
 <b>Adelaide Plains Council</b>	<b>21.1 Confidential Item</b>
<b>29 January 2019</b>	

21.1 By-Law Review Update

## **RECOMMENDATION**

**“that:-**

- 1. Pursuant to section 90(2) of the *Local Government Act 1999*, the Council orders that all members of the public, except Chief Executive Officer, General Manager – Governance and Communications, General Manager – Development and Community, General Manager – Finance and Economic Development, Acting General Manager – Infrastructure and Environment, Governance Officer and Executive Assistant be excluded from attendance at the meeting of the Council for Agenda Item 21.1 – *By-Law Review Update*;**
- 2. Council is satisfied that pursuant to section 90(3)(h) of the *Local Government Act 1999*, Item 21.1 – *By-Law Review Update* concerns legal advice obtained by Council; and**
- 3. Council is satisfied that the principle that Council meetings should be conducted in a place open to the public has been outweighed by the need to keep the information, matter and discussion confidential.”**

 <b>Adelaide Plains Council</b>	<b>21.1</b>	<b>By-Law Review Update</b>
	<b>Department:</b>  <b>Report Author:</b>	<b>Development and Community</b>  <b>General Manager - Development and Community</b>
<b>Date: 29 January 2019</b>	<b>Document No:</b>	<b>D19/2833</b>

## **EXECUTIVE SUMMARY**

- The purpose of this report is to provide Council with an update in relation to the 2019 By-Law Review (the By-Law Review), together with associated legal advice, and to seek further information from Council regarding a possible By-Law to regulate trail bike riding on private property.
- In response to community concerns in relation to off road trail bike riding on private property, Council, at its Ordinary Meeting on 18 April 2016, resolved to examine the merits of the creation of a By-Law that addresses off road trail bike riding, as well as such activity occurring on private land, and to seek advice from South Australia Police and Norman Waterhouse Lawyers.
- Council, at its Ordinary Meeting on 20 June 2016, resolved to invite Norman Waterhouse Lawyers to make a presentation to Council at its Ordinary Meeting on 18 July 2016 in relation to the regulation of off road trail bike riding.
- Mr Dale Mazzachi, Senior Associate, Norman Waterhouse Lawyers, provided a PowerPoint presentation to Council on the matter at the Ordinary Meeting on 18 July 2016.
- Council, at its Ordinary Meeting on 15 August 2016, resolved to consider the possible introduction of a new by-law to regulate trail bike riding activity on both private and public land, into the next substantive by-law review to take effect in 2017.
- Council, at its Ordinary Meeting on 18 April 2017 resolved to defer any further review of Council's by-laws until the 2018-2019 financial year.
- Council, at its Ordinary Meeting on 20 August 2018 considered a report in confidence regarding this By-Law review. As a result a motion was carried and the review commenced.
- Three of Council's by-laws, *By-law No. 1 Permits and Penalties*, *by-law No. 3 Roads and by-law No. 5 Moveable Signs* expired on 1 January 2019. Council's remaining by-laws, *By-law No. 2 Local Government Land and by-law No. 4 Dogs* will expire on 1 January 2020.

## **RECOMMENDATION**

**“that Council, having considered Item 21.1 – *By-Law Review Update* receives and notes the report and in doing so acknowledges receipt of legal advice, primarily as it relates to trail bike riding, from Norman Waterhouse Lawyers dated 20 December 2018 and presented as Attachment 1 to this Report.”**

## **BUDGET IMPACT**

Estimated Cost:	\$11,900 - \$16,900 (possible additional cost for SA Government Gazettal and other mandatory State Government referrals)
Future ongoing operating costs:	Unknown (implications on compliance resources)
Is this Budgeted?	Yes

## **RISK ASSESSMENT**

By adopting the recommendation, Council will not be exposed to any significant risk. However, by-laws are local laws relevant to and established by Council primarily to address issues on council owned land. This may impact on the ability for Council to introduce a new by-law regulating trail bike riding on private land.

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## **Attachments**

1. Letter from Paul Kelly, Director, Norman Waterhouse Lawyers dated 20 December 2018.
2. Draft – Permits and Penalties By-Law 2019.
3. Draft – Local Government Land By-Law 2019.
4. Draft – Roads By-Law 2019.
5. Draft – Dogs By-Law 2019.
6. Draft – Moveable Signs By-Law 2019.

## **DETAILED REPORT**

### **Purpose**

The purpose of this report is to provide Council with an update in relation to the 2019 By-Law Review (the By-Law Review), together with associated legal advice, and to seek further information from Council regarding a possible By-Law to regulate trail bike riding on private property.

### **Background/History**

In response to community concerns in relation to off road trail bike riding on private property, Council, at its Ordinary Meeting on 18 April 2016 resolved as follows:

*Council Resolution*

*2016/131*

*Introduction of By-law for Off Road Dirt Bike Activities (CON12/537)*

*Moved Cr Jones*

*Seconded Cr Keen*

*“that Council instructs the Acting Chief Executive Officer to bring back a report examining merits of the creation of a By-law that can address off road trail bike riding as well as such activity occurring on private land, and seek advice from SAPOL and Norman Waterhouse in relation the following: -;*

*a) drafting the relevant by-law;*

*b) administering the activity;*

*(c) examining a raft of Acts and Statutes that may regulate this activity; and*

*(d) Including associated penalties for non compliance.”*

*CARRIED*

Council, at its Ordinary Meeting on 20 June 2016 resolved as follows:

*Council Resolution*

*2016/200*

*Moved Cr Jones*

*Seconded Cr Lawrence*

*“that Council instructs the Chief Executive Officer to invite Norman Waterhouse Lawyers to provide an Open Forum deputation to Council regarding the regulation of off road trail bike riding at the 18 July 2016 Ordinary meeting, prior to a further report being provided to Council at the 15 August 2016 Ordinary meeting.”*

*CARRIED*

Dale Mazzachi, Senior Associate, Norman Waterhouse Lawyers made a presentation to Council at its Ordinary Meeting on 18 July 2018.

Council, at its Ordinary Meeting on 15 August 2016, resolved as follows:

*Council Resolution*

2016/ 254

*Moved Cr McColl*

*Seconded Cr Keen*

*“that Council considers the possible introduction of a new bylaw to regulate trail bike riding activity on both private and public land into the next substantive bylaw review to take effect in 2017.”*

CARRIED

Council, at its Ordinary Meeting on 18 April 2017, resolved as follows:

*Council Resolution*

2017/ 111

*Moved Cr Strudwicke*

*Seconded Cr Lawrence*

*“that Council, having considered Item 16.1.2 – By-Law Review, dated 18 April 2017, receives and notes the report and in doing so defer any further review of Council by-laws until the 2018-2019 financial year.”*

CARRIED

At the Ordinary Meeting on 20 August 2018 considered a report in confidence regarding this by-law review. As a result a motion was carried and Management commenced the review.

## Discussion

The By-Law Review has commenced. **Attachment 1** provides a detailed outline of the by-law making process.

Three of Council’s by-laws, *By-law No. 1 Permits and Penalties*, *By-law No. 3 Roads* and *By-law No. 5 Moveable Signs* expired on 1 January 2019. Notwithstanding this, some activities regulated by these by-laws can be controlled by utilising various provisions in the *Local Government Act 1999*. Council’s remaining by-laws, *By-law No. 2 Local Government Land* and *By-law No. 4 Dogs* will expire on 1 January 2020.

Council’s by-laws have been reviewed extensively by Norman Waterhouse Lawyers in consultation with Management. As a result, the **attached** draft by-laws (**Attachments 2 – 6**) are now provided for Members’ consideration.

Council by-laws have an operative life of 7 years from the date published in the SA Government Gazette. The draft by-laws have been updated, modernised and tailored to the Adelaide Plains Council area. They reflect best practice by-law making and have been drafted with future growth and changing needs in the area in mind. The draft Local Government Land By-law 2019 includes provisions that prohibit or restrict the use of any vehicle on local government land.

In relation to the possible introduction of a new by-law to regulate trail bike riding activity on private land, the initial advice from Norman Waterhouse Lawyers is that whilst it is possible that in certain circumstances Council may have the power to make by-laws regulating such activity, the nature and scope of such a by-law may raise issues of legislative power. Further, as this type of by-law has not previously been addressed by local government in this State, the Legislative Review Committee of State Parliament may ultimately not allow such a by-law.

