

# MOSES KOTANE LOCAL MUNICIPALITY



## ENVIRONMENTAL BY-LAW

Original Council Approval		Amended
Date of Council Approval	03/06/2026	No
Resolution Number	151/05/2026	
Effective Date	1 July 2026	

## **PURPOSE**

**To provide within the framework of the Constitution of the Republic of South Africa, 1996, the National Environmental Management Act 107 of 1998, the Local Government: Municipal Systems Act 32 of 2000, the Local Government: Municipal Structures Act 117 of 1998, the National Environmental Management: Biodiversity Act 10 of 2004, the National Environmental Management: Protected Areas Act 57 of 2003, National Environmental Management: Air Quality Act 39 of 2004 and other related legislation for a framework for environmental governance within the Moses Kotane Local Municipality (MKLM), by establishing core principles for the Municipality's and the local community's decision-making on matters affecting the environment; to provide for the prohibition, restriction and control of activities in the municipal area which are likely to have a detrimental effect on the environment; to establish environmental rights and duties on the part of the municipality and members of its local communities; to provide for the manner in which municipal environmental functions are exercised and performed; to establish a simple and enabling framework for change and conduct in the jurisdiction of the Municipality that is conducive to environmental sustainability; to establish a Code of Environmental Conduct for councillors and for Municipal staff members and to provide for matters connected therein within the broader framework of developmental local government.**

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## **PREAMBLE**

The By-law on Local Environmental Governance outlines and guides the **Moses Kotane Local Municipality's** integrated approach in relation to environmental governance and sustainability within its jurisdictional area.

Recognising the sustainable development principles as provided for in the Earth Charter and Local Agenda 21, as well as the mandate granted to the Council of the **MKLM** by the Constitution of the Republic of South Africa, 1996, and other related legislation pertaining to the local government and the environment provides a framework for the effective regulation of local environmental governance in the jurisdictional area of the **MKLM** and for the regulation of different aspects related to the relationship between the local community and the environment.

This By-Law also promotes integrated and co-operative environmental governance; the provision of services to communities in a sustainable manner and local government's promotion of a safe and healthy environment. It also gives effect to the rights, duties and functions of local government.

This By-Law also envisage the establishment of an **Environmental Management Forum** as a coordinating structure of all environmental matters and activities. This forum shall be known as the Moses Kotane Local Municipality Environmental Management Forum and shall have its own Constitution in line with municipal and environmental legislation.

## **CHAPTER 1:**

### ***DEFINITIONS, OBJECTIVES AND APPLICATIONS***

#### **Definitions**

**Alien species** means an animal, plant or tree species that is not a local indigenous species; or an indigenous species trans-located or intended to be trans-located to a place outside its natural distribution range in nature, but not an indigenous species that has extended its natural distribution range by natural means of migration or dispersal without human intervention.

**Authorised official** means any official of the Moses Kotane Local Municipality who has been authorised to administer, implement and enforce the provisions of this Bylaw.

**Biodiversity** or **Biological Diversity** means the variability among living organisms from all sources including terrestrial and aquatic ecosystems and the ecological complexes of which they are part and includes diversity of animals, plants or other organisms, found within and between ecosystems, habitats, ecological complexes of which these systems and habitats are part; and species.

**Constitution** means the Constitution of the Republic of South Africa, 1996

**Council** means the Municipal Council of the Moses Kotane Local Municipality, or any officer, committee or employee of the Council to which or whom an instruction has been given or any power has been delegated or sub-delegated in terms of, or contemplated in, Section 59 of the Local Government: Municipal Systems Act 32 of 2000 and Section 157(1) of the Constitution.

**Environment** the surroundings within which humans exist and that are made up of:

- (a) land, water and atmosphere of the earth;
- (b) micro-organisms, plant and animal life;
- (c) any part or combination of (a) and (b) and the interrelationships among and between them; and
- (d) the physical, chemical aesthetic and cultural properties and conditions of the foregoing that influence human health and well-being.

**Environmental By-law** means any by-law of MKLM that deals with environmental management, the regulation of matters pertaining to specific natural or cultural resources, the provision of environmental services such as the provision of water services and sanitation and waste services or the risk of harm to the environment.

**Grade III heritage resources** means other heritage resources worthy of conservation, as per section 7(1)(c) of the National Heritage Resources Act, and includes:

- (a) Grade III(a) heritage resources which are heritage resources, buildings/structures and sites of outstanding local architectural, aesthetic and historical value;
- (b) Grade III(b) heritage resources, buildings/structures and sites of considerable architectural aesthetic, social and historical value; and
- (c) Grade III(c) heritage resources, buildings/structures, sites and areas of considerable local contextual value for social, historical, scenic or aesthetic reasons.

**Integrated environmental management** means environmental management or governance which integrates social, economic and environmental considerations.

**Erosion** means the loss of soil through the action of water, wind, ice or other agents, including the subsidence of soil.

