

LOCAL GOVERNMENT ACT 1995

CITY OF ALBANY

**JETTIES, BRIDGES AND
BOAT PENS LOCAL LAW 2004**

**JETTIES, BRIDGES AND
BOAT PENS (AMENDMENT)
LOCAL LAW 2005**

Jetties, Bridges and Boat Pens Local Law 2004, Published 31 January 2005

Jetties, Bridges and Boat Pens (Amendment) Local Law 2004, Published 17 February 2006

LOCAL GOVERNMENT ACT 1995

City of Albany

JETTIES, BRIDGES AND BOAT PENS (AMENDMENT) LOCAL LAW 2005

Under the powers conferred by the *Local Government Act 1995* and by all other powers, the Council of the City of Albany resolved on 19 July 2005 to make the following amendment to the *City of Albany Jetties, Bridges and Boat Pens Local Law* published in the *Government Gazette* on 31 January 2005.

Title

1. This local law may be cited as the *City of Albany Jetties, Bridges and Boat Pens (Amendment) Local Law 2005*.

Operation

2. This local law will come into operation on the fourteenth day after the day on which it is published in the *Government Gazette*.

Principal Local Law

3. In this local law, the *City of Albany Jetties, Bridges and Boat Pens Local Law* made under the *Local Government Act 1995* and published in the *Government Gazette* on 31 January 2005 is referred to as the principal local law.

Principal Local Law Amendment

4. The principal local law is amended as described below—

- Clause 3.4 is amended as follows—

Clause 3.4(a) is deleted.

Dated this 10th day of February 2006.

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

ALISON GOODE, JP, Mayor.
ANDREW HAMMOND, Chief Executive Officer.

LOCAL GOVERNMENT ACT 1995

CITY OF ALBANY

JETTIES, BRIDGES AND BOAT PENS LOCAL LAW

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SCHEDULE 1

LOCAL GOVERNMENT ACT 1995

CITY OF ALBANY

JETTIES, BRIDGES AND BOAT PENS LOCAL LAW

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the City of Albany resolved on 16th November 2004 to make the following local law.

PART 1—PRELIMINARY

Citation

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

Governor's Approval

1.2 In accordance with section 3.6 of the *Local Government Act 1995* the Governor of Western Australia granted his approval, as published in the *Government Gazette* of 10 February 2004, of the City of Albany extending the area of application of its Jetties, Bridges and Boat Pens Local Law to the following areas outside of its district—

- (a) the Albany town Jetty structure (portion of Albany Town Lot 1370 of Reserve 40635); and
- (b) the Emu Point Harbour Marina (the pen system located at Plantagenet Location 7031).

Commencement

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

Interpretation

1.4 In this local law unless the context otherwise requires—

- ‘**Act**’ means the *Local Government Act 1995* (WA);
- ‘**Albany Town Jetty**’ means the jetty which is located on a portion of Albany Lot 1370 of Reserve 40635 and the jetty structure in Princess Royal Harbour;
- ‘**authorised person**’ means any 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, taking into account relevant qualifications and experience;
- ‘**bridge**’ means a structure spanning a body of water, road, railway line, chasm or the like and affording passage to vehicles or natural persons;
- ‘**bulk cargo**’ means bulk produce, such as grain, coal, oil or mineral ore, which is not packaged;
- ‘**cargo**’ means any goods, merchandise or freight which is to be loaded onto, or which has been unloaded from, a vessel, but does not include bulk cargo;
- ‘**commercial vessel**’ has the meaning given to it by section 3 of the *Western Australian Marine Act 1982* (WA);
- ‘**designated area**’ means an area set aside and appropriately identified by an authorised person to be used for particular purposes pursuant to clause 4.6 of this Local Law;
- ‘**Emu Point Boat Harbour Marina**’ means the pen system located at Plantagenet Location 7031;
- ‘**explosive**’ means a substance or article as defined in section 7 of the *Explosives and Dangerous Goods Act 1961* WA (excluding distress signals and safety equipment);

‘fish’ means to—

- (a) search for an animal;
- (b) attempt to catch or take an animal;
- (c) catch or take an animal; or
- (d) engage in any other activity that can reasonably be expected to result in an animal being caught or taken;

‘jetty’ means—

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

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

‘licensee’ means a person who has been granted a licence from the local government under clause 3.1(a) to moor a vessel within a pen or pen system and, where applicable, a person who has been granted an endorsement under clause 3.1(b) to live on board a vessel;

