

Hessequa, South Africa

Storm Water Management

Legislation as at 19 December 2008

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Hessequa South Africa

Storm Water Management By-law, 2008

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Under the provisions of section 156 of the Constitution of the Republic of South Africa, 1996 the Hessequa Municipality, enacts as follows:-

1. Definitions

In this by-law, unless the context otherwise indicates –

“**floodplain**” means land adjoining a watercourse which is predisposed to flooding up to the 100 year recurrence interval;

“**municipality**” means the Hessequa Municipality established in terms of Section 12 of the Municipal Structures Act, 117 of 1998, and includes any political structure, political office bearer, councillor, duly authorised agent or any employee acting in connection with this by-law by virtue of a power vested in the municipality and delegated or sub-delegated to such political structure, political office bearer, councillor, agent or employee;

“**owner**” also means lessee, occupier, resident or any person who obtains a benefit from the premises or is entitled thereto and also includes any insolvent estate, executor, administrator, trustee, liquidator judicial manager;

“**private stormwater system**” means a stormwater system which is owned, operated or maintained by a person and not the municipality;

“**pollute**” bears the meaning assigned to it in the National Water Act, 1998 (Act 36 of 1998);

“**stormwater**” means water resulting from natural rainfall or the accumulation thereof, and includes –
(a) groundwater and spring water ordinarily conveyed by the stormwater system; and (b) sea water within estuaries, but excludes water in a drinking water or waste water reticulation system;

“**stormwater system**” means both the constructed and natural facilities, including roads, pipes, culverts, 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**” bears the meaning assigned to it in the National Water Act, 1998 (Act 36 of 1998);

“**organ of state**” bears the meaning assigned to it in section 239 of the Constitution.

2. Purpose of by-law

- (1) The purpose of this by-law is to regulate stormwater management and activities that may have an adverse impact on the development, operation and maintenance of the stormwater system.

3. Application of the by-law

This by-law binds an organ of state and applies to storm water systems in built-up areas.

4. Prohibited conduct

- (1) No person may, except with the written consent of the municipality–
 - (a) discharge, place or permit to enter into the stormwater system –
 - (i) anything other than stormwater;
 - (ii) anything likely to damage the stormwater system or interfere with the operation thereof;
 - (iii) anything likely to pollute the water in the stormwater system;
 - (b) discharge from any place, or place onto any surface, any substance other than stormwater, where that substance could reasonably be expected to find its way into the stormwater system;
 - (c) undertake any action that is likely to destroy, damage, alter, endanger or interfere with the free flow of water or the stormwater system, or the operation thereof, which action includes, but is not limited to –
 - (i) obstructing or reducing the capacity of the stormwater system;
 - (ii) opening a pipe, culvert or canal which forms part of the stormwater system;
 - (iii) constructing or erecting any structure or thing over or in such a position or in such a manner as to destroy, damage, endanger or interfere with the stormwater system or the operation thereof;
 - (iv) draining, abstracting or diverting any water directly from the stormwater system;
 - (v) filling, excavating, shaping, landscaping, opening up or removing the ground above, within, under or immediately next to any part of the stormwater system;
 - (vi) changing the design or the use of, or otherwise modify any feature of the stormwater system which alone or in combination with other existing or potential land uses, may cause an increase in flood levels or create a potential flood risk; or
 - (vii) 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.
- (2) When an incident contemplated in subsection (1) (a) or (b) occurs without the consent of the municipality–
 - (a) if the incident is not the result of natural causes, 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, and take, at own cost, all reasonable measures to contain and minimise the effects of the incident, which measures include, but are not limited to, the undertaking of cleaning up operations including the rehabilitation of the environment.
- (3) A person who contravenes a provision of subsection (1) or (2) commits an offence.

