

**Approved Minutes of the Special Meeting of the Impact Assessment  
Committee (IACOM)  
of Heritage Western Cape (HWC) held on the 1st Floor in the Boardroom,  
Protea Assurance Building, Greenmarket Square, Cape Town,  
at 09H30 on Thursday, 22 August 2019**



**1. Opening and Welcome**

The Chairperson, Mr Chris Snelling (CSn), opened the meeting at 09H45 and welcomed everyone present.

**2. Attendance**

**Members**

Mr Chris Snelling (CSn)  
Mr Sipiwo Mavumengwana (SM)  
Mr Frik Vermeulen (FV)  
Mr Mike Scurr (MS)  
Mr Dave Saunders (DS)  
Mr Guy Thomas (GT)  
Mr Mokena Makeka (MM)  
Ms Cecilene Muller (CM)  
Dr Lita Webley (LW)

**Staff**

Dr Mxolisi Dlamuka (MD)  
Ms Penelope Meyer (PM)  
Ms Waseefa Dhansay (WD)  
Mr Olwethu Dlova (OD)

**Visitors**

Dr Stephen Townsend  
Ms Sarah Winter  
Mr Marc Turok  
Ms Cindy Postlethwayt  
Mr Geoff Underwood  
Mr Duma Goso  
Mr Mark Callaghan  
Mr Stephen van der Spuy  
Mr Mark Jacobs  
Mr Emil Biah  
Ms Michelle Couzyn  
Ms Lauren Kent  
Dr Daniel Cunnam  
Ms Lindelwa Mabuntane  
Zade Meyer

Ms Karin Dugmore-Strom  
Mr Nicholas Smith  
Ms Heidi Boise  
Mr Matthew Law  
Mr Tauriq Jenkins  
Ms Quahnita Samie  
Mr Craig Alexander  
Mr Jody Aufrichtig  
Ms Belisa Rodrigues  
Ms Emmylou Bailey  
Mr James Tannenbergyt  
Mr Rudewaan Arendse  
Ms Roslynn Groep  
Mr Piet Louw

**Observers**

Mr Mark Bell (CoCT)

Ms Sandra Hustwick (CoCT)

**3. Apologies**

Ms Colette Scheermeyer (CSc)

**3.1. Absent**

None

**4. Approval of the Agenda**

- 4.1 The Committee resolved to approve the agenda dated 22 August 2019, with a minor amendment.

**5. Disclosure of Interest**

- 5.1 None

**MATTERS TO BE DISCUSSED**

**6. SECTION 38(2) RESPONSES TO NOTIFICATION OF INTENT TO DEVELOP**

- 6.1 None

**7. SECTION 38(1) INTERIM COMMENT**

- 7.1 None

**8. SECTION 38(4) RECORD OF DECISION**

- 8.1 None

**9. SECTION 38(8) NEMA RESPONSE TO NOTIFICATION OF INTENT TO DEVELOP**

- 9.1 None

**10. SECTION 38(8) NEMA INTERIM COMMENTS**

- 10.1 **Proposed Development on Erf 151832, Corner Liesbeek Parkway and Observatory Road, Observatory: MA  
HM/ CAPE TOWN METROPOLITAN/ OBSERVATORY/ ERF 151832**

**Case No:** 15112504WD1217M

Heritage Impact Assessment (HIA) and supporting documents were tabled.

Dr Stephen Townsend, Mr Geoff Underwood, Mr Nicholas Smith, Mr Matthew Law, (on behalf of the applicant) Mr Jody Aufrichtig, (on behalf of himself), Mr Tauriq Jenkins, (on behalf of TRUP and the Goringhaicona Khoi Khoi Indigenous Traditional Council), Mr Duma Goso, (on behalf of PRASA), Mr Mark Callaghan, (on behalf of RAMPAC), Mr Craig Alexander (on behalf of DT&PW), Mr Stephen van der Spuy, (himself) and Mr Marc Turok, (on behalf of the OCA), were present and took part in the discussion.

**DISCUSSION:**

A summary of the discussion held is set out hereunder:

The Chair welcomed everyone present.