In consideration of the above, Norman Waterhouse lawyers have asked that Council provide clear direction on the scope of a proposed by-law to regulate the use of trail bikes on private land, including whether Council seeks to restrict use of trail bikes on private land:

- Absolutely; or
- At particular times or particular locations; or
- On particular land; or
- In particular circumstances (e.g. where the use creates excessive noise or dust)

Once Council has provided this information, Norman Waterhouse will provide further advice regarding Council's ability to make such a by-law and the likely attitude of the Legislative Review Committee of State Parliament towards it.

## **Conclusion**

Council's 2019 by-law review has commenced.

Three by-laws have now expired and the remaining two by-laws will expire on 1 January 2020. Council's by-laws have been extensively reviewed by Norman Waterhouse Lawyers and new draft by-laws have been prepared. These draft by-laws have been reviewed by Management, and are now presented to Council for consideration.

Norman Waterhouse Lawyers now seeks feedback from Council in relation to the possible introduction of a new by-law to regulate trail bike riding activity on private land, particularly as to whether Council seeks to restrict use of trail bikes on private land absolutely, at particular times or locations, on particular land or in particular circumstances. Once this feedback is received, Norman Waterhouse Lawyers will be in a position to provide further advice regarding Council's ability to make such a by-law and the likely attitude of the Legislative Review Committee of State Parliament towards it.

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## **References**

### Legislation

*Local Government Act 1999*

### Council Policies

Nil



By Email: RVeitch@apc.sa.gov.au  
 Ref: PSK\M00293023F05582808.DOCX

20 December 2018

Mr Robert Veitch  
 General Manager, Development & Community  
 Adelaide Plains Council  
 PO Box 18  
 MALLALA SA 5502

Dear Robert

### **By-law Review 2018/19**

We refer to previous communications regarding the above matter.

You have instructed that we provide the Council with draft by-laws and assist the Council in its passing of by-laws. We confirm the draft by-laws will deal with the following areas of regulation for the Council's consideration:

1. Permits and Penalties;
2. Local Government Land;
3. Roads;
4. Dogs; and
5. Moveable signs.

### **Matters for Consideration**

Please note that we will review all of the Council's current by-laws and make amendments and additions to these documents to take into account the head powers available to the Council. Noting these documents will be drafts only, please feel free to remove any clauses that you do not feel are necessary or indeed add clauses. I ask this be completed by pen amendment only so that the 'master copy' on my system remains accurate and unchanged.

### **Trail Bikes**

You have questioned whether the Council has the legislative ability to make a by-law to prohibit and/or limit the use of certain vehicles (trail bikes) on private land. The Council has substantive plenary power in relation to matters of municipal concern<sup>1</sup> to make by-laws for the good rule and government of the area, and for the convenience, comfort and safety of its community in accordance with Section 246(2) of the *Local Government Act 1999* (**the Act**).

It is our advice that whilst it is possible that in certain circumstances the Council may have the power to make by-laws regulating such vehicles, the nature and scope of such a by-law may raise

<sup>1</sup> See *Attorney General (SA) v Corporation of the City of Adelaide* (2013) 249 CLR 1.  
 Ordinary Council Meeting 27/2/2019

29 January 2019



issues of legislative power in some circumstances. In addition, I have concerns regarding the Legislative Review Committee of State Parliament's attitude towards such a by-law generally, given that this type of matter has not previously been addressed by local government in this State.

Before we provide any draft provisions, we request the Council provide us with clear direction of the proposed scope of any such by-law, including whether the Council seeks to restrict use of these vehicles absolutely, at particular times, at particular locations, on particular land or in particular circumstances (such as where the vehicle is used to create excessive noise or dust).

Once we have received this further direction, we will take steps to determine whether the particular restrictions sought by the Council are within the Council's legislative competence and are likely to be accepted by the Legislative Review Committee.

### The Process

The procedure for making by-laws is set out in Chapter 12 Part 1 of the Act. To assist the Council in its consideration and passing of by-laws, we have included an outline of that process below.

1. The Council drafts the proposed By-laws.
2. The Council must, at least 42 days before resolving to make the Dogs By-law, refer the draft by-law to the Dog and Cat Management Board together with a report:
  - outlining the objects of the proposed by-law; and
  - setting out how it is proposed to implement or enforce the proposed by-law; and
  - explaining the reasons for any difference in the proposed by-law from other by-laws about a similar subject matter applying or proposed to apply in other council areas.

The Council must consider any recommendations of the Dog and Cat Management Board relating to the by-law.

3. The Council must receive the approval from the Minister of Transport prior to making any by-law relating to the use of adjacent land pursuant to Section 18A of the *Harbours and Navigations Act 1993*.
4. The Council must, at least 21 days before resolving to make the by-laws (including the by-law relating to dogs), by notice in a newspaper circulating in the area of the Council inform the public of the availability of the proposed by-laws and set out the terms of the by-laws, or describe in general terms the by-laws' nature and effect.

In respect of commencing the public consultation period, I suggest the following wording for a recommendation to the Council:

- '1. *That the Council endorse draft By-law No 1 – Permits and Penalties, draft By-law No 2 – Local Government Land, draft By-law No 3 – Roads, draft By-law No 4 – Dogs and draft By-law No 5 – Moveable Signs as attached to the report entitled [insert title] for the purposes of public consultation in accordance with Section 249 of the Local Government Act 1999.*
2. *That the Chief Executive Officer be authorised to make copies of the draft By-laws available for public inspection without charge at the principal office of the Council during ordinary office hours.*

3. *That the Chief Executive Officer be authorised to publish notice informing the public of the availability of the draft By-laws in [insert name of local newspaper].'*

At the conclusion of the public consultation period, the Council must give reasonable consideration to any submissions made in respect of the by-laws.

5. The by-laws (and any code, standard or other document proposed to be applied or incorporated by the by-laws) must be made available for public inspection at the Council's office at least 21 days before the meeting at which it is proposed to make the by-laws.
6. The Council must, pursuant to Section 247(c) of the Act, consider the by-laws in light of the Competition Principles Agreement, ie the National Competition Policy, to determine if any parts of the by-laws have the potential to restrict competition.

Section 247(c) of the Act provides that a by-law must:

*'avoid restricting competition to any significant degree unless the Council is satisfied that there is evidence that the benefits of the restriction to the community outweigh the costs of the restriction, and that the objectives of the by-law can only be reasonably achieved by the restriction.'*

The Council must therefore consider a report which clarifies the objectives of the draft by-laws, identifies the nature of any potential restrictions on competition, analyses the likely effect of such restrictions and considers any alternative means of achieving the same controls including non-legislative approaches. If the Council wishes to continue to make the by-laws it must be *'satisfied'* that the benefits outweigh any detriment that may be caused by its adoption in that form.

7. The Council must obtain a Solicitors Certificate for each by-law pursuant to Section 249(4) of the Act. This document should certify that in the opinion of the legal practitioner the Council has the power to make the by-laws by virtue of a statutory power specified in the certificate and the by-law is not in conflict with the Act.
8. A report to the Legislative Review Committee must be prepared outlining the reasons and objectives of each by-law, the effect of each clause, administrative and policing strategies, the Council's consideration of its obligations under the National Competition Policy and the consultation undertaken, including who was consulted, when and their response.
9. The Council considers the by-laws at its meeting, and if any changes are required, the by-laws must be sent back to the Council's solicitors for a fresh Solicitors Certificate, and the Council must re-advertise the by-laws in accordance with paragraphs 4 and 5 above. Changes to the report to the Legislative Review Committee may also be required.
10. If the Council decides to pass the by-laws, the resolution making the by-laws must be passed at a meeting of the Council where at least two-thirds of the members of the Council are present and the resolution is supported by an absolute majority of the members of the Council.
11. The Chief Executive Officer must sign two copies of the by-laws, and insert the date of the meeting at which it was made and forward one copy to the Government Printer **immediately** so that it can be published in the Gazette. (You should note that the Subordinate Legislation Act provides that a by-law must be published forthwith).

