

NORTHERN TERRITORY OF AUSTRALIA

LITCHFIELD COUNCIL (DOG MANAGEMENT) BY-LAWS

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Subordinate Legislation No. 12 of 2017

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# NORTHERN TERRITORY OF AUSTRALIA

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Subordinate Legislation No. 12 of 2017\*

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## *Litchfield Council (Dog Management) By-laws*

Litchfield Council, at a meeting held on 17 May 2017, made the following by-laws under section 188(1) of the *Local Government Act* and, for section 63(2)(a) of the *Interpretation Act*, authorised Kaylene Maree Conrick, the chief executive officer, to sign them.

Dated 22 May 2017

K. M. CONRICK  
Chief Executive Officer

The common seal of Litchfield Council is affixed in the presence of:

M BREDHAUER  
Mayor

K. M. CONRICK  
Chief Executive Officer

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\* Notified in the *Northern Territory Government Gazette* on 5 July 2017.

## Part 1 Preliminary matters

### 1 Citation

These By-laws may be cited as the *Litchfield Council (Dog Management) By-laws*.

### 2 Definitions

In these By-laws:

**abandon**, in relation to a dog, includes:

- (a) deliberately leaving the dog at premises or in a public place;  
and
- (b) failing to obtain the release of the dog from a pound.

**animal** means an animal that is kept on private premises in the Council area, and includes dogs, cats, birds and reptiles.

**approved** means approved by the Council.

**attack**, in relation to the actions of a dog, means an action of a dog that involves:

- (a) the dog rushing at, biting, chasing or menacing a person or another animal; and
- (b) the dog actually touching the person or animal, or the clothing or other property in the immediate possession or under the immediate control of the person, whether or not any injury or damage occurs to the person, animal or property.

**authorised person** means a person appointed under section 112(1) of the Act by the Council to be an authorised person.

**CEO** means the Chief Executive Officer of the Council.

**Council** means the Litchfield Council.

**Council area** means the Litchfield local government area.

**dangerous dog** means a dog declared under by-law 19 to be a dangerous dog.

**determined** means determined by the Council by resolution.

**dog** means an animal of the genus *Canis*.

**dog exercise area** means an area declared under by-law 22.

**dog restriction area** means an area declared under by-law 23.

**former By-laws**, see by-law 49.

**infringement notice**, see by-law 39.

**infringement notice offence**, see by-law 38(1).

**licence:**

- (a) means a licence granted under these By-laws for the keeping of dogs on the premises in respect of which the licence is granted; and
- (b) includes a licence that has been renewed.

**menace**, in relation to the actions of a dog, means an action that creates a reasonable apprehension in a person:

- (a) that the dog is likely to attack:
  - (i) the person; or
  - (ii) an animal owned or in the control of the person; or
  - (iii) another person; or
- (b) that the dog may escape or be released from restraint to attack a person or animal as mentioned in paragraph (a).

**microchip** means an identification device:

- (a) that complies with the following Australian Standards:
  - (i) AS 5018 – 2001 Electronic Animal Identification – National coding scheme;
  - (ii) AS 5019 – 2001 Electronic Animal Identification – Radiofrequency methods; and
- (b) that can be implanted in a dog; and
- (c) that is designed to record information in a way that it can be electronically retrieved.

**officer** means any of the following:

- (a) an authorised person;

- (b) an officer or employee of the Council.

**owner**, in relation to:

- (a) a dog, means:
  - (i) the registered owner of the dog; or
  - (ii) the person for the time being in control of the dog; and
- (b) an animal (other than a dog) – means the person for the time being in control of the animal, unless another person is established to be the owner of the animal.

**pound** means a pound established or maintained in accordance with Part 2, Division 9.

**premises** includes:

- (a) a building; and
- (b) land (whether built on or not).

**prescribed amount**, see by-law 38(2).

**properly contained**, in relation to a dog, means the dog is:

- (a) kept within a fenced area from which the dog is unable to escape; or
- (b) kept inside a building or other enclosure from which the dog is unable to escape; or
- (c) confined or restrained on a property in an appropriate manner.

**public place** includes:

- (a) every place to which free access is permitted to the public, with the express or tacit consent of the owner or occupier of the place; and
- (b) every place to which the public are admitted on payment of money, the test of the admittance being the payment of the money only; and
- (c) every road, street or pathway that the public are allowed to use, even if the road, street or pathway is formed on private property; and
- (d) land reserved under a law of the Territory for use by the public or members of the public.



**register** means a register kept under by-law 3.

**registered**, in relation to a dog, means registered under these By-laws.

**registered owner**, in relation to a dog, means the person specified in the appropriate register as the owner of the dog.

**vehicle** means a conveyance or other device designed to be propelled or drawn by any means and includes a bicycle, tricycle, motor vehicle, wheelchair or mobility device and, where the context allows, an animal being driven or ridden.

