

To provide for Air Quality Management and matters incidental thereto:

PREAMBLE

The Council of the Prince Albert Municipality acting in terms of section 156(2) of the Constitution of the Republic of South Africa Act, 1996, read with section 13(a) of the Local Government Municipal Systems Act, 2000 (Act No. 32 of 2000) and section 11 (1) of the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004) has made the Air Quality Management By-law hereunder-

AND WHEREA Prince Albert Municipality seeks to ensure management of air quality and the control of air pollution within the area of jurisdiction of the Prince Albert Municipality and to ensure that air pollution is avoided or, where it cannot be altogether avoided, is minimized and remedied.

AND NOW THEREFORE, BE IT ENACTED by the Council of the Prince Albert Municipality, as follows:-

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CHAPTER I

DEFINITIONS AND FUNDAMENTAL PRINCIPLES

1. Definitions

1. In this By-law, unless the context indicates otherwise -

“adverse effect” means any actual or potential impact on the environment that impairs or would impair the environment or any aspect of it to an extent that is more than trivial or insignificant;

“Authorised Person” any person authorised by the municipality to implement provisions of this by-law.

“air pollutant” includes dust, smoke, fumes and gas that causes or may cause air pollution;

“air pollution” means any change in the environment caused by any substance emitted into the atmosphere from any activity, where that change has an adverse effect on human health or well-being or on the composition, resilience and productivity of natural or managed ecosystems, or on materials useful to people, or will have such an effect in the future;

“air pollution control zone” the geographical area to which Chapter IV of this by-law is declared to apply.

“atmospheric emission” or **“emission”** means any emission or entertainment process emanating from a point, non-point or mobile source that results in air pollution.

“air quality act” means the National Environment Management: Air Quality Act, 2004 (Act No. 39 of 2004);

“air quality management plan” means the Air Quality Management Plan referred to in section 15 of the Air Quality Act;

“air quality officer” means the Air Quality Officer designated as such in terms of section 14(3) of the Air Quality Act;

“ambient air” means **“ambient air”** as defined in section 1 of the Air Quality Act;

“atmosphere” means air that is not enclosed by a building, machine, chimney or other similar structure;

“atmospheric emission” or **“emission”** means any emission or entrainment process emanating from a point, non-point or mobile source that results in air pollution;

“best practicable environmental option” means the option that provides the most benefit, or causes the least damage to the environment as a whole, at a cost acceptable to society in the long term as well as in the short term;

“controlled activities” means dust emissions, emissions caused by open burning, emissions caused by burning of waste, emissions caused by tyre burning and burning of

rubber products and cables, pesticide spraying emissions, spray painting emissions, sand blasting emissions;

“controlled emitter” means any appliance or activity declared as a controlled emitter in terms of section 23 of the National Environmental Air Quality Act, 39 of 2004;

“council” means the Council of Prince Albert Municipality or any of the other political structures, political office bearers, councillors or staff members, of the Prince Albert Municipality duly authorised by delegation;

“chimney” means any structure or opening of any kind from which or through which air pollution may be emitted;

“Manager” means the Manager: Corporate, Strategic and Community Services of Prince Albert Municipality responsible for Air Quality matters;

“dust” means any solid matter in a fine or disintegrated form which is capable of being dispersed or suspended in the atmosphere, and includes dust from mine dumps;

“dark smoke” means-

- (a) in respect of Chapter V and Chapter VI of this by-law, smoke which measured using a light absorption meter, obscuration measuring equipment or other similar equipment, has an obscuration of 20% or greater;
- (b) in respect of Chapter VIII of this By-law-
 - (i) smoke emitted from the exhaust outlets of naturally aspirated compression ignition engines which has a density of 50 Hartridge smoke units or more or a light absorption co-efficient of more than 1.6m^{-1} ;
 - (ii) smoke emitted from the exhaust outlets of turbo charged compression ignition engines which has a density of 56 Hartridge smoke units or more or a light absorption co-efficient of more than 1.10m^{-1} ;

“dwelling” means any building or structure, or part of a building or structure, used as a dwelling and any outbuildings ancillary to it, but excludes informal settlements;

“environmental management inspector” ;a person designated as an environmental management inspector in terms of section 31B or 31C”;(Definition of :environmental management inspector: inserted by s.1 of Act 46/2003).

“environment” means the surroundings within which humans exist and that are made up of—

- (a) the 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 inter relationships 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;

“fuel-burning equipment” means any furnace, boiler, incinerator, including a chimney-

- (a) designed to burn or capable of burning liquid, gas or solid fuel;
- (b) Used to dispose of any material or waste by burning; or
- (c) Used to subject liquid, gas or solid fuel to any process involving the application of heat;

“Law Enforcement Officer”; an officer appointed by council responsible for the enforcement of this by-law with delegated powers from the manager.

