

COMMITTED TO SERVICE DELIVERY



KWA DUKUZA MUNICIPALITY:

DRAFT BUILDING CONTROL BYLAW, 2023

CONTACT DETAILS

P: +27 32 437 5000

E: Municipalmanager@kwadukuza.gov.za

W: www.KwaDukuza.gov.za

DRAFT DATE

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PREAMBLE AND PURPOSE

WHEREAS there is a need to provide a regulatory framework for the construction of Buildings within the KwaDukuza Municipality's jurisdiction in line with the National Building Regulations and Standards Act, 1977 and to enforce the Building standards related thereto and provide for offences and penalties;

WHEREAS Section 24 of the Constitution of the Republic of South Africa (Act No. 108 of 1996) states that everyone has the right to an environment that is not harmful to their health or well-being; and to have that environment protected, for the benefit of present and future generations;

WHEREAS Section 32 of the Constitution states that everyone has the right to any information held by the state; and any information that is held by another Person and that is required for the exercise or protection of any rights;

WHEREAS Section 156(1) of the Constitution confers on Municipalities the right to administer local government matters listed in Part B of the schedule 4 and 5;

WHEREAS Section 156(2) and (5) of the Constitution provides that a Municipality may establish and administer Bylaws for the effective administration of the matters which it has a right to administer and exercise any power concerning a matter reasonably necessary for, incidental to, the effective performance of its functions;

WHEREAS Section 11(3)(m) of the Municipal Systems Act, 2000 (Act No. 32 of 2000) grants Municipalities the right to adopt Bylaws;

WHEREAS Section 4 of the National Building Regulations and Standards Act, 1977 (Act No. 103 of 1977) empowers the Council to provide Approval for applications in respect of erection of Buildings;

WHEREAS Section 7 of the National Building Regulations and Standards Act, 1977 (Act No. 103 of 1977) empowers the Municipality to control the design and the construction of Buildings;

WHEREAS the Construction Regulations of 2014 under Section 43 of the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993) describe the requirements and obligations that must

be complied with when embarking on construction work to ensure that all construction work is performed in a safe manner.

WHEREAS this Bylaw is supplementary to the NBRA to ensure uniformity with regard to building standards, the erection of buildings and the submission, consideration and approval of building plans in the jurisdictional area of the municipality

CHAPTER 1

INTERPRETATION

Definitions

1 In this Bylaw, unless the context indicates otherwise –

“Accounting Officer” means the Municipal Manager (MM) appointed in terms of Section 56 of the Municipal Systems Act.

“Admission of Guilt Fine” means a fine structure adopted by the Municipality and endorsed by the local Magistrate’s Court or designated Municipal Court.

“Applicant” means any Person who makes an application in terms of this Bylaw.

“Application” means an application contemplated in this bylaw read with section 4 of the NBRA.

“Approve” and “Approval” means formal Approval made by the Municipality or an Authorised Official contemplated in terms of the NBRA and/or this Bylaw.

“As Built” means a Building that was Approved for construction by means of an Approved Building plan but has deviated from the Approved Building plan.

“Authorised Official” means an employee of the Municipality with delegated or sub-delegated authority to take actions in terms of this Bylaw.

“Beacons” means the Beacons delineating the boundary of a Property as defined in terms of the Land Survey Act, Act 8 of 1997

“Boundary” means a lawfully established boundary in terms of section 35 of the Land Survey Act.

“Boundary Wall” is a wall constructed abutting an Owner’s Boundary.

“Boundary Retaining Wall” means a Retaining Wall constructed on a Boundary.

“Retaining Wall” means a wall intended to resist the lateral displacement of materials.

“Building” includes-

- a. any structure, whether of a temporary or permanent nature irrespective of the materials used in the erection thereof, erected or used for or in connection with-
 - i. the accommodation or convenience of human beings or animals;

- ii. the manufacture, processing, storage, display or sale of any goods;
 - iii. the rendering of any services;
 - iv. the destruction or treatment of refuse or waste materials;
 - v. the cultivation or growing of plant or crop;
 - vi. telecommunication towers;
 - vii. outdoor advertising billboard;
- b. any wall, swimming bath, swimming pool, reservoir or bridge or any other structures connected therewith;
 - c. any part of a structure, including a structure as defined in paragraph (a) or (b);
 - d. any facilities or system, or part or portion thereof, within or outside but incidental to a structure, for the provision of water supply, drainage, Sewer, and Storm-water disposal, electricity supply or other similar services in respect of the structure;
 - e. All government buildings, including municipal buildings, except those exempted in terms of the NBRA.

“Billboard” means any screen, board, hoarding, fence, wall or other free standing structures used or intended to be used for the purpose of posting, displaying, or exhibiting any advertisement.

“Building Control Officer” and “BCO” means any Person appointed or deemed to be appointed as a Building Control Officer by the Municipality in terms of section 5 of the NBRA and includes any other designated official appointed to perform the role and function of the appointee.

“Building and Drainage Inspector” means any person appointed or deemed to be appointed by the Municipality as a Building and Drainage Inspector in terms of this bylaw to perform the role and duties mentioned in section 5 of this Bylaw and includes any other designated official appointed to perform the role and function of the appointee.

