

SECTION 6  
Strategic Services

ITEM C/6/ /13

Mayoral Committee for recommendation to Council

AMNESTY FOR REGULARISING UNLAWFUL LAND USES AND BUILDINGS

**Department:** Strategic Services                      **Demarcation:** Ward (All)

**File Ref:** 1/2/1/1 & 15/1/P

**Attachments:** None

**Report By:** HOD: Strategic Services

**Date:** 07 May 2014

**Purpose of the Report**

To gain Council approval for the extension of the amnesty period for property owners who purchased properties with unlawfully erected structures or land uses and for the confirmation of related tariffs and levies.

**Background/Discussion**

Since the approval of the amnesty in December 2013, there have been numerous queries in connection with the amnesty and a constant stream of objections to it. Most landowners, especially those who have bought farms with existing structures, do not want to incur the associated costs of having the plans for their properties approved, e.g. cost of drawing building plans or surveying the sites. Moreover, many rural landowners who commenced illegal uses of their properties now rely thereon for an income. Others feel that the law is being applied inconsistently, as houses and buildings in rural areas are under threat but illegal structures in some of the urban areas are not being demolished due to political pressure.

The fact of the matter is that the Bitou Municipality must enforce the laws created by Parliament, as much as all residents should abide by the laws. The preamble of the National Building Regulations and Building Standards Act, 1977 introduces this matter as follows: *“To provide for the promotion of **uniformity in the law relating to the erection of buildings in the areas of jurisdiction of local authorities**; for the prescribing of building standards; and for matters connected therewith.”*

Since 2009, the National Building Regulatory Authority has been exerting pressure on municipalities to strictly enforce not only the NBR but also other building regulations and land use laws and by-laws. Numerous court cases, even up to the Constitutional Court, indicated that municipalities are obligated to cause the demolition of illegally erected buildings and structures which do not comply with the legislated prescripts.

The Consumer Protection Act of 2009 serves as further catalyst in this process. This act effectively makes it impossible for property owners to sell or insure their properties without full compliance to all applicable legislation, e.g. NBR and land use by-laws and regulations.

## SECTION 6 Strategic Services

While strict enforcement will potentially affect rural property owners the most, it will also affect property owners in all urban areas, as any interested party could institute proceedings against the Municipality for not taking action where there are illegal land uses and structures. Obviously, the Municipality would not want to be defending such cases, knowing the legal implications and costs. Only informal settlements in land zoned Informal Residential Zone are exempted, which means that only Bossiesgif, Qolweni, portions of Kwanokuthula and the subsidy housing schemes developed at Kurland and Kranshoek could qualify for exemption if the zonings of these areas are amended.

The NBR defines buildings as: *“Any structure whether of permanent or temporary nature and irrespective of the materials used in the erection thereof, erected or used for or in connection with – accommodation or convenience of humans or animals, the cultivation or growing of any plant or crop, any wall, swimming bath, swimming pool reservoir, etc.....”*

Owners who acquired property with illegal buildings and / or land uses are responsible for rectifying the unlawfulness. Given the extent of some of the buildings and uses, the penalty cost thereof could amount to more than R250 000,00, added to which the cost of submission of an application, e.g. of a suitably qualified person to prepare and submit building plans. Normally, an owner would have to pay a penalty of seven times the normal building plan fee to gain authorisation for an illegal building. Regularising the land use incurs the cost of the application and an extended process. To reduce these costs and to assist the Municipality in collecting the correct future revenue and to save the cost of investigations, prosecutions and allocation of additional resources, it was suggested, but not recommended that owners be exempted from paying the penalty fees and tariffs and apply directly for payment of a contravention levy, rather than any other land use planning application.

During recent discussions between the Bitou Ratepayers Alliance and the Bitou Municipality, the Bitou Amnesty Committee (BAC) was established to hammer out a practical and fair set of guidelines to help property owners to get their properties regularized in the most cost effective and speedy way possible. The BAC held its first meeting on Tuesday, 8<sup>th</sup> April 2014 and put forward the following important suggestions:-

### A. By Council:

1. That the mayor will table a proposal to extend the current amnesty period from 30 June 2014 to 30 June 2015 for ratification at the May 2014 Municipal Council meeting.
2. That in addition to the municipal building control office in town, a weekly help desk facility will be established in Kurland, Wittedrift, Kranshoek and Harkerville for the duration of the amnesty period.
3. That the building control manager will use the Bitou municipality website to establish a publicly accessible section dealing with issues surrounding building and land use regularization with detailed updates and a Frequently Asked Question section.
4. That the municipality will publish regular information pieces in the local media.

