



FORESHORE & BOAT FACILITIES BY-LAW 2017

By-Law No. 8 of 2017

A by-law for the management of foreshore areas and to regulate the use of boat facilities within the Council's area, including on any foreshore or on Local Government land.

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15. Liability of vehicle owners 10**PART 1 – PRELIMINARY****1. Title**

This By-law may be cited as the *Foreshore & Boat Facilities By-law 2017* and is By-law No. 8 of the Kangaroo Island Council.

2. Authorising law

This By-law is made under sections 238 and 246 of the Act and section 18A of the *Harbors and Navigation Act 1993*.

3. Purpose

The objectives of this By-law are to regulate the access to and use of the foreshore:

- 3.1. to prevent and mitigate nuisances on the foreshore;
- 3.2. to prevent damage to and promote conservation of the foreshore;
- 3.3. to protect the convenience, comfort and safety of members of the public;
- 3.4. to prevent damage to boat facilities, facilitate their upkeep and ensure that they are used in an appropriate and equitable manner; and
- 3.5. for the good rule and government of the area.

4. Commencement, revocation and expiry

4.1. The following By-laws previously made by the Council are revoked from the day on which this By-law comes into operation¹:

4.1.1 *By-law No. 8 – Boat Facilities 2010.*

4.1.2 *By-law No. 9 – Foreshore 2010.*²

4.2. This By-law will expire on 1 January 2025.³

Note-

1. Generally a By-law comes into operation 4 months after the day on which it is gazetted: section 249(5) of the Act.
2. Section 253 of the Act provides that the revocation of a By-law by another By-law that contains substantially the same provisions, does not affect certain resolutions such as those applying a By-law to a part or parts of the Council area.
3. Pursuant to section 251 of the Act, a By-law will expire on 1 January following the seventh anniversary of the gazettal of the By-law.

5. Application

- 5.1. This By-law operates subject to the Council's *Permits and Penalties By-law 2017*.
- 5.2. Subject to subclauses 5.3 and 5.4, this By-law applies to foreshore areas throughout and boat facilities within the Council's area.

- 5.3. Subclauses 7.11.4 and 10.5 of this By-law only applies in such part or parts of the Council area as the Council may, by resolution direct in accordance with section 246(3)(e) of the Act.
- 5.4. Subclauses 7.3.1, 7.5.2, 7.6.2, 7.11.1, 8.4 and 10.3 of this By-law apply throughout the Council area except in such part or parts of the Council area as the Council may by resolution direct in accordance with section 246(3)(e) of the Act.

6. Definitions

In this By-law:

- 6.1. **Act** means the *Local Government Act 1999*;
- 6.2. **adjacent land** has the same meaning as in the *Harbors and Navigation Act 1993*;
- 6.3. **animal or animals** includes birds and insects but does not include a dog;
- 6.4. **annual ticket** means a ticket purchased from the Council authorising the launch and/or retrieval of one boat at a boat ramp (subject to any conditions the Council sees fit to impose), and that is valid until the next 30 November and includes a commercial ticket;
- 6.5. **authorised person** means a person appointed as an authorised person pursuant to Section 260 of the Act.
- 6.1. **boat** includes a raft, pontoon or personal watercraft;
- 6.2. **boat facilities** means a facility constructed, maintained and operated by the Council for the launching, landing or mooring of a boat;
- 6.3. **boat landing** means a facility constructed, maintained and operated by the Council for charter operators to land passengers;
- 6.4. **boat mooring** means a facility constructed, maintained and operated by the Council for the mooring of a boat;
- 6.5. **boat ramp** means a facility constructed, maintained and operated by the Council for the launching and retrieval of a boat to and from adjacent waters;
- 6.6. **camp** includes setting up a camp, or causing a tent, caravan or motor home to remain on the foreshore for the purposes of staying overnight, whether or not any person is in attendance or sleeps on the land;
- 6.7. **charter operator** means a person approved by the Council to use a boat landing;
- 6.8. **commercial ticket** means a ticket purchased from the Council authorising the launch of a fishing boat by a person with a commercial fishing licence at a boat ramp (subject to any conditions the Council sees fit to impose), and that is valid until the next 30 November;
- 6.9. **Council** means the Kangaroo Island Council;
- 6.10. **emergency worker** has the same meaning as in the *Road Traffic (Road Rules – Ancillary and Miscellaneous Provisions) Regulations 2014*;

