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LOCAL GOVERNMENT ACT 1995

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**CITY OF BUSSELTON**

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**JETTIES LOCAL LAW 2014**



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## LOCAL GOVERNMENT ACT 1995

## CITY OF BUSSELTON

## JETTIES LOCAL LAW 2014

Under the powers conferred by the Local Government Act 1995 and under all other powers enabling it, the Council of the City of Busselton resolved on 9 April 2014 to make the following local law.

## PART 1—PRELIMINARY

## 1.1 Citation

This local law may be cited as the *City of Busselton Jetties Local Law 2014*.

## 1.2 Commencement

This local law will come into operation on the 14th day after the day on which it is published in the *Government Gazette*.

## 1.3 Application

This local law applies to the Land, as approved by the Governor under section 3.6 of the Act per notice published in the *Government Gazette* No 23 on 14 February 2014 at page 327.

## 1.4 Repeal

This local law repeals the *Shire of Busselton By-laws relating to the use of a public jetty*, published in the *Government Gazette* on 17 May 1991 and as amended and published in the *Government Gazette* on 18 March 2011.

## 1.5 Definitions

In this local law—

**Act** means the *Local Government Act 1995*;

**applicant** means a person who applies for consent under clause 3.1;

**authorised person** means the CEO or a person appointed by the local government under section 9.10 of the Act to perform any of the functions of an authorised person under this local law;

**bait** means food, or some substance, used as a lure in fishing;

**berth** means—

(a) to lie alongside the jetties; or

(b) to be connected or tied to a vessel lying alongside the jetties;

**bulk cargo** means bulk, unpacked produce or other materials such as grain, coal, oil, mineral ore, timber, sand or gravel;

**Busselton Jetty** means the main jetty structure on the Land, as depicted on the plan in Schedule 4 and includes all buildings and other structures on, under or attached to the Busselton Jetty;

**CEO** means the chief executive officer of the local government;

**commencement day** means the day on which this local law came into operation;

**explosives** includes fireworks;

**fish** has the meaning given to it by section 4 of the *Fish Resources Management Act 1994*;

**fishing** has the meaning given to it by section 4 of the *Fish Resources Management Act 1994*;

**function** means an event or activity characterised by all or any of the following—

(a) Formal organisation and preparation;

(b) Its occurrence is generally advertised or notified in writing to particular persons;

(c) Organisation by or on behalf of a club or a person or entity hosting events;

(d) Payment of a fee to attend it or participate in it; or

(e) Systematic recurrence in relation to the day, time and place;

**indecent exposure** means the revealing to view of those parts of the body, especially the genitals, which by law and convention should be covered by clothing under the given circumstances;

**jetties** means the Busselton Jetty and the Swimming Jetty and, depending on the context in which the term is used, include any portion of the Busselton Jetty or the Swimming Jetty;

**Land** means the whole of Lot 350 on Deposited Plan 55296 (also known as Reserve 46715) as specified in Schedule 3;

**liquor** has the meaning given to it in section 3 of the *Liquor Control Act 1988*;

**local government** means the City of Busselton;

**local government property** means anything on the Land which belongs to the local government or in which the local government has an interest;

**moor** means to fasten or secure or connect a vessel to a mooring;

**mooring** means something to which a vessel may be moored or fastened and includes an anchor, stake, ring bolts, fastenings, or mooring pile;

**mooring line** means any line, rope, cable, chain or similar device used or capable of being used to fasten or secure a vessel to a mooring;

**mooring pile** means any pile used or capable of being used to secure a vessel;

**owner** means the person who is the lawful owner or the person entitled to possession of any vessel or vehicle;

**person** includes a legal entity but does not include the local government;

**petroleum** has the meaning given to it by section 5 of the *Petroleum and Geothermal Energy Resources Act 1967*;

**pollutant** means any noxious, pollutant or offensive material whether solid or liquid, including but not limited to non-biodegradable chemicals or cleaning agents, rubbish, dirt, black water, sewage, oil, oily bilge water, sullage, fuel or the content of brine tanks, offal or litter (but excluding fish products or bait);

**prohibited drug** has the meaning given to it by section 3 of the *Misuse of Drugs Act 1981*;

**Schedule** means a schedule of this local law;

**sign** includes a notice, flag, mark, structure or device, including an electronic device, on which may be shown words, numbers, expressions, symbols or pictures;

**Swimming Jetty** means the smaller jetty structure located at the south western corner of the Land, as depicted on the plan in Schedule 4 and includes all buildings and other structures on, under or attached to the Swimming Jetty;

**trolley** means a non-motorised trolley or cart drawn or pushed on wheels, of which the dimensions do not exceed 1.5m in length, 800mm in width and 1m in height;

**Underwater Observatory** means the underwater observatory erected towards the northern end of the Busselton Jetty, as depicted on the plan in Schedule 4;

