



The Game changer of South Coast development

PROPOSED PUBLIC ROAD BY-LAWS

Under the powers conferred by section 156(2) of the Constitution of the Republic of South

Africa, 1996, the Ray Nkonyeni Local Municipality adopts the following by-law –

Whereas the Ray Nkonyeni Municipality is vested with Legislative Authority in terms of the Constitution of the Republic of South Africa (Act 108 of 1996),

AND WHEREAS the Municipality has the right to determine its own by-laws

relating to Public Roads;

Be it therefore enacted by the Municipality of the Ray Nkonyeni as follows:-

RAY NKONYENI MUNICIPALITY PUBLIC ROAD BYLAWS

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CHAPTER 1

INTRODUCTORY PROVISIONS

(Definitions and interpretation)

- 1. In these By-laws, any word or expression that has been defined in the National Road Traffic Act, 1996 (Act No. 93 of 1996) has that meaning and, unless the context otherwise indicates

“authorised official” means

- (a) a member of the Ray Nkonyeni Local Municipality Protection Services established in terms of Local Government: Municipal Systems Act (32 of 2000), as amended; or
- (b) any person or official authorised as such, in writing, by the Council;

“backfill” means to replace the structural layers, including the base, sub-base, subgrade and subgrade but excluding the surfacing, in a trench dug in, or other excavation of, a road reserve, and “backfilling” is construed accordingly;

“these By-Laws” includes the references to any statute, and any other By-Law, which shall mutatis mutandis have application to these By-Laws;

“applicant” shall mean any contracted Ray Nkonyeni Local Municipality Service Provider, or other Municipal Organ of the State as defined in terms of Section 239 of the Constitution of the Republic of South Africa or Telkom, or Eskom, or any other person judicial or otherwise properly authorized by law or in terms of these by-laws.

“Council” means –

The Ray Nkonyeni Local Municipality, a Municipality as provided for in section 157 of the Constitution of the Republic of South Africa promulgated in 1996, in exercising the executive authority of the Ray Nkonyeni Local Municipality, as provided for in section 11(1) of the Municipal Systems Act, as amended;

“demarcated space” means a space so laid out and marked on the roadway or road reserve as a place specifically designated for either a vehicle to park or for other specific purposes;

“emergency works” means any works in the road reserve, which are necessary to prevent, end or avert a dangerous situation or unplanned interruption in the provision of services by a service provider;

“Municipal area” means the area falling within the boundaries of the Ray Nkonyeni Local Municipality as provided for in Notice No. 6766 published in *Provincial Gazette* No. 1708 dated 28 July 2016 or any subsequent notice published in terms of section 16 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998)

“Municipal store” means the municipal store of the Council;

“Municipal Systems Act” means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), as amended;

“official website” means the website of the Ray Nkonyeni Local Municipality as provided for in section 21B of the Municipal Systems Act;

“pothole” means a depression or hollow in a road surface caused by wear or subsidence.

“prescribed” means determined by resolution of the Council from time to time, or by legislation, by-law or policy of Council, or circular or directive from any other authoritative body;

“public road” means a road including a street, footpath, pavement, sidewalk, square, road island, subway, bridge, public passageway or other thoroughfare, which the public has the right to use, in the municipal area, for which the Council is responsible, and does not include a provincial road or national road within the municipal area;

“public service provider” means a service provider, other than a licensee, which is-

(a) an organ of state, as defined in the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996); or

(b) engaged in the provision of a municipal service as defined in the Municipal Systems Act;

“reinstate” means to replace the surfacing, including the bituminous surfacing, paving blocks, paving slabs, earth or grass, as the case may be, of a road reserve, and “reinstatement” is construed accordingly;

“rehabilitate or restore” means to place a public road in the state in which it was found prior to the performance of any works in the road reserve, including to backfill and reinstate the road reserve, and “restoration” is construed accordingly;

“road reserve” means the full width of a public road, and includes the verge and roadway;

“service” means a utility or other service provided to the public or a section of the public over a network including, but not limited to, electricity, water, gas and electronic communications network services and any other system for supplying a public need;

“service provider” means the provider of a service;

“trolley” means a push trolley, push cart or any table, stand or basket on wheels;

“watercourse” means a watercourse as defined in section 1 of the National Water Act, 1998 (Act No. 36 of 1998);

“works in the road reserve” means any work that may affect motorists, cyclists, pedestrians, the public road, footways, kerbing, traffic signs, traffic signals, street lighting, underground or overground services or any other structure or service that is contained in the road reserve and includes the digging of trenches, tunnelling, erection of signboards, hoardings and other structures, shaping and landscaping in the road reserve;.

Application

These By-Laws shall apply to all

2. (1) Public Roads which fall under the direct control of the Ray Nkonyeni Local Municipality
And
- (2) All Erven and property whether private or public, developed or undeveloped, registered as well as rural roads within the boundaries of the Ray Nkonyeni Local Municipality.

CHAPTER 2

GENERAL REQUIREMENTS IN RESPECT OF PUBLIC ROADS

Damage to Trees

3. (1) No person may climb upon, or break or damage or in any way mark or paint on any tree on any public road within the municipal area.
- (2) No person may, without the prior written permission of the Council, lop, top, trim, cut down or remove any tree on any public road.