- 6.11. **foreshore** means land extending from the low water mark on the seashore in the Council's area to the nearest road or section boundary, or for a distance of 50 metres from the high water mark (whichever is the lesser) and, for the avoidance of doubt, includes adjacent land within the Harbor of Kingscote and the Harbor of Penneshaw;
- 6.12. **Harbor of Kingscote** is the area defined as 'Kingscote' in Schedule 3 of the *Harbors and Navigation Regulations 2009*;
- 6.13. **Harbor of Penneshaw** is the area defined as 'Penneshaw' in Schedule 3 of the *Harbors and Navigation Regulations 2009*;
- 6.14. **life time ticket** means a ticket purchased from the Council authorising the launch of one boat at a boat ramp for a period of up to 25 years from the date of purchase of the ticket that may only be used by the person named on the ticket and is subject to any conditions imposed by the Council and set out on the ticket;
- 6.15. **Local Government land** has the same meaning as in the Act;
- 6.16. **low water mark** means the lowest meteorological tide;
- 6.17. **mooring ticket** means a ticket purchased from a vending machine located at a boat mooring, valid for 24 hours from the time of purchase;
- 6.18. **personal watercraft** means a device that –
- 6.18.1 is propelled by a motor exceeding eight (8) Horsepower; and
 - 6.18.2 has a fully enclosed hull; and
 - 6.18.3 is designed not to retain water if capsized; and
 - 6.18.4 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;
- 6.19. **sand dune or coastal slope or cliff** means the sand dunes, coastal slopes, cliffs or other geomorphologic coastal forms under the care, control and management of the Council;
- 6.20. **short term ticket** means a ticket purchased from a vending machine located at a boat ramp, valid for the launch and retrieval of any one boat at the boat ramp within 24 hours from the time of purchase;
- 6.21. **ticket** means either a current life time, annual or short term ticket;
- 6.22. **vehicle** has the same meaning as in the *Road Traffic Act 1961*; and

Note-

Section 14 of the *Acts Interpretation Act 1915* provides that an expression used in a By-law has, unless the contrary intention appears, the same meaning as in the Acts under which the By-law was made.

PART 2 – REGULATION OF ACTIVITIES ON THE FORESHORE**7. Activities Requiring Permission**

No person shall without permission on the foreshore:

7.1. *Access*

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

7.2. *Advertising*

Display, paint or erect or cause to be displayed, painted or erected, any advertisement or sign (including on any building or structure on the foreshore);

7.3. *Animals*

7.3.1 Other than in relation to the foreshore comprising Brownlow Beach and Vivonne Bay, allow, ride or take any animal onto or allow it to remain on the foreshore or in any adjacent waters:

- (a) except between the hours of midnight and 9:00am daily; and
- (b) only then, on the parts of the foreshore to which the Council has resolved this clause applies.

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

7.3.3 Fail to immediately remove and dispose of the faeces of an animal for which the person is responsible if that animal defecates on the foreshore.

7.4. *Bathing*

Swim or bathe during the times when swimming or bathing in that place has been prohibited by resolution of the Council (for the reasons of public safety) as indicated by a sign or signs displayed on the land.

7.5. *Boats & Boat Ramps*

7.5.1 Hire out a boat on or from the foreshore.

7.5.2 Launch or retrieve a boat from or onto the foreshore other than from a boat ramp except on any parts of the foreshore to which the Council has resolved this clause applies.

7.6. *Camping and Tents*

7.6.1 Subject to this subclause 7.6, erect a tent or other structure of calico, canvas, plastic or similar material as a place of habitation.

7.6.2 Camp or sleep overnight except in an area that the Council has, by resolution, designated for camping (if any) and in accordance with such time limits and other conditions determined by resolution of the Council.

7.7. *Entertainment*

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

7.8. *Fires*

Subject to the *Fire and Emergency Services Act 2005*, light any fire except in a portable barbeque as long as the barbeque is used in an area that is clear of flammable material for a distance of four metres.

7.9. *Sand dunes, coastal slope, cliffs etc*

7.9.1 Subject to subclause 8.4, carry out any activity that may damage or threaten the integrity of sand dunes, coastal slopes or cliff.

7.9.2 Introduce non-indigenous flora or fauna or dump any material in a sand dune.

7.9.3 Destroy, remove or cause interference to any nest, flora or fauna, whether living or dead, on or within a sand dune, coastal slope or coastal cliff or otherwise on the foreshore.

7.9.4 Remove or clear any sand, seaweed, soil, rocks, minerals, other flora or seashells.

7.9.5 Make or excavate any dug-out, cave, cliff or other opening, or camp in or otherwise occupy any dug out, cave or cliff overhang opening.

7.10. *Trading*

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

7.11. *Vehicles*

7.11.1 Drive or propel a vehicle except on any portion of the foreshore to which the Council has resolved this clause applies (as indicated by the erection of flags, signs or other means).

7.11.2 Drive or propel a vehicle on the foreshore except on an area or road that is constructed or set aside for that purpose.

7.11.3 Drive or propel a vehicle onto or from the foreshore other than by a ramp or thoroughfare constructed or provided by the Council for that purpose.

7.11.4 Use any ramp or thoroughfare to which the Council has resolved this clause applies to drive or propel a vehicle onto or from the foreshore without having paid the applicable fee (if any) in the manner determined by the Council.

7.11.5 Drive or propel a vehicle over or on any sand dunes.

7.12. *Weddings, Functions and events*

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

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

8. Prohibited Activities

No person shall on the foreshore:

8.1. *Annoyances*

Conduct himself or herself:

- 8.1.1 in such a manner that may annoy or endanger others; or
- 8.1.2 unreasonably interfere with the lawful activities of others that are taking place on the foreshore, including by making a noise or any other disturbance that has not been authorised by the Council.

8.2. *Fishing*

Cast a fishing line or keep a fishing line in waters adjacent the foreshore while there are other persons in the waters in the vicinity of the fishing line.

