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LOCAL GOVERNMENT ACT 1995

CITY OF ALBANY

**JETTIES, BRIDGES, BOAT
PENS AND SWIMMING
STRUCTURES
LOCAL LAW 2020**

UNDERTAKING

On the 11 November 2020, the Council of the City of Albany resolved to undertake to the Joint Standing Committee on Delegated Legislation that the City will:

1. Within six (6) months, amend the City of Albany Jetties, Bridges, Boat Pens and Swimming Structures Local Law 2020 to:

- a. in clause 2.2, delete each occurrence of the words 'the jetties' and replace them with the words 'a jetty';
- b. in clause 1.5, insert a definition of 'Land';
- c. in clause 1.5, insert a definition of 'Ellen Cove Jetty';
- d. in clause 2.3(2), delete '3.2(2)(a)' and insert either 3.4 or 3.5 (whichever the City considers applicable);
- e. amend either clause 3.9 or 4.7 to remove the inconsistency between the time frames in which a vessel must be removed;
- f. in clause 2.19, delete the word 'filth';
- g. delete clause 4.4;
- h. in clause 5.2(3), insert the words 'by resolution' after the word 'decide'
- i. insert an exemption to the prohibition of animals in or on any part of the pen system for assistance animals;
- j. make any other necessary consequential amendments).

2. Until the Local law is amended in accordance with undertaking 1:

- a. Not enforce the Local Law in a manner contrary to undertaking 1.
- b. Where the Local Law is made publicly available, whether in hard copy or electronic form (including on the City's website), ensure that it is accompanied by a copy of these undertakings.

LOCAL GOVERNMENT ACT 1995

CITY OF ALBANY

**JETTIES, BRIDGES, BOAT PENS AND SWIMMING
STRUCTURES LOCAL LAW 2020**

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SCHEDULE 1—DETERMINATIONS IN RESPECT OF JETTIES AND SWIMMING STRUCTURES

LOCAL GOVERNMENT ACT 1995

CITY OF ALBANY

**JETTIES, BRIDGES, BOAT PENS AND SWIMMING
STRUCTURES LOCAL LAW 2020**

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the City of Albany resolved on 11 August 2020 to make the following local law.

PART 1—PRELIMINARY**1.1 Citation**

This Local Law may be cited as the *City of Albany Jetties, Bridges, Boat Pens, and Swimming Structures Local Law 2020*.

1.2 Commencement

This Local Law will come into operation on the fourteenth day after the day on which it is published in the *Government Gazette*.

1.3 Application

(1) This local law applies to the jetties, bridges, boat pens and swimming structures under the control of the City of Albany and as published in the *Government Gazette* of 28 July 2020, in accordance with section 3.6 of the *Local Government Act 1995*, the Governor approved the local law to the extent that it will apply outside the district of the City of Albany.

(2) This local law applies to the following areas located outside the district—

- (a) Lot 350, 7031 Swarbrick Street, Emu Point WA;
- (b) The area bounded by the low water mark of the Indian Ocean and extending for a distance 200 metres seaward from the coastal boundary of the district; and
- (c) The region bounded by—
 - (i) the swimming enclosure;
 - (ii) the coastal boundary of Lot 1474, Flinders Parade, Middleton Beach WA; and
 - (iii) the coastal boundary of Lot 651, 2 Flinders Parade, Middleton Beach WA;on the date this local law came into operation.

(3) This local law does not apply to the administration of Department of Transport assets, which includes the—

- (a) conditions of use of moorings and pens; and
- (b) imposition and collection of fees and charges.

1.4 Repeal

This Local Law repeals the *City of Albany Jetties, Bridges and Boat Pens Local Law 2004* published in the *Government Gazette* on 31 January 2005 and as amended and published in the *Government Gazette* on 17 February 2006.

