

**DOG ACT 1976**

**CAT ACT 2011**

**LOCAL GOVERNMENT ACT 1995**

**TOWN OF CLAREMONT**

**ANIMAL LOCAL LAW 2022**

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**DOG ACT 1976****CAT ACT 2011****LOCAL GOVERNMENT ACT 1995**

## TOWN OF CLAREMONT

**ANIMAL LOCAL LAW 2022**

Under the powers conferred by the *Dog Act 1976*, the *Cat Act 2011*, the *Local Government Act 1995* and under all other powers enabling it, the Council of the Town of Claremont resolved on \_\_\_\_\_ to make the following local law.

**PART 1—PRELIMINARY****1.1 Citation**

This local law may be cited as the *Town of Claremont Animal Local Law 2022*.

**1.2 Commencement**

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

**1.3 Purpose and effect**

- (1) The purpose of this local law is to provide for the regulation, control and management of the keeping of dogs and cats within the district.
- (2) The effect of this local law is that persons who own or keep dogs and cats within the district are required to comply with the provisions of this local law.

**1.4 Repeal**

The *Town of Claremont Dogs Local Law 2012* published in the Government Gazette on 24 May 2013 is repealed.

Clause 65 of the *Town of Claremont Health Local Laws 1997* published in the Government Gazette on 31 March 1998 and amended in the Government Gazette on 5 April 2013 is repealed.

**1.5 Application**

This local law applies throughout the district.

**1.6 Terms used**

- (1) In this local law unless the context otherwise requires—
- Act** means the *Local Government Act 1995*;
- CEO** means the Chief Executive Officer of the local government;
- district** means the district of the local government;
- land** has the meaning given to it in section 7 of the Property Law Act 1969;
- local government** means the Town of Claremont;
- occupier** has the meaning given to it in section 1.4 of the Act;
- Schedule** means a schedule in this local law;
- Town** means the Town of Claremont;

## PART 2 – DOGS

### 2.1 Terms used

- (1) In this part –
- authorised person** has the meaning given to it in section 3(1) of the Dog Act;
- dangerous dog** has the meaning given to it in section 3(1) of the Dog Act;
- Dog Act** means the *Dog Act 1976*;
- Dog Regulations** means the *Dog Regulations 2013*;
- owner** in relation to a dog has the meaning given to it in section 3(1) of the Dog Act;
- person liable for the control of the dog** has the meaning given to it in section 3(1) of the Dog Act;
- pound** means a dog management facility as defined in section 3(1) of the Dog Act;
- premises** has the meaning given in section 3(1) of the Dog Act;
- public place** has the meaning given in section 3(1) of the Dog Act;
- thoroughfare** has the meaning given to it in section 1.4 of the Act;
- vehicle** has the meaning given in section 3(1) of the Dog Act;

### Division 1 – Impounding of Dogs

### 2.2 Impounding of Dogs

- (1) An authorised person shall be in attendance at the pound to facilitate the return of a dog that has been seized pursuant to section 29 of the Dog Act, as determined by the CEO.
- (2) Where a dog that has been seized is to be returned to an owner, the owner must provide to an authorised person:
- proof of ownership of the dog;
  - proof of registration of the dog in accordance with the Dog Act;

- (c) payment of any moneys due to the local government in relation to the dog;
- (d) if another person other than the owner is to take delivery of the dog on the owner's behalf, a written authority authorising that person to do so.

### **2.3 No breaking into or destruction of pounds**

- (1) A person shall not release or attempt to release a dog from a pound.
- (2) A person shall not destroy, break into, damage or in any way interfere with or render ineffective—
  - (a) any pound; or
  - (b) any vehicle or container used for the purpose of catching, holding or conveying a seized dog.

