

# CONSOLIDATED LOCAL LAW



## CITY OF MANDURAH

### JETTIES, WATERWAYS AND MARINA LOCAL LAW 2010

(Principle Local Law)

Gazette Number 53. 4 April 2011

### JETTIES, WATERWAYS AND MARINA AMENDMENT LOCAL LAW 2011

Gazette Number 6. 10 January 2012

### JETTIES, WATERWAYS AND MARINA AMENDMENT LOCAL LAW 2018

Gazette Number 64. 10 May 2019

**This Local Law is approved to apply outside the district see Government Gazette: 51, 18 April 2019:**

LOCAL GOVERNMENT ACT 1995  
*City of Mandurah*  
EXTENSION OF AREA OF APPLICATION OF LOCAL LAW  
Department of Local Government, Sport and Cultural Industries.  
DLGSC: MH7-47

It is hereby noted for public information that the Governor has approved under section 3.6 of the *Local Government Act 1995* of the making of the *City of Mandurah Jetties, Waterways and Marina Amendment Local Law 2018* to the extent that it will apply outside the district of the City of Mandurah.  
DUNCAN ORD, Director General.

#### PLEASE NOTE:

This version of the City of Mandurah Jetties, Waterways and Marina Local Law 2010 combines the:

- Principle
  - City of Mandurah Jetties, Waterways and Marina Local Law 2010; and
- Amendment:
  - City of Mandurah Jetties, Waterways and Marina Amendment Local Law 2011;
  - City of Mandurah Jetties, Waterways and Marina Amendment Local Law 2018.

**LOCAL GOVERNMENT ACT 1995**

CITY OF MANDURAH

**JETTIES, WATERWAYS AND MARINA LOCAL LAW 2010**

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# LOCAL GOVERNMENT ACT 1995

## CITY OF MANDURAH

### JETTIES, WATERWAYS AND MARINA LOCAL LAW 2010

Under the powers conferred by the *Local Government Act 1995* and under all other powers, the Council of the City of Mandurah resolved on 22 March 2011 and subsequently amended on 14 December 2011 and 30 April 2019 to adopt the following local law.

#### PART 1—PRELIMINARY

##### 1.1 Citation

This local law may be cited as the *City of Mandurah Jetties, Waterways and Marina Local Law 2010*.

##### 1.2 Interpretation

In this local law unless the context otherwise requires—

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

**animal** means any animal other than a dog;

**AS/NZS 1158** means the standard called “Lighting for roads and public spaces” published by Standards Australia;

**AS/NZS 1163** means “Cold-formed structural steel hollow sections” published by Standards Australia;

**AS/NZS 2159** means the standard called “Piling—Design and installation” published by Standards Australia;

**AS/NZS 3004** means the standard called “Electrical installations—Marinas and Recreational Boats” published by Standards Australia;

**AS/NZS 3191** means the standard called “Electric flexible cords” published by Standards Australia;

**AS/NZS 3962** means the standard called “Guidelines for design of marinas” published by Standards Australia;

**AS/NZS 3678** means “Structural Steel—Hot-rolled plates, floorplates and slabs” published by Standards Australia;

**AS/NZS 3679.1** means the standard called “Structural steel—Hot-rolled bars and sections” published by Standards Australia;

**AS/NZS 3679.2** means “Structural steel—Welded I sections” published by Standards Australia;

**authorised person** means a person appointed by the Council 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;

**boat lifter** means any mechanical or electrical device used to lift a boat out of the water;

**boat ramp** means a place where vehicles equipped with trailers launch and retrieve recreational vessels;

**CEO** means the Chief Executive Officer of the City of Mandurah;

**commercial vessel** has the meaning given to it by the *Western Australian Marine Act 1982*;

**complying drop net** means a drop net that—

- (a) is not more than 1.5 metres at its widest point; and
- (b) is so constructed so that when set—
  - (i) its side or sides collapse so that its netting lies flat on the ground; and
  - (ii) its netting is not capable of ensnaring or entangling a fish;

**cost** of the City includes its administrative costs;

**district** means the district of the City of Mandurah;

**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*

**fishing net** means any fishing net other than a—

- (a) hand scoop or hand dip net;
- (b) prawn hand trawl net; or
- (c) complying drop net;

**gangway** means a structure including a removable ladder, ramp or footway that provides pedestrian access between a fixed jetty or the shore and a pontoon, floating jetty or a vessel;

**jetty** means—

- (a) any jetty, pier, wharf, quay, walkway, grid, slip, landing place, stage, platform (other than a platform that is a vessel for the purposes of the *Western Australian Marine Act 1982*) over any waters, and
- (b) any ramp or supporting structure for the launching, landing or retrieving of a vessel;

