

Comment, Concerns and Motivated Objection to the Second Draft Bitou SDF, Specifically the Proposed Designation of Public Open Spaces and Service Erven In Natures Valley as Potential “Strategic Development Areas”

Section A: PUBLIC OPEN SPACES

The undermentioned four public spaces have been earmarked as potential “strategic development areas” in the second draft Bitou SDF:

Erf 460 - Fynbos Reserve

Erf 429 - Phyl Martin Park

Erf 380 - Wetland Reserve

Erf 381 - Forest Reserve

1. Land Use

Current Zoning: Open Space Zone III

Proposed Zoning: Open Space Zone III, (Bitou Draft Integrated Zoning Scheme By-Law

Open Space Zone III, (NV Local Spatial Development Framework)

Open Space Zone III, (First Draft Bitou SDF)

The above information shows that there is complete consensus regarding the protected status of NV public open spaces with their primary use of “nature conservation area” that allows no development.

In the draft Bitou integrated zoning scheme by-law the objective of Open Space Zone III is “to provide for the conservation of natural resources in areas that have not been proclaimed as nature areas (non-statutory conservation) in order to sustain fauna and flora and protect areas of undeveloped landscapes.”

The sudden decision by Bitou to designate the above open spaces as “potential strategic development areas” with a view to their future development in terms of a 12 year old 2008 council resolution that completely disregards the protected status of these areas, is of great concern to the NVRA and cannot be condoned.

2. Legislation and Policy

Bitou is under various forms of statutory and policy level obligations to take positive action in preserving the natural and built environment and to duly recognise existing land uses that have existed and prevailed over a substantial period of time.

The Bitou IDP recognises environmental sustainability as a global priority that should guide development issues as well as municipal development. Together with this principle, sustainable environmental management and the protection of biodiversity is acknowledged as a national outcome in which local government plays an executive role.

2.1 Constitution of the Republic of South Africa (Act 108 of 1996)

According to Article 24 of the Constitution, every person has a right to the protection of the environment for present and future generations by means of laws and measures that prevent pollution and ecological decline and promote conservation.

2.2 Western Cape Provincial SDF

According to the directives and guidelines, development is only acceptable and in the public interest if it is ecologically sustainable, socially equitable and economically viable-i.e. environmentally sustainable.

2.2 Spatial Planning and Land Use Management Act 16 of 20 (SPLUMA)

Among others SPLUMA stipulates that decision-making procedures must minimise environmental impacts. A municipality must take the public interest into account and must consider the impact of engineering services, social infrastructure and open spaces.

Very importantly a municipality must ensure compliance with environmental legislation

2.4 National Environmental Management Act 107 of 1998 (NEMA)

Principles and objectives in NEMA regarding sustainable development state that disturbance of eco-systems and loss of biological diversity are to be avoided or minimised, that negative impacts on the environment and on people's environmental rights be prevented, minimised and remedied and that sensitive eco-systems require specific attention in management and planning procedures especially where they are subject to human usage and development pressure.

2.5 National Environmental Management: Protected Areas Act 57 of 2003

There are four kinds of protected areas in the Act and these include nature reserves, protected environments, forest areas and forest nature reserves.

2.6 National Environmental Management : Integrated Coastal Management Act 24 of 2008 (ICM)

The act provides protective measures for land that is defined as a sensitive coastal area.

Municipalities must develop coastal management plans that are aligned with ICM and that aim to protect the coastal environment.

2.7 Environmental Conservation Act 73 of 1989 : Outeniqua Sensitive Coastal Area Regulations (OSCAR)

According to this Act NV is categorised as a sensitive coastal area and the OSCA. The Regulations are applicable to the township and its surrounds.

2.8 Western Cape Nature Conservation Laws Amendment Act 3 of 2000

Municipalities should identify municipal land in the coastal zone that could be designated as a local nature reserve, e.g. critically endangered habitats.

2.9 National Forest Act 84 of 1998

This Act makes provision for the declaration and protection of a forest nature reserve, protected trees, group of trees or woodland.

