

Covering Email

Dear Sirs,

The matter mentioned above refers.

We address this email to you at the instruction of our client, the Goringhaicona Traditional Khoi Khoi Council (hereinafter referred to as "the Council") to submit the appeal to the

PROPOSED APPLICATION FOR REZONING, APPROVAL OF COUNCIL AND DEVIATIONS FROM CITY POLICIES IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BYLAW IN RESPECT OF ERF 151832, 6 LIESBEECK PARKWAY (BOUNDED BY LIESBEECK PARKWAY AND OBSERVATORY ROADS), OBSERVATORY, CAPE TOWN

The Council has submitted written and oral submissions in objection to the aforementioned application. The Legal Resources Centre has represented the Council at the hearing for oral objections held on 18 September 2020. From the appeal form, it appears that when a party who submits an appeal is represented they would have to complete and submit the appeal from MPBL LUM02. For the purposes of the objector, the form is inappropriate as specifically relates to the registered owner. Please advise if you require any form of proof of representation.

The Council hereby requests an opportunity to make oral representation when such occasion arises.

Annexure to supplement the appeal are attached and marked Heritage Arguments 1 and 2 respectively.

Should you encounter any problems with opening, please do let us know so we may attend urgently.

We trust that you will find this in order. We look forward to your response. Kindly acknowledge receipt hereof.

Yours faithfully,

Lelethu Mgedezi

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Appeal Municipal Planning Tribunal — (as it appears on the Appeal Form) Submitted on Monday, October 26 2020.

Appeal form: Proposed application for rezoning, approval of council and deviations from the City policies in terms of the City of Cape Town Municipal Planning By Law in respect of ERF 151832, 6 Liesbeek Parkway.

Question : Motivate and explain if you are appealing against the decision to approve/refuse the application(s).

While this appeal is set to address the failure to into cognisance the heritage and cultural components intrinsically linked to the land and the decision regarding its rezoning, the absence of submissions in appeal of the other reasons justifying the approval of the application should not be accepted as an admission or concession thereto.

Question : Motivate how your rights are affected by the decision(s) taken.

The reasons for the appeal shall be enumerated below:

1. In the contemplation and adjudication of the granting approval to the rezoning application, there has been disregard to the greater impact and significance of the pertinent heritage considerate necessary as prescribed by section 99(3)(g) of the Municipal Planning By Law of 2015. In assessing an application for land use, it is further important to consider whether such proposed land use is desirable in so far as considerations of heritage are concerned. The land in question is under contention for significant heritage considerations, in its full extent. While the proposed development seems to incorporate heritage components to it, it is respectfully submitted that such proposed implements are inadequate in addressing a heritage insights and component over the land. The nature and the full extent of the land is in entirety holds heritage and cultural significance, particularly to the first nation group - Goringaichona. History indicates the habitat and settlement of first nation groups in the area and there is a strong likelihood of it being declared a national heritage site. The history of the area is significantly and compellingly shows that the heritage. In taking its decision, the MPT is obligated to consider the heritage component to the land, in determining if it would be desirable to proceed with the development if it impacts on heritage as prescribed under section 99(3)(g) of the MPBL. We respectfully submit that the consideration so given for the heritage component is inadequate for the purpose of consideration for the application in question. The provision was not satisfactorily applied and was a missed opportunity to give consideration to pertinent heritage considerations that impact the decision around the application.

2. On the consideration of domestic legislation, the National Heritage Act gives the clear basis of what can be considered as national heritage site as laid out in section 3 and other provisions of the Act. The section speaks to the heritage criteria and generally carries the spirit and purpose of the legislation. In light of the pending heritage applications before South African

Heritage Resources Agency over the land, so it is completely undesirable to proceed with granting approval to the application.

3. In considering favourably the granting of the approval to the application, the MPT was satisfied that the rezoning will yield positive economic development returns to the City's economy. Although this is necessary for City's wider socio economic development, it is undesirable to hold erect such a development in the location in question. The area is evidently a heritage space which is undergoing several considerations which could mark it a national or world heritage site. It would therefore be improper and inept to proceed with the development in light of these impending decisions.

