# The River Club development: What is really at stake?

*By Leslie London*

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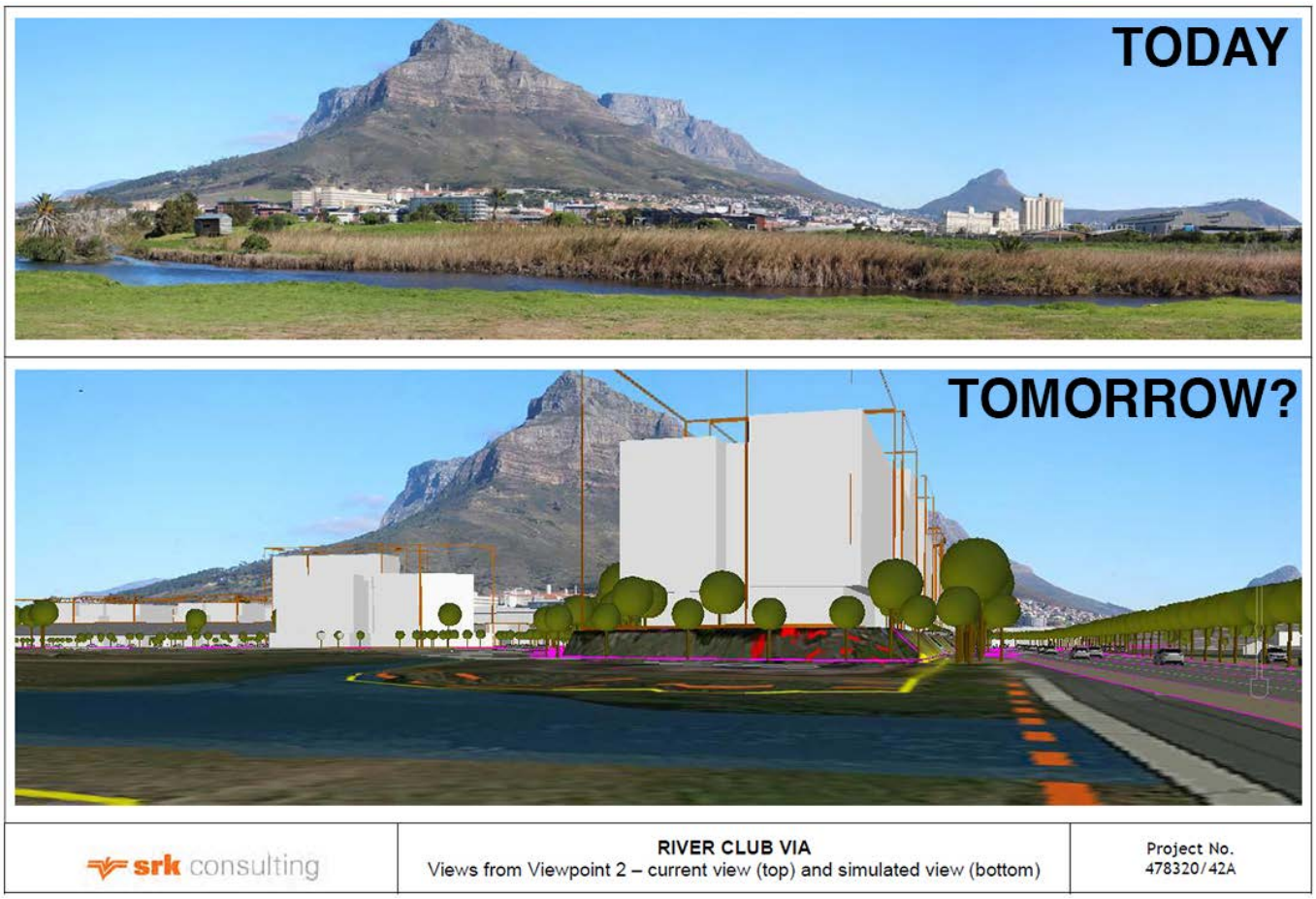
There is no doubt that the River Club redevelopment is controversial. There are many reasons for that. Firstly, it is redevelopment of land that was once public land, owned by PRASA but sold off to a private entity at way below market rates in 2015, at a time when State-Owned Enterprises were being gutted by profiteers. Secondly, it is land that everyone recognises as spiritually significant and deeply important for the Khoi people and for South Africa as a whole. It is slated for inclusion in the National Khoisan Liberation route in recognition of its symbolism as a site of first resistance to settler domination. It has also been proposed as a UNESCO heritage site, along with the South African Astronomical Observatory next door, which was founded in 1820. Thirdly, it is a site with an important wetland and a riverine course that requires protection for climate change mitigation.

