

ATTACHMENT 1

Comments, Concerns, Objections and Corrections Regarding Specific Points in The Bitou Draft Integrated Zoning Scheme Documents.

1. DRAFT BITOU ZONING SCHEME: MAP of NATURE'S VALLEY

1.1 The Island

Current zoning : Single Residential Zone I

Proposed zoning : Open Space Zone IV

The island is situated in the Groot River and forms an integral part of the ecologically sensitive estuary system.

- The 21 erven on the island were part of the initial NV township development in 1953. The then Knysna Divisional Council turned down the development of these erven because any intended sewerage system would be flooded at high tide and further, the island itself was prone to flooding when the river came down after heavy rains. These factors would have a severe impact on infrastructure with resultant severe pollution of the pristine estuary.
- To ensure that the island remained undeveloped and conserved in its natural state as part of the estuary that fell within and under management of the then Tsitsikamma National Park, the erven were expropriated.

The 21 erven numbered 353 to 373 (Title Deeds T44266/1991, T44267/1991, T28148/1994) were expropriated by the Republic of South Africa in terms of Section 2(l) of the Expropriation Act 63 of 1975. Expropriation Notice 6420/5345 dated 25 January 1988 EX 89/88 refers.

- The 21 erven no longer exist, and this island remains part of the estuary that falls within and under management of the Tsitsikamma Section of the Garden Route National Park; a promulgated state-owned conservation area.
- Accordingly, the island must be zoned Open Space Zone IV like the 'rest of this section' of the GRNP

1.2 Erf 389

Current zoning : Business Zone II

Proposed zoning : Single Residential Zone I

In 1991 the owner applied for removal of restrictive conditions of title that the property be used for business. In 1993 the property was rezoned from business to single residential. This fact is recorded in the Zoning Scheme Register but the Bitou Zoning Map still shows it as an erf zoned for Business II. This error must be corrected to show that erf 389 is the single residential property that it has been since 1993.

1.3 Erf 460 (Fynbos Reserve)

Current zoning : Open Space Zone III
Proposed zoning : Community Zone I

To clarify the above proposed zoning, it is necessary to review the zoning history of the property.

Erf 460 is a section of erf 379 that was originally reserved as a school site when the NV township was established in 1958. Erf 379 was then transferred to the Educational Trustees, School Board of Knysna; this would explain the initial zoning of Institutional 1 with its primary use of "Place of Instruction". The Section 8 zoning scheme regulations of LUPO refer.

- In the 1980's when it became clear that a school in NV would never be viable, the Outeniqua Divisional Council subdivided erf 379 and what remains today is erf 379 (DR Church Hall), erf 460 (Fynbos Reserve) and erf 451 (TELKOM site).
- At a Special Ratepayers' Meeting of the NVRA held on 29 March 1984 a unanimous motion was adopted that the remainder of the former school site (erf 460) "be retained solely as the Fynbos Reserve" with the agreement of the Divisional Council. In October 1984, the Divisional Council agreed, and the Fynbos Reserve became a Public Open Space III in terms of the Section 8 scheme of LUPO.
- This was in line with the other Public Open Spaces III in NV namely the Phyl Martin Park (Erf 429), the Wetland Reserve (Erf 380) and Forest Reserve (Erf 381). Erven 429, 380 and 381 are designated Open Space Zone III and Erf 460 should thus carry the same zoning. The description of Erf 460 as "Fynbos Reserve Park" in the Zoning Register further underlines this.

When the school site ceased to exist, erf 460 could no longer carry an Institutional I zoning with the primary use "Place of Instruction", and a Community Zone I zoning with the primary use "Place of Instruction" cannot simply be transferred to Erf 460 thereby perpetuating an erroneous zoning.

- In the Use Zone Table of Schedule I of the Bitou draft scheme the primary use of Open Space Zone III is that of a "Nature Conservation Area" and the objective of this zone 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 Fynbos Reserve is situated on a fossil dune system consisting of sandy alkaline soils deposited more than 100 000 years ago, that differ markedly

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 environmental 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 is an important corridor for wildlife moving from the Tsitsikamma Forest to the front coastal dune thicket and the sea. Animals using this corridor include iconic species like leopard, caracal and endangered blue duiker.

