

ATTACHMENT A

DRAFTING INSTRUCTIONS FOR CITY OF DARWIN BY-LAWS

Background

It is requested that by-laws be drafted in accordance with the requirements of Part 13.1 of the *Local Government Act* (the Act).

The Darwin City Council By-laws apply to the City of Darwin (the Council) area. The by-laws came into force on 1 July 1994. Since then, there have been significant changes to the council including the council's name (from Darwin City Council to City of Darwin in August 2012), the council's composition and population. As a result, the needs of the council and its residents have changed.

Most of the provisions of the by-laws are still relevant and the Council wishes to retain them. However, it is intended that those provisions be modernised with the use of contemporary language and reflect current Council practices and procedures. In addition, there are some provisions that do not quite align with the *Local Government Act*. There is also the need to make provisions for practices and procedures that are not currently provided for.

Instructions

It is proposed that a full rewrite of the By-laws be undertaken. However, the gist of the provisions of the current By-laws be retained with minor amendments to modernise the language and reflect Council practices and procedures. In addition, it is proposed to include new provisions to the By-laws that would assist the Council in carrying out its functions as a regulator.

Please note that we will be guided by you with regards to the numbering and order that the provisions in the new By-laws will be.

The following Table summarises the proposed changes to the By-laws.

By-law	Current situation	Proposed changes
Entire By-laws	The current By-law makes references to the term "Clerk"	This term is no longer in use. Instead, the more common term used in contemporary language is Chief Executive Officer of the Council. Please replace all references to "Clerk" with "CEO".
By-law 1	The By-laws are cited as <i>Darwin City Council By-laws</i>	On 9 August 2012, the then Minister for Local Government, by <i>Gazette</i> notice (No. S48), changed the name of the Council (pursuant to section 9(1)(c) of the <i>Local Government Act</i>) from Darwin City Council to City of Darwin. Please change the name of the By-laws to "City of Darwin By-laws".

By-law 3	The definition of "Council" is Darwin City Council	Please change the definition of "Council" to City of Darwin.
	The By-law has a definition for the term "guide dog"	Please replace the term "guide dog" with "assistance animal". Also, please replace all references to "guide dog" with "assistance animal" throughout the By-laws.
	Definition of "registrar"	Please delete this definition. Instead, please make a provision that the CEO of the Council is the registrar. The CEO will have the power to delegate this function.
By-laws 6 and 7	The By-laws provides that the council may appoint a person to be the registrar and that the registrar keeps appropriate registers	Under the section 100 of the <i>Local Government Act</i> , Council is responsible for the appointment of the CEO (see section 100 of the <i>Local Government Act</i>). Section 103 of the <i>Local Government Act</i> makes it the CEO's responsibility to the appoint staff in accordance with a staffing plan approved by the Council. If Council appoints staff, they would be interfering with the CEO's function. To this end, please remove the provision that the council appoint the registrar. Instead, please provide that the CEO is the registrar and he/she should keep the appropriate registers.
By-law 12	The By-law gives the power to Council to plan the numbering of areas of land adjacent to a road within the municipality	The numbering of properties/land adjacent to a road in the Northern Territory is done by the Department of Infrastructure, Planning and Logistics. It is not a power that should also rest with the Council. As such, please delete this provision.
By-law 15	The By-law provides for the granting of a licence	The By-laws provides for 3 types of licences: (i) licence for the use of a Council dump (By-law 28); (ii) licence to keep, at premises, more dogs or cats than the number determined by the Council (By-law 58); and (iii) market licence issued to stallholders association (By-law 116). Except for the licence to keep, at premises, more dogs or cats than the number determined by the Council, the By-laws do not provide for the cancellation, variation or suspension of the other types of licences. In addition, the cancellation, variation or suspension of a licence to keep more dogs or cats than the number determined by the Council do not provide for natural justice and procedural fairness to be accorded to the person whose licence is to be cancelled, varied or suspended.

