

**REPORT TO TOWN PLANNING COMMITTEE**

**PROPOSED CONVERSION OF D'MOSS FROM A POLICY OF COUNCIL TO A COMPONENT OF THE VARIOUS TOWN PLANNING SCHEMES FOUND THROUGHOUT THE ETHEKWINI MUNICIPALITY AREA BY THE AMENDMENT OF VARIOUS TOWN PLANNING SCHEMES IN TERMS OF SECTION 47BIS A OF THE TOWN PLANNING ORDINANCE NO 27 OF 1949.**

---

File Reference:

**1. EXECUTIVE SUMMARY**

- 1.1 The Durban Metropolitan Open Space System (D'MOSS) aims to conserve local biodiversity and to protect environmental goods and services for the benefit of current and future generations. As such it is an important part of Plan 1 of the IDP – Sustaining our Natural and Built Environment. The current version of the MOSS Plan is called the eThekwini Environmental Services Management Plan and was adopted by Council in March 2003. Since March 2003 the Municipality has been working on implementing the Plan and is recognized as a world leader in local government efforts to implement similar plans around the world.
- 1.2 Experience gained in the past few years, indicates that a key intervention in terms of implementing the Plan would be to integrate this policy into the eThekwini Municipality's various town planning schemes. As the Plan is already in the Spatial Development Framework, the regional Spatial Development Plans and other local spatial plans, it is a natural extension to include in the eThekwini Municipality's various town planning schemes.
- 1.3 It is, therefore, now proposed to include D'MOSS as a layer or overlay within the various town planning schemes formulated under various legislation found throughout the City and for which Council approval is sought.
- 1.4 Currently the Pinetown and the Umhloti Town Planning Schemes while having controlled development areas relating to unstable land depicted on their scheme maps they do not have the necessary controls contained within the scheme clauses. This omission is proposed to be corrected.

## 2. BACKGROUND

- 2.1 Globally there have been ever increasing concerns around the issues of sustainability, limited resources, population growth, climate change, etc. Planning legislation has in the past been the dominant legal framework controlling all new development, and which often had little, if any, environmental considerations embodied in it. This has led to the development of significant new environmental policy and legislation at both home and abroad.
- 2.2 In South Africa the key framework environmental legislation is the National Environmental Management Act No 107 of 1998 or NEMA and its regulations. NEMA sets out environmental principles, which must be considered by all.
- 2.3 In KwaZulu-Natal attempts were made to draw together town planning and the environment within the same legislative fold and in this regard, the KwaZulu-Natal Planning and Development Act No 5 of 1998 was enacted. In terms of this Act and its regulations (*sic*) new Land Use Management Schemes were to have been prepared. Unfortunately the proposed accompanying regulations were never finally agreed, despite several advertised drafts, and the Act consequently never became effective.
- 2.4 At a more local level a remaining and ongoing problem has been the often considerable disjuncture that exists between the respective town planning schemes, which ascribe apparently inviolable rights to land, schemes that have not been regularly updated, as perhaps they should, and the need to protect the environment in terms of the new environmental legislation.
- 2.5 When the existing town planning schemes currently to be found throughout the eThekweni Municipality Area (some of which date back to the 1950's) where first formulated, by and large the environment was not used as a leading or defining input when developing the respective schemes. In fact the Town Planning Ordinance, originally enacted in 1949, does not even specifically require the environment to be considered as a necessary factor when formulating a town planning scheme! All the Ordinance does have is a requirement in terms of Section 40(1) that a "*..... town planning scheme ..... shall have for its general purpose a coordinated and harmonious development of the local authority area ..... in such a way as will most effectively tend to promote ...*", amongst many others factors, the "*...amenity...*"! At best, the latter factor may be extrapolated as including the environment as a factor contributing towards the amenity! Clearly, concerns about the environment were not high on the agenda in 1949 and in subsequent amendments over the years to the Town Planning Ordinance!

- 2.6 The recently enacted KwaZulu-Natal Planning and Development Act No. 6 of 2008, which like the Town Planning Ordinance No. 27 of 1949 does not have a separate set of complimentary regulations, is currently expected to come into general force from November 2009. Note: Some elements, enabling the Removal of Title Deed Restrictions by municipalities, the establishment of the Development Appeals Tribunal and setting Provincial Norms and Standards became effective from March 2009. This new act specifically defines the environment and will provide for the potential impacts on the environment to be considered when undertaking planning decisions in the future.

