

## 12.2.2 By-law Review

<b>Report Type</b>	Decision
<b>City Plan Theme</b>	Community Leadership
<b>Report Author</b>	Manager Community & Environmental Health, Community Development
<b>Report Summary</b>	This report seeks endorsement of the amended Roads By-law for public consultation.
<b>Attachments</b>	<ol style="list-style-type: none"><li>1. Letter from Legislative Review Committee - 3 November 2022 [12.2.2.1 - 2 pages]</li><li>2. Response Letter to Legislative Review Committee - 9 November 2022 [12.2.2.2 - 1 page]</li><li>3. Confirmation Letter from Legislative Review Committee - 8 February 2023 [12.2.2.3 - 1 page]</li><li>4. Local Government Land Amendment By-law No. 9 of 2023 [12.2.2.4 - 3 pages]</li><li>5. Local Government Land By-law No. 3 of 2022 [12.2.2.5 - 16 pages]</li></ol>

### RECOMMENDATION

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**Council resolves that:**

1. The report of the Director Community Development titled "By-law Review" be received and noted.
  2. The Council is satisfied that proposed By-law No. 9 adequately addresses the feedback provided by the Legislative Review Committee in respect of the Council's Local Government Land By-law 2022 and endorses proposed By-law No. 9 as provided in Attachment 4 for consultation in accordance with Section 249 of the Local Government Act 1999.
  3. A further report be presented to Council in June 2023 with the outcome of the public consultation.
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### Background

At its meeting on 12 July 2022, Council resolved as follows:

1. *The report of the Director Community Development titled "By-laws Review" be received and noted.*
2. *In exercise of the powers contained in section 246 of the Local Government Act 1999, having satisfied the consultation requirements of the Act and having had regard to the outcome of the consultation process, the National Competition Policy Report, the Certificates of Validity provided by the Council's legal practitioner, the comments from the Dog and Cat Management Board in relation to By-law number 5, and the approval from the Minister for Infrastructure and Transport in respect of By-law numbers 3, 5 and 8; the majority of Council, in the presence of at least two thirds of its members,*

*hereby adopts the following By-laws as attached and marked 'Attachment 1':*

- *Permits and Penalties By-law No. 1 of 2022;*
  - *Moveable Signs By-law No. 2 of 2022;*
  - *Local Government Land By-law No. 3 of 2022;*
  - *Roads By-law No. 4 of 2022;*
  - *Dogs By-law No. 5 of 2022;*
  - *Animal Management By-law No. 6 of 2022;*
  - *Waste Management By-law No. 7 of 2022; and*
  - *Caravans and Camping By-law No. 8 of 2022.*
3. *The Chief Executive Officer be authorised to undertake all steps necessary to finalise the By-law review process and to give effect to the newly adopted By-laws.*

## **Report**

At the Council meeting on 12 July 2022, Council resolved to adopt the By-laws and undertake the necessary steps to finalise the By-laws which includes having the By-law laid before Parliament via the Legislative Review Committee (LRC).

On 3 November 2022 the Legislative Review Committee wrote to the Administration raising concerns with the language used in four clauses of the Local Government Land By-law and a reference error in a fifth clause. The Administration was asked to consider modernising the language used in the By-law. The Presiding Member requested a response by 10 November 2022, which was during the 2022 Local Government Election caretaker period. **(refer Attachment 1)**

Having had regards to the minimal impact of making such changes to the By-law and following discussion with Council's lawyers, it was agreed that Administration would be prepared to make amendments to address the matters raised by the LRC and a formal response was sent to the LRC on 9 November 2022. **(refer Attachment 2)**

Whilst Council was not required to amend the language in the By-laws, there was a risk that the LRC could move a notice of motion to disallow the By-law, which would effectively leave Council without a Local Government Land By-law, which is used to regulate activities on all of Council's open space.

On 8 February 2023, the Administration received notification from the LRC that should Council commit to amending the By-law to address the matters raised by the Committee, the Committee would not proceed with its notice of motion to disallow the By-law. **(refer Attachment 3)**

To amend the Local Government Land By-law, Council must create a Local Government Land Amendment By-law No 9 of 2023. The purpose of the By-law is to make minor amendments, as requested by the Legislative Review Committee to various provisions of the Local Government Land By-law. **(refer Attachment 4)**

The proposed By-law should be read in conjunction with the Local Government Land By-law No 3 of 2022 that was made by the Council of 12 July 2022. **(refer Attachment 5)** Once made a consolidated By-law will be placed on Council's website which incorporates the amendments and legislative history.

It is recommended that the Local Government Land Amendment By-law No 9 of 2023 be endorsed for public consultation.

## **Process for Amending By-laws**

The power to amend the By-law must be exercised by the Council. There are numerous steps which must be followed to amend the By-laws namely:

1. Undertake mandatory public consultation in accordance with Section 249(1) of the Local Government Act 1999 (the Act) at least 21 days before Council resolves to make the By-law. This includes having:
  - A copy of the proposed By-laws made available for public inspection at Council's principal office and on Council's website.
  - A notice in a newspaper circulating in the area advising of the public consultation.
2. Following the end of the consultation period, the By-law needs to be certified and made by Council resolution supported by an absolute majority where at least two thirds of members are present. This report will confirm that the By-law does not affect or have any implication for National Competition Policy.
3. Once made, the By-law must be published in the Government Gazette and referred to the Legislative Review Committee. Since it would not have any impacts upon existing rights or impose obligations on a person, it can commence on the date of the Gazette.