		<p>Please draft By-laws that provide that the Council may cancel, suspend or vary the conditions of a licence if:</p> <ul style="list-style-type: none"> (i) the Council believes on reasonable grounds that the licensee obtained the licence improperly; (ii) the Council believes on reasonable grounds that the licensee has failed to comply with a condition of the licence; or (iii) the Council believes on reasonable grounds that the licensee is not a fit and proper person to continue holding the licence. <p>The Council must give the licensee a written notice that the Council proposes to cancel, suspend or vary the conditions of the licence.</p> <p>For a proposed cancellation, the Council must indicate date on which the cancellation will come into effect. In the case of a proposed suspension, the Council must indicate period of the suspension and the conditions the licensee must comply with to avoid cancellation of the licence. In the case of a proposed variation of the conditions of the licence, the Council must indicate what the variation(s) to the conditions of the licence is (are), the date on which the variation(s) of the conditions will come into effect and the period of the variation(s).</p> <p>In all cases, the notice must also state the facts and circumstances on which the Council's reasonable grounds of belief are based on that have precipitated the proposed cancellation, suspension or variation to the conditions of the licence. In addition, the notice must state that the licensee may show cause, in writing, within a period not exceeding 14 days, why the licence should not be cancelled, suspended or varied.</p> <p>If after the period specified in the notice and consideration of the licensee's representation, the Council is of the opinion that it is desirable to do so, the Council may cancel, suspend or vary the conditions of the licence accordingly.</p> <p>The Council must then give the licensee written notice of the cancellation, suspension or variation to the conditions of the licence.</p>
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By-law 22	The By-law has a definition for the term “council dump”	Please replace the term “council dump” with “waste management facility”. Also, please replace all references to “council dump” with “waste management facility” throughout the By-laws.
	The By-law has a definition for the term “regular garbage collection service”	Please replace the word “garbage” with “waste and recycling” in the term that is defined. Also, please replace all references to “garbage” with “waste and recycling” in By-laws 3, 22 – 29, 47(2)(c), 117(1)(c) and 119(1)(c). For By-laws 3, 117(1)(c) and 119(1)(c), please remove the reference to “waste” in those provisions to avoid two references to “waste” in the provisions. Only the reference to “garbage” in By-law 47(1) is to remain as is.
By-law 27	The By-law requires garbage receptacles to be returned to their location after their content is collected	As currently drafted, the By-law would arguably make council workers who, after collecting the contents of a garbage receptacle, fail to replace the receptacle and its lid guilty of an offence under the By-law. This should be a matter that is dealt with by the Council under the employment contract rather than in By-laws. As such, please delete this provision.
Subdivision 1A, Part 3	The Division provides for the declaration of dogs into different categories	The reference to categories of declared dogs based on a number is considered outdated. It is proposed that the following categories of declared dogs be referred to as follows throughout the By-laws: Category 1 – please change to “dangerous dog” Category 2 – please change to “menacing dog” Category 3 – please change to “nuisance dog”
		Please provide that the declaration of a dog into any category is a reviewable decision. As such, a decision notice must be issued after the council determines to declare a dog, with the decision appealable to NTCAT.
		The policy intention is that a “dangerous dog” must be kept in a contained manner that would prevent the dog from escaping or leaving the property unaccompanied by a person with effective control. This may include having an enclosure within a property that is already fenced, where the dog is kept. The Council does not wish to be responsible for approving suitable fences but instead wishes to put back the onus on the owner of the dangerous dog to contain it. To this end, please repeal By-law 55B(8)(b)(ii) and instead draft a new By-law requiring a “dangerous dog” be kept in a contained manner to prevent it from escaping or leaving the property unaccompanied by a

