PART I

INTERPRETATION OF TERMS AND AREA OF SCHEME.
1. **INTERPRETATION OF TERMS.**

In this Scheme, unless the context otherwise requires :-

- **26/04/2005**
  - "**action sports bar**" means a building or a portion of a building used for the sale of alcohol and/or food for consumption on the premises and may include a beer hall, or live entertainment, or entertainment generated by television transmission, or by way of mechanical, electronic or electrical contrivances, instruments, apparatus of devices which are designed or used for the purpose of playing of any game or for the purpose of recreation or amusement, and the operation of which involves the payment of any valuable consideration, either by the insertion of a coin, token coin or disc therein or in an appliance attached thereto or in any other manner, or billiard saloon, or snooker room;

- **26/04/2005**
  - "**adult premises**" means a building used for the sale, hiring, display, exhibition, or viewing of adult related material;

- **26/05/2017**
  - "**agriculture land**" Means arable, meadow or pasture land, market gardens, poultry farm, garden nursery, and may include amongst others, a greenhouse or hydroponics, horticulture, permaculture, orchards, and land used for the purpose of breeding, keeping, training, or sale of domestic animals, poultry, bees or aquatic animals, ancillary residential buildings and includes any buildings connected therewith.

- **01/07/1985**
  - "**ancillary unit**" means a self-contained inter leading group of rooms including not more than one kitchen designed for occupation by a single household or family and used as such by a single household or family, and may include outbuildings ancillary thereto.

- **27/10/2005**
  - "**antennae**" means any form of transducer intended for use to transmit or receive electronic communication signals, but shall exclude television receiving equipment with a diameter of 1.50 metres or less;

- **27/10/2005**
  - "**approval**" means the written approval of the eThekwini Municipality;

- **"area"** in relation to a Town Planning Scheme or section of any Town Planning Scheme in course of preparation means that area which lies within the inner edge of the boundary line coloured blue on the Map, as hereinafter defined, which applies to the area concerned;

- **26/05/2017**
  - "**arts and craft workshop**" means premises wherein the primary purpose is the production of arts and crafts, and may include the selling of such goods. The process carried on and the machinery installed is such that they do not cause nuisance to other properties or are detrimental to the amenities of the surroundings

- **26/05/2017**
  - "**base telecommunications transmission station**" means any structure designed and used in the transmitting or receiving of electronic communications signals and includes a telecommunications mast, but excludes any television receiving equipment with a diameter of 1.5 metres or less

- **27/10/2005**
  - "**base telecommunications transceiver station**" means any structure designed and used for the accommodation of equipment used in the transmitting or receiving of electronic communication signals and including a telecommunications mast;
“basement” means the lowest part of any building which part is constructed with more than 50% of its volume below ground level. Ground level shall mean natural ground level, without any additional earthworks, as it existed prior to the conception of the building or development in question.

“bath house” means a building or portion of a building used for the purpose of providing public bathing and ablution facilities for indigent persons and/or travellers and may include ancillary laundry facilities;

“bed and breakfast establishment” means a dwelling house wherein a maximum of ten bedrooms may be used for the purpose of temporary accommodation of guests without impairing the amenity of the adjoining properties.

“boarding house” means residential premises or part thereof in which long stay lodging is provided to more than four persons by the owner or operator who resides on the premises and which may provide communal facilities.

“bottle store” means an establishment where the dominant use is the retail sale of alcoholic beverages for consumption off the property, and may include an off-sales facility;

“brothel” means a building to be used for the giving and receiving of sexual favours for gain;

“building” means any building, structure or erection of an immovable nature for whatever purpose used including in particular, but without affecting the generality of the foregoing, any tank, swimming pool; radio mast (other than a radio mast consisting of a single vertical pole), and any wall or close boarded fence more than 3 metres in height, (as viewed from the affected neighbours property) but excluding any open fence, post, pier, ramp, fountain, statue, fish pond, pergola or other garden ornamentation.

