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BERGRIVIER MUNICIPALITY
BY-LAW RELATING TO THE BERG RIVER ESTUARY USAGE ZONES

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PREAMBLE

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

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

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

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

WHEREAS the Bergrivier Municipality have the resources and capacity to manage the estuary falling within its jurisdiction as contemplated in s156(4) read with s156(5) of the Constitution and the National Environmental Management: Integrated Coastal Management Act, 2008 (Act 24 of 2008).

WHEREAS there is a need to regulate the access and the use of the Berg River Estuary as a local amenity within the area of jurisdiction of the Bergrivier Municipality;

AND WHEREAS there is a need to ensure safe recreational use of the Berg River Estuary;

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

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CHAPTER 1 INTERPRETATION AND APPLICATION

1. Definitions

In this By-law, except as otherwise expressly provided, or unless the context indicates otherwise: -

“authorised officer” means a person in the employ of the Municipality, authorised by the Municipality to perform the functions of an authorised officer under this By-law.

“Bokkomlaan” means the channel of water alongside the gravel road (Bokkom Avenue) between the corner of Granaat Avenue/ Waterkant Street and Vye Street;

“estuary” means the Berg River Estuary and is a body of surface water -

- (a) that is part of a water course that is permanently or periodically open to the sea;
- (b) in which a rise and fall of the water level is as a result of the tides and is measurable at spring tides when the water course is open to the sea; or
- (c) in respect of which the salinity is measurably higher as a result of the influence of the sea;

“Commercial fishing trawler” means a commercial fishing vessel designed to operate fishing trawls.

“houseboat” includes any vessel, irrespective of whether or not it is propelled under its own power, capable of being occupied by more than one person, which is equipped with facilities for day or night accommodation and on which food preparation facilities and toilet or washing facilities have been provided, operating on sheltered waters, but excludes a sailing vessel, commercial fishing trawler and a cabin vessel equipped with ablution and/or cooking facilities.

“Municipality” means the Bergrivier Municipality established in terms of Section 12 of the Municipal Structures Act, 117 of 1998, as amended 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 of the Municipality;

“NSRI” means the National Sea Rescue Institute;

“nuisance” means any form of interference with or encroachment on a person's right to the use and enjoyment of their vessel, or fishing experience or any disturbance to the environment, also including noise pollution and unnecessary wave action;

“**operate**” or “**control**” or any like expression, in relation to a vessel means to launch, use, sail, navigate or moor a vessel, launched, used, sailed, navigated or moored on the estuary, or to have a vessel, or to permit a vessel to be on the estuary;

“**permission**” means the written permission of the Municipality;

“**permit**” means a permit issued by the Municipality for the vessels to operate in its area, in addition to SAMSA certificates;

“**permit holder**” means the person in whose name a vessel has been registered as required in terms of this By-law;

“**person**” means a human being (natural person) or a group of human beings, a corporation, a partnership, an estate, or other legal entity (artificial person or juristic person) recognized by law as having rights and duties as related to the activities described in this By-law;

“**Personal Water Craft**” (**jet ski**) is a vessel of less than 4m in length, which uses an internal combustion engine powering a water-jet pump as its primary source of propulsion and is designated to be operated by a person or persons sitting, standing or kneeling on the craft, rather than within the confines of a hull.

“**POMA**” means the Port Owen Marina Authority;

“**powerboat**” means a vessel propelled by means of a motor or other mechanical apparatus, either in - or outboard, irrespective of whether or not such motor or apparatus is the main source of power (excluding windsailing vessels);

“**SAMSA**” means the South African Maritime Safety Authority;

“**sheltered waters**” means any of the following:

- (a) A tidal lagoon or a tidal river as defined in section 1 of the Sea-Shore Act 1935 (Act No. 21 of 1935);
- (b) The waters within the breakwaters of any port in the Republic; or
- (c) Inland waters;

“**this By-law**” means the Bergrivier Municipality By-law relating to the Berg River Estuary Usage Zones;

“**the ICM Act**” means the Integrated Coastal Management Act, Act No. 24 of 2008;

“**vessel**” means any vessel, boat, ship or other craft which is used for, equipped to be used for or of a type that is normally used for fishing related activities or recreational use, and includes all gear, equipment, stores, cargo and fuel on board the vessel;

“**vicinity of the river**” means the properties adjacent to or in the immediate vicinity of the Berg River Estuary;

“**visible**” means that can be seen or viewable by someone with reasonable eyesight during a dark night when the atmosphere is clear;

“**water area**” means the area between the high water mark on both banks of the river and its mouth at any given time;

“**water-skiing**” means to ski or skate on 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.

