

The case officer has mostly ignored the Goringhaicona objection.

Please find the annexure attached. Further to this the Case officer has inadequately responded to various other entities and statutory bodies.

The case officer claims “That Heritage impacts have been carefully considered”

The case officer further states the Incorporating of various elements or ways in which the First Nation history is memorialised

City’s EMD comment that “Legacy Projects established in 1994 included Khoisan heritage: outcomes of the 2015 baseline study and feedback from Dept Arts Culture were that the ‘unique relationship of the Khoi-San with the environment’ could be presented as a park and that the intention of the Khoi-San legacy Project “is not to create a memorial comprised of buildings and/or traditional sculpture”.(see 2.2.11 page 2910 of the line department responses)

To add to this, HWC final comments noted in paragraph 105 that “It is unfortunate that the engagement with First Nations groupings did not materially change the design approach in a manner which is reflective of the intangible heritage significance identified.” Source: HWC final comments paragraph 105

The LLPT application relies on an HIA, and a supplementary first nation report. These have been dealt with by HWC’s comprehensive response in the HIA process in their final comments and in their EA appeal.

In the final comments:

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

And paragraphs 109-115: “HWC regards the wider TRUP of which the River Club site is an integral component, as a highly significant cultural landscape in the City with a significant interplay between natural and man-made landscapes. It is this interplay that defines cultural landscapes. HWC is of the opinion that this area is of at least provincial significance, if not of national significance. It is a site which is recognized as a sacred place.”

The HIA has unfortunately reduced this significance to a set of ecological values, provided for the most part to post-rationalize a wholly intrusive development model, rather than inform appropriate development. The Committee also noted that a 'memorial'/'museum' and recreated river courses are inadequate in commemorating the significance of the site and appear to be designed to create meaning rather than attempt to enhance identified heritage significances. It is the opinion of the committee that the site is of sufficient significance within itself and does not

need to be imbued with meaning. The bulk and mass of the development proposal does not respond to the site as a living heritage. The discussion above illustrates that the HIA still does not comply with the provisions of Section 38(3) of the NHR Act. and it is noted that until the issues as identified above are addressed, the committee is not in a position to endorse the reports or the development proposal.”

Therefore, while the HIA was not part of the rezoning, it is extensively referred to by the Case Officer and the documents were all included so we can only presume that the HIA, its supplementary report and the March 2020 addition, are what the MPT deem to be evidence that “Heritage impacts have been carefully considered.”

The case officer further asserts that **“While it is acknowledged that the property includes elements of heritage significances, these are to be incorporated into the proposal by various means, such as, memorializing the history by means of story boards that tell of past experiences and the provision of architectural elements such as an amphitheatre in the shape of an indigenous kraal, spaces that enable, display of traditional crafts, amongst others. (6.1.7 page 197)**

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HWC Final comments: “The Committee also noted that a ‘memorial/ ‘museum’ and recreated river courses are inadequate in commemorating the significance of the site and appear to be designed to create meaning rather than attempt to enhance identified heritage significances. It is the opinion of the committee that the site is of sufficient significance within itself and does not need to be imbued with meaning. The bulk and mass of the development proposal does not respond to the site as a living heritage.”Paragraph 114 of HWC Final Comments on the HIA (under the DEADP EA)

Therefore, the HIA is flawed in wanting to turn an artificial existing canal into a ‘river’ when instead it will downgrade the original course of the River, which will be turned into a swale which has deadly faunal impact, including the fish. There appears to be a conflated tactic here from the onset. The HIA initially only recognised the river as tangible heritage. It then sought to ‘rehabilitate’ it. Over time, it now manages to justify parts of its destruction. The description and primary argument by the developers’ consultant that the sacred Liesbeeck River is a ‘storm water gutter’ is at total odds if not insulting to Khoi and San ‘aspirations of its ecological symbiotic relationship with riverine systems, land, animals and the cosmos.

HWC also specifically notes the standard operating procedure of a museum/memorial is not sufficient.