**jetty or pontoon envelope** means the area designated by the local government within a waterway lot within which the construction of a jetty or pontoon and associated gangway is permissible;

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

**litter** has the meaning given to it by the *Litter Act 1979*;

**marina** means a complex of interconnecting pens, and all jetties and walkways, together with any adjoining waterway, which are under the care, control or management of the local government;

**moor** means to secure a vessel to a mooring;

**mooring** means something to which a vessel may be moored and includes an anchor, stake or mooring pile;

**mooring envelope** means the area of a waterway lot designated for the mooring of vessels;

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

**nuisance** means—

- (a) an activity or condition which is harmful or annoying and which gives rise to legal liability in the tort of public or private nuisance at law; or
- (b) an unreasonable interference with the use and enjoyment by a person of his or her ownership or occupation of land; or
- (c) interference which causes material damage to land or other property on the land affected by the interference;

**owner** in relation to any vessel, vehicle, cargo, property or other chattel, means the person who is the lawful owner of the person entitled to possession of the same if that is not the lawful owner;

**pen** means a specific area within a marina for the mooring of a vessel and does not include any adjacent jetty and walkway;

**pollutant** means any noxious, polluting 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, fish products including fish carcasses (but excluding bait), shells, offal or litter;

**pontoon** means a floating platform or similar structure providing landing, docking or mooring facilities;

**private jetty** means any jetty other than a public jetty;

**public jetty** means any jetty under the care, control or management of the local government;

**reasonable notice** in regard to intended entry, means notice containing the purpose or purposes for which entry is required and giving a notice period of not less than 24 hours in accordance with section 3.32 of the Act;

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

**sign** includes any notice, mark, structure or device on which may be shown words, numbers, expressions, colours or symbols;

**State Authority** means the relevant Statutory Authority responsible for the designation of mooring envelopes;

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

- (a) a barge, lighter, floating restaurant, dinghy, commercial vessel, tender vessel or other floating structure; and
- (b) 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 a jetty or for storage;

**waterway** means any area of water under the care, control and management of the local government or a person authorised by the local government to undertake such care, control or management on behalf of the local government;

**waterway-edge wall** means any revetment wall separating the land filled part of a lot adjoining a waterway from the submerged part of such a lot together with any associated retaining wall; and

**waterway lot** means any privately owned land or lot adjoining a waterway.

*[Clause 1.2 amended by Government Gazette No. 6 of 2012 and No.64 of 2019]*

### **1.3 Repeal**

Division 5 of Part III of the City of Mandurah Consolidated Local Laws published in the Government Gazette of 13 February 1998 is repealed.

### **1.4 Application**

This local law applies throughout the district.

### **1.5 Commencement**

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

## **PART 2—USE OF WATERWAYS**

### **2.1 Swimming in waterway**

- (1) No person shall swim in a waterway so as to cause a nuisance.
- (2) Notwithstanding subclause (1) a person—
  - (a) may swim in that portion of a waterway that is within 25 metres of a beach or foreshore provided the beach or foreshore has not been designated or set aside as a locality where swimming or bathing is prohibited;
  - (b) may swim in any area of a waterway that has been designated or set aside by the local government by signs or otherwise as a swimming area; and
  - (c) may swim in any waterway with the written consent of an authorised person.

### **2.2 Fishing in waterways**

A person shall not—

- (a) fish in a waterway from a vessel;
- (b) use a net for the purpose of fishing in a waterway;
- (c) use a gidgee or speargun; or
- (d) fish from a private jetty or private land, so as to cause a nuisance.

### **2.3 Users of waterway not to cause a nuisance**

No person shall moor their vessel or otherwise use a waterway in such a manner as to cause a nuisance to other users of the waterway.

### **2.4 Maintenance of vessels**

A person shall not clean, repair or maintain a vessel moored in a waterway, pen, jetty or mooring envelope in such a manner as to cause a nuisance to other users of the waterway.

### **2.5 Storage of fuels**

A person shall not store fuel—

- (a) on a jetty;
- (b) on any other structure built on or over the water and that is attached to the land; or
- (c) otherwise within 20 metres of the high watermark,

except in a fuel storage facility constructed with the approval of an authorised person.

*[Clause 2.5 amended by Government Gazette No.64 of 2019]*

### **2.6 Pollution of waterway**

A person shall not deposit or release or permit to be deposited or released any pollutant into a waterway whether from a vessel, jetty, bridge, pen or private land.

## **2.7 Restrictions on vessel anti-fouling paint**

Any vessel that is coated with anti-fouling paint containing any substance or additive compound that has been altered or is applied at variance with manufacturers or government specification, which is known to bio-accumulate toxins or contain residual chemicals that risk being harmful to the marine environment, is prohibited from using the waterways or entering a marina.

