



Hout and About

APRIL 2012

The publication of the Hout Bay Residents & Ratepayers Association
PO Box 27031, Hout Bay, 7872

hbrra@houtbay.org.za

www.houtbay.org.za



Hout Bay beach with Chapman's Peak in the background. Photo by kind permission of Anthony Allen – The Aerial Perspective

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Len's Lines

A message from the Chairman of the Hout Bay Residents & Ratepayers Association

Our AGM – 14 March 2012

At our AGM, two clear and unanimous resolutions were passed:- 1. To continue the Court Action on the Chappies matter and 2. To change the name of the Association to Hout Bay Residents & Ratepayers Association, as the vast majority of our members are rate payers but there are some who are residents who rent property in Hout Bay. Many City officials also refer to our organisation as the Ratepayers Association.

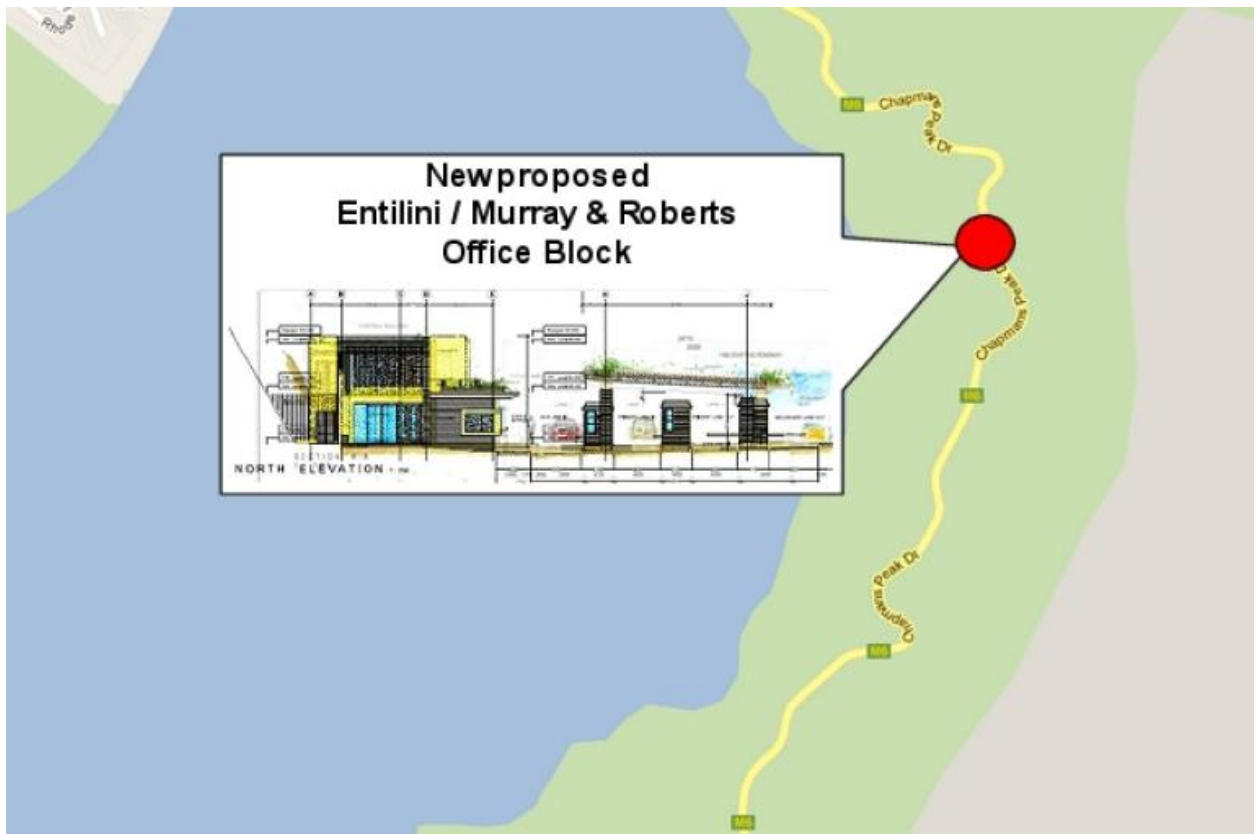
Our guest speaker, Greg Moseley, a Geologist and mountain climber showed a number of slides of poor and outright bad development in Cape Town, that scars the mountainside. He started by showing the famous "Pepper Pots" at the foot of Table Mountain, Cinnebar in Muizenberg and finished off with the proposed Toll Plaza and Office block on Chapman's Peak Drive.

