

SECTION 249 LOCAL GOVERNMENT ACT 1999

CERTIFICATE OF VALIDITY

I, CIMON ANGELA BURKE of Level 6, 19 Gilles Street, Adelaide in the State of South Australia, being a legal practitioner within the meaning of the *Legal Practitioners Act 1981*, declare that I have examined the following by-law:

District Council of Lower Eyre Peninsula

By-law No 6 – Foreshore By-Law 2019

A By-law for the management of foreshore areas;

and do certify that in my opinion:

District Council of Lower Eyre Peninsula

has the power to make the by-law by virtue of the following statutory provisions:

*Local Government Act 1999: sections 238 and 246(1), 246(2), 246(3)(a), 246(3)(c) and 246(3)(f); and
Harbors and Navigation Act 1993: section 18A;*

and the by-law is not in conflict with the *Local Government Act 1999*.

DATED the 12th day of December 2018



.....
Cimon Burke, Legal Practitioner



DISTRICT COUNCIL OF LOWER EYRE PENINSULA

FORESHORE BY-LAW 2019

By-Law No. 6 of 2019

A by-law for the management of certain foreshores in the Council's area.

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PART 1 - PRELIMINARY

1. Title

This By-law may be cited as the Foreshore By-law 2019 and is By-law No. 6 of the District Council of Lower Eyre Peninsula.

2. Authorising law

This By-law is made under sections 238, 239 and 246 of the Act and section 18A of the *Harbors and Navigation Act 1993*.

3. Purpose

The objectives of this By-law are to regulate the access to and use of certain foreshore areas:

- 3.1 to prevent and mitigate nuisances on the foreshore;
- 3.2 to prevent damage to and promote conservation of the foreshore;
- 3.3 to protect the convenience, comfort and safety of members of the public;
- 3.4 to enhance the amenity of the Council's area; and
- 3.5 for the good rule and government of the Council's area.

4. Expiry

This By-law will expire on 1 January 2027.

Note-

Pursuant to section 251 of the Act, a By-law will expire on 1 January following the seventh anniversary of the gazettal of the By-law.

5. Application

- 5.1 This By-law operates subject to the Council's *Permits and Penalties By-law 2019*.
- 5.2 Subject to subclauses 5.3 and 5.4, this By-law applies throughout the Council's area.
- 5.3 Subclauses 7.5.1, 7.5.2, 7.6.1, 7.15, 7.16 and 8.9.1 of this By-law only applies in such part or parts of the Council area as the Council may, by resolution direct in accordance with section 246(3)(e) of the Act.
- 5.4 Subclauses 7.3.1, 7.6.2, 7.8.3 and 7.19.1 of this By-law apply throughout the Council area except in such part or parts of the Council area as the Council may by resolution direct in accordance with section 246(3)(e) of the Act.

6. Definitions

In this By-law:

- 6.1 **Act** means the *Local Government Act 1999*;
- 6.2 **animal or animals** includes birds and insects but does not include a dog;

- 6.3 **authorised person** has the same meaning as in the Act;
- 6.4 **boat** includes a raft, pontoon or personal watercraft or other similar device;
- 6.5 **camp** includes setting up a camp, or causing a tent, caravan or motor home to remain on the foreshore overnight, whether or not any person is in attendance or sleeps on the foreshore;
- 6.6 **Council** means the District Council of Lower Eyre Peninsula;
- 6.7 **emergency worker** has the same meaning as in the *Road Traffic (Road Rules - Ancillary and Miscellaneous Provisions) Regulations 2014*;
- 6.8 **foreshore** means land owned by or under the Council's care control and management (including a road) that extends from the low water mark on the seashore in the Council's area to the nearest road or section boundary;
- 6.9 **low water mark** means the lowest meteorological tide;
- 6.10 **personal watercraft** means a device that -
- 6.10.1 is propelled by a motor; and
 - 6.10.2 has a fully enclosed hull; and
 - 6.10.3 is designed not to retain water if capsized; and
 - 6.10.4 is designed to be operated by a person who sits astride, stands or kneels on the device;
- and includes the device commonly referred to as a jet ski.
- 6.11 **Vehicle** has the same meaning as in the *Road Traffic Act 1961*.

