Chapter Eight Protesting Chapman’s Peak Toll Road: Market governance versus environmental politics

On Sunday 5 February 2012, environmental activist Bronwen Lankers-Byrne began a hunger strike against the building of a Toll Plaza on Chapman’s Peak Drive. Armed with her protest signs, and consuming nothing but water, she sat at the building site on the mountainside from 7am in the morning until 7pm at night. Lankers-Byrne insisted she would only stop if construction halted and transparent talks were held between civil society groups, the provincial government, and Entilini, the company building the Toll Plaza. Media attention was fierce. On the third or fourth day, Lewis Pugh, the famous endurance swimmer and ocean advocate, joined Lankers-Byrne as a mentor. Before long, however, he started to get involved, even tweeting Western Cape Premier Helen Zille about the Toll Plaza infringing on a World Heritage Site.

About 10 days into the strike, Pugh counselled Lankers-Byrne that government would not concede as they felt it would make them vulnerable to demands for housing higher up the mountains of both Hangberg and Imizamo Yethu. A solution offered itself, however. On Wednesday 15 February 2012, day 11 of the hunger strike, two other Hout Bay residents, Charlie Gorton and Fiona Hinds, handcuffed themselves to the scaffolding at the building site, and there was a whole day stoppage as a result. Inspired by their example, Lankers-Byrne handcuffed herself to foundations on Monday 20 February, the day that concrete was to be poured. Work stopped immediately. The police asked her three times in the day to leave, but she refused. That evening at 9pm police arrived with a High Court interdict removing her on the grounds of trespassing. Bronwen Lankers-Byrne conceded, and the protest was over.
Figure 8.1. Bronwen Lankers-Byrne on hunger strike at the Chapman’s Peak Toll Plaza

These dramatic and somewhat surreal events were the climax of protest against the tolling of Chapman’s Peak Road in Hout Bay between 2001 and 2012. Despite some fierce resistance, the residents lost the battle, and today every commuter must pay to use one of the three roads in and out of Hout Bay. The protesters did make marginal gains including securing one tollbooth rather than two; modifying the design of the tollbooth so that it was more visually discreet and compact; and most importantly, providing impetus for the provincial government to renegotiate the contract with Entilini in 2011 in ways that reduced public financial risk. At the end of the day, however, provincial government and their business partners overcame local resistance through a combination of tactics including the expensive and complex shield of the law, the finesse of public participation processes, and the co-option of key local leaders.

This case offers important insights into urban governance, including dynamics of democracy and popular politics in Hout Bay and beyond. In terms of governance, the tolling of Chapman’s Peak illustrates well how actors external to local government, in this case provincial government and national business, shape local transport. In privatising a public road, the case exemplifies market governance, and key to market governance is the legal contract that simultaneously empowers private actors with the coercive backing of the state, but removes from them the responsibility of accounting to the public. Hence, even the Premier of the Western Cape was unable to undo a contract made by her predecessor against the will of the people it most affects, at least not
without paying substantial costs from the public purse.

In terms of democracy, the case illustrates the profound limitations of community power over the places where people live, even under a democratically-elected government with requirements for public participation on development projects. In significant part, this is because the institutions of formal democracy have little or no purchase over the decision-makers external to local government, in this case the provincial government and private companies. In addition, this is because the processes of public participation on development projects are consultative rather than binding, and thus objections can be ignored – at least until the point of popular mobilisation that disrupts the project.

Notably, in this case the extent of popular mobilisation was reduced by the innovative use of representative institutions by the Toll Road project management. Key here was the co-option of community leaders from Imizamo Yethu and Hangberg onto the Chapman’s Peak Development Trust, allegedly reducing support for the protest. This tactic of inclusion of key leaders in project structures is reflective of a broader trend in developmental politics to interpret ‘community participation’ as representation. Conversely, for civil society ‘community participation’ often takes the form of popular mobilisation or protest, as disruption is the greatest weapon possessed by opponents of a development project. Hence, as demonstrated in this case, but also in the dynamics around super-blocking described in Chapter Six, and the politics around the Peace and Mediation Forum outlined in Chapter Nine, where democratic relations in developmental governance are weak, participation tends towards either co-option of leaders through representation, or disruption by residents through popular mobilisation.

Lastly, the chapter offers further sets of insights into popular politics in Hout Bay. First, it affirms the importance of environmental issues to the vision for Hout Bay held by many residents of the Valley. Notably, the blend of ecological thought and disruptive politics manifest in the protest emerged as alternatives to the environmentalist/conservation discourse and legalistic politics of the Hout Bay Ratepayers and Residents Association (HBRRA). Thus, as argued in Chapter Two, while there is clearly green in the politics of the Valley, it comes in different shades. In the case of the Toll Road, there is also a paradoxical relationship between this green politics and the relationship of middle-class people to cars as their main means of transport.

