

ETHEKWINI MUNICIPALITY: COASTAL MANAGEMENT BY-LAW, 2017



Adopted by Council on the:

COASTAL MANAGEMENT BY-LAW, 2017

To provide for measures for managing and protecting the coastal zone; to provide for measures for aligning development within the coastal zone with the objects of the National Environmental Management: Integrated Coastal Management Act; to provide for measures for protecting the natural environment of the coastal zone; to provide for measures for managing public access to the coastal zone; to establish the Municipal Coastal Committee; to give effect to the Municipal Coastal Management Programme; and to provide for matters connected therewith.

PREAMBLE

WHEREAS the National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008) affords coastal municipalities powers to administer certain matters, aspects or functions of the aforesaid Act, such as matters contemplated in sections 18(1), 20(2) and 50 of the said Act;

AND WHEREAS the Municipality has legislative and executive competence relating to matters such as, but not limited to, municipal planning, building regulations and standards, use of and access to beaches, and nuisances, as pertaining to the coastal zone;

NOW THEREFORE the Council of the eThekweni Metropolitan Municipality, acting in terms of section 156 of the Constitution of the Republic of South Africa, 1996, read with Part B of Schedules 4 and 5 of the Constitution, section 50 of the National Environmental Management: Integrated Coastal Management Act, 2008 and section 11 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), hereby makes the following By-law:

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CHAPTER 1 INTERPRETATION

Definitions

1. In this By-law, unless the context indicates otherwise–

"Act" means the National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008);

"Air Quality Act" means the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004);

"authorised official" means a person authorised to implement the provisions of this By-law, including but not limited to–

- (a) peace officers as contemplated in section 334 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977);

(b) municipal or metropolitan police officers as contemplated in the South African Police Service Act, 1995 (Act No. 68 of 1995); and

(c) such employees, agents, delegated nominees, representatives and service providers of the Municipality as are specifically authorised by the Municipality in this regard: Provided that for the purposes of search and seizure, where such person is not a peace officer, such person must be accompanied by a peace officer;

"Biodiversity Act" means the National Environmental Management: Biodiversity Act, 2004 (Act No.10 of 2004);

"coastal area" means land that constitutes the coastal zone of a coastal municipality;

"coastal management" includes—

(a) the regulation, management, protection, conservation and rehabilitation of the coastal environment;

(b) the regulation and management of the use and development of the coastal zone and coastal resources;

(c) monitoring and enforcing compliance with laws and policies that regulate human activities within the coastal zone; and

(d) planning in connection with the activities referred to in paragraphs (a), (b) and (c);

"coastal municipality" means any municipality of the Republic of South Africa which has within its area of jurisdiction any land or portion thereof abutting any sea, irrespective of the person who owns or controls such land;

"coastal planning scheme" means a scheme that—

(a) reserves defined areas within the coastal zone to be used exclusively or mainly for specified purposes; and

(b) prohibits or restricts any use of the areas contemplated in paragraph (a) in conflict with the terms of the scheme;

"coastal protection zone" means a coastal protection zone contemplated in section 17 of the Act;

"coastal zone" means a coastal zone as defined in the Act;

"Constitution" means the Constitution of the Republic of South Africa, 1996;

"Council" means the eThekweni Municipal Council, a municipal council as contemplated in section 157(1) of the Constitution;

"development" in relation to land, means any processes initiated by a person to change the use, physical nature or appearance of that place and includes–

- (a) the construction, erection, alteration, demolition or removal of a structure or a building;
- (b) a process to rezone, subdivide or consolidate land;
- (c) changes to the existing or natural topography of the coastal zone; and
- (d) the destruction or removal of indigenous or protected vegetation;

"Integrated Development Plan" means a plan contemplated in section 25 of the Municipal Systems Act;

"littoral active zone" means any land forming part of, or adjacent to, the seashore that is–

- (a) unstable and dynamic as a result of natural processes; and
- (b) characterised by dunes, beaches, sand bars and other land forms composed of unconsolidated sand, pebbles or other such material which is–
 - (i) unvegetated; or
 - (ii) only partly vegetated;

"Marine Living Resources Act" means the Marine Living Resources Act, 1998 (Act No. 18 of 1998);