1.5 Definitions

In this local law unless the context otherwise requires—

Act means the *Local Government Act 1995*;

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

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

berth means—

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

bridge means a structure spanning a body of water, road, railway line, chasm or the like and affording passage to vehicles or natural persons;

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

cargo means any goods, merchandise or freight which is to be loaded onto, or which has been unloaded from, a vessel, but does not include bulk cargo;

CEO means the chief executive officer of the local government;

designated area means an area set aside and appropriately identified by an authorised person to be used for particular purposes pursuant to clause 4.5 of this Local Law;

Emu Point Boat Harbour Marina means the pen system located at Plantagenet Location 7031;

Ellen Cove Jetty means the structure located at, and extends from the coastal boundary of Lot 651, 2 Flinders Parade, Middleton Beach WA.

explosive means a substance or article as defined in *Dangerous Goods Safety Act 2004*, Part 1, regulation 8 of the *Dangerous Goods Safety (Explosives) Regulations 2007* (excluding emergency device) and includes fireworks;

emergency device means an article, containing one or more explosives with or without other substances, that is designed to be used in distress or an emergency for signalling, warning or rescue purposes appropriately identified *Dangerous Goods Safety Act 2004*, Part 1, regulation 8 of the *Dangerous Goods Safety (Explosives) Regulations 2007*.

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

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

gidgee means an underwater tool used in spearfishing, consisting of a pole, a spear tip, and a rubber loop;

jetty means—

- (a) any jetty, pier, wharf, quay, grid, slip, landing place, boat launching ramps, stage, platform (other than a platform that is a vessel for the purposes of the *Western Australian Marine Act 1982*) or similar structure, whether fixed or floating, erected or placed, wholly or in part, in, on or over any waters; and
- (b) any ramp and supporting structure for vessel access to a ramp which is or which may be used for the purpose of launching or landing a vessel;

which is under the care, control or management of the local government;

key means a device or object that provides security access, also known as a security access device, security access token or security access card, code or password.

land means that part of the earth's surface that is not covered by water, for the purpose of this local law, land vested in the care and control of the local government above the mean high water mark;

land backed facility means that part of a jetty which is not located over water and which is located over a foreshore area;

liquor means a substance as defined in section 3 of the *Liquor Licensing Act 1988*;

local government means the City of Albany;

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

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

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

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

owner means the person who is the lawful owner or the person legally entitled to the possession of any vessel, vehicle, cargo, property or chattel;

pen means a specific area within a pen system for a vessel and does not include any adjacent jetty and walkway;

pen system means a complex of interconnecting pens, and includes all jetties and walkways, which are under the care, control or management of the local government;

person or any word or expression descriptive of a person includes a natural person, a public body, company or association or body of persons corporate or incorporate, but does not include the local government;

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

pollution means pollution as defined in the *Environmental Protection Act 1986*;

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

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

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

seaworthy means that a vessel is fit for voyage traversing the sea;

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

Swimming Structure means a structure designated for swimming and includes swimming enclosures also known as Shark Barriers, meaning a seabed-to-surface protective barrier that is placed around a beach to protect people from shark attacks.

tout means to solicit custom;

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

vehicle means a vehicle described in the First Schedule to the *Road Traffic Act 1974*; and **vehicle** includes—

- (a) every conveyance and every object capable of being propelled or drawn on wheels, tracks or otherwise (and includes a bicycle, a skateboard and a vessel that is outside the water and carried by a trailer);
- (b) plant or equipment such as cranes and lifting devices; and
- (c) an animal being ridden or driven, but excludes—
 - (i) a wheel-chair or any device designed for use by a physically impaired person on a footpath;
 - (ii) a pram, baby carriage, stroller or a similar device;
 - (iii) a trolley; and
 - (iv) a vessel;

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

- (a) a barge, lighter, floating restaurant, dinghy, vessel, tender vessel or other floating structure;
- (b) a jet-ski; and
- (c) an air-cushion vehicle, or other similar craft, used wholly or primarily in navigation by water, but does not include structures used only for the purpose of walkways or storage;

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

1.6 Overriding power to hire and agree not limited

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

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

PART 2—USE OF JETTIES, BRIDGES AND LAND

2.1 Use of jetty, bridge or land

(1) A person shall not land at, use, approach or enter upon a jetty or bridge except in accordance with this local law or any other written law.

