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LOCAL GOVERNMENT ACT 1995

CITY OF BUSSELTON

**HOLIDAY HOMES LOCAL
LAW 2012**

LOCAL GOVERNMENT ACT 1995

CITY OF BUSSELTON

HOLIDAY HOMES LOCAL LAW 2012

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LOCAL GOVERNMENT ACT 1995

CITY OF BUSSELTON

HOLIDAY HOMES LOCAL LAW 2012**PART 1 — PRELIMINARY**

Under the powers conferred on it by the *Local Government Act 1995*, the Council of the City of Busselton resolved on 28 March 2012 to make this local law.

PART 1 — PRELIMINARY**1.1 Title**

This is the *City of Busselton Holiday Homes Local Law 2012*.

1.2 Commencement

This local law commences 3 months after the date of its publication in the *Government Gazette*.

1.3 Application

This local law applies throughout the district.

1.4 Terms used in this local law

In this local law—

Act means the *Local Government Act 1995*;

acting manager, in relation to a holiday home, means the person who is the acting manager of the holiday home, as specified in the certificate of registration for the holiday home, whether or not that person is also the owner of the holiday home;

applicant means an applicant for a registration;

application fee means the application fee for registration that is imposed by the Council under the Act;

attendant means a person who is—

- (a) an occupant; or
- (b) a guest;

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;

CEO means—

- (a) the CEO of the City; and
- (b) any other employee of the City to whom the CEO has delegated his or her powers under this local law;

certificate of registration means a current and valid certificate issued under clause 2.4(2);

City means the City of Busselton;

Council means the council of the City;

district means the district of the City;

dwelling has the meaning given to it in the Local Planning Scheme;

grouped dwelling has the meaning given to it in the Local Planning Scheme;

guest means a person who is on the premises of a holiday home, for social purposes, at the invitation or with the permission of an occupant of the holiday home;

hirer, in relation to a holiday home, means the person who hires the holiday home or who is responsible for the payment for the accommodation of an occupant in the holiday home;

holiday home means a dwelling used, or intended to be used, to accommodate occupants for hire or reward (but does not include a 'Bed and Breakfast', 'Chalet Development', 'Guesthouse', 'Rural Tourist Accommodation' or 'Tourist Accommodation', as defined in Schedule 1 to the Local Planning Scheme);

local government means the City;

Local Planning Scheme means the City of Busselton District Town Planning Scheme No. 20, as amended from time to time;

manager, in relation to a holiday home, means the person who is the manager of the holiday home, as specified in the certificate of registration for the holiday home, whether or not that person is also the owner of the holiday home;

month means calendar month;

occupant means a person who is accommodated in a holiday home for no more than a total of 3 months in any one 12-month period ;

owner—

(a) in relation to a registered holiday home, means the person who is specified as the owner in the certificate of registration of the holiday home; and

(b) in relation to any other holiday home, means the person who is the owner of the holiday home;

premises, in relation to a holiday home, means—

(a) if the holiday home is a single house situated on a single lot, all of the land that comprises that lot; or

(b) if the holiday home is a grouped dwelling, all of the land that is set aside for the exclusive use by the owner of that grouped dwelling;

registered holiday home means a dwelling registered under this local law as a holiday home;

registration means registration, under and for the purposes of this local law, of a dwelling as a holiday home;

registration fee means the fee for registration that is imposed by the City under the Act;

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

relevant law means a written law, as defined in the *Interpretation Act 1994*, that applies to, or in respect of, the use of a holiday home; and

single house has the meaning given to it in the Local Planning Scheme.

PART 2 — REGISTRATION

Division 1—Applying for registration

2.1 Registration required

- (1) A person must not use a dwelling, or allow a dwelling to be used, as a holiday home—
- unless planning approval has been granted under the Local Planning Scheme to use the dwelling as a holiday home;
 - unless the dwelling is registered as a holiday home under this local law; and
 - other than in accordance with—
 - the conditions of the registration; and
 - the provisions of this local law.
- (2) Registration does not affect the obligations of an owner or a manager, or any other person, to comply with a relevant law.

2.2 Application for registration

- (1) An application for registration of a holiday home must—
- be in writing;
 - be in the form determined by the CEO;
 - be made by, or on behalf of, the owner of the holiday home;
 - be signed by the owner of the holiday home;
 - nominate a natural person, who may or may not be the owner, to be the proposed manager of the holiday home;
 - nominate a natural person, who may or may not be the owner, to be the proposed acting manager of the holiday home;
 - contain the details specified in clause 2.3; and
 - be forwarded to the CEO, together with any fee imposed by the Council under sections 6.16 to 6.19 of the Act.
- (2) The CEO or an authorised person may require an applicant to give local public notice of the application for registration.
- (3) The local government may refuse to consider an application for registration which is not in accordance with subclause (1).

2.3 Application details

The details that must be included in an application for registration of a holiday home are—

- a site plan of the premises;
- a floor plan of the holiday home;
- the location and title details of the holiday home;

- (d) the number of bedrooms proposed to be used at any time for short stay accommodation;
- (e) the maximum number of occupants to be accommodated at any time in the holiday home;
- (f) the details of any proposed on-site parking bays on the premises;
- (g) the name, address and contact details of the owner of the holiday home and his or her phone number at which he or she may be contacted;
- (h) in relation to each of the proposed manager and the proposed acting manager—
 - (i) confirmation that he or she accepted appointment by the owner as manager (which may be contingent on the Council's approval of the application for registration); and
 - (ii) his or her name, address and contact details, including the phone number at which he or she may be contacted at any time of the day or night;
- (i) an undertaking from the proposed manager of the holiday home that he or she—
 - (i) is to have the day-to-day management of the holiday home; and
 - (ii) will respond, within a reasonable time but in any event within 24 hours, to any contact relating to the holiday home;
- (j) an undertaking from the proposed acting manager of the holiday home that, while undertaking the functions of the manager, he or she—
 - (i) is to have the day-to-day management of the holiday home; and
 - (ii) will respond, within a reasonable time but in any event within 24 hours, to any contact relating to the holiday home; and
- (k) any other information requested by the CEO or an authorised person that is reasonably related to the application for registration.

2.4 Determining an application

- (1) The Council may—
 - (a) approve an application for registration unconditionally or subject to conditions; or
 - (b) refuse to approve an application for registration.
- (2) If the Council approves an application for registration, it is to issue to the applicant a certificate of registration in the form prescribed in Schedule 1 or in a similar form as determined by the Council from time to time.
- (3) If the Council refuses to approve an application for registration, it is to give written notice of that refusal to the applicant.
- (4) Where a clause of this local law refers to conditions which may be imposed on registration, or which are to be taken to be imposed on registration, that clause does not limit the power of the Council to impose other conditions on registration under subclause (1)(a).
- (5) Where a clause of this local law refers to the grounds on which an application for registration may be or is to be refused, the clause does not limit the power of the Council to refuse the application for a permit on other grounds under subclause (1)(b).

2.5 Relevant considerations in determining an application for registration

- (1) In determining an application for registration, the Council is to have regard to—
 - (a) the conditions of any planning approval that has been granted under the Local Planning Scheme to use the dwelling as a holiday home;
 - (b) the provisions of this local law;
 - (c) any relevant policy of the City; and
 - (d) any other matter that the Council reasonably considers to be relevant in the circumstances of the case.
- (2) The Council must refuse to approve an application for registration if there is no current planning approval under the Local Planning Scheme to use the dwelling or the premises as a holiday home.
- (3) The Council may refuse to approve an application for registration on any one or more of the following grounds—
 - (a) that the owner, the proposed manager or the proposed acting manager has committed a breach of any provision of this local law or of any other relevant law;
 - (b) that the owner, the proposed manager or the proposed acting manager is not a fit and proper person in relation to the proposed holiday home; or
 - (c) any other ground that the Council may reasonably consider to be relevant in the circumstances of the case, including a ground arising from the Council's consideration of the factors set out in clause 2.5(1).