Barbed Wire, Wires, Poles, Ropes and Electrical Fencing

4. (1) No owner or occupier of land -
 - (a) other than an owner or occupier of an agricultural holding or farm land, may, along any public road, erect or cause, or permit to be erected, any barbed-wire fence or any railing, or place any object, wall or other barrier which, by reason of spikes or other sharp or pointed protrusions or otherwise by reason of the nature of its construction or design, is or may become a danger to any member of the public using such public road;
 - (b) including an owner or occupier of an agricultural holding or farm land, may, along any public road, erect or cause, or permit to be erected, or have any electrified fence, railing or other electrified barrier unless -
 - (i) The fence, railing or other barrier is erected on top of a wall built of brick; cement, concrete or similar material, which wall will not be less than 1, 8 metres high;
 - (ii) the fence, railing, or other barrier is designed and installed in accordance with any relevant specifications determined by the Council and any standard issued in terms of the Standards Act, 2008 (Act No. 8 of 2008); and
 - (iii) The prior written permission of the Council, in terms of the National Building Regulations and Building Standards Act, 1977 (Act No. 103 of 1977) has been obtained.

- (2) The full technical details of the proposed electrified fence, railing, wall or other electrified barrier must accompany any application for permission submitted to the Council in terms of subsection (1) (b) (iii).
- (3) No person may permit any wire, pole or rope to be placed on, across or to obstruct any public road, for any purpose whatsoever.

Protection of public roads

5. No person may place upon or off-load on a public road any material or goods that are likely to cause damage to that public road unless the person has taken reasonable precautions to protect the surface of the public road against damage.

Cleanliness of public roads

6. (1) any person who spills, drops or places or permits to be spilled, dropped or placed, or dumps any rubble on a public road, any matter or substance that may interfere with the cleanliness of the public road, or cause or be likely to cause annoyance, danger or accident to any person, animal, vehicle or other traffic using the public road, must remove the matter or substance in question or cause it to be removed from the public road immediately.
- (2) if a person referred to in subsection (1), fails to remove the matter or substance in question, the Ray Nkonyeni Local Municipality may remove such matter or substance and recover the costs of removal from that person.

Article placed in building facing public road

7. No person may place any article likely to cause injury or damage to any person or property if it were to fall on a public road, in any building near a public road without taking all reasonable steps necessary to prevent the article falling onto the public road.

Damaging of Council's property

8. Subject to section 10, no person may deface, tamper, damage, remove, or in any way interfere with any of the Ray Nkonyeni Local Municipality's property or work on or along any public road.

Cleaning and repairing on public roads

9. No person may clean or repair any part of a vehicle or wash, dry or paint any article or object on any public road except in the case of an emergency breakdown of a vehicle, when emergency repairs may be done.

Defacing, marking or painting public roads

10. No person may in any way deface, mark or paint any public road or part of a public road or any structure related to such road, without the prior written permission of the Council.

Races and sports events

11. (1) An application for consent to hold a race or sports event on any public road in terms of regulation 317(2) of the National Road Traffic Regulations, 2000, under the National Road Traffic Act, 1996 (Act No. 93 of 1996), must be submitted in writing to the Council on the prescribed form at least 60 days prior to the envisaged event.
- (2) The applicant must pay the prescribed deposit for the costs to be incurred by the Council during and after the race or sports event, to the Council, prior to commencement of the race or sports event and an adjustment must be made after the conclusion of the race or sports event as soon as the Council has determined actual costs incurred by it.
- (3) The Councils' decision in this regard will be final.
- (4) Failure by the Council to respond to the request shall not constitute consent.

Loitering on public roads

12. (1) No person may –
 - (a) Lie, sit stand, congregate, loiter or walk, or otherwise act, on any public road in any manner that may obstruct traffic;
 - (b) Jostle or loiter at or within twenty (20) metres of the entrance of any place of public worship during the time of divine service or during an assembly at the place of worship or departure from such place of the congregation so as to obstruct or annoy any person going to, attending at, or leaving such place of worship.

Loitering and touting at places of public entertainment

13. (1) No person may loiter or, except when forming part of a queue, congregate on any public road within twenty (20) metres of the entrance to any place of public entertainment so as to obstruct traffic or persons proceeding to, attending at, or departing from such place of entertainment.

Public decency

14. (1) No person may appear unclothed or indecently clothed on any public road.
- (2) No person may on or in view of any public road urinate, excrete, behave in any indecent manner by exposing his or her person or otherwise, make use of any indecent gesture, or commit, solicit or provoke any person to commit any riotous, disorderly or indecent act.
- (3) No person may on any public road sing any obscene or profane song, or use any profane, foul, indecent or obscene language.
- (4) No person may on any public road in any way loiter or solicit or inconvenience or harass any other person for the purpose of begging, nor for the purposes of any sexual conduct, or soliciting.
- (5) No person may on a public road use any threatening, abusive or insulting words or gestures or behaviour with intent to cause a breach of the peace or whereby a breach of the peace is likely to be occasioned.

Trolleys

15. (1) the owner or the person who controls or has the supervision over a trolley or who offers it to be used by any person, or who uses it for any purpose whatsoever, may not leave or abandon it or permit it to be left or abandoned on any public road.
- (2) Any trolley which has been left or abandoned on any public road, may be removed, or caused to be removed, by an authorised official and placed under the care of the Municipality.

Public road collections

16. (1) No collection on a public road may be organised or held without the prior written permission of the Council.
- (2) Application for such permission must be made on a form provided for this purpose by the Council.
- (3) Every application must be accompanied by proof that the organisation or person intending to hold the public road collection is authorised to collect a contribution in terms of the Non-

Profit Organisations Act, 1997 (Act No. 71 of 1997), or the Fund-Raising Act, 1978 (Act No. 107 of 1978), as the case may be.

- (4) The Council may grant permission referred to in subsection (1) to an organisation or person to hold a collection on a specified public road, date and at a specified time and reserves the right to determine the number of collections which may be held on any one day on the public road so specified.
- (5) Every organisation or person, holding a public road collection is entitled to use his, her or its own identifiable collection boxes and if any organisation or person does not possess any boxes, the Council's collection boxes may be used upon payment of the prescribed fee.

