

Talking Conservation

Drie Valleyen

The Botmaskop Case - a warning sign for developers?

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Botmaskop - a new lifestyle type development proposed for the outskirts of Stellenbosch surrounded by famous wine estates – has been ordered by the court to put a halt on proceedings.

The development had advertised itself as: “Perfectly positioned on the north-facing slopes of the Botmaskop Mountain, this once-in-a-lifetime spectacular nature reserve, presents unique breathtaking views of the surrounding nature to synchronise nature with lifestyle without ever sacrificing the natural habitat and fauna & flora, . . . aimed at minimising the environmental impact while developing the biodiversity within its extraordinary ecosystem.”

So why is the luxury residential estate on Botmaskop mountain not happening? A developer bought the 30.7-hectare farm in 2003 for R3.135-million and got permission to build a small resort with ten rooms, fifteen chalets, a gym, a pool, and a conference facility. This resort was never built and in April 2019, a new owner wanted to change the plan to build a residential estate with 67 units instead. However, the government said this was a significant change and required a more detailed application with public input.

Notice was given to the Interested and Affected Parties (IAAPs), including the

Stellenbosch Interest Group (SIG), which objected in October 2019. But in October 2020, the developer submitted a Part I Amendment to change the 2003 environmental authorisation for a gated residential estate. This application did not need public participation. The Department of Environment Affairs and Development Planning [DEADP] approved the Environmental Assessment as a non-substantive Part I application on 18 February 2021. The new environmental approval changed the 2003 decision from a "small mountain resort" to the "Fijnbosch Residential Estate" with seventy-seven homes and related infrastructure covering 36,282 square metres.

No IAAPs were notified, and SIG found out about this in May 2024 and applied for an interdict at the court. The judge, in her ruling mentioned that SIG found out three years later that the 2021 EA had been approved without public input, changing the project from the small mountain resort to a 77-home estate.

Judge Holderness heard the application and made a decision to stop any more work on the estate. She acknowledged that her choice would have big effects and could be expensive for the party that loses. She tried to consider the interests and harms of both sides. The judge pointed out that when a court looks at an interdict request, it does not decide who is right in the end, but there needs to be a good chance that the applicant's legal claim is valid and can be enforced.

“It is not a decision which I have taken lightly . . . Whilst being sympathetic to the difficult

position in which Botmaskop finds itself, in my view the anticipated pecuniary loss to Botmaskop cannot justify the possible infringement of the SIG's (and the public's) constitutional rights.” SIG contended that irreparable damage will be done to the environment, and that there will be no access for the community to Botmaskop if the development succeeds.

“Where constitutional rights are in issue, the balance of convenience favours the protection of those rights.”

“I am of the view that in all the circumstances, the balance of convenience favours the granting of the interim relief sought, as if interim relief is not granted, the harm which will be suffered by SIG and the public more generally is likely to be significant and irreparable.” She said concerned citizens' constitutional right to environmental safeguards trump the developer's claim of catastrophic financial loss.

Judge Holderness ordered that, until Part B of SIG's application is decided, Botmaskop and the eighth to thirty-second respondents cannot start any construction or work related to the residential estate. The judge mentioned that this temporary order does not take away Botmaskop's rights. If the full review does not succeed, Botmaskop can seek damages from SIG because of the order.

In the interim an iris, *Moraea anastasia*, once thought to be extinct, was found on Botmaskop and is now categorised as critically endangered. No development may happen where this category plant is found. A study in 2019 found no endangered species on Botmaskop, likely due to many exotic plants on site, also, the study was done in summer when most fynbos geophytes are not active. Studies bordering the site done by SIG also found other endangered species.