Cederberg, South Africa

Control of Boats and Boating on the Clanwilliam Dam

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Control of Boats and Boating on the Clanwilliam Dam
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Cederberg
South Africa

Control of Boats and Boating on the Clanwilliam Dam By-law, 2022

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To provide for the control of boats and boating on the Clanwilliam dam; to provide for procedures, methods and practices to manage the use of boats and boating on the Clanwilliam dam; and to promote a safe and healthy environment for the benefit of residents within the area of jurisdiction of the Municipality.

WHEREAS there is a need to identify and provide clarity on use of the Clanwilliam dam as a local amenity, within the area of jurisdiction of the Cederberg Municipality.

WHEREAS there is a need to ensure safe recreational use of the Clanwilliam dam, within the area of jurisdiction of the Cederberg Municipality.

NOW THEREFORE under the provisions of Section 156(2) of the Constitution of the Republic of South Africa, 1996 and Schedule 5B, Cederberg Municipality enacts as follows:—

1. Definitions and interpretation

In this By-law unless the context otherwise indicates:—

"**authorised officer**" means any person authorised by the Municipality to perform the functions of an authorised officer under this By-law or a member of the South African Police Service;

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

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

"**canoe**" means a vessel designed to be propelled by means of paddles without any mechanical assistance;

"**Council**" means the Council of the Cederberg Municipality;

"**dam**" means the area within the Clanwilliam dam under jurisdiction of the Municipality;

"**helmsman**" means a person who steers or controls a vessel;

"**houseboat**" includes any vessel, irrespective of whether or not it is propelled under its own power, upon which facilities for day or night accommodation or for any kind of food preparation have been provided, or a vessel upon which any kind of toilet or washing facilities have been provided;

"**inland waters**" means that part of the dam which falls within the jurisdiction of the Municipality;

"**Merchant Shipping Act**" means the Merchant Shipping Act, 1951 (Act No. 57 of 1951);

"**Merchant Shipping (National Small Vessel Safety) Regulations**" means Merchant Shipping Regulations, 2007, Government Notice No R. 705 published in *Government Gazette* No.30151 dated 8 August 2007, made by the National Minister of the Department of Transport under section 356 of the Merchant Shipping Act, 1951 (Act No. 57 of 1951);

"**Municipality**" means the Municipality of Cederberg established in terms of Section 12 of the Municipal Structures Act, 117 of 1998 and includes any political structure, political office bearer, councillor, duly authorised agent thereof or any employee thereof 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, councillor, agent or employee;

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

"**operate**" or "control", in relation to a boat, means to launch, use, sail, navigate or moor a boat or to permit a boat to be launched, used, sailed, navigated or moored in the dam, or to have a boat, or to permit a boat to be, in the dam;

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

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

"**power boat**" means a vessel propelled by means of an engine or other mechanical apparatus, either in or outboard, irrespective of whether or not such engine or apparatus is the main source of power;

"**purchase line**" means the upper limit of the area expropriated by the state (Department of Water Affairs and Forestry) around the perimeter of the dam;

"**recreation activities**" means any activity practised in or on the water of the dam with or without the use of a boat or vessel;

"**registered boat**" a boat issued with an identification number and valid certificates;

"**rowing boat**" means a vessel designed to be propelled by means of oars without any mechanical assistance;

"**sail**" or "under way" means the situation of a vessel when it is not anchored or moored or on dry land;

"**sailing boat**" includes every boat which is under sail and is not propelled by mechanical power;

"**starboard**" means the right side of the boat as seen from the stern;

"**stern**" means the back part of a vessel;

"**SAMSA**" means South African Maritime Safety Authority established under the South African Maritime Safety Act, 1998 (Act No. 5 of 1998);

"**visible**" means visible by somebody with reasonable eyesight during a dark night when the atmosphere is clear;

"**water area**" means the area of open water below the purchase line;

"**water-ski**" means to ski or skate on or in the water with or without the assistance of any kind of skating apparatus and where the water-skier is towed by a vessel by means of a towing-rope;

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

2. Operation or control of boats on the dam

(1) No person under the age of sixteen years shall operate a boat equipped with a motor of 4,5 kW or more on the dam, unless such person is accompanied by a person over the age of sixteen years.

(2) Where any licensee of a boat allows any person who, in the opinion of an authorised officer, is not competent to operate or control such boat efficiently, such officer may direct the licensee not to allow such person to operate or control such boat, and if the licensee thereafter continues to allow such person to operate or control such boat, he shall be guilty of an offence.