2.10 Garden Route District Municipality Coastal Management Programme 2012

An important aim of the management programme is to limit coastal development.

Municipalities must develop a planning scheme that adopts land-use policies "that proposed development must be within the limits of the ecological carrying capacity and existing services (sewerage treatment, water availability) of an area...and all other land-use restrictions that contribute to the objectives of the Integrated Coastal Management Act."

Summary

The overall objectives of the listed legislation and policies are to retain ecologically sensitive habitats and environments by providing the highest protection to the coastal zone, forests, wetlands and remaining areas of

critically endangered biodiversity with specific attention to management and planning procedures to ensure their sustainability. In designating NV open spaces as strategic development areas for future development, Bitou is acting in a manner completely contrary to the listed environmental legislation. For this reason, their intentions/proposals are opposed.

3. Natures Valley in Context

To understand the importance of the public open spaces, NV must be seen in the context of one of only a few villages in South Africa that is surrounded by a category I proclaimed national park and set in a unique natural environment with unsurpassed landscapes.

3.1 Unique natural environment

NV lies at the foot of the steep coastal escarpment and is accessible only via the historic Groot River Pass. The village is bordered by the indigenous rain forests of the Tsitsikamma Section of the Garden Route National Park (GRNP), the ecologically sensitive Groot River with its lagoon and estuary and the pristine beaches of the Indian Ocean.

- The wooded front coastal dune and verges together with the flood plain of the Groot River lagoon are afforded highest protection by the proclamation of this land as a Contractual National Park Area.
- The Afro-montane temperate forest occurring in NV is one of 26 natural forest types declared as natural forest in terms of Section 7(3)(a) of the National Forest Act 84 of 1998.
- The vegetation in the area falls within the eastern section of the Cape Floristic Region which is one of the six floral kingdoms of the world and has the highest species diversity per unit in the world.

3.2 Single Residential Character

The almost exclusively single residential status of the 406 erven in the residential area has remained virtually unchanged since the establishment of the village in 1953. The

large properties averaging 1100m² are protected by the restrictive conditions in their title deeds that constitute praedial servitudes.

- Generous building line restrictive conditions (6,3m at street front and 3,15m at sides and rear) and single dwellings on wooded and largely unfenced properties along forested road verges play an integral part in augmenting the environmental integrity of the unique natural environment and enhancing the perception that the residential area is an extension of the adjacent national park.

3.3 Infrastructure Limitations

The residential area comprising 406 erven is surrounded by the Tsitsikamma Section of the GRNP, the Groot River and Ocean. These geographical constraints impose severe restrictions on any further development of existing infrastructure that provides basic service delivery to NV and has remained largely unchanged for decades.

Sewerage Management

NV has no reticulated sewerage system and sewerage management is wholly dependent on properties with septic tanks and soakaways, and conservancy tanks that have to be emptied by tankers that have to travel up and down the Groot River Pass in order to dispose of sewerage at the Kurland facility. During peak season, this service is stretched to the limit.

- A potentially serious health hazard occurs during heavy rains on erven north of St George's Avenue that are underlain by clay. The ground becomes saturated and cannot absorb the sewerage that pollutes surface drains and eventually causes pollution of the lagoon.
- A further health hazard occurs along Lagoon Drive when sewerage disposal systems are susceptible to periodic flooding from the lagoon, releasing raw sewerage directly into the lagoon and polluting the water.
- The occurrence of ground water pollution of the Groot River lagoon remains a potentially serious health hazard for one of the most popular tourism areas for families with children.
- Bitou appointed Ninam Shand Consulting Engineers (2006) and after them Aurecon Consulting Engineers (2016) to investigate the design concept and feasibility of a waterborne sewerage system for NV but to date

no environmentally acceptable solution has been identified, and no change is envisaged for the foreseeable future.

Water Supply

NV is wholly dependent on the Groot River for its water supply, which is constrained during peak season when low water pressure is experienced in the western part of the residential area. In addition, during dry periods the flow rate in the river drops dramatically. When this occurs during peak holiday periods the water supply has to be carefully managed by the Municipality.

