

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 Norwood Payneham & St Peters

By-law No 4 – Local Government Land By-Law 2018

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

and do certify that in my opinion:

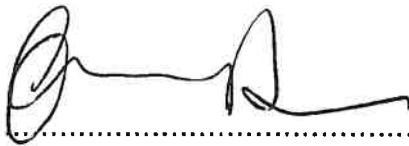
City of Norwood Payneham & St Peters

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), 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 30 day of June 2018



.....
Cimon Burke, Legal Practitioner



City of
Norwood
Payneham
& St Peters

CITY OF NORWOOD PAYNEHAM & ST PETERS

LOCAL GOVERNMENT LAND BY-LAW 2018

BY-LAW NO. 4 OF 2018

A By-law to manage and regulate 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 2018* and is By-law No. 4 of the City of Norwood Payneham & St Peters.

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 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 area; and
- 3.5 for the good rule and government of the Council's area.

4. Commencement and Expiry

This By-law will commence in accordance with section 249(5) of the Act and will expire on 1 January 2026.

5. Application

- 5.1 This By-law operates subject to the Council's *Permits and Penalties By-law 2018*.
- 5.2 Subject to subclauses 5.3 and 5.4, this By-law applies throughout the Council area.
- 5.3 Subclauses 9.3, 9.9.1, 9.9.4, 9.25.1 – 9.25.3, 9.35, 10.3 and 10.9 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 9.5.1, 9.9.2, 9.15.2.2 and 9.31 of this By-law apply throughout the Council's 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, unless the contrary intention appears:

- 6.1 **Act** means the *Local Government Act 1999*;
- 6.2 **animal** includes birds, insects, poultry, horses, cattle, sheep, goats and other livestock, but does not include a dog;
- 6.3 **authorised person** is a person appointed by the Council as an authorised person under section 260 of the Act;
- 6.4 **boat** includes a raft, pontoon, houseboat, personal watercraft or other similar device;

- 6.5 **camp** includes setting up a camp, or causing a tent, swag and/or similar bedding, a caravan or motor home to remain on the land for the purpose of staying overnight, whether or not any person is in attendance or sleeps on the land;
- 6.6 **Council** means the City of Norwood Payneham & St Peters;
- 6.7 **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;
- 6.8 **effective control** means a person exercising effective control of an animal either:
- 6.8.1 by means of physical restraint; or
- 6.8.2 by command, the animal being in close proximity to the person and the person being able to see the animal at all times;
- 6.9 **emergency worker** has the same meaning as in the *Road Traffic (Road Rules-Ancillary and Miscellaneous Provisions) Regulations 2014*;
- 6.10 **liquor** has the same meaning as in the *Liquor Licensing Act 1997*;
- 6.11 **Local Government land** means all land owned by the Council or under the Council's care, control and management (except roads);
- 6.12 **offensive** includes threatening, abusive, insulting or annoying behaviour and offend has a complementary meaning;
- 6.13 **open container** means a container which, after the contents of the container have been sealed at the time of manufacture:
- 6.13.1 being a bottle, it has had its cap, cork or top removed (whether or not it has since been replaced);
- 6.13.2 being a can, it has been opened or punctured;
- 6.13.3 being a cask, it has had its tap placed in a position to allow it to be used;
- 6.13.4 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
- 6.13.5 is a flask, glass, mug or other container able to contain liquid;
- 6.14 **personal watercraft** means a device that –
- 6.14.1 is propelled by a motor; and
- 6.14.2 has a fully enclosed hull; and
- 6.14.3 is designed not to retain water if capsized; and
- 6.14.4 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;

- 6.15 **recreation ground** means Local Government land commonly used for playing sports or games, or accommodating the spectators at any sport or game, and any area of land contiguous thereto and used in connection with it.
- 6.16 **tobacco product** has the same meaning as in the *Tobacco Products Regulation Act 1997*;
- 6.17 **vehicle** has the same meaning as in the *Road Traffic Act 1961*;
- 6.18 **waters** includes a body of water, including a pond, lake, river, creek or wetlands under the care, control and management of the Council; and
- 6.19 **wheeled recreational device** has the same meaning as in the *Road Traffic Act 1961*.

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 – 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.

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.

9.1 Advertising

Display, paint or erect or cause to be displayed, painted or erected, on Local Government Land or a structure, building or fixture on Local Government Land 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 (including a helicopter) on, or take off any aircraft from the land.

9.3 Alcohol

Consume, carry or be in possession or in charge of any liquor on Local Government land comprising parks or reserves 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 on Local Government land except for on Local Government land to which the Council has resolved this subclause applies and provided that the animal or animals are under effective control.

9.5.2 Cause or allow an animal to enter, swim, bathe or remain in any waters located on Local Government land.

9.6 Annoyance

Do anything likely to offend or unreasonably interfere with any other person:

9.6.1 using that land; or

9.6.2 occupying nearby premises,

by making excessive noise or creating a disturbance.