**veterinarian** means a registered veterinarian within the meaning of the *Veterinarians Act*.

*Note for by-law 2*

*The Interpretation Act contains definitions and other provisions that may be relevant to these by-laws.*

### **3 Registers**

- (1) The CEO must keep the registers as determined by the Council.
- (2) A register may be kept in any form, including electronic form.
- (3) The following information must be recorded in an appropriate register:
  - (a) all dogs registered by the Council;
  - (b) all licences granted by the Council;
  - (c) all offences against these By-laws:
    - (i) of which a registered owner of a dog has been found guilty by a court; or
    - (ii) in respect of which a registered owner of a dog has paid the prescribed amount under an infringement notice.

### **4 Matters of evidence**

- (1) An extract from, or copy of an entry in, a register, purportedly signed by the CEO is evidence of the details contained in the entry without requiring the production of the register, unless a court otherwise orders.

- (2) A statement purportedly signed by the CEO in relation to the details contained in an entry in a register, including the following, is evidence of those details without requiring the production of the register, unless a court otherwise orders:
- (a) whether the name of a person was entered in a register in relation to an animal, matter or thing;
  - (b) whether a licence or registration had been issued in relation to premises or an animal.

## **5            Application of Criminal Code**

Part IIAA of the Criminal Code applies to an offence against these By-laws.

*Note for by-law 5*

*Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.*

# **Part 2            Control of dogs**

## **Division 1        Preliminary matters**

### **6            Interpretation**

- (1) A reference in this Part to the owner of a dog (other than to the registered owner) includes:
- (a) the person for the time being in control of the dog; and
  - (b) the occupier of premises, or a part of premises, where the dog is usually kept; and
  - (c) if the owner is under the age of 17 years, a parent or guardian of the owner.
- (2) A reference in this Part to the owner of a dog does not include a person controlling or keeping a dog under Division 9.

### **7            General exemption for assistance dogs**

- (1) By-law 23(5) and (8) do not apply in relation to:
- (a) an assistance dog; or
  - (b) any other dog that the Council determines is exempt from those provisions.

(2) In this by-law:

**assistance dog** means a dog:

- (a) trained by an assistance dog training institution recognised by the Council; and
- (b) used as an assistance dog by a person who:
  - (i) is wholly or partially blind or deaf; or
  - (ii) has another form of disability requiring the use of an assistance dog.

## **Division 2            Registration of dogs**

### **8            Special considerations in determination of application for registration**

- (1) The Council must, not later than 14 days after receiving an application for the registration of a dog:
  - (a) register the dog, either conditionally or unconditionally; or
  - (b) refuse to register the dog and refund to the applicant the fee that accompanied the application.
- (2) The Council may refuse to register a dog if:
  - (a) within the period of 12 months before the date of the application the owner of the dog has been found guilty by a court of more than 2 offences against these By-laws; or
  - (b) the dog is a dangerous dog and, within the period of 12 months before the date of the application, the owner of the dog has contravened by-law 21(1) more than once; or
  - (c) within the period of 12 months before the date of the application the dog has been impounded under these By-laws on more than 2 occasions; or
  - (d) the Council is satisfied that the dog is destructive, dangerous, savage or consistently the cause of nuisance to members of the public; or
  - (e) the premises on which the dog is usually kept are not secured to a degree that is satisfactory to the Council.

- (3) The Council must refuse to register a dog if:
  - (a) in keeping the dog on the premises on which the dog is usually kept, the applicant would contravene by-law 13; or
  - (b) the dog is usually kept on premises within a dog restriction area and is not a dog mentioned in by-law 23(7).
- (4) The Council must also refuse to register a dog that is not implanted with a microchip.
- (5) If the Council refuses to register a dog or imposes conditions on the registration of a dog, the Council must give the applicant a statement in writing of the reasons for its decision.
- (6) For clause (2)(a), a reference to a finding of guilt for an offence includes the payment of a prescribed amount under an infringement notice given to a person under these By-laws.
- (7) In this by-law:

**register**, or **registration** of a dog, includes renewal of the registration of the dog.

## **9            Unregistered dogs**

- (1) A person commits an offence if:
  - (a) the person keeps a dog in the Council area for a period of 3 months or longer; and
  - (b) the dog is not registered.

Maximum penalty:        20 penalty units.
- (2) An offence against clause (1) is an offence of strict liability.
- (3) Clause (1) does not apply to:
  - (a) a Council employee or contractor keeping a dog in a pound; or
  - (b) an approved incorporated body that provides services relating to animal welfare keeping a dog in a refuge maintained by it; or
  - (c) a veterinarian keeping a dog for the purposes of treatment.

**10            Failure to comply with a condition of registration**

- (1) A registered owner of a dog commits an offence if:
- (a) the dog has been registered subject to conditions; and
  - (b) a condition of the registration is contravened by the owner.
- Maximum penalty:        20 penalty units.
- (2) An offence against clause (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against clause (1) if the defendant has a reasonable excuse.