### 3 TOWN PLANNING TOOL OPTIONS

- 3.1 Some relevant extracts from the Town Planning Ordinance No. 27 of 1949, as amended, which empower a town planning scheme and specify what matters it shall or may address are as follows: -

- 3.1.1 Section 40(2) states: -

*"A scheme shall contain such provisions, not incompatible with the relevant structure and development plan as may be deemed necessary or expedient for regulating, restricting or prohibiting the development of the area to which such scheme relates and generally for carrying out any of the objects for which such scheme is made and in particular, but without derogating from the generality of the foregoing, for dealing with any of the matters referred to in the Schedule to this ordinance."*

- Section 46(1) states: -

*"Every scheme shall define the area to which it applies and it –*

*(a) shall contain such provisions as are contemplated in Section 40(2);*

*(aA) shall contain provisions relating to the development of land in such area;*

*(b) shall specify the uses of land or buildings or land and buildings which, under the provisions of the said scheme, are –*

*(i) permitted, or*

*(ii) prohibited,*

*or which may be permitted by special consent,*

*(bA) may contain provisions relating to the circumstances and manner in which exemption from any provision contemplated in paragraph (b) may be granted, and*

*(c) shall provide, where the scheme contains any provision permitting the local authority to exercise its discretion to grant or refuse or grant subject to conditions any application made in terms of the scheme, that any applicant or any person who has objected in terms of Section 67bis and who is aggrieved by any decision of such local authority under such provision, shall have a right of appeal to the appeals board."*

3.1.2 Schedule – Matters to be dealt with by Schemes - (Section 46)

- 7 .....
- 8 The reservation of land for new roads, or the widening or other improvement of existing roads or for purposes of recreation or for parks and other open spaces, aerodromes, the parking of vehicles and other matters generally of a public nature.
- 9 The reservation of land for Government and municipal purposes.
- 10 The demarcation or zoning of areas to be used exclusively or mainly for residential, business, industrial and other specified purposes.
- 11 .....
- 12 .....
- 13 .....
- 14 .....
- 15 The preservation or conservation of buildings or other objects of architectural, historic or artistic interest and places of natural interest or beauty.
- 16 .....

(Emphasis above added).

**4 POTENTIAL CONSERVATION TOOLS**

**4.1 Conservation by Zoning or Reservation**

The most obvious means therefore to protect environmentally sensitive areas, i.e. places of natural interest or beauty, is by either placing a

reservation over them or by zoning them on a map as provided for under items 8 and 10 of the Schedule. While this may be appropriate in some cases, e.g. reserving land as Public Open Space, this implies the area must be purchased within a 5-year period as required in terms of Section 67 *sept* of the Town Planning Ordinance No 27 of 1949. In the event of likely non-purchase with the expiry date approaching and no agreement to defer purchase with the owner, the local authority would be required to rezone the land back to its prior zone or similar, irrespective of the desirability of this action! While if land was (say) to be zoned for Private Open Space or a similar zone where it does not have to be acquired, it may be overly restrictive in what activities could be carried out on the designated portion of the site.

#### **4.2 Conservation by Other Mechanisms.**

Item 15 in the Schedule contained in the Ordinance is unspecific in how such preservation or conservation should be undertaken. This is then left to the author of the scheme to come up with an appropriate mechanism or solution.

This latter method is deemed to be the most appropriate solution as a means of introducing D'MOSS into the respective town planning schemes as it provides a greater degree of flexibility in designation and implementation than do either zones or reservations.

### **5 Restricted Development Area - Durban Town Planning Scheme: Bluff District**

- 5.1 The Restricted Development Areas displayed in the Bluff District of the Durban Town Planning Scheme dating from 1967, and found on the oversteep Bluff slopes, provides an example of such an alternative solution. The Restricted Development Area is shown on the physical zoning map as a red honeycomb over the underlying zones that are still visible beneath, i.e. the underlying zoning is unaffected but the potential final realizable development may be significantly reduced once the impact of the steep slopes are taken into account. The relevant excerpts from the Durban Town Planning Scheme are as follows: -

