**Rusape Town Council Roads By-laws, 2023**

Statutory Instrument ….. of 2023. (CAP.29:15)

 **ARRANGEMENT OF SECTIONS**

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It is hereby notified that the Minister of Local Government and Public Works, in terms of section 94 of the Urban Council Act *[chapter 29:15*], approved the following by-laws made by Rusape Town Council:-

 *Title*

1. These by-laws may be cited as the Rusape Town Council (Roads By-laws), 2023.

 *Application*

1. These by-laws shall apply to the area under the jurisdiction of Rusape Town Council*.*

 *Interpretation*

1. In these by-laws –

“road” means a **way on land between two places that includes, bridges, culverts, shelverts , drifts and has been paved or otherwise opened, constructed or planned to allow travel by foot or by some form of conveyance** (including a motor vehicle, cart, bicycle, or horse).

“road works” includes development works, maintenance works, rehabilitation works and emergency works;

“road furniture” refers to all fixtures in the road and road reserve including but not limited to road signs, guide posts, culverts, curb stones, pavement, markings, parking meters or sensors cat eyes etc.

“periodic maintenance”, in relation to roads, means activities undertaken at intervals of several years to preserve the integrity of a road or in response to measured deterioration in the condition of a road;

“routine maintenance” means work that is undertaken each year to preserve a road from degradation caused by environmental effects, wear and tear

“ Council” means Rusape Town Council

”storm water” means water that originates from rain including storms.

“Road servitude” means an area reserved for road services and includes road drainage, carriageway, islands and shoulders

“storm water drain” means infrastructure designed to drain runoff water

“demarcated forest” shall have the meaning given to it by the Forest Act [Chapter 19:05];

“protected private forest” shall have the meaning given to it by the Forest Act [Chapter 19:05];

“spoil material” means material which has been produced or which results from repairing or making a road.

**“projection”** means any veranda, balcony, awning, sign, signboard or other similar structure, device, tree or contrivance or any bridge or tunnel, other than a railway bridge or tunnel, which projects or extends into, over or under any road or property owned by the council or town or under the control of the council.

1. **Construction of road drains**

(1) Subject to any enactment relating to the protection of the environment, the Council shall have power to construct such drains as may be necessary for the purpose of safely leading storm-water, which would otherwise naturally gather or impinge upon a road, to the nearest natural drainage.

**5. Storm-water from land adjoining roads**

 (1) If any owner or occupier of any land adjoining any road has, subject to any enactment relating to the protection of the environment, constructed drains or contour ridges for the purpose of protecting his property, he shall not cause or permit, except in the case of flooding or other natural disasters, storm-water to discharge from the drains or contour ridges on to the road or into any existing road drain on the road without the permission of the Council.

(2) In the event of any application for permission in terms of subsection (1), the Council shall grant permission if the applicant agrees to pay the expense of any enlargement or alteration of the road drains which is considered necessary by the road authority.

(3) Any person who contravenes subsections (1), (2) shall be guilty of an offence and liable to a penalty as per Council budget.

**6. Access and extraction of road making materials**

(1) In the exercise of its powers in terms of Part (VII) of the Roads Act (Chapter 13:18), Council shall, subject to section 41, subsections (7), (8) and (9), at all times have the power of making roads and temporary deviations across and of taking materials for making or repairing roads from and of depositing spoil material on any part of any land which is not included in any area which has been approved by the Council under any law relating to regional, town and country planning:

Provided that, except with the consent of the owner of the land, no material shall be taken and no spoil material shall be deposited within—

(a) five hundred metres of the site of the principal homestead on that land, whether the homestead is already erected or actually in the course of erection;

(b) one hundred metres of any other building or permanent improvement the value of which is prescribed or more, or any cattle dip tank;

(c) fifty metres of any area which, in terms of any enactment providing for the protection of the environment, is required to be protected;

(d) ten metres of any other permanent farm building.

