

Bergrivier, South Africa

## Management and Use of the Berg River Estuary

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Management and Use of the Berg River Estuary  
 Contents

1. Definitions ..... 1

2. Purpose of by-law and application ..... 3

3. Use of the designated management zones ..... 3

Chapter 1 – Licensing of boats ..... 4

    4. Licensing of boats ..... 4

    5. Automatic lapsing or cancellation of licenses ..... 5

Chapter 2 – Management and use of boats in the river ..... 6

    6. Rules regarding the management or use of boats on the river ..... 6

    7. Duties of a skipper ..... 7

    8. Prohibited behaviour ..... 8

    9. Equipment required on board a boat or vessel ..... 9

    10. Rules for water-skiing where permitted ..... 9

Chapter 3 – Pollution Prevention ..... 10

    11. Preventing pollution of the river ..... 10

Chapter 4 – Fixing of tariffs, fees and levies ..... 10

    12. Fixing of tariffs, fees and levies ..... 10

Chapter 5 – Powers of authorised officers ..... 10

    13. Powers of authorised officers ..... 10

    14. Removal of boats from the river ..... 11

Chapter 6 – General provisions ..... 12

    15. Delegation of power ..... 12

    16. Exemption from liability ..... 12

    17. Exemption from the provisions of this by-law ..... 12

    18. Conflict with other by-laws ..... 13

    19. Appeal ..... 13

    20. Penalties ..... 13

    21. Short title and commencement ..... 13

Schedule A ..... 13

Schedule B ..... 14

# Bergrivier South Africa

## Management and Use of the Berg River Estuary By-law, 2019

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Under the provisions of section 156 of the [Constitution of the Republic of South Africa, 1996](#), the Bergrivier Municipality enacts as follows:-

### 1. Definitions

In this by-law, the English text shall prevail in the event of an inconsistency between the different texts and unless inconsistent with the context -

"**authorised officer**" means a member of the South African Police Services or any person authorised by the municipality to perform the functions of an authorised officer under this by-law and includes-

- (a) an Environmental Management Inspector;
- (b) a Fisheries Control Officer appointed in terms of the Marine Living Resources Act, 1998 ([Act 18 of 1998](#));
- (c) an official of CapeNature; and
- (d) an official employed by any person or organisation with whom the municipality has entered into an agreement in terms of [section 15](#) of this by-law.

"**boat**" means any conveyance capable of floating on or in water or designed to navigate on or in water and includes, but is not limited to a sailing boat, sailing board, kite-board, rowing boat, canoe, paddle ski, power boat, jet-driven boat, jet-ski, fishing boat, flat-bottomed boat, ferry, houseboat, pleasure boat, water cycle and raft and "vessel" has a corresponding meaning;

"**Bokkomlaan**" means the channel of water closest to the Piketberg road and gravel road in Zone D extending from corner of Granaat Road and Bokkomlaan (gravel road) to "Die Slot";

"**bow**" means the front part of the vessel;

"**by-law**" means this by-law and any amendments thereto;

"**certificate of competence**" means a certificate of competence issued to a skipper in terms of regulation 16(1) of the Regulations;

"**certificate of fitness**" means a certificate issued in respect of a boat or vessel in terms of regulation 24 of the Regulations;

"**commercial purposes**" means any boat that is used for reward or financial gain;

"**corridor**" means where a zone has a corridor it is a passage through that zone where vessels may proceed at minimum planing speed purely to transit from one zone to another.

"**Die Slot**" is where the river narrows directly in front of the Velddrif Yacht Club on the west/east leg, before it turns to the south/north leg in Zone D; Die Slot is a no-wake zone;

"**harbour master**" means the official responsible for enforcing the legislation applicable to Laaiplek Harbour, in order to ensure the safety of navigation, the security of the harbour and the correct operation of the port facilities;

"**houseboat**" includes any boat, propelled under its own power, capable of being occupied by one or more persons, which is equipped with accommodation facilities and on which food preparation facilities and ablution facilities have been provided, but excludes a sailing boat and a cabin boat not equipped with ablution or cooking facilities;

"**launch site**" is an area where a boat may legally be put to water from a trailer including private and municipal launch sites;

"**license**" means a document issued as proof of permission from the municipality to operate or control a boat on the river;

"**municipality**" means Bergrivier Municipality established in terms of Section 12 of the Municipal Structures [Act, 117 of 1998](#), and includes any political structure, political office bearer, duly authorised agent or any employee acting in connection with this by-law by virtue of a power vested in the municipality and delegated or sub-delegated to such political structure, political office bearer, agent or employee;

"**municipal manager**" means the municipal manager appointed by the municipal council in terms of the Municipal Systems Act, 2000 ([Act 32 of 2000](#));

"**no-wake zone**" means an area in the river where the skipper or owner must operate or control a boat at a speed so as not to cause a wake or waves in the water;

"**operate**" or "control" in relation to a boat means to launch, use, sail, navigate, recover or moor on the river;

"**owner**" the person indicated as the owner of a boat on the license application submitted to the municipality;

"**permission**" means the written permission of the municipality;

"**pleasure boat**" means a boat that is used solely for sport and recreation;

"**POMA**" means the Port Owen Marina Authority;

"**port**" means the left hand side of the boat as seen from behind;

"**power boat**" means a boat propelled primarily by mechanical means;

"**prohibited entry area**" means that entry to such area by any person except an authorised official is prohibited;

"**rowing boat**" means a boat designed to be propelled by means of oars or paddles;

"**sailing boat**" means any boat which primary means of propulsion is the wind and is capable of being powered by wind under sail;

"**scuba diving**" means sport diving for spear fishing or recreational diving but excludes maintenance or recovery or emergency diving.

