

EDEN DISTRICT MUNICIPALITY
Coastal Protection Zone Management By-Law
Draft for Comment
February 2013

To provide for the protection, regulation and management of the Eden District Coastal Protection Zone and to provide for matters incidental thereto

PREAMBLE

WHEREAS section 156(2) of the Constitution provides that a municipality may make and administer by-laws for the effective administration of the matters which it has the right to administer, and to exercise any power concerning a matter reasonably necessary for, or incidental to, the effective performance of its functions WHEREAS section 25 of the Constitution provides that no-one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property

WHEREAS Section 56(3)(d) of the National Environmental Management:

Integrated Coastal Management Act (Act No. 24 of 2008) (hereafter the ICM Act) requires a municipality to establish and implement a Coastal Management Programme within its area of jurisdiction

WHEREAS section 50 of the ICM Act entitles a municipality to administer its Coastal Management Programme and to make by-laws to provide for the implementation, administration and enforcement of the Coastal Management Programme

AND NOW THEREFORE, BE ENACTED, by the Council of Eden District Municipality as

follows -

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Chapter 1: Definitions

“**biodiversity**” or “**biological diversity**” has the same meaning ascribed to it in the Biodiversity Act;

“**Biodiversity Act**” means the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004);

“**coastal management**” includes —

- (a) the regulation, management, protection, conservation and rehabilitation of the coastal environment;
- (b) the regulation and management of the use and development of the coastal zone and coastal resources;
- (c) monitoring and enforcing compliance with laws and policies that regulate human activities within the coastal zone; and
- (d) planning in connection with the activities referred to in paragraphs (a), (b) and (c);

“**Commercial activities**” includes all forms of informal trading, organised events, filming, organised activities and public gatherings, sporting events, functions, advertising, commercial activities, competitions or other for-profit activities

“**Council**” means the municipal council of the Eden District Municipality or any political structure, political office bearer, committee, councillor, or official of the Council, delegated to exercise powers or perform duties in terms of this by-law

“**development**”, in relation to a place, means any process initiated by a person to change the use, physical nature or appearance of that place, and includes—

- (a) the construction, erection, alteration, demolition or removal of a structure or building;
- (b) a process to rezone, subdivide or consolidate land;
- (c) changes to the existing or natural topography of the coastal zone; and
- (d) the destruction or removal of indigenous or protected vegetation;

“**Development Rights**” Existing land use rights as inferred by the City’s Zoning Scheme

“**Disaster**” means a progressive or sudden, widespread or localised, natural or human caused occurrence which:

a) caused or threatens to cause:

- ☐ death, injury or disease
- ☐ damage to property, infrastructure or the environment
- ☐ disruption of the life of a community

b) is of a magnitude that exceeds the ability of those affected by the disaster to cope with its effects using only their own resources

“Dwelling” means any human made structure that provides protection from the elements that is of permanent or non-permanent nature

“Dynamic coastal processes” means all natural processes continually reshaping the shoreline and near shore seabed and includes —

(a) wind action;

(b) wave action;

(c) currents;

(d) tidal action; and

(e) river flows;

“Estuary” means 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 as a result of the tides 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;

“High-water mark” means the highest line reached by coastal waters, but excluding any line reached as a result of—

(a) exceptional or abnormal floods or storms that occur no more than once in ten years; or

(b) an estuary being closed to the sea;

“Infrastructure” Means any human-made structure, be it permanent or non-permanent

“Littoral active zone” means any land forming part of, or adjacent to, the seashore

that is —

(a) unstable and dynamic as a result of natural processes; and

(b) characterised by dunes, beaches, sand bars and other landforms composed of unconsolidated sand, pebbles or other such material which is either unvegetated or only partially vegetated;

“Marine Resource Permit” means a permit contemplated in section 13; (xxviii) of the Marine Living resources Act (18) of 1998

“Marine Resources” Means resources as defined by the Marine Living Resources Act

(Act No. 18 of 1998).

