

## **DRAFT BERGRIVIER MUNICIPALITY COASTAL ACCESS LAND BY-LAW, 2022**

**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.**

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

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## CHAPTER 1 INTERPRETATION

### Definitions

1. 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;

**“application”** means an application contemplated in section 10;

**“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 access audit”** means the coastal access audit contemplated in section 7;

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

**“Coastal environmental assessment”** means the coastal environmental assessment contemplated in section 15;

**“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);

**“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).

## **Application of By-Law**

**2.** (1) This By-Law is legislation envisaged in sections 18(1) and 20(2) of the Integrated Coastal Management Act.

(2) This By-Law applies within the municipal area of the Municipality.

## **Conflict with other laws**

**3.** (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**

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

4.(1) The Municipal Manager is responsible for the administration of an application or initiation, as the case may be, and has the further functions and powers, as contemplated in this By-Law.

(2) 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.

#### **Establishment of coastal access committee**

5. The Municipal Manager must establish a coastal access 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.

#### **Composition of coastal access committee**

6. (1) The coastal access committee must consist of not more than seven persons appointed by the Municipal Manager, inclusive of at least—
- (a) a person with expertise relevant to coastal and environmental management;
  - (b) a person with expertise relevant to municipal planning;
  - (c) where applicable, a representative of the relevant management authority of a coastal protected area or special management area within the Municipality;
  - (d) a person with legal expertise in fields relevant to coastal and environmental management and municipal planning.
- (2) A person may not be appointed as a member of the coastal access committee if that person—
- (a) is an unrehabilitated insolvent;
  - (b) is declared to be of unsound mind by a court of the Republic;
  - (c) has at any time been convicted of an offence and sentenced to imprisonment without the option of a fine, either in or outside the Republic, if the conduct constituting the offence would have been an offence in the Republic, and such sentence was not suspended;
  - (d) is an office-bearer or a staff member of a political party;
  - (e) is a member of the National Assembly, a permanent delegate to the National Council of Provinces, a member of a provincial legislature or a member of a municipal council, or who is on a candidate list for any of those positions; or
  - (f) has a direct interest in the application or initiation concerned.
- (3) If a vacancy occurs in the committee, the Municipal Manager must fill the vacancy and appoint a person in the place of that member, as contemplated in subsection (1).

- (4) The committee must elect a chairperson from among its members.
- (5) The Municipal Council must determine the remuneration and other terms and conditions of appointment of a member of the committee who is not an official of the Municipality or in the employ of the public service or a public entity.
- (6) A recommendation supported by the majority of the members of the committee constitutes the recommendation of the committee and, in the event of an equality of votes, the chairperson has a deciding vote.

### **CHAPTER 3**

## **PROCESS FOR DESIGNATION OF LAND AS COASTAL ACCESS LAND AND AMENDMENT OR WITHDRAWAL OF DESIGNATION**

### *Part 1:*

#### *Coastal access audit*

#### **Preparation of coastal access audit**

- 7. (1) The Municipal Manager must ensure that a coastal access audit is prepared for the purpose of identifying:
  - (a) historic points of access to coastal public property;
  - (b) existing points of access to coastal public property;
  - (c) areas where there is a need and desire of the public to access coastal public property;
  - (d) areas of conflict pertaining to accessing coastal public property;
  - (e) potential land to facilitate access to coastal public property;
  - (f) the nature and type of coastal access at the historic, existing and potential access sites.
- (2) The Municipal Manager must procure the services of an independent EAP to undertake the coastal access audit.
- (3) If the Municipality requires a specialist report, the EAP must appoint a specialist to prepare the report.
- (4) The Municipal Manager must ensure that the audit meets the requirements of this By-Law.
- (5) The Municipal Manager may request another relevant organ of state to prepare or assist in preparing the coastal access audit.
- (6) The Municipal Manager must ensure that the coastal access audit—
  - (a) includes a consideration of all relevant legislation, programmes, policies, protocols, guidelines, schemes, plans and strategies applicable to the designation of coastal access land; and
  - (b) identifies all historic, existing and potential points, routes, sites and means of public access to coastal public property—

- (i) that have or do not have existing facilities, indicating their nature and whether the land concerned is appropriate for designation as coastal access land;
- (ii) that do not require designation as coastal access land, indicating whether they may continue to be used for purposes of public access to coastal public property;
- (iii) that may or may not need to be maintained, enlarged, consolidated or upgraded to cater for sufficient public access to coastal public property; and
- (iv) that require closure, whether temporarily or permanently.

