

EXPLANATORY STATEMENT

Aboriginal Land Grant (Jervis Bay Territory) Act 1986

ABORIGINAL LAND GRANT (JERVIS BAY TERRITORY)

BY – LAWS 2016

These By-Laws were made by the Wreck Bay Aboriginal Community Council (the Council) under section 52A of the *Aboriginal Land Grant (Jervis Bay Territory) Act 1986* (the Jervis Bay Act). The Council is established by section 4 of the Jervis Bay Act for the purpose of holding title to Aboriginal Land within the Jervis Bay Territory and managing that land for the benefit of the local indigenous community.

For the purposes of the By-Laws, Aboriginal Land is all the land which has been granted to the Council under the Jervis Bay Act but excluding land within the Booderee National Park and the Booderee Botanical Gardens. The effect of this is that the operation of the By-Laws will be confined to the Wreck Bay Village and surrounding land.

Subsection 52A(2) of the Jervis Bay Act empowers the Council to make by-laws for or with respect to: economic enterprise; cultural and other activities including hunting, shooting and fishing; access to Aboriginal Land including the control of visitors and authorisation of activities; management, conservation, development and use of Aboriginal Land; sacred sites; protection and conservation of flora and fauna; use of timber, and the regulation of motor traffic and parking on Aboriginal land. The charging of entrance fees for entry to Aboriginal land is authorised by section 52A(2)(i) of the Jervis Bay Act.

Subsection 52A(3) of the Jervis Bay Act provides that By-Laws made by the Council may apply any regulation made under the *Environment Protection and Biodiversity Conservation Act 1999* to Aboriginal Land, with whatever changes are needed for that purpose. Accordingly relevant provisions of the Environment Protection and Biodiversity Regulations (EPBC Regulations) have been applied with adaptations.

Part 1 titles the By-Laws, sets 1 April 2016 as the commencement date and includes as part of the By-Laws a dictionary which defines relevant words and expressions.

The purposes of Parts 2 and 3 of the By-Laws are to protect threatened species and ecological communities and to conserve biodiversity on Aboriginal Land. Relevant provisions of the EPBC Regulations are applied in order to achieve such protection through the establishment of criteria for the listing of native species. Native species, ecological communities and threatening processes can be nominated for inclusion on this list. All nominations for listing are to be sent to the Council before forwarding to the Minister for review. Offences are created for certain actions in relation to protected species.

Part 4 requires the Council, after notification to residents, to develop, introduce and maintain a Town Plan for each Township on Aboriginal Land.

Part 5 regulates various activities in relation to Aboriginal Land and creates a series of general offences for activities which are capable of causing damage to land, heritage or the environment. These activities include the dumping of waste, use of firearms, taking animals or plants onto bushland, use of the burial ground, camping, fishing, lighting fires, capturing images or recording sound in contravention of a Council restriction. Hazardous activities such as abseiling or hang gliding may only be carried out in areas provided for such activities. Entry to any part of Aboriginal Land in contravention of a Council restriction is prohibited and approval is required for the operation of a commercial activity from a structure on Aboriginal Land.

Sections 24, 25, 28, 29, 33, 34, 42, 44, 47, 48, 54, 55, 58 and 68 place an evidential burden on the defendant in respect of exceptions to offences against these sections. These exceptions are matters likely to be peculiarly within the knowledge of the defendant.

Part 5 also regulates the use of vehicles on Aboriginal Land, sets speed limits and authorises the issuing of parking permits by the Council. Signs for controlling traffic may be erected. Wardens or other authorised persons may request a person to produce a permit and may require a vehicle to stop until allowed to proceed. Wardens may require a person found to have committed an offence against the Jervis Bay Act or the By-Laws to leave Aboriginal Land. Fees for entry onto Aboriginal Land can be determined in writing by the Council and entry denied in the case of non-payment. Offence provisions in Part 5 do not apply to activities which are in accordance with a current Management Plan, otherwise approved by the Council, or carried out by a Commonwealth, State or Territory agency for law enforcement purposes.

Part 6 consists of enforcement provisions including the appointment by the Council of wardens who are issued with identity cards. A person whose interests are affected by a decision by the Council in relation to a permit may request a review of that decision by the Council, which must reconsider the decision within one month.

Part 7 regulates the issuing of permits by the Council for authorisation of activities on Aboriginal Land. The purpose of the permits is to assist in the protection of native species and cultural heritage, the prevention of damage to Aboriginal Land and fishing stocks and the maintenance of public safety and privacy.

Part 8 enables the Council to order a person to take action to remedy waste and misuse of water on Aboriginal Land. Misuse of water is an offence against the By-Laws.

Consultation took place prior to the making of these By-Laws with the Executive Members of the Executive Committee of the Council.

Penalties for offences against the By-Laws will be contained in Regulations to be made under subsections 52A (7) and (8) of the Jervis Bay Act.

Statement of Compatibility with Human Rights:- .

This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

This Disallowable Legislative Instrument does not engage any of the applicable rights or freedoms.

This Disallowable Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

These By-Laws will commence on 1 April 2016.