“Building Waste” means waste produced through the construction, alteration, repair or Demolition of any Building both manmade and natural and includes rubble, earth, wood, rock, glass, plastic, metals, asphalt, bitumen and bitumen products, installation material, concrete, bricks, tiles, ceramics and gypsum-based materials but exclude garden waste and asbestos.

“Canopy” means a Building in the nature of a roof projecting from the façade of a Building and cantilevered from that Building or anchored otherwise by columns or posts.

“Carport” means a Building intended to provide a shelter for a motor vehicle, caravan or boat and having a roof but having walls on not more than two sides.

“Certificate of Occupancy” and **“Temporary Certificate of Occupancy”** means a certificate of occupancy or temporary occupancy in respect of buildings as defined in section 14 of the NBRA and section 15 of this Bylaw.

“Competent Person” means a Person who is qualified by virtue of his education, training, experience and contextual knowledge to make a determination regarding the performance of a Building or part thereof.

“Completion Certificate” means a certificate issued by the Authorised Official for a building which is not intended for habitation.

“Conservancy tank” means a covered tank used for the reception and temporary retention of Sewage, and which requires emptying at intervals.

“Criminal Procedure Act” and **“CPA”** means the Criminal Procedure Act 51 of 1977.

“Demolition” means the act of deliberately dismantling, wrecking, destroying or removing any Building, structure, materials, or part thereof, whether it is in whole, part, or an alteration of an existing Building or part thereof, and which requires permission from the Municipality prior to the activity being completed.

“Emergency” means an unexpected sudden occurrence, including a major emission, fire or explosion leading to serious danger to the public or a potentially serious risk to the environment whether immediate or delayed.

“Encroachment” means any projection from a Building which encroaches under, into or over any Public Road or public place, Building line, boundary line and registered servitudes.

“Flood lines” means lines on a map or drawing depicting water levels likely to be reached by a flood having a specified recurrence interval.

“Foundation” means that part of the Building which is in direct contact with and is intended to transmit loads to the ground.

“Free-standing Wall” means a wall, not being a retaining wall, without lateral support.

“Internal Alterations” means alterations of a Building which do not alter the structural nature and or integratory of the Building.

“Minor Building Works” means minor works as determined in section 14 of this Bylaw.

“Municipality” means the KwaDukuza Local Municipality established in terms of Section 12 of the Local Government: Municipal Buildings Act, 1998 (Act 117 of 1998), and includes any person acting in connection with this Bylaw by virtue of a power vested in the Municipality and any other designated official appointed to perform the role and function of the appointee ;

“Municipal Council” or **“Council”** means the KwaDukuza municipal council, a municipal council referred to in section 157(1) of the Constitution.

“National Building Regulations and Building Standards Act” or **“NBRA”** means regulations issued in terms of the National Building Regulations and Building Standards Act, 1977 (Act No. 103 of 1977) and includes the Regulations thereto;

“NEMA” or **“National Environmental Management Act”** means the National Environmental Management Act No. 107 of 1998.

“Occupational Health and Safety Act” or **“OHS Act”** means the Occupational Health and Safety Act No. 85 of 1993.

"Organ of State"

- a. any government department or administration in the national, provincial or local government sphere; or
- b. any other functionary or institution-
 - i. that performs a power or function in terms of the Constitution or a provincial constitution; or
 - ii. that performs a public function or power in terms of legislation, but excludes a court or judicial Officer.

“Owner” in relation to a Building means-

- a. the Person in whose name the land, Property, Building or sectional title unit is registered in the Deeds Registry KwaZulu-Natal; and/or
- b. the beneficial holder of a real right the land, Property, Building or sectional title unit or a holder of a registered long-term lease over the land, Property, Building or sectional title unit; and/or
- c. an Organ of State in whom the land, Property, Building or sectional title unit vests, either by way of an expropriation and or other operation of law; and/or

- d. a natural Person, legal entity, and where the authority is by way of operation of law and or legal process that confers such authority including a court order; and/or
- e. a natural Person and or legal entity who is a beneficial occupier of the land, Property, Building or sectional title unit in accordance with customary law and or practice and or community rules adopted by community members in terms of the adopted constitution of communal Property association.

“PAIA” Means the Promotion of Access to Information Act No. 2 of 2000.

“Party Boundary Wall” means a wall where the registered boundary is located along the centre line of the wall.

"Person" includes any natural person, juristic person, association or Organ of State.

“Pergola” means a structure consisting of parallel colonnades supporting an open roof of girders and cross rafters.

“POPIA” Means the Protection of Personal Information Act No. 4 of 2013;

“Property” means any erf, erven, lot(s), plot(s) or stand(s), portion(s) or part(s) of farm portions or agricultural holdings, or sectional title scheme land registered in the deeds registry as such.

“Public Road” means a road which the public has the right to use;

“Refuse” and “Refusal” means formal Refusal made by the Municipality or an Authorised Official contemplated in terms of the NBRA and/or this Bylaw.

"Sewage" means soil water, waste water or industrial effluent, whether separately or together.

“Sewer” means a pipe or conduit which is in the Property which is used or intended to be used for the conveyance of Sewage.

