

KWA DUKUZA MUNICIPALITY:

INFORMAL BUSINESS BY-LAW, 2024

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KWADUKUZA MUNICIPALITY INFORMAL BUSINESS BY-LAW

To provide for the right to engage in informal business; to establish informal business areas and informal business sites on municipal property; to provide for the granting of permits; to support and manage informal business in certain areas; to manage the conduct of informal business in line with other bylaws; to regulate informal business at special events; to provide for measures to ensure health and safety; to refer businesses that commit serial offences to the appropriate authorities for enforcement; to provide for the repeal of laws and savings; and to provide for matters incidental thereto.

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PREAMBLE

WHEREAS the KwaDukuza Municipality recognises the Informal Economy as an important component of KwaDukuza's overall economy where it functions as a source of employment for vulnerable persons and an important mechanism through which people can access livelihoods and stake a claim in the overall municipal economy;

WHEREAS the KwaDukuza Municipality recognises the key role that informal business, relating to most sectors of the economy, plays in poverty alleviation, income generation and entrepreneurial development and, in particular, the positive impact that informal business has on historically disadvantaged individuals and communities;

WHEREAS the KwaDukuza Municipality recognises the historical impact of racially based laws on access to business opportunities for the majority of the population and the need to redress this through active transformation;

WHEREAS the KwaDukuza Municipality acknowledges that space for alternative forms of economic activity has historically not been provided and that access to space for business was actively controlled to exclude the majority and that this spatial structure remains in place;

WHEREAS the KwaDukuza Municipality recognises the need to adopt a developmental approach to informal business within well-managed municipal areas. This requires that, in supporting informal business, consideration must be given to -

- (a) the promotion of social and economic development;
- (b) maintaining a safe and healthy environment for all users;
- (c) directing and facilitating business formation and growth through municipal planning;
- (d) the clear separation of the developmental and the enforcement responsibilities as it relates to informal businesses;
- (e) the understanding that with each action of the municipality relating to (an) informal business(es) the developmental implications of such an action must be considered.

WHEREAS the Informal Economy denotes more than just informal trading and recognizing that there is a variety of types of informal operations taking place in the Municipality collectively contributing to the Informal Economy.

WHEREAS the KwaDukuza Municipality has competence in terms of Part B of Schedules 4 and 5 of the Constitution relating to such matters as municipal planning, street trading, public places, markets, control of public nuisances, control of undertakings that sell liquor to the public, and the licensing and control of undertakings that sell food to the public.

It is further acknowledged that there are numerous laws regulating specific business sectors and business in general, but that it is not the primary function of the KwaDukuza Municipality (or Economic Development Planning Business Unit / Local Economic Development Business Unit) to enforce such unless specifically required in terms of such legislation or delegated by an authority.

AND WHEREAS the KwaDukuza municipal council has competence, in terms of the section 156 (2) of the Constitution of the Republic of South Africa, to make and administer by-laws for the effective administration of the matters which it has the right to administer;

NOW THEREFORE the KwaDukuza municipal council, 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:

CHAPTER 1 PRELIMINARY PROVISIONS

Definitions

1. In this Bylaw, unless the context indicates otherwise -

"authorised official" means a person authorised to implement the provisions of this Bylaw, including but not limited to:-

- (a) peace officers as contemplated in section 334 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977);
- (b) such employees, agents, delegated nominees, representatives and service providers 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;
- a traffic officer appointed under Section 3 of the Road Traffic Act No.93 of 1996;
- (c) a member of the South African Police Service as defined in Section 1 of the South African Police Act No 68 of 1995.

"beach" means the portion of land above and contiguous to the seashore and includes any grass verge, where such verge exists;

"beach trading" means informal business that is conducted on a beach and includes informal business in a parking area adjacent to the beach;

"black person" means a person who falls within the definition of black people in the Broad-based Black Economic Empowerment Act, (Act No. 46 of 2013);

"event" means an event as defined in the Safety at Sports and Recreational Events Act, 2010 (Act No. 2 of 2010), namely sporting, entertainment, recreational, religious, cultural, exhibitional, organisational or similar activities hosted at a stadium, venue or along a route or within their respective precincts;

"foodstuff" means foodstuff intended for human consumption as defined in section 1 of the Foodstuff, Cosmetics and Disinfectants Act, 1972 (Act No. 54 of 1972);

"Flea Market" means an occasional or periodic market held in an open area or structure where groups of individual sellers offer goods for sale to the public.

"foreigner" means an individual who is neither a citizen nor a resident, but is not an illegal foreigner.

"fronting activities" means an arrangement or other act where a formal business or full-time formally employed person, or (an) illegal foreigner utilizing a person who qualifies to operate in the informal economy as a proxy for their participation.

"goods" means any movable property displayed or kept by a person in a public place or public road used or intended to be used in connection with carrying on the business of an informal business person and includes any article, container, vehicle, movable structure or living thing;

"high-water mark" means the high-water mark as defined in the National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008);

“Home Business” means the operation of a single non-impacting occupational activity in or in conjunction with a dwelling house by a bona fide residential occupant of that property, providing that the dominant use of the property concerned shall remain for the living accommodation of the occupants, and the property complies with the requirements contained in the Scheme clauses for a home business.

“illegal foreigner” means a foreigner who is in South Africa in contravention of the Immigration Act, 13 of 2002 and includes a prohibited person in terms of section 29 of the Immigration Act.

“illegal goods” means -

- (a) goods which may not lawfully be sold or bought including, but not limited to, counterfeit goods as defined in the Counterfeit Goods Act, 1997 (Act No. 37 of 1997);
- (b) goods that are bought or sold in an unlawful manner; or
- (c) goods that have been acquired in an unlawful manner.

“impoundment fee” means the applicable tariff charged, as determined by the municipality from time to time, for the impounding and storing of goods impounded in terms of this By-law, as well as the cost of the disposal or releasing of the impounded goods;

“informal business person” means a person who operates lawfully in the informal economy.