		<p>person with effective control.</p> <p>It is worth noting that other categories of declared dogs can be kept in an unfenced property as long as the dog is controlled by a suitable leash at all times.</p> <p>Please change the time requirement to notify the council of the new address where the premises of a dog changes from “within 7 days” to “within 24 hours” after the change (see By-laws 55B(8)(g), 55C(6)(f) and 55D(6)(c)).</p>
By-law 55C	Declaration of a dog as a Declared Dog (Category 2)	<p>It is proposed that before a dog is declared a Category 2 (to be referred to as “menacing dog” in the future), that there be an additional step for the issuance of a menacing warning notice. The notice would advise the owner that the Council intends to declare it as a menacing dog and the owner should show cause as to why the dog should not be so declared.</p> <p>The Council must take into account the submission by the owner when making the decision to declare the dog as a menacing dog. The Council must give the owner notice of this decision (which would be a decision notice under the <i>Local Government Act</i>).</p>
By-law 55F	The By-law provides for the declaration of a new dog as a “dangerous” or “menacing” dog based on its prior behaviour prior to its relocation to the municipality	Currently, the Council has the power to declare a class of dogs to be a prescribed breed which would then be a “dangerous” dog (see By-law 55B(3) and (4)). As such, please include in By-law 55F a provision that a new dog in the municipality may be declared a “dangerous” dog if it is of a prescribed breed.
By-law 58	The By-law provides for the licensing of premises	There is a typo in By-law 58(5). Please replace the words “clause (1)” with “clause (2)”.
By-law 60	The By-law provides for the cancellation, variation or suspension of registration or licence	After By-law 60(1), could you please insert provisions on what happens when the registrant or licensee shows cause or makes a submission. The Council would need to consider the submission prior to making a final decision on the matter
By-law 70A(2)	The By-law deals with the situation when dogs defecate	The requirement that the disposal of the faeces be in a manner that is not offensive to another person employs a subjective test. It is proposed that instead an objective test be used instead.
By-law 71(1)(b)(ii)	The By-law provides that a dog is a nuisance if the dog, among other things, makes a noise, by barking or otherwise, that continues to such a	<p>This definition of nuisance by a dog employs a subjective test.</p> <p>It is proposed that instead an objective test be used to ensure that the By-law is applied to situations that genuinely warrant intervention.</p>

	degree or extent that it unreasonably interferes with the peace, comfort or convenience of a person in another premises	Please redraft the provision such that an objective test is used in determining whether the continued noise (by barking or otherwise) made by a dog constitutes a nuisance.
Part 3, Division 2, Subdivision 6	Enforcement of the control of dogs and cats	As an additional step to enforcement, it is proposed that, for an offence under the By-laws, a person who is committing an offence or whose dog or cat is committing an offence, be provided with an opportunity to remedy or abate the offence. To this end, please draft a provision that allows for the issuance of an abatement notice and require that a person must comply with this notice. The notice must state the offence to be remedied, what abatement is required and the time or period by which the abatement should be done. It will be an offence for a person to fail to comply with the abatement notice within the timeframe and in the manner stipulated in the notice. Council officers will have the power to issue an infringement notice to a person who commits the offence.
By-law 76	The By-law provides for the establishment of a pound and determination of pound fees	Please repeal By-law 76(2) as well as all references to pound manager in the entire By-laws. Instead, the CEO will have primary responsibility for the pound but will have the power to delegate this function
By-law 81	The By-law provides for the change of ownership or address of a dog	Please clarify that this provision only applies to “un-declared dogs (as opposed to “dangerous”, “menacing” or “nuisance” dogs)
By-law 89	The By-law makes it an offence for a person, without a permit to lay pipes, cables or conduits; or erect, place or maintain a post, pillar, bridge, footway, fixture or structure in, on, over, under or abutting a public place. It is also an offence to, without a permit, dig or remove, or cause to be dug or removed, turf, sand, clay, soil or other material from, or from beneath, a public place; or place a matter or	It appears that the By-law is out of place given that it is found in a division of the By-laws that relates to roads and crossings. It would seem more appropriate that the By-law be contained in Division 5, Part 4 of the By-laws. The provisions in the latter division are general in nature. In particular, By-law 100 appears to be aimed at achieving a similar purpose, that is, making it an offence to place a matter or thing, on, under or above a public place without a permit. It may well be that By-laws 89 and 100 could be merged together. However, we are happy to be guided by you on how the By-law would be drafted.

