flood Plain layers (Refer to Section 8) which are consistent with the approved

Table Bay District Spatial Development Plan and the EMF that was approved for the area by the WCG MEC for EA&DP.

- 2.7 The EMF for the area, as contained in the Table Bay District Spatial Development Plan guides conservation of biodiversity, protection of rivers and floodplains, protection of open space (the green lung of the City) and access to public open space and recreational amenities. In terms of the City's EMF, the site is listed as a "structuring open space which forms part of the coast to coast greenway." The EMF is not mentioned in the EA with the result that it appears that this statutory informant for the EA was not taken into account. Alternatively, had it been taken into account, it is not clear on what grounds a departure from the provisions of the EMF was authorised or deemed justified.

### **3. INSUFFICIENT CONSIDERATION WAS GIVEN TO THE CITY'S COMMENTS REGARDING CONTEXT, ROLE OF THE SITE AND DESIRABILITY OF THE PROPOSED DEVELOPMENT**

- 3.1 The EA, under Annexure 3: Reasons for the Decision, states that *"It is imperative that the 'triple bottom-line' argument is considered in a balanced manner and within its regional context. If not considered in a balanced manner and if not evaluated within its regional or strategic context, it will result in significant cumulative negative environmental impacts and in unsustainable development"*. The City is concerned that as the regional and strategic context has not been adequately considered by the decision-maker, that there will be significant cumulative negative environmental impacts and risks, particularly to flooding, and that the development will be unsustainable.
- 3.2 The EA refers to desirability in financial terms only, with reference to the COVID-19 pandemic and job creation, rather than to the receiving context of a river and flood plain, open space, green infrastructure and recreational and visual amenity. The City has repeatedly emphasized in its comments on the BAR that the proposed bulk, scale and footprint of the development is not desirable in the receiving context.
- 3.3 The Liesbeek River and floodplains are part of a metropolitan scaled ecological corridor and open space system, linking Table Bay to the north, and False Bay to the south. This is termed the Coast to Coast Greenway and has been reflected in spatial plans for the area for some 30 years. The 30m wide Liesbeek River cannot be seen in isolation as a separate component from the overall ecosystem of which it is a part. Damage to part of the system, would compromise the integrity of the whole system.
- 3.4 The context outlined above is in accordance with the 2003 approved Two River Urban Park (TRUP) Contextual Framework, which includes the trajectory of past City planning aspirations, in which watercourses and floodplains were to be celebrated and enhanced, rather than filled in for development. The EA refers to a draft Two Rivers Local Spatial Development Framework (TRLSDF), which is inconsistent with City policies and with the approved Table Bay District Spatial Development Plan and the Broad Provincial Spatial Planning Categories for Flood Lines, Open Space, and Core Conservation Areas. The decision-maker should have considered only City approved

policy, which is the City approved (TRUP) Contextual Framework (2003) and not the TRLSDF.

- 3.5 In the City's comments on the BAR, it has been pointed out that the River Club site and nearby sites such as the Raapenberg wetlands, the Observatory, the river corridors themselves, etc., represent an integrated complex of open space areas with high green infrastructure value. Not only does the area offer value in terms of social/recreational benefits and ecological / biodiversity features, but also represents a significant area of green infrastructure critical for flood, water quality and water provision management.
- 3.6 The City's Catchment Stormwater and River Management Branch has pointed out in their comments that the site should not be viewed alone but within the context of the greater Salt Catchment (213 km<sup>2</sup>) which, apart from the upper reaches of the Elsiekraal River, the extreme upper reaches of the Liesbeek River and the broader TRUP area (and River Club), has already been intensively developed and hardened. These last open space remnants therefore have even greater value.
- 3.7 Section D of the draft Basic Assessment Report (Need and Desirability) notes that in terms of the City's EMF, the site is listed as a "*structuring open space which forms part of the coast to coast greenway*". In the Table Bay District Spatial Development Plan the site is classified as Open Space and Buffer 1 and thus the proposed development is inconsistent with the Table Bay District Spatial Development Plan. The proposed development will require that the area which is currently zoned "Special Open Space" be rezoned, and thus development of the River Club site will irrevocably change and reduce the green infrastructure and open space value of the area as a whole.
- 4. INSUFFICIENT CONSIDERATION WAS GIVEN TO HERITAGE INFORMANTS AND THE RELEVANT HERITAGE RESOURCES AUTHORITY'S COMMENTS AND THERE WAS NON-COMPLIANCE WITH S38(8) AND S38(3) OF THE NHRA.**

- 4.1 The EA is flawed because the decision-maker based their decision on the Heritage Specialist's report and their response dated 31 March 2020 to Heritage Western Cape's (HWC) Final Comment (dated 13 February 2020), rather than considering the authoritative HWC Final Comment itself.
- 4.2 According to the Final Comment, dated 13 February 2020, from HWC (as considered by their Impact Assessment Committee (IACom)), the Heritage Impact Assessment (HIA) that formed part of the information before the decision maker, did not meet the requirements of Section 38(3) of the Heritage Resources Act, 25 of 1999. (The Townsend report was deemed by HWC to constitute a 'post rationalisation for the development'). Hence, the decision-maker was not competent to assess the matter in terms of Section 38(8) which is contingent on the evaluation fulfilling the requirements of the relevant heritage resources authority in terms of section 38(3). Furthermore, Section 38(8) specifically requires that "**any comments and recommendations from the relevant heritage resources authority with regard to such development have been taken into**

**account prior to the granting of the consent.”** as this was contingent on an HIA complying with Section 38(3). It is further pointed out that the decision-maker was urged by HWC, in their Final Comment (dated 13 February 2020), to resolve all heritage related issues prior to taking a decision on the Final BAR, but failed to do so.

- 4.3 The City's comments on the BAR emphasised that the proposed development does not conserve sufficiently the historical and cultural value and significance of the landscape of the area. The importance of the historic and existing spatial context is not adequately recognised in the proposed development in its current form.
- 4.4 The EA is not consistent with the objectives and preamble of the NHRA to empower civil society to nurture and conserve their heritage resources so that they may be bequeathed to future generations. The preamble of the NHRA aims *“to encourage communities to nurture and conserve their legacy so that it may be bequeathed to future generations. Our heritage is unique and precious and it cannot be renewed.”* The historic Liesbeek River and floodplains were identified by First Nation communities as 'a tangible reminder of an intangible heritage.' Yet, this singularly important heritage resource, was not identified or mapped in the HIA, or proposed to be conserved. This natural and historic resource is authorised to be infilled and removed from the landscape, contrary to the recommendations of HWC. The decision-maker overlooked this objective of the NHRA, and authorised development which will impact adversely and permanently on this heritage resource.
- 4.5 Had the requirements of S38(3) of the NHRA been adhered to, this would have facilitated an assessment of impacts on the heritage resources for the decision-maker.