## **City Plan Relationship**

The proposed By-laws are strongly aligned to our community vision and pillars, and will support community safety, wellbeing, and positive community outcomes.

## **Legislative Context and Related Policies**

Section 246 of the Local Government Act 1999 gives Council the power to make By-laws.

In creating By-laws Council must have regard to the principles applying to By-laws (Section 247 of the Act) and the rules relating to By-laws (Section 248 of the Act)

Section 249 of the Act sets out the process Council must follow with regards to passing By-laws.

## **Stakeholder Engagement**

A significant stakeholder and community engagement program has been undertaken as part of the By-law review, which included community consultation prior to drafting the By-laws, and mandatory consultation in accordance with the Act.

Further mandatory consultation will be undertaken in relation to these proposed amendments to the By-law.

## **Risk Management**

The review of Council's By-laws ensures that we maintain effective governance practices and continue to have By-laws which improve community wellbeing and safety. Importantly the review and drafting of By-laws has carefully considered the balance between Council regulation and community expectations.

## **Financial Management**

The amendments to the By-law will be captured through existing budgets in the 2022-2023 financial year which includes provision for legal advice and mandatory consultation notifications.

## **Environmental and Social Impacts**

Our regulatory approach has many social impacts and ensuring that we balance the public good and community expectations will improve social cohesion.

LEGISLATIVE REVIEW COMMITTEE  
PARLIAMENT OF SOUTH AUSTRALIA



PARLIAMENT HOUSE  
NORTH TERRACE  
ADELAIDE SA 5000

Mr Mark Withers  
Chief Executive Officer  
City of Port Adelaide Enfield  
(by email)

3 November 2022

Dear Mr Withers,

**Re: City of Port Adelaide Enfield Local Government Land By-Law 2022 – No 3**

The Legislative Review Committee ('the Committee') noted the following matters with respect to the City of Port Adelaide Enfield Local Government Land By-law 2022 – No 3 ('the by-law').

**Clause 9.15 (Donations) of the by-law**

The Committee discussed the use of 'he or she' in clause 9.15 of the by-law. The Committee's preference is for by-laws to use gender neutral language rather than gender specific language.

**Clause 9.28 (Overhanging Articles) of the by-law**

The Committee noted that clause 9.28 of the by-law omits the word 'reasonable' when referring to the 'opinion of an authorised person'. The Committee's preference is for the text of the by-law to explicitly require an opinion of an authorised person to be reasonable.

**Clause 9.36.1 (Swimming)**

The Committee asks whether the reference in clause 9.36.1 of the by-law to 'subclause 9.35.2' should instead refer to subclause 9.36.2.

**Clause 9.39 (Weddings, funerals and special events)**

The Committee notes that clause 9.39 of the by-law refers to 'funeral' rather than the defined term 'funeral ceremony'. If the Council intended to refer to 'funeral', the definition of 'funeral ceremony' is not required. Alternatively, if the Council intended to refer to 'funeral ceremony', the Council should substitute 'funeral ceremony' for 'funeral'.

Clause 10.1.5 (Ablutionary Facilities) of the by-law

As you would be aware, the Committee tabled a report in both Houses of Parliament on 28 September 2022 entitled 'Inquiry into Local Government Land By-laws – Public Conveniences'. The Committee's report addresses concern for clauses that make a child's age the determiner of when the clause would not apply. The Commissioner for Children and Young People, Ms Helen Connolly, in evidence before the Committee, regarded age as too arbitrary and favoured the term 'vulnerable'. Ms Connolly's preference for the term 'vulnerable' is because 'capability and capacity' is a more appropriate basis to distinguish a person than the person's age.

The Committee appreciates that the Council did not have the benefit of the Committee's report before finalising the by-law. Nevertheless, the Committee asks the Council to consider modernising the language of clause 10.1.5 of the by-law consistent with the model clause set out in the Committee's report.

Next steps

The Committee would appreciate if you would consider each of the above matters and indicate whether the Council may be prepared to consider amendments to its by-law to address them within the next 12 months.

The Committee looks forward to your response on or before the close of business on Thursday 10 November 2022. If you have any questions or would like to discuss this matter further, please contact Mr Matt Balfour, Secretary to the Committee, on (08) 8237 9415.

Yours sincerely,



**Hon Irene Pnevmatikos MLC**  
**PRESIDING MEMBER**

cc Mr Clinton Jury, CEO, Local Government Association  
Mr David Whiterod, Team Leader, Office of Local Government  
Ms Cimon Burke, Legal Practitioner, Kelliedy Jones Lawyers



9 November 2022

Hon Irene Pnevmatikos MLC  
Presiding Member  
Legislative Review Committee  
(by email)

Dear Presiding Member

**Re: City of Port Adelaide Enfield Local Government Land By-Law 2022 – No 3**

Thank you for your correspondence to Mark Withers dated 3 November 2022 notifying the City of Port Adelaide Enfield (the **Council**) of the Legislative Review Committee's consideration of the By-laws that were recently made by the Council.