Control of stormwater and watercourses on public road

- 17 (1) No person may, without prior written permission of the Council, to which conditions may be attached –
- (a) Lead or discharge any water including water from a swimming pool on or over or across a public road; or
 - (b) by any means whatever, raise the level of water in any river, dam or watercourse so as to cause interference with or endanger any public road.
 - (c) allow excessive amounts of stormwater to flow from a private tenement onto a public road.
 - (d) allow any wastewater from any drain, or pipe or any other water to flow from a private tenement onto a public road.
- (2) The Council may, subject to any other applicable laws and after obtaining consent of the owner and the occupier, if any, of any land which is affected -
- (a) deviate any watercourse, stream or river if the deviation is necessary for the protection of a public road or structure related to a public road or for the construction of a structure connected with or belonging to a public road;
 - (b) divert stormwater from or under any public road onto private property other than land occupied by buildings, other structures or improvements; and or deviate stormwater away from any private property which stormwater causes or may reasonably cause damage to such public road
 - (c) pay reasonable compensation as agreed between the owner or occupier and the Council, for any damage caused as a result of any action taken in terms of

subsection(2)(a) or (b) or failing such agreement, compensation determined by arbitration in terms of the Arbitration Act, 1965 (Act No. 42 of 1965).

Obstruction on public roads

18. No person may deposit or cause to be deposited or leave or cause to be left any sand, stone, earth, bricks, timber, lime, cement or other building or excavated material of whatever nature on any portion of any road reserve unless it is deposited within an enclosure in respect of which the prior written permission of the Council has been obtained.

Planting on sidewalks

19. No person may plant or cause to be planted, any tree, shrub or other plant on any road reserve, which obstructs or interferes with pedestrian traffic on such road reserve or allow any such tree, shrub or plant to remain on that road reserve.

20. POTHOLES

Claimants who intend on claiming from the Municipality for Pothole Damages must complete the template attached hereto for such claims, attach all required documents required therein and ensure that a proper Notice is served on the Municipality in terms of Act 40 of 2002, as amended, enclosing the completed template and attachments, on the following conditions:

20.1. Mandatory Requirements for submission of claims:

- 20.1.1. Pothole claims will only be considered for Roads falling within the network of Municipal Roads. To this end a claimant must ensure that it obtains confirmation from the Roads Section of the Municipality before submitting claims and attach such confirmation to the claim Notice.
- 20.1.2. Pothole claims will not be entertained to the extent that a claim is covered by a claimants Insurers and /or it is paid out by Insurers. To this end, a declaration must be made by the claimant that it does not have Insurance that covers Pothole Damages and/or that its claim has been repudiated (to submit written proof) or that its claims has been partially paid (to submit written proof). False declarations will render the claimant liable to re-pay any claims that may be paid by the Municipality and the claimant may be subject to criminal charges.
- 20.1.3. Pothole claims will not be entertained unless the full information required by the Municipality is provided as per this By-Law and the attached Template. Specifically and together with any other information required as outlined in the attached Template, the time of the incident, weather, road surface, visibility, details of witnesses, declaration of speed, sketch of incident, GPS coordinates of Pothole and/or exact address of the incident and the road name must be provided. Photos of vehicles damages and whole vehicles that shows registration, number must also be provided, together with, the Drivers license, Identity Document of driver and owner if driver is not the owner, confirmation of whether the claim is on behalf of an entity or private person, if an entity then the entity's registration documents, personal particulars of claimant, capacity or person if acting on behalf of an

entity and authority to act on behalf of the entity, list of names of occupants of the vehicle at the time of the incident, three quotations for damages, comments on roadworthiness of the vehicle.

- 20.1.4. An incident report/sufficient proof of Incident Report having been opened, dated no later than 24hrs from time of incident must be provided to the Municipality.

20.2. Processing of claims

- 20.2.1. All claims must be submitted to the Municipal Managers office, must comply with Act 40 of 2000 and enclose the attached completed Template with all required supporting documents.
- 20.2.2. Within 5 working days of proper service, a claimant will get an acknowledge receipt of claim and a directive as to the correct office for purposes of communication and tracking progress of the claim.
- 20.2.3. If the claim is handed over to the Municipalities Insurers, the claimant shall liaise with the Assets Section of the Municipality in terms of tracking progress and submission of any information. If the claim is repudiated by the Municipalities Insurers, then the Assets Section will within, 14 days of repudiation, inform the claimant providing reasons, where-after the claimant, within 14 days thereafter, must indicate whether it intends pursuing its claim against the Municipality, where-after, it can liaise with the Legal Office of the Municipality for further processing of its claim, if it chooses to pursue the claim. Should it fail to indicate that it intends to pursue within the stipulated time, the claimant will not be entitled to issue Summons against the Municipality, unless it informs the Assets Section and Legal Office of its intentions and it is provided with an opportunity to have its claim considered outside the realms of the Insurers and without litigation, and after a period of ninety days elapses after it exhausted its claim via the Legal Office.
- 20.2.4. The Municipality will inform the claimant, if the claim is being dealt with via the Legal Office of the Municipality, within ninety days of submission, provided that all requested information had been submitted by the claimant, as to the outcomes of the assessment of the claim and the claimant will have 30 days from receipt of such communication, to make submissions to the Municipal Managers office as to whether it accepts the outcomes or not.
- 20.2.5. If claim is successful, then the claimant must provide correct banking details in writing to the legal office and the Municipality, will endeavour to pay the claim within sixty (60) days thereof.

20.3. Specific Exclusions

- 20.3.1. No claims will be entertained where road markings or signage are present indicating the presence of potholes in the vicinity of the pothole/incident.
- 20.3.2. The pothole which allegedly caused the incident must be within the road markings.
- 20.3.3. No claims will be entertained if the contact with the pothole occurred as a result of an accident.
- 20.3.4. No claims will be entertained if the driver if the vehicle is found to have been driving above the speed limit, even in the case of an emergency warranting the excessive speed.
- 20.3.5. No claims will be entertained in respect of Roads that are not a Ray Nkonyeni Municipal Road.
- 20.3.6. No claims will be entertained by the Municipality where it is found that a Contractor(s) had been assigned to repair potholes at the time of the incident and the Municipality must be

requested to provide the contact details of the Contractor, to whom the claim must be submitted directly.