In order to avoid any confusion, the Committee confirmed that this particular application is part of a s38(8) process, and not a s29 application in terms of the National Heritage Resources Act (NHRA).

The s38(8) HIA is part of a National Environmental Management Act (NEMA) process, which is being submitted to the Department of Environmental Affairs & Development Planning (DEA&DP). DEA&DP is the consenting authority, and HWC is a commenting body.

As such HWC should be regarded as a Stakeholder in the process, in much the same way as the other Interested and Affected Parties (I&APs) are, albeit HWC has an additional responsibility in that it is a statutory body that must consider the HIA report in accordance with the requirements of s38(3) of NHRA..

Whilst the Committee is aware that the site is currently provisionally protected in terms of s29 of the NHRA, no application for a permit has been submitted to HWC as yet, and hence, there is no decision that HWC can take in terms of the provisions of that section, in respect of the proposed development.

It was however noted that as long as the provisions of s29 are in force, development cannot proceed without a permit from HWC.

The Committee noted that there was disagreement between the HIA and the Environmental Assessment Practitioner (EAP) in respect of the NEMA process still to be followed. It was confirmed by the EAP that there will be a further 30-day commenting period for registered Stakeholders, after the Pre-Application BAR is submitted to DEA&DP.

As such, the Committee confirmed that it will be providing an Interim Comment, in accordance with the Standard Operating Procedure (SOP) entered into between HWC and DEA&DP. The deadline for comment is 16 September 2019.

It was noted therefore, that the purpose of this meeting was primarily for information purposes, and in order for all parties present to have the opportunity to provide the Committee with any additional information that they believe will assist it in obtaining a better understanding of the heritage significance, and meaning, of the site, the development proposal, and any other relevant issues.

Given the extreme sensitivities of the site, and the complex nature of the application, the Committee noted that it would be impossible to provide considered comment during the course of the meeting, and informed the parties present that the discussion and formulation of the Comment it will provide, will be done in camera, in much the same way as any other registered Stakeholder, (including authorities), would do.

Dr Townsend and Mr Underwood made presentations on behalf of the applicant, and thereafter various I&AP's made representation to the Committee, after which the Committee asked a number of questions of clarification in order to assist it to formulate its comment.

At the end of the discussion, the Committee informed all parties that it would consider all matters raised both at the meeting, and in the written submissions previously provided, in the formulation of its comment. This Interim Comment will be forwarded to the EAP in accordance with the timelines specified in the NEMA process, and this comment, as a courtesy, will be made available to all Interested and Affected Parties who have commented on the HIA, simultaneously.

Following the public session, the Committee adjourned for in camera discussion to formulate its comment.

## **INTERIM COMMENT.**

**DEA&DP Reference Number: 16/3/3/6/7/2/A7/17/3104/16**

**HWC Case Number: 15112504WD1217E**

**DWS Reference Number: WU9026 River Club and 16/2/7/G22/A/11**

The Committee resolved to comment as follows:

Heritage Western Cape is in receipt of a Heritage Impact Assessment, (HIA), submitted on 15<sup>th</sup> July 2019, under the provisions of s38(8) of the National Heritage Resources Act (NHRA) and contained within 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 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.

Prior to discussion of the HIA, the following is set out in order to provide background summary to the application tabled before the Committee, as well as highlight various issues that HWC has already placed on record.

The HIA tabled, conducted by Dr Stephen Townsend and Mr Tim Hart, and dated 2 July, 2019, replaces the Phase 1 HIA submitted to HWC on 22 February 2017, prepared by Ms. Bridget O'Donoghue, (including a peer review conducted by Dr Nicolas Baumann), which was tabled at the Impact Assessment Committee meeting of HWC on 8<sup>th</sup> March 2017.

The minutes of the meeting of the 8<sup>th</sup> March noted amongst other things that;

*“The Committee believes that the entire TRUP precinct must be looked at holistically: it is problematic to consider the specifics of this application in isolation from the broader study”.*

It was also noted by the IACom that;

*“On several occasions 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”.*

It was understood at the time however, that there was a broader Baseline Study of the Two Rivers Urban Park, (TRUP), commissioned by the DT&PW and conducted by

Melanie Attwell and Graham Jacobs, and which included the River Club within its area of study, and that this was to be considered by the IACom at its next meeting of 12<sup>th</sup> April 2017. On this understanding, the Committee, resolved to undertake a site inspection of the site, and wider TRUP, prior to any further consideration of the O'Donoghue Phase 1 HIA.