Dr Anne-Lise Vlok (Regional Ecologist, Cape Nature) states that the Fynbos Reserve (Erf 460) together with the wetland and forest reserves provide an ecological corridor between the uplands behind NV and the lowlands of erven 460, 380, 381 and 444 (coastal dune). This corridor is very important for the movement of wildlife and according to the report produced for the Gouritz Initiative (Lombard et al 2004) such corridors are critical for animal migration to winter lowland habitat.

- Not only does the Fynbos Reserve, as Open Space Zone III thus meet all the criteria of the Schedule I Use Zone Table of the Bitou draft scheme, but it also meets important objectives in NEMA (Act 107 of 1998); Environmental Conservation Act 73 of 1989 Outeniqua Sensitive Coastal Area Regulations and Western Cape Nature Conservation Laws, Amendment Act 3 of 2000. These pieces of legislation add further impetus to the proposed Open Space Zone III zoning of erf 460.

1.4 Erven 335 and 336

Current zoning : Single Residential Zone I
Proposed zoning : Utility Zone

To clarify the above proposed zoning, the history of the two erven needs to be reviewed.

- Firstly, it must be noted that 335 and 336 are adjacent to erf 337 and that these 3 erven have always been grouped together for the same reason and with the same zoning. As far back as 1953 the Certificate of Uniform title (T.8072/1953) in which the conditions of establishment for the NV township were entrenched, stated in point "8.that Erven No's 335 336 and 337 be reserved for authority purposes." In accordance with the Section 8 scheme regulations of LUPO the 3 erven were therefore zoned "Authority Zone".
- The 3 erven are the only sites available for the provision of municipal infrastructure and services necessary in NV and they were reserved for this purpose. These erven were identified as such as they are near to the entrance of the township and next to the R102 access road to NV.
- Erf 337 has been utilised for the municipal waste transfer station and recycling facility while the Eskom substation that supplies electricity to NV is erected on the same erf.

Erven 335,336 are reserved for the provisions of a future sewerage facility for NV as the township depends on conservancy tanks that are services by tankers for sewerage removal.

In 2008 the NVRA obtained an interdict against Bitou in the Cape High Court that prevented the municipality from selling erven 335 and 336 as residential I zoned erven for residential development. A major argument for the interdict was that erven 335 and 336 are reserved for future basic infrastructure for NV.

- All the above information underpins the fact that erven 335 and 336 have never been zoned residential I and cannot have a current zoning “Single Residential Zone I” in the new scheme. Together with erf 337 they are 3 municipal service erven that must have a current zoning status of Utility Zone of which they meet all the criteria.

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2. DRAFT BITOU ZONING SCHEME : REGISTER

The Register is one of the main components of the Bitou zoning scheme and is an important zoning reference for all land that falls into the jurisdiction of Bitou. It follows that the column **Land Use** in the register should list the primary use of a property that defines its zoning in the next two **Existing** and **Proposed** Zoning columns.

It is for this reason that the NVRA remains concerned about information regarding certain NV single residential zone I erven that is given in the register under the heading **Land Use**. In spite of assurances that these activities merely provide further information about the properties in question for the benefit of the municipality, the following issues need to be considered:

2.1 Single residential zone I

- According to the **Schedule I Use Zones Table** the dominant use of this zone is residential with a dwelling house for a single family and the primary use is “dwelling house.” This primary use of “dwelling house” defines the land use of all NV single residential zone I properties and they are shown as such on the **Bitou Zoning Scheme Map for NV** and listed as such in the **Land Use** column of the **Bitou Zoning Scheme Register**.
- Under this zoning, provision has been made for “limited employment and additional accommodation opportunities” that do not necessarily require a municipal consent use.
Such activities are all subservient to the dominant primary Land Use of “dwelling house” which is a permanent use that can only be changed by rezoning.