- (2) A person shall not land at, use, approach or enter upon a jetty or bridge which is
- (a) under construction or repair; or
 - (b) closed under section 6 of the *Jetties Act 1926*;

unless that person is engaged in the construction or repair of that jetty or bridge in accordance with the written consent of the local government.

2.2 Mooring of Vessels

(1) A person shall not moor to or berth a vessel at a jetty, or moor or berth a vessel on the Land—

- (a) unless the mooring or berthing of the vessel is authorised or permitted by the local government either by way of a sign affixed by the local government to a jetty or by written consent of the local government; and
- (b) other than in accordance with any conditions imposed by the local government under clause 3.5(1)(m).

(2) Subclause (1) does not apply to—

- (a) a person who needs to moor to or berth a vessel at a jetty, or on the Land in an emergency;
- (b) a vessel in distress such as that repairs are required and then only to effect the minimum repairs necessary to enable the vessel to be moved elsewhere;
- (c) a person who uses a jetty under and in accordance with a written agreement with the local government; and
- (d) a person who has been exempted from subclause (1) by the local government.

(3) A person shall not—

- (a) moor a vessel to a bridge,
- (b) moor a vessel to a jetty or any part of a jetty except to such moorings or mooring piles as are provided; or
- (c) permit a vessel to remain alongside a jetty unless the vessel is so moored or fastened.

2.3 Mooring Lines

- (1) The owner of a vessel must—
 - (a) provide, use and adequately maintain mooring lines sufficient to ensure the safe mooring or berthing of the vessel; and
 - (b) annually inspect the mooring lines and replace any mooring lines which are unfit for their intended purpose, so as to ensure that the mooring lines comply with any requirement under a written law or any condition imposed under clause 3.5.
- (2) Where the local government considers the mooring line of a vessel to be noncompliant with a requirement under a written law or a condition imposed under clause 3.5, or to be faulty or unfit for the purpose for which it is used or to be used, the local government may issue a written direction to the owner of a vessel requiring within a specific timeframe—
 - (a) the replacement of any mooring line;
 - (b) the testing and certification of any mooring line as suitable for its purpose by a marine engineer or equivalent and the provision of such certification to the local government; or
 - (c) the removal of the vessel from the Land.

2.4 Authorised person may order removal of vessel

Notwithstanding anything to the contrary in this Local Law, a person shall immediately remove a vessel moored or fastened to or standing alongside a jetty or bridge, upon being directed to do so by an authorised person or a member of the police force.

2.5 Restrictions on launching

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

2.6 Material not to be removed

A person shall not remove or cause to be removed from a jetty or bridge, or from its approaches, any gravel, stone, timber, trees, shrubs, grasses or other material without the prior written consent of the local government.

2.7 Cargo on jetty

- (1) A person shall—
 - (a) not store or place cargo on a jetty unless it is to be loaded onto a vessel and that vessel is moored or fastened to or alongside the jetty; and
 - (b) load cargo on to a vessel as soon as practicable after the vessel is moored or fastened to or alongside the jetty.
- (2) Any person unloading cargo from a vessel on to a jetty shall remove it from the jetty as soon as practicable, on the day on which the cargo was unloaded.
- (3) Boarding ramps and gangways shall—
 - (a) be removed from a jetty after any passengers have embarked or disembarked and cargo has been loaded or unloaded, as the case may be; and
 - (b) be placed in the appropriate designated area as defined by an authorised person.

2.8 Removal of cargo

- (1) An authorised person may direct an owner or a person who, in the opinion of the authorised person, is in charge of cargo, which remains on a jetty, land or bridge contrary to any provision of this Local Law, to remove it from the jetty or bridge.
- (2) Cargo which remains on a jetty, land or bridge contrary to this Local Law may be removed and impounded by an authorised person in accordance with Part 3, Division 3, Subdivision 4 of the Act, irrespective of whether a direction to remove the cargo has been given pursuant to subclause (1).

2.9 Handling of bulk cargo

Except with the prior written consent of the local government, a person shall not place or deposit—

- (a) bulk cargo from a vehicle, vessel or container on to a jetty or bridge; or
- (b) a container containing bulk cargo on to a jetty or bridge.

