

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 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—

- (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.

(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.