‘liquor’ means a substance as defined in section 3 of the *Liquor Licensing Act 1988* (WA);

‘live on board’ means to stay overnight on a vessel located in the pen system for two or more consecutive nights in accordance with the Requirements to Live on Board;

‘local government’ means the City of Albany;

‘Local Law’ means the *City of Albany Jetties, Bridges and Boat Pens Local Law*;

‘moor’ means to secure a vessel to a mooring;

‘mooring’ means something to which a vessel may be moored and includes an anchor or stake;

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

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

‘pen system’ means a complex of interconnecting pens, and includes all jetties and walkways, which are under the care, control or management of the local government and includes the Emu Point Boat Harbour Marina;

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

‘pollution’ means pollution as defined in the *Environmental Protection Act 1986* (WA);

‘Requirements to Live on Board’ means the requirements and conditions to live on board and details of these requirements and conditions are shown in Schedule 1 of this Local Law;

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

‘sign’ includes a notice, mark, structure or device on which may be shown words, numbers, expressions, colours or symbols;

‘tout’ means to solicit custom;

‘vehicle’ means a vehicle described in the First Schedule to the *Road Traffic Act 1974* (WA); and

‘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 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 primarily in navigation by water, but does not include structures used only for the purposes of walkways or storage.

PART 2—JETTIES & BRIDGES

Division 1—Limitation on Use

Use of jetty or bridge

2.1 (a) A person shall not land at, use, approach or enter upon a jetty or bridge except in accordance with these Local Laws.

(b) A person shall not land at, use, approach or enter upon a jetty or bridge which is—

- (i) under construction or repair; or
- (ii) closed under section 6 of the *Jetties Act 1926*;

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

Method of mooring vessel

2.2 (a) A person shall not moor or make fast a vessel to a jetty or bridge, or to any part of the jetty or bridge, except to such mooring piles, ring bolts or other fastenings as are provided.

(b) A person shall not permit a vessel to remain alongside a jetty or bridge unless the vessel is moored or fastened to such mooring piles, ring bolts or other fastenings as are provided, unless a person is on board the vessel during the period of which the vessel is moored or fastened.

When vessel may remain moored

2.3 A person shall not moor or fasten a vessel to a jetty or bridge 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) the embarking or disembarking of passengers is in progress, and then not for a single period exceeding 2 hours without the prior written consent of the local government and provided that access to the jetty structure is not impeded;
- (c) the loading or discharging of cargo is in progress in accordance with this Local Law;
- (d) where the vessel is being used for commercial purposes, the person has first paid any required fee to the local government for such mooring or making fast;
- (e) written consent has first been obtained from the local government; and
- (f) the vessel is not under any means of propulsion while moored or fastened.

Authorised person may order removal of vessel

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

Restrictions on launching

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

Material not to be removed

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

Division 2—Cargo or other goods

Loading and unloading

2.7 A person shall not allow a vessel loading or unloading cargo to come alongside or be moored or made fast to a jetty until the cargo is ready to be loaded or unloaded.

2.8 Except with the prior written consent of the local government, a person shall not permit a vessel to remain alongside a jetty—

(a) between the hours of 6:00pm and 6:00am the following morning; and

(b) for longer than 2 consecutive hours between the hours of 6.00am and 6.00pm on the same day;

provided that access to the jetty and jetty structure is not impeded.

2.9 A person with a vessel moored or fastened alongside a jetty shall leave the vessel moored and fastened only while embarking or disembarking passengers, or loading or unloading cargo, is in progress and provided that the vessel is not unattended during the period of which the vessel is moored or fastened.

Cargo on jetty

2.10 A person shall—

(a) not store or place cargo on a jetty unless it is to be loaded onto a vessel and that vessel is moored or fastened to or alongside the jetty; and

(b) load cargo on to a vessel as soon as practicable after the vessel is moored or fastened to or alongside the jetty.

2.11 Any person unloading cargo from a vessel on to a jetty shall remove it from the jetty as soon as practicable, but in any event not later than 6.00pm on the day on which the cargo was unloaded.

2.12 Boarding ramps and gangways shall—

(a) be removed from a jetty after any passengers have embarked or disembarked and cargo has been loaded or unloaded, as the case may be; and

(b) be placed in the appropriate designated area as defined by an authorised person.