"Marine Pollution (Control and Civil Liability) Act" means the Marine Pollution (Control and Civil Liability) Act, 1981 (Act No. 6 of 1981);

"Marine Pollution (Prevention of Pollution from Ships) Act" means the Marine Pollution (Prevention of Pollution from Ships) Act, 1986 (Act No. 2 of 1986);

"Mineral and Petroleum Resources Development Act" means the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002);

"Mountain Catchment Areas Act" means the Mountain Catchment Areas Act, 1970 (Act No. 63 of 1970);

"Municipality" means the eThekweni Municipality, a category A municipality as envisaged in terms of section 155(1) of the Constitution and established in terms of PN343 of 2000 (KZN);

"Municipal Coastal Committee" means the municipal coastal committee of the Municipality as contemplated in section 8 of this By-law;

"Municipal Coastal Management Programme" means a programme established in accordance with Chapter 6 of the Act, and **"Programme"** shall have a corresponding meaning;

"Municipal Manager" means the official of the Municipality appointed in terms of section 54A of the Municipal Systems Act;

"Municipal Systems Act" means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

"National Environmental Management Act" means the National Environmental Management Act, 1998 (Act No.107 of 1998);

"National Environmental Management: Integrated Coastal Management Act" means the National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008);

"National Forests Act" means the National Forests Act, 1998 (Act No. 84 of 1998);

"National Ports Act" means the National Ports Act, 2005 (Act No. 12 of 2005);

"person" means a natural or juristic person;

"Protected Areas Act" means the National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003);

"Sea Birds and Seals Protection Act" means the Sea Birds and Seals Protection Act, 1973 (Act No. 46 of 1973);

"seashore" means the seashore as defined in the Act;

"Waste Act" means the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008);

"World Heritage Convention Act" means the World Heritage Convention Act, 1999 (Act No. 49 of 1999); and

"Wreck and Salvage Act" means the Wreck and Salvage Act, 1996 (Act No. 94 of 1996).

Interpretation of By-law

2. In the event of a conflict in interpretation between the English version of this By-law and a translated version, the English version prevails.

CHAPTER 2 OBJECTS OF BY-LAW

Objects of By-law

3. The objects of this By-law are to—

- (a) fulfil the responsibilities and duties assigned to the Municipality by the Act;
- (b) ensure sustainable use and development of the coastal area by aligning municipal planning with the Act;
- (c) establish the Municipal Coastal Committee and give effect to the Municipal Coastal Management Programme;
- (d) promote the protection of the natural environment of the coastal zone;
- (e) promote cooperative governance between the Municipality and other relevant spheres of government relating to the management of the coastal zone; and
- (f) promote fair and equitable access to the coastal zone by members of the public.

CHAPTER 3 APPLICATION

Application of By-Law

4.(1) Subject to any applicable law, this By-law applies in respect of all–

- (a) activities being undertaken or performed; or
- (b) objects, things, substances and land situated,

within the coastal area of the Municipality, and is binding on all persons to the extent applicable.

(2) Any law or Schedule to which reference is made in this By-law is applicable as amended from time to time.

Applicable laws

5. This By-law must be read in conjunction with all applicable legislation, including but not limited to:

- (a) Air Quality Act;
- (b) Biodiversity Act;
- (c) Marine Living Resources Act;
- (d) Marine Pollution (Control and Civil Liability) Act;
- (e) Marine Pollution (Prevention of Pollution from Ships) Act;
- (f) Mineral and Petroleum Resources Development Act;
- (g) Mountain Catchment Areas Act;
- (h) National Environmental Management Act;
- (i) National Environmental Management: Integrated Coastal Management Act;
- (j) National Forests Act;
- (k) National Ports Act;
- (l) Protected Areas Act;
- (m) Sea Birds and Seals Protection Act;
- (n) Waste Act;
- (o) World Heritage Convention Act;
- (p) Wreck and Salvage Act; and
- (q) any other applicable By-law of eThekweni Municipality.