“Municipality” means the Prince Albert Municipality established by Provincial Notice No. 479 of 2000 in terms of section 12 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

“Municipal Manager” means a person appointed by the Council in terms of section 82 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998)

“nuisance” means an unreasonable interference or likely interference caused by air pollution with -

- (a) the health or well-being of any person or living organism; or
- (b) the use and enjoyment by an owner or occupier of his or her property or environment;

“offensive odour” means any smell which is considered to be malodorous or a nuisance to a reasonable person;

“open burning” means the combustion of material by burning without a closed system that has a chimney to vent the emitted products of combustion to the atmosphere;

“operator” means a person who owns or manages a listed activity and/or controlled emitter, or who controls an operation or process, which emits air pollutants;

“pave” means to apply and maintain concrete or any other similar material to a road surface or any other surface;

“person” means a natural person or a juristic person;

“premises” means any building or other structure together with the land on which it is situated and any adjoining land occupied or used in connection with any activities carried on in that building or structure, and includes any land without any buildings or other structures and any locomotives, ship, boat or other vessel which operates or is present within the area of jurisdiction of the Council or the precincts of any harbour;

“Province” means the Province of the Western Cape;

“small boiler” means a a small combustion installation with a design capacity of less than 50 MW heat input, capable of burning solid, liquid and gas fuels used primarily for steam rising or electricity generation;

“smoke” means the gases, particulate matter and products of combustion emitted into the atmosphere when material is burned or subjected to heat and includes the soot, grit an gritty particles emitted in smoke;

“**specialist study**” means any scientifically based study relating to air quality conducted by an expert or recognized specialist of appropriate qualifications and competency in the discipline of air quality management;

“**spray area**” means an area or enclosure and used for spray painting, and “spray booth” has a corresponding meaning;

“**Structures Act**” means the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998)

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

“**the NEMA**” means the National Environmental Management Act, 1998 (Act No.107 of 1998);

2. Application of this By-law

- (1) This By-law applies to all premises within the area of jurisdiction of the Council.
- (2) The provisions of this By-law do not remove the need for any other permit, consent, or authorisation required under any other statutory acts, By-law and regulatory documents.

3. Objectives

- (1) The objectives of this by-law are to:
 - (a) Give effect to the right contained in Section 24 of the Constitution by regulating air pollution within the area of the municipality’s jurisdiction in a cooperative manner between the District and Local Municipalities taking cognizance of the respective air quality management plans;
 - (b) provide, in conjunction with any other applicable law, an effective legal and administrative framework, within which the Council can manage and regulate activities that have the potential to adversely impact the environment, public health and well being; and
 - (c) ensure that air pollution is avoided, or where it cannot be altogether avoided, mitigated or minimized.
- (2) Any person exercising a power under this by-law must exercise such power in order to give effect to the objectives as set out in subsection (1) above.

4. Administration and Enforcement

- (1) The Manager: Corporate, Strategic & Community Services is responsible for the administration and enforcement of this By-law. The Manager: Corporate, Strategic and Community Services may delegate any power in terms of this By-law to any official, or law enforcement officer appointed by him.

5. Municipality`s right of access to premises

- (1) The Municipality shall have access to or over any premises for the purpose of-
 - (a) doing anything authorized or required to be done by the Municipality under this By-law or the Air Quality Act, 2004 (Act 39 of 2004) or any other law regulating air quality matters;
 - (b) inspecting and examining atmospheric emissions or anything connected therewith;
 - (c) enquiring into and investigating any possible sources of atmospheric emissions or the suitability of immovable property for any work, scheme or undertaking that results in atmospheric emissions;
 - (d) ascertaining whether there is or has been contravention of the provisions of this By-law or the Air Quality Act, 2004 (Act 39 of 2004); and
 - (e) enforcing compliance with the provisions of this By-law or Air Quality Act, 2004 (Act 39 of 2004).
- (2) The Municipality may by notice in writing, e-mail, telephonically or verbally served on the owner or occupier of any premises, require such owner or occupier to provide, on the day and at the hour specified in such notice, access to such premises to an authorized person and for a purpose referred to in sub-section (1).
- (3) The Municipality may gain access to, or over any property without notice and may take whatever steps or action as may, in its opinion, be necessary or desirable in consequence of the existence of, or the occurrence of any emergency or disaster, or for the purpose of sub-section (1) (d).

6. Levying of tariffs

The Municipality may levy and recover fees, charges or tariffs for any permission granted in terms of this By-law, or implement tariffs as prescribed by the National Environmental Management: Air Quality Act and may require the deposit of an amount of money as security for damages, repair, losses and other costs.

7. Conflict with other By-laws

- (1) In the event of any conflict between this By-law and any other By-law or any policy which regulates air pollution in the area of jurisdiction of the Overberg District Municipality that include the four Local Municipalities, the provisions of this By-law shall prevail, unless it is an exclusive local municipality power or function.

CHAPTER II

DUTY OF CARE

8. Reasonable measures to prevent air pollution

- (1) Any person who is wholly or partially responsible for causing air pollution or creating a risk of air pollution occurring must take all reasonable measures including the best practicable environmental option—
 - (a) to prevent any potential significant air pollution from occurring; and
 - (b) to mitigate and, as far as reasonably possible, remedy any significant air pollution that has occurred.
- (2) The Municipality may direct any person who fails to take the measures required under subsection (1) to—
 - (a) commence taking specific reasonable measures before a given date;
 - (b) to continue those measures; and;
 - (c) complete them before a specified reasonable date,

provided that prior to such direction the Municipality must give such person adequate notice and direct him or her to inform the air quality officer of his or her relevant interests, and the air quality officer may consult with any other organ of state.
- (3) The Municipality may, if a person fails to comply or inadequately complies with a directive contemplated in subsection (2), take reasonable measures to remedy the situation.
- (4) The Municipality may, if a person fails to carry out the measures referred to in subsection (1), recover all reasonable costs incurred as a result of him or her acting under subsection (3) from any or all of the following persons:
 - (a) any person who is or was responsible for, or who directly or indirectly contributed to the air pollution or the potential air pollution;
 - (b) the owner of the land at the time when the air pollution or the potential for air pollution occurred;
 - (c) the person in control of the land or any person who has or had a right to use the land at the time when the—
 - (i) activity or the process in question is or was performed or undertaken; or
 - (ii) situation came about; or
 - (d) Any person who negligently failed to prevent the—