- 20.3.7. No claims will be entertained directly by the Municipality, after it is handed over to its Insurers until finalization.
- 20.3.8. No claims will be entertained by the Municipality if it is more than three years after the date of the incident.
- 20.3.9. No claims will be entertained if the Licence of the authorized Driver of the Vehicle was expired at the time of the incident or if the vehicle licence was expired at the time of the incident.
- 20.3.10. No claims will be entertained if the vehicle which sustained damages as a result of a pothole, was being towed at the time of the incident.

20.4 Reservation of Rights

- 20.4.1 The Municipality reserves the right to conduct inspections and interview claimants and / or witnesses and obtain information from the SAPS or eNATIS System, obtain further quotations or assessments reports, obtain information and Reports from the Roads Section of the Municipality, in assessing the merits of the claim.
- 20.4.2 The Municipality reserves the right to request further information, over and above, what is herein required, in assessing the claim and is not bound to pay out any claim submitted in respect of pothole damages where, on a balance of probabilities, the claim is not proved to the satisfaction of the Municipality.
- 20.4.3 The Municipality reserves its rights to entertain a claim without every supporting document being submitted as herein required, based on the circumstances of each claim, on condition that sufficient information is submitted to make a fair assessment of the claim. Any such assessment made and claim that may be finalized in favour of a claimant shall not be construed as a waiver of its rights to require such documents for any claims whether already submitted or in the future.

CHAPTER 3

TRAFFIC MATTERS

Control of traffic

21. An authorised official may direct any form of traffic by means of any visible or audible signal and every person must obey such signal.

Clinging to moving vehicles

22. No person travelling upon any pedal cycle, motor-cycle, 4 wheeler, skateboard, or any other similar device may cling to or attach himself or herself or such cycle, 4 wheeler, skateboard or device to any other moving vehicle, upon a public road.

Removal of obstructions

23. (1) If any person causes an obstruction of any sort on a public road, an authorised official may order such person to, refrain from causing, or remove, the obstruction.
- (2) If a person causing an obstruction cannot be found, or fails or neglects to remove, or to cease causing, such obstruction, an authorised official may take such steps as may be necessary to remove the obstruction, or to prevent its continuance and the Council may if the person concerned fails or neglects to remove or cease causing the obstruction, recover the cost of the removal of the obstruction from that person.
- (3) Any activity which is authorised to be conducted on a public road in terms of these By-laws or any other law shall be deemed for the purposes of this section not to cause an obstruction.

Games, throwing stones, on public roads

24. (1) No person may ride a skateboard, or a four wheeler unlicensed or licensed motorcycle or fly a kite or throw stones or use a bow and arrow, or by any means discharge any missile upon, over or across any public road, or play cricket, football or any other game on a public road.
- (2) No person may erect a tent or place chairs or any article on a public road for the purpose of a funeral, party informal or formal trading market or Mardi Gras or any other event without the prior written permission of the Council.

Animals on public roads

25. No person may ride or walk any animal, or clean, dress, shoe, train or break-in livestock on any public road.
- (1) No person may turn any livestock or dogs loose on a public road.
 - (2) No person may leave any injured, feeble, emaciated, diseased or dying animal on a public road except for the purpose of seeking assistance for the removal of such animal.
 - (3) Any livestock at large on a public road may be taken to a place designated by the Council, by any authorised official.
 - (4) Any person contravening subsection (1) is liable, in addition to any penalty which may be imposed by a Court, to pay to the Council the costs incurred by it in acting in terms of subsection (3).
 - (5) No person may walk a dog on a public road unless it is on a leash and under control of that person.
 - (6) Any excretion left by an animal on a public road, must immediately be removed by the person in charge of the animal and be deposited in a waste receptacle provided by the Council or removed from the road by the owner or custodian of the animal.

26. Exemption of Medical Practitioners from parking restrictions

- 26.1 (a) Registered general medical practitioners to whom an exemption permit has been issued in terms of subsection 26(3) (a) are exempt from the provisions of this by-law, subject to paragraph 26 (b), relating to parking in force in the Municipality when using, on bona fide professional domiciliary visit, a motor vehicle on which is displayed an exemption permit conforming with the requirements of subsection 26(2)(a) issued to him or her by the Municipality.
- 26.1 (b) A person contemplated in Section 26(1)(a) is not exempt from a provision prohibiting the stopping of a vehicle or the parking of a vehicle in a bus stop or across an entrance.

26.2 (a) The exemption permit must be a windscreen sticker exemption permit displaying on the face thereof:-

- i) a serial number; and
- ii) the name of the person to whom it is issued.

26.3 (a) Written application for the issue of an exemption permit must be made to the Municipality and if the Municipality approves the application, it must issue an exemption permit bearing a registered serial number to the applicant.

(b) The Municipality must keep a register in which it records the serial number allocated by it of the exemption permit, the issue of which has been authorised by it, and the name of the holder.

(c) The Municipality may issue a duplicate exemption permit.

(d) Where the Municipality has reason to believe that any holder of an exemption permit is abusing a privilege conferred by the exemption permit, it may withdraw the exemption permit from the holder and the privileges conveyed by the exemption permit shall thereupon cease.

(e) The Municipality may charge a fee for the issuing of an exemption permit or a duplicate thereof.

(f) The Municipality may prescribe the period for which an exemption permit will be valid.

26.4 A person who displays a forged exemption permit or an exemption permit which was not issued by the Municipality commits an offence.

