

- the implementation of the mechanisms for the realisation of the First Nations indigenous narrative, while recognised (even embraced) by the developer as appropriate, will have considerable costs.
- 5.105.2 The proponent has presented two financially feasible and distinctly different alternatives: the Riverine Corridor Alternative and the Island Concept Alternative (as well as the No-Go Alternative).
- 5.105.3 Although, in terms of NEMA and the 2014 EIA Regulations, alternatives identified by stakeholders should be considered in the EIA process, the proponent is permitted to provide a reasoned explanation why alternatives are not found (through an investigation) to be reasonable and/or feasible. In this regard, the (financial) returns of the preferred Riverine Corridor alternative, the Island Concept alternative, and the two alternatives suggested by stakeholders ((a) a lower density / reduced floor-space alternative and (b) an alternative which incorporated ~20% of the GLA for affordable housing) were investigated by MLC Quantity Surveyors to determine the expected first year returns on investment.
- 5.105.4 Noting that market capitalisation rates below 9% are not considered commercially viable to the proponent or to other property developers, the investigation demonstrates that neither the lower density/reduced floor-space alternative nor an alternative which incorporates ~20% of the GLA for affordable housing are financially viable to the proponent. In other words, given the cost of developing the site, the proponent does not view other alternatives to be (financially) reasonable or feasible and have excluded these from further analysis.
- 5.105.5 The proponent has further calculated that the floor area currently proposed is the minimum required to ensure financial feasibility, and as such, impacts associated with the change in character of the site cannot be avoided completely through layout or functional alternatives, or other mitigation. In other words, negative impacts on the character of the site, the historical setting of the SAAO, and sense of place are anticipated should the development proceed. Should the No-Go Alternative be selected, these impacts would be forgone, as would a number of significant economic, ecological and cultural benefits.
- 5.105.6 It should also be noted that the same or very similar negative impacts would be experienced should an alternative with reduced floor space or one with 20% of the GLA devoted to affordable housing be selected. Furthermore, it is now apparent that the proposed alternative is consistent with the latest spatial framework plan for the environs, the Draft Two Rivers Local Spatial Development Framework.
- 5.105.7 In terms of NEMA, the best practicable environmental option is the option that provides the most benefit and causes the least damage to the environment as a whole, at a cost acceptable to society, in the long-term as well as in the short-term.
- 5.105.8 The proponent has calculated that a minimum floor area is required to make the development financially viable and has selected two viable layouts designed to mitigate the anticipated visual and cultural impacts as far as possible (and to enhance both ecological and heritage benefits). Layouts were selected in consultation with the specialists on the project team including the urban designer, the visual impact assessor and the architect. Nevertheless, the development will alter the sense of place (see Impact V2 in Appendix J of the BAR), reduce certain of the heritage values of the site (Impact H3), impact on the setting of the SAAO (Impact H5) and, importantly, increase significantly other heritage values. The project will also entail significant socio-economic (Section 2.7 of Appendix J of the BAR) and ecological benefits (Sections 2.4

Handwritten signature and initials. The signature is a stylized, cursive mark, possibly reading 'TK'. Below it, the initials 'TK' are written in a bold, blocky font and enclosed within a hand-drawn circle.

and 2.5). Therefore, the preferred alternative involves tradeoffs. Negative impacts can be mitigated to acceptable levels if the Riverine Concept Alternative is selected, and a significant heritage benefit is anticipated from restoring the Liesbeek River Corridor at the site (Impact H4). This alternative has therefore been selected as the preferred development alternative by the proponent. The site is privately owned and has been the subject of unsuccessful revitalisation initiatives for over a quarter of a century, and it is therefore reasonable to assume that should the development not be approved the site will continue to be inaccessible to the public and used as a commercial, recreational and conferencing facility. The benefits (and impacts) of the development would be forgone at a site that is considered by the City and the Provincial Government of the Western Cape (and, of course, proponent) as a site that is suitable for development.

- 5.105.9 Given that the two realistic and viable outcomes for the future of the site are either (a) the preferred Riverine Corridor alternative which re-envision the site or (b) the No-Go Alternative, it is their view that the preferred development alternative provides more benefit at a tolerable cost to society and is therefore considered an acceptable option for the site, *ceteris paribus*.
- 5.106 The reasons for the EA provide details of the alternatives that have been considered and state that the following has been incorporated in the proposed development in view of the heritage significance of the site and associations to the First Nations Groups:
- 5.106.1 An indigenous garden for medicinal plants used by the First Nations will be established at the site.
- 5.106.2 A cultural, heritage and media centre at the location of the heritage information hub will be established.
- 5.106.3 A heritage eco-trail around the site will be established.
- 5.106.4 An amphitheatre for use and cultural performances will be established.
- 5.106.5 Commemorating the history of the First Nations in the area through establishing a gateway feature inspired symbols at the road crossing of the ecological park/corridor, incorporating symbols into the detailed design of buildings and the naming of internal roads.
- 5.107 Considering the above, this ground of appeal has been adequately addressed.

Appeal ground 9: 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

- 5.108 The empowering legislation does not specifically require the Competent Authority to undertake site inspections. However, the following site inspections were undertaken by the Competent Authority before the granting of the EA and during this appeal process to obtain a general overview of the site and its environs:
- 5.108.1 On 29 August 2020, a Site Visit was conducted by the Directorate: Development Management.
- 5.108.2 On 30 September 2020, a Site Visit was conducted by the DEA&DP's Chief Directorate: Environmental Governance, Policy Coordination and Enforcement and case officers from the Directorate: Development Management.
- 5.108.3 On 4 December 2020, a Site Visit was conducted by the Minister of Local Government, Environmental Affairs and Development Planning (the Appeal Authority) and officials from the DEA&DP's Chief Directorate: Environmental Governance, Policy Coordination and Enforcement.

- 5.109 The fact that the Competent Authority did not invite I&APs when conducting site inspections does not prejudice the EIA process as their comments have been received in writing and were taken into account during the decision-making process.
- 5.110 The specialist studies conducted for the relevant habitats and animal species provided adequate information to inform the decision-making process. Site inspections were conducted to inform the specialist studies.
- 5.111 Considering the above, this ground has been adequately addressed.

Appeal ground 10: There is a lack of clarity regarding the boundaries of 'the site'

- 5.112 Regulation 3(1) of Appendix 1 of the 2014 EIA Regulations states that:
"A basic assessment report must contain the information that is necessary for the competent authority to consider and come to a decision on the application, and must include— ...
- (b) the location of the activity, including:*
- (i) the 21-digit Surveyor General code of each cadastral land parcel;*
- (ii) where available, the physical address and farm name;*
- (iii) where the required information in items (i) and (ii) is not available, the coordinates of the boundary of the property or properties;"*
- 5.113 As such, the BAR contains *inter alia* the following information:
- 5.113.1 The locality map of the site contained in Appendix A of the BAR.
- 5.113.2 The description that River Club is currently predominantly used by the proponent as a commercial rental enterprise comprising a golf driving range with a "mashie" 9-hole golf course in the north-east of the River Club, conference and function venue, restaurant and bar. A bird hide is located on the site which overlooks the new Liesbeek River channel and current confluence with the Black River. Beyond the mashie course is vacant land owned by the PRASA.
- 5.114 The specialist studies also contained a clear demarcation of the site in relation to the surrounding areas. Specifically, the Biodiversity Impact Assessment, which incorporate input from the following specialists, provides a study area, shown in Figure 1.1 of the study:
- 5.114.1 Dr Liz Day (freshwater ecologist – rivers and wetlands (Freshwater Consulting cc);
- 5.114.2 Mr Marius Burger (faunal specialist);
- 5.114.3 Mr Barrie Low (botanical specialist - COASTEC);
- 5.114.4 Dr Tony Williams (avifaunal specialist);
- 5.114.5 Mr Leon Groenewald (groundwater specialist – SRK Consulting).
- 5.115 The Biodiversity Impact Assessment states that the site is located in Observatory, Cape Town, and is accessed off Observatory Road, over the Liesbeek River. It is edged along its eastern and south eastern boundary by the Liesbeek Canal, which lies between the River Club and South African Astronomical Observatory (SAAO) sites; to the south by a relatively small parcel of land that is intended in the future to accommodate administrative buildings for the Square Kilometre Array (SKA) programme; to the west by an earth-lined channel referred to in this report as the natural channel of the Liesbeek River, which lies on land owned by the City of Cape Town, between Liesbeek Parkway and the River Club boundary, and to the north by the road reserve for the planned Berkley Road extension, which lies between the River Club boundary and an area of open space extending as far as the lower reaches of



Handwritten signature and initials, possibly 'TR'.

the natural Liesbeek River channel, which themselves edge property owned by the Passenger Rail Association of South Africa (PRASA).

5.116 It is concurred with the Responding Statement that:

5.116.1 Discrepancies in the description of the site boundary in various specialist studies are not material to the assessment of impacts and all specialists confirmed the findings of the Final Biodiversity Impact Assessment – see Appendix G of Appendix G2 to the BAR.

5.116.2 Specialist impact assessment considers the approved development proposal, and adequate baseline research was conducted at the site's locality and environs in order to assess impacts of the project (regardless of whether the specialists described these areas as inside- or outside the site) and to establish whether the development is ecologically, economically and socially sustainable (as it was clearly found to be, by the Director: Development Management (Region 1) in the Department.

5.117 Considering the above, this ground of appeal has been adequately addressed.

Appeal ground 11: Technical errors, discrepancies and omissions in the EA resulting in vagueness

5.118 I concur with the Responding Statement which provided adequate responses to this ground of appeal:

5.118.1 Appendix A, paragraph 1 of the City of Cape Town's Environmental Management Department Appeal states that the statement in the EA that "*Portions of the proposed site fall below the 1:100year floodline*" is "misleading (and an "error") because 90% of the River Club site is beneath the 1:100-year floodline and not only 'portions' of the site – this is not an error and is not material, in the view of the Applicant.

5.118.2 Appendix A, paragraph 2 of the City of Cape Town's Environmental Management Department Appeal states that "*a site development plan should have indicated the location of all features referred to in the EA*". All features, and their locations are clearly described in the BAR and specialist studies.

5.118.3 Appendix A, paragraphs 3 – 8 of the City of Cape Town's Environmental Management Department Appeal refer to planning nomenclature and considerations. The Planning approval for the development has been granted and the planning issues are addressed and specified.

5.118.4 Appendix A, paragraphs 9 - 10 of the City of Cape Town's Environmental Management Department Appeal. The Appellant has misread the colour illustration on page 13 of the EA. This figure simply indicates the base levels from which building heights are reported.

5.118.5 Appendix A, paragraph 11 of the City of Cape Town's Environmental Management Department Appeal states that the use of the word "rehabilitation" is not accurate to describe development proposals for the unlined course of the Liesbeek River. This is based on the City of Cape Town's misunderstanding or misrepresentation of this component of the development proposal.

5.118.6 Appendix A, paragraph 12 of the City of Cape Town's Environmental Management Department Appeal alleges that the decision maker "*relied on "maps" submitted by the Applicant in which the Liesbeek River was omitted*". The figure being referred to is the approved development proposal where the Liesbeek River is restored / naturalised at the current course, and the unlined course is transformed into a bioswale.

- 5.118.7 Appendix A, paragraph 13 of the City of Cape Town's Environmental Management Department Appeal states that the omission of a wide setback at the bioswale is an error, while when evidenced in the City of Cape Town's Appeal the Appellant is clearly aware that a 10m setback here has been assessed to be adequate by the freshwater ecologist and forms part of the development proposal.
- 5.118.8 Appendix A, paragraph 14 of the City of Cape Town's Environmental Management Department Appeal states that "*the height of the building may be 51 m in height... the visual impacts of which may not necessarily have been assessed*". The visual specialist assessed buildings of heights of 54 m above mean sea level.
- 5.118.9 Appendix B, paragraph 1 of the City of Cape Town's Environmental Management Department Appeal states that "*the responsibility to appoint a suitably experienced ECO is inappropriate for public land*". The holder is responsible for the environmental management of all components of the development, including those proposed by the City of Cape Town. Should the EA, or portions thereof, be transferred to the City of Cape Town through an amendment then the City of Cape Town would be responsible for environmental management of these components.
- 5.118.10 Appendix B, paragraphs 2 and 3 of the City of Cape Town's Environmental Management Department Appeal states that "*environmental audit every 6 months is insufficient for the City's purposes*" and "*Environmental Audit Reports every two years, as per Section 14.2 is not sufficient for such a sensitive site*" respectively. Auditing requirements are aligned with the NEMA EIA Regulations, 2014, and an ECO will monitor construction activities much more regularly.
- 5.118.11 Appendix B, paragraphs 5 and 8 of the City of Cape Town's Environmental Management Department Appeal states that "*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*" and "*Hence there should also be an Operational Environmental Management Plan (EMP)*". The approved EMP includes operational management measures which are binding on the holder.
- 5.118.12 Appendix B, paragraph 6 of the City of Cape Town's Environmental Management Department Appeal infers that the EA is inadequate because it does not include the condition that the City of Cape Town's Catchment, Stormwater and River Management Branch should approve the Stormwater Management Plan. One of the conditions of the re-zoning approval of the development is that the developer must engage and reach agreement with the City of Cape Town's Catchment, Stormwater and River Management Branch regarding the Stormwater Management Plan.
- 5.118.13 Appendix B, paragraph 7 of the City of Cape Town's Environmental Management Department Appeal infers that the EA is inadequate because it does not include the condition that the City of Cape Town's Biodiversity Management Branch should approve the Liesbeek Canal rehabilitation / restoration plan. A riverine corridor management plan is a condition of rezoning approval and the developer must engage and reach agreement with the City of Cape Town's Catchment, Stormwater and River Management Branch regarding this plan. The holder assumes that this branch will engage the City of Cape Town's Biodiversity Management Branch in the consideration of this plan as it deems appropriate.
- 5.118.14 The Applicant further submits that, should any material errors or impractical or inadequate conditions be identified, that these can be addressed through the standard EA amendment process.

A handwritten signature in black ink, appearing to be 'TK', is written above a circular scribble. Below this, the initials 'TK' are written inside a circle.

5.119 Considering the above, this ground of appeal has been adequately addressed.

Appeal ground 12: Impractical and inadequate conditions in the EA

5.120 On 7 January 2020, an Application form dated 19 December 2019 was received from the EAP, SRK Consulting (South Africa) (Pty) Ltd. on behalf of the Applicant, Liesbeek Leisure Properties Trust, to obtain an EA for the proposed redevelopment of the River Club for mixed use development and associated infrastructure on the remainder of Erf No. 15326 and Erven No. 26169 – 26175, 26426 – 26427, 108936 and 151832, Observatory in terms of the NEMA and the 2014 EIA Regulations. Hence the EA was granted to the holder who is anticipated to comply with the conditions of the authorisation, e.g. by appointing an Environmental Control Officer that will monitor and ensure compliance with the conditions of the EA. The Environmental Control Officer will monitor compliance with the conditions of the EA in a frequency specified in the EMPr. Section 49A(1)(c) of the NEMA states that it is an offence to fail to comply with or to contravene a condition of an EA granted for a listed activity or specified activity or an Approved EMPr. Section 49B(1) of the NEMA further states that if there is such an offence a person is liable upon conviction to a fine not exceeding R 10 Million or to imprisonment not exceeding 10 years in jail or to both such fine and such an imprisonment. Should there be an intention to transfer the rights and obligations of the EA to another person, an amendment application may be lodged in terms of the 2014 EIA Regulations.

5.121 In terms of the content of an EA, regulation 26 of the 2014 EIA Regulations states that “[a]n environmental authorisation must specify— ... (d) the conditions subject to which the activity may be undertaken, including conditions determining—

(ii) where the environmental authorisation does not include operational aspects, the period for which the environmental authorisation is granted, which period may not be extended unless the process to amend the environmental authorisation contemplated in regulation 32 is followed, and the date on which the activity is deemed to have been concluded;

(iii) a distinction between the portions of the environmental authorisation that deal with operational and non-operational aspects respectively and the respective periods for which the distinct portions of the environmental authorisation is granted, where the environmental authorisation contains operational and non operational aspects;

(iv) requirements for the avoidance, management, mitigation, monitoring and reporting of the impacts of the activity on the environment throughout the life of the activity additional to those contained in the approved EMPr, and where applicable the closure plan; and

(e) the frequency of auditing of compliance with the conditions of the environmental authorisation and of compliance with the approved EMPr, and where applicable the closure plan, in order to determine whether such EMPr and closure plan continuously meet mitigation requirements and addresses environmental impacts, taking into account processes for such auditing prescribed in terms of these Regulations: provided that the frequency of the auditing of compliance with the conditions of the environmental authorisation and of compliance with the EMPr may not exceed intervals of 5 years;

(f) the frequency of submission of an environmental audit report to the competent authority, including the timeframe within which a final environmental audit report must be submitted to the competent authority;



(g) the frequency of updating the approved EMPr, and where applicable the closure plan, and the manner in which the updated EMPr and closure plan will be approved, taking into account processes for such amendments prescribed in terms of these Regulations;

(h) a requirement that the environmental authorisation, approved EMPr, any independent

assessments of financial provision for rehabilitation and environmental liability, closure plans, where applicable, audit reports including the environmental audit report contemplated by regulation 34, and all compliance monitoring reports be made available for inspection and copying—

(i) at the site of the authorised activity;

(ii) to anyone on request; and

(iii) where the holder of the environmental authorisation has a website, on such publicly accessible website; and

(i) any relevant conditions which the competent authority deems appropriate."

5.122 The following has been incorporated in the proposed development in view of the heritage significance of the site and the associations to the First Nations groups (it is expected that the holder will afford employment to First Nations Groups *inter alia* in terms of the following):

5.122.1 An indigenous garden for medicinal plants used by the First Nations will be established at the site.

5.122.2 A cultural, heritage and media centre at the location of the heritage information hub will be established.

5.122.3 A heritage eco-trail around the site will be established.

5.122.4 An amphitheatre for use and cultural performances will be established.

5.122.5 Commemorating the history of the First Nations in the area through establishing a gateway feature inspired symbols at the road crossing of the ecological park/ corridor, incorporating symbols into the detailed design of buildings and the naming of internal roads.

5.123 Considering the above, the following conditions of the EA have been amended:

Condition E9.1:

"The Stormwater Management Plan, to be compiled must be approved by the City of Cape Town's Catchment, Stormwater and River Management Branch and must be included in the EMPr. A copy of the Stormwater Management Plan must be submitted to the Ministry of Local Government, Environmental Affairs and Development Planning ("Ministry") (for the attention of Mr Marius Venter, email: DEA&DP.Appeals@westerncape.gov.za) prior to the commencement of the construction for record purposes."

Condition E9.2:

"A rehabilitation/ restoration plan for the rehabilitation of the Liesbeek Canal must be compiled in consultation with CapeNature and the relevant City of Cape Town's Biodiversity Management Branch prior to the commencement of rehabilitation work to be undertaken. A copy of the final rehabilitation/ restoration plan must be submitted to the Ministry prior to the commencement of the rehabilitation work for record purposes."

5.124 Considering the above, this ground of appeal has been adequately addressed.

Appeal ground 13: Alleged conflict of interest and asserted impact thereof on the Basic Assessment process

- 5.125 It is noted that section 49(2) of the NHRA states that "(2) Anybody wishing to appeal against a decision of the SAHRA Council or the council of a provincial heritage resources authority must notify the Minister or MEC in writing within 30 days. The Minister or MEC shall then appoint an independent tribunal, consisting of three experts, having expertise regarding the matter."
- 5.126 In terms of the allegations made against the impartiality of the Acting TRUP Programme Manager (DEA&DP's Director: Development Facilitation), I draw your attention to a letter by the HOD:DEA&DP on 29 July 2020 (reference 53270029) to Professor Leslie London, Chairperson of the Observatory Civic Association, which clearly established that his retention by the Provincial Custodian Department of Transport and Public Works, as Acting TRUP Programme Manager, is not a risk to either the current or any future impact assessment in respect of the TRUP Development. He's position at DEA&DP was entirely removed from any decision making capacity in respect of EIA's.
- 5.127 The decision of the DEA&DP to lodge an appeal against the HWC section 29 protection declaration was a technical procedural appeal that sought to address a particular technical issue in terms of the legislative processes and did not concern itself with the merits of the declaration. There was therefore no bias on the part of the HoD.

Appeal ground 14: Traffic impacts

- 5.128 The increase of vehicles on the local road network was previously raised as an issue by the I&APs.
- 5.129 Aurecon, an independent traffic impact specialist, was appointed to undertake a traffic impact assessment. This traffic impact assessment determined that:
- 5.129.1 The transport modelling results have demonstrated that the present road capacity in the study area is unable to accommodate existing traffic demand. This gives rise to prolonged congestion and ever extending peak periods. Additional or upgraded road infrastructure and improved public transport services in the longer term are therefore required to support further development in the area.
- 5.129.2 Given the positive role of public transport in the study area, it is expected that Precinct 1 of the development will have a fairly marginal impact on the surrounding road network. The full development will however benefit from the following metropolitan road infrastructure improvements:
- 5.129.2.1 The extension of Berkley Road as a four-lane dual carriageway facility. The modelling results clearly illustrate a high demand for this missing link in terms of present and future traffic predictions.
- 5.129.2.2 The dualling of Liesbeek Parkway up to the proposed River Club access.
- 5.129.2.3 The implementation of a high-quality road-based public transport feeder system between Observatory, Salt River and Koeberg Stations, which could serve the development proposal more directly.
- 5.129.3 Both Precincts 1 and 2 will have an effect on the immediate road network within the vicinity of the site, however both Precincts could be accommodated with the implementation or provision of the recommended infrastructure as proposed.
- 5.129.4 It was therefore recommended that Precinct 1 and Precinct 2 be approved from a transport/traffic perspective. It was also recommended that other



Handwritten signature and initials, possibly 'TR' or 'TK', located at the bottom right of the page.

outstanding infrastructure as listed (dualling of Liesbeek Parkway and Berkley Road) be implemented progressively as other developments within the TRUP influence area are initiated.

5.130 I concur with the Applicant's Responding Statement that:

5.130.1 Traffic impacts were considered in the basic assessment process and EA and found to be significant, but acceptable. Traffic impacts were considered during decision-making, and the City of Cape Town's MPT has also approved the land use applications pertaining to the development.

5.131 Considering the above, it is considered that the traffic impacts have been adequately addressed.

Appeal ground 15: Services infrastructure

5.132 The BAR confirmed that:

5.132.1 Electricity: Sufficient capacity is available to service the development, provided that a Main Step-Down Substation is provided on the site.

5.132.2 Sewerage: Although sufficient treatment capacity exists, due to capacity constraints, a Peak Dry Weather Flow of 16 l/s only can be accommodated by the current network, and the full PDWF can only be accommodated once the gravity mains have been upgraded. Sewerage infrastructure would be upgraded as required with service contributions from the development, ensured by an engineering services agreement.

5.132.3 Potable water: Sufficient unallocated capacity exists to service the development.

5.132.4 Waste: The City of Cape Town has confirmed their capacity to collect and manage waste generated during the construction and operation of the development.

5.132.5 Stormwater: A departure will be applied for larger storms as the site is within a floodplain (which makes detention for large return period storms impractical). Stormwater management will adhere to the City of Cape Town Stormwater Management Policies and international best practice. The proponents intend to adopt sustainable stormwater management practices in line with the City and Provincial requirements (as far as possible).

5.132.6 The following interventions to improve stormwater quality will, as far as possible, be included in the final project description:

5.132.6.1 Detention facilities.

5.132.6.2 Infiltration trenches.

5.132.6.3 Swales with enhanced layerworks.

5.132.7 The City of Cape Town's confirmation of the availability of service infrastructure is addressed in the reasons for the decision contained in Annexure 3, paragraph 3.11 of the EA.

5.133 I concur with the Applicant's Responding Statement that:

5.133.1 The City of Cape Town has confirmed that there is sufficient spare, unallocated electrical, potable water and waste supply capacity to service the development.

5.133.2 In terms of wastewater treatment, the City of Cape Town is currently installing a 3rd diversion main from the Athlone WWTW to the Cape Flats WWTW so that flows during peak times can be diverted to Cape Flats WWTW and treated here, thus creating additional capacity. The City of Cape Town has confirmed that once the new diversion main is installed at the WWTW there will be sufficient capacity to receive sewerage from the development. However, the conveyancing network (specifically the Raapenberg Pump

Station) will not have sufficient capacity to receive sewage from the development during peak periods.

- 5.133.3 Certain sections of the affected bulk sewer mains will therefore need to be upgraded, or the operating performance improved, to accommodate the remaining sewer flow of 10 l/s (the Upgrades). The cost of the upgrades will be for applicant's account and will be offset, fully or partially, against the development contributions that will be levied against the development. This standard procedure is set out in the Municipal Planning By-law ("MPBL") and the City's Development Charges policy.
- 5.134 Considering the above, this ground of appeal has been addressed in order to accommodate the proposed development in terms of existing service infrastructure and proposed upgrades to be undertaken at the cost of the developer.

Appeal ground 16: Inadequate responses to IAP / stakeholder issues

- 5.135 The comments of the various I&APs received through the basic assessment process, detailed in the comments and responses reports, have been responded to and taken into account during the decision-making process.
- 5.136 I concur with the Applicant's Responding Statement that:
- 5.136.1 If a stakeholder does not agree with a finding, or objects to a development proposal, does not mean the issue was not raised, recorded or considered on its merits.
- 5.136.2 Issues raised by stakeholders are addressed comprehensively in Issues and Responses Reports that were appended to the BAR.
- 5.136.3 These reports total nearly 150 000 words of detailed issues and responses recording and reporting.
- 5.136.4 The applicant submits that all issues raised have indeed been comprehensively responded to and that the basic assessment process entirely met the legislated standard.
- 5.136.5 The Change.org petition provided in one of the Appeals, intended to garner opposition to the project, and disregarded the findings of the basic assessment and specialist studies without acknowledging these expert views.
- 5.137 Considering the above, this ground of appeal has been addressed since the comments and responses report were included in the BAR which informed the granting of the EA.

Appeal ground 17: Decision-maker based its decisions on assertions by the developer

- 5.138 The 2014 EIA Regulations state that:
"Appointment of EAPs and specialists"

12 (1) A proponent or applicant must appoint an EAP at own cost to manage the application: Provided that an EAP need not be appointed for an application to amend an environmental authorisation where no environmental impact assessment or part thereof is required as part of such amendment application.

(2) In addition to the appointment of an EAP, a specialist may be appointed, at the cost of the proponent or applicant, if the level of assessment is of a nature requiring the appointment of a specialist.

(3) The proponent or applicant must—

211

(a) take all reasonable steps to verify whether the EAP and specialist complies with regulation 13(1)(a) and (b); and

(b) provide the EAP and specialist with access to all information at the disposal of the proponent or applicant regarding the application, whether or not such information is favourable to the application.

General requirements for EAPs and specialists

13(1) An EAP and a specialist, appointed in terms of regulation 12(1) or 12(2), must—

(a) be independent;

(b) have expertise in conducting environmental impact assessments or undertaking specialist work as required, including knowledge of the Act, these Regulations and any guidelines that have relevance to the proposed activity;

(c) ensure compliance with these Regulations;

(d) perform the work relating to the application in an objective manner, even if this results

in views and findings that are not favourable to the application;

(e) take into account, to the extent possible, the matters referred to in regulation 18 when

preparing the application and any report, plan or document relating to the application; and

(f) disclose to the proponent or applicant, registered interested and affected parties and the competent authority all material information in the possession of the EAP and, where applicable, the specialist, that reasonably has or may have the potential of influencing—

(i) any decision to be taken with respect to the application by the competent authority in terms of these Regulations; or

(ii) the objectivity of any report, plan or document to be prepared by the EAP or specialist, in terms of these Regulations for submission to the competent authority; unless access to that information is protected by law, in which case it must be indicated that such protected information exists and is only provided to the competent authority.

(2) In the event where the EAP or specialist does not comply with subregulation (1)(a), the proponent or applicant must, prior to conducting public participation as contemplated in chapter 6 of these Regulations, appoint another EAP or specialist to externally review all work undertaken by the EAP or specialist, at the applicant's cost.

(3) An EAP or specialist appointed to externally review the work of an EAP or specialist as contemplated in subregulation (2), must comply with subregulation (1)(a).



TK

Disqualification of EAPs and specialists

14 (1) If the competent authority at any stage of considering an application has reason to believe that the EAP or specialist is not complying or has not complied with the requirements of regulation 13 in respect of the application, other than circumstances where the requirement of independence in regulation 13(1)(a) has been met by compliance with regulation 13(2) and (3), the competent authority may—

(a) notify the EAP or specialist and the applicant of the reasons therefore, that the application is suspended until the matter is resolved and the extended timeframe for the processing of the application; and..."

- 5.139 I concur with the Applicant's Responding Statement that:
 - 5.139.1 The Basic assessment process is based on the findings of research undertaken by independent specialists, and not the "interpretations and assertions" of the developer.
 - 5.139.2 Specialist independence is assured by the fact that EAPs and specialists must confirm that they do not have any material present or contingent interest in the outcome of the environmental assessment process, nor do they have any pecuniary or other interest that could be reasonably regarded as being capable of affecting their independence.
 - 5.139.3 Appellants have not demonstrated any conflict of interest of any members of the basic assessment project team and specialists.
- 5.140 Considering the above, this ground of appeal should be dismissed.

Appeal ground 18: Decision-maker's assessment of Triple Bottom Line impacts and benefits is flawed

- 5.141 The **principles of environmental management** as set out in section 2 of the NEMA have been taken into account in this EIA application as follows:
 - 5.141.1 Environmental and socio-economic factors are considered and weighed up, to ensure that the development is sustainable.
 - 5.141.2 The potential impacts of the development are identified, assessed and evaluated using SRK's standard impact assessment methodology in order to determine the significance of each positive and negative impact.
 - 5.141.3 Mitigation measures are recommended in the BAR to prevent, minimise impacts (and optimise benefits) and to secure stakeholders' environmental rights. An EMPr has been drafted and will be implemented to ensure that potential environmental pollution and degradation can be minimised, if not prevented.
 - 5.141.4 The needs and interests of stakeholders are taken into account through a thorough public participation process, providing adequate opportunities for participation by all stakeholders in the BA process.
- 5.142 I concur with the Applicant's Responding Statement that:
 - 5.142.1 The BAR provides a comprehensive analysis of all triple bottom line considerations, including impacts and benefits. It is the Competent Authority's function to weigh social, cultural, economic and biophysical factors in reaching a decision.
 - 5.142.2 The Competent Authority was satisfied that all issues were adequately addressed and found that on balancing the impacts, the development should proceed (and they emphasise the significant economic and ecology benefits that this development will deliver to the City of Cape Town). The

reasons for this decision are articulated in detail in the EA for the development.

5.143 This ground of appeal has been addressed.

Appeal ground 19: Lack of inclusionary housing

5.144 The BAR states that the key characteristics of the preferred alternative, the Riverine Corridor Alternative, include the provision of 20% of the residential component as inclusionary housing units.

5.145 The first paragraph of page 4 of the EA states that "...20% of the development will be for residential purposes. 20% of the residential component will be for inclusionary housing opportunities..."

5.146 I concur with the Applicant's Responding Statement that:

5.146.1 The development proposal provides that 20% of the residential component of the development will be dedicated to inclusionary housing, and therefore the issue is addressed – see Section 2e of the BAR: "the proponent has committed to include a component of "inclusionary housing" in the development scheme. 20% of residential floor area will be for inclusionary housing".

5.147 Considering the above, this ground has been addressed.

6. CONCLUSION:

Considering the comprehensive assessment of the impacts of the proposed development it is not considered appropriate to set aside the EA.

The impacts of the proposed development in relation to the historic Liesbeek River natural channel and an unacceptable loss of habitat have been satisfactorily addressed as detailed in the responses provided under the grounds of appeal.

It is not deemed appropriate to appoint a panel of experts to reassess the BAR and to consider alternative development footprints and 30m ecological setbacks from both riverine corridors as the recommendations of the specialists, which are concurred with, have been satisfactorily included in the conditions of the EA and the EMPr.

In view of the above, the NEMA principles, compliance with the conditions stipulated in the Appeal EA and compliance with the conditions of the EMPr, the proposed activities will not conflict with the general objectives of integrated environmental management stipulated in Chapter 5 of the NEMA and any potentially detrimental environmental impacts resulting from the activities can be mitigated to acceptable levels.

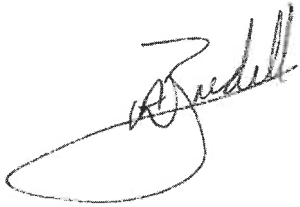
214

7. **DISCLAIMER:**

The Western Cape Government, the Local Authority, committees or any other public authority or organisation appointed in terms of the conditions of this EA shall not be responsible for any damages or losses suffered by the holder, developer or his/her successor in any instance where construction or operation subsequent to construction is temporarily or permanently stopped for reasons of non-compliance with the conditions as set out herein or any other subsequent document or legal action emanating from this decision.

Since I have discharged my decision-making powers when making the decision, I am *functus officio* in this regard. My decision is final and your only recourse, should a person still be aggrieved by my decision, is to apply to the Western Cape High Court to review my decision.