2.10 Vehicles on jetty

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

2.11 No fishing from jetties or designated structures

(1) A person shall not—

- (a) fish from a designated swimming structure;
- (b) fish within a swimming enclosure; or
- (c) hang or spread fishing net on, over, under or from a designated swimming structure or enclosure.

(2) Subclause (1) does not apply to the Ellen Cove Jetty.

2.12 Damage to bridge, jetty or swimming enclosure

- (a) A person shall not, by using a vessel or vehicle or otherwise, cause damage to a bridge, jetty or designated swimming structure owned by the local government.
- (b) Where damage is caused to a jetty or bridge, whether by a vessel or vehicle or otherwise, the local government may repair the damage and the costs of the repair shall be a debt due to the local government.
- (c) The debt referred to in clause 2.12 (b) is payable—
 - (i) where the damage is caused by the use of a vessel or vehicle, by the person in control of the vessel or vehicle at the time the damage occurs;
 - (ii) where the damage is not caused by a vessel or vehicle, by the person or persons who caused the damage; or
 - (iii) where the damage is caused by an agent or employee of the owner of the vessel or vehicle, and without prejudice to the liability of other persons, if any, by the owner of a vessel or vehicle.

2.13 Limitations on fishing

A person shall not—

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

2.14 Cleaning fish on jetties

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

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

2.15 Explosives prohibited

Without the prior written consent of the local government, no person shall land, place or handle explosives (as defined) on a jetty or bridge.

2.16 Fires on jetty or bridge

No person shall light, place or keep a fire upon a jetty or bridge.

2.17 Loitering on jetty or bridge

No person shall loiter, lounge, camp or sleep or erect a tent, camp or fly on a jetty or bridge.

2.18 Obstruction of jetty or bridge

A person shall not—

- (a) Without the written consent of the local government, cause any obstruction on a jetty or bridge or impede the free passage of other persons to, from or on a jetty or bridge.
- (b) Obstruct or hinder—
 - (i) any authorised person, or worker engaged in the construction or repair of any jetty or bridge; or
 - (ii) any authorised person acting in the course of his or her duties.
- (c) Without the prior written consent of the local government, place any advertising signage or fixture of any nature on a jetty or bridge or access to a jetty or bridge.

2.19 Polluting surrounding area

A person shall not—

- (a) throw or cause to be thrown any glass, stone or other object, or any ~~fish~~, dirt, rubbish, or other matter of a similar nature from a jetty or bridge;
- (b) tip or deposit anything on to a jetty or bridge so as to cause pollution;
- (c) deposit any offensive rubbish or offal into any rubbish bin located on the jetty or bridge; or
- (d) bring, deposit or release or permit to be bought, deposited or released black water, raw sewerage, oil, bilge water, sullage, fuel (except in a container designed for carrying fuel type)

or the content of brine tanks, fish products including fish carcasses (but excluding bait), shells and offal, whether solid or liquid, and regardless of whether or not it is dangerous, polluting or noxious in nature, onto a jetty or bridge or into the waters surrounding a jetty or bridge.

2.20 Liquor on jetties and bridges

- (1) A person shall not consume any liquor on a jetty or bridge.
- (2) A person shall not sell liquor on a jetty or bridge or from a vessel while moored to, or alongside a jetty or bridge.

2.21 Nuisance on jetties and bridges

A person shall not—

- (a) without the written consent of the local government display any sign or advertisement or use any loud speaking device on a jetty or bridge;
- (b) tout while on, or within 200 metres of, a jetty or bridge;
- (c) dive from a jetty or bridge; or
- (d) interfere with any other person using a jetty or bridge.

2.22 Application for consent

- (1) Where a person is required to obtain the written consent of the local government under this Local Law, the person is to apply for that consent in the manner required by the local government.
- (2) The local government may, in accordance with sections 6.16 to 6.19 of the Act, determine and impose a fee for receipt of an application for consent made under clause 2.21(1).
- (3) If an application for consent is not made in the manner required by the local government or the fee, if any, which is charged 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.