**utility services** means municipal or public services and include the supply of water, electrical power, petroleum and waste and sewerage disposal services;

**vehicle** includes—

- (a) every conveyance and every object capable of being propelled or drawn on wheels, tracks or otherwise (and includes a bicycle, a skateboard and a vessel that is outside the water and carried by a trailer);
- (b) plant or equipment such as cranes and lifting devices; and
- (c) an animal being ridden or driven,

but excludes—

- (d) a wheel-chair or any device designed for use by a physically impaired person on a footpath;
- (e) a pram, baby carriage, stroller or a similar device;
- (f) a trolley; and
- (g) a vessel;

**vessel** means any kind of vessel, whether licensed or unlicensed, used or being capable of being used in navigation by water, however being propelled or moved, and without limiting the generality of the foregoing, includes—

- (a) a barge, lighter, floating restaurant, dinghy, commercial vessel, tender vessel or other floating structure;
- (b) a jet-ski; and
- (c) an air-cushion vehicle, or other similar craft, used wholly or primarily in navigation by water,

but does not include structures used only for the purpose of walkways or storage;

**written law** has the same meaning given to it by section 5 of the *Interpretation Act 1984* and includes this local law.

## 1.6 Overriding power to hire and agree not limited

Despite anything to the contrary in this local law the local government may—

- (a) hire the jetties or the Land or any portion of the jetties or the Land to a person; or
- (b) enter into an agreement with a person regarding the use or management of the jetties or the Land or any portion of the jetties or the Land.

**PART 2—USE OF JETTIES AND LAND****2.1 Use of jetties and Land**

A person shall not use, enter onto or land at the jetties or the Land except in accordance with this local law and any other written law.

**2.2 Mooring of Vessels**

- (1) A person shall not moor to or berth a vessel at the jetties or moor or berth a vessel on the Land—
- (a) unless the mooring or berthing of the vessel is authorised or permitted by the local government either by way of a sign affixed by the local government to the jetties or by written consent of the local government; and
  - (b) other than in accordance with any conditions imposed by the local government under clause 3.2(1)(a).
- (2) Subclause (1) does not apply to—
- (a) a person who needs to moor to or berth a vessel at the jetties or on the Land in an emergency;
  - (b) a vessel in distress such as that repairs are required and then only to effect the minimum repairs necessary to enable the vessel to be moved elsewhere;
  - (c) a person who uses the jetties under and in accordance with a written agreement with the local government; and
  - (d) a person who has been exempted from subclause (1) by the local government.
- (3) A person shall not—
- (a) moor a vessel to the jetties or any part of the jetties except to such moorings or mooring piles as are provided; or
  - (b) permit a vessel to remain alongside the jetties unless the vessel is so moored or fastened.

**2.3 Mooring Lines**

- (1) The owner of a vessel must—
- (a) provide, use and adequately maintain mooring lines sufficient to ensure the safe mooring or berthing of the vessel; and
  - (b) periodically inspect the mooring lines and replace any mooring lines which are unfit for their intended purpose,
- so as to ensure that the mooring lines comply with any requirement under a written law or any condition imposed under clause 3.2(1)(a).
- (2) Where the local government considers the mooring line of a vessel to be non-compliant with a requirement under a written law or a condition imposed under clause 3.2(1)(a), or to be faulty or unfit for the purpose for which it is used or to be used, the local government may issue a written direction to the owner of a vessel requiring within a specific timeframe—
- (a) the replacement of any mooring line;
  - (b) the testing and certification of any mooring line as suitable for its purpose by a marine engineer or equivalent and the provision of such certification to the local government; or
  - (c) the removal of the vessel from the Land.

**2.4 Connection to utility services**

- (1) A person shall not connect a vessel to any utility services supplied on, at or from the jetties—
- (a) unless the connection is authorised or permitted by written consent of the local government;
  - (b) other than in accordance with any conditions imposed by the local government under clause 3.2(1)(a);
- (2) The owner shall ensure that all cords, leads, hoses, pipelines or other devices used to connect the vessel to the utility services, do not enter the water and do not otherwise create a hazard for those in the vicinity of the vessel.
- (3) The local government may recover from a person the reasonable costs incurred by the local government for the supply to and use of any utility services by that person.

**2.5 Vehicles on jetties**

- (1) A person shall not take onto or drive or ride a vehicle on the jetties or allow a vehicle to remain on the jetties without the written consent of the local government.
- (2) Subclause (1) does not apply when—
- (a) the vehicle is driven by a local government employee, authorised person or contractor engaged by the local government who is engaged in providing a service, maintaining or making a delivery in connection with the jetties; or
  - (b) the person is driving an emergency vehicle in the course of his or her duties.
- (3) A person must not drive a vehicle or allow a vehicle to be driven on the jetties at a speed exceeding 10km per hour or in such a manner to cause danger to a person.