The Baseline study for the TRUP, (which included the River Club), and submitted in terms of s38(8), was thereafter tabled at the IACom meeting of 12<sup>th</sup> April 2017, and, of importance to the comment being provided in respect of the current application, the minutes of that meeting reflected:

*“On balance it is evident that based on the heritage resources identified in the baseline study and its supporting documentation, that the TRUP is of extremely high heritage significance. The Committee agrees that the overall site is of at least Grade II heritage significance, if not higher”,* and the IACom recommended that,

*“Given the strategic importance and high significance of the site, 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”.*

The Committee also noted at its meeting of 12<sup>th</sup> April 2017, that it had concerns that the following issue(s) should also be addressed in the Baseline Study:

*“The National Khoisan Legacy Project; in particular the understanding that this site may form an important aspect thereof. It is further understood that this site has been identified as part of the National Liberation and Resistance Project of Government. These are aspects that cannot be ignored and must be taken into account when framing heritage related informants for the site”.*

Notwithstanding certain of the concerns raised in respect of the baseline study, Ms Attwell and Mr Jacobs were commended for an extremely thorough report, (particularly in respect of the identification of significance of the TRUP), and one which is also noted to have been commended by First Nation representatives at the MEC Tribunal Hearings.

A number of further meetings were held with respect to the TRUP Baseline Study, and the proposed provisional protection throughout the course of 2017. These include discussion of the TRUP at the Inventories, Grading and Interpretation Committee (IGIC) in May 2017.

The IACom resolution following feedback from the IGIC meeting held, as recorded in its minute of 9<sup>th</sup> June 2017 informs:

*The Committee is unanimously of the view that based on the information provided for in the consultant's Baseline Report tabled before this Committee, the TRUP is of potential Grade II or even Grade I significance. The Committee stands by its previous recommendation that the site should be provisionally protected so that the matter is fully investigated. The Committee recommends that a recommendation for the provisional protection of the TRUP is sent to the Council of HWC for its consideration.*

A wider public meeting was held on 29<sup>th</sup> August 2017 in order to discuss the proposed boundaries of a wider s29 provisional protection for the entire TRUP area.

The Attwell and Jacobs Baseline Study, along with a supplementary report, was resubmitted to HWC for consideration at its IACom meeting of 8<sup>th</sup> November 2017. The minutes of the meeting reflect that neither the Heritage Practitioners, nor Town Planner were at the meeting, and that the IACom were informed that a representative of the DT&PW would answer any heritage related questions.

The IACom was however informed, that Interested and Affected parties had not been given sight of the supplementary report. The Committee therefore removed the item from the agenda, and resolved that:

*The applicant must circulate all supplementary information to I&AP's for comment. Any additional comments from I&AP's and the heritage practitioners' response thereto, must be included with the resubmission of the supplementary report.*

It is important to note that it was during the course of this meeting that in response to a query by the DT&PW representative, the Committee verbally informed that it could 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, which provides informants for the whole TRUP, not be completed, as HWC has been explicit previously in this regard.

In, or around February/March 2018, HWC Management was made aware of the intent of the River Club to submit a new HIA. Following this, and noting concerns raised by the IACom, and recommendations made previously, decision was taken at HWC Council in March 2018 to provisionally protect the site in terms of the provisions of s29 of the NHRA and the provisional protection was formally gazetted in the Provincial Gazette, No 7916, on 20<sup>th</sup> April 2018. The Notice records the Significance of the site, and the wider TRUP area as follows:

**Significance:**

*The River Club forms part of the wider Two Rivers Urban Park (TRUP) and represents a microcosm of Cape history. It reflects the pattern of South Africa's social, architectural and political history spanning across the pre-colonial, colonial, apartheid and more recent history.*

