

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 5 – Dogs By-Law 2019

A By-law to limit the number of dogs kept on premises and for the management and control of dogs in the Council area;

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:

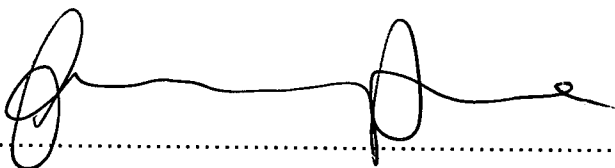
Local Government Act 1999: sections 238, 246(1), 246(2), 246(3)(a), 246(3)(c), 246(3)(e) and 246(3)(f);

Dog and Cat Management Act 1995: section 90; 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

A handwritten signature in black ink, consisting of a large loop on the left, a horizontal line, and a smaller loop on the right, ending in a short horizontal stroke.

Cimon Burke, Legal Practitioner



DISTRICT COUNCIL OF LOWER EYRE PENINSULA

DOGS BY-LAW 2019

By-law No. 5 of 2019

A By-law to limit the number of dogs kept on premises and for the management and control of dogs in the Council's area.

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PART 1 – PRELIMINARY

1. Title

This By-law may be cited as the *Dogs By-law 2019* and is By-law No. 5 of the District Council of Lower Eyre Peninsula.

2. Authorising law

This By-law is made under section 90(5) of the *Dog and Cat Management Act 1995* sections 238 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 control and manage dogs in the Council area:

- 3.1 to reduce the incidence of environmental nuisance caused by dogs; and
- 3.2 to promote responsible dog ownership; and
- 3.3 to protect the convenience, comfort and safety of members of the public; and
- 3.4 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 subclause 5.3, this By-law applies throughout the Council's area.
- 5.3 Subclauses 9.1 and 10, of this By-law only apply 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. Interpretation

In this By-law, unless the contrary intention appears:

- 6.1 **Act** means the *Local Government Act 1999*;
- 6.2 **approved kennel establishment** means a building, structure or area approved by a relevant authority, pursuant to the *Development Act 1993* for the keeping of dogs on a temporary or permanent basis;
- 6.3 **assistance dog** means a dog trained and used for the purpose of assisting a person who is wholly or partially disabled and includes a dog undergoing training of a kind approved by the Dog and Cat Management Board;

- 6.4 **children's playground** means an enclosed area in which there is equipment or other installed devices for the purpose of children's play (or within 5 metres of such devices if there is no enclosed area);
- 6.5 **Council** means District Council of Lower Eyre Peninsula;
- 6.6 **dog** (except for in subclause 7.1) has the same meaning as in the *Dog and Cat Management Act 1995*;
- 6.7 **effective control** means a person exercising effective control of a dog either:
- 6.7.1 by means of a physical restraint; (as defined under the *Dog and Cat Management Act 1995*); or
- 6.7.2 by command, the dog being in close proximity to the person and the person being able to see the dog at all times.
- 6.8 **fence** includes an enclosure or barrier (including a wall);
- 6.9 **keep** includes the provision of food or shelter;
- 6.10 **park** has the same meaning as the *Dog and Cat Management Act 1995*;
- 6.11 **premises** includes land, whether used or occupied for domestic or non-domestic purposes;
- 6.12 **residential zone, coastal settlement zone, settlement zone, town centre zone or rural living zone** have the same meanings as in the District Council of Lower Eyre Peninsula Development Plan.
- 6.13 For the purposes of clause 9 of the By-law, a dog is under **effective control by means of a leash** if the dog is secured to a leash, chain or cord that does not exceed 2 metres in length and;
- 6.13.1 the leash, chain or cord is either tethered securely to a fixed object; or
- 6.13.2 held by a person capable of controlling the dog and preventing it from being a nuisance or a danger to other persons.

Note-

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

PART 2 – LIMITS ON DOG NUMBERS**7. Limits on dog numbers in private premises**

- 7.1 Subject to subclauses 7.3 and 7.5, a person must not (either alone or together with another person) without the Council's permission keep, or cause, suffer or permit to be kept more than two dogs on any premises located in a residential zone, coastal settlement zone, settlement zone, town centre zone or rural living zone.
- 7.2 For the purposes of subclause 7.1, 'dog' means a dog that is three (3) months of age or older or, a dog that has lost its juvenile teeth.