#### ***Clause 1 - Interpretation Of Terms.***

***"Controlled area"*** means any area demarcated upon the map by the overprinting of a red honeycomb pattern, where, by reasons of the topography, the unsuitability or instability of the soil or other like reasons, development or building may be prohibited, restricted, or permitted upon such conditions as may be specified having regard to the nature of the said area;

**Clause 10. Limitations Upon Development Due to Lack Of Services, Unsuitability of Land and Other Causes.**

- (2) (a) *No person shall within a controlled area (as defined in clause 1) develop any land, or excavate or level any site, or remove any natural vegetation from, or erect any structure of any nature whatsoever or carry out any work upon such site without having obtained the prior approval of the Council in terms of this sub-clause.*
- (b) *No such approval shall be given unless the City Engineer, after due examination, and subject to such conditions as he may specify, is satisfied that any such development, erection or other work referred to in paragraph (a) hereof can be carried out without danger to the site, or any adjoining site or any building thereon.*
- (c) *For the purpose of any examination referred to in paragraph (b), the applicant shall, where required by the City Engineer, submit such plans or other information as the City Engineer may require. Without affecting the generality of the foregoing, such plans may be required by the City Engineer: -*
- (i) to be certified by a Land Surveyor or Consulting Engineer as being correct;*
  - (ii) to show sections through the site over the area to be developed down the line of greatest slope, accurate to 50 millimetres and to scale of 1 : 100;*
  - (iii) to show sections at intervals not exceeding 10 metres across the site or at such closer intervals as the City Engineer may require.*
- (d) *The conditions referred to in paragraph (b) hereof may be such as to:-*
- (i) restrict the form or nature of the building or structure;*
  - (ii) limit the size and/or shape of the building or structure;*
  - (iii) prescribe the form of foundations for the building or structure;*
  - (iv) prescribe or restrict the materials of which the building or structure is to be constructed;*
  - (v) determine the siting of any building or structure and of any soakpits or other drainage works;*
  - (vi) prohibit or control any excavation on the site, the construction of any roadways, paths and other garden features;*
  - (vii) prohibit or control the removal of any natural vegetation;*
  - (viii) control any other aspects which the City Engineer considers to be desirable.*

*(e) Notwithstanding anything contained in this sub-clause the Council shall not be liable for any loss or damage which may occur to any building, structure or any property whether within a controlled area or otherwise arising out of any action by the Council or the City Engineer in terms of this sub-clause.*

- 5.2 Two of the schemes within the eThekweni Municipal area, namely the Pinetown and the Umhloti Town Planning Schemes, while also having controlled development areas indicated on their scheme maps associated with unstable areas, do not have specific written controls within the scheme clauses. It accordingly proposed to apply the above controls to these two schemes and in all cases to replace the words “City Engineer” (as it was originally) with the words “Head Development Planning Environment and Management”.

## **6 D'MOSS Restricted Development Area**

- 6.1 A comparable restriction layer is proposed to be contained within the respective town planning schemes within the eThekweni Municipal Area. It would be comprised of areas currently designated as D'MOSS. **The D'MOSS demarcation layer as part of the adopted town planning scheme will not necessarily preclude all development occurring on affected sites.** In certain cases the restriction layer could however limit development potential otherwise achievable in terms of the underlying zoning. Thus **potential** development rights would be restricted in order to protect the environment for the greater public good.
- 6.2 The method of displaying of this layer is perhaps a concern as currently all town planning schemes found within the eThekweni Municipal Area, other than that for the Durban Town Planning Scheme, are only available to the public in hard copy form. This would imply that, like with the Bluff District town planning scheme area, a suitable overprint methodology is required so that a single plan may be used. As understood all town planning schemes are now captured, but not yet available on the Internet or Intranet other than for the Durban scheme. However, if and when all the schemes are displayed in this medium, then the D'MOSS layer could be just that, a layer that may be switched on and off electronically at will.
- 6.3 Despite the fact that D'MOSS has recently being reevaluated and refined instances may arise due to the fact that the mapping is a desktop exercise, those other equally environmentally sensitive areas in close proximity should also be restricted. Accordingly it is proposed that an additional buffer at a distance of 40 metres from the initial demarcated D'MOSS area be introduced as the appropriate demarcation displayed on the town planning schemes. This enlarged area will then ensure that flanking sites are also captured in the environmental assessment process on development. The rationale

being that inappropriate development adjacent to an environmentally sensitive area could lead to significant environmental impacts in the sensitive area. These are sometimes called off-site impacts.

