



REPORT TO ALL SUBCOUNCILS

1. ITEM NUMBER : 01SUB 10/08/2019

2. SUBJECT

NOTICE OF THE PUBLIC PARTICIPATION PROCESS FOR THE
FINALISATION OF THE CITY OF CAPE TOWN COASTAL BY-LAW

ONDERWERP

KENNIS VAN DIE OPENBAREDEELNAMEPROSES VIR DIE
AFHANDELING VAN DIE STAD KAAPSTAD: KUSVERORDENING

ISIHLOKO

ISAZISO SENKQUBO ENGOKUTHATHA INXAXHEBA KOLUNTU
UKULUNGISELELA UKUQUKUNJELWA KOMTHETHO KAMASIPALA
ONGEZASELUNXWEMENI LOLWANDLE WESIXEKO SASEKAPA

LSU: K4167

3. PURPOSE

To notify Subcouncil of the public participation process for the Draft
Coastal By-law, commencing 1st August to 2nd September 2019.

4. FOR DECISION BY

This report is for notification purposes only.

5. EXECUTIVE SUMMARY

The Coastal Management Branch of the Environmental Management
Department has established a Draft Coastal By-law. The Draft Coastal By-law
has been subject to formal City processes, including vetting by the Strategic
Policy Unit and the Legislative Development branch. Due to lengthy gap
between subcouncil meetings caused by Council recess, this report serves as
a reminder of the public participation process which commences from 1
August 2019 to 2 September 2019.

6. RECOMMENDATIONS

It is recommended that:

- a) The Subcouncil note the contents of the Draft Coastal By-law as per Annexure A;
- b) The Subcouncil note the internal processes that have been completed in the development of the Draft Coastal By-law through the City's formal structures;
- c) The Subcouncil provides comment as per the commenting guidelines (Annexure B) on the Draft Coastal By-law during the commenting period from 1 August to 2 September 2019.

AANBEVELINGS

Daar word aanbeveel dat:

- a) Die subraad kennis neem van die inhoud van die Konsepkusverordening soos in bylae A;
- b) Die subraad kennis neem van die interne prosesse wat deur die Stad se formele strukture gevolg is met die opstel van die konsepkusverordening;
- c) Die subraad gedurende die kommentaartydperk van 1 Augustus tot 2 September 2019 volgens die kommentaarriglyne (bylae B) oor die konsepkusverordening kommentaar lewer

IZINDULULO

Kundululwe ukuba:

- a) IBhungana maliqwalasele okuqulathwe nguMthetho oLuyilo kaMasipala ongezaseLinxwemeni loLwandle njengoko kubonakalisiwe kwisihlomelo A;
- b) IBhungana maliqwalasele iinkqubo zangaphakathi ezithe zagqitywa ekuqulunqweni koMthetho oLuyilo kaMasipala ongezaseLinxwemeni loLwandle ngokuthi kusetyenziswe izakheko zeSixeko ezisesikweni;
- c) IBhungana malinikezele izimvo ngokwesikhokelo sokunika izimvo (kwisihlomelo B) kuMthetho oLuyilo kaMasipala ongezaseLinxwemeni loLwandle ngexesha lokunikezela ngezimvo ukususela ngowo-1 kweyeThupha ukuya kowe-2 kweyoMsintsi 2019.

7. DISCUSSION/CONTENTS

Background

Cape Town's coastal environment is central to its sense of place, identity, global desirability and economy. A key tool to manage and protect this coastal asset is the formalisation of a Coastal By-law. A Draft Coastal By-law

(Annexure A) has been developed following a rigorous internal process of consultation and engagement. The intention of the Coastal By-law is to provide a regulatory framework to enable more effective governance and law enforcement of activities that may negatively impact on Cape Town's coastal environment. The establishment of the Draft Coastal By-law is in accordance with the requirements of the Integrated Coastal Management Act (Act 36 of 2014 as amended) which enables municipalities to establish coastal by-laws.