- An ozone water purification plant that can supply a maximum of 1000m³ of potable water per day is situated on the banks of the Groot River above the bridge over the R102.
- The existing reservoir has a capacity of 600m³ that is equal to about 4 hours reserve capacity during peak consumption periods, which falls far short of the minimum required storage capacity of 48 hours and provides no reserve for fire-fighting.

Electricity Supply

Bulk high-voltage electricity is supplied by Eskom from a 22 KV overhead powerline that feeds a step-down transformer on erf 337. Bitou is responsible for the reticulation of supply at 11 KV to the residential area with mini-substations distributed around the township which supply the residential area at 400V.

- Outages (excluding load shedding) occur frequently from bad weather and falling trees. This is especially the case with Eskom lines that run through the adjoining forest.
- The ring main intended to improve the system is not fully functional as further switchgear has yet to be installed.

Waste Management

Household waste is collected on Tuesdays and Fridays during peak season. A waste transfer station (WTS) with an enclosed brick structure for extra waste and four large plastic bins for recycling are accommodated on erf 337.

- During the holiday season the WTS and recycling bins quickly become overloaded and pose a health and baboon scavenging hazard. Daily supervision of the WTS is essential to prevent the facility from becoming a liability and these measures are not sustainable in the long run.
- Bitou had planned a few years ago, to upgrade a number of WTS sites throughout the municipal area, to improve the collection of household waste, recyclables, garden refuse and builders' rubble but no progress has been made with these plans.

Stormwater Drainage

The existing drainage system that was constructed when the township was established in 1953 is ineffective in disposing of stormwater runoff during periods of extended rainfall. The limited infrastructure comprises localised stormwater furrows and closed stormwater pipes with catch pits and drainage grates that easily become silted up or overgrown further limiting the effectiveness of the system.

Summary

From the foregoing information it is evident that NV has an extremely limited infrastructure that is functioning at capacity and beyond during the holiday season; that this infrastructure cannot expand and that any further development in the township is not feasible.

3.4 Natures Valley Community

The **NVRA** is an exceptionally strong ratepayer association that was established in 1983 and has continued to serve the interests of the ratepayers ever since. The main aims of the association are "to retain and protect the single residential character of the township and the unique natural environment of which it forms part."

The **NV Trust** that was established in 2000 is an active community-based conservation body that aims to maintain the long-term environmental integrity of NV by becoming proactively involved in issues that impact on the future of the area.

The **NV Urban Conservancy** was established in 2006 with the help of Cape Nature. Its aims are to encourage members of the residential area to implement and observe best conservation practices.

Over the years many major achievements that have aimed to preserve and protect the unique natural environment of NV and its immediate surrounds have resulted from the sustained efforts and the commitment of the community.

- The community prevented the establishment of 20 single residential properties on a sensitive island in the Groot River. The erven were expropriated; the developers reimbursed, and the area now falls under SANParks as part of the Tsitsikamma Section of the GRNP.
- The community stopped proposals for the development of a holiday resort for the then Dept of Posts and Telegraphs east of the Groot River mouth, and the development of a SAAF holiday resort west of Blue Rocks . They also rose up against proposals for a coastal highway that would have traversed the front coastal dune with a bridge over the Groot River mouth .
- They were successful in persuading the municipality to lay underground cables for the electricity supply in the residential area and to refrain from installing street lights, They were also successful in persuading Eskom to replace unsightly lines next to the scenic lagoon road with underground cables. They also succeeded in persuading Eskom not to erect unsightly and highly visual lines across the lagoon that would have destroyed the iconic view of the mountains.
- The NVRA were instrumental in establishing the proclaimed Contractual National Park Area whereby the front coastal dune, verges and flood plain of the Groot River have been afforded highest environmental protection.
- In 2009 the NVRA submitted a spatial development framework (SDF) for NV as a special management area in response to Bitou's request to do so as part of the municipal IDP revision process. After two revisions requested by Bitou and the public participation process that followed, the 2018 NV Local Spatial Development Framework (LSDF) has been updated.
- Recently the NVRA submitted a motivation to the municipality for the establishment of an Overlay Zone for NV as a special management area in the Bitou Draft Integrated Zoning Scheme By-Law.

