eTHEKWINI MUNICIPALITY: BIODIVERSITY PROTECTION BY-LAW, 2025

ADOPTED BY COUNCIL ON THE:

BIODIVERSITY PROTECTION BY-LAW, 2025

To provide for the conservation, maintenance and protection of biodiversity and for the delivery of an ecologically sustainable natural resources for the residents of eThekwini Municipality and to provide for matters incidental thereto.

PREAMBLE

WHEREAS the Municipality has competence and power, as an organ of the state as relates to the protection of the environment, incidental to municipal planning in terms of Part B of Schedule 4 read with section 156(5) of the Constitution of the Republic of South Africa;

WHEREAS section 24 of the Bill of Rights, in the Constitution, identifies the right to a healthy environment, environmental protection, prevention of ecological degradation and promotion of ecological sustainability for the members of both present and future generations, as an obligation of all state organs, including the Municipality, to ensure it is protected and afforded to everyone;

AND WHEREAS the Municipality wishes to adopt such measures as may be necessary to protect and preserve the natural vegetation, ecological goods and services and biodiversity within geographical area of the Municipality;

NOW THEREFORE the Municipal Council of the eThekwini Metropolitan Municipality, acting in terms of section 156 read with Part B of Schedule 5 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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CHAPTER 1
INTERPRETATION

Definitions

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

"alien species" means any species which is found existing outside of its natural home range;

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

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

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

(c) such enforcement officer employee, agent, delegated nominee, representative or service provider 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; or

(d) eThekwini Municipality employee designated as Environmental Management Inspector in terms of the National Environmental Management Act, 1998 (Act 107 of 1998) (NEMA) to enforce the NEMA and/or any specific environmental management act in terms of NEMA;

"biodiversity" means the total sum of and or variability among living organisms from all sources including, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part and includes genetic diversity, diversity within species, between species, and of ecosystems; naturally occurring and native to an area;

"critical biodiversity area" means an area required to meet biodiversity targets for ecosystems, species and ecological processes, as identified in a systematic biodiversity plan;

"ecosystem" means a dynamic complex of animal, plant and microorganism communities and their non-living environment interacting as a functional unit;

“environmental impact assessment” means the systematic identifying, assessment and reporting of impacts to the environment from any planned activity as required in terms of section 24 of the National Environmental Management Act, 1998 (Act 107 of 1998);

“forest” means any group of naturally occurring, indigenous trees whose crowns are largely contiguous or area of trees which have been declared by the Minister: Forestry, Fisheries and Environmental Affairs to be a natural forest in terms of section 7(2) of the National Forests Act, 1998 (Act 84 of 1998);

“Invasive species” means any species:

(a) whose establishment and spread is outside of its natural distribution range and which threatens the biodiversity integrity of ecosystems, habitats or other species or has the recognised potential to threaten ecosystems, habitats or other species; or

(b) listed as an invasive species in terms of either section 70 the National Environmental Management: Biodiversity Act 10 of 2004 or regulation 15 of the Conservation of Agricultural Resources Act, 1983 (Act 43 of 1983);

"Municipality" means the eThekwini Metropolitan Municipality, a category A municipality as envisaged in terms of section 155(1) of the Constitution of South Africa;

"Municipal Council" or **"Council"** means the eThekwini Metropolitan Municipal Council, a municipal council referred to in section 157(1) of the Constitution;

"Municipal Manager" or “City Manager” means a person appointed in terms of the Local Government: Municipal Systems Act, 1998 (Act 117 of 1998) as the head of administration of the Municipality;

“NEMA” means the National Environmental Management Act, 1998 (Act 107 of 1998);
“NEMBA” means the National Environmental Management: Biodiversity Act, 2004 (Act 10 of 2004);

“non-user conservation servitude” means a spatially defined area and a set of conditions of establishment, which define certain restrictions on the use of the defined area, in terms of a decision and process under the eThekwini Municipality: Spatial Planning and Land Use Management By-law, 2016 as amended;

"person" means a natural or juristic person;

"protected species" means any plant or animal which is considered to be protected or specially protected in terms of the Natal Nature Conservation Ordinance, 15 of 1974 or the NEMBA;

"Private Open Space" means a private open space as defined in land use schemed made in terms of eThekwini Municipality: Spatial Planning and Land Use Management By-law, 2016 as amended;

"Public Open Space" means a public open space or reserve as defined in land use schemed made in terms of eThekwini Municipality: Spatial Planning and Land Use Management By-law, 2016 as amended;

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

"waste" means any substance, as defined in the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008); and

"watercourse" means:

(a) a river or spring;
(b) a natural channel in which water flows regularly or intermittently;
(c) a wetland, lake or dam into which, or from which, water flows; or
(d) any collection of water which the Minister responsible for Water Affairs may, by notice in the *Gazette*, declare to be banks.