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

*The Two Rivers Urban Park landscape is a complex composite of natural, 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 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.*

*Different historical narratives create a story of pioneering and philanthropy, social reform and identity, self-sufficiency, farming and institutionalization.*

*The Two Rivers Urban Park possesses many distinctive and interrelated precincts which clearly demonstrates or are strongly associated with its various historical roles and uses as a place for indigenous hunter-gatherers, grazing grounds for herders, colonial farms, scientific research, reformatory and hospitals.*

This decision was appealed to the MEC Tribunal, by a number of parties, namely the owners of the River Club, the DEA&DP, the DT&PW, as well as the City of Cape Town. However, as there was a procedural flaw in the HWC Council's decision to provisionally protect, (not provisionally proclaim the River Club as a PHS, as stated in the current HIA), the Tribunal ordered on 29<sup>th</sup> January 2019, that this be rectified and must include consultation and negotiation with the appellants and I&APs, that HWC must invite the owners of the River Club to an oral hearing held by its Council within three months, that HWC must submit a report to the Tribunal within two months of the oral hearing; and that the parties will then be given thirty days in which to make final submissions and the Tribunal will then hold a final hearing and finalise the appeal.

Whilst this process has been completed, the MEC has yet to meet and take a final decision in this regard. It is accepted that the s29 provisional protection remains in place.

However, as noted, and communicated to representatives of the DT&PW, applicant, DEA&DP and the City at the IACom meeting of December 2017, this does not preclude any party making a NEMA / NHRA s38(8) application in the interim. HWC is somewhat confused therefore by the contention on page 23 of the HIA that it was the interim ruling of the MEC Tribunal released on 5<sup>th</sup> February 2019, which enabled the integrated NEMA and NHRA process to continue. This was never the case.

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).

It is finally noted that there has been no further submission of the TRUP Baseline Study, since the IACom meeting of 8<sup>th</sup> November 2017.

Representation was however made to the IACom, by the DT&PW at its meeting of 12<sup>th</sup> June 2019, (some two years after the initial Baseline Study was submitted), where the Committee was informed by the DT&PW that:

*“The DT&PW had, during the process of the s29 protection of the River Club, become aware of a real need for public engagement. In this regard, DT&PW had resolved to undertake a further public participation process for the wider Two Rivers Urban Park. This is primarily to address the role that the First Nation groups have in commenting on the wider process”.*

The above has been set out in order to provide a broad background to the current application, and particularly to inform that HWC have continually informed all parties, and demonstrated via the provisional protection, that it is of the opinion that the site, and the wider TRUP area is of exceedingly high cultural significance, (of Provincial or even National significance), and that until the Basic Assessment Report, which addresses concerns already ventilated by HWC, and in particular 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, has been incorporated into the study; any application for development of a property within the TRUP area is in danger of being compromised.

That the applicant has chosen to proceed with the application, without meaningful reference to any of the previous studies is regarded as unfortunate.

HWC remains of the opinion that the River Club is an integral part of a highly significant cultural landscape, that is at the very least of Provincial significance, but more realistically and given South Africa's history, is one of National significance. Indeed, the TRUP as a whole could be regarded as one of the single most historically significant sites in the Country.

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In respect of all of the above, as it has been confirmed that the comment being provided by HWC is an Interim, rather than a Final Comment, the following part will primarily concern itself with the Heritage Impact Assessment report, and as to whether it has complied with the provisions of s38(3) of the NHRA.

As a stakeholder in the process, HWC will reserve the right to provide a more detailed comment on other heritage related aspects of the development, as well as any other material issues relating to the development proposal, at the time it provides its Final Comment.

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).

For ease of reference, the comment which follows is structured under the subsections of s38(3).

**(a) The identification and mapping of all heritage resources in the area affected.**

HWC is of the view that this requirement has only been partly complied with.

It is noted that the HIA has been very well researched, and that the historical background is well articulated. This includes the history of planning and development as it relates to the 20<sup>th</sup> Century.

What is considered unfortunate however, is the 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.

