

LOCAL GOVERNMENT ACT 1995

SHIRE OF BROOMEHILL-TAMBELLUP

**ACTIVITIES IN THOROUGHFARES AND PUBLIC PLACES AND
TRADING LOCAL LAW 2020**

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SCHEDULE 1
PRESCRIBED OFFENCES

LOCAL GOVERNMENT ACT 1995

SHIRE OF BROOMEHILL-TAMBELLUP

ACTIVITIES IN THOROUGHFARES AND PUBLIC PLACES AND TRADING LOCAL LAW 2020

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Broomehill-Tambellup resolved on 11 February 2021 to make the following local law.

PART 1—PRELIMINARY

1.1 Citation

This local law may be cited as the *Shire of Broomehill-Tambellup Activities in Thoroughfares and Public Places and Trading Local Law 2020*.

1.2 Definitions

In this local law unless the context otherwise requires—

Act means the *Local Government Act 1995*;

applicant means a person who applies for a permit;

authorised person means a person authorised by the local government under section 9.10 of the Act to perform any of the functions of an authorised person under this local law;

built-up area has the meaning given to it in the *Road Traffic Code 2000*;

bulk rubbish container means a bin or container designed or used for holding a substantial quantity of rubbish and which is unlikely to be lifted without mechanical assistance, but does not include a bin or container used in connection with the local government's regular domestic rubbish collection service;

carriageway has the meaning given to it in the *Road Traffic Code 2000*;

CEO means the Chief Executive Officer of the local government;

commencement day means the day on which this local law comes into operation;

Council means the council of the local government;

crossing means a crossing giving access from a public thoroughfare to—

- (a) private land; or
- (b) a private thoroughfare serving private land;

district means the district of the local government;

food business has the meaning given by the *Food Act 2008*;

footpath has the meaning given to it in the *Road Traffic Code 2000*;

garden means any part of a thoroughfare planted, developed or treated, otherwise than as a lawn, with one or more plants;

intersection has the meaning given to it in the *Road Traffic Code 2000*;

kerb includes the edge of a carriageway;

lawn means any part of a thoroughfare which is planted only with grass, or with a similar plant, but will include any other plant provided that it has been planted by the local government;

liquor has the meaning given to it in section 3 of the *Liquor Control Act 1988*;

local government means the Shire of Broomehill-Tambellup;

local government property means anything except a thoroughfare—

- (a) which belongs to the local government;
- (b) of which the local government is the management body under the *Land Administration Act 1997*; or
- (c) which is an 'otherwise unvested facility' within section 3.53 of the Act;

lot has the meaning given to it in the *Planning and Development Act 2005*;

owner or occupier in relation to land does not include the local government;

permissible verge treatment means any one of the 4 treatments described in clause 2.8(2), and includes any reticulation pipes and sprinklers;

permit means a permit issued under this local law;

permit holder means a person who holds a valid permit;

person does not include the local government;

premises for the purpose of the definition of public place in both this clause and clause 6.1, means a building or similar structure, but does not include a carpark or a similar place;

public place includes any thoroughfare or place which the public are allowed to use, whether or not the thoroughfare or place is on private property, but does not include—

- (a) premises on private property from which trading is lawfully conducted under a written law; and
- (b) local government property;

Regulations means the *Local Government (Functions and General) Regulations 1996*;

Schedule means the Schedule to this local law

sign includes a notice, flag, mark, structure or device on which may be shown words, numbers, expressions or symbols;

thoroughfare has the meaning given to it in the Act, but does not include a private thoroughfare which is not under the management control of the local government;

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

townsite means the townsites of Broomehill and Tambellup which are—

- (a) constituted under section 26(2) of the *Land Administration Act 1997*; or
- (b) referred to in clause 37 of Schedule 9.3 of the Act;

vehicle includes—

- (a) every conveyance and every object capable of being propelled or drawn on wheels, tracks or otherwise; and
- (b) an animal being ridden or driven,

but excludes—

- (c) a wheel-chair or any device designed for use by a physically impaired person on a footpath; and
- (d) a pram, a stroller or a similar device; and
- (e) shopping trolleys

verge means that part of a thoroughfare between the carriageway and the land which abuts the thoroughfare, but does not include any footpath;

water channel means an artificial or constructed waterway designed to convey water;

water course means a river, creek or other natural watercourse (whether modified or not) in which water is contained or flows (whether permanently or from time to time); and includes—

- (a) a dam or reservoir that collects water flowing in a watercourse;
- (b) a lake or wetland through which water flows;
- (c) a channel into which the water of a watercourse has been diverted;
- (d) part of a watercourse; and
- (e) an estuary through which water flows.

1.3 Application

This local law applies throughout the district.

1.4 Repeal

- (1) This local law repeals the *Shire of Broomehill-Tambellup Activities in Thoroughfares and Public Places and Trading Local Law 2008* as published in the *Government Gazette* on 23 December 2008.
- (2) Where a policy was made or adopted by the local government under or in relation to a local law repealed by this local law, then the policy is to be taken to no longer have any effect on and from the commencement day.
- (3) The Council may resolve that notwithstanding subclause (2) specified policies continue, or are to be taken to have continued, to have effect on and from the commencement day.

1.5 Commencement

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

PART 2—ACTIVITIES IN THOROUGHFARES AND PUBLIC PLACES

Division 1—General

2.1 General prohibitions

A person shall not—

- (a) plant any plant (except grasses or a similar plant) within 10 metres of an intersection;
- (b) damage a lawn or a garden or remove any plant or part of a plant from a lawn or a garden unless—
 - (i) the person is the owner or the occupier of the lot abutting that portion of the thoroughfare and the lawn or the garden or the particular plant has not been installed or planted by the local government; or
 - (ii) the person is acting under the authority of a written law;
- (c) plant any plant (except grass or a similar plant) on a thoroughfare so that it is within 2m of a carriageway;
- (d) place on any footpath any fruit, fruit skins or other substance or fluid (whether vegetable or otherwise, but not water) which may create a hazard for any person using the footpath;
- (e) unless at the direction of the local government, damage, remove or interfere with any signpost, direction plate, guidepost, notice, shelter, shed, fence or any structure erected on a thoroughfare by the local government or a person acting under the authority of a written law;
- (f) play or participate in any game or sport so as to cause danger to any person or thing or impede the movement of vehicles or persons on a thoroughfare; or
- (g) within a mall, arcade or verandah of a shopping centre, ride any bicycle, skateboard, rollerblades or similar device.

2.2 Activities allowed with a permit—general

(1) A person shall not, without a permit—

- (a) dig or otherwise create a trench through or under a kerb or footpath;
- (b) subject to Division 3 of this Part, throw, place or deposit any thing on a verge except for removal by the local government under a bulk rubbish collection, and then only in accordance with the terms and conditions and during the period of time advertised in connection with that collection by the local government;
- (c) cause any obstruction to a vehicle or a person using a thoroughfare as a thoroughfare;
- (d) cause any obstruction to a water channel or a water course in a thoroughfare;
- (e) throw, place or drain offensive, noxious or dangerous fluid onto a thoroughfare;
- (f) damage a thoroughfare;
- (g) light any fire or burn any thing on a thoroughfare other than in a stove or fireplace provided for that purpose or under a permit issued under clause 5.13;
- (h) fell any tree onto a thoroughfare;
- (i) unless installing, or in order to maintain, a permissible verge treatment—
 - (i) lay pipes under or provide taps on any verge; or
 - (ii) place or install any thing on any part of a thoroughfare, and without limiting the generality of the foregoing, any gravel, stone, flagstone, cement, concrete slabs, blocks, bricks, pebbles, plastic sheeting, kerbing, wood chips, bark or sawdust;
- (j) provide, erect, install or use in or on any building, structure or land abutting on a thoroughfare any hoist or other thing for use over the thoroughfare;
- (k) on a public place use anything or do anything so as to create a nuisance;
- (l) place or cause to be placed on a thoroughfare a bulk rubbish container; or
- (m) interfere with the soil of, or anything in a thoroughfare or take anything from a thoroughfare.

(2) The local government may exempt a person from compliance with subclause (1) on the application of that person.

2.3 No possession and consumption of liquor on thoroughfare

(1) A person shall not consume any liquor or have in her or his possession or under her or his control any liquor on a thoroughfare unless—

- (a) that is permitted under the *Liquor Control Act 1988* or under another written law; or
- (b) the person is doing so in accordance with a permit.

(2) Subclause (1) does not apply where the liquor is in a sealed container.

Division 2—Vehicle crossing

Subdivision 1—Temporary crossings

2.4 Permit not required

(1) Where it is likely that works on a lot will involve vehicles leaving a thoroughfare and entering the lot, the person responsible for the works shall not be required to obtain a permit for the construction of a temporary crossing to protect the existing carriageway, kerb, drains and footpath, where—

- (a) a crossing does not exist; or
- (b) a crossing does exist, but the nature of the vehicles and their loads is such that they are likely to cause damage to the crossing.

(2) The *person responsible for the works* in subclause (1) is to be taken to be the registered proprietor of the lot.

(3) The registered proprietor of the lot shall keep the temporary crossing in good repair and in such a condition so as not to create any danger or obstruction to persons using the thoroughfare until such time that the temporary crossing is removed.

Subdivision 2—Redundant vehicle crossings

2.5 Removal of redundant crossing

(1) Where works on a lot will result in a crossing no longer giving access to a lot, the crossing is to be removed and the kerb, drain, footpath, verge and any other part of the thoroughfare affected by the removal are to be reinstated to the satisfaction of the local government.

(2) The local government may give written notice to the owner or occupier of a lot requiring her or him to—

- (a) remove any part of or all of a crossing which does not give access to the lot; and
- (b) reinstate the kerb, drain, footpath, verge and any other part of the thoroughfare, which may be affected by the removal,

within the period of time stated in the notice, and the owner or occupier of the lot shall comply with that notice.

Division 3—Verge treatments

Subdivision 1—Preliminary

2.6 Interpretation

In this Division, unless the context otherwise requires—

acceptable material means any material which will create a hard service or is approved by the local government.

2.7 Application

This Division only applies to the townsite.

Subdivision 2—Permissible verge treatments

2.8 Permissible verge treatments

(1) An owner or occupier of land which abuts on a verge may on that part of the verge directly in front of her or his land install a permissible verge treatment.

(2) The permissible verge treatments are—

- (a) the planting and maintenance of a lawn;
- (b) the planting and maintenance of a garden provided that—
 - (i) clear sight visibility is maintained at all times for a person using the abutting thoroughfare in the vicinity of an intersection or bend in the thoroughfare or using a driveway on land adjacent to the thoroughfare for access to or from the thoroughfare; and
 - (ii) where there is no footpath, a pedestrian has safe and clear access of a minimum width of 2m along that part of the verge immediately adjacent to the kerb;
- (c) the installation of an acceptable material being all forms of loose aggregate materials such as pebbles, stones, crushed brick and gravel are acceptable. The materials shall be no larger than 50mm and no smaller than 20mm in diameter. The material must be contained within the verge area at all times; or
- (d) the installation over no more than one third of the area of the verge (excluding any vehicle crossing) of an acceptable material in accordance with paragraph (c), and the planting and maintenance of either a lawn or a garden on the balance of the verge in accordance with paragraph (a) or (b).

2.9 Only permissible verge treatments to be installed

(1) A person shall not install or maintain a verge treatment which is not a permissible verge treatment.

(2) The owner and occupier of the lot abutting a verge treatment referred to in subclause (1) are each to be taken to have installed and maintained that verge treatment for the purposes of this clause and clause 2.10.

2.10 Obligations of owner or occupier

An owner or occupier who installs or maintains a permissible verge treatment shall—

- (a) keep the permissible verge treatment in a good and tidy condition and ensure, where the verge treatment is a garden or lawn, that a footpath on the verge and a carriageway adjoining the verge is not obstructed by the verge treatment;
- (b) not place any obstruction on or around the verge treatment; and
- (c) not disturb a footpath on the verge.

2.11 Notice to owner or occupier

The local government may give a notice in writing to the owner or the occupier of a lot abutting on a verge to make good, within the time specified in the notice, any breach of a provision of this Division.

Subdivision 3—Existing verge treatments

2.12 Transitional provision

(1) In this clause—

former provisions means the local law of the local government which permitted certain types of verge treatments, whether with or without the consent of the local government, and which was repealed by this local law.

(2) A verge treatment which—

- (a) was installed prior to the commencement day; and
- (b) on the commencement day is a type of verge treatment which was permitted under and complied with the former provisions,

is to be taken to be a permissible verge treatment for so long as the verge treatment remains of the same type and continues to comply with the former provisions.

Subdivision 4—Public works

2.13 Power to carry out public works on verge

Where the local government or an authority empowered to do so under a written law disturbs a verge, the local government or the authority—

- (a) is not liable to compensate any person for that disturbance;
- (b) may backfill with sand, if necessary, any garden or lawn; and
- (c) is not liable to replace or restore any—
 - (i) verge treatment and, in particular, any plant or any acceptable material or other hard surface; or
 - (ii) sprinklers, pipes or other reticulation equipment.

Division 4—Property numbers

Subdivision 1—Preliminary

2.14 Interpretation

In this Division, unless the context requires otherwise—

number means a number of a lot with or without an alphabetical suffix indicating the address of the lot by reference to a thoroughfare.

Subdivision 2—Assignment and marking of numbers

2.15 Assignment of numbers

The local government may assign a number to a lot in the district and may assign another Number to the lot instead of that previously assigned.

Division 5—Fencing

2.16 Public place—Item 4(1) of Division 1, Schedule 3.1 of Act

The following places are specified as a public place for the purpose of item 4(1) of Division 1 of Schedule 3.1 of the Act—

- (a) a public place, as that term is defined in clause 1.2; and
- (b) local government property.

Division 6—Signs erected by the local government

2.17 Signs

(1) A local government may erect a sign on a public place specifying any conditions of use which apply to that place.

(2) A person shall comply with a sign erected under subclause (1).

(3) A condition of use specified on a sign erected under subclause (1) is to be for the purpose of giving notice of the effect of a provision of this local law.

2.18 Transitional

Where a sign erected on a public place has been erected under a local law of the local government repealed by this local law, then on and from the commencement day, it is to be taken to be a sign erected under clause 2.17 if—

- (a) the sign specifies a condition of use relating to the public place which gives notice of the effect of a provision of this local law; and
- (b) the condition of use specified is not inconsistent with any provision of this local law.

Division 7—Driving on a closed thoroughfare

2.19 No driving on closed thoroughfare

- (1) A person shall not drive or take a vehicle on a closed thoroughfare unless—
- (a) that is in accordance with any limits or exceptions specified in the order made under section 3.50 of the Act; or
 - (b) the person has first obtained a permit.
- (2) In this clause—
- closed thoroughfare** means a thoroughfare wholly or partially closed under section 3.50 or 3.50A of the Act.

PART 3—ADVERTISING SIGNS ON THOROUGHFARES

Division 1—Preliminary

3.1 Interpretation

In this Part, unless the context otherwise requires—

advertising sign means a sign used for the purpose of advertisement and includes an “election sign”;

direction sign means a sign which indicates the direction of another place, activity or event, but does not include any such sign erected or affixed by the local government or the Commissioner of Main Roads;

election sign means a sign or poster which advertises any aspect of a forthcoming Federal, State or Local Government election;

portable direction sign means a portable free standing direction sign; and

portable sign means a portable free standing advertising sign.

Division 2—Permit

3.2 Advertising signs and portable direction signs

- (1) A person shall not, without a permit—
- (a) erect or place an advertising sign on a thoroughfare; or
 - (b) post any bill or paint, place or affix any advertisement on a thoroughfare.
- (2) Notwithstanding subclause (1), a permit is not required in respect of a portable direction sign which neither exceeds 500mm in height nor 0.5m² in area, provided that the sign is placed or erected on a thoroughfare on an infrequent or occasional basis only to direct attention to a place, activity or event during the hours of that activity or event.
- (3) Notwithstanding subclause (1), a person shall not erect or place an advertising sign—
- (a) on a footpath;
 - (b) over any footpath where the resulting vertical clearance between the sign and the footpath is less than 2.5m;
 - (c) on or within 3m of a carriageway;
 - (d) in any other location where, in the opinion of the local government, the sign is likely to obstruct lines of sight along a thoroughfare or cause danger to any person using the thoroughfare; or
 - (e) on any natural feature, including a rock or tree, on a thoroughfare, or on any bridge or the structural approaches to a bridge.

3.3 Matters to be considered in determining application for permit

In determining an application for a permit for the purpose of clause 3.2(1), the local government is to have regard to—

- (a) any other written law regulating the erection or placement of signs within the district;
- (b) the dimensions of the sign;
- (c) other advertising signs already approved or erected in the vicinity of the proposed location of the sign;
- (d) whether or not the sign will create a hazard to persons using a thoroughfare; and
- (e) the amount of the public liability insurance cover, if any, to be obtained by the applicant.

Division 3—Conditions on permit

3.4 Conditions on portable sign

If the local government approves an application for a permit for a portable sign, the application is to be taken to be approved subject to the following conditions—

- (a) the portable sign shall—
 - (i) not exceed 1m in height;
 - (ii) not exceed an area of 1m² on any side;
 - (iii) relate only to the business activity described on the permit;

- (iv) contain letters not less than 200mm in height;
 - (v) not be erected in any position other than immediately adjacent to the building or the business to which the sign relates;
 - (vi) be removed each day at the close of the business to which it relates and not be erected again until the business next opens for trading;
 - (vii) be secured in position in accordance with any requirements of the local government;
 - (viii) be placed so as not to obstruct or impede the reasonable use of a thoroughfare or access to a place by any person; and
 - (ix) be maintained in good condition; and
- (b) no more than one portable sign shall be erected in relation to the one building or business.

3.5 Conditions on election sign

If the local government approves an application for a permit for the erection or placement of an election sign on a thoroughfare, the application is to be taken to be approved subject to the sign—

- (a) being erected at least 30m from any intersection;
- (b) being free standing and not being affixed to any existing sign, post, power or light pole, or similar structure;
- (c) being placed so as not to obstruct or impede the reasonable use of a thoroughfare, or access to a place by any person;
- (d) being placed so as not to obstruct or impede the vision of a driver of a vehicle entering or leaving a thoroughfare or crossing;
- (e) being maintained in good condition;
- (f) not being erected until the election to which it relates has been officially announced;
- (g) being removed within 24 hours of the close of polls on voting day;
- (h) not being placed within 100m of any works on the thoroughfare;
- (i) being securely installed;
- (j) not being an illuminated sign;
- (k) not incorporating reflective or fluorescent materials; and
- (l) not displaying only part of a message which is to be read with other separate signs in order to obtain the whole message.

PART 4—OBSTRUCTING ANIMALS, VEHICLES OR SHOPPING TROLLEYS

Division 1—Animals and vehicles

4.1 Leaving animal or vehicle in public place or on local government property

(1) A person shall not leave an animal or a vehicle, or any part of a vehicle, in a public place or on local government property so that it obstructs the use of any part of that public place or local government property, unless that person has first obtained a permit or is authorised to do so under a written law.

(2) A person will not contravene subclause (1) where the animal is secured or tethered for a period not exceeding 1 hour.

(3) A person will not contravene subclause (1) where the vehicle is left for a period not exceeding 24 hours.

4.2 Prohibitions relating to animals

(1) In subclause (2), owner in relation to an animal includes—

- (a) an owner of it;
- (b) a person in possession of it;
- (c) a person who has control of it; and
- (d) a person who ordinarily occupies the premises where the animal is permitted to stay.