5. Application and conditions which municipality may impose

- (1) A person who wishes to obtain the consent of the municipality as contemplated in [section 4](#), must submit an application form obtainable from the municipality.
- (2) When considering an application the municipality may require the applicant to provide the municipality, at own cost, with impact studies such as, but not limited to, environmental impact studies or environmental impact investigations which are required by environmental legislation.

- (3) The municipality may also require the applicant to establish and provide documentation indicating flood lines.

6. Stormwater systems on private land

- (1) An owner of property on which a private stormwater system is located –
 - (a) may not carry out any activity which may impair the effective functioning of the stormwater system or which could reasonably be expected to impair the effective functioning of the stormwater system; and
 - (b) must, at own cost, keep the stormwater system functioning effectively, including undertaking, on written instruction by the municipality, the refurbishment and reconstruction thereof if the municipality has reasonable grounds for issuing such instruction.
- (2) Subsection (1)(b) does not apply where the municipality has accepted responsibility for any of the duties contained in a maintenance agreement or in terms of a condition of a servitude.
- (3) Should an owner fail or refuse to comply with an instruction by the municipality made in terms of subsection (1)(b), the municipality may undertake measures to refurbish or reconstruct the stormwater system, and the municipality may recover from the owner all reasonable costs incurred as a result of action taken.
- (4) An owner who contravenes a provision of subsection (1)(a) or who fails or refuses to comply with an instruction contemplated in subsection (1)(b) commits an offence.

7. Powers of municipality

- (1) The municipality may at all reasonable times enter upon any premises or any portion thereof with the aim of carrying out any inspection or test to determine the current status of a stormwater system, provided that such an owner received prior notice of such entry and that such employee carries an identification card issued by the municipality and produces it upon request of an owner.
- (2) The municipality may, for the purpose of providing and maintaining infrastructure for a stormwater system –
 - (a) on any premises, construct, expand, alter, maintain or lay any drain, pipe or other structure related to the stormwater system on or under any immovable property, and may do any other thing necessary or desirable or incidental, supplementary or ancillary to such construction, expansion, alteration or maintenance;
 - (b) drain stormwater or discharge water from any municipal service works into any watercourse;
 - (c) repair and make good any damage done in or damage resulting from a contravention of section 4(1)(a)(ii) or 4(1)(c), such as, but not limited to –
 - (i) demolishing, altering or otherwise dealing with any building, structure or other thing constructed, erected or laid in contravention of [section 4\(1\)\(c\)\(iii\)](#);
 - (ii) filling in, removing and making good any ground excavated, removed or placed in contravention of [section 4\(1\)\(c\)\(v\)](#);
 - (d) remove anything –
 - (i) discharged or permitted to enter into the stormwater system or watercourse in contravention of [section 4\(1\)\(a\)](#) or (b);
 - (ii) damaging, obstructing or endangering or likely to obstruct, endanger or destroy any part of the stormwater system;

- (e) seal off or block any point of discharge from any premises, irrespective of whether the point is used for lawful purposes;
 - (f) cancel any consent granted in terms of [section 5](#) if any condition under which the consent was granted is not complied with;
 - (g) by written notice and after consultation with an owner, instruct any owner of property –
 - (i) to retain stormwater originating from his or her property on such property or to lay, at the cost of such owner, a stormwater drain pipe or gutter to a suitable place indicated by the municipality, irrespective of whether the course of the pipe or gutter will run over private property or not;
 - (ii) to allow the owner of a higher lying property to lay a stormwater drain pipe or gutter over his or her property for the draining of concentrated stormwater;
 - (h) discharge stormwater into any watercourse, whether on private land or not.
- (3) Should an owner of property fail to comply with an instruction contemplated in subsection(2)(g)(i), the municipality may undertake measures to retain such stormwater or to lay such stormwater drain pipe or gutter.
- (4) Where it seems that any action or neglect by a person or owner of property may lead to a contravention of a provision of this by-law, the municipality may notify, in writing, such person or owner to comply with such requirement as may be necessary to prevent the occurrence of such contravention.
- (5) The municipality may recover all reasonable costs incurred as a result of action taken –
- (a) in terms of subsection (2)(c) or (d), from the person who was responsible for a contravention of the provisions of this by-law or the owner of the property on which a contravention occurred; or
 - (b) in terms of subsection (3), from the owner of the property.
- (6) Any drain, pipe or structure provided in terms of subsection (2)(a) vests in the municipality.
- (7) A person commits an offence if he or she –
- (a) fails to comply with a notice contemplated in subsection (2)(g);
 - (b) threatens, resists, hinders, obstructs or otherwise interfere with, or who uses foul or abusive language towards or at an employee or contractor of the municipality in the exercise of any powers or performance of any duty or function in terms of this by-law; or
 - (c) impersonates an employee or contractor of the municipality.

