

SECTION 249 LOCAL GOVERNMENT ACT 1999

CERTIFICATE OF VALIDITY

I, CIMON ANGELA BURKE care 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:

THE DISTRICT COUNCIL OF ROBE

By-law No 3 – Roads By-law 2023

This By-Law is for the management, control and regulation of certain activities on roads in the Council's area.

and do certify that in my opinion:

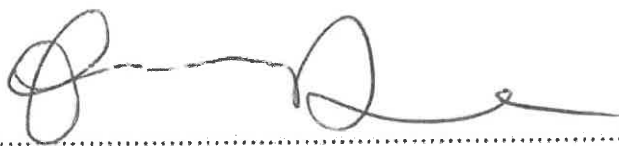
THE DISTRICT COUNCIL OF ROBE

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

*Local Government Act 1999: sections 239, 246(1), 246(2), 246(3)(a), 246(3)(c), 246(3)(e), 246(3)(f) and 246(3)(h)(iii); and
Local Government (General) Regulations 2013: regulation 28.*

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

DATED the 3 day of July 2023



Cimon Burke, Legal Practitioner

**DISTRICT COUNCIL OF ROBE****ROADS BY-LAW 2023****By-law No. 3 of 2023**

This By-Law is for the management, control and regulation of certain activities on roads in the Council's area.

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PART 1 – PRELIMINARY

1. Title

This By-law may be cited as the *Roads By-law 2023* and is By-law No. 3 of the District Council of Robe.

2. Authorising Law

This By-law is made under sections 239 and 246 of the Act and regulation 28 of the *Local Government (General) Regulations 2013*.

3. Purpose

The objectives of this By-law are to manage, control and regulate the use of roads in the Council's area:

- 3.1 to protect the convenience, comfort and safety of road users and members of the public;
- 3.2 to prevent damage to buildings and structures on roads;
- 3.3 to prevent certain nuisances occurring on roads; and
- 3.4 for the good rule and government of the Council 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:

*By-law No. 3 – Roads 2016.*²

- 4.2 This By-law will expire on 1 January 2031.³

Note-

1. Generally, a By-law comes into operation 4 months after the day on which it is gazetted pursuant to 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 2023*.
- 5.2 Subject to subclause 5.3 and 5.4, this By-law applies throughout the Council's area.
- 5.3 Subclause 7.3.3 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 Subclause 7.4.2 of this By-law applies throughout the Council's area except in such part or parts of the Council area as the Council may, by resolution, direct in accordance with section 246(3)(e) of the Act.

6. Interpretation

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

- 6.1 **Act** means the *Local Government Act 1999*;
- 6.2 **animal** includes birds, insects and poultry but does not include a dog;
- 6.3 **authorised person** is a person appointed by the Council as an authorised person under section 260 of the Act;
- 6.4 **camp** includes setting up a camp or causing
 - 6.4.1 a tent or other structure of calico, canvas, plastic or other similar material;
 - 6.4.2 a swag or similar bedding; or
 - 6.4.3 subject to the *Road Traffic Act 1961*, a caravan, tent trailer, motor home or other vehicle;to remain on a road overnight, whether or not any person is in attendance or sleeps on the road.

Note-

To avoid doubt, setting up a calico, canvas, plastic or other tent, marquee or similar structure for recreation purposes to provide shade during daylight hours only (and not overnight) is not within the meaning of 'camp'.

- 6.5 **Council** means District Council of Robe;
- 6.6 **effective control** means a person exercising effective control of an animal either:
 - 6.6.1 by means of a physical restraint; or
 - 6.6.2 by command, the animal being in close proximity to the person and the person being able to see the animal at all times;
- 6.7 **electoral matter** has the same meaning as in the *Electoral Act 1985*;
- 6.8 **emergency worker** has the same meaning as in the *Road Traffic (Road Rules - Ancillary and Miscellaneous Provisions) Regulations 2014*;
- 6.9 **moveable sign** has the same meaning as in the Act;
- 6.10 **road** has the same meaning as in the Act, being, a public or private street, road or thoroughfare to which public access is available on a continuous or substantially continuous basis to vehicles or pedestrians or both and includes—
 - 6.10.1 a bridge, viaduct or subway; or
 - 6.10.2 an alley, laneway or walkway; and
- 6.11 **vehicle** has the same meaning as in the *Road Traffic Act 1961*.

Note-

Section 12 of the *Legislation Interpretation Act 2021* provides that an expression used in this By-law has, unless the contrary intention appears, the same meaning as in the Acts under which the By-law was made.

PART 2 – USE OF ROADS

7. Activities Requiring Permission

A person must not do any of the following activities on a road without the permission of the Council:

7.1 Advertising

Display or cause to be displayed on a road or on a structure on a road, any poster, advertising or sign for the purpose of advertising goods or services or for any other purpose, other than a moveable sign that is displayed in accordance with the Council's *Moveable Signs By-law 2023*.

7.2 Amplification

Use an amplifier or other device whether mechanical or electrical for the purpose of broadcasting or amplifying sound including for announcements or advertisement.