CHAPTER 4

MUNICIPAL MANDATE AND ROLE IN INTEGRATED COASTAL MANAGEMENT

Municipal mandate and role in integrated coastal management

6. The role and mandate of the Municipality in integrated coastal management includes, but is not limited to, ensuring–

- (a) that the Municipality gives full effect and value to the principles underlying the Act;
- (b) proper management and control of the coastal zone for the common good of all;
- (c) that the Municipality upholds and aligns itself to the principles of cooperative governance–
 - (i) between itself and other spheres of government and organs of state; and
 - (ii) within the various departments of the Municipality,
 on all matters concerning integrated coastal management;
- (d) that development in the coastal zone takes place in a manner and on a scale that promotes and supports integrated coastal management;
- (e) that access to the coastal zone and any portion or component thereof is effectively regulated and managed; and
- (f) that the natural assets occurring within the Municipality's coastal zone are regulated, conserved and protected for both the current generation, and future generations.

Municipal administrative capacity relating to integrated coastal management

7.(1) The Municipality must administer all matters assigned to it by the Act and this By-law relating to integrated coastal management within its area of jurisdiction and within its competence.

(2) The Municipality must secure and ensure the administrative capacity to administer, implement and enforce the provisions of–

- (a) this By-law;
- (b) the Act which assign duties, powers or functions to the Municipality;
- (c) the Municipal Coastal Management Programme; and
- (d) the decisions of the Municipal Coastal Committee to the extent such decisions are

approved or adopted by Council as contemplated in section 10(2).

(3) The Municipality must manage the coastal zone in an innovative and integrated manner ensuring that the Municipality's environmental, economic, and social benefits linked to the coastal zone are utilised to their full extent.

(4) In the discharge of its municipal planning functions relating to any part of the coastal zone, the Municipality must ensure that an appropriate balance is maintained between the Municipality's built, rural and wilderness areas.

(5) Subject to the Beaches By-law and other applicable laws, the Municipality must provide reasonable public access to beaches and coastal areas: Provided that a people first and sustainable approach to the use and development of the coastal zone is adopted.

Municipal Coastal Committee

8.(1) The Municipality must establish a Municipal Coastal Committee as contemplated in Part 4 of Chapter 5 of the Act.

(2) The Municipal Manager must invite nominations from the public for the appointment of competent persons to serve as members of the Municipal Coastal Committee.

(3) The invitation contemplated in subsection (2) must set out the minimum requirements and the eligibility criteria for the nomination and appointment sought.

(4) The Municipal Coastal Committee must consist of–

- (a) persons with expertise in fields relevant to coastal management;
- (b) representatives of the management authorities of coastal protected areas within the Municipality;
- (c) other government institutions with particular interest in nature and conservation;
- and
- (d) representatives of port authorities.

(5) The representatives of the following persons may also be considered for the nomination contemplated in subsection (2):

- (a) communities or organisations with a particular interest in contributing to effective coastal management;

- (b) persons whose livelihoods or businesses rely on the use of coastal resources;
- (c) environmental interest groups; and
- (d) research organisations or institutions.

(6) The Municipal Coastal Committee must consist of at least 12 members.

(7) At least two thirds of the membership of the Municipal Coastal Committee must be full time employees of the Municipality.

(8) The position of Chairperson of the Municipal Coastal Committee must be held by a suitably competent person who is a full time employee of the Municipality: Provided that this does not prevent any member of the Municipal Coastal Committee from chairing any meeting or forum of the Municipal Coastal Committee in the absence of the Chairperson or as and when it is arranged as such by the members of the Municipal Coastal Committee.

(9) The appointment of a person as a member of the Municipal Coastal Committee must be for a fixed term which may not exceed five years.

(10) Notwithstanding the provisions of subsection (9), the Municipal Manager may at his or her discretion, extend or renew the appointment of any member of the Municipal Coastal Committee.

(11) Notwithstanding the provisions of subsection (10), a member of the Municipal Coastal Committee may not serve more than two consecutive terms.

(12) Notwithstanding anything in this section, the Municipal Manager may at any time terminate the membership of any member of the Municipal Coastal Committee as a result of poor performance, misconduct or other basis valid in law for such termination.

