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## BITOU MUNICIPALITY RIVER BY-LAW

In terms of Section 156 of the Constitution of the Republic of South Africa, 1996 the Bitou Municipality enact this River By-Law to provide for the control and use of rivers in the area of jurisdiction of the Bitou Municipality in the interest of the safety and convenience of persons using such rivers.

### 1. INTERPRETATION

In this by-law, unless the context indicates otherwise –

“**anchor**” means to connect a vessel to the bed of a river by means of a device to prevent such vessel from drifting due to wind or current;

“**bow**” means the front part of a vessel;

“**by-law**” means this by-law and any amendments thereto;

“**determined**” means as determined by the Municipal Manager in accordance with Section 3;

“**mooring facility**” means a device placed on or in the bed of a river or on or in the river bank to attach a vessel to, and “**moor**” means to attach a vessel to a mooring facility;

“**Municipality**” means the Municipality of Bitou 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 of the Municipality;

“**National Small Vessel Safety Regulations, 2007**” means the Merchant Shipping (National Small Vessel Safety) Regulations, 2007, issued in terms of the Merchant Shipping Act. 1951 (Act No. 57 of 1951);

“**passageway**” means a route from one place in a river to another indicated by markers placed in the river;

“**port**” means the left side of a vessel as seen from the stern;

“**river**” means the Bitou and Keurbooms Rivers and any other river within the area of the jurisdiction of the Municipality to which the Municipal Manager determines this by-law to be applicable;

“**river bank**” means the area between the water of the river and the 1:50 year flood line of the river;

“**river user**” means any person using a river for any legitimate purpose or reason;

“**starboard**” means the right side of a vessel as seen from the stern;

“**stern**” means the back of a vessel;

“**vessel**” 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 vessel, sailing board, rowing boat, canoe, kite board, paddle ski, paddle board, power-driven

vessel, jet-driven vessel, jet-ski, personal watercraft, ferry, pleasure vessel, water cycle and raft;

“**water-skiing**” includes towing a person or persons on any device behind a vessel, and the noun has a correspondent meaning.

## **2. REGULATIONS OF MERCHANT SHIPPING ACT, 1951 (ACT NO. 57 OF 1951) APPLICABLE**

This by-law must be read with, and the application thereof is subject, to the Merchant Shipping (National Small Vessel Safety) Regulations, 2007, issued in terms of the Merchant Shipping Act, 1951 (Act No. 57 of 1951) and nothing in this by-law must be taken as purporting to contradict or derogate from the control of vessels in accordance with the aforesaid Act and Regulations.

## **3. MUNICIPAL MANAGER**

(1) The Municipal Manager shall exercise control over and manage the use of rivers in the area of jurisdiction of the Bitou Municipality in accordance with this by-law.

(2) Without derogating from the generality of subsection (1), the Municipal Manager shall:

- (a) appoint Municipal employees and other competent persons as River Wardens to exercise the powers and perform the duties and functions as designated to them in this by-law;
- (b) enter into agreements with government departments, agencies and non-governmental organisations in respect of matters dealt with and incidental to this by-law;
- (c) enter into agreements with riverine property owners in respect of matters dealt with and incidental to the by-law;
- (d) determine rivers or different areas of rivers to be used or prohibit the utilisation of such areas for specific purposes;
- (e) determine categories of licences for vessels, requirements for applications for licences, licence application fees payable and the maximum number of licences to be issued per category for a river;
- (f) authorise or refuse to authorise mooring facilities;
- (g) authorise or refuse to authorise public events in, on or in the area of a river;
- (h) determine monetary fines to be issued and administrative procedures relating to powers, functions and duties to be exercised and performed in terms of this by-law;
- (i) subject to applicable legislation and policy annually determine a budget for the powers, functions and duties to be exercised and performed in terms of this by-law, to be termed the Bitou Municipality River By-Law Budget; and
- (j) perform any legal act to give effect to or relating to this by-law.

