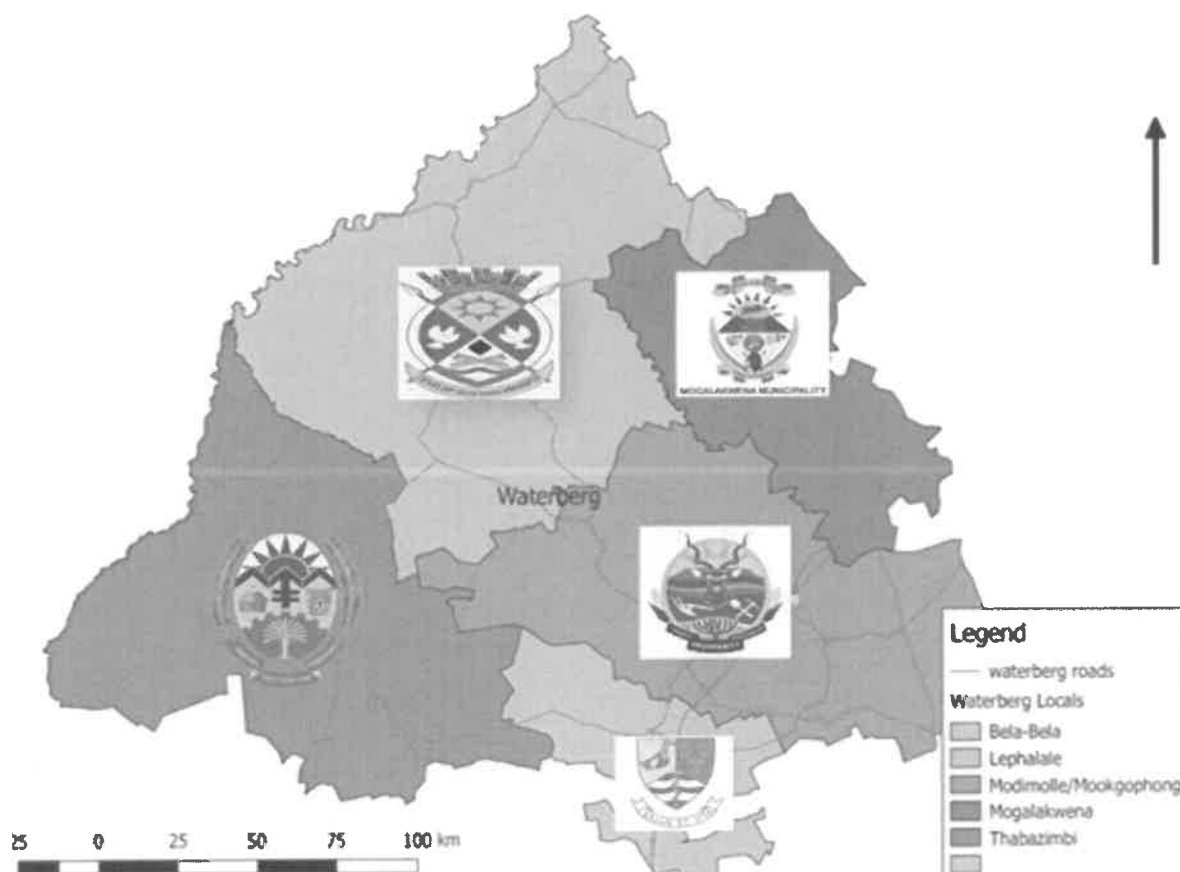


LOCAL AUTHORITY NOTICE 950 OF 2024

WATERBERG DISTRICT MUNICIPALITY

AIR QUALITY MANAGEMENT BY-LAWS



The Municipal Manager of Waterberg District Municipality hereby, in terms of section 13(a) of the Local Government Municipal Systems Act, 2000 (Act 32 of 2000), publishes the Air Quality Management By-Law for Waterberg District Municipality as approved by its Council on 27 September 2023, as set out hereunder.

