

ETHEKWINI MUNICIPALITY: STORMWATER MANAGEMENT BY-LAW, 2017



Adopted by Council on the:

Promulgated on:

STORMWATER MANAGEMENT BY-LAW, 2017

To provide for the regulation of stormwater management systems; to provide for measures to adapt to climate change and densification of built-up areas; to protect and preserve the natural environment; to provide for developments being done in a safe and sustainable manner with regard to rainfall and stormwater; to provide for a sustainable environment while pursuing economic development; and to provide for matters incidental thereto.

PREAMBLE

WHEREAS the Municipality has executive authority in respect of, and has the right to administer the local government matters listed in Part B of Schedule 4 relating to stormwater management systems in built-up areas;

WHEREAS the Constitution provides that everyone has the right to an environment which is not harmful to their health or well-being;

WHEREAS the Constitution provides for the protection of the environment to secure ecologically sustainable development;

AND WHEREAS the Constitution requires Local Government to be developmentally orientated in nature and to promote a safe and healthy environment; and

NOW THEREFORE The Municipal Council of the eThekweni Metropolitan Municipality, acting in terms of section 156 read with Schedule 4 (Part B) of the Constitution of the Republic of South Africa, and read with 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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SCHEDULE 1: LAWS REPEALED**CHAPTER 1
INTERPRETATION****Definitions**

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

“**Act**” means the National Water Act, 1998 (Act No. 36 of 1998);

“**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 purpose of search and seize, where such person is not a peace officer, such person must be accompanied by a peace officer;

“**built-up area**” means the area of the Municipality which has by actual survey been subdivided into erven or farms or is surrounded by surveyed erven or farms, and includes the public roads abutting thereon or an area where there is a permanent concentration of people, buildings and other man-made structures and activities;

“**connecting point**” means the point at which the drainage installation joins the connecting sewer;

“**connecting stormwater sewer**” means a pipe owned by the Municipality, connecting a stormwater drainage system on a premises to a stormwater sewer

beyond the boundary of the premises or within a servitude area or within an area covered by a wayleave;

“damaging incident” means a incident contemplated in section 5(1) and (2) of this By-law;

“developer” means a person who is making or on whose behalf an application for building or land approval is made;

“development” means any subdivision of land, use of or change of use of land, building or structure for which the approval from the Municipality is required in terms of any law;

“drain” means the portion of the drainage system which is not owned by the Municipality and which conveys the discharge from drainage pipes from any premises to a stormwater sewer;

“drainage work” includes any drain, water-supplying apparatus, waste or other pipe or any work connected with the discharge of liquid or solid matter into any drain or stormwater sewer or otherwise connected with the drainage of any premises;

“entrance level” means a level of the adjoining ground of the driveway from the shoulder or curblin of the road or verge leading into the premises;

“environmental cost” means the full cost of all measures necessary to restore the environment to its condition prior to the damaging incident;

“excavate” includes the loosening, taking out or removal of stone, overburden, soil or other material;

“fill” means any soil, rock or other material placed in a manner which raises the ground level;

“flood level” means the level reached by flood waters resulting from a storm of a certain return period or recurrence interval;

“**flood plain**” means the area subject to inundation by flood waters from a storm of a frequency of a certain return period or recurrence interval;

“**foul water**” means soil water, waste water and trade effluent;

“**hardened area**” means all paved areas, roofed areas, surfaced driveways, pool surrounds, semi-permeable or impermeable structures;

“**Head**” means the official of eThekweni Municipality in charge of or responsible for the department of the Municipality dealing with matters relating to stormwater management;

“**maintenance**” includes, but is not limited to, the repair, upgrading, refurbishment, reconstruction or alteration of a stormwater system;

“**municipal council**” or “**council**” means the eThekweni municipal council, a municipal council referred to in section 157(1) of the Constitution of the Republic of South Africa, 1996;

“**Municipality**” means eThekweni Municipality as amended, a category A municipality as envisaged in terms of section 155(1) of the Constitution of the Republic of South Africa;

“**municipal manager**” means a person appointed in terms of section 54A of the Municipal Systems Act as the head of administration of the municipal council;

“**municipal property**” includes all properties owned by, vesting in or under the control of the Municipality other than any property leased from the Municipality;

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

“**owner**” means an owner, occupier or responsible person in charge of the premises;

“**person**” includes a natural and juristic person;