**2.6 No fishing from the Swimming Jetty**

A person shall not—

- (a) fish from the Swimming Jetty; or
- (b) hang or spread fishing net on, over, under or from the Swimming Jetty.

## 2.7 Fishing from the Busselton Jetty

(1) In this clause—

**attend** has the meaning given to it by regulation 64B of the *Fish Resources Management Regulations 1995*.

(2) A person fishing from the Busselton Jetty using a fishing line or drop net must attend that line or net.

(3) Subject to subclause (4), a person shall not—

- (a) fish from the Busselton Jetty so as to obstruct or interfere with the free movement of a vessel approaching, leaving or passing the Busselton Jetty;
- (b) fish from the Busselton Jetty so as to cause a nuisance or danger to a person on or near the Busselton Jetty;
- (c) hang or spread a fishing net, other than a drop net, on, over, under or from the Busselton Jetty; or
- (d) when fishing from the Busselton Jetty, use more than 2 fishing lines or 4 drop nets at a time.

(4) A person shall not—

- (a) fish from; or
- (b) spread, hang, drop or land a fishing net (including a drop net) from, any part of the Busselton Jetty that is—
  - (i) north of the security gate installed approximately 50m south of the Underwater Observatory; or
  - (ii) in the absence of that security gate, north of a no—fishing sign erected or placed approximately 50m south of the Underwater Observatory.

## 2.8 Cleaning fish on jetties

A person shall not shell, gut, scale or clean fish, or deposit or discard bait or waste from a fish—

- (a) on the Swimming Jetty; or
- (b) on the Busselton Jetty, except in a place designated by way of a sign affixed by the local government or receptacle set aside by the local government, and subject to any conditions that may be specified on the receptacle or a sign.

## 2.9 Obstruction of jetties

(1) A person shall not, without the written consent of the local government—

- (a) cause any obstruction on or under or near the jetties; or
- (b) interfere with the free movement of a vessel approaching, leaving or passing the jetties.

(2) A person shall not obstruct or hinder any local government employee, authorised person or contractor engaged by the local government, who is engaged in the repair, maintenance or construction of the jetties.

(3) Property or goods intended for shipment onto a vessel—

- (a) shall not be stored or placed on the jetties unless and until the vessel is alongside the jetties; and
- (b) shall be removed from the jetties as soon as practicable and in accordance with any conditions imposed under clause 3.2(1)(a).

(4) A person unloading property or goods from a vessel onto the jetties shall cause it to be removed from the jetties as soon as practicable and in accordance with any conditions imposed under clause 3.2(1)(a).

(5) Except with the written consent of the local government, a person shall not tip or deposit bulk cargo from a vehicle or a vessel onto the jetties.

(6) The local government may direct a person apparently in charge of property or goods which remains on the jetties contrary to this local law, to remove the property or goods from the jetties.

(7) The local government may remove and impound property or goods which have been left on the jetties contrary to this local law, in accordance with Part 3 Division 3, Subdivision 4 of the Act, irrespective of whether a direction to remove the property has been given pursuant to subclause (6).

## 2.10 Launching of vessels

A person shall not launch or permit the launching of a vessel from or over or under the jetties unless—

- (a) the person is in charge of a vessel engaged in rescue services or dealing with an emergency;
- (b) the person has obtained the written consent of the local government and paid the fee set by the local government from time to time for the purpose; or
- (c) the person is a local government employee, authorised person or contractor engaged by the local government and who is engaged in repair, maintenance or construction work in connection with the jetties.

## 2.11 Prohibited activities near the Underwater Observatory

(1) A person shall not jump or dive from the Busselton Jetty within a distance of 20m from the Underwater Observatory.



(2) Subclause (1) does not apply to—

- (a) a person dealing with an emergency; or
- (b) a local government employee, authorised person or contractor engaged by the local government, who is engaged in repair, maintenance or construction work in connection with the jetties.

### **2.12 Drugs and liquor**

(1) A person shall not—

- (a) enter or remain on the jetties while under the influence or in possession of liquor or a prohibited drug;
- (b) on the jetties consume any liquor or take or use any prohibited drug; or
- (c) take or cause liquor or a prohibited drug to be taken onto the jetties.

(2) Subclause (1) does not apply to—

- (a) liquor or prohibited drugs which are medical supplies carried for lawful purpose;
- (b) cargo being loaded or discharged in accordance with this local law; or
- (c) a person who has obtained—
  - (i) the written consent of the local government; and
  - (ii) a licence or such other permission required under the *Liquor Control Act 1988* for that purpose.

### **2.13 Camping and sleeping on the jetties**

(1) A person shall not—

- (a) sleep or camp on, or lodge at the jetties; or
- (b) take or cause any stretcher, camp bed, tent, beach shade, windbreak, umbrella (other than a handheld umbrella) or similar structure to be taken onto the jetties.