**Local Community** means that body of persons comprising:

- (a) the residents of Moses Kotane Local Municipality;
  - (b) the ratepayers of Moses Kotane Local Municipality;
  - (c) any civic organisations and non-governmental, private sector or labour organisations or bodies which are involved in local affairs within Moses Kotane Local Municipality; and
  - (d) visitors and other people residing outside the municipality, who, because of their presence in Moses Kotane Local Municipality, make use of services or facilities provided by the Municipality,
- and includes, more specifically, the poor and other disadvantaged sections of such body of persons as per section 1 of the Local Government: Municipal Systems Act 32 of 2000.

**Municipality** means the Moses Kotane Local Municipality as a municipality described in section 2 of the Local Government Municipal Systems Act 32 of 2000;

**or**

Municipal area of the Moses Kotane Local Municipality as determined in terms of the Local Government: Municipal Demarcation Act 27 of 1998;

**or**

The assigned municipal department or official, required to fulfil an administrative act such as the issuing of an environmental authorisation.

**Public monuments and memorials** mean all monuments and memorials:

- (a) erected on land belonging to any sphere of national, provincial or local government, or on land belonging to any organisation funded by or established in terms of the legislation of such spheres of government; or
- (b) which were paid for by public subscription, government funds or a public spirited or military organisation, and are on land belonging to any private individual.

**Spatial development framework** means a visual representation of the desirable spatial form of Moses Kotane Local Municipality that must be included in the Municipality's Integrated Development Plan in terms of sections 26 (c) and (e) of the Municipal Systems Act.

**Sustainable development** means the integration of social, economic and environmental factors into planning, implementation and decision-making so as to ensure that development serves present and future generations.

## **Objectives**

**1.** The following are the objectives of this Bylaw:

- (a) To promote conservation of biological diversity within MKLM;
- (b) To manage people's behaviour to ensure that the use of biological resources are environmentally sustainable;
- (c) To define the roles and responsibilities of MKLM and members of the local communities in relation to the conservation of biodiversity and management of local protected areas;
- (d) To promote the use of indigenous biological resources within MKLM in a sustainable manner;
- (e) To protect aquatic and associated ecosystems and their biological diversity within MKLM;
- (f) Give effect to the environmental rights by controlling air pollution and air quality within MKLM;
- (g) To provide an effective legal and administrative framework within which MKLM can manage and regulate activities that has the potential to negatively impact the environment, public health, safety and well-being;
- (h) To ensure that air pollution is avoided or, where it cannot be avoided altogether, is minimised and remedied.
- (i) To protect and better manage local protected areas, heritage sites and places within these sites;
- (j) To regulate the admission of the public to any place protected under this Bylaw;

- (k) To encourage and empower local communities to conserve their heritage resources so they can benefit the future generations as well.

## **Application**

2. These bylaws apply throughout the **Moses Kotane Local Municipality** to the actions of the entire Municipality (including the Council) and its officials, regardless of whether they are involved with environmental matters or not, the local community, visitors to the municipal area, and service providers that may significantly affect the environment in the jurisdiction of Moses Kotane Local Municipality.
3. These bylaws shall be interpreted in consistence with, and complementary to, the National Environmental Management Act, National Environmental Management: Biodiversity Act 10 of 2004, the National Environmental Management: Protected Areas Act 57 of 2003, National Environmental Management: Air Quality Act 39 of 2004.
4. In the event of conflict between the provisions of this Bylaw and any provincial or national law, the provisions of such provincial or national law will prevail.
5. In the event of conflict between the provisions of this Bylaw and any other bylaw of the MKLM, these

## **CHAPTER 2:**

### ***ENVIRONMENTAL RIGHTS AND DUTIES***

6. Members of the local communities, councillors, staff members, service providers and any person in the jurisdiction of Moses Kotane Local Municipality have the right to the following:
  - (a) An environment not detrimental to their health and/or well-being, and the Municipality must take all reasonable legislative and other measures to protect, respect and promote this right.
  - (b) Have the environment protected, for the benefit of the present and future generations through reasonable legislative and other measures.
  - (c) Be duly informed of environmentally related decisions of the Council, another political structure, any political office bearer or staff member of the Municipality, affecting their rights, property and reasonable expectations; and

(d) Regular disclosure of the state of environmental affairs of the Municipality, including environmental budgeting.

**7.** Members of the local communities, councillors, staff members, service providers and any person in the jurisdiction of the Municipality have the duty to respect, protect, promote and fulfil the right of each other member to an environment not detrimental to their health and/or well-being, by:

(a) Preventing pollution and ecological degradation;

(b) Promoting conservation of natural resources.

**8.** No person within the jurisdiction of Moses Kotane Local Municipality shall:

(a) Lawfully/unlawfully and intentionally or negligently commit any act or omission which causes or is likely to cause pollution or degradation of, or which may negatively affect or is likely to affect, the environment;

(b) Refuse to comply with a compliance notice or directive issued in terms of this Bylaw

**9. Any contravention of subsection (7) will be punishable with a fine of up to R10, 000.00 or ten years imprisonment or both.**

**10.** The Moses Kotane Local Municipality Council has the duty to:

(a) Pursue environmental justice within local communities and to give community members equitable access to the municipal services to which they are entitled;

(b) Encourage involvement of the local communities (including traditional communities and traditional leaders) in environmental decision-making.

