

CITY OF CAPE TOWN

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MEDIA RELEASE

Watershed ruling for Cape Town's rivers, floodplains and wetlands

The Western Cape High Court's judgment in the Disa River case can be described as a watershed ruling for the preservation of Cape Town's rivers, floodplains, and wetlands. The court has ordered the developer of the Hout Bay Beach Club to remove the soil, general rubble, and fill that was placed within the floodplain of the Disa River within 45 days. Read more below:

On 2 February 2018, World Wetlands Day, the Western Cape High Court ordered Really Useful Investments (Pty) Ltd, the developer of the Hout Bay Beach Club, to remove the material from the floodplain of the Hout Bay River, colloquially known as the Disa River, that was dumped there in 2011.

Really Useful Investments started infilling part of the wetland and floodplain of the Disa River in 2011 in order to develop its property, much to the ire of Hout Bay residents.

Although the land is privately owned, the court has found that infilling is in contravention of the City's Stormwater Management By-law which prohibits land owners from dumping any material in a river, floodplain or wetland, or to reduce the capacity of the stormwater system (which includes floodplains) without the written consent of Council.

In April 2011, the City served a notice of contravention of the Stormwater Management By-law on the developer, which required it to immediately stop infilling into the floodplain of the Disa River and to remove the fill material that was placed within the floodplain. The City's Environmental Management Department followed this with a directive in terms of the Environment Conservation Act which required that the fill material be removed from the floodplain.

Although Really Useful Investments at first indicated that it would comply with the directive, by late 2012 only a part of the wetland had been restored, and the fill material remained in stockpiles and spread out on the floodplain.

In 2014 the City commenced with court proceedings in an effort to force Really Useful Investments to comply fully with the notice and directive that had been served, while Really Useful Investments instituted its own court

action in an attempt to claim compensation from the City. The compensation claim was dismissed by the Supreme Court of Appeal in 2015.

The City's proceedings were delayed as both parties sought to find an amicable settlement, but when these efforts proved fruitless the City's application was finally set down for hearing in court.

On 2 February 2018 judgment was handed down. The court declared the infilling of the floodplain to be in contravention of the Stormwater Management By-law. Furthermore, the court found that Really Useful Investments has failed to comply with the directive in terms of the Environment Conservation Act and directed them to do so within 45 days of the judgment.

Thus, the court has ordered Really Useful Investments to remove the soil, general rubble, and fill that was placed within the floodplain of the Disa River within 45 days. Should it not comply with the order, the City is authorised to enter the property and to remove the material, and to recover the costs from Really Useful Investments.

'The outcome of the Disa River case in the Western Cape High Court is a major victory for the City. We do all we can to protect rivers, wetlands and floodplains, particularly as these form an essential part of Cape Town's natural environment and biodiversity,' said the City's Mayoral Committee Member for Transport and Urban Development, Councillor Brett Herron.

'Furthermore, this judgment sends a strong message to developers that they should abide by the City's policies and by-laws.

'The City's Environmental Management Department has vigorously pursued this matter since 2011 given that protecting the wetland and floodplain of the Disa River is of extreme importance to the ecological health and functioning of the watercourse. Environmental Management will keep on monitoring the situation to ensure that Really Useful Investments abides by the court order, and that it does what is needed to restore the integrity of the Disa River,' said Councillor Herron.

Really Useful Investments has also been directed to pay the City's legal costs.

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