

**IN THE HIGH COURT OF SOUTH
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No: 12994/21

In re: The Amicus Curiae application of

FOREST PEOPLES PROGRAMME

In the matter between:

OBSERVATORY CIVIC ASSOCIATION

First Applicant

**GORINGHAICONA KHOI KHOIN INDIGENOUS
TRADITIONAL COUNCIL**

Second Applicant

and

**THE TRUSTEES FOR THE TIME BEING OF
LIESBEEK LEISURE PROPERTIES TRUST**

First Respondent

HERITAGE WESTERN CAPE

Second Respondent

CITY OF CAPE TOWN

Third Respondent

**DIRECTOR: DEVELOPMENT MANAGEMENT
(REGION 1), ENVIRONMENTAL AFFAIRS &
DEVELOPMENTAL PLANNING, WESTERN
CAPE PROVINCIAL GOVERNMENT**

Fourth Respondent

**THE MINISTER FOR LOCAL GOVERNMENT,
ENVIRONMENTAL AFFAIRS & DEVELOPMENT
PLANNING, WESTERN CAPE PROVINCIAL
GOVERNMENT**

Fifth Respondent

**CHAIRPERSON OF THE MUNICIPAL PLANNING
TRIBUNAL OF THE CITY OF CAPE TOWN**

Sixth Respondent

EXECUTIVE MAYOR, CITY OF CAPE TOWN

Seventh Respondent

WESTERN CAPE FIRST NATIONS COLLECTIVE

Eighth Respondent

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AFFIDAVIT ON BEHALF OF THE FOURTH AND FIFTH RESPONDENTS

I, the undersigned,

MARK NEVILLE OWEN

do hereby make oath and say:

1. I am an adult male attorney of this Honourable Court, practising as such at the office of the State Attorney, 4th Floor, 22 Long Street, Cape Town.
2. The facts set out in this affidavit are within my personal knowledge, unless the context indicates otherwise, and are true.
3. I am duly authorised to depose to this affidavit on behalf of the Fourth and Fifth Respondents, and to deal herein with their attitude towards the amicus curiae application of the Forest Peoples Programme (the FPP”).
4. As appears from my letter dated 29 October 2021, annexure “GB4” to the founding affidavit of the FPP, the Fourth and Fifth Respondents informed the attorneys representing the FPP that they would not oppose their application to be

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admitted as an amicus curiae in this matter. This remains the attitude of the Fourth and Fifth Respondents.

5. Because of the opposition by certain of the other Respondents to the FPP's request to be admitted as an amicus curiae, it launched its application for admission on or about 8 November 2021, slightly more than two weeks before the main application is to be heard. A perusal of the FPP's founding affidavit, and the copy of the written submissions which it proposes to make (annexures "GB1" thereto), shows the following:

- 5.1. The FPP adds nothing in respect of the relevant facts before this Court (paragraph 7 of annexure "GB1").
- 5.2. The FPP proceeds on the assumption that the relevant authorities did not properly consider the cultural significance of the site, or that developing the site would permanently undermine the cultural significance of the site. As an amicus, the FPP does not take a position in respect of this dispute (founding affidavit: paragraph 15).
- 5.3. The FPP makes extensive submissions regarding international treaties, judicial and quasi-judicial decisions and international law principles which,

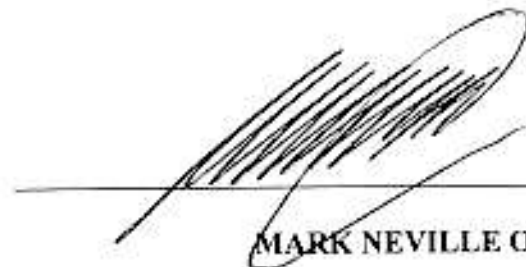
it alleges, may assist the court in this matter (annexure "GB1", pages 6 - 26).

6. Having regard to what is set out above, it may well ultimately be found that the submissions on behalf of the FPP do not have a bearing on the decision which this Court is required to take in this matter, one way or the other. However, the Fourth and Fifth Respondents cannot simply assume, at this stage, that this will be the case. In the circumstances, if this Court grants an order admitting the FPP as an amicus curiae, the Fourth and Fifth Respondents will ask that the matter be postponed to give them a proper and fair opportunity to deal with the submissions which the FPP proposes to make. In this regard, I point to the following facts and circumstances:

- 6.1. The Applicants in the main application delivered their heads of argument on 2 November 2011, which was some four court days after the date upon which they had originally undertaken to do so.

- 6.2. The Fourth and Fifth Respondents' legal representatives thereafter, working under considerable time pressure, completed their heads of argument and delivered them on Friday, 12 November 2011.

- 6.3. The Fourth and Fifth Respondents and their legal representatives have not had an adequate opportunity to deal with the written submissions which the FPP proposes to make, nor is it expected that their legal representatives will be able to do so before the date on which the matter is to be heard.
- 6.4. Whereas the Fourth and Fifth Respondents maintain the stance that they do not oppose the FPP's application to be admitted as an amicus curiae, it is no fault of the Fourth and Fifth Respondents that the FPP has waited until such a late stage before applying for admission.
- 6.5. The matter is of considerable importance for all of the parties concerned, including the Fourth and Fifth Respondents. Fairness therefore dictates that they should be allowed a sufficient and reasonable opportunity to deal with the FPP's submissions, should it be admitted.
7. In the circumstances, and in the event of the FPP being admitted as an amicus curiae, it is submitted that the matter should be postponed until a date to be determined by this Court.



MARK NEVILLE OWEN

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I certify that:-

The deponent signed this affidavit and swore and acknowledged that he: -

- a) knew and understood the contents thereof;
- b) had no objection to taking the oath; and,
- c) considered the oath to be binding on his conscience.

The deponent then uttered the words, "*I swear that the contents of this declaration are true, so help me God*".

SIGNED AT CAPE TOWN ON 16 NOVEMBER 2021



COMMISSIONER OF OATHS

Full names:

Designation and area:

Street address:

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