8.3. *Jetties*

- 8.3.1 Jump or dive from a jetty or other structure onto the foreshore or into any adjacent waters.
- 8.3.2 Throw or propel any object from any structure or jetty onto the foreshore or into any adjacent waters.

8.4. *Sandboarding*

Use a sandboard or other similar item except in an area to which the Council has resolved this clause applies.

8.5. *Toilets*

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

- 8.5.1 urinate other than in a urinal or pan or defecate other than in a pan set a part for that purpose;
- 8.5.2 deposit anything in a pan, urinal or drain that is likely to cause a blockage or damage to the facility or any drain, pipe or property associated with the facility;
- 8.5.3 use the facilities for a purpose for which it was not designed or constructed;
- 8.5.4 enter any facilities that are set aside for the use of the opposite gender except:
- (a) where a child under the age of eight years is accompanied by an adult parent or guardian of that gender; or
 - (b) to provide assistance to a disabled person; or

(c) in the case of a genuine emergency.

8.6. *Use of equipment, buildings and property*

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

8.6.2 Damage, destroy or remove any building or structure, notice board or sign.

PART 3 – BOAT FACILITIES

9. Boat Ramps

9.1. A person must not use a boat ramp on Local Government land or the foreshore to launch or retrieve a boat without first having:

9.1.1 purchased a ticket; and

9.1.2 clearly displayed the ticket on the dashboard of any vehicle (or in the case of a trailer, affixed thereto) used to launch or retrieve the boat (or to tow the boat) that is parked in the vicinity of the boat ramp, where the ticket must be left from the time that the boat is launched until the boat is retrieved.

9.2. A person must not use a boat ramp other than in accordance with any conditions stipulated on the ticket purchased in compliance with subclause 9.1.1.

9.3. Upon request of an authorised person, any person about to use, using or having used a boat ramp, must produce the ticket purchased in respect of such use that is required by subclause 9.1.

9.4. Council may exempt any organisation or person from the requirement to purchase a ticket.

9.5. A person must not allow any vehicle or boat to remain stationary on any boat ramp longer than is necessary to launch or retrieve a boat

10. Boat Moorings

10.1. A person must not moor a boat at any place within Christmas Cove other than:

10.1.1 at the boat moorings designated and clearly marked by Council; and

10.1.2 in accordance with the terms and conditions stipulated by the Council including as may be set out on any signage erected in the vicinity of the boat moorings.

10.2. For the purposes of subclause 10.1, **Christmas Cove** means the area outlined in the plan attached to this By-law and marked 'Annexure A'.

10.3. A person must not moor a boat to any foreshore or Local Government land except in any area to which the Council has resolved this subclause applies.

- 10.4. A person must not moor a boat to any foreshore or Local Government land in a manner that obstructs any boat or access to any boat or object (either floating or sunk) or any boat facility.
- 10.5. A person must not use a boat mooring on any foreshore or Local Government land to which the Council has resolved this clause applies unless the person:
 - 10.5.1 first obtains a permit from the Council or purchases a mooring ticket; and
 - 10.5.2 complies with any conditions regarding that use as specified either on the permit or mooring ticket or on any signs in the vicinity of the boat mooring.

11. **Boat Landings**

- 11.1. A person must not land at or otherwise use a boat landing without paying the applicable fee to Council in the manner directed by the Council.
- 11.2. A charter operator must:
 - 11.2.1 report to the Council monthly regarding the charter operator's use of a boat landing at the times and in the manner directed by the Council; and
 - 11.2.2 provide to the Council any other information regarding or relevant to the charter operator's use of a boat landing as is requested by the Council within 24 hours of such request (or within such other period as may be directed by the Council).

PART 4 – ENFORCEMENT

12. **Directions**

- 12.1. A person on the foreshore must comply with a reasonable direction from an authorised person relating to:
 - 12.1.1 that person's use of the foreshore or Local Government land or any boat facilities thereon;
 - 12.1.2 that person's conduct and behaviour on the foreshore; or
 - 12.1.3 the safety and enjoyment of other persons on the foreshore.
- 12.2. A person who, in the opinion of an authorised person, is likely to commit or has committed, a breach of this By-law must immediately comply with a direction of an authorised person to leave that part of the foreshore.

13. **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.

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 of and within the scope of that person's normal duties, or to a contractor or volunteer while performing work for the Council and while acting under the supervision of a Council officer.
- 14.2. For the avoidance of doubt, the restrictions in this By-law relating to the use or operation of a boat do not apply to paddleboards, canoes, kayaks and personal watercraft with a motor of eight (8) horsepower or less.

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. Pursuant to section 264(3)(h)(iii) of the Act, the owner and the driver of a vehicle driven, parked or standing in contravention of this by-law are each guilty of an offence and liable to the penalty as prescribed for that offence.

This foregoing By-law was duly made and passed at a meeting of the Kangaroo Island Council held on 13 June 2017 by an absolute majority of the members for the time being constituting the Council, there being at least two-thirds of the members present.



.....
Andrew Boardman
Chief Executive Officer

ANNEXURE A – CHRISTMAS COVE