- 6.4 Note it is possible that a site will be subject to both a controlled development area layer and a D'MOSS layer, e.g. on the steep unstable indigenously wooded slopes of the Bluff.
- 6.5 It is considered prudent that in the future, say every two years, as a result of greater knowledge gained via assessments and new applications received, to revisit the D'MOSS areas and, following significant refinement, to re-advertise it.

## **7 Proposed D'MOSS Restricted Development Area Controls**

- 7.1 The following scheme amendments are proposed to introduce D'MOSS into the respective schemes controls, building on the format of the controls in 6 above. While the numbering is applicable to the Durban Town Planning Scheme, the controls may easily be accommodated by appropriately renumbering in the other schemes.

### ***Clause 1 - Interpretation Of Terms.***

***"D'MOSS Controlled area"*** means any area demarcated upon the map by the overprinting of a green hatched pattern (or by a green layer on the GIS), where, by reasons of the natural biodiversity, flora and fauna, topography, or the environmental goods and services provided or other like reasons, development or building may be prohibited, restricted, or permitted upon such conditions as may be specified having regard to the nature of the said area;

### ***Clause 10. Limitations Upon Development Due to Lack Of Services, Unsuitability of Land, Environmental and Other Causes.***

- (3) (a) *No person shall within a D'MOSS controlled area (as defined in clause 1) develop any land, or excavate or level any site, or remove any natural vegetation from, or erect any structure of any nature whatsoever, dump on or in or carry out any work upon such site without having first obtained the prior approval of the Council in terms of this sub-clause.*
- (b) *No such approval shall be given unless the Head: Development Planning Environment and Management, after due examination, and subject to such conditions as he/she may specify, is satisfied that any such development, erection or other work referred to in paragraph (a) hereof can be carried out without degrading, destroying, or negatively impacting on the integrity of the biodiversity and/or environmental goods and services found or generated within the said D'MOSS controlled area.*
- (c) *For the purpose of any examination referred to in paragraph (b), the applicant shall, where required by the Head: Development*



*Planning Environment and Management submit such plans or other supporting documentation as the Head: Development Planning Environment and Management may require. Without affecting the generality of the foregoing, such plans and supporting documentation may be required by the Head: Development Planning Environment and Management to be certified as being correct by an appropriately recognised/registered Environmental Consultant.*

- (d) *The conditions referred to in paragraph (b) hereof may be such as to: -*
- (i) restrict the form or nature of the building or structure;*
  - (ii) limit the size and/or shape of the building or structure;*
  - (iii) prescribe or restrict the materials of which the building or structure is to be constructed;*
  - (iv) determine the siting of any building or structure and of any soakpits or other drainage works;*
  - (vi) prohibit or control any excavation on the site, the construction of any roadways, paths and other garden features;*
  - (vii) prohibit or control the removal of any natural vegetation;*
  - (viii) control any other aspects which the Head: Development Planning Environment and Management considers to be desirable.*

7.2 It should be noted that the D'MOSS areas will not normally be defined by (say) non-user conservation servitudes, nor otherwise entrenched into the respective title deeds, nor will these areas necessarily be fenced off. Such requirement could however happen in terms of (say) a development plan submitted for a particular development and that may required this as part of the conditions of approval, which may also require the management of the area in terms of an approved environmental management plan. In these circumstances it may happen that certain rates rebates may be possible in terms of the rates policy.

**10. OPERATIVE TOWN PLANNING SCHEMES WITHIN THE  
ETHEKWINI MUNICIPAL AREA ESTABLISHED IN TERMS OF  
SECTION 47bis OF THE TOWN PLANNING ORDINANCE NO 27 of  
1949**

