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# **CITY OF BAYSWATER**

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LOCAL GOVERNMENT ACT 1995

## **LOCAL GOVERNMENT PROPERTY LOCAL LAW 2016**

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DOG ACT 1976  
LOCAL GOVERNMENT ACT 1995

## **DOGS LOCAL LAW 2016**



**LOCAL GOVERNMENT ACT 1995**

CITY OF BAYSWATER

**LOCAL GOVERNMENT PROPERTY LOCAL LAW 2016**

## TABLE OF CONTENTS

**PART 1—PRELIMINARY**

- 1.1 Citation
- 1.2 Commencement
- 1.3 Definitions
- 1.4 Interpretation
- 1.5 Application
- 1.6 Repeal

**PART 2—DETERMINATIONS IN RESPECT OF LOCAL GOVERNMENT PROPERTY***Division 1—Determinations*

- 2.1 Determinations as to use of local government property
- 2.2 Procedure for making a determination
- 2.3 Discretion to erect sign
- 2.4 Determination to be complied with
- 2.5 Register of determinations
- 2.6 Amendment or revocation of a determination

*Division 2—Activities which may be pursued or prohibited under a determination*

- 2.7 Activities which may be pursued on specified local government property
- 2.8 Activities which may be prohibited on specified local government property

*Division 3—Transitional*

- 2.9 Signs taken to be determinations

**PART 3—PERMITS***Division 1—Preliminary*

- 3.1 Application of Part

*Division 2—Applying for a permit*

- 3.2 Application for permit
- 3.3 Decision on application for permit

*Division 3—Conditions*

- 3.4 Conditions which may be imposed on a permit
- 3.5 Imposing conditions under a policy
- 3.6 Compliance with and variation of conditions

*Division 4—General*

- 3.7 Duration of permit
- 3.8 Renewal of permit
- 3.9 Transfer of permit
- 3.10 Production of permit
- 3.11 Cancellation of permit

*Division 5—When a permit is required*

- 3.12 Activities needing a permit
- 3.13 Permit required to camp outside a facility
- 3.14 Permit required for possession and consumption of liquor

*Division 6—Responsibilities of a permit holder*

## 3.15 Responsibilities of permit holder

**PART 4—BEHAVIOUR ON ALL LOCAL GOVERNMENT PROPERTY***Division 1—Behaviour on and interference with local government property*

- 4.1 Behaviour which interferes with others
- 4.2 Behaviour detrimental to property
- 4.3 Taking or injuring any fauna
- 4.4 Taking or damaging any flora
- 4.5 Intoxicated persons not to enter local government property
- 4.6 No prohibited drugs
- 4.7 Appropriate behaviour and adequate clothing
- 4.8 Refusal of entry to local government property

*Division 2—Circuses on local government property*

- 4.9 No functions with wild animals

*Division 3—Signs*

- 4.10 Signs

**PART 5—MATTERS RELATING TO PARTICULAR LOCAL GOVERNMENT PROPERTY***Division 1—Swimming pool/Gymnasium areas*

- 5.1 Directions of manager to be observed
- 5.2 When entry must be refused
- 5.3 Swimming Carnivals
- 5.4 Water-based Excursions
- 5.5 Responsibilities of swimming pool/gymnasium users

*Division 2—Beaches*

- 5.6 Persons to comply with signs and directions

*Division 3—Fenced or closed property*

- 5.7 No entry to fenced or closed local government property

*Division 4—Toilet blocks and change rooms*

- 5.8 Only specified gender to use entry of toilet block or change room

*Division 5—Golf course*

- 5.9 Interpretation
- 5.10 Directions of controller to be observed
- 5.11 Controller's approval required
- 5.12 Inspection of authorisation
- 5.13 Use of vehicles and equipment

**PART 6—FEES FOR AND USE OF LOCAL GOVERNMENT PROPERTY**

- 6.1 No unauthorised entry
- 6.2 No unauthorised entry to function
- 6.3 No refund of fees

**PART 7—JETTIES AND BRIDGES***Division 1—Preliminary*

- 7.1 Interpretation

*Division 2—Consents and fees*

- 7.2 Application for consent and application fee

*Division 3—Prohibitions on use of jetty*

- 7.3 When use of jetty is prohibited

*Division 4—Mooring boats to jetties*

- 7.4 Method of mooring boat

*Division 5—When boats may remain at jetty*

- 7.5 When boat may remain moored
- 7.6 Authorised person may order removal of boat

*Division 6—Launching of boats*

- 7.7 Restrictions on launching

*Division 7—Cargo or other goods*

- 7.8 Loading and discharging
- 7.9 Outgoing cargo not to be stored on jetty
- 7.10 Removal of incoming cargo from jetty
- 7.11 Authorised person may direct removal
- 7.12 Handling of bulk cargo

*Division 8—Polluting surrounding area*

- 7.13 Polluting surrounding area

*Division 9—Fishing from jetties and bridges*

- 7.14 Limitations on fishing

**PART 8—OBJECTIONS AND APPEALS**

- 8.1 Application of Division 1, Part 9 of the Act

**PART 9—MISCELLANEOUS**

- 9.1 Authorised person to be obeyed
- 9.2 Persons may be directed to leave local government property
- 9.3 Disposal of lost property
- 9.4 Liability for damage to local government property
- 9.5 Decency of dress

**PART 10—ENFORCEMENT***Division 1—Notices given under this local law*

- 10.1 Issue of a notice
- 10.2 Offence to fail to comply with notice
- 10.3 Local government may undertake requirements of notice

*Division 2—Offences and penalties*

- 10.4 Offences and general penalty
- 10.5 Prescribed offences
- 10.6 Form of notices

*Division 3—Evidence in legal proceedings*

- 10.7 Evidence of a determination

## Schedule 1—Prescribed Offences

## Schedule 2—Determinations

- 1.1 Definitions
- 1.2 Interpretation
- Application
- 1.3 Smoking
- 1.4 Taking or driving a vehicle
- 1.5 Speed of vehicles
- 1.6 Taking or riding a bicycle, skateboard, rollerblades, sandboard or similar device
- 1.7 Taking or using a boat
- 1.8 Golf, archery, pistol shooting or rifle shooting and use of projectiles
- 1.9 Ball games
- 1.10 Model Aircraft
- 1.11 Bring, drive or ride an animal



## LOCAL GOVERNMENT ACT 1995

## CITY OF BAYSWATER

## LOCAL GOVERNMENT PROPERTY LOCAL LAW 2016

Under the powers conferred by the *Local Government Act 1995* and all other powers enabling it, the Council of the City of Bayswater resolved on 31 May 2016 to make the following local law.

## PART 1—PRELIMINARY

**1.1 Citation**

This local law may be cited as the *City of Bayswater Local Government Property Local Law 2016*.

**1.2 Commencement**

This local law comes into operation 14 days after the date of its publication in the *Government Gazette*.

**1.3 Definitions**

In this local law unless the context otherwise requires—

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

**applicant** means a person who applies for a permit under clause 3.2;

**authorised person** means a person authorised 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;

**boat** means any ship, vessel or structure capable of being used in navigation by water, however propelled or moved, and includes a jet ski;

**building** means any building which is local government property and includes a—

- (a) hall or room;
- (b) corridor, stairway or annexe of any hall or room, and includes all plumbing, electrical installations, fixtures, fittings, furniture and other contents, owned or under the care, control and management of the local government; and
- (c) a jetty;

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

**children's playground** means an area set aside for use by children and noted by the presence of dedicated children's playground equipment and the presence of either sand or other form of soft fall surface;

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

**controller** means the person or persons for the time being appointed by the local government to direct, control and manage a golf course and includes any assistant to the controller approved in writing by the local government;

**Council** means the council of the local government;

**date of publication** means, where local public notice is required to be given of a matter under this local law, the date on which notice of the matter is published in a newspaper circulating generally throughout the district;

**determination** means a determination made under clause 2.1;

**district** means the district of the local government;

**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;
- (d) payment of a fee to attend it; and
- (e) systematic recurrence in relation to the day, time and place;

**golf course** means all that portion of land which is set aside and laid out as a golf course and includes all tees, fairways, greens, adjacent rough areas, practice tees, practice fairways,

practice greens and any driving range; and all buildings, structures, fittings, fixtures and equipment forming part thereof;

**law** means the system of rules which are applicable to Western Australia or the Commonwealth and is recognised as regulating the actions of its members and which it may enforce by the imposition of penalties;

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

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

**local government property** means anything except a thoroughfare—

- (a) which belongs to the local government;
- (b) of which the local government is the management body under the *Land Administration Act 1997*; or
- (c) which is an otherwise unvested facility within section 3.53 of the Act;

**manager** means the person for the time being employed by the local government to control and manage a pool area or other facility which is local government property and includes the person's assistant or deputy;

**model aircraft** means a drone not used for commercial or research purposes;

**permit** means a permit issued under this local law;

**permit holder** means a person who holds a valid permit;

**person** does not include the local government;

**pool area** means any swimming and wading pools and spas and all buildings, structures, fittings, fixtures, machinery, chattels, furniture and equipment forming part of or used in connection with such swimming and wading pools and spas which are local government property;

**prohibited drug** is given its meaning under section 4 of the *Misuse of Drugs Act 1981*;

**Regulations** means the *Local Government (Functions and General) Regulations 1996*;

**sign** includes a notice, flag, mark, structure or device approved by the local government on which may be shown words, numbers, expressions or symbols;

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

**trading** means the selling or hiring, or the offering for sale or hire of goods or services, and includes displaying goods for the purpose of—

- (a) offering them for sale or hire;
- (b) inviting offers for their sale or hire;
- (c) soliciting orders for them; or
- (d) carrying out any other transaction in relation to them; and

**vehicle** includes—

- (a) every conveyance and every object capable of being propelled or drawn on wheels, tracks or otherwise; and
  - (b) an animal being ridden or driven,
- but excludes—
- (c) a wheel-chair or any device designed for use, by a physically impaired person on a footpath;
  - (d) a pram, a stroller or a similar device; and
  - (e) a boat.