### **CHAPTER 3:**

#### ***ENVIRONMENTAL COMPLIANCE, ENFORCEMENT AND PROTECTION***

**11.** Notwithstanding the provisions of any other law or legislation, no person may be dismissed, disciplined, prejudiced or harassed for having refused to perform any work for the Municipality, if the person faithfully believes the performance of such work would result in a serious threat to the environment and/or to human health, safety and well-being.

- 12.** Any person who refuses to perform any work in terms of section 10 must, as soon as practicably possible, notify the Municipal Manager that he/she refused to perform that work and must also state the reasons for such refusal.
- 13.** No person may threaten to take action against any person because that person has exercised or intends to exercise his or her right in terms of section 10.
- 14.** If any person performs any act or fails to perform any act as a result of which the environment may be negatively affected, a designated staff member of MKLM must direct such person to stop such activity, or take steps that the Municipality may deem fit.
- 15.** A verbal directive must be put in writing by the designated Municipal staff member within one week after it has been made and all directives must be kept on record by the Municipality.
- 16.** A designated Municipal official may direct the person referred to in section 10 to rehabilitate any damage, or potential damage, to the environment, to the satisfaction of the Municipality, at that person's expense.
- 17.** If the person referred to in section 14 fails to perform the rehabilitation activity or function, the Municipality may perform such activity or function on that person's behalf and recover all costs from that person.
- 18.** The Municipality shall, no later than 6 months after the adoption of this Bylaw, approach the Minister and/or MEC to appoint and train local Environmental Management Inspectors (EMI), as provided for in Section 31B and 31C of the National Environmental Management Act 107 of 1998, and shall also provide necessary infrastructure and assistance for such inspectors.
- 19.** The local EMI of Moses Kotane Local Municipality shall be responsible for the enforcement of all or specific environmental Bylaws applicable in the jurisdiction of the Municipality for which no other Enforcement officer exists.
- 20.** Subject to the provision of section 18, all detected non compliances with the adopted environmental Bylaws applicable in Moses Kotane Local Municipality should as far as possible be met with an enforcement consequences, which are, but not limited to:
  - a) A formal/informal warning to comply, in case of first time offence with a good compliance record;
  - b) A compliance notice or directive;

- c) The suspension or withdrawal of an authorisation of which the rights have been abused, or there is little or no intention and/or ability to comply, with that authorisation;
- d) Criminal prosecution.

## **CHAPTER 4:**

### ***ENVIRONMENTAL INFORMATION, EDUCATION AND AWARENESS***

- 21.** Every person is entitled to have access to information held by the Municipality which relates to the implementation of this Bylaw and any other Bylaw affecting the environment, and to the state of the environment in the jurisdiction of Moses Kotane Local Municipality as well as actual and future threats to the environment, including any emissions to water, air and/or soil.
  
- 22.** Moses Kotane Local Municipality is entitled to have access to information relating to the State of the Environment and actual and future threats to the environment, including any emissions to water, air and/or soil as well as the production, handling, transportation, treatment, storage and disposal of waste held by any person where the information is necessary to assist the Municipality in carrying out its duties in terms of the provisions of this and any other environmental Bylaws.
  
- 23.** Any person who desires to obtain information relating to the implementation of this Bylaw or any other environmental information in the possession of the Municipality shall have access to that information in terms of Section 32 of the Constitution of the Republic of South Africa and promotion of Access to Information Act.
  
- 24.** Any person referred to in section 21 shall apply to the Municipality in writing indicating the type of information required; and might have to pay a fee.
  
- 25.** The Moses Kotane Local Municipality shall grant access to the information referred to in section 20 on terms and conditions of the Municipality.
  
- 26.** The Municipality shall:
  - a) Gather sufficient information on the environment within its jurisdiction on a regular basis;
  - b) Have access to any data collection on the environment within its jurisdiction;
  - c) Analyse information relating to the environment within its jurisdiction;
  - d) Disseminate environmental information to members of its local communities;

- e) Exchange environmental information with non-governmental organisations and relevant authorities in the North West provincial government and national government departments;
- f) The Municipality shall carry out environmental information and education campaigns to its communities on regular basis.

## **CHAPTER 5:**

### ***DRAFT BIODIVERSITY AND LOCAL PROTECTED AREAS***

#### **Biodiversity Management Plans and Monitoring Committee**

- 27.** In terms of sections 43 and 45 of the Biodiversity Act 10 of 2004, the MKLM may submit a Biodiversity Management Plan to the Minister for the following:
- a) Listed ecosystems that warrant special conservation attention;
  - b) Listed and non-listed indigenous species that warrants special conservation attention; and
  - c) A migratory species to give effect to South Africa's international Law obligations.
- 28.** The Municipality's Biodiversity Management Plan must be in line with the National Biodiversity framework, its Integrated Development Plan, spatial development framework or any other National and/or North West Provincial plans.
- 29.** The Municipality may manage an ecosystem or an indigenous species referred to in section 27 in cooperation with another person, organisation or organ of state, if so agreed with the Minister in terms of section 44 of the Biodiversity Act 10 of 2004.
- 30.** The Minister must review the Municipality's Biodiversity Management Plan once every five years, with the information provided by the Municipality.
- 31.** The Municipality may apply to the Minister to amend its Biodiversity Management Plan during the five year period.
- 32.** The Municipality must follow an open consultation process before compiling its Biodiversity Management plan.
- 33.** MKLM must establish a Biodiversity Monitoring Committee (BMC), after the adoption of the Biodiversity Management Plan and six months after the adoption of this Bylaw. This Committee must consist of:

- a) Members of the Council responsible for environmental or related matters;
- b) At least 2 senior officials of MKLM responsible for environmental or related matters
- c) Two biodiversity experts, one of which must preferably be from the South African National Biodiversity Institute (SANBI); and
- d) Two members from the Local Communities.

