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LOCAL GOVERNMENT ACT 1995

CITY OF NEDLANDS

**LOCAL LAW RELATING TO RESERVES,
FORESHORES AND BEACHES**

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LOCAL LAW RELATING TO RESERVES, FORESHORES AND BEACHES

In pursuance of the powers conferred upon it by the abovementioned Act and of all other powers enabling it the Council of the City of Nedlands hereby records having resolved on the 27th day of February, 2001, to make the following Local Law.

PART 1—PRELIMINARY**1. Citation**

This Local Law may be cited as the *City of Nedlands Local Law Relating to Reserves, Foreshores and Beaches*.

2. Repeal

(1) The City of Nedlands Local Law No 14 Relating to Safety, Decency, Convenience and Comfort of Persons in Respect of Bathing made by the City of Nedlands on 21 May 1968 and published in the *Government Gazette* on the 13 August 1968 and amended from time to time, is repealed; and

(2) The City of Nedlands Local Law No 22 Relating to the Control of Council Reserves made by the City of Nedlands on 2 September 1965 and published in the *Government Gazette* on the 20 January 1966 and amended from time to time is repealed.

3. Interpretation

In this Local Law, unless the context otherwise requires—

“Act” means the *Local Government Act 1995*, as amended from time to time;

“Authorised Person” means a person authorised by the local government under section 9.10 of the Act;

“Bathing” means the act of entering into the sea and emerging therefrom and includes the use of bathing appliances;

“Bathing Appliances” means a float of any material, including surf skis, surf boards, kickboards, Malibu boards, paddle boards, body boards, boats or any other device whether motorised or not, used or capable of use for bathing or surf riding;

“Bathing Area” means that part of the defined area which, from time to time, is set aside pursuant to clause 8 of this local law as a bathing area;

“Beach” means the foreshore and the water adjacent to the foreshore;

“Boat” means any structure or vessel whether propelled manually or by wind or power or wave, used to float upon or travel under the sea;

“Building” means a structure erected or placed on land and without limiting the generality of the same includes all plumbing, electrical installations, fittings, fixtures and all furniture or other contents of a building and all structures in the open air including notices, signs, seats, fences, walls, drains, showers, roads, footpaths, memorials and the like erected by or with the consent of the Council;

“Council” means the Council of the City of Nedlands;

“Defined Area” means the places and the areas of the sea defined in clause 4 of this Local Law;

“District” means the district of the local government;

“Driver” means any person driving or in control of or in charge of a vehicle or any person driving, leading or in control of any animal;

“Fishing” means to use any line, lure, rod, pot or other method for the purposes of catching marine life;

“Foreshore” means all of that land under the care, control and management of the Council adjacent to any water and includes that area of the land down to the low water mark as measured at ordinary spring tides;

“Function” includes but is not limited to, any function, procession, demonstration, meeting, or rally;

“Life Saving Appliance” means any equipment or other appliance used in the provision of life saving service or for the training of Surf Life Saving Club members in their duties;

“Local Government” means the local government of the City of Nedlands;

“Nuisance” means—

- (a) any thing, condition, circumstance or state of affairs which is injurious or dangerous to the health of a reasonable person, or which has a disturbing effect on the state of reasonable physical, mental or social well-being of a person;
- (b) any thing a person does or permits or causes to be done which interferes with or is likely to interfere with the enjoyment or safe use by another person of any public place; and
- (c) any thing a person does on public or private land which detracts from or interferes with the enjoyment or value of land owned by another person;

“Organised Event” means any event that is likely to affect the reasonable use of a reserve or other public property;

“Owner” in relation to a vehicle means the person who is the holder of the requisite vehicle licence under the *Road Traffic Act 1974* in respect of that vehicle or, if the vehicle is not licensed under that Act, the person who owns the vehicle or is entitled to its possession;

“Public Place” means any thoroughfare or place which the public are allowed to use, whether the thoroughfare or place is or is not on private property and includes, parklands, squares, reserves, beaches, and other lands set apart for the use and enjoyment of the public, including all lands which belong to or which are vested in, or are under the care control or management of the Council;

“Reserve” means any land that belongs to, or is vested in, or is under the care, control or management of the City of Nedlands, or is an otherwise unvested facility in accordance with section 3.53(2) of the Act;

“Surf Life Saving Club” means a Surf Life Saving Club affiliated with Surf Life Saving Western Australia Inc;

“Vehicle” includes every conveyance, not being a train, vessel or aircraft and every object capable of being propelled or drawn, on wheels or tracks, by any means, but excludes a wheel chair being used by a physically impaired person.