“Storage tank” means tank, other than any tank used for storage of hot water or any cistern serving a toilet pan or a urinal, which forms part of a water installation and is used for the storage of water.

“Storm-water” means water resulting from natural precipitation or accumulation and includes rainwater, surface water, subsoil water or spring water.

“Storm-water Drain” means a pipe, conduit or surface channel situated on a site, which is used to convey Storm-water to a suitable point of discharge.

"Tariff" means the Tariff of charges for the Municipality's services, as determined by the Council of the Municipality from time to time.

“Temporary Building” means any Building of a temporary nature that is declared by the Owner and that is being used or is to be used for a specific purpose for a specified period of time, but doesn’t include a builder’s shed.

Application of Bylaw

2. (1) This Bylaw applies to all land which falls within the Municipality and binds all Persons, the Municipality and organs of state, to the extent applicable.

(2) When considering an apparent conflict between this Bylaw and another law, a court of law must prefer any reasonable interpretation that avoids a conflict over any alternative interpretation that results in a conflict. Where this bylaw conflicts with national or provincial policy or legislation, then the national or provincial policy/legislation will take precedence.

(3) No Person may erect a Building or develop land without Approved Building plans or Approval granted in terms of this Bylaw.

(4) This Bylaw is supplementary to the NBRA and is applicable to any new Building or existing Building unless the building has been specifically exempted in terms of the NBRA, this Bylaw or the pre-scheme planning policy.

Principles, Policies, Norms and Standards

3. (1) Any development principles and any norms and standards applicable to Building Control made in terms of national or provincial legislation apply to the Municipality.

(2) The Municipal Council may adopt policies, procedures and guidelines, which are consistent with national legislation, provincial legislation or this Bylaw to guide applications or decisions made in terms of this Bylaw.

CHAPTER 2

MUNICIPAL BUILDING CONTROL APPROVAL AUTHORITIES: ESTABLISHMENT, FUNCTIONS AND POWERS

Building Control Officer (“BCO”)

4. (1) The Municipality must appoint a Person as a Building Control Officer in order to exercise and perform the powers, duties or activities granted or assigned to a BCO by or under the NBRA.
- (2) Subject to the delegations of the Municipal Council who may sub-delegate certain powers and functions of the BCO where necessary.
- (3) Powers and functions of BCO
A Building Control Officer shall -:
- (a) make the decision on an application made in terms of this Bylaw;
 - (b) ensure that any instruction given in terms of the NBRA by the Municipality be carried out;
 - (c) When a fire protection plan is required in terms of the NBRA by the Municipality, the BCO concerned may incorporate in his/her decision referred to in subsection (a) a report of a designated official from the fire department.
 - (d) Be entitled to enter any premises at any reasonable time with a view to investigate, monitor, inspect and regulate as outlined in SANS 10400 and in this Bylaw.
 - (e) Respond to inquiries and complaints from the public regarding the codes and other issues with Buildings.
 - (f) Issue notices for non-compliance as contemplated in this Bylaw and NBRA.
 - (g) Attend to public complaints regarding Building Encroachments and illegal construction.
 - (h) Decide applications for Certificate of Occupancy and Temporary Certificate of Occupancy and the authority to revoke such certificates.
 - (i) Performs all other duties in line with the functions associated with building control.

The Municipal Building and Drainage Inspector

5. (1) Appointment of the Municipal Building and Drainage Inspector/s
- (a) The Municipality must appoint a Person or Persons as Municipal Building and Drainage Inspectors to perform the powers, duties and functions contemplated below.

- (b) The Municipal Building and Drainage Inspectors contemplated in this section must be appointed as Peace Officers in terms of section 334 of the Criminal Procedure Act.

(2) Powers and Functions of a Municipal Building and Drainage Inspector

- (a) The Municipal Building and Drainage Inspector shall have the power to inspect any Property and/or Building and:
 - i. enforce the National Building Regulations, Act 103 of 1977,
 - ii. enforce SANS 10400
 - iii. enforce the KwaDukuza Municipality Building Control Bylaw
 - iv. Enforce the conditions of any Approval

Building Control Plans Examiner

6. (1) Functions and powers of the Plans Examiner

- (a) A Plans Examiner is responsible for ensuring that the plans submitted to the Municipality are in accordance with the NBRA.
- (b) Checks all related forms and fees for correctness and accepts or rejects the submission.
- (c) A Plans Examiner shall review and assess all plans and application documentation submitted for compliance with all bylaws and codes;
- (d) Check Building plans and compare manufacturer details and specifications;
- (e) circulate plans for comments by other departments and business units.
- (f) Reviews Building plan applications and materials for all significant Buildings/developments.
- (g) Makes a decision on the assessment of building plans.
- (h) Liaise with homeowners, developer, builders, architectural professional and engineers in order to obtain compliance on plans submitted.
- (i) Liaising with the Building Control Officer
- (j) Conduct site inspections as and when required
- (k) Performs all other duties in line with the functions associated with plans examining.

- 7. The same person may simultaneously hold more than one office or position referred to in this Bylaw.