TABLE OF CONTENTS**CHAPTER 1****APPLICATION AND INTERPRETATION OF BY-LAWS**

1. Application of by-law
2. Definitions and interpretation
3. Objectives

CHAPTER 2**DUTY OF CARE**

4. Reasonable measures to prevent air pollution

CHAPTER 3**SMOKE CONTROL ZONES**

5. Declaration of air pollution control zone

CHAPTER 4**MOTOR VEHICLE EMISSIONS, FUEL BURNING EQUIPMENT**

6. Vehicle emissions
7. Fuel burning equipment
8. Operation of fuel burning equipment
9. Installation and operation of obscuring measuring equipment
10. Monitoring and sampling
11. Temporary exemption

CHAPTER 5**EMISSIONS CAUSED BY OPEN BURNING, BURNING OF MATERIAL AND DUST**

12. Emissions caused by open burning
13. Emissions caused by tyre burning, rubber and other material for the recovery of metal
14. Dust emissions

CHAPTER 6**EMISSIONS THAT CAUSE A NUISANCE**

15. Emissions that cause a nuisance
16. Abatement notice
17. Steps to abate nuisance
18. Offences and Penalties

CHAPTER 7**OFFENCES AND PENALTIES**

19. Enforcement
20. Appeals
21. Exemption

CHAPTER 8 GENERAL

- 22. Operation of these by-laws in relation to other laws
- 23. Repeal of by-laws
- 24. Short title and commencement

CHAPTER 1 APPLICATION AND INTERPRETATION OF BY-LAWS

Application of By-laws

- 1. This By-Law applies to all properties or premises within the area of jurisdiction of the municipality.

Definitions and interpretation

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

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

“Air pollutant” includes dust, smoke, fumes and gas that may cause air pollution

“air pollution” means any change in the composition of the air caused by smoke, soot, dust (including fly ash), cinders, solid particles of any kind, gases, fumes, aerosols and odorous substances.

“Air pollution control zone” means the geographical area to which chapter 4 of this by-law is declared to apply

“AQA” means the National Environmental Management: Air Quality Act 39 of 2004

“Air quality management plan” means a plan referred to in section 15 of the AQA.

“Air quality officer” means an officer appointed in terms of section 14(3) of the AQA.

“Ambient air” means the ambient air as defined in section 1 of the AQA.

“Atmospheric emission” means any emission or entrainment process emanating from a point, non-point or mobile sources that result 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.

“Compressed ignition powered vehicle” means a vehicle powered by an internal combustion, compression ignition, diesel or similar fuel engine.

“dark smoke” means smoke which when measured using a light absorption meter, obscuring measuring equipment or other similar equipment, has an obscuring of 20 % or greater.

- smoke emitted from exhaust outlets of naturally aspired compression ignition engine which has a density of 50 Hartridge smoke units or more or a light absorption co-efficient of more than 1.6m/s
- Smoke emitted from 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/s

“Dust” means any solid matter in a fine or disintegrated form which is capable of being dispersed or suspended in the atmosphere.

“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*

“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 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;

“Fuel burning equipment” means any furnace, boiler or other equipment 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”** means an employee of appointed by municipality to enforce its By-Laws and is in possession of an appointment card attesting thereto.
- “Municipality”** means Waterberg District Municipality
- “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.
 - (b) The use and enjoyment by an owner or occupier of his or her property or environment.
- “Obscuration”** means the ratio of visible light attenuated by air pollutants suspended in the effluent streams to incident visible light, expressed as percentage
- “Open burning”** means the combustion of material by burning without a chimney to vent the emitted products of combustion to the atmosphere, and burning in the open has a corresponding meaning.
- “Operator”** means a person who owns or manages an undertaking, or who controls an operation or process, which emits air pollutants.
- “Person”** means a natural person or a juristic person
- “Premises”** includes-
- (a) any building or other structure
 - (b) any adjoining land occupied or used in connection with any activities carried on in that building or structure;
 - (c) any vacant land;
- “Province”** means the province of Limpopo;
- “Public road”** means a road which the public has the right to use.
- “small boiler”** means a small combustion installation, with a design capacity of less than 50MW heat input, capable of burning solid, liquid and gas fuels used primarily for steam raising 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 soot, grit and gritty particles.
- “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.
- “The NEMA”** means the National Environmental Management Act 107 of 1998;
- “Use”** in relation to all-terrain vehicles includes driving, operating or being conveyed by, that vehicle.
- “Vehicle”** means any motor car, motor carriage, and motor cycles, bus, motor lorry or other conveyance propelled wholly or partly by any volatile spirit, steam, gas or oil, or by any means other than human power.