(2) An owner of an animal shall not—

- (a) allow the animal to enter or remain for any time on any thoroughfare except for the use of the thoroughfare as a thoroughfare and unless it is led, ridden or driven;
- (b) allow an animal which has a contagious or infectious disease to be led, ridden or driven in a public place; or
- (c) train or race the animal on a thoroughfare.

(3) An owner of a horse shall not lead, ride or drive a horse on a thoroughfare in a built-up area, unless that person does so under a permit or under the authority of a written law.

Division 2—Shopping trolleys

4.3 Interpretation

In this Division—

retailer means a proprietor of a shop in respect of which shopping trolleys are provided for the use of customers of the shop; and

shopping trolley means a wheeled container or receptacle supplied by a retailer to enable a person to transport goods.

4.4 Shopping trolley to be marked

A retailer shall clearly mark its name or its trading name on any shopping trolley made available for the use of customers.

4.5 Person not to leave trolley in public place

A person shall not leave a shopping trolley in a public place other than in an area set aside for the storage of shopping trolleys.

4.6 Retailer to remove abandoned trolley

(1) If a shopping trolley is found in a public place, other than in an area set aside for the storage of shopping trolleys, the local government may advise (verbally or in writing) a retailer whose name is marked on the trolley of the location of the shopping trolley.

(2) A retailer shall remove a shopping trolley within 24 hours of being so advised under subclause (1), unless the retailer—

- (a) requests the local government to collect and deliver the shopping trolley to the retailer; and
- (b) pays any fee for that collection and delivery (imposed and determined under and in accordance with sections 6.16 to 6.19 of the Act) within the period specified by the local government.

4.7 Retailer taken to own trolley

In the absence of any proof to the contrary, a shopping trolley is to be taken to belong to a retailer whose name is marked on the trolley.

PART 5—ROADSIDE CONSERVATION

Division 1—Preliminary

5.1 Interpretation

In this Part—

MRWA means Main Roads Western Australia;

specially protected flora has the meaning given to it in section 5 of the *Biodiversity Conservation Act 2016*.

threatened flora has the meaning given to it in section 5 of the *Biodiversity Conservation Act 2016*.

Roadside Conservation Committee means the Roadside Conservation Committee appointed by the responsible Minister; and

special environmental area means an area designated as such under clause 5.7.

5.2 Application

This Part does not apply to the townsite.

Division 2—Flora roads

5.3 Declaration of flora road

The local government may declare a thoroughfare which has, in the opinion of the local government, high quality roadside vegetation to be a flora road.

5.4 Construction works on flora roads

Construction and maintenance work carried out by the local government on a flora road is to be in accordance with the Handbook of Environmental Practice for Road Construction and Road Maintenance Works.

5.5 Signposting of flora roads

The local government may signpost flora roads with the standard MRWA flora road sign.

5.6 Driving only on carriageway of flora roads

(1) A person driving or riding a vehicle on a flora road shall only drive or ride the vehicle on the carriageway.

(2) Subclause (1) does not apply where—

- (a) conditions on the thoroughfare do not reasonably permit a vehicle to remain on the carriageway;
- (b) there is no carriageway; or
- (c) an exemption from the application of subclause (1) has been obtained from the local government.

Division 3—Special environmental areas

5.7 Designation of special environmental areas

The local government may designate a thoroughfare, or any part of a thoroughfare, as a special environmental area which—

- (a) has specially protected flora or threatened flora; or
- (b) in the opinion of the local government, has environmental, aesthetic or cultural significance.

5.8 Marking of special environmental areas

The local government is to mark and keep a register of each thoroughfare, or part of a thoroughfare, designated as a special environmental area.

Division 4—Planting in thoroughfares

5.9 Permit to plant

A person shall not plant any plant or sow any seeds in a thoroughfare without first obtaining a permit.

5.10 Relevant considerations in determining application

In determining an application for a permit for the purpose of clause 5.9, the local government is to have regard to—

- (a) existing vegetation within that part of the thoroughfare in which the planting is to take place; and
- (b) the diversity of species and the prevalence of the species which are to be planted or sown.

Division 5—Clearance of vegetation

5.11 Permit to clear

A person shall not clear and maintain in a cleared state, the surface of a thoroughfare within 1m of that person's land without first obtaining a permit and any other approvals which may be required under any written law.

5.12 Application for permit

In addition to the requirements of clause 7.1(2), a person making an application for a permit for the purpose of clause 5.11 shall submit a sketch plan clearly showing the boundary of the person's land and the portions of the thoroughfare joining that person's land which are to be cleared.

Division 6—Fire management

5.13 Permit to burn thoroughfare

A person shall not burn part of a thoroughfare without first obtaining a permit or unless acting under the authority of any other written law.

5.14 Application for permit

In addition to the requirements of clause 7.1(2), an application for a permit for the purposes of clause 5.13 shall—

- (a) include a sketch plan showing the portions of a thoroughfare which are proposed to be burned; and
- (b) advise of the estimated fire intensity and the measures to be taken to protect upper storey vegetation from the burn.

5.15 When application for permit can be approved

The local government may approve an application for a permit for the purpose of clause 5.13 only if the burning of the particular part of the thoroughfare will—

- (a) reduce a fire hazard and alternative means of reducing that hazard, such as slashing or the use of herbicides, are considered by the local government to be not feasible or more detrimental to native flora and fauna than burning; or
- (b) in the opinion of the local government, be beneficial for the preservation and conservation of native flora and fauna.

5.16 Prohibitions on burning

Notwithstanding anything to the contrary in this local law, an application for a permit for the purpose of clause 5.13 is not to be approved by the local government—

- (a) for burning between 31 August and 1 May of the following year where the intensity of the burn could damage native flora and fauna; or
- (b) in any year to any person for any part of a thoroughfare which is on the opposite side of the carriageway to that portion of the thoroughfare for which a permit to burn has been approved in the same year—
 - (i) Where an immediate fire hazard exists in a thoroughfare, an application for a permit may be approved by the local government to facilitate the removal of that hazard.

Division 7—Firebreaks

5.17 Permit for firebreaks on thoroughfares

A person shall not construct a firebreak on a thoroughfare without first obtaining a permit.

5.18 When application for permit cannot be approved

- (1) The local government is not to approve an application for a permit for the purpose of clause 5.17 where the thoroughfare is less than 20m wide.
- (2) Subclause (1) does not apply where the firebreak is, in the opinion of the local government, desirable for the protection of roadside vegetation.

Division 8—Commercial wildflower harvesting on thoroughfares

5.19 General prohibition on commercial wildflower harvesting

Subject to clause 5.20, a person shall not commercially harvest native flora on a thoroughfare.

5.20 Permit for revegetation projects

- (1) A person shall not collect seed from native flora on a thoroughfare without first obtaining a permit.
- (2) The local government may approve an application for a permit under subclause (1) only where—
 - (a) the seed is required for a revegetation project in any part of the district; and
 - (b) the thoroughfare, or the relevant part of it, is not a special environmental area.
- (3) Unless the local government specifically provides to the contrary on a permit, if the local government approves an application for a permit for the purpose of subclause (1) it is to be taken to be approved subject to the following conditions—
 - (a) the collection of the seed is to be carried out so as not to endanger the long time survival of the native flora on the thoroughfare; and
 - (b) any licence or approval which may be required under any other written law is to be obtained by the applicant.

PART 6—TRADING IN THOROUGHFARES AND PUBLIC PLACES

Division 1—Stallholders and traders

Subdivision 1—Preliminary

6.1 Interpretation

In this Division, unless the context otherwise requires—

Competition Principles Agreement means the Competition Principles Agreement executed by each State and Territory of the Commonwealth and the Commonwealth of Australia on 11 April 1995;

public place includes—

- (a) any thoroughfare or place which the public are allowed to use whether or not the thoroughfare or place is on private property; and
- (b) local government property,

but does not include premises on private property from which trading is lawfully conducted under a written law.

stall means a movable or temporarily fixed structure, stand or table in, on or from which goods or services are sold, hired or offered for sale or hire;

stallholder means a person in charge of a stall;

stallholder's permit means a permit issued to a stallholder;

trader means a person who carries on trading;

trader's permit means a permit issued to a trader; and

trading includes—

- (a) the selling or hiring of, the offering for sale or hire of or the soliciting of orders for goods or services in a public place;
- (b) displaying goods in any public place for the purpose of—
 - (i) offering them for sale or hire;
 - (ii) inviting offers for their sale or hire;
 - (iii) soliciting orders for them; or
 - (iv) carrying out any other transaction in relation to them; and
- (c) the going from place to place, whether or not public places, and—
 - (i) offering goods or services for sale or hire; or
 - (ii) inviting offers or soliciting orders for the sale or the hire of goods or services,

but does not include—

- (d) the delivery of pre-ordered goods or services to the purchaser of those goods or services or to the person nominated by the purchaser of those goods or services whether or not payment for those goods or services is accepted on delivery; or the taking of further orders for goods or services from the purchaser of those pre-ordered goods or services or from the person nominated by the purchaser of those pre-ordered goods or services when those orders are taken at the same time as a previous order is being delivered, whether or not payment is made for those goods or services at the time of taking the order;
- (e) the setting up of a stall or the conducting of a business at a stall under the authority of a stallholder's permit;
- (f) the selling or the offering for sale of goods and services to, or the soliciting of orders for goods and services from a person who sells those goods or services;

- (g) the selling or the offering for sale or hire by a person of goods of her or his own manufacture or services which he or she provides; and
- (h) the selling or hiring or the offering for sale or hire of—
 - (i) goods by a person who represents a manufacturer of the goods; or
 - (ii) services by a person who represents a provider of the services, which are only sold directly to consumers and not through a shop.

Subdivision 2—Permits

6.2 Stallholder's permit

- (1) A person shall not conduct a stall on a public place unless that person is—
 - (a) the holder of a valid stallholder's permit; or
 - (b) an assistant specified in a valid stallholder's permit.
- (2) Every application for a stallholder's permit shall—
 - (a) state the full name and address of the applicant;
 - (b) specify the proposed number of assistants to be engaged by the applicant in conducting the stall, as well as their names and addresses if already engaged;
 - (c) specify the proposed location of the stall;
 - (d) specify the period of time for which the permit is sought, together with the proposed days and hours of operation;
 - (e) specify the proposed goods or services to be sold or hired or offered for sale or hire from the stall; and
 - (f) be accompanied by an accurate plan and description of the proposed stall.

6.3 Trader's permit

- (1) A person shall not carry on trading unless that person is—
 - (a) the holder of a valid trader's permit; or
 - (b) an assistant specified in a valid trader's permit.
- (2) Every application for a trader's permit shall—
 - (a) state the full name and address of the applicant;
 - (b) specify the proposed number of assistants, if any, to be engaged by the applicant in trading, as well as their names and addresses if already engaged;
 - (c) specify the location or locations in which the applicant proposes to trade;
 - (d) specify the period of time for which the permit is sought, together with the proposed days and hours of trading;
 - (e) specify the proposed goods or services which will be traded; and
 - (f) be accompanied by an accurate plan and description of any proposed structure or vehicle which may be used by the applicant in trading.

6.4 Relevant considerations in determining application for permit

- (1) In determining an application for a permit for the purposes of this Division, the local government is to have regard to—
 - (a) any relevant policies of the local government;
 - (b) the desirability of the proposed activity;
 - (c) the location of the proposed activity;
 - (d) the principles set out in the Competition Principles Agreement; and
 - (e) such other matters as the local government may consider to be relevant in the circumstances of the case.
- (2) The local government may refuse to approve an application for a permit under this Division on any one or more of the following grounds—
 - (a) that the applicant has committed a breach of any provision of this local law or of any written law relevant to the activity in respect of which the permit is sought; or
 - (b) that—
 - (i) the applicant is an undischarged bankrupt or is in liquidation;
 - (ii) the applicant has entered into any composition or arrangement with creditors; or
 - (iii) a manager, an administrator, a trustee, a receiver, or a receiver and manager has been appointed in relation to any part of the applicant's undertakings or property.

6.5 Conditions of permit

- (1) If the local government approves an application for a permit under this Division subject to conditions, those conditions may include—
 - (a) the place, the part of the district, or the thoroughfare to which the permit applies;
 - (b) the days and hours during which a permit holder may conduct a stall or trade;

- (c) the number, type, form and construction, as the case may be, of any stand, table, structure or vehicle which may be used in conducting a stall or in trading;
- (d) the goods or services in respect of which a permit holder may conduct a stall or trade;
- (e) the number of persons and the names of persons permitted to conduct a stall or trade;
- (f) the requirement for personal attendance at the stall or the place of trading by the permit holder and the nomination of assistants, nominees or substitutes for the permit holder;
- (g) whether and under what terms the permit is transferable;
- (h) any prohibitions or restrictions concerning the—
 - (i) causing or making of any noise or disturbance which is likely to be a nuisance to persons in the vicinity of the permit holder;
 - (ii) the use of amplifiers, sound equipment and sound instruments;
 - (iii) the use of signs; and
 - (iv) the use of any lighting apparatus or device;
- (i) the manner in which the permit holder's name and other details of a valid permit are to be displayed;
- (j) the care, maintenance and cleansing of the stall or any structure used for trading and the place of the stall or any structure;
- (k) the vacating of the place of a stall or trading when the stall is not being conducted or trading is not being carried on;
- (l) the acquisition by the stallholder or trader of public risk insurance;
- (m) the period for which the permit is valid; and
- (n) the designation of any place or places where trading is wholly or from time to time prohibited by the local government.

(2) Where a permit holder by reason of illness, accident or other sufficient cause is unable to comply with this local law, the local government may at the request of that permit holder authorize another person to be a nominee of the permit holder for a specified period, and this local law and the conditions of the permit shall apply to the nominee as if he or she was the permit holder.

6.6 Exemptions from requirement to pay fee or to obtain a permit

(1) In this clause—

charitable organisation means an institution, association, club, society or body whether incorporated or not, the objects of which are of a charitable, benevolent, religious, cultural, educational, recreational, sporting or other like nature and from which any member does not receive any pecuniary profit except where the member is an employee or the profit is an honorarium; and

commercial participant means any person who is involved in operating a stall or in conducting any trading activity for personal gain or profit.

(2) The local government may waive any fee required to be paid by an applicant for a stallholder's permit or a trader's permit on making an application for or on the issue of a permit, or may return any such fee which has been paid, if the stall is conducted or the trading is carried on—

- (a) on a portion of a public place adjoining the normal place of business of the applicant; or
- (b) by a charitable organisation that does not sublet space to, or involve commercial participants in the conduct of a stall or trading, and any assistants that may be specified in the permit are members of that charitable organisation.

(3) The local government may exempt a person or a class of persons, whether or not in relation to a specified public place, from the requirements of this Division.

Subdivision 3—Conduct of stallholders and traders

6.7 Conduct of stallholders and traders

(1) A stallholder while conducting a stall or a trader while trading shall—

- (a) display her or his permit to do so in a conspicuous place on the stall, vehicle or temporary structure or if there is no stall, vehicle or temporary structure, carry the permit with her or him while conducting a stall or trading;
- (b) not display a permit unless it is a valid permit; and
- (c) when selling goods by weight, carry and use for that purpose, scales tested and certified in accordance with the provisions of the *National Measurement Act 1960 (Cth)*.

(2) A stallholder or trader shall not—

- (a) deposit or store any box or basket containing goods on any part of a thoroughfare so as to obstruct the movement of pedestrians or vehicles;
 - (b) act in an offensive manner;
 - (c) use or cause to be used any apparatus or device including any flap or shelf, whereby the dimensions of a stall, vehicle or structure are increased beyond those specified in the permit;
- or

Division 2—Outdoor eating facilities on public places

6.8 Interpretation

In this Division—

facility means an outdoor eating facility or establishment on any part of a public place, but does not include such a facility or establishment on private land;

permit holder means the person to whom a permit has been issued for the purpose of clause 6.16; and

public place has the meaning given to it in clause 6.1.

6.9 Permit required to conduct Facility

A person shall not establish or conduct a Facility without a permit.

6.10 Matters to be considered in determining application

In determining an application for a permit for the purpose of clause 6.16, the local government may consider in addition to any other matter it considers relevant, whether or not—

- (a) the Facility is conducted in conjunction with and as an extension of a food business which abut on the Facility, and whether the applicant is the person conducting such food business;
- (b) any abutting food business is registered in accordance with the *Food Act 2008* and whether the use of the business is permitted under the town planning scheme;
- (c) users of the Facility will have access to proper and sufficient sanitary and ablutionary conveniences;
- (d) the Facility would—
 - (i) obstruct the visibility or clear sight lines at an intersection of thoroughfares of any person; or
 - (ii) impede pedestrian access; and
- (e) the tables, chairs and other equipment to be used may obstruct or impede the use of the public place for the purpose for which it was designed.

6.11 Obligations of permit holder

(1) The permit holder for a Facility shall—

- (a) ensure that the Facility is conducted at all times in accordance with the provisions of this local law;
- (b) ensure that the eating area is kept in a clean and tidy condition at all times;
- (c) maintain the chairs, tables and other structures in the eating area in a good, clean and serviceable condition at all times; and

(2) Whenever, in the opinion of the local government, any work is required to be carried out to a Facility, the local government may give a notice to the permit holder for the Facility to carry out that work within the time limited by the notice.

(3) In subclause (2), “work” includes the removal, alteration, repair, reinstatement or reconstruction of any part of a public place arising from or in connection with the setting up or conduct of a Facility.

6.12 Removal of Facility unlawfully conducted

Where a Facility is conducted without a permit, or in contravention of a condition of a permit, any tables, chairs, umbrellas or other equipment may be removed by an authorised person and impounded in accordance with the Act.

6.13 Use of Facility by public

(1) A person shall not occupy a chair or otherwise use the equipment in a Facility the subject of a permit unless the person uses them for the purpose of consuming food or drinks provided by the Facility.

(2) A person shall leave a Facility when requested to do so by the permit holder.

6.14 Temporary removal of Facility may be requested

(1) The permit holder for a Facility is to temporarily remove the Facility when requested to do so on reasonable grounds by an authorised person or a member of the Police Service or an emergency service.

(2) The permit holder may replace the Facility removed under subclause (1) as soon as the person who directed her or him to remove it allows it to be replaced.

PART 7—PERMITS

Division 1—Applying for a permit

7.1 Application for permit

(1) Where a person is required to obtain a permit under this local law, that person shall apply for the permit in accordance with subclause (2).

(2) An application for a permit under this local law shall—

- (a) be in the form determined by the local government;
- (b) be signed by the applicant;

- (c) provide the information required by the form; and
 - (d) be forwarded to the CEO together with any fee imposed and determined by the local government under and in accordance with sections 6.16 to 6.19 of the Act.
- (3) The local government may require an applicant to provide additional information reasonably related to an application before determining an application for a permit.
- (4) The local government may require an applicant to give local public notice of the application for a permit.
- (5) The local government may refuse to consider an application for a permit which is not in accordance with subclause (2).

7.2 Decision on application for permit

- (1) The local government may—
- (a) approve an application for a permit unconditionally or subject to any conditions; or
 - (b) refuse to approve an application for a permit.
- (2) If the local government approves an application for a permit, it is to issue to the applicant a permit in the form determined by the local government.
- (3) If the local government refuses to approve an application for a permit, it is to give written notice of that refusal to the applicant.
- (4) Where a clause of this local law refers to conditions which may be imposed on a permit or which are to be taken to be imposed on a permit, the clause does not limit the power of the local government to impose other conditions on the permit under subclause (1)(a).
- (5) Where a clause of this local law refers to the grounds on which an application for a permit may be or is to be refused, the clause does not limit the power of the local government to refuse the application for a permit on other grounds under subclause (1)(b).