## **Division 2 – Keeping of Dogs**

### **2.4 Dogs to be confined**

- (1) An owner or occupier of premises on which a dog is kept must—
  - (a) cause a portion of the premises on which the dog is kept to be fenced in a manner capable of confining the dog;
  - (b) ensure the fence used to confine the dog and every gate or door in the fence is of a type, height and construction which having regard to the breed, age, size and physical condition of the dog is capable of preventing the dog at all times from passing over, under or through it;
  - (c) ensure that every gate or door in the fence is kept closed at all times when the dog is on the premises and is fitted with a proper latch or other means of fastening it;
  - (d) maintain the fence and all gates and doors in the fence in good order and condition; and
  - (e) where no part of the premises consists of open space, yard or garden or there is no open space or garden or yard of which the occupier has exclusive use or occupation, ensure that other means exist on the premises (other than the tethering of the dog) for effectively confining the dog within the premises.
- (2) Where an owner or occupier fails to comply with subclause (1), he or she commits an offence.
- (3) Notwithstanding subclause (1) and (2), the confinement of dangerous dogs is dealt with in the Dog Act and Dog Regulations.

### **2.5 Limitation on the number of dogs**

- (1) This clause does not apply to premises which have been granted an exemption under section 26(3) of the Dog Act.

- (2) The limit on the number of dogs which may be kept on any premises is, for the purpose of section 26(4) of the Dog Act, 2 dogs over the age of 3 months and the young of those dogs under that age.

## 2.6 Offence to excrete

- (1) A dog must not excrete on—
- (a) any thoroughfare or other public place; or
  - (b) any land which is not a public place without the consent of the occupier.
  - (c) Subject to subclause (3), if a dog excretes contrary to subclause (1), every person liable for the control of the dog at that time commits an offence.
- (2) The person liable for the control of the dog does not commit an offence against subclause (2) if any excreta is removed immediately by that person.

## PART 3 – CATS

### 3.1 Terms Used

- (1) In this part –
- Authorised Person** has the meaning given to it in section 3(1) of the Cat Act;
  - Cat Act** means the *Cat Act 2011*;
  - Cat Regulations** means the *Cat Regulations 2012*;
  - cat** has the meaning given to it in section 3(1) of the Cat Act;
  - cat management facility** has the meaning given to it in section 3(1) of the Cat Act;
  - cat prohibited area** means an area as outlined in Schedule 2;
  - nuisance** in relation to a cat 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 of a person of their 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 a cat has the meaning given to it in section 4 of the Cat Act;
  - premises** has the meaning given to it in section 3(1) of the Cat Act;
  - regulations** means the *Cat Regulations 2012*;
  - standard number of cats** has the meaning given to it in the *Cat (Uniform Local Provisions) Regulations 2013*.

### Division 1 – Control of Cats

#### 3.2 Cat not to be a nuisance

- (1) An owner shall not allow a cat to be or create a nuisance.
- (2) Where in the opinion of an authorised person, a cat is creating a nuisance, the local government may give written notice to the owner of the cat requiring that person to abate the nuisance.
- (3) When a nuisance has occurred and a notice to abate the nuisance is given, the notice remains in force for the period specified by the local government in the notice which shall not exceed 28 days.
- (4) A person given a notice to abate the nuisance shall comply with the notice within the period specified in the notice.
- (5) A cat control notice under subclause 3.2(2) shall be in the form of Schedule 1, Form 3 of the Regulations.

#### 3.3 Cat prohibited areas

- (1) A cat shall not be in any cat prohibited area as listed in Schedule 2.
- (2) If a cat is in a cat prohibited area contrary to subclause 3.3(1) –
  - (a) the owner of the cat commits an offence; and
  - (b) an authorised person may seize and impound the cat from a in accordance with the Cat Act.

### Division 2 – Number of Cats that may be Kept

#### 3.4 Interpretation

- (1) For the purposes of applying this Division, a cat does not include a cat less than 6 months old.