“National Environmental Management Act (NEMA)” means the National Environmental Management Act, 1998 (Act No. 107 of 1998);

“Pollution” has the meaning assigned to it in section 1 of the National Environmental Management Act (Act No. 107 of 1998)

“Private functions” Means any formal private function including weddings, corporate functions, gatherings and events

“Utility services” Means the provision of basic services including water, electricity, waste removal, stormwater management, demarcation and containment

“Zoning Scheme” Means the Eden District Municipal Zoning Scheme as approved by the District Council as a part of its planning law

Chapter 2: Conflict with other laws

2. In the event of any conflict between this by-law and any other by-law or policy which regulates management in the Coastal Protection Zone (CPZ), the provisions of this by-law shall prevail.

Chapter 3: Application of this by-law

3. This by-law applies to all properties or premises, and all activities that may occur thereon, whether partially or completely within the geographic area of the Eden District municipality.

Chapter 4: The Coastal Protection Zone

4. The purpose of the Coastal Protection Zone is to:

- a) Ensure that the coastline, and associated opportunities, belongs to, and remains accessible, to all Eden inhabitants and South Africans
- b) Ensure that the coastline is held and managed in trust as common property for the benefit of current as well as future generations
- c) Retain and protect the economic, social and environmental value of Eden District’s coastline
- d) Protect and manage coastal ecosystems and their associated services, coastal dynamic processes and coastal biodiversity
- e) Protect remaining coastal systems as buffers to future climate change risks
- f) Protect the natural character, sense of place and aesthetic value, of coastal property
- g) Avoid increasing the effect or severity of natural hazards on the City’s coastline
- h) Protect people, property, and economic activities from risks arising from dynamic coastal processes, including the risks associated with sea level rise
- i) Reduce management costs through retaining and protecting natural environmental systems
- j) Enhance, protect and optimize social and recreational opportunities
- k) Ensure a high quality coastal environment in perpetuity
- l) Protect the City, and thereby the City’s ratepayers, from increased financial burden resulting from the impacts of coastal erosion, predicted future sea level rise and storm surge events on coastal infrastructure and development

5. The Coastal Protection Zone is defined as:

The geographic area, including all natural features, properties and premises between the high water mark and the Coastal Edge Line

6. The Coastal Edge Line is the cadastral line as mapped by the Eden District municipality and associated B municipalities within its jurisdiction and reflected in the Eden District Spatial Development Framework while the high water mark is that as defined by the ICM Act.

7. Areas Excluded from the Coastal Protection Zone include

- a) The Garden Route National Park
- b) National Port and Harbour Authority land

Chapter 5: Development Regulations in the Coastal Protection Zone

8. Existing lawful land use rights and lawfully approved departures from land use restrictions which are currently in force, prior to 01 November 2010, in respect of properties situated in the Coastal Protection Zone, shall be unaffected by the provisions of this by-law.

9. No new development rights or enhancement rights within the CPZ will be permitted as of the 01 January 2014. This includes:

9.1 No changes to land use rights within the coastal protection zone may be permitted as of 1 January 2014, whether they be by way of rezoning, subdivision, consent use, reinstatement of lapsed rights or extension of the validity period of rights, unless in the opinion of the coastal B municipality within Eden District the proposed changes serve the purpose of furthering the aims and objectives of this by-law.

9.2 All future amendments to planning instruments, and introductions of new guide plans, urban structure plans, policy plans or development frameworks shall be drafted in such a way as to align with the provisions of this by-law in respect of land situated in the Coastal Protection Zone, and shall not have the effect of granting any land use rights which would not be granted in terms of this by-law in respect of such land. To the extent that such effect may inadvertently occur, giving rise to a conflict between such plan, instrument or framework and this by-law, the by-law shall prevail.

10. Eden District Municipality or the concerned coastal B municipality within its jurisdiction retains the right to consider expropriation of private land in the CPZ if appropriate and in the public interest in accordance with integrated coastal management objectives.