Yours faithfully,



ANTON BREDELE
**PROVINCIAL MINISTER OF LOCAL GOVERNMENT,
ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING**
DATE: 22/02/2021

Copied to:

- | | |
|---|--|
| (1) Mr. M. Law (SRK Consulting) | Email: MLaw@srk.co.za |
| (2) Mr. D. Georgeades (City of Cape Town: ERM) | Email: Dimitri.Georgeades@capetown.gov.za |
| (3) Mr. A. Oosthuizen (DEA&DP – DDF) | Email: Andre.Oosthuizen@westerncape.gov.za |
| (4) Ms. C. Scheermeyer (Heritage Western Cape) | Email: Ceoheritage@westerncape.gov.za |
| (5) Mr. D. Daniels (DWS) | Email: DanielsD@dws.gov.za |
| (6) Mr. Z. Toefy (DEA&DP- Directorate: Development Management (Region 1)) | Email: Zahir.Toefy@westerncape.gov.za |



Guidelines for Heritage Impact Assessments required in terms of Section 38 of the National Heritage Resources Act (Act 25 of 1999)

AB2

1. HERITAGE RESOURCES MANAGEMENT

The heritage resources of South Africa have lasting value in their own right and provide evidence of the origins of South African society. These heritage resources are valuable, finite, non-renewable and irreplaceable and they must be carefully managed to ensure their survival (National Heritage Resources Act (No. 25 of 1999) s. 5(1)(a)).

The National Heritage Resources Act (NHRA) has introduced an integrated system for the identification, assessment and management of the heritage resources of South Africa. The NHRA makes provision for the general protection of heritage resources:

- Section 34 in respect of the built environment;
- Section 35 in respect of archaeology, palaeontology and meteorites; and
- Section 36 in respect of graves and burial grounds.

Section 38 sets out guidelines for Heritage Resources Management and the conditions under which heritage impact assessments are required when developments impact upon heritage resources. If disturbance is permitted by the appropriate authority, the impacts on heritage resource/s affected must be mitigated to ensure the recovery and recording of information about that site.

Reports resulting from the assessment of impacts to heritage resources, or their mitigation, are part of the management of these resources and it is necessary to ensure that the quality and content of such reports accurately identify and describe the resources prior to alteration or destruction, reflect the significance of the heritage resources and provide a narrative and record of their alteration.

1. SECTION 38 APPLICATION PROCEDURES

In terms of section 38 of the NHRA, at the earliest stages of any development project, HWC must be informed through the submission of a completed Notification of Intent to Develop (NID) form. In response to the information provided in the NID form, HWC must determine whether or not heritage resources are likely to be impacted by the proposed development.

- If the proposed development triggers the requirement for a Heritage Impact Assessment (HIA) as part of other legislation such as the National Environmental Management Act (NEMA) or the Minerals and Petroleum Resources Development Act (MPRDA), then a process is followed in terms of section 38(8). For more information on this process, please see the agreement and addendum between HWC and the Department of Environmental Affairs and Development Planning (DEADP) (December 2015). In terms of section 38(8), HWC must provide comment on a submitted Heritage Impact Assessment (HIA) to the decision-making authority. However, section 38(8) states that any HIA submitted, must satisfy the requirements of section 38(3) of the NHRA.
- If the proposed development DOES NOT trigger the requirement for a Heritage Impact Assessment as part of other legislation, but does trigger the activities identified in section 38(1) of the NHRA, then HWC must follow the process set out in sections 38(1) to 38(4).

If HWC is able to ascertain from the NID that heritage resources are likely to be impacted by the proposed development, then, in terms of section 38(2), HWC must request an HIA that assesses the impacts of the proposed development on heritage resources. This HIA must satisfy the requirements of section 38(3) of the NHRA.

2. THE PURPOSE OF AN HIA

A Heritage Impact Assessment must provide insight into the impact of the proposed development on heritage resources and provide mitigation measures to limit the effect of that impact. The HIA must provide the heritage authority with sufficient information to properly assess the significance of resources on and around a site and to understand the short, medium and long term consequences of the proposed development on heritage resources so that the heritage authority can make an informed comment (section 38(8)) or decision (section 38(4)) on the impacts of a proposed development.

At a minimum, a Heritage Impact Assessment must include the following:

- Title page including the HWC Reference number, applicable section of the NHRA¹ and author information;
- Executive summary (Refer to the HWC Circular dated November 2014 regarding the requirements for Executive Summaries);
- Table of contents;
- Background information on the project;
- A description of the property/affected environment;
- A description of methodology;
- History and evolution of the site and context;
- The identification of all heritage resources that will be impacted either directly or indirectly by the proposed development.
- The mapping and spatialisation of these identified resources. At least two maps are required (a regional map and a more detailed map (project polygon));
- An assessment of the significance of these identified resources. (Refer to the HWC Guide for Grading: Implications and Management, dated March 2016 for further information on assessing significance.)
- The details and summary of findings of specialist reports requested by HWC;
- An assessment of the impact of the development on such identified heritage resources;
- An evaluation of the impact of the development on heritage resources relative to the sustainable social and economic benefits to be derived from the development;
- The results of consultation with communities and state bodies (e.g. local authorities) affected by the proposed development and other interested parties regarding the impact of the development on heritage resources including unabridged copies of the comments received;
- The consideration of alternatives and any plans for mitigation of any adverse effects during and after the completion of the proposed development;
- Conclusions;
- An integrated set of Recommendations;
- References.
- Relevant appendices which must include the full reports of any specialist assessments requested by HWC.

3. PHASING OF HERITAGE IMPACT ASSESSMENTS

In complex development applications, it is sometimes useful to submit an HIA in phases. The submission of a phased HIA is only permitted in circumstances which would warrant this. Such circumstances would generally (but not always) limited to the following:

- A large scale and/or long term subdivisional development which may follow a Package of Plans approach and where the development proposal cannot be sufficiently developed in the early phases of obtaining the broad land use rights or of disposing of the land parcels to different developers
- When it is prudent to obtain HWC's comment on the assessment of heritage resources and heritage indicators in order to strengthen a heritage argument for revised design proposals

¹Either s38(4) or s38(8)

217

HWC reserves the right to determine whether a phased HIA is acceptable on a case by case basis..

In such instances, HWC requires that the HIA is phased as follows:

Phase 1: The **identification** of all heritage resources that will be impacted either directly or indirectly by the proposed development.

The **mapping** and spatialisation of these identified resources. At least two maps are required (a regional map and a more detailed map (project polygon)), these must illustrate the cadastral boundaries of the property concerned.

An assessment of the **significance** of these identified resources. (Refer to the HWC Guide for Grading: Implications and Management for further information on assessing significance.)

The results of **consultation** with communities and state bodies affected by the proposed development and other interested parties regarding the **identification** of heritage resources and the assessment of their significance;

The details and summary of **findings of specialist reports** requested by HWC

Heritage design indicators, required responses and recommendations, including possible demolitions and guidelines for interventions / new development. If the development process requires Interim Comment on the overall development proposal, the SDP must be developed to a sufficient degree to enable a high level heritage impact assessment.

It should be noted that since a Phase 1 HIA does not satisfy the requirements of section 38(3), it cannot be approved or refused by HWC and no Record of Decision or Final Comment can be issued. HWC will only provide an interim comment, endorsing the identification and mapping of heritage resources and the assessment of significance. HWC may also endorse the heritage indicators and broad development parameters in principle, so as to give guidance for the preparation of more detailed development proposals.

Phase 2: *In a Phased HIA approach, this is generally appropriate at the Precinct Planning Phase and entails:*

An assessment of the impact of the development on identified heritage resources, incorporating the impact assessment of any specialist studies required by HWC;

An evaluation of the impact of the development on heritage resources relative to the sustainable social and economic benefits to be derived from the development;

If heritage resources are deemed to be negatively impacted, the consideration of alternatives and any plans for mitigation of any adverse effects during and after the completion of the proposed development;

The results of consultation with communities affected by the proposed development and other interested parties regarding the **impact** of the development on heritage resources including and unabridged copies of the comments received;

Conclusions, an Integrated set of Recommendations and relevant appendices which must include the full reports of any specialist assessments requested by HWC

In the case of a phased HIA, HWC will only issue a Record of Decision i.t.o. section 38(4) or a Final Comment i.t.o. section 38(8) after assessment of a Phase 2 report, once all the requirements of s38(3) have been satisfied.

Handwritten signature and initials in the bottom right corner of the page.

4. SPECIALIST STUDIES

Refer to the attached documentation on the requirements pertaining to specialist studies for archaeological and palaeontological reports.

5. CONCLUSION OF THE SECTION 38 PROCESS

Once an HIA has been submitted that complies with section 38(3), HWC is required to respond in terms of either:

Section 38(4): HWC must determine whether or not the development may proceed;

- Any limitations or conditions to be applied to the development;
- What general protections in terms of this Act apply, and what formal protections may be applied, to such heritage resources;
- Whether compensatory action is required in respect of any heritage resources damaged or destroyed as a result of the development; and
- Whether the appointment of specialists for further work is required as a condition of approval of the proposal.

Section 38(8): HWC must ensure that the evaluation fulfils its requirements and must make any comments and recommendations with regard to such development. These comments and recommendations must be taken into consideration by the relevant approving authority prior to the granting of consent.

It is important to note that, in terms of section 38(10), any person who has complied with the decision of a provincial heritage resources authority in terms of section 38(4) or other requirements referred to in section 38(8), must be exempted from compliance with all other general protections in terms of Chapter II Part 2 of the NHRA, including permits, but any existing heritage agreements made in terms of section 42 must continue to apply.

However, should HWC comments in terms of section 38(8) NOT be complied with, the general protections and permit requirements do still apply.

Any mitigation interventions that would normally fall within a general protection permitting process, that are approved in terms of a section 38 process, must be managed through the submission and approval of a Workplan (Refer to HWC Correspondence dated: August 2014 and May 2015).





Western Cape Government
Environmental Affairs and
Development Planning



Western Cape Government
Cultural Affairs and Sport



BETTER TOGETHER.

AB3

**OPERATIONAL AGREEMENT/
STANDARD OPERATING PROCEDURE (SOP):
COORDINATION OF
ENVIRONMENTAL IMPACT ASSESSMENTS (EIAs)
& HERITAGE IMPACT ASSESSMENTS (HIAs)
DECEMBER 2015**

220

**Sign Off and Date of Effect of this Operational Agreement /
Standard Operating Procedure (SOP)**

This Operational Agreement/Standard Operating Procedure (SOP) is hereby agreed by the Western Cape Department of Environmental Affairs and Development Planning (DEA&DP) and the Western Cape Provincial Heritage Resources Authority ("Heritage Western Cape") (HWC) for implementation from the following

date of effect: 10 DECEMBER 2015

All amendments to this Operational Agreement/SOP will be jointly decided by HWC and DEA&DP and will only come into effect once reduced to writing.



Piet van Zyl

Head of Department

Department of Environmental Affairs & Development Planning

10.12.2015

Date



Dr Errol Myburg

Interim Chief Executive Officer

Heritage Western Cape

10.12.2015

Date




PREAMBLE

ACKNOWLEDGING that-

everyone has the right to an environment that is not harmful to his or her health or well-being, and to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that prevent pollution and ecological degradation, promote conservation, and secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development;

environmental management must place people and their needs at the forefront of its concern, and serve their physical, psychological, developmental, cultural and social interests equitably;

sustainable development requires the consideration of all relevant factors including that the disturbance of landscapes, sites, buildings and objects that constitute the nation's cultural heritage is avoided, or where it cannot be altogether avoided, is minimised and remedied;

with respect to every application for an environmental authorisation ensure that, amongst other requirements, the actual and potential impacts on cultural heritage and the national estate be identified, predicted, investigated, assessed and evaluated to the extent necessary;

procedures for the investigation, assessment and communication of the potential consequences or impacts of activities on the environment must ensure, with respect to every application for an environmental authorisation coordination and cooperation between organs of state in the consideration of assessments where an activity falls under the jurisdiction of more than one organ of state; and

the different authorities must cooperate with one another in mutual trust and good faith by consulting with one another, coordinating their actions and legislative requirements and adhering to agreed procedures.

222

INTRODUCTION

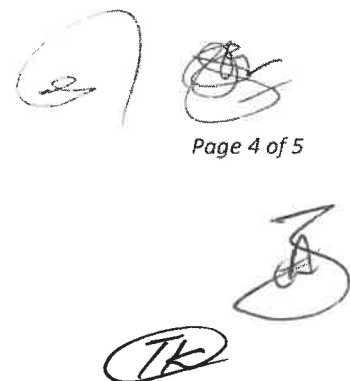
In terms of Section 24(2) the National Environmental Management Act of 1998 (Act No. 107 of 1998) (NEMA) certain activities have been identified which may not commence without environmental authorisation from the environmental authority and which must be subjected to environmental impact assessment (EIA).

Section 38 of the National Heritage Resources Act of 1999 (Act No. 25 of 1998) (NHRA) lists certain development activities and requires that any person who intends to undertake such development activities must first give notice to the heritage resources authority to determine if a heritage impact assessment (HIA) will be required. If a heritage assessment is required then the person may only proceed once the approval of the heritage authority has been obtained.

In order to avoid duplication and allow for coordination in terms of the requirements in terms of NEMA and the NHRA, Section 38(8) of the NHRA states that if the development activities listed in Section 38(1) must be subjected to EIA in terms of NEMA, then a separate HIA and approval from the heritage resources authority are not required, provided that the environmental authority must:

- ensure that if the relevant heritage resources authority requires an HIA it fulfils the requirements of the heritage resources authority, &
- any comments and recommendations of the relevant heritage resources authority with regard to such development have been taken into account prior to the granting of the environmental authority's consent.

As such, if a NEMA EIA is required for the development activities listed in terms of Section 38 of the NHRA, then separate HIA and EIA processes may not be followed and separate decisions may not be issued in terms of the NHRA and NEMA. An EIA process will be followed and if the heritage resources authority requires a HIA, then the HIA must be undertaken as one of the EIA specialist studies, but the environmental authority must ensure that the heritage resources authority's requirements in terms of the assessment are met. A separate heritage approval may also not be issued, but the environmental authority must take into account the comments and recommendation of the heritage resources authority prior to granting or refusing environmental authorisation.

The page contains several handwritten signatures and initials. At the top right, there are two distinct signatures. At the bottom right, there is a large, stylized signature that appears to be 'J' or 'Z' with a flourish, and below it, the initials 'TK' are written inside a circle.

STANDARD OPERATING PROCEDURE: EIAs AND HIAs

In terms of the 2014 EIA Regulations once an application for Environmental Authorisation has been submitted all potential or registered interested and affected parties (I&APs) must be given a period of at least 30 days to submit comments on the Basic Assessment Report (BAR) or Scoping Report (SR). Similarly, once a Scoping Report has been accepted the Environmental Impact Assessment (EIA) Report must be compiled and registered I&APs must be given a period of at least 30 days to submit comments on the EIA Report. Following the commenting period the BAR/SR/EIA Report together with the comments received must be submitted to the Competent Authority for decision-making. In order for Heritage Western Cape to make a final comment on an EIA application, Heritage Western Cape must take into account any comments submitted by any registered heritage conservation bodies. As such, Heritage Western Cape's final comments on a BAR/SR/EIA Report will not be submitted at the same time as the submission of the comments of the other I&APs.

In practice there are two options to address this challenge:

Option 1: As provided for in Section 40(3) of the 2014 EIA Regulations (GN No. R. 982 of 4 December 2014 refers) a Basic Assessment Report (BAR) or Scoping Report (SR) could be made available to I&APs prior to submission of the application for Environmental Authorisation (referred to as a "Pre-Application BAR/SR"), in which case the BAR/SR that must be made available for comment following the submission of the application (referred to as the "Draft BAR/SR") would be accompanied by the comments (including the comments of the registered heritage conservation bodies) received on the pre-application report.

Option 2: As provided for in Sections 19(1)(b) and 23(1)(b) of the 2014 EIA Regulations a Revised BAR or Revised Environmental Impact Assessment (EIA) Report must be released for a second 30-day commenting period if significant changes have been made or significant new information has been added to the Draft BAR or Draft EIA Report which changes or information was not contained in the reports released for comment during the first 30-day commenting period. Because the comments of the relevant registered heritage conservation bodies are considered significant information, it would mean that when a Revised BAR/EIA Report is released for comment it would be accompanied by the comments (including the comments of the registered heritage conservation bodies) received on the Draft BAR/EIA Report. No provision is, however, made for a "Revised" Scoping Report to be generated and released for a second 3-day commenting period.

For Heritage Western Cape to therefore make an informed final comment on a BAR, SR and EIA Report, it is therefore recommended that a Pre-Application BAR and Pre-Application SR always be released for comment, while in terms of an EIA Report it would be necessary to release a Draft EIA Report and Revised EIA Report for comment.

- **HIAs & EIA Basic Assessment with a Pre-Application Basic Assessment Report released for comment prior to submission of the Application for Environmental Authorisation.**
See attached Excel Sheet (sheet 1).
- **HIAs & EIA Scoping & Environmental Impact Reporting with a Pre-Application Scoping Report released for comment prior to submission of the Application for Environmental Authorisation.**
See attached Excel Sheet (sheet 2).

224



**DIRECTORATE: DEVELOPMENT MANAGEMENT
REGION 1**

REFERENCE NUMBER: 16/3/3/1/A7/17/3001/20
ENQUIRIES: MS. K. ADRIAANSE
DATE OF ISSUE:

2020 -02- 17
The Director
Liesbeek Leisure Properties Trust
P.O. Box 786739
SANDTON
2146

AB4

Attention: Mr. J. Aufrichtig

Tel: (021) 486 5999
Fax: (021) 421 0219

Dear Sir

COMMENT ON THE DRAFT BASIC ASSESSMENT REPORT 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.

The draft Basic Assessment Report ("BAR") dated January 2020 and received by this Department on 10 January 2020 and this Directorate's acknowledgement thereof dated 16 January 2020, refer.

Comments on the draft BAR are as follows:

1. The following comments on the pre-application draft BAR (Ref. No. 16/3/3/6/7/1/A7/17/3217/19 and dated 16 September 2019) have been addressed in the draft BAR (dated January 2020) as follows:

1.1. Executive Summary

The Executive Summary of the draft BAR has been updated to include the context of this EIA application and a description of the previous pre-application processes undertaken.

1.2. Applicable listed activities

The applicability of Activities 11 and 27 of Listing Notice 1 of the NEMA EIA Regulations, 2014 (as amended) have been provided in the Application for Environmental Authorisation (dated 19 December 2019).

1.3. Activity Description

1.3.1. The activity description has been amended to include a description of the proposed footbridges, boardwalks and other recreational / non-motorised transport infrastructure.

1.3.2. The capacity and estimated number of the holding tanks have been provided.

7th Floor, 1 Dorp Street, Cape Town, 8001
tel: +27 21 483 3763 fax: +27 21 483 4372

Private Bag X9086, Cape Town, 8000
www.westerncape.gov.za/eadp

Handwritten initials "TK" in a circle and a signature above it.

225

1.4. Specialist studies

- 1.4.1. An updated specialist statement (dated 18 November 2019) with respect to the Traffic Impact Assessment (compiled by Aurecon and dated 20 October 2017) has been provided.
- 1.4.2. An updated specialist statement (dated 18 November 2019) with respect to the Faunal Baseline Assessment (compiled by Sungazer Faunal Surveys and dated December 2017) has been provided.
- 1.4.3. An updated specialist statement (dated 19 November 2019) with respect to the Avifaunal Assessment (compiled by Dr Williams Bird Surveys and dated July 2015) has been provided.

1.5. Services

Confirmation of sufficient, spare and unallocated potable water supply, electrical supply, sewerage capacity and solid waste removal have been included in the draft BAR.

1.6. Public Participation

- 1.6.1. A summary of the previous pre-application public participation processes undertaken have been included in the draft BAR.
- 1.6.2. The dates that site notices were placed on site have been provided in the draft BAR.
- 1.6.3. The copy of the advertisement placed in the Cape Times (dated March) has been provided in the draft BAR.

1.7. Environmental Management Programme ("EMPr")

- 1.7.1. A maintenance management plan for the maintenance of the watercourse and canal has been included in the EMPr.
- 1.7.2. The footer of the EMPr has been corrected.
- 1.7.3. Mitigation measures with respect to the storage of dangerous goods within 100m of a watercourse has been included in the EMPr.

2. Section 38 of the National Heritage Resources Act, 1999("NHRA") Requirements

- 2.1. It is noted that the Supplement to the Heritage Impact Assessment "HIA" Report (dated 04 December 2019) was submitted to Heritage Western Cape for consideration.
- 2.2. The Directorate received a copy of Heritage Western Cape's final comment on the proposed development (dated 13 February 2020) which indicated that the Heritage Western Cape ("HWC") Impact Assessment Committee ("IACOM") is of the opinion that the requirements of its Interim Comment dated 13 September 2019, have not been met and therefore the requirements of Section 38(3) of the NHRA have not been met.
- 2.3. Based on the information provided in the Supplement to the HIA Report dated 4 December 2019, the Directorate notes that the heritage specialist has provided a response to the comments highlighted in HWC's Interim Comment, however, a more detailed assessment of the potential heritage impacts, which meets the requirements of Section 38 of the NHRA has not been provided.
- 2.4. HWC's aforementioned final comment, further indicated "HWC notes that it is only a commenting body in respect of this application, and that consideration of the VIA is DEA&DP's concern as the

TK



226

consenting body, however it is noted that HWC requires an independent practitioner who HWC recognizes as having the requisite expertise for heritage related work to undertake the VIA."

2.5. In light of HWC's final comments dated 13 February 2020, you are hereby required to do the following:

2.5.1 Revise the HIA in order to adequately assess the potential heritage impacts associated with the proposed development accordingly. The HIA must meet the requirements of Section 38 of the NHRA.

2.5.2 The Visual Impact Assessment ("VIA") Report dated July 2019 and compiled by Mr S Masson of SRK Consulting, must be externally reviewed by a suitably qualified specialist with expertise in conducting heritage related work. The revised VIA must meet the requirements of Section 38 of the NHRA.

3. Activity Description

3.1. The draft BAR indicates that "Certain sections of the affected bulk sewer mains will therefore need to be upgraded, or the operating performance improved, to accommodate the remaining sewer flow of 10 l/s (the Upgrades)." A description (i.e. length, diameter and located) of the proposed upgrades must be provided in the activity description.

3.2. An indication of whether any of the existing buildings at the River Club will be retained must be provided.

3.3. The draft BAR indicates that a channel excavated by a third party into the Raapenberg Wetlands on Erf 15326 will be infilled. The length and width of the channel to be infilled must be provided.

3.4. Due to the potential traffic impacts associated with the proposed development, it is understood that the proposed development of the various precincts will be phased accordingly. Phase 1 entails the development of major roads and bridges and Phase 2 entails the development of the northern precinct. Further, Phase 1 and 2 may be developed concurrently. Confirmation of the phased approach relating to the remaining road upgrades, for the rest of the phases must be included in the activity description.

4. Specialist studies

In this Directorate's comments on the pre-application draft BAR (dated 16 September 2019), it was highlighted that the geotechnical investigation was not included in the pre-application BAR. Although page 77 of the comments and responses report indicates that a geotechnical investigation has been included in Appendix K4 of the draft BAR (dated January 2020), Appendix K4 contains a Bulk Services Report for Electrical Services (compiled by Sands and dated 27 April 2019). The geotechnical report must be provided in the BAR.

5. Need and Desirability

According to the draft BAR and the Planning Policy Report (contained in Appendix K 1), the City of Cape Town Municipal Spatial Development Framework ("MSDF"), 2018 categorises the site as "urban inner core", whereas the Heritage Resources Map in the MSDF, 2018 identifies the site as falling within a "proposed heritage area". Page 119 of the draft BAR states: "This however does not supersede the MSDF designation as urban inner core where the development is proposed".

It is understood that the Heritage Resources Map in the aforementioned MSDF along with the Table District Plan, 2012 provide varying uses for the proposed site as opposed to the MSDF categorisation. As such, the proposed development is not in accordance with all the relevant policies.



227

6. Public Participation

- 6.1. You are reminded that all of the comments provided must be adequately addressed.
- 6.2. CapeNature's comment (dated 23 September 2019) indicates that further engagement with the City of Cape Town and CapeNature regarding the biodiversity agreement is required. Please provide further information on the biodiversity agreement referred to.
- 6.3. Proof of the public participation process undertaken as part of this Environmental Impact Assessment ("EIA") application must be included in the BAR.

7. Environmental Management Programme ("EMPr")

- 7.1. This Directorate notes that the City of Cape Town will implement some of the road infrastructure upgrades associated with the proposed development. The EMPr must indicate the process to be undertaken should the City of Cape Town implement the road infrastructure upgrades (i.e. whether an amendment to the Environmental Authorisation will be required).

- 7.2. This Directorate further notes that it is proposed that the MMP will be implemented by the Property Owners Association.

7.3. General

- 7.3.1. The reference number on the cover page of the EMPr must be corrected to the reference number for this EIA application.

- 7.3.2. Section 11(a) on page 114 of the draft BAR indicates "*The LLPT is obliged to apply for an Environmental Authorisation (EA) for these activities and to undertake a S&EIR process in accordance with the procedure stipulated in GN R982 under NEMA.*" Please correct the statement to reflect that a Basic Assessment process is required in accordance with the requirements of Government Notice No.R.326.

- 7.3.3. Page 2 of the EMPr refers to Government Notice No. R982. Please note that the correct Government Notice number is No. R326; and

- 7.3.4. The EMPr has not been printed correctly (i.e. some pages are up-side down and wording is missing). Please ensure that the EMPr is printed correctly.

8. The 90-day deadline for the submission of the final BAR is 07 April 2020. However, since the HIA Report and the VIA Report will need to be revised and further engagement with regard to the Section 38 of the NHRA is required, significant changes to the BAR need to be done. You are advised to consult the Directorate in this regard.

9. This Directorate therefore awaits a copy of the revised BAR for comment.

Kindly quote the abovementioned reference number in any future correspondence in respect of the application.

Please note that the activity may not commence prior to an Environmental Authorisation being granted by the Department. It is an offence in terms of Section 49A(1)(a) of the NEMA for a person to commence with a listed activity unless the Competent Authority has granted an Environmental Authorisation for the undertaking of the activity. Failure to comply with the requirements of Section 24F of the NEMA will result in the matter being referred to the Environmental Compliance and Enforcement Directorate of this Department. A person convicted of an offence in terms of the above is liable to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, or to both such fine and imprisonment.

TR

J

228

The Department reserves the right to revise its comments and request further information based on any information received.

Yours faithfully

PP. 

MR. ZAATHIR TOEFY
DIRECTOR: DEVELOPMENT MANAGEMENT (REGION 1)

Copies to: (1) Mr. M. Law (SRK Consulting)
(2) Ms. S. Hushwick (City of Cape Town: Environmental Resource Management)
(3) Ms. W. Dhansay (HWC)

Fax: (086) 530 7003
Fax: (021) 425 4448
E-mail: waseefa.dhansay@westerncape.gov.za

HWC Issues on River Club HIA (a component of the BAR) and Project Team Responses: HWC Interim and Final Comments

Amendments made to the issues and responses report on HWC's interim comment on the HIA have been underlined and italicised for ease of reference

A. Heritage of the Site and Assessment

Item No.	Issues raised by HWC	Response to HWC Interim Comment contained in the HIA Supplementary Report	Reference to final comment	Response to HWC Final Comment
Heritage of the Site and Assessment				
1.	<p>The site, and the wider TRUP area is of exceedingly high cultural significance (of Provincial or even National significance)</p> <p><i>HWC final comment conclusion:</i></p> <p><i>"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 manmade 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 national significance"</i></p>	<p>The history of the broader area is comprehensively described in Section 4 of the HIA, and includes a history of:</p> <ul style="list-style-type: none"> • Khoekhoe groups occupation and use of the area for grazing; • The importance of the rivers to the history of the area; • Conflict between Khoekhoe groups and Europeans settlers; • The defensive line established by the Dutch; • The agricultural use of the Liesbeek River catchment by the Dutch; and • Residential, commercial, and industrial encroachment on the agricultural and riverine floodplain and landscape. <p>Remaining heritage resources in the broader landscape are also documented (see Section 6 of the HIA).</p> <p>The HIA confirms that the cultural significance of the area is derived from "the history of and concentration of historic elements in this landscape as well as the symbolic values of the Black and Liesbeek Rivers".</p> <p>Although HWC's assessment of "National or Provincial" significance of the "TRUP" is noted (<i>albeit without any S29 investigation</i>), it should be borne in mind that this is a planning boundary, and with the exception of the river courses (which themselves are much changed), much of the history that derives the cultural significance of the site extends over a far broader area. In this regard, on 15 October 2019, the Draft Two Rivers Local Spatial Development Framework (L-SDF) was released for public comment. This report included a Phase 1 HIA and a "TRUP First Nations Report" (AFMAS Solutions, 2019). Following the TRUP First Nations Report, AFMAS Solutions were appointed to build on the "TRUP First Nations Report" (AFMAS Solutions, 2019) to:</p> <ul style="list-style-type: none"> • Understand the significance of the River Club site to the First Nations by identifying indigenous intangible cultural heritage specific to the River Club; • Locate the River Club site within the indigenous narrative of the broader TRUP cultural landscape; • Identify First Nation aspirations with regard to Indigenous cultural heritage and the River Club site; and • Make recommendations for the implementation of the key recommendation of the TRUP First Nations report, specifically: 	<p><u>Paragraph 109</u></p>	<p>The heritage consultants have iteratively argued that much of the Liesbeek Riverine corridor has considerable politically-charged historical significance and that the TR-area is a significant part of the corridor and that the River Club site is an important, if small part, of the TR-area and of the Liesbeek corridor. They have also argued that most of the corridor has been transformed and, as such, is a cultural landscape much broken into areas of different character and other layered and different significances, for example, the neighbouring SAOA and Valkenberg sites are very large parts of the TR-area with their own considerable separate site-based historical, scientific, and architectural and/or aesthetic significances.</p> <p>The River Club site's history and usages most closely parallels the parts of the corridor adapted and used by different sporting codes but, unlike most of those pieces of land, was not a part of an early agricultural land-holding (probably because it was too low-lying and subject to flooding).</p> <p>HWC's idea of making the whole TR-area a provincial or national heritage site is the heritage specialists think not appropriate and would advise the owners of the land to resist such a suggestion.</p> <p>The specialists do, however, agree that a remnant of the Liesbeek riverine corridor/cultural landscape that can be meaningfully experienced as such for its provincial or national heritage site. The specialists think that the development of the River Club site creates a real and immediate opportunity for such a declaration, and would be the trigger for the meaningful planning of a much larger heritage site.</p> <p>The heritage specialists note that the First Nations Collective concurs with this view.</p>

229

AB5

TR

230

Item No.	Issues raised by HWC	Response to HWC Interim Comment contained in the HIA Supplementary Report	Reference to final comment	Response to HWC Final Comment
		<p>"Acknowledge, embrace, protect and celebrate the indigenous narrative in design and planning"</p> <p>Key findings of these studies, as they relate to the River Club, are as follows:</p> <ul style="list-style-type: none"> Given that the entire TRUP project area was part of the historic indigenous landscape, each of the precincts that make up TRUP has a measure of indigenous cultural heritage; The River Club site is a small part of a much larger TRUP cultural landscape that extends to approximately 300 hectares; The extent to which the site bears testimony to its indigenous cultural heritage, is determined by the amount of indigenous cultural capital assigned to the site; First Nation informants concurred that the Two Rivers local area was the dominion of the Gorinhaliqua; No cross-cutting, narrative-defining event for any of the strands of the indigenous narrative; be it, the dominion of the Gorinhaliqua, Battle of Gorinhaliqua, Colonial-settler 'grilagem', or resistance to 'grilagem', can be attributed specifically to the River Club site; No tangible or intangible reference has been made to the Gorinhaliqua having settled specifically on the River Club site; No specific act of resistance, battle or encounter, whether tangibly manifested or intangibly articulated, have been attributed specifically to the River Club site; Although mostly a wetland and therefore of low functional use value, the River Club site was most likely part of an early precolonial landscape from which the Indigene was displaced and/or precluded from having access to; The site is not a burial ground; The site was not used as a pre-colonial river crossing; The Liesbeek River is an important heritage resource in the broader landscape, and its rehabilitation / naturalisation is supported by the First Nations Collective / would be a cultural benefit; and The First Nations narrative should be acknowledged, embraced and celebrated in design and planning for the River Club. <p>The heritage specialists on the project team therefore attest that the heritage resources identified in the HIA for the River Club site do include the broader area, and are mirrored / confirmed by the First Nations historical account / narrative.</p>		
2.	The HIA has not placed the River Club site within the context of the wider TRUP in terms of its heritage significance	<p>After reporting the history of the broader area, the HIA:</p> <ul style="list-style-type: none"> Confirms that "the area in which the River Club is situated is historically important for the role it played in the distant past"; and Places the site "within the core of this early contested landscape" (see Section 4.5 of the HIA) and within an "associative cultural landscape" with definable/known historical associations of great socio-political import. <p>In addition, on 15 October 2019, the Draft Two Rivers Local Spatial Development Framework (LSDF) was released for public comment.</p> <p>See response to item 1.</p>	Paragraph 49	Also refer to responses to items 1, 9, 29 and 45
3.	TRUP is of at least Grade II heritage significance, if not higher		Paragraph 11	Also refer to response to item 1
4.	TRUP as a whole could be regarded as one of the single most historically significant sites in the Country	Following these studies, the heritage specialists remain of the opinion that the Two River local area is comprised of a variety of precincts of very different		Also refer to response to item 1