#### 3.5 Cats for which a permit is required

- (1) Subject to subclause (2) a person is required to have a permit to keep -
  - (a) more than three (3) cats on any single dwelling or grouped dwelling premises to a maximum of five (5); or
  - (b) more than two (2) cats on any multiple dwelling premises to a maximum of five (5).
- (2) A permit is not required under subclause (1) if the premises concerned are –
  - (a) a cat management facility; or
  - (b) a veterinary premises as defined under section 3 of the *Veterinary Practice Act 2021*; or
  - (c) a pet shop.
- (3) A person who keeps more than the standard number of cats on a prescribed premises without approval commits an offence.

**3.6 Application for additional cats**

- (1) An application for a permit to keep additional cats at a prescribed premises shall be –
  - (a) made in writing by an occupier of the prescribed premises;
  - (b) in the manner and form approved by the CEO of the local government, describing and specifying the number of cats to be kept on the premises; and
  - (c) accompanied by the consent in writing of the owner of the premises where the occupier is not the owner of the premises to which the application relates.

**3.7 Refusal to determine application**

- (1) The local government may refuse to determine an application for a permit if it is not made in accordance with clause 3.7(2).

**3.8 Factors relevant to determining application**

- (1) In determining an application for a permit the local government may have regard to –
  - (a) the reasons and justification provided for the request;
  - (b) the physical suitability of the premises;
  - (c) the environmental sensitivity and general nature of the location surrounding the premises;
  - (d) the likelihood of a cat causing a nuisance, inconvenience or annoyance to the occupiers of adjoining premises;
  - (e) any submissions received under subclause (2) within the time specified in subclause (2); and
  - (f) such other factors which the local government may consider to be relevant in the circumstances of the particular case.
- (2) The local government may require the applicant to –
  - (a) consult with nearby residents; or
  - (b) advise nearby residents that they may make submissions to the local government on the application for a permit within 14 days of receiving that advicebefore determining the application for a permit.
- (3) The local government may specify the extent of consultation with nearby residents and may specify which properties should be consulted.

**3.9 Decision on application**

- (1) Upon receiving an application the local government may –
  - (a) approve the application subject to the conditions in clause 3.11 and any other conditions the local government considers appropriate;
  - (b) approve the application but specify an alternative number of cats permitted to be

housed at the premises; or

- (c) refuse to approve the application for a permit.
- (2) If the local government approves an application under subclause (1) then it shall issue a permit to the applicant in the form determined by the CEO.
- (3) If the local government refuses to approve an application under subclause (1) then it shall advise the applicant accordingly in writing.

### **3.10 Conditions**

- (1) Every permit shall be issued subject to the following conditions:
  - (a) each cat kept on the premises to which the permit relates shall comply with the requirements of the Act, the Cat Act and any subsidiary legislation made under those acts;
  - (b) without the consent of the local government, the permit holder will not substitute or replace any cat that is the subject of a permit once that cat –
    - i. dies; or
    - ii. is permanently removed from the premises.
- (2) In addition to the conditions listed in subclause (1), the local government may issue a permit subject to such other conditions as it considers appropriate.

### **3.11 Compliance with conditions of permit**

- (1) A permit holder shall comply with each condition of a permit.

### **3.12 Duration of permit**

- (1) Unless otherwise specified in a condition on a permit, a permit commences on the date of issue and expires if –
  - (a) it is revoked; or
  - (b) the cat dies; or
  - (c) the permit holder ceases to reside at the premises to which the permit relates.

### **3.13 Revocation**

- (1) The local government may revoke a permit if the permit holder fails to observe any provision of this local law or a condition of the permit.

### **3.14 Permit not transferable**

- (1) A permit is not transferrable either in relation to the permit holder or the premises.

### **3.15 Permit to be kept at premises and available for view**

- (1) A permit issued by the local government shall be kept at the premises to which it applies and

shall be provided to an authorised person on demand.

#### **PART 4 – MISCELLANEOUS**

##### **4.1 Giving of a Notice**

- (1) A notice served under this local law may be given to a person –
  - (a) personally;
  - (b) by postal mail addressed to the person; or
  - (c) by leaving it for the person at his or her address.