Second, consistent with the argument in Chapter Six, the struggle over the Toll Road foregrounded divergent and racialised conceptions of belonging in Hout Bay. Thus while green issues resonate with many in the Valley, it is probably fair to say that these are not as important to most residents of Hangberg and Imizamo Yethu. But the larger issue here is the way that some
in the Valley invoke conserving the environment to justify opposing both developments like the Toll Road and the in-migration of poor, black residents. In opposing the belonging of black migrants into Hout Bay, this local strain of environmentalism becomes racialised. In contrast, while the ecological view of being in Hout Bay affirms inclusive conceptions of social justice, it is very much a minority view.

**Chapman’s Peak Drive: Privatising Risk**

Built by press-ganged convicts from 1915 to 1922, long before the era of environmental impact assessments, Chapman’s Peak Drive is famous for its beauty and infamous for rockslides and wild fires, many of which have resulted in the loss of human life. Matters came to a head in June 1994 when several cars were trapped on the mountainside by mud- and rock-slides, seriously injuring Noel Graham, who was rendered a paraplegic by the accident. Dragged unconscious from his car by other motorists, Graham was carried back to Noordhoek amidst falling rocks (Eliot 2013). When he recovered, Noel Graham successfully sued the Cape Metropolitan Council for negligence in failing to close the road prior to the accident. He won the case and was awarded compensation and legal costs, albeit only after the City appealed the decision to the Supreme Court (Cape Metropolitan Council v Graham, 2000). Eventually, Graham won a R4 million judgement (Gosling 2012b).

Although a new management system was introduced after the Graham incident, in 1999 another driver, Ms Lara Callige, was killed by a rock fall in good weather, and the pass was closed by the provincial government, then run by the New National Party (NNP) in coalition with the Democratic Party (DP) (Chapman’s Peak website 2016). While the city was deliberating what to do, a huge fire ravaged the peninsula, including the area above Chapman’s Peak Drive, causing further rock falls. As noted by the head of the Western Cape government’s Department of Transport and Public Works, by 2000 Chapman’s Peak Drive had claimed 13 lives in the preceding 12 years, and many serious injuries (Eliot 2013). The events of early 2000 thus reinforced the need to make the road safer, and to do so urgently.
Based on recommendations from experts, the Western Cape’s Transport Branch decided to pursue ‘rock barring’ - removing loose or dangerous rocks - and contracts were awarded in March 2000 (Chapman’s Peak website 2016). However, by May 2000 rock barring was stopped as it became clear this was insufficient to solve the problem. Within four months, by September 2000, the coalition provincial government decided to embark on a public-private partnership (PPP) and proclaim the route a toll road under Western Cape Provincial Toll Road Act of 1999. Notably, and not coincidentally, Concor put in an unsolicited bid to fix up the road as a toll road in early 2000 (Gosling 2012b), a suggestion that was taken up in what amounted, in government time, to the blink of an eye. A harbinger of what was to follow with the introduction of the e-Toll system in Gauteng by SANRAL ten years later, the decision to toll Chapman’s Peak prompted significant public opposition and protest that dogged the completion of the road for over a decade.
On 21 May 2002 the NNP/DP coalition government concluded a R350 million (or R160 million\textsuperscript{1}) agreement with Entilini, whose major shareholder was Concor, for the financing, planning, designing and rehabilitation of the road, as well as the operation, management and control of the toll road for the next 30 years (Dreyer et al. 2005; Gosling 2012a, 2012b; Residents Association of Hout Bay and Others v Entilini and Others, 2012). As Dreyer et al. (2005: 1) note, this was the first toll road concluded directly with a province, the first concluded under the Public Finance Management Act, and the first subsidised toll road. Entilini concessions was a special-purpose company established by the consortium of Concor Holdings, Haw & Inglis, and Marib Holdings. More on Marib below.

Chapman’s Peak Drive was formally declared a toll road on 30 September 2002 (7648/12). The main reason given for this was the cost of fixing the road. As the Western Cape government (2012) stated: ‘Without tolling, Chapman’s Peak Drive will be permanently closed’. The idea was that a significant amount of the capital to upgrade the road would come from the private sector, and that down time, users would pay for the maintenance of the new system. This reason for tolling was confirmed by the current Premier of the Western Cape, Helen Zille (2017), who stated that, ‘maintaining Chapman Peak Drive alone was costing us ten percent of our road and maintenance budget in the province at the time’.