PART 3—PENS AND PEN SYSTEMS

3.1 Licence requirement

- (1) No person shall, without first obtaining a licence from the local government, moor or anchor or cause any vessel to be moored or anchored, within a pen or pen system.
- (2) A person shall be permitted to live on board a vessel moored or anchored within a pen or pen system for no more than two consecutive days, providing that the occupation complies with the requirements of the relevant legislation.

3.2 Application for licence and application fee

- (1) Where a person is required to obtain a licence under this Part, that person is required to apply for the licence in the manner required by the local government.
- (2) The local government may, in accordance with sections 6.16 to 6.19 of the Act, determine and impose an application fee for a licence under clause 3.2(1).
 - (a) The application for a licence must be made by the owner of the vessel; or
 - (b) the owner's agent who has the written authority to sign the application on behalf of the owner of the vessel.
- (3) The licence will be issued in the name of the owner of the vessel.
- (4) If an application for a licence is not made in the manner required by the local government or the fee, if any, which is charged to accompany that application is not paid, the local government may refuse to consider the application for a licence.

3.3 Multiple ownership of vessels

Where ownership of vessels is shared between more than one person, the following will apply—

- (a) At the time of application, one designated pen holder will be nominated in writing. This Pen Holder will be responsible for—
 - (i) All correspondence with the City of Albany, the City of Albany will not correspond with any other partners.
 - (ii) Ensuring the vessel and its use is in compliance with the local law.
 - (iii) Any local law infringements in relation to the use of this vessel or pen will be issued to, and the sole responsibility of this person.
 - (iv) Payment of all fees and any penalty for non-payment.
 - (v) Ensuring the vessels third party insurance coverage extends to use by any silent partners.
 - (vi) Paying bond to the City and forwarding key to silent partners.
 - (vii) Making application to the City for addition or removal of silent partners.
- (b) There can be up to 3 additional partners to whom the following conditions and responsibilities apply—
 - (i) be required to sign and adhere with the local law while utilising the pen system.

- (ii) the vessel's third party coverage must extend to use by these partners.
- (iii) The City of Albany will not undertake any correspondence with these partners—all correspondence will be the responsibility of the designated pen holder.
- (iv) The silent partners will be issued with a key, through the designated pen holder, who will be responsible for any applicable key bonds or communication in relation to key.
- (c) Transfer of designated pen holder—for the purpose of pen allocation and waitlisting
 - (i) Once allocated, the designated penholder status cannot be transferred to any other person.
 - (ii) In the event the designated pen holder sells, relinquishes or bequeaths their share in the vessel, the pen lease will be cancelled and silent partners shall have no claim in respect to lease of that pen. Silent partners may apply for lease of the given, or any other pen, in accordance with waitlist and other application process and procedure administered by the Manager of the Pen system.

3.4 Mooring of vessel

(1) The licensee shall during the term of the licence—

- (a) provide, use and maintain mooring lines sufficient to ensure the safe mooring of the vessel within the pen or pen system, which shall not be less than the sizes listed below—

Length of vessel	Mooring Lines Diameter
Up to 5m	Not less than 12mm
5m to 8m	Not less than 16mm
8m to 12m	Not less than 20mm
12m to 15m	Not less than 24mm

- (b) annually inspect the mooring lines and replace any mooring lines which are unfit for their intended purpose.
- (2) An authorised person may—
- (a) issue a written direction to a licensee, or, where applicable, to the person in charge of the vessel at the relevant time, requiring any mooring lines for a vessel to be refitted within a specified period where, in the opinion of that authorised person, the mooring lines are faulty or sub-standard;
 - (b) notwithstanding clause 3.4(2)(a), refit any faulty or sub-standard mooring lines where it is the opinion of the authorised person that an emergency has arisen requiring such action to be taken; and
 - (c) where a licensee fails to comply with a written direction issued under clause 3.4(2)(a) within the period specified in the written direction, refit or cause to be refitted the mooring lines.
- (3) Where mooring lines are refitted under clause 3.4(2)(c), the costs of the refit shall be a debt due to the local government, payable by the licensee.