(2) No power conferred by this section shall be exercised without reasonable notice on the owner and occupier, if any, of the land concerned calling upon them, if they wish to claim compensation in terms of Part V of the Land Acquisition Act [Chapter 20:10], for loss or deprivation of rights, to submit a claim in terms of section 22 of the Roads Act.

(3) Parts III, V and VIII of the Land Acquisition Act [Chapter 20:10], shall apply, mutatis mutandis, to the exercise of any right in terms of subsection (1): Provided that—

(i) it shall not be necessary for a preliminary notice to be published or served in terms of section 5 of that Act;

(ii) the order in terms of subsection (1) of section 8 of that Act may be issued at any reasonable time after notice is served in terms of subsection (3) or, where such notice is not served, after the publication of a notice in terms of provison (ii) to subsection (1) of section 8 of that Act; (iii) any reference in that Act to—

(a) a preliminary notice shall be construed as a reference to notice in terms of subsection (3) or (5);

(b) the publication in the Gazette or service of a preliminary notice shall be construed as a reference to the service of notice in terms of subsection (2) or, where such notice is not served, the publication of notice in terms of subsection (4).

(4) If the whereabouts of the owner to whom notice must be given in terms of subsection (3) cannot be ascertained after diligent inquiry, a notice stating the action proposed to be taken and calling upon the owner to claim compensation as referred to in subsection (2) may be published in the Gazette, and the notice shall be deemed to be sufficient notice for the purposes of that subsection.

(5) If the whereabouts of an owner of a protected private forest who has to be consulted in terms of subsection cannot be ascertained after diligent inquiry, a notice shall be published in the Gazette stating the action proposed to be taken and if one month after the publication of the notice the whereabouts of the owner are still unknown, the proposed action may be taken without any consultation with the owner.

[Subsection amended by section 20 of the Roads Act 14 of 2002]

**7**. **Reservations in respect of road-making materials**

(1) Any person authorised by Council, may enter upon land from which, in terms of the Roads Act, materials for constructing or repairing roads may be taken, if he/she has reason to believe that there is in or upon such land a deposit of any such materials and shall post a notice on the ground which he proposes to search for the materials and shall give notice to the owner of the land and to any other person or authority having any rights over or in the land of his intention to search the ground.

(2) The notice shall —

(a) be attached to a post and the upper extremity of the notice shall be not less than one comma five metres above ground level;

(b) shall state that the land is being examined, the purpose of the examination and the date and time of the posting of the notice.

(3) The posting of a notice in terms of subsection (1) shall have the effect of prohibiting, for a period of not more than fourteen days from the date and hour of the posting of the notice, any activity whatsoever, other than an activity being carried on immediately before the posting of the notice, upon the land falling within such distance, not exceeding three hundred metres from the post carrying the notice, as shall be stated in the notice:

Provided that the Council may permit such limited use of the land as it may determine, subject to such conditions as it may impose in granting the permission.

(4) If the authorised officer searching for the material discovers in or upon the land reserved under subsection (3) any deposit of the materials, he shall erect upon the boundaries of the area of the deposit or that portion of the area which may be required, beacons in the manner prescribed, and shall post upon each beacon a notice in the prescribed form.

(5) The erection of the beacons in terms of subsection (4) shall have the effect of reserving the area of land demarcated by the beacons and of prohibiting any activity whatsoever upon the land reserved, other than an activity being carried on in the area immediately before the erection of the beacons:

Provided that Council may permit such limited use of the land or the removal of such quantities of the materials by the owner of the land or any other person having any rights over or in the land affected, as Council may determine, subject to such conditions as it may impose in granting the permission.

(6) Council making any reservation shall notify the owner of and any other person having any rights over or in any land affected by the reservation of the particulars of the reservation, but if the whereabouts of the owner or the identity or whereabouts of the other person are unknown, the erection of the beacons and notices mentioned in subsection (4) shall be deemed to be a sufficient notification for the purposes of this subsection.