**11            Change of ownership**

- (1) A person who acquires ownership of a registered dog must, not later than 14 days after acquiring ownership, notify the CEO of:
- (a) the person's name and address; and
  - (b) the name of the registered owner from whom the person acquired the dog; and
  - (c) the registration number of the dog.
- (2) A person who contravenes clause (1) commits an offence.
- Maximum penalty:        10 penalty units.
- (3) An offence against clause (2) is an offence of strict liability.
- (4) It is a defence to a prosecution for an offence against clause (2) if the defendant has a reasonable excuse.
- (5) The CEO must, on being notified of a change of ownership under clause (1), amend the register accordingly.

**12            Change of address**

- (1) The registered owner of a dog who changes the owner's address must, not later than 14 days after the change, notify the CEO of the new address.
- (2) A person who contravenes clause (1) commits an offence.
- Maximum penalty:        10 penalty units.
- (3) An offence against clause (2) is an offence of strict liability.

- (4) It is a defence to a prosecution for an offence against clause (2) if the defendant has a reasonable excuse.
- (5) The CEO must, on being notified of a change of address under clause (1), amend the register accordingly.

### **Division 3            Licensing of premises**

#### **13            Requirement for licence**

- (1) The Council may determine a maximum number of dogs, or dogs of a class of dog, that may be kept on premises without a licence.
- (2) An occupier of premises commits an offence if the occupier keeps dogs on the premises in contravention of a determination under clause (1).

Maximum penalty:        20 penalty units.

- (3) An offence against clause (2) is an offence of strict liability.
- (4) It is a defence to a prosecution for an offence against clause (2) if:
  - (a) the defendant has a reasonable excuse; or
  - (b) the defendant establishes that the dogs, or the dogs of the class of dog, had not been usually kept on the premises:
    - (i) for a period of 3 months or more immediately before the date of the alleged offence; or
    - (ii) for periods totalling 3 months or more during the 6 month period immediately before the date of the alleged offence.

#### **14            Licensing of premises**

- (1) The Council must, not later than 14 days after receiving an application for the licensing of premises for the keeping of dogs:
  - (a) grant a licence in respect of the premises, either conditionally or unconditionally; or
  - (b) refuse to grant a licence in respect of the premises and refund to the applicant the fee accompanying the application.

- (2) In considering an application under clause (1), the Council may take into account any matter that it considers relevant, including the following:
  - (a) the facilities for controlling dogs at the premises specified in the application;
  - (b) the number of dogs kept or to be kept at the premises;
  - (c) the likely impact on residents in the locality where the premises are situated if the licence is granted.
- (3) If the Council has determined the manner in which premises are to be fenced, the Council must not grant a licence in respect of premises if the premises are not fenced in accordance with the determination.
- (4) The Council may renew a licence without considering the application in the manner specified in clauses (2) and (3) if:
  - (a) the application is for the renewal of a licence; and
  - (b) to the Council's knowledge no matters have arisen that, if taken into account at the time the licence was granted, would have caused the Council to refuse to grant the licence or to grant the licence subject to conditions other than those specified in the licence; and
  - (c) the Council has not, since the grant of the licence, made a determination as mentioned in clause (3) that affects the premises.
- (5) If the Council refuses to grant a licence, grants a licence subject to conditions or renews a licence subject to conditions not imposed on the original licence, the Council must give the applicant a statement in writing of the reasons for its decision.

## **15            Failure to comply with a condition of licence**

- (1) An occupier of premises commits an offence if:
  - (a) a licence has been granted subject to conditions in respect of the premises; and
  - (b) a condition of the licence is contravened by the occupier.

Maximum penalty:        20 penalty units.
- (2) An offence against clause (1) is an offence of strict liability.

- (3) It is a defence to a prosecution for an offence against clause (1) if the defendant has a reasonable excuse.

#### **Division 4 Cancellation, variation or suspension of registration or licence**

##### **16 Cancellation, variation or suspension of registration or licence by request**

The Council may, on the written request of the registered owner of a dog or the holder of a licence, by notice in writing given to the registered owner or holder:

- (a) cancel the registration of the dog or the licence; or
- (b) vary the conditions to which the registration of the dog or the licence is subject; or
- (c) in the case of a licence – suspend the licence for the period specified in the notice.