**Unreasonable behaviour** means any behaviour that would be deemed unacceptable by a reasonable person in that situation, any behaviour contrary to signs or facility rules, or any behaviour deemed unacceptable by the manager of the facility.

#### 1.4 Interpretation

In this local law unless the context otherwise requires a reference to local government property includes a reference to any part of that local government property.

#### 1.5 Application

- (1) This local law applies throughout the district.
- (2) Notwithstanding anything to the contrary in this local law, the local government may—
  - (a) hire local government property to any person; or
  - (b) enter into an agreement with any person regarding the use of any local government property.
- (3) This local law is subject to any written law and any law of the Commonwealth about assistance animals as defined in section 9(2) of the *Disability Discrimination Act 1992* (Commonwealth).

#### 1.6 Repeal

- (1) The following local laws are repealed—
  - (a) *By-laws for Controlling of Reserves* published in the *Government Gazette* on 15 July 1938 and amendments;
  - (b) *By-laws Relating to Shire of Bayswater Public Golf Course* published in the *Government Gazette* on 26 February 1965 and amendments;



- (c) *By-laws Relating to Bayswater Aquatic Centre* published in the *Government Gazette* on 30 July 1982 and amendments;
  - (d) *By-laws Relating to Use of Halls and Other Buildings* published in the *Government Gazette* on 25 January 1985 and amendments.
- (2) Where a policy was made or adopted by the local government under or in relation to a local law repealed by this local law, then the policy is to be taken to no longer have any effect on and from the commencement day.
- (3) The Council may resolve that notwithstanding subclause (2), specified policies continue, or are to be taken to have continued, to have effect on and from the commencement day.

## PART 2—DETERMINATIONS IN RESPECT OF LOCAL GOVERNMENT PROPERTY

### *Division 1—Determinations*

#### **2.1 Determinations as to use of local government property**

- (1) The local government may make a determination in accordance with clause 2.2—
- (a) setting aside specified local government property for the pursuit of all or any of the activities referred to in clause 2.7;
  - (b) prohibiting a person from pursuing all or any of the activities referred to in clause 2.8 on specified local government property;
  - (c) as to the matters in clauses 2.7(2) and 2.8(2); and
  - (d) as to any matter ancillary or necessary to give effect to a determination.
- (2) The determinations in Schedule 2—
- (a) are to be taken to have been made in accordance with clause 2.2;
  - (b) may be amended or revoked in accordance with clause 2.6; and
  - (c) have effect on the commencement day.

#### **2.2 Procedure for making a determination**

- (1) The local government is to give local public notice of its intention to make a determination.
- (2) The local public notice referred to in subclause (1) is to state that—
- (a) the local government intends to make a determination, the purpose and effect of which is summarised in the notice;
  - (b) a copy of the proposed determination may be inspected and obtained from the offices of the local government; and
  - (c) submissions in writing about the proposed determination may be lodged with the local government within 21 days after the date of publication.
- (3) If no submissions are received in accordance with subclause (2)(c), the Council is to decide to—
- (a) give local public notice that the proposed determination has effect as a determination on and from the date of publication;
  - (b) amend the proposed determination, in which case subclause (5) will apply; or
  - (c) not continue with the proposed determination.
- (4) If submissions are received in accordance with subclause (2)(c) the Council is to—
- (a) consider those submissions; and
  - (b) decide—
    - (i) whether or not to amend the proposed determination; or
    - (ii) not to continue with the proposed determination.
- (5) If the Council decides to amend the proposed determination, it is to give local public notice—
- (a) of the effect of the amendments; and
  - (b) that the proposed determination has effect as a determination on and from the date of publication.
- (6) If the Council decides not to amend the proposed determination, it is to give local public notice that the proposed determination has effect as a determination on and from the date of publication.
- (7) A proposed determination is to have effect as a determination on and from the date of publication of the local public notice referred to in subclauses (3), (5) and (6).
- (8) A decision under subclause (3) or (4) is not to be delegated by the Council.

#### **2.3 Discretion to erect sign**

The local government may erect a sign on local government property to give notice of the effect of a determination which applies to that property.

#### **2.4 Determination to be complied with**

A person shall comply with a determination.

#### **2.5 Register of determinations**

- (1) The local government is to keep a register of determinations made under clause 2.1, and of any amendments to or revocations of determinations made under clause 2.6.

(2) Sections 5.94 and 5.95 of the Act are to apply to the register referred to in subclause (1) and for that purpose the register is to be taken to be information within section 5.94(u)(i) of the Act.

### **2.6 Amendment or revocation of a determination**

- (1) The Council may amend or revoke a determination.
- (2) The provisions of clause 2.2 are to apply to an amendment of a determination as if the amendment were a proposed determination.
- (3) If the Council revokes a determination it is to give local public notice of the revocation and the determination is to cease to have effect on the date of publication.

#### *Division 2—Activities which may be pursued or prohibited under a determination*

### **2.7 Activities which may be pursued on specified local government property**

(1) A determination may provide that specified local government property is set aside as an area on which a person may—

- (a) bring, ride or drive an animal;
- (b) take, ride or drive a vehicle, or a particular class of vehicle;
- (c) fly or use a motorised model aeroplane;
- (d) use, launch or sail a motorised model boat, including electronic and remote controlled model boats;
- (e) launch, beach or leave a boat;
- (f) take or use a boat, or a particular class of boat;
- (g) use a children's playground provided that the person is under an age specified in the determination, but the determination is not to apply to a person having the charge of a person under the specified age;
- (h) deposit refuse, rubbish or liquid waste, whether or not of particular classes, and whether or not in specified areas of that local government property;
- (i) play or practice—
  - (i) golf or archery;
  - (ii) a similar activity, specified in the determination, involving the use of a projectile which, in the opinion of the local government may cause injury or damage to a person or property;

(2) A determination may specify the extent to which and the manner in which an activity referred to in subclause (1) may be pursued and in particular—

- (a) the days and times during which the activity may be pursued;
- (b) that an activity may be pursued on a class of local government property, specified local government property or all local government property;
- (c) that an activity is to be taken to be prohibited on all local government property other than that specified in the determination;
- (d) may limit the activity to a class of vehicles, boats, equipment or things, or may extend it to all vehicles, boats, equipment or things;
- (e) may specify that the activity can be pursued by a class of persons or all persons; and
- (f) may distinguish between different classes of the activity.

### **2.8 Activities which may be prohibited on specified local government property**

(1) A determination may provide that a person is prohibited from pursuing all or any of the following activities on specified local government property—

- (a) smoking on premises;
- (b) bring, ride or drive an animal;
- (c) riding a bicycle, a skateboard, rollerblades, a sandboard or a similar device;
- (d) taking, riding or driving a vehicle on the property or a particular class of vehicle;
- (e) riding or driving a vehicle of a particular class or any vehicle above a specified speed;
- (f) use, launch or fly motorised model aeroplanes, helicopters, drones, gliders or rockets that are propelled by electrical, mechanical, hydraulic, combustion or pyrotechnic means;
- (g) use, launch or sail a motorised model boat, including electronic and remote controlled model boats;
- (h) taking or using a boat, or a particular class of boat;
- (i) the playing or practice of—
  - (i) golf, archery, pistol shooting or rifle shooting; or
  - (ii) a similar activity, specified in the determination, involving the use of a projectile which, in the opinion of the local government may cause injury or damage to a person or property;
- (j) the playing or practice of any ball game which may cause detriment to the property or adjacent property or any fauna on the property;
- (k) fishing, boating, kayaking or any other water sport activity on lakes or water bodies signposted as wildlife reserves;

- (l) the release of 20 or more balloons including gas-inflated balloons at or about the same time; and
  - (m) the traversing of land which in the opinion of the City has environmental value warranting such protection, either absolutely or except by paths provided for that purpose
- (2) A determination may specify the extent to which and the manner in which a person is prohibited from pursuing an activity referred to in subclause (1) and, in particular—
- (a) the days and times during which the activity is prohibited
  - (b) that an activity is prohibited on a class of local government property, specified local government property or all local government property;
  - (c) that an activity is prohibited in respect of a class of vehicles, boats, equipment or things, or all vehicles, boats, equipment or things;
  - (d) that an activity is prohibited in respect of a class of persons or all persons; and
  - (e) may distinguish between different classes of the activity.
- (3) In this clause—
- premises** means a building, stadium or similar structure which is local government property, but not an open space such as a park or a playing field.

*Division 3—Transitional*

**2.9 Signs taken to be determinations**

- (1) Where a sign erected on local government property has been erected under a local law of the local government repealed by this local law, then it is to be taken to be and have effect as a determination on and from the commencement day, except to the extent that the sign is inconsistent with any provision of this local law or any determination made under clause 2.1.
- (2) Clause 2.5 does not apply to a sign referred to in subclause (1).