Process to date

A report was submitted to all Subcouncils in May 2019 providing notification and information on the internal process followed to date in respect of developing the Coastal By-law as well as the approaching commenting period in August. This report therefore serves as a reminder to Subcouncils to provide comment on the Draft Coastal By-law during the commenting period as per the commenting guidelines presented in Annexure B.

7.1. Constitutional and Policy Implications

The Draft Coastal By-law is aligned with the following policy:

- Integrated Coastal Management Policy

7.2. Sustainability implications

Does the activity in this report have any sustainability implications for the City? No ☐ Yes ☒

7.2.1 The finalization of a Coastal By-law for the City of Cape Town will be a key legislative tool to enable the conversion of policy into practice. Notably this includes the legislative entrenchment of the public's right to access and enjoy the coastline as a democratic and public space. It will also enable better regulation, protection and governance of the coastal zone as a sensitive and economically valuable asset to Cape Town.

7.2.2 The establishment of a Coastal By-law aligns with, and supports, the following principles and directives contained in the Environmental Strategy of Cape Town:

Principle 6.2: Equity and Accessibility

Directive 6.2.3: "Promote improved access by all citizens to safe, well maintained, and protected natural areas and public open spaces, such as parks, greenbelts, nature reserves, national parks, beaches, and coastal areas, and ensure that the needs of

vulnerable groups are considered". This directive is supported and enabled through provisions in the Draft Coastal By-law that focus on entrenching the rights of the public to freely access and enjoy beaches as Coastal Public Property.

Principle 6.3 Economic and Social Benefits

Directive 6.3.5 "Protect the social amenity value of natural and heritage areas, and public open spaces, while working towards restoring and managing degraded natural spaces to create improved social assets". This directive is supported and enabled through provisions in the Draft Coastal By-law that focus on ensuring rehabilitative and corrective measures are undertaken in the event the coastal environment is negatively impacted upon by any activities that are in contravention of the By-law.

Principle 6.6 Preventing, Minimising, and Mitigating Environmental Impacts

Directive 6.6.1 "Take steps to reduce all forms of environmental degradation in both the City's own operations and in those of external stakeholders, including pollution and of land, air, water, and the coast, through appropriate legislation, enforcement, infrastructural improvements, and environmental rehabilitation". This directive is supported and enabled through provisions in the Draft Coastal By-law that focus on ensuring rehabilitative and corrective measures are undertaken in the event the coastal environment is negatively impacted upon by any activities that are in contravention of the By-law.

7.3. Legal Implications

None

7.4. Staff Implications

Does your report impact on staff resources or result in any additional staffing resources being required?

No ☒

Yes ☐

7.5. Other Services Consulted

Public Participation Unit (Frederick Venter, 021 400 1768)
Public Participation Unit (Andre Louw, 021 400 9809)
Organizational Policy and Planning (Andre Roux, 021 400 7431)
Organizational Policy and Planning (Kayleen Simpson, 021 400 1381)
Organizational Policy and Planning (Timothy Zeeman, 021 400 3222)
Organizational Policy and Planning (Phiwe Ndinisa, 021 400 1704)
Legal Services (Laila Mahomed, 021 400 4658)

Specialized Services, Law Enforcement, Traffic and Coordination (Leon Wentzel, 021 376 6637)

Recreation and Parks (Ted Knott, 021 4001165)

Spatial Planning and Environment (Keith Wiseman, 021 487 2283)

Spatial Planning and Environment (Arne Purves, 021 444 2796)

Spatial Planning and Environment (Gregg Oelofse, 021 487 2532)

Spatial Planning and Environment (Dalton Gibbs, 021 444 7792)

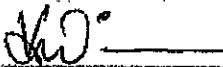
Spatial Planning and Environment (Howard Gold, 021 444 2605)

ANNEXURES

Annexure A: Draft Coastal By-law, 2019

Annexure B: Public Participation Guidelines

FOR FURTHER DETAILS CONTACT :