- (i) activity or the process being performed or undertaken; or
 - (ii) situation from coming about.
- (5) No person may:
- (a) unlawfully and intentionally or negligently commit any act or omission which causes or is likely to cause air pollution; or
 - (b) refuse to comply with a directive issued under this section.
- (6) Any person who fails to comply with subsection (5) commits an offence.
- (7) If more than one person is liable under subsection (4), the liability may be apportioned among the persons concerned according to the degree to which each person was responsible for the harm to the environment resulting from their respective failures to take the measures required under subsections (1) and (2).

CHAPTER III

DESIGNATION OF THE AIR QUALITY OFFICER

9. Designation of the air quality officer (Part 1)

- (1) Each Municipality (Municipal Manager) must designate an air quality officer from its administration to be responsible for co-ordinating matters pertaining to air quality management in the Prince Albert Municipality.
- (2) An air quality officer must perform the duties or exercise the powers assigned or delegated to that officer in terms of this By-Law.
- (3) Air quality officers may delegate a power or assign a duty to an official in the service of that officers` administration.

Air Pollution Control Zone (Part 2)

1. The whole area within the jurisdiction of the Prince Albert Municipality is hereby declared an air pollution zone.
2. Within an air pollution control zone, the Municipality may from time to time by notice in the Government Gazette:
 - Prohibits or restrict the emissions of one or more air pollutants from all premises or certain premises.
 - Prohibits or restrict the combustion of certain fuels.
 - Prescribe different requirements in an air pollution control zone relating to air quality in respect of:
 1. Different geographical portions
 2. Specified premises.
 3. Classes of premises.
 4. Premises used for specific purposes.
3. The municipality may develop and publish policies and guidelines, including technical guidelines, relating to the regulation of activities which directly and indirectly cause air pollution within and air pollution control zone.

10. Duties and functions of the Air Quality Officer

- (1) The Air Quality Officer must –
 - (a) co-ordinate the development of the Air Quality Management Plan for inclusion in the Integrated Development Plan of the Prince Albert Municipality, in accordance with Chapter 5 of the Systems Act.
 - (b) prepare an annual report of the Prince Albert Municipality on air quality;
 - (c) exercise the duties and powers assigned to him or her under this By-law under the directions of the Manager: Corporate, Strategic and Community Services; and

- (d) submit the annual report referred to in paragraph (b) to the Air Quality Officer appointed by the MEC responsible for the environment in the Province.
- (2) The annual report referred to in subsection (1)(b) must, amongst others, include the progress of the Prince Albert Municipality towards the implementation of the Air Quality Management Plan.

CHAPTER IV

LOCAL EMISSIONS STANDARDS, NORMS AND STANDARDS

Part 1: Local Emission Standards

11. Legal Mandate

- (1) The Municipality may, by notice -
 - (a) identify substances or mixtures of substances in ambient air which, through ambient concentrations, bioaccumulation, deposition or in any other way, present a threat to health, well-being or the environment in the Prince Albert Municipality or which the Air Quality Officer reasonably believes present such a threat; and
 - (b) in respect of each of those substances or mixtures of substances, publish local standards for emissions from point or non-point or mobile sources in the Prince Albert Municipality.
- (2) The Municipality shall take the following factors into consideration in setting local emission standards:
 - (a) health, safety and environmental protection objectives;
 - (b) Analytical methodology;
 - (c) technical feasibility;
 - (d) monitoring capability;
 - (e) socio-economic consequences;
 - (f) ecological role of fire in vegetation remnants; and
 - (g) best practicable environmental option.
- (3) Any person who is emitting substances or mixtures of substances as referred to in subsection(1) must comply with the local emission standards published in terms of this By-law.

Part 2: Norms and Standards

12. Substances identification process

- (1) The air quality officer must apply the following criteria when identifying and prioritising the substances in ambient air that present a threat to public health, well-being or the environment:
 - (a) the possibility, severity and frequency of effects with regard to human health and the environment as a whole, with irreversible effects being of special concern;

- (b) ubiquitous and high concentrations of the substance in the atmosphere;
 - (c) potential environmental transformations and metabolic alterations of the substance, as these changes may lead to the production of chemicals with greater toxicity or introduce other uncertainties;
 - (d) persistence in the environment, particularly if the substance is not biodegradable and able to accumulate in humans, the environment or food chains;
 - (e) the impact of the substance taking the following factors into consideration:
 - (i) size of the exposed population, living resources or ecosystems;
 - (ii) the existence of particularly sensitive receptors in the zone concerned; and
 - (f) substances that are regulated by international conventions.
- (2) The air quality officer must, using the criteria set out in subsection (1), compile a list of substances in ambient air that present a threat to public health, well-being or the environment.