#### 4. RIVER WARDEN'S

(1) The following persons appointed by the Municipal Manager as a River Warden may exercise such powers and shall perform such duties and functions in terms of this by-law as follows:

- (a) A River Warden who is a Peace Officer may exercise all such powers functions and duties as contained in or relates to subsection (3) (a), (b), (c), (d), (e), (f) and (g).
- (b) a River Warden who is a Safety Officer appointed as such in terms of the National Small Vessel Safety Regulations, 2007 but not a Peace Officer, all powers, functions and duties in terms of those Regulations and may exercise all such powers functions and duties as contained in or relates to subsection (3) (a), (b), (c), (d) and (e);
- (c) a River Warden who holds a valid Certificate of Competence issued in terms of National Small Vessel Safety Regulations, 2007 but is not a Peace Officer may exercise all such powers functions and duties as contained in or relates to subsection (3) (a) and (e);
- (d) a River Warden, not being a Peace Officer, Safety Officer or holding a valid Certificate of Competence, may exercise all such powers functions and duties as contained in or relates to subsection (3) (a).

(2) A member of the South African Police Service appointed as such in terms of the South African Police Service Act, 1995 (Act No. 68 of 1995) will by virtue of his or her appointment as such have all of the powers, functions and duties of a River Warden in terms of this by-law and may exercise all such powers functions and duties as contained in or relates to subsection (3) (a), (b), (c), (d), (e), (f) and (g).

(3) A River Warden may at any time -

- (a) order a vessel to stop to inspect its licence or to exercise a power function or duty in terms of this by-law;
- (b) order a vessel to be forthwith removed from a river where the licence for such vessel is not valid, such vessel is not licensed as required by this by-law or for any other reason as provided for in this by-law;
- (c) cancel the licence of the vessel in the circumstances as provided for in this by-law;
- (d) issue a notification to the owner of a vessel in terms of subsection 8(4);
- (e) order or effect the moving of a vessel in the circumstances as provided for in subsections 8 (7) and 8 (9);
- (f) seize a vessel without a warrant in the circumstances as provided for in subsection 12 (1) or cause a warrant for the seizure of the vessel to be issued in the circumstances as provided for in subsection 12 (2);
- (g) issue a fine in respect of an offence committed in terms of this by-law.

(4) Any person who fails or refuses to forthwith when ordered to do so by a River Warden –

- (a) bring a vessel to standstill;
- (b) move a vessel or remove it from a river;

- (c) cooperate with or give assistance to such River Warden to execute a power, function of duty in terms of subsection (3),

is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding six months.

## **5. PUBLIC PARTICIPATION AND PUBLICATION**

(1) Whenever the Municipal Manager intends to make a determination in terms of section 3 (2) (d), (e), (h) and (i), he or she shall provide residents in the Bitou area with a reasonable opportunity to comment on such determination by giving notice in a local publication of his or her intention to do so.

(2) A determination in terms of section 5 (1), shall be published in a local publication.

## **6. VESSELS TO BE LICENSED**

(1) No person may launch a vessel into or use a vessel on a river unless such vessel has been issued with the determined category of licence for such vessel and such licence is conspicuously displayed on the outside starboard side of the vessel above the waterline.

(2) An application for a licence for a vessel must be made by the completion of the determined form and payment of the determined licence application fee.

(3) Whenever an application for a licence is made the following information may be required and must be supplied:

- (a) where applicable, the certificate of fitness for the vessel issued in terms of the National Small Vessel Safety Regulations 2007;
- (b) such information relating to the vessel as may be determined including, where required, producing the vessel for inspection in the manner and at the place as determined;
- (c) particulars of the river on which the vessel will be used and where it will be moored on the river;
- (d) full particulars of the owner of the vessel;
- (e) such further particulars as may be determined by the Municipal Manager.