- 10.1.1 Contained within the eThekweni Municipal area there are currently some thirty operative town planning schemes that have been adopted in terms of the Town Planning Ordinance No 27 of 1949, as amended. The schemes take on two broad formats, the “Durban” format and the Provincial format.
- 10.2 The current Durban Town Planning Scheme is largely unique and is derived from then *de nova* scheme clauses that first appeared with the Berea District Town Planning Scheme in 1965 and which following subsequent adoption has been progressively amended over the subsequent forty odd years as additional districts have been added and as changes have been deemed necessary. When KwaZulu-Natal was re-demarcated into new local authorities in 1996 by the KwaZulu-Natal Demarcation Board, two portions of the erstwhile City of Durban were taken over by the South Local Council and the Inner West Local Council, i.e. the Durban International Airport/Reunion area and the Reservoir Hills area respectively.
- 10.3 The other thirty odd schemes are all derived from the model Provincial town planning scheme clauses. These ranged from the simple model to the complex model and were progressively adopted from *circa* 1951. These schemes have all been refined and amended over the subsequent years, some more so than others. They however all enjoy a common format and layout of the scheme clauses and the included tables.
- 10.4 The operative schemes as per the former entities are as follows: -

**Central (North & South)**

Durban

**Inner West**

Dassenhoek

Mariannahill

New Germany

Pinetown

Queensburgh

Shallcross

Welbedagt

Westville

Westville II (Reservoir Hills - ex Durban TPS)

## **North**

Canelands  
Glen Anil  
Mount Edgecombe  
Redcliffe  
Tongaat (includes Tongaat Beach)  
Umdloti  
Umhlanga Rocks 1 (original Umhlanga Rocks area)  
Umhlanga Rocks 2 (Sunningdale & Somerset Park)  
Umhlanga Rocks 3 (La Lucia)  
Verulam

N.B. The areas formerly under the Development and Services Board where there was no approved town planning schemes, i.e. Mount Moreland, Ottawa and Riet Rivier are controlled in terms of Part 5 of the Development & Service Board Regulations framed in terms of the Development and Services Board Ordinance i.e. not in terms of the Town Planning Ordinance

## **Outer West**

Consolidated Outer West (a consolidation undertaken in 2000 of the then fourteen separate schemes found in the Outer West)  
Bothas Hill (remnants found within the Hillcrest Gillitts Activity Corridor LDP area)  
Gillitts (remnants found within the Hillcrest Gillitts Activity Corridor LDP area)  
Hillcrest (remnants found within the Hillcrest Gillitts Activity Corridor LDP area)

## **South**

Amanzimtoti  
Clansthal  
Craigieburn  
Isipingo (including Isipingo Beach)  
Kingsburgh  
Lower Illovo  
Reunion/Durban International Airport (Durban TPS)  
Umbogintwini  
Umkomaas  
Widenham

10.5 All the above schemes are required to be amended so as to include the mechanisms for the introduction of D'MOSS.

**11. OPERATIVE LAND USE CONDITIONS (*DE FACTO* TOWN PLANNING SCHEMES) WITHIN THE ETHEKWINI MUNICIPAL AREA ESTABLISHED IN TERMS OF CHAPTERS VI OF THE REGULATIONS RELATING TO TOWNSHIP ESTABLISHMENT AND LAND USE GNR 1897 OF 1986**

- 11.1 Areas previously set apart or deemed to have been set apart as towns or development areas in terms of Section 33 or 35 of the Black Communities Development Act No 4 of 1984 that have land use conditions assigned to the erven as provided for in terms of Chapter VI read with Annexure F of the Regulations Relating to Township Establishment and Land Use, 1986 (GNR1897). The land use conditions may be expected to reflect the designations as set out in the respective layout plans.

Hambanati  
Inanda-Glebe  
Klaarwater  
Savanna Park II  
Savanna Park III  
St Wendolins  
Thornwood  
Welbedacht  
(Mariannahill)  
(Hostel)

In terms of Regulation 32(2) of the Regulations Relating to Township Establishment and Land Use, 1986, the Annexure F land use conditions have as far as possible been incorporated by reference into the respective Deeds of Grant. Provided that in terms of Section 57B of the Act the land use conditions lapse on the coming into force of a town planning scheme.

All the above “schemes” are required to be amended so as to include the mechanisms for the introduction of D’MOSS and to provide for standard river set backs.

These areas were brought within the ambit of the Town Planning Ordinance No 27 of 1949 when both the KwaZulu-Natal Rationalisation of Planning & Development Laws Act No 2 of 2008 and the KwaZulu-Natal Town Planning Ordinance Amendment Act No 3 of 2008 became effective on 1 November 2008.