“informal business” means the trading in goods and services in the informal economy by an informal business person within the jurisdiction of the Municipality, and which typically includes, without limitation, the following types of trading:

CATEGORY	TYPE	EXAMPLES OF PRODUCTS / SERVICES
Retail/Trade	Home based shops (Tuck shops / Spaza shops)	Snacks and sweets
		Groceries
		Fruits and vegetables
		Bread and milk
		Cold drinks
		Sugar, spices and salt
		Flour, rice and mielie meal
	Street informal business persons	Fruits and vegetables
		Cooked food
		Airtime
		Traditional muthi
		Vetkoek
		Newspapers
		Cigarettes
	Markets (Permanent / Periodic)	Traditional clothing
		Blankets
		Spices
		Cooked food

CATEGORY	TYPE	EXAMPLES OF PRODUCTS / SERVICES
		Muthi
		Clothing
		Beadwork
	Livestock informal business persons	Poultry
		Goats
		Sheep
		Cattle
	Mobile informal business persons	Fruit and vegetables
		Meat
		Other manufactured products
Manufacturing	Home based activities	Dress making
		Welding
		Carpentry
		Upholstery
		Brick / block making
		Food / catering
		Various arts, crafts, consumables, food stuffs etc.
	Hive industries (Incubation centre)	As per home-based activities
Decanting Businesses (breaking bulk)		Cleaning materials
		Staples (flour, sugar etc)
		Specialist foods
		Other foods
Personal Services	Home based services	Salons
		Photography
		Manicure and pedicure
		Nursery Schools / Early Childhood Development Centres
		Traditional healers (Sangoma)
	On street services	Salons
		Photography
		Manicure and pedicure
		Car guards
Business Services	Home based services	Public phone services
		Admin services
		Mashonisa (Loan sharks - illegal)
	On street services	Public phone services

CATEGORY	TYPE	EXAMPLES OF PRODUCTS / SERVICES
		Admin services
		Mashonisa (Loan sharks - illegal)
Automotive Services	Home based services	Car mechanics
		Panel beaters
	On street services	Car mechanics
		Panel beaters
		Auto electricians
		Car wash
Construction		Exhaust specialists
		Builders (incl project management)
		Artisans (brick layers, plasterers, painting etc)
		Plumbers
		Electricians
Domestic employment		(Other)
	Home based services	Gardening services
		Home helpers/care
		Child minders
Agriculture	Subsistence producers	Vegetables and fruit
		Livestock
		Poultry
	Small scale commercial	Vegetables and fruit
		Livestock
		Poultry
		Sugar cane
		Plantations
Recycling	Waste collectors and recyclers	Plastic
		Cans
		Paper and cardboard
		Glass
		Metal

“informal business area” means the area as shown on an Informal Economy: Spatial Designation System or otherwise determined by council through a council resolution.

“Informal Economy: Spatial Designation System” means a plan adopted by the Municipality in Chapter 3 to determine the parameters of informal businesses within specific areas.

“Informal Economy” refers to all economic activities by workers and economic units that are - legally and practically - not covered or insufficiently covered by formal arrangements,

policies and bylaws. As such, they are operating outside of the formal regulatory legal framework or are not covered by the existing formal framework in practice. This in turn means that - although they are operating within the formal reach of the law, the law is not applied or not enforced; or the law discourages compliance because it is inappropriate, burdensome, and /or imposes excessive costs;

"intersection" means an intersection as defined in the regulations promulgated in terms of the National Road Traffic Act, 1996 (Act No. 93 of 1996);

"kerb line" means the boundary between the shoulder and the verge or, in the absence of a shoulder, the part between the edge of the roadway and the verge, as defined in section 1 of the National Road Traffic Act, 1996 (Act No. 93 of 1996);

"litter" includes any receptacle, container or other object or matter discarded, abandoned.

"market" means an area within an informal business area which is designated as a market on an Informal Economy: Spatial Designation System and which is managed in a co-ordinated manner;

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

"Municipality" means the KwaDukuza Municipality, a Municipality as envisaged in terms of section 155(1) of the Constitution of South Africa and established in terms of Provincial Notice No. 43 of 2000 (KZN);

"municipal property" means property owned by, leased by or under the control of the Municipality;

"national monument" means any one of the "public monuments and memorials" as defined in terms of section 2 of the National Heritage Resources Act, 1999 (Act No. 25 of 1999);

"non-municipal property" means property that is situated within the area of jurisdiction of the Municipality but which is not owned by, leased by or under the control of the Municipality;

"nuisance" includes, but is not limited to an act or omission which is offensive, injurious or dangerous to health, or which materially interferes with the ordinary comfort, convenience, peace or quiet of the public or which adversely affects the public at large.

"obstruct" means to do anything which blocks or is likely to block vehicular or pedestrian traffic flow on a public road;

"park" means a garden or park to which the public has a right of access, and **"garden"** has the same meaning;

"perishable food" means any foodstuff which on account of its composition, ingredients, moisture content and or pH value and of its lack of preservatives and suitable packaging is susceptible to uninhibited increase in microbes thereon or therein if the foodstuff is kept within the temperature spectrum of 4 degrees Celsius, but excluding vegetables and fruit.

"permit" means a permit referred to in Chapter 4 to carry on informal business;

“permit-holder” means an informal business person who has been granted a permit by the Municipality, to conduct informal business;

“prescribed” means as determined by resolution of the council from time to time;

“public building” means a building belonging to or occupied solely by any sphere of the government, including the Municipality;

“public parking space” means any space in a public place designated by the Municipality for the parking of a motor vehicle;

“public place” means -

- (a) a public road;
- (b) a public parking space; and
- (c) any square, park, recreation ground, sports ground, beach, shopping centre, municipal cemetery, open space, or vacant municipal land which is vested in the Municipality, or in respect of which the public has the right of use, or which is shown on a general plan of a township filed in the deeds registry or a Surveyor- General’s office as having been provided for the use of the public or the owners of erven in such township;

“public road” means any road, street or thoroughfare or any other place (whether a thoroughfare or not) which is commonly used by the public or any section thereof or to which the public or any section thereof has a right of access, and includes—

- (a) the verge of any such road, street or thoroughfare;
- (b) any bridge, ferry or drift traversed by any such road, street or thoroughfare; and
- (c) any other work or object forming part of or connected with or belonging to such road, street or thoroughfare;
- (d) any footpath, sidewalk or similar pedestrian portion of the road reserve;
- (e) any premises with or without structures thereon, used or set aside as a public parking area or public parking place for the parking of motor vehicles whether or not access to such parking area or place is free of charge.