(2) Subclause (1)(b) does not apply to—

- (a) a person dealing with an emergency;
- (b) cargo being loaded or discharged in accordance with this local law; or
- (c) a person who has obtained the written consent of the local government.

(3) The maximum period for which the local government may grant consent in respect of paragraph (a) or (b) of subclause (1), is that provided in regulation 11(2)(a) of the *Caravan Parks and Camping Grounds Regulations 1997*.

### **2.14 Petroleum and explosives**

A person shall not without the written consent of the local government—

- (a) take onto or cause petroleum or explosives to be taken onto the jetties;
- (b) store or handle or let off explosives on the jetties;
- (c) store petroleum on the jetties; or
- (d) discharge petroleum from the jetties.

### **2.15 Restriction on vessel anti-fouling paint**

Any vessel that is coated with anti-fouling paint containing any substance or additive compound that has been altered or is applied at variance with manufacturers or government specification, which is known to contain bio-accumulate toxins or contain residual chemicals that risk being harmful to the marine environment, is prohibited from using the Busselton Jetty or from entering the Land.

### **2.16 Animals**

(1) A person shall not, without the written consent of the local government—

- (a) tether an animal to the jetties;
- (b) take an animal onto the jetties; or
- (c) permit an animal to enter or stray upon the jetties.

(2) Subclause (1) does not apply to—

- (a) a guide dog used for the assistance of visually impaired persons;
- (b) bait; or
- (c) fish taken from the Busselton Jetty in accordance with this local law.

### **2.17 Local government may close the jetties or regulate activities**

The local government may—

- (a) close or cause to be closed the jetties or any part thereof;
- (b) exclude or cause to be excluded the public and all persons or so many of the public or so many persons as in the discretion of the local government shall be deemed necessary from the jetties or the Land;
- (c) regulate, prohibit or restrict access to the jetties or the Land or any part thereof;

- (d) regulate, prohibit or restrict—
  - (i) jumping or diving from the jetties; or
  - (ii) swimming in the water within the Land;
- (e) direct persons to leave the jetties or the Land or any part thereof, for purposes of—
  - (f) a function or public convenience at or on the jetties or in or on the water on the Land;
  - (g) repair, maintenance or construction of the jetties;
  - (h) public safety; or
  - (i) other operational reasons.

### **2.18 Local government may order removal of vessel or vehicle or attendance**

Notwithstanding anything to the contrary in this local law, a person shall, upon being directed to do so by the local government, immediately remove—

- (a) a vessel moored to or berthed at the jetties or moored or berthed on the Land; or
- (b) a vehicle from the jetties.

### **2.19 Miscellaneous prohibitions**

- (1) A person shall not, without the written consent of the local government—
  - (a) light, place or keep a fire on the jetties;
  - (b) take onto or use on the jetties or in the water under the Land a spear gun, hand spear, gidgy or similar device;
  - (c) offer for sale or sell goods or services on the Land or from a vessel on the Land, irrespective whether the vessel is moored to or berthed at the jetties;
  - (d) use any loud speaking or sound amplifying device on the jetties or on a vessel on the Land, irrespective whether such a vessel is moored to or berthed at the jetties;
  - (e) place or display any sign, advertisement or fixture of any nature on the Land or on or from the jetties;
  - (f) remove or cause to be removed from the Land any sand, gravel, stone, timber, trees, shrubs, grass or other material;
  - (g) alter, add to, remove or demolish the jetties or any part thereof;
  - (h) write, paint or make any mark or inscription on the jetties; or
  - (i) enter any area, building or other structure on the Land which has been fenced off or closed to the public by a sign or otherwise.
- (2) A person shall not—
  - (a) throw or impel any stone or other missile from or onto the jetties, except for the express purpose of fishing and then only in accordance with this local law;
  - (b) smoke on the jetties;
  - (c) do anything which may damage, deface or destroy the jetties or any part thereof;
  - (d) interfere with any lifesaving or firefighting device, except to use it for its designed purpose;
  - (e) tip or deposit or discharge anything onto the Land as to litter or cause pollution;
  - (f) subject to clause 2.8(b), deposit any offensive rubbish or offal into any rubbish bin located on the jetties; or
  - (g) deposit or release or permit to be deposited or released any pollutant on or onto the Land.

## **PART 3—APPLICATION FOR CONSENT**

### *Division 1—Applying for Consent*

#### **3.1 Application for consent**

- (1) Where a person is required to obtain the consent of the local government under this local law, that person must apply for the consent in the manner required by the local government.
- (2) The local government may, in accordance with sections 6.16 to 6.19 of the Act, determine and impose a fee for receiving and determining an application for consent made under subclause (1).
- (3) If an application for consent is not made in the manner required by the local government or the fee, if any, which is charged for receiving and determining that application, is not paid, the local government may refuse to consider the application for consent.
- (4) The local government may require an applicant to provide additional information reasonably related to an application for consent before determining such an application.