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 Bees

Place a hive of bees on such land or allow it to remain thereon.

9.9 Boats

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

- 9.9.1 launch or retrieve a boat to or from any waters adjacent to or on any Local Government land to which the Council has determined this subclause applies;
- 9.9.2 propel, float or otherwise use a boat on or in any waters except:
- (a) on Local Government land to which the Council has determined this subclause does not apply; and
 - (b) in accordance with any conditions that the Council may have determined by resolution apply to that use.
- 9.9.3 hire out a boat or otherwise use a boat for commercial purposes; or
- 9.9.4 moor any boat on or to Local Government land to which the Council has determined this subclause applies.

9.10 Bridge Jumping

Jump or dive from a bridge on Local Government land.

9.11 Buildings

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

9.12 Burials and Memorials

9.12.1 Bury, inter or spread the ashes of any human or animal remains.

9.12.2 Erect any memorial.

9.13 Camping and Tents

9.13.1 Subject to subclause 9.13, erect a tent or other structure of calico, canvas, plastic or similar material.

9.13.2 Camp or sleep overnight on Local Government land except:

9.13.2.1 where a person is in a caravan park on Local Government land, the proprietor of which has been given permission to operate the caravan park on that land; or

9.13.2.2 on Local Government land that has been designated by resolution of the Council for that purpose and only then, in accordance with such time limits and other conditions determined by resolution of the Council and contained in any signage erected thereon.

9.14 Canvassing

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

9.15 Defacing Property

Deface, damage, 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.

9.16 Distribution

Subject to subclause 14.2 and the *Local Nuisance and Litter Control Act 2016*, place on a vehicle (without the consent of the owner of the vehicle), or give out or distribute any book, leaflet or other printed matter to any bystander, passer-by or other person.

9.17 Donations

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

9.18 Entertainment and Busking

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

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

9.19 Equipment

Use an item of equipment, facilities or property belonging to the Council if that person is of or over the age indicated by a sign or notice as the age limit for using such equipment, facility or property.

9.20 Fires

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

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

9.20.2 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.

9.21 Fireworks

Use, ignite or discharge any fireworks.

9.22 Flora and Fauna

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

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

9.22.2 cause or allow an animal to stand or walk on or drive a vehicle over any flower bed or garden plot;

- 9.22.3 deposit, dig, damage, disturb, interfere with or remove any soil, stone, wood, clay, gravel, pebbles, timber, bark or any part of the land;
- 9.22.4 take, interfere with, tease, harm or disturb any animal, bird or marine creature or the eggs or young of any animal, bird or marine creature;
- 9.22.5 pick, collect, take, interfere with or disturb any fruit, nuts, berries or native seeds;
- 9.22.6 disturb, interfere with or damage any burrow, nest or habitat of any animal or bird;
- 9.22.7 use, possess or have control of any device for the purpose of killing or capturing any animal, bird or marine creature; or
- 9.22.8 burn any timber or dead wood –

with the exception that subclauses 9.22.4 and 9.22.7 do not apply to lawful fishing activities.

9.23 **Games & Sport**

- 9.23.1 Participate in, promote or organise any organised competition or sport, as distinct from organised social play on Local Government land to which the Council has resolved this subclause applies.
- 9.23.2 Play or practise any game which involves kicking, hitting or throwing a ball or other object on Local Government land to which the Council has resolved this subclause applies;
- 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 Play or practice the game of golf on Local Government Land other than on a properly constructed golf course or practice fairway and in accordance with any conditions determined by the Council (or its agent) that apply to such play or practice.

9.24 **Interference with Land**

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

- 9.24.1 altering the construction or arrangement of the land to permit or facilitate access from an adjacent property;
- 9.24.2 erecting or installing a structure (including pipes, wires, cables, fixtures, fittings and other objects) in, on, across, under or over the land;
- 9.24.3 changing or interfering with the construction or arrangement of materials on the land;
- 9.24.4 planting a tree or other vegetation on the land, interfering with the vegetation on the land or removing vegetation from the land; or

9.24.5 otherwise use the land in a manner contrary to the purpose for which the land was designed to be used.

9.25 Model Aircraft, Boats and Cars

Subject to the *Civil Aviation Safety Regulations 1998*:

9.25.1 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; or

9.25.2 fly or operate a model or drone aircraft, boat or model or remote control vehicle on any Local Government land to which the Council has resolved this subclause applies.

9.26 Overhanging Articles or Displaying Personal Items

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.

9.27 Playing Area

Use or occupy a recreation ground:

9.27.1 in such a manner as to damage or be likely to damage the surface of the recreation ground or infrastructure (above and under ground level);

9.27.2 in a manner contrary to the purpose for which the recreation ground was intended to be used or occupied; or

9.27.3 contrary to any directions of the Council made by resolution and indicated on a sign displayed adjacent to the recreation ground.

