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**BERGRIVIER MUNICIPALITY COASTAL ACCESS LAND BY-LAW**

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**PREAMBLE**

**WHEREAS** section 156(1) and (2) of the Constitution of the Republic of South Africa, 1996, confers on a municipality the executive authority and right to administer the local government matters listed in Part B of Schedule 4 and Part B of Schedule 5 to the Constitution, and any other matter assigned to it by national or provincial legislation;

**WHEREAS** the Bergrivier Municipality has legislative and executive competence relating to matters such as, but not limited to, municipal planning, use of and access to beaches, local tourism, and nuisance, as pertaining to the coastal zones within its jurisdiction;

**WHEREAS** in terms of Part B of Schedule 4 of the Constitution of the Republic of South Africa, 1996, the Bergrivier Municipality has legislative competence relating to pontoons, ferries, jetties, piers and harbours;

**WHEREAS** in terms of Part B of Schedule 5 of the Constitution of the Republic of South Africa, 1996, the Bergrivier Municipality has legislative competence relating to beaches and amusement facilities, local amenities, noise pollution, traffic and parking;

**WHEREAS** the Bergrivier Municipality may enact by-laws as contemplated in 18(1), 20(2) and Section 50 of the National Environmental Management: Integrated Coastal Management Act (ICMA), Act 24 of 2008; read with Section 156(2) of the Constitution of the Republic of South Africa, 1996;

**AND WHEREAS** there exists a need to provide for the procedure to designate land as coastal access land and to provide for the amendment or withdrawal of such designation; to promote, regulate and control public access to coastal public property; and to provide for matters incidental thereto.

**NOW THEREFORE BE IT ENACTED** by the Municipal Council of the Bergrivier Municipality as follows:

**BE IT ENACTED** by the Municipal Council of the Bergrivier Municipality as follows: —

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## CHAPTER 1 INTERPRETATION

### 1. Definitions

In this By-Law, a word or expression to which a meaning has been assigned in the Integrated Coastal Management Act has the meaning so assigned, and unless the context indicates otherwise—

**“alternatives”** means alternatives as defined in regulation 1 of the Environmental Impact Assessment Regulations, 2014;

**“applicant”** means a person who makes an application;

**“authorised official”** means an employee of the Municipality responsible for carrying out a function or exercising a power in terms of this By-Law, and includes any employee delegated to carry out or exercise the function or power;

**“Coastal committee”** means a coastal committee contemplated in section 5;

**“Constitution”** means the Constitution of the Republic of South Africa, 1996;

**“EAP”** means an Environmental Assessment Practitioner as defined in section 1 of the National Environmental Management Act;

**“Environmental Impact Assessment Regulations, 2014”** means the Environmental Impact Assessment Regulations, 2014, published under Government Notice R982 in *Government Gazette* 38282 dated 4 December 2014;

**“Expropriation Act”** means the Expropriation Act, 1975 (Act 63 of 1975);

**“heritage resource”** means a heritage resource as defined in section 2 of the National Heritage Resources Act, 1999 (Act 25 of 1999);

**“independent”** means independent as defined in section 1 of the Environmental Impact Assessment Regulations, 2014;

**“initiation”** means an initiation contemplated in section 11 and “initiator” has a corresponding meaning;

**“Integrated Coastal Management Act”** means the National Environmental Management: Integrated Coastal Management Act, 2008 (Act 24 of 2008);

**“Integrated development plan”** means an integrated development plan envisaged in section 25 of the Municipal Systems Act;

**“Intergovernmental Relations Framework Act”** means the Intergovernmental Relations Framework Act, 2005 (Act 13 of 2005);

**“mitigation”** means mitigation as defined in section 1 of the Environmental Impact Assessment Regulations, 2014;

**“Municipal Council”** means the municipal council of the Municipality;

**“Municipal Manager”** means a person appointed by the Municipality in terms of section 54A of the Municipal Systems Act;

**“Municipal Systems Act”** means the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) (As amended);

**“National Environmental Management Act”** means the National Environmental Management Act, 1998 (Act 107 of 1998);

**“Province”** means the Province of the Western Cape;

**“Registrar of deeds”** means the relevant registrar appointed in terms of section 2 of the Deeds Registries Act, 1937 (Act 47 of 1937);

**“Spatial development framework”** means a spatial development framework envisaged by section 26 of the Municipal Systems Act, read with Chapter 4 of the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013) and Chapter 3 of the Western Cape Land Use Planning Act, 2014 (Act 3 of 2014);

**“Specialist”** means a specialist as defined in section 1 of the Environmental Impact Assessment Regulations, 2014;

**“Specific environmental management Act”** means a specific environmental management Act as defined in section 1 of the National Environmental Management Act;

**“the Municipality”** means the municipality of Bergrivier Municipality (WC013) established by Establishment Notice P.N. 483/2000 in Provincial Gazette No. 5589 of 22 September 2000, as amended, issued in terms of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998).