## **2.8 Application of signs**

- (1) A sign that—
- (a) was erected by the local government or a person authorised by the local government prior to the coming into operation of this local law; and
  - (b) relates to the use of a waterway, jetty or marina,
- shall be deemed for the purposes of this local law to have been erected by the local government under the authority of this local law and shall have effect as such.
- (2) Where the use of a vessel in a waterway is regulated by a sign, then the sign shall for the purposes of this local law apply to that part of the waterway which—
- (a) lies beyond the sign; and
  - (b) lies between the sign and the next related sign beyond that sign.
- (3) No person shall use a vessel in a waterway contrary to a sign.

*[Clause 2.8 amended by Government Gazette No.64 of 2019]*

## **PART 3—MOORING OF VESSELS**

### **3.1 Application of part**

This Part applies to the mooring of any vessel whether on a waterway, pen, jetty or within a marina.

### **3.2 Vessels moored within mooring envelope**

Where a vessel is moored within a mooring envelope it must be wholly contained within the length and width of that mooring envelope.

### **3.3 Mooring lines**

The owner of a vessel must—

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

Length of vessel	Mooring line diameter
Up to 5 m	Not less than 12 mm
5 m to 8 m	Not less than 16 mm

8 m to 12 m	Not less than 20 mm
12 m to 15 m	Not less than 24 mm; and

- (b) periodically inspect the mooring lines and replace any mooring line which is unfit for its intended purpose so as to ensure compliance with the requirements set out in this clause.

*[Clause 3.3 amended by Government Gazette No.64 of 2019]*

### **3.4 Inspection of mooring lines by authorised person**

Where an authorised person considers the mooring line of a vessel may be faulty, or not compliant with the requirements of clause 3.3(a), the authorised person may issue a written direction to the owner of the vessel requiring within a specified time frame—

- (a) the replacement of any mooring line; or
- (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.

*[Clause 3.4 amended by Government Gazette No.64 of 2019]*

### **3.5 Connection of moored vessels to electrical power supply**

The owner of a moored vessel must not connect or permit the connection of the vessel to the mains power supply of a dwelling unless—

- (a) the power supply of the vessel complies with AS/NZS 3004;
- (b) the power cords used to connect the power supply of the vessel to the mains power supply of the dwelling comply with AS/NZS 3191; and
- (c) the power cords or leads used to connect the vessel to the mains power supply of the dwelling do not enter the water and do not otherwise create a hazard for those in the vicinity of the vessel.

*[Clause 3.5 amended by Government Gazette No.64 of 2019]*

### **3.6 Mooring in waterway**

- (1) No person shall not moor or anchor a vessel in a waterway so as to —
  - (a) obstruct the waterway; or
  - (b) cause a nuisance to other users of the waterway.
- (2) A person shall not moor or anchor a vessel in a waterway for more than four hours in any seven day period if and while the vessel is moored or anchored to a public foreshore.

*[Clause 3.6 amended by Government Gazette No.64 of 2019]*

## PART 4—USE OF PUBLIC JETTIES

### 4.1 Use of a public jetty

- (1) A person shall not land at, use or enter a public jetty except in accordance with this local law.
- (2) A person shall not land at, use or enter a public jetty which is—
  - (a) under construction or repair; or
  - (b) closed under section 6 of the *Jetties Act 1926* or any other written law, unless that person is engaged in the construction or repair of that public jetty in accordance with the written authorisation of an authorised person.

*[Clause 4.1 amended by Government Gazette No.64 of 2019]*

### 4.2 Mooring of vessels

- (1) A person shall not moor or fasten a vessel to a public jetty or allow a vessel to remain alongside or so that any part of the vessel is within 3 metres of the public jetty, unless—
  - (a) the vessel is in distress such that repairs are required and then only to effect the minimum repairs necessary to enable the vessel to be moved elsewhere;
  - (b) it is for recreational purposes, and then not for a continuous period exceeding 4 hours without the prior written consent of an authorised person;
  - (c) where the vessel is being used for commercial purposes, the person has first obtained the approval of an authorised person and paid any required fee to the local government for such mooring or making fast; or
  - (d) the mooring of the vessel is authorised or permitted by the local government either by way of a sign affixed by the local government to the public jetty or by written consent of an authorised person.
- (2) A person shall not—
  - (a) moor or fasten a vessel to a public jetty or any part of the jetty except to such mooring piles, ring bolts or other fastenings as are provided;
  - (b) permit a vessel to remain alongside a public jetty unless the vessel is so moored or fastened; or
  - (c) moor or fasten a vessel to a public jetty whilst the vessel is under any means of propulsion.
- (3) For the purpose of this clause 4.2, a vessel is considered to remain alongside or adjacent to a public jetty if any part of the vessel remains within 3 metres of the jetty for more than two hours in any 24 hour period.