Certainly, the engineering on Chapman’s Peak Drive was sophisticated. According to the Entilini this was the first road in South Africa to use ‘Swiss engineered catch fences’, and had ‘innovative engineering’ in the form of ‘concrete cantilever systems and a half tunnel preventing rocks falling into the road’ (Dreyer et al. 2005: 2). The primary protection mechanisms introduced were nearly 1600m of ‘flexible, high-energy absorbing catch fences’ (Dreyer et al. 2005: 4). Two concrete canopies were also built, one which cantilevers and the other on round polls. In addition, the road was widened, and many of the walls were reinforced.

However, opponents of tolling suggest reasons other than safety and the associated engineering costs were behind the decision to toll Chapman’s Peak. Most often cited were the profits to be made by the private company and their cronies in government, who imagined large numbers of wealthy foreign tourists flocking to Hout Bay. Hence, in the wrangling over costs that followed, opponents of the road suggested that private money was not forthcoming to the extent suggested, in addition to the claim that public money was being wasted (Environmental activist 1 2017; Environmental activist 2 2014, 2015; Swimmer 2012). Before exploring this, however, it is critical to note how provincial government and Concor were able to ignore the opposition to the Toll Road in Hout Bay through the invited spaces of public participation.
The Limits of Public Participation

Following the announcement of the Toll Road in 2002, many local residents of Hout Bay voiced opposition to the tolling in the media and in the public participation session that followed. Three main reasons were advanced for opposing the Toll Road. First, was the cost of the toll, which was prohibitive for many poorer commuters (in 2015 it was R80 for a once off return transit, and at best R15 for a return for a daily frequent user). Second was the fact, articulated by environmentalists and conservationists, that the upgrades were infringing on a World Heritage Site. Third was the alleged waste of taxpayers’ money due to the excessive costs of the upgrades (Environmental activist 2 2014, 2015; Lawyer 2017; HBRRA leader 1 2017).

Legal opposition to the Toll Road was led mostly by the Hout Bay Residents and Ratepayers Association (HBRRA), which challenged the Toll Road in the courts of public opinion and law, and later by Bronwen Lankers-Byrne, an environmentalist, who played a leading role in the protests and direct action against the Toll Road. Nevertheless, this early opposition was overcome relatively easily through three main tactics: co-option of key community leaders on to project structures; ignoring the substantive views expressed in the public participation process; and the costly and complex process of legal challenge.

Co-opting representatives from Imizamo Yethu and Hangberg While a significant number of Hout Bay residents did oppose the Chapman’s Peak Toll Road, with 10,000 signing the petition in 2012 and around 2500 marching in protest, most were white residents from the Valley. Only small numbers of black and coloured residents from Imizamo Yethu and Hangberg participated in these events. One reason for this is the limited resonance of green issues in these communities. This is especially the case when the environment is framed as in opposition to development. Further, in the case of Hangberg, the current leader of the PMF claimed they were not engaged to join the protest (PMF leader 2017); in the case of Imizamo Yethu the organisers of the protest approached the 2007 SANCO leadership who mobilised just a handful of people. They did not engage the ANC-aligned faction of SANCO (Community leader 2 2015, 2017).

In addition to poor relations between the protest leaders and key leaders in Imizamo Yethu and Hangberg, there is a further reason for this lack of participation by black community leaders of Hout Bay. In terms of the May 2002 concession agreement, Entilini formed a Community Trust with trustees from Imizamo Yethu, Hangberg, Masiphumelele, Westlake and Red Hill. It was allocated 3% of the concession company and ‘as soon as the project is generating free cash flow to pay dividends, the trust will receive a regular income that will be managed by the community trustees’ (Dreyer at al. 2005: 9). In addition, BEE spending during the operations phase of the
project had to be at least 15 percent, excluding salaries. In 2005/6, the shareholders of the concession company provided R50,000 to the trust from their own social responsibility budgets (Yeld 2009). The Chapman’s Peak website reports that:

The Chapman’s Peak Community Trust is a legal entity which has been established to undertake social responsibility projects or programmes in the Chapman’s Peak area and to align all community projects in order to obtain a holistic overview of community development. The Trust, together with the Red Hill Community Forum, a charity organisation in the Chapman’s Peak area, coordinates development programmes such as church organisations, youth programmes, the women’s organisations and education programmes.