## **5 THE STORMWATER IMPACTS, INCLUDING FLOODING, ARE NOT SUFFICIENTLY MITIGATED AGAINST, THE DECISION-MAKER RELIED ON OUTDATED INFORMATION AND THE CITY'S FLOODPLAIN AND RIVER CORRIDOR MANAGEMENT POLICY APPEARS TO NOT HAVE BEEN CONSIDERED**

- 5.1 The decision-maker relied on specialist reports which failed to fully consider the impacts of possible flooding on private property owners.
- 5.1.1.1 Despite the City's advice when commenting on the BAR (Jan 2020), the decision-maker failed to sufficiently consider the impacts of infilling the natural Liesbeek River and floodplain on adjacent property owners.
- 5.1.1.2 The Catchment, Stormwater and River Management Branch has noted that there are places where the Applicant's consultants' models show an increase in possible flood levels as a consequence of the development. The Applicant was therefore advised in the Land Use Application process, to get the approval of the affected property owners and / or indemnify the City against claims in this regard. The flooding report should have discussed errors and assumptions made and their effect on results in more detail. There is a predicted increase in floods on adjacent properties, especially for more frequent flood intervals. The increase is not

"insignificant" as stated in the EA and the relevant property owners have voiced their objections to and concerns for the proposed development in the public participation process. This is particularly significant in the context of the known risks and future impacts of climate change discussed below.

- 5.2 The loss of the stormwater polishing function of the old Liesbeek River, provided by the plants and reeds, on the stormwater from the Observatory area, was not considered by the decision-maker in the EA.
- 5.3 The EA does not consider the City's Floodplain and River Corridor Management Policy, best practice riverine management principles and design principles for sustainable water management. The above-mentioned policy aims to safeguard aquatic environments and human health in addition to reducing the impact of flooding and maintaining recreational water bodies. It requires balanced consideration of flood risks, environmental impacts and socio-economic needs with one of the policy objectives being the protection and enhancement of environmental goods and services provided by water bodies. The policy considers water bodies to be public resources which need protection by, amongst others, offsetting riparian development. The policy explicitly states that no development rights will be granted in the high hazard zone. It is not acknowledged in the EA that the area of the Liesbeek River that will be infilled to create a stormwater swale, represents part of the last remains of the historic Liesbeek River channel which has ecological and eco-historical importance.
- 5.4 The City's By-Law relating to Stormwater Management allows the City to prohibit or impose conditions on developments in areas adjacent to watercourses and wetlands. The City's Stormwater Management Policy prohibits development in the High Hazard Zone and does not permit housing or business development below the 1:50year flood line – no exemptions or approvals are allowed.
- 5.5 The City points out that there are few opportunities to undertake rehabilitation of degraded rivers in Cape Town and developers generally seldom actively pursue such positive initiatives. The EA essentially results in further degradation of this historic river channel.
- 5.6 It is inappropriate to fill in a river to compensate for the loss of open space on the River Club currently zoned OS3. The existing riverine areas plus ecological setbacks must be removed from any proposed development footprint as the City requires these for the ongoing hydrological (stormwater polishing) and ecological functioning of the Liesbeek River. Diverting a 30m wide river to underground pipes is contrary to Water Sensitive Spatial Planning and Urban Design principles (see 2.5 above).
- 5.7 The EA is further inconsistent with the City's Floodplain and River Corridor Management Policy as follows: -
- 5.7.1. The permissible extent and nature of land use, development or activities within floodplains must be subject to stringent evaluation and control in the interests of public safety. In particular, obstruction to the free flow of water within the 20-year floodline area shall not be permitted (page 7 of the policy).



- 5.7.2. No buildings will be permitted within the high hazard zone (page 11 of the policy).
  - 5.7.3. Limitation of all construction / development activity within the ecological buffer (page 11 of the policy).
  - 5.7.4. Buildings must be located above the appropriate flood level or buffer zone, or on the upper extremities of the property if the site is entirely located within the relevant floodline, and must front or provide views onto the watercourse or wetland to ensure adequate visual surveillance and integration of the system into the fabric of the development and the City as a whole (page 12 of the policy).
  - 5.7.5. In support of the above comments, please find attached hereto as **Annexure C** the comments of the City's Catchment Stormwater and River Management Branch on the proposed River Club land use application being considered by the City.
- 5.8 The decision-maker relied on outdated information relating to Floodplain and River Corridor Management principles for ecological setbacks authorising infilling the natural Liesbeek River unlined channel:
- 5.8.1. The EA decision overlooked the technical information provided by the City derived from studies the City had commissioned to inform the extent of ecological buffers. The City's Catchment, Stormwater and River Management Branch provided comment on the BAR advising that a more recent study undertaken for the entire TRUP site (Blue Science Freshwater Assessment dated 2016) provided a more accurate assessment of the present status and ecological importance and sensitivity of the watercourses in the TRUP area (which included the watercourses and wetlands of the River Club site). This report recommended at least a 35m buffer along/around these systems (**page 62: "A buffer area of approximately 35m should be maintained adjacent to the delineated edge of the aquatic features"**). The report made use of the 2015 WRC buffer tool which is regarded to be an acceptable industry standard and thus the 35m buffer which is of similar order of magnitude to the City's earlier 2002 data would have been supported by the City's Catchment, Stormwater and River Management Branch. However, what was approved in the EA are two large building footprints located hard on the boundary of the River Club, within 2m of the natural Liesbeek River.
  - 5.8.2. Specifically, the flood risk mitigation for infilling the floodplain on the River Club site, is taking place on City property, where the majority of the risk will be received and where the City's own resilience to floods will be diminished through infilling the Liesbeek river and floodplain. In addition, neighbouring properties will be at risk of higher flood levels, particularly in terms of frequent floods of 1,2 and 5 year intervals, for example.

## 6. THE DECISION DOES NOT GIVE DUE CONSIDERATION TO CLIMATE CHANGE IMPACTS AND RESILIENCE AND FAILS TO APPLY THE PRECAUTIONARY PRINCIPLE

- 6.1 Substantial comments were provided by the City on a range of issues relating to climate change. Responses to these comments were not provided by either the Environmental Assessment Practitioner or the decision-maker in the EA.
- 6.2 The only reference to climate change in the EA is an unsupported statement that the City of Cape Town's Climate Change Policy has been considered in the need and desirability of the proposed development and the BAR states that the proposed development is "largely consistent" with the said policy. The comments provided by the City on the BAR indicate that the City has significant concerns regarding climate change impacts both in terms of potential climate impacts on the proposed development as well as the potential impact of the proposed development on climate risks in the area.
- 6.3 The omission of reference to the City's comments regarding climate change in the EA indicates that the decision-maker did not give due consideration to the comments provided regarding climate change. The EA, under Annexure 3 summarises the reasons for the decision and states that *"It is imperative that the 'triple bottom-line' argument is considered in a balanced manner and within its regional context. If not considered in a balanced manner and if not evaluated within its regional or strategic context, it will result in significant cumulative negative environmental impacts and in unsustainable development"*.
- 6.4 In the recent judgement by the Western Cape High Court in the matter of *Philippi Horticultural Area Food & Farming Campaign and Another v MEC for Local Government, Environmental Affairs and Development Planning: Western Cape and Others (16779/17)*, it was found that the issue of climate change had not been adequately addressed in the Environmental Impact Assessment process. The court referred to the judgment in *Earthlife Africa Johannesburg v MEC of Environmental Affairs & others* which found that,
- "There was found to have been non-compliance with s 24 (1) of NEMA in that the Chief Director had relied on the statement in the EIR that the climate change impacts of the project were relatively small and low without a climate change impact assessment. As a result, the Chief Director overlooked relevant considerations in terms of s6(2)(e)(iii) of PAJA, with the decisions found not rationally connected to the information before him and without him having applied his mind making the decision reviewable under s 6(2)(f)(ii) of PAJA as well"***
- (emphasis supplied)*
- 6.5 The City believes that without a Climate Change Impact Assessment having been conducted, the EAP's assertion that the City's Climate Change Policy has been addressed, is unsubstantiated and actively countered in the design proposal. The design concept shows disregard for addressing climate change impacts such as retaining waterways and wetlands as green lungs which reduce the heat island effect

of global warming by cooling the atmosphere through evaporation, keeping waterways and floodplains open and unobstructed to provide resilience to flood risk in heavy rainfall events, and recharging ground water and the aquifer through natural percolation. Infilling a river course and developing within the floodplain are not consistent with the stated objectives of the City's Climate Change Policy. Furthermore, no consideration appears to have been given to the concerns expressed in the City's Climate Change comment for the loss of climate resilience caused by infilling the floodplain, the heat island effect that is already evident in this area, the uncertainty of the assumed 15% increase in rainfall intensity and the more recent projections of significant sea level rise.