You have requested a response from the Council to indicate whether the Council is prepared to make amendments to address the matters raised in your correspondence in relation to the Council's Local Government Land By-law (the **By-law**).

I write to notify you that the Council is prepared to progress an amendment by-law to amend clauses 9.15, 9.28, 9.36.1, 9.39 and 10.1.5 of the By-law to address each of the matters raised by the Committee. The Council has instructed its lawyers to prepare an amendment by-law and to provide it to the Committee, through the Secretary to the Committee, once it has been prepared.

If you require further information or would like to discuss this matter, please contact me on 8405 6722.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "B. Thomass".

Brenton Thomass  
Manager Community & Environmental Health

**CIVIC CENTRE**

163 St Vincent Street,  
Port Adelaide SA 5015  
PO Box 110,  
Port Adelaide SA 5015

**COUNCIL OFFICES**

Enfield Library  
1 Kensington Crescent, Enfield  
Greenacres Library  
2 Fosters Road, Greenacres

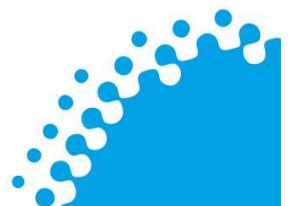
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LEGISLATIVE REVIEW COMMITTEE  
PARLIAMENT OF SOUTH AUSTRALIA



PARLIAMENT HOUSE  
NORTH TERRACE  
ADELAIDE SA 5000

Mr Mark Withers  
Chief Executive Officer  
City of Port Adelaide Enfield  
(by email)

8 February 2023

Dear Mr Withers,

**Re: City of Port Adelaide Enfield Local Government Land By-Law 2022 – No 3**

I refer to the Legislative Review Committee's ('the Committee') correspondence to you dated 3 November 2022 and to correspondence from the Council's Mr Brenton Thomass, Manager Community and Environmental Health, dated 9 November 2022 with respect to the City of Port Adelaide Enfield Local Government Land By-law 2022 – No 3 ('the by-law').

At its meeting today, the Committee confirmed that, should the City of Port Adelaide Enfield make an amending by-law to address the matters raised by the Committee, the Committee would not proceed with its notice of motion to disallow the by-law.

The Committee looks forward to your response on or before the close of business on Thursday 16 February 2023. If you have any questions or would like to discuss this matter further, please contact Mr Matt Balfour, Secretary to the Committee, on (08) 8237 9415.

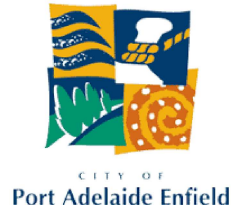
Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Irene Pnevmatikos'.

**Hon Irene Pnevmatikos MLC  
PRESIDING MEMBER**

cc Mr Clinton Jury, CEO, Local Government Association  
Mr David Whiterod, Team Leader, Office of Local Government  
Ms Cimon Burke, Legal Practitioner, Kelledy Jones Lawyers





## CITY OF PORT ADELAIDE ENFIELD

## LOCAL GOVERNMENT LAND AMENDMENT BY-LAW 2023

## By-law No. 9 of 2023

*A By-law to amend the Local Government Land By-Law of the City of Port Adelaide Enfield to address matters raised by the Legislative Review Committee*

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**PART 1 – PRELIMINARY****1. Title**

This By-law may be cited as the '*Local Government Land Amendment By-law 2023*' and is By-law No. 9 of the City of Port Adelaide Enfield.

**2. Authorising Law**

This By-law is made under sections 246 and 249 of the *Local Government Act 1999*.

**3. Purpose**

The objective of this By-law is to make minor amendments, as requested by the Legislative Review Committee and as set out in Part 2, to various provisions in the Council's Local Government Land By-law that was made by the Council on 12 July 2022 and published in the *Government Gazette* on 28 July 2022.

**4. Commencement, Revocation and Expiry**

4.1 Pursuant to section 249(6)(d) of the *Local Government Act 1999*, this By-law will take effect on the date that it is published in the *Government Gazette*.

4.2 This By-law will expire on 1 January 2030.

**5. Interpretation**

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

5.1 **Act** means the *Local Government Act 1999*;

5.2 **Council** means the City of Port Adelaide Enfield; and

5.3 **LGL By-law** means the *Local Government Land By-law 2022* made by the Council on 12 July 2022 and published in the *Government Gazette* on 28 July 2022.