(4) An application for a licence for a vessel in terms of this section may be refused on the following grounds:

- (a) failure to comply with subsection (3) to the satisfaction of the Municipal Manager;
- (b) where applicable, a valid certificate of fitness has not been issued for the vessel;
- (c) where in the opinion of the Municipal Manager, the vessel is likely to be or cause a nuisance due to the size or other attribute thereof or lack of appropriate mooring facilities or amenities for the use of the vessel on the river;

- (d) where in the opinion of the Municipal Manager it will not be in the best interest of river users that a licence be issued for either a particular vessel or vessel of a specific category due to the number of licences issued for a specific period for such category of vessel;
  - (e) any reason relating to an agreement, determination or authorisation by the Municipal Manager in terms of section 3.
- (5) A licence issued for a vessel may not be used for another vessel.
- (6) Where the River Warden is of opinion that the licence for the vessel is not valid or that the vessel is not licensed as required by this by-law, he or she may order the vessel to be forthwith removed from the river, failing which the vessel may be seized and removed from the river in accordance with section 12.
- (7) Where the River Warden acts in accordance with subsection (6) in respect of a vessel displaying a licence that is not valid, such licence must be cancelled by such River Warden in the manner prescribed in subsection 7 (3).

## **7. EXPIRATION AND WITHDRAWAL OF LICENCE**

- (1) A licence is only valid for the period that it is has been issued, whereafter it expires. Whenever a vessel's licence has expired, a new application in terms of section 6 must be made for the issuing of a licence for the vessel. A new application for a licence for a vessel may be refused on any of the grounds in subsection 6 (4).
- (2) Whenever a River Warden is of the opinion that:
- (a) false information was supplied in the application for the licence for the vessel ;
  - (b) the vessel is used on a river in any manner that contravenes this by-law; or
  - (c) the vessel is anchored or moored in a river in any manner that contravenes this by-law,
- such Warden may cancel the licence of the vessel in the manner in subsection 7 (3).
- (3) A River Warden who cancels a licence in terms of subsection 7 (2) must do so by either removing the licence from the vessel or, where removal in his or her opinion may damage the vessel, drawing a diagonal cross over the face of the licence and inscribing their name, signature and the date of cancellation on the face of the licence with a permanent marker pen. Whenever the licence of a vessel has been cancelled in terms of this subsection, such vessel must be forthwith removed from the river, failing which the vessel may be seized and removed from the river in accordance with section 12.

## **8. ABANDONING, MOORING AND ANCHORING OF VESSELS**

- (1) No person may abandon or discard a vessel or part of a vessel in a river or on the river bank. A River Warden that has reasonable grounds to suspect that a vessel or part of a vessel has been abandoned or discarded in a river or on the river bank

may seize such vessel or part and removed it from the river or river bank in accordance with section 12.

(2) Vessels may only be moored in the river at authorised mooring facilities.

(3) No person may leave a vessel moored in the river for a prolonged period unless such vessel is regularly used and maintained.

(4) A River Warden who is of the opinion that a vessel moored in the river for a prolonged period is not regularly used or properly maintained may notify the owner of the grounds for his or her opinion and unless such owner either:

- (a) presents proof to the River Warden of regular use of the vessel to the satisfaction of the River Warden;
- (b) effects such maintenance as reasonably required by the River Warden within the period required by him or her; or
- (c) removes such vessel from the river,

the River Warden may seize such vessel and removed it from the river in accordance with section 12.

(5) A vessel anchored in the river must at all times be under the direct control of a person capable of safely operating the vessel.

(6) No vessel may be anchored or moored in or near a passageway, a place or an area where it has been determined that vessels may not be anchored or moored, or where it causes a nuisance to river users.

(7) Whenever a River Warden is of the opinion that a vessel is anchored or moored:

- (a) in or near a passageway;
- (b) in a place or an area where it has been determined that vessels may not be anchored or moored; or
- (c) where it causes a nuisance or poses a danger to river users,

he or she may order the moving of such vessel to a place where it will not, in their opinion, infringe this section. If the owner or person in control of a vessel refuses to move a vessel when so ordered by a River Warden or cannot be located without delay, the River Warden may take such steps as may reasonably be required to move such vessel to a safe place or seize such vessel and remove it from the river in accordance with section 12.