TR



231

Item No.	Issues raised by HWC	Response to HWC Interim Comment contained in the HIA Supplementary Report	Reference to final comment	Response to HWC Final Comment
5.	<p>As a site of conflict alone, it is queried for argument's sake, had this site had similar particular meaning and significance to other South African Cultures and Communities, such as a "Bloed Rivier", "Isandlwana", "Rourke's Drift", "Spioen Kop", or even the Battle of Blouberg site, to use a more nearby example, would there even be consideration of them being sites that could be developed at all; let alone in the manner of any of the mega project alternatives.</p>	<p>topographies, histories of use, of development-type, each with its own qualities and a variety of potential heritage significances. In this context, the HIA finds that, apart from the Liesbeek River, the site itself has little obvious heritage significance, noting that:</p> <ul style="list-style-type: none"> • The site is entirely an infill site; and certainly reclaimed from wetlands before 1934 and iteratively reshaped since then. • The valley (or floodplain) in which the site is located, although an important component of the Liesbeek River as a landscape, has been transformed by urban development of various sorts; • The site is relatively small, comprising only 5% of the Two River local area; • No tangible heritage relics or resources occur on the site; and • No historic events are attributed to the have occurred at the site. <p>The HIA does, however, find that the Liesbeek River is a tangible heritage resource that remains in this transformed landscape, is a potentially strong symbol of past events, reflects the history and significance of the area, is a common thread and the significant heritage resource that links the River Club, the Two River local area and the broader environs more generally, and is worthy of heritage protection. The HIA recommends the restoration and memorialisation of the river course and confluence.</p>		<p>Also refer to response to item 1</p> <p>The heritage specialists emphasize here, however, that the greater Liesbeek corridor and the smaller TR-area are much transformed cultural landscapes of many different significances. Certainly, in the view of the specialists, the TR-area could not be meaningfully or persuasively presented or curated as a battle site suggested by HWC, and it would be wrong to claim the River Club site was the site of a battle like the examples referred to.</p>
6.	<p>The concept of significance is broadly underpinned by authenticity. The values attributed to the site by stakeholders have not been carried through into the report and have therefore not adequately informed the unique significance of the site and appropriate development indicators. This is a methodological problem that the HIA does not address</p>		<p>Paragraph 61</p>	<p>The Supplementary HIA from pages 15 (bottom) to page 19 sets out an explanation by the heritage practitioners as to why this framing of the argument is incorrect and/or muddled.</p> <p>In the view of the heritage practitioners, the methodological problem is HWC's. And given the response in the Supplementary Report, it seems that the authors of HWC's Final Comment have not read the Supplementary Heritage Report.</p>
7.	<p>The HIA has not taken the following criteria listed in Section 3(3) of the NHRA into account in considering whether the site is of heritage significance:</p> <ul style="list-style-type: none"> • Is considered to have cultural significance to the community; • Could yield information about heritage; and • Is important in exhibiting particular aesthetic characteristics valued by a cultural group. 	<p>These opinions are noted, but contested as follows:</p> <ul style="list-style-type: none"> • The HIA acknowledges stakeholders' views on the significance of the landscape as a heritage resource but argues that but this significance is associative and has no clear or defined place or locus, or even any physical characteristics other than being rooted here in this general location on the floodplain of the Liesbeek River; and that the heritage of the area cannot be destroyed (see above, and especially response to item 53). Rather, and in this context, the HIA suggests that the development of the River Club site is an opportunity for the articulation or making public, even celebration, of the significance of the place and of its historical associations. This opinion is shared by the First Nations Collective. • No tangible elements of the history of the broader area remain at the site, and the site is either entirely or almost entirely an infill site, it is therefore unlikely that the site could yield information about heritage. Nevertheless, 	<p>Paragraph 58</p>	<p>The HWC Final Comment ignores the findings of the extensive engagement by the heritage team with the First Nation groups and this community assessment of significances reported on in the TRUP report and River Club Report which were considered and respected and taken into account by the River Club owner in its development proposal.</p>

TR

232

Item No.	Issues raised by HWC	Response to HWC Interim Comment contained in the HIA Supplementary Report	Reference to final comment	Response to HWC Final Comment
8.	<p>The values attributed to the site by the stakeholders have not been carried through into the report and have therefore not adequately informed the unique significance of the site and appropriate development indicators</p>	<p>chance-find procedures would be implemented should construction proceed.</p> <ul style="list-style-type: none"> The HIA acknowledges that certain stakeholders value the 'openness' in the sense of place of the floodplain, as well as the views from within and across the floodplain, but noting that no cross-cutting, narrative-defining event, battle or encounter is attributed to have taken place at the site, and that no intangible reference to such an event having taken place at the site is made (see above, and especially response to item 53), the authors of the HIA argue that while the development may lead to a significant visual impact, is of relatively low heritage significance: "whether the site is developed or otherwise, it will always have a history which not manifested on the ground and cannot be destroyed by physical changes". 	<p><u>Paragraph 56</u></p>	<p>While the heritage practitioners agree with stakeholders all on the significances of the TR-area and even of the River Club site, they differ on the visibility or 'openness' of these significances at the various sites making up the TR-area and at the River Club site. And, more importantly, the heritage practitioners see the opportunity for the development to transform the River Club site and make these significances 'visible' and 'apparent'. As the heritage practitioners see it, the differences with the stakeholders are, in essence, not about significance but about impacts.</p>
9.	<p>The HIA has downplayed the open low-lying green riverine character of the site which contributes to the intangible heritage experience</p>	<p>The site is located in a significantly transformed floodplain between even more radically transformed land, is degraded and will be further affected by the future development of the Berkeley Road extension. Nevertheless, the HIA acknowledges the role that the 'openness' of the site plays in determining the current sense of place, as well as the importance of views from within and across the floodplain, but argues that while this may be a significant visual impact, is of relatively low heritage significance: "whether the site is developed or otherwise, it will always have a history which not manifested on the ground and cannot be destroyed by physical changes". This opinion is shared by the First Nations Collective.</p> <p>The HIA suggests that the development of the River Club site is an opportunity for the articulation or making public, even celebration, of the significance of the place and of its historical associations (i.e. its intangible heritage).</p> <p>Regarding the visual impact on sense of place, it is acknowledged that although ~65% of the site will be retained as open space, due to its location at the confluence of the Liesbeek River and Black River, and long-term status of the site as a green open space, the change in character may be experienced as a strong visual contrast for surrounding (urban) receptors, and the (negative) impact of a change in sense of place will be significant.</p>	<p><u>Paragraph 49</u></p>	<p>In the view of the heritage practitioners, this is the inevitable consequence of the processes of growth and change in a living city, and they note that any development of the River Club site will transform the open character of this part of the riverine corridor/landscape. In their view, this is an unending process.</p> <p>It is also necessary to acknowledge that a major transportation link, Berkeley Road Extension, catering for vehicles, buses and pedestrians, will in time inevitably be constructed along the northern border of the River Club site above the 1-700 year level. This will inevitably change the character of the area. The River Club site is in private ownership and while this does not negate heritage significance it does mean that any present or future land owner will seek to obtain an economic return. A natural open space on the River Club site is therefore not a realistic scenario. It is noteworthy that there are extensive sportsfields and large areas of passive open space owned by the Municipality in close proximity, and so there are ample opportunities for the public to access and enjoy these spaces. However, the experience of the lower Liesbeek River is severely compromised because of the concrete channel and constrained access. The lower Liesbeek River will be significantly transformed for the benefit of the public and the environment if the proposed development proceeds.</p>
10.	<p>Many parties (including HWC, the Atwell, Bauman, and O'Donoghue reports, as well as that of a considerable number of public and governmental stakeholders, including the SAOC, DTPW, and the CoCT EMB) argue that the site has a positive sense of place, and these opinions carry weight in the determination of the value of the site's sense of place</p> <p><u>HWC argues that these are considered views and concerns surely be regarded as something more than a difference of opinion". These concerns remain</u></p>	<p>It is assumed that people derive a positive sense of place from the site, and it is acknowledged that although ~65% of the site will be retained as open space, due to its location at the confluence of the Liesbeek River and Black River, and long-term status of the site as a green open space, the change in character may be experienced as a strong visual contrast for surrounding (urban) receptors, and the (negative) impact of a change in sense of place will be significant. It is also significant that almost all commentators, including the First Nations collective accept that the River Club site could, even should, be developed, and any form of development will transform the sense of place referred to here.</p>	<p><u>Paragraph 76</u></p>	<p>With regard to differences of opinion and SAOC, refer to the responses to items 31, 34 and 39. Also see response to item 9.</p>

233

Item No.	Issues raised by HWC	Response to HWC Interim Comment contained in the HIA Supplementary Report	Reference to final comment	Response to HWC Final Comment
11.	<p>The lack of recognition of the grounds of the River Club itself also noted by the DT&PW in its comment on the HIA, and as previously stated, the River Club building itself an integral component of the grounds and one which at least is of contributory (and historic) significance is contrary to the view of previous studies concluded, now deemed of no value</p>		<p>Paragraph 64</p>	<p>This opinion is noted but not shared by all of the various heritage practitioners, including the authors of the HIA, who report that: it is a straight-forward building of the late-1930s with little architectural pretension and has been extensively transformed, its history as a sports club for employees of the SAR&H is incidental, and it fails to meet the criteria for conservation or protection. Other than the building the grounds are currently a practice golf course on an infill of rubble or are paved and used for parking.</p>
12.	<p>it is agreed that the current private golf course is not the ideal land use for such a significant site. However instead of the recovery of the significance and sense of place the proposal precludes it</p>		<p>Paragraph 78</p>	<p>Noted and agreed that the current use as a practice golf course is not ideal but it is a fact. FN Collective has stated that they value the opportunity presented by the development more deeply than the conservation of an open area (for golf or other recreational activities) with no tangible connection to their heritage.</p>
13.	<p>The statement that the impact on the site's sense of place is "dependent of the personal aesthetic and values of the observer" is not supported.</p>	<p>Most academic studies attribute sense of place to the history, values, perceptions and preferences of the observer. The VIA for the development reports the relationship to place on the following basis:</p> <ul style="list-style-type: none"> • Biographical (historical and familial); • Spiritual (emotional, intangible); • Ideological (moral and ethical); • Cognitive (based on choice and desirability); • Narrative; and • Dependent. 	<p>Paragraph 75</p>	
14.	<p>The statement that the sense of place has already been transformed iteratively over the past 80 years, does not make it acceptable to destroy what remains.</p>	<p>Although a change in sense of place is anticipated and has been assessed as a negative impact of the project, the opinion that the development will destroy the sense of place of the broader area is rejected on the following grounds:</p> <ul style="list-style-type: none"> • Whether the site is developed or otherwise, it will always have a history which not manifested on the ground and cannot be destroyed by physical changes; • The development will include high quality open spaces (~65% of the site), and views through the site have been retained where possible; • There are very extensive open space areas in the immediate vicinity, comprising active open spaces such as sports fields and passive open spaces including parks and environmental areas; • Within the greater the Two Rivers local area there remain very large areas in public ownership which cannot be developed and (along with open spaces that have been included in the development proposal) will continue to form part of the public open space system; and • The proposal is to restore and celebrate the history of the Liesbeek River and site, and to celebrate the history of the First Nations people (enhancing the narrative sense of place to these people and the broader public). • The very sense of place referred to is degraded and the development proposed enables the restoration of the sense of place referred to, even if significantly interrupted. 	<p>Paragraph 79</p>	<p>In the heritage practitioners view, the low-intensity, uses currently occupying the site do not provide or signal heritage or significance. However, the proposed development and the recovered riverine corridor and the remaining required by the FN Collective will change the viewer's experience of the place- in the heritage practitioners' view, for the better.</p>

RE

234

Item No.	Issues raised by HWC	Response to HWC Interim Comment contained in the HIA Supplementary Report	Reference to final comment	Response to HWC Final Comment
15.	It is problematic that the character of the site is changed from a low-lying green riverine character as part of a larger, fragmented natural system	<p>Although an ecological benefit from the development is anticipated (i.e. habitat quality and connectivity in this "fragmented natural system" would be enhanced), impacts on the sense of place, and historical character of the site have been assessed in the HIA and found to be significant.</p> <p>Notwithstanding the site's current role in the open space system and anticipated change in character as assessed, it does not necessarily mean to say that development of the site should be precluded. In this regard, and relating to open space specifically, it should further be noted that:</p> <ul style="list-style-type: none"> The heritage specialists argue that while the development may lead to significant visual impacts, transformation of the site's character is of relatively low heritage significance. The development will be publicly accessible, ~65% of the site would be retained as open space if developed as proposed, and ~25% of the site would be made available for recreational activities in open space areas - the open space provided is considered sufficient for a development of this nature. The development would allow the public to enjoy open space vistas associated with the Raapenburg Bird Sanctuary more meaningfully. The wider open space system of which the site forms part contains campus style development (e.g. Observatory and Valkenberg). These institutions illustrate that development can be accommodated within the Two Rivers local area, provided that pockets of green space and ecological connectivity are retained (as per the development proposal). There are very extensive open space areas in the immediate vicinity, comprising active open spaces such as sports fields and passive open spaces including parks and environmental areas. Within the greater Two Rivers local area there remain very large areas in public ownership which cannot be developed and (along with open spaces that have been included in the development proposal) will continue to form part of the public open space system. Considerable social (as well as heritage and ecological) benefits are anticipated from extending the public movement corridor along the "new" Liesbeek River corridor should the Riverine Corridor Alternative be selected for development. Considerable heritage benefits are anticipated by memorialising the history of the First Nations people at the site. 	Paragraph 92	<p>It must be noted that the phrasing of the sentence is problematic as it quotes "a low-lying green riverine character" from O'Donoghue's report, and states "it is problematic that the character of the site is changed" - as if this is the view of O'Donoghue. This is not the case: the previous report provided a current description of the area - but did not state the change was problematic. It should also be noted that O'Donoghue's phase one report did not take account of the need to raise the ground level that would necessarily accompany any development of the site.</p>

TK



235

Item No.	Issues raised by HWC	Response to HWC Interim Comment contained in the HIA Supplementary Report	Reference to final comment	Response to HWC Final Comment
16.	<p>There is a disconnect between First Nations' understanding of heritage resources (and significance) and the applicants' understanding</p>	<p>The historical record for the broader area presented in the HIA is generally not contested, and aligns with the heritage significance of the area reported by the First Nations Collective (Section 1(I) of River Club First Nations Report):</p> <ul style="list-style-type: none"> • First Nations people resided (most unlikely on the site) in or grazed their herds in the area prior to European colonialization; and • That the broader area is a site of contestation, dispossession and resistance. <p>Based on interviews, it is evident that the First Nations Collective concur with the authors of the HIA that the entire TR area was part of the historic indigenous landscape, and that each of the precincts that make up the TR area have a measure of inherent indigenous cultural heritage, but that the heritage significance of each precinct that makes up the TR area is not universal, but is determined by the tangible and intangible cultural elements which are precinct specific, or cut across two or more precincts. In this regard, engagement with the First Nations Collective has confirmed that "no cross-cutting, narrative-defining event for any of the strands of the indigenous narrative... can be attributed specifically to the River Club site" (Section 2(D) of River Club First Nations Report and see response to items 1 and 53), but that the Liesbeek River is an important heritage element in the broader landscape (see Section 2(G) of River Club First Nations Report).</p>		<p>According to the heritage practitioners, there is no disconnect between First Nation's understanding of heritage resources (and significance) and the applicant's understanding.</p> <p>Through an inclusive process of independent social facilitation the First Nation groups who were the historical custodians and who are the contemporary claimants and owners of the Indigenous Heritage Narrative of the site and the broader TR-area were identified. This First Nations Collective concur with the applicants understanding of heritage resources and significance. This is explicit and made clear in the River Club First Nations Report.</p> <p>It is acknowledged that certain groups (which claim to represent First Nations indigenous to the area), reject the position of the First Nations collective and the development proposal. The First Nations Collective question the credentials and motivations of these groups (and claim that they may be furthering political and civic agendas by usurping the First Nation narrative and heritage.</p> <p>One First Nation group, the Western Cape Legislative Khoisan Council (WCLKSC), who objected to the development at the HWC IACOM where the River Club First Nations Report was tabled, later indicated to the independent social facilitator that Mr Jenkins was mandated by them to participate in First Nations engagement on the River Club and TRUP, but that they had received no feedback on the matter and had not had sight of the First Nations reports. Subsequently the social facilitator presented the TRUP First Nation Report process and content, and the River Club First Nation Report process and content.</p> <p>Thereafter, the WCLKSC:</p> <ul style="list-style-type: none"> • Rejected the position taken by Mr Jenkins; • Joined the First Nations Collective; and • Gave their unequivocal support for the proposed development as articulated in the River Club First Nations Report as a means of acknowledging and celebrating First Nation heritage. <p>Refer to responses to items 22, 58, 60, 61 and 69</p>
17.	<p>There is a disjuncture between the initial acknowledgement of the historic significance of the site and wider environs and the actual identification and mapping of the heritage resources</p>	<p>After reporting the history of the broader area, the HIA:</p> <ul style="list-style-type: none"> • Confirms that "the area in which the River Club is situated is historically important for the role it played in the distant past"; and • Places the site "within the core of this early contested landscape" (see Section 4.5 of the HIA) and within an "associative cultural landscape" with definable/known historical associations of great socio-political import. <p>Nevertheless, it is the opinion of the heritage practitioners who compiled the HIA (and others) that the Two River local area is comprised of a variety of precincts of very different topographies, histories of use, of development-type, each with its own qualities and a variety of potential heritage significances. In this context, the HIA finds that, apart from the Liesbeek River, the site itself has little obvious</p>	<p>Paragraph 45 Paragraph 54</p>	
18.	<p>(The identification of heritage resources) and diagrams ignore the significance (of the site) already identified in previous studies, public comments, HWC, and the historical significance of the site as tabled in part 7.1.2 of the current HIA report itself</p>	<p>Nevertheless, it is the opinion of the heritage practitioners who compiled the HIA (and others) that the Two River local area is comprised of a variety of precincts of very different topographies, histories of use, of development-type, each with its own qualities and a variety of potential heritage significances. In this context, the HIA finds that, apart from the Liesbeek River, the site itself has little obvious</p>	<p>Paragraph 6</p>	<p>The 2019 HIA did not replace O'Donoghue's 2017 phase one report; it expanded on the phase one report and included a development proposal. Though the heritage practitioners point out that the phase one report did presuppose development across the site.</p> <p>The 2019 HIA and the Supplementary Report included the work of the urban designer and of course development proposals and alternatives and is therefore significantly different from the phase one.</p>

TK

236

Item No.	Issues raised by HWC	Response to HWC Interim Comment contained in the HIA Supplementary Report	Reference to final comment	Response to HWC Final Comment
19.	<p>The HIA states that "River Club site and its surrounds to be of very high environmental/topographical/ecological and historical significance both as the floodplain of the Liesbeek River and as a part of the place of early confrontations between indigenous peoples and settlers", and on the other hand, it states that the River Club itself is of low significance (p117).</p>	<p>tangible heritage significance, noting that (see above, and especially response to item 53):</p> <ul style="list-style-type: none"> The site is either entirely or mostly an infill site reclaimed from wetlands; Much of the history that derives the cultural significance of the Two Rivers local area extends over a far broader spatial scale; The valley (or floodplain) in which the site is located, although an important component of the Liesbeek River as a landscape, has been transformed by urban development upstream and downstream of the site; No tangible heritage relics or resources occur on the site; and No historic events are attributed to the have occurred at the site. <p>Therefore, while the HIA acknowledges the role that the 'openness' of the site plays in determining the current sense of place, as well as the importance of views from within and across the floodplain (which are comprehensively assessed in the VIA), it argues that this openness and these views are of low heritage significance: "whether the site is developed or otherwise, it will always have a history which does not manifested on the ground and cannot be destroyed by physical changes". This view is supported by the First Nations Collective: "no cross-cutting, narrative-defining event for any of the strands of the indigenous narrative... can be attributed specifically to the River Club site" (Section 2(D) of River Club First Nations Report).</p> <p>It is on this basis that the heritage practitioners defend their assessment (and mapping) of heritage significance of the site and immediately adjacent areas (also refer to Sections 4 and 5 of the HIA Supplementary Report).</p>		
20.	<p>On p5 the HIA states that "the Liesbeek River corridor, if recovered and restored to full ecological functioning and given meaningful presence, should be recognised as a heritage resource and be declared to be a provincial heritage site." But at the same time, the HIA gives no significance to the floodplain between the rivers.</p>	<p>This is not correct – the HIA (including mapping) assigns a low heritage significance to the remaining portion of the floodplain between the two rivers. Also refer to response to item 17 regarding the assessment and mapping of heritage significance of the site, and Sections 4 and 5 of the HIA Supplementary Report.</p>		<p>The heritage practitioners see this 70m-wide connecting space as a significant part and characteristic of the transformed site enabling views through and to various significant landmarks near and far, and providing for a significant open space and ecological connection between the old pre-1958 river course (now part of the stormwater disposal system) and the transformed Liesbeek River (now a canal).</p>
21.	<p>The tangible aspects of the river are not the only heritage resources which should be mapped and identified – the rivers and the River Club site are an integral part of a much wider and highly significant system.</p>	<p>There are no tangible elements of the history of the site which remain, and therefore all heritage significance attributed to the site (with the exception of the Liesbeek River) derives from its intangible history. Also refer to response to item 17 regarding the assessment and mapping of heritage significance of the site, and Sections 4 and 5 of the HIA Supplementary Report.</p>	<p>Paragraph 48</p>	<p>Refer also to responses to items 17, 18, 60, 62, 63 and 71</p>

TK

237

Item No.	Issues raised by HWC	Response to HWC Interim Comment contained in the HIA Supplementary Report	Reference to final comment	Response to HWC Final Comment
22.	<p>The first mapping diagram bases significance on ecological rather than cultural values, and reduces the acknowledged and far wider cultural landscape of the valley to just the river(s)</p> <p><u>Par. 113 Final Comment Conclusion</u></p> <p><u>The HIA has unfortunately reduced this significance to a set of ecological values provided for the most part to post rationalise a wholly intrusive development model</u></p>	<p>This is not correct – the “diagram of current significances of the riverine topography as cultural landscape” takes account of the historical and cultural value of the much transformed floodplain to derive a low heritage significance to this portion of the broader landscape - also refer to response to item 17 regarding the assessment and mapping of heritage significance of the site, and Sections 4 and 5 of the HIA Supplementary Report.</p>	<p><u>Paragraph 47</u> <u>Paragraph 54</u> <u>Paragraph 63</u> <u>Paragraph 113</u></p>	<p>Refer also to responses to items 17, 18, 60, 62, 63 and 71</p> <p><u>In the view of the heritage practitioners HWC has misread or misunderstood the argument they have presented: the specialists recognise/contend that the River Club has high historical significance but that this significance is not visible. The recovery of the Liesbeek riverine corridor restores visible meaning and historical significance to the place even if there is a reduction of a “sense of openness”</u></p>
23.	<p>Arguing that the “river itself is the only tangible visual element which survives as a resource which warrants protection”, negates in its entirety the exceedingly high historic, and symbolic significance of the site identified in all previous studies, and submitted continuously throughout the process by the relevant I&APs.</p>	<p>The high historic and symbolic significance of the broader area is not contested (refer to response to item 58), what is contested is the “heritage capital” that can and should be attributed to the River Club site itself. In this context the HIA finds significance, noting that:</p> <ul style="list-style-type: none"> • The site is either entirely or mostly an infill site; • Much of the history that derives the cultural significance of the Two Rivers local area extends over a far broader spatial scale; • The valley (or floodplain) in which the site is located, although an important component of the Liesbeek River as a landscape, has been transformed by urban development upstream and downstream of the site; • No tangible heritage relics or resources occur on the site; and • No historic events are attributed the have occurred at the site. <p>Therefore, while the HIA acknowledges the role that the ‘openness’ of the site plays in determining the current sense of place, as well as the importance of views from within and across the floodplain (which are comprehensively assessed in the VIA), it argues that this openness and these views are of low (but not of “no”) heritage significance.</p>	<p><u>Paragraph 63</u></p>	<p>The point is that the recovery of historical significance through the recovery of the riverine corridor (and ecological functionality) increases/adds to the significance of the River Club site and to the TR-area and to the Liesbeek River itself.</p>
24.	<p>It is not just the riverine corridor, (unrehabilitated or not), but the entire TRUP valley including the riparian corridor which is noted as highly significant and is expressed in both its tangible and intangible qualities.</p>	<p>Heritage significance.</p>	<p><u>Paragraph 63</u></p>	<p>The point is that the recovery of historical significance through the recovery of the riverine corridor (and ecological functionality) increases/adds to the significance of the River Club site and to the TR-area and to the Liesbeek River itself.</p>
25.	<p>An example of this post-rationalization is the attempt to grade the current river corridor between the proposed two development ‘envelopes’ as IIB, as indeed is the attempt to only identify some 40-50m of the river corridors, and confluence as heritage resources. This makes no sense and is rejected as flawed.</p>	<p>Heritage significance.</p>	<p><u>Paragraph 63</u></p>	<p>The point is that the recovery of historical significance through the recovery of the riverine corridor (and ecological functionality) increases/adds to the significance of the River Club site and to the TR-area and to the Liesbeek River itself.</p>

238

Item No.	Issues raised by HWC	Response to HWC Interim Comment contained in the HIA Supplementary Report	Reference to final comment	Response to HWC Final Comment
26.	<p>The notion that the 20th Century disturbance, has resulted in a degraded site is, from a heritage point of view, is rejected</p>	<p>Noted. Similarly, the heritage practitioners argue that the development of the site will not destroy its history – to the contrary, they see the development as an opportunity to celebrate it. Engagement with the First Nations Collective has confirmed that “no cross-cutting, narrative-defining event for any of the strands of the indigenous narrative... can be attributed specifically to the River Club site” (Section 2(D) of River Club First Nations Report), but that the Liesbeek River is an important heritage element in the broader landscape (see Section 2(G) of River Club First Nations Report). The First Nations collective further:</p> <ul style="list-style-type: none"> • Aspire towards the restoration of the Liesbeek River as an important connecting heritage element of the broader landscape; • See the development of the site is an opportunity for the articulation and celebration of the significance of the place and of its historical associations to First Nations people; and • Value this opportunity more deeply than the conservation of an open area with no tangible connection to their heritage. <p>The site is not considered sacred by the First Nations Collective.</p>	<p><u>Paragraph 50</u> <u>Paragraph 50 – notes that the supplement does not depart from this standpoint</u></p>	<p><u>The River Club site is degraded, and its current use does adversely affect one’s recognition of its historical significance and the canal does adversely affect the significances. The development is designed to recover significance and the awareness of significance.</u></p>
27.	<p>The fact that the site has been considerably disturbed in the latter half of the 20th Century, does not in any way take away the meaning of the site as a historic frontier or point of conflict, or its significance to the representatives of the First Nations to whom the site and wider area also has sacred significance</p> <p><i>Final Comment Conclusion, Paragraph 110:</i></p> <p><i>It is a site which is recognised as a sacred place. The open, largely undeveloped floodplain is a tangible reminder of intangible heritage</i></p> <p><i>Final Comment Conclusion, Paragraph 111:</i></p> <p><i>It is recognised through historic record, as well as Cultural memory, as being a place of conflict for 150 years. It is recognised as a place where the 1657 Colonial Settlement of South Africa truly took root with the establishment of the first settler farms along the Liesbeek valley, and a place where the Cape Indigene were truly dispossessed and excluded from access to their ancestral land</i></p>	<p>• Aspire towards the restoration of the Liesbeek River as an important connecting heritage element of the broader landscape;</p> <p>• See the development of the site is an opportunity for the articulation and celebration of the significance of the place and of its historical associations to First Nations people; and</p> <p>• Value this opportunity more deeply than the conservation of an open area with no tangible connection to their heritage.</p> <p>The site is not considered sacred by the First Nations Collective.</p>	<p><u>Paragraph 53</u> <u>Paragraph 110</u> <u>Paragraph 111</u></p>	<p><u>Also refer to responses to items 5 and 33.</u></p> <p><u>The current state and usage of the site does not change or remove its history, but the recovery of the riverine corridor will enable a new reading of the place and of its history.</u> <u>It seems that the FN Collective recognises the same opportunity for recovery of significance as the heritage practitioners.</u> <u>It is also apparent, notwithstanding the importance of the River Club site as land used by pre-colonial people for seasonal grazing and a part of a ‘frontier zone’ the First Nations Collective does not recognise the site as a ‘sacred site’.</u></p>

239

Item No.	Issues raised by HWC	Response to HWC Interim Comment contained in the HIA Supplementary Report	Reference to final comment	Response to HWC Final Comment
28.	The HIA post rationalises a pre-conceived development concept	<p>The proponent seeks to develop a mixed use, "live, work and play" facility at the site, and this development must be financially viable for the proponent to proceed. Nevertheless, the development proposal has been formulated in collaboration with a multi-disciplinary team that has responded to independent environmental and specialist input. In this context there have been more than 250 iterations to the development proposal / layout, and the assertion that the HIA post rationalises a pre-conceived development concept is therefore rejected.</p> <p>Development responses have included:</p> <ul style="list-style-type: none"> • Reducing the heights of building directly opposite the SAOO, and locating taller buildings to the north of the site - the visual effect will be that buildings opposite the SAOO will appear as 3 - 4 storey buildings; • Setting back from the SAOO as far as practically possible; • Splitting the development into two precincts to retain a faunal movement corridor and views through the site; • Rehabilitating the Liesbeek Canal and infilling the unlined, western course of the Liesbeek River (in line with detailed specialist design input, with associated ecological and cultural benefits); • Providing a cultural centre and memorialising the history of the First Nations People in the design of the development; • Realigning the link road between Precinct 1 and Precinct 2 to an orthogonal geometry instead of a diagonal geometry to create a better "fit" in terms of urban design and a better functioning central ecological corridor and park; • Realigning of other internal roads (to improve views from the through the site); and • The argument about "positionalising" is irrelevant (see Section 8 of the HIA Supplement) 	<p><u>Paragraph 68</u></p>	<p>Also refer to responses 29, 30 and 64</p> <p>The development proposal was fore-shadowed in the 2017 phase one given more shape and form by the 2018 urban design study, then given architectural form in the late-2018 'island concept', then transformed into the 2019 'riverine corridor' concept. More recently comments regarding the heights (near to the SAOO in particular) and input from the First Nations Collective in particular have resulted in several refinements of the proposal. HWC's interpretation of this process is mistaken.</p>
29.	The assessment of heritage resources has ignored both the existing studies, and the wider picture, and as such has attempted to grade significance in the isolation of a much wider system. As a result, it is very difficult not to believe that the assessment of significance has been tailored to arrive at mitigation for the development rather than an assessment of significance that would assist in informing an appropriate development.	<p>The history of the broader area is comprehensively described in Section 4 of the HIA and is generally not contested. Nevertheless, there is a difference in opinion as to how this heritage manifests, and should be memorialised at a precinct level, or even more local scale. The heritage practitioners have presented a well-researched and motivated opinion on the heritage significance of the site which is confirmed by the First Nations Collective, and the specialists argue that sense of place concerns of certain stakeholders, while being valid, are mostly visual in nature. It is acknowledged that this opinion is contested, the specialists reject that the assessment of significance has been tailored for any reason.</p> <p>Regarding alternatives, by developing the site predominantly for commercial, residential and retail uses, other development / activity alternatives will be foregone. However, while the proponent has considered the viability of reasonable alternatives that are identified, as the site is privately owned by the proponent, zoned for private use, and currently operated as a commercial operation, it is reasonable that the proponents only select development alternatives that are financially viable (including the No-Go Alternative -- in this case the continued operation of the site as a viable golf and conference facility). In this sense, there are no opportunities for the development of alternatives that are not feasible to the proponent (see Sections 7 and 8 of the HIA Supplement).</p>	<p><u>Paragraph 26</u> <u>Paragraph 86</u> <u>Paragraph 114</u></p>	<p>Also refer to items 24, 36, 41 and 53</p> <p>Repeated Issues "this is in direct conflict with the advice of HWC has previously given that the RC cannot be looked at in isolation of the wider system" - Responded to - refer to items 2, 9, 46, 66 and 100</p>
	<p>Par 114 Final Comment Conclusion</p> <p>The Committee also noted that a "memorial/ museum" and recreational river courses are inadequate in commemorating</p>			

240

Item No.	Issues raised by HWC	Response to HWC Interim Comment contained in the HIA Supplementary Report	Reference to final comment	Response to HWC Final Comment
30.	<p><i>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 self and does not need to be imbued with meaning. The bulk and mass of the development proposed does not respond to the site as a living heritage.</i></p> <p>The second mapping diagram merely serves to post-rationalize a pre-conceived development concept</p>	<p>It is not clear how this conclusion is drawn, especially noting that the Riverine Corridor Alternative was developed in specific response to the sensitivity of the SAAO, and opportunity to restore the Liesbeek River corridor at the site as a public movement corridor of cultural and ecological value.</p>		<p><i>The Supplementary Report includes the heritage resource maps of the City of Cape Town, Attwell/Jacobs and of Postlethwaite, and the heritage practitioners' own commentary on them.</i></p> <p><i>It should be noted that the development concept was radically transformed between the phase one report of 2017 and the draft HIA circulated for public comment in late 2018 and has been iteratively developed in several steps in response to input from various stakeholders including, most importantly, the First Nations Collective. See item 28 above.</i></p>
31.	<p>The HIA appears not to regard the built form of the proposed development as affecting the significant heritage resources present, neither does it recommend heritage related built form restrictions. Unlike the TRUP Baseline Study and the Phase 1 HIA for the River Club</p>	<p>This is correct – with the exception of the SAOO (for which built form indicators are necessary – mainly, setting back from this site as far as possible, and reducing building heights in the southern precinct) and Liesbeek River course, the heritage significances that have been identified and assessed for the site and immediately surrounding area are of an intangible nature – it is therefore the opinion of the heritage consultants there are no resources at the site that require protection, and that the role that heritage informants can play in the urban design of the site is limited.</p> <p>Nevertheless, the development proposal has responded to numerous complex informants including advice regarding freshwater and eco-systems, a floodwater study, an archaeological statement, input from various heritage practitioners including the authors of the HIA, a visual impact assessment by SRK, the Urban Design Framework: Indicators and Recommendations (included in the HIA), and more recently the Two Rivers local area First Nations Report, and a report on the role of the River Club site within the indigenous narrative of the broader TRUP cultural landscape (which is included as a supplementary report to the final HIA for the development).</p>	<p>Paragraph 72</p>	<p>See response to item 28</p>
32.	<p>The (significance of the) River Club building is downplayed as a heritage resource, previous reports having noted the structure as being of IIBB, or at least contributory significance</p>	<p>This opinion is noted but not shared by various heritage practitioners, including the author of the HIA who report that: it is a straight-forward building of the late-1930s with little architectural pretension and has been extensively transformed, its history as a sports club for employees of the SAR&H is incidental, and it fails to meet the criteria for conservation or protection.</p>	<p>Paragraph 64</p>	<p><i>The heritage practitioners think like many commentators to date that the buildings on the River Club site have little if any significance of any kind. Those commentators who argue that the building should be a IIBB have not given any justification for this.</i></p>

241

33. HWC repeats and summarises what it regards are the significances and hence their rationale for protecting the River Club alone.

