



KINGSTON DISTRICT COUNCIL

CAPE JAFFA ANCHORAGE (WATERWAYS) BY-LAW 2023

By-law No. 6 of 2023

This By-law is to manage, control and regulate activities in waterways at Cape Jaffa.

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PART 1 – PRELIMINARY

1. Title

This By-law may be cited as the *Cape Jaffa Anchorage (Waterways) By-law 2023* and is By-law No. 6 of the Kingston District Council.

2. Authorising law

This By-law is made under section 246 and 238 of the Act.

3. Purpose

The objects of this By-law are to regulate activities in and on waterways at Cape Jaffa:

- 3.1. to prevent and mitigate nuisances;
- 3.2. to prevent damage to Local Government land;
- 3.3. to protect the convenience, comfort and safety of members of the public within the Cape Jaffa Anchorage;
- 3.4. to enhance the amenity of the Cape Jaffa Anchorage; and
- 3.5. 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 operation¹:

By-law No. 6 – Cape Jaffa Anchorage (Waterways) By-law 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. This By-law applies to the Waterways within the Cape Jaffa Anchorage Waterways as may be determined by the Council from time to time.
- 5.3. This By-law does not and is not intended to detract from the operation of the Council's Local Government land By-law, which operates in respect of Local Government land and waters thereon.

6. Interpretation

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

- 6.1. **Act** means the *Local Government Act 1999*;
- 6.2. **authorised person** is a person appointed by the Council as an authorised person under section 260 of the Act;
- 6.3. **Cape Jaffa Anchorage Waterways** means the body of water delineated as such and coloured grey in the plan marked "*Cape Jaffa Anchorage (Waterways) By-law - Annexure A*" that is available on the Council's website;
- 6.4. **Council** means the Kingston District Council;
- 6.5. **person** includes a body corporate;
- 6.6. **private property** means land that is in private ownership and is not Local Government land;
- 6.7. **vessel** has the same meaning as in the *Harbors and Navigation Act 1993*;
- 6.8. **Waterway** means those parts of the Cape Jaffa Anchorage Waterways area as the Council may by resolution determine from time to time in accordance with section 246(3)(e) of the Act;
- 6.9. **In this By-law, a reference to an:**
 - 6.9.1 approved launching ramp, slipway, or boat lift;
 - 6.9.2 approved fishing area;
 - 6.9.3 approved vessel refuelling facility;
 - 6.9.4 approved swimming area;
 - 6.9.5 approved marina berth, wharf, pontoon, jetty or boat launching facility;means an area approved and signposted by Council for the approved purpose.

Note-

Section 12 of the *Legislation Interpretation Act 2021* 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 – USE OF WATERWAYS

7. Activities Requiring Permission

No person shall, without permission of the Council, on or in any Waterway:

- 7.1. lay an anchor or moor a vessel by anchor;
- 7.2. secure a vessel to land, except within private property or to an approved marina berth, wharf pontoon, jetty or boat launching facility;

- 7.3. launch a vessel into or retrieve a vessel from a Waterway, except at an approved launching ramp, slipway or boat lift;
- 7.4. bring into a Waterway a vessel which in the reasonable opinion of an authorised person is of an excessive size (having regard to the Vessel's length, beam, draft and manoeuvrability);
- 7.5. catch fish or other marine organism, except within private property or from an approved fishing area;
- 7.6. swim, snorkel or dive, except within private property or within an approved swimming area;
- 7.7. water ski;
- 7.8. refuel a vessel other than from an approved vessel re-fuelling facility;
- 7.9. allow, cause or permit a vessel to be left unattended, unless it is securely moored to an approved marina berth, wharf, pontoon, jetty or boat launching facility; or
- 7.10. behave in a manner, or cause or permit a circumstance to arise, that in the reasonable opinion of an authorised person, is likely to cause offence or annoyance to other persons using or in the vicinity of the Waterway.

PART 3 – ENFORCEMENT

8. Directions

- 8.1. A person on or in the Waterway (whether on a vessel or otherwise) must comply with a reasonable direction from an authorised person relating to:
 - 8.1.1 that person's use of the Waterway;
 - 8.1.2 that person's use of a vessel within the Waterway;
 - 8.1.3 that person's conduct and behaviour within the Waterway;
 - 8.1.4 that person's safety within the Waterway; or
 - 8.1.5 the safety and enjoyment of other persons within the Waterway.
- 8.2. A person who, in the reasonable opinion of an authorised person, is likely to commit or has committed, a breach of this By-law must immediately comply with an order of an authorised person pursuant to section 262 of the Act including an order to leave that part of the Waterway.