Division 2—Conditions

7.3 Conditions which may be imposed on a permit

The local government may approve an application for a permit subject to conditions relating to—

- (a) the payment of a fee;
- (b) the duration and commencement of the permit;
- (c) the commencement of the permit being contingent on the happening of an event;
- (d) the rectification, remedying or restoration of a situation or circumstance reasonably related to the application;
- (e) the approval of another application for a permit which may be required by the local government under any written law;
- (f) the area of the district to which the permit applies;
- (g) where a permit is issued for an activity which will or may cause damage to a public place, the payment of a deposit or bond against such damage;
- (h) the obtaining of public risk insurance in an amount and on terms reasonably required by the local government; and
- (i) the provision of an indemnity from the permit holder indemnifying the local government in respect of any injury to any person or any damage to any property which may occur in connection with the use of the public place by the permit holder.

7.4 Imposing conditions under a policy

(1) In this clause—

policy means a policy of the local government adopted by the Council containing conditions subject to which an application for a permit may be approved under clause 7.2(1)(a).

- (2) Under clause 7.2(1)(a) the local government may approve an application subject to conditions by reference to a policy.
- (3) The local government is to give a copy of the policy, or the part of the policy which is relevant to the application for a permit, with the form of permit referred to in clause 7.2(2).
- (4) An application for a permit is to be taken not to have been approved subject to the conditions contained in a policy until the local government gives the permit holder a copy of the policy or the part of the policy which is relevant to the application.
- (5) Sections 5.94 and 5.95 of the Act shall apply to a policy and for that purpose a policy is to be taken to be information within section 5.94(u)(i) of the Act.

7.5 Compliance with and variation of conditions

- (1) Where an application for a permit has been approved subject to conditions, or where a permit is to be taken to be subject to conditions under this local law, the permit holder shall comply with each of those conditions.
- (2) The local government may vary the conditions of a permit, and the permit holder shall comply with those conditions as varied.

Division 3—General

7.6 Duration of permit

A permit is valid for one year from the date on which it is issued, unless it is—

- (a) otherwise stated in this local law or in the permit; or
- (b) cancelled under clause 7.10.

7.7 Renewal of permit

(1) A permit holder may apply to the local government in writing prior to expiry of a permit for the renewal of the permit.

(2) The provisions of—

(a) this Part; and

(b) any other provision of this local law relevant to the permit which is to be renewed,

shall apply to an application for the renewal of a permit with all the necessary changes as required.

7.8 Transfer of permit

(1) An application for the transfer of a valid permit is to—

(a) be made in writing;

(b) be signed by the permit holder and the proposed transferee of the permit;

(c) provide such information as the local government may require to enable the application to be determined; and

(d) be forwarded to the CEO together with any fee imposed and determined by the local government under and in accordance with sections 6.16 to 6.19 of the Act.

(2) The local government may approve an application for the transfer of a permit, refuse to approve it or approve it subject to any conditions.

(3) Where the local government approves an application for the transfer of a permit, the transfer may be effected by—

(a) an endorsement on the permit signed by the CEO; or

(b) issuing to the transferee a permit in the form determined by the local government.

(4) Where the local government approves an application for the transfer of a permit, it is not required to refund any part of any fee paid by the former permit holder.

7.9 Production of permit

A permit holder is to produce to an authorised person her or his permit immediately upon being required to do so by that authorised person.

7.10 Cancellation of permit

(1) Subject to clause 8.1, a permit may be cancelled by the local government if the permit holder has not complied with a—

(i) condition of the permit; or

(ii) provision of any written law which may relate to the activity regulated by the permit.

(2) On the cancellation of a permit the permit holder—

(a) shall return the permit as soon as practicable to the local government; and

(b) is to be taken to have forfeited any fees paid in respect of the permit.

PART 8—OBJECTIONS AND APPEALS

8.1 Application of Part 9 Division 1 of Act

When the local government makes a decision—

(a) under clause 7.2(1); or

(b) as to whether it will renew, vary, or cancel a permit,

the provisions of Division 1 of Part 9 of the Act and regulation 33 of the Regulations apply to that decision.

PART 9—MISCELLANEOUS NOTICES

9.1 Notice to redirect or repair sprinkler

Where a lawn or a garden is being watered with a sprinkler which is on the lawn or the garden, in a manner which causes or may cause an inconvenience or obstruction to any person using a thoroughfare, the local government may give a notice to the owner or the occupier of the land abutting on the lawn or the garden, requiring the owner or the occupier or both to move or alter the direction of the sprinkler or other watering equipment.

9.2 Hazardous plants

(1) Where a plant in a garden creates or may create a hazard for any person using a thoroughfare, the local government may give a notice to the owner or the occupier of the land abutting on the garden to remove, cut, move or otherwise deal with that plant so as to remove the hazard.

(2) Subclause (1) does not apply where the plant was planted by the local government.

9.3 Notice to repair damage to thoroughfare

Where any portion of a thoroughfare has been damaged, the local government may by notice to the person who caused the damage order the person to repair or replace that portion of the thoroughfare to the satisfaction of the local government.

9.4 Notice to remove thing unlawfully placed on thoroughfare

Where any thing is placed on a thoroughfare in contravention of this local law, the local government may by notice in writing to the owner or the occupier of the property which abuts on that portion of the thoroughfare where the thing has been placed, or such other person who may be responsible for the thing being so placed, require the relevant person to remove the thing.

PART 10—ENFORCEMENT

Division 1—Notices given under this local law

10.1 Offence to fail to comply with notice

Whenever the local government gives a notice under this local law requiring a person to do anything, if the person fails to comply with the notice, the person commits an offence.

10.2 Local government may undertake requirements of notice

Where a person fails to comply with a notice referred to in clause 10.1, the local government may do the thing specified in the notice and recover from that person, as a debt, the costs incurred in so doing.

Division 2—Offences and penalties

Subdivision 1—General

10.3 Offences

(1) Any person who fails to do anything required or directed to be done under this local law, or who does anything which under this local law that person is prohibited from doing, commits an offence.

(2) Any person who commits an offence under this local law is liable, upon conviction, to a penalty not exceeding \$5,000, and if the offence is of a continuing nature, to an additional penalty not exceeding \$500 for each day or part of a day during which the offence has continued.

Subdivision 2—Infringement notices and modified penalties

10.4 Prescribed offences

(1) An offence against a clause specified in Schedule 1 is a prescribed offence for the purposes of section 9.16(1) of the Act.

(2) The amount of the modified penalty for a prescribed offence is that specified adjacent to the clause in Schedule 1.

10.5 Forms

Unless otherwise specified, for the purposes of this local law—

- (a) where a vehicle is involved in the commission of an offence, the form of the notice referred to in section 9.13 of the Act is that of Form 1 in Schedule 1 of the Regulations;
- (b) the form of the infringement notice given under section 9.16 of the Act is that of Form 2 in Schedule 1 of the Regulations; and
- (c) the form of the notice referred to in section 9.20 of the Act is that of Form 3 in Schedule 1 of the Regulations.

Schedule 1

PRESCRIBED OFFENCES

(Clause 10.4)

Item	Clause	Nature of Offence	Modified Penalty \$
1	2.1(a)	Plant any plant (except grasses or similar plant) within 10m of intersection	125
2	2.1(b)	Damaging lawn or garden	125
3	2.1(c)	Plant (except grass) on thoroughfare within 2m of carriageway	125
4	2.1(d)	Placing hazardous substance on footpath	125
5	2.1(e)	Damaging or interfering with signpost or structure on thoroughfare	350
6	2.1(f)	Playing games so as to impede vehicles or persons on thoroughfare	125

Item	Clause	Nature of Offence	Modified Penalty \$
7	2.1(g)	Riding of skateboard or similar device on mall or verandah of shopping centre	125
8	2.2(1)(a)	Digging a trench through a kerb or footpath without a permit	125
9	2.2(1)(b)	Throwing or placing anything on a verge without a permit	125
10	2.2(1)(c)	Causing obstruction to vehicle or person on thoroughfare without a permit	125
11	2.2(1)(d)	Causing obstruction to water channel on thoroughfare without a permit	250
12	2.2(1)(e)	Placing or draining offensive fluid on thoroughfare without a permit	250
13	2.2(1)(g)	Lighting a fire on a thoroughfare without a permit	350
14	2.2(1)(h)	Felling tree onto thoroughfare without a permit	125
15	2.2(1)(i)	Installing pipes or stone on thoroughfare without a permit	125
16	2.2(1)(j)	Installing a hoist or other thing on a structure or land for use over a thoroughfare without a permit	350
17	2.2(1)(k)	Creating a nuisance on a thoroughfare without a permit	125
18	2.2(1)(l)	Placing a bulk rubbish container on a thoroughfare without a permit	125
19	2.2(1)(m)	Interfering with anything on a thoroughfare without a permit	125
20	2.3(1)	Consumption or possession of liquor on thoroughfare	125
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Dated 11th day of February 2021.

The Common Seal of the Shire of Broomehill-Tambellup was affixed by authority of a resolution of the Council in the presence of—

M. C. PAGANONI, Shire President.

K. B. WILLIAMS, Chief Executive Officer.

LOCAL GOVERNMENT ACT 1995

SHIRE OF BROOMEHILL-TAMBELLUP

EXTRACTIVE INDUSTRIES LOCAL LAW 2020

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LOCAL GOVERNMENT ACT 1995

SHIRE OF BROOMEHILL-TAMBELLUP

EXTRACTIVE INDUSTRIES LOCAL LAW 2020

Under the powers conferred by the *Local Government Act 1995* and by all other powers, the local government of the Shire of Broomehill-Tambellup resolved to make the following local laws on the 11th February 2021.

PART 1—PRELIMINARY

1.1. Definitions

In this local law, unless the context otherwise requires—

Act means the *Local Government Act 1995*;

carry on an extractive industry means quarrying and excavating for stone, gravel, sand, and other material;

CEO means the Chief Executive Officer of the local government;

district means the district of the local government;

excavation includes quarry;

land, unless the context otherwise requires, means the land on which the applicant proposes carrying on the extractive industry to which the licence application relates;

licence means a licence issued under this local law;

licensee means the person named in the licence as the licensee;

local government means the Shire of Broomehill-Tambellup;

occupier has the meaning given to it in the Act;

owner has the meaning given to it in the Act;

person does not include the local government;

secured sum means the sum required to be paid or the amount of a bond, guarantee or other security under clause 5.1; and

site means the land specified by the local government in a licence.

1.2. Application

(1) The provisions of this local law—

(a) subject to paragraphs (b), (c), (d) and (e);

(i) apply and have force and effect throughout the whole of the district; and

(ii) apply to every excavation whether commenced prior to or following the coming into operation of this local law;

(b) do not apply to the extraction of minerals under the *Mining Act 1978*;

(c) do not apply to the carrying on of an extractive industry on Crown land;

(d) do not apply to the carrying on of an extractive industry on land by the owner or occupier of that land for use on that land; and

(e) do not affect the validity of any licence issued under the local law repealed by clause 1.3 of this local law if that licence is currently in force at the date of gazettal of this local law.

(2) In sub clause (1)(d) **land** includes adjoining lots or locations in the same occupation or ownership of the owner or occupier referred to in sub clause (1)(d).

1.3. Repeal

This local law repeals the *Shire of Broomehill-Tambellup Extractive Industries Local Law* as published in the *Government Gazette* on 23 December 2008.

PART 2—LICENSING REQUIREMENTS FOR AN EXTRACTIVE INDUSTRY

2.1. Extractive Industries Prohibited Without Licence

A person must not carry on an extractive industry—

- (a) unless the person is the holder of a valid and current licence; and
- (b) otherwise than in accordance with any terms and conditions set out in, or applying in respect of, the licence.

Penalty: \$5000 and a daily penalty not exceeding a fine of \$500 in respect of each day or part of a day during which an offence has continued.

2.2. Applicant To Advertise Proposal

(1) Unless the local government first approves otherwise, a person seeking the issue of a licence shall, before applying to the local government for a licence—

- (a) forward by registered mail a notice in the form determined by the local government from time to time to—
 - (i) the owners and occupiers of all land adjoining the land upon which it is proposed to excavate, or within an area determined by the local government as likely to be affected by the granting of a licence, advising of the application and specifying that they may, within twenty-one days from the date of service of the letter, object to or make representations in writing in respect of the issue of a licence by the local government;
 - (ii) every authority or person having control or jurisdiction over any of the things referred to in clause 2.3(1)(a)(vii) and (viii) within 500 metres from the boundaries of the land, or within an area determined by the local government as likely to be affected by the granting of a licence; and
- (b) as soon as practicable after complying with the requirements of paragraph (a)—
 - (i) forward a copy of the notice to the CEO; and
 - (ii) publish the notice in a newspaper circulating in the area in which the proposed excavation is located.

(2) The local government may, within 14 days after receiving a copy of a notice referred to in sub clause (1), cause to be displayed, or require the proposed applicant to display, in a prominent position on the land one or more notices—

- (a) in the form determined by the local government from time to time;
- (b) the content, size and construction of which have been approved by the CEO;
- (c) specifying particulars of the proposed excavation; and
- (d) inviting objections or comments within 21 days from the placement of the notice.

2.3. Application For Licence

(1) Subject to sub clause (3), a person seeking the issue of a licence in respect of any land shall apply in the form determined by the local government from time to time and must forward the application duly completed and signed by each of the applicant, the owner of the land and any occupier of the land to the CEO together with—

- (a) 3 copies of a plan of the excavation site to a scale of between 1:500 and 1:2000 showing—
 - (i) the existing and proposed land contours based on the Australian Height Datum and plotted at 1 metre contour intervals;
 - (ii) the land on which the excavation site is to be located;
 - (iii) the external surface dimensions of the land;
 - (iv) the location and depth of the existing and proposed excavation of the land;
 - (v) the location of existing and proposed thoroughfares or other means of vehicle access to and egress from the land and to public thoroughfares in the vicinity of the land;
 - (vi) the location of buildings, treatment plant, tanks and other improvements and developments existing on, approved for or proposed in respect of the land;
 - (vii) the location of existing power lines, telephone cables and any associated poles or pylons, sewers, pipelines, reserves, bridges, railway lines and registered grants of easement or other encumbrances over, on, under or adjacent to or in the vicinity of the land;
 - (viii) the location of all existing dams, watercourses, drains or sumps on or adjacent to the land;
 - (ix) the location and description of existing and proposed fences, gates and warning signs around the land; and
 - (x) the location of the areas proposed to be used for stockpiling excavated material, treated material, overburden and soil storage on the land and elsewhere;
- (b) 3 copies of a works and excavation programme containing—
 - (i) the nature and estimated duration of the proposed excavation for which the licence is applied;
 - (ii) the stages and the timing of the stages in which it is proposed to carry out the excavation;

- (iii) details of the methods to be employed in the proposed excavation and a description of any on-site processing works;
 - (iv) details of the depth and extent of the existing and proposed excavation of the site;
 - (v) an estimate of the depth of and description of the nature and quantity of the overburden to be removed;
 - (vi) a description of the methods by which existing vegetation is to be cleared and topsoil and overburden removed or stockpiled;
 - (vii) a description of the means of access to the excavation site and the types of thoroughfares to be constructed;
 - (viii) details of the proposed number and size of trucks entering and leaving the site each day and the route or routes to be taken by those vehicles;
 - (ix) a description of any proposed buildings, water supply, treatment plant, tanks and other improvements;
 - (x) details of drainage conditions applicable to the land and methods by which the excavation site is to be kept drained;
 - (xi) a description of the measures to be taken to minimise sand drift, dust nuisance, erosion, watercourse siltation and dangers to the general public;
 - (xii) a description of the measures to be taken to comply with the *Environmental Protection (Noise) Regulations 1997*;
 - (xiii) a description of the existing site environment and a report on the anticipated effect that the proposed excavation will have on the environment in the vicinity of the land;
 - (xiv) details of the nature of existing vegetation, shrubs and trees and a description of measures to be taken to minimise the destruction of existing vegetation; and
 - (xv) a description of the measures to be taken in screening the excavation site, or otherwise minimising adverse visual impacts, from nearby thoroughfares or other areas;
- (c) 3 copies of a rehabilitation and decommissioning programme indicating—
- (i) the objectives of the programme, having due regard to the nature of the surrounding area and the proposed end-use of the excavation site;
 - (ii) whether restoration and reinstatement of the excavation site is to be undertaken progressively or upon completion of excavation operations;
 - (iii) how any face is to be made safe and batters sloped;
 - (iv) the method by which topsoil is to be replaced and revegetated;
 - (v) the numbers and types of trees and shrubs to be planted and other landscaping features to be developed;
 - (vi) how rehabilitated areas are to be maintained; and
 - (vii) the programme for the removal of buildings, plant, waste and final site clean up;
- (d) evidence that a datum peg has been established on the land related to a point approved by the local government on the surface of a constructed public thoroughfare or such other land in the vicinity;
- (e) a certificate from a licensed surveyor certifying the correctness of—
- (i) the plan referred to in paragraph (a); and
 - (ii) the datum peg and related point referred to in paragraph (d);
- (f) Evidence that the applicant has complied with clause 2.2(1) and issued any notices required by the Shire under clause 2.2(2).
- (g) copies of all land use planning approvals required under any planning legislation;
- (h) copies of any environmental approval required under any environmental legislation;
- (i) copies of any geotechnical information relating to the excavation site;
- (j) the consent in writing to the application from the owner of the excavation site;
- (k) the licence application fee specified by the local government from time to time; and
- (l) any other information that the local government may reasonably require.
- (2) All survey data supplied by an applicant for the purpose of sub clause (1) shall comply with Australian Height Datum and Australian Map Grid standards.
- (3) Where in relation to a proposed excavation—
- (a) the surface area is not to exceed 5000 square metres; and
 - (b) the extracted material is not to exceed 5000 cubic metres;
- the local government may exempt a person making application for a licence under sub clause (1) from supplying any of the data specified in paragraphs (b), (d), (e) and (i) of sub clause (1).