"**sewage**" means drainage and wastes from toilets, urinals and wc scuppers, from medical premises via wash basins, wash tubs, and scuppers, from animal spaces and other wastes when mixed with drainages already listed and any drainage mixed with any of the wastes already listed.

"**skipper**" means the person on board operating or controlling a boat;

"**starboard**" means the right hand side of the boat seen from behind;

"**the Regulations**" means the Merchant Shipping (National Small Vessel Safety) Regulations, 2007.

"**the river**" means the Berg Rivier estuary in the area bounded by the line joining the inner breakwater lights at the river mouth and the line joining point (24) situated at 32°56'23.36"S, 018°26'06.96"E and point (25) situated at 32°56'23.49"S, 018°26'37.35"E.

"**vessel**" includes the meaning of a boat;

"**vicinity of the river**" includes the properties adjacent to or in the immediate vicinity of the river;

"**visible**" means visible by somebody with reasonable eyesight;

"**water area**" means the area between the spring high water mark on both banks of the river and its mouth at any specific time;

"**water-skier**" or "skier" means a person who is water-skiing; and

"**water skiing**" includes towing a person or persons on any device behind a boat and the noun has a corresponding meaning;

"**zones**" means the areas of the river designated by the municipality as management zones as detailed in Annexures A and B.

## 2. Purpose of by-law and application

(1) The purpose of the by-law is to give effect to the municipality's constitutional mandate to promote a safe and healthy environment for its residents as envisaged in the following legislation:

- (a) National Environmental Management Act, 1998 (act 107 of 1998);
- (b) the Integrated Coastal Management Act, 2008 (Act 24 of 2008);
- (c) The National Estuarine Management Protocol published in Government Gazette No 341 dated 10 May 2013;
- (d) The Marine Living Resources Act, 1998 ([Act No 18 of 1998](#)); and
- (e) any Estuary Management plan adopted for the Bergrivier Estuary;

and in particular to establish a regulatory framework for the management and use of the Berg Rivier Estuary and control over the use of boats or vessels for sport-, recreation- or commercial purposes on the river.

- (2) This by-law applies to all recreational activities and boats or vessels used for sport- recreation- or commercial purposes on the river.
- (3) Nothing in this by-law shall exonerate any person from complying with the provisions of the Merchant Shipping (National Small Vessel Safety) Regulations, 2007.
- (4) This by-law does not derogate from any provision of other applicable National or Provincial legislation.

## 3. Use of the designated management zones

(1) In order to exercise control over the use of the Berg Rivier Estuary as well as recreational activities and the use of boats or vessels on the river, the municipality has designated the zones below, as indicated on the map Schedule A and the co-ordinates indicated in Schedule B, to be used as follows-

- (a) Zone A (Old Mouth Lagoon) - is a prohibited entry area;
- (b) Zone B (Fishing Harbour) is a zone where fishing and bait collection is permitted; water skiing is not permitted; scuba diving is only allowed with permission from the harbour master; the corridor in Zone B is the deepest part of the river between the Easterly (Upstream) Port Owen Marina entrance and the river mouth. It may be demarcated by buoys.

Going up-river from the river mouth it follows the left river bank to the Port Owen Holding jetty from where it slowly moves across to the right river bank. In the corridor the minimum planing speed is permitted. The area outside the corridor is a no wake zone;

- (c) Zone C (Carinus Multipurpose Recreation Area) - is an area where all forms of water sport, fishing and bait collection are permitted; scuba diving is only allowed with permission from the harbour master;
  - (d) Zone D (Conservation Area that includes Bokkomlaan) - is a zone where only sailing, canoeing, board sailing, swimming and fishing is permitted. Specifically prohibited in this area are kite boarding and water skiing as well as access to salt marshes and intertidal mudflats. Scuba diving is only allowed with permission from the harbour master. The corridor in Zone D is generally the center or deepest part of the river between the road bridge and the train bridge. It may be demarcated by buoys. Going up-river from the road bridge it follows the right or southern river bank past the 'De Plaat' mudflats from where it moves across to the left riverbank. In the corridor the minimum planing speed is permitted. The area outside the corridor is a no wake zone.
  - (e) Zone E (De Plaat Conservation Area) - is a prohibited entry area;
  - (f) Zone F (Kruispad Area) - is an area where all forms of water sport and fishing, except for scuba diving as defined, is permitted. Access to intertidal mudflats, salt marshes, sand banks as well as the adjacent private land without permission is prohibited.
  - (g) Zone G (Kliphoek multipurpose recreation area) - is an area where all forms of water sport, fishing and bait collection, except for scuba diving, are permitted;
  - (h) Zone H (Kersefontein/Langrietvlei recreation area) - fishing is only allowed with a permit from a registered licensed vessel and if from shore, with permission of the land owner;
  - (i) This Zone is no longer within the Bergrivier Municipality boundary and is therefore excluded from this by-law;
  - (j) Zone J (Port Owen Marina) is subject to POMA rules and regulations, as amended by POMA from time to time, which rules and regulations are incorporated into the provisions of this by-law; and
  - (k) Tidal Zones - access from all zones to the tidal zone that includes mud flats, salt marshes and sand banks is prohibited;
- (2) No person may act in contravention of the provisions of any of the designated management zones.