3.5 Licensee's obligations

(1) During the term of the licence, the licensee shall—

- (a) keep and maintain the vessel in a state of good and substantial repair and in a clean, tidy, orderly and seaworthy condition;
- (b) keep and maintain the pen in which the licensee's vessel is moored and any adjacent jetty or walkway in a clean, tidy and orderly condition;
- (c) ensure that, except during entry into and exit from the pen, no portion of the vessel moored in the pen shall extend beyond the boundaries of the pen;
- (d) ensure that the vessel shall not at any time interfere with, obstruct or impede the movement of any other vessels within the pen system;
- (e) ensure that the vessel shall not at any time interfere with, obstruct or impede the movement of any materials, goods or equipment along or over any jetty or walkway forming part of the pen system;
- (f) ensure that any vessel under the control of the licensee, his agent or employee, when approaching, using or leaving the pen is controlled in a cautious and seamanlike manner and does not cause a nuisance or damage to any other vessel, property or persons;
- (g) provide adequate fenders between the vessel and the dock, and when the vessel leaves the pen, mooring lines are coiled safely as to not create a tripping hazard;
- (h) ensure that hose pipes or electricity leads shall not be allowed to obstruct or create a hazard to persons walking within the pen system;
- (i) not leave any material, device or goods on any walkway or jetty;
- (j) pay all service fees and other fees (including water, electricity and fuel wharfage);
- (k) ensure the vessel is licensed with the relevant authorities;
- (l) upon expiry of license a copy of a boat renewal licence receipt is to be provided to the local government;
- (m) hold a third party insurance policy for the vessel housed in the pen or pen system;

- (n) provide a copy of the third party insurance policy upon request; and
 - (o) comply with all conditions attaching to the licence.
- (2) During the term of the licence, the licensee shall not—
- (a) permit any vessel other than the one described in the licence to use or to occupy the pen without the prior written consent of the local government;
 - (b) bring, deposit or release or permit to be bought, deposited or released any black water, raw sewerage, oil or fuel, fish products including fish carcasses (but excluding bait), shells and offal, whether solid or liquid, and regardless of whether or not it is dangerous, polluting or noxious in nature, into or within the pen or the waters surrounding the pen. This does not prohibit a person from—
 - (i) washing down their vessel, the pen, or the adjacent jetty or walkway, provided no non-biodegradable chemicals or cleaning agents are used; and
 - (ii) cleaning fish on board their vessel or at any designated area for cleaning fish within the pen system;
 - (iii) bringing fuel in approved containers onto or within the pen system for the purposes of refuelling.
 - (c) store or keep, or permit to be stored or kept, on or in any vessel in the pen, or the pen system, any inflammable substance except that which is contained in tanks or lines which either form a permanent part of a vessel or which comply with the *Uniform Shipping Laws Code 1981* (Cth) and the relevant regulations created under the *Western Australian Marine Act 1982* (WA);
 - (d) do or leave undone, or cause or permit to be done or left undone, in or upon the pen any act or thing which may—
 - (i) cause damage; or
 - (ii) become a nuisance, annoyance or inconvenience, to other users of the pen-system;
 - (e) cause the entrance gate to the pen system to be held open by any manner whatsoever;
 - (f) permit any animals to stray in or on any part of the pen system;
 - (g) without the prior written consent of the local government, make any alteration or addition to the pen or any part thereof;
 - (h) without the prior written consent of the local government, affix or exhibit, or cause or permit to be affixed or exhibited, on any part of the pen or vessel any poster, sign or advertisement other than a vessel's registration numbers and name;
 - (i) without the prior written consent of the local government, carry out or permit to be carried out any major structural work to the vessel in the pen or pen system;
 - (j) operate or permit to be operated any noisy, noxious or objectionable engines, radios or other apparatus or machinery within the pen, so as to cause any nuisance or annoyance to another user of the pen system;
 - (k) provide any person with the key (or any copy, duplicate or replica of the key) giving access to the pen system;
 - (l) leave the vessel unattended in such a manner as to prevent the movement of another vessel in or out of its pen, or obstruct the movement of vessels in the pen system;
 - (m) engage a vessel's propulsion system while secured to a pen or pen system except when alighting (leaving/arriving) from the pen or carrying out mechanical repairs or testing; or
 - (n) without the prior written consent of the local government, sub-lease the pen to a third party (this does not include names that appear as silent partners).