PART 3—DETERMINATION OF APPLICATION

3.1. Determination Of Application

- (1) The local government may, in respect of an application for a licence—
- (a) refuse the application; or

- (b) approve the application—
 - (i) over the whole or part of the land in respect of which the application is made; and
 - (ii) on such terms and conditions, if any, as it sees fit.
- (2) The local government may refuse to consider an application for a licence that does not comply with the requirements of clause 2.3, and in any event shall refuse an application for a licence where planning approval for an extractive industry use of the land has not first been obtained.
 - (a) Where the local government refuses the application for a licence under subclause (5), it shall notify the licensee in writing.
- (3) Where the local government approves an application for a licence, it shall—
 - (a) determine the licence period, not exceeding 21 years from the date of issue; and
 - (b) approve the issue of a licence in the form determined by the local government from time to time.
 - (c) notify the applicant in writing
- (4) Where the local government approves the issue of a licence, the CEO shall issue the licence to the applicant upon receipt by the local government of—
 - (a) payment of the annual licence fee, or the relevant proportion of the annual licence fee to 30th June, determined by the local government under and in accordance with sections 6.16 to 6.19 of the *Local Government Act 1995*;
 - (b) payment of the secured sum if any, imposed under clause 5.1;
 - (c) the documents, if any, executed to the satisfaction of the CEO, under clause 5.1; and
 - (d) a copy of the public liability insurance policy required under clause 7.1(1) shall issue the licence to the applicant.
- (5) Without limiting sub clause (2), the local government may impose conditions in respect of the following matters—
 - (a) the orientation of the excavation to reduce visibility from other land;
 - (b) the appropriate siting of access thoroughfares, buildings and plant;
 - (c) the stockpiling of material;
 - (d) the hours during which any excavation work may be carried out;
 - (e) the hours during which any processing plant associated with, or located on, the site may be operated;
 - (f) requiring all crushing and treatment plant to be enclosed within suitable buildings to minimise the emission of noise, dust, vapour and general nuisance to the satisfaction of the local government;
 - (g) the depths below which a person shall not excavate;
 - (h) distances from adjoining land or thoroughfares within which a person must not excavate;
 - (i) the safety of persons employed at or visiting the excavation site;
 - (j) the control of dust and wind-blown material;
 - (k) the planting, care and maintenance of trees, shrubs and other landscaping features during the time in which the extractive industry is carried out in order to effectively screen the area to be excavated and to provide for progressive rehabilitation;
 - (l) the prevention of the spread of dieback or other disease;
 - (m) the drainage of the excavation site and the disposal of water;
 - (n) the restoration and reinstatement of the excavation site, the staging of such works, and the minimising of the destruction of vegetation;
 - (o) the provision of retaining walls to prevent subsidence of any portion of the excavation or of land abutting the excavation;
 - (p) requiring the licensee to furnish to the local government a surveyor's certificate each year, prior to the renewal fee being payable, to certify the quantity of material extracted and that material has not been excavated below the final contour levels outlined within the approved excavation programme;
 - (q) requiring the licensee to enter into an agreement with the local government by which it agrees to pay any extraordinary expenses incurred by the local government in repairing damage caused to thoroughfares in the district by heavy or extraordinary traffic conducted by or on behalf of the licensee under the licence;
 - (r) requiring the licensee to enter into an agreement with the local government in respect of any condition or conditions imposed under this local law; and
 - (s) any other matter for properly regulating the carrying on of an extractive industry.

3.2. Payment Of Annual Licence Fee

On or before 30 June in each year, a licensee shall pay to the local government the annual licence fee determined by the local government under and in accordance with sections 6.16 to 6.19 of the *Local Government Act 1995*.

PART 4—TRANSFER, CANCELLATION AND RENEWAL OF LICENCE

4.1. Transfer Of Licence

- (1) An application for the transfer of a licence shall—
 - (a) be made in writing;
 - (b) be signed by the licensee and the proposed transferee of the licence;
 - (c) be accompanied by the current licence;
 - (d) be accompanied by the consent in writing to the transfer from the owner of the excavation site;
 - (e) include any information that the local government may reasonably require; and
 - (f) be forwarded to the CEO together with the fee determined by the local government from time to time.
- (2) Upon receipt of any application for the transfer of a licence, the local government may—
 - (a) refuse the application; or
 - (b) approve the application on such terms and conditions, if any, as it sees fit.
- (3) Where the local government approves an application for the transfer of a licence, the local government shall transfer the licence by an endorsement on the licence in the form determined by the local government from time to time, signed by the CEO.
- (4) Where the local government approves the transfer of a licence it shall not be required to refund any part of the fees paid by the former licensee in respect of the transferred licence.
- (5) Where the local government approves the transfer of a licence under subclause (2), it shall notify the licensee in writing.

4.2. Cancellation Of Licence

- (1) The local government may cancel a licence where the licensee has—
 - (a) been convicted of an offence against—
 - (i) this local law; or
 - (ii) any other law relating to carrying on an extractive industry; or
 - (b) transferred or assigned or attempted to transfer or assign the licence without the consent of the local government;
 - (c) permitted another person to carry on an extractive industry otherwise than in accordance with the terms and conditions of the licence and of the provisions of this local law;
 - (d) failed to pay the annual licence fee under clause 3.2; or
 - (e) failed to have a current public liability insurance policy under clause 7.1(1) or failed to provide a copy of the policy or evidence of its renewal as the case may be, under clause 7.1(2).
- (2) Where the local government cancels a licence under this clause—
 - (a) the local government shall advise the licensee in writing of the cancellation;
 - (b) the cancellation takes effect on and from the day on which the licensee is served with the cancellation advice; and
 - (c) the local government shall not be required to refund any part of the fees paid by the licensee in respect of the cancelled licence.

4.3. Renewal Of Licence

- (1) A licensee who wishes to renew a licence must apply in writing to the local government at least 45 days before the date of expiry of the licence and shall submit with the application for renewal—
 - (a) the fee determined by the local government from time to time;
 - (b) a copy of the current licence;
 - (c) a plan showing the contours of the excavation carried out to the date of that application; details of the works, excavation and rehabilitation stages reached and of any changes or proposed changes with respect to any of the things referred to in clauses 2.3(1)(b) and (c); and
 - (d) any other things referred to in clauses 2.3 and 3.1.
- (2) The local government may waive any of the requirements specified in clause 4.3 (1)(d).
- (3) If—
 - (a) an application to renew a licence is in relation to land in respect of which the current licence was issued less than 12 months prior to the date from which the new licence if granted would apply; and
 - (b) the methods to be employed in the proposed land excavation are identical to those being employed at the date of the application,then the applicant shall not be obliged, unless otherwise required by the local government to submit details of any of the things referred to in clauses 2.3 and 3.1.
- (4) Upon receipt of an application for the renewal of a licence, the local government may—
 - (a) refuse the application; or
 - (b) approve the application on such terms and conditions, if any, as it sees fit.
- (5) Where the local government renews a licence under subclause (5), it shall notify the licensee in writing.

PART 5—SECURED SUM AND APPLICATION THEREOF

5.1. Security For Restoration And Reinstatement

(1) For the purpose of ensuring that an excavation site is properly restored or reinstated, the local government may require that—

- (a) as a condition of a licence; or
- (b) before the issue of a licence, the licensee shall give to the local government a bond, bank guarantee or other security, of a kind and in a form acceptable to the local government, in or for a sum determined by the local government from time to time.

(2) A bond required under sub clause (1) is to be paid into a fund established by the local government for the purposes of this clause.

5.2. Use By The Local Government Of Secured Sum

(1) If a licensee fails to carry out or complete the restoration and reinstatement works required by the licence conditions either—

- (a) within the time specified in those conditions; or
- (b) where no such time has been specified, within 60 days of the completion of the excavation or portion of the excavation specified in the licence conditions, then, subject to the local government giving the licensee 14 days' notice of its intention to do so—
 - (i) the local government may carry out or cause to be carried out the required restoration and reinstatement work or so much of that work as remains undone; and
 - (ii) the licensee shall pay to the local government on demand all costs incurred by the local government or which the local government may be required to pay under this clause.

(2) This local law is subject to sections 3.25, 3.27 and Schedules 3.1 and 3.2 of the *Local Government Act 1995* and any power of entry exercised by the local government under this local law is subject to Part 3, Division 3, Subdivision 3 of the Act.

(3) The local government may apply the proceeds of any bond, bank guarantee or other security provided by the licensee under clause 5.1 towards its costs under this clause.

(4) The liability of a licensee to pay the local government's costs under this clause is not limited to the amount, if any, secured under clause 5.1.

PART 6—LIMITATIONS, OBLIGATIONS OF THE LICENSEE AND PROHIBITIONS

6.1. Limits On Excavation Near Boundary

Subject to any licence conditions imposed by the local government, a person shall not, without the written approval of the local government, excavate within—

- (a) 20 metres of the boundary of any land on which the excavation site is located;
- (b) 20 metres of any land affected by a registered grant of easement;
- (c) 40 metres of any thoroughfare; or
- (d) 40 metres of any watercourse.

Penalty: \$2,000

6.2. Obligations Of The Licensee

A licensee shall—

- (a) where the local government so requires, securely fence the excavation to a standard determined by the local government and keep the gateways locked when not actually in use in order to prevent unauthorised entry;
- (b) erect and maintain warning signs along each of the boundaries of the area excavated under the licence so that each sign—
 - (i) is not more than 200 metres apart;
 - (ii) is not less than 1.8 metres high and not less than 1 metre wide; and
 - (iii) bears the words “DANGER EXCAVATIONS KEEP OUT”;
- (c) except where the local government approves otherwise, drain and keep drained to the local government's satisfaction any excavation to which the licence applies so as to prevent the accumulation of water;
- (d) restore and reinstate the excavation site in accordance with the terms and conditions of the licence, the site plans and the works and excavation programme approved by the local government;
- (e) take all reasonable steps to prevent the emission of dust, noise, vibration and other forms of nuisance from the excavation site; and
- (f) otherwise comply with the conditions imposed by the local government in accordance with clause 3.1.

Penalty: \$5,000 for each offence, and if an offence is of a continuing nature, to a daily penalty not exceeding a fine of \$500.00 in respect of each day or part of a day during which the offence has continued.

6.3. Prohibitions

A licensee shall not—

- (a) remove any trees or shrubs within 40 metres (or such lesser distance as may be allowed, in writing, by the local government) of the boundary of any thoroughfare on land in respect of which a licence has been granted, except for the purpose of constructing access thoroughfares, erecting buildings or installing plant for use in connection with the excavation and then only with the express approval of the local government and subject to any conditions which the local government may impose in accordance with clause 3.1;
- (b) store, or permit to be stored, any explosives or explosive devices on the site to which the licence applies other than with the approval of the local government and the Department of Mines, Industry Regulation and Safety; or
- (c) fill or excavate, other than in accordance with the terms and conditions of the licence, the site plans and the works and excavation programme approved by the local government.

Penalty: \$5,000 for each offence, and if an offence is of a continuing nature, to a daily penalty not exceeding a fine of \$500.00 in respect of each day or part of a day during which the offence has continued.

6.4. Blasting

(1) A person shall not carry out or permit to be carried out any blasting in the course of excavating unless—

- (a) the local government has otherwise given approval in respect of blasting generally or in the case of each blast;
- (b) subject to sub clause (2), the blasting takes place only between the hours of 8.00am and 5.00pm, or as determined by the local government, on Mondays to Fridays inclusive;
- (c) the blasting is carried out in strict accordance with the AS2187 SAA Explosives Code, the *Mines Safety and Inspection Act 1994*, the *Environmental Protection Act 1986*, and all relevant local laws of the local government; and
- (d) in compliance with any other conditions imposed by the local government concerning—
 - (i) the time and duration of blasting;
 - (ii) the purposes for which the blasting may be used; and
 - (iii) such other matters as the local government may reasonably require in the interests of the safety and protection of members of the public and of property within the district.

Penalty: \$5,000.00 for each offence, and if the offence is of a continuing nature, to a daily penalty not exceeding a fine of \$500.00 in respect of each day or part of a day during which the offence has continued.

(2) A person shall not carry out or permit to be carried out any blasting on a Saturday, Sunday or public holiday except with the prior approval of the local government.

Penalty: \$2,000.

PART 7—MISCELLANEOUS PROVISIONS

7.1. Public Liability

(1) A licensee shall have at all times a current public liability insurance policy taken out in the joint names of the licensee and the local government indemnifying the licensee and the local government for a sum of not less than \$10,000,000 in respect of any one claim relating to any of the excavation operations.

(2) The licensee shall provide to the local government a copy of the policy taken out under sub clause (1), within 14 days after the issue of that policy and shall provide to the local government evidence of renewal within 14 days of each renewal date.

7.2. Mines Safety and Inspection Act and Environmental Protection Act

(1) In any case where the *Mines Safety and Inspection Act 1994* or the *Environmental Protection Act 1986* applies to any excavation carried on or proposed to be carried on at a site, the licensee in respect of that site shall—

- (a) comply with all applicable provisions of that Act or those Acts; and
- (b) provide to the local government within 14 days full particulars of any inspection or report made under that Act or those Acts.

(2) In this clause, the *Mines Safety and Inspection Act 1994* and the *Environmental Protection Act 1986* include all subsidiary legislation made under those Acts.

7.3. Notice Of Cessation Of Operations

(1) Where a licensee intends to cease carrying on an extractive industry—

- (a) temporarily for a period in excess of 12 months; or
- (b) permanently,

the licensee shall, as well as complying with clause 7.4, give the local government written notice of the cessation not later than 1 week after those operations have ceased.

(2) Where a licensee has given written notice to the local government of the intention to permanently cease carrying on an extractive industry on the site to which the licence applies the licence is deemed to have expired on the date such cessation is so notified.

(3) The temporary or permanent cessation of the carrying on of an extractive industry on a site or the deemed expiration or cancellation of a licence does not entitle the licensee to any refund of any licence fee.

7.4. Works To Be Carried Out On Cessation Of Operations

Where the carrying on of an extractive industry on the site permanently ceases or on the expiration or cancellation of the licence applicable to the site, whichever first occurs, the licensee shall, as well as complying with the provisions of clause 7.3—

- (a) restore and reinstate the excavated site in accordance with the proposals approved by the local government or in such other manner as the local government may subsequently agree in writing with the licensee;
- (b) ensure that any face permitted to remain upon the excavation site is left safe with all loose materials removed and where the excavation site is—
 - (i) sand, the sides are sloped to a batter of not more than 1:3 (vertical:horizontal); and
 - (ii) limestone or material other than sand, the sides are sloped to a batter which, in the opinion of the local government, would enable the site to be left in a stable condition;
- (c) ensure that the agreed floor level of the excavation is graded to an even surface or is otherwise in accordance with the rehabilitation and decommissioning programme approved by the local government;
- (d) ensure that all stockpiles or dumps of stone, sand or other materials are left so that no portion of that material can escape onto land not owned or occupied by the licensee nor into any stream, watercourse or drain that is not wholly situated within the land owned or occupied by the licensee;
- (e) erect retaining walls where necessary to prevent subsidence of land in the vicinity of any excavation;
- (f) remove from the site all buildings, plant and equipment erected, installed or used for or in relation to the carrying on of an extractive industry on the site and fill all holes remaining after such removal to the level of the surrounding ground and compact such filled holes sufficiently to prevent settling; and
- (g) break up, scarify, cover with topsoil and plant with grass, trees and shrubs all parts of the site where buildings, plant and equipment were erected or installed and all areas which were used for stockpiling unless otherwise specified under this local law.

Penalty: \$5,000 for each offence, and if the offence is of a continuing nature, to a daily penalty not exceeding a fine of \$500.00 in respect of each day or part of a day during which the offence has continued.

PART 8—OBJECTIONS AND APPEALS

8.1 When the local government makes a decision as to whether it will—

- (a) grant a person a licence under this local law; or
- (b) renew, vary, transfer or cancel a licence that a person has under this local law,

the provisions of Division 1 of Part 9 of the Act and regulation 33 of the *Local Government (Functions and General) Regulations 1996* shall apply to that decision.

PART 9—MODIFIED PENALTIES

9. 1. Modified Penalties

(1) An offence against a clause specified in the Schedule is a prescribed offence for the purposes of section 9.16(1) of the Act.

(2) The amount of the modified penalty for a prescribed offence is that specified adjacent to the clause in the Schedule.

9. 2. Forms

For the purposes of this local law—

- (a) the form of the infringement notice given under section 9.16 of the Act is that of Form 2 in Schedule 1 of the *Local Government (Functions and General) Regulations 1996*; and
- (b) the form of the notice sent under section 9.20 of the Act withdrawing an infringement notice is that of Form 3 in Schedule 1 of the *Local Government (Functions and General) Regulations 1996*.

Schedule 1
PRESCRIBED OFFENCES

Item	Clause	Description	Modified Penalty \$
1	2.1	Carry on extractive industry without licence or in breach of terms and conditions	350
2	6.1	Excavate near boundary	200
3	6.2(a)	Gateways not kept locked where required	350
4	6.2(b)	Warning signs not erected or maintained as required	350
5	6.2(c)	Excavation not drained as required	350
6	6.3(a)	Remove trees or shrubs near boundary without approval	300
7	6.3(b)	Store without required approval explosives or explosive devices	350
8	6.3(c)	Fill or excavate in breach of licence	350
9	6.4(1)(a)	Blasting without approval of the local government	250
10	6.4(1)(b)	Blasting outside times authorised	350
11	6.4(1)(d)	Blasting in breach of conditions imposed by the local government	350
12	6.4(2)	Blasting without approval on Saturday, Sunday or public holiday	200

Dated 11th day of February, 2021.

The Common Seal of the Shire of Broomehill-Tambellup was affixed by authority of a resolution of the Council in the presence of—

M. C. PAGANONI, Shire President.

K. B. WILLIAMS, Chief Executive Officer.

LOCAL GOVERNMENT ACT 1995

SHIRE OF BROOMEHILL-TAMBELLUP

FENCING LOCAL LAW 2020

Under the powers conferred by the *Local Government Act 1995* and all other powers enabling it, the Shire of Broomehill-Tambellup resolved on 11 February 2021 to make the following local law.

PART 1—PRELIMINARY

1.1 Citation

This local law is the *Shire of Broomehill-Tambellup Fencing Local Law 2020*.

1.2 Commencement

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

1.3 Purpose and effect

(1) The purpose of this local law is to prescribe a sufficient fence and the standard for the construction of fences throughout the district.

(2) The effect of this local law is to establish the minimum requirements for fencing within the district.

1.4 Application

This local law applies throughout the district.

1.5 Repeal

This local law repeals the *Shire of Broomehill-Tambellup Fencing Local Law 2008* as published in the *Government Gazette* on 23 December 2008.

1.6 Definitions

In this local law—

Act means the *Dividing Fences Act 1961*;

applicant means a person who makes an application for approval under this local law;

AS or AS/NZS means an Australian or Australian/New Zealand Standard as published by Standards Australia and as amended from time to time.

barbed wire fence means a wire or strand of wires having small pieces of sharply pointed wire twisted around it at short intervals;

boundary fence has the meaning given to it by the Act;

Building Surveyor means a Building Surveyor of the local government;

CEO means the Chief Executive Officer of the local government;

Commercial Lot means a lot where a commercial use—

- (a) is or may be permitted under the district planning scheme; and
- (b) is or will be the predominant use of the lot;

dangerous in relation to any fence means—

- (a) an electrified fence other than a fence approved by the local government under this local law;
- (b) a fence containing barbed wire other than a fence erected and maintained in accordance with this local law;
- (c) a fence containing exposed broken glass, asbestos fibre, razor wire or any other potentially harmful projection or material; or
- (d) a fence which is likely to collapse or fall, or part of which is likely to collapse or fall, from any cause;

district means the district of the local government;

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

dividing fence has the meaning given to it by the Act;

electrified fence means a fence carrying or designed to carry an electric charge;

fence means any structure, not including a retaining wall, used or functioning as a barrier, irrespective of where it is located and includes any gate;

front boundary means the boundary line between a lot and the thoroughfare upon which that lot abuts, or in the case of a lot abutting on more than one thoroughfare, the boundary line between the lot and the primary thoroughfare;

front fence means a fence erected on the front boundary of a lot or on a line adjacent to the front boundary;

front setback area means the area between the building line of a lot and the front boundary of that lot;

gazetted townsite means urban land declared to be a townsite under the relevant Land Administration legislation;

height in relation to a fence means the vertical distance between—

- (a) the top of the fence at any point; and
- (b) the ground level or, where the ground levels on each side of the fence are not the same, the higher ground level, immediately below that point;

Industrial Lot means a lot where an industrial use—

- (a) is or may be permitted under the district planning scheme; and
- (b) is or will be the predominant use of the lot;

licence means an electrified fence licence or a razor wire fence licence;

local government means the Shire of Broomehill-Tambellup;

local government property means anything except a thoroughfare—

- (a) which belongs to the local government;
- (b) of which the local government is the management body under the *Land Administration Act 1997*; or
- (c) which is an “otherwise unvested facility” under section 3.53 of the *Local Government Act 1995*;

lot has the meaning given to it in and for the purposes of the *Planning and Development Act 2005*;

notice of breach means a notice referred to in clause 5.1;

occupier has the meaning given to it in the *Local Government Act 1995*;

owner has the meaning given to it in the *Local Government Act 1995*;

razor wire fence means a coiled strong wire with pieces of sharp cutting edges set across it at close intervals;

Residential Lot means a lot where a residential use—

- (a) is or may be permitted under the district planning scheme; and
- (b) is or will be the predominant use of the lot;

retaining wall means any structure which prevents the movement of soil or retains soil or structures in order to allow ground levels of different elevations to exist adjacent to one another;

Rural Lot means a lot where a rural use—

- (a) is or may be permitted under the district planning scheme; and
- (b) is or will be the predominant use of the lot;

Schedule means a Schedule to this local law;

Special Rural Lot means a lot where a special rural use—

- (a) is or may be permitted under the district planning scheme; and
- (b) is or will be the predominant use of the lot;

sufficient fence means a fence described in clause 2.1

thoroughfare has the meaning given to it by the *Local Government Act 1995*, but does not include a private thoroughfare which is not under the management or control of the local government.