When a By-Law is published in the Gazette, it should be published 'as is', that is, the publication should not be put in the form of a notice. Mistakes in the content of publication

can be made if publication is under a heading '*Notice is hereby given etc*', and therefore it is desirable to publish the by-laws, signed by the CEO and with the date of the meeting at which it was made, **exactly how presented to the Council**. Variations can result in non-compliance with either or both of the Act and the *Subordinate Legislation Act 1978*.

12. The by-laws must be laid before Parliament within six sitting days.

For this purpose the following must be forwarded to the secretary of the Legislative Review Committee:

- 1 original signed copy of the by-laws.
- 17 photocopies of the signed by-laws.
- 14 copies of the Report to the Legislative Review Committee (one with an original signature).
- 1 copy of the Solicitors Certificate in respect of each by-law required under Section 249(4) of the Act (with the original signature).
- Advice of the day of proposed Gazettal unless the 17 copies above are copies of the by-laws as Gazetted (which clearly show the date). The address for the Legislative Review Committee is as follows:

The Legislative Review Committee  
Parliament House  
North Terrace  
ADELAIDE SA 5000

The Legislative Review Committee considers the by-laws and if it forms the opinion that any by-law should be disallowed it must report the opinion and the grounds for it to both Houses of Parliament within fourteen sitting days, and, if Parliament is not in Session, it may, before reporting to Parliament, report its opinion and the grounds for it to the Council.

The by-laws will take effect four months from the date of Gazettal, but may be disallowed by Parliament - a notice of motion for disallowance may be moved within fourteen sitting days. When a motion for disallowance is **passed** it is published in the Gazette.

13. Pursuant to Section 249(7) of the Act, the Council must publish a notice of the making of a by-law in a newspaper circulating in the area of the Council.
14. The Council is required pursuant to Section 252 of the Act to cause a separate register to be kept of all by-laws made or adopted by the Council.
15. A by-law will expire, unless revoked, on 1 January of the year following the year in which the seventh anniversary of the day on which the by-law was made falls.
16. In relation to any parts of any by-law that a by-law provides will only apply to areas that the Council has by resolution directed, the Council will be required to resolve which areas those parts of the by-law will apply to. Should the Council fail to pass such a resolution, those parts of the by-law will not apply to any areas.
17. The Council should set by resolution expiation fees for breaches of by-laws unless the expiation fees are set by by-law.

18. The Council may, by resolution, authorise certain employees of the Council to grant permits under the by-laws. Absent such a resolution, permission required under the by-laws can only be granted by the Council by resolution.
19. In accordance with Section 132 of the Act, the Council must make its by-laws and any determination made under item 15 available on the internet.

As part of the package being provided to the Council, we will prepare the necessary reports referred to at paragraphs 5 and 7 above. In addition, we will provide the Council with the requisite Solicitors Certificate. We will also provide the necessary documentation to the Gazette and to the Legislative Review Committee on the Council's behalf.

### **Next Steps**

I **enclose** the draft by-laws for your consideration. Could you please consider these drafts in detail and request comment from your relevant staff. Please provide me with any feedback and/or amendments to the by-laws. Having finalised the content of the draft by-laws, it will be possible for the Council to commence the public consultation process.

I also seek instructions regarding the form and content of any proposed Trial Bike by-law.

Please do not hesitate to contact me if you have any further queries in relation to this matter in the meantime.

Yours faithfully  
Norman Waterhouse



Paul Kelly  
Director  
Direct Line: (08) 8210 1248  
e-mail: pkelly@normans.com.au

Encl.



*By-law made under the Local Government Act 1999*

## PERMITS AND PENALTIES BY-LAW 2019

### By-law No. 1 of 2019

*To provide for a permit system, set penalties for breaches of by-laws, provide for certain matters pertaining to liability and evidence, set regulatory requirements, clarify the construction of Council's by-laws and for related purposes.*

#### Part 1 – Preliminary

##### 1. Short Title

This by-law may be cited as the *Permits and Penalties By-law 2019*.

##### 2. Commencement

This by-law will come into operation four months after the day on which it is published in the *Gazette* in accordance with Section 249(5) of the *Local Government Act 1999*.

##### 3. Definitions<sup>[MSW1]</sup>

3.1 In any by-law of the Council, unless the contrary intention is clearly indicated:

- 3.1.1 **authorised person** means a person appointed as an authorised person pursuant to Section 260 of the *Local Government Act 1999*;
- 3.1.2 **Council** means the Adelaide Plains Council;
- 3.1.3 **drive** a vehicle means to be in control of the steering, movement or propulsion of the vehicle;
- 3.1.4 **driver** of a vehicle means the person driving the vehicle;
- 3.1.5 **motor vehicle** has the same meaning as in the *Road Traffic Act 1961*;
- 3.1.6 **person** includes a natural person, a body corporate or incorporated association;
- 3.1.7 **road** has the same meaning as in the *Local Government Act 1999*;
- 3.1.8 **vehicle** has the same meaning as in the *Road Traffic Act 1961* and the *Australian Road Rules 1999* and includes a motor vehicle.

3.2 In this by-law:

- 3.2.1 **owner** has the same meaning as in the *Road Traffic Act 1961*;

- 3.2.2 **prescribed offence** means an offence against a by-law of the Council relating to the driving, parking or standing of vehicles.

4. **Construction**<sup>[MSW2]</sup>

Every by-law of the Council shall be subject to any Act of Parliament and Regulations made thereunder.

**Part 2 – Permits**<sup>[MSW3]</sup>

5. **Council May Grant Permits**

If any by-law of the Council states that a person needs a 'permit' or 'permission' to do a specified thing, then the following provisions apply:

- 5.1 The permit must be in writing.
- 5.2 The Council may:
  - 5.2.1 attach conditions to the permit;
  - 5.2.2 change or revoke a condition, by notice in writing; or
  - 5.2.3 add new conditions, by notice in writing.
- 5.3 A person who holds a permit must comply with every condition attached to it. Failure to do so constitutes a breach of this by-law.
- 5.4 The Council may revoke a permit, by notice in writing, if:
  - 5.4.1 the holder of the permit fails to comply with a condition attached to it; or
  - 5.4.2 the permit is of a continuing nature, and the Council has reasonable grounds for revoking it.
- 5.5 The Council may, by resolution, fix, vary or revoke fees or charges for the granting of a permit to do a specified thing.

**Part 3 – Enforcement**<sup>[MSW4]</sup>

6. **Penalties**

- 6.1 A person who contravenes, or fails to comply with any by-law of the Council is guilty of an offence and is liable to a maximum penalty, being the maximum penalty referred to in the *Local Government Act 1999*, which may be fixed for offences against a by-law.
- 6.2 A person who is convicted of an offence against any by-law of the Council in respect of a continuing act or omission is liable, in addition to the penalty otherwise applicable, to a further penalty, being the maximum penalty referred to in the *Local Government Act 1999* which may be fixed for offences of a continuing nature against a by-law.

**7. Liability of Vehicles Owners and Expiation of Certain Offences** [MSW5]

- 7.1 Without derogating from the liability of any other person, but subject to this paragraph, if a vehicle is involved in a prescribed offence, the owner of the vehicle is guilty of an offence and liable to the same penalty as is prescribed for the principal offence and the expiation fee that is fixed for the principal offence applies in relation to an offence against this paragraph.
- 7.2 The owner and driver of a vehicle are not both liable through the operation of this paragraph to be convicted of an offence arising out of the same circumstances, and consequently conviction of the owner exonerates the driver and conversely conviction of the driver exonerates the owner.
- 7.3 An expiation notice or expiation reminder notice given under the *Expiation of Offences Act 1996* to the owner of a vehicle for an alleged prescribed offence involving the vehicle must be accompanied by a notice inviting the owner, if they were not the driver at the time of the alleged prescribed offence, to provide the Council or officer specified in the notice, within the period specified in the notice, with a statutory declaration:
- 7.3.1 setting out the name and address of the driver; or
  - 7.3.2 if they had transferred ownership of the vehicle to another prior to the time of the alleged offence and has complied with the *Motor Vehicles Act 1959* in respect of the transfer—setting out details of the transfer (including the name and address of the transferee).
- 7.4 Before proceedings are commenced against the owner of a vehicle for an offence against this section involving the vehicle, the Informant must send the owner a notice:
- 7.4.1 setting out particulars of the alleged prescribed offence; and
  - 7.4.2 inviting the owner, if he or she was not the driver at the time of the alleged prescribed offence, to provide the Informant, within 21 days of the date of the notice, with a statutory declaration setting out the matters referred to in subparagraph 7.3.
- 7.5 Subparagraph 7.4 does not apply to:
- 7.5.1 proceedings commenced where an owner has elected under the *Expiation of Offences Act 1996* to be prosecuted for the offence; or
  - 7.5.2 proceedings commenced against an owner of a vehicle who has been named in a statutory declaration under this section as the driver of the vehicle.
- 7.6 Subject to subparagraph 7.7, in proceedings against the owner of a vehicle for an offence against this paragraph, it is a defence to prove:
- 7.6.1 that, in consequence of some unlawful act, the vehicle was not in the possession or control of the owner at the time of the alleged prescribed offence; or