In contrast the subservient activities are temporary. They can be started ended or changed or take place at irregular intervals.

- To list such subservient temporary activities of certain NV erven in the **Land Use** column instead of the dominant permanent primary use “dwelling house” as has been done with all the other single NV residential zone I NV erven, does not make sense.

Because these activities are listed in the **Land Use** column it is not possible to identify the primary use of each property and determine whether the subsequent zoning is correct. Instead it seems as if these lesser uses have supplanted their primary uses.

- It must also be noted that the information according to which these subservient activities have been listed as land uses in NV is arbitrary, incomplete and incorrect. There are other holiday homes that are let and other properties that provide accommodation. There are also properties that no longer offer the activities listed under them.

In view of the above irregularities in the NV information that appear in the Land Use column of the register, the question must be asked whether it is viable to record these temporary uses given their transient nature.

Further it will entail a substantial effort to keep a record of all the temporary uses permitted by the municipality correct and updated in the register. If this cannot be assured, there will be no sense in attempting to have such a record.

- The wording used to describe some of the subservient activities listed in the Land Use Column for certain NV erven is confusing and open to interpretation, namely:

Self-Catering(S/C) cottage and cottages: According to the Oxford Dictionary a cottage is a small house. In using the word “cottage” (one small house) and “cottages” (more than one small house) a second and further dwellings are seemingly being sanctioned in the register without the need to apply for a consent use.

Guest house: It is unclear what land use description and development parameters apply to this term. According to **Schedule 2** it can fall under either “guest accommodation” or “tourist accommodation”.

If it falls under “guest accommodation” it is either limited to accommodation for a maximum of 6 persons in 3 rooms or a maximum of 12 persons in 6 rooms. The latter requires consent use approval.

If it falls under “**tourist accommodation**” that provides temporary residence and meals for guests and includes a guest lodge and self-catering units, the development parameters differ from guest accommodation. Consent use approval under the zoning of general residential zone I or II would apply.

2.2 Certain Natures Valley Erven

- In view of the arguments put forward in 2.1 the NVRA requests that the primary use of “dwelling house” of the following single residential zone I NV erven replace the subservient activities on the Land Use columns of the register:

Erven 119, 133, 134, 152, 180, 185, 188, 244, 284, 285, 387, 388, 415

- The NVRA further requests that the subservient uses that are allowed under single residential zone I properties in NV are properly researched and the information verified before they are listed anywhere or in “the register”.
- The NVRA finally requests that serious consideration be given to utilising the column **Comments** for subservient /underlying lesser/additional activities of a property and utilising **the Land Use** column in the register for primary uses of properties only. It will prevent confusion and misunderstanding and will not be too difficult to implement.

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3. DRAFT BITOU ZONING SCHEME: BY- LAW DOCUMENT

Chapter 1: Definitions

“Natural Ground Level”. This definition should include a rational and accepted method for determining the reference level where the erf is not flat. The highest point on the site cannot reasonably be considered the NGL for determining the absolute height of a building. At what stage of the development is the site surveyed to establish the NGL for the design of buildings on the site?

Chapter 2: Zoning Scheme, Use Zones and Uses

Transition to new use zones and savings (p13)

- It is unclear what the meaning of the word “savings” in the heading is.
- 7(2) Table (The number of the table must be inserted) in schedule 4.....
- 7(3)(a) The term **validity period** should be defined
- 7(3)(h) An application that is submitted before the new Bitou by-law is promulgated, must be finalised in terms of the previous zoning scheme that was applicable ,e.g. Section 8 scheme regulations. When such an application is finalised, it is then reclassified in terms of Schedule 4 of the new integrated zoning scheme by-law.

Of concern is the final wording of this point that reads, “or as determined by the municipality.” The clear implication is that Bitou does not need to follow the prescribed process and can determine a zoning as it sees fit. Nowhere is it stated under what conditions, if any, the municipality can take such a decision or what alternative process, if any, must be followed.

Given the length of time that will elapse before the new by-law is promulgated (possible further public participation or Western Cape Province approval) and the number of applications that will serve before Bitou in the interim, this is a valid concern that must be addressed.