Note-

Section 14 of the *Acts Interpretation Act 1915* provides that an expression used in a By-law has, unless the contrary intention appears, the same meaning as in the Acts under which the By-law was made.

PART 2 - REGULATION OF ACTIVITIES ON THE FORESHORE

7. Activities Requiring Permission

No person shall undertake the following activities on the foreshore without the permission of the Council:

7.1 Access

Enter or remain on any part of the foreshore (including in or with a vehicle) that the Council has closed to the public (for example, by way of the erection of barriers) for reasons of public safety and/or for the conservation of the foreshore.

7.2 Advertising

Subject to clause 12.2, display, paint or erect or cause to be displayed, painted or erected any advertisement on the foreshore or on any building or structure on the foreshore.

7.3 Animals

7.3.1 Allow, ride or take any animal onto or allow it to remain on the foreshore or in any adjacent waters except:

7.3.1.1 on any part or parts of the foreshore to which the Council has resolved this clause applies; and

7.3.1.2 in accordance with any conditions determined by resolution of the Council.

7.3.2 Where an access ramp has been provided by the Council to facilitate access by an animal to the foreshore, allow any animal to enter or leave the foreshore other than by that access ramp.

7.4 Bathing

7.4.1 Swim or bathe within 5 metres of any jetty.

7.4.2 Swim or bathe at a time when swimming or bathing in that place has been prohibited by resolution of the Council (for the reasons of public safety) as indicated by a sign or signs displayed on the land.

7.5 Boats

Subject to the provisions of the *Harbors and Navigation Act 1993* and the Marine Safety (Domestic Commercial Vessel) National Law:

7.5.1 launch or retrieve a boat from or onto any foreshore to which the Council has determined that this subclause applies;

7.5.2 moor a boat on any foreshore to which the Council has determined this clause applies.

7.6 Boat Ramps

7.6.1 Use any boat ramp to which the Council has resolved this subclause applies to launch or retrieve a boat from or onto the foreshore:

(a) without having first paid the fee determined by the Council and displayed the receipt of payment on the dashboard of the towing vehicle used to launch or retrieve the boat; and

(b) other than in accordance with any conditions determined by resolution of the Council (if any) and displayed on signage in the vicinity of the boat ramp.

7.6.2 Except for any area in respect of which the Council has resolved this clause applies, launch or retrieve a boat from or onto the foreshore or onto or from

adjacent waters, without using a boat ramp constructed or provided by the Council for that purpose.

- 7.6.3 Allow a vehicle or boat to remain stationary on a boat ramp for longer than is necessary to launch or retrieve a boat.

7.7 Burials and Memorials

- 7.7.1 Bury, inter or spread the ashes of any human or animal remains.

- 7.7.2 Erect any memorial.

7.8 Camping and Tents

- 7.8.1 Subject to this subclause 7.8, erect a tent or other structure of calico, canvas, plastic or similar material as a place of habitation.

- 7.8.2 For the purpose of this clause 7.8, a tent or other structure is taken to have been erected as a place of habitation if it has been on the foreshore for 24 consecutive hours or more.

- 7.8.3 Camp or sleep overnight other than in an area that the Council has, by resolution, designated for camping and in accordance with such time limits and other conditions determined by resolution of the Council (if any) that are displayed on signage in the area.

7.9 Entertainment and Busking

- 7.9.1 Sing, busk or play a recording or use a musical instrument for the apparent purpose of either entertaining others or receiving money.

- 7.9.2 Conduct or hold any event, concert, festival, show, public gathering, circus, meeting, performance or any other similar activity.

7.10 Fires

Subject to the *Fire and Emergency Services Act 2005*, light any fire except:

- 7.10.1 in a place provided by the Council for that purpose; or

- 7.10.2 in a portable barbeque as long as the barbeque is used in an area that is clear of flammable material for a distance of four metres.

7.11 Fishing

Cast a fishing line or keep a fishing line in waters adjacent the foreshore while there are other persons in the waters in the vicinity of the fishing line.