N.B. The KwaZulu-Natal Rationalisation of Planning and Development Laws Act effectively repeals and provides for transitional arrangements for: -

- (i) The Regulations Relating to Township Establishment and Land Use, 1986 (R. 1897 of 1986) for land set apart as a town (development area) in terms of Section 33 of the Black Communities Development Act No 4 of 1984,

- (ii) The Township Development Regulations for Towns, 1990 (R. 1886 of 1990),
- (iii) The Land Use and Planning Regulations, 1990 (R.1888 of 1990)) for land set apart as a town in terms of Section 30(1) of the Black Administration Act No 38 of 1927
- (iv) The KwaZulu Land Affairs (Town Planning) Regulations (GN 30 of 1994) framed in terms of Section 37 of the KwaZulu Land Affairs Act No 11 of 1992, and
- (v) for the Transvaal and Cape incorporated towns in terms of the town planning ordinances relating to the respective former provinces.

**13. OPERATIVE TOWN PLANNING SCHEMES WITHIN THE ETHEKWINI MUNICIPAL AREA ESTABLISHED IN TERMS OF CHAPTERS V AND VI OF THE LAND USE AND PLANNING REGULATIONS R 1888**

- 13.1 Areas previously set apart or deemed to have been set apart as towns in terms of Section 30 (1) of the Black Administration Act No 38 of 1927 have effective town planning schemes prepared in terms of Chapter V or Chapter VI of the Land Use and Planning Regulations (R1888). The Chapter V basic schemes are based on the approved township layout plans or legal existing land use as at 1990, while Chapter VI provides for new schemes, extensions, amendments, etc.

Clermont  
Inanda-Newtown  
KwaDabeka  
KwaDinabukubo

- 13.2 All the above schemes are required to be amended so as to include the mechanisms for the introduction of D'MOSS.
- 13.3 These areas were brought within the ambit of the Town Planning Ordinance No 27 of 1949 when both the KwaZulu-Natal Rationalisation of Planning & Development Laws Act No 2 of 2008 and the KwaZulu-Natal Town Planning Ordinance Amendment Act No 3 of 2008 became effective on 1 November 2008.

**14. OPERATIVE TOWN PLANNING SCHEMES WITHIN THE ETHEKWINI MUNICIPAL AREA ESTABLISHED IN TERMS OF CHAPTERS V AND VI OF THE KWAZULU LAND AFFAIRS (TOWN PLANNING) REGULATIONS GN 30/94**

- 14.1 Areas within the former KwaZulu, proclaimed in terms of Proclamation R293 of 1962 (Regulations for the Administration and Control of Townships in Black Areas) as towns, have effective town planning schemes prepared in terms of Chapter V or Chapter VI of the KwaZulu Land Affairs (Town Planning) Regulations (GN 30/94). The Chapter V basic schemes are based on the approved township layout plans as at

1994, while Chapter VI provides for new schemes, extensions, amendments, etc.

KwaDengezi  
KwaMakutu  
KwaMashu  
Magabeni  
Mpumalanga  
Ntuzuma  
Umlazi

- 14.2 All the above schemes are required to be amended so as to include the mechanisms for the introduction of D'MOSS.
- 14.3 These areas were brought within the ambit of the Town Planning Ordinance No 27 of 1949 when both the KwaZulu-Natal Rationalisation of Planning & Development Laws Act No 2 of 2008 and the KwaZulu-Natal Town Planning Ordinance Amendment Act No 3 of 2008 became effective on 1 November 2008.

## **15. AREAS OUTSIDE OPERATIVE TOWN PLANNING SCHEMES**

- 15.1 There are in addition a number of other townships and areas where there are no effective town planning schemes and where development control is effected largely through the township establishment land use controls where townships have been established through the Development Facilitation Act No 67 of 1995, the Less Formal Township Establishment Act No 113 of 1991. Examples include Lovu, Lower Langefontein, Waterloo, etc. There are in addition certain minor urban areas still operating under the Development and Services Board Regulations, i.e. the Mount Moreland, Riet Rivier and Ottawa areas, where formal town planning schemes were never prepared.
- 15.2 Other areas will however remain outside of any town planning scheme until such time as the impasse on the extension of wall-to-wall town planning schemes is resolved with the KwaZulu-Natal Planning and Development Commission, brought about largely as a result of Department of Agriculture still being unwilling to relinquish its controls in terms of the Subdivision of Agricultural Land Act 70 of 1970. These areas are largely the areas under agriculture and the tribal areas of the former KwaZulu.
- 15.3 It is the intension of the Environmental Management Department, in conjunction with the Legal Department, to frame a "Green" by-law for consideration by Council. This bylaw, apart from reinforcing the town planning scheme controls as proposed above will enable those D'MOSS areas falling outside the respective town planning scheme areas to be covered.