Division 2—Conditions

2.6 Conditions which may be imposed

- The Council may approve an application for registration subject to conditions relating to—
- (a) the payment of a fee imposed by the Council under sections 6.16 to 6.19 of the Act;
 - (b) the commencement and duration of registration;

- (c) the grant of any other approval, in respect of the holiday home, that—
 - (i) is required under any written law; or
 - (ii) that may be required by the City under any written law;
- (d) the maximum number of occupants who may be on the premises at any time;
- (e) the maximum number of attendants who may be on the premises during specified times;
- (f) the number of on-site parking bays at the premises for the exclusive use of attendants;
- (g) the maximum number of vehicles that may be parked on the premises at any time;
- (h) the location and number of bedrooms to be used by the occupants;
 - (i) measures to ensure effective communication to attendants of—
 - (i) the conditions of registration; and
 - (ii) emergency management procedures to apply during an emergency or potential emergency such as a fire emergency or during a natural disaster such as a flood, cyclone or earthquake;
- (j) the provision to the CEO or an authorised person, by the owner or the manager, of details of any proposed change, or any change, to—
 - (i) the owner, the manager or the acting manager ; or
 - (ii) the contact details (including the phone and email contacts) of the owner, the manager or the acting manager;
- (k) ensuring that each of the manager, and the acting manager while undertaking the functions of the manager—
 - (i) is contactable by telephone, at any time of the day or night, using his or her contact details provided to the City; and
 - (ii) will respond, within a reasonable time but in any event within 24 hours to any contact relating to the holiday home; and
- (l) tenancy agreements with occupants that would enable the manager to comply with his or her obligations under clause 3.2.

2.7 Imposing conditions under a policy

(1) In this clause—

policy means a policy of the City adopted by the Council containing conditions subject to which an application for registration may be approved under clause 2.4(1)(a).

(2) Under clause 2.4(1)(a), the Council may approve an application subject to conditions by reference to a policy.

(3) The City is to give to the applicant a copy of the policy, or that part of the policy which is relevant to the application for registration, with the certificate of registration.

(4) An application for registration is to be taken not to have been approved subject to the conditions contained in a policy until the City gives the applicant a copy of the policy or that part of the policy which is relevant to the application.

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

2.8 Compliance with and variation of conditions

(1) Where an application for registration of a holiday home has been approved subject to conditions, or where registration is to be taken to be subject to conditions under this local law, the owner, manager and each attendant of the holiday home, must comply with each of those conditions.

(2) The Council may, after—

- (a) giving the owner or manager written notice of the proposed variation of a condition; and
- (b) taking into account any submissions made by the owner to the CEO within 14 days of the notice under paragraph (a),

vary a condition of registration.

(3) A condition that has been varied under this clause takes effect when written notice of the variation has been given to the owner and the manager.

(4) The owner, manager and each attendant must comply with a condition varied under this clause.

Division 3—General

2.9 Registration period

A registration is valid for one year from the date on which the certificate of registration is issued, unless—

- (a) it is otherwise stated in this local law or on the certificate of registration; or
- (b) registration is cancelled under clause 2.14.

2.10 Renewal of registration

(1) The owner or manager may apply in writing to the CEO in writing before the expiry of a registration for the renewal of the registration.

(2) Subject to subclause (3), the provisions of Divisions 1 and 2 of this Part, and any other provisions of this local law relevant to the registration which is sought to be renewed, apply, with appropriate modifications, to an application for renewal of the registration.

(3) The Council may waive, in a particular case or in one or more classes of cases, any of the requirements applying to an application for renewal of a registration.

2.11 Acting manager

(1) The acting manager is to undertake the functions of the manager only—

- (a) if the manager gives the City prior written notice of the period during which the acting manager is to undertake the functions of the manager; and
- (b) during the period specified in that notice—but not exceeding 30 days in any calendar year unless otherwise determined in writing by the Council.

(2) The provisions of this local law that apply to the manager are to be taken to apply to the acting manager while he or she is undertaking the functions of the manager.

2.12 Replacement of manager

(1) This clause applies where—

- (a) the owner is not also the manager of a registered holiday home; and
- (b) the owner wishes to replace the manager either—
 - (i) with a new manager; or
 - (ii) by personally taking over the role of manager.

(2) An application to replace a manager must—

- (a) be made before the expiry of the registration;
- (b) be made in writing;
- (c) be signed by the owner and, if applicable, the proposed new manager;
- (d) include the details as are required under clause 2.3(h);
- (e) include the undertaking described in clause 2.3(i);
- (f) provide such information as the CEO or an authorised person may reasonably require to enable the application to be determined; and
- (g) be forwarded to the CEO, together with the fee imposed by the Council under sections 6.16-6.19 of the Act.

(3) The Council may—

- (a) approve an application to replace a manager, unconditionally or subject to conditions; or
- (b) refuse to approve an application to replace a manager.

(4) Where the Council approves an application to replace a manager, the replacement is to be effected by—

- (a) an endorsement on the certificate of registration signed by the CEO or an authorised person; or
- (b) the CEO or an authorised person issuing to the transferee a fresh certificate of registration.

2.13 Production of certificate of registration

The manager of a holiday home must produce to the CEO or an authorised person the certificate of registration of the holiday home immediately on being required to do so by the CEO or that authorised person.

2.14 Cancellation

(1) A registration is taken to have been cancelled if, and on the date that—

- (a) the owner whose name appears on the certificate of registration ceases to be the owner of the holiday home; or
- (b) the manager whose name appears on the certificate of registration ceases to be the manager of the holiday home—unless an application to replace that manager has been approved by the Council under clause 2.12.

(2) A registration may be cancelled by the Council if—

- (a) the owner, manager or an attendant has not complied with—
 - (i) a condition of the registration;
 - (ii) a provision of this local law; or
 - (iii) any relevant law; or
- (b) the Council is satisfied, on the basis of complaints or other evidence of excessive noise, antisocial behaviour or other nuisances, that the continuing operation of the holiday home is not in the best interests of the City.

(3) If a registration is cancelled, the CEO must give the owner and the manager written notice of the cancellation.

(4) Cancellation under subclause (2) takes effect when the written notice is given to the owner and manager.

- (5) If a registration is cancelled—
- (a) the owner must return the certificate of registration to the CEO within 14 days of being given the written notice of cancellation; and
 - (b) the City is not required to refund any part of a fee paid in respect of the cancelled registration.

PART 3—OBLIGATIONS ON OWNERS AND MANAGERS

3.1 Requirement to give notice of any change

An owner and a manager must inform the CEO in writing, within 24 hours, of any change or proposed change that would affect the currency of—

- (a) the details submitted with the application for registration and any application for renewal of registration or for replacement of a manager; or
- (b) any condition imposed or varied under clauses 2.6, 2.7, 2.8 and 2.11.

3.2 Breach of a condition by an attendant

(1) In this clause, **breach** means breach by an attendant of—

- (a) a condition of registration;
- (b) this local law; or
- (c) a relevant law.