Zoning Scheme Register (p15)

9(a)The municipality must record all **departures, consent uses or other permissions** granted, in the register. In view of the importance of the register and the importance of land use permissions granted by Bitou, it seems logical that all permissions should be listed here (not only departures, consent uses) or simply be referred to as “all permissions granted.”

Temporary departures for specific occasions (p16)

- 12.(1) It is clearly stated that such temporary departures are only for “occasional uses” applicable to a land unit and must be recorded in the register.

It must be explained what is understood by the term “temporary departures” and what is meant by “specific occasions” and “occasional uses.”

Is the definition of a departure as being a temporary land use departure that may be granted to a property for a maximum period of five years after which it lapses, still in use?

Do all references to **Departure** and **Temporary Departure** have the same meaning in the new by-law?

- Zoning Scheme Register: Departure Approval, Departure Approval Date
- 9(a) Zoning Scheme register (P15) “record all departures”
- 12(1) Temporary departures for specific occasions (p16)
- Chapter 6 (p20) Development parameters applicable to use Rights 20(2) “the municipality may grant a departure from the development parameters in terms of the by-law”

Absolute clarification is essential. A temporary departure is a useful tool or can lead to a controversial issue—as has happened before.

Chapter 7 : General provisions (p21)

Encroachment of building lines

21(1) Despite the building line requirements set out in Chapter 6 (should it not read chapter 4?)

Maintenance of Property (p25)

Can the following be added :

- (e) constitute a health hazard
- (f) constitute a fire hazard

Garden refuse dumps on properties can lead to an infestation of mice and rats; and dry woody plant material can become a fire hazard.

Schedule I : Use Zones Table

Single Residential Zone I (p42)

This zoning covers the greatest number of properties in Bitou and the activities permitted under the primary use without municipal consent usage is a major component thereof. Thus it is extremely important that the information provided is as comprehensive and as clear as possible.

- Column I under the heading **Zoning** refers:
Detailed explanations of the meaning, including representative examples, of the following underlined extracts are required:
Limited employment and additional accommodation opportunities are possible as primary or consent uses.”

A list of the activities permitted under the primary use should be specified to make clear what does not require consent use approval.

- Column 3 under the heading **Consent Use** refers
“Guest accommodation (more than 3 rooms)” should also specify the maximum of 6 rooms permitted.
- It is requested that signs > (greater than) and < (less than) be replaced with user friendly wording
- Second dwelling (>60m²)
The consent use of a second dwelling on a single residential zone I property in NV contravenes the restrictive conditions of title in the title deeds of NV that are reciprocal praedial servitudes and that reads as follows: “it shall be used only for the purpose of erecting thereon one dwelling together with such outbuildings as are ordinarily required to be used therewith.”
Refer to **Attachment 2** of the Nature’s Valley submission titled: **Motivation for the adoption of an Overlay Zone for Nature’s Valley.**

General Residential Zone III (p43)

The objective of this zone is to provide a temporary residence for transient guests in “an appropriately scaled establishment” and the primary use is that of tourist accommodation.

In view of this primary use, it is essential that all the undermentioned aspects of tourism accommodation be reviewed and clarified.

- The words **guest** in “**guest accommodation**” and **tourist** in “**tourist accommodation**” have the same meaning and use and are interchangeable; there can be no doubt about that
- **In Schedule 2: Land Use Descriptions and Development Parameters**
The land use descriptions of the above two terms are also similar and interchangeable, namely “**Guest accommodation** (p78) means a dwelling

unit that is used for the purpose of supplying lodging and meals to transient guests for compensation who have permanent residence elsewhere.”

- **Tourist accommodation** (p115) means “an establishment that provides temporary residence and meals for transient guests”

Although the terms guest and tourist accommodation and their land use descriptions mean the same and are interchangeable, **guest accommodation** and **tourist accommodation** have different development parameters and fall under different zones and consent uses, namely “guest accommodation” consent use of more than 3 rooms under single residential zone I and consent use under agricultural zone I and II
“tourist accommodation” primary use under general residential zone III and consent use under general residential zone I and II.