##### **17 Cancellation, variation, or suspension of registration or licence otherwise than by request**

- (1) The Council may, by written notice given to the registered owner of a dog or the holder of a licence, require the person given the notice to show cause why the Council should not:
- (a) cancel the registration of the dog or the licence; or
  - (b) vary, in the manner specified in the notice, the conditions to which the registration or the licence is subject; or
  - (c) in the case of a licence – suspend the licence for the period specified in the notice.
- (2) The Council must consider any response by the registered owner of a dog before deciding to take an action mentioned in clause (1)(a) to (c).
- (3) The Council may, not less than 14 days after the date of service of a notice under clause (1), by another written notice given to the registered owner or the holder of the licence to whom the notice was given under clause (1):
- (a) cancel the registration of the dog or cancel the licence; or
  - (b) vary, in the manner specified in the notice, the conditions to which the registration of the dog or the licence is subject; or



- (c) in the case of a licence – suspend the licence for the period specified in the notice (which is not to be longer than the period specified in the notice given under clause (1)).

## **18            Operation of notice of cancellation**

A notice given by the Council under by-law 16 or 17(3) takes effect on the expiry of 14 days after the notice is given.

## **Division 5            Dangerous dogs**

### **19            Dangerous dog**

- (1) An authorised person may declare a dog to be a dangerous dog if:
  - (a) the dog attacks a person or animal; or
  - (b) the dog menaces a person or animal; or
  - (c) the authorised person believes on reasonable grounds that the dog is destructive, dangerous, savage or a threat to the safety of the community.
- (2) If an authorised person declares a dog to be a dangerous dog, the Council must serve a notice of the declaration on the owner of the dog.

### **20            Revocation of declaration**

- (1) The owner of a dangerous dog may apply to the Council for the revocation of the declaration of the dog.
- (2) The Council may:
  - (a) revoke the declaration; or
  - (b) refuse to revoke the declaration.
- (3) The Council must give written notice of a decision under clause (2) to the owner of the dog.
- (4) A revocation under clause (2)(a) takes effect from the date the Council notifies the owner of the revocation.
- (5) If the Council refuses an application made under clause (1), the CEO is not required to consider an application made under clause (1) in relation to the same dog within 6 months of the refusal.

## **21            Registration of dangerous dog**

- (1) As a condition of registration of a dangerous dog, the owner of the dog must:
  - (a) ensure the dog is properly contained when the dog is at the premises where the dog is usually kept; and
  - (b) erect signage on the premises where the dog is usually kept, with the words "Warning Dangerous Dog" clearly visible and legible from the front boundary of the premises; and
  - (c) when the dog is outside the premises where the dog is usually kept:
    - (i) ensure the dog is under the control of a person who is at least 18 years of age and competent to restrain the dog; and
    - (ii) ensure the dog is controlled by a suitable leash, and muzzled; and
  - (d) if the owner intends to keep the dog at a different location to the premises where the dog is usually kept for a period exceeding 14 days – notify the Council of the new address within 24 hours after the dog is relocated; and
  - (e) if the dog attacks, or is alleged to have attacked, a person or animal – notify the Council of the attack, or alleged attack, within 24 hours:
    - (i) after the attack, or alleged attack; or
    - (ii) of a later time when the owner is made aware of the attack, or alleged attack.
- (2) It is also a condition of registration of a dangerous dog that the owner must:
  - (a) if the dog is missing – notify the Council within 24 hours after the owner becomes aware the dog is missing; and
  - (b) if the dog dies – notify the Council within 14 days after its death.
- (3) It is a further condition of registration of a dangerous dog that the owner must:
  - (a) inform a prospective purchaser or owner of the dog that it is a dangerous dog; and

- (b) if ownership of the dog is transferred – notify the Council of the name and address of the new owner within 24 hours after the transfer.
- (4) The owner of a dangerous dog must also comply with any other condition imposed by the Council on the registration of the dog.
- (5) If the owner of a dangerous dog contravenes any of clauses (1) to (4) more than once in a 12 month period, the Council may, by notice served on the owner of the dog, require the owner to show cause why the Council should not cancel the registration of the dog.
- (6) The Council must consider any response by the registered owner of a dog before deciding to cancel the registration of the dog.
- (7) The Council may, not less than 14 days after the day a notice under clause (5) is served, by written notice served on the owner, do one or both of the following:
  - (a) cancel the registration of the dog;
  - (b) impose additional conditions on the registration of the dog.

## **Division 6            Dog exercise areas and dog restriction areas**

### **22            Dog exercise areas**

- (1) The Council:
  - (a) may declare an area within the Council area to be a dog exercise area; and
  - (b) must specify:
    - (i) the times when a dog may be exercised in the area; and
    - (ii) any other conditions applying to the exercising of a dog in the area.

*Example for clause (1)(b)(ii)*

*The Council may impose a condition that female dogs in oestrus are not permitted in a dog exercise area, or are permitted only at certain times.*

- (2) The Council must publish on its website and in a newspaper circulating in the Council area a notice of its intention to declare a dog exercise area not less than 28 days before making the declaration.

- (3) The Council must consider any response from members of the public who reside in the Council area to the notice mentioned in clause (2) before declaring the area to be a dog exercise area.