Indeed, the actual mapping of identified heritage resources, is noted as illogical, and flawed, and is effectively relegated to two diagrams in section 10.8 of the report which is titled "Conclusions regarding Impacts on significance". 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.

Notwithstanding that, both diagrams seemingly ignore the significance already identified in previous studies, public comments, that as previously expressed by HWC, and indeed the historical significance of the site as tabled in part 7.1.2 of the current HIA report itself.

As such, 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). 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.

The tangible aspects of the river, confined to their current extent, while certainly important, are not the only heritage resources which should be mapped and identified. They are an integral part of a much wider and highly significant system, as indeed is the River Club property itself.

The second mapping diagram, merely serves to post-rationalize a pre-conceived development concept prepared by Urban Concepts in 2016, as per Page 90 of the O'Donoghue Phase I HIA tabled at the IACom of March 2017.

An example of this post-rationalization, is the attempt to grade the current river corridor between the proposed two development 'envelopes' as IIIB, 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.

Notwithstanding that HWC has consistently advised against this, the HIA has not placed the River Club site within the context of the wider TRUP, and has downplayed the open low-lying green riverine character of the site which contributes to the intangible heritage experience.

Likewise, it is noted that the River Club building itself is down-played as a heritage resource, previous reports having noted the structure as being of IIIB, or at least contributory significance.

The notion that the 20<sup>th</sup> Century disturbance, has resulted in a degraded site is, from a heritage point of view, is also rejected.

The HIA notes that:

*“This wider site is the historically significant place, a ‘frontier zone’ (if for a short period); but its meaning and persuasiveness as heritage site has been eroded by the 19th century institutional use and development of the spur, by the growing transformation of the floodplain for sporting uses and facilities and for railway-related functions during the second half of the 20th century, by the gradual creep of the suburb and business quarter below the railway line throughout the 20th century, and by the late 20th century growth of the transformation network of arterials and motorways”.*

HWC is of the view that the HIA errs in this contention, and the fact that the site has been considerably disturbed in the latter half of the 20<sup>th</sup> 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.

Whilst this aspect will be noted later under s38(e), HWC is also of the strong view that part of the failure of the HIA to identify and map the heritage resources is that there appears to have been no meaningful engagement with the First Nation communities to either understand, or help inform, the identification of heritage resources.

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, and has resolved to correct this, by entering into a new stakeholder process. It is a strong recommendation that in order to correct the inherent flaws in the report in this regard, that the River Club does the same or awaits the outcomes of that stakeholder process. Until this is done, the identification and mapping of heritage resources must be regarded as incomplete. Currently, and based on all documentation to hand and submissions made, there is not merely a “*difference of opinion*”, between the applicants and First Nations’ understanding of heritage resources, (and significance), but a disconnect.

It is submitted therefore that the identification and mapping of heritage resources is both incomplete, and inherently flawed, and is one which is based around a preconceived development concept which pre-dates this HIA.

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**(b). Assessment of the significance of such resources in terms of the heritage assessment criteria set out in section 6(2) or prescribed under section 7, (of the NHRA).**

HWC is of the view that the assessment of significance is inadequate.

As noted, the disconnect between the various stakeholders’ understanding of what comprises the heritage resources of the area, and that of the HIA, is already problematic. It stands to reason therefore, that given the absence of a complete identification and mapping of the heritage resources pertaining to the wider ‘valley’,

that the grading of these resources will also be flawed. Indeed, if the fundamental grading of significance is wrong, then all that follows, and conclusions of the HIA will also be wrong.

Section 3(3) of the NHRA sets out, amongst others, the following criteria, in determining whether or not a site;

- i) *is considered to have cultural significance to the community;*
- ii) *could yield information about heritage;*
- iii) *is important in exhibiting particular aesthetic characteristics valued by a cultural group;*

The HIA has not taken the above into account in the assessment of significance, and as noted, has merely reduced the identification of heritage resources, and subsequently significance to tangibly based ecological values rather than cultural heritage values.

It ignores the significance of the site to a Community that has a recognized and direct, deep and sacred linkage to the site through lineage and collective memory, and furthermore whilst acknowledging the historic importance of the site in South Africa's Pre-Colonial, and Colonial History, it 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 20<sup>th</sup> Century.