**PART 2 – AMENDMENT TO LOCAL GOVERNMENT LAND BY-LAW****6. Amendment to 'Donations' clause**

As and from the date that this By-law takes effect, subclause 9.15 of the LGL By-law is deleted and substituted with the following:

**9.15 Donations**

*Ask for or receive or indicate that the person desires a donation of money or any other thing.*

**7. Amendments to 'Overhanging articles' clause**

As and from the date that this By-law takes effect, subclause 9.28 of the LGL By-law is deleted and substituted with the following:

**9.28 Overhanging articles**

*Suspend or hang an article or object from a building, verandah, pergola, post or other structure on Local Government land where it might present a nuisance or danger to a person using the land or be of an unsightly nature in the reasonable opinion of an authorised person.*

**8. Amendments to 'Swimming' clause**

As and from the date that this By-law takes effect, the reference to 9.35.2 in subclause 9.36.1 of the LGL By-law is deleted and replaced with 9.36.2

**9. Amendments to 'Weddings, funerals and special events' clause**

As and from the date that this By-law takes effect, the word 'ceremony' is to be inserted after the word 'funeral', where the word 'funeral' appears in subclause 9.39.1 and in subclause 9.39.2

**10. Amendments to 'Ablutionary facilities' clause**

As and from the date that this By-law takes effect, clause 10.1.5 of the LGL By-law is deleted and substituted with the following:

10.1.5 *enter any ablutionary facility unless the person is of the gender indicated in writing or on a sign located on that facility except:*

10.1.5.1 *in the case of a genuine emergency; or*

10.1.5.2 *where a vulnerable person is being assisted by the vulnerable person's caregiver, parent or guardian; or*

10.1.5.3 *if the person is intersex, transgender or gender diverse; or*

10.1.5.4 *if the person is a person with a disability; or*

10.1.5.5 *if the person is assisting a person with a disability.*

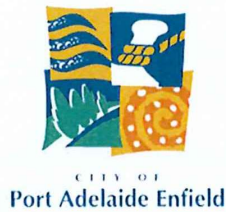
**11. Amendments to 'Directions' clause**

As and from the date that this By-law takes effect, subclause 11.2 of the LGL By-law is deleted and substituted with the following:

11.2 *A person who, in the opinion of an authorised person (acting reasonably), is likely to commit or has committed, a breach of this By-law must immediately comply with a reasonable direction of an authorised person to leave that part of Local Government land.*

This By-law was duly made and passed at a meeting of the City of Port Adelaide Enfield held on **INSERT DATE** by an absolute majority of the members for the time being constituting the Council, there being at least two thirds of the members present.

.....  
MARK WITHERS  
Chief Executive Officer



**CITY OF PORT ADELAIDE ENFIELD**  
**LOCAL GOVERNMENT LAND BY-LAW 2022**

**By-law No. 3 of 2022**

*A By-law to manage and regulate the access to and use of Local Government land (other than roads), and certain public places.*

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**PART 1 – PRELIMINARY****1. Title**

This By-law may be cited as the *Local Government Land By-law 2022* and is By-law No. 3 of the City of Port Adelaide Enfield.

**2. Authorising law**

This By-law is made under sections 238 and 246 of the *Local Government Act 1999* 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 Local Government land (other than roads), and certain public places:

- 3.1 to prevent and mitigate nuisances;
- 3.2 to prevent damage to Local Government land;
- 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. Commencement, revocation and expiry**

- 4.1 The following By-laws previously made by the Council are revoked from the day on which this By-law comes into operation<sup>1</sup>:

*By-law No. 3 – Local Government Land 2015.*<sup>2</sup>

- 4.2 This By-law will expire on 1 January 2030.<sup>3</sup>

**Note-**

- 1. Generally, a By-law comes into operation 4 months after the day on which it is gazetted (section 249(5) of the Act).
- 2. Section 253 of the Act provides that the revocation of a By-law by another By-law that contains substantially the same provisions, does not affect certain resolutions such as those applying a By-law to a part or parts of the Council area.
- 3. 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 2022*.
- 5.2 Subject to subclauses 5.3 and 5.4, this By-law applies throughout the Council's area and to foreshore areas within the Harbor of Port Adelaide.

- 5.3 Subclauses 9.3, 9.5.3.1, 9.23.3, 9.27.2, 9.40, 10.6 and 10.11 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.
- 5.4 Subclauses 9.5.3.2, 9.8.1.1, 9.8.2, 9.8.3, 9.22.1, 9.24.2, 9.26 and 9.36.1 of this By-law apply throughout the Council area except in such 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 **animal** includes birds and insects but does not include a dog unless otherwise stated;
- 6.3 **aquatic life** means any animal or plant living or growing in water including, but not limited to, molluscs, fish, insects, insect pupa or larvae and water plants;
- 6.4 **authorised person** is a person appointed by the Council as an authorised person under section 260 of the Act;
- 6.5 **boat** includes a raft, pontoon, personal watercraft or other similar device;
- 6.6 **coastal waters** means ocean waters extending offshore from the low water mark but excluding any waters overlying land between the low water mark and the high water mark;
- 6.7 **Council** means the City of Port Adelaide Enfield;
- 6.8 **electoral matter** has the same meaning as in the *Electoral Act 1985* provided that such electoral matter is not capable of causing physical damage or injury to any person within its immediate vicinity;
- 6.9 **effective control** means a person exercising effective control of an animal either:
  - 6.9.1 by means of a physical restraint; or
  - 6.9.2 by command, the animal being in close proximity to the person and the person being able to see the animal at all times;
- 6.10 **emergency worker** has the same meaning as in the *Road Traffic (Road Rules-Ancillary and Miscellaneous Provisions) Regulations 2014*;
- 6.11 **Harbor of Port Adelaide** has the same meaning as in Schedule 3 of the *Harbors and Navigation Regulations 2009*;
- 6.12 **high-water mark** means the point on land that is the highest astronomical tide;
- 6.13 **foreshore** means land extending:
  - 6.13.1 from the low water mark on the seashore to the nearest road or section boundary; or