CHAPTER 4

WORKS ON, ACROSS OR UNDER ANY PUBLIC ROAD ROPES, WIRES OR POLES

ACROSS PUBLIC ROAD

27. (1) No person may place or hang any rope, wire, pole or cable on, under, along or across any public road, without the prior written permission of the Council and on payment of the prescribed fee, unless that person is authorized to do so in terms of any other law, in which event Council must be given reasonable prior written knowledge.
- (2) Prior to performing any work in the road reserve, the person referred to in subsection (1) must, once written permission has been obtained, follow the Procedures laid down by the Council.

Excavations in public roads

28. (1) No person may make or cause to be made any hole, trench, pit or tunnel on or under any road reserve or remove any soil, metal or macadam from the road reserve without the prior written permission of the Council and on payment of the prescribed fee, unless that person is authorised to do so in terms of any other law.
- (2) Prior to performing any work in the road reserve, the person referred to in subsection (1) must, once written permission has been obtained, follow the procedures contained or stipulated by the Council.

Permission for Building Adjacent to Roads

29. (1) No person may erect, remove, alter, repair or paint any part of a building or structure or carry out any excavation, on any part of any land which is within two metres of the road reserve of a public road without approval, prior to commencing the work in question, enclosing or causing to be enclosed a space in front of such part of the building, structure or land by means of a taping off with proper taping, fence, tapes or other suitable fencing.
- (2) If the fence or other enclosure contemplated in subsection (1), will occupy or project over any portion of a public road, the person concerned may not erect the fence, or other enclosure without the prior written permission of the Council and on payment of any prescribed fee, and, where the person making application for such permission is not the owner of the building or land on which the work is to be done, the owner of that building or land must countersign the application.

- (3) Where a permit referred to in subsection (2) is granted, the Council shall specify in the permit-
 - (a) that portion of the public road which may be used for the purpose of carrying out the works;
 - (b) the conditions, if any, under which such permit is granted;

Emergency works by service providers

30. (1) A service provider may perform any emergency works as and when necessary without first making application for any permission required in terms of this Chapter, where applicable.
- (2) A service provider shall comply with the requirements specified in the specific directives given to it by the Ray Nkonyeni Municipality with regard to emergency works.

Other works in the road reserve

31. (1) A person performing any activity which is authorised in terms of any other law and which necessitates works in the road reserve must comply with the procedures of the Ray Nkonyeni Municipality.
- (2) The requirements to obtain the prior written approval of the Council in terms of sections 28(1), 29(1) and 30(1) are not applicable to a public service provider
- (3) A public service provider must comply with the procedures of the Ray Nkonyeni Local Municipality.

CHAPTER 5

INSTALLATIONS

Installation of electronic communications pipes, cables, trenches facilities works on or under public roads and other municipal land

32. (1) No person or applicant may perform work in the road reserve including -
 - (a) entering upon and breaking or opening up any public road to –
 - (i) install, construct, maintain, alter or remove any electronic communications facilities or pipes, tunnels, trenches or tubes required for electronic communications facilities or electronic communication networks, under the road reserve;
 - (ii) alter the position of any pipe for the supply of water, electricity,

other than a sewer drain or main, for the purpose of installing, constructing, maintaining, altering or removing any electronic facilities or pipes, tunnels, trenches or tubes required for electronic communications facilities, under the road reserve; or

- (b) enter upon any public road to install, construct, maintain, alter or remove any electrical cable facilities or pipes, tunnels, trenches or tubes required for electronic communications facilities upon, over, along or across the road reserve; without first giving notice to and receiving a response from the Council, outlining conditions that may be prescribed by the Council, of the works to be performed, and without having concluded a Memorandum of Understanding (MOU) with the Municipality which contain certain control mechanisms to minimise impact of works.
- (2) The notice referred to in subsection (1) must address *inter alia* –
- (a) The length of time to be taken in performing the works;
 - (b) The manner in which the licensee will access the municipal land in question;
 - (c) The works to be performed;
 - (d) The safety measures to be adopted during the performance of the works to ensure the safety of the public or sections of the public using the municipal land in question;
 - (e) The remuneration if any, to be received by the Ray Nkonyeni Local Municipality in respect of the use of the municipal land in question;
 - (f) Any specifications which must be complied with; and
 - (g) Any specifications with which the restoration of the municipal land must comply and any period during which the works performed in the restoration of the municipal land is guaranteed by the licensee.
- (3) The matters to be addressed in the Memorandum of Understanding (MOU) between the Ray Nkonyeni Municipality and the person or applicant are in addition to any matters which are required to be addressed in terms of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003) and any regulations published under that Act in respect of the granting of rights to use the assets of a municipality.

Notification of the public and service providers

33. (1) An applicant (as defined) must, at the same time as giving notice to the Council of any works in the road reserve, as provided for in section 32, to be performed by the licensee -
- (a) give written notice to any service provider whose existing facilities appear on the area plan, of the works to be performed;
 - (b) publish notice in one (1) weekly newspaper which is circulated throughout the municipal area of the works to be performed.