3. Objectives

- (1) The objectives of this by-law are to-
 - (a) Give effect to the right contained in section 24 of the Constitution in order to enhance the quality of the ambient air for the sake of securing an environment that is not harmful to the health and well-being of people.
 - (b) provide, in conjunction with any other applicable law, an effective legal and administrative framework, within which the municipality can manage and regulate activities that have the potential to adversely impact the environment, public health and well-being; and
 - (c) Secure ecologically sustainable development while promoting justifiable economic and social development.
- (2) Any person exercising a power under this by-law must exercise such a power in order to give effect to the objectives as set out in subsection (1) above.

CHAPTER 2 DUTY OF CARE

4. Reasonable measures to prevent air pollution

- (1) Any person who is wholly or partially responsible for causing air pollution or creating a risk of 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 measures required under subsection (1) to:-
- (a) investigate, evaluate and assess the impact of specific activities and report thereon.
 - (b) take specific reasonable measures before a given date;
 - (c) diligently continue with those measures; and
 - (d) complete them before a reasonable date provided that prior to such direction the law enforcement officer must give such person adequate notice and direct him or her to inform the law enforcement officer of his or her relevant interests, and the law enforcement officer may consult with any other organ of state.
- (3) Should a person fail to comply, or inadequately comply with a directive under subsection (2), the municipality may take reasonable measures to remedy the situation or apply to a competent court for appropriate relief.
- (4) The law enforcement officer 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 air pollution occurred;
 - (c) any person who diligently 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 subsection(2)
- (6) Any person who fails to comply with subsection (5) above commits an offence.

CHAPTER 3 SMOKE CONTROL ZONES

5. Declaration of air pollution control zone

- (1) The whole area within the jurisdiction of Waterberg District municipality is hereby declared an air pollution control zone.
- (2) No person shall emit or permit the emission of dark smoke from any premises for an aggregate period exceeding three minutes during a continuous period of thirty minutes.
- (3) Any person who emits or permits the emission of dark smoke in contravention of sub section (1) commits an offence.
- (4) This section does not apply to dark smoke which is emitted from a fuel burning equipment which occurs when the equipment is being started or while the equipment is being overhauled or repaired, or awaiting overhaul or repair, unless such emission could have been prevented using the best practical environmental option.
- (5) Subsection (1) and (2) do not apply to holders of atmospheric emission licenses for activities listed in terms of section 21 of AQA, and the emission standards listed in such license shall apply.
- (6) Waterberg District Municipality may, on application in writing from an applicant, grant such applicant a temporary exemption in writing from specified provisions of this section.

CHAPTER 4 MOTOR VEHICLE EMISSIONS, FUEL BURNING EQUIPMENT

6. Vehicle emissions

- (1) No person may on a public road or any premises drive or use, or cause to be used, a compression ignition powered vehicle or power generator which emits dark smoke.
- (2) For the purposes of this section the registered owner of the vehicle shall be presumed to be the driver unless the contrary is proven.
- (3) The driver of a vehicle must comply with any reasonable direction given by a law enforcement officer to stop the vehicle and to facilitate its inspection
- (4) Failure to comply with the direction given in terms of this by-laws is an offence
- (5) When a vehicle has been stopped in compliance with a directive given in terms hereof, the law enforcement officer shall inspect and test the vehicle at road side, and if the law enforcement officer reasonably believes that an offence has been committed in terms of this by-law, the law enforcement officer may instruct the driver of the vehicle in writing to repair the vehicle and take it to a testing station within a specified time for re-testing.
- (6) If the owner of the vehicle fails to comply with the notice and re-test referred to in subsection(1), the municipality may take steps it considers necessary in order to remedy the harm including towing the vehicle away and may recover the cost incurred from the owner of the vehicle.