*[Clause 4.2 amended by Government Gazette No.64 of 2019]*

#### **4.3 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 public jetty, upon being directed to do so by an authorised person.

#### **4.4 Vehicles on public jetties**

A person shall not—

- (a) drive or allow a vehicle to remain on a public jetty (other than a boat ramp) without the prior written consent of an authorised person; or
- (b) ride a bicycle, or allow a bicycle to remain, on a public jetty;

except for an emergency vehicle responding to an emergency

*[Clause 4.4 amended by Government Gazette No.64 of 2019]*

#### **4.5 Fishing from public jetties and bridges**

A person shall not—

- (a) fish from a public jetty or bridge so as to obstruct or interfere with the free movement of a vessel approaching, passing or leaving the jetty or bridge or so as to cause a nuisance on or near the public jetty or bridge; or
- (b) hang or spread a fishing net from, on or over any part of a public jetty or bridge.

#### **4.6 Prohibited activities on vessels, public jetties or bridges**

A person shall not—

- (a) without the prior written consent of an authorised person offer for sale or sell goods or services from a vessel, public jetty or bridge;
- (b) use any loud speaking or sound amplifying device on a vessel, public jetty or bridge without the prior written consent of an authorised person;
- (c) interfere with the free movement of others entering or leaving a public jetty or bridge; or
- (d) jump or dive from a public jetty or bridge; or
- (e) use a fire hose on a public jetty or bridge, except in case of an emergency.

*[Clause 4.6 amended by Government Gazette No.64 of 2019]*

#### **4.7 Material not to be removed**

A person shall not remove or cause to be removed from a public jetty or from its approaches any gravel, stone, timber, tree, shrub or grass or other material without the prior written permission of an authorised person.

*[Clause 4.7 amended by Government Gazette No.64 of 2019]*

#### **4.8 Damage to public jetty, boat ramp or bridge**

- (1) A person shall not cause damage to a public jetty, boat ramp or bridge.
- (2) Where damage is caused to a public jetty, boat ramp or bridge, the local government may repair the damage and the costs of the repair shall be a debt due to the local government recoverable in a court of competent jurisdiction.
- (3) The debt referred to in clause 4.8(2) is payable—
  - (a) 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;
  - (b) where the damage is not caused by the use of a vessel or vehicle, by the person or persons who caused the damage; or
  - (c) where the damage is caused by the use of a vessel or a vehicle while under the control of an agent or employee of the owner of the vessel or vehicle, but without prejudice to the liability of any person arising under this or any other clause of the Local Law.

*[Clause 4.8 amended by Government Gazette No.64 of 2019]*

#### **4.9 Obstruction of public jetty or bridge**

- (1) A person shall not, without the written consent of an authorised person, cause any obstruction on a public jetty or bridge or impede the free passage of other persons to, from or on a public jetty or bridge.
- (2) A person shall not obstruct or hinder any authorised person, or worker engaged in the construction or repair of any public jetty or bridge.

#### **4.10 Littering on a public jetty or bridge**

A person shall not—

- (a) discard or deposit anything, including fish or bait, on to a public jetty or bridge so as to litter or cause pollution; or
- (b) deposit any offensive rubbish or offal into any rubbish bin located on a public jetty or bridge.

#### **4.11 Launching of vessels**

A person shall not launch or permit the launching of a vessel from or over any public jetty (other than a boat ramp) unless he or she has—

- (a) applied to, and obtained the written consent of, the local government in the form (if any) prescribed by the local government for any purpose; and
- (b) paid to the local government any fee set by the local government from time to time for the purpose.

#### **4.12 Miscellaneous prohibitions**

No person shall on any public jetty or bridge—

- (a) light, place or keep a fire upon or so near as to endanger the jetty or bridge;
- (b) throw or impel any stone, or other missile onto or there from, except for the express purpose of fishing and then only in accordance with clause 4.5;
- (c) permit an animal to remain thereon, except with the written consent of an authorised person;
- (d) be in a state of intoxication or in possession of any intoxicating substance unless such intoxicating substance is cargo or medical supply carried for lawful purpose;
- (e) fix or place any receptacle capable of holding water and providing a breeding site for mosquitoes or other insects;
- (f) land, place or handle explosives without the prior written consent of an authorised person; or
- (g) loiter, lounge, camp or sleep or erect a tent, camp or fly a model aeroplane.