(3) No person shall operate a boat on the dam—

(a) in a reckless or negligent manner;

(b) while under the influence of intoxicating liquor or a narcotic drug, or while the percentage of alcohol in his blood is 0,04 or more, expressed in grams per hundred millilitres of blood;

(c) while suffering from an infirmity which renders him unfit to do so;

(d) in a manner dangerous to the public or to the occupants of such boat or in a manner calculated to endanger or damage any property or facility;

(e) in a manner which constitutes a nuisance;

(f) without reasonable consideration of the rights of other persons using such dam;

(g) while it is leaking oil, petrol or any toxic or noxious substance;

(h) if it has more persons or a bigger load on board than the vessel was designed or built to carry or stated on the licence;

(i) if the boat is not registered and licensed in terms of the Merchant Shipping Act, 1951 (Act No. 57 of 1951) read with the Merchant Shipping (National Small Vessel Safety) Regulations, 2007,.

3. Permission to enter and operate a boat on the dam

(1) The prescribed fee must be paid to the Municipality by any person entering and operating a boat on Clanwilliam dam, except for other Municipal agreements.

(2) The required SAMSA documentation to be provided as and where applicable for the respective vessel as read by the Merchant Shipping Act, 1951 (Act 57 of 1951) and Merchant Shipping (National Small Vessels Safety Regulations, 2007 as amended.

4. Equipment of vessels

(1) Equipment on board of a vessel must comply with the specifications of the Merchant Shipping Act, 1951 (Act 57 of 1951) and Merchant Shipping (National Small Vessels Safety Regulations, 2007 as amended.

(2) All life-saving apparatus on board a vessel in the water must be in good working condition and within easy reach for immediate and effective use.

5. Rules for boating

(1) No person shall leave a vessel unattended on the dam area unless it has been properly anchored, moored or removed to dry land a safe height above the water level.

(2) No vessel shall be moored or launched at any place other than the place approved by the Municipality and an authorised officer of the Municipality may move any vessel or moor it at any other place without the consent of the owner if he deems this to be in the public interest.

(3) No vessel shall be moored to any other vessel or to a marker, buoy or other navigational aid.

(4) The helmsman of any vessel must ensure that he can at all times exercise full control over the vessel while it is under way.

(5) The helmsman of any vessel towing a line, cable or rope for any purpose whatsoever, must ensure that he does not thereby endanger any other person or cause any inconvenience.

(6) No person shall operate a vessel or allow it to be operated in such a manner that it endangers or creates a nuisance to any other vessel or the occupants thereof or to other persons or property or installations in the water or at the water's edge.

(7) No power boat which is under way and no person practising water-skiing in the water area, shall approach closer than 50 meters from any spot where people are swimming or closer than 50 meters from the side of the water or closer than 10 meters from any other vessel, unless—

(a) circumstances are such that the said distances cannot be maintained;

(b) assistance is being given in an emergency situation; or

(c) the power boat or any water-skier towed by it is landing or leaving the shore: Provided that when the prescribed distances are not maintained, the power boat must immediately reduce its speed to less than 10 km per hour.

(8) No person shall be on the bow, forward deck or gunwale of any power boat which is under way unless sufficient safety rails or guard rails have been installed, and no person shall jump or dive from any power boat which is under way, except when assistance is being given in an emergency or when it is necessary to moor or to land the power boat.

(9) Where it is possible, a vessel shall be piloted in such a manner that the median line of the sailing area shall always be on the port side of the vessel, in other words all power boats must move in an anticlockwise direction.

(10) Whenever two vessels approach each other head-on or approximately headon, each must be piloted in such a manner that it passes the other on its own port side and, subject to the provisions of subsection (6) at such a distance and at such a speed that the wake of either of the vessels shall not endanger the other.

(11) (a) No vessel shall pass another vessel which is proceeding in the same direction, unless it is safe to do so and such vessel shall, when it does so, pass the other vessel on its port side and, subject to the provisions of subsection (6), at such a distance and at such a speed that its wake shall not endanger the other vessel.

(b) A vessel which is passed shall maintain its speed and direction until the passing vessel is safely past.

(12) Whenever two vessels approach each other in a manner other than referred to in subsections (10) and (11), the vessel which finds the other on its port side shall maintain its speed and direction and the vessel which finds the other on its starboard side shall stay out of the way of the other vessel by changing its direction to starboard so as to pass the other vessel from the stern and shall if necessary stop or reverse to avoid a collision.

(13) (a) Whenever two sailing boats are approaching one another in such a way as to involve risk of collision, notwithstanding the provisions of subsections (10), (11) and (12), they shall keep out of one another's way as follows:

(i) When each has the wind on a different side, the vessel which has the wind on the port side shall keep out of the way of the other;

(ii) When both have the wind on the same side, the vessel which is to the windward shall keep out of the way of the vessel which is to leeward.

(b) For the purpose of this subsection, the windward side shall be deemed to be the side opposite to that on which the mainsail is carried.