2. Application of this By-Law

- (1) This By-law applies to the Berg River Estuary, situated within the Municipality's jurisdiction.
- (2) This By-law binds any natural or juristic person within the jurisdiction of the Bergrivier Municipality.
- (3) The provisions of this By-law do not derogate from the provisions of any other legislation.

CHAPTER 2

MANAGEMENT AND USE OF VESSELS ON THE BERG RIVER ESTUARY

3. Use of the Berg River Estuary

- (1) The Municipality may require permits to be issued for estuary users, in accordance with Section 5 and Schedule 1 of this By-law, and:
 - (a) the permit disc issued in respect thereof must be permanently displayed in a manner determined by the Municipality; and
 - (b) the required SAMSA documentation must be provided, if applicable to the vessel.
- (2) The Municipality may require permits to be issued for commercial fishing trawlers and fishing vessels registered within its jurisdiction that navigate through any water area of the estuary. No trawling in the water area covering the estuary is allowed.
- (3) Any vessel used by a law enforcement body or the NSRI for water sampling or other environmental sampling for the purpose of research, monitoring, or any other environmental purpose by any department or organization, is exempted from subsection 3(1) and (2) of this By-law.

4. Prohibited Behaviour

- (1) No person shall operate a vessel on the estuary: -
 - (a) without a permit and identification number issued in respect thereof permanently fixed in a manner determined by the Municipality, subject to section 3(1); or

- (b) in contravention of any usage zone or management plan as determined by the Municipality;
 - (c) in a manner which the authorised officer regards as dangerous to the public or to the occupants of such vessel or in a manner calculated to endanger or damage any property or facility, regard being had to all the circumstances of the case.
- (2) No person shall, without the prior written consent of the Municipality, hold or arrange any race, meeting, or regatta on the estuary.
 - (3) When the Municipality grants written consent in terms of subsection 4(2) above, it may set the conditions which it sees fit in the circumstances of a particular case, to ensure the safety of the public.
 - (4) All forms of powerboat racing on the water area of the estuary are prohibited.
 - (5) No person may use a vessel on the estuary as a place of permanent abode.
 - (6) No Kiteboarding/ Kite surfing is allowed on the estuary.

5. Usage Zones

- (1) The Municipality may designate any portion of the estuary into usage zones for boating and/or other purposes for environmental or safety and may prohibit the use or operation of any vessel in certain designated parts of the estuary.
- (2) The Municipality may restrict the size of any motorised vessel used on the estuary.
- (3) The Municipality may designate and manage public launch sites and public recreational sites along the estuary.
- (4) In order to exercise control over the use of the estuary, the lower estuary is demarcated as a Special Management Area in terms of the ICM Act. The proposed Special Management Area extends from the mouth up to the Kersefontein Bridge (45 km upstream) and includes the banks of the estuary where sensitive and conservation-worthy estuarine vegetation occurs. The Special Management Area is divided into four zones as follows:
 - (a) **Schedule 1, Zone 1:** This water area covers the Old Mouth Lagoon consisting of large beds of eelgrass (*Zostera*). All forms of exploitation and motorised vessels are prohibited in this area.
 - (b) **Schedule 1, Zone 2:** This water area covers the intertidal sensitive salt marsh adjacent to the Port Owen Marina, the salt works, and the Riviera Hotel. Motorised vessels used in this zone must comply with the requirements in this By-law, and adhere to the No wake zones (also the Conservation Area that includes Bokkomlaan) and all other relevant Provincial and National legislation.