Occupation of and works on or under public roads

34. (1) Where
- (a) Any works in the road reserve are to be performed by an applicant the applicant must comply with the requirements set out by the Ray Nkonyeni Local Municipality; and
 - (b) The applicant must comply with any specifications with regard to the height or depth at which facilities, including electronic communications facilities, must be installed as set out by the Ray Nkonyeni Municipality or published for this purpose by the Ray Nkonyeni Municipality.
- (2) Where the applicant performs any works, as provided for in section 33(1)(a)(ii) –
- (a) the applicant must co-operate with the Ray Nkonyeni Local Municipality or other service provider responsible for the pipe in question, as the case may be, to determine the most efficient and expeditious, and least disruptive, manner in which the works may be performed;
 - (b) The Ray Nkonyeni Local Municipality or other service provider responsible for the pipe in question, as the case may be, may supervise, in the manner it deems fit, the works performed by the licensee and may impose reasonable conditions on the manner in which the works should be performed;
 - (c) the applicant is responsible, in addition to being responsible for the costs of restoration, for any and all reasonable costs incurred by the Ray Nkonyeni Local Municipality or other service provider responsible for the pipe in question, as the case may be, as a result of the works performed, Including, but not limited to, costs incurred through –
 - (i) The deployment of personnel to supervise the works;
 - (ii) Any repairs to the pipe which may be necessary due to the works;

- (iii) Any preparatory work done to determine the manner in which the works should be performed;
- (d) The applicant must pay the costs referred to in subsection (2)(c) upon presentation of an invoice by the Ray Nkonyeni Municipality or other service provider responsible for the pipe in question, as the case may be, within the period of time specified in that invoice, which shall not be less than thirty (30) days, failing which the Ray Nkonyeni Municipality or other service provider concerned shall be entitled to charge interest upon the unpaid amount at the rate specified in the invoice.

Control and supervision of works

35. (1) An applicant must ensure that a copy of the notice submitted to the Council in terms of section 33(1) and the acknowledgement of receipt, is available at the site where any works in the road reserve, including the restoration of the public road, are being performed, for inspection by the Council or law enforcement officials during those times of the day that work is being done.
- (2) The Council may, in the acknowledgement of receipt require a licensee to erect any signage indicating that the works in the road reserve are being performed by the licensee and providing contact details for the applicant, and the applicant must then erect any such signage upon commencing the works in question, and must maintain such signage for the duration of the works.
- (3) A licensee must ensure that any works in the road reserve, including to restore the public road, which are performed by the applicant –
- (a) are planned to be performed and are performed in the shortest possible time and in the manner calculated to cause the least possible disruption to other activities performed on the public road in question and, in particular, that in performing any work under a public road, any excavation is kept to a minimum;
 - (b) Are performed, within the time specified in the notice submitted.
- (4) Where the applicant is, for any reason beyond its control, unable to complete the works in the road reserve, including the restoration of the public road, within the time specified in the notice submitted in terms of section 33(1), the applicant must, as soon as it is apparent that the works will not be completed within that time, notify the Council of the delay and the

reasons for the delay, and must in such notice indicate the number of additional days which will be required to complete the works.

- (5) An applicant may not, subsequent to commencing any works in the road reserve but before completion of such works, abandon the site at which the works are being performed and, where an applicant is unable, for any reason, to complete the works which were intended to be performed, as described in the notice submitted in terms of section 33(1), the licensee must restore the public road and section 39 is applicable, with the necessary changes, to the restoration.

36. Restoration of public roads

- (1) Where an applicant performs any works in the road reserve, the road reserve upon, under, over, along or across which the works are performed, must be restored subsequent to the performance of the works and the applicant –
- (a) is responsible for the costs of restoration;
 - (b) in the case of works provided for in section 33(1)(a)
 - (i) Must backfill the road reserve;
 - (ii) Must, where the permanent reinstatement of the road reserve is to be performed by the Ray Nkonyeni Municipality, temporarily reinstate the road reserve; and
 - (iii) may, where permission is granted by the Ray Nkonyeni Local Municipality in accordance with subsection (2) (b), permanently reinstate the road reserve,
 - (c) in the case of works provided for in sections 33(1)(b), must take all steps necessary to restore the public road; and
 - (d) must ensure that the public road or other municipal land is restored as soon as practicably possible after performing the works.
- (2) In the case of works provided for in section 33(1) (a) –
- (a) the applicant must indicate in the notice submitted in terms of section 33(1) ,either whether it wishes itself to perform the permanent reinstatement of the road reserve, and, if so, details of its expertise and experience in performing such works, or whether the Ray Nkonyeni Local Municipality is required to perform such works;

- (b) The Ray Nkonyeni Local Municipality must, where applicable, inform the licensee within 30 days of receipt of the notice submitted in terms of section 33(1), whether the licensee is permitted to perform the permanent reinstatement of the road reserve;
- (c) Where the Ray Nkonyeni Local Municipality is to perform the permanent reinstatement of the road reserve –
 - (i) The applicant must temporarily reinstate the road reserve subsequent to the performance of the works provided for in section 33(1)(a);
 - (ii) An order for permanent reinstatement must be submitted to the Ray Nkonyeni Municipality with the completion notice referred to in section 40(1);
 - (iii) the applicant will be charged by the Ray Nkonyeni Local Municipality for the permanent reinstatement of the road reserve at the applicable rates published for this purpose by the Ray Nkonyeni Municipality on the official website from time to time; and
 - (iv) the licensee must make payment of the amount charged by the Ray Nkonyeni Local Municipality for reinstatement upon presentation of an invoice by the Ray Nkonyeni Municipality within the time period specified in that invoice, which shall not be less than thirty (30) days, failing which the Ray Nkonyeni Municipality shall be entitled to charge interest upon the unpaid amount at the rate specified in the invoice.
- (3) Where, subsequent to the performance of any works performed by the licensee to restore the public road or other municipal land, as the case may be, the Council is not satisfied that the restoration, including, where applicable, any backfilling or reinstatement, complies with any applicable specifications or considers that, during any period during which the restoration is guaranteed, any remedial work is required in order to comply with such specifications, the Council may perform, or may direct the licensee to perform, any work necessary to ensure that the public road or other municipal land is restored in accordance with the applicable specifications, including replacing any material used by the applicant, and the licensee shall be liable for any and all costs incurred in performing such work, and must pay the costs incurred by the Council in this regard upon presentation of an invoice by the Council, within the period of time specified in that invoice, which shall not be less than thirty (30) days, failing which the Council shall be entitled to charge interest upon the unpaid amount at the rate specified in the invoice.