Par 23: River Club forms part of TRUP and represents a microcosm of Cape History. It reflects the pattern of South African Social architectural and political history spanning across the precolonial colonial and apartheid and more recent history.

Par 24: "The Two Rivers Urban Park landscape has high cultural values of historical, social, aesthetic, architectural, scientific and environmental significance. It contributes to an understanding of the past beliefs, uses, events, person, periods, techniques and design. It has associated links with the past persons, uses, community memory, identity and oral history. It possesses a strong sense of place."

Par 25: The Two Rivers Urban Park landscape is a complex composite of natural and cultivated and built landscape elements. It is a cultural landscape transformed by thousands of years of settlement history. The landscape expresses both artistic and innovative qualities in terms of its natural history setting, architecture and planting patterns. It also has narrative qualities possessing a rich layering of physical evidence brought alive by the oral histories of the people who lived and worked in institutions amongst other things, the Valkenberg hospital and the South African Astronomical Observatory."

Paragraph 23
Paragraph 24
Paragraph 25
Paragraph 26
Paragraph 27

In their Final Comment, HWC refers iteratively to the statement of significance that it used in April 2018 in explaining why it was provisionally protecting the River Club Site. The heritage practitioners view of that description of significance is as follows:

1. The River Club site is within the area described as the TRUP. This the TRUP is an arbitrarily defined area, a development proposal (not a heritage entity or park) made up of many disparate pieces of land, much of it well developed and used for a very wide range of activities and owned by a wide range of public and private bodies with often mutually excluding interests. Indeed, it is difficult to see how many of these pieces with their uses could be meaningfully included in an urban park. [The very history of the endeavours to establish the 'urban park' should indicate this to all but the most myopic observer that so much time and effort has been committed to this idea must come as a shock to any disinterested]
2. In previous studies, the Liesbeek River has been identified as the surviving heritage resource worthy of declaration as a first frontier, a shared heritage across many enven.
3. The significance of the RC is its association with the historic river system that runs between the Atlantic Ocean and Kirstenbosch Gardens. Hence, several hundred, if not thousands of enven on the Liesbeek share the very same significance and involve known heritage sites at a similar frequency (if not more that TRUP) within its catchment.
4. A declaration of the entire Liesbeek valley as a protected heritage area would be untenable in heritage management terms.
5. The significance of the entire river valley seems to have been conferred to the River Club simply because it is largely undeveloped (though it is in a similar state to much of the land used for sport).
6. With this in the background, the HWC's explanation of its provisional protection of the River Club site (much of it taken fairly directly and indiscriminately from the NHRRA) about the significance of the TR-area is empty of enough detail to know what is meant. Certainly, it is difficult to guess what is being referred to both with respect to the TR-area and, in particular, with respect to the River Club site. It should be pointed out that this description could be applied to almost any piece of land almost anywhere in very many parts of the Western Cape and in South Africa more generally. If the references to Valkenberg Hospital and the SAO were omitted, this description could be used for a description of many areas/sites almost anywhere in the country.
7. In other words, the 'reasons' for the provisional protection are couched in language so general as to be meaningless in an argument even about the TR-area, let alone the River Club site.
8. The heritage practitioners cannot see any reason in the 'reasons' that are linked in a meaningful way to the River Club as a place, and cannot see any link to any of the requirements of Section 29 of the NHRRA, there is no reference to any threat or to any idea/intention of negotiation to alleviate such threat, and there is no mention of any clear or even outlined intention to investigate the significance of the River Club or its protection (or of the TR-area).

TR

242

Item No.	Issues raised by HWC	Response to HWC Interim Comment contained in the HIA Supplementary Report	Reference to final comment	Response to HWC Final Comment
34.	<p><i>Par 26. Different historical narratives create a story of pioneering and philanthropy, social reform and identity, self-sufficiency farming and institutionalization.</i></p> <p><i>Par 27. The Two Rivers Urban Park possesses many distinctive and interrelated precincts which clearly demonstrate or are strongly associated with its historical roles and uses as a place for indigenous hunter gatherers, grazing grounds for herders, colonial farms, scientific research, reformatory and hospitals.</i></p> <p>The HIA makes no attempt to assess the significance of this as a site of conflict, that has direct relation to the trajectory of South Africa's Colonial history through to the 20th Century</p>	<p>There is no documented or oral history that suggests that the River Club site in particular was a site of conflict (see response to item 53); nevertheless, the history of the broader area is comprehensively described in Section 4 of the HIA and includes a history of conflict between Khoekhoe groups and Europeans settlers. The historical record presented in the HIA is generally not contested. Nevertheless, there is a difference in opinion as to how this heritage manifests and should be memorialised at a precinct level within the Two River/local area (i.e. it is the view of the heritage consultants that the entire history of TRUP and the broader area do not manifest entirely on the River Club site). This difference in opinion is noted.</p>		<p><i>The heritage practitioners recognise the River Club site to be at the lower reaches of the Liesbeeck River (a frontier) and near to the lowest of the first grants. Similar may be said of the rest of the Liesbeeck Valley all the ways to Bishopscoort where Van Riebeeck had his own farm.</i></p>
35.	<p>The report wholly downplays the irreversible impacts of transforming a green lung at the heart of the TRUP into a mega project.</p>	<p>Regarding open space specifically, it should be noted that:</p> <ul style="list-style-type: none"> The heritage specialists argue that while the development may lead to significant visual impacts, transformation of the site's character is of relatively low heritage significance. The development will be publicly accessible, ~65% of the site would be retained as open space if developed as proposed, and ~25% of the site would be made available for recreational activities in open space areas - the open space provided is considered sufficient for a development of this nature. The development would allow the public to enjoy open space vistas associated with the Raapenberg Bird Sanctuary more meaningfully. The wider open space system of which the site forms part contains campus style development (e.g. Observatory and Valkenberg). These institutions illustrate that development can be accommodated within the Two Rivers local area, provided that pockets of green space and ecological connectivity are retained (as per the development proposal). There are very extensive open space areas in the immediate vicinity, comprising active open spaces such as sports fields and passive open spaces including parks and environmental areas. Within the greater the Two Rivers local area there remain very large areas in public ownership which cannot be developed and (along with open 	<p><i>Paragraph 72</i></p>	

TR

243

Item No.	Issues raised by HWC	Response to HWC Interim Comment contained in the HIA Supplementary Report	Reference to final comment	Response to HWC Final Comment
36.	<p>The HIA neither motivates for, or questions, the 150 000m² of floor space proposed (in comparison, Canal Walk at Century City is ±146 000m²), and whether this is an appropriate site for a mega project.</p>	<p>spaces that have been included in the development proposal) will continue to form part of the public open space system.</p> <ul style="list-style-type: none"> Considerable social (as well as heritage and ecological) benefits are anticipated from extending the public movement corridor along the "new" Liesbeek River corridor should the Riverine Corridor Alternative be selected for development. <p>Regarding the carbon sequestration potential of the site: Indigenous vegetation proposed in landscaped and ecological areas (~6 ha of the site) will have a significantly higher carbon sequestration potential than the current moved lawn and will offset the impact of the loss of ~12 ha of lawn at the site. Regarding the role the site plays in reducing the urban heat island effect: Lawns have a limited role in reducing the urban heat island, and the "original course" of the Liesbeek River (backwater) is unlikely to have a significant impact (cooling effect) on ambient temperatures even locally. Indigenous vegetation proposed in landscaped and ecological areas (~6 ha of the site) will promote urban cooling to a greater extent than existing lawned areas, and therefore would promote urban cooling (albeit insignificantly in a metropolitan context). It is further not clear on what basis the project has been defined as a "mega project", which the Oxford handbook describes as "large-scale, complex ventures that typically cost \$1 billion or more, take many years to develop and build, involve multiple public and private stakeholders, are transformational, and impact millions of people".</p> <p>Regarding alternatives: In order to develop the site large portions must be infilled to above the 1:100 flood line, which will entail significant cost. The cost of the installation of services and of ecological restoration will also be high. The proponent, as an experienced developer of international standing, has presented two financially feasible development alternatives: The Riverine Corridor Alternative and the Island Concept Alternative (as well as the No-Go Alternative). Although alternatives identified by stakeholders must be considered in the EIA process, the proponent is afforded an opportunity to provide a reasoned explanation why an alternative was not found (through an investigation) to be reasonable and / or feasible. In this regard, the (financial) returns of the two preferred development alternatives and two other alternatives suggested by stakeholders ((1) a lower density / reduced floor-space alternative and (2) an alternative which incorporated ~20% of the GLA for affordable housing) were investigated my MLC Quantity Surveyors (MLC) on behalf of the proponents to determine the expected first year returns on investment. Noting that market capitalisation rates below 9% are not considered commercially viable to the proponent and other property developers, the investigation by MLC demonstrated that the 1) lower density / reduced floor-space alternative and 2) an alternative which incorporated ~20% of the GLA for affordable housing, are not financially viable to the proponent. In other words, noting the cost of developing the site the proponents do not view these alternatives to be (financially) reasonable or feasible and have excluded these from further analysis (and it is</p>		
37.	<p>The HIA only assesses the preferred "Riverine Corridor" Alternative, and the "Island Concept" and simply dismisses the lower order bulk alternatives such as the "Mixed Use Affordable Alternative" (110 000m²) and the "Reduced Floor Alternative" (102 000m²), as these have been considered economically unviable by the town planner.</p>		<p>Paragraph 102</p>	<p>A comparison between the proposal for the River Club and Canal Walk is completely inappropriate because the two developments differ fundamentally in terms of scale, form and function. While Canal Walk covers a site of ±23ha, it is a regional shopping centre in a single monolithic structure, and is a component of Century City which spans over 200ha and has ±1.2 million square metres of bulk approved. By contrast the River Club is a mixed use development on a site of only ±14ha, and the development portion of this is divided into different sites, separated by an ecological open space. The development portion of the River Club will take up only ±8.5ha, with a retail component of only ±19 000m² GLA. There is no comparison in terms of scale and impact between the proposed River Club development and Century City, and it is wrong to compare the River Club to Canal Walk because the two are so materially different. Also refer to response 35. Please note it is not the town planner as stated by HWC but the Quantity Surveyor that investigated viability. We are not sure how a development in the order of 110 000m² or even 102 000m² makes any difference to the heritage impacts and assessments – which HWC have repeatedly raised, such as raising the floodplain level, infill, heights and density – which would all change the "open sense of place" – and all occur to varying degrees – as would any form of economically viable development. Be it 150 000 or 102 000m².</p>

TR



244

Item No.	Issues raised by HWC	Response to HWC Interim Comment contained in the HIA Supplementary Report	Reference to final comment	Response to HWC Final Comment
38.	Consider a "tread lightly", green-dominated, recreational or educational alternative, without substantial filling in of the floodplain	reasonable that the owner of the site only consider alternatives that are financially viable, including the No-Go Alternative). The developer has further calculated that the floor area currently proposed is the minimum required to ensure financial feasibility, and as such, impacts associated with the change in character of the site cannot be avoided completely through layout or operational alternatives. In other words, residual impacts on the character of the site, the historical setting of the SAOO, and sense of place are anticipated should the development proceed. It should be noted that these residual impacts would not be completely avoided by selecting an alternative with reduced floor space. Regarding the site as a "mega project": It is not clear on what basis the project has been defined as a "mega project", which the Oxford handbook describes as "large-scale, complex ventures that typically cost \$1 billion or more, take many years to develop and build, involve multiple public and private stakeholders, are transformational, and impact millions of people". Also refer to the response to item 34 regarding open space considerations.	Paragraph 103	Any form of economically viable development would require infilling and some form of bulk that would change the sense of openness of the site. A "tread lightly" proposal, as espoused by HWC and other participants would only be possible with philanthropic money or funds from government. As this is a privately owned piece of land neither are possible. Private funding requires income to repay debt and rehabilitating the river corridor, subsidised inclusionary housing, eco corridors for bio-diversity, road infrastructure all require funding, which without the private development and bulk are not possible. The site and buildings have been adapted and used but the sustained economic viability of the current uses is very marginal, and offer no ecological, heritage or general public benefit.
39.	Consider the adaptive re-use of the site and buildings as an alternative	Refer to the response to item 35 regarding the consideration of lower density alternatives. Also note that: <ul style="list-style-type: none"> The UDF (which is incorporated into the HIA – see Section 9.1.4) refers specifically to building height informants; and The HIA recommends that the heights of buildings in the portion of the site closest to the SAOO are kept lower than that of the bank of trees on the SAOO ridge (and that these buildings must include a range of building heights, variation in building form, and an avenue of trees lining the development along the edge of the riverine corridor). Memorialisation of the legacy of the First Nations groupings is being considered in direct and ongoing consultation with the First Nations Collective for the area. Memorialisation is currently proposed by including a media centre for the First Nations people, providing a place of congregation, and incorporating the First Nations narrative into the design throughout the development, by for example, including reed inspired sculptures and building finishes, and incorporating First Nations motifs in building facades (amongst others). Bold and visual memorialisation of the indigenous people's narrative is supported by the First Nations Collective.	Paragraph 74	Also see response to item 31
40.	The HIA does not motivate for, or critically interrogate building heights	Refer to the response to item 35 regarding the consideration of lower density alternatives. Also note that: <ul style="list-style-type: none"> The UDF (which is incorporated into the HIA – see Section 9.1.4) refers specifically to building height informants; and The HIA recommends that the heights of buildings in the portion of the site closest to the SAOO are kept lower than that of the bank of trees on the SAOO ridge (and that these buildings must include a range of building heights, variation in building form, and an avenue of trees lining the development along the edge of the riverine corridor). Memorialisation of the legacy of the First Nations groupings is being considered in direct and ongoing consultation with the First Nations Collective for the area. Memorialisation is currently proposed by including a media centre for the First Nations people, providing a place of congregation, and incorporating the First Nations narrative into the design throughout the development, by for example, including reed inspired sculptures and building finishes, and incorporating First Nations motifs in building facades (amongst others). Bold and visual memorialisation of the indigenous people's narrative is supported by the First Nations Collective.	Paragraph 74	Also see response to item 31
41.	A portion allocated to the museum on the northern-most corner is inconsistent with the significance, and the bulk and mass of the development proposal does not respond to the site as a living heritage.	Refer to the response to item 35 regarding the consideration of lower density alternatives. Also note that: <ul style="list-style-type: none"> The UDF (which is incorporated into the HIA – see Section 9.1.4) refers specifically to building height informants; and The HIA recommends that the heights of buildings in the portion of the site closest to the SAOO are kept lower than that of the bank of trees on the SAOO ridge (and that these buildings must include a range of building heights, variation in building form, and an avenue of trees lining the development along the edge of the riverine corridor). Memorialisation of the legacy of the First Nations groupings is being considered in direct and ongoing consultation with the First Nations Collective for the area. Memorialisation is currently proposed by including a media centre for the First Nations people, providing a place of congregation, and incorporating the First Nations narrative into the design throughout the development, by for example, including reed inspired sculptures and building finishes, and incorporating First Nations motifs in building facades (amongst others). Bold and visual memorialisation of the indigenous people's narrative is supported by the First Nations Collective.	Paragraph 74	The northern-most corner was initially thought to be a potential site at the confluence of the two rivers near to an assumed potential site of pre-colonial crossing. This has been overtaken by the interaction with the FN Collective, and several sites at the centre of the site are now proposed for various FN-supported facilities/activities. A review of the River Club First Nations Report will show that First Nation living heritage has not been relegated to the northern most corner of the site, but have in fact, been made central and core to the entire site. And that the various strands of Indigenous living heritage will permeate all areas of the site. Now irrelevant
42.	The HIA does not assess the impact of the development (10 storey buildings) on the proposed memorial	Refer to the response to item 35 regarding the consideration of lower density alternatives. Also note that: <ul style="list-style-type: none"> The UDF (which is incorporated into the HIA – see Section 9.1.4) refers specifically to building height informants; and The HIA recommends that the heights of buildings in the portion of the site closest to the SAOO are kept lower than that of the bank of trees on the SAOO ridge (and that these buildings must include a range of building heights, variation in building form, and an avenue of trees lining the development along the edge of the riverine corridor). Memorialisation of the legacy of the First Nations groupings is being considered in direct and ongoing consultation with the First Nations Collective for the area. Memorialisation is currently proposed by including a media centre for the First Nations people, providing a place of congregation, and incorporating the First Nations narrative into the design throughout the development, by for example, including reed inspired sculptures and building finishes, and incorporating First Nations motifs in building facades (amongst others). Bold and visual memorialisation of the indigenous people's narrative is supported by the First Nations Collective.	Paragraph 74	The northern-most corner was initially thought to be a potential site at the confluence of the two rivers near to an assumed potential site of pre-colonial crossing. This has been overtaken by the interaction with the FN Collective, and several sites at the centre of the site are now proposed for various FN-supported facilities/activities. A review of the River Club First Nations Report will show that First Nation living heritage has not been relegated to the northern most corner of the site, but have in fact, been made central and core to the entire site. And that the various strands of Indigenous living heritage will permeate all areas of the site. Now irrelevant
43.	The HIA does not assess the impact of the development (10 storey buildings) on the proposed riverine corridor	Refer to the response to item 35 regarding the consideration of lower density alternatives. Also note that: <ul style="list-style-type: none"> The UDF (which is incorporated into the HIA – see Section 9.1.4) refers specifically to building height informants; and The HIA recommends that the heights of buildings in the portion of the site closest to the SAOO are kept lower than that of the bank of trees on the SAOO ridge (and that these buildings must include a range of building heights, variation in building form, and an avenue of trees lining the development along the edge of the riverine corridor). Memorialisation of the legacy of the First Nations groupings is being considered in direct and ongoing consultation with the First Nations Collective for the area. Memorialisation is currently proposed by including a media centre for the First Nations people, providing a place of congregation, and incorporating the First Nations narrative into the design throughout the development, by for example, including reed inspired sculptures and building finishes, and incorporating First Nations motifs in building facades (amongst others). Bold and visual memorialisation of the indigenous people's narrative is supported by the First Nations Collective.	Paragraph 74	The northern-most corner was initially thought to be a potential site at the confluence of the two rivers near to an assumed potential site of pre-colonial crossing. This has been overtaken by the interaction with the FN Collective, and several sites at the centre of the site are now proposed for various FN-supported facilities/activities. A review of the River Club First Nations Report will show that First Nation living heritage has not been relegated to the northern most corner of the site, but have in fact, been made central and core to the entire site. And that the various strands of Indigenous living heritage will permeate all areas of the site. Now irrelevant

TR

245

Item No.	Issues raised by HWC	Response to HWC interim Comment contained in the HIA Supplementary Report	Reference to final comment	Response to HWC Final Comment
44.	<p>The HIA fails to assess the impact of the development on the most important heritage resource. The site's open, green qualities as a remnant of landscape that has considerable intangible historic and cultural heritage significance.</p>	<p>This is not correct - impacts on the historical character of the site are assessed in Section 10.3 of the HIA - this assessment takes account of the heritage significance of the broader area, and the sites, degraded, but open characteristics. The heritage practitioners have presented a well-researched and motivated opinion on the heritage significance of the site which is confirmed by the First Nations Collective, and the specialists argue that sense of place concerns of certain stakeholders, while being valid, are mostly visual in nature. It is acknowledged that this opinion of the heritage practitioners is contested.</p>	<p><u>Paragraph 77</u></p>	<p>Also refer to responses to items 9, 10 and 34.</p> <p>"Qualities" are not a heritage resource, and while the River Club site is relatively open and green, these qualities do not per se make the site a valuable heritage resource. Indeed, it is the history of its surrounds and of the river course itself that give the site its primary significance.</p>
45.	<p>The proposal completely destroys this remnant of the open, green of a landscape that has considerable intangible historic and cultural heritage significance (and this impact has not been assessed)</p>			<p>The heritage practitioners disagree.</p>
46.	<p>Meaningful discussion of the impact of the development on the significance of the wider TRUP cultural landscape is avoided altogether.</p>	<p>The history of the broader area is comprehensively described in Section 4 of the HIA, and is not contested, indeed, HWC has recognised the comprehensive research underpinning the HIA). Remaining heritage resources in the broader landscape are also documented (see Section 6 of the HIA, and Sections 4 and 5 of the HIA Supplementary Report), and the HIA confirms that the cultural significance of the area is derived from "the history of and concentration of historic elements in this landscape as well as the symbolic values of the Black and Liesbeek Rivers". In addition, on 15 October 2019, the Draft Two Rivers Local Spatial Development Framework (LSDF) was released for public comment. This report included a Phase 1 HIA and a "TRUP First Nations Report" (AFMAS Solutions, 2019). Following TRUP First Nations Report, AFMAS Solutions were appointed to build on the "TRUP First Nations Report" (AFMAS Solutions, 2019).</p> <p>Refer to the response to item 1.</p> <p>Based on the findings of the HIA and this supplementary research, the heritage specialists reiterate that, other than the SA/O and Liesbeek River, other tangible historic elements in the landscape are too far from the site to be affected by the proposed development, and "no cross-cutting, narrative-defining event for any of the strands of the indigenous narrative... can be attributed specifically to the River Club site" (Section 2(D) of River Club First Nations Report). The heritage practitioners therefore argue that the significance of the landscape that is attributed to the site is associative and has no clear or defined place or locus, or even any physical characteristics other than being rooted here in this general location on the floodplain of the Liesbeek River. The specialists therefore argue that this heritage cannot be destroyed, but rather there is an opportunity for the articulation or making public, even celebration, of the significance of the place and of its historical associations. This opinion is shared by the First Nations Collective.</p>	<p><u>Paragraph 49</u></p>	<p>Also refer to responses to items 2 and 9.</p> <p>The heritage practitioners disagree and indicate that they have argued iteratively that the recovery of the Liesbeek riverine corridor has a positive impact on the significance of the wider TR-area and of the Liesbeek River as a whole.</p>

TK

246

Item No.	Issues raised by HWC	Response to HWC Interim Comment contained in the HIA Supplementary Report	Reference to final comment	Response to HWC Final Comment
47.	HWC queries whether the proposed earthworks and infrastructure indeed constituted a greater public good.	<p>With regard to the greater public impact of the development, the project will entail so-called triple bottom line costs and benefits, i.e. social, environmental and economic costs and benefits. The triple bottom line concerns itself with environmental sustainability, social equity and economic efficiency and is typically employed by companies seeking to report on their performance. The concept serves as a useful construct to frame the evaluation of environmental impacts of the project.</p> <p>The HIA concluded that the impact of the "Island Concept Alternative" on the historical setting of the SAOO would be <i>significant</i>, but that the impacts of the Riverine Corridor Alternative (that steps back from the SAOO and restores the Liesbeek River Floodplain) on the historical setting of the SAOO are tolerable. The ecological benefits of the Riverine Corridor Alternative are also significantly higher than for the Island Concept Alternative.</p> <p>The specialist team and EAPs have not identified any fatal flaws associated with the Riverine Concept Alternative and have assessed that (as well as residual impacts) there will be a number of highly significant socio-economic benefits to local communities and government, and that the immediately adjacent ecological environment will be improved.</p> <p>The LLPT is committed to ensuring that the development is operated to high standards, achieved through implementation of the recommended mitigation measures and ongoing monitoring of performance. Specialist studies and the BA Report demonstrate that, through effective implementation of detailed design and the stipulated mitigation measures, the adverse impacts can be reduced to tolerable levels, and that benefits are significant. The Riverine Corridor Alternative is therefore positively assessed for development.</p> <p>Ultimately, decision makers will need to consider whether to authorise the project, which brings significant economic and ecological benefits and is in line with the latest draft Local Spatial Development Framework for the area, but which will lead to irreversible (but acceptable) heritage and visual impacts.</p>	<p><u>Paragraph 42</u></p>	<p>Also refer to 47</p>
48.	<p><u>The report repeatedly extols the benefits of "restoration" of the Liesbeek Riverine corridor (a notion considered by some as inauthentic and contrived).</u></p>		<p><u>Paragraph 92</u></p>	<p><u>The heritage practitioners (and project team) disagree - the environmental benefits have always been a primary concern to the developer and carried through from the first design concept to date. It is not clear on what basis HWC holds this view.</u></p>
49.	<p><u>It is clear that it is also the substantial earthworks required to artificially raise the site some 2 to 3 meters out of the 100 year floodplain and the Berkley Road extension that contribute to the high capital costs that underpin the motivation for the high bulk development scenario.</u></p>		<p><u>Paragraph 92</u></p>	<p><u>Regardless of whatever form development takes on the site, whether minimal or not - will require the raising of the development out of the floodplain. As the MSDP vision is to see "urban inner core development" this would be an inevitability result with any development.</u> <u>The high bulk is not only associated with the infrastructure cost of the roads and raising of the development level, the costs are also associated with the clean-up of the Liesbeek corridor, the provision of inclusionary housing, provision of First Nation infrastructure (media, heritage centre, gardens, landscaping) and the general cost of development that would be incurred (including electricity infrastructure, general earthworks and general building costs -with any commercial project - and therefore appropriate level of bulk is required to make it viable (for developer, the tenants of the development, and the City and Province).</u></p>
50.	<p>Consider the no-go option as an alternative</p>	<p>The no-go alternative is described in Section 9.3.1 of the HIA, and the HIA concludes that this alternative is a poor option and will not make any of the necessary contributions to the city or to City Council strategies; and it will fail to articulate the historical significance of the place.</p>	<p><u>Paragraph 104</u></p>	<p><u>It will retain a private golf course, with polluted riverine frontages, no inclusionary housing, no memorialisation of the FN or FN infrastructure (heritage centre), no eco corridor, no safe circle walking trails, no job creation, no improvement to the arterial grid.</u></p>

TK



247

Item No.	Issues raised by HWC	Response to HWC Interim Comment contained in the HIA Supplementary Report	Reference to final comment	Response to HWC Final Comment
51.	<p>It is unfortunate that the engagement with First Nations groups did not materially change the design approach in a manner which is reflective of the intangible heritage significance identified.</p>		<p>Paragraph 105</p>	<p>It is concerning that HWC appear from this comment not to be interested in the actual views and aspirations of the FN as recorded in the TRUP and RC Reports which have fed from the positive engagements between the FN Collective and the developer (through an independent social facilitator), but apparently want to use the FN engagement as an argument to support their interim comments and to justify the preconceived negative views HWC has of the proposed development.</p> <p>Through this engagement with the First Nation it has become clear that the First Nation value the development opportunity more deeply than the conservation of an open area (for golf practice or other recreational activities) with no tangible connection to their heritage.</p> <p>The assertion that there is a disconnect between First Nations' understanding of heritage resources (and significance) is therefore rejected by the specialist team.</p>
52.	<p>References throughout the IACOM comments to "various stakeholders (par 56), "broad community" (par 60), "wider public" (par 17), "representations on I&A P underscoring" (par 49), "attributed by the stakeholders" (par 61), "significant number of other stakeholders" (par 63), "wider picture" (par 66), "considerable number of public and government stakeholders" (par 76)</p>		<p>Paragraph 56 Paragraph 60 Paragraph 17 Paragraph 49 Paragraph 61 Paragraph 63 Paragraph 66 Paragraph 76</p>	

248

B. HIA Technical

Item No.	Issues raised by HWC	Response to HWC Interim Comment contained in the HIA Supplementary Report	Reference to final comment	Response to HWC Final Comment
A. HIA Technical				
53.	The entire TRUP precinct must be (assessed from a heritage perspective) holistically	<p>The development is in line with the provisions of the Draft Local Spatial Development Framework released by the Municipality in October 2019. Although the River Club is located within the Two Rivers local area, the River Club planning application was submitted prior to finalisation of the SDF for the following reasons:</p> <ul style="list-style-type: none"> • The River Club project team was never given any clear guidelines or information about the official status in respect of the Two Rivers local area initiative; • The time frame for the LSDF has always been uncertain; and • The River Club is a private development initiative on privately owned land, and the proponent is permitted to submit a planning application in terms of the legislation. <p>Nevertheless, the history of the broader area is comprehensively described in Section 4 of the HIA, and includes a history of:</p> <ul style="list-style-type: none"> • Khoekhoe groups occupation and use of the area for grazing; • The importance of the rivers to the history of the area; • Conflict between Khoekhoe groups and Europeans settlers; • The defensive line established by the Dutch; • The agricultural use of the Liesbeek River catchment by the Dutch; and • Residential, commercial, and industrial encroachment on the agricultural landscape. <p>Remaining heritage resources in the broader landscape are also documented (see Section 6 of the HIA).</p> <p>The HIA confirms that the cultural significance of the area is derived from "the history of and concentration of historic elements in this landscape as well as the symbolic values of the Black and Liesbeek Rivers".</p> <p>The Phase 1 HIA for the Two River Local Area (which assessed the significance of the Two River local area as a whole) has been released, and largely confirms the findings of the HIA for the River Club development (and concludes that development is possible at the River Club), even though there is a difference in how the practitioners interpret precinct boundaries within the area - see Sections 4 and 5 of the HIA Supplementary Report.</p>	<p><u>Paragraph 7</u></p> <p>Also refer to responses to items 24 and 29</p>	
54.	The HIA has been very well researched, and the historical background is well articulated. This includes the history of planning and development as it relates to the 20th Century.	Noted.	<p><u>Paragraph 44</u></p>	