#### **3.2 Decision on application for consent**

- (1) The local government may—
  - (a) approve an application for consent unconditionally or subject to any conditions; or
  - (b) refuse to approve an application for consent.
- (2) The local government shall give its decision on an application for consent, in writing to the applicant.
- (3) The local government may, at any time, amend a condition of approval and the amended condition takes effect when written notice of it is given to the applicant.

*Division 2—Conditions***3.3 Examples of conditions**

Examples of the conditions that the local government may impose in terms of clause 3.2(1)(a) are specified in Schedule 2.

**3.4 Imposing conditions under a policy**

(1) In this clause—

“**policy**” means a policy adopted by the local government under section 2.7 of the Act containing conditions subject to which an application for a consent may be approved under clause 3.2(1)(a).

(2) Under clause 3.2(1)(a) the local government may approve an application subject to conditions by reference to a policy.

(3) The local government must give to the applicant a copy of the relevant policy with any written approval given in terms of clause 3.2(2).

(4) An application for consent is not to be taken to have been approved subject to the conditions contained in a policy until the local government has given to the applicant a copy of the policy which is relevant to the application.

(5) Sections 5.94 and 5.95 of the Act apply to a policy and, for that purpose, a policy is deemed to be information within section 5.94(u)(i) of the Act.

**3.5 Compliance with conditions**

Where an application for consent has been approved subject to conditions, the applicant must comply with each of those conditions, as amended.

*Division 3—General***3.6 Renewal of consent**

(1) An applicant to whom consent is given under clause 3.2(1)(a), may apply to the local government in writing prior to expiry of the consent for the renewal of that consent.

(2) The provisions of this Part shall apply to an application for the renewal of consent as though it was an application for consent.

**3.7 Transfer of consent**

(1) A person shall not transfer consent given under this local law unless that person has applied to and obtained the written consent of the local government.

(2) The local government may approve an application for the transfer of consent, refuse to approve it or approve it subject to any conditions.

(3) Where the local government approves the transfer of consent, the local government is not required to refund any part of any fee paid by the person to whom that consent was formerly given.

**3.8 Production of consent**

A person to whom consent was given under this Part must produce to the local government that consent immediately upon being required to do so by the local government.

**3.9 Cancellation of consent**

(1) Subject to clause 6.3, consent given under clause 3.2(1)(a) may be cancelled by the local government if the person to whom it was granted has not complied with—

- (a) a condition imposed under clause 3.2(1)(a);
- (b) a direction given by the local government under a written law; or
- (c) a provision of any written law which may relate to the activity regulated by that consent.

(2) On the cancellation of a consent, the person to whom the consent was given—

- (a) must return the written consent as soon as practicable to the local government; and
- (b) is to be taken to have forfeited any fees paid in respect of that consent.

**PART 4—OBJECTIONS AND REVIEW****4.1 Objection and review rights**

Division 1, Part 9 of the Act applies to a decision under this local law to give, renew, amend, transfer or cancel consent or other authorisation.

**PART 5—GENERAL PROVISIONS****5.1 Authorised person to be obeyed**

A person on the Land must obey any lawful direction of an authorised person and must not in any way obstruct or hinder an authorised person in the execution of their duties.

**5.2 Signs**

(1) Subject to subclause (2) the local government may erect a sign on the jetties or the Land regulating, prohibiting or restricting specified activities on the jetties or any other portion of the Land.

- (2) A condition of use specified on a sign erected under subclause (1) is—
  - (a) not to be inconsistent with any provision of a written law; and
  - (b) to be for the purpose of giving notice of the effect of a provision of a written law.
- (3) A person must comply with a sign erected under subclause (1).

### **5.3 Refusal of entry, direction to leave and removal of persons**

- (1) If the local government considers that a person has behaved in a manner contrary to this local law or where the local government reasonably suspects that a person has contravened a provision of any written local law, the local government may—
- (a) refuse to allow that person to enter the Land or any part thereof; and
  - (b) if the person is on the Land, direct that person to leave the Land or any part thereof.
- (2) A person who has been refused entry or who has been directed to leave under subclause (1) must immediately leave the Land, or, if the direction applies to a part of the Land, that part of the Land quickly and peaceably.
- (3) If a person fails to comply with subclause (2), the local government may remove that person, or arrange for that person to be removed, from the Land.

### **5.4 Decency of dress**

Where the local government considers that the clothing of a person on the Land is not proper and adequate to prevent indecent exposure, the local government may order that person to put on adequate clothing and that person is to comply with the order immediately.