Removal of cargo

2.13 An authorised person may direct an owner or a person who, in the opinion of the authorised person, is in charge of cargo, which remains on a jetty or bridge contrary to any provision of this Local Law, to remove it from the jetty or bridge.

2.14 Cargo which remains on a jetty or bridge contrary to this Local Law may be removed and impounded by an authorised person in accordance with Part 3, Division 3, Subdivision 4 of the Act, irrespective of whether a direction to remove the cargo has been given pursuant to clause 2.13.

Handling of bulk cargo

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

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

(b) a container containing bulk cargo on to a jetty or bridge.

Division 3—Vehicles

Vehicles on jetty

2.16 (a) No person shall drive a vehicle of a gross weight exceeding three tonnes (or less if prescribed on jetty load signage) onto a jetty without the prior written consent of the Local Government.

(b) A person shall not drive a vehicle on to a jetty within 15 minutes of the arrival or departure of a commercial vessel, other than a vehicle being used by a person in the course of loading or unloading a commercial vessel.

(c) A person shall remove a vehicle from a jetty immediately after completing loading or unloading of the vehicle.

(d) A person shall not park a vehicle in a manner that obstructs access to or from a jetty.

(e) The restrictions in (a), (b) and (c) do not apply to vehicles parked in designated areas on land backed facilities.

Division 4—Liability for Damage

Damage to jetty or bridge

2.17 (a) A person shall not, by using a vessel or vehicle or otherwise, cause damage to a jetty or bridge.

(b) Where damage is caused to a jetty or bridge, whether by a vessel or vehicle or otherwise, the local government may repair the damage and the costs of the repair shall be a debt due to the local government.

(c) The debt referred to in clause 2.17(b) is payable—

(i) where the damage is caused by the use of a vessel or vehicle, by the person in control of the vessel or vehicle at the time the damage occurs;

(ii) where the damage is not caused by a vessel or vehicle, by the person or persons who caused the damage; or

(iii) where the damage is caused by an agent or employee of the owner of the vessel or vehicle, and without prejudice to the liability of other persons, if any, by the owner of a vessel or vehicle.

Division 5 –General Prohibitions

Explosives prohibited

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

Limitations on fishing

2.19 A person shall not—

(a) fish from a jetty or a bridge so as to:

(i) obstruct or interfere with the free movement of a vessel approaching or leaving the jetty or the bridge; or

(ii) interfere with the use of the jetty or the bridge by any other person or vehicle; or

(b) hang or spread a fishing net on or over any part of a jetty or a bridge.

Fires on jetty or bridge

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

Loitering on jetty or bridge

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

Obstruction of jetty or bridge

2.22 (a) A person shall not, without the written consent of the local government, cause any obstruction on a jetty or bridge or impede the free passage of other persons to, from or on a jetty or bridge.

(b) A person shall not obstruct or hinder—

(i) any authorised person, or worker engaged in the construction or repair of any jetty or bridge;

or

(ii) any authorised person acting in the course of his or her duties.

(c) A person shall not, without prior written consent of the local government, place any advertising signage or fixture of any nature on a jetty or bridge or access to a jetty or bridge.

Polluting surrounding area

2.23 A person shall not—

(a) throw or cause to be thrown any glass, stone or other object, or any filth, dirt, rubbish, or other matter of a similar nature from a jetty or bridge;

(b) tip or deposit anything on to a jetty or bridge so as to cause pollution;

(c) deposit any offensive rubbish or offal into any rubbish bin located on the jetty or bridge; or

(d) bring, deposit or release or permit to be bought, deposited or released black water, raw sewerage, oil, oily bilge water, sullage, fuel (except in an approved containers) or the content of brine tanks, fish products including fish carcasses (but excluding bait), shells and offal, whether solid or liquid, and regardless of whether or not it is dangerous, polluting or noxious in nature, onto a jetty or bridge or into the waters surrounding a jetty or bridge.

Liquor on jetties and bridges

2.24 (a) A person shall not consume any liquor on a jetty or bridge.

(b) A person shall not sell liquor on a jetty or bridge or from a vessel while moored to, or alongside a jetty or bridge.