Summary

It is evident that the wishes of the NV Community have been, and still are, to retain the historically established single residential character of the township and to protect the unique natural surroundings of which they are part.

3.5 Remaining habitats under development pressure

Before the intrinsic importance of each of the four habitats under development pressure is addressed, the following facts applicable to all four open spaces merit serious consideration:

- They have functioned as public open spaces since the establishment of the township . This is also true of erf 460 even when it was initially part of the school site that was always vacant.
- The community have managed and utilised these four open spaces since the establishment of the township and the municipality has never contributed to their upkeep.
- The four open spaces provide an important refuge and breeding area for the prolific animal and birdlife of the area.

ERF 460 Fynbos Reserve

In the 1980's when it became clear that a school in NV would never be viable, the original school site, erf 379 was subdivided and erf 460 remained. In 1984 the NV Ratepayers and Divisional Council decided that erf 460 would become a fynbos reserve which it has remained to this day.

The Fynbos Reserve is situated on a fossil dune system consisting of sandy alkaline soils deposited more than 100,000 years ago. This differs greatly from the acidic soils of most fynbos types. This geology and micro-climate have produced a unique coastal dune fynbos that is found nowhere else from the Plettenberg

Bay coast to the eastern border of the Tsitsikamma Section of the GRNP. According to environment experts, it is imperative to preserve a representative example of this all but vanished fynbos vegetation.

- According to Andrew Riley (Conservation Manager: Tsitsikamma National Park) the Fynbos Reserve is part of an important corridor for wildlife moving from the forest to the front coastal dune thicket and the sea. This includes iconic species like leopard, caracal and endangered blue duiker.
- Dr Anne-Lise Vlok (Regional Ecologist : Cape Nature) states that the Fynbos Reserve, together with the wetland, (Erf 380) and forest reserve (erf 381) provide a corridor between the uplands behind NV and the lowlands of the coastal dune(erf 444). This corridor is very important for the movement of wildlife and is crucial for animal migration to winter lowland habitat. (Lombard et al 2004).
- The NV Trust has been extremely successful in utilising the Fynbos Reserve as an outdoor classroom for environmental education involving hundreds of learners from local primary and high schools annually. Their achievement was recognised with a national award from SANParks.

With their proven experience in conservation management and track record in environmental education, the NVTrust is more than capable of continuing to utilize the fynbos Reserve as an outdoor classroom for this purpose, involving both primary and high school learners from local communities.

Erf 429 Phyl Martin Park

The Phyl Martin Park was established as such in 1955 and evolved into an indigenous botanical garden showcasing the immense variety of flora in the eastern section of the Cape Floristic Region.

- The management of the open spaces originated in the Phyl Martin Park where a committee of volunteers looked after the garden and established a nursery that was well-supported by owners.
- It remains popular with owners and tourists alike and has been successfully utilised by the NV Trust for environmental education projects for learners from local schools.
- With their proven experience in Conservation management and track record in initiating and implementing environmental education, the NVTrust is more than capable of continuing to use the Phyl Martin Park as an outdoor classroom for this purpose.

Erf 380 Wetland Reserve

In 2003 the Department of Water Affairs and Forestry published “A Practical Field procedure for identification and delineation of wetlands and riparian areas” according to which wetland areas can be identified and then protected.

- Wetlands have several distinguishing features that include the following:
 - the presence of water near the ground surface
 - distinctive wet soils
 - vegetation adapted to saturated soils in stream systems
 - presence of alluvial soils in stream systems

These conditions exist on erf 380 and the wetland must be protected in terms of the National Water Act and NEMA.

Erf 381 Forest Reserve

There are a number of protected indigenous trees older than 60 years growing on this open space. They are grouped together naturally to form a woodland that is protected in terms of the National Forest Act and NEMA

Erven 380 and 381

These two public open spaces are owned by the Nature's Valley Development Corporation and were designated as open spaces in accordance with town planning regulations.