“Bylaw” means the Bylaws or Regulations of the Council for the time being, in force in the area of this Scheme;

“caravan park” means any piece of land upon which three or more caravans are accommodated, or are intended to be accommodated, regardless of whether or not a charge is made for accommodation, but a caravan park shall not include a site for the sale, display, storage or disposal of caravans;

“casino” within the meaning of Item 5 of Schedule 4A to the Constitution including, without derogating from the generality of the afore going, any premises in respect of which a Casino license is required in terms of the KwaZulu-Natal Gambling Act and includes a building in which gambling is permitted and may include ancillary facilities;

“cellular network provider” means those companies who provide cellular network coverage;

“cemetery/crematorium” means premises designed for the inhumation of corpses and/or where the deceased are burned to ash, and include facilities for associated religious and administrative functions.

5/91; 1/98; 02/00; 1/05; 02/05; 01/09; 02/17; 01/19
"City" means the City of Durban;

"City Engineer" means the City Engineer of the City or his duly authorised representative;

14/11/1996 "cluster housing development" deleted – see “multiple unit development”
10/12/1996
28/05/2009

26/05/2017 “conference facility” means a building or portion of a building ancillary to the primary use of the site used for conferences, seminars and meetings and may include offices for the administration of such facility

28/10/2010 “conservation area” means an area or land and/or water within which the conservation of the scenic beauty, indigenous flora and fauna, other naturally occurring material, water courses, topographical features and places of interest is of primary importance.

“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;

16/05/1994 “convention centre” means any building used or constructed or designed or adapted to be used for the conducting of conferences, seminars and meetings and may include offices for the administration of such centre and such other uses considered by the Executive Director (Physical Environment) to be ancillary to or reasonably necessary for the use of the building as a convention centre;

“Council" means the City Council of the City;

27/09/1976 "creche" means a building or portion of a building used for the care of seven or more infants and young children during the daytime absence of their parents or guardians;

03/11/1975 "date of introduction" means the date on which these Regulations are applied to an area as set out in Appendix 5.

"develop land" means to erect a building or to alter or extend any building or to lay out land or adapt it for any use or purpose;

09/12/2010 “D’MOSS Controlled area” means any area demarcated upon the map by the overprinting of a green hatch pattern (or by a green layer on the GIS), where, by reasons of natural biodiversity, the existence of 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;

28/05/2009 “ domestic staff accommodation” means accommodation designed primarily for the housing of staff and may consist of, but limited to, a maximum of two bedrooms, ablution facilities, a kitchenette, a living and dining area, and total floor area not exceeding 40m².

"drive-in-cinema" means an open air cinema where persons watch cinematograph and other performances while seated in motor vehicles;

27/09/1976 "duplex flat" means a flat with living accommodation on not more than two floors;

11/75; 5/76; 2/94; 9/96; 01/09; 05/10; 06/10; 02/17
"dwelling house" means a freestanding building, with inter-leading rooms, constructed on an Erf, and used or adapted to be used as a residence for the accommodation of one household or family and may only include one kitchen, but may include outbuildings, Domestic Staff Accommodation and an Ancillary Unit.

"dwelling unit" means a self-contained inter-leading group of rooms including not more than one kitchen designed for occupation by a single household or family and used as such by a single household or family, and may include outbuildings ancillary thereto.

Educational Establishment: Means premises used as a place of instruction and may include accommodation for staff and students, and uses ancillary thereto but excludes a reform school or a school for the mentally challenged.

"environmental conservation reserve" means publically owned land dedicated to the conservation and management of natural areas of land and/or water for the ecosystem goods and services that the areas provide and the biodiversity which they support.