**PART 3—PERMITS**

*Division 1—Preliminary*

**3.1 Application of Part**

This Part does not apply to a person who uses or occupies local government property under a written agreement with the local government to do so.

*Division 2—Applying for a permit*

**3.2 Application for 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 local government from time to time;
  - (b) be signed by the applicant;
  - (c) provide the information required by the form; and
  - (d) be forwarded to the CEO together with any fee imposed and determined by the local government under and in accordance with sections 6.16 to 6.19 of the Act.
- (3) The local government may require an applicant to provide additional information reasonably related to an application before determining an application for a permit.
- (4) The local government may require an applicant to give local public notice of the application for a permit.
- (5) The local government may refuse to consider an application for a permit which is not in accordance with subclause (2).

**3.3 Decision on application for permit**

- (1) The local government 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 local government approves an application for a permit, it is to issue to the applicant, a permit in the form determined by the local government.
- (3) If the local government refuses to approve an application for a permit, it is to give written notice of that refusal to the applicant.

*Division 3—Conditions*

**3.4 Conditions which may be imposed on a permit**

- (1) Without limiting the generality of clause 3.3(1)(a), the local government may approve an application for a permit subject to conditions relating to—
- (a) the payment of a fee;

- (b) compliance with a standard or a policy of the local government adopted by the local government;
  - (c) the duration and commencement of the permit;
  - (d) the commencement of the permit being contingent on the happening of an event;
  - (e) the rectification, remedying or restoration of a situation or circumstance reasonably related to the application;
  - (f) the approval of another application for a permit which may be required by the local government under any written law;
  - (g) the area of the district to which the permit applies;
  - (h) where a permit is issued for an activity which will or may cause damage to local government property, the payment of a deposit or bond against such damage; and
  - (i) the obtaining of public risk insurance in an amount and on terms reasonably required by the local government.
- (2) Without limiting clause 3.3(1)(a) and subclause (1), the following paragraphs indicate the type and content of the conditions on which a permit to hire local government property may be issued—
- (a) when fees and charges are to be paid;
  - (b) payment of a bond against possible damage or cleaning expenses or both;
  - (c) restrictions on the erection of material or external decorations;
  - (d) rules about the use of furniture, plant and effects;
  - (e) limitations on the number of persons who may attend any function in or on local government property;
  - (f) the duration of the hire;
  - (g) the right of the local government to cancel a booking during the course of an annual or seasonal booking, if the local government sees fit;
  - (h) a prohibition on the sale, supply or consumption of liquor unless a liquor licence is first obtained for that purpose under the *Liquor Control Act 1988*;
  - (i) the prohibition on the conduct of gaming unless a gaming approval has been obtained under the *Gaming and Wagering Commission Act 1987*;
  - (j) whether or not the hire is for the exclusive use of the local government property;
  - (k) the obtaining of a policy of insurance in the names of both the local government and the hirer, 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 hire of the local government property by the hirer;
  - (l) the amplification of, or any noise complies at all times with the *Environmental Protection (Noise) Regulations 1997*; and
  - (m) the provision of an indemnity from the hirer, 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 hire of the local government property by the hirer.

### 3.5 Imposing conditions under a policy

(1) In this clause—

**policy** means a policy of the local government adopted by the Council containing conditions subject to which an application for a permit may be approved under clause 3.3(1)(a).

(2) Under clause 3.3(1)(a) the local government may approve an application subject to conditions by reference to a policy.

(3) The local government shall give a copy of the policy, or the part of the policy which is relevant to the application for a permit, with the form of permit referred to in clause 3.3(2).

(4) An application for a permit shall be deemed not to have been approved subject to the conditions contained in a policy until the local government gives the permit holder a copy of the policy or the part of the policy which is relevant to the application.

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

### 3.6 Compliance with and variation of conditions

(1) Where an application for a permit has been approved subject to conditions, the permit holder shall comply with each of those conditions.

(2) The local government may vary the conditions of a permit, and the permit holder shall comply with those conditions as varied.

#### *Division 4—General*

### 3.7 Duration of permit

A permit is valid for one year from the date on which it is issued, unless it is—

- (a) otherwise stated in this local law or in the permit; or
- (b) cancelled under clause 3.12.

**3.8 Renewal of permit**

- (1) A permit holder may apply to the local government in writing prior to expiry of a permit for the renewal of the permit.
- (2) The provisions of this Part shall apply to an application for the renewal of a permit as though it were an application for a permit.

**3.9 Transfer of permit**

- (1) An application for the transfer of a valid permit is to—
- (a) be made in writing;
  - (b) be signed by the permit holder and the proposed transferee of the permit;
  - (c) provide such information as the local government may require to enable the application to be determined; and
  - (d) be forwarded to the CEO together with any fee imposed and determined by the local government under and in accordance with sections 6.16 to 6.19 of the Act.
- (2) The local government may approve an application for the transfer of a permit, refuse to approve it or approve it subject to any conditions.
- (3) Where the local government approves an application for the transfer of a permit, the transfer may be effected by an endorsement on the permit signed by the CEO.
- (4) Where the local government approves the transfer of a permit, it is not required to refund any part of any fee paid by the former permit holder.

**3.10 Production of permit**

A permit holder is to produce to an authorised person her or his permit immediately upon being required to do so by that authorised person.

**3.11 Cancellation of permit**

- (1) Subject to clause 8.1, a permit may be cancelled by the local government if the permit holder has not complied with a—
- (a) condition of the permit; or
  - (b) determination or a provision of any written law which may relate to the activity regulated by the permit.
- (2) On the cancellation of a permit the permit holder—
- (a) shall return the permit as soon as practicable to the CEO; and
  - (b) is to be taken to have forfeited any fees paid in respect of the permit.

*Division 5—When a permit is required***3.12 Activities needing a permit**

- (1) A person shall not without a permit—
- (a) subject to subclause (3), hire local government property;
  - (b) advertise anything by any means on local government property;
  - (c) erect a structure for public amusement or for any performance, whether for gain or otherwise, on local government property;
  - (d) teach, coach or train any person on local government property;
  - (e) plant any plant or sow any seeds on local government property;
  - (f) carry on any trading on local government property unless the trading is conducted with the consent of a person who holds a permit to conduct a function, and where the trading is carried on under and in accordance with the permit; or by a person who has a licence or permit to carry on trading on local government property under any written law;
  - (g) unless an employee of the local government in the course of her or his duties or on an area set aside for that purpose drive or ride or take any vehicle on to local government property; or park or stop any vehicle on local government property;
  - (h) conduct a function on local government property;
  - (i) charge any person for entry to local government property, unless the charge is for entry to land or a building hired by a voluntary non-profit organisation;
  - (j) light a fire on local government property except in a facility provided for that purpose and in accordance with the *Bush Fires Act 1954* and other local laws;
  - (k) parachute, hang glide, abseil or base jump from or on to local government property;
  - (l) erect a building or a refuelling site on local government property;
  - (m) make any excavation on or erect or remove any fence on local government property;
  - (n) erect or install any structure above or below ground, which is local government property, for the purpose of supplying any water, power, sewer, communication, television or similar service to a person; or
  - (o) depasture any horse, sheep, cattle, goat, camel, ass or mule on local government property.
- (2) The local government may exempt a person from compliance with subclause (1) on the application of that person.

(3) The local government may exempt specified local government property or a class of local government property from the application of subclause (1)(a).

### 3.13 Permit required to camp outside a facility

(1) In this clause—

**facility** has the same meaning as is given to it in section 5(1) of the *Caravan Parks and Camping Grounds Act 1995*.

(2) This clause does not apply to a facility operated by the local government.

(3) A person shall not without a permit—

- (a) camp on, or lodge at local government property;
- (b) occupy any structure at night for the purpose of sleeping on local government property;
- (c) erect any tent, camp, hut or similar structure on local government property other than a beach shade or windbreak erected for use during the hours of daylight and which is dismantled during those hours on the same day; or
- (d) park a vehicle on local government property where that vehicle is being used by that person or any other person, for purposes of camping or sleeping on local government property.

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

### 3.14 Permit required for possession and consumption of liquor

(1) A person, on local government property, shall not consume any liquor or have in her or his possession or under her or his control any liquor, unless—

- (a) that is permitted under the *Liquor Control Act 1988*; and
- (b) a permit has been obtained for that purpose.

(2) Subclause (1) does not apply where the liquor is in a sealed container.

#### *Division 6—Responsibilities of a permit holder*

### 3.15 Responsibilities of permit holder

A holder of a permit shall in respect of local government property to which the permit relates—

- (a) maintain law and order and decent behaviour by all in attendance at any function held on or within a local government property or building;
- (b) ensure that an authorised person has unobstructed access to the local government property for the purpose of inspecting the property or enforcing any provision of this local law;
- (c) leave the local government property or building in a clean and tidy condition after its use;
- (d) report any damage or defacement of the local government property or building to the local government;
- (e) make good any damage to the local government property or building which occurs during the term of hire, or at the option of the local government, pay the local government the cost of the repair and replacement of any such property;
- (f) prevent the consumption of any liquor on the local government property unless the permit allows it and a licence has been obtained under the *Liquor Control Act 1988* for that purpose;
- (g) ensure that all tents, beach shades or windbreak structures erected on local government property are weighted down through the use of sandbags or similar items and thereby prevent the use of any pegs, pickets and stakes whatsoever; and
- (h) comply with all conditions that are imposed on the hire and use of the local government property or building.