(2) Within 24 hours of—

- (a) the CEO or an authorised person giving written notice to the manager of a breach;
- (b) the manager becoming aware of a breach; or
- (c) the manager becoming aware of circumstances that would reasonably enable the manager to determine that a breach had occurred,

the manager must ensure that—

- (d) the occupant's tenancy is terminated; and
- (e) the occupant vacates the holiday home.

3.3 Register of occupants

The manager must—

- (a) maintain a register comprising details—
 - (i) each hirer's name, address, contact details and, if applicable, length of the stay in the holiday home; and
 - (ii) of each other occupant's name; and
- (b) give the CEO or an authorised person such access to the register as may reasonably be required by the CEO or the authorised person for the purpose of administering or enforcing this local law.

3.4 Contacting the manager

(1) The manager must be contactable at all reasonable times, using the contact details provided to the CEO or an authorised person.

(2) The manager must respond within a reasonable time but in any event within 24 hours to any contact relating to the holiday home.

PART 4—OBJECTIONS AND REVIEWS

4.1 Objection and review rights

A person adversely affected by a decision made under Part 2 may be entitled to object against, or to apply for a review of, the decision under the Act.

PART 5—ENFORCEMENT

5.1 Offences and penalties

(1) A person who breaches a provision of this local law commits an offence.

(2) A person who commits an offence is liable—

- (a) to a penalty of \$5,000; and
- (b) if the offence is of a continuing nature, a further penalty of \$500 in respect of each day or part of a day during which the offence has continued.

5.2 Prescribed offences

(1) An offence against a clause specified in Schedule 2 is a prescribed offence for the purposes of clause 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 2.

5.3 Form of notices

- (1) 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 set out in Schedule 1 of the Regulations.
- (2) The form of the infringement notice given under section 9.16 of the Act is set out in Form 2 in Schedule 1 of the Regulations.
- (3) The form of the notice referred to in section 9.20 of the Act is that set out in Form 3 in Schedule 1 of the Regulations.

Schedule 1**CERTIFICATE OF REGISTRATION**

[Clause 2.4(2)]

City of Busselton

HOLIDAY HOMES LOCAL LAW 2012

CERTIFICATE OF REGISTRATION

Date...../...../.....

This certifies that the dwelling at

(address of holiday home)

owned by

(name/s of owner/s)

managed by and

(name of manager)

(name of acting manager)

is registered as a holiday home which may be used to accommodate occupants for hire or reward in accordance with—

- (a) the provisions of the *Holiday Homes Local Law 2012*;
- (b) any other relevant law; and
- (c) the conditions set out on the back of this certificate.

.....

Signature of CEO/CEO's delegate.

Notes:

1. *An application for registration of a holiday home cannot be approved unless planning approval has been granted under the City of Busselton District Town Planning Scheme No. 20 to use the dwelling as a holiday home.*
2. *Registration of a holiday home does not affect the rights and obligations of an owner or occupier under the by-laws of a strata company, including any requirement to obtain approval, or to comply with any restrictions, in connection with the use of a dwelling as a holiday home.*

CONDITIONS OF REGISTRATION

This registration is subject to the following conditions—

- 1.
- 2.
3. etc

Schedule 2**PRESCRIBED OFFENCES**

[Clause 5.2]

Clause	Description	Modified penalty
2.1(1)	Using, or allowing to be used, as a holiday home, a dwelling not registered as a holiday home	\$400.00
2.8(1)	Failure to comply with a condition of registration	\$300.00
2.8(3)	Failure to comply with a varied condition of registration	\$300.00
2.13	Failure to produce certificate of registration when required to do so	\$250.00
2.14(5)(a)	Failure to return the certificate of registration after registration cancelled	\$150.00
3.1	Failure to inform CEO of any change or proposed change affecting registration details	\$300.00

Clause	Description	Modified penalty
3.2(2)(d)	Failure to terminate occupant's tenancy for a breach	\$300.00
3.2(2)(e)	Failure to ensure occupant vacates the holiday home for breach of a condition of registration	\$300.00
3.3(a)	Failure to maintain a register	\$200.00
3.3(b)	Failure to give CEO or an authorised person access to the register	\$300.00
3.4(2)	Failure of a manager to respond, within the required time, to a contact	\$300.00

—————

This local law was made at the meeting of the Council of the City of Busselton held on 28 March 2012.

The Common Seal of the City of Busselton was affixed in the presence of—

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

On 19 April 2012.

—————

LOCAL GOVERNMENT ACT 1995

SHIRE OF YORK

EXTRACTIVE INDUSTRIES AMENDMENT LOCAL LAW 2011

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of York resolved on 27 April 2011 to make the following local law.

1. Citation

This local law is cited as the *Shire of York Extractive Industries Amendment Local Law 2011*.

2. Commencement

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

3. Principal Local Law

In this local law, the *Shire of York Extractive Industries Local Law* published in the *Government Gazette* on 22 February 2000 is referred to as the principal local law. The principal local law is amended.

4. New Clause 1.1

Insert—

“1.1 Citation

This local law is cited as the *Shire of York Extractive Industries Local Law*.”

5. New Clause 1.2

Insert—

1.2 Purpose and effect

- (1) The purpose of this local law is to establish requirements and conditions with which extractive industry proposals, within the district, must comply with.
- (2) The effect of this local law is to provide for the regulation, control and management of extractive industry proposals.

6. Clause 1.1 amended

- (1) Delete the heading “**Definitions**” and insert “**Interpretation**”.
- (2) Delete the definition “**carry on an extractive industry**” and insert—
carry on an extractive industry means quarrying and excavating for stone, gravel, sand, clay, limestone, loam and other material;”
- (3) Amend the definition “**secured sum**” by inserting “and” after the semi colon.
- (4) Insert, in the appropriate alphabetical order, the following—
 - (a) **General Regulations** means the *Local Government (Functions and General) Regulations 1996*;
 - (b) **occupier** has the meaning given to it in the Act;”;
 - (c) **owner** has the meaning given to it in the Act;”
 - (d) **person** does not include the local government;”.

7. Clause 1.2 amended

After subclause (1) insert—

- (2) Notwithstanding any other provision, the local government may waive any requirement or provision of this local law (including a requirement to hold a valid licence), where the local government is satisfied on receiving a written application for an exemption under this clause that the extractive industry is to be carried out solely for the benefit of a local community or sporting organisation (whether incorporated or not), provided that where the local government is so satisfied—
 - (a) The extractive industry may only be carried out if the local government has authorised it in writing;

- (b) The local government may impose conditions on the authorisation pursuant to which the extractive industry must operate (including in a case where the CEO otherwise waives the requirement to hold a valid and current licence);
- (c) The person carrying out the extractive industry must comply with any conditions imposed by the local government on the authorisation;
- (d) Failure to comply with any condition imposed by the local government is deemed to be an offence pursuant to clause 2.1(b);
- (e) The local government may from time to time vary or delete and condition previously imposed, and may impose a new condition or conditions; and
- (f) The local government may at any time determine that the extractive industry authorised pursuant to this clause must cease, provided that the local government must give written notice to the person carrying out the extractive industry which allows a minimum 28 days for the cessation of operations.

8. Clause 2.1 amended

Delete—

Penalty \$5,000 and a daily penalty not exceeding a fine of \$500 in respect of each day or part of a day during which an offence has continued.

9. Clause 2.2 amended

In subclause (1) delete “must” and insert “shall”.