### **5.5 Entry to and use of toilet blocks**

- (1) Where a sign on a toilet block specifies that a particular entry of the toilet block is to be used by—
- (a) females, then a person of the male gender must not use that entry of the toilet block;
  - (b) males, then a person of the female gender must not use that entry of the toilet block; or
  - (c) families, then persons who are not immediate members of a family must not use that entry of the toilet block where it is already being used by a different family.
- (2) Clause 5.5(1)(a) and (b) do not apply to—
- (a) children under the age of 6 years when accompanied by a parent, guardian or other person who is taking care of that child;
  - (b) a person providing assistance to a disabled person; or
  - (c) an authorised person performing functions or duties authorised by the local government.
- (3) A person shall not use a toilet block or any part thereof for a purpose for which it was not designed or constructed.

### **5.6 Fees and charges**

- (1) Fees and charges may be imposed by the local government for the purposes of this local law in accordance with the requirements of Part 6, Division 5, subdivision 2 of the Act.
- (2) A person shall not charge admission or seek payment for entering or using the jetties without having first obtained the written consent of the local government.
- (3) A person shall not enter upon or use the jetties without first having paid—
- (a) the fees and charges which may apply to such entry or use, as determined by the local government from time to time; or
  - (b) admission charged by a person who obtained written consent pursuant to subclause (2).

### **5.7 Appointment of an authorised person**

The local government may appoint authorised persons under section 9.10 of the Act to perform any of the functions of an authorised person under this local law.

## **PART 6—ENFORCEMENT**

### *Division 1—Notices*

#### **6.1 Definition**

In this Division—

*costs* of the local government include its administrative costs.

#### **6.2 Damage to local government property**

If a person unlawfully removes, damages, pollutes or interferes with local government property, the local government may give that person a notice under this Division.

#### **6.3 Breach of a condition of consent or direction**

If a person—

- (a) to whom consent was given under clause 3.2(1)(a), breaches a condition of the consent; or
  - (b) fails to comply with a direction given by the local government under a written law,
- the local government may give that person a notice under this Division.

**6.4 Local Government may undertake requirements of notice**

(1) Where a person fails to comply with a notice—

- (a) referred to in clause 6.2, the local government may do the thing specified in the notice, including replace the property, or reinstate the property to the state it was in before the removal, damage, pollution or interference; or
- (b) referred to in clause 6.3, the local government may, subject to subclause (2), take whatever remedial action it considers appropriate to put the local government in the position it would have been in if the breach or failure had not occurred,

and to recover from the person, as a debt, the costs of doing so.

(2) The powers of the local government to enter upon private property for purposes of subclause 1(b) are subject to Part 3, Division 3, Subdivision 3 of the Act.

(3) In subclause (2) **property** includes a vessel.

(4) The debt referred to in subclause (1) is payable, where the damage is—

- (a) caused by a vessel or the use of a vessel, by the owner of such vessel and, in case the damage is caused through the wrongful act or negligence of the person having command or charge of such vessel, such person in command or charge also;
- (b) caused by a vehicle, by the person in control of the vehicle at the time the damage occurs;
- (c) caused by an agent or employee of the owner of the vessel or vehicle, and without prejudice to the liability of other persons, if any, by the owner of the vessel or vehicle; or
- (d) not caused by a vessel or vehicle, by the person who caused the damage.

**6.5 Notice requirements**

A notice under this Division must—

- (a) be in writing;
- (b) specify the reason for giving the notice, the work or action that is required to be undertaken and the time within which it is to be undertaken; and
- (c) be given to the person referred to in clause 6.2 or 6.3, as the case may be.

**6.6 Offence to fail to comply with notice**

A person who fails to comply with a notice given to that person under this local law commits an offence.

*Division 2—Offences and Penalties***6.7 Offences and general penalty**

(1) A person who—

- (a) fails to do anything required or directed to be done under this local law; or
- (b) does anything which under this local law, that person is prohibited from doing,

commits an offence.

(2) A person who commits an offence under this local law is liable, upon conviction, to a penalty not exceeding \$5,000, and if the offence is of a continuing nature, to an additional penalty not exceeding \$500 for each day or part of a day during which the offence has continued.

**6.8 Prescribed offences**

(1) An offence against a clause specified in Schedule 1 is a prescribed offence for the purposes of section 9.16(1) of the Act.

(2) The amount of the modified penalty for a prescribed offence is that specified adjacent to the clause in Schedule 1—

- (a) in the case of a first offence the modified penalty will be that prescribed in column 4 of Schedule 1; and
- (b) in the case of a subsequent offence the modified penalty will be that prescribed in column 5 of Schedule 1.

(3) An authorised person, before giving an infringement notice to a person in respect of the commission of a prescribed offence, must be satisfied that—

- (a) the prescribed offence is a relatively minor matter; and
- (b) only straight forward issues of law and fact are involved in determining whether the prescribed offence was committed, and the facts in issue are readily ascertainable.