(7) The Municipal Manager must ensure that, in identifying the sites contemplated in subsection 6, consideration is given in the audit to—

- (a) existing rights of way, public servitudes relating to coastal access and customary or historic means of gaining access to coastal public property;
- (b) admiralty reserves and state land adjacent to the coast;
- (c) sites of access that involve conflict between owners of land adjacent to coastal public property, or persons in charge of or occupiers of such land, and persons seeking access to coastal public property through such land;
- (d) the purpose of the access, including the type of access and sites where subsistence, traditional or recreational fishing activities, uses, needs and rights can be exercised;
- (e) sites where illegal access is occurring and where access is causing or may cause damage to the environment;
- (f) the adoption of special measures, as required by section 28(3) of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act 4 of 2000), to prevent unfair discrimination and promote equality in respect of gender and disability in facilitating equitable access to coastal public property; and
- (g) routes of access and support services which accommodate persons with disabilities.

(8) The Municipal Manager must ensure that the audit includes a recommendation as to the most appropriate sites or means of public access which—

- (a) require the least financial expenditure on the part of the Municipality; including projected costs of maintaining, enlarging, consolidating or upgrading existing sites of public access;
- (b) facilitate tourism and employment opportunities;
- (c) require the least alteration to infrastructure, including parking and ablution facilities;
- (d) prioritise the use of state land;
- (e) cause the least intrusion into private property; and
- (f) are appropriate for the provision of facilities, and promotion of access to coastal public property, for persons with disabilities.

(9) The Municipal Manager must ensure that the coastal access audit, as part of its recommendations in terms of subsection (8), identify sites where the designation of land as coastal access land, or the amendment or withdrawal of such designation, is required and whether other means, as contemplated in subsection (10), are suitable for the provision of public access at the identified sites.

(10) Other means of facilitating public access to coastal public property may include—



- (a) rezoning of municipal land already in use for public access to allow for public use and the provision of facilities to facilitate such access;
- (b) the conclusion of written agreements between the Municipality and owners of privately-owned land or State land for the provision of public access over that land;
- (c) the consolidation of access routes not designated as coastal access land; and
- (d) the provision and maintenance of infrastructure where that infrastructure or the lack thereof is causing environmental degradation, or safety or security concerns for the public using a site for public access.

(11) The Municipality may, having regard to the recommendations contemplated in subsection (8), upgrade, maintain and provide facilities at any access sites which do not require designation, but which are or can be used and managed for public access as contemplated in subsection (6)(b)(ii).

(12)(a) The Municipal Manager must give notice of the coastal access audit—

- (i) in the *Provincial Gazette*; and
- (ii) in terms of the applicable provisions of sections 21 and 21A of the Municipal Systems Act.

(b) A notice contemplated in paragraph (a) must contain an invitation to members of the public to submit written representations or objections to the coastal access audit within no less than 30 days from the date of publication.

(c) The Municipal Manager must provide for public engagements where it is deemed necessary.

(d) The Municipality must consult all Ministers, MECs and municipalities whose areas of responsibility will be affected by the audit.

(13) The Municipal Manager must make the coastal access audit available to the public by—

- (a) displaying any relevant documents pertaining to the audit on the Municipality's official website; and
- (b) notifying the local community where detailed particulars concerning the audit can be obtained.

(14) The Municipality must—

- (a) include the recommendations contained in the coastal access audit in the coastal management programme, integrated development plan and the spatial development framework of the Municipality; and

(b) identify the land which is to be designated as coastal access land in the integrated development plan and the spatial development framework and allocate funds from its annual budget for this purpose.

(15) The coastal access audit is deemed to form part of the municipal coastal management programme as contemplated in section 48 of the Integrated Coastal Management Act.

(16) A coastal access audit prepared for the Municipality prior to the coming into operation of this By-Law is deemed to have been prepared under the corresponding provisions of this By-Law.

**Part 2:**  
***Closure of sites identified in coastal access audit***

**Temporary closure**

8.(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.

**Permanent closure**

9.(1) The Municipality may permanently close or permanently restrict access to a point, route, site or means of public access identified in the coastal access audit 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 must, 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 must, where possible, take the necessary remediation steps to address the reasons for closure or restriction.