- 7.6.2 that the owner provided the Informant with a statutory declaration in accordance with an invitation under this paragraph.
- 7.7 The defence in paragraph 7.6.2 does not apply if it is proved that the owner made the declaration knowing it to be false in a material particular.
- 7.8 If:
- 7.8.1 an expiation notice is given to a person named as the alleged driver in a statutory declaration under this paragraph; or
- 7.8.2 proceedings are commenced against a person named as the alleged driver in such a statutory declaration,
- the notice or summons, as the case may be, must be accompanied by a notice setting out particulars of the statutory declaration that named the person as the alleged driver.
- 7.9 The particulars of the statutory declaration provided to the person named as the alleged driver must not include the address of the person who provided the statutory declaration.
8. **Evidence**<sup>[MSW6]</sup>
- In proceedings for a prescribed offence, an allegation in an Information that:
- 8.1 a specified place was a road or local government land; or
- 8.2 a specified vehicle was driven, parked or left standing in a specified place; or
- 8.3 a specified vehicle was parked or left standing for the purposes of soliciting business from a person or offering or exposing goods for sale; or
- 8.4 a specified place was not formed or otherwise set aside by the Council for the purposes of the driving, parking or standing of vehicles; or
- 8.5 a specified person was an authorised person; or
- 8.6 a specified provision was a condition of a specified permit granted under paragraph 5 of this by-law; or
- 8.7 a specified person was the owner or driver of a specified vehicle; or
- 8.8 a person named in a statutory declaration under paragraph 7 of this by-law for the prescribed offence to which the declaration relates was the driver of the vehicle at the time at which the alleged offence was committed; or
- 8.9 an owner or driver of a vehicle for a prescribed offence was given notice under paragraph 7 of this by-law on a specified day,
- is proof of the matters so alleged in the absence of proof to the contrary.



**Part 4 – Miscellaneous****9. Revocation**

Council's *By-law No. 1 – Permits and Penalties*, published in the *Gazette* on 8 September 2011, is revoked on the day on which this by-law comes into operation.

The foregoing by-law was duly made and passed at a meeting of the Adelaide Plains Council held on the                      day of                      2019 by an absolute majority of the members for the time being constituting the Council, there being at least two thirds of the members present.

.....  
Mr James Miller  
Chief Executive Officer

Draft



*By-law made under the Local Government Act 1999*

## **MOVEABLE SIGNS BY-LAW 2019**

### **By-law No. 5 of 2019**

*To set standards for moveable signs on roads, to provide conditions for and the placement of such signs, to protect public safety and to protect or enhance the amenity of the area of the Council.*

#### **Part 1 – Preliminary**

##### **1. Short Title**

This by-law may be cited as the *Moveable Signs By-law 2019*.

##### **2. Commencement**

This by-law will come into operation four months after the day on which it is published in the *Gazette* in accordance with Section 249(5) of the *Local Government Act 1999*.

##### **3. Definitions<sup>[MSW1]</sup>**

In this by-law:

- 3.1 **banner** means a moveable sign constituted of a strip of cloth, plastic or other material hung or attached to a pole, fence or other structure;
- 3.2 **footpath** means:
  - 3.2.1 a footway, lane or other place made or constructed for the use of pedestrians; or
  - 3.2.2 that part of road between the property boundary of the road and the edge of the carriageway on the same side as that boundary;
- 3.3 **moveable sign** has the same meaning as the *Local Government Act 1999*;
- 3.4 **road** has the same meaning as in the *Local Government Act 1999*;
- 3.5 **road related area** has the same meaning as in the *Road Traffic Act 1961*.

#### **Part 2 – Provisions Applicable to Moveable Signs**

##### **4. Design and Construction**

A moveable sign displayed on a road must:

- 4.1 be constructed so as not to present a hazard to any member of the public;
- 4.2 be constructed so as to be stable when in position and to be able to keep its position in adverse weather conditions;
- 4.3 not be unsightly or offensive in appearance;
- 4.4 not contain flashing or moving parts;
- 4.5 be not more than 1.2 metres high, 80cm in width or 80cm in depth;
- 4.6 not have a display area exceeding 1m<sup>2</sup> in total or, if the sign is two-sided 1m<sup>2</sup> on each side;
- 4.7 in the case of an 'A' frame or sandwich board sign:
  - 4.7.1 be hinged or joined at the top;
  - 4.7.2 be of such construction that its sides can be and are securely fixed or locked in position when erected;
- 4.8 in the case of an inverted 'T' sign, contain no struts or members than run between the display area of the sign and the base of the sign.

## 5. Placement

A moveable sign displayed on a road must:

- 5.1 not be placed anywhere except on the footpath;
- 5.2 not be placed on a sealed footpath, unless the sealed part is wide enough to contain the sign and still leave a clear thoroughfare at least 1.2 metres wide;
- 5.3 be placed at least 40cm from the kerb (or if there is no kerb, from the edge of the roadway);
- 5.4 not be placed on a landscaped area, other than on landscaping that comprises only lawn;
- 5.5 not be placed on a designated parking area or within 1 metre of an entrance to any premises; and
- 5.6 not be fixed, tied or chained to, leaned against or placed closer than 2 metres to any other structure, object or plant (including another moveable sign);
- 5.7 not be placed in a position that puts the safety of any person at risk;
- 5.8 not be placed on a median strip, roundabout, traffic island or on a carriageway;
- 5.9 not be within 1 metre of an intersection of a road.

## 6. Restrictions

A moveable sign displayed on a road must:

- 6.1 only contain material which advertises a business being conducted on commercial premises adjacent to the sign, or the goods and services available from that business;
- 6.2 be limited to two per business premises;
- 6.3 not be displayed unless the business to which it relates is open to the public;
- 6.4 be securely fixed in position such that it cannot be blown over or swept away;
- 6.5 not be displayed during the hours of darkness unless it is clearly visible.

## 7. **Appearance**

A moveable sign displayed on a road must:

- 7.1 be painted or otherwise detailed in a competent and professional manner;
- 7.2 be legible and simply worded to convey a precise message;
- 7.3 be of such design and contain such colours that are compatible with the architectural design of the premises adjacent to the sign and are compatible with the townscape and overall amenity of the locality in which the sign is situated;
- 7.4 contain a combination of colours and typographical styles that blend in with and reinforce the heritage qualities of the locality and the buildings in which the sign is situated;
- 7.5 not have any balloons, flags, streamers or other things attached to it.

## 8. **Banners**

A banner must:

- 8.1 only be displayed on a road, footpath or road related area;
- 8.2 be securely fixed to a pole, fence or other structure so that it does not hang loose or flap;
- 8.3 not be attached to any building, structure, fence, vegetation or other item owned by the Council on a road, or other improvement to a road owned by the Council;
- 8.4 not be displayed more than one month before and two days after the event it advertises;
- 8.5 not be displayed for a continuous period of more than one month and two days in any twelve month period;
- 8.6 not exceed 3m<sup>2</sup> in size.

### Part 3 – Enforcement

#### 9. Removal of Unauthorised Moveable Signs

9.1 If:

- 9.1.1 a moveable sign has been placed on any road or footpath in contravention of this by-law or of section 226 of the *Local Government Act 1999*, an authorised person may order the owner of the sign to remove the moveable sign from the road or footpath;
- 9.1.2 the authorised person cannot find the owner, or the owner fails to comply immediately with the order, the authorised person may remove and dispose of the sign;
- 9.1.3 a moveable sign is removed under subparagraph 9.1.2 of this by-law and is not claimed within 30 days of such removal the authorised person may sell, destroy or otherwise dispose of the moveable sign as the authorised person thinks fit.