## PART 4—BEHAVIOUR ON ALL LOCAL GOVERNMENT PROPERTY

### *Division 1—Behaviour on and interference with local government property*

#### 4.1 Behaviour which interferes with others

A person shall not in or on any local government property behave in a manner which—

- (a) is likely to interfere with the enjoyment of a person who might use the property;
- (b) interferes with the enjoyment of a person using the property; or
- (c) is likely to interfere with the amenity of adjoining residential properties.

#### 4.2 Behaviour detrimental to property

(1) A person shall not behave in or on local government property in a way which is or might be detrimental to the property

(2) In subclause (1)—

**detrimental to the property** includes—

- (a) removing any thing from the local government property such as a rock, a plant or a seat provided for the use of any person; and

- (b) destroying, defacing or damaging any thing on the local government property, such as a plant, or a seat provided for the use of any person or a building.

#### 4.3 Taking or injuring any fauna

(1) A person shall not take, injure or kill or attempt to take, injure or kill any fauna which is on or above any local government property, unless that person is authorised under a written law to do so and so as not to contravene the *Animal Welfare Act 2002*.

(2) In this clause—

**animal** means any living thing that is not a human being or plant; and

**fauna** means any animal indigenous to or which periodically migrates to any State or Territory of the Commonwealth or the territorial waters of the Commonwealth and includes in relation to any such animal—

- (a) any class of animal or individual member;
- (b) the eggs or larvae; or
- (c) the carcass, skin, plumage or fur

#### 4.4 Taking or damaging any flora

(1) A person shall not take, damage, or attempt to take or damage any flora which is on or above any local government property, unless that person is authorised under a written law to do so.

(2) In this clause—

**flora** means all vascular plants.

#### 4.5 Intoxicated persons not to enter local government property

A person shall not enter or remain on local government property while under the influence of liquor or a prohibited drug.

#### 4.6 No prohibited drugs

A person shall not take a prohibited drug on to, or consume or use a prohibited drug on, local government property.

#### 4.7 Appropriate behaviour and adequate clothing

(1) A person over the age of 6 years shall not on or in any local government property—

- (a) appear in public unless properly dressed in clothing which covers the body to prevent indecent exposure;
- (b) loiter outside or act in an unacceptable manner, in any portion of a toilet block or change room facility set aside for the opposite or same gender; and
- (c) without the consent of the occupier, enter or attempt to enter any toilet or other compartment which is already occupied.

(2) Where an authorised person considers that the clothing of any person on local government property is not proper and adequate to prevent indecent exposure, the authorised person may direct that person to put on adequate clothing and that person shall comply with that direction immediately.

#### 4.8 Refusal of entry to local government property

(1) An authorised person may refuse to allow entry, or suspend admission, to any local government property to any person whom he or she reasonably suspects has behaved in a manner contrary to the provisions of this Part.

(2) This refusal or suspension can be for any period of up to 12 months as decided by that authorised person.

### *Division 2—Circuses on local government property*

#### 4.9 No functions with wild animals

A function shall not be conducted on local government property, for public entertainment or otherwise, if the function involves the display or performance of—

- (a) lions, tigers, leopards, other great cats, elephants, bears, giraffes, monkeys or apes; or
- (b) any other type of animal which, in the opinion of the local government, is either dangerous or wild by nature.

### *Division 3—Signs*

#### 4.10 Signs

(1) A local government may erect a sign on local government property specifying any conditions of use which apply to that property.

(2) A person shall comply with a sign erected under subclause (1).

(3) A condition of use specified on a sign erected under subclause (1) is—

- (a) not to be inconsistent with any provision of this local law or any other written law or any determination; and
- (b) to be for the purpose of giving notice of the effect of a provision of this local law.

**PART 5—MATTERS RELATING TO PARTICULAR LOCAL GOVERNMENT PROPERTY***Division 1—Swimming pool/Gymnasium areas***5.1 Directions of manager to be observed**

Every person, coach and spectator at a swimming pool/gymnasium, shall at all times observe any reasonable direction given by the manager or authorised person.

**5.2 When entry must be refused**

(1) A manager or an authorised person shall refuse admission to, may direct to leave or shall remove or cause to be removed from a swimming pool/gymnasium area any person who—

- (a) in her or his opinion is—
  - (i) under the age of 13 years and who is unaccompanied by a responsible person over the age of 16 years;
  - (ii) apparently suffering from any contagious, infectious or cutaneous disease or complaint, or is in an unclean condition; or
  - (iii) under, or apparently under the influence of liquor or a prohibited drug;
- (b) is to be refused admission under and in accordance with a decision of the local government for breaching any clause of this local law.

(2) A person shall on being requested by the manager or authorised person to leave a swimming pool/gymnasium area, do so immediately, quietly and peacefully.

(3) The manager or authorised person may temporarily suspend admission to, or remove from a swimming pool/gymnasium area or any part thereof, all or any person or persons, if in their opinion, such action is necessary or desirable.

(4) At the discretion of the manager or authorised person, the swimming pool/gymnasium area or any part thereof, may at any time be set aside for the use of certain persons to the exclusion of others.

**5.3 Swimming Carnivals**

A person, club, organisation or association conducting a carnival or event at a swimming pool shall take reasonable steps to prevent overcrowding and ensure that no damage is done to the buildings or fencing or any other portion of the swimming pool/gymnasium areas and that these local laws are observed by all competitors, officials and spectators attending the carnival or event.

**5.4 Water-based Excursions**

A State Education Department School conducting a school water-based excursion shall do so as a minimum, in accordance with the *Education Department of Western Australia Outdoor Education and Recreation Activities Policy*.

**5.5 Responsibilities of swimming pool/gymnasium users**

A person while in the swimming pool/gymnasium areas shall not—

- (a) consume foodstuffs or drinks in any specific area in which food consumption is prohibited;
- (b) climb up or upon any roof, fence, wall or partition in the swimming pool/gymnasium area; or
- (c) whilst suffering from a contagious, infectious or cutaneous disease or whilst in an unclean condition, enter or use or attempt to enter or use the swimming pool, spa or pool gymnasium areas.

*Division 2—Beaches***5.6 Persons to comply with signs and directions**

(1) In this Division—

*beach* includes the foreshore of the Swan River within the City of Bayswater.

(2) A person shall—

- (a) not act in contravention of any sign erected on a beach designating bathing areas and signs regulating, prohibiting or restricting specified activities on the whole or any part of a beach or in or on the water adjacent to the beach; and
- (b) not enter an area which has been temporarily closed with rope, hessian, wire or any other means, unless he or she has obtained permission to enter from the local government.

*Division 3—Fenced or closed property***5.7 No entry to fenced or closed local government property**

A person must not enter local government property which has been fenced off or closed to the public by a sign or otherwise, unless that person is authorised to do so by the local government.

*Division 4—Toilet blocks and change rooms***5.8 Only specified gender to use entry of toilet block or change room**

(1) Where a sign on a toilet block or change room specifies that a particular entry of the toilet block or change room is to be used by—

- (a) females, then a person of the male gender shall not use that entry of the toilet block or change room; or



- (b) males, then a person of the female gender shall not use that entry of the toilet block or change room.
- (2) Paragraphs (a) and (b) of subclause (1) do not apply to a child, when accompanied by a parent, guardian or caregiver, where the child is—
  - (a) under the age of 8 years; or
  - (b) otherwise permitted by an authorised person to use the relevant entry.

*Division 5—Golf course*

### 5.9 Interpretation

In this Division—

**controller** means the person appointed by the local government to direct, control and manage a golf course;

**golf course** means that portion of a golf course reserve which is laid out as a golf course and includes all tees, fairways, greens, practice tees, practice fairways, practice greens and any driving range; and includes all buildings, structures, fittings, fixtures and equipment on that land.

### 5.10 Directions of controller to be observed

While on a golf course, every player, caddie and person shall at all times observe and comply with—

- (a) the direction of a controller in respect of any special conditions of play;
- (b) the requirement of any notice erected to direct or control play; and
- (c) the etiquette of golf and the rules of golf except as varied by any local rules detailed on any score card issued by the controller and displayed on the notice board at the controller's office.

### 5.11 Controller's approval required

A person shall not, without the prior approval of the controller or authorised officer—

- (a) be accompanied by a non-playing spectator whilst playing golf on a golf course;
- (b) cross or trespass on any portion of the golf course prepared for play or practice or on any practice fairway or practice putting green, unless that person is a fee playing player;
- (c) offer himself for employment or be employed for a fee as a caddie on the golf course; or
- (d) sell, offer or expose for sale or exchange any golf ball or any golf equipment or other goods or services on a golf course.

### 5.12 Inspection of authorisation

A player or person on a golf course, shall at any time requested by the controller or other authorised person, produce any written authority granted or ticket issued to the player or person, to play golf for the number of holes being played and valid for play on that day and at that time.