13. Publication of local emission standards

- (1) For the purposes of publication of the local emission standards, the Prince Albert Municipality must follow a consultative process in terms of Chapter 4 of the Systems Act.

CHAPTER V

CONTROLLED EMITTERS

14. Installation of controlled emitters. (To be proclaimed when regulation on controlled emitters are promulgated)

- (1) No person shall install, use, alter, extend or replace any controlled emitter on any premises without the prior written authorization of the Municipality, which may only be given after consideration of the relevant plans and specifications and any applicable emission standards developed for controlled emitters that have been determined in terms of section 24 of the Air Quality Act.
- (2) After considering the application submitted in terms of subsection (1), the Municipality must either:
 - (a) grant an application and issue an authorization, subject to any conditions that may be imposed; or
 - (b) refuse an application with reasons.
- (3) The authorization issued in terms of subsection (1) must specify:
 - (a) the product name and model of the controlled emitter;
 - (b) the premises in respect of which it is issued;
 - (c) the person to whom it is issued;
 - (d) the period for which the authorization is issued;
 - (e) the name of the municipality;
 - (f) the periods at which the authorization may be reviewed;
 - (g) the fuel type and quality;
 - (h) the maximum allowed amount, volume, emission rate or concentration of pollutants that may be discharged in the atmosphere;
 - (i) any other operating requirements relating to atmospheric discharges, including non-point source emission measurement and reporting requirements; and
 - (j) any other matters which are necessary for the protection or enforcement of air quality.
- (4) The Municipality must review the authorization issued in terms of this section at intervals specified in the authorization, or when circumstances demand that a review is necessary.

- (5) Any controlled emitter installed, altered, extended or replaced on premises in accordance with plans and specifications submitted to and approved for the purposes of this section by the Municipality, shall be presumed until the contrary is proved to comply with the provisions of subsection (1).
- (6) Where any controlled emitter has been installed, altered, extended or replaced on premises contrary to subsection (1), the Municipality may, on written notice to the owner and occupier of the premises, order the removal of the fuel-burning equipment from the premises at the expense of the owner and operator and within the period stated in the notice.
- (7) The Council may take whatever steps necessary in order to remedy the harm caused by the installation, alteration, extension or replacement on premises and prevent any further occurrence, and may recover the reasonable costs so incurred from the person responsible for causing such harm.

(Commencement date of section 14: to be proclaimed)

15. Operation of controlled emitters

- (1) No person may use or operate any controlled emitter on any premises contrary to the authorisation referred to in section 14.
- (2) Where any controlled emitter has been used or operated on the premises in contrary to subsection (1), the Council may on written notice to the owner and occupier of the premises-
 - (a) revoke his or her authorisation under section 14; and
 - (b) order the removal of the controlled emitter from the premises at the expense of the owner and operator within the period stated in the notice.
- (3) The Municipality may, if the owner or occupier of the premises fails to comply with the notice referred to in subsection (2), remove the controlled emitter from the premises and may recover the reasonable costs incurred from such owner or occupier of such premises.

16. Monitoring and sampling

- (1) The operator of controlled emitters, must install emission measuring equipment and or must do emissions monitoring if and when required by an authorized person and must -
 - (a) record all monitoring and sampling results and maintain a copy of this record for at least five years after obtaining the results;
 - (b) if requested to do so by an air quality officer, produce the record of the monitoring and sampling results for inspection; and

- (c) if requested to do so by an air quality officer, provide a written report, in a form and by a date specified by the air quality officer, of part or all of the information in the record of the monitoring and sampling results.

17. Dust Emissions from controlled emitters

(1) Any person who controlled an emitter that produces emissions of dust that may be harmful to public health, their well-being and/or cause a nuisance, shall take control measures to prevent or minimize emissions into the atmosphere.

(2) Any person who controlled an emitter that causes dust emissions must implement control measures to minimize and prevent it:

The following measurements can be used to try and prevent or minimize it but the municipality could not be held responsible if the prescribed measures do not work.

- (i) pave;
 - (ii) use dust palliatives or suppressants;
 - (iii) uniformly apply and maintain any surface gravel;
 - (iv) erect physical barriers and signs to prohibit access to the disturbed areas;
 - (v) use ground covers;
 - (vi) re-vegetation which is similar to adjacent undisturbed native conditions; or
 - (vii) any alternative control measure approved in writing by the air quality officer.
- (3) The control measures must be consistent with the provisions of any applicable legislation.
- (4) Any person who contravenes subsection (1) commits an offence.

CHAPTER VI

EMISSIONS THAT CAUSE AN OFFENSIVE ODOUR

18. Prohibition of emissions that cause offensive odours

- (1) No person shall, within the area of jurisdiction of the Prince Albert Municipality controlled emitter a activity which cause an offensive odour that is in contravention of Atmospheric Emission Licence conditions or minimum emission standards published in terms of Section 21 of the Air Quality Act ; or
- (2) Any person who controlled emitter activities that produce emissions of offensive odours that may be harmful to public health and / or well-being or cause a nuisance that is in contravention of Atmospheric Emission Licence conditions or minimum emission standards published in terms of Section 21 of the Air Quality Act, shall take control measures to prevent odorous emissions into the atmosphere.
- (3) Any person undertaking an activity referred to in (2) must implement the necessary measures such as, but not limited to, monitoring or any other measure determined by the air quality officer to identify the substance(s) causing the offensive odour.
- (4) Any person undertaking an activity referred to in (2) must implement the necessary offensive odour control measures and any alternative control measure approved by the air quality officer or his or her delegated representative.
- (5) If an occupier or owner of any premises from which an offensive odour emanates, or where an offensive odour exists, refuses to control the offensive odour or refuses to implement the control measures referred to in subsection (3) such an occupier or owner is guilty of an offence.

