

22 August 2021

Attention: The City of Cape Town Metropolitan Municipality:

To: Mr Richard Nel
Manager for the Water Quality Improvement Project
City of Cape Town Metropolitan Municipality
Per: E-mail: Richard.Nell@capetown.gov.za

And to: Mr Michael Webster
Office of the Executive Director:
Water and Waste Services
Per: E-mail: Michael.Webster@capetown.gov.za

And to: Alderman Dan Plato
Executive Mayor
City of Cape Town Metropolitan Municipality
Per: E-mail: dan.plato@capetown.gov.za

CC: Alderman Xanthea Limberg
Mayoral Committee Member: Water and Waste
City of Cape Town Metropolitan Municipality
Per: E-mail: Xanthea.Limberg@capetown.gov.za

CC: Mr Lungelo Mbandazayo
City Manager
City of Cape Town Metropolitan Municipality
Per: E-mail: Lungelo.Mbandazayo@capetown.gov.za

Good day Sir/s,

POLLUTION AND DEGRADATION OF THE DIEP RIVER CATCHMENT AND THE MILNERTON LAGOON


1. The Organisation Undoing Tax Abuse (“OUTA”) is a proudly South African non-profit civil action organisation, comprising of and supported by people who are passionate about improving the prosperity of our nation.
2. We wish to thank the city for their response, dated 10 August 2021, the contents of which we have now considered and wish to respond to as follows:
3. We note the significant discrepancies between the preliminary compliance audit findings of the Department of Environmental Affairs and Development Planning (“DEA & DP”) - which show that the City has, as of 2 August 2021, only fully satisfied six of the obligations that have fallen due under the modified Directive (“the Directive”) - and the contents of the annexure to your letter, in which the City purportedly claims to have satisfied all but two of its obligations. We trust that the City will, in this regard, provide OUTA with a copy of its response to DEA & DP’s letter, dated 2 August 2021, which was due on 23 August 2021.
4. Insofar as DEA & DP’s preliminary compliance audit findings revealed that the City has not complied, or has not fully complied, with 63% of the obligations that have fallen due under the Directive, we are constrained to point out that the City has committed a statutory offence, as contemplated in section 49A(1)(g) of NEMA.
5. Furthermore, we note that the City has opted not to respond to our request for information pertaining to compliance with the conditions of its water use license (“WUL”) in respect of the Potsdam Wastewater Treatment Works.
6. We have been informed that an “agreement” has been concluded between the City and the Department of Water and Sanitation (“DWS”) and/or that a “temporary approval” has been granted to the City (presumably for a departure from one or more conditions of the WUL).

7. We do not believe that it would be lawful for DWS, as the regulatory authority, to make any concession on compliance with these conditions in favour of the City, as the licensee, based on an “agreement” or “approval” and we are disappointed that neither the City nor DWS has come clean on the issue.
8. The City’s refusal to provide an answer to a pertinent question tilts the scale in favour of an adverse inference that the position as postulated (namely, in this case, non-compliance with one or more conditions of the WUL) should be regarded as the actual position, which has been neither explained nor denied, and as fortified by the recent water quality results, which were some of the worst we have seen to date.
9. We therefore invite the City, once more, to provide a full and proper explanation regarding the extent to which it is compliant with the conditions of its WUL, in response to the relevant parts of our letter, dated 23 July 2021.
10. We also infer, based on the information that the DEA & DP has requested the City to provide by 23 August 2021, that key actions/measures appear not to have been taken, or taken timeously, by the City, which we believe are both critical and relatively easy to take, such as, amongst others, the installation of the additional sampling point, installation of nets at stormwater outlets, investigating external sources of pollution, submission of water quality results during times of discharge at the reedbeds, and providing various updates on complaints and repairs.
11. These omissions in OUTA’s view detract from compliance with the Directive, as well as the duty of the City to take reasonable measures to prevent further pollution and degradation of the environment.
12. OUTA eagerly awaits the final compliance audit report, which will determine the additional actions to be taken to ensure that the City meets its constitutional and statutory obligations, to the protect the Diep River Catchment and Milnerton Lagoon, and associated fundamental rights, from further harm.

19 Should you have any queries, kindly contact OUTA's Senior Legal Project Manager, Ms. Andrea Korff, on andrea.korff@outa.co.za.

20 We trust that you find the above in order.

Yours Sincerely,



Stefanie Fick

Executive Director of the Accountability Division

OUTA – Organisation Undoing Tax Abuse

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