### 5.13 Use of vehicles and equipment

A person shall not—

- (a) take on to a golf course a bicycle, motor cycle, motor car, motorised or other vehicle unless—
  - (i) with the prior consent of the controller; or
  - (ii) the vehicle is under the control of the controller and used for hire purposes;
- (b) drive, use or park a bicycle, motor cycle, motor car, motorised or other vehicle on any portion of a golf course except in such areas paved, marked and set apart for such purposes without the prior consent of the controller;
- (c) while driving, using or parking any bicycle, motor cycle, motor car, motorised or other vehicle on any portion of a golf course, refuse or fail to comply with all signs applicable thereto and any order or direction given by the controller or other authorised person;
- (d) take any golf buggy or like conveyance fitted with wheels on to any part of a golf course unless the width of its wheels are 25mm or greater;
- (e) take any golf bag or golf bag buggy onto any part of the golf course laid out as a putting green, practice putting green, sand trap or bunker; or
- (f) leave on a golf course any vehicle, object or thing or any animal which the controller or other authorised person has directed to be removed.

## PART 6—FEES FOR AND USE OF LOCAL GOVERNMENT PROPERTY

### 6.1 No unauthorised entry

A person, other than an authorised person or contractor appointed by the local government carrying out their normal duties, shall not—

- (a) enter or leave any local government property other than by the public entrance or exit ways, except in an emergency; and
- (b) enter or remain on local government property except on those days and during those times when access is available to the public.

## 6.2 No unauthorised entry to function

- (1) A person shall not enter local government property on such days or during such times as the property may be set aside for a function for which a charge for admission is authorised, except—
- (a) through the proper entrance for that purpose; and
  - (b) on payment of the fee chargeable for admission at the time.
- (2) The local government may exempt a person from compliance with subclause (1)(b).

## 6.3 No refund of fees

A person will not be entitled to a refund of any fees paid for—

- (a) entry into or participation in any activity on or in any local government property; or
  - (b) where a booking for the use of local government property is cancelled by the hirer;
- but the local government may authorise repayment of a part or all of the amount paid.

# PART 7—JETTIES AND BRIDGES

## *Division 1—Preliminary*

### 7.1 Interpretation

- (1) This Part only applies to bridges and jetties which are local government property.
- (2) In this Part—
- jetty** means any jetty, pier, wharf or landing place which is local government property; and
  - bulk cargo** means bulk produce, such as grain, coal, oil or mineral ore, which is not packaged.

## *Division 2—Consents and fees*

### 7.2 Application for consent and application fee

- (1) Where a person is required to obtain the consent of the local government under this Part, the person is to apply for that consent in the manner required by the local government.
- (2) The local government may require an application for consent made under subclause (1) to be accompanied by a fee.
- (3) If an application for consent is not made in the manner required by the local government or the fee which is to accompany that application is not paid, the local government may refuse to consider the application for consent.
- (4) The local government shall give its decision on an application for consent, in writing to the person who applied for that consent.
- (5) Where a fee is referred to in this Part, the fee must be imposed and determined by the local government under and in accordance with sections 6.16 to 6.19 of the Act.

## *Division 3—Prohibitions on use of jetty*

### 7.3 When use of jetty is prohibited

A person shall not land at, use or go on any part of a jetty which is—

- (a) under construction or repair; or
- (b) closed,

unless that person has first obtained the consent of the local government.

## *Division 4—Mooring boats to jetties*

### 7.4 Method of mooring boat

A person in control of a boat shall not moor or make fast the boat to a jetty, or to any part of the jetty, except to such mooring piles, ring bolts or other fastenings as are provided.

## *Division 5—When boats may remain at jetty*

### 7.5 When boat may remain moored

A person in control of a boat shall not moor or make fast the boat to a jetty unless—

- (a) the boat is in distress and then only to effect the minimum repairs necessary to enable the boat to be moved elsewhere;
- (b) the embarking or disembarking of passengers is in progress, and then not for a consecutive period exceeding 2 hours without the prior consent of the local government;
- (c) the loading or discharging of cargo or other goods is in progress in accordance with Division 7; or
- (d) where the boat is used at that time for commercial purposes, the person has first paid the fee (if any) for such mooring or making fast to the local government.

### 7.6 Authorised person may order removal of boat

Notwithstanding anything to the contrary in this Part, a person in control of a boat moored or fastened to or alongside a jetty shall remove it immediately upon being directed to do so by an authorised person.

*Division 6—Launching of boats***7.7 Restrictions on launching**

A person shall not launch a boat from or over any jetty (other than a boat ramp) unless she or he has first obtained the consent of the local government.

*Division 7—Cargo or other goods***7.8 Loading and discharging**

A person in control of a boat shall not allow the boat to come alongside or be moored or made fast to a jetty for the purpose of loading or discharging cargo or other goods—

- (a) until the cargo or other goods are ready to be loaded or discharged; or
- (b) without the consent of the local government—
  - (i) between the hours of 6.00pm to 6.00am on the next day; or
  - (ii) for longer than 2 consecutive hours.

**7.9 Outgoing cargo not to be stored on jetty**

A person in control of cargo or other goods intended for loading on to a boat shall—

- (a) not allow them to be stored or placed on a jetty unless and until the boat is moored or fastened to or alongside the jetty; and
- (b) load them on to the boat as soon as practicable after the boat is moored or fastened to or alongside the jetty.

**7.10 Removal of incoming cargo from jetty**

Any person unloading cargo or other goods from a boat on to a jetty shall remove them, or cause them to be removed from the jetty as soon as practicable, but not later than 6.00pm on the day on which they were placed there.

**7.11 Authorised person may direct removal**

An authorised person may direct a person who, in the opinion of the authorised person, is in charge of cargo or other goods which remain on a jetty contrary to any provision of this Part to remove them from the jetty.

**7.12 Handling of bulk cargo**

Except with the prior consent of the local government, a person shall not place or deposit bulk cargo from a vehicle, boat or container on to a jetty.

*Division 8—Polluting surrounding area***7.13 Polluting surrounding area**

A person shall not tip or deposit anything on to a jetty so as to pollute the surrounding area.

*Division 9—Fishing from jetties and bridges***7.14 Limitations on fishing**

A person shall not—

- (a) fish from a jetty or a bridge so as to obstruct or interfere with the free movement of a boat approaching or leaving the jetty or the bridge or so as to unreasonably interfere with the use of the jetty or the bridge by any other person; or
- (b) hang or spread a fishing net from, on or over any part of a jetty or a bridge.

**PART 8—OBJECTIONS AND APPEALS****8.1 Application of Division 1, Part 9 of the Act**

When the local government makes a decision as to whether it will—

- (a) grant a person a permit or consent under this local law; or
- (b) renew, vary, or cancel a permit or consent that a person has under this local law, the provisions of Division 1 of Part 9 of the Act and regulation 33 of the Regulations apply to that decision.

**PART 9—MISCELLANEOUS****9.1 Authorised person to be obeyed**

A person on local government property shall obey any lawful direction of an authorised person and shall not in any way obstruct or hinder an authorised person in the execution of her or his duties.

**9.2 Persons may be directed to leave local government property**

An authorised person may direct a person to leave local government property where she or he reasonably suspects that the person has contravened a provision of any written law.

**9.3 Disposal of lost property**

An article left on any local government property, and not claimed within a period of 3 months, may be disposed of by the local government in any manner it thinks fit.

#### **9.4 Liability for damage to local government property**

(1) Where a person unlawfully damages local government property, the local government may by notice in writing to that person require that person within the time required in the notice to, at the option of the local government, pay the costs of—

- (a) reinstating the property to the state it was in prior to the occurrence of the damage; or
- (b) replacing that property

(2) On a failure to comply with a notice issued under subclause (1), the local government may recover the costs referred to in the notice as a debt due to it.

#### **9.5 Decency of dress**

Where an authorised person considers that the clothing of any person on local government property is not proper and adequate to secure decency, the authorised person may order that person to put on adequate clothing and that person is to comply with the order immediately.

### **PART 10—ENFORCEMENT**

#### *Division 1—Notices given under this local law*

##### **10.1 Issue of a notice**

Where the local government requires works to be done to rectify a breach of any condition of permit, or to maintain public safety, the local government may give notice to the permit holder—

- (a) advising details of the breach of the local law or works required; and
- (b) requiring the permit holder to remedy the breach or do the works required within the time specified by the notice.

##### **10.2 Offence to fail to comply with notice**

Whenever the local government gives a notice under this local law requiring a person to do anything, if a person fails to comply with the notice, that person commits an offence.

##### **10.3 Local government may undertake requirements of notice**

Where a person fails to comply with a notice referred to in clause 10.2, the local government may do the thing specified in the notice and recover from the person to whom the notice was given, as a debt, the costs incurred in so doing.

#### *Division 2—Offences and penalties*

##### *Subdivision 1—General*

##### **10.4 Offences and general penalty**

(1) Any 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 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.

##### *Subdivision 2—Infringement notices and modified penalties*

##### **10.5 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.

(3) For the purpose of guidance only, before giving an infringement notice to a person in respect of the commission of a prescribed offence, an authorised person should be satisfied that—

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

##### **10.6 Form of notices**

(1) 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 Regulations;
- (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 Regulations; 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.

(2) Where an infringement notice is given under section 9.16 of the Act in respect of an alleged offence against clause 2.4, the notice is to contain a description of the alleged offence.

*Division 3—Evidence in legal proceedings***10.7 Evidence of a determination**

- (1) In any legal proceedings, evidence of a determination may be given by tendering the register referred to in clause 2.5 or a certified copy of an extract from the register.
- (2) It is to be presumed, unless the contrary is proved, that the determination was properly made and that every requirement for it to be made and have effect has been satisfied.
- (3) Subclause (2) does not make valid a determination that has not been properly made.