“roadway” means that portion of a road, street or thoroughfare improved, constructed or intended for vehicular traffic, which is between the edges of the roadway, as defined in section 1 of the National Road Traffic Act, 1996 (Act No. 93 of 1996);

“Road Reserve” means the area alongside a roadway that acts as a protective buffer for potential future road widening, development, and essential infrastructure, including the roadway, shoulders, and allocated space for utilities and other road-related purposes.

“Scheme” means the latest KwaDukuza Land Use Management Scheme.

“seashore” means the seashore as defined in the National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008);

“sell” includes the selling of goods or the supply or offering to supply a service and also-

- (a) bartering, exchanging or hiring out;
- (b) displaying, exposing, offering or preparing for sale;
- (c) storing on a public road or in a public place with a view to selling; and
- (d) providing a service for reward,

and “sale” or “selling” has a corresponding meaning;

"services", in relation to an informal business person, includes any advantage or gain given or supplied by the informal business person in return for consideration or reward;

"shoulder" means that portion of the road, street or thoroughfare between the edge of the roadway and the kerb line, as defined in the National Road Traffic Act, 1996 (Act No. 93 of 1996);

"sidewalk" means that portion of a verge intended for the exclusive use of pedestrians, as defined in section 1 of the National Road Traffic Act, 1996 (Act No. 93 of 1996) and includes a road reserve or thoroughfare which is not the roadway;

"special event" means events such as music festivals, sporting events, recreational events, pop-up-markets or other similar events;

"Subsistence farming" means the cultivation of crops or raising livestock primarily to meet an individual or family's own basic food and survival needs, rather than for commercial purposes

"type" in the context of an informal business, means the broad type of informal business listed in the column of the definition of informal business;

"verge" means that portion of a road, street or thoroughfare, including the sidewalk, which is not the roadway on the shoulder, as defined in section 1 of the National Road Traffic Act, 1996 (Act No. 93 of 1996).

Interpretation of By-law

2. (1) If there is a conflict of interpretation between the English version of this By-law and a translated version, the English version prevails.
- (2) An approval or decision in terms of this bylaw does not exempt an individual or entity from complying with any other applicable law or regulation.

Objects of By-law

3. (1) The object of this By-law is to regulate informal business in a manner which –
 - (a) Recognises the importance of the informal economy to the Municipality and its residents;
 - (b) Ensures that informal business is conducted in an orderly manner;
 - (c) Enables access to job and entrepreneurial opportunities within the informal business sector;
 - (d) Harmonises the relationship between the informal business sector and the formal business sector; and
 - (e) ensures the health and safety of the public.

Application of By-Law

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

Principles, Norms and Standards and Policies

5. (1) Any development principles and any norms and standards applicable to Business Licences and Informal Business Licences and/or Informal Business Licence Permits, made in terms of national or provincial legislation apply to the Municipality.

(2) The Municipal Council may adopt policies and sub-policies not inconsistent with national legislation, provincial legislation or this By-law to guide applications or decision making in terms of this By-law.

(3) If the Municipal Council intends to adopt or amend a policy that may materially and adversely affect the rights of any individual or the public, the Municipality must follow a participation process and procedure which meets the requirements of the Municipal Systems Act.

CHAPTER 2 FREEDOM TO TRADE

Freedom to Engage in Informal Business

6. (1) Subject to compliance with the provisions of -
- (a) this By-law;
 - (b) an informal business policy;
 - (c) any other applicable law;
 - (d) any conditions in an applicable informal business permit;
 - (e) the Scheme
 - (f) any person is permitted to engage in informal business within the area of jurisdiction of the Municipality.

CHAPTER 3

INFORMAL ECONOMY: SPATIAL DESIGNATION SYSTEM

Purpose of an Informal Economy: Spatial Designation System

7. (1) The purpose of the informal business plan or the amendment of an existing Informal Economy: Spatial Designation System, is to determine informal business rights and parameters in a particular area of the Municipality in order to –
- (a) give effect to the policies and plans of national and provincial government,
 - (b) give effect to the Municipality's informal business policy;
 - (c) promote and encourage sustainable and desirable economic development in a manner that will promote the convenience, efficiency, economy, health, safety and general welfare of the public;
 - (d) promote social integration;
 - (e) promote economic growth and job creation;
 - (f) limit nuisance and undesirable conditions in the development of the informal business sector; and
 - (g) regulate informal business on Municipal and non-municipal property.

Adoption of Informal Economy: Spatial Designation System

8. (1) The council may adopt an Informal Economy: Spatial Designation System or amend an existing Informal Economy: Spatial Designation System. An Informal Economy: Spatial Designation System should be considered for the management of informal business activity particularly in areas where there-
- (a) is a significant overlap between formal and informal business;
 - (b) is no formal provision for business land use but where such informal business is prevalent;
 - (c) is a need for a specific business activity; or
 - (d) is of cultural, historical or environmental significance.
- (2) An Informal Economy: Spatial Designation System may allow and regulate informal business on—
- (a) municipal property; and
 - (b) non-municipal property, subject to the rights of the owners of the property.
- (3) An Informal Economy: Spatial Designation System may —
- (a) define the geographic boundary of an informal business area;
 - (b) demarcate informal business sites; and
 - (c) demarcate any markets.
- (4) Any person who can show good cause, shall be entitled to request that the Municipality considers the adoption of an Informal Economy: Spatial Designation System; provided that where a proposed Informal Economy: Spatial Designation System contemplates trading taking place on non-municipal property, the request is accompanied by the written consent of the owner and proof of ownership of such non-municipal property. The Municipality must consider and decide upon the request within a reasonable time.
- (5) When considering a request for the adoption of an Informal Economy: Spatial Designation System, the municipality shall have due regard to section 8(1) and any existing and proposed Informal Economy: Spatial Designation Systems in the vicinity of the proposed area in order to determine the desirability of the adoption of an Informal Economy: Spatial Designation System.