Paradoxically, there are numerous references in the AFMAS report on the importance of the River. Source 2_AFMAS_Solutions_Final_River_Club_First_Nations_Report

"The Khoi and the San have the most exquisite symbiotic relationship with the soil, with the river, with the stars, with [Kaggen], who's the mantis. And, when you look at the Liesbeeck River, the flow of that river and the land next to it. When I talk about a symbiotic relationship, I 'm saying that the river is flowing within; it's embodied within the consciousness of the Khoi, and so is the land. You can't separate the two. So, when you separate the Khoi from the land permanently, you separate a part of the body itself. It's disembodiment of the physical body; the physical manifestation that's imbibed in them. By dislocating the Khoi permanently from the land and from its proximity to the river, you're completely; you're ripping the soul out of them. It was physical, visceral dislocation, because of the understanding, the integral understanding of connectivity." (p18)

N.B. This unacknowledged statement above was made by High Commissioner T.Jenkins of the Goringhaicona in an interview for a different AFMAS report done for the Department of Public Works and Transport. This transcript was unethically appropriated without his consent into the River Club AFMAS report which now forms part of the supplementary report to the River Club's HIA.

"Places where rivers are coming together, are special places. Those rivers are connected with people and memory. Water holds memory. So, wherever rivers are coming together, at that point is a ceremonial place. So, the Two Rivers, at that point, is one of them, because of the rivers coming together there. So that space holds a huge memory." (p19)

"The confluence of the Black River and the Liesbeeck River, that embankment area is the place where the Khoi would engage in marriage ceremonies and burial rites, cremation and these kinds of things. It's also a political hotspot, because that's where the tribes would gather and meet... So symbolically, confluences for the Khoi, had a tremendous resonance." (p19)

The case officer states too that "It must also be noted that the Department of Environment and Development Planning (DEA&DP) have approved this component of the application." In spite of this, the relevant city department has also opposed this component of the application for reasons stated in 6.3 d) above and 6.3 f) below.

Therefore, it is incongruous to the claim that "The River Club, as a precinct of TRUP, is to be authenticated as an *"Indigenous commemorative landscape"* that has *"spaces of engagement and Indigenous place-making"* (Page 67 of the AFMAS report) goes on to allow the original river to be infilled while the canal is recreated as an artificial river. In fact, the "Rationale" makes no mention of the River but only of the land as in "Authentication involves reconnecting the Khoi and San to the River Club land through Indigenous usufruct that can take different forms." (p67)

Heritage Western Cape have appealed the DEADP authorisation which they have described as "unlawful." Points 1.4 to 1.7 of their appeal read as follows: "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. 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. 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. 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." Source: Memorandum_River Club Final signed

The City's Environmental Management Department refers to an article quoting High Commissioner Tauriq Jenkins from the Goringhaicona Khoi Khoi Indigenous Traditional Council which notes the the Goringhaicona 'do not accept this development' which it describes as 'an act of spiritual and heritage genocide'. EMD goes on to say "this statement is of concern and raises the question of how inclusionary the process of participation with the First Nations has been." Para 2.210 page 2910.

Further, EMD notes "The social issues revolving around cultural appropriation and social impact have not been expounded on sufficiently, the First Nations narrative appears to not be totally inclusive of all relative groups." Para 2.3.7 page 2913

This is further reinforced in HWC final comments (para 97) which noted "the scope of engagement resulted in a number of groups electing to not participate fully; the research process was contested by participants in the engagements; the impartiality of the research questions is not clear to the committee; the methodology for the engagement does not appear to follow accepted oral history interviewing protocols (for example. no ethical clearance forms were supplied); the confusion between this report and the DT&PW-commissioned report brings the ethics around the engagement into question."

Augmenting this observation is the note in the EMD description of the development that "The implementation of these mechanisms is to be assured through an institutional arrangement which establishes within the Property Owners Association (or similar) an autonomous legal entity led by the Gorinhaiqua Cultural Council that will be responsible for the governance, planning, management, operations, maintenance and sustainability of the indigenous place-making mechanisms.: para 2.2. p2908. This is information in the 2019 supplementary HIA report which was not circulated for public comment by the MPT.

Divisiveness

Paragraph 91 of the Heritage Appeal Tribunal Directive commented that "The policy of maintaining control over one's subordinates or opponents by encouraging dissent between them, thereby preventing them from uniting in opposition, is evident in this matter. Conservation efforts to preserve the heritage of the Indigenous First Nations' people and communities and protect their cultural rights, have been hamstrung by the 'politics of divide and rule'. In a divided and disparate society that can benefit from and become unified through knowledge of each other's cultures and heritage, the current situation is not a good scenario to be in and this is unfortunate."