ATT 5

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 Victor Harbor**

**By-law No 5 – Dogs By-Law 2016**

*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:

City of Victor Harbor

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 6 day of July 2016

.....

Cimon Burke, Legal Practitioner

# CITY OF VICTOR HARBOR

## DOGS BY-LAW 2016

## By-law No. 5 OF 2016

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

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## PART 1 – PRELIMINARY

### 1. Title

This By-law may be cited as the *Dog By-law 2016* and is By-law No. 5 of the City of Victor Harbor.

### 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 objects 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 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[1]:

4.1.1 *By-law No. 5 – Dogs.*[2]

4.2. This By-law will expire on 1 January 2024.[3]

**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 2016*.

5.2. Subject to clause 5.3, this By-law applies throughout the Council area.

5.3. Clauses 10 and 11.1 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;

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 3 metres of such devices if there is no enclosed area);

6.5. ***Council*** means the City of Victor Harbor;

6.6. ***dog*** (except for in clause 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. ***foreshore*** means land extending from the low water mark on the seashore in the Council's area to the nearest road or section boundary, or for a distance of 50 metres from the high water mark (whichever is the lesser);

6.9. ***keep*** includes the provision of food or shelter;

6.10. ***low water mark*** means the lowest meteorological tide;

6.11. ***park*** has the same meaning as in the *Dog and Cat Management Act 1995*;

6.12. ***premises*** includes land, whether used or occupied for domestic or non-domestic purposes;

6.13. ***small dwelling*** means a self-contained dwelling that is:

6.13.1 a residential flat building; or

6.13.2 contained in a separate strata unit or community title; or

6.13.3 on an allotment less than 560 square metres in area; or

6.13.4 without a secure yard of at least 100 square metres in area;

6.14. ***township*** has the same meaning as in the Act;

6.15. ***working dog*** means a dog primarily used for the purposes of droving or tending stock;

6.16. for the purposes of clauses 9 and 10 of the By-law, a dog is under ***effective control by means of a leash*** if the dog is secured to a leash that does not exceed 2 metres in length and:

6.16.1 the leash is either tethered securely to a fixed object; or

6.16.2 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 clauses 7.2, and 7.4 a person must not, without the Council's permission, keep, or cause, suffer or permit to be kept:

7.1.1 in a township, more than one dog in a small dwelling; or

7.1.2 in a township, two or more dogs on any premises other than a small dwelling; or

7.1.3 outside of a township, more than 3 dogs (other than working dogs) on any premises.

7.2. For the purposes of clause 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. Clause 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 business involving the keeping of dogs provided that the business is registered in accordance with the *Dog and Cat Management Act 1995* and operating in accordance with all required approvals and consents.

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, 10 and 11 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, 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. Dogs on the Foreshore

9.1. Subject to clauses 9.2 and 10 and 11, a person may exercise any dog under that person's control, charge or authority on a foreshore provided that the dog is under effective control at all times.

9.2. Between the hours of:

9.2.1 10:00am and 8:00pm daily during daylight savings time; and

9.2.2 10:00am and 6:00pm daily during any other period;

a person must not allow a dog under that person's effective control, charge or authority (except an assistance dog that is required to remain off-leash in order to fulfil its functions) to remain on the foreshore to unless the dog is under effective control by means of a leash.

## 10. Dog on leash areas (other than the foreshore)

A person must not 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 on Local Government land or in a public place to which the Council has determined this clause applies unless the dog is under effective control by means of a leash.

## 11. 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:

11.1. on any Local Government land or public place to which the Council has determined this clause applies; or

11.2. on or in any children's playground.

## 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 – ENFORCEMENT

## 13. Orders

13.1. If a person engages in conduct that is in contravention of this By-law, an authorised person may order that person:

13.1.1 if the conduct is still continuing – to stop the conduct; and

13.1.2 whether or not the conduct is still continuing – to take specified action to remedy the contravention.

13.2. A person must comply with an order under this clause.

13.3. 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.

13.4. 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 dog prohibited area.

This By-law was duly made and passed at a meeting of the City of Victor Harbor held on **25 July 2016** 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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Mr Graeme Maxwell
Chief Executive Officer