Public Participation

9. (1) Before adopting an Informal Economy: Spatial Designation System, the Municipality must notify / consult with interested and affected persons. This consultation process must comply with at least the provisions set out in subsections 9(2) to subsections 9(6).
- (2) If the Municipality believes that an Informal Economy: Spatial Designation System is desirable, the Municipality must—
- (a) compile a draft Informal Economy: Spatial Designation System; and
 - (b) publish a notice which contains a summary of the key aspects of the draft Informal Economy: Spatial Designation System and —
 - i. informing the public that the draft Informal Economy: Spatial Designation System is available for inspection at a specified location and between specified hours and/or online;
 - ii. inviting comments and objections from the public, to be received by a specified date not less than 30 days after the publication of the notice.
- (3) The notice referred to in subsection 9(2)(b) must be distributed and communicated in a manner determined by the Municipality which will reasonably come to the attention of interested and affected parties.
- (4) The Municipality must consider all objections or comments received from the public regarding the draft Informal Economy: Spatial Designation System.
- (5) After having considered the comments and objections, the council must, within a reasonable period from the commencement of the public participation process in respect of the relevant draft plan—
- (a) adopt the draft Informal Economy: Spatial Designation System;
 - (b) amend and adopt the draft Informal Economy: Spatial Designation System; or
 - (c) reject the draft Informal Economy: Spatial Designation System.
- (6) If the council adopts an Informal Economy: Spatial Designation System, a notice must be published in the Provincial Gazette, which informs the public
- (a) that the draft plan has been adopted;
 - (b) of the key aspects of the plan including the date upon which it shall become effective, and
 - (c) that the Informal Economy: Spatial Designation System is available for inspection at a specified location which may be online.

Amendment, Revocation and Review of Informal Economy: Spatial Designation System

10. (1) The council—
- (a) may amend or revoke an adopted Informal Economy: Spatial Designation System, provided that the council must—
 - i. follow the public participation process set out in section 9; and
 - ii. afford to any person whose existing rights are adversely affected by a proposed amendment their rights
 - (b) must review Informal Economy: Spatial Designation Systems from time to time as the council deems fit.

CHAPTER 4

INFORMAL BUSINESS ON MUNICIPAL PROPERTY

Part 1: Informal Business Areas: designation, trading hours and permitting requirement

Informal Business Areas and Informal Business Sites

11. (1) Notwithstanding anything contained in the Scheme, the council may, by resolution—
- (a) set apart informal business areas on municipal property within any area designated as an informal business area in terms of an Informal Economy: Spatial Designation System; and
 - (b) demarcate informal business sites within informal business areas; and
 - (c) lease informal business sites to informal traders and private stakeholders for the purposes of SMME developments or public-private partnerships.
- (2) The council may, by resolution -
- (a) extend, reduce or disestablish any informal business area or informal business site;
 - (b) lease any verge or any portion of a verge to the owner or occupier of any contiguous land on condition that the owner or occupier must allow a specified number of informal businesses to operate from sites on such verge on such terms and conditions as the council may determine.

Trading hours and other conditions

12. (1) The Municipality may when setting apart informal business areas, or at any time thereafter on reasonable notice, impose -
- (a) General business days and hours; and
 - (b) any other conditions.
- These should be reflected on the corresponding permits issued for the informal business area.

Prohibition: informal business on municipal property without permit

13. (1) No person may conduct a schedule 1 informal business on municipal property without a valid informal business permit from the Municipality.

Part 2: Informal Business Permits: Application, fees, transfer, suspension and termination.

Informal business permits

14. (1) A person may apply for an informal business permit, to conduct informal business mentioned in Schedule 1 on municipal property, if that person-
- (a) is an informal business or a person who wants to become an informal business;
 - (b) does not already hold a permit in respect of any other informal business site within the area of jurisdiction of the Municipality;
 - (c) is a South African citizen or, failing which, has a valid work permit which includes, but is not limited to, a refugee permit;
 - (d) does not require the assistance of more than 5 persons;
 - (e) does not have an interest in more than 1 entity or partnership which conducts informal business; or
 - (f) is currently not formally employed
 - (g) is not a minor.
- (2) An application for an informal business permit must be on the form prescribed by the Municipality from time to time and may be online.
- (3) The Municipality must consider any application for an informal business permit and may—
- (a) approve it subject to any conditions;
 - (b) request that additional information be furnished within a specified time frame; or
 - (c) reject the application and provide reasons thereof.
- (4) The Municipality may take into account the following factors when considering an application for an informal business permit the need to give preference to applicants who are—
- (a) South African citizens holding a valid ID document;
 - (b) black persons;
 - (c) unemployed persons;
 - (d) persons domiciled within the jurisdiction of the Municipality;
 - (e) persons already operating in the sector;
 - (f) persons who do not share a household with an existing permit-holder, unless the applicant is not a dependant on or financially reliant upon that permit-holder;
 - (g) persons who are living with disabilities;
 - (h) persons who have an established informal business operation in the location for which a new trading area is adopted;
 - (i) persons who are over the age of 18 years;
 - (j) women.
 - (k) whether the goods which the applicant intends selling, or the services which the applicant intends providing, fit with those sold or supplied by other informal business persons in the informal business area or other businesses in the immediate vicinity of the informal business area;
 - (l) whether the applicant has, in the two-year period prior to his or her application, been convicted of an offence relating to informal business or has had his or her informal business permit revoked or suspended;
 - (m) the applicant's ability to meet the trading hours for the relevant informal business area as the council may determine;