7.12 Flora and Fauna

Subject to the *Native Vegetation Act 1991* and the *National Parks and Wildlife Act 1972*:

- 7.12.1 damage, pick, disturb, interfere with or remove any plant, flower or other vegetation planted thereon;

- 7.12.2 deposit, dig, damage, disturb, interfere with or remove any soil, stone, wood, clay, gravel, pebbles, timber, bark or any part of the land;
- 7.12.3 plant any bushes, shrubs, trees or plants;
- 7.12.4 take, interfere with, tease, harm or disturb any animal, bird or marine creature or the eggs or young of any animal, bird or marine creature;
- 7.12.5 pick, collect, take, interfere with or disturb any fruit, nuts, berries or native seeds;
- 7.12.6 disturb, interfere with or damage any burrow, nest or habitat of any animal or bird;
- 7.12.7 use, possess or have control of any device for the purpose of killing or capturing any animal, bird or marine creature; or
- 7.12.8 burn any timber or dead wood -

with the exception that subclauses 7.12.4 and 7.12.7 do not apply to a lawful fishing activity.

7.13 **Games**

Participate in, promote or organise any organised competition or sport, as distinct from organised social play on any foreshore to which the Council has resolved this subclause applies.

7.14 **Jetties**

- 7.14.1 Jump or dive from a jetty or other structure onto the foreshore or into any adjacent waters;
- 7.14.2 throw or propel any object from any structure or jetty onto the foreshore or into any adjacent waters.

7.15 **Model & Drone Aircraft, Boats and Cars**

Subject to the *Civil Aviation Safety Regulations 1998 (Cth)*, fly or operate a model or drone aircraft, boat or model or remote control vehicle on any foreshore to which the Council has resolved this subclause applies.

7.16 **Paragliders & Hang-gliders**

Subject to the Civil Aviation Safety Regulations 1998 (Cth), operate or use a hang-glider or paraglider on any foreshore to which the Council has resolved this subclause applies and other than in accordance with any conditions determined by resolution of the Council.

7.17 **Sandboarding**

Use a sandboard or other item except on any foreshore to which the Council has resolved this clause applies.

7.18 **Trading**

Sell, buy, offer or display for sale or hire any goods or services, including in or from a vehicle.

7.19 **Vehicles**

7.19.1 Drive or propel a vehicle on the foreshore except in an area designated by resolution of the Council for that purpose.

7.19.2 Repair, wash, paint, panel beat or carry out other work to a vehicle, except for running repairs in the case of a breakdown.

7.19.3 Subject to this clause 7.19, drive or propel a vehicle over or on any sand dunes.

7.20 **Weddings, Functions and Special events**

7.20.1 Hold, conduct or participate in a marriage ceremony, funeral or special event.

7.20.2 Erect a marquee, stage or structure for the purpose of holding or conducting a wedding, funeral or special event.

7.20.3 Hold or conduct any filming where the filming is for a commercial purpose.

8. **Prohibited Activities**

No person shall on the Foreshore:

8.1 **Annoyances**

Unless authorised by the Council:

8.1.1 act in such a manner that may annoy or endanger others; or

8.1.2 unreasonably interfere with the lawful use of the foreshore by other persons.

8.2 **Bathing**

If aged 5 years or over, remain thereon or in any adjacent waters unless properly clad in a bathing costume or other garment necessary to ensure the observance of public decency.

8.3 **Interference with Permitted Use**

Interrupt or unreasonably interfere with any other person's use of the foreshore where the person is using the land in a manner permitted by the Council or in accordance with any permission that has been granted by the Council.

8.4 **Rubbish**

8.4.1 Remove, disperse or interfere with any rubbish (including bottles, newspapers, cans, containers or packaging) that has been discarded in a Council rubbish bin on the foreshore.

8.4.2 Deposit in a receptacle any rubbish emanating from domestic or trade premises, unless a sign or signs on or near the receptacle provide to the contrary.