### **23        Dog restriction areas**

- (1) The Council may:
- (a) declare an area to be a dog restriction area; and
  - (b) prohibit the keeping in the area of:
    - (i) all dogs; or
    - (ii) more than a specified number of dogs; or
    - (iii) all or more than a specified number of dogs of a specified class.
- (2) The Council may also prohibit the taking of a dog into a dog restriction area.
- (3) The Council must publish on its website and in a newspaper circulating in the Council area a notice of its intention to declare a dog restriction area not less than 28 days before making the declaration.
- (4) The Council must consider any response from members of the public who reside in the Council area to the notice mentioned in clause (3) before declaring the area to be a dog restriction area.
- (5) A person commits an offence if the person keeps a dog in a dog restriction area where keeping the dog is prohibited.
- Maximum penalty:        20 penalty units.
- (6) An offence against clause (5) is an offence of strict liability.
- (7) It is a defence to a prosecution for an offence against clause (5) if the defendant proves that, at the date of the declaration of the dog restriction area, the dog:
- (a) was owned by the person; and
  - (b) was usually kept at premises in the dog restriction area; and
  - (c) if required by these By-laws to be registered, was registered.

- (8) A person commits an offence if the person takes a dog into a dog restriction area where the taking of the dog is prohibited.

Maximum penalty:        20 penalty units.

- (9) It is a defence to a prosecution for an offence against clause (8) if the person has a reasonable excuse.

## **Division 7            Offences**

### **24            Containment of dog**

- (1) An owner of a dog commits an offence if the dog is not properly contained when the dog is on the premises where the dog is usually kept.

Maximum penalty:        20 penalty units.

- (2) An offence against clause (1) is an offence of strict liability.

- (3) For clause (1), the following matters are immaterial:

- (a) the time for which the dog is not properly contained;
- (b) the ability of the owner to contain the dog.

### **25            Dog at large**

- (1) An owner of a dog commits an offence if the dog is at large in the Council area.

Maximum penalty:        20 penalty units.

- (2) An offence against clause (1) is an offence of strict liability.

- (3) It is a defence to a prosecution for an offence against clause (1) if the defendant establishes that another person had, without the defendant's permission, enticed the dog to become at large.

- (4) It is also a defence to a prosecution for an offence against clause (1) if the defendant establishes that:

- (a) the dog was in a dog exercise area; and
- (b) the dog was not in contravention of any conditions applying in relation to the dog exercise area.

(5) In this by-law:

**at large**, in relation to a dog, means:

- (a) the dog is in a place other than the premises where the dog is usually kept; and
- (b) the dog is not under effective control.

**under effective control**, in relation to a dog, means the dog is:

- (a) restrained by a leash, cord, chain or similar device that:
  - (i) is no longer than 3 metres; and
  - (ii) is held by a person who is over the age of 12 years and competent to restrain the dog; or
- (b) enclosed in a vehicle (which includes being in or on the back of a flat-topped, tray-backed or well-bodied vehicle) in such a manner that no part of the dog is projecting from the vehicle; or
- (c) in a dog exercise area in accordance with the conditions, if any, to which use of the area is subject.

## **26 Enticement**

A person commits an offence if:

- (a) the person intentionally engages in conduct; and
- (b) the conduct results in the owner of a dog being liable to prosecution for an offence against these By-laws; and
- (c) the person is reckless in relation to that result.

Maximum penalty: 20 penalty units.

## **27 Dog menacing person or animal**

- (1) An owner of a dog must ensure that the dog does not menace a person or animal.
- (2) An owner of a dog commits an offence if the owner contravenes clause (1).

Maximum penalty: 20 penalty units.

- (3) An offence against clause (2) is an offence of strict liability.

- (4) It is a defence to a prosecution for an offence against clause (2) if the defendant establishes any of the following:
- (a) another person had, without the defendant's permission, enticed the dog to menace the person or animal;
  - (b) the animal that was menaced was menaced on premises owned or occupied by the defendant;
  - (c) the person who was attacked:
    - (i) was attacked on premises owned or occupied by the defendant; and
    - (ii) was not able to establish that he or she was on the premises for a lawful purpose.
- (5) If a court finds a person guilty of an offence against clause (2), the court may make one or both of the following orders:
- (a) if the dog was impounded as a result of the offence – an order that the person pay the costs and expenses of, and incidental to, the impounding;
  - (b) an order for the destruction of the dog in addition to, or instead of, the penalty for the offence.

## **28            Dog attacking person or animal**

- (1) An owner of a dog must ensure that the dog does not attack a person or animal.
- (2) An owner of a dog commits an offence if the owner contravenes clause (1).

Maximum penalty:        20 penalty units.