“policy” means the eThekweni Municipality Floodline and Stormwater Management Policy adopted by Council, as may be amended from time to time;

“pollution” means the direct or indirect alteration of the physical, chemical or biological properties of a water resource so as to make it less fit for any beneficial purpose for which it may reasonably be expected to be used or which may be harmful or potentially harmful to—

- (a) the welfare, health or safety of human beings;
- (b) any aquatic or non-aquatic organisms;
- (c) the water resource quality; or
- (d) property;

“pollution incident” means an incident or occurrence which has a detrimental impact or potential detrimental impact on the quality of water in the stormwater system to such an extent that public health or the health of the natural ecosystems may be threatened;

“premises” means land with or without improvements;

“prescribed” means as determined by resolution of the Council from time to time;

“private stormwater system” means a stormwater system owned, operated or maintained by a person other than the Municipality;

“public road” means any road, street or thoroughfare or any other place (whether a thoroughfare or not) which is commonly used by the public or any section thereof or to which the public or any section thereof has a right of access, and includes:-

- (a) the verge of any such road, street or thoroughfare;
- (b) any bridge, ferry or drift traversed by any such road, street or thoroughfare; or
- (c) any other work or object forming part of or connected with or belonging to such road, street or thoroughfare;

“return period” means a statistical estimate of the likelihood of an event, such as a storm, flood or given river discharge, to occur;

“stormwater” means water resulting from natural precipitation or the accumulation thereof and includes groundwater and spring water ordinarily conveyed by the stormwater system;

“stormwater system” means both the constructed and natural facilities, including roads, culverts, pipes, canals, road crossings, bridges, watercourses and their associated floodplains, whether over or under public or privately owned land, used or required for the management, collection, conveyance, temporary storage, control, monitoring, treatment, use or disposal of stormwater;

“watercourse” means—

- (a) a river or spring;
- (b) a natural channel or depression in which water flows regularly or intermittently;
- (c) a wetland, lake or dam into which, or from which, water flows;
- (d) any collection of water which the Minister may by notice in the *Gazette*, declare to be a watercourse as defined in the Act; and
- (e) a watercourses bed and banks, where relevant; and

“wetland” means land which is usually at or near the surface, or where the land is periodically covered with shallow water, and which land in normal circumstances supports or would support vegetation typically adapted to life in saturated soil.

Interpretation of By-law

2. If there is a conflict of interpretation between the English version of this By-law and a translated version, the English version prevails.

Objects of By-law

3. The objects of this By-law are to—

- (a) provide for the regulation of stormwater management in the eThekweni Municipal area; and
- (b) regulate activities which may have a detrimental effect on development, operation or maintenance of stormwater systems.

Application of By-law

4. This By-law applies to stormwater systems which fall under the jurisdiction of the Municipality and is binding on all persons to the extent applicable.

**CHAPTER 2
STORMWATER SYSTEMS****Protection of stormwater system**

5.(1) Subject to the written consent of the Municipality and to any conditions which the Municipality may impose, a person may not—

- (a) cause, discharge or permit to enter the stormwater system—
 - (i) any solid, liquid, foul-water or gaseous substance;
 - (ii) anything other than stormwater;
 - (iii) anything which may damage the stormwater system;
 - (iv) anything which may interfere with the operation of the stormwater system; or
 - (v) anything likely to pollute or contaminate the water in the stormwater system;
- (b) obstruct, block or reduce the capacity of the stormwater system;
- (c) open a pipe, culvert or canal which forms part of the stormwater system;
- (d) construct or erect any structure over or in such a position or manner as to destroy, damage, endanger, block or interfere with the stormwater system or operation thereof;
- (e) drain, abstract or divert any water directly from the stormwater system;
- (f) fill, excavate, shape, landscape, open up or remove the ground above, within, under or immediately next to any part of the stormwater system;
- (g) change the design, the use of or modify any feature of the stormwater system which alone or in combination with other existing activities may cause an increase in flood levels or create a potential flood risk;
- (h) undertake any activity which alone or in combination with other existing or future activities, may cause an increase in flood levels or create a potential flood risk;
- (i) undertake any activity which interferes with existing stormwater system infrastructure;
- (j) undertake any activity which will or which in the opinion of the Municipality could impair the effective functioning of the stormwater system;

(k) discharge water from a fountain, borehole, well, reservoir or swimming pool into the stormwater system;

(l) bridge over or enclose any gutter or stormwater drain which forms part of municipal property;

(m) remove manhole covers, grids and other equipment which form part of the stormwater system; and

(n) undertake any activity which may result in a potential to increase soil erosion or which may cause damage to another person's premises.