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FILE REF No	



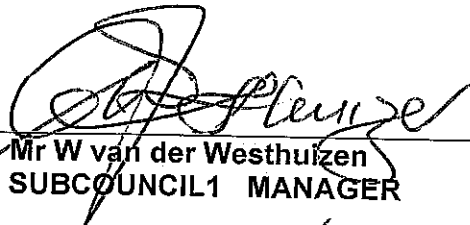
ACTING EXECUTIVE DIRECTOR
Osman Asmal

NAME

DATE

2/7/2019


Comment:


Mr W van der Westhuizen
SUBCOUNCIL1 MANAGER

DATE

7/8/2019

Comment:


Cllr C Clayton
SUBCOUNCIL 1CHAIRPERSON

Date

7/8/2019

**CITY OF CAPE TOWN
COASTAL BY-LAW, 2019**

DRAFT BY-LAW

To provide for measures for managing and protecting the coastal zone; protecting the natural environment of the coastal zone; managing public access to the coastal zone; manage, control and regulate public access and behaviour at beaches and beach areas; and to provide for matters incidental thereto.

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 (a) the local government matters listed in Part B of Schedule 4 and Part B of Schedule 5 to the Constitution; (b) and any other matter assigned to it by national or provincial legislation;

WHEREAS the City has legislative and executive competence relating to matters such as, but not limited to, municipal planning, building regulations and standards, use of and access to beaches, and nuisance, as pertaining to the coastal zone;

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

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

WHEREAS the National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008) affords coastal municipalities the powers to administer certain matters, aspects of functions of the aforesaid Act, such as matters contemplated in sections 18(1), 20(2) and 50 of the said Act;

AND WHEREAS there is a need to develop legislation to govern the access to and use of beaches and the coastal areas within the jurisdiction of the City.

NOW THEREFORE BE IT ENACTED by the Municipal Council of the City of Cape Town as follows:

ARRANGEMENT OF BY-LAW

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**CHAPTER 1.
DEFINITIONS**
(ss 1-2).

1 Definitions

(1) In this By-Law, unless the context indicates otherwise –

'authorised official' means – an employee of the City responsible for carrying out a duty or function or exercising any power in terms of this By-Law and includes any employee delegated to carry out or exercise the duty, function or power;

'bathing' means swimming or entering the waters or any tidal pool provided by the City on the beach area for public use;

'beach area' means the beach and any part of the coastal area and its immediate surroundings, including any open space, park, road, lane, parking space, pathway, or any municipal property or public amenity located in such area;

'beach bathing area' means any portion of the seashore which is demarcated as a bathing area and may be protected from sharks by whatsoever means and under supervision of lifeguards, and includes the sea for a distance of two hundred metres seaward, but excludes surf-riding or surfing and paddling;

'City' means the municipality of the City of Cape Town established by Government Notice No 479 of 2000 issued in terms of section 12 the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998), or any structure or employee of the City acting in terms of delegated authority;

'coastal access land' means the land designated as coastal access land in terms of section 18(1) of this By-law, read with section 26 of the National Environmental Management: Integrated Coastal Management Act, 2008 (Act 24 of 2008);

'coastal area' means the seashore and the sea for a distance of 200 meters seaward and 100 meters inland, but excluding any privately owned land and including all Admiralty Reserves and Public Roads as defined in the Road Traffic Act, 1996 (Act No. 93 of 1996);

'coastal environment' means the environment within the coastal zone;

'Coastal Management Act' means the National Environmental Management: Integrated Coastal Management Act, 2008 (Act 24 of 2008);

'coastal zone' means the area comprising coastal public property, the coastal protection zone, coastal access land and coastal protected areas, the seashore, coastal waters and the exclusive economic zone and includes any aspect of the environment on, in, under and above such area, as contemplated by the National Environmental Management: Integrated Coastal Management Act, 2008 (Act 24 of 2008);