(8) No vessel may be anchored in a river in the same place or area for a period longer than 12 (twelve) hours.

(9) Whenever a River Warden is of the opinion that a vessel has been anchored in a river in the same place or area for a period longer than 12 (twelve) hours, he or she may order the moving of such vessel to an authorised mooring facility. If the owner of a vessel ordered to be moved in terms of this subsection does not have access to an authorised mooring facility in the river then he or she must remove the vessel from the river. If the person operating or in control of a vessel refuses to move a vessel when so ordered or a River Warden or there is no person operating or in control of the vessel a River Warden may seize such vessel and remove it from the river in accordance with section 12.

(10) For the purpose of determining the period that a vessel has been moored or anchored it will be presumed that if the vessel has been noticed in a place or an area for a certain period that the vessel was continuously moored or anchored in that place or area.

## **9. GENERAL RULES OF NAVIGATION**

(1) A person operating or in control of a vessel shall at all times maintain a proper look-out by sight and hearing so as to make a full appraisal of any situation that may lead to the risk of collision.

(2) A person operating or in control of a vessel shall at all times ensure that the vessel proceed at a safe speed so that proper and effective action can be taken to avoid any collision and for the vessel to be stopped within a distance appropriate to the prevailing circumstances and conditions. In determining a safe speed, the following factors shall be amongst those taken into account:

- (a) the traffic density including concentrations of stationery vessels, people swimming and other river users;
- (b) the manoeuvrability of the vessel taking into account its stopping distance and turning ability in the prevailing conditions;
- (c) the state of visibility and at night, the presence of background light such as onshore lights or from back-scatter of its own lights;
- (d) the state of wind and tidal flow and the proximity of navigational hazards;
- (e) the draught of the vessel in relation to the available depth of the water; and
- (f) the wake of the vessel and the danger created thereby for another vessel or river user.

(3) No power-driven vessel may pass closer than 20 metres to any person in the water, or closer than 10 metres from any other vessel, navigational aid in the river or the river bank. Where circumstances are such that a power-driven vessel cannot keep the distance as determined by this subsection, then the person operating or in control of the vessel must reduce the speed of the vessel in good time to avoid any collision. Where reducing the speed of a power-driven vessel to avoid a collision will apparently not have the desired effect, the operator or person in control of the vessel must bring the vessel to a stop and where necessary reverse the vessel away from the person, other vessel, navigational aid or river bank.

(4) The following navigation rules apply to an area in a river where a passageway is determined:

- (a) a vessel proceeding from one part of the river to another part of the river shall do so by travelling in a passageway and shall take all reasonable steps to avoid disturbing a river user fishing, swimming or otherwise utilising the river for activities outside of a passageway;



- (b) a vessel proceeding along a passageway shall keep as near to the outer limit of the passageway which lies on her starboard side as is safe and practicable;
- (c) no vessel shall cross a passageway if such crossing will impede the passage of a vessel proceeding along such a passageway;
- (d) a vessel crossing a passageway shall do so as near as practicable at right angles to the passageway;
- (e) a vessel joining or leaving a passageway will do so at as small an angle to the general direction of traffic flow in the passageway as practicable.

#### **10. VESSELS APPROACHING AND OVERTAKING ONE ANOTHER**

(1) When two sailing vessels are approaching one another, so as to avoid a risk of collision, one of them shall keep out of the way of the other as follows:

- (a) 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;
- (b) when both have the wind on the same side, the vessel which is to windward shall keep out of the way of the vessel which is to leeward;
- (c) if a vessel on the port side sees a vessel to windward and cannot determine with certainty whether the other vessel has the wind on the port or the starboard side, she shall keep out of the way of the other;
- (d) if applicable, for the purposes of this sub-section, the windward side of a sailing vessel shall be deemed to be the side opposite to that on which the main sail is carried or, in the case of a square-rigged vessel, the side opposite to that on which the largest fore- and aft-sail is carried.