- 6.6 Section 2 (4) (a) (vii) of NEMA states that sustainable development requires "*that a risk-averse and cautious approach is applied, which takes into account the limits of current knowledge about the consequences of decisions and actions*". This is commonly known as "the precautionary principle".
- 6.7 The comments submitted by the City on the BAR noted that "*climate models inherently incorporate a certain amount of uncertainty due to the nature of model design and this uncertainty is magnified the further forward the model looks*" and that as such there should be additional caution applied to this proposed development, due to the likelihood of the proposed infilling of the Liesbeek River and its floodplain exacerbating these flooding impacts on surrounding properties and City infrastructure.
- 6.8 The comments noted that the projected 15% increase in rainfall intensity in the Surface Water Impact Assessment was based on a single study and should not be assumed to account for all likely climate futures, particularly in the far future.
- 6.9 The comments also noted that key studies, namely the "Stormwater Infrastructure Asset Management Plan (Phase 2A) Rainfall Analysis and High: Level Master planning" (SRK, 2012) and "Marine Inputs to Salt River Flood Model.:94" (PRDW, 2010) were 8 and 10 years old respectively. The comments noted that clarity on the risks of using data that is a decade old and what this means for confidence levels in modelled outputs, and hence flood risk determinations, was required.
- 6.10 The comments also noted that, due to recent updates to IPCC projections regarding sea level rise in the context of continued global failure to meet climate change mitigation targets, the eustatic sea level rise upper limit of 0.55cm which was used in the report, and from which additional modelling was based in terms of hydrology and storm surge, was a significant underestimate in respect of applying the precautionary principle approach. Newer IPCC modelling shows a potential upper limit of 0.84cm by 2100.
- 6.11 No reference to risk, the precautionary principle, or a "risk-averse and cautious approach" was made in the EA. This indicates that the decision-maker had not adequately applied the precautionary principle, as it relates to climate change, in this decision.

## **7. THE DECISION DOES NOT APPROPRIATELY DESCRIBE OR MITIGATE THE LOSS OF OPEN SPACE**

- 7.1 The EA fails to differentiate between the use, quality, accessibility and nature of the open space, the actual loss of open space, the allocation of public open space (OS2) and special open space (OS3), and publicly accessible areas of City land along the Liesbeek River (currently zoned TR2). The EA states that 60% of the site will be retained as POS but, importantly, the BAR needed to show what percentage of POS allocation is on City land and what percentage is on private land.
- 7.2 The calculations for open space retention in the BAR do not apply to the River Club site (erf 151832) only but to the adjacent open space and river corridors which would have been retained as such without the development and road schemes. It would be a more accurate reflection to indicate the retention of open space on the River Club site itself given that this erf is proposed to be rezoned from its current Open Space 3 zoning to Subdivisional area.
- 7.3 The actual open space allocation on the River Club site (5.17ha of 14.75ha) equates to one third of open space being retained as open space of some sort. However, this open space is modified (i.e. not retained in its natural state), it is increased in height by 6m to cover the sides of the double basement parking beneath the ground floor at a slope of 1:5 gradient and some of the open space is above parking garages.
- 7.4 The quality of open space on the privately owned River Club site is jeopardised by the road infrastructure and numerous buildings fragmenting the open space, and the infilling of the Liesbeek River, creating a bermed open space. These issues and impacts have not been clearly described nor quantified in the BAR and have not been addressed in the EA.

7.5 The EA states that *"The open spaces will include, inter alia, the ecological corridor, ecological setbacks, recreational facilities such as foot and cycle paths, footbridges and service infrastructure"*. *Ecological setbacks will consist of a bank with a maximum average slope of 1:5, planted with suitable wetland vegetation."* It is the City's considered view that the inclusion of 1:5 gradient slopes and embankments and service infrastructure would not yield high quality publically accessible spaces. Hence, it could not reasonably be assumed that 60% of the site will translate into high quality public open space amenity with information presented to date as stated in the EA. The illustration below indicates the two building footprints of the parking garages on the site, and the low proportion of land remaining for open space.

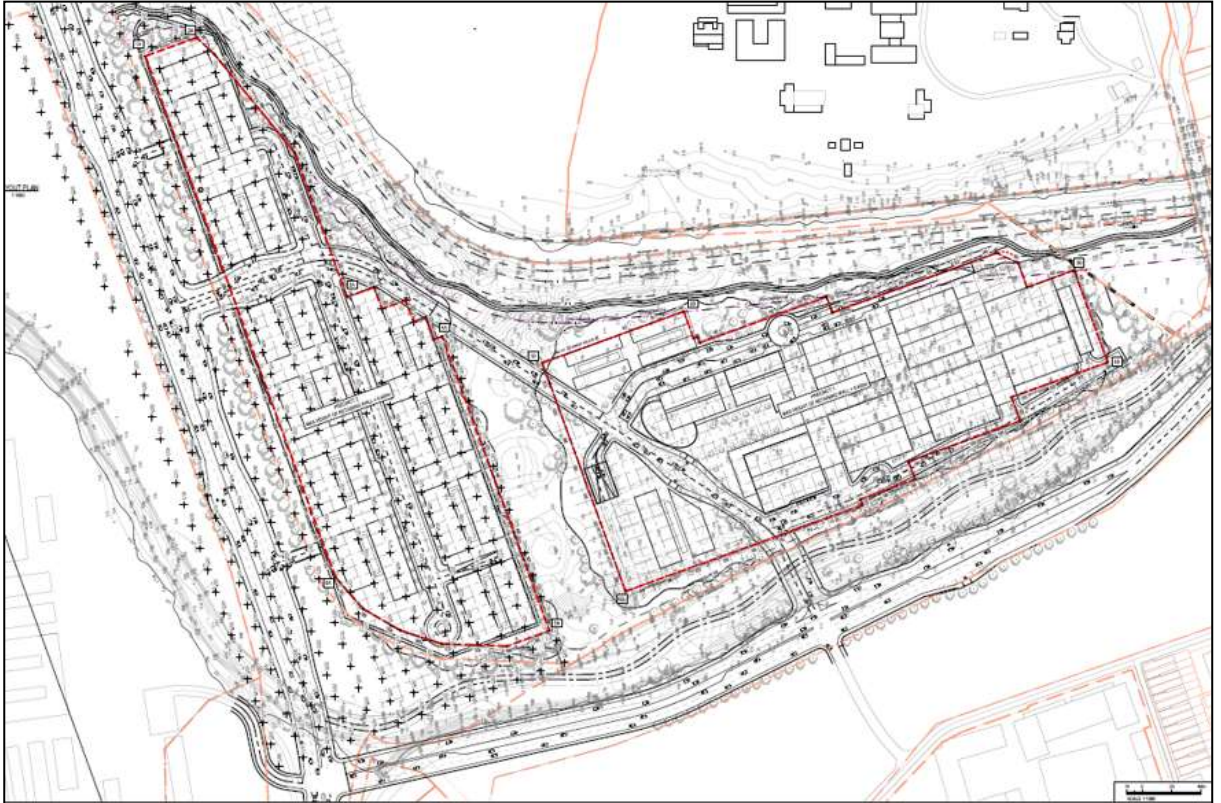


Figure 1: Plan showing proposed building footprint in red, hard on the Liesbeek River, with no ecological setback, and remaining open space on the river club site – within the dashed orange line