'encroachment' means a condition in the coastal zone arising through human activity that has the design, effect or appearance of extending the extent of a private property or appropriating any part of the coastal zone;

'environment' means the surroundings within which humans exist and that are made up of –

- (a) the land, water and atmosphere of the earth;
- (b) micro-organisms, plant and animal life;
- (c) any part or combination of (a) and (b) and the interrelationships among and between them, and
- (d) the physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and well-being;

'fish' means a living marine organism including an aquatic plant or animal whether piscine or not, and a mollusc, crustacean, coral, sponge, holothurian or other echinoderm, reptile and marine mammal, and includes their eggs and larvae at all juvenile stages;

'fishing' means –

- (a) searching for, catching, taking or harvesting fish by any means including line, net or spear gun, or attempting to engage in such an activity;
- (b) engaging in another activity which can reasonably be expected to result in the locating, catching, taking or harvesting of fish;
- (c) placing, searching for or recovering a fish aggregating device or associated gear, including radio beacons;

- (d) an operation in support of or in preparation for an activity described in this definition, or
 - (e) the use of a vessel or aircraft in relation to an activity described in this definition;
- 'high-water mark'** means the highest line reached by coastal waters, but excluding any line reached because of –

- (a) exceptional or abnormal weather or sea conditions, or
- (b) an estuary being closed to the sea.

'illegal fishing' means engaging in fishing without every permit required by law or using a fishing method or fishing gear that is prohibited by law;

'infrastructure' means an object or structure, whether permanent or temporary;

'low-water mark' means the lowest line to which coastal waters recede during spring tides;

'Municipal Coastal Management Programme' means the municipal coastal management programme adopted by the City in terms of section 48 of the Coastal Management Act;

'permit' includes a licence, certificate, right or any other written permission granted by the City;

'person' means a natural or juristic person and includes the state and an organ of state in the national, provincial or local sphere of government;

'pollution' means any change in the environment caused by –

- (a) substances;
- (b) radioactive or other waves; or
- (c) noise, odours, dust or heat

emitted from any activity, including the storage or treatment of waste or substances; construction and the provision of services, whether engaged in by any person or an organ of state, where that change has an adverse effect on human health or well-being or on the composition, resilience and productivity of natural or managed ecosystems, or on materials useful to people, or will have such an effect in the future;

'sea defence' means a measure taken or an artificial structure intended to prevent or promote erosion or accretion of the seashore or for protecting property from a coastal process, including wind-blown sand and storm surge, irrespective of –

- (a) the material used, if any;
- (b) whether it is of a permanent or temporary nature;
- (c) whether it is on public or private property, and
- (d) whether it is on a person's own property or another person's property;

'seashore' or **'beach'** means the area between the low-water mark and the high-water mark, or as may be determined or adjusted from time to time in respect of the coastal zone boundaries by a competent national or provincial authority in terms of the National Environment Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008);

'sign' means a written notice erected by the City;

'unauthorised sea defence' means a sea defence which the City has not authorised in terms of section 9(1);

'vessel' means a water-navigable craft of whatsoever nature, whether self-propelled or not, and

'waste' means a substance, material or object that is unwanted, rejected, abandoned, discarded or disposed of or that is intended or required to be discarded or disposed of, whether or not it can be re-used, recycled or recovered.

- (2) Words derived from the word or terms defined have corresponding meanings, unless the context indicates otherwise.
- (3) A reference to another law includes an amendment and a future amendment to that law.

2 Object of By-law

- (1) The objects of the By-law are to –
 - (a) fulfil the responsibilities and duties assigned to the City by the Coastal Management Act;
 - (b) ensure sustainable use and development of the coastal area by aligning municipal planning with the Coastal Management Act;
 - (c) promote the protection of the natural environment of the coastal zone;

- (d) promote cooperative governance between the City and other relevant spheres of government relating to the management of the coastal zone;
- (e) promote fair and equitable access to the coastal zone by members of the public;
- (f) create an effective system for the managing and controlling of public access to beaches and beach areas;
- (g) provide measures to regulate conduct on beaches and beach areas and to prohibit certain activities or conduct on beaches and beach areas;
- (h) provide measures to control and regulate access to and the use of public amenities on the beach and beach areas;
- (i) provide for penalties for the breach of its provisions; and
- (j) provide for related matters.