3.6 General prohibitions

- (1) A person shall not swim in the pen system without having first obtained written consent from the local government.
- (2) A person shall not perform underwater repairs or hull cleaning in the pen system;
- (3) A person shall use power points and water taps provided within the pen system only with the appropriate connections and for the purpose of minor maintenance, and ensure all power cords are tagged and tested and in good order and repair, and not placed in the water.
- (4) A person shall not without obtaining the prior written consent of the local government, use a—
 - (a) power point for longer than 3 hours; or
 - (b) water tap for longer than 30 minutes,in a 24 hour period commencing at midnight.
- (3) A person shall not use a gidgee or spear gun in a pen system.

3.7 Right of entry and execution of repairs

- (a) An authorised person may, at any reasonable time during the term of the licence, enter upon and view the condition of the pen, the vessel and any mooring dolphins, buoys and lines or any part thereof.
- (b) An authorised person may give to the licensee a notice in writing requiring the licensee to execute any repairs and works within a stipulated time period that, in the reasonable opinion of the authorised person, are necessary to any of the things referred to in clause 3.7(a).

- (c) The licensee shall execute all repairs and works required to be done within a reasonable time period by written notice given by an authorised person.
- (d) If the licensee does not, within the time specified in any notice issued under this clause, complete the repairs and works required in the notice, an authorised person may enter the mooring pen and complete the repairs and works required in the notice.
- (e) The cost of any repairs and works undertaken by the local government under clause 3.7(d) shall be a debt due to the local government payable by the licensee.
- (f) An authorised person may, at any reasonable time enter a pen for the purpose of making surveys or carrying out any works the local government may deem to be necessary without paying to the licensee any compensation, although any work shall be carried out with, the least inconvenience possible to the licensee.
- (g) An authorised person may enter a pen or a vessel, at any time when, in the reasonable discretion of the authorised person, an emergency exists.

3.8 Removal of vessel

- (1) An authorised person may, in any of the circumstances mentioned in **Clause 4.7**, move or cause to be moved any vessel located within a pen.
- (2) The costs of moving a vessel under this clause shall be a debt due to the local government, payable by the licensee.

3.9 Termination of licence

- (1) The local government may, on twenty-one (21) days written notice to the licensee, terminate a licence granted under clause 3.1 in the event of—
 - (a) the annual service fee or any part thereof, payable by a licensee being in arrears for one calendar month after becoming due and payable; or
 - (b) any default by a licensee in the due observance and performance of any of the requirements contained in this Local Law or any condition of the licence.
- (2) Termination of a licence pursuant to this clause will not prejudice the local government's rights, powers and remedies in relation to any fee or other monies owed as a debt due to the local government under this Local Law or in relation to penalties for breach of this Local Law.
- (3) Upon the expiration or earlier termination of a licence granted under clause 3.1(1), the licensee shall remove the vessel from the pen within **28 days**. If the licensee fails to remove the vessel within **28 days**, the local government may remove and store the vessel and the costs of removing and storing the vessel shall be a debt due to the local government payable by the licensee.
- (4) Where a licence is terminated in accordance with clause 3.9 reapplication by the person holding the licence, either as a licence holder or silent partner, shall not be considered for a period of 12 months from effect of the licence termination
- (5) In the event of a licensee discontinuing the use of the pen he or she shall not be entitled to a refund of that part of any fee paid by the licensee in respect of a licence, the service fee or any other fees that may apply from time to time.
- (6) In the event of a breach by the licensee of any of the provisions of this Local Law, the licensee's vessel may be removed, impounded and disposed of in accordance with Part 3, Division 3, Subdivision 4 of the Act.

PART 4—GENERAL PROVISIONS

4.1 Fees and charges

Fees and charges may be imposed by the local government for the purposes of this Local Law in accordance with the requirements of sections 6.16 to 6.19.

4.2 Recovery of debt due

Wherever this Local Law refers to a debt due to the local government, that amount may be recovered by the local government in a court of competent jurisdiction.