19. Abatement notice

- (1) An air quality officer may serve an abatement notice on any person whom he or she reasonably believes is likely to act in contrary to, or has acted in contrary of section 18, calling upon that person -
 - (a) to abate the offensive odour within a period specified in the notice;
 - (b) to take all necessary steps to prevent a recurrence of the offensive odour;
and
 - (c) to comply with any other conditions contained in the notice.
- (2) An abatement notice under subsection (1) may be served -
 - (a) upon the owner of any premises, by -

- (i) delivering it to the owner or, if the owner cannot be traced or is living abroad, the agent of the owner;
 - (ii) transmitting it by registered post to the last known address of the owner or the last known address of the agent; or
 - (iii) delivering it to the address where the premises are situated, if the address of the owner and the address of the agent are unknown;
- (b) upon the occupier of the premises, by -
- (i) delivering it to the occupier; or
 - (ii) transmitting it by registered post to the occupier at the address at which the premises are situated.

CHAPTER VII

CONTROLLED ACTIVITIES AND FUEL BURNING APPLIANCES

20. Small Boilers

- (1) No person may install, alter, extend or replace any small boiler on any premises without the prior written authorisation of the Council, which may only be given after consideration of the relevant plans, specifications and any applicable emission standards developed for controlled emitters that have been determined in terms of section 24 of the AQA.
- (2) Application for an authorisation to operate a small boiler shall be made on a form prescribed by the Council.
- (3) Where a small boiler has been installed, altered, extended or replaced on premises in contravention of subsection (1):
 - (a) the owner or occupier of the premises commits an offence;
 - (b) the Council may, on written notice to the owner or occupier of the premises, order the removal of the small boiler from the premises at the expense of the owner or occupier and within the period stated in the notice.
- (4) In considering an application submitted in terms of subsection (1), the air quality officer may require the applicant to furnish such information as the air quality officer may require.
- (5) After considering the application submitted in terms of subsection (1), the Council must either:
 - (a) grant an application and issue an authorisation, subject to any conditions that may be imposed; or
 - (b) refuse an application with reasons.
- (6) The authorisation issued in terms of subsection (1) must specify:
 - (a) the product name and model of the small boiler;
 - (b) the premises in respect of which it is issued;
 - (c) the person to whom it is issued;
 - (d) the period for which the authorisation is issued;
 - (e) the name of the municipality;
 - (f) the periods at which the authorisation may be reviewed;
 - (g) the fuel type and quality;
 - (h) the maximum allowed amount, volume, emission rate or concentration of pollutants that may be discharged in the atmosphere;
 - (i) any other operating requirements relating to atmospheric discharges, including non-point source emission measurement and reporting requirements; and
 - (j) any other matters which are necessary for the protection or enforcement of air quality.

- (7) The Council must review the authorisation issued in terms of this section at intervals specified in the authorisation, or when circumstances demand that a review is necessary. Transitional arrangements in respect of authorised small boilers
- (8) (a) Despite the coming into operation of this by-law, any small boiler that was authorised to operate in terms of any by-law of the municipality continues to be authorised to operate subject to subsection (8)(c).
- (b) During the period for which the authorised small boiler continues to operate, the provisions of this by-law, read with the necessary changes as the context may require, apply in respect of:
- (i) the holder of an existing authorisation as if that person is the holder of the authorisation issued in terms of subsection (1); and
 - (ii) the existing authorisation as if the authorisation was issued in terms of subsection (1).
- (c) The holder of an existing authorisation must apply for an authorisation in terms of subsection (1), when required to do so by the Council, in writing, and within the period stipulated by the Council.

21. Dust Emissions

- (1) Any person conducting activities which customarily produce emissions of dust that may be harmful to public health, well-being and/or cause a nuisance shall take control measures to prevent or minimise emissions into the atmosphere.
- (2) Any person who undertakes any activity that causes dust emissions must implement one or more of the following control measures:
- (i) pave;
 - (ii) use dust palliatives or suppressants;
 - (iii) uniformly apply and maintain any surface gravel;
 - (iv) erect physical barriers and signs to prohibit access to the disturbed areas;
 - (v) use ground covers;
 - (vi) re-vegetation which is similar to adjacent undisturbed native conditions; or
 - (vii) any alternative control measure approved in writing by the air quality officer.
- (3) The control measures must be consistent with the provisions of any applicable legislation.
- (4) The provisions of this section are not applicable to:
- (a) landscaping activities by a person at his place of residence;
 - (b) emergency maintenance activities on publicly maintained roads, road shoulders and rights of way;
 - (c) unpaved roads having vehicular traffic of less than 500 vehicles per day;
 - (d) non-commercial and non-institutional private driveways;
 - (e) horse trails, hiking paths, bicycle paths or other similar paths; and

- (f) any other path that has been designated as an exclusive use area for purposes other than travel by motor vehicle.
- (5) Any person who contravenes subsection (1) commits an offence.

