

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 7 – Foreshore By-Law 2016

A By-law for the management of foreshore areas;

and do certify that in my opinion:

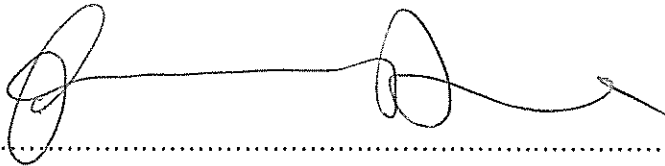
City of Victor Harbor

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

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

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

DATED the 29 day of July 2016



.....
Cimon Burke, Legal Practitioner



**CITY OF VICTOR HARBOR
FORESHORE BY-LAW 2016**

By-Law No. 7 of 2016

A by-law for the management of foreshore areas.

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PART 1 – PRELIMINARY**1. Title**

This By-law may be cited as the *Foreshore By-law 2016* and is By-law No. 7 of the City of Victor Harbor.

2. Authorising law

This By-law is made under 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 regulate the access to and use of the foreshore:

- 3.1. to prevent and mitigate nuisances on the foreshore;
- 3.2. to prevent damage to and to 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 area; and
- 3.5. for the good rule and government of the area.

4. Expiry

- 4.1. This By-law will expire on 1 January 2024.

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 2016*.
- 5.2. Subject to clauses 5.3 and 5.4, this By-law applies throughout the Council area.
- 5.3. Clauses 7.5.1, 7.5.3, 7.11 and 8.7.1 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. Clauses 7.3.1, 7.5.2, 7.6.2 and 7.12 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. Interpretation

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. **adjacent land** has the same meaning as in the *Harbors and Navigation Act 1993*;
- 6.4. **authorised person** has the same meaning as in the Act;
- 6.5. **boat** includes a raft, pontoon or personal watercraft or other similar device;
- 6.6. **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 land;
- 6.7. **Council** means the City of Victor Harbor;
- 6.8. **emergency worker** has the same meaning as in the *Road Traffic (Road Rules – Ancillary and Miscellaneous Provisions) Regulations 2014*;
- 6.9. **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), and for the avoidance of doubt, includes adjacent land within the Victor Harbor;
- 6.10. **low water mark** means the lowest meteorological tide;
- 6.11. **personal watercraft** means a device that –
- 6.11.1 is propelled by a motor; and
- 6.11.2 has a fully enclosed hull; and
- 6.11.3 is designed not to retain water if capsized; and
- 6.11.4 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.
- 6.12. **pontoon** includes a platform, landing, base, raft or similar structure (including steps and supports) in or surrounded by water;
- 6.13. **subjacent land** means land underlying navigable waters adjacent to the foreshore within the Council's area; and
- 6.14. **Vehicle** has the same meaning as in the *Road Traffic Act 1961*; and
- 6.15. **Victor Harbor** means the area defined as 'Victor Harbor' in Schedule 3 of the *Harbors and Navigation Regulations 2009*.

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, without the Council's permission, undertake any of the following activities on the foreshore:

7.1. Access

Enter or remain on any part of the foreshore that has been closed to the public (including by way of the erection of barriers) for reasons of public safety and/or conservation of the foreshore.

7.2. Advertising

Subject to clause 14.2, display, paint or erect any advertisement (including 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 on any part or parts of the foreshore to which the Council has resolved this clause applies.

7.3.2 Allow any animal to enter or leave the foreshore other than by the access ramps constructed or provided by the Council for that purpose.

7.4. Bathing

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. Boat Ramps

7.5.1 Launch or retrieve a boat from or onto any boat ramp on any part of the foreshore to which the Council has determined this clause applies without having:

- (a) purchased a short term ticket; or
- (b) been granted an annual launch permit.

7.5.2 Except for on any portion of the foreshore to which the Council has resolved this clause applies, launch or retrieve a boat from or onto the foreshore without using a boat ramp constructed or provided by the Council for that purpose.

7.5.3 Use a boat ramp on any foreshore to which the Council has determined this clause applies to launch or retrieve a boat, or for any other purpose, other than in accordance with the conditions determined by the Council (if any).