## 16. RECOMMENDATIONS

Whereas the Minister is to be requested in terms of Sections 23 & 24, 28 & 29 and 41 & 42 of KwaZulu-Natal Rationalisation of Planning & Development Laws Act No 2 of 2008 to recognise all the existing schemes in the eThekweni Municipal area respectively prepared in terms of the Regulations Relating to Township Establishment and Land Use GNR1897, the Land Use and Planning Regulations R1888 or the KwaZulu Land Affairs (Town Planning) Regulations GN 30/94 as town planning schemes in course of preparation in accordance with the provisions of Chapter IV of the Town Planning Ordinance No 27 of 1949, as amended, and to identify and list the respective maps for the schemes by notice in the Provincial Gazette. It is recommended that:-

- 1) That Durban Town Planning Scheme clauses in respect of controlled development areas be introduced into the scheme clauses of the Pinetown and the Umhloti Town Planning Schemes so that they may apply to the areas on the respective scheme map so designated, but otherwise not controlled in the existing clauses. Provided that the wording of the Durban Town Planning Scheme clauses be first modified by replacing the words "City Engineer" with "Head: Development Planning and Management",
- 2) That the introduction of the current Durban Metropolitan Open Space System (D'MOSS) shape files into the various operational town planning schemes found throughout the eThekweni Municipal area as depicted on Maps ..... (as may be amended from time to time) be approved in principle and be implemented via suitable designation of D'MOSS by overlays on the respective zoning maps and the introduction of appropriate scheme clauses into the respective schemes.
- 3) That the proposed clauses in order to effect recommendations (1), and (2) are contained under points 5, 7 and 9 of the above report respectively.
- 4) That in order to effect recommendations (1) and (2) above entailing the proposed amendments of the respective adopted town planning schemes that currently fall under the Town Planning Ordinance No 27 of 1949, as amended, or which, following recognition by the Minister in terms of the KwaZulu-Natal Rationalisation of Planning & Development Laws Act No 2 of 2008, will be brought under the said Ordinance, that the amendments be given public notice as contemplated in terms of Section 47bis A (2) read with Section 74ter of the said Ordinance, including by calling for written comment by way of public notices in the press and by holding public meetings at suitable venues throughout the municipal area due to the impracticability of erecting site notices and serving individual advices.

- 5) That where there are no adopted town planning schemes either in terms of the Town Planning Ordinance No 27 of 1949, the KwaZulu Land Affairs (Town Planning) Regulations GN 30/94, the Land Use and Planning Regulations R1888, the Regulations Relating to Township Establishment and Land Use GNR1897 or other alternative legislation, that, until such time as a appropriate by-law is put in place or the town planning scheme is extended, implementation of recommendation (2) and (3) above be pursued as a policy directive in informing all applications for development that may be lodged with Council for consideration.
  
- 6) That upon receipt of any written comment in regard to the proposals contained in (1) to (6) above, the Head: Development Planning and Management be required to report further thereon, but in the event of no such objections being received, the proposals be placed before the eThekweni Municipal Council for adoption as part of the respective town planning schemes-in-course-of-preparation or to forward to the respective Ministers as recommendations for approval.

|  
**JOHN A FORBES**  
**PROJECT EXECUTIVE**  
**ENVIRONMENTAL MANAGEMENT DEPARTMENT**

**DEBRA ROBERTS**  
**DEPUTY HEAD: ENVIRONMENTAL MANAGEMENT**

**LIHLE PHEWA**  
**DEPUTY HEAD: PLANNING & DEVELOPMENT**

**SOOBS T MOONSAMMY**  
**HEAD: DEVELOPMENT PLANNING ENVIRONMENT & MANAGEMENT**

**XABISO MAHLAWE**  
**DEPUTY CITY MANAGER: SUSTAINABLE DEVELOPMENT AND CITY**  
**ENTEPRISES**