**SCHEDULE 1—PRESCRIBED OFFENCES**

[clause 10.5]

Item	Clause	Description	Modified Penalty
1	2.4	Failure to comply with determination	150
2	3.6	Failure to comply with conditions of permit	150
3	3.13(1)	Failure to obtain a permit	200
4	3.14(3)	Failure to obtain permit to camp outside a facility	150
5	3.15(1)	Failure to obtain permit for liquor	150
6	3.16	Failure of permit holder to comply with responsibilities	150
7	4.2(1)	Behaviour detrimental to property	200
8	4.3	Taking or injuring any fauna	300
9	4.4	Taking or damaging any flora	300
10	4.5	Entering local government property under the influence of liquor or prohibited drug	150
11	4.10	Failure to comply with sign on local government property	150
12	5.6	Failure to comply with sign or direction on beach	150
13	5.7	Unauthorised entry to fenced or closed local government property	150
14	5.8	Entering a toilet block or change room not for your specified gender	125
15	5.10	Failure to comply with direction of controller or notice on golf course	125
16	6.2(1)	Unauthorised entry to function on local government property	125
17	7.3	Unauthorised use of any part of jetty which is closed or under repair or construction	125
18	7.4	Mooring of boats in unauthorised manner	125
19	7.5	Unauthorised mooring of a boat to jetty	125
20	7.6	Failure to remove moored boat on direction of authorised person	125
21	7.7	Launching of boat from jetty without consent	125
22	7.8	Mooring when not ready to load or discharge cargo, at times not permitted or for longer than permitted	125
23	7.9	Unlawful storing of goods on jetty	125
24	7.10	Removing incoming cargo from jetty outside of the permitted hours	125
25	7.11	Failure to remove cargo on jetty on direction of authorised person	125
26	7.12	Unauthorised deposit of bulk cargo on jetty	125
27	7.13	Tip or deposit anything on to a jetty so as to pollute the surrounding area	150
28	7.14	Fishing from jetty or bridge so as to obstruct a boat or another person	125
29	10.2	Failure to comply with notice	200

**SCHEDULE 2—DETERMINATIONS**

The following determinations have been made by the local government under clause 2.1.

*Definitions*

1.1 In these determinations unless the context otherwise requires—

**local law** means the Local Government Property Local Law made by the local government.

*Interpretation*

1.2 Unless the context otherwise requires, where a term is used but not defined in a determination and that term is defined in the local law then the term shall have the meaning given to it in the local law.

*Application***1.3 Smoking**

A person must not smoke on premises owned by the local government or under the care, control and management of the local government or within 5m of any such premises.

**1.4 Taking or driving a vehicle**

A person shall not take or drive a vehicle on any reserve vested in the local government except upon an area specified by a sign erected on the local government property.

**1.5 Speed of vehicles**

A person shall not drive a vehicle on local government property at a speed exceeding 35 kilometres an hour except that—

- (a) on any land marked by a sign as a parking area, a person shall not drive a vehicle at a speed exceeding 8 kilometres an hour; and
- (b) on accessways within any reserve vested in the local government, a person shall not drive a vehicle at a speed exceeding 20 kilometres an hour.

**1.6 Taking or riding a bicycle, skateboard, rollerblades, sandboard or similar device**

A person shall not take or ride a bicycle, rollerblades, sandboard or similar device on any reserve, building or property vested in the local government except upon an area specified by a sign erected on the local government property.

**1.7 Taking or using a boat**

A person shall not take or use a boat or any particular class of boat on or in any reserve containing a water body owned or vested in the local government.

**1.8 Golf, archery, pistol shooting or rifle shooting and use of projectiles**

A person shall not play at or practice golf on any local government property except where a permit specifies a particular local government property.

A person shall not aim, shoot or throw an arrow or similar projectile on any local government property except where a permit specifies a particular local government property.

A person shall not have in their possession any gun or rifle or means of discharging any projectile that may cause injury or damage to a person or property on any local government property except where a permit specifies a particular local government property.

**1.9 Ball games**

In this determination fauna and flora means the same as that in clause 4.3(2) of this local law.

A person shall not play or practice at any ball game which may cause detriment to the property or any fauna or flora on any reserve owned or vested in the local government.

A person shall not, on any reserve owned or vested in the local government, play or practice at any ball game which is expressly prohibited by a sign erected pursuant to this local law.

**1.10 Model Aircraft**

(1) A person shall not use, launch or fly model aircraft propelled by electrical, mechanical, hydraulic, combustion or pyrotechnic means on or from any local government property in such a manner as to endanger any person or property.

(2) A person shall not use, launch or fly large model aircraft as defined by the Civil Aviation Safety Authority from any local government property.

**1.11 Bring, drive or ride an animal**

A person shall not tether any animal to a tree, shrub, tree guard, wall or fence or permit any animal to enter upon or into any local government property except where a permit or determination specifies a particular local government property.

This clause does not apply to assistance animals as defined in section 9(2) of the *Disability Discrimination Act 1992* (Commonwealth).

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Dated: 28 June 2016.

The Common Seal of the City of Bayswater was affixed by authority of the Council in the presence of—

BARRY McKENNA, Mayor.  
FRANCESCA LEFANTE, Chief Executive Officer.

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**DOG ACT 1976  
LOCAL GOVERNMENT ACT 1995**

CITY OF BAYSWATER

**DOGS LOCAL LAW 2016**

TABLE OF CONTENTS

**PART 1—PRELIMINARY**

- 1.1 Citation
- 1.2 Commencement
- 1.3 Repeal
- 1.4 Application
- 1.5 Definitions

**PART 2—IMPOUNDING OF DOGS**

- 2.1 Charges and costs
- 2.2 Attendance of pound keeper at pound
- 2.3 Release of impounded dog

**PART 3—REQUIREMENTS AND LIMITATIONS ON THE KEEPING OF DOGS**

- 3.1 Dogs to be confined
- 3.2 Limitation on the number of dogs

**PART 4—APPROVED KENNEL ESTABLISHMENTS**

- 4.1 Interpretation
- 4.2 Application for licence for approved kennel establishment
- 4.3 Notice of proposed use
- 4.4 Exemption from notice requirements
- 4.5 When application can be determined
- 4.6 Determination of application
- 4.7 Where application cannot be approved
- 4.8 Conditions of approval
- 4.9 Compliance with conditions of approval
- 4.10 Fees
- 4.11 Form of licence
- 4.12 Period of licence
- 4.13 Variation or cancellation of licence
- 4.14 Transfer
- 4.15 Notification
- 4.16 Inspection of kennel

**PART 5—MISCELLANEOUS**

- 5.1 Offence to excrete

**PART 6—ENFORCEMENT**

- 6.1 Interpretation
- 6.2 Modified penalties
- 6.3 Issue of infringement notice

- 6.4 Failure to pay modified penalty
- 6.5 Payment of modified penalty
- 6.6 Withdrawal of infringement notice
- 6.7 Service
- SCHEDULE 1
- SCHEDULE 2
- SCHEDULE 3



**DOG ACT 1976  
LOCAL GOVERNMENT ACT 1995**

CITY OF BAYSWATER

**DOGS LOCAL LAW 2016**

Under the powers conferred by the *Dog Act 1976*, the *Local Government Act 1995* and under all other powers enabling it, the Council of the City of Bayswater resolved on 31 May 2016 to make the following local law.

**PART 1—PRELIMINARY**

**1.1 Citation**

This local law may be cited as the *City of Bayswater Dogs Local Law 2016*.

**1.2 Commencement**

This local law comes into operation 14 days after the date of its publication in the *Government Gazette*.

**1.3 Repeal**

The *City of Bayswater Dogs Local Law 2001* published in the *Government Gazette* on 3 January 2001 and as amended on 28 December 2001 is repealed.

All By-laws and amendments relating to the provisions of impounding dogs, to control the number of dogs that can be kept on premises and the manner of keeping dogs and to prescribe areas which dogs are prohibited and dog exercise areas made and Gazetted by the City of Stirling applying to the locality of Maylands are repealed.

**1.4 Application**

This local law applies throughout the district.

**1.5 Definitions**

In this local law unless the context otherwise requires—

**Act** means the *Dog Act 1976*;

**authorised person** means a person who is appointed under section 29 of the Act;

**CEO** means the Chief Executive Officer of the local government;

**dangerous dog** (e.g. has the meaning given to it under section 3 of the Act);

**district** (e.g. means the district of the local government);

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

**owner** has the meaning given to it under section 3 of the Act;

**occupier** has the meaning given to it under section 3 of the Act;

**person liable for the control of the dog** means each of the following—

- (a) the registered owner of the dog; or
- (b) the owner of the dog; or
- (c) the occupier of any premises where the dog is ordinarily kept or ordinarily permitted to live; or
- (d) a person who has the dog in his possession or under his control,  
but does not include—
  - (e) a registered veterinary surgeon, or a person acting on his behalf, in the course of his professional practice; or
  - (f) a police officer or other person acting under a statutory duty or in the administration of this Act;

**pound keeper** means a person authorised by the local government to perform all or any of the functions conferred on a “pound keeper” under this local law, this includes the local government’s authorised Rangers and Security Officers;

**Regulations** means the *Dog Regulations 2013*;

**Schedule** (e.g. means a Schedule in this local law);  
**thoroughfare** has the meaning given to it in section 1.4 of the *Local Government Act 1995*; and  
**town planning scheme** means a town planning scheme made by the local government under the *Planning and Development Act 2005* which applies throughout the whole or a part of the district.