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

7.5.5 For the purposes of clause 8.4 the following definitions apply:

- (a) **annual launch permit** means a permit issued by the Council and/or its agent upon application and which authorises the launch of a boat from a boat ramp in accordance with the conditions determined by the Council;
- (b) **short term ticket** means a ticket purchased from a vending machine located at or in the vicinity of a boat ramp that authorises a single launch of a boat from the boat ramp in accordance with the conditions determined by the Council (including any conditions displayed at the site of the vending machine) and, which is valid for a period of 24 hours from the time of purchase.

7.6. *Camping and Tents*

7.6.1 Erect a tent or other structure of calico, canvas, plastic or similar material.

7.6.2 Camp or sleep overnight except 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).

7.7. *Entertainment and Busking*

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

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

7.8. *Fires*

Subject to the *Fire and Emergency Services Act 2005* and the *Environment Protection (Air Quality) Policy 2016*, light any fire except:

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

7.8.2 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.

7.9. *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.

7.10. *Jetties*

7.10.1 Jump or dive from a jetty or other structure onto the foreshore or into any adjacent waters.

7.11. *Pontoon*

Moor a boat to or allow any boat to remain stationary on any pontoon installed on subjacent land to which the Council has resolved this clause applies other than in accordance with the conditions determined by the Council and displayed on any sign on or in the vicinity of the pontoon.

7.12. *Sandboarding*

Use a sandboard or other item except in any area the Council has resolved this clause applies.

7.13. *Trading*

Sell, buy, offer or display for sale or hire any goods or services (including from a vehicle standing on the foreshore).

7.14. *Weddings, Functions and events*

7.14.1 Hold, conduct or participate in a marriage ceremony, funeral or other organised event or competition.

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

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

8. Prohibited Activities

No person shall undertake any of the following activities on the Foreshore.

8.1. *Annoyances*

Unless authorised by the Council, conduct himself or herself:

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

8.1.2 unreasonably interfere with the lawful activities of others that are taking place on the foreshore.

8.2. *Clad and unclad 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 interfere with any other person's use of the foreshore for which permission has been given by the Council.

8.4. *Sand dunes, coastal slopes and cliffs*

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

- 8.4.2 Introduce non-indigenous flora or fauna or dump any material in a sand dune.
- 8.4.3 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.
- 8.4.4 Remove or clear any sand, seaweed, soil, rocks or other flora and fauna.
- 8.4.5 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.

8.5. *Toilets*

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

- 8.5.1 urinate other than in a urinal or pan or defecate other than in a pan for the purpose;
- 8.5.2 smoke tobacco or any other substance;
- 8.5.3 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;
- 8.5.4 use the ablutionary facilities for a purpose for which it was not designed or constructed;
- 8.5.5 enter any ablutionary facilities that is set aside for the use of the opposite sex except for:
 - 9.5.5.1 a child under the age of 10 years accompanied by an adult person;
 - 9.5.5.2 providing assistance to a disabled person.

8.6. *Use of equipment, buildings and property*

- 8.6.1 Use or occupy any equipment, structure, building or property thereon that belongs to the Council other than for the purpose and in the manner for which it was designed, constructed and intended to be used.
- 8.6.2 Damage, destroy or remove any building or structure, notice board or sign.

8.7. *Vehicles & Boats*

- 8.7.1 Drive or propel a vehicle on any portion of the foreshore to which the Council has resolved this clause applies.
- 8.7.2 Drive or propel a vehicle on the foreshore except on an area or road that is constructed or set aside for that purpose.
- 8.7.3 Drive or propel a vehicle onto or from the foreshore other than by a ramp or thoroughfare constructed or provided by the Council for that purpose.

- 8.7.4 Use any ramp or thoroughfare to which the Council has resolved this clause applies to drive or propel a vehicle onto or from the foreshore without having paid the applicable fee (if any) in the manner determined by the Council.
- 8.7.5 Drive or propel a vehicle over or on any sand dunes.
- 8.7.6 Hire out a boat on or from the foreshore.

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 a Council officer.

- 12.2. The restrictions in clauses 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. Pursuant to section 264(3)(h)(iii) of the Act, 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 City of Victor Harbor held on **22 August 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.



.....
Graeme Maxwell
Chief Executive Officer