## Chapter 1 Licensing of boats

### 4. Licensing of boats

- (1) Any person who intends to operate a power boat, houseboat, or sailing boat for whatever purposes, excluding a commercial trawler, on the river, must apply in writing on the prescribed form to the municipality for a license for such a boat.
- (2) A license granted by the municipality is valid for a period of 12 months from date of issue and is renewable on application.
- (3) A license may limit the use of a boat or zone where it is allowed and may distinguish between commercial and private use thereof.
- (4) Any such application must be accompanied by-
  - (a) in the case of a boat to be used for commercial purposes, the original or a certified copy of the valid certificate of fitness showing the applicant as the owner;

- (b) in the case of a boat used for sport and recreation, the original or a certified copy of the valid certificate of fitness showing the applicant as the owner;
  - (c) a certified copy of the applicant's identity document or a valid driver's license or if the applicant is not a South African citizen, a certified copy of his or her passport;
  - (d) the original or a certified copy of the skipper's certificate of competence; and
  - (e) the fees, as determined by the municipality.
- (5) The municipality may limit the number of licenses per owner.
- (6) Notwithstanding the provisions of sub section (1), a person applying for a license for a houseboat must do so in a manner prescribed by the municipality.
- (7) A license-
- (a) must specify its date of expiry and the identification number allocated to the boat as detailed on the certificate of fitness; and
  - (b) is not transferable from any person to another or from one boat to another except where an owner of a licensed boat in terms of this by-law transfers the license to another boat belonging to him with the written permission of the municipality.
- (8) The municipality may-
- (a) approve or refuse an application and may, in approving it, impose conditions as to the manner of operation of or repairs or alterations to such boat;
  - (b) limit the number of boats on the river; and
  - (c) when granting authority in terms of this by-law, set conditions to ensure the safety of the public and the protection of the environment.
- (9) The municipality must-
- (a) provide reasons in writing in the event of it refusing to license a boat;
  - (b) refuse to approve an application if the operation of the boat will -
    - (i) be a source of pollution in a river or the vicinity of the river;
    - (ii) cause a nuisance;
    - (iii) constitute a danger to persons using it, or to the public or any section of the public; or
    - (iv) be inappropriate with the area and nature of the river or may cause damage to the environment.
- (10) The skipper of a boat must ensure that the license is affixed to the boat in such a manner that it is clearly visible for inspection.

## 5. Automatic lapsing or cancellation of licenses

- (1) A license shall lapse automatically-
- (a) on the date of expiry of the license; or
  - (b) if such boat has been removed by or on the authority of the municipality in terms of [section 11\(1\)](#) on account of pollution caused by the discharge of petrol, oil, sewage or waste in the river.
- (2) If the municipality is of the opinion that a boat no longer qualifies for licensing in terms of this by-law or in terms of any conditions on which the license was issued, the license may be cancelled after reasonable notice to that effect has been given to the owner at the address on the license.

- (3) The municipality may, after reasonable notice to the owner thereof, cancel any license if-
  - (a) the boat in respect of which such license was issued is no longer seaworthy, or is a source of pollution in the vicinity of the river, or is operated in a manner which constitutes a nuisance or danger to other boats or vessels or to the public or any section of the public;
  - (b) the boat is transferred, sold or disposed of or if the municipality is satisfied that the owner has ceased to exercise control over the said boat or to supervise it;
  - (c) the owner or the skipper has been convicted of an offence relating to the operation or control of a boat in terms of this by-law; or
  - (d) any information provided in any application form is false or untrue.