[Subsection amended by section 4 of Roads Act 22 of 2001]

(7) When the materials on the land so reserved are no longer required, Council by whom or on whose behalf the beacons and notices mentioned in subsection (4) were erected shall notify the owner of the land and any other person who may have been affected by the reservation and shall cause the beacons and notices to be removed, and the reservation of the land shall thereupon be withdrawn.

(8)Notwithstanding anything contained in the Roads Act or any other law, no compensation shall be paid to any person in respect only of the reservation of land in terms of this section unless Council has refused to permit, in terms of the provision to subsection (5), the limited use of the land or has permitted use only subject to conditions and the person concerned shows that he has suffered loss or damage by reason of the refusal or by reason of the conditions imposed.

(9) Any person who, without the permission of Council responsible for the erection of any beacon or the posting of any notice under this section, removes or interferes with any beacon or notice shall be guilty of an offence and liable to a penalty as prescribed in the councils approved budget *[Subsection amended by section 4 of Roads Act 22 of 2001]*

(10) Any person who contravenes subsections (3), (4,) (5), shall be guilty of an offence and liable to a penalty set as per Council budget.

**8**. **Temporary encampments**

(1) Subject to subsections (2) and (3) and to any law relating to the protection of the environment, Council shall, in the exercise of the powers conferred upon it in terms of the Roads Act, have the right on any site which the Council considers convenient, to establish temporary encampments for the purposes of—

(a) the accommodation of persons and animals; and

(b) the parking, maintenance, installation and storage of vehicles, equipment, machinery, materials and stores, as the case may be; and

(c) the construction or erection and maintenance of buildings, huts, tents, stores, structures, camps and enclosures.

(2) A temporary encampment may be established in terms of subsection (1) on any site for such period as the Council considers to be necessary or expedient in the circumstances.

(3) Subsections (3) to (8) of section forty-one of the Roads Act shall apply, mutatis mutandis, in relation to the exercise of powers in terms of subsection (1) as they apply in relation to the power to use land or make roads in terms of subsection (2) of section forty-one.

(4) A temporary encampment and any derelict equipment shall be removed within three months of the completion of the work for which the encampment was erected or the equipment was used and the area of the land on which the encampment was erected shall be rehabilitated to the condition in which it was before its erection.

**9**. **Scaffolding, mobile cranes and decorations**

(1) No person shall place scaffolding, mobile cranes, construction elevators or decorations on a road servitude without Council authority.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a penalty as prescribed in the Council budget.

**10.** **Weight restrictions**

(1) No person shall drive a vehicle exceeding 18 tonnes gross weight in a residential area without authority from Council.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a penalty as prescribed in the Council budget.

**11. Removal of obstacles and unauthorised structures affecting roads**

(1) If any person without the written authority of the Council given in terms of section forty-seven of the Roads Act.

(a) erects any wall or fence or the planting of any tree, shrub or hedge which, owing to its position in regard to any road or intersection of roads or for any other reason, constitutes a danger to traffic.

(b) plants trees and shrubs on private property which overhang or encroach upon, or the roots thereof protrude into or under, any road so as to damage any road or obstruct or endanger any user of such road, shall be guilty of an offence and liable to a penalty as prescribed in the Council budget.

(2) Where any person fails or neglects to comply with the order referred to in subsection (1) within the time stated in the notice, council may cause the obstacle to be removed to a suitable site, and the cost of removal shall be recovered from the owner by Council.

**12. Numbering of houses and naming of roads**

(1) The Council may from time to time assign names to roads within the council area and cause the name of any road to be affixed to or painted on any house, building or other structure fronting upon any part of such road.

(2) The Council may, by notice in writing to the owner or occupier of any house or other building, direct the owner or occupier at his own expense—

(a) to mark or affix in accordance with any by-law at the main entrance or in some other conspicuous position on such premises the number specified in that notice; or

(b) to renew the number referred to in paragraph (a) as often as it has become defaced or obliterated; and that owner or occupier shall, within thirty days after receipt of that notice from the council, mark, affix or renew any such number as so directed and, if he fails to do so, he shall be guilty of an offence and the council may then cause such number to be marked, affixed or renewed and recover the expenses incurred by it from the owner or occupier concerned.