- (5) The Municipality may, when issuing an informal business permit, impose any reasonable conditions, including but not limited to—
- (a) minimum or maximum business hours;
 - (b) restrictions regarding the type of goods, services or activities in which the permit-holder is permitted to do business;
 - (c) an expiry date for the permit;
 - (d) whether assistants are allowed; and
 - (e) conditions regarding the type of structure or structures, and the dimensions and mass of any vehicles if any, which may be erected on an informal business site or in an informal business area.
- (6) Where applicable, an informal business permit -
- (a) must refer to a specified business bay, as identified by its allocated number, to which the permit relates; and
 - (b) gives only the permit-holder, and his or her assistant, the right to use that business bay subject to the conditions of the permit, the provisions of an applicable informal business policy and any other conditions imposed in terms of this By-law;
 - (c) Expires after two years.
- (7) Registered schools, religious bodies and non-profit organisations are exempted from the requirement of obtaining an informal business permit for an annual event but still require consent from the Municipality in terms of a special event.
- (8) A foreigner wishing to participate in the informal economy must:
- (a) Have a permit in terms of the Immigration Act (Non-South African Residents);
 - (b) Have a Section 22 Permit for refugees or asylum seeker in terms of the Refugees Act (Non-South African Residents);
 - (c) Provide any other information as the Municipality may designate as reasonably required based on the nature of the specific business, including but not limited to proof that the business is compliant with tax and other financial legislation and provides a unique product or service;
 - (d) consent to any information or documentation provided being verified with the Department of Home Affairs.
 - (e) Foreigners who do not have the necessary authorisations and/or approvals shall be prohibited from participating in the informal economy or conducting informal business.

Informal business fees

15. (1) The Municipality is entitled to charge -
- (f) any person who applies for an informal business permit, an application fee on submission of each application for an informal business permit; and
 - (g) any informal business permit-holder, an annual rental in respect of the informal business site to which the permit relates; and
 - (h) an additional fee or tariff, which is to be determined by the Municipality in its sole discretion, in respect of additional costs incurred for services provided by the Municipality, including but not limited to circumstances where the permit-holder trades within a market.
- (2) In the event that a person qualified for a permit, but has motivated in writing the inability to pay any fee contemplated in Section 15(1) and has provided sufficient proof thereof to the reasonable satisfaction of the municipality, the municipality

may waive the fee in whole or in part, or may determine a payment system in terms of which the person may pay the fee over a stipulated period by way of instalments.

Transfer of informal business permits

16. (1) A permit is non-transferable and may not be leased, sold or otherwise disposed of except with the prior consent of the Municipality in terms of this section.
- (2) A permit may, with the prior written approval of the Municipality, be temporarily or permanently transferred to:
- (a) a person nominated by a permit-holder in writing with reasons; or
 - (b) the successor in title to a permit holder who is deceased;
 - (c) subject to the provision of any additional information which the Municipality may reasonably require from time to time.
- (3) If the Municipality consents to the temporary or permanent transfer of an informal business permit, the—
- (a) Municipality may impose such requirements as it deems fit; and
 - (b) the person replacing the permit-holder will be entitled to do business, if the transfer is temporary, for the period of time indicated by the Municipality.

Removal and suspension of informal business permits (fault)

17. (1) The Municipality may, on reasonable notice to an informal business and after having given the informal business an opportunity to make written representations, revoke or suspend an informal business permit if the informal business has—
- (a) breached any conditions of his or her informal business permit;
 - (b) breached the provisions of this By-law or of any other law;
 - (c) been convicted of trading in illegal goods or of providing a service unlawfully; or
 - (d) been found to have willfully supplied incorrect information to the Municipality when required to provide that information.

Temporary relocation and suspension of informal business permits (no-fault)

18. (1) The Municipality may, on reasonable notice to an informal business, temporarily—
- (a) relocate a permit-holder (if located on public land);
 - (b) suspend the validity of a permit; or
 - (c) suspend informal business from an informal business area or a particular business site or sites,
- if the continuation of operation from an informal business area or business site is impractical or inconvenient to the activities of the Municipality, any sphere of government, any public entity, including their respective service providers, or the immediate and larger community.
- (2) No compensation is payable by the Municipality to an informal business in the event that—
- (a) the business is relocated;
 - (b) the permit is suspended; or
 - (c) operation is suspended from a particular informal business area or trading site.
- (3) No informal business fee shall be payable during any period where -
- (a) the validity of an informal business permit is suspended; or
 - (b) informal business in an informal business area or from a particular informal business site is suspended or prohibited, without an alternate site being provided to the permit holder concerned.

Termination and return of informal business permits

19. (1) A permit-holder must immediately return his or her permit to the Municipality when the permit expires or if the—
- (a) Municipality revokes the permit;
 - (b) permit-holder is refused permission to transfer the permit;
 - (c) permit-holder ceases trading for a period of 25 or more days;
 - (d) permit-holder no longer wishes to operate as an informal business from the relevant informal business site;
 - (e) permit-holder becomes employed in the formal sector; or
 - (f) the business is formally registered and requires a business license.

CHAPTER 5

RESTRICTIONS AND PROHIBITIONS ON INFORMAL BUSINESS

General Restrictions

20. (1) As per the Schedules to this Bylaw, Informal business will be limited or allowed as follows:
- (a) Informal Businesses which require a permit and must be conducted in a designated Informal Business Area;
 - (b) Informal Businesses which can only be conducted in accordance with the Scheme;
 - (c) Informal Businesses that do not require an Informal Business Permit and are a freely permitted use throughout the Municipality but will still be restricted in terms of the relevant provisions and prohibitions in terms of this bylaw and any other legislation.

Restricted or prohibited areas

21. (1) The council may, by resolution, declare any place in its area of jurisdiction to be an area in which informal business is restricted or prohibited.
- (2) The council may, in restricting or prohibiting informal business, indicate places where—
- (a) informal business is prohibited; or
 - (b) informal business trading in specified goods or services, and/or manufacturing certain products are prohibited.
- (3) The Municipality may erect signs, markings or other devices to indicate the boundaries of—
- (a) areas where informal business is restricted or prohibited (and the nature of any restriction); and
 - (b) informal business areas and informal business sites.
- (4) Any sign erected in terms of this By-law or any other law, shall serve as sufficient notice to an informal business that informal business is prohibited or restricted in that area.