Interpretation

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

(2) In the event of any conflict between this By-law and any other By-law or legislation which directly or indirectly, within the jurisdiction of the Municipality, regulates biodiversity, the provisions of this By-law will prevail to the extent of the inconsistency.

CHAPTER 2
OBJECTS OF BY-LAW

Objects of By-law

3. The objects of this By-law are to:

(a) regulate activities of any person within the Municipality in as far as those activities may cause the degradation of biodiversity within the eThekwini municipal area;

(b) protect and manage biodiversity within high priority biodiversity areas in the eThekwini municipal area;

(c) protect the Municipality's undisturbed biodiversity as well as disturbed biodiversity, that may be rehabilitated, for the benefit of current and future generations;

(d) protect and manage conservation worthy species, natural environment throughout the eThekwini municipal area;

(e) manage adverse impacts on biodiversity within the municipal area, where applicable in co-operation with national, provincial and other local spheres of government; and

(f) promote coordination among Municipality functions that influence biodiversity to enhance compliance monitoring and enforcement for sustainable biodiversity protection.

CHAPTER 3
APPLICATION

Application of By-law

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

CHAPTER 4
WATERCOURSE

Watercourse restricted activities

5. (1) No person without a prior written consent from the Municipality may–

(a) undertake any of the activities listed in subsection (2); or

(b) cause or allow any activity in the watercourse,

to occur within the 1:100-year flood line or 32m of the watercourse (watercourse buffer zone) in the absence of a 1:100 flood line depiction on the Municipality's Geographical Information Systems.

(2) The following activities may not be undertaken without a prior written consent from the Municipality, if undertaken in the watercourse, within 1:100-year flood line or 32m of a watercourse:

(a) the physical altering, reshaping, infilling, diversion, excavation or obstruction of the bed and/or banks of a watercourse by construction of, but not limited to:

(i) any riverbank retaining structures, which includes but are not limited to:

(aa) hessian sandbags;

(bb) concrete walls;

(cc) gabion baskets; or

(dd) tyres;

(ii) fences or barbed/ razor wire barriers;

(iii) weirs;

(iv) ponds;

(v) access structures such as:

(aa) earthen berms;

(bb) pipe culverts; or

(cc) bridges,

(vi) pipes;

(vii) conduits; and/ or

(viii) stormwater pipe discharge headwalls;

(b) the dumping or depositing of waste materials (solid or liquid) into a watercourse;

(c) the removal or destruction of naturally occurring indigenous vegetation within a watercourse which may pose a risk to the structural integrity of the riparian habitat and or the ecological integrity thereof;

(d) the removal of rocks, sand, silt or gravel from watercourses;

(e) the drainage of wetlands by any means unless by relevant authorisation; or

(f) the abstraction of water from wetlands, streams or rivers for commercial usage but excluding for domestic subsistence usage.

(3) The Municipality may from time to time amend the list of activities contemplated in subsection (2) by adding new activities.

CHAPTER 5
PROTECTION OF SPECIES AND ECOSYSTEMS

Indigenous vegetation restricted activities

6. (1) No person may without a prior written consent of the Municipality pick, cut, disturb, damage, grow or destroy a naturally occurring indigenous plant or plant community, from any of the areas listed in subsection (2).

(2) The following areas are restricted for activities contemplated in subsection (1):

(a) areas designated as:
  (i) critical biodiversity area;
  (ii) non-user conservation servitude;
  (iii) protected areas as defined in terms of section 52 of the National Environmental Management: Protected Areas Act, 2003 (Act No.57 of 2003);
  (iv) river reserve;
  (v) area zoned specifically for purposes of biodiversity conservation; or
  (vi) areas zoned either as Public Open Space or Private Open Space in terms of applicable eThekwini Municipality By-law or planning legislation;
(b) areas along a watercourse and defined watercourse buffer;
(c) a natural forest;
(d) a threatened, protected or specially protected species as defined or determined in terms of the following legislation:
    (i) the National Forests Act,1998(Act No.84 of 1998);
    (ii) the Nature Conservation Ordinance No. 15 of 1974;
    (iii) the Threatened or Protected Species Regulations, 2015 in terms of section 56 of the NEMBA; or
    (iv) applicable eThekwini Municipality By-laws.

