

MUNICIPALITY OF BEAUFORT-WEST

Notice no. 144/2005

The Council of the Municipality of Beaufort West published the sub-joined by-law relating to stormwater, for general notice.

BY-LAW RELATING TO STORMWATER

Introduction

Whereas the Municipality of Beaufort West is vested with Legislative Authority in terms of the Constitution of the Republic of South Africa (Act 108 of 1996),

AND WHEREAS the Municipality has the right to determine its own by-laws relating to stormwater;

Be it therefore enacted by the Municipality of Beaufort West as follows:-

1. Definitions

In this by-law, unless inconsistent with the context:-

“Council” means the municipal council of the municipality;

“engineer” means the person appointed by the municipality to act as engineer for the purpose of administering this by-law

“flood level” means that level reached by flood waters resulting from a storm designated in terms of recognised engineering criteria as being of a frequency to be expected once in every 50 years;

“flood plain” means the area subject to inundation by the flood level;

“municipality” means the Municipality of Beaufort West;

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

“Property By-Law” means the By-law Relating to the Management and Administration of Immovable Municipal Property, published in Provincial Gazette of 6082 of 7 November 2003;

“stormwater” means water resulting from natural precipitation or accumulation and includes rainwater, groundwater and spring water;

“stormwater system” means both the constructed and natural facilities, including 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 and disposal of stormwater;

“water pollution incident” means an incident or occurrence whereby a substance or matter, other than stormwater, is discharged directly or indirectly into the stormwater system and which may be a danger to health or may

adversely affect the general quality of water in the stormwater system to such an extent that public health or the health of natural ecosystems may be threatened, and

“watercourse” means:-

- (a) a river, stream, channel or canal in which water flows regularly or intermittently, and
- (b) a vlei, wetland, dam or lake into which or from which water flows, and includes, where relevant, the bed and the banks of such watercourse.

2. **Prohibited discharges**

No person may, except with the written consent of the engineer and subject to any conditions the engineer may impose, discharge, permit to enter or place anything other than stormwater into the stormwater system.

3. **Protection of stormwater system**

No person may, except with the written consent of the engineer and subject to any conditions the engineer may impose-

- (a) damage, endanger, destroy or undertake any action likely to damage, endanger or destroy, the stormwater system or the operation thereof;
- (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) discharge, permit to enter or place anything likely to damage the stormwater system or interfere with the operation thereof or contaminate or pollute the water therein;
- (d) construct or erect any structure or thing over or in such a position or in such a manner so as to interfere with or endanger the stormwater system or the operation thereof;
- (e) make an opening into a stormwater pipe, canal or culvert;
- (f) drain, abstract or divert any water directly from the stormwater system, or
- (g) fill, excavate, shape, landscape, open up or remove the ground above, within, under or immediately next to any part of the stormwater system.

4. **Prevention of flood risk**

No person may, except with the written consent of the engineer and subject to any conditions the engineer may impose-

- (a) obstruct or reduce the capacity of the stormwater system;

- (b) change the design or the use of, or otherwise modify any aspect of the stormwater system which, alone or in combination with other existing or future uses, may cause an increase in flood levels or create a potential flood risk, or
- (c) 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.

5. **Studies and assessments**

- (1) The conditions which the engineer may impose in terms of Sections 2, 3, and 4, may include, but are not limited to-
 - (a) the establishment of flood lines;
 - (b) the undertaking of impact assessments, and
 - (c) environmental impact studies or investigations which may be required by any applicable environmental legislation.
- (2) The costs of any study undertaken in terms of the provisions of subsection (1), is for the account of the applicant.

6. **Water pollution incidents**

- (1) Whenever a water pollution incident takes place on any property or premises-
 - (a) the owner of the property or premises on which the incident took place, or is still in the process of taking place, or
 - (b) the person responsible for the incident, if the incident is not the result of natural causes,

must immediately report the incident to the municipality, and at own cost, take all reasonable measures which will contain and minimise the effects of the pollution.

- (2) If the owner or person responsible for the pollution incident fail to introduce measures to contain and minimise the effects of the pollution or have introduced insufficient measures, the engineer may at the cost of such owner or person-
 - (a) undertake cleaning up procedures;
 - (b) rehabilitate the environment;
 - (c) take any other reasonable measures to neutralise the effect of the pollution incident.

7. **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 will or which, in the opinion of the engineer, will adversely affect the functioning of such stormwater system;
 - (b) must keep such stormwater system functioning effectively; and
 - (c) must undertake the refurbishment and reconstruction thereof if, in the opinion of the engineer, it should be reconstructed or refurbished.
- (2) In cases where the flow of stormwater in a private stormwater system has been increased as a result of new building developments or changes to the stormwater system by the council, the council may, either on request of the owner or on own volition, decide to take over the responsibility for the private stormwater system.
- (3) The provisions of sub-section (1) do not apply to the extent that the council has accepted responsibility for any of the duties contained therein, either in a formal maintenance agreement or in terms of a condition of a servitude.

8. Provision of Infrastructure

- (1) The Council has the power to-
- (a) construct, expand, alter, maintain or lay any drains, pipes or other structures related to the stormwater system on or under any immovable property, and ownership of these drains, pipes or structures shall vest in the municipality;
 - (b) drain stormwater or discharge water from any municipal service works into any natural watercourse, and
 - (c) do any other thing necessary or desirable for or incidental, supplementary or ancillary to any matter contemplated by paragraph (a).
- (2) When the Council exercises the powers referred to in subsection (1)(a) in regard to immovable property not owned by the municipality, it shall comply with the provisions of the Property By-Law.

9. Miscellaneous powers of the engineer

- (1) The engineer may-
- (a) demolish, alter or otherwise deal with any building, structure or other thing constructed, erected or laid in contravention with the provisions of this by-law;
 - (b) fill in, remove and make good any ground excavated, removed or placed in contravention with the provisions of this by-law;
 - (c) repair and make good any damage done in contravention with the provisions of this by-law or resulting from a contravention;
 - (d) remove anything discharged, permitted to enter into the stormwater system or natural watercourse in contravention of the provisions of this by-law;

- (e) remove anything damaging, obstructing or endangering or likely to obstruct, endanger or destroy 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 with the provisions of 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 under which the permission was granted are not complied with;
 - (h) by written notice, direct any owner of property 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) by written notice, direct any owner of property to retain stormwater on such property or, at the cost of such owner, to lay a stormwater drain pipe or gutter to a suitable place indicated by the Council, irrespective of whether the course of the pipe or gutter will run over private property or not, and
 - (i) discharge stormwater into any watercourse, whether on private land or not.
- (2) The engineer may, in any case where it seems that any action or neglect by any person or owner of property may lead to a contravention of the provisions of this by-law, give notice in writing to such person or owner of property to comply to such requirements as the engineer may deem necessary to prevent the occurrence of such contravention.
- (3) The engineer may recover all reasonable costs incurred as a result of action taken in terms of subsection (1) from a 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.

10. **Offences and penalties.**

Any person who-

- (a) contravenes any provision of this by-law;
- (b) fails to comply with the terms of any notice issued in terms of this by-law;
- (c) threatens, resists, hinders or obstructs a councillor or an employee or contractor of the municipality in the exercise of any powers or performance of any duties or function in terms of this by-law,

is guilty of an offence and, on conviction, liable to the payment of a fine.