10. Clause 2.3 amended

(1) In subclause(1)(a), delete subparagraph (i) and insert—

(i) where the proposed excavation surface area is—

- (I) not to exceed 5 hectares, the existing and proposed land contours based on the Australian Height Datum and plotted at 1 metre contour intervals;
- (II) to be greater than 5 hectares, the existing and proposed land contours based on the Australian Height Datum and plotted at 5 metre contour intervals;

(2) In subclause (1)(b), delete subparagraph (xi) and insert—

(xi) a description of the measures to be taken to minimise sand drift, dust nuisance, erosion, watercourse siltation and dangers to the general public;

(3) In subparagraph (xii) of subclause (1)(b), italicise “Environmental Protection (Noise) Regulations 1997”.

(4) In subparagraph (v) of subclause (1)(c), delete “and” at the end of the paragraph.

(5) In subclause (1)(c) insert a new subparagraph (vii)—

(vii) how any face is to be made safe and batters sloped.

(6) In subclause (1)(i) delete “and”.

(7) After subclause (1)(j) insert—

- (k) copies of any environmental approval required under any environmental legislation; and
- (l) copies of any geotechnical information relation to the excavation site.

(8) In subclause (2) delete “must” and insert “shall”.

(9) After subclause (2) insert—

(3) Where in relation to a proposed excavation—

- (a) the surface area is not to exceed 5,000 square metres; and
- (b) The extracted material is not to exceed 5,000 cubic metres;

the local government may exempt a person making application for a licence under subclause (1) from supplying any of the data specified in paragraphs (b), (d), (e) and (l) of subclause (1).

11. Clause 3.1 amended

(1) In subclause (4), delete paragraph (a) and insert—

(a) payment of the annual licence fee, or the relevant proportion of the annual licence fee to 30 June, imposed and determined by the local government from time to time under and in accordance with sections 6.16 to 6.19 of the Act;

(2) In paragraph (b) of subclause (4) delete “and”.

(3) After the semi colon in paragraph (c) of subclause (4) insert “and”.

(4) After subclause (4)(c) insert—

(d) a copy of the public liability insurance policy required under clause 7.1(1),

(5) In subclause (5) insert a new paragraph (d)—

(d) the approval of the number and size of trucks entering and leaving the site each day and the route or routes to be utilised by those trucks;

(6) In paragraph (h) of subclause (5) delete “roads” and insert “thoroughfares”.

(7) In paragraph (q) of subclause (5) after the semi colon delete “and”.

- (8) In subclause (5) insert a new paragraph—
- (q) requiring the licensee to meet all conditions imposed under the development approval issued by the local government in relation to the extractive industry;
- (9) In paragraph (r) of subclause (5) after the semi colon insert “and”.
- (10) In subclause (5) insert a new paragraph (u)—
- (u) requiring the licensee to enter into an agreement with the local government by which it agrees to pay any extraordinary expenses incurred by the local government in repairing damage caused to thoroughfares in the district by heavy or extraordinary traffic conducted by or on behalf of the licensee under the licence.

12. Clause 3.2 amended

- (1) Delete “31 December” and insert “30 June”.
- (2) After the word “fee” insert “imposed and”.
- (3) After the words “time to time” insert “under and in accordance with sections 6.16 to 6.19 of the Act”.

13. Clause 4.1 amended

In subclause (1) delete “must” and insert “shall”.

14. Clause 5.2 amended

In subclause (1), delete paragraphs (b), (c) and (d) and insert—

- (b) where no such time has been specified, within 60 days of the completion of the excavation or portion of the excavation specified in the licence conditions, then subject to the local government giving the licensee 14 days notice of its intention to do so—
 - (i) the local government may carry out or cause to be carried out the required restoration and reinstatement work or so much of that work as remains undone; and
 - (ii) the licensee shall pay to the local government on demand all costs incurred by the local government or which the local government may be required to pay under this clause.

15. Clause 6.1 amended

- (1) In paragraph (d) delete “With”.
- (2) After paragraph (d), delete “Penalty \$2,000”.

16. Clause 6.2 amended

- (1) Delete the word “must” and insert “shall not”.
- (2) In paragraph (a) delete “not”.
- (3) Delete paragraphs (b), (c) and (d).
- (4) In paragraph (e), delete “not”.
- (5) In paragraph (e) delete “Minerals and Energy” and insert “Mines and Petroleum”.
- (6) In paragraph (f), delete “not”.
- (7) Delete paragraphs (g), (h) and (i).
- (8) After paragraph (i) delete—
- “Penalty \$5,000 for each offence, and if an offence is of a continuing nature, to a daily penalty not exceeding a fine of \$500 in respect of each day or part of a day which the offence has continued.

17. Clause 6.3 amended

- (1) In subclause (1) delete “must” and insert “shall”.
- (2) In paragraph (b) of subclause (1) delete “am” and insert “a.m.”, and delete “pm” and insert “p.m.”.
- (3) In subparagraph (ii) of subclause (1)(d), insert after the semi colon “and”.
- (4) Delete subparagraphs (iii) and (iv) of subclause (1)(d).
- (5) After subclause (1)(d) delete—
- “Penalty: \$5,000 for each offence, and if the offence is of a continuing nature, to a daily penalty not exceeding a fine of \$500 in respect of each day or part of a day during which the offence has continued.
- (6) After subclause (2), delete “Penalty \$2,000”.

18. New Clause 6.4

Insert new clause 6.4—

6.4 Obligations of the licensee

A licensee shall—

- (a) where the local government so requires, securely fence the excavation to a standard determined by the local government and keep the gateways locked when not actually in use in order to prevent unauthorised entry;
- (b) erect and maintain warning signs along each of the boundaries of the area excavated under the licence so that each sign—
 - (i) is not more than 200 metres apart;
 - (ii) is not less than 1.8 metres high and not less than 1 metre wide; and
 - (iii) bears the words “DANGER EXCAVATIONS KEEP OUT”;

- (c) except where the local government approves otherwise, drain and keep drained to the local government's satisfaction any excavation to which the licence applies so as to prevent the accumulation of water;
- (d) restore and reinstate the excavation site in accordance with the terms and conditions of the licence, the site plans and the works and excavation programme approved by the local government;
- (e) take all reasonable steps to prevent the emission of dust, noise, vibration and other forms of nuisance from the excavation site; and
- (f) otherwise comply with the conditions imposed by the local government in accordance with clause 3.1.

19. Clause 7.2 amended

(1) In subclause (1), italicise "Mines Safety and Inspection Act 1994" and "Environmental Protection Act 1986".

(2) In subclause (2) , italicise "Mines Safety and Inspection Act 1994" and "Environmental Protection Act 1986".

20. Clause 7.4 amended

After paragraph (g) delete—

Penalty \$5,000 for each offence, and if the offence is of a continuing nature, to a daily penalty not exceeding a fine of \$500 in respect of each day or part of a day during which the offence has continued.

21. Part 8 heading amended

In the heading delete "APPEALS" and insert "REVIEW".

22. Clause 8.1 amended

(1) In the heading delete "Appeals" and insert "review".

(2) Delete "regulations 33 and 34" and insert "regulation 33".

(3) Delete "*Local Government (Functions and General) Regulations 1996*" and insert "General Regulations".

23. New Part 9

Insert—

PART 9—MODIFIED PENALTIES

9.1 Offences

(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 had continued.

9.2 Prescribed offences

(1) An offence against a clause specified in the Schedule 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 the Schedule.

9.3 Forms

For the purposes of this local law—

(a) the form of the infringement notice given under section 9.16 of the Act is that of Form 2 in Schedule 1 of the General Regulations; and

(b) the form of the notice sent under section 9.20 of the Act withdrawing an infringement notice is that of Form 3 in Schedule 1 of the General Regulations.

24. Forms deleted

Delete Form 1 through to Form 5.