7.3 Subclause 7.1 does not apply to:

7.3.1 approved kennel establishments operating in accordance with all required approvals and consents; or

7.3.2 any premises for a business involving the keeping of dogs provided that the business is registered in accordance with the *Dog and Cat Management Act 1995*.

7.4 The Council may require that premises which are the subject of an application for permission to keep additional dogs must be inspected by an authorised person for the purpose of assessing the suitability of the premises for housing dogs.

7.5 No dog is to be kept on any premises where, in the opinion of an authorised person, there is no secure or appropriate area where a dog may be effectively confined.

PART 3 – DOG CONTROLS

8. Dog exercise areas

Subject to clauses 9 and 10 of this By-law, a person may enter a park in the Council area for the purpose of exercising a dog under his or her effective control.

Note-

If a person is exercising a dog in a park as permitted under this clause and the dog is not under effective control as that term is defined by the *Dog and Cat Management Act 1995*, this gives rise to a dog wandering at large offence under section 43(1) of the *Dog and Cat Management Act 1995* for which the owner of or person responsible for the dog may be liable.

9. Dog on leash areas

A person must not, without the Council's permission, allow a dog under that person's control, charge or authority (except an assistance dog that is required to remain off-lead in order to fulfil its functions) to be or remain:

9.1 on Local Government land or in a public place to which the Council has resolved that this subclause applies; or

9.2 on any park or reserve during times when organised sport is being played;

unless the dog is under effective control by means of a leash.

10. Dog prohibited areas

A person must not allow a dog under that person's control, charge or authority (except an assistance dog) to enter or remain on any Local Government Land or public place to which the Council has determined this subclause applies.

11. Fencing

11.1 The owner or occupier of any premises on which a dog is kept must, in accordance with the requirements of this clause 11, ensure the premises (or the portion of it on which the dog is kept) is fenced in a manner capable of confining the dog to the premises (or that portion as the case may be).

- 11.2 Any fence constructed or used to confine a dog must be of a type, height and construction which, having regard to the species, age, size and physical condition of the dog, is adequate (in the opinion of an authorised person) to prevent the dog from passing over, under or through the fence.
- 11.3 If there is a gate in the fence, the gate shall be closed at all times except when the dog is not kept on the premises, but nothing in this subclause prevents a person from opening a gate, in order to enter or leave the portion of the premises where the dog is kept.

12. Dog faeces

No person is to allow a dog under that person's control, charge or authority to be in a public place or on Local Government land unless that person has in their possession a bag or other suitable container for the collection and lawful disposal of any faeces that the dog may deposit (for the purpose of complying with their obligation under section 45A(6) of the *Dog and Cat Management Act 1995*).

PART 4 – EXEMPTIONS

13. Council may grant exemptions

- 13.1 The Council may, by notice in writing, on application or on its own initiative, exempt a person (or a class of persons) from the operation of a specified provision of this By-law.
- 13.2 An exemption—
- 13.2.1 may be granted or refused at the discretion of the Council; and
 - 13.2.2 may operate indefinitely or for a period specified in the instrument of exemption; and
 - 13.2.3 is subject to any conditions specified in the instrument of exemption.
- 13.3 The Council may, by notice in writing, vary, revoke or add a condition of an exemption.
- 13.4 The Council may, in its discretion, revoke an exemption for a contravention of a condition of the exemption, or for any other reason it thinks fit.

PART 5 – ENFORCEMENT

14. Orders

- 14.1 If a person engages in conduct that is in contravention of this By-law, an authorised person may order that person:
- 14.1.1 if the conduct is still continuing – to stop the conduct; and
 - 14.1.2 whether or not the conduct is still continuing – to take specified action to remedy the contravention.
- 14.2 A person must comply with an order under this clause.

- 14.3 If a person does not comply with an order, the authorised person may take action reasonably required to have the order carried out, and the Council may seek to recover its costs of any action so taken from the person to whom the order was directed.
- 14.4 However, an authorised person may not use force against a person under this section.

Note-

For example, an authorised person may order a person to:

- cease keeping more than the permitted number of dogs on that person's premises; or
- remove a dog from a prohibited area.

This By-law was duly made and passed at a meeting of the District Council of Lower Eyre Peninsula held on the 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.



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ROD PEARSON
Chief Executive Officer