**34.** The Biodiversity Monitoring Committee should meet at least twice a year or as need arises.

**35.** The Biodiversity Monitoring Committee of MKLM shall resume the following functions or duties:

- a) Consider the BMP submitted to them in terms of sections 7 and 8 of the Biodiversity Act 10 of 2004;
- b) Determine the implementation progress of the BMP, indicating successes and challenges thereof;
- c) Suggest proposals to the Council to address the challenges mentioned in subsection b);
- d) Consider any matter raised by the public in a public meeting.
- e) Prepare a final report to be submitted to the MKLM Council for discussion at their next meeting in the next calendar year.

**36.** The BMC must convene an annual public meeting with its local communities after considering the BMP received by the municipality as well as the successes and challenges referred to in subsection (9)(b).

### **Threatened or Protected Ecosystems and Species**

**37.** MKLM must align its Integrated Development Plan (IDP), Spatial Development Plan (SDP) and Environmental Management Framework (EMF) with the national list, or North West provincial list, of threatened ecosystems that need protection in terms of section 52 of the Biodiversity Act 10 of 2004. The IDP, SDP and EMF must be revised and amended each time after a new list is amended or repealed.

**38.** MKLM's IDP and SDP must also delineate special areas with specific attributes to protect the habitat, ecosystem and ecosystem services where only permitted restricted activities are allowed and where the following listed species occur:

- (a) Critically endangered species;
- (b) Endangered species;

- (c) Vulnerable species;
- (d) Protected species; or
- (e) Any other species determined by the Council after publication in the Provincial Gazette.

**39.** The IDP and SDF must be revised and amended if the national lists referred to in section (2) are amended or repealed.

### **Species and Organisms posing Potential Threats to Biodiversity**

**40.** No person shall carry out any restricted activity involving an alien species within the jurisdiction of MKLM without a permit issued in terms of Chapter 7 of the Biodiversity Act 10 of 2004.

**41.** MKLM will issue permits, in terms of section 97 of the Biodiversity Act 10 of 2004, only if:

- (a) Prescribed assessment of risks and potential impacts on the biodiversity has been carried out;
- (b) The alien species referred to in section 39 are not exempted by the Minister in the *Government Gazette*;
- (c) The activity is not entirely prohibited by the Minister in the *Government Gazette*.

**42.** MKLM must, no later than twelve months after adoption of this Bylaw, prepare an invasive species monitoring, control and eradication plan for the land within its jurisdiction. This plan must include details:

- (a) List and description of any listed invasive species occurring on any piece of land within their jurisdiction;
- (b) Description of the parts of that land infested with such listed invasive species;
- (c) An assessment of the extent of such infestation;
- (d) A status report of the previous control and eradication measures;
- (e) Current measures to monitor, control and eradicate such invasive species; and
- (f) Measurable indicators of progress and success, and indication of the target completion date of the plan;
- (g) The control and eradication of listed invasive species must be done in accordance with methods appropriate for the species concerned as well as the environment in which it occurs;
- (h) Control and eradication of listed invasive species must be undertaken to cause the least possible harm to biodiversity and damage to the environment;

- (i) Methods employed to eradicate and/or control listed invasive alien species must also be directed at the offspring, propagating material and regrowth of such species, in order to prevent such species from producing offspring, forming seeds, regenerating or re-establishing itself in any manner.

### **Local protected areas**

**43.** MKLM is responsible for the management of the following areas, within its jurisdiction:

- (a) Local protected areas;
- (b) Any other natural area that may be worthy of protection;
- (c) Special nature reserve(s) if assigned to it by the Minister;
- (d) Protected environment, if assigned to it by the MEC or Minister.

**44.** MKLM must prepare a management plan for its local protected and other areas assigned to it and integrate this plan with its IDP.

**45.** The purpose of this plan referred in section (2) is to ensure protection, conservation and management of the protected areas concerned in a manner consistent with the objectives of the Protected Areas Act 57 of 2003.

**46.** No person may, within the jurisdiction of, and without a permit from, MKLM;

- (a) Enter a local protected area;
- (b) Reside in a local protected area;
- (c) Develop, construct or farm; or
- (d) Perform any other activity in a local protected area.

**47.** The restrictions in section (4) do not apply to MKLM official or any official organ of state designated by the Minister in writing, to monitor

- (a) The state of conservation of the area or of the biodiversity in that area;
- (b) The implementation of the management plan and this Bylaw;

**48.** MKLM may grant an exemption from a provision of section (4), in writing and on conditions determined MKLM and the assigned protected area, to:

- (a) A scientist performing a scientific work;
- (b) Any person to perform any activity related to conservation of the protected area and/or its biodiversity;

- (c) A person recording news event that occurred in the reserve or an educational or scientific programme;
- (d) An official of the Management Authority, or of an organ of state, to perform official duties.

