

Hout and About

NOVEMBER 2011

The publication of the Residents' Association of Hout Bay
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Photo – courtesy of Anthony Allen – The Aerial Perspective

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Len's Lines

A message from the Chairman of the Residents' Association of Hout Bay

Imizamo Yethu

The Residents' Association (RAHB) have always had a strong leaning towards proper planning and development in Hout Bay and to this end we have been involved, from the outset in the Public Participation process of IY. The planning of IY has gone through a tortuous path, with differing political administrations, the Institute of Justice and Reconciliation (IJR) consensus decision making process, which recognized that not everyone living in IY can be housed on this land. It was agreed between the parties that proper consultation and relocation has to take place in order to make any development viable and free from chaotic land grabs and shack farming.

With a number of Consultants leading the process, the Public Participation came to an end and the City's Officials were given the task of completing the process. So far we are pleased to see that a Primary school is at last being built, thanks to a private funder and hopefully a High School will be built in the not too distant future. We believe that negotiations in this regard are currently taking place. However, of great concern is the proper infrastructure and proper development of the 19ha on sites 1, 2 and 3 on what is referred to as the old Forestry Station. Any development **plan must conform to the environmental authorisation** issued by the Provincial Department of Environmental Affairs and Development planning. This is where the train has been derailed as the Planning and Environmental Authorisation are not in sync. The City and Province were taken to the High Court in the “Paradyskloof” case in Stellenbosch, for the very same reasons and eventually withdrew their case and had to pay the costs, but they never seem to learn. The out of sync plans are not what the Hout Bay South African Civic Organisation (SANCO) want either and they and their members live in IY and would have to bear the consequences as will the rest of Hout Bay, if the present Plans go ahead. The Environmental Authorisation seeks, among other things, to preserve the bands of trees on the borders of IY as a heritage asset. The visual impact of the Scenic Route into Hout Bay along Main Road, would be altered considerably and permanently with their destruction. The City Planners also wish to put a 19m road at the bottom parallel to Main Road, (instead of constructing a service road across the middle of IY, eg. along the northern portion of the existing Mandela Drive & O R Tambo road. Placing the service road and taxi rank at the bottom of IY would result in removal of nearly all the protected trees and would also mean a steep long walk to their houses for the people getting off the taxis at the bottom of IY and a painful climb for the elderly and infirm.

The HB&L Environmental Conservation Group (ECG) are holding a Public Meeting on Wednesday 9th November at 6:30pm in the Kronendal School Hall to inform the Hout Bay

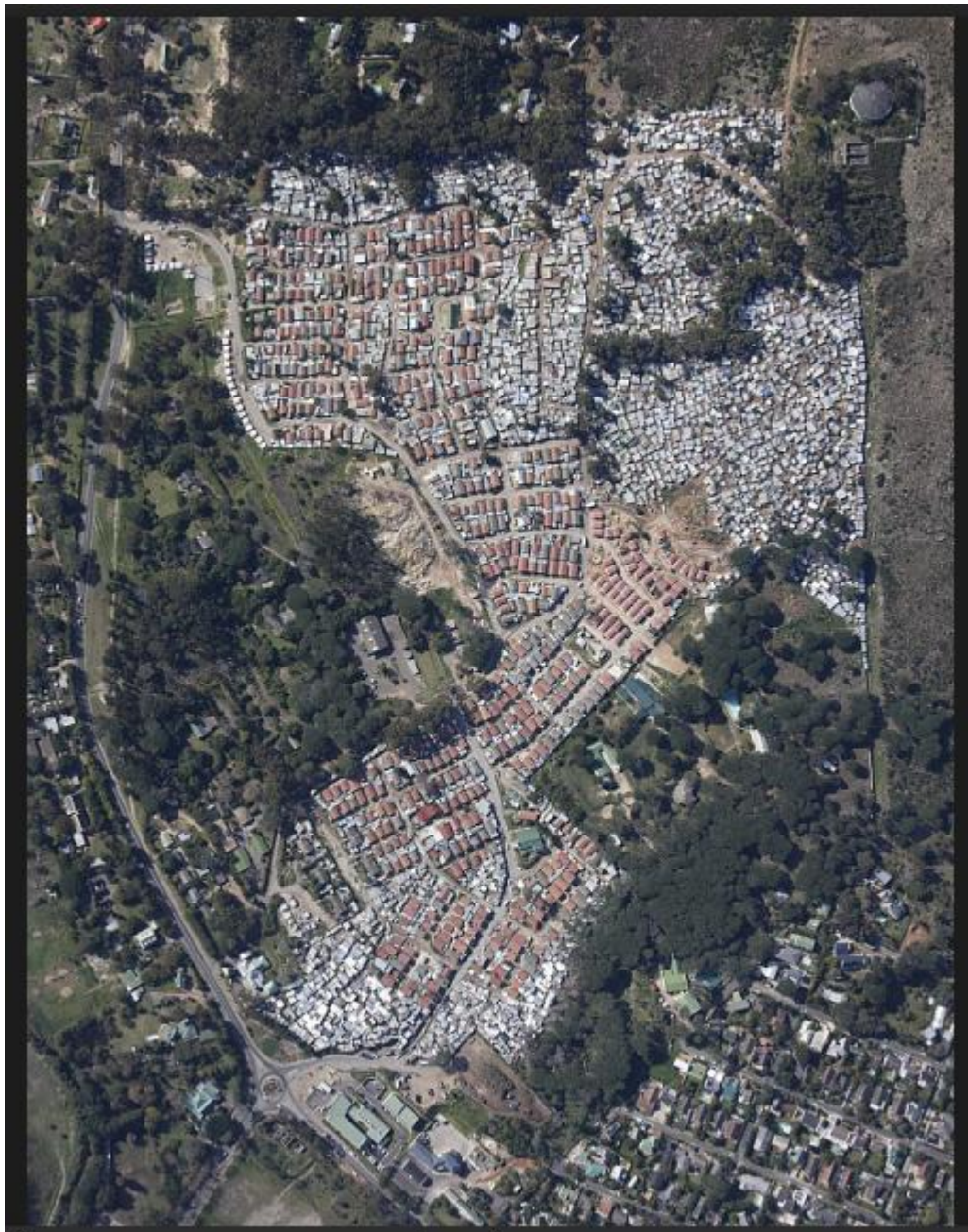
public just what is going on with regard to the IY development. We urge everyone to attend as this very important meeting to get the information you need and deserve in order to know exactly what is happening in Imizamo Yethu – it really does affect us all, as a bad development cannot be undone.