(2) When two power-driven vessels are meeting in head-on or nearly head-on courses, so as to involve risk of collision, each shall alter her course to starboard so that each shall pass on the port side of the other. When a person operating or in control of a vessel is in any doubt as to whether a head-on situation exists, he or she shall assume that it does exist and act accordingly.

(3) When two power-driven vessels are crossing so as to involve risk of collision, the vessel which has the other on her own starboard side shall keep out of the way and shall, if the circumstances permit, avoid crossing ahead of the other vessel.

(4) The following rules shall be applicable to vessels overtaking one another;

- (a) no vessel shall overtake another vessel unless it is safe to do so. In the case of a power-driven vessel overtaking a vessel it shall be deemed that it is not safe to pass if the overtaken vessel cannot be passed at a distance of greater than 10 meters and the wake of the overtaking vessel does not present a danger to overturn the overtaken vessel;
- (b) any vessel overtaking another vessel shall keep out of the way of the vessel being overtaken and shall where it is practicable in the

circumstances overtake by passing on the port side of the overtaken vessel;

- (c) the overtaken vessel shall maintain its speed and direction until the overtaking vessel is finally past and clear of the overtaken vessel;
- (d) notwithstanding subsection (c) a vessel overtaking another vessel shall retain the duty of keeping clear of the overtaken vessel until the overtaking vessel is finally past and clear of the overtaken vessel;
- (e) for the purposes of this sub-section, it shall be deemed that a vessel is overtaking another when a vessel comes up to another vessel from a direction more than 22,5 degrees from either side of the stern of the vessel being approached. When a person operating or in control of a vessel is in any doubt as to whether he or she is overtaking another vessel, they shall assume that this is the case and act accordingly.

(5) Every vessel which in terms of this section is directed to keep out of the way of another vessel shall, so far as possible, take early and substantial action to keep well clear. If circumstances so require a vessel that is directed to keep out of the way must stop and reverse its course to avoid any collision.

(6) A vessel that in terms of this section does not have the duty to keep out of the way of another vessel shall keep her course and speed constant while the vessel directed to keep out of the way takes the prescribed action. In the event that it becomes apparent to the vessel that does not have the duty to keep out of the way that the vessel that has the duty to keep out of the way is not taking the prescribed action, then and in such event the first-mentioned vessel shall take such action as will best aid to avoid collision. It shall not be a defence for a vessel that is directed to keep out of the way of the other that the other vessel failed to take steps to avoid a collision.

(7) Except where this by-law otherwise provides:

- (a) A power-driven vessel underway shall keep out of the way of:
  - (i) a person in the water or stationery vessel;
  - (ii) a vessel at anchor or restricted in her ability to manoeuvre;
  - (iii) a vessel of which the users thereof are engaged in fishing;
  - (iv) a sailing vessel;
  - (v) any man powered vessel.
- (b) A sailing vessel underway shall keep out of the way of:
  - (i) a person in the water or stationery vessel;
  - (ii) a vessel at anchor or restricted in her ability to manoeuvre;
  - (iii) a vessel of which the users thereof are engaged in fishing.

## 11. LIGHTS

(1) Any vessel used on a river from sunset to sunrise must, unless other legislation in respect of a particular vessel has more stringent requirements, display and use the following lights in the following manner when underway:

- (a) In the case of a power-driven vessel or sailing vessel, such vessels shall display a green light on the starboard side and a red light on the port side so as to be visible at a minimum range of 100 metres.
  - (b) In addition to the lights in subsection 11(a) a power-driven or sailing vessel shall have and display either an all-round white light or a stern light of such size and intensity so as to be visible at 200 metres.
  - (c) A man powered vessel shall have ready at hand an electric torch or lit lantern of such size and intensity so as to be visible at 200 metres showing a white light which shall be exhibited in sufficient time to prevent collision.
- (2) A vessel at anchor in the area of a passageway shall from sunset to sunrise display an all-round white light so as to be visible at 200 metres.
- (3) A vessel moored at an approved mooring facility or anchored in close proximity to a riverbank and not in the area of a passageway shall not be required to exhibit any lights.

