

**LG301\***

**LOCAL GOVERNMENT ACT 1995**

*City of Cockburn*

(LOCAL GOVERNMENT ACT) AMENDMENT NO. 2 LOCAL LAW 2012

Under the powers conferred by the *Local Government Act 1995* and all other powers enabling it, the City of Cockburn resolved on 14 June 2012 to adopt the following local law.

**1. Citation**

This local law may be cited as the *City of Cockburn (Local Government Act) Amendment No. 2 Local Law 2012*.

**2. Commencement**

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

**3. Principal Local Laws**

*The City of Cockburn (Local Government Act) Local Laws 2000* published in the *Government Gazette* on 9 October 2000, and as published and amended in the *Government Gazette* on 13 November 2001, 15 November 2002, 26 September 2003, 25 November 2003, 27 July 2004, 17 May 2005, 11 January 2008, 10 December 2010 and 16 December 2011 is referred to as the Principal Local Law. The Principal Local Law is amended.

**4. Part I—Preliminary amended**

In clause 1.6 (1) delete the definition of “**Nuisance**” and insert—

“**Nuisance**” means—

- (a) any activity, thing, condition, circumstance or state of affairs which is injurious or dangerous to the health of a person of normal susceptibility or which has a disturbing effect on the state of reasonable, physical, mental or social well-being of a person;
- (b) anything which interferes with or is likely to interfere with the enjoyment or safe use by a person of any public place; or
- (c) anything done on privately owned land or a public place which unreasonably detracts from or interferes with the enjoyment, safe use or value of land owned by a person.

**5. Part II Division 1 Preliminary amended**

In clause 2.1 delete the definitions of “**beehive**”, “**cattery**” and “**Code of Practice**” and insert the following definitions in alphabetical order—

**beehive** means a moveable or fixed structure, container or object in which bees are kept;

**Beekeepers Act** means the *Beekeepers Act 1963*;

**cattery** means any premises where four or more cats are kept, boarded, trained or bred;

**Code of Practice** means the Code of Practice—Pigeon Keeping and Racing in Western Australia, International Standard Book Number (ISBN 7307 6330 7), published March 2003 as amended from time to time and published by the Department of Local Government.

**5.2 Clause 2.12 amended**

In clause 2.12 delete subclause (c) and insert—

- (c) a report from an acoustic consultant verifying that the various plant, machinery and operational noise levels, including noise from dogs, will comply with the requirements of the *Environmental Protection (Noise) Regulations 1997* or their equivalent in force from time to time.

**5.3 Clause 2.26 amended**

In clause 2.26 delete subclauses (a) and (b) and insert—

- (a) not keep a large animal unless approval is granted by the City’s Planning Services.;
- (b) not keep a large animal on any land less than 2020m<sup>2</sup> in area; and
- (c) not allow any large animals to be loose in any yard, paddock or place, being portion of such premises, unless due provision is made to prevent large animals from approaching within 15 metres of any dwelling, shop, church or any premises where food is stored, manufactured or sold.

**5.4 Clause 2.27 amended**

In clause 2.27 delete subclause (2) and insert—

(2) A person must register the miniature horse with the local government annually and the approved annual registration fee must be paid.

**5.5 Clause 2.27 amended**

In clause 2.27 insert subclause (3)—

(3) The occupier of any premises where a miniature horse is kept shall—

- (a) only keep a sterilised animal and retain written proof of its sterilisation;
- (b) confine the animal on the property at all times; and
- (c) ensure the animal does not cause a nuisance to any neighbour regarding noise, dust or odour.

**5.6 Clause 2.29 amended**

In clause 2.29 delete subclause (a) and insert—

- (a) keep or stable, any horse within the district except in an area identified as a rural zone or resource zone unless the stable is registered under these local laws; or

**5.7 Clause 2.39 amended**

In clause 2.39 delete subclause (c) and insert—

- (c) all poultry is kept in a properly constructed and securely fastened structure or enclosure;

**5.8 Clause 2.39 amended**

In clause 2.39 delete subclause (f) and insert—

- (f) all enclosures or cages within which poultry are kept shall be maintained at all times in a clean condition and shall be cleaned or otherwise dealt with in a way directed by an authorised person.

**5.9 Clause 2.42 amended**

In clause 2.42 delete the heading of “Cattery” and insert “Catteries”.

**5.10 Clause 2.43 amended**

In clause 2.43 (2) delete “effected” and insert “affected”.