##### **4.2 Objection and Appeal Rights**

- (1) Any person who is aggrieved by –
  - (a) the conditions imposed in relation to a permit;
  - (b) the revocation of a permit; or
  - (c) the refusal of the local government to grant a permit,may object or appeal against the decision under Division 1 of Part 9 of the Act.

#### **PART 5 – ENFORCEMENT**

##### **5.1 Offences and Penalties**

- (1) Any person who fails to do anything required or directed to be done under this local law, or who does anything which under this local law that person is prohibited from doing, commits an offence.
- (2) Any person who commits an offence under Part 2 of this local law may be liable, upon conviction, to a penalty not exceeding—
  - (a) \$1,000, and if the offence is of a continuing nature, to an additional penalty not exceeding \$100 for each day or part of a day during which the offence has continued; or
  - (b) \$2,000, and if the offence is of a continuing nature, to an additional penalty not exceeding \$200 for each day or part of a day during which the offence has continued in relation to a dangerous dog.
- (3) Any person who commits an offence under Part 3 of this local law may be 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.

##### **5.2 Modified Penalties**

- (1) An offence against:
  - (a) Part 2 of this local law is a prescribed offence any provision of this local law is a prescribed offence for the purposes of section 9.16(1) of the Act;

- (b) Part 3 of this local law is a prescribed offence for the purposes of section 62(1) of the Cat Act.
- (2) The offences contained in Schedule 1 are offences in relation to which a modified penalty may be imposed.
- (3) The amount of the modified penalty for a prescribed offence –
  - (a) in relation to Part 2, is the amount specified in—
    - (i) the third column of Schedule 1 if the dog is a dangerous dog;
    - (ii) the fourth column of Schedule 1 if the dog is not a dangerous dog; and
  - (b) in relation to Part 3, is the amount specified in the final column of Schedule 1.

### **5.3 Form of Notices**

- (1) The issue of infringement notices, their withdrawal, the payment of modified penalties and the appropriate forms are dealt with –
  - (a) for the purposes of Part 2, in Division 2 of Part 9 of the Act;
  - (b) for the purposes of Part 3, in Division 4 of Part 4 of the Cat Act.

**Schedule 1****PRESCRIBED OFFENCES AND MODIFIED PENALTIES**

[Cl. 5.2(2)]

## Part 2 - Dogs

<b>Clause</b>	<b>Nature of Offence</b>	<b>Modified Penalty \$</b>	<b>Modified Penalty (Dangerous Dog) \$</b>
2.3(1)	Attempting to or causing the unauthorised release of a dog from a pound	200	400
2.3(2)	Destroy, break into, damage or interfere with any pound or vehicle or container used for the purpose of catching, holding or conveying dogs	200	Nil
2.4	Failing to provide means for effectively confining a dog	200	400
2.6	Dog excreting in a prohibited place	200	Nil

## Part 3 – Cats

<b>Clause</b>	<b>Nature of Offence</b>	<b>Modified Penalty \$</b>
3.2(1)	Cat causing a nuisance	200
3.2(4)	Failure to comply with a cat control notice	200
3.3(1)	Cat in a prohibited area	200
3.6(2)	Keeping more than the standard number of cats without a permit	200
3.12(1)	Failure to comply with a condition of a permit	200

**Schedule 2****CAT PROHIBITED AREAS**

[Cl. 3.2(1)]

<b>Name</b>	<b>Location</b>	<b>Bound by</b>
Creswell Park		Mitford Street, Gloucester Street
Lake Claremont		Davies Road, Alfred Road, Elliott Road, Strickland Street, Eastway Crescent, The Cedus, Stirling Road
Freshwater Bay Foreshore <i>*Subject to consultation with DPLH – Refer report to Council OCM 29 November 2022</i>		Victoria Avenue

Dated \_\_\_\_\_

The Common Seal of the Town of Claremont was affixed by authority of a resolution of the Council in the presence of –

\_\_\_\_\_  
JOCK BARKER  
Mayor

\_\_\_\_\_  
LIZ LEDGER  
Chief Executive Officer

DRAFT