



CITY OF HOLDFAST BAY

ROADS BY-LAW 2019

By-law No. 4 of 2019

For the management, control and regulation of 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 2018* and is By-law No. 4 of the City of Holdfast Bay.

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 prescribed uses 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's 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 operation.¹
- 4.2 By-Law No. 4 - Roads 2012.²
- 4.3 This By-law will expire on 1 January 2027.³

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 2019*.
- 5.2 Subject to subclauses 5.3 and 5.4, this By-law applies throughout the Council's area.
- 5.3 Subclause 7.3 of this By-law only applies to 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 (including a tent trailer) or other structure of calico, canvas, plastic or other similar material; or
 - 6.4.2 a swag or similar bedding; or
 - 6.4.3 subject to the *Road Traffic Act 1961*, a caravan or motor home;
- to remain on a road for the purpose of staying overnight, whether or not any person is in attendance or sleeps on the road;
- 6.5 **Council** means the City of Holdfast Bay;
- 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 1995* provided that such electoral matter is not capable of causing physical damage or injury to a person within its immediate vicinity;
- 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 14 of the *Acts Interpretation Act 1915* 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, other than a moveable sign that is displayed in accordance with the Council's Moveable Signs By-law.

7.2 Amplification

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

7.3 Animals

Allow any horse, cattle, sheep or other livestock to stray onto, graze, wander or be left unattended on any road to which the Council has, by resolution, 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 or remain overnight except:

7.4.2.1 on a road to which the Council has resolved this subclause applies (if any); and

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

7.5 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, footway, water-channel, or watercourse in a road.

7.6 Preaching

Preach, harangue, solicit or canvass for religious or charitable purposes.

7.7 Public Exhibitions and Displays

7.7.1 Sing, busk, play a recording or use a music 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 any rubbish emanating from a domestic, commercial or trade source.

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 Repairs to Vehicles

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

Note-

Movable signs on roads are regulated by sections 226 and 227 of the Act and the Council's Moveable Signs By law.

PART 3- ENFORCEMENT

8. Directions

A person who, in the opinion of an authorised person is committing or has committed a breach of this By-law, must immediately comply with a direction of the authorised person to leave that part of the road.

9. Orders

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 under section 262(3) of the Act from the person to whom the order was directed.

Note-

Section 262(1) of the Act states:

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

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

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

10. Removal of animals and objects

- 10.1 The Council (or its delegate) may, pursuant to section 234 of the Act, remove an animal or object that is on a road in breach of a By-law if no person is in charge, or apparently in charge, of the animal or object.
- 10.2 The Council may recover from the owner or apparent owner of an object removed under subclause 10.1 the costs it incurs in removing that object.

PART 4- MISCELLANEOUS

11. Exemptions

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..

12. Liability of vehicle owners

- 12.1 For the purposes of this clause 12, **owner** in relation to a vehicle has the same meaning as contained in section 4 of the Act.
- 12.2 The owner and the driver of a vehicle driven, parked or standing in contravention of this By-law are each guilty of an offence and liable to the penalty as prescribed for that offence.

This By-law was duly made and passed at a meeting of the City of Holdfast Bay held on **9th JULY 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.

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ROBERTO BRIA
Chief Executive Officer