8.5 Sand dunes, pebble banks, coastal slopes and cliffs

Subject to subclause 7.12 (where relevant):

8.5.1 carry out any activity that may damage or threaten the integrity of sand dunes, pebble banks, coastal slopes or cliff;

8.5.2 introduce non-indigenous flora or fauna or dump any material in a sand dune or pebble bank;

8.5.3 destroy, remove or cause interference to any flora or fauna, whether living or dead, on or within a sand dune, coastal slope or coastal cliff;

8.5.4 remove or clear any sand, seaweed, soil, rocks or other flora and fauna;

8.5.5 make or excavate any dug-out, cave, cliff or other opening, or camp in or otherwise occupy any dug out, cave or cliff overhang opening or otherwise on the foreshore.

8.6 Throwing objects

Throw, roll, project or discharge a stone, substance or other missile (including sport and recreational equipment) in a manner that endangers or may cause harm to any person or animal.

8.7 Toilets

In any public convenience (including showers, toilets and hand washing facilities):

8.7.1 urinate other than in a urinal or pan or defecate other than in a pan set a part for that purpose;

8.7.2 deposit anything in a pan, urinal or drain that is likely to cause a blockage or damage to the facility or any drain, pipe or property associated with the facility;

8.7.3 use the facilities for a purpose for which it was not designed or constructed;

8.7.4 enter any facilities that are set aside for the use of the opposite gender except:

(a) where a child under the age of 8 years is accompanied by an adult parent or guardian of that sex; or

(b) to provide assistance to a disabled person; or

(c) in the case of a genuine emergency.

8.8 Use of equipment, buildings and property

8.8.1 Use or occupy any equipment, structure, building or property thereon other than for the purpose and in the manner for which it was designed, constructed or intended to be used.

8.8.2 Damage, destroy or remove any building or structure, notice board or sign.

8.9 Vehicles

8.9.1 Drive or propel a vehicle (or any class of vehicle) on any part of the foreshore to which the Council has determined this clause applies.

8.9.2 Drive or propel a vehicle (or any class of vehicle) onto or from the foreshore other than by a ramp or thoroughfare constructed or provided by the Council for that purpose.

PART 3 - ENFORCEMENT

9. Directions

9.1 A person on the foreshore must comply with a reasonable direction from an authorised person relating to:

9.1.1 that person's use of the foreshore;

9.1.2 that person's conduct and behaviour on the foreshore; or

9.1.3 the safety and enjoyment of other persons on the foreshore.

9.2 A person who, in the opinion of an authorised person, is likely to commit or has committed, a breach of this By-law must immediately comply with a direction of an authorised person to leave that part of the foreshore.

10. Orders

If a person fails to comply with an order of an authorised person made pursuant to section 262 of the Act in respect of a breach of this By-law, the Council may seek to recover its costs of any action taken under section 262(3) of the Act from the person to whom the order was directed.

11. Removal of animals and objects

An authorised person may remove an animal or object that is on the foreshore in breach of a By-law if no person is in charge of, or apparently in charge of, the animal or object.

PART 4 - MISCELLANEOUS

12. Exemptions

12.1 The restrictions in this By-law do not apply to a police officer, emergency worker, Council officer or employee acting in the course and within the scope of that person's normal duties or, to a contractor or volunteer while performing work for the Council

and while acting under the supervision of or in accordance with a direction from a Council officer.

12.2 The restrictions in clause 7.2 of this By-law do not apply to electoral matter authorised by a candidate and which is:

12.2.1 related to a Commonwealth or State election and occurs during the period commencing on the issue of the writ or writs for the election and ending at the close of polls on polling day; or

12.2.2 related to an election under the Act or the *Local Government (Elections) Act 1999* and occurs during the period commencing four weeks immediately before the date that has been set (either by or under either Act) for polling day and ending at the close of voting on polling day; or

12.2.3 related to, and occurs during the course of and for the purpose of a referendum.

13. Liability of vehicle owners

13.1 For the purposes of this clause 13, **owner** in relation to a vehicle has the same meaning as contained in section 4 of the Act;

13.2 The owner and the driver of a vehicle driven, parked or standing in contravention of this by-law are each guilty of an offence and liable to the penalty as prescribed for that offence.

This foregoing By-law was duly made and passed at a meeting of the District Council of Lower Eyre Peninsula held on 20 December 2018 by an absolute majority of the members for the time being constituting the Council, there being at least two-thirds of the members present.



.....
...RODNEY PEARSON
Chief Executive Office