## Chapter 2

### Management and use of boats in the river

#### 6. Rules regarding the management or use of boats on the river

- (1) No person shall operate or control a power boat on the river, unless-
  - (a) such boat has been licensed by the municipality;
  - (b) an exemption has been issued for such boat to operate on the river;
  - (c) the boat is skippered in terms of the Regulations; or
  - (d) when a power boat is being operated or controlled by a person under the age of sixteen years, there is onboard the boat, a skipper in possession of a valid certificate of competence supervising the person operating or controlling the boat.
- (2) No owner shall permit a skipper to operate or control a sailing boat of nine meters or more in overall length on the river, unless-
  - (a) the skipper is in possession of a valid certificate of competence; and
  - (b) the boat has issued in its favour a valid certificate of fitness.
- (3) Any person who is not required by this by-law to hold a certificate of competence and who operates or controls a boat on the river, shall be competent to operate and control such boat.
- (4) Where an owner of a boat as contemplated in sections 6(1) and 6(2) of this by-law allows a person who, in the opinion of an authorised officer, is not competent to operate or control such boat safely, he or she may direct the owner to replace that person with someone who is capable of doing so.
- (5) Jet skis will only be permitted in the transition corridor between the Western (Downstream) Port Owen entrance and the sea and may travel at the minimum planning speed in a straight line only. No jet skis or water propelled craft may operate above the Westerly Port Owen entrance unless being used by a law enforcement body, the NSRL or in an emergency.
- (6) No person may operate or control a boat on the river-
  - (a) between the hours of one hour after sunset and one hour before sunrise upstream of Die Slot; notwithstanding this rule, navigation lights shall at all times be on and visible, in low light, misty or dark conditions.
  - (b) in such a manner that it causes damage to the environment.
  - (c) in such a manner that it endangers or is used in an inconsiderate manner that creates a nuisance to any other boat or the occupants thereof or other persons or property or installations in the water or at the water's edge including any boats or vessels moored to any jetty;



- (d) closer than 100 meters in the wake of another boat towing a person, water-skier or a towable aquatic device;
- (e) while under the influence of intoxicating liquor or narcotic drugs;
- (f) in a manner an authorised officer regards:
  - (i) as dangerous to the public or to the occupants of such boat or in a manner calculated to endanger or damage any property or facility, regard being had to all the circumstances of the case;
  - (ii) as reckless or negligent; or
  - (iii) as constituting the using of a boat without consideration to other persons.
- (g) in such a manner that excessively large waves are generated;
- (h) while it is leaking oil, petrol, pollutant or any toxic or noxious substance;
- (i) if the load or number of persons on board exceeds the carrying capacity as stated on the boat or vessel's certificate of fitness. In the absence of such certificate then no more persons than one per whole meter length of boat;
- (j) if the boat is licensed by the municipality as required in terms of this by-law and the license token issued in respect thereof is not permanently displayed in a manner determined by the municipality; or
- (k) in contravention of any provisions of a management zone on the river as determined by the municipality.

## 7. Duties of a skipper

- (1) A skipper of any boat-
  - (a) must ensure that the boat is operated and controlled in compliance with-
    - (i) the provisions concerning the safe operation of vessels on inland waters in the Regulations and the provisions of the Merchant Shipping (Collision and Distress Signals) Regulations, 2005; and
    - (ii) the usage requirements applicable to the zone in which the boat is being operated;
  - (b) must ensure that he or she can at all times exercise full control over the boat while it is underway;
  - (c) must maintain a safe and cautious speed in any area where people are swimming, boats or vessels are moored, where angling is taking place or where buoys are placed and must at all times operate the boat under his or her control in such a manner that people, other boats or vessels or other property are not endangered or causing a nuisance;
  - (d) which is under way may not approach closer than fifteen meters from any spot where people are swimming, or closer than 10 meters from the side of the river bank, or closer than fifteen meters from any other boat or any other distance as determined by the municipality unless-
    - (i) circumstances are such that the said distances cannot be maintained; or
    - (ii) assistance is being given in an emergency situation;
  - (e) leaving a slipway or jetty must give way to incoming or passing boats;
  - (f) towing a line, cable or rope for any purpose whatsoever, must ensure that he or she does not thereby endanger or cause any inconvenience to another person;

- (2) The skipper of a powerboat-
  - (a) taking into account the hazards to safe navigation and other boats, anglers and swimmers, must when underway and where possible, proceed nearest the bank that lies on the starboard side of the boat; provided that when operating or controlling a power driven boat in zone D at a speed in excess of the no-wake speed, he or she must ensure that when the boat is underway, it does so in the corridor; and
  - (b) must when proceeding along the corridor, ensure that the boat stays on the starboard side of the corridor leaving the buoys marking the centre line of the corridor, to port at maximum distance of 10m from the centre line of the corridor.

