

18 August 2016

Local Government Act 1995

CITY OF WANNEROO

**BEE KEEPING LOCAL
LAW 2016**

DRAFT

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Local Government Act 1995

CITY OF WANNEROO

BEE KEEPING LOCAL LAW 2016

Under the powers conferred by the *Local Government Act 1995* and under all other enabling powers, the Council of the City of Wanneroo resolved on [DD/MM] 2016 to make the following local law.

Part 1 - Preliminary

1.1 Title

This is the *City of Wanneroo Bee Keeping Local Law 2016*.

1.2 Commencement

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

1.3 Repeal

Part 6 of the *City of Wanneroo Animals Local Law 1999* is repealed.

1.4 Application

This local law applies throughout the district.

1.5 Terms used

(1) In this local law, unless the context requires otherwise -

Act means the *Local Government Act 1995*;

authorised person means a person authorised by the local government under section 9.10 of the Act to carry out functions with respect to this local law;

bee means a bee of the species *Apis mellifera*;

bee hive means a movable or fixed structure, container or object which contains a bees nest and in which bees are kept;

beekeeper has the meaning given in regulation 3 of the *Biosecurity and Agriculture Management Regulations 2013*;

Beekeeper means –

- (a) a person who owns, or has the charge, care or possession of, bees or any hive that contains, or has contained, bees; and
- (b) where a person referred to in paragraph (a) is a body corporate, each of the directors of the body corporate.

Crown land has the meaning given in section 3(1) of the *Land Administration Act 1997*;

Crown land, subject to subsections (2), (3), (4) and (5), means all land, except for alienated land.

Land Administration Act 1997, section 3(1)

Subsections (2), (3), (4) and (5) of section 3 of the *Land Administration Act 1997* state -

- (2) All land below high water mark, including the beds and banks of tidal waters, is Crown land unless that land is inundated land or other alienated land.
- (3) When tidal waters form the boundary of a parcel of land or a person holds the freehold of parcels of land adjoining tidal waters —
 - (a) the land below high water mark (except for land which was alienated land immediately before the appointed day) is Crown land; and
 - (b) if the line of the high water mark shifts over time by gradual and imperceptible degrees, the boundaries of the parcel or parcels of land shift with the high water mark.
- (4) No act to occupy, use, build or carry out works or remove material, with or without lawful authority, is capable of causing land below high water mark to cease to be Crown land.
- (5) Land that becomes raised above high water mark, whether gradually or imperceptibly or otherwise, because of the building or carrying out of works, is Crown land.

district means the district of the local government;

local government means the City of Wanneroo;

local planning scheme means a local planning scheme of the local government made under the *Planning and Development Act 2005*;

nuisance means –

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

occupier has the meaning given in the Act;

occupier where used in relation to land means the person by whom or on whose behalf the land is actually occupied or, if there is no occupier, the person entitled to possession of the land, and includes a person in unauthorised occupation of Crown land and where under a licence or concession there is a right to take profit of Crown land specified in the licence or concession, means the person having that right;

Local Government Act, section 1.4

penalty unit has the meaning given in the *City of Wanneroo Penalty Units Local Law 2015*;

permit means a permit issued under this local law;

permit holder means a person who holds a valid permit; and

registered beekeeper means a person who is registered as a beekeeper under regulation 13(7) of the *Biosecurity and Agriculture Management (Identification and Movement of Stock and Apiaries) Regulations 2013*.

- (2) A term that is used in this local law and is not defined in subclause (1) has the same meaning as is given in the Act.

Part 2 - Permit to keep bees

2.1 Permit required to keep bees

- (1) Subject to this clause, a person must not keep bees or allow bees to be kept on land:
- (a) unless that person is a registered beekeeper; and
 - (b) in accordance with a valid permit issued in relation to the land.
- (2) Subclause (1)(b) does not apply where —
- (a) the land is zoned General Rural, Special Residential, Special Rural, Rural Community, Urban Deferred or Rural Resource under a local planning scheme -
 - (i) before establishing the bee hives on the land, the occupier of the land notifies, in writing, the occupier of each property adjoining the land that the bee hives are to be kept;
 - (ii) each bee hive is kept at least 10 metres from any thoroughfare (including a footpath) or public place and at least 5 metres from any other boundary of the land; and
 - (iii) bees from the bee hives do not become a nuisance; or
 - (b) in relation to any other land -
 - (i) no more than 2 bee hives are kept on the land;
 - (ii) before establishing the bee hives on the land, the occupier of the land notifies, in writing, the occupier of each property adjoining the land that the bee hives are to be kept;
 - (iii) each bee hive is kept at least 10 metres from any thoroughfare (including a footpath) or public place and at least 5 metres from any other boundary of the land; and
 - (iv) bees from the bee hives do not become a nuisance.