*[Clause 4.12 amended by Government Gazette No. 6 of 2012 and No. 64 of 2019]*

#### **4.13 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 4.13(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.

#### **4.14 Local government may close jetties or regulate activities**

The local government may—

- (a) Close or cause to be closed any jetty or any part thereof;
- (b) Regulate, prohibit or restrict access to any jetty or any part thereof; and
- (c) Direct persons to leave the jetty or any part thereof, for the purposes of—
  - (i) a function or public convenience at or on the jetty;
  - (ii) repair, maintenance or construction of the jetty;
  - (iii) public safety; or

(iv) other operational reasons.

*[Clause 4.14 amended by Government Gazette No. 64 of 2019]*

## **PART 5—PRIVATE JETTIES AND WATERWAYS LOTS**

### **5.1 Activities prohibited on a private jetty**

A person shall not on a private jetty without the prior written consent of an authorised person—

- (a) offer for sale or sell goods or services;
- (b) display any sign or advertisement other than those authorised by the local government;
- (c) use any loud speaking or sound amplifying device; or
- (d) interfere with the free movement of others on any waterway adjoining the private jetty.

*[Clause 5.1 amended by Government Gazette No. 64 of 2019]*

### **5.2 Mooring of vessels**

A person shall not—

- (a) moor or permit the mooring of a commercial vessel at a private jetty without the prior approval of the local government; or
- (b) moor or permit the mooring of a vessel at a private jetty without the consent of the owner of the jetty.

*[Clause 5.2 amended by Government Gazette No. 64 of 2019]*

### **5.3 Private jetties and pontoons**

- (1) A person shall not construct a jetty or pontoon—
  - (a) in such a manner as to damage a waterway-edge wall underlying or adjoining the jetty or pontoon;
  - (b) in such a manner as to impose any additional load upon a waterway edge wall, unless approved by the local government; or
  - (c) other than within the jetty or pontoon envelope designated by the local government.
- (2) The installation of sewage and sullage or fuel storage facilities is prohibited on any private jetty or pontoon.
- (3) An owner may with the permission of the local government and in accordance with AS1158 install lighting on a private jetty.
- (4) The owner of a private jetty or pontoon must maintain the jetty or pontoon so as to avoid it becoming dilapidated, unsightly, unsafe or otherwise unfit for its purpose, and

must comply with any notice given by the local government in that regard within 28 days or such longer period as may be stipulated in the notice.

- (5) A person shall not construct a gangway—
- (a) other than in accordance with AS 3962;
  - (b) in such a manner as to damage or impose any additional load upon a waterway-edge wall;
  - (c) other than within the jetty or pontoon envelope; or
  - (d) that is permanently attached or fixed to a waterway-edge wall;
  - (e) that is in excess of 2 metres in width to a jetty or pontoon.

*[Clause 5.3 amended by Government Gazette No. 64 of 2019]*

#### **5.4 Design of mooring piles**

- (1) A person shall not construct a mooring pile other than—
- (a) in accordance with AS 2159;
  - (b) where steel piles are installed, in accordance with AS 3679.1, AS 3679.2, AS 1163 and AS 3678 as applicable.
- (2) A person must not construct, position or place a mooring pile, pole or other structure for the purpose of mooring a vessel within a waterway without the written consent of the local government.

*[Clause 5.4 amended by Government Gazette No. 64 of 2019]*

### **PART 6—MAINTENANCE OF WATERWAY EDGE WALLS**

#### **6.1 Maintenance of waterway-edge walls**

- (1) An owner of property must maintain any waterway-edge wall within their property so as to avoid it becoming dilapidated, unsightly, unsafe or otherwise unfit for its purpose, and must comply with any notice given by the local government in that regard within 28 days or such longer period as may be stipulated in the notice; and
- (2) A person must not drill, cut, alter or remove a waterway-edge wall without the written consent of the local government.
- (3) An owner of property containing a waterway-edge wall shall maintain a depression on the dry side of the owner's lot behind the top of the retaining wall edge for drainage purposes.

*[Clause 6.1 amended by Government Gazette No. 64 of 2019]*

## **PART 7—USE OF MARINA**

### **7.1 Requirement for licence**

A person must not, without first obtaining a licence from the local government, moor or anchor or cause any vessel to be moored or anchored, within a marina.

*[Clause 7.1 amended by Government Gazette No. 64 of 2019]*

### **7.2 Application for licence and application fee**

- (1) Where a person is required to obtain a licence under this Part, that person shall apply for the licence in the form in Schedule 2.
- (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 7.1
- (3) The application for a licence must be made by—
  - (a) 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.
- (4) The licence is to be issued in the name of the owner of the vessel.
- (5) If an application is not made in the manner required by the local government or the fee, if any, which is charged in respect of the application is not paid, the local government may refuse to consider the application for a licence.