It is again noted that a meaningful engagement with the First Nation Communities would have assisted in further informing significance.

The concept of significance is broadly underpinned by authenticity. 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. This is a methodological problem that the HIA does not address.

The HIA undervalues the significance of the heritage resources generally, or is confusing or contradictory. For example:

On the one hand, it 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).

On p5 it 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, and supports the redevelopment of the River Club site, which immediately abuts and provides the green setting for this river corridor with a bulk of 150 000m<sup>2</sup> and heights of 10 storeys.

Here again it is considered that it is the post-rationalizing of the development that has resulted in the incongruence in the report.

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. This has been recognized and assessed in previous reports considered by HWC, a significant number of other stakeholders, and indeed the IACom, and HWC itself in taking the step to provisionally protect the site in terms of s29 of the NHRA.

The lack of recognition of the grounds of the River Club itself is 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 the least is of contributory, (and historic), significance, is contrary to previous studies conducted, now deemed of no value.

In general, and in spite 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*".

In this instance, 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. It is as a result of this that, the report contends 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.*" In other words, there are hardly any heritage indicators for development.

It is considered short sighted to relegate the significance of the site, which is an integral part of a broader area which has a recognized and acknowledged high cultural significance, to a set of post-rationalized and confined areas of significance, primarily based on ecological rather than cultural values and to isolate the subject site from the broader cultural landscape.

There is a fundamental problem with the assessment of significance, or grading in the HIA, and as stated: If the grading of significance is wrong, then the conclusions will certainly be wrong, as is the case with this HIA.

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**(c). Assessment of the impact of the development on such heritage resources.**

As noted above, given the heritage resources themselves have not been fully identified or mapped, and that the assessment, or grading, of the heritage resources is flawed, (given they are tailor made for mitigation rather than as informants), then it follows that any assessment of the development on identified heritage resources must be flawed.

Amongst other things, HWC notes that:

The report wholly downplays the irreversible impacts of transforming a green lung at the heart of the TRUP into a mega project. These irreversible impacts are hardly interrogated at all

Whilst it is conceivable that the site may have some potential for some low-rise development and possible activation of edges, the HIA neither motivates for, or questions, the 150 000m<sup>2</sup> of floor space proposed (in comparison, Canal Walk at Century City is ±146 000m<sup>2</sup>), and whether this is an appropriate site for a mega project.

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 (both of which provide some well-considered, spatialised indicators), this HIA practically gives the development carte blanche i.t.o. heights and massing.

It is noted that the Preferred Alternative (1) has heights of 4-9 storeys in Precinct 1 (south) and 6-10 storeys in Precinct 2 (north).

The HIA does not motivate for, or critically interrogate those heights, or its impacts on the heritage resources identified in the report itself.

For example:

- Noting that HWC have already queried these recommendations or informants previously, (*"concern was raised in respect of the origin of certain of the heritage informants that have been tabled; one example is that it is wholly unclear as to how the height related informants for the River Club were derived. It is difficult not to draw conclusion that these are based on a pre-conceived development concept". IACom minutes 12<sup>th</sup> April 2017*), other consultants recommended a maximum of 3-4 storeys next to the South African Astronomical Observatory (SAAO), the HIA now supports 4-9 storeys in Precinct 1.
- Whilst it is noted that it is recommended that a 'suitable memorial' is located on the site, within the northern corner of the notional PHS area, which commemorates the legacy of the first Nation Groups and Cape Indigene, there is no assessment of the impact that a 10 storey building would have on this site, or for that matter the proposed corridor. Indeed, it is noted that when this was put to the heritage practitioner at its meeting of 22<sup>nd</sup> August 2019, the IACom were informed that this site was not fixed, and could conceivably be anywhere within the development. It is questioned then, if the site and built form is not fixed, how it can the impact on heritage resources be assessed.

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.

Indeed, this dismisses, (or avoids), the '*observations*' previously stated by HWC, those contained within the Attwell, Bauman, and O'Donoghue reports, as well as that of a considerable number of public and governmental stakeholders, which includes the SAAO, DTPW, and the CoCT EMB.