Completion

37. (1) Once the applicant has concluded any works in the road reserve, and the steps required to be taken by the licensee to restore the public road have been performed, and all materials, equipment and rubble have been removed from the site and the site is completely cleared and cleaned, the licensee must give written notice to the Council that the works have been completed.
- (2) Upon receipt of the notice of completion referred to in subsection (1), the Council Ray Nkonyeni Municipality, as the case may be, will arrange a meeting with the applicant at the site or sites where any works were performed to inspect the site and determine whether the requirements of these By-laws and any applicable specifications have been complied with.
- (3) If, following its inspection of the site in terms of subsection (2), the Ray Nkonyeni Local Municipality is satisfied that these By-laws and any applicable specifications have been complied with, the Ray Nkonyeni Local Municipality, shall issue a certificate certifying that the works notified in terms of section 33(1) have been completed.
- (4) If, following its inspection of the site in terms of subsection (2), the Ray Nkonyeni Local Municipality is not satisfied that these By-laws and any applicable specifications have been complied with, the Ray Nkonyeni Local Municipality may direct the licensee concerned in writing to take such steps as the Ray Nkonyeni Local Municipality may consider necessary for such compliance, and the applicant must perform such steps, at its own cost, within the period specified in the direction.
- (5) Any period during which the works required to be taken by the licensee to restore the public road or municipal land are guaranteed shall commence from the date on which the certificate of completion referred to in subsection (3) is issued to the licensee.

Emergency Works by an Applicant

38. (1) An applicant may perform any emergency works as and when necessary without first giving notice, as provided for in section 33(1), of the works to be performed.
- (2) An applicant shall comply with the requirements specified with regard to emergency works.

- (3) All other provisions and requirements of these By-laws, including the requirements with regard to the restoration of public roads and municipal land, completion of works, excavations and road signs and barricading, remain applicable, with the necessary changes, to a licensee who performs emergency works.

Notice regarding trees

39. (1) Where any person is of the opinion that a tree or vegetation within the municipal area for which the Council is responsible, obstructs or interferes with or is likely to obstruct or interfere with the operation or maintenance of any facilities comprising the electronic or electrical communications network or pipes, trenches, tunnels or tubes required for the efficient functioning, in a manner which makes it necessary for the tree or vegetation to be cut down or trimmed, the person must give written notice to the Council of the action which is required to be taken to remedy the situation.
- (2) The Council shall, perform the action which is required to be performed.
- (3) In the event that, the Council has not performed the required action as specified in the notice given the person may, must ensure that all precautions necessary to ensure the safety of members of the public and any person engaged in performing the required action, and to prevent damage to property, are taken and that the action is performed in the manner calculated to cause the least disruption to other persons or activities performed in the vicinity of the trees or vegetation in question.
- (4) Where the Council performs the required action as specified, Council is responsible for all and any reasonable costs incurred by the Council in performing the action, which shall be paid by the Council upon receipt of an invoice from the person setting out such costs, within the period of time specified in that invoice, which shall not be less than thirty (30) days, failing which the person shall be entitled to charge interest on the unpaid amount at the rate specified in the invoice.

Notice regarding opening of Access Roads

40. (1) Where any person requests that an access road be provided by the council in order for him/her to gain access to his/her property for the purpose of building and or securing the property, such notice shall be accompanied by the following-
 - (a) An approved plan in terms of National Building Regulations and Building Standards Act, 1977 (Act No. 103 of 1977)

- (b) Statement of rates and taxes depicting that rates are in order
 - (c) Details of property boundary beacons as marked by a Professional Surveyor
- (2) Upon the receipt of notice and documentation contemplated in Section 39(1), Council shall within reasonable time make necessary arrangements to have the access opened

Failure to give notice

41. (1) Where any, does not comply with the requirement to give notice, as provided for in section 33 (1), and, having failed to give such notice, commences the performance of any works, the Council or any law enforcement official may direct the person immediately to cease any works being performed and to submit the requisite notice in terms of section 33(1) within 30 (Thirty) days of the date on which the direction was issued.
- (2) Where a licensee is directed, in terms of subsection (1), to cease the performance of any works -
- (a) the Council may direct the licensee to restore, at its own cost, the public road on a temporary basis, in accordance with any requirements specified by the Council so as to render it safe for use by the public or sections of the public, until the expiry of the period referred to in section 33(2);
 - (b) The Council may itself take any steps necessary to restore the public Road or municipal land, as the case may be, on a temporary basis, so as to render it safe for use by the public or sections of the public, until the expiry of the period referred to in section 33(2), and the licensee shall be responsible for all costs incurred by the Council in taking such steps;

CHAPTER 6

GENERAL PROVISIONS

Offences and penalties

42. A person who -

- (1) Fails to obtain any permit or permission which is required to be obtained in terms of these By-laws;
- (2) Fails to obtain any approval which is required in terms of the Code of Practice;
- (3) Fails to comply with any notice or direction given by the Ray Nkonyeni Municipality in terms of these By-laws;
- (4) obstructs or hinders any authorised official or employee of the Council in the execution of his or her duties under these By-laws; is guilty of an offence and liable on conviction to a fine or in default of payment to imprisonment for a period not exceeding six months, and in the case of a continuing offence, to a further fine not exceeding R5000, or in default of payment, to imprisonment not exceeding one day, for every day that the offence continues, after a written notice has been issued by the Council, and served on the person concerned, directing the person to stop the offending activity.
 - (a) performs any works in the road reserve without complying with a requirement imposed in terms of section 37);
 - (b) performs any act in relation to a tree or vegetation in contravention of section 42;
 - (c) contravenes or fails to comply with a direction made in terms of any of these By-Laws; is guilty of an offence.
- (5) A person who commits an offence in terms of subsections (2) or (3) is liable on conviction to a fine not exceeding R5 000 or, in default of payment, to imprisonment for a period not exceeding six months, and in the case of a continuing offence, to a further fine not exceeding R100000.00 for every day that the offence continues, after a written notice has been issued by the Council, and served on the person concerned, directing the licensee to stop the offending activity.