## PART 2—IMPOUNDING OF DOGS

### 2.1 Charges and costs

The following are to be imposed and determined by the local government under sections 6.16 to 6.19 of the *Local Government Act 1995*—

- (a) the charges to be levied under section 29(4) of the Act relating to the seizure and impounding of a dog;
- (b) the additional fee payable under section 29(4) of the Act where a dog is released at a time or on a day other than those determined under clause 2.2; and
- (c) the costs of the destruction and the disposal of a dog referred to in section 29(15) of the Act.

### 2.2 Attendance of pound keeper at pound

The pound keeper is to be in attendance at the pound for the release of dogs at the times and on the days of the week as are determined by the CEO.

### 2.3 Release of impounded dog

- (1) A claim for the release of a dog seized and impounded is to be made to the pound keeper or in the absence of the pound keeper, to the CEO.
- (2) The pound keeper is not to release a dog seized and impounded to any person unless that person has produced, to the satisfaction of the pound keeper, satisfactory evidence—
  - (a) of her or his ownership of the dog or of her or his authority to take delivery of it; or
  - (b) that he or she is the person identified as the owner on a microchip implanted in the dog.

## PART 3—REQUIREMENTS AND LIMITATIONS ON THE KEEPING OF DOGS

### 3.1 Dogs to be confined

- (1) An owner and/or occupier of premises on which a dog is kept or a person liable for control of the dog must—
  - (a) cause a portion of the premises on which the dog is kept to be fenced in a manner capable of confining the dog;
  - (b) ensure the fence used to confine the dog and every gate or door in the fence is of a type, height and construction which having regard to the breed, age, size and physical condition of the dog is capable of preventing the dog at all times from passing over, under or through it;
  - (c) ensure that every gate or door in the fence is kept closed at all times when the dog is on the premises (unless the gate is temporarily opened in a manner that ensures that the dog remains confined) and is fitted with a proper latch or other means of fastening it;
  - (d) maintain the fence and all gates and doors in the fence in good order and condition; and
  - (e) where no part of the premises consists of open space, yard or garden or there is no open space or garden or yard of which the owner or occupier has exclusive use or occupation, ensure that other means exist on the premises (other than the tethering of the dog) for effectively confining the dog within the premises.
- (2) Where an owner and/or occupier fails to comply with subclause (1), he or she commits an offence.
- (3) Notwithstanding subclause (1) and (2), the confinement of dangerous dogs is dealt with in the Act and Regulations.

### 3.2 Limitation on the number of dogs

- (1) This clause does not apply to premises which have been—
  - (a) licensed under Part 4 as an approved kennel establishment; or
  - (b) granted an exemption under section 26(3) of the Act.
- (2) The limit on the number of dogs which may be kept on any premises is, for the purpose of section 26(4) of the Act, 2 dogs over the age of 3 months and the young of those dogs under that age.

## PART 4—APPROVED KENNEL ESTABLISHMENTS

### 4.1 Interpretation

In this Part and in Schedule 2—

**licence** means a licence to keep an approved kennel establishment on premises;

**licensee** means the holder of a licence;

**premises**, in addition to the meaning given to it in section 3 of the Act, means the premises described in the application for a licence; and

**transferee** means a person who applies for the transfer of a licence to her or him under clause 4.14.

#### **4.2 Application for licence for approved kennel establishment**

An application for a licence must be made in the form of that in Schedule 1, and must be lodged with the local government together with—

- (a) plans and specifications of the kennel establishment, including a site plan;
- (b) copies of the notices to be given under clause 4.3;
- (c) written evidence that either the applicant or another person who will have the charge of the dogs, will reside on the premises or, in the opinion of the local government, sufficiently close to the premises so as to control the dogs and so as to ensure their health and welfare;
- (d) a written acknowledgment that the applicant has read and agrees to comply with any code of practice relating to the keeping of dogs nominated by the local government; and
- (e) the fee for the application for a licence referred to in clause 4.10(1).

#### **4.3 Notice of proposed use**

(1) An applicant for a licence must give notice of the proposed use of the premises as an approved kennel establishment after the application for a licence has been lodged—

- (a) once in a newspaper circulating in the district; and
- (b) to the owners and occupiers of any premises adjoining the premises.

(2) The notices in subclause (1) must specify that—

- (a) any written submissions as to the proposed use are to be lodged with the CEO within 14 days of the date the notice is given; and
- (b) the application and plans and specifications may be inspected at the offices of the local government.

(3) Where—

- (a) the notices given under subclause (1) do not clearly identify the premises; or
- (b) a notice given under subclause (1)(a) is of a size or in a location in the newspaper which, in the opinion of the local government, would fail to serve the purpose of notifying persons of the proposed use of the premises,

then the local government may refuse to determine the application for a licence until the notices or notice, as the case may be, is given in accordance with its directions.

#### **4.4 Exemption from notice requirements**

Where an application for a licence is made in respect of premises on which an approved kennel establishment is either a—

- (a) permitted use; or
- (b) use which the local government may approve subject to compliance with specified notice requirements,

under a town planning scheme, then the requirements of clauses 4.2(b), 4.3 and 4.5(a) do not apply in respect of the application for a licence.

#### **4.5 When application can be determined**

An application for a licence is not to be determined by the local government until—

- (a) the applicant has complied with clause 4.2;
- (b) the applicant submits proof that the notices referred to in clause 4.3(1) have been given in accordance with that clause; and
- (c) the local government has considered any written submissions received within the time specified in clause 4.3(2)(a) on the proposed use of the premises.

#### **4.6 Determination of application**

In determining an application for a licence, the local government is to have regard to—

- (a) the matters referred to in clause 4.7;
- (b) any written submissions received within the time specified in clause 4.3(2)(a) on the proposed use of the premises;
- (c) any economic or social benefits which may be derived by any person in the district if the application for a licence is approved;
- (d) the effect which the kennel establishment may have on the environment or amenity of the neighbourhood;
- (e) whether the approved kennel establishment will create a nuisance for the owners and occupiers of adjoining premises; and
- (f) whether or not the imposition of and compliance with appropriate conditions of a licence will mitigate any adverse effects of the approved kennel establishment identified in the preceding paragraphs.

#### **4.7 Where application cannot be approved**

The local government cannot approve an application for a licence where—

- (a) an approved kennel establishment cannot be permitted by the local government on the premises under a town planning scheme; or

- (b) an applicant for a licence or another person who will have the charge of the dogs will not reside on the premises, or, in the opinion of the local government, sufficiently close to the premises so as to control the dogs and so as to ensure their health and welfare.

#### 4.8 Conditions of approval

- (1) The local government may approve an application for a licence subject to the conditions contained in Schedule 2 and to such other conditions as the local government considers appropriate.
- (2) In respect of a particular application for a licence, the local government may vary any of the conditions contained in Schedule 2.

#### 4.9 Compliance with conditions of approval

A licensee who does not comply with the conditions of a licence commits an offence.

Penalty: \$5,000 and a daily penalty of \$100;

#### 4.10 Fees

- (1) On lodging an application for a licence, the applicant is to pay a fee to the local government.
- (2) On the issue or renewal of a licence, the licensee is to pay a fee to the local government.
- (3) On lodging an application for the transfer of a valid licence, the transferee is to pay a fee to the local government.
- (4) The fees referred to in subclauses (1) to (3) are to be imposed and determined by the local government under sections 6.16—6.19 of the *Local Government Act 1995*.

#### 4.11 Form of licence

The licence is to be in the form determined by the local government and is to be issued to the licensee.

#### 4.12 Period of licence

- (1) The period of effect of a licence is set out in section 27(5) of the Act.
- (2) A licence is to be renewed if the fee referred to in clause 4.10(2) is paid to the local government prior to the expiry of the licence.
- (3) On the renewal of a licence the conditions of the licence at the time of its renewal continue to have effect.

#### 4.13 Variation or cancellation of licence

- (1) The local government may vary the conditions of a licence.
- (2) The local government may cancel a licence—
- (a) on the request of the licensee;
  - (b) following a breach of the Act, the Regulations or this local law; or
  - (c) if the licensee is not a fit and proper person.

**fit and proper person**—means a person who has been deemed to be not fit to care for animals by a reputable body such as the RSPCA, or a person who is deemed by an authorised officer, not to have the ability or adequate support to undertake obligations of the licence.

- (3) The date a licence is cancelled is to be, in the case of—
- (a) paragraph (a) of subclause (2), the date requested by the licensee; or
  - (b) paragraphs (b) and (c) of subclause (2), the date determined under section 27(6) of the Act.
- (4) If a licence is cancelled the fee paid for that licence is not refundable for the term of the licence that has not yet expired.

#### 4.14 Transfer

- (1) An application for the transfer of a valid licence from the licensee to another person must be—
- (a) made in the form determined by the local government;
  - (b) made by the transferee;
  - (c) made with the written consent of the licensee; and
  - (d) lodged with the local government together with—
    - (i) written evidence that a person will reside at or within reasonably close proximity to the premises the subject of the licence; and
    - (ii) the fee for the application for the transfer of a licence referred to in clause 4.10(3).
- (2) The local government is not to determine an application for the transfer of a valid licence until the transferee has complied with subclause (1).
- (3) The local government may approve, whether or not subject to such conditions as it considers appropriate, or refuse to approve an application for the transfer of a valid licence.
- (4) Where the local government approves an application for the transfer of a valid licence, then on the date of approval, unless otherwise specified in the notice issued under clause 4.15(b), the transferee becomes the licensee of the licence for the purposes of this local law.

