

## 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 considers the feedback of the consultation process and seeks endorsement of the Local Government Land Amendment By-law No. 9 of 2023.
<b>Attachments</b>	1. Local Government Land Amendment By-law No 9 of 2023 [12.2.2.1 - 4 pages]

### 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. In exercise of the power contained in Section 246 of the Local Government Act 1999, having satisfied the consultation requirements of the Act and after having had regard to the outcome of the public consultation in relation to the proposed By-law and the Certificate of Validity provided by the Council's legal practitioner; the majority of Council, in the presence of at least two thirds of its members, hereby makes and passed By-law No. 9 – Local Government Land Amendment By-law 2023 as attached and marked 'Attachment 1'.
  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 adopted By-law.
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### Background

At its meeting on 11 April 2023, Council resolved:

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.*

## Report

The mandatory community consultation of the draft Local Government Land Amendment By-law No. 9 of 2023 (**refer Attachment 1**) occurred through the Participate PAE Page between 17 April and 17 May 2023, which included a notice published in the Advertiser on 17 April 2023 in accordance with City of PAE Community Engagement Policy.

There were 68 visitors to the page, with one contribution being:

*Really like the updated section 10.1.5 on ablutionary facilities, it will make life easier for everyone covered by the exemption clauses. It can be very hard to find the “right” toilet when you or your kids are disabled and/or gender diverse. Having explicit guidelines around being able to access public restrooms when you don’t “look” like you should be there will ease the burden for many people.*

As there was no feedback against the proposed By-law it is recommended to adopt the Local Government Land Amendment By-law No. 9 of 2023.

## Adoption of the By-laws

The By-law can only be adopted where at least two-thirds of the members of the Council are present and the resolution must be supported by an absolute majority of the members of Council. In practical terms, this means that since the Council comprises of 18 members, at least 12 members must be present at the meeting and at least 10 members must support the resolution.

Council must consider the Certificate of Validity provided by the Council’s legal practitioner for the By-law pursuant to Section 249(9) of the Local Government Act 1999 (LG Act). The certificate certifies that in the opinion of the legal practitioner, the Council has the power to make the By-law by virtue of a statutory power specified in the certificate and that the By-law is not in conflict with the LG Act.

The amending By-law has been certified by Council’s legal practitioner, Cimon Burke, as required by the Act, and has no implications for National Competition Policy.

Once the By-law has been adopted by Council, it must be published in full in the Government Gazette.

The By-law must be laid before Parliament (via the Legislative Review Committee) within six (6) sitting days. The Legislative Review Committee considers the By-law and if it forms the opinion that the By-law should be disallowed, it must report the opinion and grounds for it to both Houses of Parliament within fourteen (14) sitting days. If Parliament is not in session, it may, before reporting to Parliament, report its opinion and the grounds for it to the Council.

As the By-law does not have any impact upon existing rights or impose obligations on a person, the By-law can commence on the date of Gazettal.

## City Plan Relationship

The proposed By-law is 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.

## **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 have been 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.

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:

**City of Port Adelaide Enfield**

***By-law No 9 – Local Government Land Amendment By-law 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*

and do certify that in my opinion:

City of Port Adelaide Enfield

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

*Local Government Act 1999*: sections 246 and 249(6)(d);

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

**DATED** the 23<sup>rd</sup> day of May 2023

A handwritten signature in black ink, appearing to read 'Cimon Burke', is written over a horizontal dotted line.

Cimon Burke, Legal Practitioner



CITY OF  
Port Adelaide Enfield

## 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 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.

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MARK WITHERS  
Chief Executive Officer