- 7.6 The loss of publicly accessible City owned land (zoned TR2, not zoned OS, and included in the current Liesbeek River Conservation Area) located on the western bank of the historic Liesbeek River, as a pedestrian / cycle trail, should be factored into the impacts on the loss of publicly accessible open space, in order to provide for the widening of Liesbeek Parkway as part of the proposed development.
- 7.7 It would be reasonable for the decision-maker to require a breakdown of the nature of the open spaces being proposed (percentages for hard and soft, recreational, ecological and functional (e.g. detention ponds, embankments and slopes) as well as the percentage provision for what will be deemed accessible to the public in each case.
- 7.8 The EA states that *"Approximately 15.6Ha of open space will be provided in a number of open space areas throughout the site."* This statement is inaccurate because nothing

new will be provided in these areas outside the River Club site on City land. These areas already constitute publicly owned open space. Accordingly, there will be a net loss of open space across the site.

- 7.9 Open space areas provided throughout the park are to be provided in what is referred to as the "ecological setbacks abutting the unlined / natural channel of the Liesbeek River". It should be noted that there will be no ecological setbacks given the proposal to pipe the Liesbeek River underground. Ecological setbacks and corridors are associated with natural rivers that exist above ground, with wetlands and river banks, and riparian vegetation and habitat, and not for underground pipelines. This gives a false impression that the 35-40m wide ecological setbacks from the Liesbeek River, recommended by the City for ecological functioning of the Liesbeek River, will be provided for.
- 7.10 The City requires that the Liesbeek River must remain in its natural state with 35-40m wide ecological setbacks to ensure protection of the existing riverine and wetland ecology. Instead of setting back the development from the watercourse, the development is located hard on the boundary of the River Club site, hard up against the bank of the Liesbeek River, which is proposed to be infilled. As evident from the diagram above, the proposed parking garage footprint extends virtually to the edges of the River Club site. Hence there are no ecological setbacks from the river as stated. These ecological corridors would have been one type of open space with an ecological function, retaining wildlife and visual amenity for the community and the general public, and providing some flood protection.

## **8. THE DECISION DOES NOT APPROPRIATELY DESCRIBE, OR MITIGATE THE BIODIVERSITY IMPACT OR HABITAT LOSS OF THE HIGH FAUNAL SENSITIVITY PROTECTED AREA AND ASSUMES A WILLINGNESS ON THE CITY'S PART TO RELINQUISH SUCH PROTECTED AREA**

- 8.1 Reliance by the Decision-Maker on ill-conceived or flawed information relating to Annexure 3: Biodiversity Impacts and Mitigation Measures, has led to an underestimation of the high negative impacts of permanent duration on the Liesbeek River Conservation Area:
- 8.1.1 The Faunal Specialist based the Faunal Importance Assessment ("FIA") score for mammals, reptile and amphibians on what was anticipated to occur on site not on site evidence (see Faunal Impacts on page 23 of 31). Given the status of the conservation area, it is unacceptable that the Faunal Specialist relied on a desktop study and not on actual site assessments. This was raised in the City's comments on the BAR.
- 8.1.2 The Faunal Specialist assigned an FIA score of "moderate at a regional scale", but only applied "specific mitigation measures with respect to the Western Leopard Toad". These mitigation measures fail to account for mitigation measures for other threatened species, such as the Cape Dwarf Chameleon (*Bradypodion pumilum*), which is nationally listed as Vulnerable and known to

occur in the broader study area. It also fails to account for impacts to charismatic, Near-Threatened mammals such as the African clawless otter (*Aonyx capensis*), which would lose forage (fish, crabs and molluscs) and potential burrow sites if the unlined/natural channel of the Liesbeek River is infilled.

- 8.1.3 The faunal specialist failed to disclose that the Western Leopard Toads (WLTs) are breeding on the River Club Site itself, even though he had allegedly observed them himself. This led to the decision-maker relying on flawed information in that it was led to believe that the River Club site is less significant to fauna than it actually is. See Annexure D: Confirmation of the presence of western leopard toads (WLTs) near the natural Liesbeek River channel, of WLTs breeding on the River Club site and observed by the herpetologist.
- 8.1.4 Infilling of the unlined/natural channel of the Liesbeek River will have significant negative impacts on the wetland habitat available for numerous bird species. Support for this view is provided under the Avifaunal Impacts on page 24 of 31: ***“More than forty (40) bird species were recorded during the various site visits that were undertaken by the specialist. Most of the bird species recorded were water or wetland habitat related.”*** This appears to have been overlooked under the Ecological and Freshwater Impacts on page 25 of 31 of the EA.
- 8.1.5 The Ecological and Freshwater Impacts state that: *“The specialist identified and assessed the potential impacts associated with Alternative 1 (i.e. the preferred alternative / the Riverine Corridor Alternative) and Alternative 2. The proposed rehabilitation of the Liesbeek Canal into a functional river channel would result in a high positive significance prior to the implementation of mitigation. The river habitat would improve from a PES Category F to at least a PES Category D.”* This recommendation is flawed, because it ignores the significant negative impacts of infilling the unlined/natural channel of the Liesbeek River.
- 8.1.6 With reference to the following statement in the Ecological and Freshwater Impacts on page 25 of 31: *“The unlined/natural channel of the Liesbeek River no longer receives flow from the Liesbeek River.”* It is submitted that this statement is misleadingly, because it was based on drought conditions when the sluice gate to this unlined/natural channel was kept closed. Stormwater from the surrounding catchment still enters this unlined/natural channel.
- 8.1.7 The Ecological and Freshwater Impacts on page 25 of 31 of the EA conclude that: *“The potential impacts in the unlined/natural channel of the Liesbeek River are therefore anticipated to be of low negative significance post mitigation.”* This fails to account for the loss of habitat for indigenous fish such as Cape Galaxias (*Galaxia zebratus species complex*). Morphological taxonomic revision and genetic studies are underway for this species complex, and thus the population occurring in the Liesbeek River may be a genetically distinct subspecies.

8.1.8 The Ecological and Freshwater Impacts on page 26 of 31 states that: "The specialist indicated that Alternative 1 (i.e. the Applicant's preferred alternative / the Riverine Corridor Alternative) is preferred from a biodiversity and general aquatic ecosystems perspective since the overall impact is anticipated to be positive." The infilling of a natural river channel cannot be considered positive from an environmental perspective.

