

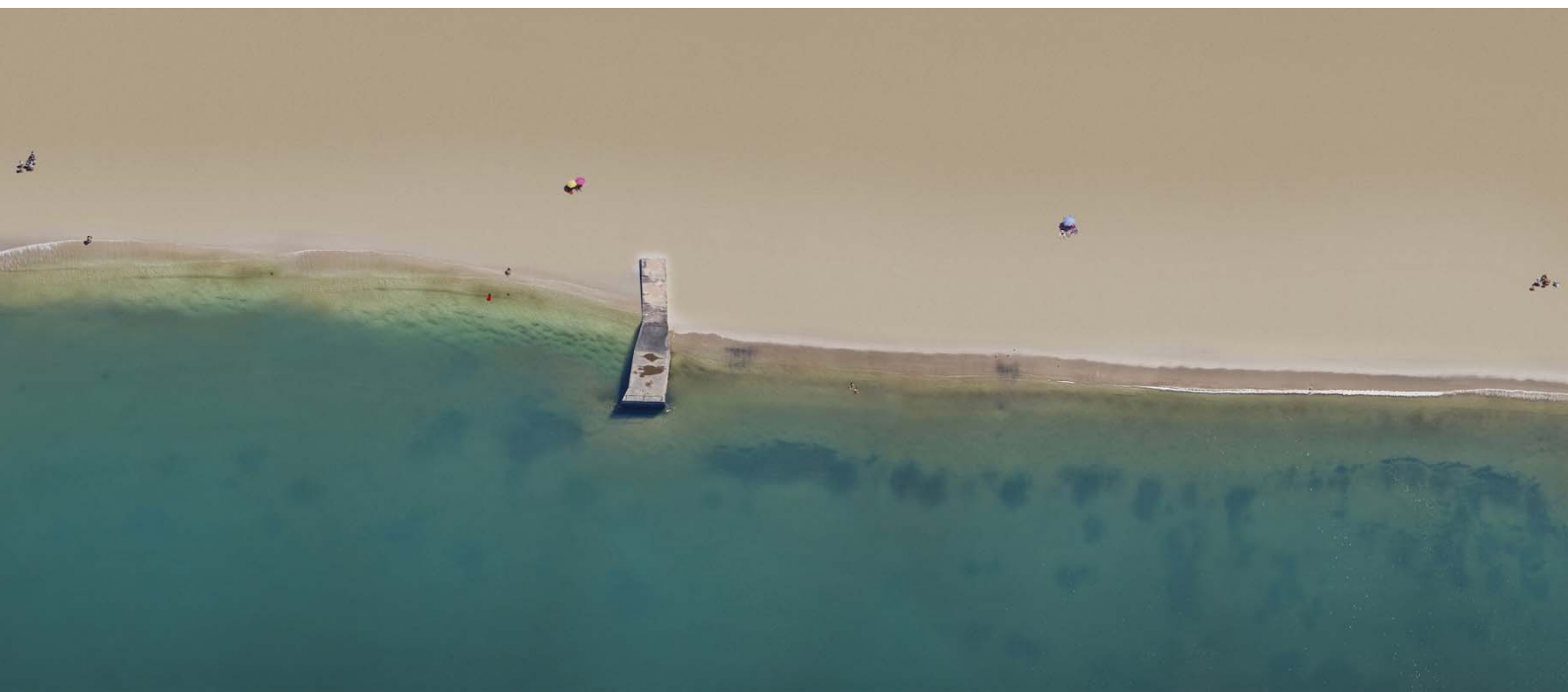


**Bayside Council**

Serving Our Community

# **Impounding of Vehicles Policy**

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Impounding of Vehicles Policy  
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Telephone Interpreter Services - 131 450 Τηλεφωνικές Υπηρεσίες Διερμηνέων بخدمة الترجمة الهاتفية 電話傳譯服務處 Служба за преведување по телефон

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# 1 Introduction

## 1.1 Background

Current statistical models, based on information obtained during the 2016 census by the Australian Bureau of statistics indicate the Bayside Local Government will see an increase in population of 22% by the year 2036. This, and the associated development to accommodate this increase in population places extreme pressures to ensure that the benefits of public land, such as the use of roads, be used in a sensible, efficient and fair manner, particularly in residential areas where parking is at a premium.