Nuisance on jetties and bridges

2.25 A person shall not—

(a) without the written consent of the local government display any sign or advertisement or use any loud speaking device on a jetty or bridge;

(b) tout while on, or within 200 metres of, a jetty or bridge;

(c) dive from a jetty or bridge; or

(d) interfere with any other person using a jetty or bridge.

Division 6—Consents

Application for consent

2.26 (a) 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.

(b) The local government may, in accordance with sections 6.16 to 6.19 of the Act, determine and impose a fee for receipt of an application for consent made under clause 2.26(a).

(c) 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.

(d) The local government shall give its decision on an application for consent, in writing to the person who applied for that consent.

PART 3 –PENS AND PEN SYSTEMS

Division 1—Pen Licence

Licence requirement

- 3.1 (a) No person shall, without first obtaining a licence from the local government, moor or anchor or cause any vessel to be moored or anchored, within a pen or pen system.
- (b) No person shall, without first obtaining a licence from the local government, live on board a vessel moored or anchored within a pen or pen system.

Application for licence and application fee

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

Division 2—Licensees' Obligations

Mooring of vessel

- 3.3 (a) The licensee shall during the term of the licence—
- (i) provide, use and maintain mooring lines sufficient to ensure the safe mooring of the vessel within the pen or pen system, which shall not be less than the sizes listed below—
 - Length of vessel Mooring Lines Diameter*
 - Up to 5m Not less than 12mm*
 - 5m to 8m Not less than 16mm*
 - 8m to 12m Not less than 20mm*
 - 12m to 15m Not less than 24mm; and*
 - (ii) periodically inspect the mooring lines and replace any mooring lines which are unfit for their intended purpose.
- 3.4 An authorised person may—
- ~~(a) board any vessel at any time to inspect or adjust any mooring lines;~~
- (b) issue a written direction to a licensee, or, where applicable, to the person in charge of the vessel at the relevant time, requiring any mooring lines for a vessel to be refitted within a specified period where, in the opinion of that authorised person, the mooring lines are faulty or sub-standard;
 - (c) notwithstanding clause 3.4(b), refit any faulty or sub-standard mooring lines where it is the opinion of the authorised person that an emergency has arisen requiring such action to be taken; and
 - (d) where a licensee fails to comply with a written direction issued under clause 3.4(b) within the period specified in the written direction, refit or cause to be refitted the mooring lines.
- 3.5 Where mooring lines are refitted under clause 3.4, the costs of the refit shall be a debt due to the local government, payable by the licensee.

Licensee's obligations

3.6 During the term of the licence, the licensee shall—

- (a) keep and maintain the vessel in a state of good and substantial repair and in a clean, tidy, orderly and seaworthy condition;
- (b) keep and maintain the pen in which the licensee's vessel is moored and any adjacent jetty or walkway in a clean, tidy and orderly condition;
- (c) ensure that, except during entry into and exit from the pen, no portion of the vessel moored in the pen shall extend beyond the boundaries of the pen;
- (d) ensure that the vessel shall not at anytime interfere with, obstruct or impede the movement of any other vessels within the pen system;
- (e) ensure that the vessel shall not at anytime interfere with, obstruct or impede the movement of any materials, goods or equipment along or over any jetty or walkway forming part of the pen system;
- (f) ensure that any vessel under the control of the licensee, his agent or employee, when approaching, using or leaving the pen is controlled in a cautious and seamanlike manner and does not cause a nuisance or damage to any other vessel, property or persons;
- (g) ensure that hose pipes or electricity leads shall not be allowed to obstruct or create a hazard to persons walking within the pen system;
- (h) not leave any material, device or goods on any walkway or jetty;
- (i) pay all service fees and other fees (including water, electricity and fuel wharfage);
- (j) ensure the vessel is licensed with the relevant authorities;
- (k) hold a third party insurance policy for the vessel housed in the pen or pen system;
- (l) if the local government has granted a licence to live on board the vessel, comply with the local government's Requirements to Live on Board in Schedule 1; and
- (m) comply with all conditions attaching to the licence.