CHAPTER 3

KEEPING OF RECORDS AND ACCESS TO INFORMATION

Record of applications for Building plan Approval and access

8. (1) The Municipality must keep a register of all applications submitted for Approval.
- (2) The Municipality must keep copies of the approved building plans and application documents for their records and operational requirements.
- (3) Public access to building plan documentation will be granted only after an application in terms of PAIA.
- (4) An Owner has a right to access Building plans on his/her property if he/she provides the following documents:
- (a) Proof of ownership
 - (b) The latest rates statement for the property
 - (c) Identity Document of Owner
 - (d) Power of attorney or proxy letter with proof of identity of authorised individual of the owner
 - (e) Any other information that may be required in terms of PAIA or POPIA.
 - (f) Proof of payment of any administrative fee for processing the request.
- (5) The Municipality reserves the right to refuse access to Building plans should the above information not be provided and should the requestor not be the Owner or hold a power of attorney or proxy letter from the Owner, provided that the Municipality has followed the provisions of POPIA and PAIA and/or where an order by a competent court has been served on the Municipality ordering the Municipality to provide such information.

Owners' Record of Building Plan Approval, Certificates of Occupancy and any other Building Records

9. (1) The Owner is responsible for keeping copies of approved building plans and Certificates of Occupancy and any other building records for their Property.
- (2) It is the Owner's responsibility to provide successors in title with approved building plans, Certificates of Occupancy and other building records.
- (3) The Owner of a Property must disclose the following to any prospective transferee:

- (a) Any unfulfilled or unresolved Contravention Notice including penalties
- (b) The absence of a Certificate of Occupancy
- (c) The terms of a Temporary Certificate of Occupancy
- (d) Buildings which do not have approved Building Plans

Lodging of public complaint

- 10.** (1) A member of public may lodge a complaint regarding any property related concerns within the Municipal area jurisdiction in the manner and form prescribed by the Municipality.
- (2) The Authorised Official shall assess complaints that have been lodged by the public and shall forward said complaints through to the relevant department or business unit to deal with the complaint.
- (3) The Authorised Official may allocate a Building and Drainage Inspector or delegate to investigate the complaint.
- (4) The Authorised Official will take steps to resolve the complaint and inform the complainant of the outcome of the investigation and steps taken to resolve it where necessary.
- (5) The Municipality shall keep a register of all complaints received and actions taken to resolve them.

CHAPTER 4

APPLICATIONS FOR BUILDING PLAN APPROVAL

Application and requirements

- 11.** (1) An application for Building Plan Approval must be in writing in a form or manner prescribed by the Municipality from time to time.
- (2) An application must include-
- (a) such plans, drawings and documentation or any additional information in the scale or format as prescribed by the Municipality; and
 - (b) proof of valid professional registration documents from a Competent Person involved in the applications; and
 - (c) proof of payment of the fees determined by the Municipality for the scrutiny of such plans, drawings or documentation.
- (3) Any application or resubmission of an application after 1 year from the original submission, will be subject to a fee.

Erection of Buildings which require Building plan Approval

- 12.** (1) All Buildings require an application for a Building Plan Approval unless they are specifically exempted or provided for elsewhere in this Bylaw and include but are not limited to:
- (a) carports;
 - (b) swimming pools, koi ponds and water feature exceeding 300mm depth;
 - (c) awnings;
 - (d) Signage and Billboards;
 - (e) telecommunication towers;
 - (f) lightning arrestors;
 - (g) floodlights exceeding height of 3,0m;
 - (h) underground and aboveground fuel Storage Tanks;
 - (i) silos;
 - (j) wooden deck for public use / exceeding 900mm in height;
 - (k) wooden deck exceeding 900mm in height
 - (l) change of roof design from gable to hip roof, from flat roof to gable or hip roof;
 - (m) internal alterations;
 - (n) reservoirs and bridges.
 - (o) retractable awnings;

- (p) wendy houses greater than 10m2

Buildings which Do Not Require Building Plan Approval and Exemptions

- 13.** (1) Permeable roof Buildings are exempt from Building plan Approval. These include but are not limited to:
- (a) shade cloth for hoarding
 - (b) pergola
 - (c) The Municipality may grant an exemption from the provision of section 12 on application by an Applicant and where such exemption will not be in conflict with the NBRA.

Minor Building Works

- 14.** (1) A building not listed in section 12 may be determined by the BCO as a Minor Building Works.
- (2) An application for Minor Building Works must include-
- (a) such plans, drawings and documentation or any additional information in the scale or format as prescribed by the Municipality; and
 - (b) proof of payment of the fees determined by the Municipality for the scrutiny of such plans, drawings or documentation.
- (3) Any Building work, that falls within the ambit of Minor Building Works, requires authorisation by the Municipality before the Owner may commence with such work. These Buildings include:
- (a) braai area without any roof covering;
 - (b) Boundary Walls or fences requiring an earth-work or Foundations;
 - (c) wooden gazebo not exceeding 15m2;
 - (d) garden/tool shed/wendy house not exceeding 10m2 / storage container not exceeding 15m2, should be used only for storage purposes and; must be built in such a way that it is not visible from the Public Road and is 2m away from the adjacent boundary;
 - (e) child's playhouse not exceeding 15m2;
 - (f) shrines or place of worship not exceeding 10m2 provided it does not require any structural support;
 - (g) animal shelter not exceeding 10m2;

- (h) replacement of windows or doors provided that the existing frames are not load bearing and that the openings are not enlarged, or that any openings needed for fire escapes are not removed;
- (i) minor repairs to a house or shop- for example, replacement of the same or similar roofing or tile/ sheeting.