25. New Schedule

Insert—

**Schedule—Prescribed offences
MODIFIED PENALTIES**

[cl. 9.2(1)]

Item No.	Clause No.	Nature of Offence	Modified Penalty \$
1	2.1(a)	Excavate without a valid and current licence	500
2	2.1(b)	Carry on extractive industry without licence or in breach of terms and conditions	500
3	6.1	Excavate near boundary	250

Item No.	Clause No.	Nature of Offence	Modified Penalty \$
4	6.2(a)	Removal of trees or shrubs near within 40 metres of the boundary without approval	300
5	6.2(b)	Store without required approval explosives or explosive devices	350
6	6.2(c)	Fill or excavate, contrary to the terms and conditions of the licence	350
7	6.3(1)(b)	Carry out or permit to be carried out blasting outside hours approved by the local government	350
8	6.3(1)(d)	Failure to comply with conditions imposed by the local government in relation to blasting activities	350
9	6.3(2)	Carry out or permit to be carried out any blasting on Saturday, Sunday or public holiday without approval	250
10	6.4(a)	Failure to securely fence and/ or keep gateways locked where required	350
11	6.4(b)	Failure to erect and maintain warning signs as required	350
12	6.4(c)	Failure to drain and keep drained any excavation to which the licence applies	350
13	6.4(f)	Failure to comply with conditions of licence imposed by the local government	500
14		All other offences not specified	200

26. Redesignation of divisions and clauses

- (1) Designations "1.1" through to "1.3", are redesignated "1.3" to "1.5".
- (2) Designations "3.1(5)(d)" through to "(o)" are redesignated "3.1(5)(e)" to "(p)".
- (3) Designations "3.1(5)(p)" through to "(r)" are redesignated "3.1(5)(r)" to "(t)".
- (4) Designations "6.2(e)" to "(f)" are redesignated "6.2(b)" to "(c)".
- (5) Designation "6.3(1)(d)(v)" is redesignated "6.3(1)(d)(iii)".

Dated: 27 April 2011.

The Common Seal of the Shire of York was affixed by the authority of a resolution of the Council in the presence of—

J. P. HOOPER, Shire President.
R. P. HOOPER, Chief Executive Officer.

LOCAL GOVERNMENT ACT 1995

SHIRE OF YORK

LOCAL GOVERNMENT PROPERTY AMENDMENT LOCAL LAW 2012

Under the powers conferred by the *Local Government Act 1995* and by all other powers enabling it, the Council of the Shire of York resolved on 16 April 2012 to make the following local law.

1. Citation

This local law is cited as the *Shire of York Local Government Property Amendment Local Law 2012*.

2. Commencement

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

3. Principal Local Law

In this Local Law, the *Shire of York Local Government Property Local Law* published in the *Government Gazette* on 17 January 2001 is referred to as the principal Local Law. The principal local law is amended.

4. Part 1 Clause 1.2 amended

(1) Delete the definitions “**boat**” and “**Regulations**”.

(2) Insert, in the appropriate alphabetical order the following—

“**Code**” means the Code of Practice for the Design, Operation, Management and Maintenance of Aquatic Facilities, as published by the Executive Director Public Health, from time to time, pursuant to the provisions of section 344A (2) of the Health Act;

“**closely related adult**” means a parent, grandparent, brother, sister, uncle or aunt;

“**costs**” of the local government include its administrative costs;

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

“**Health Act**” means the *Health Act 1911*, as amended;

“**Local public notice**” has the same meaning as in section 1.7 of the Act;

“**nuisance**” means—

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

(3) Amend the definition “**vehicle**”—

- (a) Delete paragraph (e);
- (b) In paragraph (c), insert “and” after the semicolon; and
- (c) In paragraph (d) delete “; and” and substitute “.”.

5. Part 1 Clause 1.4 amended

Delete subclause (2).

6. Part 1 New Clause 1.6

In the appropriate alphabetical order, insert—

1.6 Overriding power to hire or agree

Despite 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.

7. Part 2 Clause 2.7(1) amended

Delete paragraphs (e), (f) and (j).

8. Part 2 Clause 2.8 amended

- (1) In subclause (1)—
 - (a) delete paragraphs (e) and (h); and
 - (b) insert new paragraph (g)—
 - (g) bring, ride or drive an animal.
- (2) Delete subclause (3).

9. Part 3 Clause 3.2(5) amended

After “(2)”, insert—

or where the requirements of subclause (3) or (4) have not been satisfied.

10. Part 3 Clause 3.3 amended

After subclause (3) insert—

(4) The local government may, at any time, amend a condition of approval and the amended condition takes effect when written notice of it is given to the permit holder.

11. Part 3 Clause 3.6 amended

- (1) Delete “and variation of” from the clause heading.
- (2) In subclause (1) delete the number “(1)”.
- (3) Delete subclause (2).

12. Part 3 Clause 3.9 amended

In subclause (2), delete “mutatis mutandis” and substitute “as though it were an application for a permit”.

13. Part 3 Clause 3.12(1) amended

Delete “9” and substitute “7”.

14. Part 3 Clause 3.13(1) amended

Insert, in the appropriate alphabetical order, new paragraphs (p), (q) and (r)—

- (p) deposit or store any thing on local government property;
- (q) conduct or take part in any gambling game, context or bet, or offer to bet, publicly; or
- (r) erect, install, operate or use any broadcasting, public address system, loud speaker or other device for the amplification of sound on local government property.

15. Part 4 Clause 4.1 amended

- (1) In paragraph (a) insert “interferes with or” before “is”.
- (2) Delete paragraph “(b)” and insert—
 - (b) causes or is likely to cause a disturbance to nearby residents; or
 - (c) creates a nuisance.

16. Clause 4.4 amended

- (1) Designate existing paragraph as “(1)”.
- (2) Insert—
 - (2) a person found in contravention of subclause (1) may be removed from local government property by an authorised person or a member of the Police service.

17. Part 4 New Clause 4.6

- (1) Insert, in the appropriate alphabetical order—

4.6 Refusal of entry to local government property

- (1) An authorised person may refuse to allow entry, or suspend admission, to any local government property by any person who he or she believes 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.
- (3) A decision made under this clause is a decision to which clause 7.1 applies.

18. Part 5 Clause 5.1 amended

- (1) In subclause (1) delete “, may direct to leave or shall remove or cause to be removed from”.
- (2) In subclause (1)(a), delete subparagraph (i) and substitute the following—
 - (i) under the minimum age of that specified in the Code and who is unaccompanied by a responsible person over the age of that specified in the Code; or
 - (ii) under the minimum age of that specified in the Code and who is accompanied by a responsible person over the age of that specified in the Code where the responsible person is incapable of, or not providing, adequate supervision of, or care, for that person;

(3) Insert new subclause (2)—

(2) If a person referred to in paragraph (a) or (b) of subclause (1) is in a pool area, a Manager or an authorised person must—

(a) direct the person to leave; and

(b) if the person refuses to leave or fails to leave, remove the person or arrange for the person to be removed, from the pool area.

19. Part 5 New Clause 5.2

Insert in the appropriate numerical order new clause 5.2—

5.2 Consumption of food or drink may be prohibited

A person must not consume any food or drink in an area where consumption is prohibited by a sign.

20. Part 5 Clause 5.3 amended

(1) In subclause (1), insert new paragraph (c)—

(c) families—then where the toilet block or change room is being used by a family, only an immediate member of that family may use that entry of the toilet block or change room.