1.7 Licence fees and charges

All licence fees and charges applicable under this local law shall be determined by the local government from time to time in accordance with section 6.16 to section 6.19 of the *Local Government Act 1995*.

PART 2—FENCES

Division 1—Sufficient fences

2.1 Sufficient fences

- (1) A person shall not erect a dividing fence or a boundary fence that is not a sufficient fence.
- (2) Subject to subclauses (3) and (4), a sufficient fence—

- (a) on a Residential Lot is a dividing fence or a boundary fence constructed and maintained in accordance with the specifications and requirements of Schedule 2;
 - (b) on a Commercial Lot and on an Industrial Lot is a dividing fence or a boundary fence constructed and maintained in accordance with the specifications and requirements of Schedule 3; and
 - (c) on a Rural Lot and on a Special Rural Lot is a dividing fence or a boundary fence constructed and maintained in accordance with the specifications and requirements of Schedule 4.
- (3) Where a fence is erected on or near the boundary between—
- (a) a Residential Lot and an Industrial Lot, a sufficient fence is a dividing fence constructed and maintained in accordance with the specifications and requirements of Schedule 2;
 - (b) a Residential Lot and a Commercial Lot, a sufficient fence is a dividing fence constructed and maintained in accordance with the specifications and requirements of Schedule 3;
 - (c) a Residential Lot and a Rural Lot, a sufficient fence is a dividing fence constructed and maintained in accordance with the specifications and requirements of Schedule 4;
 - (d) a Residential Lot and a Special Rural Lot, a sufficient fence is a dividing fence constructed and maintained in accordance with the specifications and requirements of Schedule 4; and
 - (e) a Special Rural Lot and a Rural Lot, a sufficient fence is a dividing fence constructed and maintained in accordance with the specifications and requirements of Schedule 4.
- (4) An application must be made to the local government for grant of consent to any variation to the specifications in Schedules 2, 3 and 4.
- (5) Unless an authorised person determines otherwise, a sufficient fence on a boundary between lots other than those specified in subclause (3) is a dividing fence constructed in accordance with the specifications and requirements of Schedule 2.
- (6) Notwithstanding any other provision in this local law, a dividing fence or boundary fence constructed of masonry, stone or concrete shall be a sufficient fence only if it is designed by a suitably qualified structural engineer and constructed in accordance with that design where—
- (a) it is greater than 1 800 millimetres in height; or
 - (b) the Building Surveyor so requires.
- (7) Notwithstanding any other provision in this local law, a dividing fence or boundary fence shall not exceed 1 800 millimetres in height unless the approval of the local government has been obtained for such a fence.

Division 2—General

2.2 Fences within front setback areas

- (1) A person shall not, without the written consent of the Building Surveyor, erect a free-standing fence greater than 1200 millimetres in height, within the front set-back area of a Residential Lot within the district.
- (2) The Building Surveyor may approve the erection of a fence of a height greater than 1200 millimetres in the front setback area of a Residential Lot only if the fence on each side of the driveway into the lot across the front boundary is to be angled into the lot for a distance of not less than 1 500 millimetres along the frontage to a distance of not less than 1 500 millimetres from the frontage in order to provide appropriate splayed lines of vision for a motorist using the driveway for access to a thoroughfare.
- (3) The provision of subclause (2) shall not apply to a fence—
- (a) of open construction that does not obscure the lines of vision of a motorist using the driveway for access to a thoroughfare; or
 - (b) that does not adjoin a footpath.

2.3 Gates in fences

A person shall not erect a gate in a fence which does not—

- (a) open into the lot; or
- (b) open by sliding parallel and on the inside of the fence, which it forms part of, when closed.

2.4 Depositing fencing material on public place

A person shall not deposit or permit the deposit of any materials whatsoever used in the construction or maintenance of any fence, on any thoroughfare, public place or local government property unless the approval of the local government has been obtained.

2.5 Fences on a Rural Lot

A person shall not, without the written consent of the Building Surveyor, erect a fence on a Rural Lot of a height exceeding 1500 millimetres.

2.6 Fences for large animals

A person shall not keep large animals within a Special Rural lot unless a fence constructed of a type that prevents large animals escaping and dogs entering is installed

2.7 Maintenance of fences

An owner of a lot on which a fence is erected shall maintain the fence in good condition so as to prevent it from becoming dangerous, dilapidated, or unsightly to the amenity of the locality.

2.8 Fences across rights-of-way, public access ways or thoroughfares

A person must not, without the approval of the local government, erect or maintain a fence or obstruction of a temporary or permanent nature across any right-of-way, public access way or thoroughfare so as to impede or prevent use of those facilities in the manner for which they are intended and constructed.

2.9 General discretion of the local government

(1) Notwithstanding the provisions of clause 2.1, the local government may approve the erection or repair of a dividing fence which is not a sufficient fence where all of the owners of the lots to be separated by the dividing fence make an application for approval for that purpose.

(2) In determining whether to grant its approval under subclause (1), the local government may consider whether the erection or retention of the fence would have an adverse effect on—

- (a) the safe or convenient use of any land;
- (b) the safety or convenience of any person; or
- (c) the visual amenity of the locality.

Division 3—Fencing materials

2.10 Where required by the Building Surveyor, fencing designs are to be certified by a practicing structural engineer as being suitable for wind loadings found in Region D Category 2 areas in accordance with the current edition of AS/NZS 1170.0:2002 Structural design actions—General principles.

2.11 Pre-used fencing materials

(1) Notwithstanding clause 2.1, a person shall not construct a fence on a Residential Lot, a Commercial Lot or an Industrial Lot from pre-used materials without the approval of the local government.

(2) Where the local government approves the use of pre-used materials in the construction of a fence under subclause (1), that approval shall be conditional on the applicant painting or treating the pre-used material as directed by the Building Surveyor.

2.12 Barbed wire fences and spiked or jagged materials

(1) This clause does not apply to a fence constructed wholly or partly of razor wire.

(2) An owner or occupier of a Residential Lot or a Commercial Lot shall not erect, affix or allow to remain on any fence on such a lot any barbed wire or other material with spiked or jagged projections, unless the prior written approval of the local government has been obtained.

(3) An owner or occupier of an Industrial Lot shall not erect, affix or allow to remain on any fence bounding that lot any barbed wire or other materials with spiked or jagged projections unless the wire or other materials are carried on posts at an angle of 45 degrees, and unless the bottom row of wire or other materials is setback 150mm from the face of the fence and is not nearer than 2000mm from the ground level.

(4) If the posts which carry the barbed wire or other materials referred to in subclause (3) are angled towards the outside of the lot bounded by the fence, the face of the fence must be set back from the lot boundary a sufficient distance to ensure that the angled posts, barbed wire or other materials do not encroach on adjoining land.

(5) An owner or occupier of a lot shall not erect, affix or allow to remain as part of any fence or wall, whether internal or external, on that lot any broken glass.

(6) An owner or occupier of a Rural Lot shall not erect, affix or allow to remain any barbed wire upon a fence on that lot where the fence is adjacent to a thoroughfare or other public place unless the barbed wire is fixed to the side of the fence posts furthest from the thoroughfare or other public place.

2.13 Electrified and razor wire fences

(1) An owner or occupier of a lot shall not—

- (a) construct or use an electrified fence on that lot without obtaining the approval of the local government in the form prescribed in Schedule 5; or
- (b) construct a fence wholly or partly of razor wire on that lot without obtaining the approval of the local government in the form prescribed in Schedule 6.

(2) The local government shall not approve an application for the purpose of subclause (1)(a)—

- (a) in respect of a lot which is or which abuts a Residential Lot;
- (b) unless the proposed fence will comply with “AS/NZS 3016:2002 Electrical installations—Electricity security fences”; and
- (c) unless provision is made so as to enable the fence to be rendered inoperable during the hours of business operations, if any, on the lot where it is erected.

(3) The local government shall not approve an application for the purpose of subclause (1)(b)—

- (a) if the fence is within 3000 millimetres of the boundary of the lot; or

- (b) where any razor wire used in the construction of the fence is less than 2 000 millimetres or more than 2400 millimetres above the ground level.
- (4) An application for approval for the purpose of subclauses (1)(a) or (1)(b) shall be made by the owner of the lot on which the fence is or is to be erected, or by the occupier of the lot with the written consent of the owner.

2.14 Prohibited fencing materials

A person shall not affix or use broken glass in the construction of any fence.

PART 3—APPROVALS

3.1 Application for approval

- (1) Where a person is required to obtain the approval of the local government under this local law, that person shall apply for approval in accordance with subclause (2).
- (2) An application for approval under this local law shall—
- be in the form determined by the local government;
 - be signed by the applicant and the owner of the lot;
 - provide the information required by the form; and
 - be forwarded to the CEO together with any fee imposed and determined by the local government under and in accordance with sections 6.16 to 6.19 of the *Local Government Act 1995*.
- (3) The local government may require an applicant to provide additional information reasonably related to an application before determining an application for approval.
- (4) The local government may refuse to consider an application for approval which is not in accordance with subclauses (2) and (3).

3.2 Decision on application for approval

- (1) The local government may—
- approve an application for approval unconditionally or subject to any conditions; or
 - refuse to approve an application for approval.
- (2) If the local government approves an application for approval, it is to issue to the applicant an approval in the form determined by the local government.
- (3) If the local government refuses to approve an application for approval, it is to give written notice of that refusal to the applicant.
- (4) Where a clause of this local law refers to conditions which may be imposed on an approval or which are to be taken to be imposed on an approval, the clause does not limit the power of the local government to impose other conditions on the approval under subclause (1)(a).

3.3 Compliance with approval

Where an application for approval has been approved, the applicant and the owner or occupier of the lot to which the approval relates, shall comply with the terms and any conditions of that approval.

3.4 Duration of approval

Unless otherwise stated in the form of approval, an approval granted under this local law—

- runs with the lot to which it relates;
- may be relied upon by any subsequent occupier or owner of the lot; and
- may be enforced by the local government against a subsequent occupier or owner of the lot.

PART 4—MISCELLANEOUS

4.1 False or misleading statement

A person shall not make a false or misleading statement in connection with any application, requirement or request under this local law.

PART 5—NOTICES OF BREACH

5.1 Notices of breach

- (1) Where a breach of any provision of this local law has occurred in relation to a fence on a lot, the local government may give a notice in writing to the owner of that lot.
- (2) A notice of breach shall—
- specify the provision of this local law which has been breached;
 - specify the particulars of the breach; and
 - state that the owner is required to remedy the breach within the time specified in the notice.
- (3) Should an owner fail to comply with a notice of breach, the local government may, by its employees, agents or contractors enter upon the lot to which the notice relates and remedy the breach, and may recover the expenses of so doing from the owner of the lot in a court of competent jurisdiction.

(4) The provisions of this clause are subject to section 3.25 and item 12 of Division 1 of Schedule 3.1 of the *Local Government Act 1995* and any entry on to land will be in accordance with Part 3, Division 3 of that Act.

PART 6—OFFENCES

6.1 Offences and penalties

(1) A person who fails to comply with a notice of breach commits an offence and is liable upon conviction to a penalty of not less than \$250 and not exceeding \$5 000 and, if the offence is a continuing offence, to a maximum daily penalty of \$500.

(2) A person who fails to comply with or who contravenes any provision of this local law commits an offence and is liable on conviction to a penalty of not less than \$250 and not exceeding \$5 000 and, if the offence is a continuing offence, to a maximum daily penalty of \$500.

6.2 Modified penalties

(1) An offence against any provision of this local law is a prescribed offence for the purposes of section 9.16(1) of the *Local Government Act 1995*.

(2) The amount appearing in the final column of Schedule 1, directly opposite a prescribed offence in that Schedule, is the modified penalty for that prescribed offence.

(3) For the purpose of guidance only, before giving an infringement notice to a person in respect of the commission of a prescribed offence, an authorised person should be satisfied that—

- (a) commission of the prescribed offence is a relatively minor matter; and
- (b) only straightforward issues of law and fact are involved in determining whether the prescribed offence was committed, and the facts in issue are readily ascertainable.

6.3 Form of notices

For the purposes of this local law—

- (a) the form of the infringement notice referred to in sections 9.16 and 9.17 of the *Local Government Act 1995* is to be in the form of Form 2 of Schedule 1 of the *Local Government (Functions and General) Regulations 1996*; and
- (b) the form of the withdrawal of infringement notice referred to in section 9.20 of the *Local Government Act 1995* is to be in the form of Form 3 in Schedule 1 of the *Local Government (Functions and General) Regulations 1996*.

PART 7—OBJECTIONS AND REVIEW

7.1 Objections and review

When the local government makes a decision under clause 3.2, the provision of Part 9 Division 1 of the *Local Government Act 1995*, and regulation 33 of the *Local Government (Functions and General) Regulations 1996*, apply to that decision.

Schedule 1

OFFENCES AND MODIFIED PENALTIES

[clause 6.2(2)]

Item No	Clause No.	Nature of Offence	Modified penalties \$
1	2.1(1)	Erect a fence which is not a sufficient fence	250
2	2.2(1)	Erect a fence greater than 1200mm in height within a front setback area without the written consent of the Building Surveyor	250
3	2.3(a)	Erect a gate in a fence not opening into the lot	200
4	2.3(b)	Erect a gate in a fence not sliding parallel and inside a fence	200
5	2.7	Failure to maintain a fence in good condition to prevent the fence becoming dangerous, dilapidated or unsightly	250
6	2.8	Erect or maintain a fence or obstruction of temporary or permanent nature across a right-of way, public access way or thoroughfare without approval	250
7	2.10(1)	Construct a dividing fence on a Residential, Commercial or Industrial Lot from pre-used materials without written approval	250
8	2.11(2)	Erect a fence using barbed wire or material with spiked or jagged projections in the fence construction without approval	250
9	2.12(1)	Construct, erect or use razor wire in a fence or electrify a fence without approval	250

Item No	Clause No.	Nature of Offence	Modified penalties \$
10	2.13	Affix, or use, any broken glass in a fence	250
11	3.3	Failure to comply with terms or conditions of approval	250
12	6.1	Failure to comply with notice of breach	250

Schedule 2

SPECIFICATIONS FOR A SUFFICIENT FENCE ON A RESIDENTIAL LOT

[clause 2.1(2)(a)]

Each of the identified categories in this Schedule is a sufficient fence on a Residential Lot and the fence design being certified by a practicing structural engineer as being suitable for wind loadings found in Region D Category 2 areas in accordance with AS/NZS 1170.0:2002 Structural design actions—General principles.

Timber fence

- (a) corner posts to be 125mm x 125mm x 2400mm and intermediate posts to be 125mm x 75mm x 2400mm spaced at 2400mm centres;
- (b) corner posts to be strutted two ways with 100mm x 50mm x 450mm sole plates and 75mm x 50mm struts;
- (c) intermediate posts to be doubled yankee strutted with 150mm x 25mm x 450mm struts; (d) all posts to have tops with a 60mm weather cut and to be sunk at least 600mm into the ground;
- (d) rails to be 75mm x 50mm with each rail spanning 2 bays of fencing double railed or bolted to each post with joints staggered;
- (e) the fence to be covered with 75mm x 20mm sawn pickets, 1 800mm in height placed 75mm apart and affixed securely to each rail; and
- (f) the height of the fence to be 1800mm except with respect to the front set back area for which there is no minimum height but which is subject to clause 7.

Corrugated fence

A fence constructed of corrugated fibre reinforced pressed cement or steel sheeting constructed to manufacturer's specifications or which satisfies the following specifications—

- (a) a minimum in-ground length of 25 per cent of the total length of the sheet, but in any case shall have a minimum in-ground depth of 600mm;
- (b) the total height and depth of the fence to consist of a single continuous fibre reinforced cement or steel sheet;
- (c) the sheets to be lapped and capped with extruded "snap-fit" type capping in accordance with the manufacturers written instructions; and
- (d) the height of the fence to be 1 800mm except with respect to the front set back area for which there is no minimum height but which is subject to clause 7.

Brick, stone or concrete fence

A fence constructed of brick, stone or concrete, which satisfies the following requirements and specifications—

- (a) a site classification is to be provided by a professional engineer in accordance with AS 2870-2011 Residential slabs and footings as amended;
- (b) the footing is to be designed in accordance with AS 2870-2011 Residential slabs and footings as amended;
- (c) footings of minimum 225mm x 150mm concrete 15MPa or 300mm x 175mm brick laid in cement mortar;
- (d) fences to be offset a minimum of 200mm at maximum 3000mm centres or 225mm x 100mm engaged piers to be provided at maximum 3000mm centres;
- (e) expansion joints in accordance with the manufacturer's written instructions; and
- (f) the height of the fence to be 1800mm except with respect to the front set back area for which there is no minimum height but which is subject to clause 2.2.

Composite fence

A composite fence which satisfies the following specifications for the brick construction—

- (1) (a) brick piers of minimum 345mm x 345mm at 1 800mm centres bonded to a minimum height base wall of 514mm;
- (b) each pier shall be reinforced with one R10 galvanised starting rod 1500mm high with a 250mm horizontal leg bedded into a 500mm x 200mm concrete footing and set 65mm above the base of the footing. The top of the footing shall be 1 course (85mm) below ground level;

- (c) the minimum ultimate strength of brickwork shall be 20MPa. Mortar shall be a mix of 1 part cement, 1 part lime and 6 parts sand;
 - (d) the ground under the footings is to be compacted to 6 blows per 300mm and checked with a standard falling weight penetrometer; and
 - (e) control joints in brickwork shall be provided with double piers at a maximum of 6-metre centres;
- or
- (2) (a) brick piers of a minimum 345mm x 345mm x 2 700mm centres bonded to the base wall; and
 - (b) each pier shall be reinforced with two R10 galvanised starting rods as previously specified.

Schedule 3

SPECIFICATIONS FOR A SUFFICIENT FENCE ON A COMMERCIAL LOT OR AN INDUSTRIAL LOT

[clause 2.1(2)(b)]

Each of the identified categories in this Schedule, with minimum and maximum specifications where stated, is a sufficient fence on a Commercial Lot or an Industrial Lot and the fence design being certified by a practicing structural engineer as being suitable for wind loadings found in Region D Category 2 areas in accordance with the current edition of AS/NZS 1170.0:2002 Structural design actions—General principles.