Restricted conduct: location of business

22. (1) An informal business must not—
- (a) place his or her goods on a public road or public place, with the exception of his or her motor vehicle or trailer from which informal business is conducted: provided that such motor vehicle or trailer does not obstruct pedestrian or vehicular traffic movement and complies with the provisions of the National Road Traffic Act, 1996 (Act No. 93 of 1996);
 - (b) allow his or her goods or area of activity to cover an area of a public road or a public place which—
 - i. is greater than 6 square meters in area; or
 - ii. is greater than 3 meters in length, unless otherwise approved by the Municipality;
 - (c) trade or undertake business activity on a sidewalk or verge where the—
 - i. width of the sidewalk or verge is less than 3 meters;
 - ii. sidewalk or verge is next to a public building, a place of worship such as a church, synagogue or mosque, or a national monument; or
 - iii. sidewalk is contiguous to a building in which business is being carried on by any person who sells goods of the same or of a similar nature to the goods being sold on such sidewalk by the informal business person,

if that person objects to informal business taking place at that location;

- (d) obscure any road traffic sign displayed in terms of the National Road Traffic Act, 1996 (Act No. 93 of 1996), or any marking, notice or sign displayed or made in terms of a by-law;
 - (e) obstruct vehicular traffic;
 - (f) obstruct access to a pedestrian crossing, pedestrian arcade or mall;
 - (g) obstruct access to a vehicle;
 - (h) obstruct access to refuse disposal bins or other facilities intended for the use of the public;
 - (i) obstruct access to an automatic teller machine;
 - (j) obstruct the view of a CCTV camera;
 - (k) limit access to parking or loading bays or other facilities for vehicular traffic;
 - (l) do business within 5 metres of an intersection or fire hydrant or any other fire fighting equipment;
 - (m) do business below the high water mark; or
 - (n) do business in a park, unless such area has been declared by the Municipality as an informal business area.
- (2) An informal business must, in respect of any sidewalk, leave an unobstructed space for pedestrian traffic of not less than—
- (a) 2 meters wide when measured from any contiguous building to his or her goods or area of activity; and
 - (b) 0.5 meters wide when measured from the kerb line to his or her goods or area of activity.

Restricted conduct: use of the site overnight

23. (1) An informal business must not sleep overnight at the place where he or she carries on informal business.
- (2) An informal business must not, on concluding business for the day, leave his or her goods, materials or any equipment at an informal business site which is part of a public road or public place, except any structure permitted by the Municipality.

Restricted conduct: erection of structures

24. (1) An informal business must not erect any structure, whether movable or immovable, other than a structure approved by the Municipality subject to section 14.

Restricted Conduct: Street Furniture

25. (1) An informal business must not obstruct access to, or the use of, street furniture or any other facility designed for the use of the public.

Restricted Conduct: Display, Storage and Attachment of Goods

26. (1) An informal business must not—
- (a) place or stack his or her goods, materials or equipment in such a manner that it constitutes a danger to any person or property, or is likely to injure any person or cause damage to any property;
 - (b) display his or her goods on or in a building, without the consent of the owner, lawful occupier, or person in control of such building or property;
 - (c) interfere with the ability of a person using a sidewalk to view the goods displayed behind a shop display window or obscure such goods from view;
 - (d) place on a public road or public place any goods that are not capable of being easily removed to a storage place at the end of the day's business; and

- (e) store or dispose of his or her goods or litter in a manhole, storm water drains, public toilet, bus shelter or in a tree.
- (f) attach any of his or her goods by any means to any building, structure, pavement, tree, parking meter, lamp, pole, electricity pole, telephone booth, post box, traffic sign, bench or any other street furniture in or on a public road or public place.

Restricted Conduct: Fires

27. (1) An informal business must not make a fire at any place unless authorised to prepare foodstuffs by utilising open-flame fire or gas-fired equipment and, where the informal business is authorised to make a fire, he or she must not make a fire in circumstances where it could harm any person or damage any building, structure, vehicle or other property.

Restricted Conduct: Litter

28. (1) An informal business must dispose of litter generated by his or her informal business in a refuse receptacle approved or supplied by the Municipality.
- (2) An informal business must not, other than in a refuse receptacle approved or supplied by the Municipality, accumulate, dump, store, deposit, or cause or permit to be accumulated, dumped, stored or deposited, any litter on any land or premises or any public road or public place or on any public property.

Restricted Conduct: Alcohol, Sound-Emitting Devices And Electricity

29. (1) An informal business must not—
- (g) sell or promote alcoholic products;
 - (h) use bells, hooters, amplified equipment or similar devices which emit sound, in order to attract customers; and
 - (i) use any electrical supply or a power generator on public land, unless expressly approved by the Municipality.

Restricted Conduct: Fronting

30. (1) A registered and/or formal business must not do business under the guise of, or in conjunction with, an informal business.
- (2) An informal business must not do business as or in conjunction with a formal business in an informal business area.

Restricted Conduct: General

31. (1) An informal business must not carry on informal business—
- (a) in a place or area in contravention of any prohibition or restriction imposed by the Municipality; or
 - (b) in such a manner as to—
 - i. create a nuisance;
 - ii. damage or deface the surface of any public road or public place, or any public or private property;
 - iii. create a traffic or health hazard or a health risk;
 - iv. contravene any of the terms and conditions of his or her informal business permit; or
 - v. act in a way which disturbs the reasonable peace, comfort or convenience and well-being of any other person.
- (2) No person shall

- (a) deliver or provide goods or equipment to an informal business if that business is in contravention of this By-law;
- (b) after having been requested to do so by an authorised official who requires access to a facility or area, fail to remove any goods, or refuse to do so.
- (c) assign a site, sub-let or sell a site granted under a permit in an informal business area other than the Municipality.
- (d) issue a permit other than the Municipality.

Environmental Health

32. (1) An informal business must -

- (a) keep the informal business site or area occupied by him or her for the purposes of conducting informal business in a clean and sanitary condition;
- (b) keep his or her goods in a clean and sanitary condition;
- (c) ensure that, if operating from a public space, on completion of business each day-
 - i. the informal business site or area occupied by him or her for the purposes of conducting informal business is free of litter and other waste; and
 - ii. all his or her goods are collected and removed from any public road or public place and stored in a suitable facility;
- (d) take necessary precautions in the course of conducting his or her business as may be necessary to prevent the spilling of fat, oil or grease onto a public road, or public place, or into a storm water drain;
- (e) ensure that no smoke, fumes or other substance, odours, or noise, emanating from his or her activities associated with informal business, causes pollution of any kind;
- (f) carry on business in a manner which does not cause a threat to public health or public safety;
- (g) at the request of an authorised official of the Municipality, move or remove any object so that the area or informal business site from which informal business is conducted may be cleaned; and
- (h) obtain, from the relevant authority, a certificate of acceptability in the event that foodstuffs are prepared in an informal business bay.