22. Emissions Caused by Open Burning

- (1) A person who carries out or permits open burning of any material on any land or premises is committing an offence, unless:
- (a) the prior written authorisation of the Council has been obtained, which authorisation may be granted by the Council with conditions, and
 - (b) that person has notified in writing the owners and occupiers of all adjacent properties and electricity powerlines traversing such properties of:
 - (i) all known details of the proposed open burning;
 - (ii) the right of owners and occupiers of adjacent properties and electricity powerlines traversing such properties to lodge written objections to the proposed open burning with the municipality within 14 days of being notified; and
 - (iii) the administrative fee that has been paid to the municipality.
- (2) The Council may not authorise open burning:
- (a) unless it is satisfied that the requirements set out in subsection (1) above have been adequately addressed or fulfilled; or
 - (b) where a warning under section 10(1)(b) of the National Veld and Forest Act, 1998 (Act No. 101 of 1998) has been published for the region.
- (3) The provisions of this section shall not apply to:
- (a) recreational outdoor activities on private premises or residential areas; and
 - (b) controlled fires in dwellings for the purposes of heating any area within the dwelling, cooking, heating water and other domestic purposes.

23. Emissions Caused by Burning of Industrial Waste, Domestic Waste and Garden Waste in Waste Bins or Skips on Any Land or Premises

A person who carries out or permits the burning of any industrial, domestic or garden waste, on any land or premises, for the purpose of disposing of that waste, is committing an offence unless the industrial, domestic or garden waste is legally disposed of in terms of section 26 of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008).

24. Emissions Caused by Tyre Burning and Burning of Rubber Products and Cables in Open Spaces

- (1) No person may carry out or permit the burning of any tyres, rubber products, cables or any other products, on any land or premises for any purpose, for the

purposes of recovering the scrap metal or fibre reinforcements, or of disposing of tyres, of the rubber products or cables as waste.

- (2) Any person who contravenes subsection (1) commits an offence.

25. Pesticide Spraying Emissions

- (1) No person may carry out or permit the spraying of pesticides, except as permitted by section 3 of the Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947 (Act No. 36 of 1947).
- (2) A person who carries out the spraying of pesticides, either by tractor or aerial, within the municipal jurisdiction, must comply with the following control measures:
- (a) obtain a prior written authorization from the Council, which authorization may be granted valid for a period of 12 months from the date of issue;
 - (b) notification in writing of all the owners and occupiers of adjacent properties (including surrounding communities) of the treatment area of:
 - (i) the details of the proposed treatment area;
 - (ii) the reason for the pesticide use;
 - (iii) the active ingredient;
 - (iv) the dates or months of the pesticide use;
 - (v) the time, if any, indicated on the product label specifying when the area can safely be re-entered after application;
 - (vi) the right of owners and occupiers of adjacent properties (including surrounding communities) to lodge written objections to the proposed spraying of pesticides with the Council within 14 days of being notified; and
 - (vii) The administrative fee has been paid to the municipality.
- (3) The Council must notify in writing, within 30 days, the applicant and all registered affected parties about a decision on an application.
- (4) The authorization issued in terms of subsection (1) must specify
- (a) the person to whom it is issued;
 - (b) the areas on which the pesticide may be applied;
 - (c) the dates or months of the pesticide spraying;
 - (d) the period for which the authorization is issued;
 - (e) measures which are necessary for the protection of the environment.
- (5) Any person who contravenes subsection (2) commits an offence.
- (6) A person may apply to the Council for an exemption if the spraying of the pesticide is for:
- (a) the management of pests that transmit human diseases or adversely impact agriculture or forestry;
 - (b) the management of pests that threaten the integrity of sensitive

- ecosystems; or
 - (c) the need for the use of the pesticide is urgent.
- (7) The provisions of this section are not applicable to:
 - (a) residential areas;
 - (b) buildings or inside buildings and the domestic use of pesticides; or
 - (c) any other defined area or defined activity to which the Council has declared this section not to apply.

26. Spray Painting Emissions

- (1) No person shall, within the municipality's jurisdiction, spray, coat, plate, or epoxy-coat any vehicle, article, object or allow them to be sprayed, coated, plated, or epoxy-coated with any substance outside approved spray painting room or booth.
- (2) No person may spray, coat, plate, or epoxy-coat any vehicle, article, object, or building or part thereof or allow them to be sprayed, coated, plated or epoxy-coated with any substance unless:
 - (a) that person is in possession of a spraying authorization contemplated in subsection (1);
 - (b) the spraying, coating, plating or epoxy-coating as the case may be is conducted in a spraying room approved by the designated fire officer, in consultation with the air quality officer, on premises registered for that purpose.
- (3) A person that contravenes subsections (1) and (2) commits an offence.
- (4) Any person who wishes to obtain a spraying authorisation must complete and submit to the designated fire officer an application form for such permit in the form and manner as prescribed.
- (5) The designated fire officer, in consultation with the air quality officer, may grant or refuse a spraying authorisation contemplated in subsection (1) based on the information submitted.
- (6) A spray room or booth or area designated for the application of a substance must be constructed and equipped according to the requirements in Schedule 6 to this by-law.
- (7) The designated fire officer may cancel the spraying authorisation if there is reason to believe that the holder of the spraying authorisation contravenes or fails to comply with any provision of this by-law.
- (8) Subject to subsection (9), before the designated fire officer cancels the spraying authorisation as contemplated in subsection (7), that officer must:
 - (a) give the holder of the spraying authorisation written notice of the intention to cancel the spraying authorisation and the reasons for such cancellation;

- (b) give the holder a period of at least 30 days to make written representations regarding the matter to the municipality.
- (9) If the designated fire officer has reason to believe that the failure to cancel the spraying authorisation may endanger any person, that officer may cancel the spraying authorisation without prior notice to the holder as contemplated in subsection (7).