CHAPTER 2. APPLICATION OF THIS BY-LAW AND CONFLICT OF LAWS (ss 3 -4)

3 Application

- (1) This By-Law –
 - (a) applies to the coastal zone;
 - (b) binds every person;
 - (c) governs conduct that takes place either wholly or partially in, or impacts upon, the coastal zone.
- (2) This By-Law does not apply to the following activities when conducted by the City –
 - (a) provision of a safety measure intended to reduce the risk of injury to people in the coastal zone;
 - (b) implementation of a measure intended to protect against coastal erosion, storm surge events, estuary migration and sea level rise;
 - (c) manipulation or clearing of an estuary, river mouth, river or stormwater outlet;
 - (d) provision of a utility service, including water, desalinization facilities, electricity, waste removal and disposal, and stormwater management, demarcation and containment of pollution;
 - (e) clearing of alien vegetation;
 - (f) controlled burning of vegetation;
 - (g) cleaning of a beach area;
 - (h) management and disposal of sand that has accumulated on infrastructure;
 - (i) construction and removal of a temporary structure in accordance with the City's Filming By-law or Events By-Law; and
 - (j) rehabilitation and management of the coastal zone in accordance with the Municipal Coastal Management Programme and or the Maintenance Management Plan: Dunes and Beaches.
- (3) An approval, instruction or exemption granted in terms of this By-Law and the provisions of subsection (2) do not release any person from their duty to also obtain any other authorisation or permit required by this By-Law or another law, and to comply with all law.

4 Conflict with other laws

- (1) If there is a conflict between this By-Law and another by-law, this By-Law prevails over the affected provision of the other by-law in respect of any matter concerning the regulation of the coastal zone.
- (2) If there is a conflict of interpretation between the English version of this By-law and a translated version, the English version prevails.

CHAPTER 3.
PROTECTION OF COASTAL ZONE
(ss 5-10)

5 Duty of care

- (1) No person may cause, continue or contribute to an adverse effect on the coastal zone.
- (2) A person who causes, contributes to an adverse effect or allows an adverse effect to continue on the coastal zone or who owns, controls, or a person who has a right to use land on, or premises in, which an activity occurs which causes, contributes to an adverse effect or allows and adverse effect to continue on the coastal zone, must take reasonable measures to prevent the adverse effect from occurring, continuing or recurring, and must remedy the adverse effect.

6 Illegal fishing

- (1) No person may engage in illegal fishing or be in possession of illegally caught fish.
- (2) Any person who is found in possession of fishing gear, which is reasonably suspected of having been used or intended to be used to engage in illegal fishing, and is unable to give a satisfactory account of such possession, is presumed to be engaged in illegal fishing unless evidence is produced to the contrary.
- (3) Any person who is found in possession of a fish, which is reasonably suspected of having been caught by illegal fishing, and is unable to give a satisfactory account of such possession is presumed to be in possession of illegally caught fish unless evidence is produced to the contrary.