(2) The municipality should;

- (a) ensure that the sites on publicly owned land occupied by informal businesses are cleaned and sanitized on a regular basis; and
- (b) ensure that refuse receptacles are emptied on a regular basis in order to facilitate the cleaning of Informal Business Sites.

Special Events

33. (1) In line with Section 18, the Municipality may, on reasonable notice, prohibit or restrict informal business for the duration of a special event and within a prescribed area, notwithstanding the provisions of any informal business policy or any informal business permit.

(2) No compensation is payable by the Municipality to any informal business as a result of the prohibition or restriction of informal business as contemplated in subsection 33(1).

(3) No informal business fee shall be payable by an informal business during any period during which informal business is prohibited or restricted.

- (4) The Municipality will determine whether an event shall be determined as a special event;
- (5) The Municipality may approve a special event subject to reasonable conditions;
- (6) A special event does not require an Informal Economy: Spatial Designation System.

Obligation of Owners on Non-Municipal Property

34. (1) An owner of non-municipal property must -
- (a) ensure that any informal business taking place on his or her property complies with this By-law;
 - (b) allow any authorised official access to his or her property for the purpose of ensuring compliance with this By-law; and
 - (c) ensure, at the owner's cost, that sufficient services are provided to maintain acceptable hygienic conditions in respect of the informal business.

CHAPTER 6 APPEALS

Appeals

35. (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 the Appeals provision contained in the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000)

CHAPTER 7 ENFORCEMENT

Lawful Instructions

36. (1) Failure to comply with a lawful request of an authorised official is a contravention of this By-law.

Recovery of Costs

37. (1) If an informal business person contravenes any provision of this By-law, an applicable informal business policy or his or her permit and fails or refuses to cease the contravention, or to take steps to rectify any contravention, then the Municipality may take those steps itself and recover the costs from the informal business person.

(2) The costs mentioned in subsection 37(1) are in addition to any fine which may be imposed on the informal business person.

Written Warning

38. (1) An authorized official may issue a person with a written warning if, in the opinion of the authorized official, that person has traded in goods or provided services in contravention of this By-law or that person has contravened this By-law in any other manner, including but not limited to, violation of a permit condition, or any other applicable law.

(3) In the event of a person continuing or repeating a contravention, then the authorized official may

- (a) remove and impound any goods of such informal business person as provided for hereunder; and
- (b) issue a fine.

Removal and Impoundment

39. (1) An authorised official may remove and impound any goods of an informal business person which he or she reasonably suspects are being used, has been used or is intended to be used for or in connection with informal business which is in contravention of this By-law or any other applicable law.

(2) The removal and impoundment of goods in terms of subsection 39(1) may be carried out irrespective of whether or not such goods are in the possession or under the control of any third party at the time.

(3) Any authorised official who removes and impounds goods in terms of subsection 39(1) must immediately store any impounded goods in area designated by the Municipality for the storage of impounded property and, except where goods have been left or abandoned, and issue the informal business person a receipt which—

- (a) itemises the goods to be removed and impounded;
- (b) provides the address where the impounded goods will be kept;
- (c) states the period of impoundment;
- (d) states the terms and conditions which must be met to secure the release of the impounded goods;
- (e) states the impoundment fee to be paid to secure release of the impounded goods;
- (f) states the terms and conditions on which unclaimed goods will be sold or otherwise disposed of; and

- (g) provides the name and address of a municipal official to whom any representations regarding the impoundment may be made and the date and time by which representations must be made.
- (4) If any goods to be impounded are attached to immovable property or a structure, an authorised official may order any person who appears to be in control of the immovable property or structure to remove the goods to be impounded and, if that person refuses or fails to comply, then—
 - (a) that person shall be guilty of an offence; and
 - (b) the authorised official may remove the goods himself or herself without a court order.
- (5) Goods which have been impounded may be released after -
 - (c) proof of ownership in the form of the presentation of the receipt contemplated in subsection 39(3); and
 - (d) payment of the impoundment fee, is received.
- (6) The Municipality may at any time after the impoundment sell, destroy or otherwise dispose of—
 - (e) impounded perishable goods if the goods represent or might represent a health risk or a nuisance; and
 - (f) foodstuffs which are unfit for human consumption.
- (7) Impounded goods other than perishable goods, may be sold by the Municipality if the owner does not, or is unable to, pay the impoundment fee within ONE (1) month from the date of impoundment of those goods.
- (8) If impounded goods are sold by the Municipality in terms of subsections 39(6) or 39(7), and upon the presentation of the receipt contemplated in subsection 39(3) as proof of ownership, the Municipality must pay to the person presenting the inventory the proceeds of the sale less the impoundment fee.
- (9) If in the reasonable opinion of an authorised official, an informal business person is suspected of trading in illegal goods, then the authorised official must—
 - (g) comply with the requirements of this section; and
 - (h) immediately inform the South African Police Service of the suspected offence.
- (10) In the event of the proceeds of any sale of property contemplated in this section not being sufficient to defray any expenses incurred by the municipality in connection with the removal and impoundment thereof, the informal business person shall remain liable for the balance.

Vicarious Liability

40. (1) When an assistant or agent of an informal business person contravenes a provision of this Bylaw, any informal business policy or informal business permit, the informal business person shall be deemed to have committed such contravention himself or herself unless such informal business person satisfies the court that he or she took reasonable steps to prevent such contravention.
- (2) The fact that the informal business person issued instructions to the assistant or agent, prohibiting such contravention, shall not in itself constitute sufficient proof of such reasonable steps.