27. Blast Cleaning Methods

- (1) Any person conducting sand blasting activities which customarily produce emissions of dust that may be harmful to public health, well-being and/or cause a nuisance shall take control measures to prevent emissions into the atmosphere.
- (2) Any person who undertakes any sand blasting activity that causes dust emissions must implement the following control measure:
 - (a) dust extraction control measure; or
 - (b) any alternative dust control measure approved in writing by the air quality officer.
- (3) A person that contravenes subsections (1) and (2) commits an offence.

EMISSIONS FROM COMPRESSION IGNITION POWERED VEHICLES AND POWER GENERATORS

28 Prohibition of dark smoke from compression ignition powered vehicles

- (1) No person may on a public or private road or any premises drive or use, or cause to be used, a compression ignition powered vehicle or power generator that emits dark smoke.
- (2) For purposes of this section the registered owner of the vehicle shall be presumed to be the driver unless the contrary is proven

29. Stopping of vehicles for inspection and testing

- (1) In order to enable an authorized person to enforce the provisions of this Chapter, the driver of a vehicle must comply with any reasonable direction given by an authorized person –
 - (a) To stop the vehicle; and
 - (b) to facilitate the inspection or testing of the vehicle
- (2) When a vehicle has stopped in compliance with a direction given under subsection (1), the authorized person may

- (a) Inspect and test the vehicle at the roadside, in which case inspection and testing must be carried out –
 - (i) at or as near as practicable to the place where the direction to stop the vehicle is given; and
 - (ii) As soon as practicable, and in any case within one hour, after the vehicle is stopped in accordance with the direction; or

- (b) Conduct a visual inspection of the vehicle and, if the authorized person reasonable believes that an offence has been committed under 28(1) section, instruct the driver of the vehicle, who is presumed to be the owner of the vehicle unless he or she produces evidence to the contrary, in writing to take the vehicle to a testing station, within a specified period of time, for inspection and testing in accordance with section 30.

30. Testing procedure

(1) An authorised person must use the free acceleration test method in order to determine whether a compression ignition powered vehicle is being driven or used in contravention of section 28(1)

(2) The following procedure must be adhered to in order to conduct a free acceleration test:

- (a) When instructed to do so by the authorised person, the driver must start the vehicle, place it in neutral gear and engage the clutch;
 - (b) while the vehicle is idling, the authorised person must conduct a visual inspection of the emission system of the vehicle;
 - (c) the authorised person must rapidly, smoothly and completely depress the accelerator throttle pedal of the vehicle, or he may instruct the driver to do likewise under his supervision;
 - (d) while the throttle pedal is depressed, the authorised person must measure the smoke emitted from the emission system of the vehicle in order to determine whether or not it is dark smoke;
 - (e) the authorised person must release the throttle pedal when the engine reached cut-off speed;
 - (f) if the authorised person instructs the driver to depress the throttle, the driver may only release the throttle when it reached cut-off speed or when instructed to do so by the authorised person.
- (3) If, having conducted the free acceleration test, the authorised person is satisfied that the vehicle –

- (a) Is not emitting dark smoke, he or she must furnish the driver of the vehicle with a certificate indicating that the vehicle is not being driven or used in contravention of section 28(1); or
- (b) Is emitting dark smoke, he or she must issue the driver of the vehicle with a repair notice in accordance with section 31.

Repair notice

31. (1) The authorised person must with a written repair notice, direct the owner of the vehicle to repair the vehicle within a specified period of time, and to take the vehicle to a place identified in the notice for re-testing before the expiry of that period.

(2) The repair notice must contain the following information:

- (a) the make and registration number of the vehicle;
- (b) the name, address and identity number of the driver of the vehicle; and
- (c) if the driver is not the owner, the name and address of the vehicle owner.

(3) It shall not be a defence in proceedings relating to the non compliance of the repair notice and non re- testing of the vehicle referred to in subsection (1) to aver that the driver of the vehicle failed to bring the repair notice to the attention of the owner of that vehicle.

CHAPTER VIII

OFFENCES AND PENALTIES

32. Offences and penalties

- (1) Any person who continues to commit an offence after notice has been served on him or fails to cease committing such offence after he has been convicted of such offence, is guilty of a continuing offence.
- (2) Any person who-
 - (a) Contravenes any provisions of this By-Law commits an offence and shall, upon conviction, be liable to a fine or in default of payment, to imprisonment, or such imprisonment without the option of a fine, or both such fine and such imprisonment. Alternatively, main contravening acts together with sanctions should be included in any amended provision.
 - (b) contravenes any provisions of this By-law, condition or restriction or fails to comply therewith; or
 - (c) contravenes or fails to comply with any order made hereunder or any notice served in connection herewith; or
 - (d) furnishes a false statement, or give false or misleading information knowing it to be false or misleading; is guilty of an offence and liable to a-
 - (i) fine or imprisonment, or to both such fine and such imprisonment and;
 - (ii) in the case of a continuing offence, to an additional fine or an additional period of imprisonment for each day on which such offence is continued and;
 - (iii) a further amount equal to any cost and expenses found by the court to have been incurred by the municipality as result of such contravention or failure.
- (3) In addition to imposing a fine or imprisonment, a court may order any person convicted of an offence under this By-law -
 - (a) to remedy the harm caused;
 - (b) to pay damages for harm caused to another person or to property, which order shall have the force and effect of a civil judgment; and
 - (c) to install and operate at the person's own expense emission measuring equipment referred to in section 16.
- (4) In addition to any other penalty the court may impose, it may order a person convicted of an offence under this By-law to take such steps the court considers

necessary within a period determined by the court in order to prevent a recurrence of the offense.