Any other expression used in this Local Law and not defined herein shall have the meaning given to it in the *Local Government Act 1995*.

4. Application

Unless the contrary is expressly provided, this Local Law shall apply—

- (a) to the sea adjoining the District for a distance of 200 metres seaward from the low water mark as measured at ordinary spring tides;
- (b) to the area comprising the reserves to the extent the reserves are within the District;
- (c) to any building that belongs to, or is vested in, or is under the care, control, or management of the City of Nedlands or is an otherwise unvested facility in accordance with section 3.53(2) of the Act, where such building is located on a reserve, beach or foreshore to the extent that the Local Law Relating to the Control and Management of Council Halls does not already apply, in which case the latter shall prevail.

PART 2—ACTIVITIES ON RESERVES, FORESHORES AND BEACHES

5. General prohibitions

(1) On a reserve, foreshore or beach, a person shall not—

- (a) drive or take any bathing appliance or boat into any place where persons are bathing, in such a manner as to cause annoyance or injury to any person bathing or about to bathe;
- (b) play games in such a way as to cause inconvenience or annoyance to other persons;
- (c) obstruct, disturb, interrupt or annoy any person in the use of, or the execution of his or her duty, or insult or neglect to obey the lawful directions of any authorised person, member of an on duty surf life saving club patrol, or any servant of the local government;
- (d) consume any intoxicating liquor except on premises licensed under the *Liquor Licensing Act 1988* or except with the written permission of the local government;
- (e) take, inject, ingest or otherwise administer any illicit drug or substance;
- (f) commit or cause a nuisance;
- (g) behave in a disorderly manner, create or take part in a disturbance, or commit any act of indecency;
- (h) pry, or loiter in or around any lavatory, change room, or other similar building;
- (i) bathe, swim, wade, sun bathe, or wander unless properly clothed;
- (j) enter any place that has been fenced off or otherwise closed to the public;
- (k) bathe, swim, or wade in any sump, drain, fountain, pond or lake;
- (l) destroy, damage or interfere with any property owned by or vested in the Council;
- (m) operate any musical instrument, or amplifying equipment or other sound producing, enhancing or amplifying device at such volume as to cause a nuisance to other persons;
- (n) other than a gas-fuelled barbecue, light a fire or dispose of any incendiary material;
- (o) play or practice at golf or strike a golf ball except on an area set aside for that purpose;
- (p) remove, damage, deface, mark or alter any sign, notice, flag or other specified indicator; and

- (q) disobey the directions of Council, whether sign posted or otherwise, in relation to—
 - (i) the conditions for use;
 - (ii) the type or nature of activities that are prohibited or restricted and/or permitted; and
 - (iii) the times of the day that those activities are prohibited or restricted and/or permitted on that reserve, foreshore or beach or part of that reserve, foreshore or beach.

(2) The provisions of this clause shall not apply to an authorised person acting in the course of his or her duty.

6. Activities requiring consent

On a reserve, foreshore or beach a person shall not without a permit from the local government or an authorised person—

- (a) take part in any organised event;
- (b) fly any model aeroplane whether mechanically operated or otherwise;
- (c) use or install a loud speaker or amplifier;
- (d) distribute or exhibit any printed or written pamphlet, hand bill, placard or notice on any matter whatsoever;
- (e) sell, expose for sale or invite any offer to buy any goods, wares, vehicles, food, refreshments, fruit or other merchandise;
- (f) hire, expose for hire or invite any offer to take or hire any vehicle, boat or vessel;
- (g) take part in any organized sport on a reserve or foreshore unless he or she or an organized club or organization of which he or she is a member has first obtained a written permit from the local government to do so;
- (h) camp or lodge;
- (i) erect a tent or any other temporary cover for the purpose of entertainment or for the display of any merchandise;
- (j) land or fly off a helicopter, unless an authorised emergency helicopter;
- (k) land while parachuting, parasailing, paragliding or engaging in any other flying activity; and
- (l) carry or discharge any firearm, airgun, firework or other missile, whether of the same kind or not, except in the course of a lawful function.