### ***Part 3:***

#### ***Application for and initiation of designation of land as coastal access land and amendment or withdrawal of designation***

##### **Application for designation of land as coastal access land and amendment or withdrawal of designation**

**10.** (1) Any interested and affected person, including a juristic person or an organ of state, may apply in writing to the Municipality, on the application form prescribed by the Municipality, for the designation of land as coastal access land, or the amendment or withdrawal of such designation.

(2) The application contemplated in subsection (1) must be submitted to the Municipal Manager.

(3) Where two or more applications concern the same land, they may be considered together.

(4) The Municipal Manager may require the applicant to provide clarification or further information about the application.

##### **Initiation of designation of land as coastal access land and amendment or withdrawal of designation**

**11.** (1) An authorised official designated by the Municipal Manager must, based on a recommendation contemplated in section 7(9), indicating that land identified in the coastal access audit is required for designation, initiate the process for the designation of that land as coastal access land.

(2) An authorised official may initiate the process for the amendment or the withdrawal of the designation of any land as coastal access land following the conclusion of the coastal access audit.

(3) A Municipal Councillor may initiate the process for the designation of land as coastal access land, or the amendment or withdrawal of such designation following the conclusion of the coastal access audit.

(4) An initiation must be submitted in writing to the Municipal Manager and must include at least the information required in section 12(2)(a), (b), (d) and (e).

(5) The Municipal Manager may require the initiator, to provide clarification or further information about the initiation.

(6) The Municipal Manager may require an organ of state or interested and affected party contemplated in section 18(5) of the Integrated Coastal Management Act requesting the amendment or withdrawal of the designation of land as coastal access land to provide clarification or further information about the request for the amendment or withdrawal.

## **Requirements for application**

**12.** (1) The Municipal Manager must ensure that the application form contemplated in section 10(1) is available to applicants.

(2) The form must make provision for the inclusion of at least the following information:

- (a) a description of the land involved, including—
  - (i) the 21-digit Surveyor-General code of each cadastral land parcel, physical address and farm name, where applicable; or
  - (ii) where the required information in subparagraph (i) is not available, the coordinates of the boundary of the property or properties;
- (b) a plan which depicts the proposed coastal access land and surrounding land, including coastal public property, at an appropriate scale;
- (c) the name and contact details of the applicant;
- (d) any agreement between the Municipality and the owner of land where such an agreement exists; and
- (e) adequate motivation for the application, including a motivation as to the need for and the desirability of the application.

### ***Part 4:***

#### ***Process to be undertaken by Municipality after receipt of application or initiation***

## **Coastal environmental assessment**

**13.** (1) The Municipal Manager, after receipt of an application or initiation must, taking into consideration the factors contemplated in subsection (4), assess the need for, the desirability of and the potential impacts of the application or initiation by undertaking a coastal environmental assessment.

(2) The coastal environmental assessment must assess the land or location which is the subject of the application or initiation, in the context of the environmental, financial and social opportunities and constraints, taking into consideration the coastal access audit and all other relevant information.

(3)(a) The Municipal Manager must procure the services of an independent EAP to conduct the coastal environmental assessment or request the applicant to do so.

(b) The Municipal Manager may, upon the recommendation of the EAP or the coastal access committee, procure the services of an engineering or construction professional or a legal professional to make inputs where required or request the applicant to do so.

(4) The coastal environmental assessment must include an assessment of—

- (a) the impact that the proposed application or initiation may have, including impacts caused by or arising from—
  - (i) the risks posed by natural hazards to people, biodiversity and coastal public property;
  - (ii) the coastal landscape, aesthetics of the area, and sense of place;