7 Protection of coastal environment

- (1) In this section, unless the context indicates otherwise, 'natural dynamic coastal process' means a natural process that occurs within the coastal environment and which shapes the coastal environment, adjacent natural areas and inshore seabed and includes wind, wave, current and tidal action, river flow, long- and cross-shore sediment drift, coastal erosion and accretion.
- (2) No person may in the coastal zone –
 - (a) interfere with, impede or restrict a natural dynamic coastal process unless written authorisation is granted by the City;
 - (b) prune, harvest or remove vegetation unless reasonably necessary;
 - (c) deposit, move, collect or remove sand, pebbles, rocks, shells, shell grit or kelp: Provided that reasonable activity in relation to the listed actions together with the digging of holes by children or beachgoers in the ordinary use or enjoyment of the beach area is not prohibited; or
 - (d) change the geomorphology unless written authorisation is granted by the City.
- (3) Unless the City grants written authorisation, no person may within the coastal zone interfere with, cause damage to, collect, harvest, impede, harm, harass, hunt or restrict a living or dead wild animal or plant, or displace, disturb, destroy or remove its habitat.
- (4) No person may in the coastal zone –
 - (a) litter;
 - (b) misuse, remove water from or contaminate a water body, water source, water supply or wastewater or any portion thereof;
 - (c) drain or redirect water from private land into the coastal zone; or
 - (d) damage, dig, disturb, deface, destroy or remove a fossil, historical artefact or similar object.
- (5) No person may, without prior written authorisation from the City, in the coastal zone –
 - (a) discharge solid, liquid or gaseous pollution;
 - (b) dump, deposit or store waste;
- (6) No person may drop, throw, deposit, spill, dump, store or in any other way discard any litter or waste in the coastal zone.
- (7) No person may use a vehicle without a permit in terms of, or contrary to the provisions of the Control of Use of Vehicles in the Coastal Area Regulations published in terms of the Coastal

Management Act or park a vehicle in any place where the use of a vehicle is prohibited under those Regulations.

8 Encroachment

(1) No person may cause, permit or contribute to an encroachment or allow an encroachment to continue.

(2) For purposes of subsection (1) an encroachment is caused by any of the following actions or activities, irrespective of whether the encroachment is of a temporary or permanent nature –

- (a) erection of a structure or building;
- (b) placement of an item;
- (c) erection of a fence, wall, barrier, swimming bath, swimming pool, reservoir or bridge or other structure connected therewith;
- (d) erection of a facility or system for the provision of water supply, irrigation, drainage, sewerage or stormwater disposal, electricity supply or other similar service;
- (e) alteration of a water course;
- (f) landscaping, gardening, planting, maintenance or removal of vegetation;
- (g) placement, movement or removal of a dune; and
- (h) dumping, infilling or excavation of any material or disposal of soil, rubble or garden refuse.

(3) No owner of, person in control of, or person who has a right to use land which appears to be extended by or benefit from an encroachment may allow the encroachment to continue to exist, even if such owner or person did not cause, permit or contribute to the encroachment; or

(4) A person who alleges that the owner of land that is encroached upon granted written, lawful permission for the encroachment has the onus of proving it, except in criminal proceedings.

9 Unauthorised sea defence

(1) Unless authorised by the City in writing, no person may cause, permit or contribute to a sea defence or allow a sea defence to continue.

(2) No owner of, person in control of, or person who has a right to use land which is intended to benefit from an unauthorised sea defence may allow the sea defence to continue to exist, even if such owner or person did not cause, permit or contribute to the sea defence.

10 Remediation of encroachment and unauthorised sea defence

(1) In this section, unless the context indicates otherwise, 'responsible person' means –

- (a) a person who causes, permits or contributes to an encroachment or unauthorised sea defence or allows an encroachment or unauthorised sea defence to continue; or
- (b) in respect of land which appears to be extended by or benefit from an encroachment or is intended to benefit from an unauthorised sea defence, a person who –
 - (i) owns, controls, or has a right to use the land; or
 - (ii) previously owned, controlled, or had a right to use the land at any time that the encroachment or unauthorised sea defence existed.

(2) A responsible person must take measures at their cost to –

- (a) eliminate or remove the encroachment or unauthorised sea defence; and
- (b) rehabilitate the affected land, to the satisfaction of the City.

(3) Before undertaking the action contemplated in subsection (2) the responsible person must –

- (a) satisfy the City of the appropriateness and adequacy of the proposed action;
- (b) obtain written authorisation of the proposed action from the City; and
- (c) obtain any other permit lawfully required.