## **2. Application of By-Law**

- (1) This By-Law is legislation envisaged in sections 18(1), 20(2) and 50 of the National Environmental Management: Integrated Coastal Management Act and under the provisions of Section 156(2) of the Constitution of the Republic of South Africa,

- (2) This By-Law applies to the beach area and the coastal area under control of the Municipality where that is appropriate and not excluded or inconsistent with any other law.

### **3. Conflict with other Laws**

- (1) If there is any conflict between this By-Law and another By-Law of the Municipality which directly or indirectly regulates coastal access or coastal access land, this By-Law prevails over the affected provision of the other By-Law to the extent of the inconsistency.
- (2) If there is a conflict of interpretation between the English version of this By-Law and any other version thereof, the English version prevails.

## **CHAPTER 2 INSTITUTIONAL ARRANGEMENTS**

### **4. Functions and powers of Municipal Manager**

- (1) Any of the functions and powers of a Municipal Manager contemplated in this By-Law may be delegated in terms of section 59 of the Municipal Systems Act.

### **5. Establishment of a coastal committee**

- (1) The Municipality may establish a coastal committee comprising of persons who are not councillors of the Municipality to perform the following tasks:
  - (a) consider an application or initiation in accordance with section 15; and
  - (b) make written recommendations to the Municipality on the application or initiation.

### **6. Composition of coastal committee**

- (1) The coastal committee may include:
  - (a) a person with expertise relevant to coastal management;
  - (b) where applicable, a representative of the relevant management authority of a coastal protected area or special management area within the Municipality;

- (c) representatives of communities or organisations with a particular interest in contributing to effective coastal management, such as port authorities, organs of state, persons whose livelihoods or businesses rely on the use of coastal resources, environmental interest groups and research organisations (for reference, refer to Section 42 (2), (3) and (4) in the ICMA.

### **CHAPTER 3**

#### **CLOSURE OF SITES AND AGREEMENTS WITH ORGANS OF STATE**

##### ***Part 1:***

##### ***Closure of sites identified in coastal audits***

#### **7. Temporary closure**

- (1) The Municipality may, if it is necessary for the purposes of maintenance, development, security, safety, public health or protection of the coastal environment, temporarily—
  - (a) close access to;
  - (b) restrict the use of or activities occurring on;
  - (c) suspend all or any activities on, a point, route, site or means of public access identified in the audit.
- (2) The Municipality must, for the purposes of addressing the reasons for closure, restriction or suspension contemplated in subsection (1), take all reasonable steps that are necessary to reopen and lift restrictions and suspensions on the use of and activities at the point, route, site or means of access.

#### **8. Permanent closure**

- (1) The Municipality may permanently close or permanently restrict access to a point, route, site or means of public access identified in coastal audits that is not designated as coastal access land, where it is necessary to do so for the purposes of development, security, safety, public health or the protection of the coastal environment.
- (2) The Municipality may, prior to permanent closure or permanent restriction of access, temporarily close the point, route, site or means of public access in question and implement the processes contemplated in subsection (3).

- (3) A decision to permanently close or restrict access to a point, route, site or means of public access may only be made if the Municipality—
  - (a) grants affected members of the public at least 30 days to comment on the intended closure or restriction of access;
  - (b) consults the relevant Ministers, MECs and municipalities whose areas of responsibility will be affected by the closure or restricted access;
  - (c) investigates and evaluates the need for and the potential impacts of the closure or restriction; and
  - (d) gives due consideration to any comments and representations received by way of the processes contemplated in paragraphs (a) and (b) and the outcome of the investigation contemplated in paragraph (c).
- (4) If a point, route, site or means of public access is permanently closed or access to it is permanently restricted, the Municipality may, where possible, take the necessary remediation steps to address the reasons for closure or restriction.

**Part 2:**  
**State land**

**9. Agreements with organs of state to facilitate public access to coastal public property**

- (1) The Municipality may enter into an agreement with an organ of state in respect of state land owned or controlled by that organ of state, to use the land or part of the land for the purposes of public access to coastal public property.
- (2) The Municipality may enter an implementation protocol, as contemplated by section 35(1) of the Intergovernmental Relations Framework Act, to achieve the participation of an organ of the state in the provision of public access to coastal public property.
- (3) In the event of an intergovernmental dispute between the Municipality and the organ of state, as defined in section 1 of the Intergovernmental Relations Framework Act, the applicable provisions of that Act apply.