(2) Insert new subclause (2)—

(2) Paragraphs (a) and (b) of subclause (1) do not apply to a child under the age of 7 years that is accompanied by a closely related adult, or care giver, of the gender specified on the particular entry of the toilet block or change room as the gender that may use that entry of the toilet block or change room.

21. Part 5 New Clause 5.5

Insert in the appropriate numerical order new clause 5.5—

5.5 Use of Shower Facilities

A person may use a shower facility in change rooms on condition that—

(a) the facilities must be used by the person only for the purposes of cleansing and washing themselves;

(b) use of the facilities must be restricted to a maximum period of 15 minutes, or such lesser time as required by an attendant; and

(c) the facilities must not be used for the purposes of laundering or washing any clothing or other articles.

22. Part 5 Division 4 amended

Delete Division 4 and substitute—

Division 4—Aerodrome (Airports)

5.6 Access of animals restricted

(1) Subject to section 8 of the *Dog Act 1976* and section 66J of the *Equal Opportunity Act 1984*, a person shall not bring an animal on to an aerodrome unless—

(a) the animal is being air freighted from the aerodrome;

(b) the animal has been air freighted to the aerodrome; or

(c) the person is authorised to do so by the local government.

(2) A person in charge of an animal shall keep the animal under control and shall not allow it to wander at large on the aerodrome.

(3) If an animal is at any time on an aerodrome in contravention of subclause (2), in addition to the person specified in that subclause, the owner of the animal at that time commits an offence against subclause (2).

23. Part 7 deleted

Delete Part 7.

24. Part 8 deleted

Delete Part 8.

25. Part 9 amended

(1) In the heading, delete “APPEALS” and insert “REVIEW”.

(2) Delete clause 9.1 and insert—

Division 1 of Part 9 of the Act applies to a decision of the local government, under this local law, 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.

26. Clause 10.4 amended

Delete subclause (2).

27. Schedule 1 amended

Delete Schedule 1 and substitute the following—

Schedule 1—Prescribed offences MODIFIED PENALTIES

[cl. 9.4]

Clause	Description	Modified Penalty \$
2.4	Failure to comply with determination	125
3.6	Failure to comply with conditions of permit	125
3.13(1)	Failure to obtain a permit	125
3.14(3)	Failure to obtain permit to camp outside a facility	125
3.15(1)	Failure to obtain permit for liquor	125
3.16	Failure of permit holder to comply with responsibilities	125
4.2(1)	Behaviour detrimental to property	350
4.4	Under influence of liquor or prohibited drug	125
4.7(2)	Failure to comply with sign on local government property	125
5.3	Unauthorised entry to fenced or closed local government property	125
5.4	Enter toilet block or change room facility of opposite gender	125
6.1(1)	Unauthorised entry to function on local government property	125
9.1	Failure to comply with notice	250
	All other offences not specified	125

28. Schedule 2 New Part 2

After Part 1, insert—

PART 2—APPLICATION

2.1 Animals on local government property

(1) Unless authorised by a written law, or by a permit, a person must not—

(a) tether any animal to—

(i) a tree, shrub, tree guard, or

(ii) a wall or fence, unless it is an approved tethering point so indicated by a sign; or

(b) permit any animal to enter into any local government property.

(2) Subclause (1) does not apply to a guide dog used for the assistance of visually impaired persons.

2.2 Vehicles on local government property

(1) Unless authorised by a permit, a person must not take or cause a vehicle to be taken onto or drive on local government property unless—

(a) subject to subclause (3), the local government property is clearly designated as a road, access way or car park;

(b) the vehicle is driven by a local government employee, authorised person or contractor engaged by the local government, who is engaged in—

(i) providing a service or making a delivery in connection with the local government property; or

(ii) maintaining the local government property;

(c) the person is driving an emergency vehicle in the course of his or her duties; or

(d) the vehicle is a motorised wheel chair, and the driver of that vehicle is a disabled person.

(2) A person must not drive a vehicle or allow a vehicle to be driven on local government property at a speed exceeding 10 kilometres per hour, or in such a manner as to cause danger, inconvenience or annoyance to any person.

(3) Other than in accordance with paragraphs (b), (c) or (d) of subclause (1), a person must not drive a vehicle on local government property or part of it that is being used for a function for which a permit has been obtained unless permitted to do so by the permit holder or an authorised person.

2.3 Activities prohibited on local government property

(1) A person must not play or practise archery, pistol or rifle shooting on local government property except on land which is reserved by the local government for that purpose, or as otherwise provided by a permit.

(2) A person must not, on any local government property, use or ride a bicycle or wheeled recreational device, or skateboard—

(a) inside or on the curtilage to, a building;

(b) in a pool area.

(3) Unless authorised by a permit or by an authorised person, a person must not take a glass container—

- (a) within 5 metres of the edge of a swimming pool on local government property;
- (b) on to a children's playground; or
- (c) within any area of local government property where a sign prohibits glass containers.

2.4 Deposit of refuse, rubbish or liquid waste

A person must not, on local government property—

- (1) deposit or discard the waste or rubbish from any animal.
- (2) deposit or discard refuse, rubbish or liquid waste, except in a place or receptacle set aside by the local government for that purpose and subject to any conditions that may be specified on the receptacle or a sign in relation to the type of waste that may be deposited or other conditions.

29. Schedule 3 deleted

Delete Schedule 3.

30. Various references to Liquor Licensing Act amended

Amend the provisions listed in the Table as set out in the Table.

Part	Division	Clause	Delete	Insert
1		1.2	<i>Liquor Licensing Act 1988</i>	<i>"Liquor Control Act 1988"</i>
3		3.4(2)(h)	<i>Liquor Licensing Act 1988</i>	<i>"Liquor Control Act 1988"</i>
3		3.15(1)(a)	<i>Liquor Licensing Act 1988</i>	<i>"Liquor Control Act 1988"</i>
3		3.16(d)	<i>Liquor Licensing Act 1988</i>	<i>"Liquor Control Act 1988"</i>

31. Redesignation of Parts, Divisions and clauses

- (1) In clause 2.7, paragraphs "(g)" to "(i)" are redesignated "(e)" to "(g)".
- (2) In clause 2.8(1), paragraphs "(f)" to "(g)" are redesignated "(e)" to "(f)".
- (3) Clause "4.6" is redesignated "4.7".
- (4) In clause 5.1(a) subparagraphs "(ii)" to "(iii)" are redesignated "(iii)" to "(iv)".
- (5) Clauses "5.2" to "5.3" are redesignated "5.3" to "5.4".
- (6) "Part 9" is redesignated "Part 7".
- (7) Clause "9.1" is redesignated "7.1".
- (8) "Part 10" is redesignated "Part 8".
- (9) Clauses "10.1" to "10.4" are redesignated "8.1" to "8.4".
- (10) In clause 10.4, subclause "(3)" is redesignated "(2)".
- (11) "Part 11" is redesignated "Part 9".
- (12) Clauses "11.1" to "11.6" are redesignated "9.1" to "9.6".

32. Table of Contents amended

The Table of Contents is amended as follows—

- (1) After designation 1.5, insert "1.6 Overriding power to hire or agree".
- (2) Amend designation 3.6 by deleting "and variation of".
- (3) After designation 4.5, insert "4.6 Refusal of entry to local government property".
- (4) Designation "4.6" is redesignated "4.7".
- (5) After designation 5.1 insert "5.2 Consumption of food or drink may be prohibited".
- (6) Designations "5.2" to "5.3" are redesignated "5.3" to "5.4.;
- (7) In Part 5, delete all of Division 4 and substitute—
Division 4—Aerodrome (airport)
5.6 Access of animals restricted
- (8) Delete all of Part 7.
- (9) Delete all of Part 8.
- (10) Parts "9" to "11" are redesignated "7" to "9".
- (11) Designation "9.1" is redesignated "7.1".
- (12) Designations "10.1" to "10.4" are redesignated "8.1" to "8.4".
- (13) Designations "11.1" to "11.6" are redesignated "9.1" to "9.6".
- (14) Delete "SCHEDULE 3—GOLF COURSE RESERVE".

