Swartland, South Africa

Storm Water Management By-law, 2014

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Swartland
South Africa

Storm Water Management By-law, 2014

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

1. Definitions

In this by-law, the English text shall prevail in the event of an inconsistency between the different texts, and unless the context otherwise indicates:—

"**built-up areas**" means those portions or areas of the municipality which are divided into erven by means of physical survey or which are surrounded by surveyed erven, including the public roads adjacent thereto as well as portions or areas falling within the urban edge of the approved Spatial Development Framework;

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

"**municipality**" means the Swartland 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;

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

"**person**" includes any natural person, juristic person, association or organ of state;

"**pollute**" means the direct or indirect alteration of the physical, chemical or biological properties of a water resource so as to make it—

(a) less fit for any beneficial purpose for which it may reasonably be expected to be used;

(b) harmful or potentially harmful—

(i) to the welfare, health or safety of human beings;

(ii) to any aquatic or non-aquatic organisms;

(iii) to the resource quality;

(iv) to property; or

(v) to any other fish or aquatic animals or life.

"**private storm water system**" means a storm water system which is owned, operated or maintained by a person on his or her own property;

"**stormwater**" means water resulting from natural rainfall or the accumulation thereof, and includes—

(a) groundwater and spring water ordinarily conveyed by the storm water system; and

(b) sea water within estuaries,

but excludes water in a drinking water or waste water reticulation system;

"**storm water 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 storm water;

"**watercourse**" bears the meaning assigned to it in the National Water Act, 1998 (Act 36 of 1998);

"**water source**" includes any water way, surface water, estuary or aquifer;

2. Purpose of by-law

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

3. Application of by-law

This by-law binds an organ of state and applies to storm water systems in built-up areas and the natural environment on which it may have a negative impact.

4. Prohibited conduct

(1) No person may, except with the written consent of the municipality—

(a) discharge, place or permit to enter into the storm water system—

(i) anything other than storm water;

(ii) anything likely to damage the storm water system or interfere with the operation thereof;

(iii) anything likely to pollute the water in the storm water system;

(b) discharge from any place, or place onto any surface, any substance other than storm water, where that substance could reasonably be expected to find its way into the storm water system;

(c) undertake any action that is likely to destroy, damage, alter, endanger or interfere with the free flow of water or the storm water system, or the operation thereof, which action includes, but is not limited to—

(i) obstructing or reducing the capacity of the storm water system;

(ii) opening a pipe, culvert or canal which forms part of the storm water system;

(iii) constructing or erecting any building, structure or thing over or in such a position or in such a manner as to destroy, damage, endanger or interfere with the storm water system or the operation thereof;

(iv) draining, abstracting or diverting any water directly from the storm water system;

(v) filling, excavating, shaping, landscaping, opening up or removing the ground above, within, under or immediately next to any part of the storm water system;

(vi) changing the design or the use of, or otherwise modify any feature of the storm water 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.

(d) deposit storm water, whether originated on private or other areas, in a pipe line or structure (water and sewerage) other than a storm water network.

(2) No person may carry out any activity that causes storm water to flood the property of the municipality or that of any other person or to create the risk of such flooding.

(3) When an incident contemplated in subsection (1) (a), (b), (c) of (d) 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.

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 in the form prescribed by 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 or engineers' reports which are required by environmental legislation.

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

6. Storm water systems on private land

(1) An owner of property on which a private storm water system is located—

(a) may not carry out any activity which may impair the effective functioning of the storm water system or which could reasonably be expected to impair the effective functioning of the storm water system; and

(b) must, at own cost, keep the storm water 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) or subsection (3), the municipality may undertake measures to refurbish or reconstruct the storm water system, and the municipality may recover from the owner all reasonable costs incurred as a result of action taken.

(4) If, in the opinion of the municipality, it is impracticable for storm water to be drained from any high-lying erf direct to a public street, the owner of any lower lying erf shall be obliged to accept or permit the passage of such storm water and the owner of such high-lying erf, discharging over the lower lying erf, shall be liable for a proportionate share of the cost of any pipe-line or drain which the owner of such lower lying erf may find necessary to construct for the purpose of conducting the water so discharged.

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 storm water system.

(2) The municipality may, for the purpose of providing and maintaining infrastructure for a storm water system—

(a) on any premises, construct, expand, alter, maintain or lay any drain, pipe or other structure related to the storm water 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 storm water 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), 4(1)(c) or 4(1)(d) such as, but not limited to—

(i) subject to an appropriate court order, 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 storm water 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 storm water 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, instruct any owner of property where storm water is generated or accumulated to retain storm water on such property or to lay, at the cost of such owner, a storm water 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;

(h) drain storm water into any water source, whether or not such source is on private property.

(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 storm water or to lay such storm water 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.

8. Liaison forums in community

(1) The municipality may establish one or more liaison forums in a community for the purposes of—

(a) creating conditions for a local community to participate in the affairs of the municipality; and

(b) promoting the storm water activities of the municipality;

(2) A liaison forum may consist of—

(a) a member of members of an interest group, or an affected person in the spirit of section 2(4)(f) to (h) of the national Environmental Management Act, 1998;

(b) a designated official or officials of the municipality;

(c) a councillor; and

(d) any other person or persons on which the municipality may decide.

(3) (a) the municipality may, in the implementation and application of this by-law, request the input of a liaison forum.

(b) a liaison forum or any person or persons contemplated in subsection (2) may, on own initiative submit an input to the municipality.

9. 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 if such notice or document has been served in terms of section 115(1) of the Municipal Systems Act, 2000 (Act 32 of 2000).

(3) Service of a copy is deemed to be service of the original.

(4) 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.

10. Appeal

A person whose rights are affected by a delegated decision of the municipality may appeal against that decision by giving written notice of the appeal and the reasons therefor 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.

11. 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.

12. Offences and Penalties

(1) A person who contravenes any provision or fails to comply with any provision of this by-law, or fails to comply with a notice issued in terms of this by-law, commits an offence and shall on conviction be liable to—

(a) a fine or imprisonment, or either such fine or imprisonment or to both such fine and such imprisonment; and

(b) in the case of a continuing offence, to an additional fine or an additional period of imprisonment or to such additional imprisonment without the option of a fine or to both such additional fine and imprisonment for each day on which such offence is continued; and

(c) a further amount equal to any costs and expenses found by the court to have been incurred by the municipality as result of such contravention or failure.

(2) A person commits an offence if he or she—

(a) threatens, resists, hinders, obstructs or otherwise interferes 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

(b) impersonates an employee or contractor of the municipality.

13. Conflict with other legislation

In the event of any conflict between any provision of this by-law and National and Provincial legislation, standards, policies or guidelines, the National and Provincial legislation, standards, policies or guidelines shall prevail.

14. 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.

15. Short title and commencement

This by-law shall be known as the Storm Water Management By-law, and commences on the date of publication thereof in the Provincial Gazette.