(2) A person may not cause or permit any stormwater to enter the sewage disposal system.

(3) If an incident contemplated in subsection (1) or (2) occurs without the written consent of the Municipality, and the incident is not a result of natural causes—

(a) the person responsible for the incident; or

(b) the owner of the property on which the event took place, or is taking place, must immediately report the incident to the Municipality.

(4) A person referred to in subsection (3) must, at his or her own cost, take all reasonable measures to contain and minimise the effects of the incident, which measures may include, but are not limited to—

(a) the undertaking of cleaning up operations; and

(b) where necessary, the rehabilitation of the surrounding environment and any environmental cost related thereto.

Development applications

6.(1) Any application for the approval of a development on any premises must include a stormwater management plan based on a rational design method as specified in the policy.

(2) An approval of a development application is subject to—

(a) the submission by the developer of a stormwater management plan which is in accordance with the floodline and stormwater design requirements or guidelines as specified in the policy;

(b) any other requirements or guidelines specified in the policy for the approval of a development application; and

(c) any amendment which the Municipality may require the developer to make to the

development application regarding the stormwater management plan.

Duties of owners

7.(1) An owner of a premises must—

- (a) manage and make provision for the control and reduction of stormwater run-off from hardened areas;
- (b) control accumulated stormwater; and
- (c) dispose of accumulated stormwater,

from their premises to the stormwater system as specified in the policy.

(2) An owner is required at his or her own cost to maintain the effective functioning of the private stormwater system, which may include undertaking the refurbishment of and reconstruction of the private stormwater system, unless the Municipality has undertaken to accept responsibility for the duties either in the form of a maintenance agreement or in terms of a condition of servitude.

(3) Where the Municipality is the holder of a servitude over an owner's premises, the owner must allow an authorised official to access the servitude area for purposes of inspection, maintenance, repair or installation of a stormwater sewer or manhole within the servitude area.

(4) An owner must take reasonable measures to prevent the occurrence of a health nuisance as a result of the use of rain water harvesting measures or rain water tank arrangements.

(5) An owner must take reasonable measures to maintain existing soakpits, roof valleys, gutters, downpipes or any other structures which have been used to ensure the control, management and run-off of stormwater.

Entrance levels

8.(1) An existing entrance level of premises may be required to be modified to adhere to the current requirements as prescribed by the policy.

(2) The Municipality may notify the owner in writing of the reasons for the necessity of

the modification of the entrance level design.

(3) The Municipality reserves the right to exempt any premises from the application of subsection (1).

Pollution incidents

9.(1) Any person or owner must immediately report the occurrence of a pollution incident to the Municipality.

(2) A pollution incident is subject to the provisions of this By-law and any other applicable legislation dealing with pollution.

Powers of the Municipality

10.(1) The Municipality may—

- (a) demolish, alter or otherwise deal with any building, structure or other thing constructed, erected or laid in contravention of this By-law;
- (b) fill in, remove and make good any ground excavated, removed or placed in contravention or resulting from a contravention of this By-law;
- (c) remove anything discharged into the stormwater system or watercourse in contravention of this By-law;
- (d) repair and make good any damage in contravention of this By-law;
- (e) remove anything that may be damaging, obstructing or endangering or likely to damage, endanger or obstruct any part of the stormwater system;
- (f) seal off or block any point of discharge from any premises if such discharge point is in contravention of the provisions of the this By-law, irrespective of whether the point is used for lawful purposes;
- (g) cancel any permission granted in terms of this By-law if the conditions in terms of which the permission was granted are not complied with; and
- (h) discharge any stormwater onto any watercourse, whether private or not.

(2) The Municipality may by written notice, direct any owner to effect repairs to the stormwater system or lay a stormwater drain pipe or gutter to a suitable place indicated by the Municipality.

(3) The Municipality may where any action or neglect by an owner of a premise may lead to a contravention of this By-law give written notice to the owner to comply with such requirements as the Municipality may deem necessary to prevent the occurrence of such contravention.

(4) Should the owner of a premises or a responsible person in respect of municipal property, fail to comply with any notice issued in terms of this By-law by not carrying out repairs required by the Municipality, the Municipality may carry out the necessary work and recover the full cost of the repairs from the owner or responsible person.