TR

249

Item No.	Issues raised by HWC	Response to HWC Interim Comment contained in the HIA Supplementary Report	Reference to final comment	Response to HWC Final Comment
55.	<p>The HIA requires meaningful consultation with representatives of the First Nation and Cape Indigene groups in order to better understand the significance of the site to these groups</p> <p>There appears to have been no meaningful engagement with the First Nation communities to either understand or help inform, the identification of heritage resources.</p>	<p>On 15 October 2019, the Draft Two Rivers Local Spatial Development Framework (LSDF) was released for public comment. This report included a Phase 1 HIA and a "TRUP First Nations Report" (AFMAS Solutions, 2019). The main findings of this report are as follows:</p> <ul style="list-style-type: none"> The Two Rivers local area (and beyond) is the historic landscape of the indigenous First Nations; That the indigenous narrative of the Two River local area, as articulated by the First Nations Collective, is congruent with the historic record; and Acknowledgement of the First Nations narrative is the primary aspiration of the First Nations. <p>Based on these findings, the following recommendations were made in this report:</p> <ul style="list-style-type: none"> Acknowledge, embrace, protect and celebrate the indigenous narrative in design and planning at all scales of the Two River local area; Provide a gathering place for indigenous cultural performances; Incorporate indigenous plants – used as food, medicine and ritual purposes – into landscaping; Provide an Indigenous Peoples centre; and Rename the Two River local area as an integral part of the indigenizing of the TRUP landscape. <p>Following this report, AFMAS Solutions were appointed to build on the "TRUP First Nations Report" (AFMAS Solutions, 2019) – refer to response to item 1. This report, the "River Club First Nations Report" (AFMAS, 2019a – attached as River Club First Nations Report) was informed by:</p> <ul style="list-style-type: none"> Primary research, including key informant interviews with various First Nations representatives for the "TRUP First Nations Report" (AFMAS Solutions, 2019); Key informant interviews with First Nation knowledge keepers and traditional custodians of the Goringhaiqua, Gorachouqua, Cochoqua, Griqua Royal Council and the San House of Nlinthe to understand First Nation intangible heritage significance and indigenous "sense of place and meaning" of the River Club site; and Deconstruction of the Two Rivers local area cultural landscape through multi-layered and multi-dimensional contextualizing to locate the indigenous narrative of the River Club within this area. <p>The heritage specialists on the project team therefore attest that:</p> <ul style="list-style-type: none"> Meaningful consultation with representatives of the First Nation has been achieved; and The heritage resources identified in the HIA for the River Club are mirrored / confirmed by the First Nations historical account / narrative. 		<p><u>This has been carried out</u></p>
56.				<p><u>This has been carried out</u></p>
57.	<p>It is a strong recommendation that in order to correct the inherent flaws in the HIA in this regard, that the River Club enter in to a new engagement process with First Nations representatives or awaits the outcomes of (the TRUP LSDF First Nations engagement) process.</p>			<p><u>The River Club has completed a new engagement process with First Nations groups</u></p>
58.	<p>The HIA would benefit from input from a specialist consultant, with the requisite expertise in dealing with the intangible aspects pertaining to the wider TRUP area. This input would assist in focussing on, in particular, the strong sense of place and meaning of the site pertinent to the First Nation Representatives. It is a strong recommendation that a supplementary report from an expert in this field is incorporated into the HIA.</p>			<p><u>This has been carried out</u></p>
59.	<p>Where comment has been received from First Nations Peoples this comment has seemingly been dismissed as a "difference of opinion", rather than a meaningful interrogation of concerns raised</p>			<p><u>This has been carried out</u></p>

TR



250

Item No.	Issues raised by HWC	Response to HWC Interim Comment contained in the HIA Supplementary Report	Reference to final comment	Response to HWC Final Comment
60.	NHRA Section 38(3)(a) "The identification and mapping of all heritage resources in the area affected" has only been partly complied with as the identification and mapping of heritage resources is conceptually flawed (see issues 2, 7, 9, 16, 17, 18, 21, 22, 23, 26, 27, 28, 30, 32 and 33).	The history of the broader area is comprehensively described in Section 4 of the HIA and is generally not contested: there is no documented or oral history that suggests that the River Club site is of particular historic significance; nevertheless, the broader area is acknowledged to be of high cultural significance. It is the opinion of the heritage practitioners who compiled the HIA (and others) that the broader area (including the Two Rivers local area) is comprised of a variety of precincts of very different topographies, histories of use, of development-type, each with its own qualities and a variety of potential heritage significances. It is apparent that HWC arrive at a different opinion regarding the heritage capital that is, or should be, assigned to the River Club (see responses to items, 7, 9, 16, 17, 18, 21, 22, 23, 26, 27, 28, 30, 32 and 33). Heritage resources have been identified (Section 6 of the HIA) and mapped (Section 10.8 of the HIA and Sections 4 and 5 of the HIA Supplementary Report) in the HIA for the River Club, and notwithstanding the difference in opinion relating to the heritage resources that occur at the site and immediately surrounding area, the legislative requirements of Section 38(3)(a) of the NHRA are clearly achieved in the HIA for the River Club. Refer to the responses to items 53 and 58.	<p><u>Paragraph 43</u></p> <p><u>Paragraph 54</u></p> <p><u>Paragraph 69</u></p>	<p>Refer primarily to the supplementary response to item 33</p> <p>Also refer to responses to items 17, 22, 60, 61 and 69.</p>
61.	NHRA Section 38(3)(a) "The identification and mapping of all heritage resources in the area affected" can only be completed following meaningful engagement with First Nations Groups to identify heritage resources.	This opinion is noted but is not relevant to compliance with the legislative requirements of Section 38(3)(a) of the NHRA. However, the Executive Summary, the Preface and the Introduction do this.	<p><u>Paragraph 45</u></p>	<p>This has been carried out. It seems that the authors of the HWC Final Comment have not read the Supplementary Report or the First Nation Report</p>
62.	The identification and mapping of heritage resources is something that should be addressed in the first part of the report, and should set the tone of the report, rather than being relegated to a conclusion.	HWC places weight on the historical significance of the overall TR-area area that they feel should be identified and mapped, and using reasons that could apply to any piece of land in the country, without providing any concrete site specific reasons linked to the River Club (Valkenberg, and SAAO have their own unique history, but cannot be equated to the River Club, other than being place along the same river, together with many thousands of acres of land between the Atlantic Ocean and Kirstenbosch that share this river frontage but not included in an arbitrarily defined area. The Supplementary Report includes the mapping of heritage resources in the area suggested by the City Council, by Attwell/Jacobs and by Postlethwayt with the heritage practitioners own commentary on those alternate views. It is difficult to understand how this could be "inadequate". Indeed, the heritage practitioners are at a loss to interpret this comment from HWC.	<p><u>Paragraph 45</u></p>	<p>Also refer to responses to items 17, 22, 61 and 69</p>

TK

251

Item No.	Issues raised by HWC	Response to HWC Interim Comment contained in the HIA Supplementary Report	Reference to final comment	Response to HWC Final Comment
63.	<p>NHRA Section 38(3)(b) "Assessment of the significance of such resources" is inadequate because it stands to reason that if the identification and mapping of heritage resources is flawed, the grading of significance will be flawed (as will the conclusions of the HIA).</p>	<p>The significance of heritage resources has been assessed (Section 7 of the HIA and Sections 4 and 5 of the HIA Supplementary Report) in the HIA for the River Club, and notwithstanding the difference in opinion relating to the heritage resources that occur at the site and immediately surrounding area, and the significance thereof (see response to item 58), the legislative requirements of Section 38(3)(b) of the NHRA are clearly achieved in the HIA for the River Club. This simple linear argument is addressed (and contested) in section 8 of the Supplement.</p>	<p><u>Paragraph 57</u> <u>Paragraph 58</u> <u>Paragraph 59</u> <u>Paragraph 70</u></p>	<p>The HIA and Supplementary Report deal with significance at great length. If HWC disagrees, it is for HWC to determine grading and assessments of significance of a potential heritage resource in accordance with s8 and s27 of the NHRA and in doing so comply with s27 (8) regarding the rights of the landowners to be engaged with and to give representations before doing so. For HWC to state that it is "their opinion" that "fundamental grading of significances is wrong" misplaces and abdicates the responsibility of the HWC onto the owner. In terms of s8 and s27 HWC is responsible and must be accountable for its actions and the performance of its functions under this system of grading, and it is HWC that is responsible for identifying and the management of provisional heritage identified resources. However, since the provisional protection order was gazetted in April 2018, HWC has not taken any steps to investigate or motivate the significance of the RC as a heritage resource or any steps to justify its claims regarding grading of the RC or the overall TRUP area for that matter. Or to engage with the landowner. On the other hand, the owner of RC has furnished an extensive HIA from two respected and independent heritage practitioners that do not concur with the unsubstantiated views of HWC. HWC seems to think that it can go on insisting that the applicant should continue to submit analysis until HWC agrees with that analysis.</p>
64.	<p>NHRA Section 38(3)(b) "Assessment of the significance of such resources" is inadequate because the values attributed to the site by the stakeholders have not been carried through into the report and have therefore not adequately informed the unique significance of the site and appropriate development indicators (see especially issues 2 and 7).</p>	<p>The HIA acknowledges the statement that some stakeholders value the 'openness' in the sense of place of the floodplain, as well as the views from within and across the floodplain, but noting that no cross-cutting, narrative-defining event, battle or encounter is attributed to have taken place at the site, and that no intangible reference to such an event having taken place at the site is made, the authors of the HIA argue that while the development may lead to a significant visual impact, is of relatively low heritage significance: "whether the site is developed or otherwise, it will always have a history which not manifested on the ground and cannot be destroyed by physical changes". It is noted that some stakeholders arrive at a difference in opinion in this regard. The significance of heritage resources has been assessed (Section 7 of the HIA and Sections 4 and 5 of the HIA Supplementary Report) in the HIA for the River Club, and notwithstanding the difference in opinion in the assessment of heritage significance, the legislative requirements of Section 38(3)(b) of the NHRA are clearly achieved in the HIA for the River Club.</p>		<p>Refer above</p>
65.	<p>NHRA Section 38(3)(b) "Assessment of the significance of such resources" is inadequate because the HIA undervalues the significance of the heritage resources associated with the site generally, or is confusing or contradictory (see issues 19 and 20)</p>	<p>It is the opinion of the heritage practitioners who compiled the HIA (and others) that the Two River local area is comprised of a variety of precincts of very different topographies, histories of use, of development-type, each with its own qualities and a variety of potential heritage significances. In this context, the HIA finds that, apart from the Liesbeek River, the site itself has little obvious heritage significance, noting that:</p> <ul style="list-style-type: none"> • The site is either entirely or mostly an infill site; • Much of the history that derives the cultural significance of the Two Rivers local area extends over a far broader spatial scale; • The valley (or floodplain) in which the site is located, although an important component of the Liesbeek River as a landscape, has been transformed by urban development upstream and downstream of the site; • No tangible heritage relics or resources occur on the site; and • No historic events are attributed to have occurred at the site. <p>Therefore, while the HIA acknowledges the role that the 'openness' of the site plays in determining the current sense of place, as well as the importance of views from within and across the floodplain (which are comprehensively assessed in the</p>	<p><u>Paragraph 62</u></p>	<p>The heritage practitioners repeat: HWC seems to think that it can/should go on insisting that the applicant should continue to submit analysis until HWC agrees with that analysis. The heritage practitioners repeat: their view of the significances (in kind or quantity) of the River Club site are not significantly different from those of most commentators (including HWC); there is difference, however, over the visibility or apparentness of those significances in the landscape and, therefore, of the various components of the landscape as heritage resource(s).</p>

JK

252

Item No.	Issues raised by HWC	Response to HWC Interim Comment contained in the HIA Supplementary Report	Reference to final comment	Response to HWC Final Comment
66.	<p>NHRA Section 38(3)(b) "Assessment of the significance of such resources" is inadequate because the HIA post-rationalises the assessment of significance based on a pre-conceived development concept</p>	<p>VIA), it argues that this openness and these views are of low heritage significance: "whether the site is developed or otherwise, it will always have a history which does not manifested on the ground and cannot be destroyed by physical changes". Although it is acknowledged that HWC hold a different opinion in this regard, it is on this basis that the heritage practitioners defend their assessment of heritage significance of the site and immediately adjacent areas. Furthermore, this view is supported by the First Nations Collective who have confirmed that "no cross-cutting, narrative-defining event for any of the strands of the indigenous narrative... can be attributed specifically to the River Club site" (Section 2(D) of River Club First Nations Report). The significance of heritage resources has been assessed (Section 7 of the HIA and Sections 4 and 5 of the HIA Supplementary Report) in the HIA for the River Club, and notwithstanding the difference in opinion in the assessment of heritage significance, the legislative requirements of Section 38(3)(b) of the NHRA are clearly achieved in the HIA for the River Club. The proponent seeks to develop a mixed use, "live, work and play" facility at the site, and this development must be financially viable for the proponent to proceed. Nevertheless, the development proposal has been formulated in collaboration with a multi-disciplinary team that has responded to independent environmental and specialist input. In this context there have been more than 250 iterations to the development proposal / layout (many in response to input from the heritage specialists on the project team, and the assertion that the HIA post-rationalises a pre-conceived development concept is therefore rejected (also see response to item 28 regarding development responses to specialist findings). The significance of heritage resources has been assessed (Section 7 of the HIA and Sections 4 and 5 of the HIA Supplementary Report) in the HIA for the River Club, and notwithstanding the difference in opinion in the assessment of heritage significance, the legislative requirements of Section 38(3)(b) of the NHRA are clearly achieved in the HIA for the River Club.</p>		<p>The heritage practitioners repeat: HWC seems to think that it can/should go on insisting that the applicant should continue to submit analysis until HWC agrees with that analysis.</p>
67.	<p>NHRA Section 38(3)(b) "Assessment of the significance of such resources" is inadequate because the assessment of heritage resources has ignored both the existing studies, and the wider picture, and as such has attempted to grade significance in the isolation of a much wider system. That the applicant has chosen to proceed with the application, without meaningful reference to any of the previous studies is regarded as unfortunate.</p>	<p>After reporting the history of the broader area, which has also been drawn from various previous research), the HIA: <ul style="list-style-type: none"> • Confirms that "the area in which the River Club is situated is historically important for the role it played in the distant past"; and • Places the site "within the core of this early contested landscape" (see Section 4.5 of the HIA) and within an "associative cultural landscape" with definable/known historical associations of great socio-political import. <p>Nevertheless, it is the opinion of the heritage practitioners who compiled the HIA (and others) that the Two River local area is comprised of a variety of precincts of very different topographies, histories of use, of development-type, each with its own qualities and a variety of potential heritage significances. In this context, the HIA finds that, apart from the Liesbeek River, the site itself has little obvious heritage significance (refer to the response to item 17 regarding the absence of objects and history specifically attributed to the River Club site). The significance of heritage resources has been assessed (Section 7 of the HIA and Sections 4 and 5 of the HIA Supplementary Report) in the HIA for the River Club, and notwithstanding the difference in opinion in the assessment of heritage significance, the legislative requirements of Section 38(3)(b) of the NHRA are clearly achieved in the HIA for the River Club.</p> </p>	<p>Paragraph 66</p>	<p>The heritage practitioners repeat: HWC seems to think that it can/should go on insisting that the applicant should continue to submit analysis until HWC agrees with that analysis.</p>
68.			<p>Paragraph 47</p>	<p>The heritage practitioners indicate that none of the "previous studies" preclude development of the River Club site. Indeed, O'Donoghue's phase one for the River Club site and Postlethway's recent phase one for the entire TR-area, in particular, anticipate development of the site in a manner not entirely inconsistent with what is proposed. Refer to responses in Point 33 and 69 and 71 and 75 regarding differences with other studies and drawing on them and referencing them</p>

TR

253

Item No.	Issues raised by HWC	Response to HWC Interim Comment contained in the HIA Supplementary Report	Reference to final comment	Response to HWC Final Comment
69.	In general and in suite of HWC having previously advised that whilst individual land owners are entitled to proceed with an HIA for their own development to ignore the existing studies and the bigger TRUP picture could be "at their own peril"	The HIA reports the history of the broader area and has drawn from various previous research. The site is located in a significantly transformed floodplain between even more radically transformed land, is degraded and will be further affected by the future development of the Berkeley Road extension. Nevertheless, the HIA acknowledges the role that the 'openness' of the site plays in determining the current sense of place, as well as the importance of views from within and across the floodplain, but argues that while this may be a significant visual impact, it is relatively low heritage significance: "whether the site is developed or otherwise, it will always have a history which not manifested on the ground and cannot be destroyed by physical changes".	Paragraph 65	The HIA and the Supplementary Report, which deal with the River Club and its context, together answer all of HWC's questions outlined in the Interim Comment. The several other studies, both land-use planning frameworks and phase one "HIAs" (which do not include development proposals or assessments), and HWC's various comments on those studies are recognised and referred in the HIA and Supplementary Report. The primary difference between the HIA and Supplement and the other studies is that the heritage practitioners task is, essentially, to assess the impact of a development proposal on heritage resources, and in our analysis the development proposal developed and refined with numerous significant improvements and mitigations since 2017). In our analysis, leads to significant recoveries of significance, including the making visible, even tangible, of otherwise invisible intangible heritage of First Nations people, as well as other cultural significances.
70.	The HIA has barely acknowledged or interrogated the significance that HWC and previous reports have attributed to the wider valley context	The HIA reports the history of the broader area and has drawn from various previous research. The site is located in a significantly transformed floodplain between even more radically transformed land, is degraded and will be further affected by the future development of the Berkeley Road extension. Nevertheless, the HIA acknowledges the role that the 'openness' of the site plays in determining the current sense of place, as well as the importance of views from within and across the floodplain, but argues that while this may be a significant visual impact, it is relatively low heritage significance: "whether the site is developed or otherwise, it will always have a history which not manifested on the ground and cannot be destroyed by physical changes".		The heritage practitioners have iteratively argued that the River Club is a part, a small part, of the wider Liesbeek River area with its history.
71.	NHRA Section 38(3)(c) "Assessment of the impact of the development on such heritage resources" is inadequate because it stands to reason that if the identification and mapping of heritage resources is flawed, the grading of significance will be flawed any assessment of the development on identified heritage resources must be flawed.	An assessment of the impact of the development on heritage resources is provided in the HIA for the River Club (Section 10 of the HIA), and notwithstanding the difference in opinion in the identification of heritage resources at the site (see response to item 58) and on the assessment of heritage significance (see response to item 63), the legislative requirements of Section 38(3)(c) of the NHRA are clearly achieved in the HIA for the River Club.		Also refer to responses to items 17, 22, 61 and 68. The heritage practitioners mapping of heritage resources relies on the "previous studies" and their argument regarding significance relies on taking account of significances that extend well beyond the River Club site and the TR-area. Indeed, their assessment of significance relies precisely and primarily on the greatest historical significance that extends from the sea to the head of the Liesbeek. The assessment is not "flawed" even if HWC is unpersuaded by the conclusions.
72.	If the site of the memorial is not fixed, how can the impact (benefit?) on heritage resources be assessed?	The purpose of memorialisation at the site is to "acknowledge, embrace and celebrate" the narrative of the First Nations groupings, and various proposals to achieve this memorialisation are currently being explored in direct and robust consultation with the First Nations Collective. Ultimately, provided that the acknowledgement and celebration of the Indigenous narrative is achieved to the satisfaction of these people (and the heritage specialists on the project team), these benefits are recognised and supported in the Supplement. Greater detail in the design development of the mechanisms for the implantation of the First Nations narrative will unfold later in the process. For the moment it is sufficient that the heritage and environmental authorities approve the concept as illustrated in the architects' drawings attached.		

254

Item No.	Issues raised by HWC	Response to HWC Interim Comment contained in the HIA Supplementary Report	Reference to final comment	Response to HWC Final Comment
73.	<p>NHRA Section 38(3)(c) "Assessment of the impact of the development on such heritage resources" is inadequate because the HIA fails to assess the impact of the development on the most important heritage resource: The site's open, green qualities as a remnant of landscape that has considerable intangible historic and cultural heritage significance.</p>	<p>An assessment of the impact of the development on heritage resources is provided in the HIA for the River Club (Section 10 of the HIA and Sections 4 and 5 of the HIA Supplementary Report), and notwithstanding the difference in opinion on the assessment of heritage significance (see response to item 63), the legislative requirements of Section 38(3)(c) of the NHRA are clearly achieved in the HIA for the River Club. The site is not a remnant of a green landscape, but is situated on reclaimed engineered land.</p>	<p>Paragraph 55</p>	<p>As noted previously, a quality is not a heritage resource. A quality may give significance to a place, and the practitioners do not argue that the qualities of "openness" and "greenness" are not significant qualities of this part of the Liesbeek River and what will have been low-lying wetlands. However, these qualities, while interrupted by the proposed development, will not disappear: the proposal is to transform them, providing better greenness and greater ecological functionality, and a clearer, more distinctly recognisable riverine corridor. The "openness" is a quality that will be interrupted, but the topography more widely will still exist, but like the surrounding components of the environs, will be transformed into a more useful and integral part of the urban environment.</p>
74.	<p>NHRA Section 38(3)(d) "Evaluation of the impact of the development on heritage resources relative to the sustainable social and economic benefits to be derived" is inadequate because the impact of the development on a site which has been recognized previously by HWC as being of Provincial, if not National significance, is not acknowledged (see Issue 45).</p>	<p>The history of the broader area is comprehensively described in Section 4 of the HIA and is not contested. Remaining heritage resources in the broader landscape are also documented (see Section 6 of the HIA), and the HIA confirms that the cultural significance of the area is derived from "the history of and concentration of historic elements in this landscape as well as the symbolic values of the Black and Liesbeek Rivers". Also see response to item 45 regarding the heritage significance of the site in the context of the broader area. In this context it is clear on what basis HWC arrive at the opinion that the entire River Club property is of any specific heritage significance not associated with the broader TR area (the river course excluded). It is also not clear how Section 38(3)(d) of the NHRA is not complied with in this context.</p>	<p>Paragraph 84</p>	<p>It is misleading to state "against a site which has been recognised by HWC as being a Provincial if not national significance" – HWC merely issued a notice of intent in 2017 for public comment and this was never taken any further – so how can this preliminary action that to date has not been acted upon be regarded in any manner as HWC recognising the "TRUP" site as provincial or national significance – in fact by doing nothing one can assume they decided it was not the case</p>
75.	<p>It is further noted that other than acknowledgment of process followed thus far, the HIA and supplementary reports have not acknowledged or interrogated the significance that HWC and previous reports have attributed to the wider valley context</p>		<p>Paragraph 85</p>	<p>Also refer to response to item 69 and 71</p> <p>The heritage practitioners do not agree with this statement: the reports clearly interrogate the significances attributed to the wider valley and the site, and they disagree with this view and provide cogent reasons for their departure, where there is departure.</p>
76.	<p>That the site falls within the Urban Inner Core in terms of the MSDF does not override heritage considerations</p>	<p>Correct. The necessary environmental and heritage approvals are required in order to develop the site notwithstanding its status in terms of the MSDF.</p>		
77.	<p>Noting that the proposed development is in line with the City of Cape Town's new Metropolitan Spatial Development Framework (MSDF), is not an evaluation of the impact of the development on heritage resources.</p>		<p>Paragraph 87</p>	<p>Correct</p>
78.	<p>It is noted that the revised MSDF designates the River Club and TRUP area as part of the "Urban Inner Core" and that development within the area is supported in principle</p>		<p>Paragraph 87</p>	<p>Correct</p>

TK



255

Item No.	Issues raised by HWC	Response to HWC Interim Comment contained in the HIA Supplementary Report	Reference to final comment	Response to HWC Final Comment
79.	<p>A high level spatial planning tool which supports development in principle does not override heritage considerations or indeed mean that a media project is appropriate on this particular site in comparison with an upgrade to the Voortrekker Road Corridor for example.</p>			<p>Refer to the response to item 72</p> <p>Regarding reference to "media project" – also refer to responses to items 34 and 35.</p>
80.	<p>The HIA has ignored applicable provisions of the Table Bay Spatial District Plan (SDP) and Environmental Management Framework (EMF) 2012</p>	<p>It is not irregular to deviate from a District Plan. The District Plan is outdated. The proposed development represents a change in the way development of the site is considered. Whereas the Table Bay District Plan does not consider the site developable, it has been demonstrated from detailed technical studies that the site is indeed developable, with the major motivating factors being:</p> <ul style="list-style-type: none"> Raising the level of the site above the 1:100 floodplain will not have a significant effect on flood levels (as demonstrated in the surface water hydrology report, attached as Annexure H to the motivation report); The CoCT's desire to develop the Berkeley Road extension, which will change the existing character of the site, and will provide enhanced access opportunities onto the site; and The policy objective of the authorities for the Two Rivers area to become a mixed use and mixed tenure environment. <p>Furthermore, the 2018 Municipal Spatial Development Framework states that specific and immediate implementation actions that the City must undertake include "reviewing district plans to interpret the reviewed MSDF" (pages xv and 90 of the MSDF). The Table Bay District Plan is currently under review, with the updated version to be made available for public comment in May/June 2020. This updated version should (in theory) be consistent with the MSDF</p> <p>According to the "Consistency principles and post-2012 amendments, as contained in Technical Supplement D of the 2018 MSDF, lower order spatial plans and policies must be consistent with higher order spatial plans and policies. The MSDF identifies the land as 'urban inner core' and therefore the lower order Table Bay District Plan is inconsistent with the higher order MSDF (and must be updated by the City in any event).</p> <p>It is also noteworthy that the latest spatial policy plan relating to the site is the Draft Two Rivers Local Spatial Development Framework. This Framework is both a City of Cape Town and a Western Cape Provincial Government local spatial planning initiative / proposal. It is pertinent that the development is in line with this</p>		
81.	<p>It is the view of HWC that the HIA has ignored [Table Bay Spatial District Plan - SDP 2012]. The adopted spatial planning policies should take preference over proposed policies which have not yet been adopted or are still within the consultation phase</p>	<p>Paragraph 89</p> <p>The project planners do not agree with this view: the applicants remain of the view that the adopted 2012 district plan is outdated and is in process of revision through the local area spatial development framework mechanism of the MPB-L.</p> <p>The MSDF which supports "Urban Inner Core" development, is the overarching Framework that sets out the current vision and policy of City and Province. The draft LSDF implements this vision and policy at precinct level.</p> <p>If it was not the vision of the City and Province why was the MSDF amended and the LSDF drafted? If this is the policy shift and the old district plan outdated then reasonable for a developer to propose an application for rezoning in line with this, which accords with current vision and policy in the MSDF and the draft LSDF policy which complies with the requirement of the 2018 MSDF, which states that specific and immediate implementation actions that the City must undertake include "reviewing district plans to interpret the reviewed MSDF" (pages xv and 90 of the MSDF</p>		<p>Also refer to responses to items 74 and 79</p>
82.	<p>The following provisions of the Table Bay Spatial District Plan (SDP) and Environmental Management Framework (EMF) 2012 must be taken into account:</p> <ul style="list-style-type: none"> Preserve the qualities of the various areas of the City, which exhibits a range of diverse character zones; Protect the historical built fabric, scale and texture of the historical areas of the City; Maintain the interface between the City and Table Mountain, retaining view corridors and scenic vistas and avoiding monolithic 	<p>Paragraph 88</p>		

TK

256

Item No.	Issues raised by HWC	Response to HWC Interim Comment contained in the HIA Supplementary Report	Reference to final comment	Response to HWC Final Comment
83.	<p>structures that block views;</p> <ul style="list-style-type: none"> Ensure that proposed development is in keeping and appropriate to the historical nature of the City; Ensure the retention and protection of historical areas, sites and features both above and underground; <p>Ensure that construction activities within the district and specifically within heritage and conservation areas do not negatively impact on the historical character of the area or fabric;</p> <p>The Table Bay Spatial District Plan (SDP) and Environmental Management Framework (EMF) 2012 is still the most relevant planning and policy framework applicable to the site</p>	<p>framework, and the developers highlight a number of factors that suggest more intense development at this site should be considered, including:</p> <ul style="list-style-type: none"> The policy objective of the authorities for the Two Rivers local area is to become a mixed use and mixed tenure environment. The vision is for the development to be a special place for the community – a vibrant destination that provides people with quality, public spaces and the chance to interact with the river edges in a meaningful way. The site located at the western gateway into the Two Rivers local area¹. An opportunity exists to improve this gateway into the Two Rivers local area with features such as mixed-use development, public access routes, statement buildings, quality public spaces, water features and landscaping. Specialist ecological investigations have demonstrated that the site and adjacent watercourses are degraded but retain certain ecological functions; and that development at the site provides an opportunity to improve the ecological condition of the site and adjacent watercourses without leading to significant ecological impacts. Set-backs will be retained at the interfaces between the site and adjacent rivers to restore ecological function in these areas and attenuate stormwater. Moreover, these buffer areas will be designed and landscaped to accommodate pedestrians, thus encouraging more interaction between the public and the river edges here. The site is located in a strategically important position within Cape Town – it is a highly accessible site located within close proximity to agglomerated places of work such as the Central Business District (CBD) and Paarden Eiland, and also has relatively good accessibility to the metropolitan south-east. The location of the site at the knuckle of the Main Road corridor, the Voortrekker Road corridor and the Klipfontein Road corridor means that it can be a generator of people and economic activity that may support and reinforce these corridors with higher densities and supplementary mixed-use development (in particular the Voortrekker Road corridor). The site is well located in respect to the public transport network: both Observatory rail station (to the south-west) and Koeberg rail station (to the north-east) fall within a 500m radius of the site, while the Voortrekker Road corridor and Main Road corridor – both of which carry bus and mini-bus taxi routes – are located within 1 km of the site. The development can therefore further the principles and strategies identified in the CoCT Transit Oriented Development (TOD) Strategic Framework (2016). The project provides an opportunity for the CoCT to generate sufficient funds to implement critical (socially beneficial), long-planned infrastructure at this location (e.g. the extension of Berkley Road and the widening of Liesbeek Parkway), thereby reducing existing movement barriers between the west (e.g. Sait River, Observatory and Mowbray) and the east (e.g. Maitland, Ndabeni and Pinelands). Implementation of Berkley Road extension, in particular, will improve permeability between the Voortrekker and Main Road corridors, including to train stations and public facilities. More foot traffic between these 		

TR

Handwritten signature

¹ A 'gateway' in planning / urban design terms is an important entry point into a place, and they can play a key role in identifying distinct areas (e.g. the Two Rivers local area).