## 8. Prohibited behaviour

- (1) No person may-
  - (a) leave a boat unattended in the water area unless it has been properly anchored, moored or removed to dry land at a safe height above the water level; notwithstanding the aforesaid, no boat may be left unattended in the water area for a period in excess of 24 hours;
  - (b) use a boat on the river as a place of permanent abode;
  - (c) launch a boat at a launch site that is not a launch site approved by the applicable authority responsible for approval of launch sites;
  - (d) moor a boat at any place other than a private jetty or a place indicated by the municipality and an authorised officer or the municipality may move such boat or moor it at any other place without the consent of the owner if he deems it to be in the public interest;
  - (e) moor a boat to another boat or to a marker, buoy or other navigational aid;
  - (f) be towed behind a boat on any apparatus where in the opinion of an authorised officer, the towing poses a danger to the user or any other river users;
  - (g) except in an emergency, operate any hovercraft, water jet-driven craft, including but not limited to jet-skis unless in a designated zone, a craft of which the propeller or exhaust is above or partly submerged in the water, a seaplane, a wing in ground effect craft, or conduct any form of parachuting, para-gliding or kite surfing on any part of the river;
  - (h) place any form of obstruction on or near the surface of the river;
  - (i) be on the bow, forward deck or gunwale of the boat which is under way unless sufficient safety rails or guard rails have been installed;
  - (j) sit on the bow of the boat when underway with their legs dangling over the water; except when assistance is being given in an emergency or when it is necessary to moor, recover or land the boat;
  - (k) swim within fifteen meters either side of a slipway;
  - (l) dive or jump from any part the of structure of a bridge crossing the river;
  - (m) fish from any bridge or within fifteen meters either side of slipway;
  - (n) scuba dive or spearfish in the river, except where scuba diving has been approved by the harbour master;
  - (o) leave a fishing line in the river unattended in or near a navigational channel;
  - (p) catch fish with a gillnet;
  - (q) catch fish without a license; or

- (r) via the river access land in the river or the river bank unless such area is designated a recreational area by the municipality.
- (2) No boat may be left on any slipway except in an emergency and no vessel, trailer or vehicle may remain on or in close proximity to a slipway for longer than it takes to launch or recover a vessel.
- (3) No person may in the water area and without the consent of the municipality-
  - (a) use any boat for commercial purposes;
  - (b) hold or arrange any fishing competition; or
  - (c) hold or arrange any race or regatta.
- (4) No person may, while in the water area;
  - (a) use indecent, offensive or improper language;
  - (b) behave in an offensive, improper or disorderly manner; or
  - (c) willfully or negligently do anything which will cause inconvenience to any other person or which may disturb the peace of someone else.
- (5) The municipality may-
  - (a) restrict the size of any motor of a boat used on any river or any part of the river; and
  - (b) designate any portion of the river into usage zones for environmental or safety reasons.
- (6) The municipality may designate and manage public launching sites and public recreational sites along the river;

## 9. Equipment required on board a boat or vessel

- (1) The owner or skipper must ensure that whenever a licensed boat is used on the river, the safety equipment as prescribed in the certificate of fitness for that boat, be kept and maintained on board.
- (2) The owner or skipper of a boat used on the river which is not requiring to be licensed, must-
  - (a) ensure that whenever the boat is used on the river, the safety equipment is provided and maintained on board as is prescribed in regulation 37 of the Regulations; and
  - (b) ensure that the batteries and fuel of any boat, if kept in a compartment, be kept in separate compartments and no fuel line may run through a battery compartment and both compartments must be sufficiently ventilated.

## 10. Rules for water-skiing where permitted

- (1) Water-skiing is permitted only in the designated zone between sunrise and sunset.
- (2) The skipper shall ensure that the boat towing the skier is operated and controlled in compliance with Regulation 36 of the Regulations.
- (3) The skier shall at times while on the ski, off the ski, launching and or recovering the ski comply with the provisions of Regulation 36;
- (4) The skier shall not approach closer than twenty meters from any spot where people are swimming or closer than twenty meters from the side of the river bank or closer than twenty meters from any other boat or any such other distance as determined by the municipality unless-
  - (a) circumstances are such that the said distances cannot be maintained;
  - (b) assistance is being given in an emergency situation; or
  - (c) the skier is landing or leaving the shore.

- (5) If the skier or the ski rope is in the water and not moving, a clear visible red flag must be raised by the skipper.

### **Chapter 3 Pollution Prevention**

#### **11. Preventing pollution of the river**

- (1) No person, except with the permission of the municipality and in compliance with the provisions of the National Environmental Management: Integrated Coastal Management Act, 2008, ([Act 24 of 2008](#)), may allow any sewage pipe or tank to discharge into a river or allow any other waste water from any other source to drain into the river.
- (2) No substance such as petrol, oil or any toxic or noxious substance may be disposed of in the river.
- (3) No plastic product, bottles, cans, waste of any kind whatsoever may be disposed of from a boat into the water or onto abutting land or any facility except in receptacles furnished for that purpose.

### **Chapter 4 Fixing of tariffs, fees and levies**

#### **12. Fixing of tariffs, fees and levies**

- (1) The municipality may determine tariffs, fees and levies in respect of the use of the river and for the licensing of boats and the provision of tokens.
- (2) In fixing tariffs, fees and levies in terms of subsection (1), the municipality may distinguish between various classes of boats making use of the river or any facilities, or in respect of their size, method of propulsion or use.
- (3) All income derived from permits for licensing or recreational activities must be allocated to the management of the estuary and the control of recreational activities and or maintenance of public infrastructure in and around the river.