3.7 During the term of the licence, the licensee shall not—

- (a) permit any vessel other than the one described in the licence to use or to occupy the pen without the prior written consent of the local government;
- (b) bring, deposit or release or permit to be bought, deposited or released any black water, raw sewerage, oil or fuel, fish products including fish carcasses (but excluding bait), shells and offal, whether solid or liquid, and regardless of whether or not it is dangerous, polluting or noxious in nature, into or within the pen or the waters surrounding the pen. This does not prohibit a person from—
 - (i) washing down their vessel, the pen, or the adjacent jetty or walkway, provided no non biodegradable chemicals or cleaning agents are used; and
 - (ii) cleaning fish on board their vessel or at any designated area for cleaning fish within the pen system;
 - (iii) bringing fuel in approved containers onto or within the pen system for the purposes of refuelling.
- (c) store or keep, or permit to be stored or kept, on or in any vessel in the pen, or the pen system, any inflammable substance except that which is contained in tanks or lines which either form a permanent part of a vessel or which comply with the *Uniform Shipping Laws Code 1981*(Cth) and the relevant regulations created under the *Western Australian Marine Act 1982* (WA);
- (d) do or leave undone, or cause or permit to be done or left undone, in or upon the pen any act or thing which may—
 - (i) cause damage; or
 - (ii) become a nuisance, annoyance or inconvenience,to other users of the pen system;
- (e) cause the entrance gate to the pen system to be held open by any manner whatsoever;
- (f) permit any animals to stray in or on any part of the pen system;
- (g) without the prior written consent of the local government, make any alteration or addition to the pen or any part thereof;

- (h) without the prior written consent of the local government, affix or exhibit, or cause or permit to be affixed or exhibited, on any part of the pen or vessel any poster, sign or advertisement other than a vessel's registration numbers and name;
- (i) without the prior written consent of the local government, carry out or permit to be carried out any major structural work to the vessel in the pen or pen system;
- (j) operate or permit to be operated any noisy, noxious or objectionable engines, radios or other apparatus or machinery within the pen, so as to cause any nuisance or annoyance to another user of the pen system;
- (k) provide any person with the key (or any copy, duplicate or replica of the key) giving access to the pen system;
- (l) leave the vessel unattended in such a manner as to prevent the movement of another vessel in or out of its pen, or obstruct the movement of vessels in the pen system;
- (m) engage a vessel's propulsion system while secured to a pen or pen system except when alighting (leaving/arriving) from the pen or carrying out mechanical repairs or testing; or
- (n) live on board a vessel without being granted a licence to do so by the local government under clause 3.1(b).

Division 3—General Prohibitions

General prohibitions

- 3.8 (a) A person shall not swim in the pen system without having first obtained written consent from the local government.
- (b) A person shall not perform underwater repairs or hull cleaning in the pen system without having first obtained written consent from the local government and provided the activity is only undertaken within the licensee's pen.
- 3.9 (a) Subject to clauses 3.9(b) and (c), a person shall use power points and water taps provided within the pen system only with the appropriate connections and for the purpose of minor maintenance, and ensure all power cords are in good order and repair, and not placed in the water.
- (b) A person shall not without obtaining the prior written consent of the local government, use a—
- (i) power point for longer than 3 hours; or
 - (ii) water tap for longer than 30 minutes,
- in a 24 hour period commencing at midnight.
- (c) Persons who have obtained a licence from the local government to live on board may connect to power for longer periods on the condition that they shall not restrict power to other pen holders for the purpose of minor maintenance.
- 3.10 A person shall not use a gidgee or spear gun in a pen system.

Division 4—Power to terminate, enter and remove

Right of entry and execution of repairs

- 3.11 (a) An authorised person may, at any reasonable time during the term of the licence, enter upon and view the condition of the pen, the vessel and any mooring dolphins, buoys and lines or any part thereof.
- (b) An authorised person may give to the licensee a notice in writing requiring the licensee to execute any repairs and works within a stipulated time period that, in the reasonable opinion of the authorised person, are necessary to any of the things referred to in clause 3.11(a).
- (c) The licensee shall execute all repairs and works required to be done within a reasonable time period by written notice given by an authorised person.
- (d) If the licensee does not, within the time specified in any notice issued under this clause, complete the repairs and works required in the notice, an authorised person may enter the mooring pen and complete the repairs and works required in the notice.
- (e) The cost of any repairs and works undertaken by the local government under clause 3.11(d) shall be a debt due to the local government payable by the licensee.

(f) An authorised person may, at any reasonable time enter a pen for the purpose of making surveys or carrying out any works the local government may deem to be necessary without paying to the licensee any compensation, although any work shall be carried out with the least inconvenience possible to the licensee.