## **12. SEIZURE OF VESSELS AND FORFEITURE TO MUNICIPALITY**

- (1) A River Warden may seize a vessel in terms of this by-law without a warrant in the following circumstances:
- (a) where a vessel is abandoned or discarded as intended in subsection 8 (1) of this by-law;
  - (b) where a vessel is anchored or moored in a position or place where it in the opinion of the River Warden poses a danger to river users and the owner or person in control of the vessel cannot be located without delay or refuses to move the vessel;
  - (c) whenever a River Warden arrests a person who commits an offence in terms of this by-law in the presence of such Warden and a vessel was instrumental in the commission of such offence.
- (2) In circumstances other than those provided for in subsection (1), a River Warden who is of opinion that it is reasonably necessary for the effective enforcement of this by-law by the Municipality may cause a vessel to be seized in terms of a warrant issued by a magistrate or justice in terms of section 21 of the Criminal Procedure Act 1977 (Act No. 51 of 1977). A magistrate or justice may issue a warrant to seize a vessel in terms of this by-law if he or she is of opinion that such seizure is in the interest of effective enforcement of this by-law by the Municipality.
- (3) An application for a warrant in subsection (2) shall be made in the name of the Municipality in the form as determined and shall be accompanied by a statement under oath by the River Warden whom has ordered the removal of the vessel from the river setting forth the following information:
- (a) the reasons why he or she is of the opinion that it is reasonably necessary for the effective enforcement of this by-law that the vessel be seized, including the sections of this by-law and any other law that it is alleged is or was transgressed with the vessel;

- (b) details of efforts that he or she has made to obtain the cooperation of the operator, person in control of or owner of the vessel to remove the vessel from the river;
  - (c) details of the place where the vessel will be removed to after seizure, to be dealt with in accordance with this section.
- (4) A magistrate or justice issuing a warrant in terms this section may impose such conditions to the execution of the warrant as he or she deems appropriate in the circumstances.
- (5) A vessel seized in terms of this section must be removed and stored in a manner as may be determined. For the purpose of seizure of a vessel in terms of this section, the Municipality and anybody executing a warrant on its behalf shall be entitled to obtain access to any place where it is reasonably believed the vessel is kept, anchored or moored.
- (6) Whenever a fine has been imposed by a River Warden or a court of law in respect of the use of a vessel seized in terms of this by-law, such vessel shall not be released unless such fine has been paid.
- (7) In addition to the payment of any fine in terms of subsection (6) a vessel seized in terms of this by-law shall not be released unless the cost and expense of the Municipality in obtaining a warrant to seize, to remove and to store the seized vessel has been paid.
- (8) Where a vessel seized in terms of this by-law is not required as evidence in criminal prosecution and the amounts, if any in subsections (6) and (7) have been paid, it may be released to a person claiming to be the owner thereof or to be acting on behalf of such owner.
- (9) Whenever a vessel seized in terms of this by-law is not dealt with in terms of subsection (8), it shall be dealt with as follows:
- (a) where the particulars of the owner of the vessel is known to the Municipality, he or she shall be notified by the Municipality by registered post to collect the vessel before such date from such place, between such hours, after payment of such fine and cost as specified in such registered letter and that should he or she fail to collect such vessel as set out in such letter then such vessel shall be forfeited to the Municipality. The date by which a vessel must be collected in terms of this subsection must be a date at least 30 (thirty) days from the date of the posting of the letter;
  - (b) Where the particulars of the owner of the vessel is not known to the Municipality and no person claims ownership of a vessel seized by the Municipality in terms of this by-law within 60 (sixty) days of the removal of the seized vessel from the place where it was seized to the place determined in terms of this by-law such vessel shall be forfeited to the Municipality.
- (10) A vessel forfeited to the Municipality in terms of this by-law must be dealt with in the manner as determined, provided that no River Warden or Municipal official or

councillor may in any manner either directly or indirectly obtain any benefit from the disposal of a vessel forfeited to the Municipality.