### **Chapter 5 Powers of authorised officers**

#### **13. Powers of authorised officers**

- (1) Any person who owns or operates a boat on the river in contravention with any provision of this by-law, may be ordered by an authorised officer to remove such boat forthwith from the river or to cease such contravention, and non-compliance with such order shall constitute an offence.
- (2) An authorised officer shall have the right to board a boat at any time and to inspect it for the purposes of ensuring compliance with the provisions of this by-law.
- (3) An authorised officer may -
  - (a) investigate and test any boat or part thereof or any equipment thereon in order to determine whether the boat is suitable for use on the river and whether the provisions contained in this by-law have been complied with;
  - (b) call for any information regarding the boat from the skipper and may, if the skipper is unable to furnish the information, order him to remove the boat forthwith from the river until such time as the request can be complied with;

- (c) require the skipper to furnish his name and address or the name and address of the owner and any other information required for identification purposes;
  - (d) require any other person on the boat to furnish his name and address as well as any other information required for identification of the skipper or the owner;
  - (e) if it appears that the skipper of any boat, owing to a physical or mental condition, irrespective of how this originated, is not capable of operating or controlling the boat, forbid the skipper temporarily from continuing to control or operate the boat. The authorised officer may make arrangements which in his opinion are necessary or advisable for the safe disposal of the boat;
  - (f) if it appears that the load or number of persons transported in any boat is more than that stated on the certificate of fitness, or more than can be transported in reasonable safety under prevailing conditions, forbid the skipper of such a boat to proceed until the load or the number of persons has been reduced in the manner he considers necessary;
  - (g) if it appears that any boat or part thereof cannot be safely operated or controlled on the river, order the skipper to remove the boat forthwith from the water area until such time as the boat or part thereof has been made safe to operate or control on the river;
  - (h) if it appears that any of the equipment prescribed by this by-law is not onboard the boat or in good working condition or is not easily available for immediate use onboard, order the skipper to remove the boat forthwith from the river until such time as all the provisions of this by-law have been complied with; and
  - (i) remove any fishing rod or line that has been left unattended from a river if the rod or line constitutes a threat to the safety of others.
  - (j) if he or she is a Peace Officer, in accordance with the Criminal Procedures Act, 1977, search a person for and seize anything-
    - (i) which is used in, or is on reasonable grounds believed to be used in a contravention or failure to comply with any provision of this by-law;
    - (ii) which may afford evidence of such contravention or failure; or
    - (iii) which is intended to be used or on reasonable grounds believed to be intended to be used in such contravention or failure.
- (4) No person may-
- (a) obstruct or interfere with an authorised officer whilst the latter is engaged in the execution of his duties; or
  - (b) refuse to furnish his or her correct name and address when requested to do so by an authorised officer.

#### 14. Removal of boats from the river

- (1) If the owner or skipper of a boat fails to remove such boat from a river after having been instructed to do so by an authorised officer, the municipality may remove such boat forthwith.
- (2)
  - (a) In the event of the municipality canceling any license, or if any license expires or lapses in terms of this by-law, the owner or skipper of the boat must immediately remove such boat from the river;
  - (b) If the owner of a boat contemplated in paragraph (a) fails to remove such boat or vessel from a river within thirty days after such license has expired or lapsed or after notification to him of the said cancellation, the municipality may remove such boat forthwith;

- (c) If an authorised officer is of the opinion that a boat has been abandoned, or is no longer fit for use on the river, he or she may by written notice order the owner to remove such boat from the river.
- (d) Where the owner of an abandoned boat cannot be traced, the municipality may seize such boat and all accessories thereon, after obtaining a court order from a competent court.
- (e) The court, when considering an order contemplated in paragraph (d) must-
  - (i) summarily enquire into the matter;
  - (ii) enquire whether notice was given to the owner of the proposed sale of the property; and
  - (iii) make such order as it considers just and equitable, including an order-
    - (aa) as to costs; and
    - (bb) on the process to be followed by the municipality in the sale of the seized boat and accessories.
- (3) Any boat in or on a river for which the fees as prescribed by the municipality are in arrears for more than thirty days, may be removed from the river by the municipality after reasonable notice has been given to the owner or owner.
- (4) Where the municipality is entitled to remove a boat in terms of this section, an authorised officer may make any arrangements considered necessary by him to ensure the removal of such boat and the municipality may recover the cost of such removal from the owner.
- (5) If a boat removed from the river in terms of this section is not claimed within ninety days after such removal, the municipality may act in terms of sub section (2)(d) and (e).

## **Chapter 6**

### **General provisions**

#### **15. Delegation of power**

The municipality may delegate and or transfer any powers conferred on it under this by-law to any person or organisation, or enter into a service level agreement with any person or organisation, with the exception of the power to levy or determine fees.

#### **16. Exemption from liability**

- (1) The municipality shall not be liable for any injury which is sustained by any person using the river or any other facilities or for damage to any property thereon.
- (2) The municipality, or any authorised officer or person or organisation to whom the municipality has delegated powers in terms of section 15 shall not, except in the event of willful act or omission on the part of the municipality or the said person or organisation, be liable for loss or damage which arises out of or in connection with anything which is done or performed in good faith in the exercise or performance of a power or duty conferred or imposed in terms of this by-law.