7. Vehicles on reserves

A person other than an employee of the Council executing their normal duties shall not without the consent of the local government—

- (a) drive or ride or bring a vehicle onto a reserve or foreshore or permit to drive or ride or bring any vehicle onto a reserve or foreshore except on or over such parts of the reserve or foreshore as are set aside as roads or driveways or vehicle parking or as access to areas set aside for the use of the vehicle; and
- (b) park or stand any vehicle on a reserve except in an area set aside for that purpose.

PART 3—ACTIVITIES IN RELATION TO SAFETY, DECENCY AND CONVENIENCE IN RESPECT OF BATHING

8. Prohibited areas

(1) For the safety, decency, convenience and comfort of persons in respect of bathing and other recreational conduct, the Council or an authorised person may set aside specific localities wherein all or any of the following things are prohibited—

- (a) entry by persons;
- (b) bathing;
- (c) the use of any bathing appliance or any particular kind of bathing appliance;
- (d) the entry and use of vehicles;
- (e) the launching of boats and bathing appliances;
- (f) the playing of games;
- (g) the selling or displaying for sale or hiring of goods and merchandise; and
- (h) the use of a Council facility.

(2) The Council or an authorised person may set aside such specified facilities or localities for the purpose of clause 8(1) for a particular period or until further notice by causing notices to that effect to be placed in the vicinity of the locality.

9. Environmental protection

Subject to the provisions of the *Fish Resources Management Act 1994* and the *Wildlife Conservation Act 1950*, as amended, for the purpose of protecting and conserving the beach reserve environment, it is prohibited to—

- (a) injure, cause harm to, snare, or take any animal or marine life ordinarily found within the defined area;
- (b) enter any place that has been fenced off or otherwise closed to the public;
- (c) use any board or other object to traverse or slide down the sand dune system;

- (d) erect any tent, camp, hut or other structure other than a beach umbrella or other portable item used for the purposes of protection from the elements without the written consent of the local government or an authorised person;
- (e) unless with the consent of an authorised person, cause or allow to be ridden or driven any bicycle or other vehicle whether motorised or not except upon a carriageway, thoroughfare, path or footpath designated for use by such vehicle except by an authorised person; and
- (f) traverse the sand dune system except on designated accessways, unless given permission by an authorised person.

10. Decency

(1) In order to comply with community expectations and standards of decency, the following restrictions apply—

- (a) Any person over the age of 5 years bathing in water exposed to the public view or using a beach for sunbathing or any other activity in public view shall, in order to secure the observance of decency, be properly and adequately clad.
- (b) A parent or other adult person who is responsible for the custody, care or control of a child between the age of 5 years and 15 years shall ensure that the child is properly and adequately clad in accordance with paragraph (a) of this clause.

(2) Where in the opinion of an authorised person the costume or other clothing of any person on land or water to which these local laws apply is not proper and adequate to secure decency, the authorised person may order that person to put on adequate clothing and that person shall comply with such order forthwith.

11. Boat launching

(1) Where the Council sets aside areas or sites for the launching and beaching of boats at any place within the defined area, it shall exhibit signs indicating that the area is one in which that action may be taken.

(2) The Council may set aside areas in which boats may be left or parked and a boat may not thereupon be left on the beach in an area other than that so set aside.

(3) Every person using a car or other vehicle to tow a boat to a launching site shall use the road set aside for that purpose and, after the launching shall withdraw the vehicle from that road to an area set aside for parking in the defined area or, where there is no such area set aside, shall remove the vehicle to a place where it may be lawfully parked.