Galvanised or PVC fence and gate

A fence constructed of galvanised or PVC coated non-rail link mesh, chain mesh or steel mesh which satisfies the following specifications—

- (a) corner posts to be minimum 50mm nominal bore x 3.5mm and with footings of a 225mm diameter x 900mm;
- (b) intermediate posts to be minimum 37mm nominal bore x 3.15mm at maximum 3.5m centres and with footings of a 225mm diameter x 600mm;
- (c) struts to be minimum 30mm nominal bore x 3.15mm fitted at each gate and 2 at each corner post and with footings 225mm x 600mm;
- (d) cables to be affixed to the top, centre and bottom of all posts and to consist of 2 or more 3.15mm wires twisted together or single 4mm wire;
- (e) non-rail link, chain or steel mesh is to be to a height of 2000mm on top of which are to be 3 strands of barbed wire carrying the fence to a height of 2400mm in accordance with the requirements and standards of the local planning schemes; and
- (f) galvanised link mesh wire to be 2 000mm in height and constructed of 50mm mesh 2.5mm galvanised iron wire and to be strained, neatly secured and laced to the posts and affixed to cables. Vehicle entry gates shall provide an opening of not less than 3.6m and shall be constructed of 25mm tubular framework with 1 horizontal and 1 vertical stay constructed of 20mm piping and shall be covered with 50mm x 2.5mm galvanised link mesh strained to framework. Gates shall be fixed with a drop bolt and locking attachment.

Other fences

- (a) a fence of cement sheet or steel sheeting constructed to the minimum specifications referred to in Schedule 2;
- (b) a fence constructed of aluminium sheeting when supported on posts and rails provided that it is used behind a building line and is of a minimum height of 1 800mm but no greater than 2 400mm; or
- (c) a fence of timber, brick, stone or concrete constructed to the minimum specifications referred to in Schedule 2.

Schedule 4

SPECIFICATIONS FOR A SUFFICIENT FENCE ON A RURAL LOT OR SPECIAL RURAL LOT

[clause 2.1(2)(c)]

Each of the identified categories in this Schedule, with minimum and maximum specifications where stated is a sufficient fence on a Rural Lot or a Special Rural Lot and the fence design being certified by a practicing structural engineer as being suitable for wind loadings found in Region D Category 2 areas in accordance with the current edition of AS/NZS 1170.0:2002 Structural design actions—General principles.

Non-electrified fence

- (a) wire shall be high tensile wire and not less than 2.5mm. A minimum of 5 wires shall be used, generally with the lower wires spaced closer together than the higher wires so as to prevent smaller stock passing through, and connected to posts in all cases.
- (b) posts shall be of indigenous timber or other suitable material including—
 - (i) timber impregnated with a termite and fungicidal preservative;
 - (ii) standard steel star pickets; or
 - (iii) concrete;
- (c) cut not less than 1800mm long x 50mm diameter at small end if round or 125mm x 60mm if split or sawn.
- (d) posts to be set minimum 600mm in the ground and minimum 900mm above the ground; and
- (e) strainer posts shall be not less than 2250mm long and 150mm diameter at the small end (tubular steel to be 50mm in diameter) and shall be cut from indigenous timber or other suitable material. These shall be placed a minimum of 1000mm in the ground.
- (f) Fences on Special Rural lots shall be constructed of a type that prevents large animals escaping and dogs entering.

Electrified fence

An electrified fence having 4 wires is a sufficient fence if constructed generally in accordance with a non-electrified fence.

—————
Schedule 5

LICENCE FOR APPROVED ELECTRIFIED FENCE

[clause 2.12(1)(a)]

This is to certify that ⁽¹⁾
 of ⁽²⁾
 is licensed , subject to the conditions set out below, to have and use an electrified fence on

 (address)
 from 20 and until this licence is transferred or cancelled.
 Dated this day of 20

.....
Chief Executive Officer
Shire of Broomehill-Tambellup

Conditions of Licence—

The holder of the licence must—

- (a) display the licence in a prominent position on the land or premises on which the electrified fence has been erected;
- (b) upon the request of a Building Surveyor produce to him or her the licence;
- (c) within 14 days of a change in the ownership or occupation of the land or premises in respect of which the licence has been granted, notify the Chief Executive Officer in writing of the details of that change or those changes;
- (d) obtain the written consent of the local government prior to the commencement of any alteration, addition or other work relating to or affecting the electrified fence; and
- (e) comply with AS/NZS 3016:2002 Electrical installations—Electric security fences.

Transfer by Endorsement

This licence is transferred to ⁽³⁾
 of ⁽⁴⁾

 from and including the date of this endorsement.
 Dated this day of 20

.....
Chief Executive Officer
Shire of Broomehill-Tambellup

⁽¹⁾ Name
⁽²⁾ Address
⁽³⁾ Name
⁽⁴⁾ Address

Schedule 6
LICENCE FOR APPROVED RAZOR WIRE FENCE

[clause 2.11(1)(b)]

This is to certify that ⁽¹⁾.....
of ⁽²⁾.....
is licensed, subject to the conditions set out below, to have a fence constructed wholly or partially of
razor wire at.....
(address)

From 20 and until this licence is transferred or cancelled.

Dated this day of 20

.....
Chief Executive Officer
Shire of Broomehill-Tambellup

Conditions of licence—

- (a) display the licence in a prominent position on the land or premises on which the fence has been erected;
- (b) upon the request of a Building Surveyor produce to him or her the licence;
- (c) within 14 days of a change in the ownership or occupation of the land or premises in respect of which the licence has been granted, notify the Chief Executive Officer in writing of the details of that change or those changes; and
- (d) obtain the written consent of the local government prior to the commencement of any alteration, addition or other work relating to or affecting the fence.

Transfer by Endorsement

This licence is transferred to ⁽³⁾
of ⁽⁴⁾

.....
from and including the date of this endorsement.

Dated this day of 20

.....
Chief Executive Officer
Shire of Broomehill-Tambellup

- ⁽¹⁾ Name
- ⁽²⁾ Address
- ⁽³⁾ Name
- ⁽⁴⁾ Address

.....
Dated 11th day of February 2021.

The Common Seal of the Shire of Broomehill-Tambellup was affixed by authority of a resolution of the Council in the presence of—

M. C. PAGANONI, Shire President.
K. B. WILLIAMS, Chief Executive Officer.

LOCAL GOVERNMENT ACT 1995

SHIRE OF BROOMEHILL-TAMBELLUP

LOCAL GOVERNMENT (COUNCIL MEETINGS) LOCAL LAW 2020

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LOCAL GOVERNMENT ACT 1995

SHIRE OF BROOMEHILL-TAMBELLUP

LOCAL GOVERNMENT (COUNCIL MEETINGS) LOCAL LAW 2020

Under the powers conferred by the *Local Government Act 1995* and under all other relevant powers, the Shire of Broomehill-Tambellup resolved on 11th February 2021 to make the following local law.

PART 1—PRELIMINARY

1.1 Citation

This local law may be cited as the *Shire of Broomehill-Tambellup Local Government (Council Meetings) Local Law 2020*.

1.2 Commencement

By virtue of section 3.14 of the Act, this Local Law comes into operation 14 days after the date of their publication in the *Government Gazette*.

1.3 Application and intent

- (1) This local law provide rules and guidelines which apply to the conduct of meetings of the Council and its committees and to meetings of electors.
- (2) All meetings are to be conducted in accordance with the Act, the Regulations and this local law.
- (3) This local law are intended to result in—
 - (a) better decision-making by the Council and committees;
 - (b) the orderly conduct of meetings dealing with Council business;
 - (c) better understanding of the process of conducting meetings; and
 - (d) the more efficient and effective use of time at meetings.

1.4 Interpretation

- (1) In this local law unless the context otherwise requires—
 - absolute majority** has the meaning given to it in the Act;
 - Act** means the *Local Government Act 1995*;
 - CEO** means the Chief Executive Officer of the local government;
 - committee** means a committee of the Council established under section 5.8 of the Act;
 - committee meeting** means a meeting of a committee;
 - Council** means the Council of the Shire of Broomehill-Tambellup;
 - local government** means the Shire of Broomehill-Tambellup;
 - President** means the President of the local government or other presiding member at a Council meeting under section 5.6 of the Act;
 - meeting** means a meeting of the Council or a committee, as the context requires;
 - member** has the meaning given to it in the Act;
 - presiding member** means—
 - (a) in respect of the Council, the person presiding under section 5.6 of the Act; and
 - (b) in respect of a committee, the person presiding under sections 5.12, 5.13, and 5.14 of the Act;
 - Regulations** means the *Local Government (Administration) Regulations 1996*;
 - simple majority** means more than 50% of the members present and voting; and
 - substantive motion** means an original motion or an original motion as amended, but does not include an amendment or a procedural motion.
- (2) Unless otherwise defined in this local law, the terms and expressions used in this local law are to have the meaning given to them in the Act and Regulations.

1.5 Repeal

This local law repeals the *Shire of Broomehill-Tambellup Standing Orders Local Law 2008* published in the *Government Gazette* on 23 December 2008.

1.6 Provisions of the Act, Regulations and other legislation

- (1) Throughout this local law, provisions of the Act and Regulations, and provisions of other legislation, are reproduced in a boxed format.
- (2) The purpose of reproducing these provisions is to assist the reader by giving a fuller picture of related legislative provisions that also apply to meetings of the Council, committees and electors.
- (3) The reproduced provisions of the Act and Regulations and other legislation—
 - (a) are to be treated as footnotes and are not part of this local law (see section 32(2) of the *Interpretation Act 1984*); and
 - (b) reproduce only the provisions that were in force at the time that the Council resolved to adopt this local law and therefore may not necessarily be correct at a future date.

PART 2—ESTABLISHMENT AND MEMBERSHIP OF COMMITTEES

2.1 Establishment of committees

- (1) The establishment of committees is dealt with in the Act.
- (2) A Council resolution to establish a committee under section 5.8 of the Act is to include—
 - (a) the terms of reference of the committee;
 - (b) the number of council members, officers and other persons to be appointed to the committee;
 - (c) the names or titles of the council members and officers to be appointed to the committee;
 - (d) the names of other persons to be appointed to the committee or an explanation of the procedure to be followed to determine the appointments; and
 - (e) details of the delegation of any powers or duties to the committee under section 5.16 of the Act.
- (3) This local law are to apply to the conduct of committee meetings.

2.2 Types of committees

The types of committees are dealt with in the Act.

2.3 Delegation of some powers and duties to certain committees

The delegation of some powers and duties to certain committees is dealt with in the Act.

2.4 Limits on delegation of powers and duties to certain committees

The limits on the delegation of powers and duties to certain committees are dealt with in the Act.

2.5 Appointment of committee members

The appointment of committee members is dealt with in the Act.

2.6 Tenure of committee membership

Tenure of committee membership is dealt with in the Act.

2.7 Resignation of committee members

The resignation of committee members is dealt with in the Regulations.

2.8 Register of delegations to committees

The register of delegations to committees is dealt with in the Act.

2.9 Committees to report

A committee—

- (a) is answerable to the Council; and
- (b) is to report on its activities when, and to the extent, required by the Council.

PART 3—CALLING AND CONVENING MEETINGS

3.1 Ordinary and special Council meetings

- (1) Ordinary and special Council meetings are dealt with in the Act.
- (2) An ordinary meeting of the Council, held on a monthly basis or otherwise as determined by the Council, is for the purpose of considering and dealing with the ordinary business of the Council.
- (3) A special meeting of the Council is held for the purpose of considering and dealing with Council business that is urgent, complex in nature, for a particular purpose or confidential.

3.2 Calling Council meetings

The calling of Council meetings is dealt with in the Act.

3.3 Convening Council meetings

- (1) The convening of a Council meeting is dealt with in the Act.

(2) Subject to subclause (3), the CEO is to give at least 72 hours' notice, for the purposes of section 5.5 of the Act, in convening a special meeting of the Council.

(3) Where, in the opinion of the President or at least one-third of the Members, there is a need to meet urgently, the CEO may give a lesser period of notice of a special Council meeting.

3.4 Calling committee meetings

The CEO is to call a meeting of any committee when requested by the President, the Presiding Member of a committee or any two members of that committee.

3.5 Public notice of meetings

Public notice of meetings is dealt with in the Regulations.

PART 4—PRESIDING MEMBER AND QUORUM

Division 1: Who presides

4.1 Who presides

Who presides at a Council meeting is dealt with in the Act.

4.2 When the Deputy President can act

When the Deputy President can act is dealt with in the Act.

4.3 Who acts if no President

Who acts if there is no President is dealt with in the Act.

4.4 Election of Presiding Members of committees

The election of Presiding Members of committees and their deputies is dealt with in the Act.

4.5 Election of Deputy Presiding Members of committees

The election of Deputy Presiding Members of committees is dealt with in the Act.

4.6 Functions of Deputy Presiding Members

The functions of Deputy Presiding Members are dealt with in the Act.

4.7 Who acts if no Presiding Member

Who acts if no Presiding Member is dealt with in the Act.

Division 2—Quorum

4.8 Quorum for meetings

The quorum for meetings is dealt with in the Act.

4.9 Reduction of quorum for Council meetings

The power of the Minister to reduce the number for a quorum and certain majorities is dealt with in the Act.

4.10 Reduction of quorum for committee meetings

The reduction of a quorum for committee meetings is dealt with in the Act.

4.11 Procedure where no quorum to begin a meeting

The procedure where there is no quorum to begin a meeting is dealt with in the Regulations.

4.12 Procedure where quorum not present during a meeting

If at any time during a meeting a quorum is not present, the Presiding Member is—

- (a) immediately to suspend the proceedings of the meeting for a period of up to 15 minutes; and
- (b) if a quorum is not present at the expiry of that period, the Presiding Member is to adjourn the meeting to some future time or date.

4.13 Names to be recorded

At any meeting—

- (a) at which there is not a quorum present; or
- (b) which is adjourned for want of a quorum,

the names of the Members then present are to be recorded in the minutes.

PART 5—BUSINESS OF A MEETING

5.1 Business to be specified

(1) No business is to be transacted at any ordinary meeting of the Council other than that specified in the agenda, without the approval of the Presiding Member or the Council.

(2) No business is to be transacted at a special meeting of the Council other than that given in the notice as the purpose of the meeting.

(3) Subject to subclause (4), no business is to be transacted at an adjourned meeting of the Council other than that—

- (a) specified in the notice of the meeting which had been adjourned; and
- (b) which remains unresolved.

(4) Where a meeting is adjourned to the next ordinary meeting of the Council then, unless the Council resolves otherwise, the business unresolved at the adjourned meeting is to be dealt with before considering Reports (Item 9) at that ordinary meeting.

5.2 Order of business

(1) Unless otherwise decided by the Council the order of business at any ordinary meeting of the Council is to be as follows—

1. Declaration of Opening/Announcement of Visitors
2. Announcements from the Presiding Member
3. Attendance
 - 3.1 Apologies
 - 3.2 Approved leave of absence
4. Declaration of interest
5. Public Question Time
 - 5.1 Response to previous public questions taken on notice
 - 5.2 Public question time
6. Confirmation of minutes
7. Presentations
 - 7.1 Petitions
 - 7.2 Presentations
 - 7.3 Deputations
 - 7.4 Delegates' reports
8. Method of dealing with agenda business
9. Reports
10. Applications for leave of absence
11. Motions of which previous notice has been given
12. Questions from Members without notice
13. New business of an urgent nature introduced by decision of the meeting
14. Meeting closed to public
 - 14.1 Matters for which the meeting may be closed
 - 14.2 Public reading of resolutions that may be made public
15. Closure

(2) Unless otherwise decided by the Council, the order of business at any special meeting of the Council is to be the order in which that business stands in the agenda of the meeting.

(3) In determining the order of business for any meeting of the Council, the provisions of the Act and Regulations relating to the time at which public question time is to be held are to be observed. *[See section 5.24 of the Act; and regulations 6 and 7 of the Regulations]*

5.3 Motions of which previous notice has been given

(1) Unless the Act, Regulations or this local law otherwise provide, a Member may raise at a meeting such business as he or she considers appropriate, in the form of a motion, of which notice has been given in writing to the CEO and which has been included on the agenda.

(2) A notice of motion under subclause (1) is to be given at least 7 clear working days before the meeting at which the motion is moved.

(3) A notice of motion is to relate to the good governance of the district.

(4) The CEO—

- (a) may, with the concurrence of the President, may exclude from the notice paper any notice of motion deemed to be, or likely to involve, a breach of any of this local law or any other written law;
- (b) will inform Members on each occasion that a notice has been excluded and the reasons for that exclusion;
- (c) may, after consultation with the Member where this is practicable, make such amendments to the form but not the substance as will bring the notice of motion into due form; and
- (d) may provide to the Council relevant and material facts and circumstances pertaining to the notice of motion on such matters as policy, budget and law.

(5) A motion of which notice has been given is to lapse unless—

- (a) the Member who gave notice of it, or some other Member authorised by the originating Member in writing, moves the motion when called on; or
- (b) the Council on a motion agrees to defer consideration of the motion to a later stage or date.

(6) If a notice of motion is given and lapses under subclause (5), notice of a motion in the same terms or to the same effect is not to be given again for at least 3 months from the date of such lapse.

5.4 New business of an urgent nature

(1) In cases of extreme urgency or other special circumstances, matters may, on a motion by the Presiding Member that is carried by the meeting, be raised without notice and decided by the meeting.

(2) In subclause (1), 'cases of extreme urgency or other special circumstances' means matters that have arisen after the preparation of the agenda that are considered by the Presiding Member to be of such importance and urgency that they are unable to be dealt with administratively by the Local Government and must be considered and dealt with by the Council before the next meeting.

5.5 Adoption by exception resolution

(1) In this clause 'adoption by exception resolution' means a resolution of the Council that has the effect of adopting, for a number of specifically identified reports, the officer recommendation as the Council resolution.

(2) Subject to subclause (3), the Local Government may pass an adoption by exception resolution.

(3) An adoption by exception resolution may not be used for a matter—

- (a) in which an interest has been disclosed;
- (b) that has been the subject of a petition or deputation;
- (c) that is a matter on which a Member wishes to make a statement; or
- (d) that is a matter on which a Member wishes to move a motion that is different to the recommendation.

PART 6—PUBLIC PARTICIPATION

6.1 Meetings generally open to the public

Meetings being generally open to the public is dealt with in the Act.

6.2 Meetings not open to the public

(1) The CEO may, at any time, recommend that a meeting or part of a meeting be closed to members of the public.

(2) The Council or a committee, in one or more of the circumstances dealt with in the Act, may at any time, by resolution, decide to close a meeting or part of a meeting.

(3) If a resolution under subclause (2) is carried—

- (a) the Presiding Member is to direct everyone to leave the meeting except—
 - (i) the Members;
 - (ii) the CEO; and
 - (iii) any Officer specified by the Presiding Member; and
- (b) the meeting is to be closed to the public until, at the conclusion of the matter justifying the closure of the meeting to the public, the Council or the committee, by resolution, decides otherwise.

(4) A person who fails to comply with a direction under subclause (3)(a) may, by order of the Presiding Member, be removed from the meeting.

(5) While the resolution under subclause (2) remains in force, the operation of clause 8.9 is to be suspended until the Council or the committee, by resolution, decides otherwise.

(6) A resolution under this clause may be made without notice.