6.13.2 to a distance of 50 metres from the high-water mark,

(whichever is the lesser distance) and to avoid doubt includes the foreshore within the Harbor of Port Adelaide;

6.14 **funeral ceremony** means a ceremony only (i.e. a memorial service) and does not include a burial;

6.15 **liquor** has the same meaning as in the *Liquor Licensing Act 1997*;

6.16 **Local Government land** means all land owned by the Council or under the Council's care, control and management (except roads);

6.17 **low water mark** means the point of the lowest astronomical tide on the foreshore;

6.18 **offensive** includes threatening, abusive, insulting or annoying behaviour and offend has a complementary meaning;

6.19 **open container** means a container that:

6.19.1 after the contents of the container have been sealed at the time of manufacture:

6.19.1.1 being a bottle, it has had its cap, cork or top removed (whether or not it has since been replaced);

6.19.1.2 being a can, it has been opened or punctured;

6.19.1.3 being a cask, it has had its tap placed in a position to allow it to be used;

6.19.1.4 being any other form of container, it has been opened, broken, punctured or manipulated in such a way as to allow access to its contents; or

6.19.2 is a flask, glass, mug or other container able to contain liquid;

6.20 **personal watercraft** has the same meaning as in the *Harbors and Navigation Act 1993*, which is a device that—

6.20.1 is propelled by a motor;

6.20.2 has a fully enclosed hull;

6.20.3 is designed not to retain water if capsized; and

6.20.4 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;

6.21 **tobacco product** has the same meaning as in the *Tobacco and E-Cigarette Products Act 1997*;

- 6.22 **road** has the same meaning as in the Act;
- 6.23 **special event** means an organised gathering of more than fifty (50) persons for any social, sporting or cultural purpose;
- 6.24 **vehicle** has the same meaning as in the *Road Traffic Act 1961*;
- 6.25 **waters** includes a body of water, including a pond, lake, river, creek or wetlands under the care, control and management of the Council but excludes coastal waters; and
- 6.26 **wheeled recreational device** has the same meaning as in the *Road Traffic Act 1961*.

**Note-**

Section 12 of the *Legislation Interpretation Act 2021* 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 – ACCESS TO LOCAL GOVERNMENT LAND****7. Access****Note-**

Pursuant to section 238(3) of the Act, if a Council makes a By-law about access to or use of a particular piece of Local Government land (under section 238), the Council should erect a sign in a prominent position on, or in the immediate vicinity of, the land to which the By-law applies.

The Council may:

- 7.1 close, or regulate or restrict access to, any part of Local Government land to the public for specified times and days; and
- 7.2 fix charges or fees payable for entry onto any part of Local Government land.

**8. Closed lands**

A person must not without permission, enter or remain on any Local Government land:

- 8.1 which has been closed, or in respect of which access by the public is regulated or restricted in accordance with subclause 7.1;
- 8.2 where entry fees or charges are payable, without paying those fees or charges; or
- 8.3 where the land has been enclosed by fences and/or walls and gates that have been closed and locked or, where a sign is displayed at the entrance of the land notifying that the land has been closed.

**PART 3 – USE OF LOCAL GOVERNMENT LAND****9. Activities requiring permission****Note-**

Pursuant to section 238(3) of the Act, if a Council makes a By-law about access to or use of a particular piece of Local Government land (under section 238), the Council should erect a sign in a prominent position on, or in the immediate vicinity of, the land to which the By-law applies.



A person must not without the permission of the Council, do any of the following on Local Government land or on the foreshore.

**9.1 Advertising**

Display, paint or erect or cause to be displayed, painted or erected, including on a structure, building or fixture there upon any sign, advertising or hoarding for the purpose of commercial advertising or any other purpose.

**9.2 Aircraft**

Subject to the *Civil Aviation Act 1988*, land any aircraft on, or take off any aircraft from the land.

**9.3 Alcohol**

Consume, carry or be in possession or in charge of any liquor in an open container on Local Government land comprising a park or reserve to which the Council has determined this paragraph applies.

**9.4 Amplification**

Use an amplifier or other mechanical or electrical device for the purpose of amplifying sound or broadcasting announcements or advertisements.

**9.5 Animals**

9.5.1 Cause or allow an animal to stray onto, move over, graze or be left unattended.

9.5.2 Subject to subclause 9.5.3, cause or allow an animal to enter, swim, bathe or remain in any waters located thereupon.

9.5.3 Lead, ride or otherwise allow a horse:

9.5.3.1 to be on or remain on any foreshore to which the Council has resolved this clause applies; or

9.5.3.2 to bathe in any waters except waters to which the Council has resolved this clause applies.

9.5.4 Lead, herd or exercise an animal, except where the Council has set aside a track or other area for use by or in connection with an animal of that kind and provided that the animal or animals are under effective control.

**9.6 Aquatic life**

Introduce any marine life to any waters located on Local Government land.

**9.7 Attachments**

Subject to subclause 9.1, attach or cause to be attached, hang or fix anything to a tree, plant, equipment, fence, post, structure or fixture on Local Government land.