As a flood plain, it was zoned as Open Space to recognise the importance of maintaining both its heritage and environmental significance. To build in a flood plain is completely contrary to urban planning policies and requires massive and very destructive earthworks to infill the flood plain. Because of the huge cost of such massive construction, the developers have proposed a development of colossal proportions, much higher and denser than any existing urban cluster nearby, and they are proudly declaring that this will be the South African headquarters of the international Amazon corporation. The developers specifically discounted any alternatives that were less dense and less imposing on the environment because they would not make sufficient profit to meet the massive capital investment.

Thus, this is not just a development on the River Club land (which floods regularly every few winters). This is a monument to the thirst for profits by private developers who have seized the opportunity to make billions by imposing a monstrous development on a small piece of privately owned land within a larger area that the City had declared a protected urban park. While the rest of the Two Rivers Urban Park remains under a public participation process to consider a new spatial development plan, this 14.7ha piece of land at the apex of the two rivers (the Liesbeek and the Black) will have placed upon it 150 000 square meters of concrete, a development even denser than Cape Town's mixed residential/ commercial Century City alongside the N1 motorway.

The developers first took umbrage when the Observatory Civic Association drew a comparison with Century City. However, at the rezoning of the area in 2020 the Chair of the Municipal Planning Tribunal (MPT) used it as a compliment, and City Planners agreed to a specification in the plan that a further 10ha of public land should be made available to enable the development; this is private benefit at the expense of public interest.

How did this development gain approvals when it was neither supported by Heritage Western Cape (HWC), the competent heritage authority in the approval process, nor by the City's own Department of Environmental Management? The answer lies in the fact that the development was subject to a sick system of development approvals in the City of Cape Town, a system that serves the interests of large developers and political conflict in the DA-controlled City of Cape Town Municipality (Olver,




2019). The confluence of developers' interests, big capital and political leadership that is pursuing power is the minefield described by Zenzile Khoisan in the previous issue of *New Agenda*. To understand why this particular development is exploitative rather than liberatory one needs to understand the background.

## *THE HISTORY OF THE RIVER CLUB*

The River Club lies on land appropriated by the first colonial settlers and subsequently owned by the South African Railways at the start of the 20th century. The origin of turning a low-lying floodplain and wetland, unsuited to housing or industrial purposes, into sports fields and recreational facilities can be traced to one of the findings of the *Carnegie Commission of Inquiry into the Poor White Problem, 1929-32*, which declared that "poor whites" required improved welfare, education and socialisation. The issue of extreme poverty among white workers became highly politicised in the mid 1920s and the early 1930s. The government attempted to provide employment through large state-run projects and a significant number of skilled and unskilled white workers were employed at the Salt River Railway Works at that time.

The Great Depression of 1929 impacted hugely on the economy of South Africa, aggravated by a severe drought which caused a migration of largely unskilled 'poor whites' from the rural areas to the cities. The South African Government Railways and other large state employers provided a variety of mechanisms for socialisation, involving sport, welfare, nutrition and recreation.