Role of Municipal Coastal Committee

9. The role of the Municipal Coastal Committee is as contemplated in section 42 (4) of the Act and includes, but is not limited to, the following:

- (a) promoting integrated coastal management within the area of jurisdiction of the Municipality;
- (b) ensuring the co-ordinated and effective implementation of the Act and the Municipal Coastal Management Programme;

- (c) providing advice and support to the Municipality on matters concerning integrated coastal management;
- (d) providing advice and support to the Municipality on the development, finalisation, reviewing and amendment, as the case may be, of the Municipal Coastal management Programme;
- (e) monitoring and reporting on the implementation of the Municipal Coastal Management Programme;
- (f) promoting a co-ordinated, inclusive and integrated approach to coastal management within the Municipality by providing a forum for dialogue, cooperation and co-ordination between the key organs of state and other persons involved in coastal management within the area of jurisdiction of the Municipality;
- (g) promoting the achievement of the integrated coastal management objectives of the Municipality in line with the Municipality's Integrated Development Plan, Spatial Development Framework, and any other municipal plans, tools, programmes or policies that affect the coastal environment; and
- (h) performing any coastal governance function delegated to it by the Municipality.

Powers of Municipal Coastal Committee

10.(1) In performing any function and discharging any role as contemplated in section 9 of this By-law, the Municipal Coastal Committee must where applicable and necessary make recommendations to the Council relating to—

- (a) land use and development in the coastal zone;
- (b) access to the coastal zone or any part thereof;
- (c) the use of any public place in the coastal zone by members of the public;
- (d) the protection of the natural environment of the coastal zone;
- (e) the protection of the natural resources of the coastal zone;
- (f) the implementation of the Municipal Coastal Management Programme;
- (g) the delineation of municipal coastal set-back lines on the relevant maps and tools of the Municipality;
- (h) coastal access land; and
- (i) any other matter or activity which is connected with the coastal zone.

(2) A recommendation contemplated in subsection (1) is not binding on any person unless, and to the extent, adopted or approved by the Council through a Council resolution.

(3) If an adopted or approved recommendation as contemplated in subsection (2) is likely to have an adverse effect on—

- (a) any development or land use right of any person; or
- (b) the use of any public place by the members of the public,

the Municipality must follow the consultation and public participation process contemplated in section 53 of the Act to the extent applicable.

Cooperative governance and integrated coastal management

11.(1) The Municipality must, in administering and implementing this By-law, give effect to and promote effective cooperative governance, which includes—

- (a) the promotion of integrated decision-making between and within all relevant spheres of government and organs of state, and other parties concerned with coastal management;
- (b) the promotion of a co-ordinated approach to integrated coastal management between the Municipality and other municipalities managing adjoining coastal zones; and
- (c) supporting and promoting the initiatives and objectives of the National Coastal Management Programme and the Provincial Coastal Management Programme.

(2) The Municipality must endeavour to promote cooperative governance within the various departments and decision-making bodies of the Municipality itself, as contemplated in this By-law.

CHAPTER 5

MUNICIPAL COASTAL MANAGEMENT PROGRAMME

Municipal Coastal Management Programme

12.(1) The Municipality must prepare and adopt a Municipal Coastal Management Programme of the Municipality as contemplated in Part 3 of Chapter 6 of the Act.

(2) The Municipal Coastal Management Programme must—

- (a) identify and delineate the geographic area of the coastal zone of the Municipality;
- (b) identify and show all land and areas which the Municipality must delineate or

designate for any purpose contemplated in the Act;

(c) identify active measures aimed at co-ordinating and aligning municipal planning within the coastal zone with the Act;

(d) set out the principles to be applied in municipal planning and development within the coastal zone;

(e) prescribe rules and guidelines relating to access to the coastal zone;

(f) prescribe rules and guidelines relating to public access to public places with the coastal zone; and

(g) set out the general strategy of the Municipality relating to the management of the coastal zone as contemplated in the Act.

Contents of Municipal Coastal Management Programme

13. The Municipal Coastal Management Programme must contain details on matters—

(a) as contemplated in section 12 of this By-law;

(b) as contemplated in section 49 of the Act; and

(c) which give effect to the promotion of the effective management of the coastal zone.

Public participation

14. (1) The Municipality must, in all relevant cases, take all reasonable measures to effect public participation as contemplated in sections 48 and 53 of the Act, read with the public participation requirements contemplated in Chapter 4 of the Municipal Systems Act.

(2) The provisions of subsection (1) also apply to any material review or amendment of the Municipal Coastal Management Programme.