CHAPTER 6
INVASIVE ALIEN SPECIES

Invasive alien species restricted activities

7. (1) No person, including landowner or tenant of any property of landowner, may—

(a) keep, propagate, breed, transport or sell any species (either floral or faunal) listed as an invasive alien in terms of NEMBA unless in possession of a written authority from the relevant mandated government department; or

(b) eradicate any invasive species, listed in terms of Conservation of Agricultural Resources Act,1983 (Act No. 43 of 1983) or NEMBA, using any method, chemical or implement which is–

(i) deemed to be either unlawful within this context;

(ii) damaging to the ambient biodiversity; or

(iii) in contradiction to eradication best practice recognised in local, provincial or national legislation or proven science.

(2). The person conducting an activity contemplated in subsection (1) must produce, upon a request to do so by the authorised official–

(a) a copy of authority in terms of paragraph (a) or

(b) a method employed in respect of paragraph (b).

CHAPTER 7
SERVITUDES

Non-user conservation servitudes

8. (1) No person may without a written consent, within a registered non-user conservation servitude:

(a) undertake earthworks or the erection of any structure, building, fencing, swimming pool, wastewater, stormwater infrastructure, or similar infrastructure;

(b) construct a road, track, driveway or similar infrastructure;

(c) construct a dam or any like feature;

(d) landscaping or planting of any vegetation, unless it is a requirement for rehabilitation of the environment in terms of environmental management plan agreed with the Municipality; or

(e) dumping of garden waste or any other form of waste.

(2) The Municipality may consent to undertaking of an activity specified in subsection (1) if required for rehabilitation of the environment in terms of this By-law or environmental management plan approved or adopted by the Municipality.

CHAPTER 8
CONSENTS AND PERMITS

Application for consents and processing

9. (1) A person intending to undertake any activity, contemplated in Chapter 4, 5 and 6 of this By-law must apply to the Municipality for a consent to undertake such activity.

(2) The application, contemplated in subsection (1) must be made to the line function responsible for biodiversity protection, on a prescribed form provided in Schedule 1.

(3) The Municipality must process the application and finalise it within timelines determined and published by the Municipality on its website every 5 years.

(4) Additional application processing timelines may be considered—
where environmental impact assessment or ecological specialist assessment and report(s) preparation and submission to the Municipality is required; or

(a) where an undertaking or a document is required from any other person, Municipality line function, local, provincial or national authority to finalise the application.

(5) The Municipality designates the Deputy Head, or equivalent senior official responsible for biodiversity protection to consider applications submitted in terms of this Chapter.

(6) The Deputy Head, or equivalent senior official responsible for biodiversity protection may, as part of processing an application as contemplated in subsection (5) request the applicant to appoint an independent qualified and professionally registered person to–

(a) undertake specified environmental impact, damage or ecological specialist study; and
(b) submit a report,

with an application or following an application contemplated in this Chapter.

(7) Where a report, contemplated in subsection (6) has been submitted by an applicant, the Deputy Head, or equivalent senior official responsible for biodiversity protection must process the application, finalise and communicate the decision within timelines decided and published on the Municipality's website as contemplated in subsection (3).

Consents, condition and other authorities permits adoption

10. (1) The Deputy Head, or equivalent senior official responsible for biodiversity protection may grant consent with or without any condition to an applicant in respect of an application to undertake an activity contemplated in Chapter 4, 5 and 7 of this By-law.

(2) The Deputy Head, or equivalent senior official responsible for biodiversity protection may grant consent with or without a condition to an applicant to undertake part of one or more of the activities contemplated Chapter 4, 5 and 7 of this By-law.

(3) The Deputy Head, or equivalent senior official responsible for biodiversity protection may refuse to grant consent to an applicant to undertake any of activities contemplated in Chapter 4, 5 and 7 of this By-law.

(4) The Deputy Head, or equivalent senior official responsible for biodiversity protection may upon perusing an application for activity in Chapter 5 of this By-law consider, adopts for compliance monitoring and enforcement purposes, that any or combination of authorisation, permit, licence, approval, or directive listed in subsection (5) submit—

(a) such authorisation, permit, licence, approval or directive or any combination with an application or immediately thereafter; and

(b) related reports or documents as may be determined, for consideration and consent, that such authorisation, permit, licence, approval or directive or any combination is sufficient for management of impacts on the watercourse, wetland, or indigenous vegetation, contemplated in Chapters 5 and 7 above.