"environmental impact assessment" means an environmental impact assessment as defined in the Environmental Impact Assessment Regulations (Regulation R1183 under Section 26 of the Environmental Conservation Act, Act No. 73 of 1989);

"environmental protection" means the degree of management which is required to be exercised, based on the environmental sensitivity of the biodiversity present on, under and above land surface or water bodies, to ensure the preservation, protection, conservation, restoration, rehabilitation, and retention of that biodiversity which would ensure the flow of ecosystem goods and services for future generations,

"escort agency" means premises to be used for the making of the services of an escort, whether male or female, available to any other person;

"exhibition centre" means any building used or constructed or designed or adapted to be used for the display of goods or for public entertainment and may include offices for the administration of such centre and other uses considered by the Executive Director (Physical Environment) to be ancillary to or reasonably necessary for the use of the building as an exhibition centre;

"existing building" means a building lawfully erected before the material date, a building erected in accordance with plans which were approved by the Council prior to that date, or a building erected in accordance with any authority duly granted by the Council between the material date and the date of introduction of this Scheme;

"existing use" means in relation to any building or land, a continuous use of that building or land for any purpose of substantially similar character for which it was lawfully being used at the material date, or, in the case of a building erected in accordance with plans approved before the material date, and which was not being used at that date, a continuous use of such building for any purpose for which it was designed, or where after the said date, the Council has authorised the use of a building or land for any purpose, a continuous use of that building or land for the purpose authorised, provided that:-

(a) discontinuance of the existing use of a building or land at any time after the material date for a period exceeding 18 months shall be deemed to interrupt the continuous use;
(b) where on the material date, a person who with the consent of the Council, was using any land for the purpose of an extractive industry or the deposit of waste material or refuse, or any other purpose of a similar nature, was legally entitled to use neighbouring land for any such purpose, whether before or after the material date, such use of that neighbouring land shall be deemed to be an existing use;

27/09/1976  "extended residential building" means a building which is used, constructed, designed or adapted for use for human habitation and comprises not more than three dwelling units, together with such outbuildings as are ordinarily used therewith;

06/02/1978  "extractive industry" means an industry, the nature of which is the extraction of raw materials from the land whereon such industry is situated and shall include:-

(i) the crushing, sorting and storage of the raw material extracted from the land where such raw material is stone, and

(ii) the manufacture of burnt clay products where the raw material extracted from the land is extracted for this purpose;

07/02/1983  "family" means

(i) a single person maintaining an independent household, or

(ii) two or more persons related by blood or marriage, maintaining a common household, or

(iii) two, three or four unrelated persons maintaining a common household and includes not more than four persons lodging or boarding with a family.

26/04/2005  “fast food outlet” means Business Premises designed for use, or used primarily for the preparation and sale of food and non-alcoholic beverages for consumption off the premises;

28/05/2009  “flat” means a portion of a building, such building being two or more storeys in height, comprising a self-contained dwelling unit with a separate entrance and forming part of one or more storeys of such building or buildings.

26/05/2017  “flea market” Means an occasional or periodic market where groups of individual sellers offer goods and services for sale to the public.

26/04/2005  “funeral parlour” within the meaning of Item 3 of Schedule 5B to the Constitution which includes, without detracting from its usual meaning, any premises used for or intended to be used for the preparation of corpses (whether called an undertaker’s, a funeral director’s, a funeral parlour or by any other appellation), the operation of any hearse, the removal of any human remains to such premises and from such premises to any funeral chapel or other place of worship and from such place of worship or premises to any cemetery but excludes a mortuary;

26/05/2017  “garden nursery” Means premises for the purpose of growing, displaying and selling of plants and items incidental thereto, and includes the erection of buildings and structures ordinarily used therewith.

5/76;1/78;1/83  6/96;2/00;2/05;07/05;01/09;02/17  continued
"general industrial building" means an industrial building other than a noxious industrial building, light industrial building or service industrial building;

"ground floor storey" means that storey of a building to which there is an entrance from the outside on or near the level of the ground and where there is more than one such storey, then the lowest of such storeys;

23/03/2005  “Guest House Establishment” deleted – see cl. 7(6) quat

28/05/2009  “height” means the vertical measurement of a building and is expressed as a linear measurement either in meters, a measurement above mean sea level, or as a number of storeys.