257

Item No.	Issues raised by HWC	Response to HWC Interim Comment contained in the HIA Supplementary Report	Reference to final comment	Response to HWC Final Comment
		<p>corridors may lead to upliftment of these areas. Further, bike paths on the site will integrate with the newly implemented bike lanes along Albert Road in Salt River.</p> <ul style="list-style-type: none"> The Berkeley Road extension will change the existing character of the site, and will provide enhanced access opportunities onto the site and will make the site more accessible than is currently the case. <p>These motivations for deviations from policy are included in the BAR for the development (including Planning Policy overview – Appendix K1) and are substantiated by specialist studies and have been formulated after much research and careful planning by highly qualified professionals.</p>		
84.	<p>NHRA Section 38(3)(d) "Evaluation of the impact of the development on heritage resources relative to the sustainable social and economic benefits to be derived" is inadequate because the viability argument is regarded by HWC as unconvincing and inadequate (also see Issue 46).</p>	<p>As the site is privately owned, it is reasonable that a developer only consider alternatives that are financially viable to them (as well as the No-Go Alternative), and it is not clear on what basis HWC find the owner's viability argument to be unconvincing or inadequate. It is also not clear how Section 38(3)(d) of the NHRA is not complied with in this context. River Club has employed quantity surveyors and planners who job it is to assess viability in hard figures which they have done, and ranked the viability of the alternatives accordingly. Arguments against should be best informed by hard figures.</p> <p>Also see response to item 46 regarding the public impact of the development, and item 35 regarding the consideration of alternatives and viability considerations.</p>	<p><u>Paragraph 90</u> <u>Paragraph 95</u></p>	<p><u>The question of financial viability (to the proponent) is not directly related to the social and economic benefits anticipated from the project (which have been assessed by experienced, qualified specialists in the field of socio-economics).</u></p>
85.	<p><u>The Heritage significance of the site should be the primary informant of any development, and not linked to cross subsidisation opportunities</u></p>		<p><u>Paragraph 90</u></p>	<p><u>Heritage significance is one of the informants, together with environmental, and socio-economic assessments – the heritage practitioners do not agree that it is the primary informant is heritage, but rather all informants under NEMA and the NHRA, must be looked at as read with s38 (3) – which the applicant has done.</u></p>
86.	<p>That there appears to be a cross subsidy of the development to help fund the City's proposed Berkeley Road extension should in no way be used as mitigation to try and argue for sustainable and economic benefits.</p>	<p>Phase 1 of the Berkeley Road extension (bridge over the Black River and extension to the River Club development) will be offset by Development Contributions payable by the developer to the CoCT. These contributions (costs to the developer) would factor into the cost calculations for any development proposal. Development contributions are only made if the necessary approvals for the development are secured and the development proceeds, and the City does not have the necessary funds to implement this critical infrastructure at this stage in time, and therefore the components to this infrastructure that would be paid for and implemented by the developer are considered to be benefits of the development.</p>	<p><u>Paragraph 90</u></p>	
87.	<p>NHRA Section 38(3)(e) "Results of consultation with communities affected by the proposed development and other interested parties" is inadequate because there has been a lack, or avoidance, of a meaningful consultation with the First Nation Groups (see Issues 53, 54, 55 and 57).</p>	<p>Refer to the response to item 53 regarding engagement with representatives of the First Nations, Section 5 of the HIA and Section 2 of the Supplementary Report: Consultation and Commentary of Interested Parties, and River Club First Nations Report. The authors of the HIA motivate that compliance with Section 38(3)(e) is now achieved and exceeded.</p>		<p><u>It seems that HWC has not read the heritage Supplementary Report or the report by AFMAS on interactions with the FN Collective.</u></p>

TK

258

Item No.	Issues raised by HWC	Response to HWC Interim Comment contained in the HIA Supplementary Report	Reference to final comment	Response to HWC Final Comment
88.	<p>NHRA Section 38(3)(f) "the consideration of alternatives" is inadequate because there is no meaningful consideration of alternatives whatsoever (see Issues 37, 38 and 49).</p> <p><i>"Therefore the committee is of the opinion that the reports demonstrate insufficient exploration and intercomparison of a range of alternatives, thus the report still does not comply with Section 38 (3) (f)"</i></p>	<p>Alternative Development Proposals are discussed (Section 9.3 of the HIA and Section 7 of the HIA Supplementary Report) in the HIA for the River Club, and notwithstanding the difference in opinion relating to the heritage resources that occur at the site, or of HWCs dismissal of the proponents viability considerations (see response to item 35), the legislative requirements of Section 38(3)(f) of the NHRA are clearly achieved in the HIA for the River Club.</p>	<p><u>Paragraph 101</u> <u>Paragraph 108</u></p>	<p>Also refer to responses to items 29, 35, 39 and 82</p>
89.	<p>NHRA Section 38(3)(g) "Plans for mitigation of any adverse effects" is inadequate because mitigation ignores the broader issues pertaining to a highly significant cultural landscape.</p> <p><i>"The reports submitted do not adequately address mitigation of the impacts of this development. The reports fails to identify heritage resources adequately, which results in an inability to adequately assess the potential impact on the heritage resource. As a result it is not possible to assess mitigation measures"</i></p>	<p>Noting that there is no historical record specific to the River Club property – other than it being part of the broader historical landscape, the Liesbeek River Course excluded, the heritage practitioners have not been able to identify many heritage design informants applicable to the site, other than the restoration of the Liesbeek River Corridor, and setting back from and respecting the SAOO site (noting their opinion that objections to the development are largely visual in nature). Nevertheless, detailed engagements with representatives of the First Nations have made it possible to articulate the history of the broader landscape to these people in detailed design of the development (and, in doing so, to gain the support of these people for the development as proposed). This engagement has led to a number of new heritage design indicators that have been presented in Section 2 of the supplementary report.</p> <p>These additional indicators, as well as those presented in the HIA (Section 8) clearly achieve the legislative requirements of Section 38(3)(g) of the NHRA.</p>	<p><u>Paragraph 107</u></p>	<p>As explained, mitigations have been incorporated through design revisions since 2017.</p>
90.	<p>The Visual Impact Assessment (VIA) is inadequate in its assessment of the cultural landscape and defining the sense of place.</p>	<p>The VIA aims to present a dispassionate assessment of visual and sense of place impacts, and while the cognitive and narrative association to the site is considered when describing the existing sense of place to receptors, delegates the assessment of impacts on the cultural landscape to the heritage specialists / HIA (which is, in turn, informed by the VIA).</p>	<p><u>Paragraph 80</u></p>	
91.	<p>While the VIA finds that "a loss of sense of place is expected" (p37) and "new built structures will be visually intrusive", it simply echoes the HIA, by concluding that the judgement of visual impacts depends on "receptor perceptions". This is neither conclusive nor useful.</p>	<p>With regard to the visual impact, the VIA finds that the scale of the development will have visual impacts, and it is the location/context of the site - the surrounding built fabric and topography, visual absorption capacity, visibility, and landscape integrity - which effectively reduces such impacts to the assigned medium rating after mitigation.</p>	<p><u>Paragraph 81</u></p>	

TK

259

Item No.	Issues raised by HWC	Response to HWC Interim Comment contained in the HIA Supplementary Report	Reference to final comment	Response to HWC Final Comment
92.	The photomontages provided in the VIA are too crude and inaccurate to be considered as a useful tool to assess impact	These have been updated to reflect accurate perspectives of the current development proposal.	Paragraph 80	
93.	If HWC were the competent authority in this application it would require that the VIA either be conducted by a practitioner who HWC recognizes as having the requisite expertise for heritage related work, or should at least be conducted by an independent consultant, and not by the EAP's company.	The visual specialist is qualified, competent and experienced (and has compiled a number of VIAs to the satisfaction of HWC). The visual specialists employ at the same company as the (independent) EAP team does not compromise the specialist's independence to the developer.		
94.	HWC notes that it is only a commenting body in respect of the application and that consideration of the VIA is DEAs&DP's concern as the consenting body, however it is noted that HWC requires an independent practitioner who HWC recognises as having the requisite expertise for heritage related work to undertake the VIA. The VIA should establish a sense of place and landscape character and assess the development against these criteria		Paragraph 82	The visual specialist is qualified, competent and experienced (and has VIAs to the satisfaction of HWC).
95.	As indicated in the interim comment dated 13 September 2019 the assessment of the development on the significance in the HIA and VIA is flawed and thus does not comply with Section 38 (3) (c)		Paragraph 83	All issues noted from Par 1 to 82 of the final comments dated 14 Feb 2020 did not need to be repeated in the Final comment as they paraphrase the same wording stated in the Interim Comments of 13 September 2019. The Final comments do not however acknowledge any of the Responses to the prior issues raised: nor does HWC provide specialist reports to counter the LLPT specialist reports. (save to at times make vague references to "previous studies"). All the statements made in the Final Comments are based on vague "opinions" and "views" and reliance on unnamed stakeholders to defend their unsubstantiated personal views of the development. Findings of the LLPT specialist reports are either ignored or attacked without any substantial basis and the LLPT question whether the comments are rationally connected to facts or a pre-determined bias.

TK

AS

260

C. Heritage Application Process

Item No.	Issues raised by HWC	Response to HWC Interim Comment contained in the HIA Supplementary Report	Response to HWC Final Comment
B. Heritage Application Process			
96.	HWC has been led to believe that development issues for the entire TRUP area would be addressed prior to the development of individual pockets therein	<p>Although the River Club is located within the Two Rivers local area, the River Club planning application was submitted prior to finalisation of the SDF for the following reasons:</p> <ul style="list-style-type: none"> The River Club project team was never given any clear guidelines or information about the official status in respect of the Two Rivers local area initiative; The time frame for the LSDF has always been uncertain; and The River Club is a private development initiative on privately owned land, and the proponent is permitted to submit a planning application in terms of the legislation. <p>On 15 October 2019, that Draft Two Rivers Local Spatial Development Framework (LSDF) was released for public comment. This report included a Phase 1 HIA and a "TRUP First Nations Report" (AFMAS Solutions, 2019). This report, and a supplementary report compiled for the River Club development (AFMAS Solutions, 2019a) confirm that the heritage resources identified in the HIA for the River Club are accurate. The Phase 1 HIA concludes that the site is developable "provided the intangible heritage is respected and appropriate provision is made for spatial opportunities for commemoration", and the development is largely compliant with the Draft LSDF.</p>	<p>Also refer to response to item 29</p> <p>An individual private owner cannot be prejudiced by delays of the responsible statutory authorities (that could be indefinite and beyond its control). After delays independent of the River Club HIA process, the Draft LSDF for the TR-area has been published which sets out City's proposed new Framework for planning and development of the entire area, including the River Club and the draft LSDF was subsequently considered by the Heritage</p>
97.	(HWC have previously advised that) the IACOM will not prevent a separate application being submitted by any individual land owner, but that this would be at the risk of the applicant, should the broader TRUP Baseline Study not be completed		<p>Whilst HWC acknowledges that the TR-area report has still not been resubmitted, it finds fault with the River Club electing as a private owner to run its own separate application ahead of the TR-area application, assessing its own heritage resources and impacts, with independent specialist studies – which it did due to the very fact that it had no clear timeline (if even when the TR-area report would be finalised- and, as a private owner, could not be expected to never consider opportunities on its property until the remaining, very different parcels of land making up the whole 300 hectares of land were considered</p>
98.	In answer to query from DT&PW representative the Committee verbally informed that it could not prevent a separate application being submitted by an individual and owner, but would be at the risk of the applicant should the broader TRUP baseline study not be completed.		<p>Paragraph 21</p>
99.	Notes the TRUP baseline report has not been resubmitted since 8 Nov 2017		<p>Paragraph 79</p>
100.	The HIA is unlikely to comply with the provisions of s38(3) of the NHR Act until a meaningful engagement with the First Nation Groupings has taken place, both on a broader level, and more immediate one in terms of the site itself, and that furthermore is integrated with, and informed by the Baseline Study being conducted for the wider TRUP area, is unlikely to do so in the future		<p>This has been done- more than adequately.</p>
101.	It is problematic to consider the specifics of the River Club application in isolation from the broader (heritage) study (for TRUP)		<p>Also refer to the responses to items 2 and 45</p>

TK

261

Item No.	Issues raised by HWC	Response to HWC Interim Comment contained in the HIA Supplementary Report	Reference to final comment	Response to HWC Final Comment
102.	There has been no further submission of the TRUP Baseline Study, since the IACOM meeting of 8th November 2017			
103.	After previously noting the high heritage significance of TRUP, and the need to provisionally protect TRUP under Section 29 of the NHRA, a decision was taken at HWC Council in March 2018 to provisionally protect the River Club site in terms of the provisions of s29 of the NHRA (in response to news of the intent of the applicant to submit a new HIA for the redevelopment of the River Club)	Noted; however, the threat that the intent to comply with the provisions of Section 38(8) of the NHRA introduced to the site remains unclear.		
104.	<u>"given the strategic importance and high significance of the site (TRUP), it is a strong recommendation of the committee that the Council of HWC gives consideration to the provisional protection of the TRUP area under s29 of the NHRA"</u>		<u>Paragraph 12</u>	A notice of intention to protect the entire TRUP was published for comment in December 2017 – However despite this HWC has undertaken no further investigation or research of its own – nor did it invoke a s29 protection order for the TR-area, despite the stated intention noted more than 2 years and several months ago to determine its significance. However it invoked a s29 Protection Order over River Club in isolation, based purely on hearing about an application to develop, which order has been in place for almost the maximum period of 2 years – HWC has done nothing in terms of s29 to investigate the heritage significance it claims are under threat, and has been found to have failed to comply with the NHRA on procedural grounds for invoking the order (despite directive from the MEC Tribunal to do so).
105.	Throughout 2017 IGIG discussed grading of TRUP		<u>Paragraph 15</u>	
106.	Committee stands by recommendation that TRUP site should be provisionally protected so matter can be "fully investigated"		<u>Paragraph 16</u>	
107.	Committee notes - "wide" meeting held on 29 August 2017 to discuss the proposed protection of entire TRUP area		<u>Paragraph 17</u>	
108.	March 2018 Council decided to provisionally protect the River Club		<u>Paragraph 22</u>	

TK

262

Item No.	Issues raised by HWC	Response to HWC Interim Comment contained in the HIA Supplementary Report	Reference to final comment	Response to HWC Final Comment
109.	<p>Committee wanted the TRUP Baseline Study to address "the National Khoisan Legacy Project and understand the TRUP site may from part of the National Liberation and Resistance Project of Government – and this cannot be ignored"</p>		<p><u>Paragraph 13</u></p>	<p>Raised in interim comments and addressed in HIA supplementary report. The extensive engagement with the First Nation Collective and the Social Compact reached with the developer addresses the issue raised by these projects including, inter alia, a heritage trail and other initiatives set out in responses to items 51 and 56 in this document, and as detailed in the TRUP Report and follow on River Club First Nation Report which record the testimony of the First Nation Collective. The National Liberation and Resistance Project is an initiative of the National Heritage Council as per its website: "The Resistance and Liberation Heritage Route (RLHR) project is a national memory project aimed at commemorating, celebrating, educating, promoting, preserving, conserving and providing a durable testament of South African's road to independence. The project draws on heritage as testimony and depiction of South Africa's journey from the first contact with colonists to the attainment of democracy through a series of connected multi-dimensional sites at the local, provincial, national and international level. This is done in a manner that promotes the values enshrined in the South African Constitution namely, a participatory process of identification and documentation of significant sites, formal protection and management of heritage resources and the interpretation and commemoration of the liberation struggle. It uses an integrated approach to leverage the potential of resistance and liberation heritage to help demonstrate a shared past and shared future, and tap into the socio-economic potential of this heritage for the benefit of different communities, by harnessing multi-disciplinary strengths of diverse government and other sectors." The Legacy Projects are an initiative of Dept. of Arts & Culture. Per its website: Legacy projects refers to Monuments, museums, plaques, outdoor art, heritage trails and other symbolic representations create visible reminders of, and commemorate, the many aspects of South Africa's past. Government has initiated several national legacy projects to establish commemorative symbols of South Africa's history and celebrate its heritage. The legacy projects include the Women's Monument, Chief Albert Luthuli's house in KwaDukuza, KwaZulu-Natal, Battle of Blood River/Ncome Project, Samora Machel Project, Nelson Mandela Museum, Constitution Hill Project, Sarah Baartman Centre of Remembrance, Khoisan Legacy Project, Freedom Park Project, Dulcie September Legacy Project, Matola Raid Memorial Project, Bhambathe Project and Albert Luthuli Annual Memorial Lecture. The heritage and cultural initiatives proposed in the River Club development takes the initiatives proposed by government and actualises them on privately owned land funded by the developer not with government budget.</p>

TK

BN

263

Item No.	Issues raised by HWC	Response to HWC Interim Comment contained in the HIA Supplementary Report	Reference to final comment	Response to HWC Final Comment
110.	Provisional protection of the River Club site in terms of Section 29 of the NHRA does not preclude any party making a NEMA / NHRA Section 38(8) application in the interim – "What is noted is that a s29 provisional protection does not preclude an applicant from making an application (indeed s29(10) of the NHRA makes provision for this)"	Noted.		
111.	HWC claim they are confused by the contention in the HIA that the interim ruling of the MEC tribunal released on 5 Feb 2019 enabled the integrated NEMA and NHRA process to continue. They state this was never the case as HWC has always contended the s38 could proceed		Paragraph 30 Paragraph 31	This might be the case but there were differing legal opinions and until this was stated on record by the legal advisor for HWC and confirmed in the MEC Directive – it was an unresolved issue- and one of the primary reasons we understand why the DEADP became an applicant appealing the s29 provisional protection order was that it was of the view that it was wasteful and unnecessary expenditure on the part of HWC to invoke a s29 order when a comprehensive s38 process was underway – and remains of this view and wanted to ensure this action was not repeated in the future. Their concern is borne out by the fact that despite invoking s29 almost 2 years ago HWC has taken no steps under this section to consider if there is a heritage resource that requires protection from a threat – and failed to comply with the MEC Tribunal directive to remedy the procedural flaws.
112.	Following on Point 21 re the significance of "entire TRUP valley" that " This has been recognised and assessed in previous reports considered by HWC, a significant number of other stakeholders and indeed the IAcorn and HWC itself in taking steps to provisionally protect the site in terms of s29 of the NHRA		Paragraph 63	HWC repeats that it took steps to provisionally protect the site, which we assume it reference to the entire TRUP area due to HWC's own assessment of its high significance. However other than advertising a notice on intention in 2017 to provisionally protect- it did nothing more. So one has to question its intention in the first place and what is one to make of it then not proceeding to protect, if by its own claim it was of high significance
113.	HWC state the matter was appealed. "HOWEVER" it was procedurally flawed		Paragraph 28	The sentence is grammatically incorrect. The appeal was BECAUSE it was procedurally flawed AND appealed on merits. It is noted that on 7 Feb 2020 (being the third time the appeal resumed after being part heard) HWC has after almost 2 years failed to comply with the lenient Directive that called on HWC to "rectify" its procedural flaws

264

Item No.	Issues raised by HWC	Response to HWC Interim Comment contained in the HIA Supplementary Report	Reference to final comment	Response to HWC Final Comment
114.	<p>HWC claims the "meaningful engagement" process has been completed. And states that the S29 order remains in place.</p>		<p><u>Paragraph 29</u></p>	<p>HWC is however fully aware that at the MEC tribunal hearing on 6/7 Feb 2020 – the applicants and I&AP continued to argue that HWC had failed to engage meaningfully and further it remained a procedurally flawed order. So the statement of IACOM that in its view the "process is completed" is not factually correct or biased in its incompleteness. Having not been present at the first day of the resumed part heard matter, HWC legal counsel acknowledged on the following day that the order remains fatally and procedurally flawed and confirmed that regardless of this that the order lapses on 21 April 2020, if not withdrawn due to the flaw. Notably in this 2 year period HWC has failed to undertake any investigation of its own into its own claimed broadly stated Significances of the site, being the so called basis for HWC imposing the order in the first place. And yet adminishes and criticises the specialist experts of the River Club despite the RC having undertaken at its own costs meaningful engagements with the First Nation Collective and producing extensive independent research, investigations and reports from a wide field of specialist experts. Which HWC professes to have many disparaging opinions and views and recommendations on these reports without providing any supporting specialist studies to back these views (save for vague references and reliance on "other stakeholders" or the community at large" sharing their views). IACOM should also be aware of the MEC tribunal process and in particular the case - SHARA versus Aniston Hotel - brought to the attention of the parties at the hearing – which is a binding judgement of the high court of the Western Cape. Which despite being an important decision of the courts was apparently not known to the legal counsel of HWC. Settling out similar facts to the s29 order on RC and finding that the actions of the Council to be fatally flawed. HWC have asked time to consider the case and will respond on 13 March 2020 when the tribunal hearing is resumed. So for IACOM to state "it is accepted that the s29 provisional order remains in place" is misleading in absence of it setting out the full facts – and one questions their agenda for doing so.</p>
115.	<p>HWC is obliged, in terms of the provisions of s38(8) of the National Heritage Resources Act, (NHRA), to give consideration as to whether the evaluation of the impact of the development on heritage resources fulfils the requirements of the relevant heritage resources authority in terms of s38(3) of the NHRA. It is the unanimous view of the IACOM, being the delegated authority to issue comment on behalf of HWC in terms of s38(8), that the HIA as tabled does not comply with the provisions of s38(8).</p>	<p>Notwithstanding the difference in opinion on the identification and assessment of heritage resources presented in the HIA for the River Club, and noting the information provided in the supplementary report, it is the opinion of the heritage specialists that the legislative requirements of Section 38(3) of the NHRA are achieved in the HIA for the River Club (refer to Section B above: HIA Technical); and, given the considerable additional research and evaluation supplied in the Supplement, we trust that HWC will now accept that all of HWC's requirements regarding the impact assessment are now satisfied.</p>		

TR

[Handwritten signature]

Item No.	Issues raised by HWC	Response to HWC Interim Comment contained in the HIA Supplementary Report	Reference to final comment	Response to HWC Final Comment
116.	<p>The HIA is unlikely to comply with the provisions of s38(3) of the NHR Act until meaningful engagement with the First Nation Groupings has taken place, both on a broader level, and more immediate one in terms of the site itself</p>	<p>Refer to the response to item 53 regarding consultation with representatives of the First Nations for the broader area and the site. It should also be noted that HWC has accepted that all statutorily required processes for advertising and consultation have been satisfied.</p>		
117.	<p>The supplement to the HIA and the First Nation report has not fully unpacked the significance of the site to the broad Community that has a recognised and direct deep and sacred linkage to the site through lineage and collective memory. The findings of the supplementary report assess the significance of the as limited. The committee does not concur with this finding</p>		Paragraph 90	<p>The heritage practitioners do not agree with the assertion that "the First Nation Report" has not fully unpacked the significance of the site to a broad community", or that "it is limited". The practitioners are the opinion that the reports evidence the exact opposite. Simply because HWC does not agree with what the First Nation Collective has to say does not make what they say go away.</p> <p>HWC has not substantiated its opinion with any evidence as to (a) who they are referring to when they claim the views of the "broader community", nor have they interrogated I&AP claims to represent such communities. Whilst the TRUP and RC FN reports record the factual oral history of the identified First Nation groups that have a valid link to the site, and the engagement and consultation with these groups individually and as a collective by the social facilitator and the owner, IACom refuse to acknowledge the position of the majority First Nation groups and the FN groups that are linked to the land as recorded in these reports and in turn choose to selectively rely on the unsubstantiated opinions of a few individuals in support of their opinion without HWC having engaged with the very FN groups whose opinions and oral narrative they dismiss as "limited"</p>
118.	<p>The concept of significance is broadly underpinned by authenticity. The values attributed to the site by stakeholders have not been carried through into the reports and have therefore not adequately informed the unique significance of the site and appropriate development indicators. This is a methodological problem that the HIA does not address</p>		Paragraph 91	<p>We do not agree that stakeholder's comments are not "carried through". Where the heritage specialists and First Nation Collective disagree with certain stakeholders' unsubstantiated views these are noted and explained why in the HIA.</p> <p>The Supplementary HIA from pages 15 (bottom) to page 19 sets out an explanation by the heritage practitioners as to why this statement is incorrect. Also refer to the response to item 6.</p>
119.	<p>It is noted that the applicants conducted an engagement with First Nation Groupings which culminated in the First Nation report submitted to HWC on 4 December 2019</p>		Paragraph 96	Correct
120.	<p>There are a number of problems with this report, namely:</p>		Paragraph 97	

266

Item No.	Issues raised by HWC	Response to HWC Interim Comment contained in the HIA Supplementary Report	Reference to final comment	Response to HWC Final Comment
121.	<p>a) <u>The scope of engagement resulted in a number of groups electing not to participate</u></p>		<p><u>Paragraph 97</u></p>	<p>Also refer to response to item 16. Mr Jenkins representing the Goringhaona and claiming to represent the Indigenous Xarra Restorative Justice forum, elected not to participate in the research for the River Club First Nations Report (possibly because he could not reconcile his conflict of interests). At the time of the TRUP and the River Club First Nations Reports, Tauriq Jenkins was also the Chairperson of the Observatory Civic Association (OCA) and the Two Rivers Urban Park Association (TRUPA). The First Nations Collective produced evidence of Mr Tauriq Jenkins, as chair of OCA actively mobilising the Observatory Civic Association and the Rosebank and Mowbray Civic Association against First Nation interests and aspirations. The First Nations are in possession of minutes of OCA meetings Chaired by Tauriq Jenkins, during the time of the River Club First Nation Report, where he committed to court action against the LSDF, despite him having been part of the First Nations who agreed to the First Nation aspirations.</p>
122.	<p>b) <u>The research process was contested by participants in the engagement</u></p>		<p><u>Paragraph 97</u></p>	<p>Refer above and to the response to item 16.</p>
123.	<p>c) <u>The impartiality of the research questions is not clear to the committee</u></p>		<p><u>Paragraph 97</u></p>	<p>The RC First Nation Report sets out clearly in the preamble what the "questions" were and flow from the outcome of the TRUP FN Report, and comply with the recommendation made by HWC regarding the First Nations engagement. Refer to Points 55 and 56: "It is a strong recommendation that in order to correct the inherent flaws in the HIA in this regard, that the River Club enter into a new engagement process with First Nations representatives or awaits the outcomes of the TRUP LSDF First Nations engagement process." "The HIA would benefit from input from a specialist consultant, with the requisite expertise in dealing with the intangible aspects pertaining to the wider TRUP area. This input would assist in focussing on, in particular, the strong sense of place and meaning of the site pertinent to the First Nation Representatives. It is a strong recommendation that a supplementary report from an expert in this field is incorporated into the HIA."</p>
124.	<p>d) <u>The methodology for the engagement does not appear to follow accepted oral history interviewing protocols (for example no ethical clearance forms were supplied).</u></p>		<p><u>Paragraph 97</u></p>	<p>The methodology followed is accented oral history interviewing protocols. Mr Jenkins, who actively participated and signed-off individually and collectively on the TRUP First Nations Report, had no concerns with the methodology, nor did anyone else. Informed consent around purpose and use of information was obtained from all participants, in both the TRUP and River Club First Nations Reports. Good ethical protocols were followed. In some instances the anonymity of informants in terms of specific statements, had to be protected (senior elderly chiefs of the First Nations Collective have been threatened with violence for supporting the development).</p>

TK

25

Item No.	Issues raised by HWC	Response to HWC Interim Comment contained in the HIA Supplementary Report	Reference to final comment	Response to HWC Final Comment
125.	e) Confusion between this report and the DT&PW commissioned report bring the ethics around the engagement into question		Paragraph 97	The TRUP First Nations report was completed and submitted in September 2019. After this date the contractual obligations between AFMAS and DTPW was concluded. Following this date (in October 2019), AFMAS was appointed by the LLPT to build on this research for the River Club site in particular (on the recommendation of the First Nations Collective to the LLPT). It is therefore unclear a) where the confusion arises, and b) what the basis is for HWC's question of the ethics of the study.
126.	The issue of confusion with regard to the TRUP and First Nation Report was raised by DT&PW at the meeting of 28 January 2020 and a follow up letter to HWC		Paragraph 98	The LLPT have not been notified of any concern and the statement made by the representative of DP&PW at the 28 Jan 2020 was not a concern: the LLPT saw it as a point of clarification that DP & TW only commissioned the first report and were not involved in the 2nd report.
127.	DT&PW are concerned at the conflation of what should be two separate reports and processes.		Paragraph 98	<p>The following (quoted from the interim comment dated 13 September 2019), indicates the IACoM's knowledge of DT&PW's intended engagement prior to the requirement for a First Nation Report:</p> <p>"It is noted that the DT&PW has now identified the lack of meaningful engagement with the First Nation Groups as being problematic in the wider TRUP baseline study, as has resolved to correct this by entering into a new stakeholder process. It is the strong recommendation that in order to correct inherent flaws in the report in this regard, that the River Club does the same or awaits the outcome of that stakeholder process."</p> <p>The heritage practitioners do not agree that there is conflation, and the LLPT are not sure that DT&PW holds this view regarding conflation: the 2nd Report makes it very clear the "link" between the 2 reports and the reason therefor. Furthermore, HWC explicitly recommended (refer to point 55):</p> <p>"It is a strong recommendation that in order to correct the inherent flaws in the HIA in this regard, that the River Club enter into a new engagement process with First Nations representatives or awaits the outcomes of (the TRUP LSDF First Nations engagement process)"</p> <p>On this recommendation AFMAS was approached by the LLPT on the recommendation of some of the FN groups involved in the TRUP report to consider the outcome of their high level engagements through the TRUP process and how these could be implemented at RC site level.</p> <p>AFMAS was approached with the brief (which is outlined in the Report) as their work had been completed on the TRUP report, which was about to be made public. AFMAS was specifically approached for the very reason that, as the social facilitator, he had successfully managed to engage with the many FN groups in the TRUP process and asked to continue this engagement and take the findings of the TRUP report and see if these could be actualised on the RC site through engagement with the FN.</p> <p>It concerning that HWC has taken such an unsubstantiated negative approach to what we consider a very positive engagement process between the majority and relevant FN groups and the developer, finding common ground, which in the past was not possible. This positive step was without any assistance from HWC in any form – it appears that HWC prefer dissent to engagement for reasons unknown.</p>

TR

268

Item No.	Issues raised by HWC	Response to HWC Interim Comment contained in the HIA Supplementary Report	Reference to final comment	Response to HWC Final Comment
128.	<p>As previously noted, the DT&PW itself has entered into a stakeholder engagement with First Nation Communities as it recognised that the Baseline Study first tabled at IACOM on 12 April 2017 was deficient in this regard, and now seeks to rectify this. HWC queries as to what would be the point of this exercise if the development of the most critical undeveloped land parcel is proceeding ahead of this process.</p>		<p><u>Paragraph 99</u></p>	<p>The heritage practitioners do not understand this issue raised at this stage, whilst they differ in opinion as to the RC being "the most critical undeveloped land", they nevertheless accepted the recommendation regarding further engagement with the FN.</p> <p>The TRUP engagement, however, has been completed and culminated in the TRUP FN Report, and so too has the RC FN Report been completed. If HWC are somehow now suggesting that the RC should wait for the further TRUP Baseline report/HIA, the specialists do not agree, nor understand why, and who it benefits (not the FN). The view that HWC holds about the wider TRUP area has been responded to, and the FN issues in any event have been dealt with at overall TRUP level and now RC site level.</p> <p>It is noteworthy that the RC owner as a private developer has been the only party to date to take forward and implement in its design informs the desires and wishes of the FN. HWC as the heritage agency has provided no assistance in this regard and would apparently from the IACOM comments, prefer to keep the land undeveloped and without the memorialisation initiatives, which without development are not fundable.</p>
129.	<p>The engagement of interested and affected parties while undertaken in response to the interim comment dated 13 September 2019 still do not comply with section 38 (3) (e) of the NHRA</p>		<p><u>Paragraph 100</u></p>	<p>The project team strongly disagree with this unsubstantiated view.</p> <p>Firstly, HWC has already acknowledged that in terms of the provisions of the PAJA (in so far as a formal notice and commenting procedure is concerned), that the report complies with this section.</p> <p>How then does the further and extensive engagement with the FN and other I&AP in the TRUP area not constitute compliance or denigrate previous consultation to now be non-compliant.</p> <p>The heritage practitioners refer to the Conclusion of the supplementary report Par 9 (e) in support of their view.</p>
130.	<p>HWC acknowledges that in terms of the provisions of the PAJA, (in so far as a formal notice and commenting procedure is concerned), that the report complies with this section.</p>	<p>Noted.</p>		
131.	<p>It is a place where almost all of the stages of South Africa's developmental history and policies are either embedded deep within this cultural landscape or is viewed from</p>		<p><u>Paragraph 112</u></p>	<p>The conclusion is so vague to be without meaning and could apply to any piece of land, and simply ignores the heritage practitioners reports and the detailed Responses of the applicant, the specialist and the First Nation Collective</p>
132.	<p>It is a place where Cetshwayo and Langalibalele were exiled to</p>		<p><u>Paragraph 112</u></p>	<p>This history is not associated with the River Club site.</p>
133.	<p>The par 109 to 114 above illustrate that the HIA 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</p>		<p><u>Paragraph 115</u></p>	<p>This document and the Supplementary HIA and summarised conclusions from pages 29 to 30 sets out an explanation by the heritage practitioners as to why this conclusion of HWC is considered incorrect</p>

Item No.	Issues raised by HWC	Response to HWC Interim Comment contained in the HIA Supplementary Report	Reference to final comment	Response to HWC Final Comment
134.	<p>The committee reiterate the need for DEADP as the consenting authority to engage with HWC as the commenting Heritage authority on this matter before DEADP takes a decision on the final BAR</p>		<p>Paragraph 116</p>	<p>Noted</p>

269

TK



270

AB6

HWC's Final Comment on the HIA for the River Club

HWC's perceived deficiencies with the HIA:

NHRA Section 38(3)(a) "The identification and mapping of all heritage resources in the area affected" only partially complied with:

- Heritage resources have been identified (Section 6 of the HIA) and mapped (Section 10.8 of the HIA and Sections 4 and 5 of the HIA Supplementary Report) in the HIA for the River Club.
- The history of the broader area is comprehensively described in Section 4 of the HIA.
- ***HIA includes the mapping of heritage resources in the area identified by the City Council, by Attwell/Jacobs, and by Postlethwayt ["previous studies"]; and the argument contained regarding significance relies on taking account of significances that extend well beyond the River Club site and the TR-area including the heritage practitioners' commentary on those alternate views.***
- It is the opinion of the heritage practitioners who compiled the HIA (and others) that the broader area (including the Two Rivers local area) is comprised of a variety of precincts with varying heritage significance.
- As a consequence, LLPT argues that the identification and mapping is NHRA-compliant.

NHRA Section 38(3)(b) "Assessment of the significance of such resources" is inadequate because it stands to reason that if the identification and mapping of heritage resources is flawed, the grading of significance will be flawed (as will the conclusions of the HIA)

- This must be the other way around as significance determines/affects whether a place is seen as a heritage resource or not.
- The significances of heritage resources have been assessed (Section 7 of the HIA and Sections 4 and 5 of the HIA Supplementary Report) in the HIA for the River Club.
- ***The HIA does not reflect a view of the significances (with respect to type/quality of the significances) significantly different from that of most commentators including HWC;*** there are, however, differences in the quantity/extent of some of types of significance pertaining to parts of the wider "Liesbeek Valley", the TR-area and the River Club site which the heritage practitioners have explained (at great length).
- The HIA also recognises that some significances will be reduced but that the most significant significances will be significantly enhanced.
- HWC may assess the significances outlined and with the implied claims of "offsets" and may disagree with the conclusions but this does not make the assessments of the HIA (and its supplements) inadequate.

NHRA Section 38(3)(c) "Assessment of the impact of the development on such heritage resources" is inadequate because it stands to reason that if the identification and mapping of heritage resources is flawed, the grading of significance will be flawed any assessment of the development on identified heritage resources must be flawed.

- An assessment of the impact of the development on heritage resources is provided in the HIA for the River Club (Section 10 of the HIA)
- HWC: HIA "does not recommend heritage related built form restrictions":
 - Heritage Practitioners: Urban design indicators presented include heritage (and other) considerations: including height reductions respecting the SAO site, view lines

TR

271

from SAAO and Valkenberg and within the site (and the Additional indicators are presented in the supplementary report relating to First Nations design interventions.)

- HWC: HIA fails to assess the impact of the development on “the most important heritage resource: the site’s open, green qualities as a remnant of landscape that has considerable intangible historic and cultural heritage significance”.
 - Heritage Practitioners: “A quality is not a heritage resource. A quality may give significance to a place; and the practitioners do not argue that the qualities of ‘openness’ and ‘greenness’ are not significant qualities of this part of the Liesbeek River and what will have been low-lying wetlands. However, these qualities, while interrupted by the proposed development, will not disappear: the proposal is to transform them, providing better greenness and greater ecological functionality and a clearer more distinctly recognisable riverine corridor. The ‘openness’ is a quality that will be interrupted; but the topography more widely will still exist; but, like the surrounding components of the environs, will be transformed into a more useful and integral part of the urban environment.”
- Again, HWC may have different perceptions of the environs and of the significances and it may differ with respect to the recovery of significance, but this does not make the assessment of impacts “inadequate” in law.