Indeed, both Imizamo Yethu leaders aligned to the ANC and Hangberg leaders in the PMF confirmed the existence of the Chapman’s Peak Development Trust, and both specified that its role was awarding scholarships for students from the two poor, black settlements to study at university (Community leader 2 2017; PMF leader 2017). With a stake in Entilini, and direct participation by key community leaders in the Chapman’s Peak Community Trust, it is not surprising that the leaders of Imizamo Yethu and Hangberg did not support the Toll Road protests with any real enthusiasm.

Notably, the Chapman’s Peak Community Trust keeps a low profile in the public life of Hout Bay. Thus, other than the scholarships, the Trust has not succeeded in driving the promised ‘social responsibility projects or programmes’, and aligning ‘community projects in order to obtain a holistic overview of community development’ as suggested by the Chapman’s Peak website. Not only is the Trust not on the exhaustive list of Hout Bay stakeholders compiled by the Hout Bay Partnership, it does not participate in the key development forums of Hout Bay including the Hout Bay partnership, the Hout Bay health forum, the Imizamo Yethu civil society forum, and the like. Indeed, the only presence we could find of the Chapman’s Peak Community Trust in the public domain was on the Chapman’s Peak website.

The construction of a mutually beneficial relationship between business and political leaders in the Entilini deal was not limited to community-based leaders, but also existed at the highest level. The clearest manifestation of this was the fact that Dr Lionel Louw, uncle to Greg Louw, a current leader of the Hangberg Peace and Mediation Forum, was right hand man to ANC Premier Rasool as head of the Premier’s Office from 2004-2008. Notably, at the same time he was a director of Marib holdings, which had a 10% share in Entilini. A direct coincidence of interests is offset by the fact that the Entilini contract was awarded in 2002, and Lionel Louw became Head of the Premier’s Office when the ANC came to power in the province from 2004 to 2009.
participation. While we do not know whether this intimate relationship between business and political leaders was the idea of the majority shareholder at the time, Concor, or key ANC politicians like Louw, the alignment of national business and provincial political interests helps explain the imposition of a project on Hout Bay that benefitted elite interests rather than local residents.

**Ignoring public participation** In addition to the co-option of local political leaders, another key tactic evident in the founding phase of the Chapman’s Peak Toll Road was the finessing of formal state processes, in particular the requirements for public participation. In 2002, opposition to the Toll Road by the HBRRA through the courts prompted the Provincial government to instigate a full Environmental Impact Assessment (EIA) to inform the plan for the plaza (Western Cape Government 2012). Emergent from this were a number of recommendations, including for a single tollbooth to reduce changes to the environment, which was ignored until opposition grew in the late 2000s (Hart 2003).

During 2003, the first round of public participation took place, and included adverts in national and local newspapers, including the *Sentinel*, inviting Interested and Affected Parties (IAPs) to register and provide comment. Three public meetings were held at Fish Hoek (18 June, 30 July), Hout Bay (19 June, 31 July) and with the Chapman’s Peak Community Forum (2 August 2003). Reflecting on her experiences of the public meetings an environmental activist 2 (2015) commented:

> I went to all of the public meetings which were a complete farce because people objected but their views were just rolled over. The main objections given at the public meetings were the expense, the damage to the mountain and that now it would be a toll road because it cost so much. If you just fix it like any other so-called dangerous public road you would not need a toll. Nobody spoke for it at any of the meetings, but [government] just nodded and smiled and carried on doing what they wanted anyway, which is what I have seen is the typical way of doing public participation. I was bitterly disappointed in the public participation process.

A Residents’ Association leader (HBRRA 1 2017) recalls a few people from Hangberg supporting the toll plaza, but the rest of the residents at the meeting opposing it. Notably, in the face of significant mobilisation in 2012, Provincial MEC for Transport Robyn Carlisle, criticised protesters for opposing aspects of the toll booth that were made public through the public participation processes – a claim that Len Swimmer of the HBRRA contested (Gosling 2012a). This incident reflects a tendency in South African law to equate the process of public participation with legitimating decisions, even when the public substantively disagrees with
proposals discussed in the participation process!