Summary

The legislation listed under point 2 clearly shows the extent of the protection afforded to the public open spaces of NV.

Section B: SERVICE ERVEN 335 AND 336

Erven 335 and 336 are adjacent to erf 337 and these 3 erven have always been grouped together for the same purpose. In the Certificate of Uniform Title of 1953, in which the conditions for the establishment of the NV township were set out, it is stated in point 8 “that erven no’s 335, 336 and 337 be reserved for authority purposes.”

- The 3 erven are the only sites available for the provision of municipal infrastructure and services in NV and they were reserved for this purpose. These erven were identified as such as they are near the entrance of the township and next to the R102 access road to NV.
- **Erf 337** is utilised for the municipal waste transfer station and recycling facility while the ESKOM substation responsible for NV electricity supply is on the same property. Erven 335 and 336 are reserved for the provision of a future sewerage facility as NV does not have a waterborne sewerage system.
- **High Court Interdict:** In 2008 the NVRA obtained a Cape High Court interdict against Bitou preventing the municipality from disposing of the two erven. A major argument for the interdict was that erven 335 and 336 are reserved for the provision of future basic infrastructure for NV.

Section C: 2008 COUNCIL RESOLUTION

In the Second Draft revised Bitou SDF it is stated that Bitou intends to designate the four open spaces in NV (erven 460, 429, 380, 381) and two service erven (335, 336) as potential “strategic development areas.”

Further it was stated that this decision was taken in line with a Bitou Council Resolution of 2008.

- In response to the written request by the NVRA for information about the 2008 resolution, the following were received from Bitou Municipality:
 - an unidentified extract authorising the Municipal Manager to conduct a public participation process (ppp), **(Attachment 4)**
 - minutes of a Mayco meeting of 4 December 2007 **(Attachment 3)**
 - a November 2007 Bitou discussion document titled, “Towards a policy for the use and development of municipal land.” **(Attachment 2)**
- The premise of the municipality rests on the 2008 resolution that is central to the reason for their intended actions. It is therefore imperative that all aspects concerning the resolution and accompanying documents be fully investigated and the legal status of these 12-year-old documents as well as their validity be determined.

With reference to the above documents (which are attached for reference) we comment further as follows:

1. The unidentified “extract:”

This extract is meaningless on its own and must be put into context by providing all relevant information:

- Details of the meeting where the “resolution” was taken, the date, Mayco or Council meeting, the agenda item and content of discussion that lead to the decision to undertake a public participation process (ppp).
- Was such a ppp undertaken; what was the subject of the ppp and if undertaken, what were the outcomes?

- Do the regulations and ordinance of 1974 that are referred to in the extract, have the same legal status as the legislation that governs the second draft SDF; namely SPLUMA (2013) and the MSA (2000) and are they still valid?
2. Mayco Minutes dated 4 Dec 2007 and the Discussion Document, "Towards a policy for the use and development of Municipal Land".
- These two documents belong together as the Mayco minutes refer to the discussion document. However, there is no indication that there is any relevance between them and the "extract" in point 1. This needs to be clarified.
 - Except for the reference to erven 460 and 429 in the "extract", no reference is made to any NV properties in the Mayco meeting minutes or the discussion document.
 - It is thus unclear what relevance the two documents have to NV open spaces. This needs to be clarified.
3. None of the documentation provided refers to any of the following NV properties; Erven 380, 381, 335, 336.
- The question is, how it is then possible that they were included in the 2nd Draft SDF as potential "strategic development areas"?
 - In terms of what decision taken, in accordance with which regulations or what act, were these properties identified as potential "strategic development areas"?

Section D: BITOU DRAFT SDF, FIGURE 61.1, NATURES VALLEY DEVELOPMENT PROPOSALS

We note the following errors on Fig 61.1

- Erf 440 is shown as an open space whereas it is in fact a Residential1 property.
- According to the text on page 128, Erf 337 which houses the Waste Transfer facilities is not a potential Strategic Development Area. However, Fig 61.1 shows it as such.

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