*[Clause 7.2 amended by Government Gazette No. 64 of 2019]*

### **7.3 Obligations of licensee**

- (1) During the term of the licence, the licensee must—
  - (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 does not at any time interfere with, obstruct or impede the movement of any other vessel within a marina;
  - (e) ensure that the vessel does 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 a marina;
  - (f) ensure that any vessel under the control of the licensee, or the licensee's agent or licensee 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) ensure that hose pipes or electricity leads or similar projections from a vessel do not obstruct or create a hazard to persons walking or otherwise travelling within a marina;
  - (h) 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 a pen or marina;
  - (i) hold a third party insurance policy for the vessel housed in the pen or pen system;
  - (j) 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 in good order and repair, and not placed in the water;
  - (k) comply with all conditions attaching to the licence.
- (2) During the term of the licence, the licensee must 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) 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)*;
  - (c) 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 cause damage or become a nuisance, annoyance or inconvenience, to other users of a marina;
  - (d) cause any entrance gate to a marina to be held open by any manner whatsoever;
  - (e) permit any animal to stray in or on any part of a marina;
  - (f) without the prior written consent of the local government, make any alteration or addition to the pen or any part thereof;
  - (g) 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;
  - (h) 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 a pen or marina;

- (i) operate or permit to be operated any noisy, noxious or objectionable engine, radio or other apparatus or machinery within the pen, so as to cause any nuisance or annoyance to another user of a marina;
  - (j) provide any person with the key (or any copy, duplicate or replica of the key) giving access to a marina;
  - (k) 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 a marina;
  - (l) 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;
  - (m) live on board a vessel without the prior written authorisation of an authorised person;
  - (n) install a vessel lifting device without the prior written authorisation of an authorised person;
  - (o) bring, deposit or release or permit to be brought, 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;
  - (p) 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; or
  - (q) use a fire hose, where no emergency exists.
- (3) A licensee or a person under the charge of the licensee, subject to subclause (2)(o), may—
- (a) wash down their vessel, the pen, or the adjacent jetty or walkway, provided no non- biodegradable chemicals or cleaning agents are used;
  - (b) clean fish on board their vessel or at any designated area for cleaning fish within the pen system; or
  - (c) bring fuel in approved containers onto or within a pen system for the purposes of refuelling.

*[Clause 7.3 amended by Government Gazette No. 64 of 2019]*

#### **7.4 General prohibitions**

- (1) A person shall not perform underwater repairs or hull cleaning in a marina without having first obtained written consent from the local government and provided the activity is only undertaken within the licensee's pen.
- (2) 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) a water tap for longer than 30 minutes,in a 24-hour period commencing at midnight of the previous day.
- (3) A person who has obtained the written authorisation of the local government to live on board a vessel may connect to power for longer periods but must not in doing so restrict power to other pen holders required for the purpose of minor maintenance.

*[Clause 7.4 amended by Government Gazette No. 64 of 2019]*

#### **7.5 Right of entry and execution of repairs**

- (1) An authorised person may, at any reasonable time on reasonable notice during the term of a licence, enter upon and view the condition of the relevant pen, the vessel and any buoys and lines or any part thereof within or attached to the pen.
- (2) 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 for the proper maintenance of any of the things referred to in subclause (1).
- (3) The licensee must execute all repairs and works required to be done within any reasonable time period stipulated by written notice given by an authorised person.
- (4) 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.
- (5) The cost of any repairs and works undertaken by the local government under subclause (4) shall be a debt due to the local government payable by the licensee.
- (6) An authorised person may, at any reasonable time on reasonable notice 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.
- (7) 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.

*[Clause 7.5 amended by Government Gazette No. 64 of 2019]*

#### **7.6 Removal of vessel**

An authorised person may, in any of the circumstances mentioned in clause 7.5, move or cause to be moved any vessel located within a pen. The cost of moving a vessel under this clause shall be a debt due to the local government, payable by the licensee and recoverable in a Court of competent jurisdiction.

*[Clause 7.6 amended by Government Gazette No. 64 of 2019]*

#### **7.7 Termination of licence**

- (1) The local government may, on 30 days written notice to the licensee, terminate a licence granted under clause 7.2 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 7.2, the licensee shall remove the vessel from the pen within 7 days. If the licensee fails to remove the vessel within 7 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 and recoverable in a Court or competent jurisdiction.
- (4) 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.

*[Clause 7.7 amended by Government Gazette No. 64 of 2019]*

#### **7.8 Breach of licence**

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.

