

City of Johannesburg Council 2009-01-29

URGENCY REPORT NO. 2

COJ : ENVIRONMENT COMMITTEE 2009-01-22

COJ : TRANSPORT COMMITTEE 2009-01-19

COJ : MAYORAL COMMITTEE 2008-11-25

OFFICE OF THE EXECUTIVE MAYOR

**45 DRAFT BY-LAWS RELATING TO
STORMWATER MANAGEMENT**

1 STRATEGIC THRUST

Well Governed and Managed City.

2 OBJECTIVE

The purpose of this report is to present to the Council new draft By-laws relating to Stormwater ("the By-laws") for consideration and to obtain the Council's approval for the By-laws to be made available for public comment.

3 SUMMARY

... The draft By-laws are Annexure A to this item.

(1) Background

The National Building Regulations and Buildings Standards Act 103 of 1977 repealed the country-wide myriad of different municipal by-laws in the above-mentioned respect and provided in section 29(8) thereof that no further by-laws affecting any matters therein provided for may without ministerial consent be enacted by any local authority. It contains sections dealing with stormwater in very broad terms only, which have since 1977 proved totally inadequate in practice and it is generally known that uncontrolled stormwater not only regularly causes severe flooding damage, but that the wide misuse of stormwater installations for mainly sewerage and other waste disposal causes irreparable environmentally unfriendly pollution.

It was under the circumstances, and more particularly because environmental management has increasingly become the responsibility of local authorities, deemed expedient for the draft By-law to be developed from an engineering point of view on the basis of adverse past stormwater experiences in order that the public in general and more specifically land developers can take cognisance of exactly what is expected of them, what should and may not be done and what fines they face in the absence of compliance.

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(2) Contents

The By-laws contain provisions relating to interpretation (definitions), purpose and application and responsibility for complying with the By-laws, site development activity permits, erosion and sediment control, land grading, stormwater management, operation and maintenance, critical drainage areas, stormwater pollution and various miscellaneous provisions about deviations and exemptions from the By-laws, compliance notices, "stop work" orders, inspections, offences and penalties, appeals and its short title.

4 POLICY IMPLICATIONS

Once the By-laws have been promulgated, there will finally be clarity on the City's requirements relating to stormwater. This will assist both residents and developers within the municipality and the Council's law enforcement agencies in ensuring compliance with the By-laws.

5 LEGAL AND CONSTITUTIONAL IMPLICATIONS

The By-laws must comply with the Constitution and National Legislation. The By-laws were drafted in terms of section 98 of the Local Government: Municipal Systems Act, 2000. A specific enabling power is contained in section 80(7) of the Local Government Ordinance, 1939.

A further requirement in terms of section 7 of the Rationalisation of Local Government Affairs Act, 1998, and section 12 of the Local Government: Municipal Systems Act, 2000, is that the public must have an opportunity of not less than one month to comment on the By-laws before they can be promulgated. The Notice to invite comments must be published in the Provincial Gazette and local newspapers. All comments received must be considered by the Council and, where necessary, amendments must be made to the draft By-laws.

The permission of the Minister of Trade and Industry must thereafter be obtained in accordance with section 29(8) of the National Building Regulations and Buildings Standards Act 103 of 1977 to promulgate the By-laws.

6 FINANCIAL IMPLICATIONS

... Annexure B hereto is a draft Notice inviting the public to comment on the draft By-laws. Provision exists in the estimates for the advertising thereof.

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7 COMMUNICATIONS IMPLICATIONS

In terms of section 7(9) of the Rationalisation of Local Government Affairs Act, 1998, every municipal council must develop and implement policies and programmes to assist members of the public in commenting on by-laws and all the Ward Committees will also be informed of the contents of the draft By-laws.

8 OTHER DEPARTMENTS OR BODIES CONSULTED

The Johannesburg Roads Agency commenced the development of the By-laws, about which the Council's Environment Department and Building Control Officer were also consulted.

IT IS RECOMMENDED

- 1 That in terms of Section 1 of the Rationalization of Local Government Affairs Act, 1998, the Council declare its intention to make By-laws relating to Storm water on the basis of the draft on Annexure A to the report.**
- 2 That the Secretary to Council publish the Notice on Annexure B to the report in the Provincial Gazette, Sowetan, Beeld, The Star and The Citizen to the effect that the Council is announcing its intention in terms of Paragraph 1 above with a view to allowing the public not less than 1 month from the date of publication to comment on the draft By-laws.**
- 3 That the Section 79 Committees on Environment and Transport in consultation with the MMCs for Environment and Transport report back to the Council on the comments received in terms of Paragraph 2 above, if any, with recommendations on the finalization of the draft By-laws.**

(LEGAL AND COMPLIANCE)

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THE NEXT ITEM FOLLOWS THE ANNEXURE TO THIS ITEM