4. While there is no contention around the existence of intangible heritage in the area and with the section 29 protection order that had been granted previously, mainly on this basis, the decision to grant the approval for the application effectively disregards the existence of intangible heritage which should be protected, particularly by the State. The intangible nature of the heritage does not make it any less important for consideration. Therefore, the MPT erred in granting approval while there are contentions of intangible heritage in the area. While the proposed heritage effects would purportedly give credence to heritage and cultural significance over the land, it is important to emphasize the inadequacy of the proposal given the history and heritage over the area.

5. The fullness and completeness of the heritage over the area is entirely set on the open space that the land is, in its full extent. The proposed heritage implements will require a change in the natural and original form of the land and area. This completely distorts the effects the nature and heritage aspirations so sought over the land, through the proposed concretization

6. The representative body- the First Nation Collective - that has agreed to the development and the effecting of the heritage developments over the land is implored to present the basis of its establishment, functions, authority and accountability in so far as it makes decisions relating to first nation groups.

7. Indeed, HWC must still consider an application by the Goringhaicona Council, the OCA and the Two Rivers Urban Park Association for heritage grading of the TRUP precinct. We have written to HWC to clarify their intent to act with urgency on that application given the evident and immediate threat to heritage resources posed by the DEADP decision.

8. The Council has also made a submission to SAHRA for the recognition of the site as a National heritage site and supplementary documents giving more details around the heritage application have been requested. On June 10, 2020 Cabinet approved the implementation of the National Khoi and San Heritage Route, which is a national legacy project. The route will identify, highlight, conserve and promote the heritage of the Khoi, Nama, Griqua, Korana and San. This project contributes towards the acknowledgement of the previously neglected and marginalized South African history. The site is on the tentative list for UNESCO. The process is

still underway but requires due consideration by this Tribunal. In terms of section 99 of the MPBL it is undesirable and arguably unlawful to take a decision without having information before the decision maker relevant to the impact of the decision on various rights under the SPLUMA, the MPBL and the Constitution of South Africa

9. The current Local Spatial Development Plan for the area does not currently permit a Mixed-Use development in the flood plain. In 2015, the then Executive Mayor initiated a co-design process to update the local spatial development plan for the area. However, in 2018, this process was abandoned in favour of a consultant-driven process for a new LSDP for the Two Rivers Urban Park which is still currently under a public participation process. The LSDF has been highly contested by IAPs, particularly for its abandoning of principles previously agreed under the Co-design process and for its attempt to legitimize the River Club development as a fait accompli in the area. In the Environmental Authorisation process, this draft LSDF has been presented by the developer and other officials as if it is an existing and accepted planning framework. Any consideration by the MPT of the draft LSDF will be open to challenge. It is geographically undesirable to hold

Reading the reasons for the appeal as outlined above, it is important to note the failure to take cognisance of the heritage consideration in their fullness adversely affects the rights of the Goringaichona in so far as domestic and international legislation is concerned. Below is the list of rights that have been affected adversely or have not been given effect in their protection:

1. The supreme Constitution requires due consideration for heritage and culture – section 30 and 31 of the Constitution. These provisions give guarantee to these rights of cultural groups and the preservation of heritage, language and culture. They must be read with section 9 which champions dignity of humans to give meaning to the aspects of heritage and culture.

International law

2. UNDRIPS

Article 8 – indigenous people should not be assimilated or forced into culture and makes it peremptory for states to prevent any actions that would not achieve this

3. AFRICAN CHARTER

Article 20.2 (Colonized or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to

any means recognized by the international community),

Article 22.1 (All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.)

The list is not exhaustive and all rights and privileges that apply to first nation groups for the land and cultural preservation shall receive application in this context.

The failure to take cognisance and give recognition to rights of first nation groups is a clear violation of rights that are recognized domestically and internationally. There is no scope for redress to set right the advent and effect of brutal colonial actions that dispossessed first nation people from their land and from the practice of culture.

Appellant's full names and surname : Tauriq Jenkins - High Commissioner, Goringhaicona Khoi Khoi Indigenous and Traditional Council, on behalf of Paramount Chief Aran

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