### B. By Ratepayers:

1. Owners who knowingly contravened the regulations **will not be** eligible for amnesty.
2. There will be three categories of applications **which do qualify** for amnesty:
  - a. Owners who **bought** a property with structures and/or land use irregularities -
    - i. Re-zoning to be applied for in correction of land use issues and Contravention levy applied for.
    - ii. Building irregularities will attract a flat application fee of R 467-40 with no additional penalty fees. This will increase with normal prices in July 2014.

SECTION 6  
Strategic Services

- b. Owners who themselves erected structures and/or caused land use irregularities.
  - i. Re-zoning to be applied for in correction of land use issues and Contravention levy applied for.
  - ii. Building irregularities will attract normal rates for building applications but no penalty fees.
- c. Owners who have a combination of categories a. and b. above.
  - i. Re-zoning to be applied for in correction of land use issues and Contravention levy applied for.
  - ii. Building irregularities will attract fees in a combination of a. and b. above.

C. Additional

1. Irregularities or contraventions for a structure will be measured against the regulations applicable at date of construction of that structure i.e.: no retrospective application of current regulations will be made.
  - a. Past building regulations include, amongst others, Standards Act (33 of 1962), National Building Regulations and Standards Act (103 of 1977) (NBR), Land Use Planning Ordinance (15 of 1985) (LUPO), Various amendments & additions to NBR and more recently Energy Efficiency legislation in 2011. The latest revision/ amendment of the NBR as per the full Regulations was in 2011.
  - b. The NBR do allow for "Deemed to Satisfy", Performance Regulations and or Functional Regulations for buildings which by test of years or use of materials can be deemed to satisfy in terms of strength and structure, this practice for "functional or performance regulations" requires and rational assessment of the building by a "competent person," normally an Engineer, to undertake and to certify the building to be compliant.
2. Buildings older than 60 yrs. fall under National Heritage and Resources Act (25 of 1999). Applications must be submitted to Heritage Western Cape for assessment by them before Bitou can make any comment or recommendation. Compliance with heritage matters falls outside of the amnesty as Local Authorities have no jurisdiction over heritage matters.
3. Structures which fall under Minor Building Works as defined by NBR will be dealt with on individual basis as these may be exempt from the formalities of the NBR and may only require sketch plans for the municipality to issue a "minor building works" permit.
4. Land use issues must be regularised first before building plans can be submitted as plans for structures which are not consistent with the zoning cannot be approved.
5. The amnesty does not bind the municipality to approve any rezoning and the risk of unlawful land use remains with the owner.
6. Approvals and authorisations in terms of the Land Use Planning Ordinance, 1985, Ordinance 15 of 1985 (LUPO) and the National Building Regulations and Building Standards Act, 1977, Act 103 of 1977 (NBR) are covered in this amnesty proposal. It does not apply to any other legislation.
7. The amnesty conditions remain as recommended before.

**Relevant Legislation**

Spatial Planning and Land Use Management Act, 2013, Act 16 of 2013 (SPLUMA).

SECTION 6  
Strategic Services

National Building Regulations and Building Standards Act, 1977, Act 103 of 1977 (NBR).  
Land Use Planning Ordinance, 1985, Ordinance 15 of 1985 (LUPO).

**Financial implications**

The Bitou Municipality will lose some of its revenue from submission of applications, but the loss will be offset by the cost of investigating all the properties and the early correction of services accounts to the owners.

