



OBSERVATORY
Civic Association

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PRIVATE DEVELOPER, CITY OF CAPE TOWN MUST ANSWER FOR THE DESTRUCTION OF A SACRED FLOODPLAIN

Our court case will take place on 19 January

On 19th to 21st January 2022, the interdict brought by the Goringhaicona Khoi Khoi Indigenous Traditional Council and the Observatory Civic Association (OCA) will be heard in the Cape Town High Court. The interdict seeks to stop the development of 150 000 square metres of concrete at the River Club site, Observatory. We believe the Rezoning and Environmental Authorization decisions by the City of Cape Town and the Department of Environmental Affairs and Development Planning, will be found invalid by the High Court.

On three occasions the developers were asked to hold off construction pending the High Court review but they refused and have proceeded with building as fast as possible.

Let us be clear. It is our view that they have received every assistance from the authorities to enable them to get started with construction before all due processes were completed. Construction work has continued during statutory builders' holidays as captured in the image above.

The City's Heads of Argument submitted in November 2021 makes a rather remarkable claim. It argues that our "...requested relief is both pointless and moot. Construction commenced on 26 July 2021, more than five months after the Province's final environmental authorisation and more than three months after the Mayor's decision. By the time of the hearing on 24 November 2021, construction will have been ongoing for four months."

What the City does not acknowledge is the following:

From what can be gathered from the City of Cape Town's Building Development branch, the initial building plans for Precinct 2 phase 1 were preliminarily approved on 22 July 2021 after sign-off by the developer on 1 July 2021 – a mere 15 working days later. To the best of our knowledge, this time frame is unprecedented even for the simplest of buildings. The developer then immediately proceeded with full-on construction, indicating that they expected fast track approval.

Furthermore, it appears that the City may have approved the building plans without all line departments sign-off as is normal practice. This is because a further approval is on record for a revised set of drawings, submitted by the developer and their architects on 2 August 2021 and

approved by the City on 18 October 2021, which suggests that line department sign-off may only have occurred during August to October 2021. If so, this means the developers were busy with construction while line departments were still considering the plans. Even now, we cannot be certain that all line departments have signed off the building plans.

Moreover, at the time the Mayor rejected our appeal against the rezoning on 19 April, the conditions for building plan approval required the developers to submit eight other plans before securing building approval. Despite our requests for clarity and for copies of these plans, the City has not been forthcoming, delayed by processes under the Promotion of Access to Information Act (PAIA).

Anyone who has dealt with the City knows that approval for a complex project like this cannot expect approval within one month. We have to ask: What lies behind this special flexibility that the City is offering?

The developers likewise secured the help of the former Minister of Water Affairs and Sanitation. They appealed to her to lift the suspension of the Water Use License (WUL) following its suspension triggered by our appeal to the Water Tribunal in June 2021. Strangely, the date the City gave preliminary approval to the current building plans is the very same date on which the developers' lawyer told us that the WUL suspension had been lifted by the Minister. It is also the date that the developers were in correspondence with the Special Advisor to the Minister. To date, the Minister has not provided substantive reasons for lifting the suspension.

The WUL appeal by the OCA and other parties is still to be heard. The South African Heritage Resources Agency (SAHRA) is assessing the Two Rivers Urban Park for national heritage status. They may issue a provisional protection order because of the immediate threat to living heritage resources on the site.

So, the fact that the developers have advanced in construction at precinct 2 is the result of administrative decisions made which exercised extraordinary discretion in favour of allowing the development to proceed before all approvals have been secured. The mootness, if such mootness were to exist, would have been, in our opinion, manufactured by the assistance from the authorities to speed approve this development.

The facts of the case are:

- (1) Heritage Western Cape rejected the development proposal because the developers' Heritage Impact Assessment failed to meet the requirements of the National Heritage Resources Act;
- (2) the City of Cape Town's environmental management authorities noted 13 grounds for appealing the environmental authorisation, including flooding concerns, biodiversity risk and conflict with climate change policies; and
- (3) independent planners note that there is no planning rationale to locate this development on a coast-to-coast greenway.

We believe the High Court judge will consider our arguments to be rational and based on the evidence, and will put a stop to the construction so that the High Court can review the decisions in question that have allowed a private developer and the City and Provincial authorities to destroy a sacred floodplain.

Released by the Liesbeek Action Campaign, the Goringhaicona Khoi-Khoin Indigenous Traditional Council and the Observatory Civic Association

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