- 9.2 Any person who displays an unauthorised moveable sign or who is the owner of an unauthorised moveable sign which has been removed under subparagraph 9.1 of this by-law must pay the Council any reasonable costs incurred in removing, storing or attempting to dispose of the moveable sign before being entitled to recover the moveable sign.

#### 10. Removal of Authorised Moveable Signs

A moveable sign must be removed or relocated by the person who placed the moveable sign on a road or footpath or the owner of the sign, at the request of an authorised person if:

- 10.1 in the opinion of the authorised person, and notwithstanding compliance with this by-law, there is any hazard or obstruction or there is likely to be a hazard or obstruction arising out of the location of the moveable sign; or
- 10.2 so required by the authorised person for the purpose of special events, parades, road or footpath works or any other circumstances which, in the opinion of the authorised person, requires relocation or removal of the moveable sign.

### Part 4 – Miscellaneous

#### 11. Specified Exemptions

- 11.1 This by-law does not apply to a moveable sign which:

- 11.1.1 is a moveable sign that is placed on a public road pursuant to an authorisation under the *Local Government Act 1999* or another Act;
- 11.1.2 directs people to the open inspection of any land or building that is available for purchase or lease;

- 11.1.3 directs people to a garage sale that is being held on residential premises;
- 11.1.4 directs people to a charitable function;
- 11.1.5 is related to a State or Commonwealth election and is displayed during the period commencing on the issue of writ or writs for the election and ending at the close of polls on polling day;
- 11.1.6 is related to an election held under the *Local Government Act 1999* or the *Local Government (Elections) Act 1999* and is displayed during the period commencing four weeks immediately before the date that has been set for polling day and ending at the close of voting on polling day;
- 11.1.7 is related to a referendum and is displayed during the course and for the purpose of that referendum;
- 11.1.8 is displayed with permission of the Council and in accordance with any conditions attached to that permission; or
- 11.1.9 is a sign of a class prescribed in regulations.
- 11.2 Clauses 6.2 and 6.3 of this by-law do not apply to a flat sign containing only the banner or headlines of a newspaper or magazine.
- 11.3 Clauses 4, 6.2, 6.3 and 7 of this by-law do not apply to a directional sign to an event run by a charitable body.

## 12. Prohibition

- 12.1 The Council may, by resolution, prohibit the display of moveable signs on a road or part of road subject to this clause.
- 12.2 A resolution made by the Council under sub-clause 12.1 may prohibit the display of moveable signs absolutely, or at particular times or on particular days.
- 12.3 The Council may only make a resolution under sub-clause 12.1 if, in the opinion of the Council, the display of movable signs on the road would endanger the safety of road users.
- 12.4 Notwithstanding any other clause of this by-law, a person must not display a moveable sign on a road or part of a road contrary to a prohibition made by the Council under this clause.

## 13. Revocation

Council's *By-law No. 5 – Moveable Signs*, published in the *Gazette* on 8 September 2011, is revoked on the day on which this by-law comes into operation.

The foregoing by-law was duly made and passed at a meeting of the Adelaide Plains Council on the \_\_\_\_\_ day of \_\_\_\_\_ 2019 by an absolute majority of the

members for the time being constituting the Council, there being at least two thirds of the members present.

.....  
Mr James Miller  
Chief Executive Officer

Draft



*By-law made under the Local Government Act 1999*

## **ROADS BY-LAW 2019**

### **By-law No. 3 of 2019**

*For the management of public roads.*

#### **Part 1 – Preliminary**

##### **1. Short Title**

This by-law may be cited as the *Roads By-law 2019*.

##### **2. Commencement**

This by-law will come into operation four months after the day on which it is published in the *Gazette* in accordance with Section 249(5) of the *Local Government Act 1999*.

##### **3. Definitions** [MSW1]

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

- 3.1 **adjacent land** has the same meaning as in the *Australian Road Rules*;
- 3.2 **animal** includes birds and poultry but does not include a dog;
- 3.3 **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;
- 3.4 **emergency worker** has the same meaning as in the *Road Traffic (Road Rules – Ancillary and Miscellaneous Provisions) Regulations 2014*.

#### **Part 2 – Management of Roads**

##### **4. Activities Requiring Permission**

A person must not on any road, without the permission of Council:

##### **4.1 Advertising**

- 4.1.1 display any sign for the purpose of commercial advertising, other than a moveable sign which is displayed on a public road in accordance with the Council's *Moveable Signs By-law 2019*;
- 4.1.2 place or maintain any goods or sign on the road or park or stand a vehicle on the road for the purpose of:



4.1.2.1 soliciting any business from any person; or

4.1.2.2 offering or exposing goods or services for sale.

provided that this subparagraph 4.1.2 shall not apply to a person who is simply travelling along a road.

#### 4.2 **Amplification**

use an amplifier or other device whether mechanical or electrical for the purposes of amplifying sound to the public;

#### 4.3 **Animals**

4.3.1 cause or allow any animal, to stray onto, graze, wander on or be left unattended on any road 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, then only if under the effective control of a person;

4.3.2 lead, drive or exercise any animal in such a manner as to endanger the safety of any person;

#### 4.4 **Bridge Jumping**<sup>[MSW2]</sup>

jump from or dive from a bridge;

#### 4.5 **Donations**

ask for or receive or indicate that he or she desires a donation of money or any other thing;

#### 4.6 **Driving on Formed Surface**<sup>[MSW3]</sup>

drive a motor vehicle other than on a portion of the road that has been formed or otherwise set aside by the Council for the driving of motor vehicles, unless it is not reasonably practical to do so;

#### 4.7 **Fires**

light any fire except:

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

4.7.2 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 metres; and

4.7.3 in accordance with the *Fire and Emergency Services Act 2005*;

#### 4.8 **Fishing**<sup>[MSW4]</sup>

fish from any bridge or other structure on a road to which the Council has resolved this subparagraph shall apply;

**4.9 Preaching**

preach or harangue;

**4.10 Public Exhibitions and Displays**

4.10.1 sing, busk or play a musical instrument for the apparent purpose of either entertaining others or receiving money;

4.10.2 conduct or hold any concert, festival, show, public gathering, street party, circus, performance or any other similar activity;

4.10.3 cause any public exhibitions or displays;

**4.11 Tents and camping**

4.11.1 erect any tent or other structure of calico, canvas, plastic or similar material as a place of habitation;

4.11.2 camp or sleep overnight;

**4.12 Working on Vehicles**

perform the work of repairing, washing, painting, panel beating or other work of any nature on or to any vehicle, except for running repairs in the case of breakdown.

**Part 3 – Miscellaneous****5. Directions**

A person must comply with any reasonable direction or request from an authorised person relating to:

5.1 that person's use of the road;

5.2 that person's conduct and behaviour on the road;

5.3 that person's safety on the road;

5.4 the safety and enjoyment of the road by other persons.

**6. Removal of Animals** [MSW5]

If any animal is found on a road in breach of this by-law:

6.1 any person in charge of the animal shall forthwith remove it from that land on the request of an authorised person; and

6.2 any authorised person may remove any animal from the road if the person fails to comply with the request, or if no person is in charge of the animal.

## 7. Exemptions

- 7.1 The restrictions in this by-law do not apply to any Police Officer, Council Officer or Council 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 a Council Officer, or to an emergency worker performing emergency duties.
- 7.2 The restrictions in paragraph 4.2, 4.9 and 4.10 of this by-law do not apply to:
- 7.2.1 electoral matters authorised by a candidate and which relate to a Commonwealth or State election that 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
  - 7.2.2 electoral matters authorised by a candidate and which relate to an election under the *Local Government Act 1999* or the *Local Government (Elections) Act 1999* that 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
  - 7.2.3 matters which relate to, and occur during the course of and for the purpose of a referendum.
- 7.3 Clause 4.6 of this by-law does not apply to a motor vehicle being driven to or from adjacent land by the shortest practical route.

