

SECTION 249 LOCAL GOVERNMENT ACT 1999

CERTIFICATE OF VALIDITY

I, CIMON ANGELA BURKE of Level 6, 19 Gilles Street, Adelaide in the State of South Australia, being a legal practitioner within the meaning of the *Legal Practitioners Act 1981*, declare that I have examined the following by-law:

City of Whyalla

By-law No 8 – Boat Harbours & Facilities 2021

To regulate the use of harbours, boat ramps and lands adjacent thereto which are under the care, control and management of the Council.
and do certify that in my opinion:

City of Whyalla

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

*Local Government Act 1999: sections 238, 246(1)(a), 246(3)(a), 246(3)(c) and 246(3)(e);
Harbours and Navigation Act 1993: section 18A;*

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

DATED the 12 day of August 2021

A handwritten signature in black ink, appearing to be 'Cimon Burke', written over a horizontal dotted line.

Cimon Burke, Legal Practitioner

CITY OF WHYALLA
BOAT HARBORS AND FACILITIES BY-LAW 2021

By-law No. 8 of 2021

A By-law to regulate certain activities in parts of the Harbor of Whyalla and the use of, boat ramps on land adjacent thereto which is under the care, control and management of the Council.

PART 1 – PRELIMINARY

1. Title

This By-law may be cited as the *Boat Harbors and Facilities By-law 2021* and is By-law No. 8 of City of Whyalla.

2. Authorising law

This By-law is made under sections 238 and 246 of the *Local Government Act 1999*, 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 certain activities in the Harbor and related boat facilities:

- 3.1. to prevent and mitigate nuisances in and around that harbors;
- 3.2. to prevent damage to land and property;
- 3.3. to protect the convenience, comfort and safety of members of the public;
- 3.4. to enhance the amenity of the Council area; and
- 3.5. for the good rule and government of the area.

4. Expiry

- 4.1. The following By-laws previously made by the Council are revoked from the day on which this By-law comes into operation:¹

*By-law No. 9 – Boat Harbors and Facilities 2014.*²

- 4.2. This By-law will expire on 1 January 2029.³

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 2021*.
- 5.2. This By-law applies to the Harbor and to boat ramps in the Council's area.

6. Interpretation

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

- 6.1 **Act** means the *Local Government Act 1999*.
- 6.2 **authorised person** means a person appointed as an authorised person pursuant to Section 260 of the Act;
- 6.3 **boat ramp** means a facility constructed on Local Government land or in the Harbor that is designed or used for the launching or retrieval of a vessel to or from adjacent waters;
- 6.4 **emergency worker** has the same meaning as in the *Road Traffic (Road Rules – Ancillary and Miscellaneous Provisions) Regulations 2014*;
- 6.5 **Harbor** means:
 - 6.5.1 those parts of the Harbor of Whyalla (as that harbor is defined in Schedule 3 to the *Harbors and Navigation Regulations 2009*) comprising marina facilities and within 5 metres of those facilities, being the area delineated in red in the plan with the heading 'Foreshore Marina' contained in the Council report of 28 June 2021 for agenda item 13.2.4; and
 - 6.5.2 the area known as the Point Lowly Marina, being the area delineated in red in the plan with the heading 'Point Lowly Marina' contained in the Council report of 28 June 2021 for agenda item 13.2.4; and
 - 6.5.3 Local Government land (contained in the whole of an allotment) that is adjacent to the land described in subclauses 6.5.1 and 6.5.2 (whether or not covered by water) that has been developed for or is used for the launching or mooring of a vessel;
- 6.6 **launch permit** means a permit issued by the Council authorising a specified vessel (as identified in the permit) to be launched at a boat ramp (subject to any conditions the Council sees fit to impose) for so long as the launch permit is in operation;
- 6.7 **launch ticket** means a single-use ticket purchased from the Council (which may include from a vending machine located at a boat ramp that authorises the launch of any one vessel at the boat ramp within 24 hours from the time of purchase);
- 6.8 **Local Government land** means land that is owned by or that is under the care, control and management of the Council;
- 6.9 **personal watercraft** has the same meaning as in the *Harbors and Navigation Act 1993*, which is a device that –

- 6.9.1 is propelled by a motor; and
 - 6.9.2 has a fully enclosed hull; and
 - 6.9.3 is designed not to retain water if capsized; and
 - 6.9.4 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;

6.10 **ticket** means either a launch permit or a launch ticket; and

6.11 **vessel** includes a raft, boat, personal watercraft or other similar device.

7. Boat Ramps

- 7.1. A person must not use a boat ramp to launch or retrieve a vessel without permission of the Council except:
 - 7.1.1 if the person has a valid ticket authorising the launch of the vessel and the ticket is clearly displayed on the dash of the vehicle used to launch or retrieve the vessel (or to tow the vessel) from the time that the vessel is launched until the vessel is retrieved; and
 - 7.1.2 in accordance with the conditions specified on a sign erected on or in the vicinity of the boat ramp and the conditions that may attach to a ticket obtained by the person to use the boat ramp.
- 7.2. 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 in compliance with this By-law.
- 7.3. A person must not allow any vehicle or vessel to remain stationary on any boat ramp longer than is necessary to launch or retrieve a vessel.
- 7.4. The Council may grant an exemption to any person from the requirement to comply with this clause 7, which exemption may be subject to any conditions the Council sees fit to impose.

8. Harbors

Subject to the *Harbors and Navigation Act 1993* and the *Marine Safety (Domestic Commercial Vessel) National Law*, a person must not, without permission of the Council, undertake or engage in the following activities in a Harbor:

- 8.1. anchor or moor a vessel;
- 8.2. interfere with any of the moorings therein;
- 8.3. move or remove any rock from a breakwater, or throw or place any rock, stone or other object into the waters;
- 8.4. do anything to obstruct the entrance to the Harbor;
- 8.5. remain or sleep overnight on any vessel for more than three consecutive nights;

- 8.6. fish, swim, dive, scuba dive or snorkel or conduct or participate in any water sports;
- 8.7. swim or bathe within five (5) metres of any jetty;
- 8.8. handle any fuel or dangerous or flammable substance in such a manner that may expose a person or property to danger;
- 8.9. conduct himself or herself in a manner that is contrary to the conditions of entry or use that apply to the Boat Harbor, that are displayed on a sign or signs located therein, or that are otherwise notified to the person in writing by the Council; and
- 8.10. jump or dive from a jetty into water or onto a beach or tie or affix any vessel to a jetty.

9. 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.

10. Exemptions

The restrictions in this By-law do not apply to a police officer, emergency worker, Council officer or employee acting in the course and within the scope of that person's normal duties, or to a contractor while performing work for the Council and while acting under the supervision of or in accordance with a direction of a Council officer.

This foregoing by-law was duly made and passed at a meeting of the City of Whyalla held on **16 August 2021**, by an absolute majority of the members for the time being constituting the Council, there being at least two-thirds of the members present.



JUSTIN COMMONS
Chief Executive Officer

16 August 2021