8. Authentication and service of notices and other documents

- (1) A notice or other document requiring authentication by the municipality must be signed by the municipal manager and when issued by the municipality in terms of this by-law is deemed to be duly issued if it is signed by the municipal manager.
- (2) Any notice or other document that is served on a person in terms of this by-law is regarded as having been served –
 - (a) when it has been delivered to that person personally;
 - (b) when it has been left at that person's place of residence or business in the Republic with a person apparently over the age of 16 years;
 - (c) when it has been posted by registered or certified mail to that person's last known residential or business address in the Republic, and an acknowledgment of the posting thereof from the postal service is obtained;

- (d) if that person's address in the Republic is unknown, when it has been served on that person's agent or representative in the Republic in the manner provided by paragraphs (a), (b) or (c);
 - (e) if that person's address and agent or representative in the Republic is unknown, when it has been posted in a conspicuous place on the property or premises, if any, to which it relates;
 - (f) in the event of a body corporate, when it has been delivered at the registered office of the business premises of such body corporate; or
 - (g) when it has been delivered, at the request of that person, to his or her e-mail address.
- (3) Service of a copy is deemed to be service of the original.
- (4) When any notice or other document must be authorised or served on the owner, occupier, or holder of any property, or right in any property, it is sufficient if that person is described in the notice or other document as the owner, occupier, or holder of the property or right in question, and it is not necessary to name that person.
- (5) Any legal process is effectively and sufficiently served on the municipality when it is delivered to the municipal manager or a person in attendance at the municipal manager's office.

9. Appeal

A person whose rights are affected by a decision of the municipality may appeal against that decision by giving written notice of the appeal and the reasons therefore in terms of section 62 of the Local Government: Municipal Systems Act, [Act 32 of 2000](#) to the municipal manager within 21 days of the date of the notification of the decision.

10. Exemptions

- (1) Any person may by means of a written application, in which the reasons are given in full, apply to the municipality for exemption from any provision of this by-law.
- (2) The municipality may –
- (a) grant an exemption in writing and the conditions in terms of which, if any, and the period for which such exemption is granted must be stipulated therein;
 - (b) alter or cancel any exemption or condition in an exemption; or
 - (c) refuse to grant an exemption.
- (3) An exemption does not take effect before the applicant has undertaken in writing to comply with all conditions imposed by the municipality under subsection (2), however, if an activity is commenced before such undertaking has been submitted to the municipality, the exemption lapses.
- (4) If any condition of an exemption is not complied with, the exemption lapses immediately.

11. Penalties

A person who has committed an offence in terms of this by-law is, on conviction, liable to a fine or in default of payment, to imprisonment, or to such imprisonment without the option of a fine, or to both such fine and such imprisonment, and in the case of a successive or continuing offence, to a fine for every day such offence continues, or in default of payment thereof, to imprisonment.

12. Repeal of by-laws

The provisions of any by-laws previously promulgated by the municipality or by any of the disestablished municipalities now incorporated in the municipality are hereby repealed as far as they relate to matters provided for in this by-law.

13. Short title and commencement

This by-law may be cited as the Stormwater Management By-law, and commences on the date of publication thereof in the *Provincial Gazette*.