## 8. Application

Paragraph 4.8 of this by-law shall apply only in such portion or portions of the area as the Council may by resolution direct from time to time in accordance with Section 246(3)(e) of the *Local Government Act 1999*.

## 9. Revocation

Council's *By-law No. 3 – Roads*, published in the *Gazette* on 8 September 2011, is revoked on the day on which this by-law comes into operation.

The foregoing by-law was duly made and passed at a meeting of the Adelaide Plains Council held on the \_\_\_\_\_ day of \_\_\_\_\_ 2019 by an absolute majority of the members for the time being constituting the Council, there being at least two thirds of the members present.

.....  
Mr James Miller  
Chief Executive Officer



By-law made under the Local Government Act 1999

## LOCAL GOVERNMENT LAND BY-LAW 2019

### By-law No. 2 of 2019

*For the management and regulation of the use of and access to all land vested in or under the control of the Council including the prohibition and regulation of particular activities on local government land.*

#### Part 1 – Preliminary

##### 1. Short Title

This by-law may be cited as the *Local Government Land By-law 2019*.

##### 2. Commencement

This by-law will come into operation four months after the day on which it is published in the *Gazette* in accordance with Section 249(5) of the *Local Government Act 1999*.

##### 3. Definitions<sup>[MSW1]</sup>

In this by-law:

- 3.1 **animal** includes birds, insects and fish;
- 3.2 **boat** includes a raft, canoe, personal watercraft or any other similar device;
- 3.3 **camping** means the occupation of a sleeping bag, tent, vehicle, caravan or other makeshift structure as temporary accommodation, but does not include a situation where a person is resting in a vehicle during a journey;
- 3.4 **children's playground** means any enclosed area in which there is equipment, apparatus or other installed devices for the purpose of children's play (or within 5 metres of such devices if there is no enclosed area);
- 3.5 **community garden** means an area of land set aside by the Council for the purposes of being gardened collectively by a group of people;
- 3.6 **domestic animal** includes any duck, reptile or fish;
- 3.7 **E-Cigarette** means:

- 3.7.1 a device that is designed to generate or release an aerosol or vapour for inhalation by its user in a manner similar to the inhalation of smoke from an ignited tobacco product; or
- 3.7.2 a device of a kind resolved by the Council and notified by notice in the *Gazette* to be an E-Cigarette;
- 3.8 **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;
- 3.9 **emergency worker** has the same meaning as in the *Road Traffic (Road Rules – Ancillary and Miscellaneous Provisions) Regulations 2014*;
- 3.10 **funeral ceremony** means a ceremony only (i.e. a memorial service) and does not include a burial;
- 3.11 **inflatable castle** includes a bouncy castle, jumping castle and any other inflatable structure used for recreational purposes;
- 3.12 **liquor** has the same meaning as defined in the *Liquor Licensing Act 1997*;
- 3.13 **local government land** has the same meaning as in the *Local Government Act 1999*, but does not include any road;
- 3.14 **open container** means a container which:
- 3.14.1 after the contents thereof have been sealed at the time of manufacture and:
- 3.14.1.1 being a bottle, has had its cap, cork or top removed (whether or not it has since been replaced);
- 3.14.1.2 being a can, it has been opened or punctured;
- 3.14.1.3 being a cask, has had its tap placed in a position to allow it to be used;
- 3.14.1.4 being any form of container, it has been opened, broken, punctured or manipulated in such a way as to allow access to the contents thereof; or
- 3.14.2 is a flask, glass or mug or other container used for drinking purposes;
- 3.15 **organised competition or sport** does not include social play;
- 3.16 **personal watercraft** means a device that:
- 3.16.1 is propelled by a motor; and
- 3.16.2 has a fully enclosed hull; and
- 3.16.3 is designed not to retain water if capsized; and

- 3.16.4 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;
- 3.17 **sand dune** means the sand dunes, coastal slopes, cliffs and other geomorphological coastal forms under the care, control, and management of the Council;
- 3.18 **smoke** means:
- 3.18.1 in relation to a tobacco product, smoke, hold, or otherwise have control over, an ignited tobacco product; or
- 3.18.2 in relation to an E-Cigarette, to inhale from, hold or otherwise have control over, an E-Cigarette that is in use;
- 3.19 **traffic control device** has the same meaning as in the *Road Traffic Act 1961*;
- 3.20 **variable message sign** includes a permanent, portable or vehicle mounted electronic sign (except when the sign is used as a traffic control device);
- 3.21 **waters** means any body of water including a pond, lake, river, creek or wetlands under the care, control and management of Council.

## Part 2 – Management of Local Government Land

### 4. Activities Requiring Permission

A person must not on any local government land, without the permission of Council:

- 4.1 **Access to Waters**<sup>[MSW2]</sup>
- subject to the provisions of the *Harbors and Navigation Act 1993*, enter any waters, or swim or use a boat in or on waters:
- 4.1.1 in an area where a nearby sign erected by the Council states that one or more of these activities is prohibited;
- 4.1.2 contrary to any condition or requirement stated on a nearby sign erected by the Council;
- 4.2 **Advertising and Signage**<sup>[MSW3]</sup>
- 4.2.1 display any sign for the purpose of commercial advertising, other than a moveable sign that is displayed in accordance with the *Moveable Signs By-law 2019*;
- 4.2.2 erect, install, place or display a variable message sign;
- 4.2.3 place or maintain any goods or sign on the road or park or stand a vehicle on the land for the purpose of:
- 4.2.3.1 soliciting any business from any person; or

#### 4.2.3.2 offering or exposing goods or services for sale.

provided that this subparagraph 4.2.3 shall not apply to a person who is simply travelling along an area or road on local government land set aside by the Council;

### 4.3 Aircraft

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

### 4.4 Alteration to Local Government Land

make an alteration to the land, including:

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

### 4.5 Amplification

use an amplifier or other device whether mechanical or electrical for the purpose of amplifying sound to the public;

### 4.6 Animals on Local Government Land

- 4.6.1 cause or allow any animal to stray onto, move over, graze or be left unattended;
- 4.6.2 ride, lead or drive any horse, cattle or sheep, except on any track or car park on local government land that the Council has set aside (through the erection of signage) for the use by, or in connection with that animal;
- 4.6.3 cause or allow any animal under his or her control to swim or bathe in any waters to which Council has resolved this subparagraph will apply;
- 4.6.4 allow an animal in that persons control, charge or ownership to damage Council property;
- 4.6.5 release or leave any domestic animal;

#### 4.7 **Attachments**

attach anything to a tree, plant, structure or fixture on local government land;

#### 4.8 **Bees**

place, or allow to remain, any bee hive;

#### 4.9 **Boats**<sup>[MSW4]</sup>

subject to the provisions of the *Harbors and Navigation Act 1993* and the *Marine Safety (Domestic Commercial Vessel) National Law* and to which the Council has resolved the subparagraph shall apply:

4.9.1 hire, offer for hire or use for commercial purposes a boat, raft, pontoon or other watercraft;

4.9.2 launch or retrieve a boat, raft, pontoon or other watercraft to or from any waters;

4.9.3 propel, float or otherwise use any boat, raft, pontoon or other watercraft on any waters;

4.9.4 tie or affix a boat to any jetty or pontoon;

#### 4.10 **Bridge and Jetty Jumping**<sup>[MSW5]</sup>

4.10.1 jump from or dive from any bridge;

4.10.2 jump or dive from any jetty or pontoon to which the Council has resolved this subparagraph applies;

#### 4.11 **Buildings and Structures**

4.11.1 erect or install a building;

4.11.2 use a building or structure other than for its intended purpose;

#### 4.12 **Camping**

Camp or stay overnight or erect any tent, booth, marquee or other structure for the purpose of habitation for a period of 24 hours or more except on any local government land designated by resolution of the Council for the purpose and in accordance with any such resolution;

#### 4.13 **Cemeteries**

Comprising a cemetery:

4.13.1 bury or inter any human or animal remains;

4.13.2 erect any memorial;



**4.14 Closed Lands**

enter or remain on any part of the land:

- 4.14.1 at any time during which the Council has declared that it shall be closed to the public, and which is indicated by a sign to that effect; or
- 4.14.2 where the land is enclosed with fences and/or walls and gates, at any time when the gates have been closed and locked; or
- 4.14.3 where admission charges are payable, without paying those charges;