As such, car parking spaces are available for all, and not just the exclusive use of particular individuals, the management of unregistered abandoned vehicles and those that have been left unattended on public land is crucial. Further, the long-term storage of vehicles on public land (including roads), in addition to becoming unsightly and contribute to a loss of amenity, are a nuisance, and may present a safety hazard to the public.

## 1.2 Definitions

The definitions of certain terms are included in the Act – they are included in an Appendix for convenience.

“public land” includes public places as defined in the Appendix and public roads.

It is noted that there is no definition of the word ‘abandoned’ or ‘left unattended’ in the act. The meaning and definition is that found within common usage of the word eg as described in the Oxford English dictionary:

### *Abandoned*

1. Having been deserted or left.

### *Unattended*

1. Not noticed or dealt with.
2. Not supervised or looked after.

## 1.3 Policy statement

Council is committed to facilitating the equitable, efficient and safe use of public roads within the Bayside area, particularly with regard to the parking of vehicles.

## 1.4 Scope of Policy

This Policy applies to:

- Motor vehicles, and their owners and drivers, parked on public land in the Bayside Council area
- Council staff responsible for enforcing the Act.

# 2 Parking of vehicles

Most public roads within the Bayside Council area have provision for vehicle parking, whether restricted or unrestricted, for the benefit of residents, businesses and

visitors to the area. Such parking is intended to serve as places to leave a vehicle as drivers 'come and go'.

Parking on public land is not meant for long-term storage of stationary private vehicles, which are not being used for transport.

It is Council's desire that vehicle owners supervise their vehicles adequately. If their vehicles are no longer required for transport, it is appropriate that they store them on private property or dispose of them.

### **3 Investigation of vehicles**

If Council becomes aware that a vehicle is potentially abandoned or left unattended, it will commence an investigation that may lead to action to have the vehicle impounded or destroyed in accordance with this Policy.

When a vehicle is potentially abandoned or left unattended, Council will take all reasonable steps to contact the owner in order to notify them that Council has reasonable grounds to suspect that the vehicle is abandoned or left unattended.

Council will only investigate potentially abandoned or left unattended vehicles located on public land. Council is not authorised to remove vehicles from private property. Further, vehicle registration in itself does not determine if a vehicle is abandoned or left unattended. An unregistered vehicle can be owned (and frequently is owned) and, conversely, a registered vehicle may be abandoned or left unattended.

If the owner of a registered vehicle under investigation notifies Council that they own the vehicle Council will take no further action.

It is noted that it is a traffic offence to drive or park an unregistered vehicle on a road or road related. This offence is enforced by New South Wales Police rather than Council's officers, who are authorised to enforce parking offences but not traffic offences.

### **4 Impounding of vehicles**

If, after following due process, consistent with the Impounding Act 1993 and this Policy, a vehicle is determined to be abandoned or left unattended on public land and the owner is not forthcoming, Council will impound (or destroy) the vehicle in accordance with the Act.

### **5 Disposal of vehicles**

Vehicles that are to be impounded will be independently valued by an auctioneer engaged by Council.

In accordance with the Act:

- Impounded vehicles less than the value specified in the Act will be destroyed.
- Impounded vehicles greater than the value specified in the Act will be auctioned, with the net proceeds being retained by the Council.

In the case of vehicles being auctioned, persons that have an interest in impounded vehicles are able to deal with Council's auctioneer.

## 6 Policy implementation

### 6.1 Policy responsibilities

The General Manager has overall responsibility for the Policy.

The Director City Life has responsibility to provide resourcing to enable the compliance aspects of this to be implemented.

The Manager Compliance is responsible for the management Policy's effective implementation.

Council's impounding officers are responsible for the day-to-day operations of this Policy.

### 6.2 Procedures

Administrative procedures that support this Policy may be approved by the General Manager from time to time and address such issues as administrative workflows and notices.

## 7 Document control

### 7.1 Review

This Policy should be reviewed at least every four years.

Minor editorial amendments may be approved by the General Manager and / or the Manager Governance & Risk.