- (c) **Schedule 1, Zone 3:** This water area covers the deepest part of the river between the road and the train bridge, including the whole of De Plaat and the adjacent salt marsh. Motorised vessels used in this zone must comply with the requirements in this By-law, and adhere to the No wake zones and all other relevant Provincial and National legislation. The De Plaat (Conservation Area) - is a prohibited entry area.
 - (d) **Schedule 1, Zone 4:** This water area covers the supratidal salt marsh, reed, and sedge marsh between the railway bridge and the Hopefield road bridge (Kersefontein bridge). Motorised vessels used in this zone must comply with the requirements in this By-law, and adhere to the No wake zones and all other relevant Provincial and National legislation.
 - (e) **Schedule 1, Zone 1 to 4** - Pedestrian traffic is restricted to demarcated paths and boardwalks only.
- (5) Access to tidal zones and areas, including salt marsh and mudflats is prohibited; with the exception of designated/ demarcated pathways/ access points or with valid permits.
 - (6) The Municipality may designate bank restoration zones where specific activities may be regulated to achieve the goals of estuarine management and maintenance plans, such as the slowing of erosion.
 - (7) No person may act in contravention of the provisions of any of the zones as indicated in the demarcated Special Management Area.
 - (8) Jet skis will only be permitted within the harbour jurisdiction area, from the Carinus bridge to the sea, and shall travel at minimum planing speed in a straight line only. No jet skis or water-propelled craft may operate above the Carinus bridge unless being used by a law enforcement body, the NSRI, or in an emergency.
 - (9) Water skiing is permitted between the Carinus bridge and the West/ Main entrance of the Port Owen Marina, and between the train bridge and the power lines only. Water skiing is prohibited everywhere else in the Berg River Estuary.

6. Rules for Boating

- (1) No person shall leave a vessel unattended in the water area, unless it has been properly anchored or moored, according to subsection (2) below or removed to dry land at a safe height above the water level.
- (2) No vessel may be moored or launched at any place other than that indicated or approved by the Municipality and an authorised officer. The Municipality may move any vessel or moor it at any other place without the consent of the owner if such action is deemed to be in the public interest. Such movement shall be at the sole risk of the owner of the vessel.

- (3) No person may use any slipway for any purpose other than launching or retrieving a vessel, unless with written consent from the Municipality.
- (4) No person may operate or control a vessel between one hour after sunset and one hour before sunrise up-river in the No wake zone and in the direction of Velddrif Yacht Club, where the river narrows directly ahead of the yacht club in Waterkant Street towards Zone 3 and 4, unless in an emergency and provided that they use navigation lights during low light, misty or dark conditions.

7. Prohibition or instruction by means of Signage

- (1) Any prohibition or instruction in terms of this By-law may be indicated by means of a sign placed at determined areas along the Berg River Estuary by the Municipality. This sign may also specify the times and hours during which such activity shall be prohibited.

CHAPTER 3

PERMITTING OF VESSELS

8. The Municipality may issue Permits for Vessels

- (1) An application for a permit submitted in terms of section 3(1) shall be accompanied by an application fee as determined by the Municipality.
- (2) Permits are not transferable.
- (3) All permits must be affixed to the vessel in such a manner that it is clearly visible for inspection.
- (4) The Municipality may refuse to issue a permit and will provide reasons upon written request.

9. Cancellation of Permits

- (1) The Municipality may cancel any permit if: -
 - (a) a vessel no longer qualifies for permitting in terms of this By-law or in terms of any conditions upon which the permit was issued;
 - (b) it is satisfied that the vessel in respect of which such permit was issued is no longer seaworthy, or is a source of pollution in the vicinity of the estuary, or is operated in a manner which constitutes a nuisance or danger to other vessels or to the public;
 - (c) the vessel is transferred, sold or disposed of or if the Municipality is satisfied that the permit holder has ceased to exercise control over the said vessel or to supervise it;

- (d) the permit holder has been convicted of an offence relating to the operation or control of a vessel in terms of this By-law; or
 - (e) any information provided in any application form is incorrect.
- (2) If the Municipality cancels any permit in terms of this By-law, an authorised officer must forthwith notify the permit holder in writing of such cancellation, at the address appearing on the application form.

CHAPTER 4

FIXING OF TARIFFS AND FEES

10. Fixing of Tariffs, Fees and Levies

- (1) The Municipality may determine tariffs, fees and levies for the permitting of vessels and the provision of permit discs in respect of the estuary.
- (2) In fixing tariffs, fees and levies in terms of subsection (1), the Municipality may distinguish between various classes of vessels making use of the estuary or any facilities, or in respect of their size, method of propulsion or use, or may make any other distinctions which in the opinion of the Municipality, are relevant in fixing such tariffs or fees.
- (3) Any application for the permitting of a vessel and the use of any facilities by a vessel or for a temporary permit shall be accompanied by the prescribed fees as determined by the Municipality.