(5) The Municipality may enter into an agreement with a person in terms of which the person at his or her own cost may install a stormwater system or part of a stormwater system, subject to the Municipality's approval and any conditions which may be imposed.

CHAPTER 3 OFFENCES AND PENALTIES

Offences

11.(1) A person commits 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) obstructs, hinders, or in any manner interferes with an authorised official who is acting or entitled to act in terms of this By-law; or
- (d) fails to obey any lawful instruction or direction given to him or her in terms of this By-law.

Penalties

12.(1) Any person who is convicted of an offence under this By-law shall be liable to a fine of an amount not exceeding R 10 000 or to imprisonment for a period not exceeding 6 months, or to both such fine and imprisonment.

(2) In the case of a continuing offence, an additional fine of an amount not exceeding R200 or imprisonment for a period not exceeding 10 days, for each day on which such offence continues or both such fine and imprisonment, will be imposed.

CHAPTER 4 GENERAL PROVISIONS

Appeals

13.(1) A person whose rights are affected by a decision taken by the Head or any authorised official in terms of this By-law may appeal against that decision in terms of the Appeals provision contained in the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) 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 must promptly submit the appeal to the appropriate appeal authority.

Delegations

14.(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, councillor, or staff member, to an entity within, or a staff member employed by, the Municipality.

(2) The delegation in terms of sub-section (1) must be effected in accordance with the system of delegation adopted by the council in accordance with section 59(1) of the Local Government: Municipal Systems Act, 2000 (Act No.32 of 2000), 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.

Repeal of laws and savings

15.(1) The laws mentioned in the first and second columns of the Schedule to this By-law are hereby repealed to the extent set out in the third column of the said Schedule.

Short title and commencement

16.(1) This By-law is called the Stormwater Management By-law, 2017 and takes effect six months from the date of publication thereof in the *Provincial Gazette* or such earlier date as may be determined by the publication of a commencement notice in the *Provincial Gazette*

SCHEDULE 1 - LAWS REPEALED

<i>Number and year of law</i>	<i>Title</i>	<i>Extent of repeal</i>
Provincial Notice No. 179 of 1989 adopted by Provincial Notice No. 4696 of 1989 for the Borough of Yellow Wood Park	Drainage Regulations	Sections 24 and 25
Provincial Notice No. 407 of 1975 adopted by Provincial Notice No. 3870 of 1975 for the Borough of Queensburgh	Industrial Effluent	Section 2
Provincial Notice No. 1830 of 1970 adopted by Provincial Notice No. 2894 of 1970 for the Township of Hillcrest	Building By-law	Sections 9, 16, 20, 89, 90, 101, 108, 110.
Provincial Notice No. 60 of 1973 adopted by	Drainage	Section 24 and 25.

Provincial Notice No. 3721 of 1973 for Cato Ridge		
Provincial Notice No. 153 of 1990 adopted by Provincial Notice No. 4750 of 1990 for Cato Ridge	Trade Effluent Regulations	Sections 2, 3, 4 and 5. Schedule 2 & 3
Provincial Notice No. 287 of 1963 adopted by Provincial Notice No. 3164 of 1963 for the Township of Verulam	General	Sections 13, 18A, 25 and 26.
Provincial Notice No. R.1830 of 1970 adopted by Provincial Notice No. 2894 of 1970 for the Borough of Umhlanga	Building	Sections 9, 16(2)(g), 20, 23, 89, 90, 101 and 108.
Provincial Notice No. 23 of 1973 adopted by Provincial Notice No. 3718 of 1973 for the Borough of Umhlanga	By-laws relating to the specification for the construction of new roads and stormwater drainage serving new subdivisions of land	Sections 2,3, 4, 8, 9, 10 and 12.
Provincial Notice No. 87 of 1953 adopted by Provincial Notice No. 2461 of 1953 for Umhlanga Rocks	Standard By-laws	Section 7(m) and 9(f)
Provincial Notice No. R.1830 of 1970 adopted by Provincial Notice No. 2894 of 1970 for the Township of Tongaat	Standard Building	Sections 9(a); 16(2)(g); 20(d); 89(1); 90(1); 101(1); 108(b); 110(1)(f).
Provincial Notice No. 54 of 1972 adopted by	By-laws relating to Chalets	Section 2(q)