9. Orders

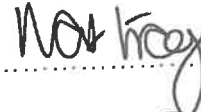
If a person fails to comply with an order of an authorised person made pursuant to section 262 of the Act in respect of a breach of this By-law, the Council may seek to recover its costs of any action taken under section 262(3) of the Act from the person to whom the order was directed.

10. **Exemptions**

The restrictions in this By-law do not apply to:

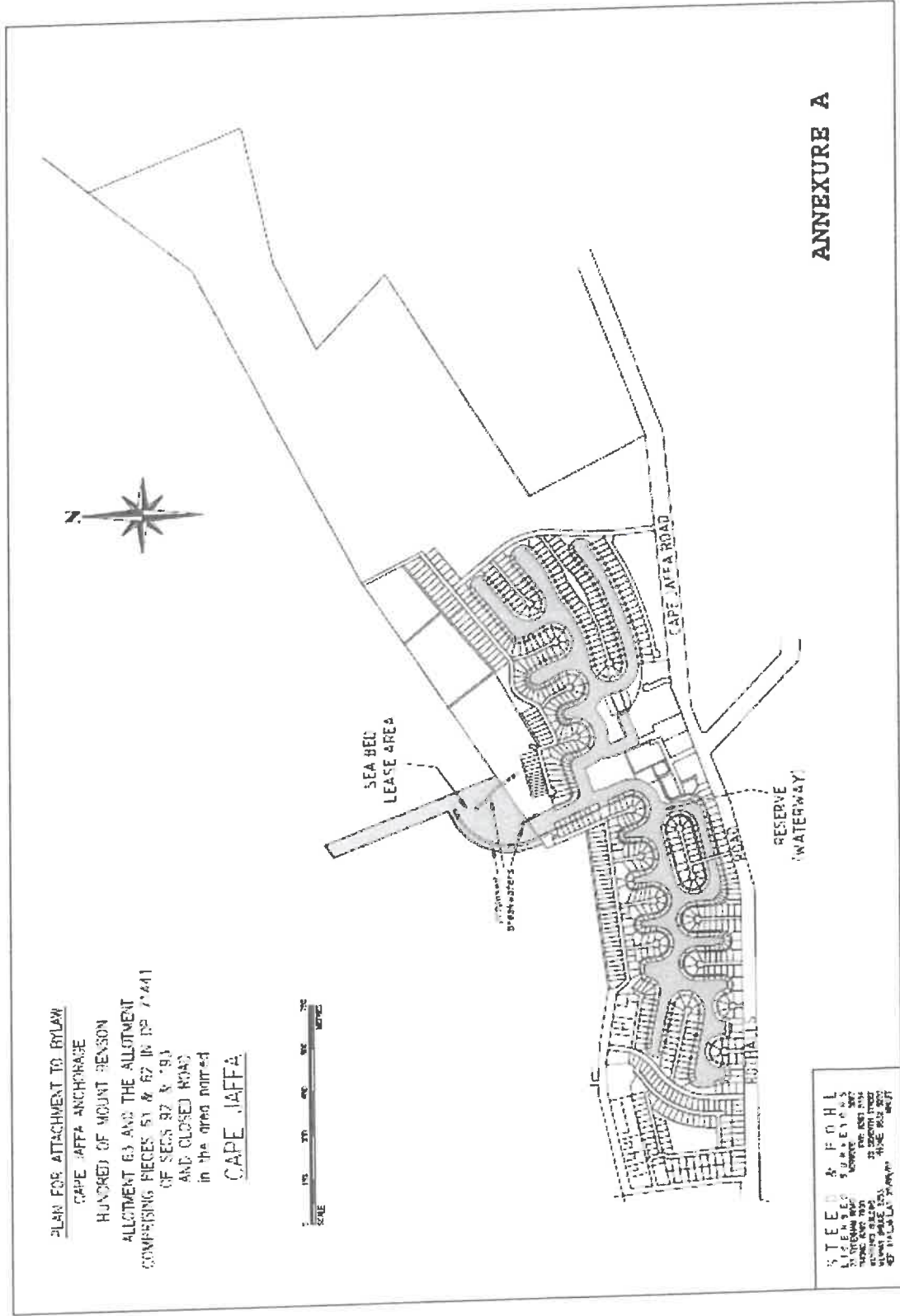
- 10.1. any emergency services personnel to the extent that they are acting in the course of their emergency response duties;
- 10.2. any Council officers or employees (including authorised persons) who are acting in the course of their normal duties; or
- 10.3. any of the Council's contractors while performing work for the Council or while acting in accordance with the direction or under the supervision of a Council officer.

This By-law was duly made and passed at a meeting of the Kingston District Council held on **18 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.



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Nat Traeger
Chief Executive Officer

ANNEXURE A



ANNEXURE A