CHAPTER 5

POWERS OF AUTHORISED OFFICERS

11. Powers of Authorised Officers

- (1) Any person who operates a vessel on the estuary in contravention of any provision of this By-law, may be ordered by an authorised officer to remove such vessel forthwith from the estuary or cease such contravention.
- (2) Any authorised officer shall have the right to board a vessel at any time and to inspect it for the purposes of ensuring compliance with the provisions of this By-law.
- (3) Any person who is an authorised officer may, in the estuary: -
 - (a) require the helmsman to produce the permit which has been issued in respect of the vessel concerned;
 - (b) 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;

- (c) call for any information regarding the vessel from the helmsman and may, if the helmsman is unable to furnish the information, order him or her to remove the vessel forthwith from the water area until such time as the request can be complied with;
 - (d) require the helmsman to furnish his or her name and address or the name and address of the owner of the vessel and any other information required for identification purposes;
 - (e) require any other person in the vessel other than the helmsman, to furnish his or her name and address as well as any other information required for the identification of the helmsman or the owner of the vessel;
 - (f) if it appears to him or her that the helmsman of any vessel is, for whatever reason, not capable of steering the vessel or of controlling it, forbid the helmsman temporarily from continuing to steer or remain in control of the vessel and may make any arrangements which in his or her opinion are necessary or advisable for the safety of the vessel and/or people aboard;
 - (g) if it appears to him/her that the load or number of persons transported in any vessel is more than that stated on the registration certificate 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/she considers necessary or advisable;
 - (h) if it appears to him/her that any vessel or part thereof, in or on the water is unseaworthy, order the helmsman to remove the vessel forthwith from the water area until such time as the vessel or part thereof has been made navigable in or on the water; and
 - (i) remove any fishing rod or line that has been left unattended from the vicinity of the river if, in his/her opinion, the rod or line constitutes a threat to the safety of others.
- (4) No person may: -
- (a) obstruct or interfere with any 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.

12. Removal of Vessels from the Estuary

- (1) In the event of the Municipality cancelling any permit, or if any permit expires or lapses in terms of this By-law, the owner of the vessel, or the permit holder shall immediately remove the vessel from the estuary.
- (2) If the owner of a vessel fails to remove such vessel from the estuary within thirty days after such permit has expired or lapsed or after notification to him/her of the said cancellation, the Municipality may initiate steps to have such vessel removed.
- (3) The Municipality may initiate steps to have any vessel in or on the estuary removed from the estuary, after written notice has been given to the owner or permit holder, for which the fees as prescribed by the Municipality are in arrears for more than thirty days.
- (4) The Municipality may recover the cost of removal from the owner.
- (5) If a vessel removed from the estuary in terms of the provisions of this By-law is not claimed within ninety days after such removal, the Municipality may seize such vessel by Court Order to recover fees in arrears.

CHAPTER 6

HOUSEBOATS

13. Houseboats

No person may keep or use any houseboat in the Berg River Estuary,

CHAPTER 7

GENERAL PROVISIONS

14. 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.

15. Exemption from Liability

- (1) The Municipality shall not be liable for any injury which is sustained by any person using the estuary or any other facilities or for damage to any property thereon, whatever the cause may be.
- (2) The Municipality as a whole, individual Councillors, any person in the service of the Municipality, any authorised officer or any person or organisation to whom the Municipality has delegated any powers in terms of this By-law shall not, except in the event of any wilful act or omission on the part of the Municipality or the said person or organisation, be liable for any loss or damage which results from any loss of 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 exercise or performance of a power or duty conferred or imposed in terms of this By-law.

- (3) The use of the estuary is at the owner's own risk and the Municipality will not be held liable for any injury or fatality or damage to any person or vessel or any other equipment used in the estuary.

16. Exemptions

- (1) Any 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.
- (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 must be stipulated therein;
 - (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 under subsection 16(2); however, 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.

17. Offences and Penalties

- (1) It is an offence to: -
 - (a) furnish false information to an authorised officer in respect of any issue pertaining to this By-law;
 - (b) to refuse to co-operate with a request of an authorised officer made in terms of this By-law; or
 - (c) to fail to comply with any notice issued in terms of this By-law.
- (2) A person who has committed an offence in terms of this By-law is liable to a fine or upon conviction to a fine or imprisonment, or either such fine or imprisonment or to both such fine and such imprisonment. In the case of a continuing offence, a person shall be liable to an additional fine or an additional period of imprisonment or to such additional imprisonment without the option of a fine or to both such additional fine and imprisonment for each day on which such offence is continued and, 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 or failure.