### **13. REQUIREMENTS FOR AND AUTHORISATION OF MOORING FACILITIES**

(1) The owner of a riparian property may apply to the Municipal Manager for the approval of mooring facilities adjacent to such riparian property by submission of the following documents and payment of the application fee as determined:

- (a) a site plan indicating the locality and position of the mooring facilities, including the distance from the mooring facilities to the nearest demarcated passageway, if applicable;
- (b) a plan of the mooring facilities including specifications for attachment of the mooring facilities to the river bed and river bank and details of the maximum length and maximum width of vessels to be moored at the mooring facilities;
- (c) the written consent of the downstream riparian owner for the construction of the mooring facilities or a certificate by a competent person certifying that the construction of the mooring facilities will have no detrimental effect on the property of the downstream riparian owner.
- (d) such details as determined of facilities on the property where solid and any other waste and sewage and grey water from a vessel to be moored at the mooring facilities, will be disposed of; and
- (e) an undertaking to the satisfaction of the Municipal Manager that such mooring facilities will at all times be properly maintained and managed to ensure compliance with this by-law and in particular subsection (4).

(2) The Municipal Manager may refuse an application for the authorisation of mooring facilities on the following grounds:

- (a) where, in the opinion of the Municipal Manager, the mooring facilities are in too close proximity to a passageway or will otherwise likely be or cause a nuisance to river users;
- (b) where the facilities on the property for the disposal of waste and sewage are not as determined or inadequate for usage by vessels to be moored at the mooring facilities;
- (c) where due to the location or position of the proposed mooring facilities in the river the proposed mooring facilities will in the opinion of the Municipal Manager not be safe for the mooring of a vessel due to the movement of persons or vessels on the river or tidal action in or flooding of the river; or
- (d) where the proposed mooring facilities or the use thereof will, in the opinion of the Municipal Manager, probably or in fact disfigure the area or not be in keeping with the ambience that the Municipality wishes to keep or create on a river or a particular area of a river.

(3) The approval by the Municipal Manager of a mooring facility in terms of this by-law does not absolve the owner of the riparian property from obtaining such other approval for the construction of the mooring facility as may be required by law.

(4) The owner of the riparian property to whom a mooring facility has been approved shall take such steps as may be necessary or required to maintain such facility and ensure that only vessels complying with this by-law and any other applicable law are moored at such mooring facility.

#### **14. RESTRICTIONS ON THE USE OF CERTAIN VESSELS AND WATER-SKIING ON A RIVER**

(1) The following vessels may only be used on a river within an area designated or demarcated specifically for the use of such vessels;

- (a) personal water-craft or a jet-ski under 3 metres in length;
- (b) a dynamically supported craft;
- (c) a kiteboard and kite surfboard;
- (d) a stand-up paddle board.

(2) Where a designated or demarcated area exists for a vessel in subsection (1) and a passageway leads to and from such area the use of such passageway by such vessel strictly for the purpose of traveling to and from the designated or demarcated area is not prohibited by such subsection.

(3) Water-skiing is strictly only allowed in such area of a river designated for such purpose.

#### **15. PROHIBITED BEHAVIOUR IN, ON OR IN THE AREA OF A RIVER**

(1) No person may:

- (a) fish from any bridge or within 20 metres of a launching facility;
- (b) swim in a river within 20 metres of a launching facility;
- (c) leave a fishing rod or line unattended in, on or in the area of the river.