**9.8 Boats and mooring**

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

9.8.1 launch or retrieve a boat from or to the foreshore or other Local Government land except:

9.8.1.1 in an area to which the Council has resolved this subclause applies;  
or

9.8.1.2 in an area where a nearby sign states that such activity is allowed and in accordance with any conditions stated in the sign;

9.8.2 hire out a boat or otherwise use a boat for commercial purposes except in any area to which the Council has resolved this subclause applies;

9.8.3 moor any boat on or to Local Government land except on or to any Local Government land to which the Council has determined this subclause applies and in accordance with any conditions the Council has resolved applies to such use; or

9.8.4 obstruct any boat or mooring place or access to any mooring place.

**9.9 Bridge jumping**

Jump or dive from a bridge or jetty on Local Government land.

**9.10 Buildings**

Use a building, or structure on Local Government land for a purpose other than its intended purpose.

**9.11 Burials and memorials**

9.11.1 Bury, inter or spread the ashes of any human or animal remains (including a dog).

9.11.2 Erect any memorial.

**9.12 Canvassing**

Subject to subclause 14.2, convey any advertising, religious or other message to any bystander, passer-by or other.

**9.13 Defacing property**

Deface, remove, paint, spray, write upon, cut names, letters or make marks on any tree, rock, gate, fence, object, monument, building, sign, bridge or property of the Council.

**9.14 Depositing soil**

Deposit any soil, clay, gravel, sand, timber, stones, pebbles or other matter on the land.

**9.15 Donations**

Ask for or receive or indicate that he or she desires a donation of money or any other thing.

**9.16 Encroachment**

Erect or cause to be erected or placed any fencing, post or other structures or any other items so as to encroach onto the land.

**9.17 Entertainment and busking**

9.17.1 Sing, busk or play a recording or use a musical instrument for the purpose of entertaining others whether or not receiving money.

9.17.2 Conduct or hold a concert, festival, show, public gathering, circus, meeting, performance or any other similar activity.

**9.18 Equipment**

Use an item of equipment, facilities or property belonging to the Council other than in accordance with any conditions of use contained on a sign or notice in the vicinity of the equipment, facility or property.

**9.19 Fires**

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

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

9.19.2 in a portable barbeque, as long as the barbeque is used in an area that is clear of flammable material for a distance of at least four (4) metres.

**9.20 Fireworks**

Ignite, discharge or use any fireworks.

**9.21 Flora and fauna**

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

9.21.1 plant, damage, pick, cut, disturb, interfere with or remove any plant, tree or flower thereon;

9.21.2 cause or allow an animal (including a dog) to stand or walk on any flower bed or garden plot;

9.21.3 deposit, dig, damage, disturb, interfere with or remove any soil, stone, wood, clay, gravel, pebbles, timber, bark or any part of the land;

- 9.21.4 take, interfere with, tease, harm or disturb any animal, bird or aquatic life or the eggs or young of any animal, bird or aquatic life;
- 9.21.5 pick, collect, take, interfere with or disturb any fruit, nuts, berries or native seeds;
- 9.21.6 disturb, interfere with or damage any burrow, nest or habitat of any animal or bird;
- 9.21.7 use, possess or have control of any device for the purpose of killing or capturing any animal, bird or aquatic life; or
- 9.21.8 collect or take any dead wood or timber or burn any timber or dead wood; –  
with the exception that subclauses 9.21.4 and 9.21.7 do not apply to lawful fishing activities.

**9.22 Foreshore**

On the foreshore:

- 9.22.1 drive or propel a vehicle onto or on the foreshore except onto or on any foreshore area to which the Council has resolved this clause applies; and
- 9.22.2 allow a vehicle to remain stationary on any boat ramp longer than is necessary to launch or retrieve a boat.

**9.23 Games and sport**

- 9.23.1 Participate in, promote or organise any organised competition or sport, as distinct from organised social play.
- 9.23.2 Play, practise or participate in any game which involves the use of a ball, missile or other object which by the use thereof may cause or be likely to cause injury or discomfort to any person being on or in the vicinity of that land or detract from or be likely to detract from another person's lawful use and enjoyment of that land.
- 9.23.3 Engage or participate in or conduct any organised group fitness activity or training on Local Government land to which the Council has resolved this subclause applies.
- 9.23.4 Participate in any game, recreational activity or event where the Council has caused a notice to be erected indicating the game, recreational activity or event is prohibited.

**9.24 Golf**

Play or practise golf except on:

- 9.24.1 a properly constructed golf course or practice fairway; or
- 9.24.2 Local Government land to which the Council has resolved this clause applies.

**9.25 Interference with land**

Interfere with, alter or damage the land (including a building, structure or fixture located on the land) including:

- 9.25.1 altering the construction or arrangement of the land to permit or facilitate access from an adjacent property;
- 9.25.2 erecting or installing a structure in, on, across, under or over the land;
- 9.25.3 changing or interfering with the construction, arrangement or materials of the land;
- 9.25.4 planting a tree or other vegetation on the land, interfering with the vegetation on the land or removing vegetation from the land; or
- 9.25.5 otherwise use the land in a manner contrary to the purpose for which the land was designed to be used.

**9.26 Kite surfing and kite buggies**

Launch or use a kite designed or used for the purpose of pulling or carrying a person, except from or on Local Government land or any foreshore to which the Council has resolved this subclause applies.