- (3) An offence against clause (2) is an offence of strict liability.
- (4) It is a defence to a prosecution for an offence against clause (2) if the defendant establishes any of the following:
- (a) another person had, without the defendant's permission, enticed the dog to attack the person or animal;
  - (b) the animal that was attacked was attacked on premises owned or occupied by the defendant;

- (c) the person who was attacked:
  - (i) was attacked on premises owned or occupied by the defendant; and
  - (ii) was not able to establish that he or she was on the premises for a lawful purpose.
- (5) If a court finds a person guilty of an offence against clause (2), the court may make one or both of the following orders:
  - (a) if the dog was impounded as a result of the offence – an order that the person pay the costs and expenses of, and incidental to, the impounding;
  - (b) an order for the destruction of the dog in addition to, or instead of, the penalty for the offence.

## **29 Dog chasing vehicle**

- (1) An owner of a dog must ensure the dog does not chase a vehicle.
- (2) An owner of a dog commits an offence if the owner contravenes clause (1).

Maximum penalty: 20 penalty units.
- (3) An offence against clause (2) is an offence of strict liability.
- (4) It is a defence to a prosecution for an offence against clause (2) if the defendant establishes that another person had, without the defendant's permission, enticed the dog to chase the vehicle.

## **30 Dog causing nuisance**

- (1) An owner of a dog must ensure that the dog, either by itself or in concert with other dogs, is not a nuisance.
- (2) An owner of a dog commits an offence if the owner contravenes clause (1).

Maximum penalty: 20 penalty units.
- (3) An offence against clause (2) is an offence of strict liability.
- (4) It is a defence to a prosecution for an offence against clause (2) if the defendant has a reasonable excuse.



- (5) For this by-law, a dog is a nuisance if it is injurious or dangerous to the health of the community or an individual, or behaves repeatedly in a manner contrary to the general interest of the community or an individual.
- (6) Without limiting clause (5), a dog is a nuisance if it:
  - (a) creates a noise, by barking or otherwise, that persistently occurs or continues to a degree or extent that has a disturbing effect on the state of reasonable mental, physical or social well-being of a person; or
  - (b) repeatedly barks when people or vehicles use a public place in the vicinity of the premises where the dog is kept; or
  - (c) repeatedly defecates in a place causing annoyance to a person other than the owner of the dog.
- (7) The owner of a dog does not commit an offence against this by-law by reason of the actions of the dog mentioned in clause (6)(c) if the owner immediately removes the faeces and disposes of them in a public garbage receptacle or on the owner's own property.

### **31            Abandoning dog**

- (1) A person commits an offence if the person abandons a dog in the Council area.  
  
Maximum penalty:        20 penalty units.
- (2) An offence against clause (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against clause (1) if the defendant has a reasonable excuse.

## **Division 8            Enforcement**

### **32            Seizure of dogs**

- (1) An authorised person may seize:
  - (a) an apparently diseased, injured, savage, destructive, stray or unregistered dog; or
  - (b) a dog that is at large; or
  - (c) a dangerous dog, if the owner of the dog has not complied with the conditions of the dog's registration.

- (2) The authorised person may destroy the dog if:
  - (a) the dog is diseased, injured, savage or destructive; and
  - (b) in the opinion of the authorised person, it is necessary to do so.
- (3) Otherwise, the authorised person must as soon as practicable:
  - (a) deliver the dog to a pound; or
  - (b) return the dog to its owner.

## **Division 9            Pounds**

### **33            Pounds**

The Council may, whether within the Council area or otherwise:

- (a) establish a pound; or
- (b) make arrangements it considers appropriate for the use of premises for impounding dogs under this Division.

### **34            Notice of impounding**

- (1) If a registered dog with a microchip is delivered to a pound, the CEO must give the registered owner a notice of the impounding of the dog.
- (2) If a dog with a collar on which an address is displayed is delivered to a pound, the CEO may give, at the address, a notice of the impounding of the dog.
- (3) Except as mentioned in clause (1) or (2), the CEO is not obliged to notify the owner of a dog of the impounding of the dog.

### **35            Release of dogs from pounds**

- (1) Subject to by-law 37(1)(b), an impounded dog is not to be released from a pound:
  - (a) unless it is registered; and
  - (b) other than to the owner of the dog or a person authorised to act as the owner's agent; and
  - (c) unless there is paid to the Council the appropriate release fees.

- (2) A person who is collecting a dog from a pound must satisfy the council employee at the pound that the person is the owner of the dog, or is authorised to act as the owner's agent.