9.28 Preaching

Preach, harangue or solicit for religious or charitable purposes.

9.29 Rubbish

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).

9.30 Share Bikes

9.30.1 Operate a share bike scheme.

9.30.2 Leave a share bike on Local Government land other than in accordance with conditions determined by the Council (including as set out in a policy from time to time) that are published on the Council's website.

9.30.3 For the purposes of this subclause 9.30:

9.30.3.1 **share bike** means a bike operating in the Council's area that is available for hire (for fee or otherwise) in connection with a share bike scheme, including through the use of a special purpose electronic application; and

9.30.3.2 **share bike scheme** means a scheme operated in the Council's area which involves bikes (dockless or otherwise) being made available for hire by any person for a fee or otherwise.

9.31 **Swimming**

Subject to the provisions of the *Harbors and Navigation Act 1993* swim in, bathe or enter any waters on Local Government land except:

9.31.1 in an area which the Council has designated and set aside for such purposes; and

9.31.2 in accordance with any conditions that the Council may have determined (by resolution) apply to such use and which are exhibited on any signage in the vicinity.

9.32 **Trading**

9.32.1 Sell, buy, offer or display anything for sale or hire or lease any goods, merchandise, commodity, article or thing.

9.32.2 Carry on any business or promote or advertise the same.

9.32.3 Set up a van or other vehicle, stall, stand, table or other structure, tray, carpet or device for the apparent purpose of buying, selling, offering, displaying or exposing for sale or the hiring or leasing of any goods, merchandise, commodity, article, service or thing.

9.33 **Vehicles**

9.33.1 Drive or propel a vehicle except on an area or road constructed and set aside by the Council for that purpose.

9.33.2 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.

9.33.3 Repair, wash, paint, panel beat or carry out other work to a vehicle, except for running repairs in the case of a breakdown.

9.34 **Weddings, Functions and Special events**

9.34.1 Hold, conduct or participate in a marriage ceremony, funeral service or other special event as determined by the Council.

9.34.2 Erect a marquee, stage or structure for the purpose of holding or conducting a wedding, funeral service or other special event as determined by the Council.

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

9.35 **Wheeled Recreational Devices**

Subject to the *Road Traffic Act 1961*, use 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.

10.1 **Animals**

10.1.1 Cause or allow an animal to damage a flowerbed, garden plot, tree, lawn or like thing or place.

10.1.2 Subject to subclause 9.4, lead, herd or exercise any animal in such a manner as to cause a nuisance or endanger the safety of any person.

10.2 **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.

10.3 **Fishing**

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

10.4 **Glass**

Willfully break any glass, china or other brittle material.

10.5 **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.

10.6 **Nuisance**

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

10.7 **Playing games**

Play or practise a game or sport or participate in any form of recreation or amusement:

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

10.7.2 which endangers the safety or interferes with the comfort of (any person; and

10.7.3 in any area where a sign indicates that the game, sport or amusement is prohibited.

10.8 Rubbish and Rubbish Dumps

- 10.8.1 Interfere with, remove or take away any rubbish that has been discarded at any rubbish dump on Local Government land.
- 10.8.2 Deposit in a receptacle any rubbish emanating from domestic or trade purposes, unless designated by a sign or signs.

10.9 Smoking

Subject to the *Tobacco Products Regulation Act 1997*, smoke, hold or otherwise have control over an ignited tobacco product on any land to which the Council has determined to be a smoke-free area.

10.10 Solicitation

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

10.11 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.

10.12 Toilets

In any public convenience on Local Government land:

- 10.12.1 urinate other than in a urinal or pan or defecate other than in a pan set apart for that purpose;
- 10.12.2 deposit anything in a pan, urinal or drain which is likely to cause a blockage;
- 10.12.3 use it for a purpose for which it was not designed or constructed;
- 10.12.4 enter a toilet that is set aside for use of the opposite gender except:
- (a) where a child under the age of eight years is accompanied by a parent or adult guardian of that gender; or
 - (b) to provide assistance to a person with a disability; or
 - (c) in the case of a genuine emergency.

10.13 Waste

Deposit or leave thereon anything obnoxious or offensive.

PART 4 - ENFORCEMENT

11. Directions

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

- 11.1.1 that person's use of the land;
 - 11.1.2 that person's conduct and behaviour on the land;
 - 11.1.3 that person's safety on the land; or
 - 11.1.4 the safety and enjoyment of other persons on the 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:

- (1) *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;
- 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 no person is in charge of, or apparently in charge of, the animal or object.

PART 5 - MISCELLANEOUS

14. Exemptions

- 14.1 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 while performing work for the Council and while acting under the supervision of or in accordance with a direction from a Council officer.
- 14.2 The restrictions in subclauses 9.14 and 9.16 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; or
- 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 Norwood Payneham & St Peters held on the **6 August 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.



Mario Barone
Chief Executive Officer