*[Clause 7.8 inserted by Government Gazette No. 64 of 2019]*

## **PART 8—GENERAL PROVISIONS**

### **8.1 Objections and appeals**

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.

### **8.2 Notice of breach**

- (1) Where a breach of any provision of this local law has occurred, the local government may give a notice in writing to the person alleged to be responsible for such breach.
- (2) A notice issued pursuant to subclause (1) shall—
  - (a) specify the provision of this local law which has been breached;
  - (b) specify the particulars of the breach; and
  - (c) state the manner in which the recipient is required to remedy the breach to the satisfaction of the local government within a time period stipulated in the notice which shall be not less than 14 days from the giving of the notice, except as provided in subclause (3).
- (3) Where the breach of a notice involves or includes the treatment or use of a vessel for a limited period of time, the breach will occur if the vessel is treated or used in the manner complained of for more than the limited or stipulated time.; and
- (4) It is an offence to fail to comply with a notice issued by the local government pursuant to subclause (1).

*[Clause 8.2 amended by Government Gazette No. 64 of 2019]*

### **8.3 Offences and penalties**

- (1) A person who—
  - (a) fails to do anything required or directed to be done under this local law;
  - (b) fails to comply with the requirements of a notice issued under this local law by the local government or by an authorised person; or
  - (c) does anything which under this local law that person is prohibited from doing;commits an offence.
- (2) Where, under this local law, an act is required to be done or forbidden to be done in relation to any land or premises, the owner or occupier of the land or premises has the duty of causing to be done the act so required to be done, or of preventing from being done the act forbidden to be done.

- (3) A person who commits an offence under this local law is liable to a maximum penalty of \$5,000 and a maximum daily penalty of \$500 in respect of each day or part of a day during which the offence has continued.
- (4) Any person who fails to comply with a direction issued by an authorised person commits an offence.
- (5) Any person who obstructs an authorised person in the course of the authorised person's duties under this local law commits an offence.

*[Clause 8.3 amended by Government Gazette No. 64 of 2019]*

#### **8.4 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-
  - (a) in the case of a first offence the modified penalty will be that prescribed in column 4 of Schedule 1; and
  - (b) in the case of a subsequent offence the modified penalty will be that prescribed in column 5 of Schedule 1.
- (3) An authorised person, before giving an infringement notice to a person in respect of the commission of a prescribed offence, must be satisfied that—
  - (a) the prescribed offence is a relatively minor matter; and
  - (a) only straightforward issues of law and fact are involved in determining whether the prescribed offence was committed, and the facts in issue are readily ascertainable.

*[Clause 8.4 amended by Government Gazette No. 64 of 2019]*

#### **8.5 Forms of infringement notices**

For the purposes of this local law—

- (a) where a vehicle is involved in the commission of an offence, the form of the notice referred to in section 9.13 of the Act is that of Form 1 of the Regulations;
- (b) the form of the infringement notice given under section 9.16 of the Act is that of Form 2 in Schedule 1 of the Regulations; and
- (c) the form of the notice given under section 9.20 of the Act withdrawing an infringement notice is that of Form 3 in Schedule 1 of the Regulations.

#### **8.6 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 Part 6, Division 5, Subdivision 2 of the Act.

## 8.7 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 and the local government may recover the cost as a debt due in a Court of competent jurisdiction.

*[Clause 8.7 amended by Government Gazette No. 64 of 2019]*

### Schedule 1

#### Prescribed offences

[cl 8.4(1)&(2)]

City of Mandurah

*Jetties, Waterways and Marina Local Law 2010*

#### OFFENCES AND MODIFIED PENALTIES

Item No	Clause	Nature of offence	Modified penalty first offence	Modified penalty subsequent offence
1	2.1(1)	Swimming in a waterway so as to cause a nuisance in a waterway so as to cause a nuisance	\$50	\$100
2	2.2(a)	Fishing in a waterway from a vessel so as to cause a nuisance	\$100	\$200
3	2.2(b)	Using a net to fish in a waterway so as to cause a nuisance	\$100	\$200
4	2.2(c)	Using a gidgee or speargun to fish in a waterway so as to cause a nuisance	\$100	\$200
5	2.2(d)	Fishing from a private jetty or private land so as to cause a nuisance	\$100	\$200
6	2.3	Using a waterway so as to cause a nuisance	\$100	\$200
7	2.4	Maintaining a vessel so as to cause a nuisance	\$100	\$200