The ExCo remains the same except for the resignation of Reinhard Marx, who we'll miss and the addition of two new members to the Committee, Trevor Ball and Christopher Hudson.

Our Senior Counsel has pointed out that the refusal of our interdict, pending further legal proceedings is appealable.

Our High Court action will be to launch proceedings anew for similar relief to that which was sought in the application dismissed Friday 9th March, on substantially similar papers, and to enroll it for urgent hearing in the first or second week of the second term of Court.

This is a further call to you now to please make a financial contribution to a fund established specifically for the purpose of stopping construction of the proposed inappropriate luxury office block and so saving Chappies for us and future generations. Without funding we cannot launch this Court action.



The fund is being administered by Environmental specialist attorneys Cullinan and Associates and contributions should be paid into the following account:

Standard Bank

Account name: Cullinan & Associates Inc. Trust Account

Account no: 070223149

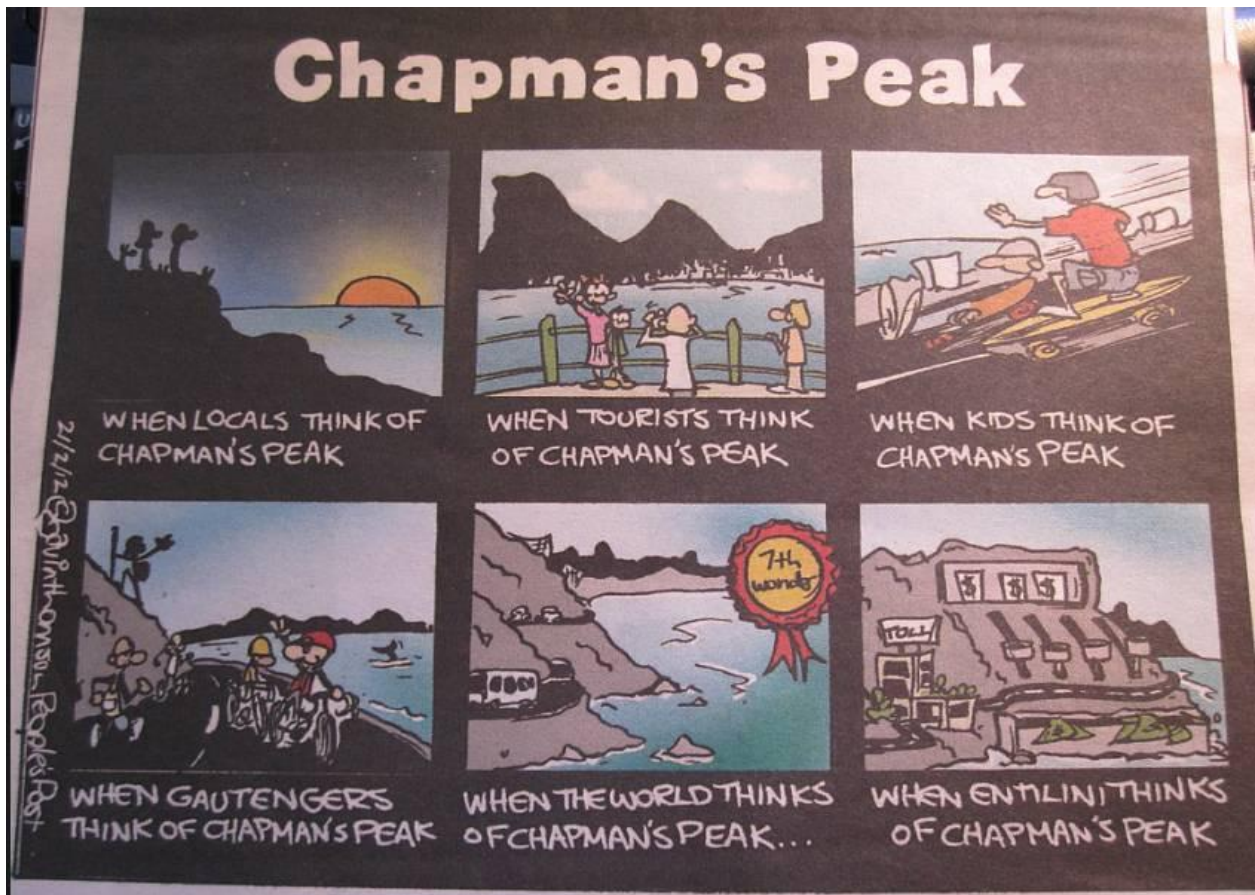
Branch code: 020009

Reference: Chapman's Peak (Very important to insert this)

Please send proof of payment with your name and contact details to:
hbrra@houtbay.org.za or at Fax 021 790 3839



Permanent scarring of the mountainside – a World Heritage Site- The Environment cannot speak for itself!



Cartoon in the "Peoples' Post" Newspaper 21 February 2012

NEW SPORTS FIELDS, CAUSE PROBLEM OF ELECTRICITY SUPPLY TO ORIGINAL FARM WORKERS – Main Rd & Victoria Rd – Report by City Official, Byron Kemp

After we began construction on the new sport field we needed to demolish the crèche on the corner. This became a problem as the electricity to the containers for the farm workers was being supplied from a distribution board behind the crèche. If we demolished the creche, the farm workers would not have any electricity and we did not want to leave the situation like that. We have demolished the crèche, but ensured that the farm workers are not compromised by supplying a generator to supply electricity to the containers. We then made application and had several meetings and discussions with the Electrical Department. The result thereof is that Dormakorp 66, the Van Oudtshoorn Trust, own the land and need to ensure the reconnection of electricity to the containers.