12. Surf life saving activities

(1) An authorised person or a patrol captain or patrolling member of a surf life saving club authorised by that club to carry out duties covered by this clause may perform all or any of the following functions in the interests of maintaining safety at beaches in the district—

- (a) patrol any beach;
- (b) take onto any beach any life saving gear including vehicles or boats that are used for life saving activities;
- (c) indicate by signs or patrol flags, any areas of a beach or the adjacent water beyond the beach, where bathing is permitted;
- (d) indicate by signs any areas of a beach or the adjacent water beyond the beach where—
 - (i) riding of surfboards or any other bathing appliance is prohibited;
 - (ii) driving of boats is prohibited;
 - (iii) fishing is prohibited;
- (e) regulate, prohibit, restrict or set aside by signs, rope, wire, cloth or other flexible sheeting, any areas for the following activities—
 - (i) entry by any persons;
 - (ii) playing of games;
 - (iii) conduct of training or surf club carnivals;
 - (iv) establishing a first aid or command post;
- (f) direct any person to bathe within the designated permitted bathing area indicated by signs or patrol flags;
- (g) close any beach or part of any beach during any period of potential dangerous conditions or sighting of a shark;
- (h) direct any person to leave the water and, if necessary, physically remove any person from the water, if in the opinion of the authorised person, patrol captain or patrolling member, the person is in immediate life threatening danger.

(2) When any beach or part of any beach is closed in accordance with clause 12(1)(g) an authorised person or patrol captain of a surf life saving club shall advise the Chief Executive Officer of the local government as soon as is practicable.

13. Identification of surf life saving patrol

(1) A patrolling member of a surf life saving patrol on duty at any beach shall wear a red and yellow quartered swimming cap and bathers, in accordance with the Surf Life Saving Australia Inc Patrol Uniform Policy, for the time they are on patrol.

(2) A person who is not a patrolling member of a surf life saving patrol on duty shall not wear a red and yellow quartered swimming cap and bathers or give the impression they are a patrolling member of a surf life saving patrol on duty.

14. Compliance with signs and directions

A person attending any beach in the district shall—

- (a) comply with any sign erected on the beach;
- (b) comply with any lawful direction given by an authorised person or a patrol captain or patrolling member of a surf lifesaving club patrolling the beach; and
- (c) not enter any area set aside for any surf life saving activity, training, competition or carnival.

15. Fishing

(1) A person shall not fish in any area—

- (a) where fishing is prohibited and the prohibition is designated by signs; or
- (b) set aside by an authorised person or member of a surf life saving patrol as a designated permitted bathing area.

(2) A person shall not at any place, whether fishing is permitted or not—

- (a) clean fish or cut bait on any seat or hand rail;
- (b) leave or deposit fish offal on land or in the sea within 200m of any part of the beach; or
- (c) fish for sharks within 200m of any part of a beach.

PART 4—PERMITS

Division 1

16. Application for a permit

(1) Where a person is required to obtain a permit under this local law, that person shall apply for the permit in accordance with subclause (2).

(2) An application for a permit under this local law shall—

- (a) be in the form determined by the Council;
- (b) be signed by the applicant;
- (c) provide the information required by the form; and
- (d) be forwarded to the Chief Executive Officer together under and in accordance with sections 6.16 to 6.19 of the Act.

(3) The Council may require an applicant to provide additional information reasonably related to an application before determining an application for a permit.

(4) The Council may require an applicant to give local public notice of the application for a permit.

(5) The Council may refuse to consider an application for a permit which is not in accordance with subclause (2).

17. Decision on application for permit

(1) The Council may—

- (a) approve an application for a permit unconditionally or subject to any conditions; or
- (b) refuse to approve an application for a permit.

(2) If the Council approves an application for a permit, it is to issue to the applicant a permit in the form determined by the Council.

(3) If the Council refuses to approve an application for a permit, it is to give written notice of that refusal to the applicant.

(4) Where a clause of this local law refers to conditions which may be imposed on a permit or which are to be taken to be imposed on a permit, the clause does not limit the power of the Council to impose other conditions on the permit under subclause (1)(a).

(5) Where a clause of this local law refers to the grounds on which an application for a permit may be or is to be refused, the clause does not limit the power of the Council to refuse the application for a permit on other grounds under subclause (1)(b).