8.1.9 The Ecological Corridor referred to on Page 7 of 34 of the EA is a misrepresentation of facts. Once the habitat of the Liesbeek River Conservation Area has been destroyed through infilling, there will be no movement of animals from there anymore. The paths across the River Club site they used to traverse, will be empty and unused. The need for the ecological corridor arises from the significance of the habitat of the Liesbeek River, and the need to maintain the ecological linkages across the River Club site, for frogs, otters and birds which move to and from the Liesbeek River and the Raapenberg wetlands, noted by various specialists and members of the public. With no life left in the Liesbeek River, the *raison d'être* for the ecological corridor falls away.

8.1.10 The EA states, "Ecological setbacks will consist of a bank with a maximum average slope of 1:5 planted with suitable wetland vegetation." This is a misconception of creating wetland habitat once the river and its associated wetlands have been filled in and a mound of earth 6m high lies on top of the previous 30m wide river. The decision-maker does not appear to discern that wetland vegetation grows on level areas or depressions, not on banks as steep as 1:5 gradients. There will be no wetlands growing on the banks which are quick draining topographical features.

8.2 **Biodiversity Management and Conservation Areas Agreement:** the decision-maker failed to adequately consider various City of Cape Town Policies that recognise the biodiversity significance of the conservation area (Biodiversity Agreement site) on the City erven. This is despite attention drawn to the fact that this Biodiversity Agreement site is recognised under both Municipal and Provincial Government Policy, and in terms of National Environmental Legislation:

8.2.1 The EA Annexure 3 Reasons for Decision (under 3.8. Ecological and Freshwater Impacts on page 25 of 31) states that: "According to the Western Cape Biodiversity Spatial Plan, 2017, the unlined/natural channel of the Liesbeek River, the Liesbeek Canal, the Black River and the Raapenberg Wetlands are mapped as a Protected Area in terms of the National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003)."

8.2.2 The Western Cape Biodiversity Spatial Plan incorporates the BioNet (Cape Town's fine-scale systematic biodiversity plan). The BioNet is adopted as City of Cape Town Policy in the Bioregional Plan 2015. The BioNet is also aligned with and adopted in other City Policy, most notably the Integrated Development Plan (IDP 2017-2022) and the Municipal Spatial Development Framework (MSDF 2017-2022). The IDP and MSDF recognise Cape Town's critical environmental



assets and its globally important biodiversity. The MSDF's often misquoted "Consolidated Spatial Plan Concept" (also known as "The Blue Turtle" owing to the shape of the "Urban Inner Core") does not override the MSDF's Biodiversity Network as if development were more important than conserving biodiversity. The MSDF comprises 4 main maps, and notes that this is "A series of maps that collectively indicate a metropolitan-scale interpretation of the City's spatial vision, development directives, land use informants and investment priority areas." This clearly shows that the MSDF is to be read as a collection of maps of equal standing, rather than the 'consolidated spatial plan concept' overriding all other layers of spatial informants.

### 8.3 **Reliance by the Decision-Maker on a Misconception relating to amending the Biodiversity Agreement to exclude the Liesbeek River:**

8.3.1 In the EA, the decision-maker has included one recommendation for City land (point 22 on page 9 of 31 of the EA): 'The holder will facilitate a discussion between the City of Cape Town and CapeNature in order to amend the current Biodiversity Agreement.'

8.3.2 It is submitted that this recommendation is based on a misconception. The City does not intend to amend the current Biodiversity Agreement on erven 15326-RE, 24300, 26426, 26129, 26170, 26171, 26172, 26173, 26174 and 26175, Observatory. This Biodiversity Agreement was signed in 2014 between City and CapeNature and is legally binding on both parties. The City's position regarding the biodiversity and conservation significance of this site remains unchanged.

8.3.3 The words 'facilitate discussion' in the recommendation (point 22 on page 9 of 31 of the EA) does not require a conclusion to be reached, thereby allowing the Applicant to proceed without resolution or mitigation for the loss of and impacts to the Biodiversity Agreement conservation erven. If engagement is required, this will not be meaningful unless there is an outcome.

## 9. **FAILURE TO CONSIDER APPROPRIATE ALTERNATIVES, INCLUDING THE NO-GO ALTERNATIVE**

9.1 In the EA, the decision-maker states that, in reaching its decision, it considered its guidelines on alternatives as per its EIA Guideline and Information Document Series, Guideline on Alternatives, March 2013. These Guidelines state the following:

***"The identification of alternatives should be broad, objectively done and well documented. Key criteria when identifying and investigating alternatives are that they should be "feasible" and "reasonable". The alternatives identified must serve to achieve the triple bottom-line of sustainability i.e. they must meet the social, economic and ecological needs of the public. The alternatives must also aim to address the key impacts of the proposed project by maximising benefits and avoiding or minimising the negative impacts. The primary objective must be to avoid all negative impacts, rather than***

***to minimise them. Detailed information on the consideration of alternatives must, however, be provided in the relevant reports.”***

*(emphasis supplied).*

The City submits that these Guidelines were not followed in this regard.

- 9.2 The City recommended that another alternative be investigated. This alternative was both feasible and reasonable and provided an alternative to the infilling of the historic river course and proposed a minimum setback of 30m from the natural Liesbeek River and from the Liesbeek River canal, to enable ecological riverine buffers for faunal habitat and for recreational and visual amenity. This appropriate alternative should have been investigated in the BAR, most importantly to satisfy the triple bottom line of sustainability, that includes ecological, social and economic needs. Furthermore, the No-Go alternative, as explored in the BAR did not include detailed information, thereby making it impossible to be properly considered. It is therefore submitted that there was a failure to consider appropriate alternatives, including the No-Go alternative. Further detail of the City's requirements for an appropriate alternative are contained in its comments on the BAR.

**10. THE DECISION-MAKER FAILED TO CONDUCT A SITE INSPECTION UPON RECEIPT OF THE CITY'S COMMENTS TO ASCERTAIN THEIR VERACITY, AND THE DECISION REFERS TO FEATURES THAT ARE NOT PRESENT ON THE SITE**

- 10.1 The Decision-Maker's site visit, on 29 August 2019, preceded the City's submission of inter-departmental comments on the BAR in February 2020, which indicates that the decision-maker did not interrogate the City's findings and recommendations with conditions on site, or interrogate certain of the flawed specialist information by checking on site.
- 10.2 Despite a City official, having offered to accompany the decision-maker's officials on the site inspection, this was declined telephonically. Given the extensive and concerning comments submitted by the City, a site inspection was warranted.
- 10.3 HWC's Final Comment was dated 13 February 2020 in which information regarding the identification of resources, including the Cultural Landscape and Sense of Place, their heritage significance, impacts thereon and mitigation measures were described in detail. This information should have played a vital role at a site inspection by the decision-maker in order for a thorough assessment of heritage resources to be made.
- 10.4 Furthermore, the decision-maker did not check on site for all the relevant habitats and animal species that had been brought to their attention by the City or by the I&APs, following their receipt of the comments on the BAR. They relied on their earlier site visit only.
- 10.5 The City pointed out various issues in its comments on the BAR, such as discrepancies in the specialist information, that could have been confirmed by means of a site inspection by the decision-maker. The failure to undertake a further inspection prior to

the decision being made resulted in the decision-maker not being able to interrogate the veracity of comments made by both the City, HWC and I&APs.