Alignment with provincial and national coastal management programmes

15.(1) The Municipal Coastal Management Programme must be consistent with the—

(a) National Coastal Management Programme;

(b) Provincial Coastal Management Programme; and

(c) National Estuarine Management Protocol,

as contemplated in section 49(1)(b) of the Act.

(2) In the event of a conflict between the Municipal Coastal Management Programme and one or more of the—

- (a) National Coastal Management Programme;
- (b) Provincial Coastal Management Programme; or
- (c) National Estuarine Management Protocol,

then either one or all of the tools contemplated in paragraphs (a) to (c), as the case may be, prevail to the extent of the inconsistency.

Municipal statutory spatial tools and instruments

16.(1) Every instrument and tool of the Municipality relating to planning and development land use, which affects the coastal zone, such as, but not limited to, the Integrated Development Plan must–

- (a) be consistent with the –
 - (i) Municipal Coastal Management Programme;
 - (ii) Provincial Coastal Management Programme; and
 - (iii) National Coastal Management Programme;
- (b) make reference to the provisions of the programmes contemplated in paragraph (a) that–
 - (i) specifically apply to such instrument or tool;
 - (ii) affects such instrument or tool; or
 - (iii) is affected by such instrument or tool;
- (c) give effect to the programmes contemplated in paragraph (a) to the extent applicable; and
- (d) take into account the international best practices and obligations.

(2) In the event that neither the Provincial Coastal Management Programme nor the National Coastal Management Programme are in effect, every municipal instrument and tool as contemplated in subsection (1) must be aligned exclusively to the Municipal Coastal Management Programme, to the extent applicable.

(3) In the event that either the Provincial Coastal Management Programme or the National Coastal Management Programme comes into effect after the adoption of the Municipal Coastal Management Programme by the Council as contemplated in section 18, the Municipal Coastal Management Programme must be amended in so far as it may be inconsistent with the Provincial Coastal Management Programme or National Coastal Management Programme, as the case may be.

(4) The Municipality may establish and implement a Coastal Planning Scheme that facilitates the coastal management objectives as contemplated in section 56 of the Act.

(5) The Coastal Planning Scheme contemplated in subsection (4) may form, and be enforced as part of, any land use scheme adopted by the Municipality: Provided that–

(a) the land use scheme of the Municipality is not inconsistent with a Coastal Planning Scheme established in terms of the Act; and

(b) in the event of a conflict between the land use scheme of the Municipality that has been established after the commencement of the Act and the Coastal Planning Scheme established in terms of the Act, the latter prevails,

as contemplated in section 57 of the Act.

Legal effect of Municipal Coastal Management Programme

17.(1) The Municipal Coastal Management Programme contemplated in section 12 is not binding on any person unless, and to the extent, adopted or approved by Council.

Amendment and review of Municipal Coastal Management Programme

18. The review of the Municipal Coastal Management Programme must occur as contemplated in section 55 of the Act.

Prohibition of activities inconsistent with Municipal Coastal Management Programme

19. Unless authorised by law, all conduct or activities inconsistent with the Municipal Coastal Management Programme are prohibited, and may in some instances attract both civil and criminal sanctions, as contemplated in, but not limited to, chapters 11 and 12 of this By-law.

CHAPTER 6

THE COASTAL PROTECTION ZONE

Municipal mandate and responsibility

20.(1) The Municipality must take all reasonable measures to promote and ensure the achievement of the provisions of section 17 of the Act read with section 21(2) of this By-law in such a manner as to ensure the—

- (a) preservation of the ecological integrity of the coastal zone;
- (b) mitigation of the effects of natural disasters; and
- (c) sustainable use of the coastal zone's spatial capacity.

(2) The measures contemplated in subsection (1) must be taken within the context of cooperative governance as contemplated in section 11 of this By-law.

Powers to regulate, control and restrict activities in coastal protection zone

21.(1) The Municipality has the power to regulate, control and restrict any activity within the coastal protection zone, excluding areas contemplated in section 29 of this By-law.

(2) The Municipality must regulate, control or restrict any activity in the coastal zone in order to—

- (a) protect the ecological integrity, natural character and the economic, social and aesthetic value of coastal public property;
- (b) avoid increasing the effect or severity of natural hazards in the coastal zone;
- (c) protect people, property, and economic activities from risks arising from coastal processes, including the risk of sea level rise;
- (d) maintain the functioning of the littoral active zone;
- (e) maintain the productive capacity of the coastal zone by protecting the ecological integrity of the coastal environment; and
- (f) make land near the seashore available to organs of state and other authorised persons for performing rescue operations or temporarily depositing objects or materials washed up by the sea or tidal waters,

as contemplated in section 17 of the Act.