CHAPTER IX

GENERAL MATTERS

33. Compliance Monitoring

- (1) The air quality officer may request from any polluter that significantly contributes or is likely to contribute to poor air quality, ambient and point or non-point source monitoring and any other air quality related study, programs or reports to be conducted by a recognised and competent third party, at the cost of the polluter.

34. Enforcement

- (1) The air quality officer must take all lawful, necessary and reasonable practicable measures to enforce the provisions of this By-law.
- (2) The Prince Albert Municipality may develop enforcement procedures which should take into consideration any national or provincial enforcement procedures.
- (3) The Municipality may, in any case where it seems that any action or neglect by any person or owner of property may lead to a contravention of the provisions of this By-law, give notice in writing to such person or owner of property to comply with such requirements as the Municipality may deem necessary to prevent the occurrence or repetition of such contravention.

35. Recognition programmes

- (1) An air quality officer may establish a programme for the public recognition of significant achievements in the area of pollution prevention.

36. Co-operation between municipalities

- (1) In an effort to achieve optimal service delivery in terms of this By-law, the Council may enter into any written agreement with any person, organ of state or organization with which legislative and executive powers are shared, in respect of the following-
 - (a) the practical arrangements with regard to the execution of the provisions of this By-law;
 - (b) the recovery of costs and expenses related to any action in terms of this By-law;
 - (c) any other matter regarded necessary by the parties to achieve optimal service delivery in terms of this By-law.
- (2) The Municipality must monitor the effectiveness of any agreement entered into in terms of sub-section (1), in achieving the purposes for which it was entered into and may cancel the agreement after giving reasonable notice to the other party if the Municipality has reason to believe that the agreement is not effective, or is inhibiting the attainment of the purpose of this By-law.

37. Appeals

- (1) Any person may appeal against a decision taken by an air quality officer under this By-law by giving a written notice of the appeal in accordance with the provisions of section 62 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000).

38. Exemptions

- (1) Any person may, in writing, apply for exemption from the application of a provision of this By-law to the Municipality.
- (2) An application in terms of subsection (1) must be accompanied by substantive reasons.
- (3) The Municipality may require an applicant applying for exemption to take appropriate steps to bring the application to the attention of relevant interested and affected persons and the public.
- (4) The steps contemplated in subsection (3) may include the publication of a notice in at least two newspapers, one circulating provincially and one circulating within the jurisdiction of the Prince Albert Municipality.
 - (a) giving reasons for the application; and
 - (b) containing such other particulars concerning the application as the air quality officer may require.
- (5) The Municipality may -
 - (a) from time to time review any exemption granted in terms of this section, and may impose such conditions as it may determine; and
 - (b) on good grounds withdraw any exemption.
- (6) The Municipality may not grant an exemption under subsection (1):
 - (a) until it has taken reasonable measures to ensure that all persons whose rights may be significantly detrimentally affected by the granting of the exemption, including adjacent land owners or occupiers, are aware of the application for exemption and how to obtain a copy of it;
 - (b) until it has provided such persons with a reasonable opportunity to object to the application; and
 - (c) until it has duly considered and taken into account any objections raised.
- (7) The municipality may in writing exempt certain premises, classes of premises or premises used for specified purposes from the operation of measures adopted by the municipality under this section.

39. Policy

- (1) The Municipality may adopt and implement in a policy document measures for the regulation of Air Quality, and activities and to provide for incidental matters.
- (2) The application of the provisions of the policy may be limited to a specific area/or any categories of premises or activities and may permit deviation and exemptions from, and the relaxation of, any such provisions on reasonable grounds.
- (3) Any person contravening the provision of the Policy or furnish false or misleading information, is guilty of an offence, and on conviction liable to a fine or imprisonment, or both such fine and imprisonment.
- (4) The Policy must be made public and conveyed to the community in terms of section 21 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000).

40. Indemnity

- (1) The Prince Albert Municipality shall not be liable for any damage caused to any property or premises by any action or omission of the employees or officials of the Prince Albert Municipality when exercising any function or performing any duty in terms of this By-law, provided that such employees or officials must, when exercising such function or performing such duty, take reasonable steps to prevent any damage to such property or premises.

41. Repeal and savings

- (1) Anything done or deemed to have been done under any other law remains valid to the extent that it is consistent with this By-law, or until anything done under this By-law overrides it.

42. Short title

- (1) This By-law is called the Prince Albert Municipality: Air Quality Management By-law, and shall come into operation on the date of publication thereof in the Provincial Gazette, with exclusion of section 14, which will come into operation on a date decided by Council.