(3) No person shall, without the permission of the council –

(a) destroy, remove or deface any name affixed or painted by the council in terms of subsection (1); or

(b) destroy, remove or deface any number marked or affixed by a person in terms of a direction given under subsection (2) or by the council in terms of that subsection; or and that owner or occupier shall, within thirty days after receipt of that notice from the council, mark, affix or renew any such number as so directed.

(4) Any person who contravenes subsections (1) (2) and (3) shall be guilty of an offence and liable to a penalty as prescribed in the Council budget.

**13. Prohibition of ramps or similar devices**

(1) No person shall construct a ramp or similar device for the purpose of permitting any vehicle to cross a side-walk where—

 (a) access to the property concerned is available or can be made available by means of an access lane; or

(b) the presence or use of such device could—

(i) obstruct the stormwater channel or constitute a nuisance or an obstruction or a danger to traffic or to persons using the sidewalk; or

(ii) cause damage to the sidewalk by the passage of vehicles.

(2) Any person who contravenes subsection (1) shall be guilty of an offence, liable to a penalty as prescribed in the Council budget and or restore to the original state at own cost, or

(3) Notwithstanding provisions of subsection (2) Council shall recover the costs of restoration incurred.

**14.** **Offences with respect to diversion, closure, obstruction, encroachment and damage of roads**

(1) Any person who;

(a) diverts,

(b) closes,

(c) conducts a procession or public meeting or;

(d) pitches a tent on or across any road without Council authority shall be guilty of an offence and liable to a penalty as prescribed in the Council budget.

(2) Subject to subsection (3), any person who—

(a) leaves or places on or over any road servitude any timber, stones, rubbish or other material; or

(b) leaves or deposits any disused vehicle or machine or a disused part of a vehicle or machine on or over any road servitude

(c) encroaches on any road by making or erecting any building, fence, ditch or other obstacle or by planting trees or by placing, leaving or keeping on it any structure resting on wheels or in any other manner whatsoever; or

(d) marks without reasonable cause, digs up, removes or alters in any way the soil, surface or scarping of any road; or

(e) on, over or below the surface of any road or land in any area within which building is restricted, erects, constructs, lays or establishes any structure or other thing;

(f) makes any structural alteration on, over or below the surface of a road or land in any area within which building is restricted;

(g) fills up, alters or obstructs any ditch or drain which is constructed for the purpose of safely leading storm-water from such road; or

(h) causes or allows any timber, sledge or other heavy thing or material which is not wholly raised above the ground on wheels to be dragged on any road; or

(i) uses on a wheeled vehicle any locking or other device, not being a skid-pan, calculated to cause the wheels to drag; or

(j) cuts down, burns, damages or interferes with any tree, shrub or other plant growing on any road; or

(k) without reasonable cause, uses any vehicle or moves any vehicle which is in such a condition that it causes or is likely to cause damage to a road shall be guilty of an offence and liable to a penalty as prescribed in the Council budget.

(3) Council shall authorise in writing under such conditions as it may determine the doing of any act prohibited under subsection (2) if it is satisfied that no material damage to the road or prejudice to the public can result from it, and, in the case of an authorisation to do anything prohibited by paragraph (e) or (f) of that subsection, it may require that such specifications as may be set out in writing be complied with.

**15.** **Trading on road servitude or in restricted area**

(1) No person shall, without the written permission of the Council or contrary to the terms and conditions of such written permission, carry on any trade or expose, offer or manufacture for sale any goods on a road or road servitude.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a penalty as prescribed in the Council budget.

16. **Vandalism of road furniture**

(1) Any person who vandalises road furniture shall be guilty of an offence and liable to a penalty as prescribed in the Council budget.