(2) No person may in, on or in the area of a river:

- (a) use indecent, offensive or improper language;
- (b) behave in an offensive, improper or disorderly manner;
- (c) wilfully or negligently do anything which will cause inconvenience to other persons using the river area, or disturb the peace.

(3) No person may operate a vessel on the river:

- (a) in a manner that a River Warden regards as reckless or negligent;
- (b) while under the influence of intoxicating liquor or a narcotic drug or for any physical or mental reason that renders such person, in the opinion of the River Warden, unfit to do so;
- (c) in a place or area or in a manner that a River Warden regards as dangerous to the safety of any person or to any vessel whether on its way, at anchor or moored, or any structure, infrastructure, facilities or amenities in or on a river;

- (d) in a manner that in the opinion of the River Warden constitutes a nuisance or disregard for the use of the river by other river uses;
- (e) that in the opinion of the River Warden is not fit and proper for safe usage on the river, properly maintained, or fit taking into account the safety of the users of the vessel, other vessels using the river or the danger of collision.

**16. APPROVAL BY MUNICIPAL MANAGER REQUIRED FOR CERTAIN ACTIVITIES AND EVENTS IN, ON, OR IN THE AREA OF A RIVER.**

- (1) No person may, without the written approval of the Municipal Manager:
  - (a) offer for reward or profit any show or entertainment, conduct any business or trade, or charter any vessel for reward;
  - (b) keep or use any boat or vessel for the transport of passengers or goods for payment or reward;
  - (c) hold or arrange any fishing competition;
  - (d) hold or arrange any race or meeting, regatta or public event, in, on or in the area of the river without the written approval of the Municipal Manager.
- (2) When the Municipal Manager grants his or her approval in terms of section 17 (1), he or she may set the conditions which they see fit in the circumstances in any particular case including such provisions that may be deemed necessary to ensure the safety of the public.

**17. EXEMPTION FROM LIABILITY**

- (1) The Municipality shall not be liable for any injury which is sustained by any person using a river, 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 Council, any River Warden appointed in terms of the by-law or any person or organization to whom the Municipality has delegated any powers in terms of this by-law shall not, except in the event of any willful act or omission on the part of the Municipality or the said person or organization, be liable for any loss or damage which results from any loss of or damage to property which is caused by negligence or arises out of or in connection with anything which is done or performed in good faith in exercise or performance of a power, duty or function conferred or imposed in terms of this by-law.

**18. 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 (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.

## **19. APPEAL**

A person whose rights are affected by a 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**

A person who contravenes or fail to comply with the provisions of this by-law shall be guilty of an offence and liable on conviction to –

- (a) a fine or imprisonment, or either such fine or imprisonment or to both such fine and such imprisonment; and
- (b) in the case of a continuing offence, to an additional fine or an additional period of 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 or failure.

## **21. REVOCATION OF BY-LAWS**

The provisions of any by-laws previously promulgated by the Municipality or by any of the disestablished municipalities now incorporated in the Municipality, are hereby repealed as far as they relate to matters provided for in this by-law, and insofar as it has been made applicable to the Municipality by the authorisation for the execution of powers and functions in terms of section 84(3) of the Local Government: Municipal Structures Act, Act 117 of 1998.

## **22. TRANSITIONAL ARRANGEMENTS**

- (1) Notwithstanding the date of commencement of this by-law, any provision thereof that requires the authorisation of the Municipal Manager will not come into



operation on such date but on a date 6 (six) months thereafter, or such longer period as the Municipal Manager may determine by publication in the Provincial Gazette.

(2) The Municipal Manager may in accordance with subsection (1) determine different dates for the coming into operation of different sections of this by-law requiring his or her authorisation.

### **23. SHORT TITLE AND COMMENCEMENT**

This by-law may be cited as the River by-law, and subject to the transitional arrangements in section 22 commences on the date of publication thereof in the Provincial Gazette.