The welfare programme in the Liesbeek River Valley was therefore part of a general initiative to provide poverty-stricken and socially depressed white workers with healthy social outlets and improve their quality of life. The fields and club facilities were for the exclusive use of white railway workers, while black workers were pushed further to the periphery. By the time the Nationalists came to power in 1948, the River Club had become a feature of a social system designed to provide leisure opportunities to white workers and a solution to the 'poor white' problem, whilst negating any connections of indigenous peoples to the land, a familiar tenet of apartheid philosophy.

The facility operated on South African Railways land had been zoned ››

as Open Space until 19 May 2015 when Transnet elected to sell the property. Liesbeek Leisure Properties (LLP) (Pty) Ltd, the long-term tenant, exercised its right of first refusal and purchased the property for R12 million plus VAT. LLP PTY then sold the property to Liesbeek Leisure Property Trust (LLPT) within a few months for R100 million. The land was zoned as Private Open Space, and allowed to be used for recreational purposes, but was still designated as unsuited for housing or mixed-use development because it lay in a flood plain and had important heritage and environmental significance. However, the prospect of massive speculation by moneyed developers and their financiers to turn a sacred floodplain into a gargantuan and very dense mixed-use development could not be ignored.

## *THE APPROVAL PROCESS*

Under the National Environmental Management Act (NEMA), the River Club developers had to secure an Environmental Authorisation to proceed. Various consultants contracted by the River Club's Environmental Practitioners examined the feasibility of the development, and prepared a Draft Scoping Report (2016), a Revised Scoping Report (2017), a Draft Basic Assessment Report (July 2019) and a Final Basic Assessment Report (BAR) (April 2020). Despite multiple critical comments by Interested and Affected Parties, the proposal did not respond to public concerns other than to alter the relative distribution of the heights of the buildings planned for the very densely developed site. The result was 150,000 square metres distributed across 18 buildings that would be between 20 and 44m high. This would radically alter the character of the open space, which was the hallmark of the riverine valley, and require infill of the original course of the Liesbeek River. As HWC noted, the position of the developers remained "intractable" and each iteration of the Heritage Impact Assessment (HIA) was simply "a further re-statement of the views of the applicant, with no true evaluation of HWC's concerns".

One of the key elements of the BAR was the need to identify and map heritage resources and develop heritage indicators for the site through an HIA. The developers' initial HIA was presented to the Observatory Civic Association in February 2018 where the notion was first peddled that recreating a river course where the current artificial canal runs (a canal created during apartheid, without any input from Khoi leaders, to redirect the Liesbeek), could preserve the area's heritage. No attention was paid to the importance of open space in preserving the history of the site as a place of first resistance to colonial intrusion. Indeed, the HIA consultants could not name one First Nation group with whom they had consulted to develop their HIA report, when asked about this in a public meeting in 2018.

Because of the imminent threat to heritage, in April 2018 HWC issued a Provisional Protection Order that required the River Club site to be graded for heritage importance before any development could be considered. The Protection Order was rapidly appealed by the developers, supported by the City of Cape Town, the Department of Public Works and Transport (DPWT), and the Department of Environmental Affairs and Development Planning (DEADP) in the Western Cape. Here were three provincial government entities lining up with developers to stop another government entity from protecting heritage. Indeed, in her appeal, the Head of DPWT expressed her concern at the challenge posed by the HWC Protection Order *to the developers*.

The Ministerial Heritage Appeal Tribunal sat over the next 18 months and finally dismissed the appeal in April 2020, but not before rebuking government departments for their divide-and-rule tactics and for failing to cooperate on a matter of intense heritage importance. Three things were notable about this process.

Firstly, the Protection Order was very strongly supported by a range of First Nation groups opposed to the development, along with civic associations and NGOs. There was no First Nation support for the development. The First Nations Collective, to which Chief Khoisan Zenzile belongs, was not present at all during the first set of hearings in 2018 when it was clear that all First Nation groups in the room were opposed to the development and expressed their agency in resisting the destruction of a sacred site. It is unclear if the First Nations Collective even existed at that time. What is clear is that the developers were exposed at the Heritage Appeal Tribunal for having failed to consult Khoi groups over their proposed development. One Khoi chief demanded that unless the development was stopped, he would call for the land to be expropriated without compensation by President Ramaphosa, so strong was his opposition to the development.

