

1/3/12

OVERSTRAND MUNICIPALITY  
BY-LAW RELATING TO STORMWATER MANAGEMENT

To provide for the regulation of stormwater management in the built-up areas of the Overstrand Municipality and to regulate activities which may have a detrimental effect on the development, operation or maintenance of the stormwater system.

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## 1. DEFINITIONS

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

**“council”** means the municipal council of the Municipality, or any political structure, political office bearer, committee, councillor, or official of the Council, delegated to exercise powers or perform duties in terms of this by-law;

**“floodplain”** means the land adjoining a watercourse which, in the opinion of the Council, is susceptible to inundation by floods up to the one hundred year recurrence interval;

**“Municipality”** means the Overstrand Municipality;

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

**“stormwater”** means water resulting from natural precipitation and/or the accumulation thereof and includes groundwater and spring water ordinarily conveyed by the stormwater system, as well as sea water within estuaries, but excludes water in a drinking water system;

**“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 which has a detrimental impact or a potential detrimental impact on the quality of the 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, spring, 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. APPLICATION

- (1) This by-law binds any organ of state.
- (2) Any provision in any other by-law of the Municipality dealing specifically with stormwater, is subject to the provisions of this by-law.
- (3) This by-law applies to stormwater systems in built-up areas.

## 3. PROTECTION OF STORMWATER SYSTEM

No person may, except with the written consent of the Municipality and subject to any conditions it 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) discharge, permit to enter or place anything other than stormwater into the stormwater system;
- (e) 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;
- (f) make an opening into a stormwater pipe, canal or culvert;
- (g) drain, abstract or divert any water directly from the stormwater system;
- (h) fill, excavate, shape, landscape, open up or remove the ground above, within, under or immediately next to any part of the formal stormwater system;
- (i) remove manhole coverings, grids and other equipment designed to prevent access to the stormwater system by persons, animals and waterborne debris.

## 4. PREVENTION OF FLOOD RISK

No person may, except with the written consent of the Municipality and subject to any conditions it 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 potential land uses, may cause an increase in flood levels or create a potential flood risk;
- (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;
- (d) undertake any activity with regard to stormwater management which may interfere with existing ecological elements such as wetlands and natural watertable levels.

## 5. STUDIES AND ASSESSMENTS

The conditions which the Municipality may impose in terms of Sections 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 environmental investigations which may be required by any applicable environmental legislation or deemed necessary by the Municipality in its sole discretion.

## 6. WATER POLLUTION

In the event of a water pollution incident contemplated in Section 3(b), 3(c) or 3(d)—

- (a) the owner of the property 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,

shall immediately report the incident to the Municipality, and at own cost, take all reasonable measures which, in the opinion of the Municipality, will minimize the effects of the pollution, by undertaking cleaning up procedures, including the rehabilitation of the environment and implementation of measures to prevent a recurrence of the incident, as required by the Municipality.

## 7. STORM WATER SYSTEMS ON PRIVATE LAND

(1) Every owner of property on which private stormwater systems are located, shall—

- (a) not carry out any activity which will or which, in the opinion of the Municipality, could reasonably be expected to impair the effective functioning of the stormwater system, or pollute the stormwater flowing in it,
- (b) at own cost, keep such stormwater systems functioning effectively, including undertaking the refurbishment and reconstruction thereof if, in the opinion of the Municipality, it should be reconstructed or refurbished,
- (c) at own cost control vegetation which may obstruct the flow of stormwater which may cause flooding lower down the watercourse,
- (d) not discharge or drain stormwater into any sewerage system.

(2) The provisions of subsection (1) do not apply to the extent that the Municipality has accepted responsibility for any of the duties contained therein, either in a formal maintenance agreement or in terms of a condition of servitude.

## 8. PROVISION OF INFRASTRUCTURE

(1) The Municipality may—

- (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, attenuated where deemed necessary into any natural watercourse, excluding into any sewerage system, and
- (c) do any other thing necessary or desirable for or incidental, supplementary or ancillary to any matter contemplated by subsection (a).

(2) When the Municipality exercises its powers in terms of subsection (1)(a) in regard to immovable property not owned by the Municipality, it shall comply with the provisions of the Municipality's policy relating to the management and administration of the Municipality's immovable property.

## 9. POWERS OF THE MUNICIPALITY

(1) The Municipality may—

- (a) demolish, alter or otherwise deal with any building, structure or other thing constructed, erected or laid in contravention of the provision of this by-law;
- (b) fill in, remove and make good any ground excavated, removed or placed in contravention of the provisions of this by-law;
- (c) repair and make good any damage done in contravention of 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 or block any point of discharge from any premises if such discharge point is in contravention of 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;
- (i) 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 Municipality, irrespective of whether the course of the pipe or gutter will run over private property or not; and
- (j) discharge stormwater into any watercourse, attenuated where appropriate, whether on private land or not.

(2) The Municipality 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 Municipality may deem necessary to prevent the occurrence of such contravention.

(3) The Municipality 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 such a contravention occurred.

#### **10. OFFENCES AND PENALTIES**

(1) 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 or uses foul, abusive or insulting language towards or at 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, or falsely holds himself or herself to be a councillor or an employee or a contractor of the Municipality,

shall be guilty of an offence and be liable, on conviction, to the payment of a fine as determined from time to time or imprisonment for a period not exceeding six months or to such imprisonment without the option of a fine or to both such fine and such imprisonment and, in the case of a continuing offence, to an additional fine as determined from time to time or additional imprisonment for a period not exceeding ten days 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.

#### **11. SHORT TITLE**

This By-Law is called the Overstrand Municipality: Stormwater Management By-Law, 2009.

#### **12. COMMENCEMENT**

This By-law shall commence on 2 November 2009.

#### **13. REPEAL OF EXISTING MUNICIPAL STORMWATER MANAGEMENT**

The provisions of any by-law relating to the management of stormwater by the Municipality are hereby repealed insofar as they relate to matters provided for in this by-law, provided that such provisions shall be deemed not to have been repealed in respect of any such by-law which has not been repealed and which is not repugnant to these by-laws on the basis as determined by the relevant by-law.