20/07/2004  “home business” deleted – see cl. 7(4)

07/02/1983  “household” means a group of people who live together and share living and eating costs and may consist of one family, together with or without their servants and with or without a boarder or boarders, but with a maximum of four boarders.

27/10/2005  “ICNERP” means the International Commission on Non-Ionising Radiation Protection;

04/02/1991  "important building" means any building of architectural, historic or artistic interest which is listed in Appendix 7 and is indicated on the relevant maps by means of an asterisk;

04/02/1991  "important object" means any object of architectural, historic or artistic interest which is listed in Appendix 7;

"industrial building" means any building or portion of a building used or constructed or designed or adapted to be used for industrial purposes;

16/09/1991  "industrial purposes" means in relation to any land or building the use thereof for the manufacture, production, extraction, adaptation, alteration, renovation, repair, processing or servicing of any article or material and shall include the use thereof:

(a) as a factory as defined in the Machinery and Occupational Safety Act No. 6 of 1983 as amended;
(b) by a building contractor for the storage of builder's material;
(c) for the stacking, storing or preparation for resale of scrap material;
(d) as a storage warehouse;
(e) as an office, caretaker's flat or for any other purpose which is incidental to or reasonably necessary in connection with the use thereof as a factory, builder's yard or scrap yard; but shall not include the use of any land or building as a petrol service station;
16/09/1991  "institution" means a building or portion of a building used or designed for use as a charitable institute including the administration thereof, and a building designed for use as a hospital, nursing home, sanatorium or clinic, whether private or public, but does not include:-

(a) a hospital, nursing home, sanatorium or clinic for treatment of infectious or contagious diseases;
(b) premises licensed under the Mental Health Act No. 18 of 1973 for the detention of mentally disordered persons; or
(c) a mental hospital;

26/05/2017  “institution – animal welfare” Means premises primarily used for the protection, medical treatment and housing of animals on a short or medium term, including the buildings designed for the administration thereof and any land use considered to be ordinarily ancillary thereto, so as to ensure the sustainability of the primary use.

26/05/2017  Laundry: Means a service or self-service which may include the ironing, drying or pressing of clothing and textile.

16/09/1991  "Licensed hotel" means an hotel in respect of which an hotel liquor licence is required in terms of the Liquor Act No. 27 of 1989 as amended;

04/02/1974  "light industry" means an industry which can be carried on in a Light Industrial zone without causing nuisance to other properties within such Light Industrial zone or to the general public or without detriment to the amenities of other use zones by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust, grit, traffic generation or other causes;

"maisonettes" or "pair of maisonettes" means a building designed or constructed or adapted to contain two self-contained dwelling units, together with such outbuildings as are ordinarily used therewith;

03/11/1975  "map" means the map approved in relation to an area as set out in Appendix 5;

26/04/2005  “ massage parlour” means a building in which the massage or manipulation of the human body is administered by a registered medical practitioner or similar professional person;

18/11/1974  "material date" means in relation to each of the various parts of the City shown on Plan No. 1849.380C, as amended from time to time, the date on which a resolution of the Council to prepare a scheme for each such part took effect, which date for each such part is shown on the said plan;

21/06/1982  "milk depot" means premises used primarily for the distribution of milk;

26/05/2017  “mortuary” Means a Building or part thereof where corpses are stored and exposed for identification, and where autopsies are performed but exclude a Funeral Parlour.

28/05/2009  “multiple unit development” means a group of two or more attached/detached dwelling units, together with such outbuildings as are ordinarily associated thereto, each dwelling unit having access to a private open space and access to common land, the whole development having been designed as a harmonious entity. No ancillary unit shall be permitted in a multiple unit development.
Museum: Means a Building in which objects illustrating art, history, science, and culture are displayed, and may include a workshop for the repair and restoration of these objects.