- (3) An authorised officer may issue fines, in line with approved contravention fines, if he or she has reasonable grounds to suspect that a person is guilty of an offence.
- (4) An authorised officer may serve a compliance notice on a person if he or she has reasonable grounds to suspect that the person is guilty of an offence.
- (5) A compliance notice contemplated in subsection 17(4) must instruct the person to cease the offence, without delay or within the period determined by the Municipality.
- (6) A compliance notice must-
 - (a) identify the person to whom it is addressed;
 - (b) inform the person of the particular offence committed or being committed by the continuation thereof;
 - (c) state the steps that the person must take and the period within which those steps must be taken;
 - (d) state anything which the person may not do and the period during which the person may not do it;
 - (e) make provision for the person to submit representations, with the contact person stated in the notice; and
 - (f) issue a warning to the effect that-
 - i. the person may be prosecuted for and convicted of an offence contemplated in subsection 17(1)(a), (b) and/or (c);
 - ii. on conviction of an offence, the person will be liable for the penalty in subsection 17(2);
 - iii. the person may be required by an order of court to cease the offence and/or rehabilitate any negative impact related to the offence.
- (7) Any person on whom a compliance notice is served must comply with that notice within the period stated in the notice unless the person has made written representation to the Municipality and the Municipality has agreed to suspend the operation of the compliance notice.
- (8) Any person who received a compliance notice may make written representation to the Municipality within 30 days of the date of notification.

- (9) After consideration of any representations made in terms of subsection 17(8) the Municipality may-
- (a) suspend, confirm, vary or withdraw the compliance notice or any part of the compliance notice; and
 - (b) must specify the period within which the person to whom the compliance notice is addressed must comply with any part of the compliance notice that is confirmed or varied.
- (10) If a person fails to comply with a compliance notice, the Municipality may-
- (a) lay a criminal charge against the person; or
 - (b) apply to the court for an order restraining that person from continuing the offence.
- (11) 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.

18. Repeal of By-Laws

- (1) The By-laws listed in Schedule 2 is repealed.
- (2) Any action taken in terms of the By-laws listed in Schedule 2 and has not been finalised before this By-law comes into operation, must be administered and finalised as if the By-laws listed in Schedule 2 had not been repealed.

19. Short Title and Commencement

- (1) This By-law is called the Bergrivier Municipality By-law Relating to the Berg River Estuary Usage Zones.
- (2) This By-law comes into effect on the date of publication thereof in the Provincial Gazette.

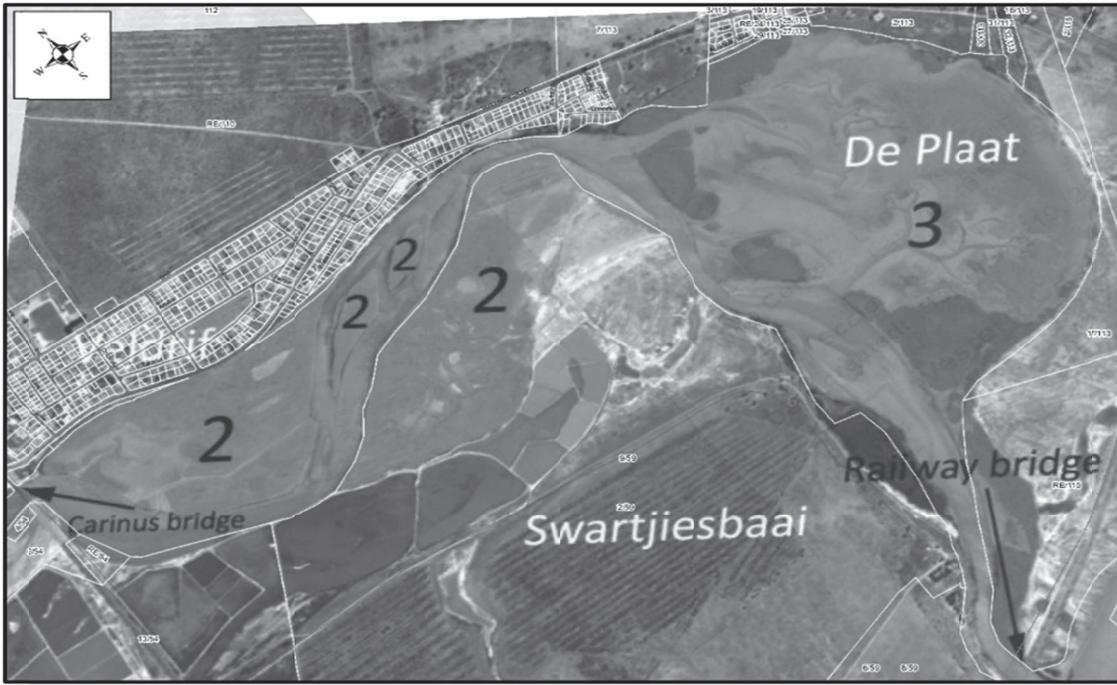
SCHEDULE 1:

West/ Main Entrance of the Port Owen Marina

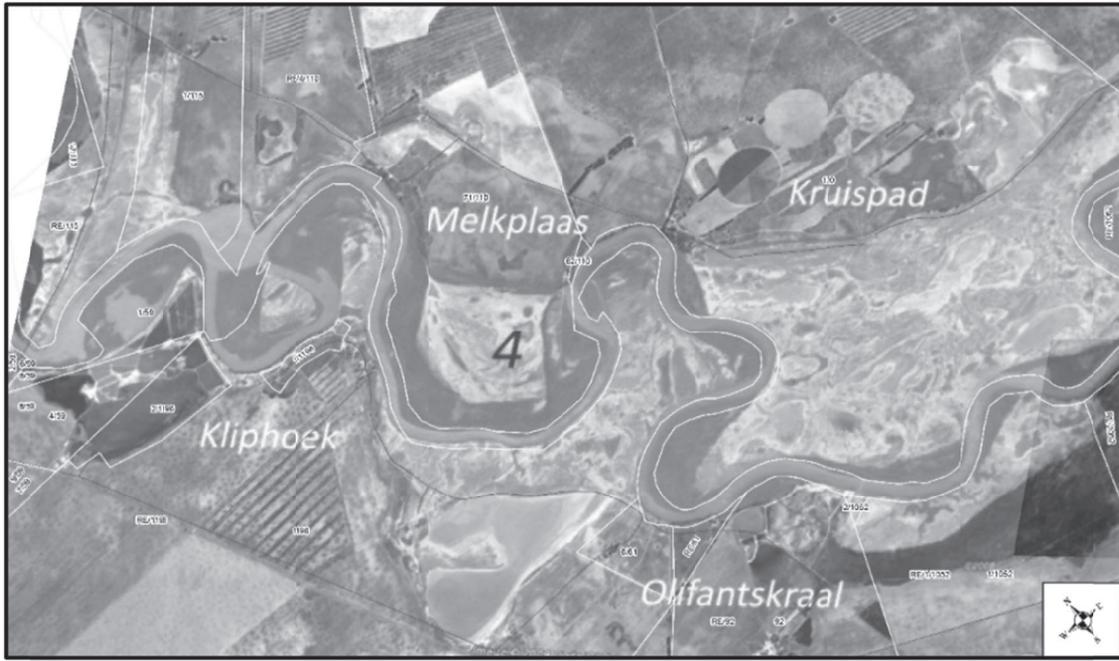


Zone 1 - Old Mouth Lagoon – Covering the water area and salt marshes stretching upstream towards to Zone 2

Zone 2 - Intertidal water area covering salt marsh adjacent to the Port Owen Marina, the salt works, and the Riviera Hotel. Also the Conservation Area that includes Bokkomlaan.



Zone 3 – Water area covering the river between the road and the train bridge, including the whole of De Plaaf and the adjacent salt marsh and the De Plaaf Conservation Area.



Zone 4 – Water area covering the supratidal salt marsh, reed and sedge marsh between the railway bridge and the Hopfield road bridge (Kersefontein bridge)



Zone 4

Power lines

SCHEDULE 2
BY-LAWS REPEALED

Bergrivier Municipality: By-law Relating to the Management and use of the Berg River Estuary, No. 8124, dated 5 July 2019

Bergrivier Municipality: By-law Relating to the Control of Vessels and Boating activities on the Berg River Estuary, No. 8338, dated 23 October 2020.