### **36 Diseased dogs**

- (1) This by-law applies if a dog has been seized under these By-laws and:
- (a) a council employee notices or suspects that the dog is diseased; or
  - (b) the CEO receives advice from a veterinarian that the dog is, or is suspected of being, diseased.
- (2) If clause (1)(a) applies, the employee must notify the CEO of the dog's condition.
- (3) The CEO must arrange for the dog to be isolated from other dogs in the pound.
- (4) The CEO must give the owner, if known, of a dog isolated under clause (3) written notice that the dog is, or is suspected of being, diseased and that the Council:
- (a) requires the dog to undergo a course of treatment specified in the notice; or
  - (b) requires the dog to be destroyed.
- (5) In a notice under clause (4), the CEO may require the owner of the dog to produce to the Council, within the time specified in the notice, a report prepared by a veterinarian or other person specified in the notice relating to:
- (a) if the dog is not required to be destroyed – the disease of the dog; or
  - (b) all other dogs usually kept at the premises where the dog was kept.
- (6) A dog the subject of a notice under this by-law may be released from the pound in accordance with by-law 35 or 37(1)(b) subject to any conditions the Council considers appropriate.
- (7) The CEO may arrange for a dog in a pound to be destroyed if the dog is so diseased or injured that it is humane to destroy it.
- (8) The cost of treatment reasonably provided by the Council to a diseased dog, and to any other dog in the pound that was infected

or was at risk of being infected by the diseased dog before the dog could reasonably be isolated, is a debt due and payable by the owner of the diseased dog to the Council.

- (9) An owner of a dog commits an offence if the owner:
- (a) fails to comply with a requirement of a notice under clause (4); or
  - (b) contravenes a condition imposed under clause (6).

Maximum penalty: 20 penalty units.

- (10) An offence against clause (9) is an offence of strict liability.
- (11) It is a defence to a prosecution for an offence against clause (9) if the defendant has a reasonable excuse.

### **37 Disposal of impounded dogs**

- (1) The CEO may, after a dog has been impounded for 72 hours:
- (a) arrange for the destruction of the dog; or
  - (b) pass the property in the dog to an approved incorporated body that provides services relating to animal welfare, and dispose of the dog as agent for that body.
- (2) Despite clause (1), if an investigation is initiated in relation to a dog that is impounded (for example, if the dog is alleged to have attacked a person or another animal), the dog must not be destroyed or disposed of until the investigation is complete.
- (3) A dog in a pound is not to be destroyed other than:
- (a) by a veterinarian or another person who is, in the opinion of the CEO, qualified to destroy the dog; and
  - (b) in a manner that is approved by the Australian Veterinary Association.

## **Part 3 Infringement notice offences**

### **38 Infringement notice offence and prescribed amount payable**

- (1) An ***infringement notice offence*** is an offence against a provision specified in the Schedule.

- (2) The **prescribed amount** for an infringement notice offence is the amount equal to the monetary value of the number of penalty units specified for the offence in the Schedule.

### **39 When infringement notice may be given**

If an authorised person believes on reasonable grounds that a person has committed an infringement notice offence, the authorised person may give a notice (an ***infringement notice***) to the person.

### **40 Contents of infringement notice**

- (1) The infringement notice must specify the following:
- (a) the name and address of the person, if known;
  - (b) the date the infringement notice is given to the person;
  - (c) the date, time and place of the infringement notice offence;
  - (d) a description of the offence;
  - (e) the prescribed amount payable for the offence;
  - (f) the enforcement agency, as defined in the *Fines and Penalties (Recovery) Act*, to which the prescribed amount is payable.
- (2) The infringement notice must include a statement to the effect of the following:
- (a) the person may expiate the infringement notice offence and avoid any further action in relation to the offence by paying the prescribed amount to the specified enforcement agency within 28 days after the notice is given;
  - (b) the person may elect under section 21 of the *Fines and Penalties (Recovery) Act* to have the matter dealt with by a court instead of under that Act by completing a statement of election and giving it to the specified enforcement agency;
  - (c) if the person does nothing in response to the notice, enforcement action may be taken under the *Fines and Penalties (Recovery) Act*, including (but not limited to) action for the following:
    - (i) suspending the person's licence to drive;
    - (ii) seizing personal property of the person;
    - (iii) deducting an amount from the person's wages or salary;

- (iv) registering a statutory charge on land owned by the person;
  - (v) making a community work order for the person and imprisonment of the person if the person contravenes the order.
- (3) Also, the infringement notice must include an appropriate form for making the statement of election mentioned in clause (2)(b).

#### **41 Electronic payment and payment by cheque**

- (1) If the person uses electronic means to pay the prescribed amount, payment is not effected until the amount is credited to the Council's bank account.
- (2) If the person tenders a cheque in payment of the prescribed amount, payment is not effected unless the cheque is cleared on first presentation.

#### **42 Withdrawal of infringement notice**

- (1) The Council may withdraw an infringement notice by written notice given to the person.
- (2) The withdrawal notice must be given:
- (a) within 28 days after the infringement notice is given to the person; and
  - (b) before payment of the prescribed amount.

#### **43 Application of Part**

- (1) This Part does not prejudice or affect the start or continuation of proceedings for an infringement notice offence for which an infringement notice has been given, unless the offence is expiated.
- (2) Also, this Part does not:
- (a) require an infringement notice to be given; or
  - (b) affect the liability of a person to be prosecuted in a court for an offence for which an infringement notice has not been given; or
  - (c) prevent more than one infringement notice for the same offence being given to a person.