"National Building Regulations" means the national building regulations made in terms of section 17 of the National Building Regulations and Building Standards Act No. 103 of 1977;

“nature based tourism” means a low key outdoor recreation and participatory travel experience in a natural environment, which contributes to the sustainable use of that environment, and which produce economic opportunities that contribute to the long-term conservation of the ecosystem goods and services within that environment, thereby reinforcing the concept that conservation can bring meaningful benefits. This use does not necessarily require the provision of accommodation or other built infrastructure.

“night club” means a building used as a place of a amusement wherein music is played and dancing occurs, and may include the selling of alcoholic and non-alcoholic beverages and food for consumption within the premises;

"noxious industrial building" means an industrial building used or constructed or designed or adapted to be used for the purpose of any trade, business or occupation which, by reason of fumes, gases, vapours, dust, smell, noise, vibration or other causes, is deemed by the Council to be or likely to become, injurious or a source of danger, nuisance, discomfort or annoyance to the neighbourhood.

"office" means premises used for the administration of any business, whether public or private

“office–medical” Means an establishment primarily engaged in the provision of health services, and may include laboratories associated therewith, but which does not provide overnight care or serve as a base for an ambulance service

"Ordinance“ means the Town Planning Ordinance No. 27 of 1949 as amended;

"outbuilding" means a building ordinarily used in conjunction with a dwelling unit/units, and for the garaging of private motor vehicles, a storeroom, private laundry, workroom, and other such similar uses.

"owner“ means the person registered in the Deeds Registry as the owner of the land or the person who for the time being receives the rent in respect of the land or any building thereon, whether on his own account or as the agent or trustee, and includes the liquidator of a company or a legal representative, provided that such liquidator or legal representative is acting within the authority conferred upon him by law;

"parking garage" means a building or portion of a building or any land with or without buildings used, constructed, designed or adapted to be used for the purpose of the parking of motor vehicles for reward but excludes a building in or land on which parking is required to be provided in terms of Clause l2 as long as the parking provided does not exceed the minimum prescribed in such clause by more than 50%;
"petrol service station" means a building or portion of a building other than a parking garage used or constructed or designed or adapted to be used for the sale of motor fuels, lubricants and motor spares and motor accessories and may include a caretaker's flat and provision for the maintenance or repair of motor vehicles for reward and a convenience store inclusive of takeaways and ATM's totaling a maximum of 400m².

Pet Grooming Parlour: Means premises used for the grooming and overnight boarding of household pets for commercial gain.

"place of amusement" means land or a building, or portion of a building, constructed or designed or adapted to be used as a place of entertainment, and includes an exhibition hall, theatre, cinema, amusement park, circus arena, race track, including an oceanarium and skating rink.

"place of instruction" means a building or portion of a building used or constructed or designed or adapted to be used as a school, college, technical institute, university, academy, lecture hall or other educational centre, and any chapel, other place of worship or hall which is ancillary to such building, but does not include a certified reformatory or industrial school or a school for mentally defective children;

"place of worship" means a building or portion of a building used or constructed or designed or adapted to be used as a church, chapel, oratory, synagogue, mosque, temple, Sunday school or other place of public devotion, but does not include a funeral chapel;

"plot area ratio" means the ratio of the total floor area of the building to the total area of the subdivision on which the building is or is to be erected;

"private open space" means any land owned by any person or body other than the Council and zoned in terms of this Scheme for use as a private ground for sports, play or recreation;

"public open space" means any land owned by the Council and reserved in terms of this Scheme for use for sports, play or recreation;

"reservation map" means the map listed in Appendix 5 showing the uses to which land, reserved in terms of Clause 3 hereof may be put in the event of the reservation of land being rescinded or deemed to be rescinded.

"residential building" means a building (other than a dwelling house, ancillary unit, pair of maisonettes or extended residential building) or portion of a building used, constructed, designed or adapted to be used for human habitation together with such outbuildings as are ordinarily used therewith, and includes a block of flats, or duplex flats, boarding house, hotel (other than a licensed hotel), residential club and hostel, but does not include any building mentioned whether by way of inclusion or exclusion in the definitions of "place of instruction" and "institution".
"restaurant" means any business premises used for the selling or supplying of meals or refreshments for consumption on or off the premises.