Temporary Buildings

- 15.** (1) Any Building work for a Temporary Building, requires authorisation by the Municipality before the Owner may commence with such work
- (2) An application for a Temporary Building must include-
 - (a) such plans, drawings and documentation or any additional information in the scale or format as prescribed by the Municipality; and
 - (b) proof of payment of the fees determined by the Municipality for the scrutiny of such plans, drawings or documentation.
 - (3) The Applicant may apply to establish a Temporary Building for no longer than 12 months.
 - (4) An Applicant may request an extension of time in writing not less than 30 days prior to the expiry date of the original Approval. The Municipality may grant the approval for the extension with additional conditions it deems necessary.
 - (5) Temporary Buildings shall be constructed and or installed without the need for permanent Foundations and or concrete floor slabs.
 - (6) Temporary Buildings must not create an encroachment.
 - (7) Removal of Temporary Buildings
 - (a) The Owner shall ensure that the Temporary Buildings are demolished and or removed within fourteen (14) days of the expiry date of the Approval.

Certificate of Occupancy and Completion Certificate

- 16.** (1) When Building work has been carried out and completed in accordance with an approved building plan, an Applicant must apply for a Certificate of Occupancy or Completion Certificate as the case may be.

- (2) Subject to the provisions of section 14(1A) of the Act, a Certificate of Occupancy shall not be issued by the Municipality unless an Applicant has provided the Municipality with the following information where applicable and in a manner prescribed by the Municipality-
- (a) electrical compliance certificate, certified by the relevant department or business unit;
 - (b) plumbing certificate, certified by the relevant department or business unit;
 - (c) glass certificate issued by a Competent Person;
 - (d) engineer's structural completion certificate, certified by the relevant department or business unit;
 - (e) mechanical engineer's compliance certificate;
 - (f) gas installation certificate issued by a Competent Person;
 - (g) lift installation certificate issued by a Competent Person;
 - (h) lift commissioning certificate issued by a Competent Person
 - (i) architectural completion certificate;
 - (j) energy efficiency certificate;
 - (k) beacon certificate issued by a professional land surveyor;
 - (l) soil poisoning certificate which is valid for not less than 5 years from date of submission
 - (m) Surveyors As-Built drawings showing all structures
 - (n) fire safety certificate by a Competent Person certifying that the fire protection system, equipment and the fire installation system has been designed and erected in accordance with the application.
 - (o) Any other certificate, documentation or information necessary for the purposes of issuing a Certificate of Occupancy
- (3) Should the BCO determine that a Certificate of Occupancy may not as yet be Approved but the Building is habitable, then the BCO may approve a Temporary Certificate of Occupation in instances where:
- (a) Minor construction works are still underway and where all safety aspects as per the applicable legislative framework have been fully complied with;
 - (b) In the event of multi-storey Building(s) and or Buildings that comprise of a series of 'connected' Buildings and where some of the storey(s) and or 'connected' Buildings are deemed to be habitable;
 - (c) Documentation, approvals or information required for approval of a Certificate of Occupancy is not yet available but does not impact safety considerations.

- (d) There is non-compliance with conditions imposed by another authority which does not impact the safety of occupation.
- (4) An application for a Temporary Certificate of Occupation shall be for a period determined by the Municipality.
- (5) An application for renewal or extension of the period of a Temporary Certificate of Occupation should be made not less than 30 days prior to the expiry date of the Temporary Certificate of Occupation.

Demolition of Buildings

- 17.** (1) No Owner is permitted to demolish any Building, whether it is the whole Building, a part of the Building or alteration carried out on an existing Building, without prior written Approval of the Municipality.
- (2) The application to demolish must be submitted to the Municipality in a manner prescribed by the Municipality.
- (3) The Owner must ensure that before any Demolition work is carried out, and in order to ascertain the method of Demolition to be used, a detailed structural engineering survey of the Building to be demolished is carried out by a Competent Person and that a method statement on the procedure to be followed in demolishing the Building is submitted together with the application.
- (4) The Owner of such Building that is to be demolished must ensure that:
- (a) there is full compliance with the provisions of the Occupational Health and Safety Act 85 of 1993;
 - (b) no floor, roof or other part of the Building is overloaded with debris or material in a manner which would render it unsafe;
 - (c) all reasonably practicable precautions are taken to prevent the Building and or any adjoining Building(s) from collapsing as a result of the Demolition. This includes the provision of adequate structural support;
 - (d) where the stability of the Building and or any adjoining Buildings may be compromised and where there is a risk that the Demolition works may encroach onto a public road, notwithstanding the measures that have been put in place then the Municipality must be advised prior to any Demolition work being carried out.