NHRA Section 38(3)(d) “Evaluation of the impact of the development on heritage resources relative to the sustainable social and economic benefits to be derived”

- The history of the broader area is comprehensively described in Section 4 of the HIA and is not contested. Remaining heritage resources in the broader landscape are also documented (see Section 6 of the HIA), and the HIA confirms that the cultural significance of the area is derived from “the history of and concentration of historic elements in this landscape as well as the symbolic values of the Black and Liesbeek Rivers”.
- Appears as if HWC are saying that since the heritage impact is not fully characterised, one cannot compare the economic benefits to this potential impact.
 - Again, this argument is based on a difference in perception regarding the conclusions of the HIA, and not associated with meeting legislative requirements.
- The question of financial viability (to the proponent) is not directly related to the social and economic benefits anticipated from the project (which have been assessed by experienced, qualified specialists in the field of socio-economics).
- It appears as if HWC have not grasped the potential social and economic benefits of the development (outside of potential social benefits and impacts from changes to the cultural value of the site).
 - Investment in the economy, creating wealth
 - Increased employment, income and skills development
 - Increased State and local government revenue
 - Increase in centrally located housing and other facilities
 - Densification facilitating improved connectivity, transport systems and TR-area implementation
 - Creation of new publicly accessible areas, especially but not only to First Nations groupings
- United Nations Sustainable Development Goals (SDGs) are a broad suite of 17 development goals with an even more extensive list of 169 targets established by the United Nations (UN) in 2015. They aim to advance solutions for everything from climate change to urban planning

Handwritten signature and initials in the bottom right corner of the page.

272

to gender equality. At base however, the SDGs are about **poverty reduction** (ISS Today: Zachary Donnenfeld is an ISS Consultant)

- Again, none of this means that the HIA does not take adequate cognisance of the significance of the site.

NHRA Section 38(3)(e) “Results of consultation with communities affected by the proposed development and other interested parties”

- HWC: acknowledges that in terms of the provisions of the Promotion of Administrative Justice Act (PAJA) (in so far as formal notices and commenting procedures is concerned) that the report complies with this section).
- HWC: claims inadequacies with First Nations report, therefore this report does not comply with Section 38(3)(e) of the NHRA.
 - Groups elected not to participate fully.
 - Research process contested by participants.
 - Impartiality of research question.
 - Methodology did not follow oral history interviewing protocols.
 - Confusion between report.
 - Heritage Practitioners: Refer to the Conclusion of the HIA supplementary report Par 9 (e)
- HWC: has acknowledged that the consultation processes have followed all necessary steps; and heritage practitioners believe that the First Nation Report more than adequately filled a lacuna.
- It is difficult to understand how the HIA and supplements do not comply with the NHRA requirements.

NHRA Section 38(3)(f) “the consideration of alternatives” is inadequate because there is no meaningful consideration of alternatives whatsoever

- Alternative Development Proposals are discussed (Section 9.3 of the HIA and Section 7 of the HIA Supplementary Report) in the HIA for the River Club, and notwithstanding the difference in opinion relating to the heritage resources that occur at the site, or of HWCs dismissal of the proponents viability considerations, the legislative requirements of Section 38(3)(f) of the NHRA are achieved.
- This an opinion unsustainable by argument or evidence in the face of an expert explanation of the requirements of alternatives.

NHRA Section 38(3)(g) “Plans for mitigation of any adverse effects” is inadequate because mitigation ignores the broader issues pertaining to a highly significant cultural landscape.

- Mitigations have been incorporated iteratively through design transformations, revisions and refinements since 2017.
- Urban design indicators presented include heritage (and other) considerations: the restoration of the Liesbeek River Corridor; built form height reductions and setting back from and respecting the SAAO site; lines of site from and within the site.
- Detailed engagements with representatives of the First Nations have made it possible to articulate the history of the broader landscape to these groups in detailed design of the development (Section 2 of the supplementary report). These additional indicators, as well as those presented in the HIA (Section 8) achieve the legislative requirements of Section 38(3)(g) of the NHRA.

TK

“Ideological” or perception difference

NHRA Section 38(3)(a) “The identification and mapping of all heritage resources in the area affected”:

- It is the opinion of the heritage practitioners who compiled the HIA (and others) that the broader area (including the Two Rivers local area and, even further, the “Liesbeek valley”) is comprised of a variety of precincts with varying heritage significance.
- Heritage resources (and their significances) are mapped on this basis.
- It is apparent that HWC arrive at a different opinion regarding the heritage capital that is, or should be, assigned to the River Club:
 - HWC:
 - Other studies have identified the significance of the valley as a heritage resource.
 - See that the heritage of the broader area (“TR-area”) is manifested at the site (but that the historical record is not contested).
 - Attribute heritage significance to the visual qualities of the site (“open, low-lying, green, riverine character”) and sense of place.
 - Has not articulated any heritage issue that relates to the RC site broadly or in particular (other than it being part of a much broader early frontier).
 - The heritage practitioners maintain that:
 - TR-area is an arbitrary planning boundary.
 - Visual aspects (“qualities”) are not heritage resources.
 - While the broader area is historically significant, there are no manifestations on the site, be they tangible or intangible (apart from the Liesbeek River, which runs from Kirstenbosch to its confluence with the Black River).
 - Development at the site will not make this history “go away”.
- Notwithstanding the difference in opinion/perception relating to the heritage resources (and/or their significances) that occur at the site and immediately surrounding area, the legislative requirements of Section 38(3)(a) are achieved.

NHRA Section 38(3)(b) “Assessment of the significance of such resources” is inadequate because it stands to reason that if the identification and mapping of heritage resources is flawed, the grading of significance will be flawed (as will the conclusions of the HIA).

- Indications from HWC here that if mapping had graded the wider valley as being of high heritage significance, HWC would consider the HIA compliant with Section 38(3).
 - While the HIA acknowledges the role that the ‘openness’ of the site plays in determining the current sense of place, as well as the importance of views from within and across the floodplain (which are comprehensively assessed in the VIA), it argues that this openness and these views are of low heritage significance: “whether the site is developed or otherwise, it will always have a history which does not manifested on the ground and cannot be destroyed by physical changes”.
- HWC insist that the First Nation communities have a “deep, sacred linkage to the site through lineage and collective memory”; this is not disputed and, indeed, the communities support the development because they can see the recovery of significance to the site (narrower and wider) and its benefits.

274

NHRA Section 38(3)(c) "Assessment of the impact of the development on such heritage resources" is inadequate because it stands to reason that if the identification and mapping of heritage resources is flawed, the grading of significance will be flawed any assessment of the development on identified heritage resources must be flawed.

- The HIA "post-rationalises development at the site": given that the HIA explains the series of transformations, changes and refinements that have been imposed of the proposal from mid-2018, this is simply wrong.
- HIA fails to assess the impact of the development on "the most important heritage resource: the site's open, green qualities as a remnant of landscape that has considerable intangible historic and cultural heritage significance".
 - A quality is not a heritage resource. A quality may give significance to a place; and the practitioners do not argue that the qualities of "openness" and "greenness" are not significant qualities of this part of the Liesbeek River and what will have been low-lying wetlands. However, these qualities, while interrupted by the proposed development, will not disappear: the proposal is to transform them, providing better greenness and greater ecological functionality and a clearer more distinctly recognisable riverine corridor. The "openness" is a quality that will be interrupted; but the topography more widely will still exist; but, like the surrounding components of the environs, will be transformed into a more useful and integral part of the urban environment and a site with recovered meaning.
- HWC indicate VIA inadequate in its assessment of cultural landscape, and definition of sense of place, and while the VIA finds that the loss of sense of place and visual intrusion will be significant, HWC calls for review of this study:
 - VIA aims to present a dispassionate assessment of visual and sense of place impacts and is meant to be read with the HIA and interpreted by heritage practitioners.
 - The VIA finds that the scale of the development will have visual impacts, and it is the location/context of the site - the surrounding built fabric and topography, visual absorption capacity, visibility, and landscape integrity - which effectively reduces such impacts to the assigned medium rating after mitigation.
- VIA says visual impacts depend on receptor perceptions = not useful
 - The VIA says this but notes that a conservative approach has been adopted for the study, assuming stakeholders derive a positive sense of place from the area (not the site).

NHRA Section 38(3)(d) "Evaluation of the impact of the development on heritage resources relative to the sustainable social and economic benefits to be derived"

- "Viability argument is regarded by HWC as unconvincing and inadequate".
- "The development is not in line with current planning"; and "Adopted spatial planning takes precedence over draft policies".
- Again, it seems that HWC has not read the fairly lengthy accounts of the current land-use and other policy-directives and frameworks of City and Province in the HIA and Supplement which outline an expert view and the most recent factual developments in this regard. HWC may differ on any number of aspects but, has done so without demonstrating how this understanding is wrong or inadequate.

NHRA Section 38(3)(e) "Results of consultation with communities affected by the proposed development and other interested parties"

Handwritten signature and initials in the bottom right corner of the page.

275

NHRA Section 38(3)(f) “the consideration of alternatives” is inadequate because there is no meaningful consideration of alternatives whatsoever

- View of HWC that another option with less bulk should be assessed:
 - Not viable to the developer.
 - Would not enable the positive outcomes outlined.
 - How would a development in the order of 110 00m² or even 102 000m² make any difference to the heritage impacts and assessments – such as raising the floodplain level, infill, heights and density – which would all change the “open sense of place” - and all occur to varying degrees – as would any form of economically viable development, be it 150 000 or 102 000m².
- Post rationalised: The proponent seeks to develop a mixed use, “live, work and play” facility at the site, and this development must be financially viable for the proponent to proceed. Nevertheless, the development proposal has been formulated in collaboration with a multi-disciplinary team that has responded to independent environmental and specialist input. In this context there have been more than 250 iterations to the development proposal / layout, and the assertion that the HIA post rationalises a pre-conceived development concept is therefore rejected.
- The HIA and supplements have explained the several transformations, changes, refinements since 2017 demonstrating the opposite.

NHRA Section 38(3)(g) “Plans for mitigation of any adverse effects” is inadequate because mitigation ignores the broader issues pertaining to a highly significant cultural landscape.

- HIA “does not recommend heritage related built form restrictions”:
 - Heritage indicators are incorporated in the UDF (and repeated in the HIA).
 - Additional indicators are presented in supplementary report relating to First Nations design interventions.
 - Are these indicators insufficient in HWC’s view, or has the development not interpreted them sufficiently, in the view of HWC?
- Noting the historical record specific to the River Club property – as part of the broader historical landscape- the heritage practitioners have not been able to identify other meaningful heritage design informants applicable to the site, other than the restoration of the Liesbeek River Corridor, and respecting the SAAO site (by setting back, reducing heights and providing lines of sight) and those reliant on the urban design study and its design indicators (noting their opinion that objections to the development are largely visual in nature)
- First Nation design interventions are also proposed, including the heritage centre in a central location, a media centre, an indigenous medicinal garden, an amphitheatre for cultural performances, a heritage trail and respecting lines of sight from the centre to Lions Head.

276

WESTERN CAPE ECONOMIC WAR ROOM

Action points from workshop to discuss IACom's comments on the River Club's Revised BAR (incl. Revised HIA), 4 March 2020

AB7

Noted:

Heritage Western Cape's (HWC's) Impact Assessment Committee (IACom) on 13 February 2020 issued its "Final Comments" on the River Club Development's Revised Basic Assessment Report (BAR) (incl. Revised Heritage Impact Assessment (HIA)).

The Department of Environmental Affairs and Development Planning (DEA&DP) on 17 February 2020 issued a letter to the applicant requesting that HWC's requirements as set out in IACom's comments of 13 February 2020 be addressed.

While the workshop was specifically arranged with HWC and the DEA&DP to discuss and clarify IACom's comments of 13 February 2020, on arrival at the workshop that attendees were informed that IACom has selected not to attend the workshop.

Action points:

1. The applicant together with the applicant's consultant team have a right to make representations in response to IACom's comments. Matthew Law (the Environmental Assessment Practitioner managing the River Club Development's EIA process) on 28 February 2020 already provided an initial response to IACom's comments to DEA&DP and HWC. Matthew Law to again circulate this initial response to all the parties, with the HWC officials to ensure that IACom also receive this initial response.
2. Mxolisi Dlamuka to call a meeting with Matthew Law, Prof. Steve Townsend and team at a time to be confirmed on Tuesday 11 March to go through the documentation and prepare a structured process for engagement with IACom.
3. Mxolisi Dlamuka to invite Matthew Law, Steve Townsend and team to attend the IACom meeting scheduled for Wednesday 12 March in an effort to clarify IACom's comments and requirements.

277

4. HWC will make decision on whether any representatives of DEA&DP should be in attendance at the IACom meeting on 12 March.
5. Informed by the workshop, the meeting on 11 March (2 above) and the IACom meeting of 12 March (3 above), the applicant and consultant team must then finalise the responses to the IACom comments and formally submit the final responses to IACom, HWC and DEA&DP, and provide IACom with 30 days within which to reply to the responses.
6. The applicant together with the consultant team must also decide, based on all of the above:
 - a. whether to apply for an extension of time in terms of EIA Regulation 3(7);
 - b. whether to do additional works and therefore for another version of the BAR (including the HIA) to be produced and released for comment; and
 - c. whether to brief an independent consultant to review the HIA and Visual Impact Assessment (or the entire BAR inclusive of the HIA).

278

Timothy JG Hart

MA, Cape Town
Archaeologist

Stephen S Townsend

B Arch, Cape Town; Dipl in the Study and Restoration of Monuments, Rome; PhD, Cape Town
Architect, Statutory Planner, Conservationist

31 March 2020

Matthew Law
SRK Consulting

MLaw@srk.co.za

Dear Mr Law,

AB8

Specialist Response to HWC's Final Comment on the HIA for the River Club

We address you as the EAP responsible for the BAR currently being submitted to the provincial Department of Environment Affairs and Development Planning.

Given the letter (of 17 February 2020) from the Director: Development Management: Region 1, of the Department of Environment Affairs and Development Planning commenting on the draft BAR referring to the Final Comment of Heritage Western Cape (of 13 February 2020), this note is intended to outline in brief our corrections of and responses to HWC's Final Comment:

First, however, given the omissions, errors, vagueness and incompleteness of HWC's Final Comment and the consequential questions raised in your letter, we point out that the following steps have been taken in an endeavour (or series of endeavours) to seek clarification from HWC:

- a very detailed matrix (of 43 pages) was produced by the LLPT consultants listing each issue raised or point argued by HWC in its Interim Comment and/or in the Final Comment and our response showing that many of their claims are unfounded; and a briefer summary (of six pages) was produced which focused directly on the arguments raised in the Interim and Final Comments in as much as it was argued that the HIA of 2 July 2019 and its supplementary documentation (the Supplement of 4 December 2019 and the River Club First Nations Report of November 2019) did not, in HWC's view, adequately comply with the requirements of subsection (a) to (g) of section 38(3) of the National Heritage Resources Act (both of these documents are attached hereto);
- these two documents were sent to HWC a week prior to a workshop on 4 March 2020 in the offices of HWC which had been agreed to include both HWC's senior officials and the committee responsible for the Final Comment (its Impact Assessment Committee), officials of DT&PW and DEA&DP, and the LLPT team at which it was intended to develop clarity regarding HWC's arguments that the HIA and its supplementary documentation did not

279

adequately comply with the requirements of subsection (a) to (g) of section 38(3) of the National Heritage Resources Act;

- however, the authors of the HWC Final Comment, HWC's Impact Assessment Committee, belatedly declined (despite the initial agreement of their chairman) to attend the meeting which, as a consequence, although attended by HWC, DT&PW and DEA&DP officials, was inconclusive resulting in the HWC CEO inviting one of the heritage practitioners and the EAP to meet the following week first with the HWC officials and then with the authors of the Final Comment (HWC's IA Comm) at its regular monthly meeting;¹
- as a consequence, on 10 March 2020 the heritage practitioner and the EAP met with the HWC officials and fruitfully discussed the way forward and where clarity was required; and
- however, on the day, 11 March 2020, the HWC committee again refused to meet the LLPT consultants (45 minutes after the scheduled time of the meeting).

Given the iterative refusal of the authors of the HWC Final Comment to discuss and clarify its views that the HIA and its supplementary documentation (and the Visual Impact Assessment- VIA) did not adequately comply with the requirements of subsection (a) to (g) of section 38(3) of the National Heritage Resources Act and given that in the view of Liesbeek Leisure Properties Trust (LLPT) and its several expert consultants of various disciplines, the applicant, LLPT, is now confronted with a conundrum: should it proceed blindly, without input from HWC, to try yet again to satisfy the authors of the Final Comment (which, in our view, is not rationally derived from the information presented in the HIA, VIA and the supplementary documentation) and submit yet further documentation, or should it proceed directly to the decision-maker with a submission demonstrating the satisfaction of or compliance with the requirements of the NHRA.

In the circumstances, Liesbeek Leisure Properties Trust has resolved to proceed directly to the decision-maker, the DEA&DP.

The heritage practitioners have iteratively argued that much of the Liesbeek Riverine corridor has considerable politically-charged historical significance; that the Two Rivers-area² is a significant part of the corridor; and that the River Club site is an important, if small part, of the Two Rivers-area and of the Liesbeek River corridor as a whole. They have also argued that most of the corridor has been transformed and, as such, is a cultural landscape much broken into components/areas of very different character with other layered and different significances; for example, the neighbouring SAAO and Valkenberg sites are large components of the TR-area with their own considerable separate site-based historical, scientific, and architectural and/or aesthetic significances which have significantly changed their place-making characteristics.

¹ We note that the workshop was chaired by an independent facilitator engaged by the Premier's Western Cape Economic War Room who drafted agreed 'action points'.

² Previously known as the 'Two Rivers Urban Park' or TRUP.

280

The River Club site's own history and usages most closely parallels the parts of the corridor adapted and used by different sporting codes; but, unlike most of those pieces of land, it was not a part of an early agricultural land-holdings (probably because it was too low-lying and too subject to flooding). Certainly, neither the River Club site nor the wider TR-area could be meaningfully or persuasively presented or curated as a battle site as suggested by HWC; and it is wrong to claim the River Club site was the site of a battle like the examples that HWC refers to.

We do, however, agree that the River Club site is a remnant, if much spoiled, of the Liesbeek riverine corridor/cultural landscape and, if this short section of the riverine corridor could be recovered, it could be meaningfully experienced as such (for its signal historical-political significance); and, if so, this section of the corridor could (perhaps with other sections of the two rivers) be declared as a provincial or national heritage site (but this is outside of this process). Indeed, we think that the development of the River Club site creates a real and immediate opportunity which could trigger the meaningful planning of a much larger heritage site. In our view, the scruffy low-intensity usages currently occupying the River Club site do not signal heritage or cultural significance of any sort (but we acknowledge that the visual openness is valued by many stakeholders, including HWC).

Furthermore, the proposed development and the recovered riverine corridor and the renaming and integration of a First Nation-narrative as proposed by the First Nations Collective³ will change the viewer's experience of the place- very much for the better. The recovery of historical significance through the recovery of the riverine corridor (and ecological functionality) will, we argue, add to and make apparent the significance of the River Club site, or at least the Liesbeek River component of the Two Rivers-area, and of the Liesbeek River as a whole. Such recovery is of considerable political, cultural and ecological significance and meaning to both the First Nations groupings and to a wider range of publics.

We note that the First Nations Collective concurs with this view; and we note with dismay (and surprise) that HWC has ignored the findings of the extensive engagement with the First Nation groups and that community's views of the significance of the River Club site as reported in both the First Nation TR-area Report and the First Nations River Club Report which were reported on in the Supplement to the HIA and which have also been taken into account in revisions of the development proposal.

In both its Interim Comment of September 2019 and its Final Comment of 13 February 2020 HWC has referred iteratively to the statement of significance that it used in April 2018 to justify its provisional protection of the River Club Site. Our view of that statement is as follows:

- Importantly, throughout its administration of submissions made in connection with the Two Rivers-area and the River Club site, HWC has elided and confused the two places and their significances: the TR-area, is an arbitrarily defined area made up of many disparate pieces of land, much of it well

³ See section (s) below.



developed and used for a wide range of activities and owned by a wide range of public and private bodies with mutually excluding interests. Indeed, it is difficult to see how many of these pieces with their uses, ownerships and differing security regimes could be meaningfully included in an 'urban park'. [The very history of the endeavours to establish the 'urban park' should indicate this to all but the most myopic observer: that so much time, now more than twenty two years, and effort has been committed to this idea must come as a shock to any disinterested observer. We note also that the authorities and their land-use planners have recognised this and, first, will henceforth refer to the area as the Two-Rivers Area and, second, that the vision of the "park" as "a New York style Urban Park... with a green/park core and high rise buildings on the edges... does not deal with the reality on the ground".⁴]

- With this in the background, the HWC's explanation of its provisional protection of the River Club site (much of it taken directly and indiscriminately from the NHRA) about the significance of the TR-area is empty of enough detail to know what is meant. Certainly, it requires a great deal of good will to guess what is being referred to both with respect to the TR-area and, in particular, with respect to the River Club site; and we point out that this description could be applied *to many pieces of land in the Western Cape and in South Africa more generally*. If the references to Valkenberg Hospital and to the SAAO were omitted, this description could be used for a description of innumerable sites in the country.
- In other words, the 'reasons' for the provisional protection are couched in language so general as to be meaningless in an argument about even the TR-area, let alone the River Club site.
- This lack of specificity applies also to the rhetoric about HWC's responsibilities and claimed mandate. Frankly, there is no reason in these 'reasons' that can be linked in a meaningful way to the River Club as a place; and there is no link to any of the requirements of the provision protection section of the Act: certainly, there is no reference to any threat or to any idea/intention of negotiation to alleviate such threat; and there is no mention of any clear or even outlined intention to investigate the significance of the River Club or its protection (or of the TR-area).
- Bluntly, HWC's reference in the Final Comment to the 2018 provisional protection is, at best, lazy and, at worst, illustrative of the inadequacy of its thinking; and any disinterested observer must be surprised by it. We are also surprised by this because various expert consultants have given considerable time and effort in articulating the River Club site's significance and its relationship to the TR-area and to the Liesbeek River as a whole.

Indeed, it seems that HWC has misread or misunderstood our argument: we recognise that the River Club has high historical significance but also that this

⁴ *Two Rivers (LSDF) Local Spatial Development Framework (Draft October 2019)*, draft for public circulation, p8.



282

significance is not visible or apparent. The recovery of the Liesbeek riverine corridor could restore visible and apparent meaning and political-historical significance to the place even if, as a consequence of development, there is a reduction of a “sense of openness”. Indeed, in our view, this is the ordinary process of city-making: all living cities grow and change with ever-increasing densifications and transformations:

“(T)he one reliable characteristic of urban behaviour through history is its unpredictability. Whatever the perfection of its initial form, a city will follow its own rules or rejoice in its lawlessness. Those who see themselves in charge will legislate a built order, turning upon this wilful artefact with stern cures. But always the city has its own mind: it may refuse to go along with what has been prescribed, or find its own mode of obedience that leaves it free to metamorphose without losing track of its idiosyncratic habits”.⁵

The life-blood of living cities and the driver of this apparently wilful lawlessness is the economy; and the task of land-use planning, environmental management and heritage management is to guide investment as best it can ensuring that development responds to and adapts the landscape and/or townscape and enabling greater efficiencies and creating greater amenity and value for the city as a whole and as an organism. In our own more local circumstances, such guidance/governance must, at the same time, also endeavour to satisfy political policy goals of restorative justice.

With this view of city-making and of the role of governance underpinning the stance of the LLPT consultant team and of the authors of the HIA and its supplementary documentation, we have responded, first, in considerable detail to the contentions of the HWC Final Comment in the two documents referred to above, that is, the very detailed matrix (of 43 pages) and the briefer summary (of six pages). Here we summarise our comments regarding the claimed inadequacies in respect of the subsections of section 38(3) and, therefore, of 38(8) of the NHRA as follows:

(a) That “(t)he identification and mapping of all heritage resources in the area affected” “has only been partially complied with”.⁶

Heritage resources have been identified, mapped and discussed at great length in numerous sections of the HIA (dated 2 July 2019) and of the Supplement (dated 4 December 2019). These sections include Sections 6 and 10.8 of the HIA and Sections 4 and 5 of the Supplement. Furthermore, as a consequence of this claim in the Interim Comment, the Supplement (in Section 4) additionally includes the maps of three separate mapping exercises, the grading map of the City Council, the “composite diagram of heritage areas, potentially sensitive sites and heritage resources” of Attwell/Jacobs,⁷ and the composite diagram of “tangible and some

⁵ Kostof, Spiro, 1992, p298, *The City Assembled: The Elements of Urban Form Through History*, Thames and Hudson; see also Kostof, Spiro, 1991, *The City Shaped: Urban Patterns and Meanings Through History*, Thames and Hudson

⁶ HWC, 13 February 2020, Final Comment, para.43.

⁷ Attwell, Melanie and Graham Jacobs, October 2016, *Two Rivers Urban Park, Cape Town: Baseline Heritage Study*, a study commissioned by Western Cape Provincial Government, Diagram 05, p103.



intangible heritage resources” of Postlethwayt,⁸ and some discussion of these exercises.

Given this, it is difficult to concede that the NHRA requirement to identify and map heritage resources has been “only partially complied with” even if HWC disagrees with that description. Indeed, given the exhaustive discussion of heritage resources in the HIA and Supplement and HWC’s refusal to clarify its views, it is the inescapable conclusion that HWC makes this claim only (and cynically) to avoid concluding its responsibilities under section 38(8) of the NHRA.

(b) That the “(a)ssessment of the significance of such resources” “is inadequate”.⁹

This section of the Final Comment (para.s 55 to 69) is muddled and deals with rather more than the assessment of significance:

First, discussion, articulation and assessment of the significances of a place and its surrounds must *precede* the identification of that place and its parts as heritage and/or as heritage resources. HWC argues that the reverse is the case and that, because (in their opinion) the identification and mapping is incomplete, “the grading of these resources will also be flawed”¹⁰ and/or “wrong”.¹¹ This is irrational. Also, we contend that “assessment of significance” is not equivalent (as iteratively presumed by HWC) to “grading”: grading is a separate exercise and even if commonly used as a ‘shorthand’ for the extent or degree of significance, it discourages a proper assessment of the significances in places with complex histories and significances with over-lapping significances; and, given that grading assigns management responsibility to different tiers/spheres of government, we have, as has HWC, referred to low, medium and high significance when referring to extent or degree of significance (as a self-evident proxy for Grade I, II or III).

Second, it seems that the authors of the Final Comment have not read the HIA or Supplement or the First Nations Report very carefully, if, in certain respects, at all: for example, the HIA does not “reduce(d) the identification of heritage resources, and subsequently significance to tangibly based ecological values rather than cultural heritage values”;¹² the HIA and Supplement iteratively refer to the high political-historical significance of the entire Liesbeek River corridor from mountain to sea;¹³ and certainly the Supplement and First Nations Report give detailed discussion of the significance of the Liesbeek River and its environs to “a broad community”.¹⁴ Indeed, given these same comments of HWC in the Interim Comment, the Supplement was at pains to articulate an argument about the various significances of the site and its surrounds:¹⁵ this is ignored in the Final Comment.

⁸ Postlethwayt, Cindy, September 2019, *Draft Two Rivers Heritage Impact Assessment for the Site ‘Two Rivers’ (formerly TRUP)*, a report prepared for the Provincial Government of the Western Cape (Transport and Public Works), Fig.28, p36.

⁹ HWC, 13 Feb 2020, para. 55.

¹⁰ Ibid. para. 56.

¹¹ Ibid. para. 57.

¹² Ibid. para. 59.

¹³ Ibid. *contra* para. 63.

¹⁴ Ibid. *contra* para. 60.

¹⁵ Supplement, pp15-20.

284

Third, in the Final Comment, despite a succinct explanation (and rebuttal) in the Supplement,¹⁶ HWC repeats its erroneous contention that “The concept of significance is broadly underpinned by authenticity”; it then makes muddled references to stakeholder opinions; and it concludes that “This is a methodological problem that the HIA does not address”.¹⁷ Indeed, it is clear that the authors of the Final Comment have not read the Supplement.

Fourth, much of this section of the Final Comment is opinion regarding the consequences of these mistaken interpretations argued by HWC; and we deal with these under the relevant headings below.

Given this, it is difficult to concede that the requirement for an assessment of the significance of heritage resources in the area affected “is inadequate” even if HWC disagrees with the assessment. Indeed, given the iterative discussion and argument about significance in the HIA and Supplement, this conclusion is irrational (HWC could rationally disagree with the assessment; but it is irrational to judge it “inadequate”); and, given the exhaustive and iterative discussion of significance in the HIA and Supplement and HWC’s refusal to clarify its views, it is the inescapable conclusion that HWC makes this claim only (and cynically) to avoid concluding its responsibilities under section 38(8) of the NHRA.

(c) That “(t)he assessment of the impact of the development on such heritage resources” is “flawed”.¹⁸

This section of the Final Comment (para.s 70-83) is itself fatally flawed in that HWC relies on an irrational and simplistic argument rather than evidence:

The rationality of this argument was questioned in the Supplement (section 8, pp28-9) but, like other issues responded to in either the Supplement and/or First Nations Report, the authors of the Final Comment seem not to have read these reports carefully enough. HWC’s argument is: “given that the heritage resources themselves have not been fully identified or mapped, and that the assessment, or grading, of the heritage resources is flawed, then it follows that any assessment of the impact of the development must also be flawed”.¹⁹ This argument fails both because of the inadequacy of simple linear equations of this sort in circumstances like these (as discussed in the Supplement) and on two further grounds:

First, the heritage resources on and surrounding the site are more than adequately identified and mapped (as demonstrated above) and assessments of significance are clearly articulated (as demonstrated above) and impacts are described at length. HWC may disagree with the assessment of the impacts; but this is not because their argument is correct or rational; and, second, even if the heritage resources were “only partially identified” and even if the significances were “inadequately” assessed, the impacts of the development could still be assessed and rationally found to be acceptable or otherwise. In other words, HWC’s differences regarding the identification of heritage resources and/or the assessment of the significances do not

¹⁶ Ibid. pp15-16.

¹⁷ HWC, 13 Feb 2020, para. 61.

¹⁸ Ibid. para.s 70 and 83.

¹⁹ Ibid. para.70.

prevent them from assessing the impacts of the proposed development on the heritage resources they identify or the significance they assess.

We note also that there is no legislated requirement for the development of "indicators": "indicators", whether they are called design indicators, heritage indicators or spatialised indicators, may assist designers, their clients, interested parties, and the authorities in their various roles, but are most useful as criteria for decision-making. As a consequence, they are most useful when framed in general terms rather than as pre-emptive instructions to designers limiting both invention and non-heritage factors or criteria. Indeed, it seems that the root of HWC's critique of the HIA and its documentation is its differences regarding this non-statutory 'requirement', the heritage-related design indicators or criteria for decision-making discussed in Section 8 of the HIA (pp85-89); and we note that, while these indicators/criteria are framed in general terms, HWC did ask²⁰ for an "urban design framework" which was attached²¹ to the HIA and the HIA incorporates its urban-design-related design indicators (pp89-96).

That said, it seems that HWC's greatest concern is regarding "the impact of the development" on "the most important heritage resource: the site's open, green qualities as a remnant of landscape that has considerable intangible historic and cultural heritage significance":²² however, a quality (like openness or greenness) is not a heritage resource; a quality may give significance to a place; and the HIA and Supplement do not argue that the qualities of 'openness' and 'greenness' are not significant qualities of this part of the Liesbeek River and of what will have been low-lying wetlands. However, these qualities, while interrupted by the proposed development (and assessed in the VIA to be a significant visual impact in the VIA), will not disappear: the proposal is to transform them, providing better greenness and greater ecological functionality and a clearer more distinctly recognisable riverine corridor. The 'openness' is a quality that will be interrupted; but the topography will still exist; but, like the surrounding components of the environs, will be transformed into a more useful and integral part of the urban environment." Again, HWC may have different perceptions of the environs and of the significances and it may differ with respect to the recovery of significance, but this does not make the assessment of impacts "flawed" in law.

Given this, it is difficult to concede that the requirement for an assessment of the impact of the development on such heritage resources "is flawed" even if HWC disagrees with the assessment. Indeed, given the lengthy accounts of the development and its impacts in the HIA and Supplement, this conclusion is irrational (HWC could rationally disagree with the assessment; but it is irrational to judge it "flawed"); and, given the exhaustive and iterative articulation of the impacts (both positive and negative) in the HIA and Supplement and HWC's refusal to clarify its views, it is the inescapable conclusion that HWC makes this claim only (and cynically) to avoid concluding its responsibilities under section 38(8) of the NHRA.

²⁰ HWC, Response to NID, Letter, 7 January 2016.
²¹ Urban Concepts. December 2017. *The River Club. Urban Design Framework.*
²² HWC, 13 Feb 2020, para.77.