“riding stables” Means a place or undertaking for the leasing of horses and/or riding instruction against which payment is made, and includes the care and stabling of such horses.

“roof-top installation” means a transceiver installation which is attached to the roof of a building;

"Scheme" or "this Scheme" means that section of the Town Planning Scheme in course of preparation adopted by the City Council with effect from the date specified in Appendix 5;

"service industry" means an industry of the kind referred to in the definition of a "light industry" but of a type in which not more than eight persons are engaged and which caters specifically for the essential day-to-day needs of a residential area;

“shelter" means premises used, constructed, designed or adapted to be used to provide accommodation for the homeless and may include a soup kitchen and ablution facilities

"social hall" means a building or portion of a building used, constructed, designed or adapted to be used for social meetings, gatherings and recreation, and includes a masonic hall and non-residential club, but does not include a place of amusement;

"special building” means any other type of building or use not specifically referred to in this set of definitions

"storage warehouse" means a building used or constructed or adapted to be used solely for the storage of goods and shall include the use of open land for such purposes;

"storey" means that part of a building which is situated on top of any floor and the top of the floor next above it, or if there is no floor above the ceiling; provided that the height of such storey or floor shall not be more than 3.5 metres for residential and 4.5 metres for other uses save that:

a) a ground floor shall count as a single storey or floor but may be on several levels,
b) spaces provided for lifts, elevators and similar rooms and architectural features, and which are in proportion to any building shall not constitute a storey or floor;

c) in the event of a storey being higher than the height as indicated above, it shall be counted as a storey.

d) a mezzanine shall not count as a storey

e) a basement shall not count as a storey

f) a roof which may contain, or supports any room, or any structures or features which in the opinion of the Head : Development Planning, Environment & Management, are considered habitable, shall count as a storey.

27/09/1976 "subdivision" or "site" means any piece of land which has been allotted an individual description in the records of the Surveyor-General and includes a remainder and also any group of subdivisions tied by a notarial deed in restraint of free alienation in favour of the Council;

26/04/2005 “tavern” means a building or portion of a building used for the consumption of liquor on residential premises, and may include the consumption of non-alcoholic beverages and the preparation and consumption of food, but shall not include the sale of any of the aforesaid items for consumption off the premises.

16/09/1991 "totalisator depot" means any shop, office or other premises used for the purpose of a totalisator agency in terms of Section 28(3) of the Horse Racing and Betting Control Consolidation Ordinance No. 28 of 1957 as amended;

28/03/2019 Tuck Shop/Spaza Shop: means a portion of a dwelling house used for the sale of day–to-day convenience goods where goods are sold through a window, door way or hatchway, but does not include a walk in shop.

26/05/2017 Veterinary Clinic: Means premises where animals are provided with medical care and the boarding of animals is limited to short-term care resulting from medical treatment and may include an ancillary grooming parlour and a retail outlet restricted to the sale of veterinary and animal maintenance products.

26/05/2017 “warehouse” Means premises used primarily for the storage of goods.

26/04/2005 “work house” means premises used, constructed, designed or adapted to be used for a combination of residential and labour intensive purposes, and which can be carried on without causing nuisance to other properties or to the general public or without detriment to the amenities of other use zones by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust, grit, traffic generation or other causes.

"zone" means a portion of the area shown on the map by distinctive colouring, hatching or edging or in some other distinctive manner (other than any such portion which is reserved for public open space, street, railway and Government or Municipal purposes), for the purpose of indicating the restrictions imposed by this Scheme on the erection and use of buildings or structures, or the use of land; and the terms "Density Zone", "Use Zone", etc., mean zones indicating restrictions as to density and so on, and any word to which a meaning has been assigned by the Ordinance shall, when used in this Scheme, bear the same meaning as is assigned to it in the Ordinance.

26/05/2017 Zoological Garden: Means premises where fauna and flora are exhibited for public education and enjoyment and may include other ancillary facilities