(14) To avoid a collision between vessels, a power boat shall give way to all other vessels, and a rowing boat or a canoe shall give way to a sailing boat when circumstances require it, notwithstanding the provisions of subsections (9), (10), (11), (12) and (13); provided that this By-law shall not give the right to the helmsman of any vessel to unnecessarily obstruct or interfere with the course of any other vessel.

(15) The helmsman of any vessel shall maintain a safe and cautious speed in the area where vessels are moored, where angling is taking place or where buoys are placed, and whenever visibility is

obstructed due to fog or other causes he shall pilot the vessel under his control in such a manner that people, other vessels or other property are not endangered.

(16) No vessel shall follow closer than 100 meters in the wake of a water-skier.

(17) No vessel or vehicle which is propelled by means of a propeller above the water, shall be used in the water area.

(18) Except in the case of an emergency, no aeroplane shall land in or take off from the water area.

(19) No boat shall be left on any slip-way except for purposes of repair.

(20) No boats, except those on official business, may proceed beyond the buoys in front of the dam wall.

6. Water-skiing

(1) No person shall practice water-skiing on the dam unless an effective life-belt or other floating device is attached to his body.

(2) No steel or metal cable or steel wire shall be used to tow a water-skier.

(3) The helmsman of any vessel which tows a water-skier shall, before such water skier is taken in tow, ensure that the water-skier is familiar with the distress signal for water skiers, namely drawing the hand across the throat.

(4) No water-skiing shall be practised between sunset and sunrise and the Municipality may also prohibit water-skiing at other times.

(5) No vessel shall tow a water-skier unless a second person older than 14 years is present in the vessel to observe the waterskier.

(6) No water-skier shall drop a water-ski except at a spot where the discarded water-ski does not constitute a danger to any other water-skier or vessel.

(7) As soon as a water-skier drops the towing-line, the helmsman of the vessel towing the water-skier shall pull in the towing line immediately and if the water-skier has dropped the towing line by accident, the said helmsman shall turn the vessel immediately and take the water-skier in tow again or take him aboard.

(8) When a skier drops the towing-line, a red Áag measuring a minimum of 300 mm x 300 mm shall be held up and kept up until the skier boards the boat or resume skiing.

7. Prohibition of operating a vessel or a boat

The Municipality may prohibit any vessel if—

(a) it is satisfied that the vessel or boat is no longer safe or seaworthy, or is a source of pollution in the vicinity of the dam, or is operated in a manner which constitutes a nuisance or danger to other boats or to the public or any section of the public;

(b) the vessel or the boat is transferred, sold or disposed of or if the Municipality is satisfied that the licensee has ceased to exercise control over the said boat or to supervise it, or

(c) the licensee has been convicted of an offence relating to the operation or control of a boat in terms of this By-law.

8. Pollution of the dam

(1) No person must, while he is in the water area—

(a) use indecent, offensive or improper language;

(b) behave in an offensive, improper or disorderly manner;

(c) stay, bathe or sunbathe in the nude or not properly clothed, whether on a vessel or not; or

(d) wilfully or negligently do anything which will cause inconvenience to any other person using the water area, or which may disturb the peace.

(2) No person shall allow any sewer pipe or tank to discharge into the dam or allow any other waste water from any other source to drain into the dam.

(3) No substance such as petrol, oil or any toxic or noxious substance shall be deposited or disposed of in the dam.

(4) No bottles, cans, garbage or refuse of any kind whatsoever shall be thrown into the dam or onto abutting land or any facility except in receptacles furnished for that purpose.

(5) No person shall by any act or omission, whether directly or indirectly, allow a nuisance or the creation or continuation of a source of danger, or allow any interference with the convenience or comfort of persons in the vicinity of the dam.

9. Powers of authorised officers

(1) Any person who operates an unlicensed boat in the dam or contravenes any provision of this By-law, may be ordered by an authorised officer to remove such boat forthwith from the dam or to cease such contravention, and non-compliance with such order shall constitute an offence.

(2) An authorised officer has 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 or person who is authorised in writing by the Municipality may, in the water area:—

(a) investigate and test any vessel or part thereof or any equipment thereon in order to determine whether the vessel is suitable for navigation on or in the water and whether any particular provision of this By-law has been complied with;

(b) call for any information regarding the vessel from the helmsman and may, if the helmsman is unable to furnish the information, order him to remove the vessel forthwith from the water area until such time as the request can be complied with;

(c) require the helmsman to furnish his name and address or the name and address of the owner of the vessel and any other information required for identification purposes;

(d) require any other person in the vessel other than the helmsman, to furnish his name and address as well as any other information required for the identification of the helmsman or the owner of the vessel;