Provincial Notice No. 3659 of 1972 for the Township of Tongaat		
Provincial Notice No. 87 of 1953 adopted by Provincial Notice No. 2461 of 1953 for Cato Ridge	Standard By-laws	Sections 4(2)(g); 26(a)(b)&(c); 27; 55 <i>bis</i> ; 62, 229. Part II – 7(m); 9(f) Part II – 5(q)
Provincial Notice No. 375 of 1954 adopted by Provincial Notice No. 2562 of 1954 for the Township of Umkomaas	Building By-laws	Section 43
Provincial Notice No. 375 of 1954 adopted by Provincial Notice No. 2562 of 1954 for the Township of Umkomaas	Building By-laws	Section 43
Provincial Notice No. 595 of 1972 adopted by Provincial Notice No. 3709 of 1972 for the Township of Umkomaas	By-laws relating to Chalets	Section 2(q)
Provincial Notice No. 87 of 1953 adopted by Provincial Notice No. 2461 of 1953 for the Township of Umkomaas	Standard	Sections 26(a)(b)&(c) and 27.
Provincial Notice No. 236 of 1977 adopted by Provincial Notice No. 3984 of 1977 for Widenham	Conservancy Tank Regulations	Section 4(d)

Provincial Notice No. 87 of 1953 adopted by Provincial Notice No. 2461 of 1953 for Kingsburgh	Standard By-laws	Section 4(2)(g); 26; 27; 55 <i>bis</i> ; 62 and 229. Part II 7(m) and 9(f) Part II (q)
Provincial Notice No. 87 of 1953 adopted by Provincial Notice No. 2461 of 1953	Standard By-laws	Section 27, 27.
Provincial Notice No. 87 of 1953 adopted by Provincial Notice No. 2461 of 1953 for Isipingo	Standard By-laws	Section 18(a);(b) and (c) and 19(a).
Provincial Notice No. 87 of 1953 adopted by Provincial Notice No. 2461 of 1953	Standard By-laws	Sections 18(a)(b) and (c); 19(a)(d)(h)(l) and (m); 26(a)(b)(c), 27, 88(c)(ii), 55 <i>bis</i> ; 62 and 229.
Provincial Notice No. 27 of 1999 adopted by Provincial Notice No. 5356 of 1999 for Durban	Sewage Disposal	Section 2.4 (1)(a) and (3).
Provincial Notice No. 82 of 1932 adopted by Provincial Notice No. 1250 of 1932 for the Borough of Durban	Building	Section 1(1) 16(1); (2); (3); (4) and (5); 32.
Provincial Notice No. 149 of 1975 adopted by Provincial Notice No. 3849 of 1975 for City of Durban	Market By-laws: Durban National Fresh Produce Market	Section 43(2)(m)
Provincial Notice No. 36 of 1986 adopted by Provincial Notice No. 4512 of 1986 for the City	Subdivision of Land and new Streets	Section 3(3)(e)(g)(n);12(6)(b)(ii); 13; 14.

of Durban		
Provincial Notice No. R1830 of 1970 adopted by Provincial Notice No. 2894 of 1970 for the Borough of Queensburgh	Standard Building	Sections 9(a); 20(d); 89; 90; 101; 108(b) and 110(1)(f).
Provincial Notice No. 502 of 1984 adopted by Provincial Notice No. 4438 of 1984 for the Borough of Queensburgh	By-laws relating to the Consolidation and Subdivision of and Earthworks upon properties and matters incidental thereto	Section 3(xiii)
Provincial Notice No. R1830 of 1970 adopted by Provincial Notice No. 2894 of 1970 for the Borough of Pinetown	Building	Sections 9(a); 16(2)(g); 20(d); 20(5); 89; 90; 101; 108(b); 110(1)(f).
Provincial Notice No. 461 of 1981 adopted by Provincial Notice No. 4258 of 1981 for the Borough of Pinetown	Consolidation and Sub-Division of and Earthworks Upon Properties and matters incidental thereto	Section 4(3)(xiii)
Provincial Notice No. 87 of 1953 adopted by Provincial Notice No. 2461 of 1953 for the Borough of Pinetown	Standard	Section 2(3)(xi)(xii)(xiii)
Provincial Notice No. 87 of 1953 adopted by Provincial Notice No. 2461 of 1953	Standard	Sections 26; 27; 118; 119; 55 <i>bis</i> ; 62 and 229.
Provincial Notice No. 755 of 1971 adopted by Provincial Notice No. 3654 of 1971 for the Borough of Kloof	Conservancy Tank By-laws	Section 4(e)