**6.9 Forms of infringement notices**

Unless otherwise specified, for the purposes of this local law—

- (a) the form of the infringement notice given under section 9.16 of the Act is that of Form 2 in Schedule 1 of the *Local Government (Functions and General) Regulations 1996*; and
- (b) the form of the notice referred to in section 9.20 of the Act is that of Form 3 in Schedule 1 of the *Local Government (Functions and General) Regulations 1996*.

***Schedule 1***  
**PRESCRIBED OFFENCES AND MODIFIED PENALTIES**  
*City of Busselton*  
**JETTIES LOCAL LAW 2014**

[cl. 6.8(1)&amp;(2)]

<b>Item Number</b>	<b>Clause</b>	<b>Nature of Offence</b>	<b>Modified Penalty First Offence</b>	<b>Modified Penalty Subsequent Offence</b>
1	2.2(1)	Unauthorised mooring or berthing a vessel or mooring or berthing a vessel contrary to a sign or a condition	\$250	\$500
2	2.2(3)	Mooring a vessel to the jetties other than to moorings or mooring piles provided	\$250	\$500
3	2.3(1)	Mooring a vessel with faulty or inadequate mooring lines	\$250	\$500
4	2.4(1)	Unauthorised connection to a utility service	\$250	\$500
5	2.5(1)	Driving or riding or taking a vehicle on a jetty without written consent	\$100	\$200
6	2.6	Fishing or dropping a net from the Swimming Jetty	\$100	\$200
7	2.7(2)	Leaving a fishing line or a drop net unattended when fishing from the Busselton Jetty	\$100	\$200
8	2.7(3)(a)	Fishing from the Busselton Jetty so as to cause obstruction	\$100	\$200
9	2.7(3)(b)	Fishing from the Busselton Jetty so as to cause nuisance or danger	\$100	\$200
10	2.7(3)(c)	Hanging or spreading a fishing net, other than a drop net, from the Busselton Jetty	\$100	\$200
11	2.7(3)(d)	Using more than two fishing lines or four drop nets at a time from the Busselton Jetty	\$100	\$200
12	2.7(4)	Fishing or using a net from the Busselton Jetty north of the security gate installed approximately 50m south of the Underwater Observatory	\$250	\$500
13	2.8(a)	Cleaning or scaling fish on the Swimming Jetty	\$100	\$200
14	2.8(b)	Cleaning or scaling fish outside designated areas on the Busselton Jetty or failing to deposit fish offal in designated receptacle	\$100	\$200
15	2.9(1)	Causing an obstruction on a jetty or interfering with free movement of vessels	\$100	\$200
16	2.9(2)	Obstructing or hindering a person engaged in repair, maintenance or construction work of the jetties	\$100	\$200
17	2.9(5)	Tipping or depositing bulk cargo onto the jetties	\$250	\$500
18	2.10	Unauthorised launching of a vessel from or over or under the jetty	\$250	\$500
19	2.11	Jumping or diving from the Busselton Jetty within 20m from the Underwater Observatory	\$100	\$200
20	2.12(1)(a)	Entering or remaining on the jetties while under the influence or in possession of liquor or a prohibited drug	\$100	\$200
21	2.12(1)(b)	Unauthorised consumption of liquor or use of a prohibited drug on the jetties	\$100	\$200
22	2.12(1)(c)	Taking or causing liquor or prohibited drugs to be taken onto the jetties without approval	\$100	\$200

Item Number	Clause	Nature of Offence	Modified Penalty First Offence	Modified Penalty Subsequent Offence
23	2.13(1)(a)	Camping, sleeping or lodging at or on the jetties	\$100	\$200
24	2.13(1)(b)	Taking a stretcher, camp bed, tent, beach shade, windbreak, umbrella (other than a hand held umbrella) or similar structure onto the jetties	\$100	\$200
25	2.14(a)	Taking petroleum or explosives onto the jetties	\$250	\$500
26	2.14(b)	Store or handle or let off explosives on the jetties	\$250	\$500
27	2.14(c)	Store petroleum on the jetties	\$250	\$500
28	2.14(d)	Discharge petroleum from the jetties	\$250	\$500
29	2.16(1)(a)	Tethering an animal to the jetties	\$100	\$200
30	2.16(1)(b)	Taking an animal onto the jetties	\$100	\$200
31	2.17(c)	Entering prohibited or restricted areas on the jetties or the Land	\$100	\$200
32	2.18	Failure to remove vessel or a vehicle	\$250	\$500
33	2.19	Miscellaneous prohibitions	\$100	\$200
34	3.5	Failure to comply with a condition	\$100	\$200
35	3.8	Failure to produce a written consent	\$100	\$200
36	3.9(2)(a)	Failure to return written consent	\$100	Not applicable
37	5.1	Failure to obey a lawful direction	\$100	\$200
38	5.2(3)	Failure to comply with a sign	\$100	\$200
39	5.4	Failure to comply with an order to put on adequate clothing	\$100	\$200
40	5.5(1)	Unauthorised entry of toilet blocks	\$100	\$200
41	5.5(3)	Unauthorised use of toilet blocks	\$100	\$200
42	5.6(3)	Failure to pay fees, charges or admission fees	\$100	\$200
43	6.6	Failure to comply with notice	\$100	\$200