7. Fuel-burning equipment

- (1) No person may install, alter, extend or replace any fuel-burning equipment on any premises without the prior written authorization of Waterberg District Municipality, which may only be given after consideration of the relevant plans, specifications.
- (2) Any fuel-burning equipment which has been 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)
- (3) Where fuel-burning equipment has been installed, 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.

8. Operation of fuel burning equipment

- (1) No person may use or operate any fuel-burning equipment contrary to the authorization referred to in section 7.
- (2) Where fuel-burning equipment has been used or operated on the premises in contrary to subsection (1), the Municipality may on written notice to the owner and occupier of the premises-
 - (a) revoke his or her authorization under section 13; and
 - (b) order the removal of the fuel-burning equipment from the premises at the expense of the owner and operator within the period stated in the notice.
- (3) Waterberg District Municipality may, if the owner or occupier of the premises fails to comply with the notice referred to in subsection (2) remove the fuel burning equipment from the premises and may recover the reasonable costs incurred from such owner or occupier of such premises.

9. Installation and operation of obscuration measuring equipment

- (1) A law enforcement officer may give notice to any operator of fuel-burning equipment or any owner or occupier of premises on which fuel-burning equipment is used or operated, or intended to be used or operated, to install, maintain and operate obscuration measuring equipment at his or her own cost, if-
 - (a) Unauthorised and unlawful emission of dark smoke from the relevant premises have occurred consistently and regularly over a period of at least two days.
 - (b) Unauthorised and unlawful emission of dark smoke from the relevant premises have occurred intermittently over a period of at least fourteen days,
 - (c) Fuel-burning equipment has been or is intended to be installed on the relevant premises which are reasonably likely to emit dark smoke.
 - (d) The person on whom the notice is served has been convicted more than once under this chapter and has not taken adequate measures to prevent further contravention of the provision of this Chapter; or

- (e) The law enforcement officer considers that the nature of the air pollutant emitted from the relevant premises is reasonably likely to create a hazard to human health or the environment
- (2) A notice referred to in subsection (1) must inform the person to whom it is addressed of-
 - (a) that person's right to make written representations and to appear in person to present the dispute information and arguments regarding the notice, and must stipulate a reasonable period within which this must be done.
 - (b) that person's right of appeal under section 20.
 - (c) that person's right to request written reasons for the issuing of the notice; and
 - (d) the measures that must be taken and the potential consequences if the notice is not complied with.

10. Monitoring and sampling

- (1) An occupier or owner of premises, and the operator of any fuel-burning equipment, who is required to install obscuring measuring equipment in terms of section 9(1) must-
 - (a) record all monitoring and sampling results and maintain a copy of this record for at least four years after obtaining the results;
 - (b) if requested to do so by a law enforcement officer, produce the record of the monitoring and sampling results for inspection; and
 - (c) if requested to do so by a law enforcement officer, provide a written report, in a form and by a date specified by the law enforcement officer, of part or all of the information in the record of the monitoring and sampling results.

11. Temporary exemption

- (1) Subject to section 21 and on application in writing by the owner or occupier of premises or the operator of fuel-burning equipment, the Municipality may grant a temporary exemption in writing from one or all the provisions of this chapter.
- (2) Any exemption granted under subsection (1) must state at least the following:
 - (a) A description of the fuel-burning equipment and the premises on which its used or operated;
 - (b) The reasons for granting the exemption;
 - (c) The conditions attached to the exemption, if any
 - (d) The period for which the exemption has been granted; and
 - (e) Any other relevant information
- (3) Waterberg District Municipality may not grant a temporary exemption under subsection (1) until the Municipality has-
 - (a) Taken reasonable measures to ensure that all persons whose rights may be significantly detrimentally affected by the granting of the temporary exemption, including adjacent land owners or occupiers, are aware of the application for temporary exemption and how to obtain a copy of it;
 - (b) Provided such persons with a reasonable opportunity to object to the application; and
 - (c) Duly considered and taken into account any objections raised.