**9.27 Model aircraft, boats and cars**

- 9.27.1 Fly or operate a model or drone aircraft, boat or model or remote control vehicle in a manner which may cause or be likely to cause injury or discomfort to a person being on or in the vicinity of the land, or detract from or be likely to detract from another person's lawful use of and enjoyment of the land.
- 9.27.2 Fly or operate a model or drone aircraft, boat or model or remote control vehicle on any Local Government land or foreshore to which the Council has resolved this subclause applies.

**9.28 Overhanging articles**

Suspend or hang an article or object from a building, verandah, pergola, post or other structure on Local Government land where it might present a nuisance or danger to a person using the land or be of an unsightly nature in the opinion of an authorised person.

**9.29 Playing area**

Use or occupy a playing area:

- 9.29.1 in such a manner as to damage or be likely to damage the surface of the playing area or infrastructure (above and under ground level);
- 9.29.2 in a manner contrary to the purpose for which the playing area was intended to be used or occupied; or

9.29.3 contrary to directions of the Council made by resolution and indicated on a sign displayed on or in the vicinity of the playing area.

**9.30 Pontoons**

Install or maintain a pontoon in any waters.

**9.31 Preaching**

Preach, harangue or solicit for religious purposes.

**9.32 Removal of sand**

Remove, clear or destroy any sand, seaweed, soil, rocks, minerals, vegetation or shells.

**9.33 Ropes**

Subject to the provisions of the *Harbors and Navigation Act 1993* and the *Marine Safety (Domestic Commercial Vessel) National Law*, place a buoy, cable, chain, hawser, rope or net in or across any waters.

**9.34 Rubbish bins**

Remove, disperse or interfere with any rubbish (including bottles, newspapers, cans, containers or packaging) that has been discarded in a bin on any Local Government land, or placed on Local Government land for collection by the Council (or its agent).

**9.35 Sand dunes, pebble dunes, coastal slopes and cliffs**

9.35.1 Carry out any activity that may damage or threaten the integrity of dunes, pebble dunes, coastal slopes or cliffs.

9.35.2 Introduce non-indigenous flora or fauna or dump any material in a sand dune or pebble dune.

9.35.3 Destroy, remove or cause interference to any vegetation, whether living or dead, on or within a sand dune, coastal slope or coastal cliff.

**9.36 Swimming**

9.36.1 Subject to the *Harbors and Navigation Act 1993* and subclause 9.35.2, swim in, bathe or enter any waters except:

9.36.1.1 in an area which the Council has determined may be used for such purposes; and

9.36.1.2 in accordance with any conditions that the Council has determined by resolution apply to such use (if any) and which are specified on signage on or in the vicinity of the area.



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

**9.37 Trading**

- 9.37.1 Sell, buy, offer or display anything for sale, hire or lease any goods, merchandise, commodity, article or thing.
- 9.37.2 Carry on or cause to be carried on any business.
- 9.37.3 Set up a van or other vehicle, stall, stand, table or other structure, tray, carpet or device for the purpose (as determined by an authorised officer acting reasonably) of buying, selling, offering, displaying for sale or the hiring or leasing of any goods merchandise, commodity, article or thing.

**9.38 Vehicles**

- 9.38.1 Drive or propel a vehicle except on an area or road constructed and set aside by the Council for that purpose.
- 9.38.2 Promote, organise or take part in a race, test or trial of any kind in which vehicles take part, except on an area properly constructed for that purpose.
- 9.38.3 Repair, wash, paint, panel beat or carry out other work to a vehicle, except for running repairs in the case of a breakdown.

**9.39 Weddings, functions and special events**

- 9.39.1 Hold, conduct or participate in a marriage ceremony, funeral or special event.
- 9.39.2 Erect a marquee, stage or structure for the purpose of holding or conducting a wedding, funeral or special event.
- 9.39.3 Hold or conduct any filming where the filming is for a commercial purpose.

**9.40 Wheeled recreational devices**

Subject to the *Road Traffic Act 1961*, ride or operate a wheeled recreational device on Local Government land to which the Council has determined this subclause applies.

**10. Prohibited activities**

A person must not do any of the following on Local Government land or on the foreshore.

**10.1 Ablutionary facilities**

In any ablutionary facility (including showers, washing and toilet facilities) on Local Government land:

- 10.1.1 urinate other than in a urinal or pan or defecate other than in a pan set apart for that purpose;

- 10.1.2 deposit anything in a pan, urinal or drain which is likely to cause a blockage or damage to the facility or any drain, pipe or property associated with the facility;
- 10.1.3 use the facility for a purpose for which it was not designed or constructed;
- 10.1.4 deface, or make use of a facility other than for its proper purpose or cause any unsanitary or unclean condition in any ablutionary facility; and
- 10.1.5 subject to the *Equal Opportunity Act 1984* (SA), enter any ablutionary facility that is set aside for use of the opposite gender except:
  - 10.1.5.1 where a child under the age of ten (10) years is accompanied by an adult parent or guardian of that gender;
  - 10.1.5.2 to provide assistance to a person with a disability; or
  - 10.1.5.3 in the case of a genuine emergency.