Offences

41. (1) A person is guilty of an offence if he or she—
- (a) trades without an informal business permit;
 - (b) contravenes any provision of this By-law;
 - (c) contravenes any condition on which a permit has been issued to him or her;
 - (d) contravenes any provision of an applicable informal business policy;
 - (e) fails to comply with any lawful instruction given in terms of this By-law;
 - (f) threatens, resists, interferes with or obstructs any authorised official in the performance of official duties or functions in terms of or under this By-law; or
 - (g) deliberately furnishes false or misleading information to an authorised official.
- (2) A person is guilty of a continuing offence if he or she continues with an offence after notice has been served on him or her in terms of this By-law requiring him or her to cease committing such offence, or after he or she has been convicted of such offence.

Penalties

42. (1) Any person who contravenes this bylaw or commits an offence in terms of this bylaw shall be liable to a fine in terms of the Municipality's approved fine structure or to imprisonment for a period not exceeding 1 year, or to both such fine and imprisonment.
- (2) In the case of a continuing offence, an additional fine shall be imposed in terms of the Municipality's approved fine structure for each day on which such offence continues or both such fine and imprisonment, will be imposed.

Exemption from Liability

43. (1) The Municipality shall not be liable for damages or compensation arising from anything lawfully done in good faith by it or any authorised official or employee thereof in terms of this By-law.

CHAPTER 8

KEEPING OF RECORDS AND ACCESS TO INFORMATION

Access to information held by Municipality

44. (1) . The Municipality must keep copies of all documents to which the public has a right of access

(2) The following records that are held by the Municipality must be regarded as records that are automatically available as contemplated in section 15 of the Promotion of Access to Information Act, subject to limitations in terms of the Promotion of Personal Information Act -

- (a) List and mapped image of designated Informal Business Sites;
- (b) List and mapped image of available Informal Business Sites;
- (c) comments received by the Municipality in response to an invitation to comment on an Informal Economy: Spatial Designation System.

(2) Records held by the Municipality must be held in accordance with the provisions of the Protection of Personal Information Act

CHAPTER 9 DELEGATIONS

Delegations

45. (1) Subject to the Constitution and applicable national and provincial laws, any -
- (a) power, excluding a power referred to 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) The delegation must be affected in accordance with the system of delegation adopted by the council in accordance with section 59(1) of the Local Government: Municipal Systems Act, 2000 (Act No.32 of 2000), subject to the criteria set out in section 59(2) of said Act.
- (3) Any delegation contemplated in this section must be recorded in the Register of Delegations, which must contain information on the -
- (a) entity or person issuing the delegation or sub-delegation;
 - (b) recipient of the delegation or sub-delegation; and
 - (c) conditions attached to the delegation or sub-delegation.

CHAPTER 10 MISCELLANEOUS PROVISIONS

Calculation of number of days

46. (1) If this By-law 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 By-law, 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

47. (1) Notwithstanding the enactment of this By-law—
- (a) any declaration of an area within the jurisdiction of the Municipality as an area for the carrying on of informal business which may be restricted or prohibited, shall remain valid until such time as the council adopts an informal business policy in respect of such area in terms of this By-law;
 - (b) where an informal business person had been issued with a lease or permit prior to the enactment of this By-law which permits trading from a particular site, such lease or permit shall remain valid until a new permit system is adopted by the council which complies with the permit system as contemplated in this By-law.

Short Title and Commencement

48. (1) This By-law is called the KwaDukuza Municipality : Informal business By-law, 2022 and takes effect on the date on which it is published in the Provincial Gazette of KwaZulu-Natal.

Repeal of Previous Laws and By-Laws

49. (1) The laws mentioned in the Schedule to this By-law are hereby repealed to the extent set out.
- (2) All permits and/or approvals issued under any other law or formal process relating to informal business prior to the commencement of this bylaw remain in full force for a period of 24 months from date of promulgation or until repealed, whichever the earlier.
- (3) Any rights accrued or obligations incurred as contemplated in the laws referred to in above remain in force, as if those laws have not been repealed for the periods mentioned above.

SCHEDULE 1: TYPES OF INFORMAL BUSINESS WHICH REQUIRE AN INFORMAL TRADING PERMIT AND MUST BE CONDUCTED IN A DESIGNATED INFORMAL BUSINESS AREA

1. Informal Traders conducting Informal Trading in any items which do not require a Certificate of Acceptability;
2. Informal Traders trading in foodstuffs provided that an Informal Trader had a Certificate of Acceptability, where applicable;
3. Informal Traders conducting Informal Trading at Markets (Permanent / Periodic)
4. Livestock trading
5. Mobile trading
6. Any other type of informal business regarded by the Municipality as being a schedule 1 type of informal business and which is not included in the other schedules.

SCHEDULE 2: TYPES OF INFORMAL BUSINESS WHICH CAN ONLY BE CONDUCTED IN ACCORDANCE WITH THE SCHEME

1. Retail/Trade: Home based shops;
2. Personal Services: Home Based Services;
3. Business Services: Home Based Services;
4. Manufacturing: Home based activities;
5. Subsistence Farming and Agriculture Small Scale Commercial;
6. Part-time Automotive Services: Home Based Services;
7. Any other type of informal business regarded by the Municipality as being a schedule 2 type of informal business and which is not included in the other schedules.

SCHEDULE 3: TYPES OF INFORMAL BUSINESS THAT DO NOT REQUIRE AN INFORMAL BUSINESS PERMIT AND ARE A FREELY PERMITTED USE THROUGHOUT THE MUNICIPALITY

1. Domestic employment;
2. Individual waste collectors and recyclers;
3. Any other type of informal business regarded by the Municipality as being a schedule 3 type of informal business and which is not included in the other schedules.

SCHEDULE 4: TYPES OF INFORMAL BUSINESS THAT ARE PROHIBITED

1. Mashonisa (Loan sharks);
2. Prostitution;
3. Trading in illicit and illegal goods;
4. Trading or serving liquor;
5. Businesses conducted or operated by illegal foreigners;
6. Any other type of informal business regarded by the Municipality as being a schedule 4 type of informal business and which is not included in the other schedules.

SCHEDULE 5: REPEALED BY-LAWS

All prior Municipal Bylaws and amendments related to Informal Business made by:

KwaDukuza Municipality;
Nkwazi/Zinkwazi Beach Transitional Local Council,
KwaDukuza/Stanger Transitional Local Council
Dolphin Coast Transitional Local Council,

are hereby repealed.