**4.15 Distribution**

distribute anything to any bystander, passerby or other person;

**4.16 Donations**

ask for or receive or indicate that he or she desires a donation of money or any other thing;

**4.17 Fires**

light any fire except:

- 4.17.1 in a place provided by the Council for that purpose; or
- 4.17.2 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 metres; and
- 4.17.3 in accordance with the *Fire and Emergency Services Act 2005*;

**4.18 Fireworks**

discharge any fireworks;

**4.19 Fishing** [MSW6]

- 4.19.1 fish in any waters on local government land to which the Council has resolved this subparagraph shall apply; or
- 4.19.2 fish from any bridge or other structure on local government land to which the Council has resolved this subparagraph shall apply;

**4.20 Flora, Fauna and Other Living Things**

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

- 4.20.1 except in a community garden, damage, pick, or interfere with any plant, fungi or lichen thereon; or

4.20.2 tease, remove or cause harm to any animal or bird or the eggs or young of any animal or bird or aquatic creature;

4.20.3 use, possess or have control of any device for the purpose of killing or capturing any animal or bird;

**4.21 Funerals and Scattering Ashes**

conduct or participate in a funeral ceremony, or scatter ashes on land to which the Council has resolved this subparagraph will apply;

**4.22 Golf**

play or practice golf;

**4.23 Lighting**

4.23.1 use or operate any fixed floodlight;

4.23.2 use or operate any portable floodlight on land to which this subparagraph applies;

**4.24 Model Aircraft**<sup>[MSW7]</sup>

subject to the *Civil Aviation Act 1988*, fly or operate a model aircraft or drone aircraft;

**4.25 No Liquor**

4.25.1 consume, carry or be in possession or charge of any liquor on any local government land constituting a park or reserve to which this subparagraph applies;

4.25.2 excepting sealed containers, consume, carry or be in possession or charge of any liquor in an open container on any local government land constituting a park or reserve to which this subparagraph applies;

**4.26 Picking of Fruit, Nuts or Berries**

except in any community garden, pick fruit, nuts, seeds or berries from any plant;

**4.27 Preaching and Canvassing**

preach, canvass, harangue or otherwise solicit for religious purposes except on any land or part thereof where the Council has, by resolution, determined this restriction shall not apply;

**4.28 Public Exhibitions and Displays**

4.28.1 sing, busk or play a musical instrument for the apparent purpose of either entertaining others or receiving money;

4.28.2 conduct or hold any concert, festival, show, public gathering, circus, performance or any other similar activity;

4.28.3 erect or inflate any inflatable castle;

4.28.4 cause any public exhibitions or displays;

**4.29 Removing**

carry away or remove any earth, rocks, minerals, plant material (dead or living), animal remains (including shells and fossils) or any part of the land;

**4.30 Selling**

sell anything or display anything for sale;

**4.31 Skateboards and Small Wheeled Devices**

subject to the *Road Traffic Act 1961*, and the *Local Government Act 1999*, ride on a skateboard or use roller skates or roller blades on land to which the Council has resolved this subparagraph will apply;

**4.32 Vehicles**<sup>[MSW8]</sup>

4.32.1 drive or propel a motor vehicle thereon, unless on an area or road constructed or set aside by the Council for the parking or travelling of motor vehicles;

4.32.2 except on an area properly constructed for the purpose, promote, organise or take part in any race, test or trial of any kind in which motor vehicles, motor cycles, motor scooters or bicycles take part;

**4.33 Weddings**

conduct or participate in a marriage ceremony on land to which the Council has resolved this subparagraph will apply;

**4.34 Wetlands**

subject to the *Natural Resources Management Act 2004*, where that land constitutes a wetland:

4.34.1 operate a model boat;

4.34.2 fish, or take any aquatic creature;

4.34.3 introduce any fish or aquatic creature;

4.34.4 take or draw water;

#### **4.35 Working on Vehicles**

perform the work of repairing, washing, painting, panel beating or other work of any nature on or to any vehicle, except for running repairs in the case of breakdown.

### **5. Prohibited Activities**

A person must not, on any local government land:

#### **5.1 Annoyances**

unreasonably annoy or interfere with any other person:

5.1.1 using the land;

5.1.2 occupying nearby premises,

by making a noise or creating a disturbance that has not been authorised by the Council;

#### **5.2 Children's Playgrounds**

use any device, equipment or apparatus installed in a children's playground if that person is over the age indicated by sign or notice as the age limit for using such equipment, apparatus or other installed device;

#### **5.3 Fishing**

deposit or leave any dead fish (in part or whole) or offal;

#### **5.4 Interference with Permitted Use**

interrupt, disrupt or interfere with any other person's use of local government land which is permitted or for which permission has been granted;

#### **5.5 Playing Games**

5.5.1 play or practice a game in any area where a sign indicates that the game is prohibited;

5.5.2 promote, organise or take part in any organised competition or sport in any area to which this subparagraph applies;

**5.6 Sand dunes**

- 5.6.1 use a sand board or other item to slide down a sand dune, coastal slope or cliff;
- 5.6.2 destabilise sand on a sand dune, coastal slope or cliff so as to cause it to unnecessarily mass waste down slope;
- 5.6.3 destroy, remove or cause interference to live or dead vegetation within a sand dune, coastal slope or coastal cliff;
- 5.6.4 light or cause to be lit or permit to remain alight any fire within a sand dune or on a coastal slope or cliff;
- 5.6.5 introduce non-indigenous flora and fauna or dump any material in the sand dunes or down coastal slopes or coastal cliffs;
- 5.6.6 carry out any activity which may threaten the integrity of sand dunes, coastal slopes and cliffs in the area;

**5.7 Smoking**

smoke tobacco or any other substance:

- 5.7.1 in any building or part of any building; or
- 5.7.2 on any land to which this subparagraph applies;

**5.8 Toilets**

in any public convenience:

- 5.8.1 urinate other than in a urinal or pan or defecate other than in a pan provided for that purpose;
- 5.8.2 smoke tobacco or any other substance;
- 5.8.3 deposit anything in a pan, urinal or drain which is likely to cause a blockage;
- 5.8.4 use it for a purpose for which it was not designed or constructed;
- 5.8.5 enter any toilet that is set aside for use by the opposite sex except where:
  - 5.8.5.1 a child under the age of five years accompanied by an adult person of that other sex; and/or
  - 5.8.5.2 to provide assistance to a disabled person;

**5.9 Use of Equipment**

use any item of equipment or property belonging to the Council other than in the manner and for the purpose for which it was designed or set aside.

### Part 3 – Miscellaneous

#### 6. Directions

A person must comply with any reasonable direction or request from an authorised person relating to:

- 6.1 that person's use of the land;
- 6.2 that person's conduct and behaviour on the land;
- 6.3 that person's safety on the land;
- 6.4 the safety and enjoyment of the land by other persons.

#### 7. Removal of Animals and Exclusion of Persons

7.1 If any animal is found on local government land in breach of this by-law:

- 7.1.1 any person in charge of the animal shall forthwith remove it from that land on the request of an authorised person; and
- 7.1.2 any authorised person may remove any animal from the land if the person fails to comply with the request, or if no person is in charge of the animal.

7.2 An authorised person may direct any person who is considered to be committing, or has committed, a breach of this by-law to leave local government land and not return for a period of no longer than 24 hours.

#### 8. Exemptions

8.1 The restrictions in this by-law do not apply to any Police Officer, Council Officer or Council 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 a Council Officer, or to an emergency worker performing emergency duties.

8.2 The restrictions in paragraph 4.2.2, 4.5, 4.7, 4.15, 4.27, 4.28.2 and 4.28.4 of this by-law do not apply to:

- 8.2.1 electoral matters authorised by a candidate and which relate to a Commonwealth or State election that 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
- 8.2.2 electoral matters authorised by a candidate and which relate to an election under the *Local Government Act 1999* or the *Local Government (Elections) Act 1999* that 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

- 8.2.3 matters which relate to, and occur during the course of and for the purpose of a referendum.

**9. Application**

Any of paragraphs 4.6.3, 4.9, 4.10.2, 4.12, 4.19.1, 4.19.2, 4.21, 4.23.2, 4.25.1, 4.25.2, 4.31, 4.33, 5.5.2 and 5.7.2 of this by-law shall apply only in such portion or portions of the area as the Council may by resolution direct from time to time in accordance with Section 246(3)(e) of the *Local Government Act 1999*.