See Notice below on Page 4.

Len Swimmer

Chairman, Residents Association of Hout Bay

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Imizamo Yethu, Hout Bay with the tree lined Main Road

**WHAT IS HAPPENING ABOUT THE
FURTHER DEVELOPMENT OF IMIZAMO
YETHU?**

YOUR COMMUNITY ORGANISATIONS
CONSIDER THAT THE CITY'S CURRENT
PLANS ARE UNLAWFUL AND ARE
CONTRARY TO OUR COMMUNITY'S
EXPRESSED WISHES.

WHAT CAN BE DONE TO CORRECT
MATTERS?

**COME TO A PUBLIC
MEETING**

**ORGANISED BY YOUR COMMUNITY ORGANISATIONS
TO FIND OUT ABOUT AND SUPPORT THE LEGAL
CHALLENGE BEING MOUNTED AT THE CAPE HIGH
COURT ON 22 NOVEMBER 2011**

6:30PM

WEDNESDAY 9 NOVEMBER 2011

KRONENDAL SCHOOL HALL

**A VISUAL POWERPOINT PRESENTATION
WILL BE GIVEN AT THE MEETING OF THE CITY'S
UNLAWFUL PLANS AND HOW THEY CAN BE
CORRECTED.**

HOUT BAY & LLANDUDNO ENVIRONMENT CONSERVATION GROUP (ECG)

PO Box 27091, Hout Bay, 7872 South Africa A coalition of community organisations and trusts set up to protect and preserve the local built and natural environment

ECG member organizations include: Cape Wetlands Trust; Hout Bay & Llandudno Heritage Trust; Llandudno Civic Association; Residents' Association of Hout Bay; SANCO Hout Bay; Sinethemba Civic Association.

Report on the ECG Legal Actions to seek a judicial review of the unlawful planning procedures for the further development of Imizamo Yethu

(1) The Hout Bay & Llandudno Environment Conservation Group (ECG) is seeking to have the Western Cape Provincial Government's planning approval for the further development of Imizamo Yethu (IY) on the 16ha Forest Station site, set aside by the High Court on the grounds that the City of Cape Town's Planning Application and the resulting Provincial Approval were in a number of respects unlawful.

(2) The Provincial Environmental Authorisation (EA) for the IY plans was issued by the Department of Environmental Affairs & Development Planning (DEA&DP) on 18 November 2009. However the City's Planning Application was completed and first submitted to the Provincial authorities on 5 November 2009 before the EA, on which it should have been based, was even issued. If the City's Planning Application had been in accordance with the EA there would be no problem but it was not. Both the Application and the resulting purported Approval contravenes specific conditions of the EA and thus both are unlawful. The unlawful contraventions of the EA by the Application and Approval were outlined repeatedly in letters from the ECG and its member organisations to DEA&DP and the City between December 2009 and September 2010 to no avail.

(3) The ECG has emphasised throughout its interactions with the City and Province that its concerns were motivated by a desire that Imizamo Yethu should be developed as a well-planned and integral part of the whole community providing a good and sustainable living environment for its residents. The IY civic associations fully support this aim and the actions of the ECG. Furthermore the ECG has repeatedly stated that it wished the proposed plans to be reviewed and revised and the overcrowding to be dealt with without the need to initiate legal proceedings but both levels of government have refused to negotiate with the community. Hence as a last resort the ECG is taking legal action to seek a judicial review of the purported Approval.