The appearance of the First Nations Collective and its notion of agency only became apparent after the developers were faced with a big headache – they had no Khoi support for their project. This means that the agency described by Chief Khoisan Zenzile was only possible because of the agency of other Khoi groups, along with civics and NGOs, whose steadfast opposition forced the developers to look for support amongst the Khoi.

Secondly, the role of DEADP in joining the developers in appealing the Protection Order is significant, since DEADP is the decision-making department for NEMA Environmental Authorisation. DEADP's appeal argued that the Protection Order (under Section 29 of the National Heritage Resources Act, [NHRA]) was unnecessary because heritage matters would be addressed through the HIA under Section 38 of the NHRA. In doing so, DEADP would make


the final decisions (under a Section 38 HIA process) and not HWC (through its Provisional Protection Order). As shown later, DEADP omitted to take into account the requirements of the NHRA when it granted Environmental Authorisation against the wishes of HWC in August 2020.

Thirdly, the process of public hearings for the Heritage Appeal Tribunal was marred by the distribution of a series of *prima facie* defamatory emails sent from a false address purporting to be coming from the A|Xarra Aboriginal Restorative Justice Forum. The emails defamed Khoi leaders who opposed the development as well as civic and NGO representatives and others who were seen as taking the same stance. Various insults were made, labelling opponents with terms such as "fake", "gay dog", "descendants of colonialists", "collaborator", "institutional violence you are perpetrating against us, the indigenous people", "we will hold you to account", "fabricating", "misfits", "inkruipers", "conmen", "fugitives", "fronts", "snake oil salesmen", "desperados", "extortionist", "scam artist", "swindler", "fraud", "hypocrite" and people who "hijack".

Leaders who opposed the development were singled out as purportedly guilty of abusing and misusing statutory heritage processes with malicious intent to deny First Nation heritage and 'Indigenous Rights' and they were warned that they would be held 'accountable'.

These emails were fake, condemned as false and inflammatory by the A|Xarra Forum, and were found to have metadata suggesting they were authored by one of the heritage consultants working for the developers. Both the developers and the consultant denied being the source of the emails, but the fact that such emails were distributed signals the high stakes involved in opposing the development and the lengths to which those who were in favour of it were prepared to go to silence opponents. Khoi leaders who dared to speak up were labelled traitors to the Khoi cause.

Fourthly, in rejecting the appeal the Tribunal issued a directive which also lamented this 'divide and rule' behaviour and severely criticised public officials who foment discord. For example, one of the public officials wrote to the secretary of the committee, copying the developer and various ››

other agencies, including the DEADP official who awarded the Environmental Authorisation, asking it be distributed to "the relevant parties".

Consistent with the Tribunal's position, HWC, in its evaluation of the applicant's HIA – which was issued as its Final Comment in February 2020 – deemed the HIA as failing to meet the requirements of Section 38 of the NHRA because it did not identify the intangible heritage of the site and develop heritage indicators for future development, but rather revised their heritage assessment to suit the development. According to NEMA, the decision-making authority (DEADP) was supposed to engage with the heritage authority (in this case HWC) before coming to a decision. However, the DEADP allowed the developers to submit a further addendum to their HIA in March 2020, which they used to justify bypassing HWC. Not surprisingly, HWC has declared such irregular action illegal and is one of 10 organisations and 11 individuals who have appealed the Environmental Authorisation issued by DEADP to the River Club development in August 2020.

Another significant appellant is the Department of Environmental Management of the City of Cape Town, whose appeal details 13 categories of irregularities, inconsistencies and misinformation relating to heritage, environment and planning matters. It is the City's Environmental Management Department that called attention to the fact that the development is not consistent with the City's own climate change policies, nor does the development recognise the intense intangible heritage of the site, which will "impact adversely and permanently on this heritage resource".