- (3) If more than one infringement notice for the same offence has been given to a person, the person may expiate the offence by paying the prescribed amount in accordance with any one of the notices.

## **Part 4                      Miscellaneous matters**

### **44                      Removal or disposal of animal remains**

- (1) The Council may arrange for the remains of a dead animal that is found in a public place to be removed or disposed of.
- (2) If the Council incurs expense in removing or disposing of a dead animal, the Council may recover the expense from the owner of the animal as a debt due and payable to the Council.

### **45                      Obstruction of officers**

- (1) A person commits an offence if:
- (a) the person intentionally obstructs another person; and
  - (b) the other person is one of the following:
    - (i) an officer;
    - (ii) an employee of a contractor or subcontractor of the Council; and
  - (c) the other person is acting in an official capacity and the person has knowledge of that circumstance.

Maximum penalty:        20 penalty units.

- (2) Strict liability applies to clause (1)(b).

- (3) In this by-law:

***acting in an official capacity***, in relation to a person mentioned in clause (1)(b), means the person is exercising powers or performing functions under, or otherwise related to the administration of, these By-laws.

***obstruct*** includes hinder and resist.

### **46                      Misleading information**

- (1) A person commits an offence if:
- (a) the person intentionally gives information to another person; and

- (b) the other person is an officer; and
- (c) the information is misleading and the person has knowledge of that circumstance; and
- (d) the officer is acting in an official capacity and the person has knowledge of that circumstance.

Maximum penalty: 20 penalty units.

(2) A person commits an offence if:

- (a) the person intentionally gives a document to another person; and
- (b) the other person is an officer; and
- (c) the document contains misleading information and the person has knowledge of that circumstance; and
- (d) the officer is acting in an official capacity and the person has knowledge of that circumstance.

Maximum penalty: 20 penalty units.

(3) Strict liability applies to clauses (1)(b) and (2)(b).

(4) Clause (2) does not apply if the person, when giving the document:

- (a) draws the misleading aspect of the document to the officer's attention; and
- (b) to the extent to which the person can reasonably do so – gives the officer the information necessary to remedy the misleading aspect of the document.

(5) In this by-law:

**acting in an official capacity**, in relation to an officer, means the officer is exercising powers or performing functions under, or otherwise related to the administration of, these By-laws.

**misleading information** means information that is misleading in a material particular or because of the omission of a material particular.



#### **47            Exemption for events**

- (1) The Council may, by notice in writing, exempt a person or body from either or both of by-laws 24 or 25:
  - (a) for the purposes of a dog race, dog trial or dog show; or
  - (b) while taking part in the activities of a dog obedience club; or
  - (c) while using a dog to drive cattle or stock on a road; or
  - (d) for any other purpose or event as the Council may determine.
- (2) An exemption under clause (1):
  - (a) may relate to a particular event or to a class of events; and
  - (b) may be subject to any conditions the Council considers appropriate.

#### **48            Council may charge fee for service**

- (1) The Council may charge a fee for any service provided under these By-laws.

*Examples for clause (1)*

*A fee for registering a dog, licensing of premises, inspecting a register, keeping a dog in a pound.*

- (2) If the Council considers it appropriate, the Council may waive, reduce or refund a fee charged under clause (1).

## **Part 5            Repeals and transitional matters**

### **Division 1        Repeals**

#### **49            Repeals**

The following By-laws (the **former By-laws**) in relation to the Litchfield local government area that were in force immediately before the commencement of these By-laws are repealed:

- (a) all By-laws made under section 188 of the *Local Government Act*;
- (b) all By-laws continued in force under section 262(2) of the *Local Government Act*.

## **Division 2            Transitional matters for Litchfield Council (Dog Management) By-laws**

### **50            Dogs taken to be registered**

If, under the former By-laws, the owner of a dog provided the Council with details of an approved microchip implanted in the dog, the dog is taken to be registered under these By-laws.

### **51            Offence provisions – before and after commencement**

- (1) The offence provisions apply only in relation to offences committed after the commencement of these By-laws (the **commencement**).
- (2) The offence provisions under the former By-laws, as in force before the commencement, continue to apply in relation to offences committed before the commencement.
- (3) For this by-law, if any of the conduct constituting an offence occurred before the commencement, the offence is taken to have been committed before the commencement.
- (4) In this by-law:

**offence provisions** means the provisions of these By-laws that create or relate to offences (including in relation to criminal responsibility, defences and penalties).

**Schedule      Infringement notice offences and prescribed amounts**

by-law 38

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<b>Provision</b>	<b>Prescribed amount in penalty units</b>
by-laws 9(1), 10(1), 11(2), 12(2), 13(2), 23(5) and (8) and 25(1)	1
by-laws 15(1), 24(1), 29(2), 30(2) and 31(1)	2
by-law 27(2)	3
by-law 28(2)	6