(d) That the “(e)valuation of the impact of the development on heritage resources relative to the sustainable social and economic benefits to be derived” “does not comply with the NHRA”.²³

This section of the Final Comment (para.s 84-95) is flawed in that HWC apparently disputes or does not recognise either the heritage resource-related benefits of the development, the ecological benefits of the development, the public amenity gains for the general public, or the very significant gains in access and memorialisation of the First Nations; and it does not have the expertise to assess the very considerable social and economic benefits of the development including: investment in the economy, creating wealth; increased employment, income and skills development; increased State and local government revenue; increase in centrally located housing and other facilities; densification facilitating improved connectivity, transport systems and TR-area implementation; and creation of new publicly accessible areas, especially but not only to First Nations groupings.

Given this, it is difficult to concede that the requirement for an “evaluation of the impact of the development on such heritage resources relative to the sustainable social and economic benefits to be derived” “does not comply with the NHRA”, even if HWC disagrees with the assessment in the HIA and Supplement. Indeed, given the accounts of impacts in the HIA and Supplement which are reliant on the appropriate expertise, this conclusion is irrational (HWC could rationally disagree with the assessment; but it is irrational to contend that it “does not comply with the NHRA”); and, given the articulation of the social and economic impacts in the HIA and Supplement and HWC’s refusal to clarify its views, it is the inescapable conclusion that HWC makes this claim only (and cynically) to avoid concluding its responsibilities under section 38(8) of the NHRA.

(e) That the “(r)esults of consultation with communities affected by the proposed development and other interested parties” “still does not comply with the NHRA”.²⁴

In its Interim Comment, HCW stated clearly that the “formal notice and commenting procedure” had been “complied with”; but that there had not been a “meaningful consultation with First Nations Groups”.²⁵ While considerable effort had been made both to engage with First Nations groupings and to find a willing and capable expert to assist in this regard, this criticism was accepted; and, finally, an appropriate expert was found and engaged, Rudewaan Arendse of AFMAS Solutions, who had been engaged by DT&PW to draw up a report on First Nations interests in the TR-area.

As a consequence, Arendse was engaged by LLPT to interact with the First Nations groupings in respect of the rather smaller River Club site; and the Supplement includes an account of the interactions with and views of the First Nations Collective, an assembly of five groupings (pp4-9).

All the First Nation groups who are regarded amongst the First Nations groups as the historical custodians and who are the contemporary claimants and custodial owners of the indigenous heritage narrative of the site and of the broader Two

²³ Ibid. para. 95.

²⁴ Ibid. para. 100.

²⁵ HWC, *Interim Comment*, 13 September 2019, p9.



287

Rivers-area and who are the authentic First Nations Voice are part of the First Nations Collective. This includes the Gorinaiqua, Cochoqua, Gorachouqua and the San First Nation groups who in pre-colonial times used the River Club site and the wider Two Rivers-area.

Despite every effort to reach consensus with other First Nations groupings who were not historically located at the River Club and TR-area, the other groups elected not to engage with LLPT (but expressed this choice through written submissions as I&APs in the BAR/HIA process; these issues and comments are addressed in the detailed Issues and Responses report prepared by SRK). The First Nations Collective attributed the withdrawal to a variety of possible reasons including potential conflict of interests or representing Nguni groups or groups from outside South Africa or individuals and groups with no historical, ethnic, geographic, cultural or heritage linkages to the River Club land or the Two Rivers landscape as a whole. The requirement of the applicable legislation (NHRA) in this instance is to “consult with communities affected by the proposed development and other interested parties”; it does not require consensus.

Notwithstanding the criticisms of HWC of the HIA and the call for engagement with First Nations groupings in the Interim Comment, HWC has in the Final Comment sought (extraordinarily), without any evidence whatsoever (or, frankly, expertise), to dismiss Arendse’s report and the engagement with the First Nations Collective (and the attempts to engage with other groupings) stating that the “engagement... still does not comply with... the NHRA”.²⁶

The methodology followed accepted oral history interviewing protocols; and parties who participated in and signed-off individually and collectively on the TR-area First Nations Report, had no concerns with methodology in that instance. Informed consent around purpose and use of information was obtained from all participants, in both the TR-area and River Club First Nations Reports. Generally accepted ethical protocols for such cases were followed; and in some instances the anonymity of participants were protected in order to prevent harassment and threats (as detailed in 43 page matrix referred to above and attached).

Also, it is difficult to see “confusion between this report [the River Club First Nation Report] and the DT&PW-commissioned report [the so-called TRUP First Nations Report]. The TRUP First Nation Report was completed and submitted in September 2019; and the River Club First Nations Report was commissioned in October 2019; while the River Club is a part of the TR-area, the participants in the two cases are similar, if with the omissions explained; and the objectives of the participants in the two instances are clearly aligned.

Our understanding is that there is no confusion; and there are no ethical issues.

Our view is that several First Nations groupings and the First Nations Collective led by the Gorinaiqua Cultural Council explicitly and clearly support the development proposal which is evidenced by the First Nations Report in respect of the TR-area, the First Nation’s Report in respect of the River Club site, and letters from several

²⁶ HWC, 13 Feb 2020, para. 100.

288

First Nations leaders. While there may be some First Nations groupings who do not share this view, the First Nations Collective is authoritative; and Arendse's report is persuasive in its method, its argument and in its conclusions. See attached a comment from Chief Zenzile (*Cape Argus*, 26 February 2020) voicing the disappointment of the First Nations Collective in HWC's remarks in this regard.

(f) That “the consideration of alternatives” “still does not comply with... the NHRA”.²⁷

This section of the Final Comment is fairly brief and simply repeats word-for-word what appeared in the Interim Comment and goes on to add, without any reason, that “(i)t is unfortunate that the engagement with First Nations groupings did not materially change the design approach which is reflective of the intangible heritage significances identified”.²⁸

Indeed, this seems to us to be a conclusive demonstration of HWC's intransigence (and their dismissal of the views of the owner-claimants of an intangible heritage how that intangible heritage should best be given acknowledgment, respect and manifestation in the physical world).

Given this, it is difficult to concede that the requirement for the consideration of alternatives “still does not comply with... the NHRA”, even if HWC disagrees with the explanations and assessment in the HIA and Supplement. Indeed, given the consideration of alternatives in the HIA and Supplement which are reliant on the appropriate expertise, this conclusion is irrational (HWC could rationally disagree with the assessment; but it is irrational to contend that it “still does not comply with the NHRA”); and, given their dismissal of the First Nations views and HWC's refusal to clarify its own views, it is the inescapable conclusion that HWC makes this claim only (and cynically) to avoid concluding its responsibilities under section 38(8) of the NHRA.

(g) That the “(p)lans for the mitigation of any adverse impacts during and after the completion of the proposed development” which should be included in the HIA “still does not comply with... the NHRA”.²⁹

This section of the Final Comment is very short, comprising just two paragraphs which reiterate the Interim Comment without referring to the explanations and account of continual mitigation throughout the four year process of analysis of the context and iterative amendments to the design iteratively adapting the proposal so as to mitigate the impacts. Also, HWC avoids the essential argument about off-sets: yes, the current “openness” of the site will be changed, even transformed (by any form of development), and, yes, this will constitute a loss of a quality currently deemed to be significant by many stakeholders (and confirmed by the VIA); but this change, at least from a heritage perspective, will be off-set by the positive transformation of the current Liesbeek canal into a restored riverine corridor which, in the words of a contributor to the River Club First Nations Report:

²⁷ Ibid. para. 106.

²⁸ Ibid. para. 105

²⁹ Ibid. para.108.

289

"The reason this development is good for us, is that the developer has taken the concern of rehabilitating the rivers. When you purify the water, you open up the way through which life can regenerate, When you purify water, you purvey the sense that life can regenerate where death has come. Regenerate at so many levels. At individual level, as a collective, and the environment."

"We bless this development by ensuring that the wells that were poisoned, the waters that were poisoned, once again regenerate life and reflect as close as possible as we can come to what gave life to that sweet water."³⁰

Given this, it is difficult to concede that plans for the mitigation of any adverse impacts during and after the completion of the proposed development which should be included in the HIA have not been included and accounted for in the HIA which, in the view of HWC, "still does not comply with... the NHRA", even if HWC disagrees with the explanations in the HIA and Supplement. Indeed, given the inclusion of mitigations in the HIA and Supplement and, given HWC's refusal to clarify its own views, it is the inescapable conclusion that HWC makes this claim only (and cynically) to avoid concluding its responsibilities under section 38(8) of the NHRA.

Conclusions:

Given these rebuttals of the various claims by Heritage Western Cape in its Final Comment of 13 February 2020, we hope that this puts aside the claims that the HIA, the Supplement and accompanying documentation (including, in particular, the River Club First Nations Report) are inadequate or do not comply with the requirements of the National Heritage Resources Act. We emphasize too that Heritage Western Cape has, both in describing its last comment as "final" and, in its refusal to clarify its views, explicitly and implicitly declined to interact further with LLPT.

Yours faithfully,



Dr Stephen S Townsend
Timothy JG Hart

³⁰ AFMAS Solutions, November 2019, *River Club First Nations Report*, a report commissioned by LLPT, p50.





The First Nations Collective, comprising the majority of Khoi and San leaders in the Cape Peninsula, says Heritage Western Cape is not listening to it regarding the proposed redevelopment of the River Club in Observatory, the writer says.

■ MARGINALISED

First Nations 'bludgeoned'

Khoi, San leaders dejected after Heritage Western Cape rejects their River Club proposals

CHIEF IGARU ZENZILE KHOISAN

THE First Nations Collective, comprising the majority of Khoi and San leaders in the Cape Peninsula, is extremely disappointed in the final comment of Heritage Western Cape (HWC) on the proposed redevelopment of the River Club in Observatory.

HWC appears to have completely ignored how this project would preserve and celebrate the relevant First Nations heritage, rehabilitate and indigenise the local ecology, while providing thousands of jobs to benefit thousands of unemployed First Nation descendants who have been marginalised by discriminatory labour practices.

Staggeringly, recent media reports reference comments from HWC chief executive Dr Mfokisi Dlamuka who stated that any development of property in the Two Rivers area "is in danger of being compromised" unless the baseline study involves "meaningful consultation" with the First Nations and incorporates their understanding of the significance of the site into the study.

Yet, as the heritage official is well aware, this is exactly what has happened over the past few months and he and his colleagues were appraised on the record.

Leaders of the First Nations Collective, which represents structures and leaders who have been in the forefront of the fight for recognition and res-

toration, held numerous meaningful and constructive engagements with the River Club owners on how to sensitively and respectfully memorialise the historical significance of the area.

This collective, which is organic and growing, comprises the community Gqachobana, two Gqachobana councils, Gqachobana Royal Council, San Traditional Royal House of N!lufe, National Khoi and San Council, and the Western Cape Legislative Khosian Council.

Even as this response is being scripted, numerous indigenous structures have joined, and now include the Overberg Heritage Committee, the Foundation Nation Restoration, and the Khoi/San Labour Forum.

The result of our engagements is a more appropriate development proposal that includes world-class facilities where the First Nations will be empowered to permanently collate and curate our heritage, meaningfully practice our culture and tell our own stories while training our own people.

Through this project our voice will have a platform to find resonance across South Africa – and also with indigenous communities across the world.

Yet, despite representatives of the First Nations Collective appearing before the HWC and informing them of the outcomes of these engagements, this was ignored by the committee.

Our support for this project is pri-

marily a strategic act of indigenous cultural agency to secure a legacy for us and for seven generations into the future for which we are responsible.

The significance of this area and the adjoining Gude Molen site, has been the subject of more than two decades of intense engagement between ourselves and numerous senior state officials.

This includes Western Cape premiers, various MECs, mayors of Cape Town, the Chief Land Claims commissioners, several ministers of the national government and even the apex of governance, namely the Presidency.

All our efforts in this regard have fallen on deaf ears, have been subjected to ridicule and, or bludgeoned with the arrogant silence of invisibility, which means being treated as never having spoken and not worthy of being heard.

It is with the knowledge of being trivialised and bludgeoned into invisibility that we elected to directly engage with the owner of the River Club, Jody Antreiching on the redevelopment proposal.

What we have discovered in this engagement process is that the developer has been open and empathetic to our concerns, which were placed on the table in a frank exchange of views.

We believe that the developer has grasped the intense pain that has been associated with the bludgeoning of our narrative.

As such this developer, unlike any other government, corporate or social entities with which we have engaged, has made a firm commitment to ensure that the footprint of the Khoi and San's history of resistance, and its modern day resurgence is incorporated into the development plan.

The developer has committed to allocate an area in the centre of this development, which is of great cultural significance to us for the building of a Heritage Centre, a functional indigenous garden and cultural praxis site, and a world-first International Indigenous Media and Communication Centre.

The developer has also committed to cleaning up and indigenising the ecology of the area, and ensuring that the spiritual and cultural symbols of the Khoi and the San find resonance within the proposed development plan.

We are aware that there will be detractors, including those who believe that indigenous people stand diametrically opposed to development. Our position is that indigenous people are not the perpetual children that the colonial and colonial mentality would have us be.

On the contrary, it is our view that such paternalistic notions must by themselves be put to the sword.

Chief Zenzile Khosian is a journalist, poet and cultural activist.

This material has been copied under a Creative Commons and is not to be used for commercial purposes.



291

AB9

**A HERITAGE IMPACT ASSESSMENT
regarding
THE PROPOSED DEVELOPMENT
of
THE RIVER CLUB SITE,
OBSERVATORY, CAPE TOWN**

for consideration by

**HERITAGE WESTERN CAPE
and
THE DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND DEVELOPMENT
PLANNING**

in terms of Section 38(8) of the National Heritage Resources Act
and
the National Environmental Management Act and Its Regulations

Timothy JG Hart
MA, Cape Town
Archaeologist

and

Stephen Townsend
B Arch, Cape Town; Dipl in the Study and Restoration of Monuments, Rome;
PhD, Cape Town
Architect, Statutory Planner, Conservationist

2 July 2019

1



292

CONTENTS OF THE SPECIALIST REPORT – CHECKLIST FOR APPENDIX 6 of GNR982

Regulation GNR 982 of 2014, Appendix 6	Section of Report
(a) details of the specialist who prepared the report; and the expertise of that specialist to compile a specialist report including a <i>curriculum vitae</i> ;	Details of Specialists
(b) a declaration that the specialist is independent in a form as may be specified by the competent authority;	Declarations of Independence
(c) an indication of the scope of, and the purpose for which, the report was prepared;	1 Introduction
(d) the date and season of the site investigation and the relevance of the season to the outcome of the assessment;	n/a
(e) a description of the methodology adopted in preparing the report or carrying out the specialised process;	1.3 Method
(f) the specific identified sensitivity of the site related to the activity and its associated structures and infrastructure;	6 Identification of heritage resources
(g) an identification of any areas to be avoided, including buffers;	7 Significances
(h) a map superimposing the activity including the associated structures and infrastructure on the environmental sensitivities of the site including areas to be avoided, including buffers;	9 The proposed development
(i) a description of any assumptions made and any uncertainties or gaps in knowledge;	3.3 Assumptions
(j) a description of the findings and potential implications of such findings on the impact of the proposed activity, including identified alternatives on the environment;	8 Heritage indicators 10 Assessment of Impacts
(k) any mitigation measures for inclusion in the EMPr;	11 Mitigations
(l) any conditions for inclusion in the environmental authorisation;	11 Mitigations
(m) any monitoring requirements for inclusion in the EMPr or environmental authorisation;	10 Assessment of impacts
(n) a reasoned opinion— i. as to whether the proposed activity or portions thereof should be authorised; and ii. if the opinion is that the proposed activity or portions thereof should be authorised, any avoidance, management and mitigation measures that should be included in the EMPr or Environmental Authorization, and where applicable, the closure plan;	12 Recommendations
(o) a summary and copies of any comments received during any consultation process and where applicable all responses thereto; and	Appendices
(p) any other information requested by the competent authority	Appendices

EXECUTIVE SUMMARY

The Liesbeek Leisure Properties Trust has appointed Dr Stephen Townsend and Tim Hart (ACO) to compile a Heritage Impact Assessment satisfying Section 38(8) of the National Heritage Resources Act (NHRA) in conjunction with a Basic Assessment process conducted under the National Environmental Management Act (NEMA) for the redevelopment of the River Club site, Erf 151832 and its bounding riverine banks, the construction of the abutting long-planned arterial Berkley Road Extension on Erf 15326, the widening of Liesbeek Parkway, and of the road intersections giving access to Erf 151832, Observatory, Cape Town. Although use of the River Club site has been gradually intensified over the years, Liesbeek Leisure Properties Trust have explored the possibility of developing the site as the land is under-used within this urban context close to Cape Town where land for urban densification is needed and desired. The proposal is to construct a mixed-use development on the site that will contain residential, hotel, retail, office, business and educational facilities.

The River Club project area is a roughly triangular site at the confluence of the Liesbeek and Black Rivers between a canal cut in 1952 to carry the waters of the Liesbeek and a relic of the older course, itself much altered by its own meanderings and by various 20th century dredging and infill, and since 1952 serving only as a component of the local stormwater system, sometimes receiving water backing up from the slow-moving river below the confluence. We will refer to the two courses as "***the new post-1952 canalized Liesbeek River course***" and "***the old pre-1952 course***" (or variations to suit the context). The lower reaches of the Liesbeek and its surrounds was the earliest site of settler farming during the early years of the VOC occupation; and the loss of what had been used for summer-grazing brought the settlers into conflict with KhoiSan pastoralists.

The process of compiling an HIA and of seeking the comment of interested and affected parties and the public at large has been complicated both the legal framework and by a decision in March 2018 by HWC to provisionally proclaim the property to be a provincial heritage site. This final version of the HIA will accompany a Basic Assessment Report for circulation for pre-application stakeholder engagement in terms of Regulation 19(1)(a) of the NEMA EIA regulations of 2014 and will be submitted to HWC for their comment in terms of Section 38(8) of the NHRA. This final version of the HIA has been preceded by earlier versions circulated for comment in order to satisfy separate requirements under the NHRA between 25 January and 26 March 2018 and again between 22 March and 2 May 2019 in order to include discussion regarding the provisional proclamation relevant to the development application under the NHRA and NEMA.

Heritage Significance

The low-lying area at the confluence of the Liesbeek and Black Rivers and the raised spur of land between the two rivers that accommodates the South African Astronomical Observatory and Valkenburg Hospital was a key site in the early



294

frontier zone. The lower reaches of the Liesbeek and its surrounds were the earliest sites of settler farming during the beginning years of the VOC occupation; and the loss of land which had been used for summer-grazing by Khoikhoi pastoralists brought the settlers and these pastoralists into conflict .

Descriptions in Moodie (1938) and the VOC *Resolutions* indicate that the Liesbeek, for much of its length, was an early frontier and, as such, partially fortified.

Although no tangible remnants of the actual events, forts, outposts or graves have been found so far, the topography and 'place' survive albeit greatly transformed by the iterative changes of land-use. Wilderness and wetlands were transformed to farm land, then for various institutional uses, and thereafter into modern suburbia. The Liesbeek and Black Rivers, their confluence, and the remnants of the Salt River estuary still exist today. Indeed, the one heritage feature of high significance that has been identified is the Liesbeek River corridor itself and the confluence. They are an important topographical element; a powerful historic symbol that takes us back to the early landscape of pre-colonial transhumance use, colonial settlement and agriculture, and contestation; and it is today claimed as a living heritage site by First Peoples groups.

The site itself has no tangible traces of early pre-colonial or colonial historic events. The 1930s recreational club building and its extensions are of low heritage significance and the site itself contains no tangible resources that are worthy of conservation. The immediate surrounds, however, contain some highly significant heritage places and structures and the late-Victorian and early 20thC suburbs of Observatory and Maitland are nearby. They are, however, the Astronomical Observatory (SAAO) apart, too distant from the site to be impacted on in any immediate or direct sense by the development proposed.

So, while the landscape remains, it is in a much transformed state. Also, the future development of the Berkley Road Extension will change the character of the site and its surrounds considerably as it will stretch across the River Club 'island' and the Black River to Maitland. Likewise, if development of the land owned by the SAAO immediately to the south of the River Club site occurs, the sense of place here would be affected though we understand that this is now unlikely.

As a consequence, the possible pre-colonial river crossing site and the Liesbeek floodplain/riverine corridor and its sense of place apart, there are no heritage resources on the site that require intervention. Given this, we contend that the heritage-related criteria-for-decision-making/design indicators are relatively limited in guiding the architectural and urban character of the proposed development itself. We do argue, however, that the heritage indicators aimed at the recovery and restoration of the Liesbeek riverine corridor and those aimed at protecting the sense of place of the river and the spur of land occupied by the Observatory (SAAO) should be the primary generators of the position, form and design of the development proposal.



In this last sense, there is we argue little distance between our assessment of the sense of place, significance of this stretch of the Liesbeek River and the views expressed by many commentators. Indeed, we argue that the Liesbeek River corridor, if recovered and restored to full ecological functioning and given meaningful presence, should be recognised as a heritage resource and be declared to be a provincial heritage site.

The development proposal

Five development scenarios have been considered. These include the no-go alternative, a preferred 'riverine corridor' alternative, an 'island concept' alternative and another two which are not financially viable. Both the preferred 'riverine corridor' alternative and the 'island concept' alternative propose a mixed-use development comprising a mixture of open space and multi-storey complexes with office space, residential, retail and hospitality components. They both provide for approximately 150 000sqm of accommodation.

The preferred 'riverine corridor' alternative offers meaningful rehabilitation of the canalised portion of the Liesbeek River on the eastern boundary of the site restoring ecological functioning, providing public access along the 40m wide bank as part of the restored Liesbeek River as historical and topographical feature. The old pre-1952 Liesbeek course would be landscaped and retained as a part of the storm water system (as it is at present) but also connected ecologically across the property with a 70m-wide ecological corridor to the restored Liesbeek riverine corridor. Several significant changes/ mitigations have been added since the last version of the HIA was circulated.

The 'island concept' alternative, offers a similar development mix but without rehabilitation or meaningful improvement of the canalised section of the river or of the old pre-1952 Liesbeek course.

Impacts

The greatest negative impact of both the preferred 'riverine corridor' and 'island' alternatives on the floodplain as a whole and the site and surrounds is that the proposed development will result in a fundamental change in the appearance and character of the site, which has been perceived as a negative impact by almost all commentators. Also, development of this site will affect the experience of the SAAO from within and without even though the nearest buildings of the development will be as much as 160m from the main Observatory building and its campus; and such change is difficult to mitigate (although we regard the restoration of the Liesbeek River to have a positive overall impact on the SAAO). As a consequence, it is recommended that the visual impact of the development of the southern portion of the site closest to the SAAO be mitigated by keeping its height rather lower than that of the bank of trees on the SAAO ridge and include a range of building heights, variation in building form, and an avenue of trees lining the development along the edge of the riverine corridor.

On the other hand, the proposed restoration of the Liesbeek riverine corridor in place of the canal, with pedestrian access to the confluence, is a positive impact and a place-making contribution that is of benefit to both cultural and natural heritage and to the amenity of the environs more generally; and this seems to us to be able to trigger a positive contribution to the planning for the Two Rivers Urban Park, an endeavour now more than twenty years in the making.

Mitigation

Mitigation measures include enhancing/restoring the Liesbeek riverine corridor and providing open public access to the corridor by doing the following:

- 1) The Liesbeek River: the currently canalised section of the Liesbeek bounding the site is to be rehabilitated so as to create the sense of a natural riverine environment and engender conditions favourable to creating biodiversity and natural qualities. This action will result in a powerful, positive contribution to the overall commemoration of this feature and enhance and celebrate its symbolic and historical significance.
- 2) The riverine buffer zones: a riverside green strip or buffer that is pedestrian-, flora- and fauna-friendly along both the old and new river courses. Wetland specialists have indicated the size and specification of the buffer. A pedestrian walk along the buffer zone will provide an enhanced view of the SAAO site, the river itself, wetlands and the bird sanctuary. Furthermore, it will enhance the quality of the area generally.
- 3) Ensure that the buildings of the southern precinct, Precinct 1, lining the riverine corridor are limited to a height of four storeys above the new ground level.
- 4) A commemorative area: space is left open for the establishing of a green zone or open area at the confluence of the Liesbeek and Black Rivers, at or near to the likely historic crossing point of the Salt River (near *Varschedrift*), to serve as a commemorative and/or celebratory marker of the history of contestation.
- 5) Implement monitoring and chance-find procedures for archaeological and palaeontological material during excavations of the western bank of the Liesbeek Canal and during excavations for the construction of the Berkley Road extension (as specified in the EMPr) in particular at the potential pre-colonial crossing point at the northern-most point of the subject site.

Conclusions

Given the identified heritage significances and the heritage-related criteria for decision-making presented in this report, and the determination of the impacts of the development proposed on the heritage significances, mitigation measures have been identified and proposed. These are incorporated into the preferred alternative, the Riverine Corridor Alternative (the preferred alternative being the result of specialist inputs, especially ecological, heritage and urban design), which offers the best solution and will enhance the amenity- and symbolic-value of the Liesbeek River, this



297

site and the environs from a heritage point of view.

As a consequence, on balance, we do not anticipate unacceptable impacts on heritage resources or their significances; and it is recommended that Heritage Western Cape supports the development proposed and recommends approval of the proposed alternative to the NEMA decision-maker, the provincial Department of Environmental Affairs and Development Planning.



DETAILS OF THE SPECIALISTS

This study has been undertaken by:

Stephen Townsend, Architect, Statutory Planner, Conservationist
10 Faure Street, Gardens, Cape Town, 8001
Email: ssquared@worldonline.co.za
Phone: 021-424 9871

and

Tim Hart of ACO Associates CC, archaeologists and heritage consultants
Unit D17, Prime Park, Mocke Road, Diep River, Cape Town, 7800
Email: tim.hart@aco-associates.com
Fax: 086 603 7195
Phone: 021-706 4104

Stephen Stewart Townsend **Abbreviated CV**

Stephen Stewart Townsend (1947, Cape Town) is an architect with forty years experience (until recently a corporate member of Cape Institute for Architecture and of the South African Institute of Architects and registered with the South African Council for the Architectural Profession; now retired); and, prior to that, he worked for almost ten years as an engineering and then architectural assistant; he is a statutory planner (an associate member of the South African Planning Institute); a heritage practitioner (an accredited member of the Association of Professional Heritage Practitioners); and he was an adjunct associate professor at the University of Cape Town from 2009 till the end of 2017.

He has a B Arch from the University of Cape Town (1978), a diploma in conservation studies from the University of Rome (1985; equivalent to a Masters degree), and a Ph D from the University of Cape Town (2003; thesis title: *Development Rights and Conservation Constraints*).

His work as an architect in the late-1970s and 80s focused on conservation-oriented work: this included the infill of more than a hundred houses in the Muslim quarter or Bokaap of Cape Town, the Bokaap community centre and a range of other conservation and restoration projects. Later, from 1985 to 2004, he worked for the City of Cape Town managing the built environment, first as head of the Urban Conservation Unit (ten years) during which time he was responsible for the creation of nearly thirty conservation areas; and then as head of land use management (for nine years). During these nineteen years he became experienced in the administration of the law relating to development, in particular, those regarding planning, heritage resources, the environment and building development generally.

Between April 2006 and September 2007 he was Chief Executive Officer of Heritage Western Cape, the Western Cape provincial heritage resources authority; and in August 2010 he was appointed to the Heritage Western Cape Council and its Executive Committee for a three-year period ending in September 2013 and he chaired two of its permit committees (the Impact Assessment Committee and the Built Environment and Landscape Committee) and served (and still does) on another, the Inventories and Grading Committee.

He served on the Cape Institute for Architecture's management committee from 1987 to 2006; and, between 1988 and 1998, he chaired its Planning and Environment Committee and then its Heritage Committee; and he chaired its Heritage Committee again from 2004 to 2006; and he continues to serve on its Heritage Committee.

He was also been active in the formation of the Association of Professional Heritage Practitioners, an embryonic professional association of heritage practitioners: and he has served several periods on its executive committee and has chaired its academic liaison and mentorship committee and served on its legislation and administration committee.

299

He was also a founder member and first treasurer of ICOMOS SA, the national branch of the International Council on Monuments and Sites which is an agency under the aegis of UNESCO.

He has presented papers on conservation-oriented management and on land use management and development control at both local and international conferences; and has had papers, articles and chapters published in the press, in journals and books.

He established his own architectural, planning and heritage consultancy in 2004 in which capacity he specialises in heritage resource- and land use-related advice regarding development and its regulation and administration.

As an adjunct associate professor, he taught at the University of Cape Town's School of Architecture, Planning and Geomatics, convening and teaching the Master in Philosophy in Conservation of the Built Environment degree (which he established in 2009) until the end of 2017; and he still runs continuing professional development courses in architectural and urban conservation at the University of Cape Town, which have trained nearly 400 participants in the past ten years.

January 2018

Timothy James Graham Hart

Curriculum vitae


Name: Timothy James Graham Hart
Profession: Archaeologist
Date of Birth: 29/07/60
Parent Firm: ACO Associates
Position in Firm: Director
Years with Firm: 9
Years experience: 30 years
Nationality: South African
HDI Status: n/a
Education: Matriculated Rondebosch Boys High, awarded degrees BA (UCT) BA Hons (UCT) MA (UCT).
Professional Qualifications: Principal Investigator ASAPA, member of Association of Heritage Professionals (AHP)
Languages: Fully literate in English, good writing skills. Conversation in Afrikaans, mediocre writing skills, good reading skills. Some knowledge of Latin.

KEY QUALIFICATIONS

- Bachelor of Arts in Archaeology and Psychology (UCT)
- BA Honours in Archaeology (UCT)
- MA in Archaeology (Southern Methodist University, USA and UCT)
- Recipient of Frank Schweitzer Memorial Prize (UCT) for student excellence
- Professional member (no 50) Association of Southern African Professional Archaeologists (ASAPA)
- Principal Investigator, cultural resources management section (ASAPA)
- Professional member in specialist and generalist categories Association of Heritage Professionals (AHP)
- Past Committee Member Heritage Western Cape, Committee Member SAHRA
- Awarded Department of Arts and Culture and Sport award for best heritage study in 2014

Relevant recent Project Experience with respect to large projects:

- Specialist consultant – Eskom's Kudu Integration project (identifying transmission line routes across Namaqualand)

9




- Specialist consultant – Eskom’s Atlantis Open Cycle Gas Turbine project, upgrade and power lines
- Specialist consultant – Eskom’s Mossel Bay Open Cycle Gas Turbine project, substations and power lines
- Specialist consultant – Eskom’s proposed Omega sub-station
- Specialist consultant – Eskom’s Nuclear 1 programme
- Specialist consultant – Eskom’s PBMR programme
- Specialist consultant – Department of Water Affairs raising of Clanwilliam Dam project
- Specialist consultant to De Beers Namaqualand Mines (multiple projects since 1995)
- Specialist consultant – Saldanha Ore Handling Facility phase 2 upgrade
- Three years of involvement in Late Stone Age projects in the Central Great Karoo
- Wind Energy systems: Koekenaap, Hopefield, Darling, Vredendal, Bedford, Sutherland, Caledon
- Bantamsklip Nuclear 1 TX lines
- Koeberg Nuclear 1 TX lines
- Karoo uranium prospecting - various sites
- HIA Houses of Parliament
- Proposed Ibhubesi gas project, West Coast of South Africa.

Experience

After graduating from UCT with my honours degree I joined the Southern Methodist University (SMU Dallas Texas, USA) team undertaking Stone Age research in the Great Karoo. After working in the field for a year I registered for a Masters degree in pre-colonial archaeology at UCT with support from SMU. On completion of this degree in 1987 I commenced working for the ACO when it was based at UCT. This was the first unit of its kind in RSA.

In 1991 I took over management of the unit with David Halkett. We nursed the office through new legislation and were involved in setting up the professional association and assisting SAHRA with compiling regulations. The office developed a reputation for excellence in field skills with the result that ACO was contracted to provide field services for a number of research organisations, both local and international. Since 1987 in professional practise, I have been involved in a wide range of heritage related projects ranging from excavation of fossil and Stone Age sites to the conservation of historic buildings, places and industrial structures. To date ACO Associates cc (of which I am co-director) has completed more than 1500 projects throughout the country ranging from minor assessments to participating as a specialist in a number of substantial EIA’s as well as international research projects. Some of these projects are of more than 4 years duration.

Together with my colleague Dave Halkett I have been involved in heritage policy development, development of the CRM profession, the establishment of two professional bodies and development of professional practice standards. Notable projects I have been involved with are the development of a heritage management plan and ongoing annual mitigation for the De Beers Namaqualand Mines Division, heritage management for Namakwa Sands and other west coast and Northern Cape mining firms. Locally, I was responsible for the discovery of the “Battery Chavonnes” at the V&A Waterfront (now a conserved as a museum), the discovery of a massive paupers burial ground in Green Point (now with museum, memorial and a published book), the fossil deposit which is now the subject of a public display at the West Coast Fossil Park National Heritage Site as well as participating in the development of the Robben Island Museum World Heritage Site. I have teaching experience within a university setting and have given many public lectures on archaeology and general heritage related matters, both locally and internationally.

Academic Publications

Hart, T.J.G. 1987. Porterville survey. In Parkington, J. & Hall, M.J. eds. Papers in the Prehistory of the Western Cape, South Africa. Oxford: BAR International Series 332.