### 7.2 Related documents

- Local Government Act 1993
- Impounding Act 1993 (hereinafter referred to as the Act)
- Bayside Council Enforcement Policy

### 7.3 Version history

Version	Release Date	Author	Reason for Change
1.0	11/04/2018	Paul Vogt, Bruce Cooke	New document

## Appendix 1 – Relevant legislative provisions

### Impounding Act 1993

*The following sections of the Impounding Act 1993 are particularly relevant to this Policy, however, it is important that the reader familiarises themselves with the Act.*

#### *s15 – Abandoned and unattended vehicles can be impounded*

An impounding officer may impound an article found in the officer's area of operations if the officer believes on reasonable grounds that the article has been abandoned or left unattended. Section 16 affects this if the article is a motor vehicle.

#### *s16 – Special procedures for impounding of motor vehicles*

(1) An impounding officer must make all reasonable inquiries in an effort to find out the name and address of the owner of a motor vehicle before the officer impounds the vehicle.

(2) If the impounding officer's inquiries fail to reveal the name and address of the owner, the officer may proceed to impound the vehicle.

(3) If the impounding officer's inquiries do reveal the name and address of the owner, the officer is not to impound the vehicle until notice of the proposed impounding has been given to the owner and the period specified in the notice has elapsed.

(4) The notice to the owner must be in writing addressed to the owner and must indicate that the vehicle may be impounded unless it is removed within a specified period (not less than 3 days) and may be destroyed if its value is less than \$500 (or such other amount as may be prescribed under section 18).

(5) A motor vehicle may be impounded immediately (without following the procedures in this section) if the vehicle is in a public place and the impounding officer is satisfied on reasonable grounds that its immediate removal is justified because it is causing an obstruction to traffic (vehicular or pedestrian) or is likely to be a danger to the public.

#### *s17 – Impounded article to be delivered to pound*

(1) An impounding officer must have an impounded article delivered to a pound as soon as practicable after it is impounded. The pound to be used is the nearest convenient pound (if it is impounded by a police officer) or (if it is impounded by an impounding officer of an impounding authority) the nearest pound operated or used by the authority.

(2) However, an impounded article need not be delivered to a pound if the size, quantity or nature of the article concerned makes its delivery to or storage at a pound impracticable, unreasonably costly or more costly than the value of the article. In such a case, the impounded article may be left where it is impounded.

(3) An impounded motor vehicle need not be taken to a pound if section 18 authorises it to be destroyed or otherwise disposed of.

#### *s45 – Protections from liability*

(1) A person who destroys an animal under a power conferred by this Act or who destroys or otherwise disposes of a motor vehicle under section 18 is not liable in damages for any loss that the owner of the animal or motor vehicle or any other

person has sustained as a result of that action and nor is any impounding authority that authorised the person, unless it is proved that the person or authority did not act in good faith.

(2) If an item is sold or disposed of under a power conferred by this Act, the following provisions apply:

- the buyer obtains the ownership of the item,
- the item is discharged from any right, interest, trust or obligation to which it was subject immediately before sale,
- the person who was the owner of the item immediately before the sale or disposal ceases to have any claim in respect of the item or any right of action in respect of the sale or disposal except as specifically provided by this Act.

(3) A person is not prevented from recovering damages from an impounding authority in respect of the sale or disposal of an item if the person establishes that the authority, or the person who effected the sale or disposal, did not act in good faith or acted without reasonable care.



## Appendix 2 – Definitions

The definitions of certain terms within this Policy are included in the Act, and included here for convenience:

"area of operations" of an impounding officer means

- in the case of an impounding officer appointed by a council, any place in the area of the council and any place in the area of another council in which that other council has authorised it to impound under this Act, but does not include the area of operations of an impounding officer appointed by the Director of National Parks and Wildlife.

"article" means anything capable of ownership except a living creature.

"boat trailer" means a trailer constructed for, or used for, the conveyance of a boat and includes any boat (including any article that is secured to or in such a boat) or other article mounted on such a trailer at the time it is impounded.

"council" means a council under the Local Government Act 1993 .

"exercise" of a power includes, where the power is a duty, the performance of the duty.

"impounded" has the meaning given by section 8.

"impounding authority" means a council.

"impounding officer" means a person appointed by an impounding authority to exercise the powers of an impounding officer.

Note : Under section 5 all police officers have the powers of impounding officers. Police officers are not expected to exercise a primary role under this Act. Primary responsibility under this Act rests with the appropriate impounding authority.

"item" means an animal or article.