12. Emissions caused by dust emissions, open burning and burning of material

- (1) Subject to subsection(4), any person who intends to carry out open burning of any material on any land or premises, must apply for prior written authorization of such open burning to Waterberg District Municipality
- (2) Waterberg District Municipality may, in the written authorization referred to in subsection (1) impose conditions with which the person requesting authorization must comply.
- (3) Waterberg District Municipality may not authorize open burning referred to in subsection (1) unless it is satisfied that the following requirements have been adequately addressed or fulfilled:
 - (a) the material will be open burned on the land from which it originated;
 - (b) that the person requesting authorization has investigated and assessed the impact the open burning will have on the environment to the satisfaction of the Municipality.
 - (c) that the person requesting authorization has notified in writing the owners of the and occupier of all adjacent properties of-
 - (i) all known details of the proposed open burning; and
 - (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 being notified; and

- (d) a warning under section 10(1) (b) of the National Veld and Forest Act, 1998 (Act no.101 of 1998) has not been published for the region.
- (e) the land on which that person intends to open burn the material is state land, a farm or small holding, or land within a proclaimed township that is not utilised for residential purposes;
- (f) the open burning is conducted 100 metres from any building or structures; and
- (g) the open burning will not pose a potential hazard to human health or safety, private property or the environment
- (4) The provision of this section shall not apply to-
 - (a) recreational outdoor barbecue or braai activities on private premises
 - (b) small controlled fires in informal settlements for the purposes of cooking, heating water and other domestic purpose; or
 - (c) any other defined area or defined activity to which Waterberg District Municipality has declared this section not to apply.

13. Emissions caused by tyre burning and of rubber and other material for the recovery of metal

- (1) No person may without authorisation in writing by Waterberg District Municipality may-
 - (a) carry out or permit the burning of tyres or rubber or other synthetically coated, covered or insulated products and electronic or other equipment on any land or premises;
 - (b) carry out or permit the burning of any tyres, rubber products, cables or any other products, on any land or premises for the purpose of recovering the scrap metal or fibre reinforcements, or of disposing of tyres, or the rubber products or cable as waste; or
 - (c) possess, store, transport or trade in any burnt metal or fibre reinforcements referred to in paragraph (a) and (b)
- (2) The municipality may take whatever steps it considers necessary in order to remedy the harm caused by the burning referred to in paragraphs (a) and (b) and the possession referred to in paragraph (c), and prevent any occurrence of it, and may recover the reasonable costs incurred from the person responsible for causing such harm.

14. Dust Emissions

- (1) Any person who-
 - (a) Conducts any activity; or
 - (b) Causes or permits dust emissions to occur, shall adopt the best practical environmental option to the satisfaction of the law enforcement officer to prevent and abate dust emissions into the atmosphere that may be harmful to public health and well-being or is likely to cause a nuisance to persons residing or present in the vicinity of such land, activity or premises.

**CHAPTER 5
EMISSIONS THAT CAUSE A NUISANCE**

15. Emissions that cause a nuisance

- (1) No person shall, within the area of jurisdiction of Waterberg District Municipality-
 - (a) inside an approved spray area or spray booth, spray or apply any coat, plate or epoxy coat to any vehicle, article or object, so as to cause a nuisance; or
 - (b) outside an approved spray area or spray booth, allow any spray, coat, plate or epoxy coat to be applied to any such vehicle, article or object.
- (2) The spray area or spray booth referred to in subsection (1) must be constructed and equipped in such a manner the complies with the General Safety Regulations promulgated in terms of the Occupational Health and Safety Act, 1993 (Act no.85 of 1993) and must be approved by the authorised person, for emissions, mechanical ventilation, noise and any other relevant Department as may be required by any other law.
- (3) Any person conducting sand blasting shot blasting, grinding, finishing or similar activity which customarily produces emissions of dust that may be harmful to public health or cause a nuisance shall take control measures to prevent emissions into the atmosphere.
- (4) Any person undertaking an activity referred to in (3) must implement the following measures:

- (a) dust extraction control measures
- (b) any alternative control measure approved by the air quality officer or his or her delegated representative.
- (5) An occupier or owner of any premises-
 - (a) Must prevent the existence in or emission of any nuisance from his or her premises.
 - (b) From which a nuisance emanates, or where a nuisance exists is guilty of an offence.

16. Abatement notice

- (1) The law enforcement officer may serve an abatement notice on any person whom he or she reasonably believes is likely to act in contrary or has acted in contrary of section 15, calling upon that-
 - (a) to abate the nuisance within a period specified in the notice
 - (b) to take all necessary steps to prevent a recurrence of the nuisance.
 - (c) to comply with any other conditions in the notice.

17. Steps to abate nuisance

- (1) At any time, the municipality may at its own cost take whatever steps it considers necessary to remedy the harm caused by the nuisance and prevent a recurrence of it, and may recover the cost incurred from the person responsible for causing the nuisance.

CHAPTER 6 EMISSIONS THAT CAUSE A NUISANCE

18. OFFENCES AND PENALTIES

- (1) Any person who contravenes any provision of this By-Law commits an offence and shall, upon conviction, be liable to a fine or imprisonment, or to both such fine and such imprisonment, or to such imprisonment without the option of a fine, and in the case of a successive or continuing offence, to a fine for everyday that such an offense continues, or in default of payment thereof, to imprisonment.
- (2) It is an offence to:-
 - (a) supply false information to an authorised person in respect of any issue pertaining to this By-Law.
 - (b) refuse to cooperate with the request of an authorised person made in terms of this By-Law and any person convicted of such offence is liable to imprisonment for a period not exceeding 30 days or to a fine or to both such imprisonment and such a fine.
 - (c) failure to comply with a notice, direction or instruction referred to in this By-Law constitute a continuing offence.

CHAPTER 7 GENERAL MATTERS

19. Enforcement

- (1) The law enforcement officer must take all lawful, necessary and reasonable practicable measures to enforce the provisions of this by law.
- (2) Waterberg District Municipality may develop enforcement procedures which should take into consideration any national or provincial enforcement procedures.

20. Appeals

- (1) Any person may appeal against a decision taken by the law enforcement 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 no.32 of 2000).

21. Exemptions

- (1) Any person may, in writing apply for exemption from the application of this By- Law to Waterberg District Municipality.
- (2) An application in terms of subsection (1) must be accompanied by substantive reasons.
- (3) Waterberg District 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) must include the publication of a notice in at least two newspapers circulating within the jurisdiction of Waterberg District Municipality-
 - (a) giving reasons for the application; and
 - (b) containing such other particulars concerning the application as the air quality officer may require.
- (5) Waterberg District 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) Waterberg District Municipality may not grant an exemption under subsection (1) until he or she has-
 - (a) 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) provided that such persons with a reasonable opportunity to object to the application; and
 - (c) duly considered and taken into account any objections raised.

**CHAPTER 8
GENERAL****22. Operation of these by-laws in relation to other laws**

- (1) The provisions of these by-laws are in addition to and not a substitution for any other law which is not in conflict or inconsistent with these by-laws.

23. Repeal of by-laws

- (1) These By-laws repeals all other previous by-laws relating to this function applicable to this area.

24. Short title and commencement

- (1) This by-law is called the Waterberg District Municipality Air Quality Management By-law and takes effect upon proclamation in the *Government Gazette*.

25. By-laws bind state

- (1) This By-law binds any organ of state and any person in the service of any organ of state as defined in Section 239 of the Constitution, 1996 as amended.