**10. Revocation**

Council's *By-law No. 2 – Local Government Land*, published in the *Gazette* on 10 January 2013, is revoked on the day on which this by-law comes into operation.

The foregoing by-law was duly made and passed at a meeting of the Adelaide Plains Council on the \_\_\_\_\_ day of \_\_\_\_\_ 2019 by an absolute majority of the members for the time being constituting the Council, there being at least two thirds of the members present.

.....  
Mr James Miller  
Chief Executive Officer



*By-law made under the Local Government Act 1999  
and the Dog and Cat Management Act 1995*

## **DOGS BY-LAW 2019**

### **By-law No. 4 of 2019**

*For the management and control of dogs within the Council's area.*

#### **Part 1 – Preliminary**

##### **1. Short Title**

This by-law may be cited as the *Dogs By-law 2019*.

##### **2. Commencement**

This by-law will come into operation four months after the day on which it is published in the *Gazette* in accordance with Section 249(5) of the *Local Government Act 1999*.

##### **3. Definitions**

In this by-law:

- 3.1 **approved kennel establishment** means a building, structure or area approved by the relevant authority, pursuant to the *Development Act 1993* for the keeping of dogs on a temporary or permanent basis;
- 3.2 **assistance dog** means a dog trained and used for the purpose of assisting a person who is wholly or partially disabled and includes a dog undergoing training of a kind approved by the Board for assistance dogs;
- 3.3 **children's playground** means any enclosed area in which there is equipment, apparatus or other installed devices for the purpose of children's play (or within 5 metres of such devices if there is no enclosed area);
- 3.4 **control**, in relation to a dog, includes the person having ownership, possession or charge of, or authority over, the dog;
- 3.5 **dog** has the same meaning as in the *Dog and Cat Management Act 1995*;
- 3.6 **effective control** means a person exercising effective control of a dog either:
  - 3.6.1 by means of a physical restraint;
  - 3.6.2 by command, the dog being in close proximity to the person, and the person being able to see the dog at all times;



- 3.7 **keep** includes the provision of food or shelter;
- 3.8 **leash** includes any chain, cord or leash;
- 3.9 **local government land** has the same meaning as in the *Local Government Act 1999*;
- 3.10 **park** has the same meaning as in the *Dog and Cat Management Act 1995*;
- 3.11 **premises** includes:
- 3.11.1 land;
  - 3.11.2 a part of any premises or land;
- 3.12 **public place** has the same meaning as in the *Dog and Cat Management Act 1995*;
- 3.13 **small premises** means a premises comprising any self-contained dwelling where the premises associated with the dwelling contains a secured unobstructed yard area of less than 100 square metres;
- 3.14 **township** has the same meaning as in the *Local Government Act 1999*;
- 3.15 **wetland area** includes any park, reserve, scrub, trail or other land adjacent to a wetland;
- 3.16 **working livestock dog** means a dog:
- 3.16.1 usually kept, proposed to be kept or worked on rural land by a person who is:
    - 3.16.1.1 a primary producer; or
    - 3.16.1.2 engaged or employed by a primary producer; and
  - 3.16.2 kept primarily for the purpose of herding, droving, protecting, tending or working stock, or training for herding, droving, protecting, tending or working stock.

## Part 2 – Dog Management and Control

### 4. Dog Free Areas

- 4.1 A person must not allow a dog in that person's control to be in, or remain in a dog free area.
- 4.2 For the purposes of this paragraph, a **dog free area** is any:
- 4.2.1 local government land; or
  - 4.2.2 public place,
- to which the Council has resolved this paragraph applies.

4.3 The restrictions in subparagraph 4.1 do not apply to any assistance dog.

## 5. Dog on Leash Areas

5.1 A person must not allow a dog under that person's control to be in, or remain in, a dog on leash area unless the dog is secured by a strong leash not exceeding two metres in length which is either:

5.1.1 tethered securely to a fixed object capable of securing the dog; or

5.1.2 held by a person capable of controlling the dog and preventing it from being a nuisance or a danger to other persons.

5.2 For the purposes of this paragraph, a **dog on leash area** is any:

5.2.1 local government land or public place to which the Council has resolved that this paragraph applies;

5.2.2 park when organised sport is being played;

5.2.3 enclosed children's playground or if a children's playground is not enclosed land within five metres of children's playground equipment; or

5.2.4 wetland area.

## 6. Dog Exercise Areas

6.1 Subject to paragraphs 4 and 5, a person may enter any dog exercise area for the purpose of exercising a dog under his or her control.

6.2 For the purposes of this paragraph, a **dog exercise area** is any:

6.2.1 park; or

6.2.2 local government land that the Council has resolved is a dog exercise area.

6.3 A person must ensure that any dog under their control remains under effective control while the dog is in a dog exercise area.

## 7. Limit on Dog Numbers

7.1 A person must not, without permission, keep any dog on any premises where the number of dogs on the premises exceeds the prescribed limit.

7.2 Subject to subparagraph 7.3, the **prescribed limit** on the number of dogs to be kept on premises:

7.2.1 constituting a small premises is one dog;

7.2.2 within a township on premises other than a small premises is three dogs;

- 7.2.3 outside a township on premises other than a small premises within the Rural Living Zone as described in the Council's Development Plan or the Planning and Design Code is five dogs.
- 7.2.4 outside a township on premises other than a small premises within the Animal Husbandry Zone as described in the Council's Development Plan or the Planning and Design Code is nine dogs.
- 7.2.5 excluding 7.2.3 and 7.2.4, outside a township on any other premises other than a small premises is five dogs.
- 7.3 For the purposes of calculating the prescribed limit, the following dogs are to be disregarded:
  - 7.3.1 any dog that is under three months of age; and
  - 7.3.2 up to five working livestock dogs kept on premises outside a township.
- 7.4 The prescribed limit does not apply to:
  - 7.4.1 an approved kennel establishment;
  - 7.4.2 a veterinary practice;
  - 7.4.3 a pet shop;
  - 7.4.4 any premises that the Council has exempted from the requirements of this paragraph; or
  - 7.4.5 any business involving dogs provided that the business is registered in accordance with the *Dog and Cat Management Act 1995*.

### Part 3 – Miscellaneous

#### 8. Application

- 8.1 The Council may from time to time, by resolution, identify local government land as a dog exercise area in accordance with subparagraph 6.2.2 of this bylaw.
- 8.2 Any of subparagraphs 4 and 5.2.1 of this by-law shall apply only in such portion or portions of the area as the Council may from time to time, by resolution, direct in accordance with Section 246 of the *Local Government Act 1999*.
- 8.3 Where the Council makes a resolution under either of subparagraphs 8.1 or 8.2, the Council's Chief Executive Officer must ensure that:
  - 8.3.1 the area is denoted by signs erected by the Council; and
  - 8.3.2 information is provided to the public on the Council's website and in any other manner determined by the Council's Chief Executive Officer.

## 9. Revocation

Council's *By-law No. 4 – Dogs*, published in the *Gazette* on 6 September 2012, is revoked on the day on which this by-law comes into operation.

The foregoing by-law was duly made and passed at a meeting of the Adelaide Plains Council held on the                      day of                      2019 by an absolute majority of the members for the time being constituting the Council, there being at least two thirds of the members present.

.....  
Mr James Miller  
Chief Executive Officer

Draft

## **RECOMMENDATION**

**“that Council, having considered the matter of Agenda Item 21.1 – *By-Law Review Update* in confidence under sections 90(2) and 90(3)(h) of the *Local Government Act 1999*, resolves that:-**

- 1. The agenda item, report and any other associated information pertaining to Agenda Item 21.1 – *By-Law Review Update*, and the minutes of this meeting in relation to the matter remain confidential and not available for public inspection until further order of Council;**
- 2. Pursuant to section 91(9)(a) of the *Local Government Act 1999*, the confidentiality of the matter will be reviewed every 12 months; and**
- 3. Pursuant to section 91(9)(c) of the *Local Government Act 1999*, Council delegates the power to revoke this confidentiality order to the Chief Executive Officer.”**