Prohibited conduct

22. A person may not perform any act or omission that harms or may harm the coastal protection zone.

Development within coastal protection zone

23. A person may not develop on land within the coastal protection zone, except in accordance with the requirements of the Programme.

CHAPTER 7 ACCESS TO COASTAL PUBLIC PROPERTY

Municipal mandate and responsibility

24.(1) The Municipality must–

- (a) designate coastal access land as contemplated in section 18 of the Act; and
- (b) ensure the proper regulation and maintenance thereof as contemplated in section 20 of the Act.

(2) The Municipality may determine or adjust the boundaries of the coastal access land in accordance with section 29 of the Act.

Designation of coastal access land

25. The designation and withdrawal of the designation of coastal access land must take place in compliance with the Programme, read with section 19 of the Act.

General provision relating to conduct within coastal public property

26.(1) An act or omission in contravention of this By-law or any other By-law associated with coastal public property is prohibited and may attract both civil and criminal liability.

(2) The Municipality is empowered to regulate, control or restrict any activity within coastal access land that may impede upon the duty to fulfil its mandate as contemplated in this By-law and the Act.

CHAPTER 8 PROTECTION OF COASTAL ENVIRONMENT

General environmental protection in coastal zone

27.(1) The Municipality must within its competence, as regulated by the Constitution, applicable national legislation and applicable provincial legislation, take all reasonable measures to—

- (a) manage and control activities which may have a detrimental effect on the natural environment and natural resources of the coastal zone; and
- (b) give effect to the provisions of the Programme, the Act and any other law which seek to protect the natural environment and natural resources of the coastal zone.

(2) The provisions of section 58 of the Act apply to the extent applicable, to establish a duty of care on any person whose activity, conduct or omission may cause, causes or has caused a significant pollution and environmental degradation on the coastal environment.

(3) The Municipality may erect any notice on any part of the coastal zone in terms of which specific conduct or activities are restricted or prohibited.

Coastal protected areas

28. (1) Coastal protected areas may include, but are not limited to, the following:

- (a) marine protected areas declared in terms of the Marine Living Resources Act;
- (b) special nature reserves, national parks, nature reserves, wilderness areas and protected environments as contemplated by the Protected Areas Act;
- (c) world heritage sites declared in terms of the World Heritage Convention Act;
- (d) specially protected forest areas, forest nature reserves and forest wilderness areas declared in terms of the National Forest Act;
- (e) mountain catchment areas declared in terms of the Mountain Catchment Areas Act; and
- (f) special management areas as contemplated in section 23 of the Act.

(2) The Municipality may not permit or cause the development and use of any coastal protected area as contemplated in subsection (1) in contravention to any law contemplated in that subsection or any other applicable law.

(3) The Municipality must enforce compliance with this By-law on any land that falls within the coastal zone.

Powers to regulate, control and restrict development in coastal zone

29.(1) No development or use of land may be permitted on any part of the coastal zone, unless such development or use of land is in compliance with the requirements of the Programme.

(2) The Municipality may adopt a Coastal Planning Scheme as contemplated in section 56(3)(d) of the Act to manage development and land use within a coastal zone, and to restrict any activity within any such area or part thereof.

(3) The Coastal Planning Scheme contemplated in subsection (2) may be incorporated within any pre-existing land use scheme of the Municipality.

(4) The Municipality must, in writing, issue a compliance notice to any person who undertakes any development activity in contravention with the provisions of this By-law, the Programme or the Act, requiring such person to comply with the provisions of the notice, this By-law or the Act.

CHAPTER 9

COASTAL SET-BACK LINES AND COASTAL BOUNDARIES

Delineation of coastal set-back lines on maps for zoning schemes

30.(1) Where a set-back line has been established as contemplated in section 25(1) of the Act, the Municipality must delineate such set-back line on any maps that form part of the land use schemes that are applicable to the subject coastal area.

(2) The Municipality may determine and adjust the coastal boundaries of coastal access land as contemplated in section 29 of the Act.