The considered comment and concerns raised by these bodies must surely be regarded as something more than "a difference of opinion".

Importantly 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.

It is agreed that a private golf course is not the ideal land use for such a significant site. However, instead of the recovery of both significance and sense of place, the proposal completely destroys what is left of the landscape.

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.

It is finally noted that the Visual Impact Assessment (VIA) is inadequate in its assessment of the cultural landscape and defining the sense of place. The photomontages provided are too crude and inaccurate to be considered as a useful tool to assess impact.

Furthermore, 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.

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 authorizing body, however it is noted that should the situation arise where it has to take a decision in respect of this application, it would require that the accompanying VIA material 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.

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**(d) Evaluation of the impact of the development on heritage resources relative to the sustainable social and economic benefits to be derived from the development.**

Whilst it is acknowledged that there may well be a potential economic benefit to developing the site, it is noted that there has been no attempt to develop argument or acknowledge, the impact of the development balanced against a site which has been recognized previously by HWC as being of Provincial, if not National significance.

It is further noted that other than an acknowledgement of process followed thus far, the HIA has also barely acknowledged or interrogated the significance that HWC and previous reports have attributed to the wider valley context.

As a result, and in attempting to define or limit significance to the riverine corridors only, meaningful discussion of the impact of the development on the significance of the wider TRUP cultural landscape is avoided altogether. This is in direct conflict with the advice HWC has previously given that the River Club cannot be looked at in isolation of the wider system.

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. It is noted that the revised MSDF designates the River Club and TRUP area as part of the 'Urban Inner Core', and that urban development within these areas is supported in principle. A high-level spatial planning tool which supports development in principle, does not override heritage considerations, or indeed mean that a mega project is appropriate on this particular site, in comparison with an upgrade to the Voortrekker Road Corridor for example.

Notwithstanding the above, it is also noted that 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, and that from a heritage point of view, the following, amongst other things, must be taken into account:

- 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 structures that block views;
- 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;
- 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;

It is the view of HWC that the HIA has ignored this.

The viability argument is regarded by HWC as unconvincing and inadequate. That there appears to be a cross subsidy of the development to help fund the City's proposed Berkley Road extension should in no way be used as mitigation to try and argue for sustainable and economic benefits.

The HIA argues that "*a lesser development would not generate adequate funds for the great public good that we argue for, the restoration of the Liesbeek riverine corridor.*"

The report repeatedly extols the benefits of the "restoration" of the Liesbeek riverine corridor. (a notion considered by some as inauthentic and contrived), but it is clear that it is also the substantial earthworks required to artificially raise the site some 2 to 3 metres 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.

HWC queries whether the proposed earthworks and infrastructure indeed constituted a greater public good.

In fact, it is problematic that the character of the site is changed from a "*low-lying green riverine character as part of a larger, if fragmented natural system*", as noted in the O'Donoghue report.

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**(e) Results of consultation with communities affected by the proposed development and other interested parties regarding the impact of the development on heritage resources.**

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.

It is clear to HWC however, that there has been a lack, or avoidance, of a meaningful consultation with the First Nation Groups. HWC is further disappointed that in the instances where comment has been received, this comment has seemingly been dismissed as a “difference of opinion”, rather than a meaningful interrogation of concerns raised.

As previously noted, the DT&PW itself has entered into a stakeholder engagement with First Nation Communities, as it has recognized that the Baseline Study first tabled at the IACom on 12<sup>th</sup> April 2017 was deficient in this regard, and it 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?

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**(f) If heritage resources will be adversely affected by the proposed development, the consideration of alternatives.**

The HIA fails in this regard, as there is no *meaningful* consideration of alternatives whatsoever.

The HIA only assesses the preferred ‘Riverine Corridor Alternative’ and ‘Island Concept Alternative’ (both 150 000m<sup>2</sup> of bulk) and simply dismisses the lower bulk alternatives, such as the ‘Mixed-Use Affordable Alternative’ (110 000m<sup>2</sup>) and the ‘Reduced Floor Space Alternative’ (102 000m<sup>2</sup>), as these have been considered economically unviable by the town planners.