## **CHAPTER 4**

### **RESPONSIBILITIES OF MUNICIPALITY REGARDING COASTAL ACCESS LAND**

#### **10. Delineation of coastal access land**

- (1) The Municipality must, if it has established a coastal planning scheme in terms of section 56(3) of the Integrated Coastal Management Act, delineate coastal access land on a map or maps that form part of the scheme.
- (2) If a coastal planning scheme has been established by any other person or authority in terms of sections 56(3)(a), (b), (c) or (e) of the Integrated Coastal Management Act, the Municipality must request that person or authority to delineate coastal access land on a map or maps forming part of the coastal planning scheme.

#### **11. Designation of Coastal access land and responsibilities of the Municipality regarding Coastal access land**

In terms of Section 18 and 20 of the ICMA, the Municipality is hereby afforded the power to:

- (1) Designate strips of land as coastal access land within the Municipal area of its jurisdiction which includes coastal public property. To secure public access to that coastal public property.
- (2) Designate any public access servitude in favour of the Municipality as coastal access land.
- (3) Remove any public access servitude in favour of the Municipality as coastal access land, which is causing or contributing to adverse effects that the Municipality is unable to prevent or to mitigate adequately; Subject to the Municipality giving notice of the intended designation or withdrawal of the designation to the owner of the land.
- (4) Protect and enforce the rights of the public to use coastal access land to gain access to coastal public property.
- (5) Maintain the designated coastal access land as to ensure that the public has access to the relevant, coastal public property.
- (6) Signpost entry points to that coastal access land.

## **CHAPTER 5 ENFORCEMENT**

### **12. Activities occurring on coastal access land and rules regarding these activities**

- (1) The Municipality may make rules for the use of coastal access land, including rules to prohibit the obstruction of access to coastal access land, littering, nuisance and damage to property, fauna and flora.
- (2) No person may use a vehicle in the coastal area unless that use is a permissible use; is authorised in terms of a permit granted by the Department of Forestry, Fisheries and the Environment (DFFE); is authorised in terms of an exemption granted and is lawful in terms of regulations as stated in the National Environmental Management Integrated Coastal Management Act No. 24 of 2008. Control of use of vehicles in the coastal area (GN. No. R.496 of 27 June 2014).
- (3) A person who contravenes a provision of subsection (3) commits an offence.
- (4) The Municipality may by means of a notice set aside and reserve any area along the beach within its jurisdiction as a bathing area and swimming area only.

### **13. Law enforcement officers**

- (1) The Municipality must appoint, or make available, law enforcement officers and/ or authorised official to enforce this Chapter.
- (2) In addition to any other powers in terms of other legislation, a law enforcement officer may instruct any person to comply with—
  - (a) section 12(1) and (2);
  - (b) any steps taken by the Municipality in terms of section 12(4) or
  - (c) any rule applicable to the use of coastal access land made in terms section 11 (1 -7).

### **14. Compliance notices**

- (1) A law enforcement officer may issue a compliance notice to any person if that person fails to comply with an instruction of a law enforcement officer contemplated in section 13(2) or if there are reasonable grounds

for believing that a person has not complied with a provision contemplated in section 13(2).

- (2) The compliance notice must—
  - (a) set out the provision or rule contravened;
  - (b) direct the person concerned to comply with the relevant provision or rule; and
  - (c) set out the measures which must be taken to rectify the contravention, and the period in which the person concerned must do so.
- (3) A law enforcement officer may, on good cause shown, amend or cancel the compliance notice or any part of the notice.

## **15. Offences and penalties**

- (1) It is an offence—
  - (a) to contravene or fail to comply with—
    - (i) section 12(1), (2) and (4);
    - (ii) any rule applicable to the use of coastal access land made in terms of section 12;
  - (b) to supply false or misleading information to a law enforcement officer in respect of any matter which the law enforcement officer is empowered to enforce under this By-Law; or
  - (c) to refuse to obey the instruction of a law enforcement officer given in terms section 13(2).
- (2) A person who commits an offence referred to in subsection (1) may be sentenced on conviction—
  - (a) to a fine or imprisonment; or
  - (b) to both a fine and imprisonment.
- (3) A person who commits an offence contemplated in this By-Law, which is also an offence in terms of the relevant provisions of the Integrated Coastal Management Act, may be sentenced on conviction to a penalty contemplated in section 80 of that Act.

- (4) In addition to 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;
  - (c) to remedy the harm caused and to pay damages for harm caused to another person or to property.
- (5) An order under subsection (4)(b) or (c) to pay damages has the effect of a civil judgment.

## **CHAPTER 6**

### **GENERAL**

#### **16. Short title**

This By-Law is called the Bergrivier Municipality Coastal Access Land By-Law.