**Courts and the environment** Under South African law, the main mechanism available for public participation around infrastructure development is the Environmental Impact Assessment report. Hence, given its history of using the formal processes of government and the courts as its main medium of challenging government decisions, the HBRRA relied mostly on this tactic to challenge the imposition of the Chapman’s Peak Toll Road (Lawyer 2017; HBRRA leader 1 2017). In 2003, the HBRRA advocated strongly for participation in the EIA process around the Chapman’s Peak Toll Road. A site visit was conducted with the Chapman’s Peak Drive Environmental Monitoring Committee on 10 July 2003, the EIA was lodged at public libraries and posted online, and registered interested and affected parties were invited to comment. An activist decided to take action using the public participation process (Environmental activist 2 2015):

> So I went to the library which is what you’re meant to do, and I saw about 20 people had been to register their complaints, so I decided to work with them to do something. We created an A5 summary of what was happening and what people could do. We got free sponsorship to make 1,000 of these, and we dropped them off at schools and shop. We only had about three days to respond. We got 500 back from schools in IY HB and the Valley! So we took all of these to Tasneem Essop’s office, MEC for Environment and Planning, and we said the people of Hout Bay do not want this.

Despite these objections, Chapman’s Peak Drive was reopened to traffic as a toll road on 20 December 2003, after investing costs of R160 million (Western Cape Government 2012). Following its reopening, Chapman’s Peak Drive was closed for 55 days in 2004 after heavy rains in winter (1/2 annual rainfall). In October 2004, Entilini unilaterally decided to withdraw the R20 concession card for trips on the Hout Bay-Noordhoek route (Swimmer 2014). By 2005 the environmental impact assessments were complete, and the Provincial government issued a formal Record of Decision, as required by environmental law, in favour of constructing ‘a toll plaza at the quarry site at Kooëlbaai, and a second toll plaza at the Noordhoek end of the pass’ (Western Cape Government 2012: 8). In 2006, Murray & Roberts acquired Concor and became the major shareholder in Entilini (Murray & Roberts 2012). At roughly the same time the Provincial government changed, with the ANC leading the Western Cape from 2004 to 2008.

The decision to construct two toll plazas was further challenged by a number of groups and individuals, led mainly by the HBRRA. Key to the Hout Bay Residents Association objection was the issue of conservation, and more specifically the impact of the Toll Road and booth on the Table Mountain Nature Reserve that was declared a World Heritage Site in 2000 (Lawyer
2017). It was in the context of the struggle over the Chapman’s Peak Toll Road that the HBRRA came to portray the City as favouring development projects over the environment, and ignoring public opposition in the process. In a letter to the Cape Times on 1 September 2014, Len Swimmer (2014) explicitly links what he sees as ‘pro-development decision with insufficient regard for the protection of ... natural resources’, ‘short terminism’ linked to elections, a growing and ‘disturbing disregard for public opinion’, including the ‘discouragement of public participation’, and a concomitant increase in ‘the centralisation of decision making’ powers.

This relationship between development and growing *dirigisme* at the expense of the environment has been made frequently on the HBRRA’s and Greater Cape Town Civic Alliance’s websites over the last ten years. As demonstrated in Chapters Two and Six, the appeal to conservation and environmentalism has also been used to limit the settlement of further poor black residents in Hout Bay, and the upgrading of facilities in Imizamo Yethu. In the words of one respondent (Environmental activist 1 2017):

> What I see is that ... wealthy developers can just go ahead and do it because they have access to funds to push plans through and to get it done, and on the other side, Imizamo Yethu is in dire straits and some of the real issues are not being looked at.

Thus the discourse of environmentalism (as opposed to ecologism) serves to integrate the more conservative views of an older generation of white residents against both new forms of development, and poor, black migration into Hout Bay. It is close to what Draper (2003: 57) characterises as a ‘colonial preservationist mind-set seeking to alienate indigenous people from nature both intellectually and materially’. This conservatism is also evident in the preference for formal and legal challenge, in contrast with the forms of direct action taken by Bronwen Lankers-Byrne and her fellow ecological activists.

**Resisting Closure, Resisting the Toll Booth**

Thus, to return to the plan for two toll booths in the mid-2000s, while the legal objection made by the HBRRA was successful in securing further rounds of public participation, it made little difference to the original decision. In 2008, a second Record of Decision was issued by the Minister of the Environment, Martinus van Schalkwyk, approving the two toll plazas once again (Western Cape Government 2012). The failure of the HBRRA and the use of formal channels only was precisely what inspired environmentalists to take a different approach in 2010 (Environmental activist 1 2017, Environmental activist 2 2015). What followed was the use of a range of innovative tactics from petitions and marches, to hunger strikes and obstruction that were able to generate enough media pressure to force meetings between protest leaders and both
the Provincial Premier, Helen Zille, and the CEO of Murray & Roberts, Henry Laas. While this disruptive politics also failed to stop the Toll Road, it achieved much more when combined with formal participation in invited spaces, bringing about a number of new concessions.