(g) An authorised person may enter a pen or a vessel, at any time when, in the reasonable discretion of the authorised person, an emergency exists.

Removal of vessel

3.12 An authorised person may, in any of the circumstances mentioned in Clause 4.8, move or cause to be moved any vessel located within a pen. The costs of moving a vessel under this clause shall be a debt due to the local government, payable by the licensee.

Termination of licence

3.13 (a) The local government may, on twenty one (21) days written notice to the licensee, terminate a licence granted under clause 3.1 in the event of—

(i) 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

(ii) 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.

(b) 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.

(c) Upon the expiration or earlier termination of a licence granted under clause 3.1(a), 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.

(d) Upon the expiration or earlier termination of a licence granted under clause 3.1(b), the licensee shall within seven (7) days cease to live on board the vessel.

(e) 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.

(f) In the event of a breach by the licensee of any of the provisions of this Local Law, the licensee's vessel may be removed, impounded and disposed of in accordance with Part 3, Division 3, Subdivision 4 of the Act.

PART 4—GENERAL PROVISIONS

Fees and charges

4.1 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.

Recovery of debt due

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

Offences and Penalties

4.3 (a) Any person who fails to do anything required or directed to be done under this Local Law, or who does anything which under this Local Law that a person is prohibited from doing, commits an offence.

(b) Any person who commits an offence under this Local Law is liable, upon conviction, to a penalty not exceeding \$5,000, and if the offence is of a continuing nature, to an additional penalty not exceeding \$500 for each day or part of a day during which the offence has continued.

(c) An offence against any provision of this Local Law is a prescribed offence for the purpose of section 9.16(1) of the Act.

(d) The modified penalty for an offence against any provision of this Local Law is \$100.

Costs of repair

4.4 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.

Appointment of an authorised person

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

Designated areas

4.6 An authorised person may designate, and appropriately identify, a particular area on or within a jetty, bridge or pen system, to be used for a particular purpose, in accordance with relevant Acts and associated Regulations.

Breach/Termination Notice

4.7 Under any breach or termination notice a person will have 21 days to remove the vessel and all fixtures and fittings from the pen.

When an authorised person can act

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

(a) an inspection that serves to either verify compliance or remedy non-compliance with the conditions of the Local Law.

(b) the rectification of a situation that could reasonably be expected to lead to either damage to private or public property or threaten personal safety.

(c) The overall efficient and effective management of the facility.

Schedule 1

REQUIREMENTS TO LIVE ON BOARD

OBJECTIVE

To provide suitable controls over the number of live on boards in the City of Albany controlled Emu Point Boat Pen Marina to protect the amenity, environment and security of the Emu Point Boat Pens Marina precinct.

POLICY STATEMENT

The Emu Point Boat Pen Marina (“the Marina”) does not normally accommodate full time live-onboard.

A full time live on board is defined as follows—

In the case of Permanent Pen Holders—

Where, on a boat in any pen leased on an annual basis, one or more persons spends more than 5 consecutive weeks in any 12 month lease period, and for the balance of that period, spends more than 10 days in any given month.

In the case of Short Term or Transient Pen Holders—

Where, on a boat in any pen leased, one or more persons spends more than 2 months in any 12 month period for the purpose of repairing or preparing the vessel for voyage. Transient live on boards will be charged a live on board fee.

CONSIDERATIONS

The Chief Executive Officer (Marina Manager) is delegated the authority to consider a variation to the provisions of these requirements in the following manner provided such variations are formally applied for annually—

- Permanent penholders: A maximum period of up to 8 consecutive weeks in a 12 month lease period;
- Transient penholders: A maximum period of up to 5 months in any 12 month period;
- Provided that—
 1. A live on fee will be applicable for transient penholders for each person staying on board the vessel.
 2. The vessel and surrounding area will not have any visual reference to persons living on board the vessel.
 3. All occupants of the vessel are to abide by any reasonable instruction of the Chief Executive Officer (Marina Manager), including, but not limited to, noise and the placement of surplus equipment.
 4. Limit the parking of a motor vehicle to one bay and in a car bay as designated by the Chief Executive Officer (Marina Manager).

Dated this 1st day of December 2004.

The Common Seal of the City of Albany is affixed by authority of a resolution of the Council in the presence of—

ALISON GOODE, JP, Mayor.
ANDREW HAMMOND, Chief Executive Officer.