## *Schedule 2*

### EXAMPLES OF CONDITIONS

[clause 3.3]

Examples of the type and content of the conditions that the local government may impose under clause 3.2 are conditions relating to—

- (a) the payment of a fee and when it is payable;
- (b) compliance with a standard or policy adopted by the local government;
- (c) compliance with applicable Australian Standards (as published by Standards Australia Ltd from time to time);
- (d) commencement and duration of written consent or the intervals upon which the use may occur;
- (e) the commencement of written consent being contingent on the happening of an event;
- (f) the rectification, remedying or restoration of a situation or circumstance reasonably related to the application for written consent;
- (g) the obtaining of another permit, approval or consent which may, in relation to the application for written consent, be required under any written law;
- (h) the area of the Land or the jetties to which the written consent applies;
- (i) where the written consent is required for an activity which will or may cause damage to local government property, the provision of security in a form acceptable to the local government, including payment of a bond or deposit;
- (j) the obtaining of public liability insurance in an amount and on terms reasonably required by the local government;

- (k) the provision of an indemnity from the applicant, indemnifying the local government in respect of any injury to any person or any damage to any property which may occur in connection with the applicant's use of the Land or the jetties under the written consent;
  - (l) restrictions on the erection of structures, material or decorations;
  - (m) limitations on the number of guests, patrons or invitees who may attend a function;
  - (n) allowing exclusive use of the Land or the jetties for a function, or not;
  - (o) the right of the local government to cancel a written consent which authorises an annual or seasonal booking, during the course of such booking;
  - (p) in relation to approval of another application or permit or approval the Terms and conditions of supplying utility services and the costs thereof;
  - (q) the mooring to or berthing of vessels at the jetties or on the Land, including the type or size of the vessel, when, where and how mooring or berthing may occur, and the standard or specification of mooring lines to be used;
  - (r) the embarking onto or disembarking of passengers from the jetties, including when and where such use may occur and the maximum number of passengers allowed to embark or disembark;
  - (s) the loading of cargo from or discharging of cargo onto the jetties, including when and where such use may occur, the type or nature of cargo and maximum volume or weight to be allowed onto the jetties;
  - (t) the use of utility services, including the type of services allowed to be used, when and where such use may occur and standards or specifications which shall apply to the use of utility services; and
  - (u) restrictions on and/or specifications of plant or equipment, like cranes or lifting devices, allowed to be used on the jetties.
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**Schedule 3**

LOT 350 ON DEPOSITED PLAN 55296 (ALSO KNOWN AS RESERVE 46715)

[clause 1.5—definition of the “Land”]

TYPE	CROWN
PURPOSE	SUBDIVISION
PLAN OF	LOT 350

DISTRICT	SUSSEX
TOWNSITE	BUSSELTOWN
FILE	4498/1913/3
LOCAL AUTHORITY	SHIRE OF BUSSELTOWN
LOCALITY	BUSSELTOWN
ON	REFERENCE
	FB 99759

SCALE	1:6000
1 cm = 60 m	

SUBJECT TO SURVEY	
NOT FOR ALIENATION PURPOSES	

SURVEY FORM	
LANDGATE - PENDING	DATE 22-07-2008
LOGGED	TYPE OF VALIDATION
DATE 30/7/2008	FULL ACCT. GM
FILE PAD	FILE NO. 157863
ASSESS. NO.	3007/2008
SUBJECT TO IN ORDER FOR DEALINGS	
Reserve action	
APPROVED	DATE 30/7/2008
FOR AUTHORIZED LAND OFFICER	DATE 30/7/2008
APPROVED	DATE 30/7/2008
FOR AUTHORIZED LAND OFFICER	DATE 30/7/2008

DEPOSITED PLAN	
55296	
SHEET 1 OF 1	
VERSION 1	

**Schedule 4**  
**PLAN OF BUSSELTON JETTY AND SWIMMING JETTY**  
 [clause 1.5—definition of Busselton Jetty and Swimming Jetty]



Dated: 30 April 2014.

The Common Seal of the City of Busselton was affixed by authority of a resolution of the Council in the presence of—

IAN WILLIAM STUBBS, Mayor.  
 MICHAEL STEPHEN LEE ARCHER, Chief Executive Officer.