#### **17. Exemption from the provisions of this by-law**

- (1) A person may by means of a written application, in which the reasons are given in full, apply to the municipality for exemption from any provision of this by-law; provided that the application for an exemption from the requirement for the skipper or person in charge of the boat to hold a certificate of competence shall not be considered by the municipality.

- (2) The municipality may:
  - (a) grant an exemption in writing and the conditions in terms of which, if any, and the period for which such exemption is granted; provided that such exemption shall not exceed a period of six months;
  - (b) alter or cancel any exemption or condition in an exemption; or
  - (c) refuse to grant an exemption.
- (3) An exemption does not take effect before the applicant has undertaken in writing to comply with all conditions imposed by the municipality in terms of sub section (2)(a). If an activity is commenced before such undertaking has been submitted to the municipality, the exemption lapses.
- (4) If any condition of an exemption is not complied with, the exemption lapses immediately.

## 18. Conflict with other by-laws

In the event of conflict between the provisions of this by-law and any other by-law of the municipality, the provisions of this by-law shall prevail.

## 19. Appeal

A person whose rights are affected by a delegated decision of the municipality may appeal against that decision by giving written notice of the appeal and the reasons therefore in terms of section 62 of the Local Government: Municipal Systems Act, [Act 32 of 2000](#) to the municipal manager within 21 days of the date of the notification of the decision.

## 20. Penalties

- (1) A person who contravenes or fails to comply with any of the provisions of sections 3(2), 4, 6, 7, 8, 9, 10, 11, 13 or 14 commits an offence and shall, upon conviction, be liable to a fine or in default of payment, to imprisonment, or to such imprisonment without the option of a fine, or to both such fine and such imprisonment, and in the case of a successive or continuing offence, to a fine for every day such offence continues, or in default of payment thereof, to imprisonment.
- (2) It is an offence to-
  - (a) furnish false information to an authorised person in respect of any issue pertaining to this by-law;
  - (b) to refuse to co-operate with the request of an authorised person made in terms of this by-law; or
  - (c) to fail to comply with any notice issued in terms of this by-law.
- (3) Failure to comply with a notice, direction or instruction referred to in this by-law constitutes a continuing offence.

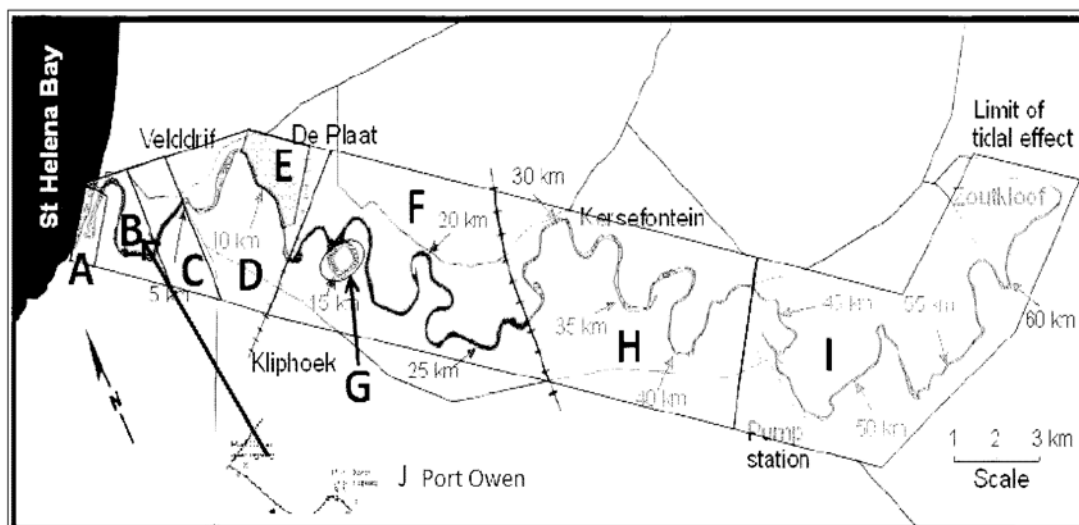
## 21. Short title and commencement

This by-law may be cited as the By-Law relating to the Management and Use of the Berg River Estuary, with commencement date 1 September 2019.

## Schedule A

### Map indicating the designated management zones

Note: Zone 1 is excluded from this by-law



## Schedule B

### Coordinates (WGS84) for the Berg River Estuary management zones

The latitude and longitude co-ordinates of the points (1) to (25) in the explanation of the Zones below are contained in the table at the end of Zone 1 (Upper Berg estuary)

#### Zone A (Old Mouth Lagoon)

- Downstream (northern) boundary: a line drawn through the point (1) and point (2), situated at on the south bank of the estuary respectively where the old mouth joins the main channel.
- Lateral and upstream (southern) boundaries: A line that follows the SHWM between points (1) and (2).