(7) Unless the Council resolves otherwise, once the meeting is reopened to members of the public, the Presiding Member is to ensure that any resolution of the Council made while the meeting was closed is to be read out including a vote of a Member to be included in the minutes.

6.3 Question time for the public

Question time for the public is dealt with in the Act.

6.4 Question time for the public at certain meetings

Question time for the public at certain meetings is dealt with in the Regulations.

6.5 Minimum question time for the public

Minimum question time for the public is dealt with in the Regulations.

6.6 Procedures for question time for the public

Procedures for question time for the public are dealt with in the Regulations.

6.7 Other procedures for question time for the public

(1) A member of the public who raises a question during question time, is to state his or her name and address.

(2) A question may be taken on notice by the Council for later response.

(3) When a question is taken on notice the CEO is to ensure that—

- (a) a response is given to the member of the public in writing; and
- (b) a summary of the response is included in the agenda of the next meeting of the Council.

- (4) Where a question relating to a matter in which a relevant person has an interest is directed to the relevant person, the relevant person is to—
- (a) declare that he or she has an interest in the matter; and
 - (b) allow another person to respond to the question.
- (5) Each member of the public with a question is entitled to ask up to 2 questions before other members of the public will be invited to ask their questions.
- (6) Where a member of the public provides written questions then the Presiding Member may elect for the questions to be responded to as normal business correspondence.
- (7) The Presiding Member may decide that a public question shall not be responded to where—
- (a) the same or similar question was asked at a previous meeting, a response was provided and the member of the public is directed to the minutes of the meeting at which the response was provided;
 - (b) the member of the public uses public question time to make a statement, provided that the Presiding Member has taken all reasonable steps to assist the member of the public to phrase the statement as a question; or
 - (c) the member of the public asks a question that is offensive or defamatory in nature, provided that the Presiding Member has taken all reasonable steps to assist the member of the public to phrase the question in a manner that is not offensive or defamatory.
- (8) A member of the public shall have two minutes to submit a question.
- (9) The Council, by resolution, may agree to extend public question time.
- (10) Where an answer to a question is given at a meeting, a summary of the question and the answer is to be included in the minutes.

6.8 Distinguished visitors

If a distinguished visitor is present at a meeting of the Council, the Presiding Member may acknowledge the presence of the distinguished visitor at an appropriate time during the meeting, and the presence of that visitor shall be recorded in the minutes.

6.9 Deputations

- (1) Any person or group wishing to be received as a deputation by the Council is to either—
- (a) apply, before the meeting, to the CEO for approval; or
 - (b) with the approval of the Presiding Member, at the meeting, address the Council.
- (2) The CEO may either—
- (a) approve the request and invite the deputation to attend a meeting of the Council; or
 - (b) refer the request to the Council to decide by simple majority whether or not to receive the deputation.
- (3) Unless the council resolves otherwise, a deputation invited to attend a Council meeting—
- (a) is not to exceed 5 persons, only 2 of whom may address the Council, although others may respond to specific questions from Members;
 - (b) is not to address the Council for a period exceeding 10 minutes without the agreement of the Council; and,
 - (c) additional members of the deputation may be allowed to speak with the leave of the Presiding Member.
- (4) Any matter which is the subject of a deputation to the Council is not to be decided by the Council until the deputation has completed its presentation.

6.10 Petitions

- (1) A petition is to—
- (a) be addressed to the President;
 - (b) be made by electors of the district;
 - (c) state the request on each page of the petition;
 - (d) contain the name, address and signature of each elector making the request, and the date each elector signed;
 - (e) contain a summary of the reasons for the request; and
 - (f) state the name of the person to whom, and an address at which, notice to the petitioners can be given.
- (2) Upon receiving a petition, the Local Government is to submit the petition to the relevant officer to be included in his or her deliberations and report on the matter that is the subject of the petition, subject to subclause(3).
- (3) At any meeting, the Council is not to vote on any matter that is the subject of a petition presented to that meeting, unless—
- (a) the matter is the subject of a report included in the agenda; and
 - (b) the Council has considered the issues raised in the petition.

6.11 Presentations

(1) In this clause, a “presentation” means the acceptance of a gift or an award by the Council on behalf of the Local Government or the community.

(2) A presentation may be made to the Council at a meeting only with the prior approval of the CEO.

6.12 Participation at committee meetings

(1) In this clause a reference to a person is to a person who—

- (a) is entitled to attend a committee meeting;
- (b) attends a committee meeting; and
- (c) is not a member of that committee.

A member of the public is entitled to attend a committee meeting only where a local government power or duty has been delegated to that committee: see section 5.23(1)(b) of the Act.

(2) Without the consent of the Presiding Member, no person is to address a committee meeting.

(3) The Presiding Member of a committee may allow a person to make an oral submission to the committee for up to 3 minutes.

(4) A person addressing the committee with the consent of the Presiding Member is to cease that address immediately after being directed to do so by the Presiding Member.

(5) A person who fails to comply with a direction of the Presiding Member under subclause (4) may, by order of the Presiding Member, be removed from the committee room.

(6) The Council may make a policy dealing with the circumstances in which a person may be given consent to address a committee meeting.

6.13 Council may meet to hear public submissions

(1) Where an item on the agenda at a Council meeting is contentious and is likely to be the subject of a number of deputations, the Council may resolve to meet at another time to provide a greater opportunity to be heard.

(2) The CEO and the President shall set the time and date of the meeting to provide the opportunity to be heard.

(3) Where the Council resolves to meet to provide the opportunity to be heard under subclause (1), the Presiding Member shall—

- (a) instruct the CEO to provide local public notice of the time and date when the Council will meet to provide an opportunity to be heard;
- (b) provide a written invitation to attend the meeting to provide the opportunity to be heard to all members of the public who have applied under clause 6.9 to make a deputation on the issue; and
- (c) cause minutes to be kept of the meeting to provide the opportunity to be heard.

(4) A meeting held under subclause (1) shall be conducted only to hear submissions. The council shall not make resolutions at a meeting to provide the opportunity to be heard.

(5) At a meeting held under subclause (1), each person making a submission shall be provided with the opportunity to fully state his or her case.

(6) A member of the public shall be limited to 10 minutes in making an oral submission, but this period may be extended at the discretion of the Presiding Member.

(7) Once every member of the public has had the opportunity to make a submission the Presiding Member is to close the meeting.

(8) The CEO is to ensure that a report is included on the agenda of the next Council meeting summarising each submission made at the meeting.

(9) The Council must not resolve on the matter that is the subject of a meeting to provide the opportunity to be heard until it has received the CEO’s report under subclause (8).

6.14 Public Inspection of agenda materials

The right of the public to inspect the documents referred to, and in accordance with, regulation 14 of the Regulations may be exercised at the Shire of Broomehill-Tambellup, 46-48 Norrish Street, Tambellup and on the Local Government’s website.

6.15 Confidentiality of information withheld

(1) Information withheld by the CEO from the public under regulation 14(2) of the Regulations is to be—

- (a) identified in the agenda of a Council meeting under the item “Matters for which meeting may be closed”;
- (b) marked “*Confidential*” in the agenda; and
- (c) kept confidential by Officers and Members until the Council resolves otherwise.

(2) A member or an officer in receipt of confidential information under subclause (1) or information that is provided or disclosed during a meeting or part of a meeting that is closed to the public is not to disclose any of that information to any person other than another member or an officer to the extent necessary for the purpose of carrying out his or her duties.

(3) Subclause (2) does not apply where a member or officer discloses the information to his or her lawyer or government officer for the purpose of seeking advice in order to lawfully fulfil his or her role and responsibilities.

6.16 Recording of proceedings

A person is not to use any electronic, visual or audio recording device or instrument to record the proceedings of the Council without the permission of the presiding member.

6.17 Prevention of disturbance

- (1) A reference in this clause to a person is to a person other than a member.
- (2) A person addressing the Council shall extend due courtesy and respect to the Council and the processes under which it operates and shall comply with any direction by the Presiding Member.
- (3) A person observing a meeting shall not create a disturbance at a meeting, by interrupting or interfering with the proceedings, whether by expressing approval or dissent, by conversing or by any other means.
- (4) A person shall ensure that his or her mobile telephone or audible pager is not switched on or used during any meeting of the Council.
- (5) A person shall not behave in a manner that is contrary to section 75 of the Criminal Code.

PART 7—QUESTIONS BY MEMBERS

7.1 Questions by members

- (1) Members may ask questions relating to an item on the notice paper or on matters related to the good government of persons in the district.
- (2) A member requesting general information from an Officer at a Council meeting may ask a question without notice and with the consent of the presiding member, may ask one or more further questions of that Officer or another Officer present at the meeting.
- (3) Where possible the Officer shall endeavour to answer the question to the best of his or her knowledge and ability, however, if the information is unavailable or the answer requires research or investigation, the Officer may ask that—
 - (i) the question be placed on notice for the next meeting of Council; and
 - (ii) the answer to the question be given to the member who asked it within 14 days.
- (4) Every question and answer—
 - (i) is to be brief and concise; and
 - (ii) is not to be accompanied by argument, expression of opinion or statement of facts, except to the extent necessary to explain the question or answer.
- (5) In answering any question, an Officer may qualify his or her answer and may at a later time in the meeting or at a subsequent meeting alter, correct, add to or otherwise amend the original answer.

PART 8—CONDUCT OF MEMBERS

8.1 Members to be in their proper places

- (1) At the first meeting held after each election day, the CEO is to allot, alphabetically by ward, a position at the Council table to each Member.
- (2) Each Member is to occupy his or her allotted position at each Council meeting.

8.2 Respect to the Presiding Member

After the business of a Council has been commenced, a Member is not to enter or leave the meeting without first paying due respect to the Presiding Member.

8.3 Titles to be used

A speaker, when referring to the President, Deputy President or Presiding Member, or a Member or Officer, is to use the title of that person's office.

8.4 Advice of entry or departure

During the course of a meeting of the Council, a Member is not to enter or leave the meeting without first advising the Presiding Member, in order to facilitate the recording in the minutes of the time or entry or departure.

8.5 Members to indicate their intention to speak

A Member of the Council who wishes to speak is to indicate his or her intention to speak by raising his or her hand or by another method agreed by the Council.

8.6 Priority of speaking

- (1) Where two or more Members indicate, at the same time, their intention to speak, the Presiding Member is to decide which Member is entitled to be heard first.
- (2) A decision of the Presiding Member under subclause (1) is not open to discussion or dissent.
- (3) A Member is to cease speaking immediately after being asked to do so by the Presiding Member.

8.7 Presiding Member may take part in debates

The Presiding Member may take part in a discussion of any matter before the Council, subject to compliance with this local law.

8.8 Relevance

- (1) A member is to restrict his or her remarks to the motion or amendment under discussion, or to a personal explanation or point of order.
- (2) The presiding member, at any time, may—
 - (a) call the attention of the meeting to—
 - (i) any irrelevant, repetitious, offensive or insulting language by a Member; or
 - (ii) any breach of order by a member; and
 - (b) direct that member, if speaking, to discontinue his or her speech.
- (3) A member is to comply with the direction of the Presiding Member under subclause (2) by immediately ceasing to speak.

8.9 Speaking twice

A Member is not to address the Council more than once on any motion or amendment except—

- (a) as the mover of a substantive motion, to exercise a right of reply;
- (b) to raise a point of order; or
- (c) to make a personal explanation.

8.10 Duration of speeches

- (1) A Member is not to speak on any matter for more than 5 minutes without the consent of the Council which, if given, is to be given without debate.
- (2) An extension under this clause cannot be given to allow a Member's total speaking time to exceed 10 minutes.

8.11 No speaking after conclusion of debate

A Member is not to speak on any motion or amendment—

- (a) after the mover has replied; or
- (b) after the question has been put.

8.12 No interruption

A Member is not to interrupt another Member who is speaking unless—

- (a) to raise a point of order;
- (b) to call attention to the absence of a quorum;
- (c) to make a personal explanation under clause 8.13; or
- (d) to move a procedural motion that the Member be no longer heard (see clause 11.1(e)) .

8.13 Personal explanations

- (1) A Member who wishes to make a personal explanation relating to a matter referred to by another Member who is then speaking is to indicate to the Presiding Member his or her intention to make a personal explanation.
- (2) The Presiding Member is to determine whether the personal explanation is to be heard immediately or at the conclusion of the speech by the other Member.
- (3) A Member making a personal explanation is to confine his or her observations to a succinct statement relating to a specific part of the speech at which he or she may have been misunderstood.

8.14 No reopening of discussion

A Member is not to reopen discussion on any Council decision, except to move that the decision be revoked or changed (see Part 16).

8.15 Adverse reflection

- (1) A Member is not to reflect adversely on a decision of the Council except on a motion that the decision be revoked or changed (see Part 16).
- (2) A Member is not—
 - (a) to reflect adversely on the character or actions of another Member or Officer; or
 - (b) to impute any motive to a Member or Officer,unless the meeting resolves, without debate, that the question then before the meeting cannot otherwise be adequately considered.
- (3) A Member is not to use offensive or objectionable expressions in reference to any Member, Officer or other person.
- (4) If a Member specifically requests, immediately after their use, that any particular words used by a Member be recorded in the minutes—
 - (a) the Presiding Member is to cause the words used to be taken down and read to the meeting for verification; and
 - (b) the Council may, by resolution, decide to record those words in the minutes.

8.16 Withdrawal of offensive language

- (1) A Member who, in the opinion of the Presiding Member, uses an expression which—
 - (a) in the absence of a resolution under clause 8.15—
 - (i) reflects adversely on the character or actions of another Member or Officer; or
 - (ii) imputes any motive to a Member or Officer; or
 - (b) is offensive or insulting,

must, when directed by the Presiding Member, withdraw the expression and make a satisfactory apology.

(2) If a Member fails to comply with a direction of the Presiding Member under subclause (1), the Presiding Member may refuse to hear the Member further on the matter then under discussion and call on the next speaker.

PART 9—PRESERVING ORDER

9.1 Presiding Member to preserve order

- (1) The Presiding Member is to preserve order, and, whenever he or she considers necessary, may call any Member to order.
- (2) When the Presiding Member speaks during a debate, any Member then speaking, or indicating that he or she wishes to speak, is immediately to sit down and every Member present is to preserve strict silence so that the Presiding Member may be heard without interruption.
- (3) Subclause (2) is not to be used by the Presiding Member to exercise the right provided in clause 8.7, but to preserve order.

9.2 Point of order

- (1) A Member may object, by way of a point of order, only to a breach of—
 - (a) any of this local law; or
 - (b) any other written law.
- (2) Despite anything in this local law to the contrary, a point of order—
 - (a) takes precedence over any discussion; and
 - (b) until determined, suspends the consideration or discussion of any other matter.

9.3 Procedures on a point of order

- (1) A Member who is addressing the Presiding Member is not to be interrupted except on a point of order.
- (2) A Member interrupted on a point of order is to resume his or her seat until—
 - (a) the Member raising the point of order has been heard; and
 - (b) the Presiding Member has ruled on the point of order,and, if permitted, the Member who has been interrupted may then proceed.

9.4 Calling attention to breach

A Member may, at any time, draw the attention of the Presiding Member to any breach of this local law.

9.5 Ruling by the Presiding Member

- (1) The Presiding Member is to rule on any point of order which is raised by either upholding or rejecting the point of order.
- (2) A ruling by the Presiding Member on a point of order—
 - (a) is not to be the subject of debate or comment; and
 - (b) is to be final unless the majority of Members then present and voting, on a motion moved immediately after the ruling, dissent from the ruling.
- (3) Subject to a motion of dissent being carried under subclause (2), if the Presiding Member rules that—
 - (a) any motion, amendment or other matter before the meeting is out of order, it is not to be considered further; and
 - (b) a statement made or act done by a Member is out of order, the Presiding Member may require the Member to make an explanation, retraction or apology.

9.6 Continued breach of order

If a Member—

- (a) persists in any conduct that the Presiding Member had ruled is out of order; or
- (b) refuses to make an explanation, retraction or apology required by the Presiding Member under clause 9.5(3),

the Presiding Member may direct the Member to refrain from taking any further part in the matter under discussion, other than by voting, and the Member is to comply with that direction.

9.7 Right of Presiding Member to adjourn

- (1) For the purpose of preserving or regaining order, the Presiding Member may adjourn the meeting for a period of up to 15 minutes.
- (2) On resumption, the debate is to continue at the point at which the meeting was adjourned.
- (3) If, at any one meeting, the Presiding Member adjourns the meeting more than once for the purpose of preserving or regaining order, the second or subsequent adjournment may be to a later time on the same day or to another day.

PART 10—DEBATE OF SUBSTANTIVE MOTIONS

10.1 Motions to be stated and in writing

Any Member who wishes to move a substantive motion or an amendment to a substantive motion—

- (a) is to state the substance of the motion before speaking to it; and
- (b) if required by the Presiding Member, is to put the motion or amendment in writing.

10.2 Motions to be supported

- (1) A substantive motion or an amendment to a substantive motion is not open to debate until it has been seconded.
- (2) A motion to revoke or change a decision made at a Council meeting is not open to debate unless the motion has the support required under regulation 10 of the Regulations.

10.3 Unopposed business

- (1) Immediately after a substantive motion has been moved and seconded, the Presiding Member may ask the meeting if any Member opposes it.
- (2) If no Member opposes the motion, the Presiding Member may declare it carried without debate and without taking a vote.
- (3) A motion declared carried under this clause is to be recorded in the minutes as a unanimous decision of the Council.
- (4) If a Member opposes a motion, the motion is to be dealt with under this Part.
- (5) This clause does not apply to a motion to revoke or change a decision which has been made at a Council meeting (see Part 16).

10.4 Only one substantive motion at a time

When a substantive motion is under debate at a meeting of the Council, no further substantive motion is to be accepted. The Council is not to consider more than one substantive motion at any time.

10.5 Order of call in debate

The Presiding Member is to call speakers to a substantive motion in the following order—

- (a) the mover to state the motion;
- (b) a seconder to the motion;
- (c) the mover to speak to the motion;
- (d) the seconder to speak to the motion;
- (e) a speaker against the motion;
- (f) a speaker for the motion;
- (g) other speakers against and for the motion, alternating where possible; and
- (h) mover takes right of reply which closes debate.

10.6 Limit of debate

The Presiding Member may offer the right of reply and put a substantive motion to the vote if he or she believes that sufficient discussion has taken place even though all Members may not have spoken.

10.7 Member may require question to be read

A Member may require the question or matter under discussion to be read at any time during a debate, but not so as to interrupt any other Member who is speaking.

10.8 Consent of seconder required for alteration

The mover of a substantive motion may not alter the wording of the motion without the consent of the seconder.

10.9 Order of amendments

Any number of amendments may be proposed to a substantive motion, but when an amendment is moved to a substantive motion, no second or subsequent amendment is to be moved or considered until the first amendment has been withdrawn, carried or lost.

10.10 Form of an amendment

An amendment must add, delete, or substitute words to the substantive motion.

10.11 Amendment must not negate original motion

An amendment to a substantive motion cannot negate the original motion or the intent of the original motion.

10.12 Relevance of amendments

Each amendment is to be relevant to the motion in respect of which it is moved.

10.13 Mover of motion may speak on amendment

Any Member may speak during debate on an amendment.

10.14 Effect of an amendment

If an amendment to a substantive motion is carried, the motion as amended then becomes the substantive motion, on which any Member may speak and any further amendment may be moved.