4.3 Offences and Penalties

- (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 a 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.
- (3) An offence against any provision of this Local Law is a prescribed offence for the purpose of section 9.16(1) of the Act.
- (4) The modified penalty for an offence against any provision of this Local Law is \$150.

4.4 Costs of repair

~~Any person who causes damage to a jetty, bridge or pen under the care, control and management of the local government, whether or not they are committing an offence under this Local Law, shall pay the costs of repairing any damage caused to the local government.~~

4.4 Appointment of an authorised person

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

4.5 Designated areas

(1) An authorised person may designate, and appropriately identify, a particular area on or within a bridge, jetty, swimming structure, or pen system, to be used for a particular purpose.

(2) Subject to conditions that may be imposed by relevant Acts and associated Regulations (for example: a use or activity not allowed under Part 2 of the local law, may be approved with appropriate controls and a defined area).

4.6 Breach/Termination Notice

Under a breach of the licensee's obligations prescribed in part 3, that results in a termination notice a person will have 28 days to remove the vessel and all fixtures and fittings from the pen.

4.7 When an authorised person can act

Notwithstanding the powers and functions of the authorised officer prescribed in parts 1, 2 and 3, no action shall be taken by an authorised officer unless such action is related to—

- (a) an inspection that serves to either verify compliance or remedy non-compliance with the conditions of the Local Law;
- (b) the rectification of a situation that could reasonably be expected to lead to either damage to private or public property or threaten personal safety; or
- (c) The overall efficient and effective management of the facility.

4.8 Objection and appeal rights

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

- (a) grant a person a licence under this local law; or
- (b) renew, vary, or cancel a licence 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 shall apply to that decision.

PART 5—DETERMINATIONS IN RESPECT OF JETTIES AND SWIMMING STRUCTURES

5.1 Determinations as to use local government property

(1) The local government may make a determination in accordance with clause 5.2—

- (a) setting aside specified local government property for the pursuit of approved activities, such as swimming and/or fishing;
- (b) prohibiting a person from pursuing an activity on specified local government property; and
- (c) as to any matter ancillary or necessary to give effect to a determination.

(2) The determinations in Schedule 1—

- (a) are to be taken to have been made in accordance with clause 5.2;
- (b) may be amended or revoked in accordance with clause 5.6; and
- (c) have effect on the commencement day.

5.2 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 **by resolution** 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.

(9) This local law is subject to any written law and law of the Commonwealth about assistance animals as defined in the *Disability Discrimination Act 1992* (Cth).

(10) The prohibition of animals in or on any part of the pen system does not apply to assistance animals.

5.3 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.

5.4 Determination to be complied with

A person shall comply with a determination.

5.5 Register of determinations

(1) The local government is to keep a register of determinations made under clause 5.1, and of any amendments to or revocations of determinations made under clause 5.6.

(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.

5.6 Amendment or revocation of a determination

(1) The Council may amend or revoke a determination.

(2) The provisions of clause 5.2 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.

Schedule 1

DETERMINATIONS IN RESPECT OF JETTIES AND SWIMMING STRUCTURES

Location Description	Determination of Use
Emu Point Boat Pens—Lot 350, 7031 Swarbrick Street, Emu Point WA.	No swimming from structures within the security controlled boat pen area.
Emu Point Swimming Structure—Lot 1461, Roe Parade, Emu Point WA.	No fishing on the swimming structure.
Ellen Cove Swimming Enclosure and Swimming Platform—The coastal boundary of Lot 1474, Flinders Parade, Middleton Beach WA.	No fishing permitted from the beach, in the area bounded by the Ellen Cove Swimming Enclosure.
Ellen Cove Jetty—The coastal boundary of Lot 651, 2 Flinders Parade, Middleton Beach WA.	Swimming permitted from the Jetty. Fishing permitted from the Jetty.

Dated this 14th day of September, 2020.

The Common Seal of the *City of Albany* was affixed by the authority of the resolution of Council in the presence of—

DENNIS WELLINGTON, Mayor.

ANDREW SHARPE, Chief Executive Officer