**5.11 Clause 2.44 amended**

In clause 2.44 delete subclause (b) and insert—

- (b) the area of the enclosure adjacent to any shelter or group of shelters forming a cattery shall be no less than 1.7m<sup>2</sup> per cat;

**5.12 Clause 2.50 amended**

In clauses 2.50 (3) and (3)(d) delete “Principal Environmental Health Officer” and insert “Environmental Health Services Manager”;

**5.13 Clause 2.54 amended**

Delete clause 2.54 and insert—

- 2.54 The local government or an authorised person may order an owner or occupier of a house or vacant land or land upon which there are trees or structures in or on which pigeons are, or are in the habit of nesting or perching, to take adequate steps to prevent them continuing to do so.

**6. Division 8 amended**

**6.1 Clause 2.56 amended**

Delete clause 2.56 (1) and insert—

- 2.56. (1) A person shall not keep a beehive in a residential area or a resource zone without the written approval of the local government or an authorised person.

**6.2 Clause 2.57 amended**

In clause 2.57—

- (a) delete “2.34” and insert “2.56”; and
- (b) delete paragraph (a) and insert—
  - (a) is registered as a bee keeper under Section 8 of the *Beekeepers Act 1963*.

**6.3 Clause 2.58 amended**

In clause 2.58 delete subclauses (1) and (2) and insert—

- (1) A person shall not keep, or permit the keeping of, wild hives and/or wild bees;
- (2) Where the local government or an authorised person forms the opinion that wild hives or wild bees are being kept on residential land or any other land within the district, a notice may be served on the owner or occupier of the land who shall within the time specified in the notice remove the bees and/or hives from the land.

### **6.5 Clause 2.59 amended**

In clause 2.59 amend clause numbering from “2.36” to “2.58”.

### **6.6 Insert Division 9—Limitations on Number of Cats**

#### **6.7 Insert clause 2.60—**

- 2.60 (1) A person shall not keep more than three cats on any premises;
- (2) Where the local government or an authorised person is satisfied that a person is keeping more than three cats on any premises, the authorised person may by notice in writing direct the owner or occupier to reduce the number of cats to three or less within a time specified in the notice;
- (3) An owner or occupier who does not comply with a notice served under Local Law 2.60 (2) commits an offence.

### **7. Part V Division 3 amended**

#### **7.1 Clause 5.4 amended**

After clause 5.4(1) insert “(2)” and “(3)”—

- 5.4 (2) Where the local government or an authorised person is satisfied that as a result of such an undertaking or activity—
- (a) a nuisance exists; or
  - (b) the escape of smoke, air borne particles, fumes, odours, dust or other emissions in such quantity or of such nature as to cause a nuisance to any person exists; or
  - (c) the escape of any matter which may enter surface or ground waters exists; or
  - (d) an inadequate management of waste water exists; or
  - (e) an inadequate management of other solid or liquid waste exists;
- the authorised person may by notice in writing direct the owner or occupier to take such actions necessary to abate the nuisance within a time specified in the notice; or
- to prevent or minimise the escape of the smoke, air borne particles, fumes, odours, dust or other emissions or correct the inadequate management, as the case may be, within the time specified in the notice.
- 5.4 (3) An owner or occupier who does not comply with a notice served under clause 5.4(2) commits an offence.

#### **7.2 Division 4 amended**

Delete Division 4 and insert a new Division as follows;

### **Division 4—Sand Drift and Dust Management**

#### **7.3 Insert clause 5.9—Abatement of Sand Drift or Dust—**

- 5.9. An owner or occupier of land or premises, from which any sand or dust is released or escapes, whether by means of wind, water or any other cause, commits an offence.

#### **7.4 Insert clauses 5.10 and 5.11—Dust Management—**

- 5.10 (1) An owner or occupier who intends, for any purposes, to undertake any works or activities involving the clearing, excavation or filling of any land or premises, and having the potential to cause sand drift or dust release from the land or premises, shall—
- (a) submit an application for approval of a Dust Management Plan, which shall be lodged in a format approved by the local government;
  - (b) obtain written approval of the Dust Management Plan before commencement of any such works or activities.
- (2) An authorised person may apply to the approval of a Dust Management Plan such conditions regarding the control of dust on the premises as is deemed fit.
- (3) An owner or occupier who commences such works or activities, without obtaining a written approval for a Dust Management Plan, commits an offence.
- (4) If an owner or occupier fails to comply with the Dust Management Plan approval or any associated approval conditions as issued pursuant to clause 5.10(2)—
- (a) the owner or occupier commits an offence; and,
  - (b) where, as a result of that non-compliance, sand or dust has been released from the site, the works or activity shall cease until the local government is satisfied that the non-compliance is rectified.
- 5.11 (1) Where the local government is of the opinion that there is a high risk of sand or dust release as a result of the use of any premises, or from a works

or activity being carried out or likely to be carried out on any land or premises, the local government may cause to be served on the owner or occupier a notice providing that the use, works or activity may only occur subject to conditions, which may include a dust management plan, and the notice shall specify the conditions.