13. Beekeepers to be registered
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- | |
|---|
| (1) A person must not be or become a beekeeper unless the person is a registered beekeeper. |
|---|

Penalty: a fine of \$2 000.

- (2) Subregulation (1) does not apply to a person who becomes a beekeeper only because of the ownership, or the charge, care or possession, of bees —
- (a) kept in a device of an approved kind; and
 - (b) used for the purposes of the pollination of crops, if the bees and device are disposed of in accordance with subregulation (4) within 8 weeks after the person becomes a beekeeper in relation to them.

*Biosecurity and Agriculture Management (Identification and Movement of Stock and Apiaries)
Regulations 2013*

- (3) Subclause (1) does not apply where a person keeps bees on Crown land.

Regulation 90 of the *Biosecurity and Agriculture Management Regulations 2013* provides that unless water is available from natural sources, every beekeeper must provide a good and sufficient supply of water on every apiary site (ie a site occupied by one or more beehives) in a way that is readily accessible to the bees on that site.

2.2 Application for a permit

An applicant for a permit must -

- (a) be a registered beekeeper;
- (b) provide the information (including any comments from neighbours) that may be required by the local government;
- (c) apply in the form determined by the local government; and
- (d) pay any application fee imposed by the local government under sections 6.16 to 6.19 of the Act.

2.3 Determination of application

- (1) The local government may -
- (a) refuse to determine an application that does not comply with clause 2.2;
 - (b) approve an application subject to any conditions that it considers appropriate; or
 - (c) refuse to approve an application.
- (2) The permit conditions may include that -
- (a) each bee hive must be kept at least 10 metres from any thoroughfare (including a footpath) or public place and at least 5 metres from any other boundary of the land; and
 - (b) may include that no more than 2 bee hives are to be kept.
- (3) If the local government approves an application, it is to issue to the applicant a permit in the form determined by the local government from time to time.

- (4) A permit is valid from the date of issue until it is cancelled under this local law.
- (5) A permit holder must comply with the permit conditions.

2.4 Variation or cancellation

- (1) The local government may vary a permit condition by giving written notice to the permit holder and the varied condition takes effect 7 days after that notice is given.
- (2) The local government may cancel a permit if -
 - (a) the permit holder requests the local government to do so; or
 - (b) the permit holder fails to comply with a notice under clause 3.1 within the time specified in the notice or commits any other offence under this local law.
- (3) A permit is taken to be cancelled on –
 - (a) the permit holder ceasing to be registered as a beekeeper; or
 - (b) the expiration of a continuous period of 12 months during which the permit holder has not kept any bees on the land to which the permit relates.

2.5 Information to be provided by a permit holder

- (1) In this clause a ‘permit holder’ includes the holder of a permit cancelled under clause 2.4(3).
- (2) A permit holder must notify the local government in writing as soon as practicable after -
 - (a) the permit holder ceases to be a registered beekeeper; or
 - (b) a continuous period of 12 months passes during which the permit holder has not kept any bees on the land to which the permit relates.
- (3) A permit holder must, within 7 days of an authorised person giving the permit holder a written notice to do so, provide to the local government either or both of –
 - (a) written proof of the permit holder’s registration as a beekeeper under regulation 13(7) of the *Biosecurity and Agriculture Management (Identification and Movement Stock and Apiaries) Regulations 2013*; and
 - (b) a signed statement as to whether the permit holder has, within the 12 months preceding the date of the notice, kept bees on the land to which the permit relates and which is identified in the notice.

2.6 Permit not transferable

A permit –

- (a) is personal to the permit holder;

- (b) applies only to the land described in the permit; and
- (c) is not transferable.

2.7 Nuisance

A person must not keep or allow to be kept bees or beehives, or both, on land so as to create a nuisance.

2.8 Objections and review rights

Division 1 of Part 9 of the Act applies to a decision under this local law –

- (a) to refuse an application for a permit;
- (b) to impose or vary a condition of a permit;
- (c) to cancel a permit; or
- (d) to give a person a notice under clause 3.1.

A person affected by a decision referred to in clause 2.8 may have a right to object to the decision (to the Council or a committee of the local government) and/or to apply to the State Administrative Tribunal for a review of the decision.