Dated: 16 April 2012.

The Common Seal of the Shire of York was affixed by the authority of a resolution of the Council in the presence of—

A. BOYLE, Shire President.
R. P. HOOPER, Chief Executive Officer.

LG302*

LOCAL GOVERNMENT ACT 1995

Shire of Kalamunda

**KEEPING AND CONTROL OF ANIMALS AND NUISANCE
AMENDMENT LOCAL LAW 2012**

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Kalamunda resolved on 16 April 2012 to make the following local law.

1. Citation

This local law may be cited as the *Shire of Kalamunda Keeping and Control of Animals and Nuisance Amendment Local Law 2012*.

2. Commencement

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

3. Principal local law

In this local law the *Shire of Kalamunda Keeping and Control of Animals and Nuisance Local Law 2011*, published in the *Government Gazette* on 5 September 2011 is referred to as the principal local law. The principal local law is amended.

4. Clause 3.1 amended

In clause 3.1 delete “not cause or permit” and insert “take reasonable and effective measures to prevent”.

5. Clause 3.2 amended

In clause 3.2—

- (a) delete “not cause or permit” and insert “take reasonable and effective measures to prevent”;
- (b) delete “to be” and insert “being”; and
- (c) delete “to escape” and insert “escaping”.

6. Clause 3.4 amended

In clause 3.4(2)(b) delete “, green garden materials”.

7. Clause 4.5 amended

In clause 4.5(1)—

- (a) delete paragraph (e); and
- (b) renumber the remaining paragraphs accordingly.

8. Clause 4.1 amended

In clause 4.1 after “*animal* includes any large animal, dog, cat,” insert—
restricted poultry,

9. Clause 4.7 amended

Delete clause 4.7 and insert—

4.7 Keeping of cats

- (1) A person may keep up to 3 cats without obtaining approval of the local government.
- (2) A person shall not keep more than 3 cats unless—
 - (a) it is for the purpose of boarding or breeding ; and
 - (b) the person has the approval from the local government in accordance with clause 4.8.
- (3) For the purpose of this clause, the number of cats kept does not include any cats less than 6 months in age.

10. Clause 4.8 amended

Delete clause 4.8 and insert—

4.8 Keeping of more than 3 cats for the purpose of breeding or boarding

- (1) An owner or occupier of land who intends to keep more than 3 cats and not more than 6 cats for the purpose of breeding must first obtain approval of the local government in accordance with clause 4.5.
- (2) An owner or occupier of land who intends to keep more than 3 cats for the purpose of boarding or more than 6 cats for the purpose of breeding, must first obtain approval of the local government to register a cattery in accordance with clause 4.10.

11. Schedule 2 amended

In schedule 2, column 1 of table delete the number 4.7 and insert 4.7(2).

Dated: 24 April 2012.

The common seal of the Shire of Kalamunda was affixed by authority of a resolution of Council in the presence of—

DONALD McKECHNIE, Shire President.
JAMES TRAIL, Chief Executive Officer.

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LOCAL GOVERNMENT ACT 1995

**MINDARIE
REGIONAL COUNCIL**

**WASTE FACILITY SITE
LOCAL LAW 2012**

LOCAL GOVERNMENT ACT 1995

MINDARIE REGIONAL COUNCIL

WASTE FACILITY SITE LOCAL LAW 2012

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SCHEDULE 1 — PRESCRIBED OFFENCES

LOCAL GOVERNMENT ACT 1995

MINDARIE REGIONAL COUNCIL

WASTE FACILITY SITE LOCAL LAW 2012

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Mindarie Regional Council resolved on the 19 April 2012 to make the following local law.

PART 1 — PRELIMINARY

1. Title Citation

This local law is the *Mindarie Regional Council Waste Facility Site Local Law 2012*.

2. Commencement

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

3. Repeal

The *Mindarie Regional Council Tamala Park Local Law 2002* published in the *Government Gazette* on 27 December 2002 is repealed.

4. Interpretations used in this local law

In this local law, unless the contrary intention appears—

ACROD sticker has the same meaning as given in the *Local Government (Parking for Disabled Persons) Regulations 1988*;

Act means the *Local Government Act 1995*;

authorised officer means a person authorised by the local government under section 9.10 of the Act, to perform any of the functions under this Local Law;

carriageway has the same meaning as it has in the *Road Traffic Code 2000*;

drive has the same meaning as in the *Road Traffic Act 1974*;

emergency vehicle has the same meaning as in the *Road Traffic Code 2000*;

local government means the Mindarie Regional Council;

litter has the same meaning as given in the *Litter Act 1979*;

parking area means an area designated for the parking of vehicles;

permission has a meaning given in clause 6;

protection in relation to the environment, includes conservation, preservation, enhancement and management thereof has the same meaning as given in the *Environmental Protection Act 1984*;

road has the same meaning as given in the *Road Traffic Act 1974*;

sign includes a traffic sign, inscription, road marking, mark, structure or device approved by the local government on which may be shown words, numbers, expressions or symbols, and which is placed on or near a thoroughfare or within a parking station or reserve for the purpose of prohibiting, regulating, guiding, directing or restricting the parking of vehicles;

site has the meaning given in clause 5;

traffic sign has the meaning given to it by the *Road Traffic Code 2000*;

unattended in relation to a vehicle, means that the driver has left the vehicle so that the driver is more than 3 metres from the closest point of the vehicle—

(a) restricting or regulating the use of roads, tracks or paths on the site; or

(b) prohibiting, restricting or regulating the use, standing or parking of vehicles on the site;

vehicle has the same meaning as given in the *Road Traffic Act 1974*.

5. Site

The site is all of the land being Lot 9504 on Plan 52070 known as 1700 Marmion Avenue, Mindarie, Western Australia.

6. Permissions

- (1) Where a provision of this local law states that an act or activity must not be done or carried on without permission, the reference to permission is to the permission of the local government.
- (2) For the purposes of any such provision, the local government may refuse permission or in the exercise of its power, it may grant permission—
 - (a) generally or for any specific instance; or
 - (b) on and subject to such terms and conditions as it considers appropriate including terms and conditions as to—
 - (i) the part of the site to which the permission applies;
 - (ii) the class or description of persons to whom the permission extends; or
 - (iii) the payment of any fee or charge whether before the act is done or the activity is commenced or otherwise.
- (3) The local government may amend or revoke a permission that has been granted.
- (4) A permission must be in writing and must be obtained before the act is done or the activity is commenced.
- (5) Where a permission has been given to a person subject to any condition, the permission is to be taken to have lapsed during any period when the condition was not observed or performed according to its tenor by that person.

PART 2—ACCESS TO THE SITE

7. Local government may restrict access

- (1) The local government may—
 - (a) close the site or part of the site; or
 - (b) close a road, track or path on the site,to pedestrians or vehicles or both for such period as the local government thinks fit.
- (2) Where the local government closes any part of the site including a road, track or path on the site, it shall erect signs to give effect to the closure.
- (3) The inscription on a sign erected or established under this clause operates according to its tenor.
- (4) A person must not, without written permission—
 - (a) enter the site or any part of the site that is for the time being closed under this clause; or
 - (b) drive a vehicle on a road, track or path that is for the time being closed under this clause.