**Comments Head: Municipal Services and Infrastructure Development**

**Comments by Head: Corporate Services**

**Comments by Head: Community Services**

**Comments by CFO**

**Recommendation by the Municipal Manager**

- 1) That Council confirm approval of the amnesty for regularising land use and illegal buildings as per Item C/6/205/12/13 of 04 December 2014.
- 2) That amnesty applications will be considered in respect of all transgressions up to and including 4 December 2013
- 3) That the conditions applicable to the amnesty be amended as follows:
  - a) It is available to all residents of the Bitou Municipality until 30 June 2015.
  - b) Building plans submitted in terms of the amnesty need not be approved within the statutorily prescribed periods of 30 or 60 days.
  - c) Land use planning applications need not be approved within the periods prescribed in the relevant regulations.
  - d) Land owners must submit the relevant land use planning applications to the Municipality together with the building plans and simultaneously apply for the payment of contravention levies in terms of Section 40 (1) (a) (ii) of LUPO.
  - e) All applications and submissions to the Municipality must be accompanied by proof of ownership and transfer details of the property and a sworn statement made in front of a Commissioner of Oaths to state whether the property was acquired with the unauthorised structures and/or uses.
  - f) Occupation and zoning certificates or receipts for payment of contravention levies issued to applicants in compliance with the relevant statutory provisions will indicate conclusion of an application.
  - g) Approvals and authorisations can only be granted within the limits of the relevant statutory provisions.

SECTION 6  
Strategic Services

- h) The Municipality may approve, conditionally approve or refuse any application.
  - i) The standard town planning application fees will apply to applicants and land owners who knowingly and/or wilfully disregarded the relevant statutes, commenced unlawful uses and erected unauthorised buildings. As such, these owners will not be eligible for amnesty.
- 4) There will be three categories of applications which qualify for amnesty:
- a) Owners who bought a property with structures and/or land use irregularities -
    - i) Land use applications to be applied for correction of land use issues to the amount of R6000-00 plus VAT.
    - ii) Building irregularities will attract a flat application fee of R 467-40 with no additional penalty fees. This will increase with normal prices in July 2014.
  - b) Owners who themselves erected structures and/or caused land use irregularities unknowingly of relevant Planning and or NBR.
    - i) Land use applications to be applied for correction of land use issues as per approved tariffs with a 40% reduction on normal application fees.
    - ii) Building irregularities will attract a 40% reduction on normal rates for building applications and no penalty fees.
  - c) Owners who have a combination of categories a. and b. above.
    - i) Land use applications to be applied for correction of land use issues as per fees under a. and b. respectively
    - ii) Building irregularities payments as per a. and b. above
- 5) That the amnesty be communicated to all residents of the Municipality by the Manager: Communications and Customer Care, by inserting an amnesty notice to the July 2014 monthly invoices or similar of the Municipality and to request all Ward Committees to distribute the information in the wards.
- 6) Items listed in the preliminary report above under the heading "C. Additional" are further acknowledged and recommended as statutory requirements to be complied with:
- a) Irregularities or contraventions for a structure will be measured against the regulations applicable at date of construction of that structure i.e.: no retrospective application of current regulations will be made.
    - i) Past building regulations include, amongst others, Standards Act (33 of 1962), National Building Regulations and Standards Act (103 of 1977) (NBR), Land Use Planning Ordinance (15 of 1985) (LUPO), Various amendments & additions to NBR and more recently Energy Efficiency legislation in 2011. The latest revision/ amendment of the NBR as per the full Regulations was in 2011
    - ii) The NBR do allow for "Deemed to Satisfy", Performance Regulations and or Functional Regulations for buildings which by test of years or use of materials can be deemed to satisfy in terms of strength and structure, this practice for "functional or performance regulations" requires and rational assessment of the building by a "competent person," normally an Engineer, to undertake and to certify the building to be compliant
  - b) Buildings older than 60 yrs. fall under National Heritage and Resources Act (25 of 1999). Applications must be submitted to Heritage Western Cape for assessment by

SECTION 6  
Strategic Services

them before Bitou can make any comment or recommendation. Compliance with heritage matters falls outside of the amnesty as Local Authorities have no jurisdiction over heritage matters.

- c) Structures which fall under Minor Building Works as defined by NBR will be dealt with on individual basis as these may be exempt from the formalities of the NBR and may only require sketch plans for the municipality to issue a “minor building works” permit.
- d) Land use issues must be regularised first before building plans can be submitted as plans for structures which are not consistent with the zoning cannot be approved.
- e) The amnesty does not bind the municipality to approve any rezoning and the risk of unlawful land use remains with the owner.
- f) Approvals and authorisations in terms of the Land Use Planning Ordinance, 1985, Ordinance 15 of 1985 (LUPO) and the National Building Regulations and Building Standards Act, 1977, Act 103 of 1977 (NBR) are covered in this amnesty proposal. It does not apply to any other legislation.
- g) The amnesty conditions remain as recommended before.