#### Zone B (Fishing Harbour)

- Downstream boundary: a line joining point (3) situated on the southern bank of the estuary and point (4) situated on the northern bank of the estuary.
- Upstream boundary: a line joining point (5) situated on the north bank of the estuary and point (6) situated on the south bank of the estuary opposite the mouth of the Port Owen Marina.
- Lateral boundary (N): A line that follows the SHWM linking point (4) with point (7), a straight line from here to point (8) (spanning the lower entrance to the Port Owen Marina), and from here on a line following the SHWM to point (9) and from here on a straight line to point (5).
- Lateral boundary (S): A line that follows the SHWM linking point (3) with point (1), a straight line from here to point (2), and following the SHWM from here to point (6).

#### Zone C (Carius Multipurpose Recreation Zone)

- Downstream boundary: As for Zone B upstream boundary.
- Upstream boundary: a straight line joining point (10) and point (11)
- Lateral boundary (N): A line that follows the SHWM linking point (5) and (10).
- Lateral boundary (S): A line that follows the SHWM linking point (6) and (11).

#### Zone D (Conservation Area)



- Downstream boundary: As for Zone C upstream boundary.
- Upstream boundary: a straight line joining point (12) and point (13).
- Lateral boundary (N): A line that follows the SHWM linking point linking points (10) and (12).
- Lateral boundary (S): A line that follows the SHWM linking point linking points (11) and (13).

#### Zone E (De Plaat Conservation Area)

- The area encircled by a line that follows the SHWM linking point linking point (14) and point (15), and a straight line joining these two points.

#### Zone F (Kruispad Conservation Area)

- Downstream boundary: As for Zone 0 upstream boundary.
- Upstream boundary: a straight line joining point (16) and point (17).
- Lateral boundary (N): A line that follows the SHWM linking point (12) with point (16).
- Lateral boundary (S): A line that follows the SHWM linking point (13) with point (18), and a straight line from here to point (19), and a line following the SHWM from here to point (20), and a straight line from here to point (21), and a line from here that follows the SHWM to point (17).

#### Zone G (Kliphoeck multipurpose recreation zone)

- The area encircled by a line that follows the SHWM linking point linking points (18) and (21), a straight line joining points (18) and (19), and points (20) and (21), and a that follows the SHWM linking point linking points (19) and (20).

#### Zone H (Kersefontein/Langrietvlei recreation area)

- Downstream boundary: As for Zone F upstream boundary.
- Upstream boundary: a straight line joining point (22) and point (23).
- Lateral boundary (N): A line that follows the SHWM linking point linking points (16) and (22).
- Lateral boundary (S): A line that follows the SHWM linking point linking points (17) and (23).

#### Zone I (Upper Berg estuary)

- Downstream boundary: As for Zone H upstream boundary.
- Upstream boundary: a straight line joining point (24) and point (25)
- Lateral boundary (N): A line that follows the SHWM linking point linking points (22) and (24).
- Lateral boundary (S): A line that follows the SHWM linking point linking points (23) and (25).

#### Zone J (Port Owen Waterway that includes the Marina basin)

- West entrance of Port Owen: A direct line between points (7) and (8)
- East entrance of Port Owen: A straight line joining point (9) and point (5)

Table of latitudes and longitudes for the points mentioned above.

Point	Latitude and longitude	Point	Latitude and longitude
(1)	32°46' 16.24"S, 018°08' 40.50"E	(14)	32°47' 24.65"S, 018°11' 49.15"E
(2)	32°46' 19.15"S, 018°08' 52.82"E	(15)	32°48' 31.27"S, 018°11' 57.68"E
(3)	32°46' 05.06"S, 018°08' 35.59"E	(16)	32°52' 19.36"S, 018°15' 29.07"E
(4)	32°46' 06.21"S, 018°08' 39.05"E	(17)	32°52' 23.98"S, 018°15' 28.30"E
(5)	32°47' 24.38"S, 018°09' 15.83"E	(18)	32°49' 19.72"S, 018°12' 27.29"E
(6)	32°47' 29.00"S, 018°09' 19.78"E	(19)	32°49' 21.67"S, 018°12' 31.55"E
(7)	32°47' 14.93"S, 018°08' 42.34"E	(20)	32°49' 26.44"S, 018°12' 40.95"E
(8)	32°47' 16.37"S, 018°08' 44.27"E	(21)	32°49' 26.03"S, 018°12' 45.00"E
(9)	32°47' 24.93"S, 018°09' 13.46"E	(22)	32°54' 24.96"S, 018°20' 04.39"E
(10)	32°47' 14.12"S, 018°10' 08.74"E	(23)	32°54' 25.76"S, 018°20' 03.66"E
(11)	32°47' 16.86"S, 018°10' 08.65"E	(24)	32°56' 23.36"S, 018°26' 06.96"E
(12)	32°49' 04.05"S, 018°11' 37.65"E	(25)	32°56' 23.49"S, 018°26' 37.35"E
(13)	32°49' 05.49"S, 018°11' 34.34"E		