## **11 THERE IS A LACK OF CLARITY REGARDING THE BOUNDARIES OF 'THE SITE'**

11.1 The EA that has been granted includes City land. However, these City erven were not addressed as the "proposed site" by several of the Specialists. Two examples of this inconsistency in what constitutes the "proposed site" are provided in the site descriptions below for reference:

11.1.1 The Faunal Impacts on page 23 of 31: "The proposed site is surrounded by a few key environmental aspects, such as, the unlined/natural channel of the Liesbeek River (west of the proposed site), the Liesbeek Canal (east of the proposed site), the Black River, the Raapenberg Bird Sanctuary wetlands, artificial wetlands on the existing site and the adjacent wetlands located on the SAAO site."

11.1.2 The Ecological and Freshwater Impacts on page 24 of 31: "The proposed site is surrounded by wetlands and rivers. The western border of the proposed site is bordered by an unlined/natural channel of the Liesbeek River." Furthermore, "The road reserve of the proposed Berkley Road extension is located north of the proposed site."

11.2 Certain faunal specialists did not inspect the City land and did not consider the impacts of infilling the Liesbeek River on biodiversity habitats. The Avifauna study of 2015 predated the proposal to infill the Liesbeek River, because the development proposal was at that stage confined to the River Club site only. Hence the impacts of infilling the Liesbeek River, on the avifauna, were not assessed by the avifaunal specialist.

11.3 It is submitted that if a fundamental issue such as the proper boundaries of the site is inaccurate then the specialist input relied on by the decision-maker is flawed in that impacts were not accurately assessed further resulting in the decision being flawed for reason of being based on inaccurate information.

## **12. TECHNICAL ERRORS, DISCREPANCIES AND OMISSIONS IN THE EA RESULTING IN VAGUENESS**

See **Annexure A**: Technical Errors, Discrepancies and Omissions in the Environmental Authorisation Resulting in Vagueness.

## **13. IMPRACTICAL AND INADEQUATE CONDITIONS IN THE ENVIRONMENTAL AUTHORISATION**

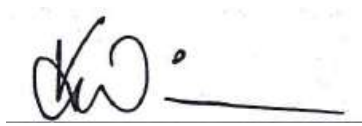
See **Annexure B**: Impractical and inadequate conditions in the Environmental Authorisation.

## Conclusion

Based on the above grounds, the City appeals the decision to grant Environmental Authorisation in the above matter and requests the setting aside of the decision.

If the EA is upheld, it will result in further degradation of the historic Liesbeek River natural channel and an unacceptable loss of habitat.

The City suggests the appointment of a panel of experts to reassess the BAR and to consider alternative development footprints and 30m ecological setbacks from both riverine corridors, including the application of approved policy to the site.

A handwritten signature in black ink, appearing to be 'KW', is written over a horizontal line. The signature is stylized and cursive.

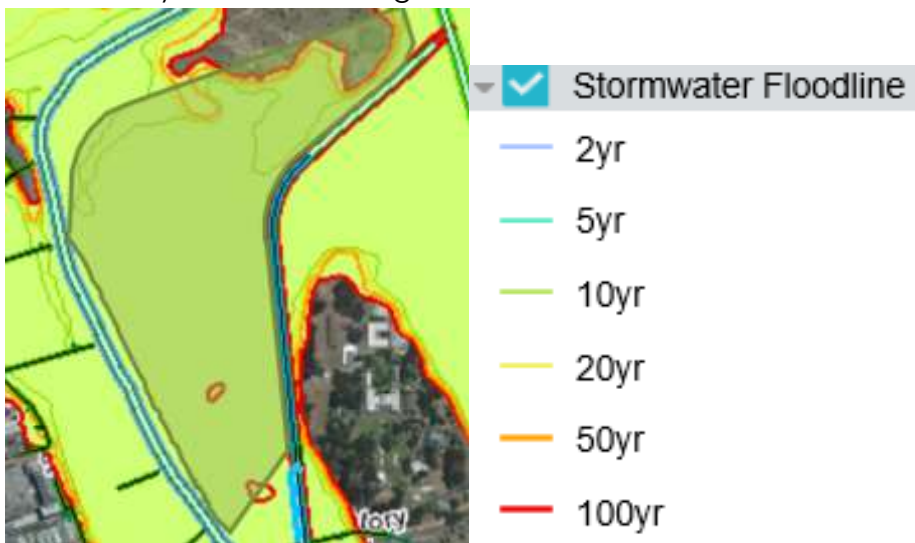
K. Wiseman  
Acting Director: Environmental Management Department  
Date: 11 September 2020

## ANNEXURE A

### **TECHNICAL ERRORS, DISCREPANCIES AND OMISSIONS IN THE ENVIRONMENTAL AUTHORISATION RESULTING IN VAGUENESS**

It is submitted that the following technical errors and discrepancies render the EA vague. Given that the EA constitutes the decision of the decision-maker, it should contain no doubt as to the decision-maker's decision and the holder's rights and obligations. That is clearly not the case in the present matter. Where there are clear uncertainties and significant errors as pointed out below, then the decision stands to be set aside on this basis.

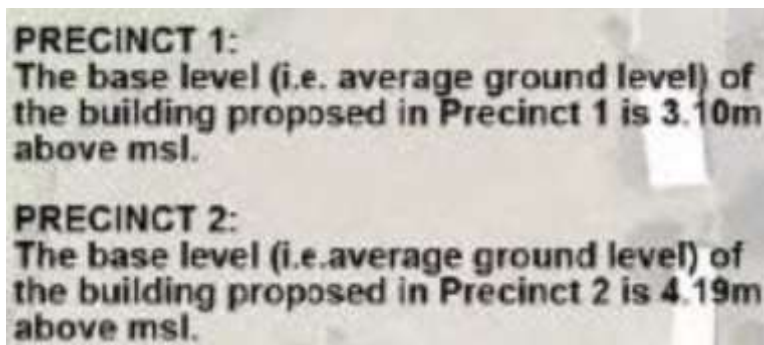
1. Extent of proposed development below the 1:10year floodline on Page 3 of 31: The last paragraph states that **"Portions of the proposed site fall below the 1:100year floodline."** This statement is misleading because 90% of the River Club site is beneath the 1:100yr floodline and not only 'portions' of the site as stated in the EA. In fact, more accurately, most of the River Club site is below the **1:10year** floodline. This is therefore an error and a misrepresentation of the facts. The remaining City land is not affected by a development footprint, so this statement is not pertinent to those portions. See map below, which indicates the 1:10year floodline in green.



As is evident, approximately 90% of the River Club site is below the 1:10year floodline, and even more of the site is beneath the 1:100year floodline, pointing to the unsuitability of the site for development. This fact is downplayed in the EA.

2. Although the EA states on page 4 and 5 of 31 that a channel of 3m x 90m in length would be infilled, it is not clear where such a feature exists on the site. A site development plan should have indicated the location of all features referred to in the EA.
3. Incorrect terminology on Page 3 of 31: a term, 'the ground level of the building' is used. A building has 'finished floor levels', and 'ground levels' are for existing and proposed ground levels outside / around a building.

