

AMNESTY FOR REGULARISING UNLAWFUL LAND USES AND BUILDINGS

What the amnesty is NOT:

1. Unlawful buildings and/or land use are and remain unlawful despite this amnesty. The amnesty does not make legal what is now illegal. It simply affords transgressors an opportunity to rectify their transgressions without penalty.
2. The amnesty is not an exemption from following the prescribed National Building Regulations which are applicable to all properties.
3. The Building Control Office is in no way obliged to approve any structure or land use.

What the Amnesty is:

Before any building is constructed or land use changed, application must be made with local Council to seek approval of the proposed additions or changes. This is an international standard and very few properties are exempt from this. National Government has called on local Municipalities to clamp down on and prosecute owners of property with unlawful buildings and/or land uses. There are heavy fines (7x normal submission fees) as per Bitou Municipality's tariffs, imposed on such properties.

The processes and the costs of bringing an unlawful building or land use into compliance are exactly what they would have cost if these changes had followed the prescribed processes before construction began. Land surveyor, Architect, Engineer, Electrician, Plumber and all other people who may have been involved in the process of a lawful application may be involved in the process of the amnesty.

1. The Amnesty involves a reduction in the costs of submitting an application.
2. The Amnesty is an undertaking by the Bitou Municipality not to impose the penalty fees outlined for the prosecution of offenders for a limited time period. (Till 30 June 2015)

What is an unlawful building and/or land use?

A building is unlawful if it is not constructed in accordance with approved plans i.e. building plans approved by the local authority. These approved plans form part of the requirements for an Occupation Certificate on completion of the building. Other items required include Electrical Certificate of Compliance COC, Plumbing COC, Engineers COC, etc., all of which will be outlined as requirements at a Pre-assessment meeting. Relevant structures will also be outlined. Details on pre-assessment meetings are outlined later in this document. Any property owner who does not have approved plans and a Compliance Certificate in his possession is deemed to have Unlawful Buildings.

A land use is unlawful if the property, or the improvements thereon, is used for a purpose contrary to the zoning of the property. A use is not unlawful if it is ancillary to the main use but will be unlawful if it is the main use and is in conflict with the zoning. An unlawful use can only be rectified by a rezoning and or consent use application approved by the local authority.

Where might one obtain a copy of approved plans?

Responsibility for the safe-keeping of plans always has and still now falls on the owner of a property. However, there is a possibility that a copy could be found on file at the Local Building Office. If a property has a bond attached, there would may be a copy with the bank. If a property was recently acquired it may be worth asking the previous owner if they have a copy.

Why do I need a Compliance Certificate?

The Consumer Protection Act of 2009 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. A Compliance Certificate indicates compliance with all relevant legislation.

Currently a property cannot be sold without Electrical Compliance and Rates Clearance. In the next few years at most, Building Compliance will be added to these requirements. Not having Building Compliance will result in lengthy delays in the sale of a properties and stiff penalty fees.

Property owners...

1. are under no obligation to make use of this amnesty period but should be aware that penalty fees and full submission fees will again be payable following the amnesty period.
2. can make contact with the Bitou Building Control office in Monk's View building in Church Street to request a copy of any existing drawings which they may have on file
3. are encouraged set up a Pre-assessment meeting with a Building Inspector at the Building Control office to establish what is required in order to achieve Compliance of their properties. At this meeting Inspectors will indicate which of the buildings require. The following are to be taken with to this meeting:
 - a. basic legible drawings of their properties, not necessarily by an Architect or Draftsman, showing a dimensioned outline of buildings with bathrooms, bedrooms, kitchens. Include all stores, carports, staff quarters, water reservoirs & other structures. Indicate the distance of each of these structures to the nearest boundary.
 - b. take a few photo's of all structures.
 - c. make a sworn affidavit relating to the drawing reflecting which buildings were in place when the property was bought. (beneficial if the previous owner confirms this)
 - d. a copy of Title Deeds for property, confirming date of purchase.
 - e. if possible, print a Google earth photo, or other aerial photo of the entire property

Bitou Building Control...

1. If demand requires, Bitou Building Inspectors will be set up at scheduled times in offices in various areas, like Kranshoek, Wittedrift, Craggs and town, for Pre- pre-assessed and will there be told what will be required for compliance.
2. If needed, onsite inspections will also be considered.
3. The Building Control office will be open at normal times for pre- assessment.
4. Inspectors for various areas have been briefed and appointments can be made for Pre-assessment of properties at offices in Church Street. Inspectors are:
 - a. Town Centre area - Creswell Basson
 - b. Kranshoek, Harkerville area - Khanyisa Mapitiza
 - c. Wittedrift, Craggs area – Creswell Basson

Attached below are the recommendations of the Municipal Manager which were approved by Council on 16 October 2015

Kindly address any questions not covered by this document or in a Pre-assessment meeting to the Bitou Amnesty Committee at bitouamnesty@gmail.com

Regards

Steve Ritky
Bitou Amnesty Committee

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.
 - 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 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.