Part 3 - Enforcement

3.1 Notice to remove

- (1) If, in the opinion of an authorised person, the bees on any land (whether or not the subject of a permit) are likely to endanger the safety of any person or create a serious public nuisance, the authorised person may give to the owner or occupier of that land a written notice requiring the owner or occupier as the case may be to remove the bees before the date specified in the notice.
- (2) If, in the opinion of an authorised person, a person has breached a provision of this local law, the authorised person may give to that person a written notice requiring him or her to remedy that breach before the date specified in the notice.

Item 11 of Schedule 3.1 and sections 3.25(3)-(6) and 3.26 of the *Local Government Act 1995* apply to a notice given under clause 3.1(1). Item 11 of Schedule 3.1 enables the City, as one of the things a notice under section 3.25 may require to be done, to 'remove bees that are likely to endanger the safety of any person or create a serious public nuisance'. Sections 3.25(3)-(6) and 3.26 state –

3.25. Notices requiring certain things to be done by owner or occupier of land

- (3) If the notice is given to an occupier who is not the owner of the land, the owner is to be informed in writing that the notice was given.
- (4) A person who is given a notice under subsection (1) is not prevented from complying with it because of the terms on which the land is held.
- (5) A person who is given a notice under subsection (1) may apply to the State Administrative Tribunal for a review of the decision to give the notice.
- (6) A person who fails to comply with a notice under subsection (1) commits an offence.

3.26. Additional powers when notices given

- (1) This section applies when a notice is given under section 3.25(1).
- (2) If the person who is given the notice (notice recipient) fails to comply with it, the local government may do anything that it considers necessary to achieve, so far as is practicable, the purpose for which the notice was given.
- (3) The local government may recover the cost of anything it does under subsection (2) as a debt due from the person who failed to comply with the notice.
- (4) If a notice recipient —
 - (a) incurs expense in complying with any requirement of the notice; or
 - (b) fails to comply with such a requirement and, as a consequence, is fined or has to pay to a local government the cost it incurs in doing anything under subsection (2),the notice recipient may apply to a court for an order under subsection (6).
- (5) In subsection (4) —

court means a court that would have jurisdiction to hear an action to recover a debt of the amount of the expense, fine or cost sought to be recovered by the notice recipient.
- (6) On an application under subsection (4) the court may order —
 - (a) if the notice recipient is the owner, the occupier; or
 - (b) if the notice recipient is the occupier, the owner,to pay to the notice recipient so much of that expense, fine or cost as the court considers fair and reasonable in the circumstances.
- (7) In determining what is fair and reasonable the court is to have regard to —
 - (a) the type of land involved; and
 - (b) the terms on which the occupier is occupying the land; and
 - (c) any other matter the court considers to be relevant.

3.2 Offences and general penalty

- (1) A person who fails to do anything required or directed to be done under this local law, or who does anything which under this local law that person is prohibited from doing commits an offence.
- (2) A person who commits an offence under this local law is liable to a penalty of \$5,000 and a daily penalty of \$500 in respect of each day or part of a day during which the offence has continued.

3.3 Prescribed offences

- (1) An offence against a clause specified in the Schedule is a prescribed offence for the purposes of section 9.16(1) of the Act.
- (2) The amount of the modified penalty for a prescribed offence is that specified adjacent to the clause in the Schedule.
- (3) If this local law expresses a modified penalty as a number of penalty units, the monetary value of the modified penalty is the number of dollars obtained by multiplying the value of the penalty unit by the number of penalty units.

3.4 Forms

- (1) The form of the infringement notice referred to in section 9.17 of the Act is Form 2 in Schedule 1 of the *Local Government (Functions and General) Regulations 1996*.
- (2) The form of the infringement withdrawal notice referred to in section 9.20 of the Act is Form 3 in Schedule 1 of the *Local Government (Functions and General) Regulations 1996*.

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Schedule
(Clause 3.3)

PRESCRIBED OFFENCES AND MODIFIED PENALTIES

Item No	Clause No	Nature of Offence	Penalty Unit
1	2.3(5)	Failure to comply with a permit condition	10
2	2.5(2)	Failure to notify cessation of registration or keeping of bees	10
3	2.5(3)	Failure to provide information in response to a notice	10
4	2.7	Keeping bees or beehives so as to create a nuisance	10

Note: Penalty Units are prescribed in the City of Wanneroo Penalty Units Local Law 2015. At 15 November 2015 one penalty unit was \$10.00.

The Common Seal of the City of Wanneroo)
was affixed by authority of a resolution)
of the Council in the presence of:)

.....
T Roberts, Mayor

.....
D Simms, Chief Executive Officer

Dated: dd mm 2016.