- The Municipality reserves its right to either impose additional structural and or other measures and or to withdraw the Approval granted for the Demolition work;
- (e) as far as is reasonably practicable determine the location and nature of electricity, water, gas or other public service infrastructure which may in any way be affected by the Demolition work, and must ensure that before the commencement of the Demolition work, measures are put in place to adequately protect such services and members of the public; and
 - (f) adequate measures have been put in place to prevent any debris arising from the Demolition work from falling onto and or into an entrance or passageway, especially where Persons, including members of the public may pass;
 - (g) adequate measures are taken to contain dust and noise pollution.
- (5) Where the Demolition work involves any form of explosives, the Owner shall ensure full compliance with the applicable laws governing such work;
- (6) Where the Demolition work involves the presence of asbestos, the Owner must ensure that all asbestos related work is conducted in accordance with the Asbestos Regulations, 2001, promulgated by Government Notice No. R. 155 of 10 February 2002.
- (7) Where the Demolition work involves the presence of lead, the Owner must ensure that all lead related work is conducted in accordance with the Lead Regulations, 2001, promulgated by Government Notice No. R.236 of 28 February 2002.
- (8) The Owner shall ensure that all waste and Building material arising from the Demolition work is disposed of to a licenced waste disposal facility. The Owner must provide the Municipality with such confirmation confirming that the facility to be used is licenced.
- (9) Buildings over 60 years old require the KwaZulu Natal AMAFA and Research Institute's consent, prior to a Demolition Approval being granted by the Municipality.

Disposal of Building rubble

- 18.** (1) When Building plans are submitted to the Municipality for Approval in terms of NBRA and this Bylaw, the Owner must submit an integrated disposal management plan setting out how, where and under which authority any such Building rubble will be disposed of.

- (2) The Owner shall ensure that all waste and Building material arising from the construction of a Building or the Demolition of a Building is disposed of to a licenced waste disposal facility. The Owner must provide the Municipality with proof that the facility to be used is licenced.

Storm-water

19. (1) When Building plans are submitted to the Municipality for Approval, the Owner must on request, indicate measures to control stormwater discharge;
- (2) An Authorised Officer may request that the Owner submit an integrated stormwater management plan prepared by a Competent Person.

Sewage

20. (1) When Building plans are submitted to the Municipality for Approval, the Owner must on request, indicate measures to control sewage.
- (2) An Authorised Officer may request that the Owner submit an integrated waste disposal management plan prepared by a Competent Person.

Water

21. (1) When Building plans are submitted to the Municipality for Approval, the Owner must on request, provide reports and plans to the relevant department or business unit prepared by a Competent Person.

Restriction on Erection of Buildings within Flood lines and proximity to a natural water course

22. (1) No Building may, without the express permission of the Municipality, be erected within a flood line indicating the maximum level likely to be reached by flood water.
- (2) No Building may, without the express permission of the Municipality, be erected within 100m of the high-water mark or natural water-course subject to environmental approvals.
- (3) For the purpose of subsection (1) the Municipality is the sole judge as to the position of the line insofar as it relates to the provision of this bylaw and the NBRA.
- (4) This section does not replace and or absolve the Owner from complying with the provisions of NEMA.

Environmental, Water and Heritage Authorisations and Permits

- 23.** (1) No Building may be erected and or demolished, water discharged or drawn or any other activity which may require an authorisation or permit in terms of the applicable environmental, water and/or heritage laws as the case may be.
- (2) The above authorisations are required prior to the Municipality granting of an Approval in terms of this Bylaw .

Boundary Walls and Beacons

- 24.** (1) General Provision
- (a) Subject to the imposition of a Notarial Tie, servitude or insertion of a restrictive condition of title, no Person or Owner may construct a Boundary Wall (as per figures 3 and 4 below) and or Party Boundary Wall (as per figure 1 below) without Building Plan Approval from the Municipality;
- (2) Boundary Retaining walls, Retaining Walls and Party Boundary Walls
- (a) Subject to sub-paragraph (e) below, a retaining wall shall be designed when the ground circumstances are such that there is a need to resist the lateral pressure of soil due to changes that will be made to the ground elevation and which exceeds the angle of repose of the soil.
- (b) Where a Boundary Wall supports soil that is higher than 300mm on one side of the wall than it is on the other side then such Boundary Wall is also considered to be a Retaining Wall.
- (c) A Building Plan shall be submitted for a retaining wall. A Retaining wall shall be designed and constructed under the supervision of a professional structural engineer in accordance with SANS 10400 and this Bylaw.
- (d) A Person who intends to alter the natural slope of the ground is responsible for retaining the ground.
- (e) Where the natural ground is to be altered but where a retaining wall is not contemplated, then the resultant bank shall be constructed at an angle not exceeding an angle of 26 degrees to the horizontal and steps taken to prevent soil erosion.
- (f) Retaining wall weep-holes must not be below ground level.
- (g) Any Person who plugs a weep-hole to prevent natural seepage shall be guilty of an offence.

(3) Exposure of Beacons

- (a) The Municipality may require that the Owner expose all Beacons and point these out to Building Inspector prior to the Approval of a Building Plan. A professional Land Surveyor shall expose such Beacons and a Beacon Certificate provided to the Municipality in such an instance.