	thing, whether or not it causes an obstruction, on a public place.	
By-law 94	The By-law creates the offence of damaging a tree, plant, garden or grass strip in a public place.	<p>At the moment, the By-law is not understood to include precluding a person from parking in a park or green belt. All that can be done is for a council ranger to ask the person to move the vehicle (and they do not have to move the vehicle). This is a particular issue when dealing with the Bicentennial Park and the Jingili Water Gardens.</p> <p>Please draft a provision that makes it an offence for a person to park a vehicle in a Council park or green belt in a public place and not within an allocated parking area without a permit.</p>
By-law 97	The By-law makes it an offence for a person to give out, distribute or affix a handbill in or on a public place without a permit.	<p>Currently, the By-law only contemplates handbills being affixed to a power pole, signpost or fixture in a street. However, people circumvent this prohibition by placing handbills under the windscreen wipers of cars.</p> <p>Please extend the prohibition of affixing handbills to vehicles and any other stationary object in or on a public place.</p>
By-law 104	The By-law deals with shopping trolleys	<p>There are typos in By-law 104(5). Please replace the words "clause (2)(a)" with "clause (3)(a)". Also, please replace the words "clause (3)" with "clause (4)".</p> <p>There is a typo in By-law 104(7). Please replace the words "clause (3)" with "clause (5)".</p>
By-law 109(8)	The By-law prohibits a person, without a permit, from bringing an animal into a mall.	<p>The policy intent is that this prohibition should not extend to assistance animals. It is also the intent that a person with an assistance animal need not obtain a permit to bring the animal into the mall. The Council will provide free registration of assistance animals.</p> <p>In addition, please include a new provision for the Council to have the power to allow dogs (that are not assistance dogs) in the mall at particular hours. For example, before 7am and after 6pm in order to allow for dog walking.</p>
By-law 113	The By-law provides for the removal of a child from public swimming pools	<p>Currently, the By-law provides that an authorised person can exclude from a public swimming pool or other waters, a child who is not accompanied by and in control of an older person who is capable of caring for the child. This provision is vague and could be interpreted to include any person who is under 18 years of age.</p> <p>The policy intent is that only children who are not capable of taking care of themselves may be excluded if they are not accompanied by an older</p>

		<p>person.</p> <p>Other Councils in Australia set the age that supervision is required as a child under 10 years. Please clarify this provision accordingly.</p>
By-law 122	The By-law, among other terms, defines the terms “book or material”.	The definition does not include electronic devices or material that is online. Please draft a definition that includes electronic devices and material that can be accessed online.
By-law 124	The By-law provides for the registration of borrowers	<p>Currently, no photo identification is required to be registered as a borrower as long as a person produces evidence of the person’s place of residence (which could be a bill or bank statement).</p> <p>It is proposed that photo identification be provided in addition to proof of residence in order to ascertain the identification of the borrower. Please draft a provision to achieve this result.</p> <p>The By-laws should also allow persons to register online and then come in for physical verification with photo identification and evidence of place of residence. Once these requirements have been met, the person can then borrow physical books.</p> <p>The By-laws currently do not contemplate for online registrations, where the sole purpose of the borrower is to access eResources including eBooks, without visiting the library in person. Please draft provisions to allow for this type of registrations.</p> <p>The By-laws should allow a person who is only registered as a borrower of eResources to, if the need arises later, to be registered to borrow physical books by presenting in person with photo identification and proof of NT residence.</p>
By-law 127	The By-law provides for the registration of borrowers from other libraries	The wording of the current By-law is unclear. Please clarify the provision as the intention is that a person who is registered as a borrower in any NT library that is not within the City of Darwin area may be registered by a City of Darwin library as a borrower and can then borrow books from any City of Darwin library.
By-law 129	The By-law provides for borrowers’ cards and their validity	<p>The <i>Information Act</i> imposes obligations on the City of Darwin in relation to how long the Council can hold borrowers’ information on its library management system.</p> <p>Please clarify the provision so that a card remains in force and expires on a set expiry date endorsed on the card. If there is no set expiry date, then the card expires after 5 years. However, a card can be</p>

		cancelled or suspended at any time.
By-law 130(3)	The By-law prohibits the issuance of a new borrower's card, where a previous card has been lost or destroyed, unless all books and materials are returned and outstanding fees and charges paid	Please repeal this provision. This practice is obsolete as the library can issue a card which records the books and materials that are yet to be returned and/or outstanding fees and charges.
By-law 132	The By-law requires the a borrower to present his/her card at a designated area in order to borrow a book or material	This requirement is outdated as it does not allow for the use of mobile technology. As such, please delete the words "at the area designated" from the provision.
By-law 134(3)	The By-law allows a librarian to decline to change the book or material borrowed on the same day.	This practice is outdated and is no longer applicable to contemporary library service. Please repeal the provision.
By-law 138	The By-law makes it an offence not to return books or pay a specified amount to replace lost or damaged books after a person has received a formal demand from the council	The current practice by the Council is to use debt collectors to retrieve long overdue items. The Council does not send "formal demands". Please redraft the provision to retain the offence but not make references to a formal demand letter by the council and instead allow for the current practice by Council.
By-law 146(1)(e)	The By-law prohibits a person from making a copy of the borrower's card	Please redraft to ensure that it does not capture borrowers who use smart technology to store library cards on apps.
By-law 146(h)(i)	The By-law prohibits a person from taking a tracing from a book or material except through a protective screen and with the permission of the librarian	This practice is outdated and is no longer applicable to contemporary library service. Please repeal the provision.
By-law 146	Conduct of persons in libraries	Please include a new provision that requires any person in a library to observe the library's code of conduct
By-law 162	Rescinding or altering motions	Please review and rewrite this section in plain English
By-law	The By-law prohibits,	The definition of vehicle includes bicycles, tricycles,