(5) The authorisation, permit, licence, approval, or directive contemplated in subsection (4) include, but is not limited to—

(a) environmental authorisation in terms of NEMA, read with the Environmental Impact Assessment Regulations 2014;

(b) water use licence in terms of the National Water Act, 1998 (Act No.36 of 1998);

(c) environmental maintenance management programme in terms of NEMA and the Environmental Impact Assessment Regulations 2014;

(d) section 30A directive in terms of NEMA;

(e) permit in terms of the National Forest Act,1998(Act No.84 of 1998);

(f) permit in terms of the Nature Conservation Ordinance 15 of 1974;

(g) permit in terms of the Threatened or Protected Species Regulations in terms of section 56 of the NEMBA; or

(h) Conservation of Agricultural Resources Act,1983 (Act No. 43 of 1983).

(6) The Municipality may decide not to adopt an authorisation, permit, licence, approval, or directive as contemplated in subsection (4) read with subsection (5).

CHAPTER 9
ENFORCEMENT

Authority to investigate

11. (1) Notwithstanding anything to the contrary contained in any other law, the Municipality has the authority to investigate complaints in relation to an activity in Chapter 4, 5, 6 and 7 of this By-law.

(2) The investigations are to be conducted by an official designated by Head: Development Planning, Environment and Management.

(3) The designated official must after investigations, where necessary make recommendations regarding—

(a) the undertaking of activity or activity being undertaken, that is the subject of compliant or related;
(b) possible environmental impact assessment or ecological specialist assessment undertaking and report compilation, content of what to be covered in the report;
(c) municipality line functions and/or other local, provincial or national environmental authorities to whom any environmental impact assessment or ecological specialist assessment report is to be submitted; or
(d) deadlines for submission of reports or any related documents,

to the Deputy Head, or equivalent senior officer responsible for biodiversity protection or Deputy Head of equivalent senior officer of a Municipality line function performing any environmental, biodiversity or natural resources protection.

Powers of authorised officials

12. (1) An authorised official may question any person regarding an act or omission constituting any one or more of the following-

(i) a contravention in terms of this By-law;
(ii) a contravention of a consent issued in terms of this By-law; and
(iii) a contravention of or a condition of consent issued in terms of this By-law.

(2) An authorised person may:

(a) conduct inspection of any site, area, property, premise, structure, document or seek clarity regarding any written or electronic document, on the matter that is being questioned in subsection (1).
(b) request any information from any person regarding a matter contemplated in such subsection (1).
(c) request a copy or extract of any document or information contemplated in paragraphs (a) and (b);
(d) take any document or information contemplated in paragraphs (a) and (b), with him or her to make a copy or extract some information;
(e) take a photograph of the document or information contemplated in paragraphs (a) and (b);
(f) take a video of any document, site, area, property, premises, structures contemplated in paragraph(a);
(g) take photograph or make audio-visual recording of anything related to a matter in subsection (1); or
(h) take a sample or accompany any relevant specialist to take any sample in relation to the matter contemplated in paragraph (a).

(3) The powers and duties, in this By-law, should be utilised, for the purpose of performing a function or duty in terms of this By-law or any compliance monitoring and enforcement measure available to the Municipality in terms of any applicable legislation.

Contravention Notices

13. (1) The Head: Development Planning, Environment and Management or equivalent senior officer responsible for biodiversity protection or Deputy Head or equivalent senior officer of a Municipality line function performing any environmental, biodiversity or natural resources protection may–

(a) issue a contravention notice provided in Schedule 3, in writing, to a person who has failed to comply with the provision of this By-law;
(b) within a specified time, cease undertaking certain activity in or within a specified area or site;
(c) within a specified time, employ the services of a specified professional and/or specialist to:
    (i) undertake environmental damage assessment or specialist ecological assessment;
    (ii) prepare a report with findings and recommendations of mitigation measures against findings; and/or

(iii) submit such report to the Municipality and/or other relevant Municipality line function or local, provincial or national environmental authority for review, comments, deliberations on such a report and Municipality's approval of mitigation measures to be undertaken,

(d) within a specified time of mitigation measures approval by the Municipality, commence undertaking mitigation measures as approved by the Municipality; and

(e) within a specified time of completing undertaking mitigation measures, submit close-out report prepared by an independent qualified environmental consultant.

(2) The Head: Development Planning, Environment and Management or equivalent senior officer responsible for biodiversity protection or Deputy Head or equivalent senior officer of a Municipality line function performing any environmental, biodiversity or natural resources protection must, prior to issuing a contravention notice contemplated in subsection (1), issue a notice of intention to issue a contravention notice provided in Schedule 2, allowing a person to make written representations on why the contravention notice should not be issued.