Despite such objections, including those from the Goringhaicona Traditional Council (speaking on behalf of several sovereign traditional houses and organisations viz. the !Aman Traditional Council under Paramount Chief Marthinus, Taaibosch Kei Koranna Royal House under Ka'i Bia Taaibosch, Kai !Korana Transfrontier under Khoebaha Arendse, the Cochoqua Royal Council under Paramount Chief Johannes, the Southern African Khoi and San Kingdom Council, the First Indigenous Nation of South Africa, the Federation of First Peoples of South Africa, A|Xarra Restorative Justice Forum (It is a straight line not a diagonal line), !khoraIIgauIIaes Council, IKhowese Nama Traditional Council, the Western Cape Khoi and San Kingdom Council) DEADP went ahead and on 20 August 2020 granted the Environmental Authorisation for the River Club which is now under appeal.

## *THE APPROVAL PROCESS – THE CITY OF CAPE TOWN REZONES THE PROPERTY*

Hardly had the ink dried on the Authorisation when the developers had their rezoning application to the City Planners reactivated, the second key permission needed to proceed. However, this application had been submitted more than two year before and since then many new relevant documents had emerged. Surprisingly, the only new documents permitted into the process by the City were those selected by the developers. Interested and Affected Parties, who had initially commented on the rezoning application in September 2018, were not privy to seven new documents submitted to a Special Municipal Planning Tribunal (MPT) called in September 2020 to consider the rezoning application. The municipal planning bylaw enables the City Planners to require re-advertising of a development application if two years have passed since the first submission or if new information relevant to the application becomes available. On both counts, the City Planners should have re-advertised the application. It was more than two years old, and new documents of relevance should have been made available for public comment and served before the Tribunal for it to be able to make a reasoned assessment.

For example, the developers had revised their stormwater assessment in 2019, but it was not made publicly available. Flooding is one of the key adverse impacts of the infill and the River Club is regularly flooded. Moreover, the developers included in their documentation for the Tribunal their Environmental Authorisation from DEADP of 20 August but not the appeals by the 21 organisations and individuals. They included their supplementary Heritage Report by their consultants (March 2020) but not the Final Comment from HWC (Feb 2020) pointing out why the HIA failed to meet the requirements of the law.

When appellants asked for these new documents to be tabled, they were told in no uncertain terms that this was not possible because the applicant (the developers) would not have seen them. This was neither true (since the developers knew these documents but left them off the rezoning application), nor fair, since the developers were permitted to include documents that Interested and Affected Parties could not have seen but who were precluded from adding new evidence. This dual standard, favouring the developer over objectors, is well known to communities across Cape Town, who see the Tribunals as acting for the developers rather than impartially balancing community interests with broader development.

Not surprisingly, the MPT rushed to approve the development, gushing over it as a victory for Cape Town, welcoming the economic benefits and comparing the future development to Century City.

But let's understand that the MPT consists of planners – either from the private sector or City Planners who believe development approvals are a sign of progress. There is no citizen voice and comments by Interested and Affected Parties are not taken seriously. When activist group Ndifuna Ukwazi