(e) if it appears to him that the helmsman of any vessel, owing to his physical or mental condition, irrespective of how this originated, is not capable of steering the vessel or of being in control of it, forbid the helmsman temporarily from continuing to steer or being in control of the vessel and may make any arrangements which in his opinion are necessary or advisable for the safe disposal of the vessel;

(f) if it appears to him that the load or number of persons transported in any vessel is more than the vessel was designed or built to carry or more than can be transported in reasonable safety under prevailing conditions, forbid the helmsman of such a vessel to proceed until the load or the number of persons has been reduced in the manner he considers necessary or advisable;

(g) if it appears to him that any vessel or part thereof is not navigable in or on the water, order the helmsman to remove the vessel forthwith from the water area until such time as the vessel or the part thereof has been made navigable in or on the water;

(h) if it appears to him that any of the equipment prescribed by this By-law is not on board the vessel or in a good working condition or easily available for immediate use on board, order the helmsman to remove the vessel forthwith from the water area until such time as all the provisions of this By-law regarding equipment have been complied with;

(i) remove any fishing rod or line that has been left unattended from the dam if in his opinion the rod or line constitutes a threat to the safety of others,

(4) (a) No person shall obstruct or interfere with an authorised officer whilst the latter is engaged in the execution of his duties, and

(b) No person shall refuse to furnish his or her correct name and address when requested to do so by an authorised officer.

10. Delegation of power

The Municipality may delegate and/or transfer any powers conferred on it under this By-law, with the exception of the power to levy or determine fees, to any person or persons or organisation, and such person or persons or organisation shall after such delegation or transfer have the same power as the Municipality would have had in terms of the provisions of this By-law.

11. Removal of boats from the dam

(1) If the owner of an unlicensed boat fails to remove his or her boat from the dam after having been requested to do so by the Municipality or an authorised officer, the Municipality may remove such boat forthwith.

(2) If the owner of a boat, of which the certificate/s has expired or lapsed or has been cancelled, fails to remove his or her boat from the dam within thirty days after such certificate has expired or lapsed or after notification to him of the said cancellation, he shall be guilty of an offence and the Municipality may remove such boat forthwith.

(3) If, in the opinion of the Municipality any boat constitutes a danger in the dam or causes pollution by the discharge of petrol or oil, such boat may be removed forthwith by the Municipality.

(4) Where the Municipality is entitled to remove a boat, 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 is removed from the dam in terms of the provisions of subsections (1), (2) or (4) is not claimed within ninety days after such removal, or within ninety days after the said written notice has been given and all fees in arrears have not been paid, the Municipality may confiscate such boat or boats by court order to claim fees in arrears.

12. Exception from liability in respect of injury and/or damage

(1) The use of the Clanwilliam dam is by the owner's own risk and the Municipality shall not be liable for any injury which is sustained by any person using the dam or any facility, or for damage to any property thereon, whatever the cause may be.

(2) The Municipality shall not be liable for any loss or damage to property which is caused by or 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.

13. General

(1) No person shall in the water area, without the prior written consent of the Municipality—

(a) offer for reward or profit any show or entertainment or conduct any business or trade;

(b) keep or use any house boat;

(c) keep or use any vessel for the transport of passengers or goods for payment or reward;

(d) hold any fishing competition, or(e) hold any race, meeting or regatta.

(2) When the Municipality grants the consent in terms of subsection (1), the Municipality may set the conditions which it sees fit in the circumstances in any particular case, to ensure the safety of the public.

(3) No person is allowed to—

(a) fish from any bridge or dam wall in the water area;

(b) scuba dive, spearfish or use fish nets other than a landing net without a permit;

(c) catch fish without a licence;

(d) discharge a fire arm in the water area except an authorised officer in the performance of his duties or for the firing of blank cartridge during authorised organised events or to signal distress;

(e) overnight or camp in the water area on any island within the water area;

(f) deface or otherwise interfere with any notice board, notice, sign, buoy or marker erected, posted or placed in the water area by the Municipality

(g) disturb, injure, feed or attempt to disturb or feed any waterfowl or other wild animal in the water area, or

(h) pick, uproot, fell or damage or attempt to pick, uproot, fell or damage in any way any plant or tree growing in the dam area.

14. Offences and penalty

Any person who contravenes or fails to comply with any provision of this By-law commits an offence and shall be guilty of an offence and liable upon conviction to—

(a) a fine or imprisonment, or either such fine or such imprisonment or both such fine and such imprisonment;

(b) in the case of a continuing offence, an additional fine or an additional period of imprisonment or either such additional fine or such additional imprisonment or both such additional fine and imprisonment for each day on which such offence is continued, and

(c) a further amount equal to any costs and expenses found by the court to have been incurred by the Municipality as result of such contravention.

15. Short title and commencement

This By-law is called the Cederberg Municipality By-law relating to the Control of Boats and Boating on the Clanwilliam dam