11. Coastal B municipalities within Eden District must prepare an overlay zone for the CPZ to be incorporated into the relevant new Zoning Scheme. The CPZ overlay zone must be divided into, and reflect appropriate activities for, the following land-use sub-categories:

a) *Coastal Public Access Points* which shall provide for designated strips of CPZ land in order to secure public access to coastal public property as per Section 18. (1) of the ICM Act

b) *Coastal Recreational Node* which shall provide for active and passive coastal recreation, have infrastructure and amenities to underpin and support public coastal recreation, as well as appropriate related commercial activities

c) *Coastal Public Property* which shall provide for the protection of coastal dynamic process and ecosystems, act as a buffer to coastal erosion, protect coastal landscapes and property, protect scenic routes and drives, and provide access points for passive beach recreation

d) *Coastal Conservancy Land* which shall provide explicitly for the protection and conservation of sensitive and endangered coastal ecosystems, landscapes and biodiversity while providing formal public access to natural coastal spaces for nature-based recreation and environmental education.

e) *Coastal Resort Land* which shall provide for coastal land explicitly for family and social recreation defined by day visitor facilities as well as overnight facilities to ensure that all members of our society have access to coastal land for general, family, social and vacation recreation

f) *Marine Access Points* which shall provide explicitly for legally compliant public facilities for the launching of motorised watercraft of less than six metres in length

g) *Private Coastal Land* which shall provide for all land within the CPZ that does not belong to government or its agencies, and which in terms of this by-law is limited to existing development and land-use rights as of 01 January 2014

Chapter 6: Additional Regulations pertaining to the use of the Coastal

Protection Zone

12. No person may intentionally interfere with, cause damage to, impede or restrict any coastal dynamic process(es) within the CPZ unless in possession of formal Environmental Approval from the Department of Environmental Affairs and Development Planning or their delegated authority and, where required, the Competent Authorising Authority of the NEMA.
13. No person may intentionally interfere with, cause damage to, collect, harvest, impede, harm, harass or restrict any biodiversity within the CPZ unless in possession of a formal resource allocation permit issued by National Government.
14. No person may intentionally interfere with, cause damage to, collect, harvest, impede or restrict any coastal or marine resources, including but not limited to sand, shells and rocks, within the CPZ unless in possession of a formal resource allocation permit issued by National Government.
15. No person may extend their private property or encroach into the CPZ in any manner including the erection of permanent or non-permanent structures or through gardening or landscaping activities.
16. No person may construct a permanent or non-permanent structure or dwelling within the CPZ unless existing land rights, as of the 1 January 2014, allows for this and due process has been followed.
17. No person may overnight in the CPZ unless within a formal Coastal Resort as per the Resort requirements, or on land zoned as Private Coastal Land.
18. No person may start or maintain a fire within the CPZ unless within a designated braai area within a Coastal Resort area.
19. No person may have in their possession, or discharge, fireworks of any kind within with CPZ.
20. No person may damage, block, impede or cause restriction to Public Access Points, Marine Access points or coastal walkways and paths.
21. No person may act in any way that diminishes the social and recreational value of the CPZ for other members of society.
22. No person may discharge pollution into the CPZ unless such discharge is authorised in terms of a water use licence under the National Water Act No.36 of 1998 or a waste management licence under the provisions of the National Environmental Management : Waste Act No. 59 of 2008, or an atmospheric emission licence under the provisions of the National Environmental Management: Air Quality Act No. 39 of 2004, or any other permit, licence or authorisation granted according to law.
23. No person may conduct or hold any private functions within the CPZ without an approval from the relevant coastal B municipality within the Eden District Municipality, or other legislation requiring the issue of permits or authorisations for events, unless on land zoned as Private Coastal Land.
24. No person may undertake any action that would result in the alteration of the use, physical nature or appearance of the CPZ unless in possession of formal Environmental Approval from the Department of Environmental Affairs and Development Planning as the competent authority or their delegated authority and where required, the Competent Authorising Authority of the NEMA.