A “tread lightly”, green-dominated, recreational or educational alternative, without substantial filling in of the floodplain is not even considered, and nor indeed is the no-go option or the adaptive re-use of the site and buildings.

A discussion of alternatives, should include a meaningful discussion of the no development option, and although the No Go Option is tabled in the HIA as well as the Planning Partners Report, in *The River Club: Overview of Development Alternatives, dated June 2019*, there is no consideration whatsoever, which would weigh this against the potential benefit, or otherwise, of this option to identified heritage resources.

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.

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**(g) Plans for mitigation of any adverse effects during and after the completion of the proposed development.**

The reduction of the Heritage Significance to a few post-development, post-rationalized, and ecologically based values, (which in itself conflicted by the raising of the site by 2-3 meters above the 100 year flood plain in order to allow for the development), is not something that can be mitigated, as it wholly ignores the broader issues pertaining to a highly significance cultural landscape.

As noted, if the identification of significance and assessment of that significance is wrong from the start, the conclusions will likewise be wrong.

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In conclusion:

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

It is a site which is recognized as a sacred place. The open, largely undeveloped floodplain is a tangible reminder of intangible heritage.

It is recognized through historic record, as well as Cultural Memory, as being a place of conflict for over 150 years. It is recognized as the place where, in 1657, Colonial Settlement of South Africa truly took root with the establishment of the first settler farms along the Liesbeek Valley, and the place where the Cape Indigene were first truly dispossessed of, and excluded from, access to their ancestral land.

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 it. It is a place where Cetshwayo and Langalibalele were exiled to. It is a place which speaks to who we are now, and from where we have come, not just as a City, or a Province, but as a Nation.

The HIA has unfortunately reduced this significance to a set of ecological values, provided for the most part to post-rationalize a wholly intrusive development model, rather than inform appropriate development.

The Committee also noted that a 'memorial' / 'museum' and recreated river courses were inadequate in commemorating the significance of the site and appears to 'box-in' heritage significance when the remaining sense of place is not recovered, but

destroyed. 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.

The HIA does not comply with the provisions of s38(3) of the NHR Act, and it is noted that 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.

HWC cannot recommend strongly enough, as indeed it is on record as having done previously, that the entire TRUP is looked at holistically, and that any proposed development of the River Club site, follows on from this.

HWC finally notes that:

Notwithstanding the unquestionable qualifications and heritage standing of both heritage practitioners who compiled the report, HWC is of the opinion that 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.

**WD**

- 11. SECTION 38(8) NEMA FINAL COMMENTS ON ENVIRONMENTAL IMPACT ASSESSMENT**
  - 11.1 None
- 12. SECTION 38(8) MPA ENVIRONMENTAL MANAGEMENT PLAN RESPONSES TO NOTIFICATION OF INTENT TO DEVELOP**
  - 13.1 None
- 14. SECTION 38(8) MPA ENVIRONMENTAL MANAGEMENT PLAN INTERIM COMMENT**
  - 15.1 None
- 16. SECTION 38(8) MPA ENVIRONMENTAL MANAGEMENT PLAN FINAL COMMENT**
  - 16.1 None
- 17. SECTION 38(8) OTHER LEGISLATION NOTIFICATION OF INTENT TO DEVELOP**
  - 17.1 None

**18. SECTION 38(8) OTHER LEGISLATION INTERIM COMMENT**

18.1 None

**19. SECTION 38(8) OTHER LEGISLATION FINAL COMMENT**

19.1 None

**20. SECTION 27 PROVINCIAL HERITAGE SITES**

20.1 None

**21. SECTION 42 – HERITAGE AGREEMENT**

21.1 None

**22. OTHER/ ADVICE**

22.1 None

**23 Adoption of decisions and resolutions**

The Committee agreed to adopt the decisions and resolutions.

**24. CLOSURE: 14:30**

**25. DATE OF NEXT MEETING: 11 September 2019**

**CHAIRPERSON** \_\_\_\_\_ **DATE** \_\_\_\_\_

**SECRETARY** \_\_\_\_\_ **DATE** \_\_\_\_\_