4. In this case, the EA states the 'ground level' of the proposed building will be raised 600mm above the 1:100year flood level. It is not clear what is being referred to here and whether the finished floor level of the proposed building will be raised, or whether the existing ground level beneath the building will be raised.
5. A building has a ground floor and ground storey, but not ground level.
6. There are 2 levels of parking, beneath the first storey (actually the 3rd storey).
7. Ground level is not a term for the building, but for the ground levels around the building – existing or average 'ground levels'. Whereas, 'Ground floor' is the lowest floor of a building that is not a basement. The ground floor is going to be 600mm plus 2 storeys of so called "basement" parking above the existing ground level, i.e. ground floor will be about 6.6m above the existing ground level.
8. Basement parking: Further the term 'basement' parking is misleading because the 'basement' parking at Precincts 1 & 2 is above ground. In terms of the Municipal Planning By-law, basements may only project 1.5m above natural / existing ground level. So these parking garages cannot be considered basements as they project about 6m above the current ground level. They are actually 2storey parking garages beneath the proposed buildings above. The attempt to conceal them behind a 6.6m high embankment does not render the parking garages as basements.
9. There are disparate ground levels on page 3 of 31 of the EA compared to what is shown on the colour illustration on page 13 of 31 of the EA. The following is a snip from the colour illustration:



These levels above differ from the following snip below, which is stated on page 3 of the EA:

Portions of the proposed site fall below the 1:100 year floodline, which is approximately 5.81m above mean sea level. The ground level of the proposed buildings will therefore be raised to approximately 6.4m above mean sea level.

10. There are discrepancies between the levels indicated in the proposal and those contained in the EA. A building does not have a ground level, but a finished floor level, or a ground floor / ground storey. The existing ground level beneath the building could be proposed to be raised to 6.4m above mean sea level (msl), which is neither 3.10 nor 4.19m above msl.

11. Rehabilitation Work: Under the inappropriate wording of 'rehabilitation work' on page 4 of 31, the EA includes the highly inappropriate infilling of the Liesbeek River, one of the City's high faunal sensitivity riverine Conservation Areas. The EA uses the word rehabilitation, but the word should have been 'landscaping', because it's impossible to mitigate the loss of a natural habitat such as the Liesbeek River.
12. Omission of the Liesbeek River: The decision-maker relied on maps submitted by the Applicant in which the Liesbeek River was omitted.
13. The proposed building footprints shown below, extend up to the river bank of the natural Liesbeek River, with no ecological setback as required by the City's Catchment, Stormwater and River Management Branch and Environmental Management Department in terms of the City's approved Flood plain and river corridor management policy.



14. The EA authorises a development shown to the public that authorises 8 and 10 storey buildings with a certain floor to ceiling height. The floor to ceiling height for each storey is excessive for certain uses – being 6m for retail, 4.5m for office and conference, and 3.5m for residential. This implies that for a 10storey building, the height of the building may be 51m in height, including the 2storey car park beneath, the visual impacts of which may not necessarily have been assessed.

**ANNEXURE B****IMPRACTICAL AND INADEQUATE CONDITIONS IN THE ENVIRONMENTAL AUTHORISATION**

It is evident that the following conditions are either impractical or inadequate to have the desired effect. It is respectfully submitted that the EA stands to be set aside for reason of these conditions. The City fails to see how the EA can be regarded as a legally sound decision in light of the deficiencies pointed out in the following conditions.

1. Section 11: Monitoring on Page 7 of 31, requires that the 'holder' of the EA must appoint a suitably experienced Environmental Control Officer (ECO) to ensure compliance with the provisions of the EMPr and the conditions contained in the EA. The implications of the holder of the EA having the responsibility to appoint a suitably experienced ECO is inappropriate for public land, given that the City is responsible for having to do road schemes, and yet a private property owner is being held accountable to provide ECOs for the City's road projects, which the EA states are not necessary for the development scheme. The City would have to provide its own contractors via its own tenders, and yet the private property owner is responsible for appointing ECOs for this work in terms of the EA. This has not been thought through by the decision-maker.
2. Auditing on Page 8 of 31: The environmental audit every 6 months is insufficient for the City's purposes of auditing a development on a river where pollution of the fresh water in the Liesbeek needs to be guarded against. The protection of fish, WLTs, bird habitat, breeding birds on the Liesbeek River, wetlands, etc., needs weekly audits initially, and monthly audits thereafter.
3. Environmental Audit Reports every two years, as per Section 14.2 is not sufficient for such a sensitive site. This system will not promote accountability of the contractor if the audit reports are only required every two years.
4. Specific condition 16.1 requires that "the recommendations provided in the HIA and the Supplementary Report compiled by Mr. T. Hart and Mr. S. Townsend and dated 04 December 2019, as included in the EMPr, must be implemented." However, HWC found that the HIA did not meet the requirements of S38 of the NHRA. It is therefore inadequate and concerning that the decision-maker would require their recommendations to be implemented.
5. Section 21.1 on Page 9 of 31: There is a requirement that "employment opportunities be afforded to the First Nations Communities (as far as practically possible) for the operational phase of the heritage component of the proposed development. Since there is no requirement for an operational EMP, it will not be possible to provide employment opportunities for First Nation communities for the operational phase of the heritage components, to be monitored in an ongoing manner.
6. Section 9.1 on Page 7 of 31: Management of Activity requires the approval of a Stormwater Management Plan for one of the City's rivers, but this condition does not include the City's



Catchment, Stormwater and River Management Branch in the approval of the Stormwater Management Plan.

7. Section 9.1 on page 7 of 31: A rehabilitation / restoration plan for the rehabilitation of the Liesbeek Canal is required with no requirement for the City's Biodiversity Management Branch to approve such a rehabilitation / restoration plan. This is not in line with co-operative governance with regard to the management of City assets and resources for which Biodiversity Management is responsible.
8. Given that the decision-maker is concerned about stormwater management and rehabilitation of the canal, there would also need to be management of future land use activity impacts on these environments, such as ensuring there is no discharge of contaminated soapy water from car washing activities or oily water from restaurants into the stormwater system, for example. Hence there should also be an Operational Environmental Management Plan (EMP) which should continue to be monitored in perpetuity, for good housekeeping practices of future tenants on the site, given the fact that the development is within a floodplain, and also abuts the Raapenberg Wetlands, and an unlined section of the continuation of the Liesbeek River, and the section of the Liesbeek River that extends into the Black River.

## ANNEXURE C

### COMMENTS OF THE CITY'S CATCHMENT STORMWATER AND RIVER MANAGEMENT BRANCH ON THE PROPOSED RIVER CLUB LAND USE APPLICATION BEING CONSIDERED BY THE CITY



**CITY OF CAPE TOWN  
ISIXEKO SASEKAPA  
STAD KAAPSTAD**

**WATER AND SANITATION DEPARTMENT  
WATER AND WASTE DIRECTORATE**

**Ben de Wet**

Head: Catchment, Stormwater & River Management: Region 1

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17 January 2020

**Joy San Giorgio**

Senior Professional Officer, Development Management

**RE: COMMENTS ON DAMS CASE 70396369, RIVER CLUB DEVELOPMENT, OBSERVATORY, CAPE TOWN**

Several motivation reports have been uploaded to the DAMS system with the most recent one being an application for permission to hold a New Year's Eve party on Dec 31, 2018. This response addresses the Motivation Report Rev 4, Sep 2018, called Application for Deviation from Table Bay District Plan etc.

Furthermore, our comments are informed by the Aurecon report into flooding of the site, Rev 3, dated March 2018 while the report uploaded to DAMS is Rev 2 dated Nov 2017. The earliest flooding report commissioned by the River Club in 2015 and undertaken by AED, laments the historical mistakes made by City fathers in allowing development of the foreshore and infilling of the salt river lagoon. This as part of an application to develop the last bit of open green land left in the system.