In addition to a desire for different tactics, these environmentalists advocated a discourse of ecologism explicitly distinct from ideas of conservation that carry colonial-era contrasts between wilderness and indigenous people. Thus, where the HBRRA based its objection to the toll road on the conservation of the Table Mountain National Park, the environmentalists objected to the toll road on the basis of the exploitation of both the local environment and local people. The account of ecologism is one that affirms sustainable living of people within the larger ecology, which for them necessitates social justice. Thus recycling goes hand in glove with food gardens, and the sharing of common resources. Indeed, as outlined in Chapter Two, a key activist sees environmentalism as an issue that can unite Hout Bay as:

I am sick and tired of wealthy people living in opulence, owning the majority of the land, literally 95% or even more percent of the land and the majority in our country are living in squalor; and its continued for 14 years since I’ve lived in Hout Bay (Environmental activist 2 2015).

Key to sparking the new, and more radical, round of resistance was the closure of Chapman’s Peak Drive in June 2008 for major upgrades and repairs. The construction work took over a year and the road was eventually reopened on 9 October 2009. Two facts are critical here: first, in terms of the original concession, Entilini could unilaterally close the road without consulting Province; and second, there was a clause in the contract whereby Province would continue to pay on ‘expected traffic volumes’ when the road was closed. Notably, the projected traffic figures were calculated by Concor’s consultants, Stewart and Scott Pty Ltd. They had projected, month by month, the number of vehicles they believed would use the toll over the next 30 years (Gosling 2012b). Thus, for the period that the road was closed, Entilini was paid R59 Million in ‘compensation’ by Province. Further, and in retrospect perhaps unsurprisingly, ‘expected traffic volumes’ have never been met on Chapman’s Peak Toll Road. The project estimated daily usage growing to 4,000 vehicles a day. Yet, according to the Chapman’s Peak website the reported usage in 2014, which was the highest yet, was 835,756, or an average of 2290 per day, just over 50% of the estimate (see http://www.chapmanspeakdrive.co.za/traffic-stats.html).

In 2009 frustration with the unilateral closure of a public road, which many in Hout Bay also saw as an attempt to extract resources from the Province, led to direct action. As one participants explains:
In 2009 things came to a head as the road was closed and they did not seem to be doing anything. There was a fence across the road, right at the top, and you couldn’t even walk past. I mean bloody hell, it’s a public road! Carte Blanche did a story and there was a big *opskop* (brawl), and after that I met with some people from Noordhoek, and we agreed that I would organise people to march from the Hout Bay side and they would organised people from Noordhoek side. We did the big March and met the MEC for Finance in the middle to deliver a memorandum. People were angry, yoh, they were angry. His tyres got let down, but anyway! When we got to the fence, they asked me to tell the crowds to calm down because Entilini were going to open the gate. They didn’t come with their keys, so somebody brought their bolt cutters and cut the lock. The gates open and it’s like the Berlin wall! It was classic (Environmental activist 2 2015).

These events happened against the background of a review of the concessionaire contract towards the end of 2008, based on an investigation ordered by ANC Premier Lynne Brown. This process surfaced both Entilini’s frustration at the five-year delay in constructing the plaza, and Province’s ‘frustration with repeated (and lengthy) road closures, which the public, under the existing contract, had to pay for’ (Western Cape Government 2012: 7). With the change of government to the DA in 2009, the contract was renegotiated and by March 2011 ‘the so-called Third Amendment agreement was signed, which brought an end to unilateral closures of the pass [by Entilini] and the burden on the public purse of compensating the concessionaire during closures’ (Western Cape Government 2012: 8). Notably, while Entilini agreed to repay the R59 million, they were given 20 years to do so. Remarkably, since 2011 Chapman’s Peak Drive has remained open almost continually (Chapman’s Peak website 2016).

The final phase of the toll project commenced with the building on the toll plaza in 2012. The plaza was controversial both because of its proposed size at 800m² (by 2012 reduced to 610m²) and cost of R52 million, of which Government was to contribute R25 million to be recouped from toll fees (Western Cape Government 2012). The Provincial government justified the plaza on the basis of the need for a world class facility designed to host 57 staff, including ‘management, administration, secretarial support, technicians, supervisors, route patrollers, toll booth operators, maintenance staff and a cleaner’. The government document notes that the delays in building the toll centre meant that these staff had to work in temporary facilities that consisted of six shipping containers stacked two stories high, and four fibreglass toll booths for eight years, which created difficult working conditions (Western Cape Government 2012 :9):

Toll booth operators in particular struggle with the eight hour shifts in the fibreglass boxes, where temperatures soar in summer and plunge in winter. Eight years of using
port-a-loos while the machinery of due process grinds through the gears has also taken its
toll, and the operator estimates as many as 200 employees have departed over the years,
about 50% of staff year on year, with working conditions a major factor in many
resignations.