**49.** Any person may apply to the Municipality for a permit to:

- (a) A commercial activity in the local or assigned protected area; or
- (b) An activity in the local or assigned protected area aimed at raising revenue.
- (c) Enter into a written agreement with the local community inside or adjacent to the local or assigned protected area, to allow members of that community to sustainably use biological resources in that area.

**50.** An activity listed in section (7) (a) and (b) may not negatively affect the survival of any species within that area or the ecological integrity of that area.

### **Public and Private open spaces**

**51.** Public and zoned private open spaces within the jurisdiction of MKLM must as be managed in an environmentally friendly and sustainable manner.

**52.** The local communities within the jurisdiction of MKLM must be made aware of the value of biodiversity and natural resources in the natural environment within public and private open spaces and be encouraged to use and care for them.

**53.** The local communities must be educated and trained to take responsibility for the maintenance and care of open spaces in their immediate surroundings.

**54.** MKLM may require members of the public to pay a prescribed fee:

- (a) To use the recreational or other facilities that it provides within its public open spaces;
- (b) For entrance to public open spaces which are significantly more expensive to maintain than other public open spaces; such as Zoological and Botanical Gardens;
- (c) For the right to undertake a special event
- (d) For the right to exclusively use municipal property for a specific period; and
- (e) For processing applications for permits or letters of permission under this Bylaw.

### **Restricted Activities**

**55.** No person shall, within MKLM public open spaces:

- (a) Bathe, wade or swim in or wash him/herself, an animal or any object, including clothing, in any water body;
- (b) Make, light or otherwise start a fire;
- (c) Camp or reside there;
- (d) Erect a shelter of informal housing in an open public or private space;
- (e) Play an active game, except in an area designated for that purpose, on sport playing fields or on golf course;
- (f) Deposit, dump or discard any waste, unless in a suitable receptacle provided by MKLM for that purpose;
- (g) Disturb, change or degrade the area in any way;
- (h) Light a fire or burn or attempt to burn any rubbish, refuse or grass or other vegetation, other than for cooking in designated places;
- (i) Disturb, damage, destroy, remove or even plant any vegetation;
- (j) Alter the slope or drain pattern so as to interfere with the access of water, air or nutrients to any tree;
- (k) Capture or attempt to capture, trap, chase, shoot at, injure, throw objects at, tease, molest or in other way disturb any living species;
- (l) Disturb, damage or destroy any bird, amphibian or reptile nest or eggs;
- (m) Take into or have a dog in a park, unless it is on a chain or a leash.
- (n) Disturb the surface of any land, whether by digging or undertaking any earthworks;
- (o) Erect, build or assemble any structure, including a hut, tent, screen, bulletin board, pole, stand, stage or construction of whatever nature;

### **Application for permission**

**56.** Any person who wants to undertake any prohibited activity, listed in section (1) above, in a public open space, must apply to MKLM in writing for permission to do so;

**57.** The Municipality must consider the application within reasonable time and can either:

- (a) Refuse the application in which case the refusal must be accompanied by adequate written reasons for the refusal; or
- (b) Grant permission on certain conditions determined from time to time by MKLM, which may also include payment of a deposit and/or a fee.

**58.** An application for permission to hold a special event in a public open space must be made at least 3 weeks before the proposed date of the special event;

**59.** The application must contain the following information:

- (a) Full names and contact details of the applicant;
- (b) Nature and purpose of the special event;
- (c) The intended route or area proposed to be used by for the special event.

**Wetlands, Aquatic Diversity, Hills and Ridges**

**60.** In terms of Section 21 of the National Water Act:

- (a) No development shall occur in the jurisdiction of MKLM within a wetland habitat or 1:50 year floodline;
- (b) Wetlands may not be modified or transformed through landscaping;
- (c) A buffer zone, determined by a wetland specialist, must be created between the wetland and any proposed development; and
- (d) A control and eradication programme for exotic and invasive species shall be implemented within wetland systems contained in the development by the developer.

**61.** MKLM must manage and implement the Working for Water (WFW) programme for the Department of Water and Environmental Affairs.

**62.** Exotic and Invasive species within the privately owned wetlands must be removed by the owner or the person renting the area for grazing.

**63.** No development shall occur on any ridge with a slope greater than 5<sup>0</sup> within the jurisdiction of MKLM.

**64.** If a developer wishes to develop on a ridge, MKLM must notify the developer that the following studies are required:

- (a) A complete and full Environmental Impact Assessment with a full set of specialist reports including, but not limited to:
  - (i) Ecological study;
  - (ii) Red data study;
  - (iii) Invertebrate study;
  - (iv) Pollution study, including air, water and soil pollution;
  - (v) Social study, including cultural, historical and open space value aspects.

- (b) No owner or occupier of land within MKLM shall cause or permit to occur therein any soil erosion, which causes or may cause damage to adjacent or any other land within MKLM.
- (c) If any soil erosion occurs upon land or may cause damage to adjacent or any other land within MKLM, the Municipality may serve the owner or occupier with a notice to remediate the damage.