CHAPTER 10

ENFORCEMENT

Compliance notice

31. The Municipality must issue a compliance notice to any person who has contravened any provision of this By-law, requiring such person to comply with the notice in a manner and within the time specified in the notice.

Municipal remedial work and recovery of costs

32. The Municipality may, to the extent it deems practicable and necessary, act in order to avert or remedy any harm on the coastal zone caused by a person who has contravened any provision of this By-law, and may recover any associated costs from such person.

CHAPTER 11 OFFENCES AND PENALTIES

Offences

33.(1) A person is guilty of an offence if he or she—

- (a) contravenes any provision of this By-law;
- (b) contravenes any conditions, restrictions or prohibitions imposed in terms of this By-law;
- (c) fails to comply with the terms of any notice or signage displayed in terms of this By-law;
- (d) threatens, resists, hinders, obstructs or uses foul, abusive or insulting language towards or at an authorised official in the exercise of any duty or function in terms of this By-law; or
- (e) fails to obey any lawful instruction or direction given to him or her in terms of this By-law.

(2) A person is guilty of a continuing offence if he or she continues with an offence after notice has been served on him or her in terms of this By-law requiring him or her to cease committing such offence, or after he or she has been convicted of such offence.

Penalties

34.(1) Any person who commits an offence in terms of this By-law, is on conviction, liable to imprisonment for a period not exceeding three years or to the payment of a fine not exceeding R50 000, or both such fine and imprisonment.

(2) In addition to imposing a fine or imprisonment, a court may order any person convicted of an offence under this By-law to–

- (a) remedy the harm caused which will be for his or her account;
- (b) perform or undertake community service which will benefit the coastal environment, which includes but it not limited to, entering into a corporate responsibility agreement with the Municipality to the court's satisfaction; and
- (c) pay damages for any harm or loss suffered or incurred by any person who is party to the proceedings, which order has the force and effect of a civil judgment.

(3) In the case of a continuing offence, the guilty person is liable to a fine of R500 or 10 days imprisonment for each day on which the offence continues.

CHAPTER 12 GENERAL PROVISIONS

Appeal

35.(1) A person whose rights are effected by a decision made by the Municipality in terms of this By-law may appeal against that decision in terms of the Appeals provision contained within the Municipal Systems Act by giving written notice of the appeal and reasons thereof to the Municipal Manager within 21 days of the date of the notification of the decision.

(2) The Municipal Manager is obliged to promptly submit the appeal to the appropriate appeal authority.

(3) The appeal authority must commence with an appeal within six weeks from the date of lodgement and must decide the appeal within a reasonable period.

(4) The appeal authority must confirm, vary or revoke the decision, but no such revocation or variation of a decision may detract from any rights that may have accrued as a result of the decision.

(5) The appeal authority must furnish written reasons for its decision on all appeal matters.

(6) All appeals lodged are done so in terms of the Municipal Systems Act.

(7) Where a conviction has been affirmed by a court of law and the accused wishes to appeal such conviction, the appeal must take place in terms of the court's appeal process and not in terms of subsections (1) to (5).

Delegation

36.(1) Subject to the Constitution and applicable national and provincial laws, any –

- (a) power, excluding a power referred to in section 160(2) of the Constitution;
- (b) function; or
- (c) duty,

conferred, in terms of this By-law, upon the Council, or on any of the Municipality's other political structures, political office bearers, councilors or staff members, may be delegated or sub-delegated by such political structure, political office bearer, councilor, or staff member, to an entity within, or a staff member employed by, the Municipality.

(2) The delegation in terms of subsection (1) must be effected in accordance with the system of delegation adopted by the Council in accordance with section 59(1) of the Municipal Systems Act, subject to the criteria set out in section 59(2) of said Act.

(3) Any delegation contemplated in this section must be recorded in the Register of Delegations, which must contain information on the –

- (a) entity or person issuing the delegation or sub-delegation;
- (b) recipient of the delegation or sub-delegation; and
- (c) conditions attached to the delegation or sub-delegation.

Short title and commencement

37. This By-law is called the eThekweni Municipality: Coastal Management By-law, 2016 and takes effect six months from the date of publication thereof or such earlier date as may be determined by the publication of a commencement notice in the *Provincial Gazette*.