These reasons did not wash with opponents of the Toll Road. While recognising that the Toll
Road was probably now an inevitability, as was some form of plaza given that this was in the
original contract, they resolved to oppose what they saw as the unnecessary and wasteful version
of a toll booth (Environmental activist 1 2017). Indeed, to this end protestors proposed a number
of alternative toll booths, including one commissioned by Bronwen Lankers-Byrne that was
estimated at R2 million. Given her experience in 2002 and especially during the march of 2009,
Lankers-Byrne was resolved to do her utmost and organised a series of protests against the new
toll plaza on Saturday 22 and Saturday 29 January 2012.

The first protest saw around 1,000 protesters from Hout bay come out against the new toll
station. Poster slogans included, ‘54 million! Can build houses for IY and Hangberg people’,
‘Stay Away from our Mountain’, ‘picnics before profits’, ‘Jou Ma se Toll’, ‘Stay Away from our
Mountain’, ‘10 of us in one shelter, can you build houses instead of playing with money’, ‘Hands
off chappies robber Carlisle’, ‘Murray & Robbers’, ‘Zille: where’s the democracy?’. Although
most protesters were from the valley there were also some from Imizamo Yethu and Hangberg
(Bennett 2012), including the 2007 SANCO leader. As suggested in Chapter Six however, he
was leader of a faction of SANCO not in good standing with the ANC locally, and with limited
capacity to mobilise in Imizamo Yethu. As noted above, the ANC leadership were included in
the Chapman’s Peak Community Trust and thus had a vested interest in the toll road construction
proceeding.
After the protest, Lankers-Byrne reported engaging over e-mail with Murray & Roberts, and getting the distinct impression that were open to dialogue over the toll booth, only to discover that on the Thursday following the protest they were on the mountain digging. ‘I was angry that they were deliberately misleading me. So then I decided, well I’ll go to a hunger strike to see if they’ll listen, to force further negotiations’ (Environmental activist 2 2015). Thus on Sunday 5 February 2012, the hunger strike described in the opening vignette began.

During the hunger strike and obstruction, media coverage of the Chapman’s Peak Toll Road reached unprecedented levels, and supporters secured over 10,000 signatures in a petition calling for the cessation of the building of the toll booth (Bennett 2012). With the removal of hunger strikers from the site, building continued, but the protest did not end. On the 2 March 2012, Entilini began felling a stand of gum trees on SanParks land and a group of 12 protesters tried to halt the felling until the police were called. In response, the HBRRA initiated an interdict to halt all construction as it was World Heritage Site (Bennett 2012). According to Len Swimmer, the heart of the case was that according to the relevant laws, usage of a global World Heritage Site should be for conservation, not for profit. More specifically, the objection was that the Records of Decision in 2005 and 2008 were made on old information from previous EIAs. Prof Merle Sawman of UCT wrote a letter to Helen Zille expressing these concerns during this period.
In March 2012, activists used the Cape Argus cycle tour and the Two Oceans marathon to protest the toll booth, as both events pass along Chapman’s Peak Drive. Lankers-Byrne recalled how on the morning of the Argus cycle tour she crashed a media interview that Helen Zille was doing about the Argus to demand that she meet with her. ‘She agreed and I had half an hour between 7:15 and 7:45 in the morning. She argued that it would cost R140 million to cancel the contract at that point, and it was too costly. I do think her hands were pretty tied by the contract. My thought was perhaps we could get them both to agree to review’ (Environmental activist 2 2015).

Thus, just before the Two Oceans marathon, Lankers-Byrne went up to the head office of Murray & Roberts with her 96 year old father and blocked the entrance to Murray & Roberts at Bedford View. She noted, ‘there were three of us, but my friend had to take the pictures as none of the press had arrived then! The CEO, Henry Laas, invited us into a meeting with two of his Directors in the building. The signs were all put inside the room while we met! Nothing really came of the meeting, they insisted they were bound by the contract’ (Environmental activist 2 2015).