#### 4.15 Notification

The local government is to give written notice to—

- (a) an applicant for a licence of the local government's decision on her or his application;
- (b) a transferee of the local government's decision on her or his application for the transfer of a valid licence;

- (c) a licensee of any variation made under clause 4.13(1);
- (d) a licensee when her or his licence is due for renewal and the manner in which it may be renewed;
- (e) a licensee when her or his licence is renewed;
- (f) a licensee of the cancellation of a licence under clause 4.13(2)(a); and
- (g) a licensee of the cancellation of a licence under paragraphs (b) or (c) of clause 4.13(2), which notice is to be given in accordance with section 27(6) of the Act.

#### **4.16 Inspection of kennel**

With the consent of the owner or occupier, an authorised person may inspect an approved kennel establishment at any time.

### **PART 5—MISCELLANEOUS**

#### **5.1 Offence to excrete**

- (1) A dog must not excrete on—
- (a) any thoroughfare or other public place; or
  - (b) any land which is not a public place without the consent of the occupier.
- (2) Subject to subclause (3), if a dog excretes contrary to subclause (1), every person liable for the control of the dog at that time commits an offence.
- Penalty: \$500.
- (3) The person liable for the control of the dog does not commit an offence under subclause (2) if any excreta is removed immediately by that person.

### **PART 6—ENFORCEMENT**

#### **6.1 Interpretation**

In this Part—

*infringement* notice means the notice referred to in clause 6.3; and

*notice of withdrawal* means the notice referred to in clause 6.6(1).

#### **6.2 Modified penalties**

- (1) The offences contained in Schedule 3 are offences in relation to which a modified penalty may be imposed.
- (2) The amount appearing in the third column of Schedule 3 directly opposite an offence is the modified penalty payable in respect of that offence if—
- (a) the dog is not a dangerous dog; or
  - (b) the dog is a dangerous dog, but an amount does not appear in the fourth column directly opposite that offence.
- (3) The amount appearing in the fourth column of Schedule 3 directly opposite an offence is the modified penalty payable in respect of that offence if the dog is a dangerous dog.

#### **6.3 Issue of infringement notice**

Where an authorised person has reason to believe that a person has committed an offence in respect of which a modified penalty may be imposed, he or she may issue to that person a notice in the form determined by the local government from time to time.

#### **6.4 Failure to pay modified penalty**

Where a person who has received an infringement notice fails to pay the modified penalty within the time specified in the notice, or within such further time as may in any particular case be allowed by the CEO, he or she is deemed to have declined to have the offence dealt with by way of a modified penalty.

#### **6.5 Payment of modified penalty**

A person who has received an infringement notice may, within the time specified in that notice or within such further time as may in any particular case be allowed by the CEO, send or deliver to the local government the amount of the penalty, with or without a reply as to the circumstances giving rise to the offence, and the local government may appropriate that amount in satisfaction of the penalty and issue an acknowledgment.

#### **6.6 Withdrawal of infringement notice**

- (1) Whether or not the modified penalty has been paid, an authorised person may withdraw an infringement notice by sending a notice in the form of Form 8 of the First Schedule of the Regulations.
- (2) A person authorised to issue an infringement notice under clause 6.3 cannot sign or send a notice of withdrawal.
- (3) Only delegated officers under the City of Bayswater Sundry Debt Collection and Recovery Policy shall be authorised to sign or send a notice of withdrawal.

#### **6.7 Service**

An infringement notice or a notice of withdrawal may be served on a person personally, or by leaving it at or posting it to her or his address as ascertained from her or him, or as recorded by the local government under the Act, or as ascertained from inquiries made by the local government.

## SCHEDULE 1

[clause 4.2]

**Application for a licence for an approved kennel establishment**

I/we (full name) .....  
 of (postal address) .....  
 (telephone number) .....  
 (facsimile number) .....  
 (E-mail address) .....

Apply for a licence for an approved kennel establishment at (address of premises) .....

For (number and breed of dogs).....

\* (insert name of person) ..... will be residing at the premises on and from (insert date) .....

\* (insert name of person) ..... will be residing (sufficiently close to the premises so as to control the dogs and so as to ensure their health and welfare) at ..... (insert address of residence) on and from ..... (insert date).

Attached are—

- (a) a site plan of the premises showing the location of the kennels and yards and all other buildings and structures and fences;
- (b) plans and specifications of the kennel establishment;
- (c) copy of notice of proposed use to appear in newspaper;
- (d) copy of notice of proposed use to be given to adjoining premises;
- (e) written evidence that a person will reside—
  - (i) at the premises; or
  - (ii) sufficiently close to the premises so as to control the dogs and so as to ensure their health and welfare; and
- (f) if the person in item (e) is not the applicant, written evidence that the person is a person in charge of the dogs.

I confirm that I have read and agree to comply with the Code of Practice known as ....., in the keeping of dogs at the proposed kennel establishment.

Signature of applicant .....

Date .....

\* delete where inapplicable.

Note: a licence if issued will have effect for a period of 12 months—section 27(5) of the Dog Act.

## OFFICE USE ONLY

Application fee paid on *[insert date]*.

## SCHEDULE 2

[clause 4.8(1)]

**Conditions of a licence for an approved kennel establishment**

An application for a licence for an approved kennel establishment may be approved subject to the following conditions—

- (a) each kennel, unless it is fully enclosed, must have a yard attached to it;
- (b) each kennel and each yard must be at a distance of not less than—
  - (i) 25m from the front boundary of the premises and 5m from any other boundary of the premises;
  - (ii) 10m from any dwelling; and
  - (iii) 25m from any church, school room, hall, factory, dairy or premises where food is manufactured, prepared, packed or stored for human consumption;
- (c) each yard for a kennel must be kept securely fenced with a fence constructed of link mesh or netting or other materials approved by the local government;
- (d) the minimum floor area for each kennel must be calculated at 2.5 times the length of the breed of dog (when it is fully grown), squared, times the number of dogs to be housed in the kennel and the length of the dog is to be determined by measuring from the base of the tail to the front of its shoulder;
- (e) the floor area of the yard attached to any kennel or group of kennels must be at least twice the floor area of the kennel or group of kennels to which it is attached;
- (f) the upper surface of the kennel floor must be—
  - (i) at least 100mm above the surface of the surrounding ground;

- (ii) smooth so as to facilitate cleaning;
  - (iii) rigid;
  - (iv) durable;
  - (v) slip resistant;
  - (vi) resistant to corrosion;
  - (vii) non-toxic;
  - (viii) impervious;
  - (ix) free from cracks, crevices and other defects; and
  - (x) finished to a surface having a fall of not less than 1 in 100 to a spoon drain which in turn must lead to a suitably sized diameter sewerage pipe which must be properly laid, ventilated and trapped in accordance with the health requirements of the local government;
- (g) all kennel floor washings must pass through the drain in item (f)(x) and must be piped to approved apparatus for the treatment of sewage in accordance with the health requirements of the local government;
- (h) the kennel floor must have a durable upstand rising 75mm above the floor level from the junction of the floor and external and internal walls, or internal walls must be so constructed as to have a minimum clearance of 50mm from the underside of the bottom plate to the floor;
- (i) where a yard is to be floored, the floor must be constructed in the same manner as the floor of any kennel;
- (j) from the floor, the lowest internal height of a kennel must be, whichever is the lesser of—
- (i) 2m; or
  - (ii) 4 times the height of the breed of dog in the kennel, when it is fully grown, measured from the floor to the uppermost tip of its shoulders while in a stationary upright position;
- (k) the walls of each kennel must be constructed of concrete, brick, stone or framing sheeted internally and externally with good quality new zincalume or new pre-finished colour coated steel sheeting or new fibrous cement sheeting or other durable material approved by the local government;
- (l) all external surfaces of each kennel must be kept in good condition;
- (m) the roof of each kennel must be constructed of impervious material;
- (n) all kennels and yards and drinking vessels must be maintained in a clean condition and must be cleaned and disinfected when so ordered by an authorised person;
- (o) all refuse, faeces and food waste must be disposed of daily into the approved apparatus for the treatment of sewage;
- (p) noise, odours, fleas, flies and other vectors of disease must be effectively controlled;
- (q) suitable water must be available at the kennel via a properly supported standpipe and tap; and
- (r) the licensee or the person nominated in the application for a licence, must, in accordance with the application for the licence, continue to reside—
- (i) at the premises; or
  - (iii) in the opinion of the local government, sufficiently close to the premises so as to control the dogs, and to ensure their health and welfare.

### SCHEDULE 3

[clause 6.2]

#### Offences in respect of which modified penalty applies

Offence	Nature of offence	Modified penalty \$	Dangerous Dog Modified Penalty \$
4.9	Failing to comply with the conditions of a licence	200	200
5.1(2)	Dog excreting in prohibited place	100	

Dated: 28 June 2016.

The Common Seal of the City of Bayswater was affixed by authority of the Council in the presence of—

BARRY McKENNA, Mayor.  
FRANCESCA LEFANTE, Chief Executive Officer.