8	2.6	Depositing or releasing pollutant into waterway	\$250	\$500
9	2.8(3)	Using a vessel in a waterway contrary to a sign	\$100	\$200
10	3.2	Mooring a vessel other than wholly within a mooring envelope	\$100	\$200
11	3.3	Mooring a vessel with faulty or inadequate mooring lines	\$100	\$200
12	3.6	Mooring or anchoring in a waterway to cause obstruction or cause a nuisance	\$150	\$300
13	4.2	Unauthorised mooring of a vessel at a public jetty	\$100	\$200
14	4.5(a)	Fishing from a public jetty or bridge so as to cause obstruction or nuisance	\$100	\$200
15	4.5(b)	Using a fishing net on a public jetty or bridge	\$100	\$200
16	4.6(a)	Selling goods or services from a vessel, public jetty or bridge	\$100	\$200
17	4.6(b)	Using a loud speaking device on a public jetty or bridge	\$100	\$200
18	4.6(c)	Interfering with the free movement of others entering or leaving a public jetty or bridge	\$100	\$200
19	4.6(d)	Jumping or diving from a public jetty or bridge	\$100	\$200
20	4.6 (e)	Use of fire hose where no emergency exists	\$500	
21	4.8(1)	Causing damage to a public jetty or bridge	\$200	\$400
22	4.9	Causing an obstruction of a public jetty or bridge	\$100	\$200
23	4.10	Littering on a public jetty or bridge	\$100	\$200
24	4.12	Miscellaneous prohibitions	\$100	\$200
25	5.1	Prohibited activities on a private jetty	\$100	\$200
26	5.2(a)	Mooring of a commercial vessel on a private jetty	\$100	\$200
28	5.2(b)	Mooring of a vessel on a private jetty without consent of owner	\$100	\$200
29	5.3 (1)	Unsatisfactory construction of jetty or pontoon	\$100	\$200
30	5.3(4)	Failing to maintain private jetty or pontoon	\$100	\$200
31	6.1(1)	Failing to maintain waterway-edge wall	\$100	\$200
32	6.1(2)	Damaging a waterway-edge wall	\$200	\$400
33	7.1	Mooring or anchoring a vessel in a marina without a licence	\$100	\$200
34	7.3(2)(q)	Use of a fire hose where no emergency exists	\$500	
35	8.2(4)	Failure to comply with notice	\$100	\$200
36	8.3(1)	Other offence not specified	\$100	\$200

37	8.3(4)	Failure to comply with a direction by an authorised person	\$100	\$200
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[Schedule 1 amended by Government Gazette No. 64 of 2019]

## Schedule 2

### Form 1

City of Mandurah

[cl 7.2]

*Jetties, Waterways and Marina Local Law 2010*

### APPLICATION FOR LICENCE TO MOOR VESSEL IN MARINA

I hereby apply for the allocation of boat pen accommodation at the Mandurah Ocean Marina Recreational Jetty and acknowledge that the lodgment of this application is subject to approval and payment of pen fee before occupying the pen allocated to my vessel.

#### Marina Selection

Mandurah Ocean Marina Recreational Berth

Mandurah Ocean Marina Commercial Berth

Mandurah Ocean Marina Brokers Berth

South Harbour Mini Marina

Mary Street Lagoon—Halls Head

Dolphin Pool Recreational Berth (10 meter)

#### Applicants Details

Applicant Name

Home Tel:

Company Name (If invoice is to be addressed to

Company Name)

Mobile Tel No:

Address

Fax

Postal Address (if different to above):

Business Tel:

Email:

Emergency Contact Name (Not Self)

Emergency Tel:

**Vessel Details**

Vessel Name:

Vessel Type:

Registration Number:

Insurance Company, Policy Number and Expiry

and Expiry Date:

Length (m) (including extremes

bowspirit and davits):

Beam(m):

**Current** Insurance Certificate of Currency

**Attached:**

 

Draft(m):

**Current** Boat Registration/Certificate of Survey Paper **Attached**—

(Expiry Date: \_\_\_\_\_)

 

**Commercial Operator Details**

Please only answer the following questions if you are applying for a commercial berth

Commercial Activity (eg Lobster,prawn,charter)

If Fishing, company that you fish for:

I acknowledge by signing this Pen Licence Application that I have received the following documents and will comply with the terms, conditions and policies contained within these documents throughout the initial and any extended term. Should I disagree with any of the clauses within the documents I will respond in writing to the Marina Manger within 7 days from the date on this application whereby I will be entitled to a refund minus the applicable daily charge and application fees.

Marina Pen Agreement Terms and Conditions

Applicants Signature:

Date:

Approved by Marina Management:

Date:

**Office Use Only**

Licence from:

Licence to:

Keys Issued:

Pen Number

Allocated:

Dated 23 March 2011.

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

PATRICIA M. CREEVEY, OAM, Mayor.  
MARK R. NEWMAN, Chief Executive Officer.