8. Unauthorised entry

A person must not, without written permission, enter or attempt to enter the site except through an entrance provided by the local government for that purpose.

9. Defence

It is a defence for the defendant to prove that the act complained of was necessary to prevent or mitigate injury to a person or damage to property.

PART 3—REGULATION OF VEHICLES

10. Traffic signs and directions

- (1) The local government may erect or establish traffic signs on the site.
- (2) The inscription on a traffic sign operates according to its tenor.
- (3) A person must comply with—
 - (a) the inscription on a traffic sign erected or established under subclause (1); or
 - (b) a signal or direction by an authorised officer as to the use, parking or movement of a vehicle that is addressed to the person and that is reasonably required for the regulation of traffic on the site.

11. Parking

- (1) A person must not, without permission, park a vehicle, or cause or permit it to be parked, on the site—
 - (a) in a place, other than a parking area, that is off a carriageway;
 - (b) on part of a carriageway, if the parking of vehicles on that part of the carriageway is prohibited by a traffic sign;
 - (c) during a period when the person is not on the site, whether or not the vehicle is parked in a parking area;
 - (d) in a place that is marked with parking bays, unless it is entirely within the confines of a parking bay; or
 - (e) in an area designated for the parking of vehicles of people with a disability, unless—
 - (i) a person with a disability is the driver of, or a passenger in the vehicle; and
 - (ii) an ACROD sticker is displayed in a prominent position on the vehicle.

(2) Any person, who commits a parking offence under this local law is liable, upon conviction, to a penalty not exceeding \$1,000, and if the offence is of a continuing nature, to an additional penalty not exceeding \$100, for each day or part of a day during which the offence has continued.

12. Emergency vehicles

In an emergency situation a driver of an emergency vehicle may park or stop that emergency vehicle at any place on the site at any time when it is expedient and safe to do so.

PART 4—PROTECTION OF THE ENVIRONMENT

13. Protection of flora and fungi

(1) In this clause—

flora means any form of plant life including any part, seeds or spores;

fungi means yeast, mold, smuts, mushrooms and toadstools; and

take includes gather, pluck, cut, pull up and dig up.

(2) A person must not, without written authorisation under another written law, intentionally damage, destroy or take any flora or fungi living or dead on the site.

(3) A person must not, without written authorisation, intentionally remove any stake-supporting label on or near—

(a) protective fencing;

around or near;

(b) any flora or fungi living or dead on the site.

14. Protection of fauna

(1) In this clause—

fauna means any living thing that is not a human being or a plant and the eggs and immature stages of any such living thing; and

take includes remove, catch, trap and snare.

(2) A person must not, without written authorisation under any other written law, injure, take, or interfere with any fauna on the site.

(3) A person must not, without written authorisation under any other written law, intentionally carry or have in the person's possession on the site, a trap, cage, net, or other device for taking or transporting fauna.

(4) A person must not, without written authorisation under any other written law, intentionally lay or place any trap, net or other device for the taking of fauna on the site.

(5) A person must not, or without written authorisation under another written law, intentionally interfere with or destroy any nest or habitat of fauna on the site.

15. Protection of rocks, soil, etc.

A person must not, without written authorisation under any other written law—

(a) intentionally remove, damage, interfere with or mark any rock or other geological material on the site;

(b) intentionally remove or displace soil on the site; or

(c) intentionally otherwise damage or interfere with the natural surface of the site.

16. Litter

(1) In this clause—

litter has the same meaning as in the *Litter Act 1979*.

(2) A person must not, —

(a) deposit litter, or cause litter to be deposited, on the site unless the litter is deposited in a litter receptacle; or

(b) deposit litter, or cause litter to be deposited, in a litter receptacle on the site if the litter was not generated on the site.

(3) Any person found littering under this local law is liable, upon conviction, to a penalty not exceeding \$1,000, and if the offence is of a continuing nature, to an additional penalty not exceeding \$100, for each day or part of a day during which the offence has continued.

PART 5—CONTROL OF CERTAIN ACTIVITIES

17. Unauthorised structures

(1) In this clause—

structure means a building, tent, shelter, fence or other thing that is fixed permanently or temporarily, to land or to anything that is fixed to land.

(2) A person must not, without permission, erect or place a structure on the site.

18. Unauthorised trading, etc.

- (1) A person must not, without written authorisation—
- (a) sell or hire, any goods or services;
 - (b) provide any service or conduct any business or activity for fee or reward;
 - (c) sell, distribute, or offer or expose for sale or distribute any printed or written material on the site.

19. Commercial photography

A person must not, without permission, take still or motion pictures on the site by photographic or electronic means for—

- (a) the purpose of public display, broadcast or transmission; or
- (b) use in the promotion or sale of goods or services.

20. Unauthorised advertising.

A person must not, without written permission—

- (a) place any notice, advertisement or document on any structure, object or natural surface on the site;
- (b) paint, mark or deface any structure, object or natural surface on the site.
- (c) cause any of the acts prohibited by paragraph (a) or (b) to be done by another person.

21. Lighting fires etc.

A person must not, without written permission—

- (a) light a fire; or
- (b) use a gas barbecue or other cooker, on the site.

22. Explosive devices

A person must not, without written permission, possess, throw, set off or ignite a firework, sparkler or other explosive device on the site

23. Camping

(1) In this clause—

camping means to stay or lodge, whether in a tent, temporary shelter, vehicle or otherwise.

(2) A person must not camp on the site written authorisation.

24. Unauthorised removal of property

- (1) A person must not remove or disturb any property on the site without written authorisation.
- (2) Subclause (1) does not apply to the owner of the property or to any person legally entitled to possession of the property.

PART 6—ENFORCEMENT

25. Offences

- (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 \$1,000, and if the offence is of a continuing nature, to an additional penalty not exceeding \$100, for each day or part of a day during which the office has continued.

26. 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.

**Schedule 1
PRESCRIBED OFFENCES**

[clause 26]

Modified Penalties

Item Number	Clause No.	Nature of offence	Modified Penalties \$
1	7(4)(a)	Enter the site or any part of the site that is closed for the time being; or driving a vehicle on a road, track or path that is closed for the time being.	200
2	8	Enter the site other than through an entrance without permission	200

Item Number	Clause No.	Nature of offence	Modified Penalties \$
3	11(a to d)	Park a vehicle, or cause or permit it to be parked, on the site without permission. Park in a place, other than a parking area, that is off a carriageway. Park on part of a carriageway, if the parking of vehicles on that part of the carriageway is prohibited by a traffic sign. Park during a period when the person is not on the site, whether or not the vehicle is parked in a parking area. Park in a place that is marked with parking bays, unless it is entirely within the confines of a parking bay	100
4	11(e)	Park a vehicle or vehicles in an area designated for a person or persons with a disability, unless the person or persons with a disability is the driver of, or a passenger in, the vehicle and an ACROD sticker is displayed in a prominent position on the vehicle.	100
5	13(1)	Damage, destroy or take away flora without permission	200
6	14(1)	Injure, take, or interfere with any fauna without permission	200
7	16(1)	Deposit litter other than in a litter receptacle	100
8	20	Sticking of bills, advertising etc without permission	100
9	21	Light a fire or use a cooker without permission	200
10	24	Disturb or remove property from the site without permission	200

Dated 26 April 2012.

The Common Seal of Mindarie Regional Council was affixed pursuant to a resolution of the Council in the presence of—

RUSSEL FISHWICK, Chairman.
BRIAN CALLANDER, Chief Executive Officer.