(2) If an owner or occupier fails to comply with a notice issued pursuant to clause 5.11(1)—

- (a) the owner or occupier commits an offence; and,
- (b) where, as a result of that non-compliance, sand or dust has been released from the site, the works or activity shall cease until the local government is satisfied that the non-compliance is rectified.

**7.5 Insert clause 5.12 — Remediation of Dust or Sand Release —**

5.12 (1) The local government may serve on an owner or occupier of any land or premises in the district, from which any sand or dust has been released or has escaped, a notice requiring the owner or occupier to clean up and make good any damage resulting from that release or escape, and where the notice specifies a time and date, the requirements set out in the notice shall be completed by the time specified therein.

(2) If an owner or occupier fails to comply with a notice issued pursuant to clause 5.12(1)—

- (a) the owner or occupier commits an offence; and,
- (b) the local government may undertake or cause to be undertaken that work.

**7.6 Insert clauses 5.13, 5.14 and 5.15 — Terms of Notices Relating to Dust —**

5.13 Where the local government undertakes or causes to be undertaken any work, or carries out or causes to be carried out any conditions, it may cause to be given to the owner or occupier of the land or premises written notice of the amount expended by the local government in carrying out that work.

5.14 The amount specified in the notice referred to in Clause 5.13 must be paid to the local government within 14 days of the service of the notice, or otherwise according to terms agreed between the local government and the owner or occupier, and, if the amount specified is not paid within the prescribed time from the service of the notice, the local government may recover it, as well as the costs of proceeding and interest thereon, in a Court of competent jurisdiction.

5.15 (1) Where a notice is served on the owner or occupier of any land or premises and the owner or occupier satisfies the local government within 14 days of the date of the giving of the notice that

- (a) it was not responsible for the conduct in respect of which the notice was issued under clauses 5.8 or 5.12, or the use, works or activity in respect of which conditions were imposed under clauses 5.10 or 5.11, as the case may be;
- (b) it took all reasonable precautions to prevent the conduct or cause the conditions to be complied with, as the case may be; and
- (c) where another person was responsible for the conduct or non-compliance with the conditions, as the case may be, it identifies the person responsible sufficiently to enable the notice to be issued to that person, the local government may cancel the notice.

5.15 (2) Without limiting the generality of paragraph (a) of subclause (1), an owner or occupier will be responsible for the conduct and compliance with conditions when

- (a) in the case of conduct, the owner, or owner's representative with respect to management of the premises, or occupier was aware of the conduct, or gave their consent or approval.
- (b) in the case of conditions, the owner, or owner's representative with respect to management of the premises, or occupier was aware of the use, works or activity on which conditions were imposed.

5.15 (3) If the local government cancels the notice it may within 28 days from the date of cancellation cause a notice (the "second notice") to be issued to the person identified by the person to whom the notice was originally given as being responsible for the conduct or non-compliance with conditions in respect of which the notice was issued.

5.15 (4) Where the second notice is issued pursuant to subclause (3), the provisions of the Division shall apply to the second notice on and from the date of service of the notice.

**7.7 Insert clause 5.16 — Power of entry —**

5.16 The local government may lawfully enter any upon any land or premises for the purposes of giving effect to, or carrying out, any provisions of this Division.

**8. Part VII Division 1 amended**

**8.1 Clause 7.1 amended**

In clause 7.1 delete the definition of “Responsible Officer” and insert —

“**Responsible Officer**” means the Environmental Health Services Manager or the Waste Services Engineer.

**9. Schedule 2 MODIFIED PENALTIES amended**

**9.1 Part II — Animals amended**

Insert after clause 2.57 (a) the following new penalties —

2.60. (1) Keeping more than three cats on any premises .....	100.00
2.60 (3) Failing to comply with a notice served under 2.60 (1).....	100.00

**9.2 Part V — Dangerous and Offensive Things amended**

Delete penalty clauses “5.9 (1)”, “5.11”, and “5.12” and insert the following clauses—

5.9 Failure to abate sand drift or dust nuisance.....	500.00
5.10 (3) Commencing work without approval of Dust Management Plan.	500.00
5.10 (4) Failure to comply with Dust Management Plan approval conditions .....	500.00
5.11 (2) Failure to comply with conditions of notice .....	500.00
5.12 (2) Failure to comply with notice to make good damage from dust or sand release.....	500.00

Dated: 18 June 2012.

The Common Seal of the City of Cockburn was affixed under the authority of a resolution of Council in the presence of—

LOGAN K. HOWLETT, Mayor.  
STEPHEN CAIN, Chief Executive Officer.