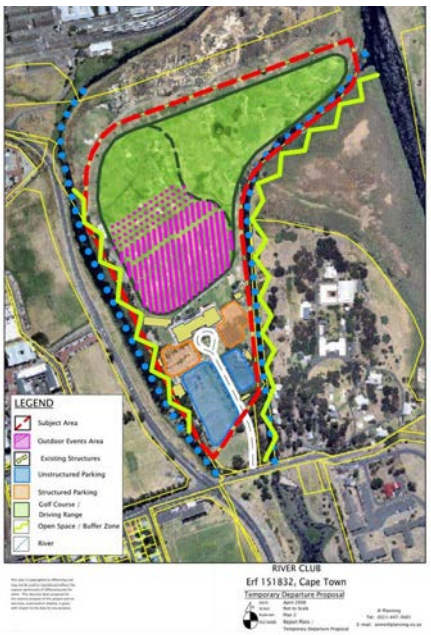
noted that spatial justice was about recognising the deep connection of the Khoi people to the land and that the development could not be justified as an act of justice, they were disregarded. When the Observatory Civic Association pointed out the patent unfairness of the process by which the developers could present material unchallenged, we were scoffed at. And when the Goringhaicona disputed the narrative spun by the developers and exposed the ongoing ethnocide represented in the greed of developers in appropriating sacred land for an Amazon headquarters, they were dismissed as outcasts with no claim to the land.

In the surprising matter of why the development was not re-advertised, it was stated in the MPT by one of the developers' planners that the application was reviewed in terms of a City Standard Operating Procedure (SOP) which found that it was not necessary to re-advertise. When we asked the City Planners for a copy of this SOP, there was apparent confusion and no such SOP was produced. It then transpired that the planner who stated this in the Tribunal, and who is now employed by the developers, had for many years previously been the head of planning for the City. His insider knowledge was all that was needed to help bypass the tricky problem that the City had not followed its own planning bylaw. Indeed, the practice of large developers employing former public officials to help them with approvals is documented in Crispian Olver's expose of the City administration (2019).

Moreover, none of the Tribunal members have the requisite competence to assess heritage matters and they relied wholly on the developers' consultant, who disparaged the Goringhaicona as a tribe of drifters and outcasts, based on an ahistorical and simplistic view of some entries in a colonialist's diary. The developers characterised the existing remnant of the Liesbeek River as a "neglected stormwater gutter", completely annihilating the intense connection voiced by First Nation groups to the river and its surrounding land (as well as omitting to mention that the mistreatment of the Liesbeek by human action is responsible for its current poor state). The developers portrayed the Gorinhaiqua, the group supporting the development, as the "custodians" of the River Club land, yet they were a small group of Khoi, and could not speak for the Khoi as a whole. In fact, the development has now promised the Gorinhaiqua Cultural Council control over the features of the development said to represent the inclusion of First Nations' heritage as a design informant viz., an indigenous garden for medicinal plants used by the First Nations; a cultural centre; a heritage-eco trail; and an amphitheatre for use by both the First Nations and the general public. An autonomous legal entity led by the Gorinhaiqua Cultural Council will be responsible for its governance, planning, management, operations, maintenance and sustainability.

However, more than 60 First Nation groups, civic associations and NGOs, have come together to apply to have the Two Rivers Urban Park graded as a provincial heritage resource, recognising that heritage cannot be preserved in a sea of concrete that obliterates the open space and intangible heritage of the site. This is an unprecedented show of unity across First Nation groups and civil society organisations and exposes the lie that those who oppose the development are serving their own narrow interests.

The approvals of the River Club say less about the autonomous decision-making of the Khoi (or some of the Khoi who have the support of rich and powerful developers) than about the corrupt system of development




approvals we have inherited in the new South Africa. It is a system geared toward the rich and powerful. It is not a system where ordinary people have a voice. It is a system where money counts and where influence can allow some voices to speak while silencing others. We have seen an intense propaganda machine unleashed claiming that it is a major victory to have Amazon establish its behemothic headquarters on a sacred floodplain, ignoring the huge environment and heritage costs.

If LLPT really wishes to celebrate our province's rich history and heritage, it can recognise the intense importance of the river confluence and its open space as precious intangible heritage, slated for inclusion in the National Khoi and San Heritage Route as a national legacy project. Develop a park for the people of Cape Town. That would really undo apartheid spatial planning.

REFERENCE

Olver, C. (2019) *A House Divided: Battle for the Mother City*. Johannesburg and Cape Town: Jonathan Ball Publishers. NA