## **CHAPTER 6:**

### ***AIR QUALITY AND NOISE POLLUTION CONTROL***

#### **Air Quality Officer**

**65.** The MKLM Council shall, within six months after the adoption of this Bylaw, in consultation with all the relevant divisions of the MKLM, designate an Air Quality Officer, who can also be designated as an Environmental Management Inspector, in terms of sections 31B and 31C of the National Environmental Management Act.

The Air Quality Officer shall resume and perform the following duties and responsibilities:

- (a) Co-ordinate the development of the MKLM Air Quality Management Plan and prepare annual reports to the Municipality on air quality management, and must include the following information:
  - (i) Achievement of the air quality objectives;
  - (ii) air quality management initiatives of MKLM;
  - (iii) its level of compliance with ambient air quality standards;
  - (iv) its compliance with any priority area air quality management plans;
  - (v) its air quality monitoring activities; and
  - (vi) its implementation progress.

#### **Noise control**

**66.** No person shall

#### **A. NOISE ABATEMENT BY-LAWS**

#### **DEFINITIONS**

For the purposes of this by-law, unless the context otherwise indicates: -

**“ambient sound level”** means the reading of an integrating sound level meter measured at the measuring point at the end of a total period of at least 10 minutes after such integrating sound level meter has been put into operation, during which period a noise alleged to be a disturbing noise is absent

**Disturbing noise”** means a noise level which exceeds the ambient sound level, or more, and “disturbing”, in relation to a noise, shall have a corresponding meaning;

**“Integrating sound level meter”** means a device integrating a function of sound pressure over a period of time and indicating the result, indicating is a function of both the sound level and the duration of exposure to the sound during the period of measurement;

**Measuring point”** means: -

(a) in relation to a piece of land from which a disturbing noise is emitted, a point beyond the vertical boundaries of the land concerned where, in the opinion of the Head of Unit : Environmental and Waste Management, a disturbing noise should be measured in accordance with the provisions of section 3; or

(b) In relation to a multi-occupancy building, a point in such building where, in the opinion of the Head of Unit: Environmental and Waste Management a disturbing noise should be measured in accordance with the provisions of section 3;

**Noise”** means any sound which disturbs the quiet or rest of a person or impairs or may disturb or impair or create a nuisance;

**“noise level”** means the reading on an integrating sound level meter taken at the measuring point at the end of a reasonable period after the integrating sound level meter has been put into operation during which period the noise alleged to be a disturbing noise is present, to which reading 5dB (A) is added if the disturbing noise contains a pure tone component or is of an impulsive nature.

## **B. OFFENCES**

No person shall make, produce, cause or permit to be made or produced by any person, machine, animal, bird, device or apparatus or any combination of these, a noise, which is a disturbing noise. Any person found to cause such disturbing noise shall be guilty of an offence.

## **C. MEASURING OF AMBIENT SOUND LEVEL AND NOISE LEVEL**

When the ambient sound level or noise level is measured and read in terms of this by-law such measurement and reading shall be done in the case of:

- outdoor measurement on a piece of land which the microphone of the sound level meter is at least 1,2 m but no more than 1,4 m above the ground and at least 3.5 m distant from walls, buildings, or other sound-reflecting surfaces.
- Indoor measurements in a room or enclosed space with the microphone of the integrating sound level meter at least 1,2 m but not more than 1,4 m above the floor and at least 1,2 m distant from any wall, with all the windows and outside doors of such room or enclosed space completely open.

The microphone of an integrating sound level meter shall at all times be equipped with a windshield.

#### **D. POWERS OF HEAD OF UNIT: ENVIRONMENT AND WASTE MANAGEMENT**

When the Head of Unit is satisfied that a noise emanating from any building, premises or street is a disturbing noise, he may, in a written notice, instruct the person causing or responsible for the disturbing noise or the owner of such building or premises on which the disturbing noise is caused, or both of them within a period specified in such notice to stop such noise or have it stopped or take the necessary steps to reduce the disturbing noise level to a level which complies with the provisions of this by-law, provided that if the Head of Unit : Environmental and Waste Management is satisfied that the disturbing noise is due to or caused by: -

(a) The working of:

- A machine or apparatus which is necessary for the maintenance or repair of property, or the protection of life, property or public services;
- Garden equipment;
- A machine or device, the noise level which has, in the opinion of the Chief Officer of Health been reduced or muffled according to the best practical method and which continues to be disturbing;
- A sports meeting; or
- Circumstances or activities beyond the control of the person responsible for causing the disturbing noise,

He/ She may, whether generally or specifically, after written representation to the Head of Unit: Environmental and Waste Management by the person who caused or was responsible for the disturbing noise, permit the working of such machine, apparatus or device, or such sports meeting or circumstances or activities, to continue subject to such conditions as he deems fit.

(b) The Head of Unit: Environmental and Waste Management may, if it comes to his attention that a person intends, plans or constructs business or trade, which may create a noise in the normal commissioning thereof or at any time in the future, may instruct

such a person to conduct a noise impact study or have such study carried out which complies with the conditions of the Head of Unit: Environmental and Waste Management and such study must be submitted to the Head of Unit: Environmental and Waste Management before commissioning any contemplate planned or constructed operation.