- The meaning of the following words and phrases that are used in relation to tourism accommodation in the above use zones and Schedule 2?
Establishment, appropriately scaled establishment, guest house, guest lodge self-catering cottage, self-catering unit, self-catering dwelling unit,
- Why is there no reference to bed and breakfast (B & B)?

Community Zone I (p 48)

The objective of this zone is to provide for educational facilities, but the following underlined sentence “ but controlled provision is made for other compatible community uses” is cause for concern. This sentence is vague in the extreme and leaves this zone wide open to a multitude of interpretations and uses. Clarification must be provided for the meaning of the underlined phrases.

SCHEDULE 2: Land Use Description and Development Parameters “dwelling house” (p69)

- **Land use description**

Under this heading a “**dwelling house**” means a building containing only one dwelling unit together with normal outbuildings.

It should be made clear that according to the definition of “**dwelling unit**” on p3 of the new by-law, “**dwelling house**” and “**dwelling unit**” have the same meaning and uses.

(b) The question must be asked why it has been deemed necessary to allow “a second dwelling or additional dwelling unit”—irrespective of the 60m² maximum—on a land unit, without consent use approval. This seems like the type of precedent that could have unintended consequences.

It would avoid confusion if the difference between a “second dwelling” as a consent use under single residential zone I, and also agricultural zone II and “additional dwelling unit(s)” as a consent use only under agricultural zone I is clearly set out.

(f) “letting to lodgers”

The meaning of this vague phrase that is open to interpretation, must be provided.

- **Development parameters**

(b) Coverage and building lines (p70)
Refer to points (i), (ii), (iii).

It is requested that the < and > signs be replaced with words.

With regard to coverage and building lines, the following are applicable to the single residential zone I even in NV in accordance with restrictive conditions of title that are reciprocal praedial servitudes.

Coverage: a maximum of 50%

Building lines: 6.3 metres at street front and 3.15metres at lateral and rear. (Refer to Attachment 2 : Motivation for the Adoption of an Overlay Zone for Nature's Valley).

“outdoor trading and dining” (p 96)

The land use description includes “outdoor dining and seating” that could take place in permanent open structures in an open-air setting.

- The heading could not be found under any use zone in the Schedule I table of the new by-law.

“public Open space” (p101)

This description includes a park, public garden and nature area.

Under the development parameters that apply

(a) the municipality **may** require a site development plan for its approval
(b) and such an approved site development plan would then also constitute the development parameter of such area.

- Given the environmental and ecological sensitivity of the particular examples listed, should a site development plan not be a prescribed requirement? Such a measure is doubly important as the site development plan becomes the development parameters of an open space.
- Perhaps a reputable nature conservation body like SANParks or Cape Nature should be involved in such a process?

“Second dwelling” (p 110)

- **“Land use description”**

“a second dwelling” may only be erected in a use zone where provision has been made in **column 3** of the table set out in schedule 1 for a second dwelling as a consent use. (Column 2 is reserved for primary uses).

- **Development Parameters**

Under this heading only the development parameters for a second dwelling as a consent use are listed.

There is no reference to or development parameters for a second dwelling not exceeding 60m² that does not require consent use approval.

Schedule 3 : Overlay zones approved in terms of Section 16

2. Special Planning Area overlay Zone (P122)

- It must be noted that the Nature's Valley Local Spatial Development Framework (LSDF) conforms to the requirements for LSDF'S as set out in c(i),(ii) and(iii).
- Two public participation processes have been followed, with amendments in accordance with municipal requirements.

- The information required under c (iii) has been clearly set out in the NV LSDF document
- It is crucial that the NV LSDF be given the serious attention it merits.

Schedule 4: Zoning Transition Table

P132. Community Zones (ii) and (iii) must be corrected

P134. Open Space Zones (ii), (iii) must be corrected

Open Space Zone **IV** is the last entry on the page not (iii).

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