#### **CCT Stormwater Bylaw and Policies**

The CCT Bylaw relating to Stormwater management allows the City to prohibit or impose conditions on developments in areas adjacent to watercourses and wetlands. The CCT Stormwater Policies attempt to give guidance on how and when such conditions should be imposed. The Floodplain and river corridor management policy aims to safeguard aquatic environments and human health in addition to reducing the impact of flooding and maintaining recreational water bodies. It requires balanced consideration of flood risks, environmental impacts and socio economic needs with one of the policy objectives being the protection and enhancement of environmental goods and services provided by water bodies. The policy considers water bodies to be public resources which need protection by, amongst others, offsetting riparian development. The policy explicitly states that no development rights will be granted in the high hazard zone. The Stormwater Impacts Policy aims to mitigate changes to runoff characteristics brought about by development.

**WATER & SANITATION HEAD OFFICE**

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**Making progress possible. Together.**

### **Deviations Requested**

The CSR branch is largely satisfied with the work done and findings made by Aurecon in their report of their "Investigation into the impact of the proposed development of the River Club on flooding and flood abatement in the Salt river catchment" Rev 3 dated 12 March 2018. These are not disputed.

The Stormwater policies prohibit the exercising of development rights in the High Hazard zone and also does not permit housing or business development below the 1:50 year floodline. It is not clear why the application is for deviation from restrictions on development below the 1:20 year floodline.

It is beyond the authority of the branch to authorize the manipulation of ground levels aimed at changing floodlines below the 1:50 year flood line. Furthermore, while in-filling of the "old Liesbeek" has been shown to be hydraulically unimportant, it goes against the other aspects of the City's stormwater strategies and policies as discussed above. While it may have a limited effect, the "old Liesbeek" currently acts as polishing facility for stormwater coming from the suburb Observatory.

In addition to the applicant wishing to obtain approval for a departure from the flood related aspects of the Floodplain and River Corridor Management Policy, the developers are in essence also requesting a departure from the need to provide a buffer along the river section (which is proposed to be infilled to create a stormwater swale). A departure from the ecological principles and guidance provided in the latter policy needs to be taken in the context of the wider system and catchment. It needs to be acknowledged that the area that will be infilled represents part of the last remains of the historic Liesbeek River channel which has ecological and eco-historical importance.

There are a few opportunities to undertake rehabilitation of degraded rivers in the Cape Town and developers generally seldom actively pursue such positive initiatives. Endorsing the River Club proposals that would essentially result in further degradation of this historic channel should not be supported.

In its current form, the historic river channel should be buffered by at least 40m (in terms of the City's 2002 buffer line spatial informants recommended by Southern Waters). A more recent study undertaken for the entire TRUP site (Blue Science freshwater assessment dated 2016) provides a more accurate assessment of the present status and ecological importance and sensitivity of the watercourses in the TRUP area (which included the watercourses and wetlands of the River Club site). This report recommends at least a 35m buffer along/around these systems (page 62: A buffer area of approximately 35m should be maintained adjacent to the delineated edge of the aquatic features"). The report made use of the 2015 WRC buffer tool which is regarded to be an acceptable industry standard and thus the 35m buffer which is of similar order of magnitude to the City's earlier 2002 data would be supported by the City's Catchment, Stormwater and River Management Branch.

The branch would not oppose the manipulation of the 1:50 year floodline when other mitigation measures such as raised floor levels and escape routes are taken and when a spatial development framework is also presented for approval. This would enable a more specific discussion of the location and extent of deviations requested. There are places where the models show a small increase in possible flood levels. The applicant should get the

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approval of the affected property owners and/or indemnify the City against claims in this regard. The flooding report should discuss errors and assumptions made and their effect on results in more detail. Practical interventions to prevent flooding of the astronomical observatory and of Liesbeek parkway must be undertaken.

The location of the site is such that on-site generated post development stormwater detention will most likely be counterproductive and this branch supports doing away with the "Control quantity and rate of runoff" requirements of the Management of Urban Stormwater Impacts Policy. The water quality improvement aspects of the policy must still be met.

It has been already pointed out in the City's comments on the draft BAR for this development that the River Club site and nearby sites such as the Raapenburg wetlands, the Observatory, the river corridors themselves etc represent an integrated complex of open space areas with high green infrastructure value. Not only does the area offer value in terms of social/recreational benefits and ecological / biodiversity features, but also represents green infrastructure important for flood, water quality and water provision management. The site should not be viewed alone but within the context of the greater Salt Catchment (213 km<sup>2</sup>) which, apart from the upper reaches of the Elsiekraal, the extreme upper reaches of the Liesbeek River and the broader TRUP area (and River Club), has already been intensively developed and hardened. These last open space remnants therefore have even greater value. Indeed, Section D of the draft Basic Assessment Report (Need and Desirability) notes that in terms of the City's EMF, the site is listed as a "structuring open space which forms part of the coast to coast greenway". In the Table Bay Spatial Development Plan the site is classified as Open Space and Buffer 1 and thus the proposed development represents a major departure from this. The proposed development will require that the area which is currently zoned "Special Open Space" be rezoned, and thus development of the River Club site will irrevocably change and reduce the green infrastructure and open space value of the area as a whole.

The proposed infilling and conversion of the river channel to a stormwater swale will alter the green infrastructure engineering and ecological value of this site. The Environmental Management Department of the City will also point out that the biota in this system (Western Leopard Toad - confirmed breeding site), fish (indigenous *Galaxias zebratus* likely to thrive in this system), frogs and avifauna will be displaced due to the complete loss of habitat in this section.

It seems to be very risky for the City to grant blanket deviations from policy without knowing exactly what development is proposed where and the CSR branch would be more comfortable discussing relaxation of policy requirements in terms of development plans.

Yours Sincerely



**Ben de Wet**

Head: Catchment, Stormwater & River Management

**WATER & SANITATION HEAD OFFICE**



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**ANNEXURE D****CONFIRMATION OF THE PRESENCE OF WESTERN LEOPARD TOADS (WLTs) NEAR THE NATURAL LIESBEEK RIVER CHANNEL, OF WLTs BREEDING ON THE RIVER CLUB SITE AND OBSERVATION BY THE HERPETOLOGIST**

Wed 2020/09/09 7:49 PM

jean.s.ramsay &lt;jean.s.ramsay@gmail.com&gt;

RE: the Western Leopard Toads on the River Club site

To:  Sandra Hustwick You forwarded this message on 2020/09/09 7:55 PM.

Hi

I confirm that I was with Marius Burger when we found western leopard toads on the river club site. We rescued several young ones that were trapped in the irrigation system - which he said indicated that they were breeding on the site, and found adults near the original Liesbeeck river channel.

Kind regards

Jean Buckley

----- Original message -----

From: Sandra Hustwick <[Sandra.Hustwick@capetown.gov.za](mailto:Sandra.Hustwick@capetown.gov.za)>

Date: 2020/09/09 13:20 (GMT+02:00)

To: [jean.s.ramsay@gmail.com](mailto:jean.s.ramsay@gmail.com)

Subject: the Western Leopard Toads on the River Club site

Hi Jean

Thanks for all the info so far.

I recall you mentioned that you had been on site with Marius Burger and photographed the WLTs on the River Club site, and yet he didn't mention their presence on the River Club site in the faunal assessments.

Is it possible you could send me an email to this effect, or you could write an affidavit saying that you were with him when you saw the WLTs please?

Thanks

Sandy