- (iii) the presence of any heritage resources;
  - (b) the impact of public access and whether it is likely to cause adverse effects including irreversible or long-lasting impacts on any aspect of the coastal environment;
  - (c) the estimated carrying capacity of the site with due regard to the type of access being considered and its impact on the environment;
  - (d) the kind of public access required and whether it is for—
    - (i) pedestrians;
    - (ii) vehicles;
    - (iii) vessels;
    - (iv) the needs of the community for public access, including seasonal needs; or
    - (v) any other kind of access;
  - (e) any potential adverse effects that public access may cause, including those caused by—
    - (i) associated infrastructure;
    - (ii) vehicles, vessels or other conveyances; and
    - (iii) increased numbers of people;
  - (f) the need for parking, recreational and ablution facilities;
  - (g) any existing rights of way, public servitudes or customary means of gaining access to the seashore and coastal waters;
  - (h) the need to protect any coastal areas;
  - (i) the importance of not restricting the rights of landowners unreasonably;
  - (j) the extent to which the designation, amendment or withdrawal will-
    - (i) address past inequalities relating to public access to coastal public property; and
    - (ii) take into account the suitability of access for persons with disabilities;
  - (k) the impact of construction and the use of proposed facilities on the proposed coastal access land;
  - (l) the impact of the designation of coastal access land over privately-owned land;
  - (m) the need for, financial cost of and the impact of—
    - (i) facilities, amenities or infrastructure which facilitate access;
    - (ii) consolidating multiple access points, where appropriate, in order to prevent the fragmentation of coastal public property;
  - (n) municipal capacity for management, maintenance and enforcement in relation to the proposed coastal access land;
  - (o) the design of coastal access land and its impact on the safety of users of that land;
  - (p) the ability of the Municipality to implement the provisions of section 20 of the Integrated Coastal Management Act;
  - (q) any alternatives;
  - (r) mitigation; and
  - (s) any other relevant factor.
- (5) The Municipal Manager must ensure that the coastal environmental assessment is completed without undue delay and to this end may investigate delays and impose time periods for its completion.

## Consultation and public participation

14.(1)(a) The Municipal Manager must give notice of the application or initiation and the draft coastal environmental assessment contemplated in section 13 —

- (i) in the *Provincial Gazette*; and
- (ii) in terms of the applicable provisions of sections 21 and 21A of the Municipal Systems Act.

(b) A notice contemplated in paragraph (a) must contain an invitation to members of the public to submit written representations or objections to—

- (i) the application or the initiation; and
- (ii) the draft coastal environmental assessment,

within no less than 30 days from the date of publication of the notice.

- (2) All Ministers, MECs and municipalities whose areas of responsibility will be affected by the proposed designation, amendment or withdrawal of land as coastal access land must be consulted.
- (3) If the land is situated within a special management area as defined in the Integrated Coastal Management Act, the Municipal Manager must consult the management authority of the special management area.
- (4) (a) The Municipal Manager must give written notice of the application or initiation and the draft coastal environmental assessment contemplated in section 13 to a registered owner, person in charge of or occupier of land, who is not the applicant, and—

- (i) whose land or a part thereof is the subject of the application or initiation;
- (ii) whose land or a part thereof is adjacent to the land which is the subject of the application or initiation,

in accordance with the applicable provisions of section 115 of the Municipal Systems Act: Provided that delivery of the application or initiation may be effected by sending it by electronic mail to the electronic mail address of the applicable person, and for this purpose, the relevant provisions of the Electronic Communications and Transactions Act, 2002 (Act 25 of 2002) apply.

(b) The Municipal Manager must provide reasonable and sufficient time for the persons contemplated in paragraph (a) to submit written representations or objections to the proposed designation of land as coastal access land, or the amendment or withdrawal of a designation, and to respond to the representations and objections of other interested and affected parties.

(5) The notices contemplated in subsection (1) and subsection (4) must at least—

- (a) describe the property over which coastal access is proposed to be designated or in respect of which such designation is to be amended or withdrawn, and the extent of the proposed designation, amendment or withdrawal;
- (b) describe the type of access, an amendment thereto or the withdrawal thereof, which is proposed for the land in question;
- (c) set out the background and circumstances of the proposed designation of land as coastal access land, or of the amendment or withdrawal of such designation, provide