187(3)(a)	among other things, an advertising sign from causing obstruction of, or distraction to, vehicular and pedestrian traffic.	motor vehicles, an animal being driven or ridden but does not include a train, or a motorised wheelchair which is not capable of travelling at a speed greater than 7km/h. The policy intent is that an advertising sign should not obstruct or distract any person. Please also include in this By-law that the advertising sign must not obstruct or distract a person on a motorised wheelchair which is not capable of travelling at a speed greater than 7km/h.
By-law 197	The By-law provides that if an advertising sign is exhibited in contravention of the By-laws or a condition of a permit in respect of the advertising sign, an authorised person may give written notice of non-compliance to the advertiser.	Currently, the Council issues notices to the business or land owner where the advertising sign is located and not the person who carried out the works. However, there are times when the business or land owner is unaware of the sign which may be erected without his/her knowledge or consent. Please draft provisions that will allow the Council to issue notices to the signage consultant who erected the advertising in addition to the business or land owner.

New provisions

In addition to the changes mentioned above, Council would like the inclusion of the following new provisions in the By-laws.

Smoke free areas

The Council wishes to responsibly manage public places so as to enhance the enjoyment of those places by the general public. This includes establishing smoke free areas within the municipality.

Please draft By-laws that prohibit a person from smoking a tobacco product in a smoke free area. Where an authorised officer believes on reasonable grounds that a person is smoking a tobacco product in a smoke free area, the authorised person may direct the person to extinguish and then dispose of the tobacco product.

Council may declare any area within the municipality to be a smoke free area. At least 28 days before declaring a smoke free area, the Council must publish, in a newspaper circulating in the Council area, a notice of its intention to declare the area. The Council must consider any responses from members of the public before declaring the area.

When determining whether to declare a smoke free area, Council must have regard to the following factors:

- (1) the size of the proposed smoke free area;
- (2) the opinions of any person who is the owner or occupier of any part of the proposed smoke free area;

- (3) proximity of the proposed smoke free area to a public place, part or all of which is not in a smoke free area;
- (4) the extent and outcome of any public consultation on the proposed smoke free area;
- (5) any benefits to the community which would be achieved by Council prescribing the proposed smoke free area; and
- (6) any detriments to the community which would be caused by Council prescribing the proposed smoke free area.

However, the following areas are automatically smoke free areas:

- any children's playground and any area abutting such children's playground as prescribed by Council; and
- any parcel of land on which a child care centre is located, and any area abutting such parcel of land as prescribed by Council.

The Council or an authorised officer may erect, or cause to be erected, an acceptable "no smoking" sign in a smoke free area.

Unattended item in a Public Place

The Council wishes to protect the use and amenity of public places for all citizens by controlling behaviour in public places, by providing security measures to be taken in public places and by prohibiting persons from causing damage to public places or acting in a socially unacceptable manner.

Please draft By-laws that prohibits a person from leaving any item unattended in a public place unless in accordance with a permit. Please also provide an authorised officer with powers to confiscate and impound any item that is left unattended. An item that is confiscated or impounded must be returned to the owner on payment of any fee or charge prescribed by Council for its release.

If the owner of a confiscated or impounded item has not paid any fee or charge required for its release, the Council may sell, destroy or give away the item. However, before doing so, the Council must take reasonable steps to notify the owner of the item that the item has been impounded and may be sold, destroyed or given away unless the specified fee or charge is paid within 14 days.