Short title

43. These By-laws are called the Ray Nkonyeni Local Municipality Public Road, By-laws, 2024.

FORM TO BE COMPLETED REGARDING AN INTENDED CLAIM FOR ALLEGED POTHOLE DAMAGES, BROUGHT AGAINST RAY NKONYENI MUNICIPALITY

Attention is drawn to the following aspects:

- It is essential that **all** the required particulars and information referred to in this form, be supplied by the claimant in order to enable the Municipality to consider the claim as expeditiously as possible

NB: Any request to complete this form is solely to obtain full particulars from the claimant in order to evaluate the claim and must in no way be construed as acceptance of liability by the Municipality. The Municipality furthermore, reserves the right to request further information it deems necessary in considering the claim.

- The complete form, together with the relevant Notice in terms of Act 40 of 2002 and required documents must be forwarded or hand delivered to:-

The Office of the Municipal Manager

10 Connor Street

Port Shepstone

4240

Tel. No.: 039 688 2021

REQUIREMENTS FOR CLAIMING

Fill in the claim form and attach the following documents and thereafter submit the claim to the Office of the Municipal Manager: -

- 1 **Affidavit from police station**
- 2 **Certified Copy of driver's license**
- 3 **Certified Copy of the owner's driver's license (if applicable)**
- 4 **Proof of car/vehicle ownership (CERTIFIED)**
- 5 **Certified Copy of Driver's ID**
- 6 **Photos of the pothole, that caused the damage to the vehicle**
- 7 **Photos of the damaged parts of the vehicle**
- 8 **Three (3) cost quotations (ORIGINAL)**
- 9 **Invoice / proof of payment (ORIGINAL)**
- 10 **Letter from insurance company confirming that the vehicle is/was insured or an affidavit from the police station confirming that the vehicle is/was not insured**

1. **CLAIMANT'S PARTICULARS**

1.1 NAME :

1.2 IDENTITY NUMBER : -----

(Copy of certified ID must be attached)

1.3 POSTAL ADDRESS :

1.4 PHYSICAL ADDRESS : -----

1.5 TELEPHONE NUMBERS :

1.6 E-MAIL ADDRESS :

2. PARTICULARS OF VEHICLE

2.1 IN THE CASE OF A VEHICLE

2.1.1 MODEL & MAKE OF THE VEHICLE :

2.1.2 NAME AND ADDRESS OF REGISTERED : -----

OWNER

3. PARTICULARS OF CLAIM

3.1 IN THE CASE OF A VEHICLE

3.1.1 NAME AND ADDRESS OF DRIVER OF THE :

VEHICLE AT THE TIME OF THE INCIDENT

3.1.2 DRIVER'S LICENSE AND DATE ISSUED :

(Certified Copy must be attached)

3.1.3 GIVE A DETAILED DESCRIPTION OF THE :

CIRCUMSTANCES WHICH GAVE RISE TO

THIS CLAIM. ALSO INDICATE THE DATE

AND TIME OF THE ALLEDGED INCIDENT.

INCLUDE A DESCRIPTION OF

THE WEATHER AT THE TIME AND

INCLINE OF ROAD/STREET WHERE ALLEDGED

INCIDENT OCCURRED. STATE THE SPEED AT

WHICH THE VEHICLE WAS MOVING

PRECEDING THE ALLEDGED INCIDENT.

(use a separate page if necessary)

3.1.4 IF THE VEHICLE IS INSURED, :

THE **NAME OF THE INSURANCE**

COMPANY AS WELL AS POLICY NUMBER

MUST BE FURNISHED.

IF THE VEHICLE/PROPERTY IS NOT

INSURED AN AFFIDAVIT TO CONFIRM

THIS IS REQUIRED

3.2 ON OR ALONG WHICH ROAD DID THE :
INCIDENT OCCUR, WITH REFERENCE TO
THE NEAREST KILOMETER MARK AND/OR
ANY OTHER IDENTIFIABLE BEACONS IN
THE IMMEDIATE VICINITY WHERE THE
INCIDENT OCCURRED

GPS CO-ORDINATES : -----

3.3 NAMES AND CONTACT ADDRESSES/ :
TELEPHONE NUMBERS OF EYE
WITNESSES, IF APPLICABLE

3.4 AT WHICH POLICE STATION WAS THE :
INCIDENT REPORTED

3.4.1 REFERENCE NUMBER AND DATE :

3.5 DESCRIPTION OF THE DAMAGE TO :
VEHICLE

- 3.6 SKETCH THE SCENE WHERE THE INCIDENT OCCURRED WITH SPECIFIC REFERENCE TO ALL ROAD SIGNS AND MARKINGS AND, IN THE CASE OF A VEHICLE, THE DIRECTION IN WHICH THE CAR WAS TRAVELING, LOCATION OF THE POTHOLE AS WELL AS THE LOCATION OF ANY OTHER VEHICLES, IF APPLICABLE, AND ANY FURTHER RELEVANT INFORMATION YOU MAY CONSIDER NECESSARY, (use separate page if needed)

SKETCH

3.7 COMPILATION OF THE AMOUNT

:

CLAIMED

--

I HEREBY DECLARE THAT THE PARTICULARS IN THIS DOCUMENT FURNISHED BY ME, AS WELL AS THE CONTENTS OF THE REQUIRED DOCUMENTS ATTACHED THERETO, IS CORRECT IN ALL ASPECTS.

CLAIMANT'S SIGNATURE

DATE :