Chapter 7: Powers of the Council

25. The Council of Eden or any coastal B municipality within the Eden District may-

- (a) demolish, alter or otherwise deal with any building, structure or other thing or device constructed, erected or laid in contravention of the provisions of this by-law
- (b) remove and make good any ground excavated, removed or placed in contravention with the provisions of this by-law;
- (c) repair and make good any damage done in contravention of the provisions of this by-law or resulting from a contravention;
- (d) remove anything damaging, obstructing or endangering or likely to damage, obstruct or endanger any part of the CPZ;
- (e) temporarily close or restrict access to any part of the CPZ in the event of an emergency as deemed by the Council;
- (f) remove members of the public from any part of the CPZ in the event of an emergency as deemed by the Council;
- (g) Remove members of the public from the CPZ in the event of contravention of the provisions of this by-law

26. The respective municipal Council's may, in any case where it seems that any action or neglect by any person or owner of property may lead to a contravention of the provisions of this by-law, give notice in writing to such person or owner of property to comply to such requirements as the Council may deem necessary to prevent the occurrence of such contravention.

27. The Council may recover all reasonable costs incurred as a result of action taken in terms of section 25 of this by-law from a person or owner of property who was responsible for a contravention of the provisions of this by-law.

28 The response to all coastal disasters and emergencies are exempt from the provisions of this by-law, including but not limited to:

- ☐ The stranding of a ship or vessel that is of greater length than 6 metres
- ☐ Marine oil or toxic spill
- ☐ Large marine animal stranding
- ☐ Human or animal rescue operations

29. The delivery and provision of utility services by the respective B municipalities within the Eden District is exempt from this by-law provided that compliance to the provisions of the NEMA, where necessary, has been attained.

30 The following integrated coastal management activities are exempt from this by-law:

- ☐ The implementation or action of any municipal approved policy, guideline, operational procedure or protocol
- ☐ The rehabilitation and management of beaches and rocky shores by the respective municipality or its partners and contractors in accordance with the Eden District Municipal Coastal Management Plan.
- ☐ Alien vegetation clearing and controlled vegetation burns by the municipality or its contractors
- ☐ The management and disposal by the municipalities or its partners and contractors of accumulated windblown beach sand that has accumulated on, or impedes or threatens infrastructure

☒ The construction and removal of non-permanent structures as approved by CapeNature's Filming and Events Policy

☒ Beach cleaning as per the respective municipal mandate

☒ The provision by the respective municipalities, its contractors or partners of coastal safety measures that reduce the risk of injury or fatality of coastal recreational users

☒ Provided that formal Environmental Approval from the Department of Environmental Affairs and Development Planning or their delegated authority and where required, the Competent Authorising Authority of the NEMA, have been attained, the construction by the City or its contractors, of protection measures against coastal erosion, storm surge events and sea level rise

☒ Provided that formal Environmental Approval from the Department of Environmental Affairs and Development Planning or their delegated authority and where required, Competent Authorising Authority of the NEMA, have been attained, the manual manipulation by the respective coastal municipality within Eden or its contractors of estuary mouths

Chapter 8: Offences and Penalties

31. Any person who -

(a) contravenes any provision of this by-law;

(b) fails to comply with the terms of any notice issued in terms of this by-law;

(c) threatens, resists, hinders or obstructs or uses foul, abusive or insulting language towards or at a Councillor or an employee or contractor of the Council in the exercise of any powers or performance of any duties or function in terms of this by-law, or falsely holds himself or herself to be a councillor or an employee or a contractor of the Council, shall be guilty of an offence and be liable, on conviction, to imprisonment not exceeding one year or to the payment of a fine or both such fine and such imprisonment

32. In addition to imposing 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 property within the CPZ, which

order shall be the force and effect of a civil judgment