Emergency Approval

- 25.** (1) An Authorised Official, BCO and/or Plans Examiner may provide an approval with or without conditions immediately, either in writing or verbally, in an emergency.
- (2) A verbal approval must be confirmed in writing at the earliest opportunity after it has been given.

CHAPTER 5

BUILDING COMPLETION AND DELAYS

Commencement and Completion of Building

- 26.** (1) An Applicant must commence building within 3 months of an approval.
- (2) If for a period exceeding 3 months the erection of a building is not proceeded with, the Municipality may by notice order the Owner to resume and to complete the erection of such building within the periods specified in such notice.
- (3) If the owner fails to resume or complete the erection of such building within the periods specified in the notice, the Municipality may extend such periods from time to time an owner satisfies it that such failure was due to circumstances beyond his control.
- (4) Where an owner fails to resume or to complete the erection of a building within the periods specified in a notice or, when applicable, within such periods as extended and the Municipality is of the opinion that such building is unsightly or dangerous to life or property or derogates from the value of adjoining or neighbouring properties, the Municipality may by notice order an owner to demolish the building or to remove material or rubbish from the site and to clean up such site within the period specified in the last mentioned notice.
- (5) If an owner fails to comply with a in terms of subsection (4) in respect of such building, the Municipality may demolish the building, remove and rubbish from the site in question and otherwise clean up such site, and may recover the costs thereof from the owner.
- (6) Where the Municipality acts in terms of subsection 5, then it may sell such material and may utilize the proceeds of such sale to defray the costs of demolition, removal or clean-up and shall pay the balance, if any, of the proceeds to the owner.
- (7) Any building approval granted in terms of this Bylaw shall lapse as soon as a notice in terms of subsection (4) is served on the owner.

Completion of a building

- 27.** (1) An Applicant must complete a building within the timeframe specified in an approval.

- (2) Where no timeframe for completion has been specified then a building must be completed within:
- (a) 18 months where the footprint is 500 square meters or less;
 - (b) 3 years where the footprint is more than 500 square meters.

CHAPTER 6

EARLY COMMENCEMENT

Early Commencement of Buildings

- 28.** (1) In terms of Section 7(6) of the NBRA an Applicant may lodge an application for early commencement to proceed with the erection of a Building to which such application relates.
- (2) An Authorised Official may in his/her sole discretion approve or refuse an application lodged for Early Commencement.
- (3) Where an application for Early Commencement is refused, the Authorised Official may grant a partial refund of the application fee as stipulated in the applicable tariff.
- (4) The Applicant must complete an Application form as provided by the Municipality and must provide a detailed motivation in support of the Application.
- (5) An Application as per this section will only be considered if it does not conflict with land use controls, a Building Plan Application has been lodged and the Municipality have confirmed in writing that the Building Plan Application is complete and a plan number ascribed.
- (6) Should the Municipality grant such Application, it reserves the right to impose such conditions and time periods for such approval that the Municipality in its sole discretion determines.
- (7) The Municipality may require the Applicant to lodge such financial guarantee(s) as the Municipality may determine and which the Applicant shall furnish prior to the Applicant commencing or proceeding with the erection of a Building in terms of this Section.
- (8) The Municipality may require that an application or Approval in terms of another bylaw accompanies such application.
- (9) The Municipality may require that comments or input may be received from relevant stakeholders or departments.

Application and requirements for early commencement of Buildings

- 29.** (1) An application for Approval for Early Commencement must be in writing in a manner and form prescribed by the Municipality and submitted to the BCO.
- (2) The application must-
- (a) contain the name and address of the Applicant who must be the Owner of the land on which the Building in question is to be erected;
 - (b) be accompanied by-
 - (i) Proof of submission of Building Plans already submitted (Building Control Payment Receipt and Building plan application reference number);
 - (ii) An Engineer's appointment letter;
 - (iii) Proof of payment of the relevant fee;
 - (iv) The documents and/or approvals required by an Authorised Official in terms of section 28 above;
 - (v) A motivating memorandum of why the Approval cannot be obtained; and
 - (vi) any other relevant information or documentation.

CHAPTER 7 ENFORCEMENT

Offences and penalties

- 30.** (1) Any Person who contravenes any provision or fails to comply with any notice issued in terms of this Bylaw, commits an offence and may at the sole discretion of the Municipality pay an Admission of Guilt fine to the extent stipulated in the NBRA.
- (2) Any Person who contravenes any provision or fails to comply with any notice issued in terms of these Bylaws, commits an offence and may be liable for a fine as prescribed by the Municipality.
- (3) For the purposes of this Chapter, an authorized official appointed as a peace officer in terms of section 334 of the Criminal Procedure Act, may:
- (a) issue Admission of Guilt fines;
 - (b) enforce the National Building Regulations, Act 103 of 1977, SANS 10400
 - (c) enforce the KwaDukuza Municipality Building Control Bylaw
 - (d) approach the courts to acquire an interdict to cease such activities/contraventions;
 - (e) approach the courts to issue a Warrant of Arrest.
- (4) A contravention notice issued by an authorized official or penalty imposed, attaches to a property and is not extinguished by virtue of a property being transferred.