This has been discussed with both my District Manager and Director, the result of which has been the attached mail sent to the representative of the Van Oudtshoorn Trust, Zelda Botha.

In short we as the City will supply the generator until the end April 2012 and the Van Oudtshoorn Trust then takes full responsibility thereafter.

Erf 8736-7 - Ferrero property ('Baviaans Vlei')

Re. responsibility of removing fill deposited / dam wall that was illegally constructed by the previous owner:

We continue to question the validity of the applicant's legal opinion that the large dam constructed by the previous owner should not be rectified. The consultant's response to our query was:

Section 24G states that "On application, a person who has committed an offence in terms of section 24F(2) ..." The late owner did not commit an offence under section 24F(2) *in respect of the pond* and therefore had no legal standing to apply for rectification for the large dam.

and under 'Key Findings' the Report says:

• **Legal:** The late owner did not commit an offence under section 24F(2) *in respect of the*

pond and therefore had no legal standing to apply for rectification for the large dam.

We have followed up on this issue more generally and on the question of the responsibility for removing illegally dumped soil/construction of an illegal dam wall as the case may be, one of our members has discussed the matter with a leading legal authority and come to the conclusion that claims by current owners (or their consultants) that they are responsible *only for removing the infill into wetlands (including rivers and streams) that they had dumped and not for the soil put down/dam wall built by previous owners* of the property, is in fact not correct. It is clear to us that, in law, if it is established that there is illegal infill on a property, then the *present owner can be compelled to remove it*.

Clearly the dam wall can be categorized as 'illegal infill' and the present owner is liable for removing it. The present owner has the right to proceed against previous owners for their contribution to the illegality but the present owner is responsible in law for correcting the illegality in the first place.

Therefore if the present owner admits that there is an illegal dam on the Baviaans River tributary stream /wetland as described in this application, and the authorities have only become aware of its existence since the present owner took possession, it seems clear he/she is responsible for removing this dam.