7.3 Animals

7.3.1 Subject to this subclause 7.3, cause or allow an animal to stray onto, move over, or graze on a 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 provided the animal or animals are under effective control.

7.3.2 Lead, herd or exercise an animal in such a manner as to cause a nuisance or endanger the safety of a person.

7.3.3 Lead, herd or exercise any horse, cattle, camel or sheep on any road to which the Council has determined this subclause applies.

7.4 Camping and Tents

7.4.1 Subject to this subclause 7.4, erect a tent or other structure of calico, canvas, plastic or other similar material as a place of habitation.

7.4.2 Camp, sleep overnight or occupy any caravan or other vehicle for or in connection with undertaking camping activities (including but not limited to washing, cooking, sleeping) except:

7.4.2.1 on a road to which the Council has resolved this subclause applies (and thereby designated as a camping area); and

7.4.2.2 in accordance with any conditions determined by the Council and displayed on any signage on or near the road.

7.4.3 subject to this subclause 7.4, use or occupy or cause, suffer or permit to be used or occupied, any caravan, motorhome or other vehicle on a road for or in connection with camping activities, including for washing, cooking or sleeping.

7.5 Obstructions

Erect, install or place, or cause to be erected, installed or placed any structure, object or material of any kind so as to obstruct a road or any part of a road or a footway, water-channel, or watercourse.

7.6 Preaching and Canvassing

Subject to clause 10.2, preach, harangue, or canvass for a religious, charitable or any other purpose.

7.7 Public Exhibitions and Displays

7.7.1 Sing, busk, play a recording or use a musical instrument, or perform similar activities.

7.7.2 Conduct, cause or hold a concert, festival, show, display public gathering, circus, performance or a similar activity.

7.7.3 Erect a stage or structure for the purpose of conducting or holding a concert, festival, show, circus, performance or a similar activity.

7.8 Rubbish Bins

Deposit in any Council bin on a road:

7.8.1 any rubbish emanating from a domestic, commercial or trade source; or

7.8.2 any rubbish that is not rubbish of the type permitted to be placed in the bin as indicated on signs on the bin or in its vicinity.

7.8.3 Cause any public exhibition or displays.

7.9 Soliciting

Ask for or receive or do anything to indicate a desire for a donation of money or any other thing.

7.10 Vehicles

Repair, wash, paint, panel beat or perform other work on or to any vehicle, except for running repairs in the case of a vehicle breakdown.

PART 3 – ENFORCEMENT

8. Orders

8.1 A person on a road who, in the reasonable opinion of an authorised person, is committing or has committed a breach of this By-law, must immediately comply with an order of the authorised person made pursuant to section 262 of the Act, including an order to leave that part of the road.

8.2 If a person does not 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 by an authorised person under section 262(3) of the Act from the person to whom the order was directed.

Note-

Section 262(1) of the Act states:

- (1) If a person (the offender) engages in conduct that is a contravention of this Act or a By-law under this Act, an authorised person may order the offender-
- a) if the conduct is still continuing - to stop the conduct; and
 - b) whether or not the conduct is still continuing- to take specified action to remedy the contravention.

Subsections (2) and (3) of section 262 also provide that it is an offence to fail to comply with an order and that if a person does not comply, the authorised person may take the action reasonably required to have the order carried out. For example, an authorised person may order a person to:

- cease busking on a road; or
- remove an object or structure blocking a footpath; or
- dismantle and remove a tent from a road.

9. Removal of Objects

- 9.1 The Council (or its delegate) may, pursuant to section 234 of the Act, remove an object that is on a road in breach of a By-law if no person is in charge of the object.
- 9.2 The Council may recover from the owner of an object removed under subclause 9.1 the costs it incurs in removing that object.

PART 4 – MISCELLANEOUS

10. Exemptions

- 10.1 The restrictions in this By-law do not apply to any emergency worker, Police Officer, 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 or in accordance with a direction of a Council officer.
- 10.2 The restrictions in subclause 7.6 of this By-law do not apply to electoral matter authorised by a candidate and which is:
- 10.2.1 related to a Commonwealth or State election and occurs during the period commencing on the issue of the writ or writs for the election and ending at the close of polls on polling day;
- 10.2.2 related to an election under the Act or the *Local Government (Elections) Act 1999* and occurs during the period commencing four weeks immediately before the date that has been set (either by or under either Act) for polling day and ending at the close of voting on polling day; or
- 10.2.3 related to, and occurs during the course of and for the purpose of a referendum.

11. Liability of vehicle owners

- 11.1 For the purposes of this clause 11, owner in relation to a vehicle has the same meaning as contained in section 4 of the Act.
- 11.2 The owner and the driver of a vehicle driven, parked or standing in contravention of this By-law are each guilty of an offence and liable to the penalty as prescribed for that offence.

This By-law was duly made and passed at a meeting of the District Council of Robe held on **12 July 2023** by an absolute majority of the members for the time being constituting the Council, there being at least two thirds of the members present.


.....
Deb Brokenshire
Acting Chief Executive Officer