- a motivation as to why the land should be designated as coastal access land or why a designation is proposed to be amended or withdrawn and explain how existing rights and interests may potentially be affected; and
- (d) indicate where and how written representations or objections may be submitted to the Municipal Manager.
- (6) The Municipal Manager may on good cause extend the time-period for the submission of comments or representations as contemplated in subsection (1)(b) and must communicate this extension to all members of the public.
- (7) In the event of the expropriation of privately-owned land or rights in privately-owned land for the purpose of designating coastal access land, the Municipality must give notice of the intended expropriation in accordance with the applicable provisions of the Expropriation Act.
- (8) The Municipal Manager must consult the persons contemplated in subsection (4)(a) by—
- (a) providing them at least 45 days before publication of the notice contemplated in subsection (1) to submit written representations or objections; and
  - (b) holding workshops or other engagements, if required.
- (10) The Municipal Manager must keep a written record of the consultative and public participatory processes referred to in this section, which includes—
- (a) copies of all notices and publications in the media and the *Provincial Gazette*;
  - (b) proof of service on the persons contemplated in subsection (4)(a);
  - (c) details and minutes of any meetings or consultations held;
  - (d) proof of all notifications contemplated in subsection (4)(a);
  - (e) representations and objections submitted to the Municipality;
  - (f) representations and objections by parties contemplated in subsection (4)(a) and responses by such parties to comments made by other interested and affected parties;
  - (g) agreements or proposals discussed with affected owners, persons in charge of and occupiers of land; and
  - (h) any other information relating to consultation and public participation in terms of this section.

## ***Part 5:***

### ***Consideration of application or initiation***

#### **Functions and powers of coastal access committee**

**15.** (1) The coastal access committee must consider an application or initiation taking into consideration the coastal access audit, the coastal environmental assessment, the representations and objections of landowners and interested and affected parties and all relevant reports and other information obtained in terms of this By-Law.

(2) If the coastal access committee requires clarification or further information, it may request such clarification or further information from—

- (a) the applicant or the initiator;

- (b) the EAP, specialist, or other professional that undertook or made inputs into the coastal environmental assessment;
- (c) any organ of state involved in the coastal environmental assessment; or
- (d) any other relevant person.

(3)(a) The coastal access committee must make a written recommendation to the Municipality to either approve or reject the application or initiation wholly or in part, with or without conditions, and provide written reasons for the recommendation to the Municipality, together with all relevant information and documentation, based on an assessment of all the information contemplated in subsection (1).

- (b) If the recommendation of the committee is to reject the application or initiation, it may propose other means of public access to coastal public property concerned.

(4) The coastal access committee must make its recommendation without undue delay, and must report any delays in writing as may be required by the Municipal Manager from time to time.

(5) The Municipal Manager must ensure that the committee makes its recommendation without any undue delay.

(6) The recommendation of the coastal access committee must be accompanied by a diagram, as defined in section 1 of the Land Survey Act, 1997 (Act 8 of 1997), of the subject land, signed by a land surveyor, as defined in that Act, which indicates the site concerned.

### **Designation of land as coastal access land and amendment or withdrawal of designation**

**16.** (1) The Municipality must consider the recommendation of the coastal access committee having regard to all the information contemplated in section 15(1), and, subject to section 17, either—

- (a) approve the application for or initiation of the designation of land as coastal access land, or the amendment or withdrawal of such designation wholly or in part and with or without conditions;
- (b) reject the application or initiation;
- (c) vary the recommendation of the coastal access committee; or
- (d) remit the application or initiation to the relevant EAP, specialist or other professionals for further assessments to be done and additional information to be obtained.

(2) Land designated as coastal access land, and the amendment or withdrawal of such a designation must be set out in a by-law of the Municipality.

(3) The by-law contemplated in subsection (2) must contain a description of the land concerned sufficient to identify it and a map of that land, as well as a diagram depicting the land.

(4) Any condition contemplated in subsection (1) must be included in the map and the diagram.

(5) A copy of the designation, amendment or withdrawal must be deposited with the registrar of deeds.



***Part 6:***  
***Designation of privately-owned land as coastal access land***

**Requirements for designation of privately-owned land as coastal access land**

**17.** (1) Before designating privately-owned land as coastal access land, the Municipality must, if possible, enter into negotiations with the registered owner of that land for the designation of the land, or part thereof, as coastal access land.

(2) Subject to sections 13 and 14, privately-owned land may be designated as coastal access land following the conclusion of a written agreement between the Municipality and the owner of that land.

(3) If the Municipality and the owner of privately-owned land do not reach an agreement regarding the designation of the land as coastal access land, the Municipality may not designate that land as coastal access land unless the land or any applicable right in the land is expropriated in terms of the Expropriation Act.

(4) The coastal access committee must, with due regard to applicable law, and as part of its recommendation, consider whether compensation to the owner of privately-owned land is necessary in the circumstances, including to the extent reasonable, compensation in the form of—

- (a) a property rates or other tax rebate on that portion of land over which coastal access is to be designated; or
- (b) monetary compensation.