**Note-**

To avoid doubt, subclause 10.1 does not operate to prohibit a transgender person or, a person who identifies as 'gender diverse', from lawfully using an ablutionary facility for the gender with which that person identifies.

**10.2 Animals**

- 10.2.1 Cause or allow any animal (including a dog) to enter, swim, bathe or remain in any waters to the inconvenience, annoyance or danger of any other person bathing or swimming.
- 10.2.2 Cause or allow an animal to damage a flowerbed, garden plot, tree, lawn or similar.
- 10.2.3 Lead, herd or exercise a horse in such manner as to cause a nuisance or endanger the safety of a person.

**10.3 Annoyances**

- 10.3.1 Annoy, or unreasonably interfere with any other person's use of Local Government land by making a noise or by creating a disturbance that has not been authorised by the Council.
- 10.3.2 Spit, urinate or defecate other than in toilet provided thereon.

**10.4 Climbing**

Climb on or over any fixture, fitting, plant, object or building thereon other than in a playground or similar area that the Council has set aside for that purpose.

**10.5 Buildings and equipment**

Use any item of equipment, facilities or property belonging to the Council other than in the manner and for the purpose for which it was designed, constructed or intended to be used, or in such manner as is likely to damage or destroy it.



**10.6 Fishing**

Fish in any waters to which the Council has determined this subclause applies.

**10.7 Glass**

Willfully break any glass, china or other brittle material.

**10.8 Interference with permitted use**

Interrupt or unreasonably interfere with any other person's use of Local Government land 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.

**10.9 Nuisance**

Behave in such an unreasonable manner so as to cause discomfort, inconvenience, annoyance or offence to any other person including by using profane, indecent or obscene language.

**10.10 Playing games**

Play or practise a game:

10.10.1 which is likely to cause damage to the land or anything on it; or

10.10.2 in any area where a sign indicates that the game is prohibited.

**10.11 Smoking**

Subject to the *Tobacco and E-Cigarette Products Act 1997*, smoke, hold or otherwise have control over an ignited tobacco product on any land to which the Council has determined this subclause applies.

**10.12 Obstruction**

Obstruct or cause to be obstructed:

10.12.1 any path or track;

10.12.2 any door, entrance, stairway or aisle in any building; or

10.12.3 any gate or entrance thereon.

**10.13 Solicitation**

Tout or solicit customers for the parking of vehicles or for any other purpose whatsoever.

**10.14 Throwing objects**

Throw, roll, project or discharge a stone, substance or other missile, excluding sport and recreational equipment designed to be used in that way.

**10.15 Waste and rubbish**

10.15.1 Deposit or leave thereon anything obnoxious or offensive.

10.15.2 Deposit any rubbish other than in receptacles provided by the Council for that purpose.

10.15.3 Deposit in any rubbish bin:

10.15.3.1 any trash emanated from a domestic, trade or commercial source;  
or

10.15.3.2 any rubbish contrary to any information on signs on the bin or in its vicinity.

**PART 4 – ENFORCEMENT****11. Directions**

11.1 A person on Local Government land or the foreshore must comply with a reasonable direction from an authorised person relating to:

11.1.1 that person's use of that land;

11.1.2 that person's conduct and behaviour on that land;

11.1.3 that person's safety on that land; or

11.1.4 the safety and enjoyment of other persons on that land.

11.2 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 Local Government land.

**12. 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.

**Note-**

Section 262(1) of the Act states:

*If a person (the **offender**) engages in conduct that is a contravention of this Act or a By-law under this Act, an authorised person may order the offender-*

- a) If the conduct is still continuing - to stop the conduct; and*
- b) whether or not the conduct is still continuing- to take specified action to remedy the contravention.*

Subsections (2) and (3) of section 262 also provide that it is an offence to fail to comply with an order and that if a person does not comply, the authorised person may take action reasonably required to have the order carried out.

For example, an authorised person may order a person to

- cease smoking on Local Government land;
- remove an object or structure encroaching on Local Government land; or
- dismantle and remove a structure erected on Local Government land without permission.

**13. Removal of animals and objects**

An authorised person may remove an animal or object that is on Local Government land in breach of a By-law if the authorised person reasonably believes that no person is in charge of the animal or object.

**PART 5 – MISCELLANEOUS****14. Exemptions**

- 14.1 The restrictions in this By-law do not apply to any Police Officer, emergency worker, Council officer or Council employee acting in the course of and within the scope of that person's normal duties, or to a contractor while performing work for the Council and while acting under the supervision or in accordance with a direction of a Council officer.
- 14.2 The restrictions in subclauses 9.12 of this By-law do not apply to electoral matter authorised by a candidate and which is:
  - 14.2.1 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;
  - 14.2.2 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
  - 14.2.3 related to, and occurs during the course of and for the purpose of a referendum.

**15. Liability of vehicle owners**

- 15.1 For the purposes of this clause 15, **owner** in relation to a vehicle has the same meaning as contained in section 4 of the Act.
- 15.2 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 By-law was duly made and passed at a meeting of the City of Port Adelaide Enfield held on **12 July 2022** by an absolute majority of the members for the time being constituting the Council, there being at least two thirds of the members present.

MARK WITHERS  
Chief Executive Officer