(c) Any person who fails to comply with an instruction in terms of (a) or (b) above shall be guilty of an offence.

#### **E. NOISE DISTURBANCE**

Notwithstanding the foregoing provisions of this by-law, no person shall: -

- In any street or public place in or on any premises between 22:00 and 06:00 shout, sing, hoot or otherwise make any loud noise;
- operate, play or sanction the operation or performing of any radio, television set, phonograph drum, musical instrument, sound amplifier or similar device which produces, reproduces amplifies sound;
- Operate or sanction the operation of any warning device, siren, hooter, or any similar device other than in an emergency or when required by law;
- In terms of section 80A of the National Road Traffic Act, Act 93 of 1996, the Municipality prohibits anybody to offer any article for sale or to canvas for business by shouting or ringing a bell or use a hooter in a manner which may cause a noise nuisance. No person shall on a public road use a sounding or warning device or hooter of a vehicle except when such use is necessary in order to comply with the provisions of the Act or on grounds of safety.
- Sanction or passively allow any burglar alarm device to sound either continuously or intently for more than 20 minutes after it begun sounding;
- keep, possess or harbour in or on any premises any animal or bird, or sanction the keeping, session or harbouring in or on any premises any animal or bird which in a manner may disturb or hinder the comfort, convenience, or quiet of the public;
- operate or sanction the operation of any lawnmower, other garden machinery or power rated tool between 18:00 and 06:00 on any day which may, or in a manner which may disturb or hinder the comfort, convenience or quiet of the public;
- Cause a noise or permits a noise to be caused.

## **F. RIGHT OF ENTRY**

Any authorized officer of the Council may, for any purpose connected with the enforcement of this by-law, and without previous notice, enter any property and make such examination, enquiry and inspection thereon as he deems fit, and he or any person instructed by him may take such steps as may be necessary to silence any noise for the purpose of determining the ambient sound level.

## **G. OBSTRUCTION**

Any person who fails or refuses to give access to any officer of the Council authorized by the Head of Unit: Environmental and Waste Management or by the Council to enter upon and inspect any property, or obstructs or hinders such officer in the execution of his duties under this by-law, or who fails or refuses to give information which he may lawfully be required to give, or, gives to such officer false or misleading information knowing it to be false or misleading, commits an offence.

## **H. OFFENCES AND PENALTIES**

Any person who: -

- Contravenes or fails to comply with any provision of this by-law; or
- fails to comply with an instruction given or condition imposed in terms of section D above,

shall be guilty of an offence and shall upon conviction be liable to a fine not exceeding R10 000-00 or to imprisonment for a period not exceeding 6 months, or to both such fine and imprisonment, and in the case of a continued offence, to a fine not exceeding R500-00 per day for each day on which such offence continues.

### **Open burning**

**67.** Any person who carries out open burning of any material on any land or premises, without any prior written authorisation, is guilty of an offence

**68.** The following requirements should be adequately addressed when authorising open burning:

- (a) material to be open burned on the land from which it originates;
- (b) that the person requesting authorisation to open burn has investigated alternatives for reducing, reusing or recycling the material before open burning, to the satisfaction of the authoriser;

- (c) that the person requesting authorisation to open burn has investigated and assessed the impact that the open burning will have on the environment, to the satisfaction of the authoriser.
- (d) the person requesting authorisation has notified, in writing, the owners and occupiers of all adjacent properties, of:
  - (i) all known details of the proposed open burning;
  - (ii) the right of owners and occupiers of adjacent properties to lodge written objections to the proposed open burning with the Municipality, within seven days of the notice.
- (e) the open burning is conducted at least 100 meters from any buildings or structures;
- (f) the open burning will not pose a potential hazard to human health or safety, private property or environment.

**69.** The provisions of this section do not apply to the following:

- (a) recreational outdoor braai activities on private premises;
- (b) small controlled fires used for cooking, heating water and for other domestic purposes, in informal settlements

### **Other Emissions**

**70.** No person may burn or cause to be burnt any domestic or garden waste, for the purpose of disposing of that waste, in a waste bin, skip or any other container, in terms of section 26 of the National Environmental Management: Waste Act 59 of 2008.

**71.** No person may (or allow to) spray, coat, plate or epoxy-coat any vehicle, article, object or building with any flammable substances unless having a spraying permit from the Chief Fire and Environmental and/or Health Officers of MKLM;

**72.** No person shall carry out or permit to burn any tyres or rubber or any synthetically coated, covered or insulated products and electronic or other equipment on any land or premises, not even for the purpose of recovering the metals from those items;

**73.** Any person causing dust emissions shall take full responsibility to prevent excessive emissions into the atmosphere that may be harmful to public, safety and health;

**74.** Any person who produces excessive emission of dust must adopt control measures before starting the activity;

**75.** Any person who carries out or plans to carry out any construction activity must notify, in writing, owners and occupiers; of all adjacent properties about the details of the proposed construction activity, and also, of their right to lodge written objections to the proposed construction activity;

**76.** Owners and operators of unpaved roads must implement the following control measures to prevent excessive emissions of dust:

- (a) pave the road;
- (b) use dust suppressants for that road; or
- (c) regularly maintain surface gravel

Section (7) above does not apply to; a gravel road of less than 150 vehicles per day, non-commercial private driveways, horse trails, hiking paths, or bicycle paths.