(5) In the event of expropriation, the amount of compensation and the time and manner of payment must be determined in accordance with the Expropriation Act and section 25 of the Constitution.

***Part 7:***  
***State land***

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

**18.** (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 into an implementation protocol, as contemplated by section 35(1) of the Intergovernmental Relations Framework Act, in order 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**

#### **Delineation of coastal access land**

**19** (1) The Municipality must reflect the boundaries of coastal access land on a map or maps that form part of its zoning scheme.

(2) 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.

(3) 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 Municipal Manager must request that person or authority to delineate coastal access land on a map or maps forming part of the coastal planning scheme.

#### **Facilities**

**20.** Facilities provided by the Municipality to promote public access to coastal public property must be constructed and maintained with due consideration of the type of access envisaged for the coastal access land in question, including access for the purposes of fishing and recreation, taking into account erosion and accretion of the seashore and other dynamic coastal processes.

#### **Review of facilities**

**21.** (1) The Municipality must periodically review the facilities which promote access to coastal public property, including parking areas, ablution facilities, boardwalks and other amenities, taking into account the needs of persons with disabilities.

(2) The Municipality must maintain the facilities in good order and repair.

#### **Management plan**

**22.** The Municipality must adopt a management plan for the management, use and maintenance of coastal access land, which—

- (a) provides for the control of the use of, and activities on, that land;
- (b) provides for the maintenance of coastal access land to ensure that the public has access to the relevant coastal public property;
- (c) ensures that the provision and use of coastal access land and associated infrastructure do not cause adverse effects to the environment.

## **Signposts**

**23.** (1) The Municipality must signpost the entry points of coastal access land by clearly indicating on a signpost in legible writing in the three official languages of the Province—

- (a) that the coastal access land has formally been designated; and
- (b) the rules, if any, which apply to that coastal access land.

(2) Signage may contain graphic representations to convey meaning.

(3) The Municipality must indicate by means of signage erected at the entry point to coastal access land—

- (a) activities that are allowed, limited, controlled or prohibited;
- (b) the times, dates and conditions of access, if applicable; and
- (c) notification of closure, restrictions or suspension in accordance with section 24.

## **CHAPTER 5 ENFORCEMENT**

### **Activities occurring on coastal access land**

**24.**(1) The owner or person in charge of or occupier of coastal access land may not use that land contrary to the conditions of designation contemplated in section 16 or set out in an agreement contemplated in section 17.

(2) The Municipality may determine the times and dates on which and the conditions under which certain coastal access land may be accessed by the public.

(3) The Municipality may, if it is necessary for the purposes of maintenance, development of infrastructure related to the coastal access land, security, safety, public health or protection of the coastal environment, temporarily—

- (a) close access to coastal public property *via* specific coastal access land;
- (b) restrict the use of or activities occurring on coastal access land;
- (c) suspend all or any activities on coastal access land.

(4) The Municipality must, for the purposes of addressing the reasons for closure, restriction or suspension contemplated in subsection (3), take all reasonable steps that are necessary to reopen the coastal access land and lift restrictions and suspensions of the use of and activities on the coastal access land.

(5) The Municipality may reserve any part of coastal access land exclusively for the use of persons with disabilities and may indicate such restrictions with appropriate signage.

### **Rules**

**25.** (a) 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.

## **Law enforcement officers**

**26.** (1) The Municipality must appoint, or make available, law enforcement officers 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 24(1) or (2);
- (b) any steps taken by the Municipality in terms of section 24(3), (4) and (5); or
- (c) any rule applicable to the use of coastal access land made in terms section 25.

## **Compliance notices**

**27.** (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 26(2) or if there are reasonable grounds for believing that a person has not complied with a provision contemplated in section 26(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.

## **Offences and penalties**

**28.** (1) It is an offence—

(a) to contravene or fail to comply with—

- (i) section 24(1) or a determination made under section 24(2);
- (ii) any steps taken by the Municipality as contemplated in section 24(3), (4) or (5); or
- (iii) any rule applicable to the use of coastal access land made in terms of section 25;

(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 26(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**

### **Short title**

**29.** This By-Law is called the Bergrivier Municipality Coastal Access Land By-Law, 2022.