Notices

- 31.** (1) Every notice, order or other document issued or served by the Municipality in terms of this Bylaw is valid if signed or issued electronically by an Authorised Official.
- (2) Any notice, order or other document served on any Person in terms of this Bylaw must be served in the following manner:
- (a) The notice, order or other document, or a true copy thereof, must be delivered to the Person to whom it is addressed at his or her last-known residence, and/or place of business and/or listed email address;
 - (b) Where the notice, order or other document, or a true copy thereof, has been posted and/or emailed to the Person to whom it is addressed at his or her last known residence, listed email address or place of business, it will be deemed to have been served five days after it was posted or on date of delivery receipt in the case of electronic transmission.

- (3) In every notice, order or other document issued or served in terms of this Bylaw, the premises to which the notice, order or document relates must be specified, but the Person for whom it is intended may be referred to as "the Owner" or "the Occupier" if his or her name is not known.

Entry by Building and Drainage Inspector

- 32.** (1) Any Building and Drainage Inspector may enter any Property or Building at any reasonable time with a view to -
- (a) inspect, monitor, investigate or determine whether the Building complies with any provision of this Bylaw;
 - (b) take photos of the Building, whether of the outside of the Building or any internal aspect of the Building, including any residence;
 - (c) serve a contravention notice contemplated in this Bylaw or any other legislation;
- (2) No Person shall hinder or obstruct any Building Control inspector in the exercise of his or her powers in terms of the Bylaw.
- (3) Any Building and Drainage Inspector shall, when entering the premises, produce a valid identification document issued to him or her by the Municipality to the Owner of such Building.
- (4) In circumstances that requires an immediate action, the Building and Drainage Inspector may enter any Property or Building at any given time.
- (5) A Person commits an offence if he or she -
- (a) obstructs, hinders, or in any manner interferes with the enforcement official who is acting or entitled to act in terms of this Bylaw
 - (b) fails to obey any lawful instruction or direction given to him or her in terms of this Bylaw
 - (c) continues with an offence after notice has been served on him or her in terms of this Bylaw requiring him or her to cease committing such offence.
- (6) Notwithstanding any remedies provided in this Bylaw and other statutory and common law remedies, a Building and Drainage Inspector may;
- (a) Install and display a contravention notice on the site for public information and safety.
 - (b) Instruct/Issue Notice to a Person to barricade a Property.

- (c) Instruct an Owner or their agent or contractor to rectify/cease unlawful land activities.

CHAPTER 8

APPEALS

Appeals

- 33.** (1) A person whose rights are affected by a decision taken by the Municipality in terms of this Bylaw may appeal against that decision in terms of the Appeals provision contained in the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000)

CHAPTER 9

GENERAL PROVISIONS

Determination of Tariffs and fees

- 34.** (1) The Municipality may, determine Tariffs and fees for any service rendered in terms of this Bylaw.

Legal Indemnification

- 35.** (1) If a claim is made or legal proceedings are instituted against a member of the Building Control Directorate or their support staff arising out of any act or omission by the member or support staff in the performance of his or her duties or the exercise of his or her powers in terms of this Bylaw, the Municipality must, if it is of the opinion that the Person acted or omitted to act in good faith and without negligence–
- (a) if a civil claim or civil proceedings is instituted against the Person –
 - (i) indemnify the Person in respect of such claim or proceedings; and
 - (ii) provide legal representation for the Person at the cost of the Municipality or pay taxed party and party costs of legal representation.
 - (b) if a criminal prosecution is instituted against the Person, provide for legal representation for the Person at the cost of the Municipality.
- (2) A member of Building Control Directorate or their support staff has no legal indemnification if he or she, with regard to the act or omission, is liable in law and–
- (a) intentionally exceeded his or her powers;
 - (b) made use of alcohol or drugs;
 - (c) did not act in the course and scope of his or her employment, designation or appointment;
 - (d) made an admission that was detrimental to the Municipality; or
 - (e) failed to comply with or ignored standing instructions, of which he or she was aware of or could reasonably have been aware of, which led to the loss, damage or reason for the claim.
- (3) The Municipality may determine by means of a policy or by other means–
- (a) the terms and conditions of such indemnity and legal representation; and
 - (b) circumstances in addition to the circumstances contemplated in this section in which indemnity or legal representation may be withdrawn by the Municipality.

Calculation of number of days

- 36.** (1) If this Bylaw prescribes a period for performing an action, the number of days must be calculated by excluding the first day, and by including the last day, unless the last day happens to fall on a Saturday, Sunday or public holiday, in which case the first work day immediately following the Saturday, Sunday or public must be regarded as the last day of the period.
- (2) Days that a Municipality is officially in recess must be excluded from the period in which a Municipality must perform an action in terms of this Bylaw, if –
- (a) a Municipality did not delegate the power to perform the action; and
 - (b) the action must be performed in 120 days or less.

Transitional Arrangements and Savings

- 37.** (1) Notwithstanding the enactment of this Bylaw where a building control or planning decision or approval has been made prior to the enactment of this Bylaw such decision or approval shall be deemed to be an approval or decision in terms of this Bylaw.

Short title and commencement

- 38.** This Bylaw is called the KwaDukuza Local Municipality: Building Control Bylaw, 2023 and takes effect on a date of notice in the Provincial Gazette.