**77.** The control measures mentioned in subsection (7) (a), (b) and (c) also apply to unpaved parking areas that park more than 100 vehicles for more than 150 days per year.

**78.** No one shall:

- (a) operate or play a radio, television set, musical instrument, sound amplifier, loudspeaker system or any device producing sound to cause a noise nuisance;
- (b) allow an animal owned or controlled by him/her to cause a noise nuisance;
- (c) build, make, construct, repair, rebuild, modify, operate or test any sound producing engine that cause a noise nuisance;
- (d) Erect or allow to erect a building or structure on residential premises if this may cause a noise nuisance;
- (e) Use or discharge any explosive, firearm or similar device that emits impulsive sound and may cause a noise nuisance;
- (f) emit a sound, or allow a sound to be emitted by means of a bell, siren, hooter, static alarm, whistle, loudspeaker or similar device, if it may cause a noise nuisance, except in an emergency.
- (g) drive a vehicle on a public or private road in such a way that it may cause a noise nuisance;
- (h) use any power tool or equipment used for construction for the purposes of drilling or demolition work near a residential area if it may cause noise nuisance.
- (i) no person may stage any open-air entertainment festival, such as a show, an air show, music festival or similar gathering without the prior written consent of MKLM.

## **CHAPTER 7:**

## ***STANDARD WASTE MANAGEMENT BY-LAW***

**79. Please note** that the Bylaw for Solid Waste Management for the Moses Kotane Local Municipality already exists and was drafted prior to this By-law. Nevertheless, a copy of the Solid Waste Management By-law should be attached to this By-law and the two will always be handled and applied concurrently in the application and effect of the entire Environmental By-law for the Moses Kotane Local Municipality.

## **CHAPTER 8:**

### ***STANDARD HERITAGE RESOURCES BY-LAW***

**80.** MKLM must establish a Local Heritage Authority, within six months of adoption of this Bylaw and with the approval of SAHRA (South African Heritage Resources Agency);

**81.** The following are the functions of the Local Heritage Authority:

- (a) protection and management of protected areas, places in a heritage register as well as heritage areas;
- (b) Identification of Grade III heritage resources and record them in the heritage register;
- (c) Determine the fees for access to areas mentioned in subsection (2)(a);
- (d) Provide incentives for the conservation and maintenance of any place protected within MKLM;

**82.** The Local Heritage Authority must draft a local heritage resources register containing Grade III heritage resources as well as public monuments and memorials within the jurisdiction of MKLM.

**83.** The Local Heritage Authority must maintain and conserve the heritage resources under its control in accordance with SAHRA and the Department of Public Works.

**84.** The Local Heritage Authority shall give a special written consent for any changes and/or developments affecting a resources listed in the local heritage register.

**85.** The Local heritage Authority shall compile and adopt a heritage management plan in accordance with best environmental, heritage conservation, scientific and educational principles.

**86.** No person shall, without permission or a permit:

- (a) enter a protected heritage site, or area, listed in the local heritage register;
- (b) reside in a protected heritage site, or area, listed in the local heritage register;
- (c) develop, construct or farm in a protected heritage site, or area, listed in the local heritage register;
- (d) perform any other activity in a protected heritage site, or area, listed in the local heritage register.

**87.** The restrictions mentioned in section 85 do not apply to a member of the Local Heritage Authority, or any official of MKLM or another organ of state designated by SAHRA or North West Provincial Heritage Authority.

**88.** The Local Heritage Authority may grant an exemption from a provision of section 85, in writing and on its conditions, to:

- (a) a scientist performing scientific work;
- (b) a person to perform an activity related to the conservation of the protected heritage site and/or resource listed in the local heritage register;
- (c) a person recording a news event that occurred in a protected heritage site, on an educational or scientific programme;
- (d) A MKLM official or any other authorised state official to perform official duties.

## **CHAPTER 9:**

### ***OFFENCES, PENALTIES AND APPEALS***

**89.** Any person who:

- (i) obstructs or hinders the Municipality in exercising the powers or performance of functions or duties as outlined in these bylaws;
  - (ii) contravenes or fails to comply with any provision of these bylaws; or
  - (iii) fails to comply with the terms of a notice served upon him/her in terms of these bylaws;
- Shall be guilty of an offence.

- 90.** Any person who contravenes or fails to comply with a provision of these bylaws is guilty of an offence and liable on conviction of up to **six months imprisonment** or payment of a fine of up to **R10, 000.00** or both.
- 91.** Any person whose rights are affected by a decision taken by the Municipality in terms of these bylaws, may appeal against that decision by giving written notice of the appeal and the reasons thereof, in terms of Section 62 of the Local Government: Municipal Systems Act 32 of 2000, to the Municipal Manager or delegated official within MKLM within 21 days of the date of notification of the decision.

## **CHAPTER 10:**

### **SHORT TITLE AND COMMENCEMENT**

- 92.** This By-Law is called the Moses Kotane Local Municipality Environmental By-Law and shall commence on the date of its publication in the North West Provincial Gazette.