(6) Notwithstanding a decision to approve an application for a permit made under this clause, the Council may at any time cancel or vary the permit.

Division 2—Conditions

18. Conditions which may be imposed on a permit

The Council may approve an application for a permit subject to conditions relating to—

- (a) the payment of a fee (determined from time to time by the Council);
- (b) the duration and commencement of the permit;
- (c) the commencement of the permit being contingent on the happening of an event;
- (d) the rectification, remedying or restoration of a situation or circumstance reasonably related to the application;
- (e) the approval of another application for a permit which may be required by the Council under any written law;

- (f) the area of the district to which the permit applies;
- (g) where a permit is issued for an activity which will or may cause damage to a public place, the payment of a deposit or bond against such damage;
- (h) the obtaining of public risk insurance in an amount and on terms reasonably required by the Council; and
- (i) the provision of an indemnity from the permit holder indemnifying the Council in respect of any injury to any person or any damage to any property which may occur in connection with the use of the public place by the permit holder.

19. Fees

The Council may set fees as it determines from time to time for—

- (a) the hire of a reserve or foreshore;
- (b) a bond for the restoration of the reserve or foreshore to its condition prior to hire and may use all or any of the bond to carry out such work as it deems necessary.

20. Observance of conditions

Where permission has been granted by the Council under this Part the person to whom the permission has been granted shall ensure that any conditions are observed at all times. If any such condition is not observed, that person commits an offence against these local laws and the Council may by written notice cancel the permit.

Division 3—Miscellaneous

21. Appeal

When the Council makes a decision—

- (a) under clause 17(1); or
- (b) as to whether it will vary, or cancel a permit,

the provisions of Division 1 of Part 9 of the Act and Regulations 33 and 34 of the Local Government (Functions and General) Regulations 1996, relating to objection and appeal rights, apply to that decision.

PART 5—MISCELLANEOUS

22. Persons to provide details to an authorised person

- (1) An authorised person may demand from any person, whom they believe is in breach of these Local Laws, his or her full name and place of residence.
- (2) Any person who refuses to state his or her full name and place of residence or states a false name or place of residence on demand being so made by an authorised person or a member of the Police Service commits an offence.

23. Removal for failure to depart

Where an individual commits an offence under this local law and he or she remains in or fails to depart from any place upon being ordered to do so by an authorised person, he or she may be removed from such public reserve, foreshore or beach by an authorised person or by any member of the Police Service.

24. Delegation

The City of Nedlands may delegate any of the powers, functions and duties in this Local Law to the Chief Executive Officer.

PART 6—PENALTIES

25. Offences

- (1) A person who fails to do anything required or directed to be done under this local law, or who does anything which under this local law that person is prohibited from doing, commits an offence.
- (2) Any person who commits an offence under this local law shall be 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.

26. Prosecution for offences

A penalty for an offence against this local law (not being a modified penalty) may be recovered by the local government by taking proceedings against the alleged offender in a Court of Petty Sessions.

27. Modified penalties

- (1) Where an authorised person has reason to believe that a person has committed an offence under this Local Law, he or she may issue to that person an infringement notice in accordance with the modified penalties set out in subclause (2).
- (2) The infringement notice penalties for any offence or class of offences under these local laws are—
 - (a) in the case of a first such offence \$50;
 - (b) in the case of a second such offence \$75;
 - (c) in the case of a third and subsequent such offence \$100; andif that offence is a continuing offence, a daily penalty which is not more than \$500 and not less than \$50.

28. Forms

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

- (a) where a vehicle is involved in the commission of an offence, the form of the notice referred to in section 9.13 of the Act is that of Form 1 in Schedule 1 of the Local Government (Functions and General) Regulations 1996;
- (b) 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 (Function and General) Regulations 1996; and
- (c) The form of the notice referred to in section 9.20 of the Act is that of Form 3 in Schedule 1 of the Regulations.

This Local Law was made by the City of Nedlands at an Ordinary Meeting held on 27th day of February 2001.

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

J. M. PATERSON, Mayor.
S. SILCOX, Chief Executive Officer.



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