(3) The notice, contemplated in subsection (1) may be issued, where urgent action is required to be undertaken for environmental protection from imminent degradation or irreparable damage and give the person issued with such notice an opportunity to make representations as soon as in receipt of such notice.

Indemnity

14. The Municipality and any authorised official are not liable to any third party for any damage caused by anything lawfully done or omitted by the Municipality or the authorised official in carrying out any function or duty in terms of this By-law.

CHAPTER 10
BIODIVERSITY ENFORCEMENT DECISION MAKERS' COMMITTEE ESTABLISHMENT

Committee establishment

15. (1) The Deputy Head or equivalent senior officer responsible for biodiversity protection or Deputy Head or equivalent senior officer of a Municipality line function performing any environmental, biodiversity or natural resources protection, may establish a committee, where there are 2 or more authorised officials respectively, performing functions under Chapter 8.

(2) The Committee must—

(a) discuss any matter contemplated in Chapter 8 and any related matter in this By-law; and

(b) assist the Deputy Head or equivalent senior officer in the decision making.

(3) The Deputy Head or equivalent senior officer responsible for biodiversity protection, or Deputy Head or equivalent senior officer of other Municipality line function performing any environmental, biodiversity or natural resources protection, in respect of Chapter 8 may call for any required internal or external sourced specialist assistance as needed to make a decision.

CHAPTER 11
OFFENCES AND PENALTIES

Offences

16. (1) A person is guilty of an offence if such person–

(a) without a prior written consent from the Municipality undertakes any activity contemplated in section 5(2) read with section 5(1), 5(3), 6(1) read with section 6(2) and 8(1) of this By-law;

(b) obstructs, threatens or hinders in any manner whatsoever an authorised official who is performing a function under this By-law;

(c) refuses to provide to an authorised official or Biodiversity Enforcement Officer such information as is required in law, to allow such official or officer to perform a function in terms of this By-law;

(d) knowingly provide or gives false or misleading information to an authorised official or Biodiversity Enforcement Officer, as the case may be; or

(e) contravenes or fails to comply with an instruction or order lawfully issued in terms of this By-law.

(2) A person knowingly and with intent continuously commits an offence if such person–

(a) has been found to have previously been convicted of such an offence in terms of the By-law or other legislation regulating similar activity;

(b) has previously been issued an instruction verbally or in writing, by any means recognised in law, informing him/her that such activity is unlawful in terms of the By-law or other legislation regulating similar activity;

(c) continues to undertake, or let the undertaking of, an activity in Chapter 5, 6 or 8, immediately after being instructed verbally or in writing, by any means recognised in law, that undertaking such activity without a valid written authorisation from or of the Municipality is an offence; or

(d) continues undertaking an act contemplated ins subsection (1) immediately after being instructed verbally or in writing, by any means recognised in law, to refrain from doing such an act.

(3) A person who, upon the opinion of an authorised official, commits, is committing or has committed, an offence in terms of this By-law, may be issued with an admission of guilt fine of a maximum of R5000(five thousand rands).

Penalties

17. (1) A person who commits an offence in terms of this By-law is upon conviction, liable–

(a) to imprisonment for a period not exceeding 3 years;

(b) to payment of a maximum fine of R100 000 (hundred thousand rands); or

(c) to both such fine and imprisonment.

(2) A person found guilty of an offence in terms of this By-law and who is a repeat offender may be imprisoned to a maximum period of 5 years or payment of R200 000 (two hundred thousand rands) fine, or to both such fine and imprisonment.

CHAPTER 12
GENERAL PROVISIONS

Delegations

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

(a) power, excluding a power contemplated 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, councillors, 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) A delegation contemplated in subsection (1) must be effected in accordance with the system of delegation adopted by the Council in accordance with section 59(1) of the

Systems Act, subject to the criteria set out in section 59(2) of the Systems Act.

Appeals

19. (1) A person whose rights are affected by a decision taken by the Municipality in terms of this By-law may appeal against that decision in terms of section 62 of the 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 must act in accordance with the provisions outlined in section 62 of the Municipal Systems Act, 2000 in response to the appeal.

Short title and commencement

20. This By-law is called the eThekwini Municipality: Biodiversity Protection By-law, 2025 and takes effect six months from the date of publication thereof in the Provincial Gazette or on such earlier date as may be determined by the publication of a commencement notice in the Provincial Gazette.