"motor vehicle" means:

- (a) a motor vehicle within the meaning of the Road Transport Act 2013 , and includes a caravan, boat trailer or other trailer (whether or not attached to such a vehicle), and
- (b) the remains of such a vehicle, and
- (c) any article (including parts and accessories) that is secured to or in such a vehicle at the time it is impounded.

"occupier" of land includes:

- (a) a person who is managing the land on behalf of its owner or occupier, and
- (b) a person who is responsible for caring for or controlling the land.

"owner" of an animal or article means any person who alone or jointly is entitled, whether at law or in equity, to possession of the animal or article.

"place" includes premises, an area of water and a means of transport.

"power" includes authority, duty and function.

"private land" means:

- all land, except Crown land (as defined in the Crown Lands Act 1989 ) and land dedicated or reserved for a public purpose that is not managed or controlled by a reserve trust under that Act, and
- Crown land (as defined in that Act) that is the subject of a holding (as defined in that Act).

Note : Land held under a lease from the Crown is treated as private land.

"public place" means a place (other than a place declared by the regulations not to be a public place) that is open to or frequented by the public:

(a) whether or not payment for admission to the place is required, and

(b) whether or not the place is usually open to or frequented by the public,

and, in particular, includes:

(c) any place dedicated or reserved for a public purpose, and

(d) a place which, although privately owned, is a place to which the public are permitted to have access for the purposes of business or leisure or to use as a thoroughfare.

"public pound" means a pound established as a public pound under this Act.

"record" includes a book, document, writing and any other source of information compiled, recorded or stored in written form, or on microfilm, or by electronic process, or in any other manner or by any other means.

## Appendix 3 – Procedures

### **Making a complaint about an abandoned / left unattended vehicle**

Complaints about abandoned/left unattended vehicles are usually made by the public directly to Council's Customer Service Centre where a Customer Request is raised on Council's CRM system and the enquiry is then allocated to a Regulations officer to investigate. In the event a complaint about an abandoned or left unattended vehicle is made by someone other than the public (eg, Councillor, Council staff) the person taking the complaint must ensure that a CRM is raised for the enquiry prior to ensure the investigation can be managed in accordance with Council Policy.

### **Initial assessment in response to complaint**

- a Following the enquiry being allocated to the Regulations Officer the Officer carries out an initial assessment of the matter. This includes;
- b An enquiry using the Roads and Maritime Services data base to determine if the registration of the reported vehicle matches that on the Roads and Maritime Services data base in addition to if it is currently registered.
- c If the vehicle is registered – an inspection to determine if it is roadworthy.
- d If the vehicle is recorded as unregistered – a door knock is carried out of nearby residences to determine the owner.
- e A review of Council records to determine if the vehicle has been fined numerous times at that location and remains illegally parked.
- f An inspection to determine if the vehicle is causing an obstruction to traffic (vehicular or pedestrian) or is likely to be a danger to the public

### **Commencement of Impounding Process**

Following the above enquiries having been carried out, the Regulations Officer will commence the impounding process under the following circumstances;

- a The vehicle is unregistered
- b The vehicle is not roadworthy.
- c The vehicle has been fined on numerous occasions and has not been moved.
- d The vehicle is causing an obstruction to traffic (vehicular or pedestrian) or is likely to be a danger to the public.

If any of the above criteria are satisfied a fluorescent 'Intention to Impound Motor Vehicle' sticker is affixed to the window of the subject vehicle advising that:

- The vehicle has been observed stationary for a period of time on the public road and Council has reasonable grounds to suspect that the vehicle has been abandoned or left unattended
- The registered owner remove the vehicle immediately from the public road, or the following enforcement action may occur.
  - (i) The vehicle will be impounded and sold at auction after the prescribed period.
  - (ii) Destroyed if less than \$500 in value
  - (iii) Issued a Penalty Notice for abandoning the vehicle
  - (iv) Claim administration and other costs associated with the processing of the vehicle

## **Valuation of Vehicle**

If the vehicle has not been moved for fourteen days after having had the fluorescent 'Intention to Impound Motor Vehicle' sticker affixed to the vehicles window, subject to written representations from the vehicle owner outlying extenuating circumstances supporting a request for an extension of time to remove the vehicle, Council will seek to have the vehicle valued.