We hereby request that DEADP get an independent opinion on this issue and, we hope, require that the stream is re-instated as it should be and in an environmentally acceptable manner. Not to do so sets a bad precedent and encourages land owners to ignore the law and then apply to legalize an illegal action after the deed had been done, and with minimal punitive consequences.

We spoke to a leading legal authority very recently on the question of responsibility for the removal of illegally dumped soil. We were consulting him on a remark we understood had been made by the present owner of Beach club: that he was only responsible for removing the infill into the wetlands that he had dumped and not the soil put down by previous owners of the property.

Our legal opinion obtained said that that contention is nonsense. If it is established that there is illegal infill on a property, then the present owner can be compelled to remove it. The present owner has the right to proceed against previous owners for their contribution to the illegality but the present owner is responsible in law for correcting the illegality in the first place.

Therefore if the present owner admits that there is an illegal dam on the BaviaansVlei stream and the authorities have only become aware of its existence since the present owner took possession it seems clear to me that he/she is responsible for removing this dam.

Letters/e-mails from our Members & Associates

1. Letters from Colin Enzer

You may be pleased about this one fall back concession. Will you tell the press?
Colin E

2. **From:** colin enzer [<mailto:colinenzer@mweb.co.za>]
Sent: 19 March 2012 04:33 PM
To: Robin Carlisle
Subject: Public Meeting 14th March 2012

Sir,

Thank you for your presentation on Chapman's Peak Drive and Road Safety given on Wednesday 14th March 2012 at the Cape Hotel School. As I remarked at the time, I was most impressed by your plans for improving road safety and by your proposed reliance upon the most modern electronic and other technologies.

When your proposals for Chapman's Peak Drive were projected on the screen it was apparent that these followed the wording in your "brochure" contained in the <http://www.westerncape.gov.za/eng/pubs/news/2012/feb/2401> and the words are quoted below:-

- "Free Access to Chapman's Peak Facilities Can Remain Day Pass System Can Stay in Place.

The current temporary arrangements mean that the management of Chapman's Peak Drive is split between the temporary toll plaza and offices in Hout Bay. The costs of the inefficiencies involved, as well as the costs of managing the day pass system are being subsidised by the Province.

Once a permanent operations centre is in place, the costs savings may be sufficient to allow the Day Pass system to stay in place. Wild Card holders will continue to enjoy discounted access. Access to picnicking, hiking and lookout facilities on either side of the toll plaza will remain."

I asked you why the word "can" should not be substituted by the word "will" so as to give some real meaning to this statement to the public. You consulted briefly with an advisor(s) at the front of the audience and you then confirmed that the use of the word "will" was appropriate. I thanked you for this assurance and requested that you email me accordingly. I gave my contact details again to the officials in the foyer.

I appreciate that you and your office are occupied on many matters, but as I have not heard from you I can only assume that my contact details have been mislaid or you have overlooked your stated commitment (or both). In whatever event, I shall be obliged if you will let me have your written confirmation of your verbal reply on this rather important issue in the perception of very many members of the general public.

Yours etc., Colin Enzer.

3. **From:** Robin Carlisle <Robin.Carlisle@pgwc.gov.za>
Date: Mon, 19 Mar 2012 15:45:00 +0000
To: colin enzer<colinenzer@mweb.co.za>
Subject: RE: Public Meeting 14th March 2012

Hi Colin,

As below, the change has been made. Thank you for pointing it out.

Apologies if I was a bit grumpy at the meeting.

By the way, I had no advisers there, only a young man from the Hotel School helping me with the computer. I am not much good with those things.

Best wishes,

Robin

4. Dear Minister,

On the contrary, the changes were made after you and I discussed on Thursday 15th March 2012, ie the night after the public meeting referred to below – the original brochure was drafted while negotiations were still ongoing with Entilini over how to ensure the day pass system could continue indefinitely.

The brochure is available at westerncape.gov.za/chapmanspeak. The word “will” has replaced “can”.

There is also a copy of your ppt available for download at the same link.

Kind regards,

Hector

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

Contact us via email on hbrra@houtbay.org.za and a membership form will be promptly sent to you.