(4) The ECG's attorney lodged a Founding Affidavit with the Cape High Court in November 2010.

The attorneys acting for the Province responded in January 2011 with six large lever-arch files of documents from the City and DEA&DP files and in April 2011 the ECG's lawyers submitted a Supplementary Affidavit. Answering Affidavits from three Respondents (DEA&DP, MEC for Human Settlements and the City) were received in September 2011 and the ECG's final Replying Affidavits were submitted in mid-October 2011. The case is set down for a hearing in the Cape High Court on 22 November 2011.

(5) Efforts have continued and indeed are still continuing at this eleventh hour to seek an out-of-court settlement. Meetings have been held with the relevant Provincial and City officials and their legal advisers but the officials have refused to discuss any amendment of their plans, even though these plans are contrary to the expressed wishes of the residents of IY and the Community, and are subject to serious questions about their legality.

(6) The ECG is advised by senior experienced lawyers that it has a strong case and the expectation is that the existing approvals will be set aside. If the Approvals are set aside by the High Court, the City's Planners will be forced to prepare new plans. This should not take long but it will provide the opportunity for the Community and the ECG to press for improved plans which are in accordance with the Environmental Authorisation and with the Community's wishes.

Letters/e-mails from our Members

Amanda Farrish writes: It's a fact that dog owners literally get away with murder and keep all the privileges as in the running of the beach. I was speaking to Jane earlier today and she told me that once when riding on the beach, 2 dogs chased her horse, snapping at his legs and the dog owner laughed! When Jane asked her to put her dogs on their leads, Jane was told that chasing horses is good exercise for her dogs. It's absolutely ludicrous. We have approx 900 signatures on our petition (horse riding on the beach)

Karen has this to say: **My main concern is that all "users" of Hout Bay environment should take due care and be considerate of others safety whoever they may be. As a horse rider I am all too aware of how, in particular, dangerous drivers and irresponsible dog owners put our lives at risk whenever we venture out. There is often an attitude of "I'm OK so what's your problem?" Perhaps if we could raise awareness in the community of what the laws state in terms of responsibility and sanction it may improve the behaviour of those who are short of common sense and consideration.**



Photo of the magnificent horse "History" before being savaged by two dogs while on an out-ride with his young owner and rider



“History” was attacked by two Great Dane dogs from Nooitgedacht Drive while being ridden home in Park Avenue. The trauma, pain and suffering to this horse is unimaginable. The damage is now done and “History” has a long and painful road to recovery (hopefully) with many other hazards along the way, for example septicaemia, which may kick in at any time even with the best care provided. The Vet bills, to date already exceed R10 000,00

From the Law Dept at UCT by kind research of two Hout Bay law students:-

The law pertaining strictly for domestic animals is the ACTIO DE PAUPERIE

The action de pauperie is one of the instances of strict liability, where the victim does not have to prove fault. This law has been inherited from the common law. It is an action that makes the owner of a domestic animal strictly liable for damage caused to another by such animal, provided that it was acting contrary to its nature (contra naturam sui generis). The requirement that an animal must have acted contrary to the nature of the TYPE OF ANIMAL, not the nature of the specific breed ie even if a Doberman (which is an aggressive dog but is classed as a domestic dog) attacks a horse, it is still acting contrary to the nature of domestic dogs (which are well behaved). Furthermore, the plaintiff (horse/rider/owner/victim) must be lawfully present at the place where the damage occurs. Both pecuniary loss (medical expenses) and non-pecuniary loss (pain and suffering) can be claimed from the dog owner.

We feel very strongly about this issue, and our Association's view is that owners of dogs who cannot control their dogs should not be bringing them on the public streets. The damage to the horse 'History' was entirely unnecessary and the owners should be charged criminally and a civil action law suite should be brought against them. The pain and suffering and trauma to the horse cannot just be forgotten or set aside, never mind the vet bills. We shall be investigating the City of Cape Town's Bylaws in this matter and have already contacted the Chairman of our Subcouncil Councillor Taki Amira.

On a lighter note and a feel good story here's Les Appleby's before and after having been treated with great tender loving care. See these photos of Lesley's rescue dog "Honey"

Honey being adopted by Lesley and leaving her cage at DARG for her new home and a brand new life with Les.





This is Honey in her new loving home – a constant companion to Lesley Appleby who recently retired from Librarian duty in the Hout Bay Library – what a transformation – proof of what care and loving kindness can do to a rescue dog.

We urge all those who live in Hout Bay to take a leaf out of Les Appleby's book and be kind to all the living creatures, human, animal, bird or beast wherever they live in our beautiful Valley.

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**To know what's going on in Hout Bay, why not join the Residents' Association?
Join today – here's how:-
To join the Residents' Association:**

Contact us via email on rahb@houtbay.org.za
Membership forms available from Chairperson (see above)
Membership fee: R50 per couple; R30 per individual
Corporate membership also available.