These two engagements with Zille and Laas reveal quite profoundly the loss of popular sovereignty involved in market governance. Through the device of any form of contract, in this case a Public-Private Partnership, service providers gain the coercive backing of the state without the accountability mechanisms that usually apply to elected officials. Thus, even the Premier of the Western Cape was unable to revoke unilaterally a decision on a government-sponsored project that was both unwanted by the residents it most affected and was costing the government money. Notably this was not just a problem for Zille, but also her predecessors, and it was not just Concor who benefitted from this, but also the subsequent investors who bought it out. Lastly, it was only popular resistance that brought costs for both business and political elites that enabled the renegotiation of the contract in the ‘Third amendment agreement’ of 2011.

After the meeting at Murray & Roberts, resistance to the toll road petered out. There was another protest at the High Court in Wynberg on 28 May 2012 when the state attempted to prosecute Fiona Hinds for spray painting ‘Murray & Robbers’ at the construction site, but the case was dismissed by the Court. In June 2012, the Residents Association court case failed on the basis that the likely damage to the World Heritage Site was not significant (Residents Association of Hout Bay and Others v Entilini and Others, 2012). The only glimmer of justice in this respect was that, in 2013, Murray & Roberts paid a R309-million fine in terms of the Competition Commission’s fast-track programme in connection with price collusion around the 2010 World Cup, leading the HBRRA to appeal to the Competition Commission to investigate the Chapman’s Peak concession (Bernardo 2015).
Conclusion

The decision to toll Chapman’s Peak Drive through a Public-Private Partnership (PPP) between Provincial government and national construction companies is an exemplary case of governance rather than government. Province co-governs transport in a formal partnership with other social actors, in this case with a national business. It is also a profound illustration of how powerful actors external to the City of Cape Town can shape the ways in which people must live in the city. Lastly, it is an exemplar of market governance where a public resource is privatised for reasons of financial viability. Notably, these decisions were not popular, and consistently opposed by many residents of Hout Bay, if not necessarily most of those affected by it.

The ensuing struggle between Entilini, Provincial government and residents sheds important light on the nature of market governance, the disconnect with local democracy, and the resultant bifurcation of public participation into co-option through representation or disruption through mobilisation, as well as the variegated nature of green politics in Hout Bay. In respect of market governance, the Chapman’s Peak case shows how private actors are enabled by law to retain the coercive backing of the state, but without the requirement of popular accountability. Thus the initial attempt in 2000 to make Chapman’s Peak Drive safe was changed at the prompting of big business, and lead to the passing of new Public-Private Partnership (PPP) legislation by Provincial government and the award of a contract to the same business with uncommon speed. A few years later, when the DA came to power in the province, and it was clear both that the residents of Hout Bay did not want the Toll Road, and that the Provincial government were economic losers in the original deal. Despite this, the new Premier was unable to change things unilaterally, because under market governance, sovereignty resides in contract law, not with the legislature, and certainly not with the people.

In addition to offering insights into market governance, the tolling of Chapman’s Peak illustrates the limitations of invited spaces of public participation to influence decision-making. Partly this is because local democratic institutions have no purchase over Provincial government, and partly because processes of public participation on development projects are not binding. In addition, project managers co-opted important leaders from Imizamo Yethu and Hangberg onto the Chapman’s Peak Development Trust, creating a vested interest in the Toll Road. Frustrated by the unresponsiveness of formal institutions, activists turned to protest and disruption illustrating how, when democratic engagement is weak, public participation tends to either representation though co-option, or mobilisation to disrupt.

Lastly, in terms of popular politics, the Chapter affirms the importance of green issues to the
conceptions of being and belonging of white and wealthy residents of Hout Bay. Ideologically this stretches from accounts of conservation through environmentalism to ecologism, with different notions of how nature and society should relate. For many, the natural beauty of Hout Bay should be preserved, and the environment protected from human development that pollutes the river, destroys the natural bush and so on. For others, it is about finding new ways for residents and nature to co-exist sustainably. Important to the Hout Bay story, however, is how key organisations in the Valley have invoked conserving the environment to justify opposing both developments like the Toll Road and the in-migration of poor, black residents. By linking environmental threats to identities, this discourse reinforces racial conceptions of belonging in Hout Bay identified in Chapter Six. While it is not the only form of green politics in Hout Bay, and the ecological view of being in Hout Bay affirms inclusive conceptions of social justice, the latter is very much a minority view.

References


Residents Association of Hout Bay and Others v Entilini and Others (7648/12) [2012] ZAWCHC 23 (6 June 2012).


Interviews


Notes

1 Western Cape MEC for Transport Robin Carlisle took the Cape Times to the Press Council (2012) on range of issues, including the estimated cost of R360 million which he insists was R160 million. Notably, the figure of R360 million is taken from the conference paper of Dreyer et al (2005), the engineers of Entilini.