## **Service of Notice to Impound Vehicle**

Following the valuation of the vehicle, should the vehicle continue to remain at the same location, and, subject to written representations from the vehicle owner outlying extenuating circumstances supporting a request for an extension of time to remove the vehicle, Council will serve a 'Notice of Intention to Impound Motor Vehicle'. The type of Notice sent to the last registered owner will depend on the valuation of the vehicle and whether the owner has claimed ownership of the vehicle.

- Vehicles less than \$500 in value

The Notice advises the owner of Council's intention to destroyed the vehicle in not less than three days of the Notice being served due to the vehicle being deemed either 'abandoned' or left 'unattended'.

### *Abandoned*

In the event the owner does not claim ownership of the vehicle, within the period of notification referred to on the fluorescent 'Intention to Impound Motor Vehicle' sticker, the vehicle will be deemed to have been abandoned and this will be reflected in the Notice.

### *Left Unattended*

In the event the owner claims ownership of the vehicle, should the vehicle not be moved within the period of notification referred to on the fluorescent 'Intention to Impound Motor Vehicle' sticker, the vehicle will be deemed to have been 'Left Unattended' and this will be reflected in the Notice.

- Vehicles greater than \$500 in value

The Notice advises the owner of Council's intention to impound the vehicle in not less than three days of the Notice being served due to the vehicle being deemed either 'abandoned' or left 'unattended'.

### *Abandoned*

In the event the owner does not claim ownership of the vehicle, within the period of notification referred to on the fluorescent 'Intention to Impound Motor Vehicle' sticker, the vehicle will be deemed to have been abandoned and this will be reflected in the Notice.

### *Left Unattended*

In the event the owner claims ownership of the vehicle, should the vehicle not be moved within the period of notification referred to on the fluorescent 'Intention to Impound Motor Vehicle' sticker, the vehicle will be deemed to have been 'Left Unattended' and this will be reflected in the Notice.

The Notice advises the owner of Council's intention to impound the vehicle in not less than three days of the Notice being served due to the vehicle being deemed either 'abandoned' or left 'unattended'.

### **Impounding or destruction of vehicle advice**

#### *Vehicles less than \$500 in value*

Following the expiry of the period outlined on the Notice of Intention to Impound an Abandoned or Left Unattended Vehicle, should the vehicle not be moved, notification will be sent to the owner, advising of Council's determination that the vehicle is to be impounded or destroyed with no further warning.

Notification to destroy an Abandoned Motor Vehicle or vehicle 'Left Unattended' valued at less than \$500 will be addressed to the owner and the Police will be advised.

#### *Vehicles greater than \$500 in value*

### **Application to Obtain the Release of an impounded Motor Vehicle**

An application may be made to Council, for the release of an Impounded Motor Vehicle. Council must release the vehicle if:

- it is satisfied that on reasonable grounds that the applicant is the Owner of the vehicle, is authorised to claim the vehicle on the owners behalf, or is otherwise authorised to lawful possession of the vehicle; and,
- all fees and charges payable in respect of the impounding, holding and disposing of the vehicle are paid to Council; and,
- it is satisfied that all penalties imposed in connection with the event that gave rise to the impounding have been paid; and, d) the applicant signs a receipt for the release of the vehicle.

### **Sale of Impounded Motor Vehicles**

Council must offer for sale the Impounded Motor Vehicle if:

a) reasonable inquiries have failed to reveal the name and address of the owner, 28 days from the day on which those enquiries were completed, or the date on which the vehicle was impounded (whichever is the latter).

### **Reasonable Inquiries — Sale of Impounded Motor Vehicles**

For the purposes of Clauses 8.2 and 8.3 of this Guideline, "Reasonable Inquiries" shall be deemed to have been made if:-

- a the Impounding Officer has formally contacted the relevant Police Local Area Command;
- b an "Impounding Notice" has been placed (where possible) on the driver's side window and as close as practical to the door handle of the vehicle. This Notice

is to indicate Council's intention to impound the vehicle in accordance with the relative provisions of the Act'.

- c The Impounding Officer shall record all details of these enquiries and attach this Report to the appropriate CRMS.

### **Proceeds for the Sale of Impounded Motor Vehicles**

Council may retain the net proceeds from the sale of an Impounded Motor Vehicle if no application is made by the Owner of the vehicle immediately before its sale.

**Abandoned and Unattended Vehicles  
S15 and S16 Impounding Act 1993**