10.15 Withdrawal of motion or amendment

(1) Subject to subclause (2), the Council may, without debate, grant leave to withdraw a motion or amendment on the request of the mover of the motion or amendment and with the approval of the seconder.

(2) Where an amendment has been proposed to a substantive motion, the substantive motion is not to be withdrawn, except by consent of the majority of Members present, until the amendment proposed has been withdrawn or lost.

10.16 Right of reply

(1) The mover of a substantive motion has the right of reply.

(2) The mover of any amendment to a substantive motion has a right of reply.

(3) The right of the reply may only be exercised—

(a) where no amendment is moved to the substantive motion—at the conclusion of the discussion on the motion; or

(b) where one or more amendments have been moved to the substantive motion—at the conclusion of the discussion on the substantive motion and any amendments.

(4) After the mover of the substantive motion has commenced the reply—

(a) no other Member is to speak on the question;

(b) there is to be no further discussion on, or any further amendment to, the motion.

(5) The right of the reply is to be confined to rebutting arguments raised by previous speakers and no new matter is to be introduced.

(6) At the conclusion of the right of reply, the substantive motion, or the substantive motion as amended, is immediately to be put to the vote.

PART 11—PROCEDURAL MOTIONS

11.1 Permissible procedural motions

In addition to the right to move an amendment to a substantive motion (under Part 10), a Member may move the following procedural motions—

(a) that the meeting proceed to the next item of business;

(b) that the debate be adjourned;

(c) that the meeting now adjourn;

(d) that the question be now put;

(e) that the Member be no longer heard;

(f) that the ruling of the Presiding Member be disagreed with;

(g) that the meeting be closed to the public (see clause 6.2).

11.2 No debate

(1) The mover of a motion specified in paragraph (a), (b), (c), (f) or (g) of clause 11.1 may speak to the motion for not more than five minutes, the seconder is not to speak other than to formally second the motion, and there is to be no debate on the motion.

(2) The mover of a motion specified in paragraph (d) or (e) of clause 11.1 may not speak to the motion, the seconder is not to speak other than to formally second the motion, and there is to be no debate on the motion.

11.3 Who may move

No person who has moved, seconded, or spoken for or against the substantive motion, or any amendment to the substantive motion, may move any procedural motion which, if carried, would close the debate on the substantive motion or amendment.

11.4 Procedural motions—right of reply on substantive motion

The carrying of a procedural motion which closes debate on the substantive motion or amendment and forces a decision on the substantive motion or amendment does not deny the right of reply to the mover of the substantive motion.

11.5 Meeting to proceed to the next business

The motion “that the meeting proceed to the next business”, if carried, has the effect that—

(a) the debate on the substantive motion or amendment ceases immediately;

(b) no decision is made on the substantive motion;

- (c) the Council moves to the next item of business; and
- (d) there is no requirement for the matter to be raised again for consideration.

11.6 Debate to be adjourned

A motion “that the debate be adjourned”—

- (a) is to state the time to which the debate is to be adjourned; and
- (b) if carried, has the effect that all debate on the substantive motion or amendment ceases immediately, but continues at the time stated in the motion.

11.7 Meeting now adjourn

(1) A Member is not to move or second more than one motion of adjournment during the same sitting of the Council.

(2) Before putting the motion for the adjournment of the Council, the Presiding Member may seek leave of the Council to deal first with matters that may be the subject of an adoption by exception resolution (see clause 5.5).

(3) A motion “that the meeting now adjourn”—

- (a) is to state the time and date to which the meeting is to be adjourned; and
- (b) if carried, has the effect that the meeting is adjourned to the time and date specified in the motion.

(4) A meeting adjourned under subclause (3) is to continue from the point at which it was adjourned, unless the Presiding Member or the Council determines otherwise.

11.8 Question to be put

(1) If the motion “that the question be now put”, is carried during debate on a substantive motion without amendment, the Presiding Member is to offer the right of reply and then put the motion to the vote without further debate.

(2) If the motion “that the question be now put” is carried during discussion of an amendment, the Presiding Member is to put the amendment to the vote without further debate.

(3) This motion, if lost, causes debate to continue.

11.9 Member to be no longer heard

If the motion “that the member be no longer heard”, is carried, the speaker against whom the motion has been moved cannot speak further on the current substantive motion, or any amendment relating to it, except to exercise the right of reply if he or she is the mover of the substantive motion.

11.10 Ruling of the Presiding Member to be disagreed with

If the motion “that the ruling of the Presiding Member be disagreed with”, is carried, that ruling is to have no effect and the meeting is to proceed accordingly.

PART 12—DISCLOSURE OF INTERESTS

12.1 Disclosure of interests

Disclosure of interests is dealt with in the Act.

PART 13—VOTING

13.1 Question—when put

(1) Immediately after the debate on any question is concluded and the right of reply has been exercised, the Presiding Member—

- (a) is to put the question to the Council; and
- (b) if requested by any Member, is to again state the terms of the question.

(2) A Member is not to leave the meeting when the Presiding Member is putting any question.

13.2 Voting

Voting is dealt with in the Act and the Regulations.

13.3 Majorities required for decisions

The majorities required for decisions of the Council and committees are dealt with in the Act.

13.4 Method of taking vote

(1) In taking the vote on any motion or amendment the Presiding Member—

- (a) is to put the question, first in the affirmative, and then in the negative;
- (b) may put the question in this way as often as may be necessary to enable him or her to determine whether the affirmative or the negative has the majority of votes;
- (c) may accept a vote on the voices or may require a show of hands; and,
- (d) is, subject to this clause, to declare the result.

(2) If a Member calls for a show of hands, the result of the vote is to be determined on the count of raised hands.

(3) If a member of council or a committee specifically requests that there be recorded—

- (a) his or her vote; or,
- (b) the vote of all members present,

on a matter voted on at a meeting of the council or committee, the person presiding is to cause the vote or votes, as the case may be, to be recorded in the minutes.

(4) If a Member calls for a division—

- (a) those voting in the affirmative are to pass to the right of the Chair; and
- (b) those voting in the negative are to pass to the left of the Chair.

(5) For every division, the CEO is to record—

- (a) the name of each member who voted; and
- (b) whether he or she voted in the affirmative or negative.

PART 14—MINUTES OF MEETINGS

14.1 Keeping of minutes

The keeping and confirmation of minutes are dealt with in the Act.

14.2 Content of minutes

(1) The content of minutes is dealt with in the Regulations.

(2) In addition to the matters required by regulation 11 of the Regulations, the minutes of a Council meeting is to include, where an application for approval is refused or the authorisation of a licence, permit or certificate is withheld or cancelled, the reasons for the decision.

14.3 Public inspection of unconfirmed minutes

The public inspection of unconfirmed minutes is dealt with in the Regulations.

14.4 Confirmation of minutes

(1) When minutes of an ordinary meeting of the Council are distributed for consideration prior to their confirmation at the next meeting, if a Member is dissatisfied with the accuracy of the minutes, the Member may provide the Local Government with a written copy of the alternative wording to amend the minutes no later than 7 clear working days before the next ordinary meeting of the Council.

(2) At the next ordinary meeting of the Council, the Member who provided the alternative wording shall, at the time for confirmation of minutes—

- (a) state the item or items with which he or she is dissatisfied; and
- (b) propose a motion clearly outlining the alternative wording to amend the minutes.

(3) Members must not discuss items of business contained in the minutes, other than discussion as to their accuracy as a record of the proceedings.

PART 15—ADJOURNMENT OF MEETING

15.1 Meeting may be adjourned

The Council may adjourn any meeting—

- (a) to a later time on the same day; or
- (b) to any other time on any other day, including a time which coincides with the conclusion of another meeting or event.

15.2 Effect of adjournment

Where any matter, motion, debate or meeting is adjourned under this local law—

- (a) the names of Members who have spoken on the matter prior to the adjournment are to be recorded in the minutes;
- (b) debate is to be resumed at the next meeting at the point where it was interrupted; and
- (c) the provisions of clause 8.9 [speaking twice] apply when the debate is resumed.

PART 16—REVOKING OR CHANGING DECISIONS

16.1 Requirements to revoke or change decisions

The requirements to revoke or change a decision made at a meeting are dealt with in regulation 10 of the Regulations.

16.2 Limitations on powers to revoke or change decisions

(1) Subject to subclause (2), the Council or a committee is not to consider a motion to revoke or change a decision—

- (a) where, at the time the motion is moved or notice is given, any action has been taken under clause 16.3 to implement the decision; or
- (b) where the decision is procedural in its form or effect.

(2) The Council or a committee may consider a motion to revoke or change a decision of the kind described in subclause (1)(a) if the motion is accompanied by a written statement of the legal and financial consequences of carrying the motion.

16.3 Implementing a decision

- (1) In this clause—
- (a) “authorisation” means a licence, permit, approval or other means of authorising a person to do anything;
 - (b) “implement”, in relation to a decision, includes—
 - (i) communicate notice of the decision to a person affected by, or with an interest in, the decision; and
 - (ii) take any other action to give effect to the decision; and
 - (c) “valid notice of revocation motion” means a notice of motion to revoke or change a decision that complies with the requirements of the Act, Regulations and the Local Laws and may be considered, but has not yet been considered, by the Council or a committee as the case may be.
- (2) Subject to subclause (4), and unless a resolution is made under subclause (3), a decision made at a meeting is not to be implemented by the CEO or any other person until the afternoon of the first business day after the commencement of the meeting at which the decision was made.
- (3) The Council or a committee may, by resolution carried at the same meeting at which a decision was made, direct the CEO or another person to take immediate action to implement the decision.
- (4) A decision made at a meeting is not to be implemented by the CEO or any other person—
- (a) if, before commencing any implementation action, the CEO or that person is given a valid notice of revocation motion; and
 - (b) unless and until the valid notice of revocation motion has been determined by the Council or the committee as the case may be.
- (5) The CEO is to ensure that members of the public attending the meeting are informed by an appropriate notice that a decision to grant an authorisation—
- (a) is to take effect only in accordance with this clause; and
 - (b) cannot be acted upon by the person who has been granted the authorisation unless and until the decision has been implemented in accordance with this clause.

PART 17—SUSPENSION OF LOCAL LAWS

17.1 Suspension of Local Laws

- (1) A Member may at any time move that the operation of one or more of the provisions of this local law be suspended.
- (2) A Member moving a motion under subclause (1) is to state the reasons for the motion but no other discussion is to take place.
- (3) A motion under subclause (1) which is—
- (a) seconded; and
 - (b) carried by an absolute majority,

is to suspend the operation of the clause or clauses to which the motion relates for the duration of the meeting, unless the meeting earlier resolves otherwise.

17.2 Where Local Laws do not apply

- (1) In situations where—
- (a) one or more provisions of this local law have been suspended; or
 - (b) a matter is not regulated by the Act, the Regulations or this local law,
- the Presiding Member is to decide questions relating to the conduct of the meeting.
- (2) The decision of the Presiding Member under subclause (1) is final, except where a motion is moved and carried under clause 11.10.

17.3 Cases not provided for in Local Laws

The Presiding Member is to decide questions of order, procedure, debate, or otherwise in cases where this local law, the Act or the Regulations are silent. The decision of the Presiding Member in these cases is final, except where a motion is moved and carried under clause 11.10.

PART 18—MEETINGS OF ELECTORS

18.1 Electors’ general meetings

Electors’ general meetings are dealt with in the Act.

18.2 Matters for discussion at electors’ general meetings

The matters to be discussed at electors’ general meetings are dealt with in the Regulations.

18.3 Electors’ special meetings

Electors’ special meetings are dealt with in the Act.

18.4 Requests for electors’ special meetings

Requests for electors’ special meetings are dealt with in the Regulations.

18.5 Convening electors' meetings

Convening electors' meetings is dealt with in the Act.

18.6 Who presides at electors' meetings

Who presides at electors' meetings is dealt with in the Act.

18.7 Procedure for electors' meetings

(1) The procedure for electors' meetings is dealt with in the Act and the Regulations.

(2) In exercising his or her discretion to determine the procedure to be followed at an electors' meeting, the Presiding Member is to have regard to this local law.

18.8 Participation of non-electors

A person who is not an elector of the Local Government shall not take part in any discussion at an electors' meeting unless the meeting, by resolution, permits the person do so.

18.9 Voting at electors' meetings

Voting at electors' meetings is dealt with in the Regulations.

18.10 Minutes of electors' meetings

Minutes of electors' meetings are dealt with in the Act.

18.11 Decisions made at electors' meetings

Decisions made at electors' meetings are dealt with in the Act.

PART 19—ENFORCEMENT

19.1 Penalty for breach

A person who breaches a provision of this local law commits an offence.

Penalty: \$1,000.00 and a daily penalty of \$100.00.

19.2 Who can prosecute

Who can prosecute is dealt with in the Act.

Dated 11th day of February, 2021.

The Common Seal of the Shire of Broomehill-Tambellup was affixed by authority of a resolution of the Council in the presence of—

M. C. PAGANONI, Shire President.

K. B. WILLIAMS, Chief Executive Officer.

LOCAL GOVERNMENT ACT 1995

SHIRE OF BROOMEHILL-TAMBELLUP

LOCAL GOVERNMENT PROPERTY LOCAL LAW 2020

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LOCAL GOVERNMENT ACT 1995

SHIRE OF BROOMEHILL-TAMBELLUP

LOCAL GOVERNMENT PROPERTY LOCAL LAW 2020

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Broomehill-Tambellup resolved on 11th February 2021 to make the following local law.

PART 1—PRELIMINARY

1.1 Citation

This local law may be cited as the *Shire of Broomehill-Tambellup Local Government Property Local Law 2020*.

1.2 Definitions

In this local law unless the context otherwise requires—

Act means the *Local Government Act 1995*;

aircraft has the meaning given to it in the Civil Aviation Act 1988 (Cth);

applicant means a person who applies for a permit under clause 3.2;

authorised person means a person authorised by the local government under section 9.10 of the Act to perform any of the functions of an authorised person under this local law;

boat means any ship, vessel or structure capable of being used in navigation by water, however propelled or moved, and includes a jet ski;

building means any building which is local government property and includes a—

- (a) hall or room;
- (b) corridor, stairway or annexe of any hall or room; and
- (c) jetty;

CEO means the Chief Executive Officer of the local government;

commencement day means the day on which this local law comes into operation;

Council means the council of the local government;

date of publication means, where local public notice is required to be given of a matter under this local law, the date on which notice of the matter is published in a newspaper circulating generally throughout the district;

determination means a determination made under clause 2.1;

district means the district of the local government;

function means an event or activity characterised by all or any of the following—

- (a) formal organisation and preparation;
- (b) its occurrence is generally advertised or notified in writing to particular persons;
- (c) organisation by or on behalf of a club;
- (d) payment of a fee to attend it; and
- (e) systematic recurrence in relation to the day, time and place;

liquor has the same meaning as is given to it in section 3 of the *Liquor Control Act 1988*;

local government means the Shire of Broomehill-Tambellup;

local government property means anything except a thoroughfare—

- (a) which belongs to the local government;
- (b) of which the local government is the management body under the *Land Administration Act 1997*; or
- (c) which is an ‘otherwise unvested facility’ within section 3.53 of the Act;

Manager means the person for the time being employed by the local government to control and manage a pool area or other facility which is local government property and includes the person's assistant or deputy;

permit means a permit issued under this local law;

permit holder means a person who holds a valid permit;

person does not include the local government;

pool area means any swimming and wading pools and spas and all buildings, structures, fittings, fixtures, machinery, chattels, furniture and equipment forming part of or used in connection with such swimming and wading pools and spas which are local government property;

Regulations means the *Local Government (Functions and General) Regulations 1996*;

sign includes a notice, flag, mark, structure or device approved by the local government on which may be shown words, numbers, expressions or symbols;

trading means the selling or hiring, or the offering for sale or hire of goods or services, and includes displaying goods for the purpose of—

- (a) offering them for sale or hire;
- (b) inviting offers for their sale or hire;
- (c) soliciting orders for them; or
- (d) carrying out any other transaction in relation to them; and

vehicle includes—

- (a) every conveyance and every object capable of being propelled or drawn on wheels, tracks or otherwise; and
- (b) an animal being ridden or driven,

but excludes—

- (c) a wheel-chair or any device designed for use, by a physically impaired person on a footpath;
- (d) a pram, a stroller or a similar device; and
- (e) a boat.

1.3 Interpretation

In this local law unless the context otherwise requires a reference to local government property includes a reference to any part of that local government property.

1.4 Application

- (1) This local law applies throughout the district.
- (2) This local law is subject to any written law and law of the Commonwealth about assistance animals as defined in the *Disability Discrimination Act 1992* (Commonwealth) section 9(2).
- (3) Notwithstanding anything to the contrary in this local law, the local government may—
 - (a) hire local government property to any person; or
 - (b) enter into an agreement with any person regarding the use of any local government property.

1.5 Repeal

- (1) This local law repeals the *Shire of Broomehill-Tambellup Local Government Property Local Law 2008* as published in the *Government Gazette* on 23 December 2008.
- (2) Where a policy was made or adopted by the local government under or in relation to a local law repealed by this local law, then the policy is to be taken to no longer have any effect on and from the commencement day.
- (3) The Council may resolve that notwithstanding subclause (2), specified policies continue, or are to be taken to have continued, to have effect on and from the commencement day.

PART 2—DETERMINATIONS IN RESPECT OF LOCAL GOVERNMENT PROPERTY

Division 1—Determinations

2.1. Determinations as to use of local government property

- (1) The local government may make a determination in accordance with clause 2.2—
 - (a) setting aside specified local government property for the pursuit of all or any of the activities referred to in clause 2.7;
 - (b) prohibiting a person from pursuing all or any of the activities referred to in clause 2.8 on specified local government property;
 - (c) as to the matters in clauses 2.7(2) and 2.8(2); and
 - (d) as to any matter ancillary or necessary to give effect to a determination.
- (2) The determinations in Schedule 2—
 - (a) are to be taken to have been made in accordance with clause 2.2;
 - (b) may be amended or revoked in accordance with clause 2.6; and
 - (c) have effect on the commencement day.

2.2. Procedure for making a determination

- (1) The local government is to give local public notice of its intention to make a determination.
- (2) The local public notice referred to in subclause (1) is to state that—
 - (a) the local government intends to make a determination, the purpose and effect of which is summarised in the notice;
 - (b) a copy of the proposed determination may be inspected and obtained from the offices of the local government; and
 - (c) submissions in writing about the proposed determination may be lodged with the local government within 21 days after the date of publication.
- (3) If no submissions are received in accordance with subclause (2)(c), the Council is to decide to—
 - (a) give local public notice that the proposed determination has effect as a determination on and from the date of publication;
 - (b) amend the proposed determination, in which case subclause (5) will apply; or
 - (c) not continue with the proposed determination.
- (4) If submissions are received in accordance with subclause (2)(c) the Council is to—
 - (a) consider those submissions; and
 - (b) decide—
 - (i) whether or not to amend the proposed determination; or
 - (ii) not to continue with the proposed determination.
- (5) If the Council decides to amend the proposed determination, it is to give local public notice—
 - (a) of the effect of the amendments; and
 - (b) that the proposed determination has effect as a determination on and from the date of publication.
- (6) If the Council decides not to amend the proposed determination, it is to give local public notice that the proposed determination has effect as a determination on and from the date of publication.
- (7) A proposed determination is to have effect as a determination on and from the date of publication of the local public notice referred to in subclauses (3), (5) and (6).
- (8) A decision under subclause (3) or (4) is not to be delegated by the Council.

2.3. Discretion to erect sign

The local government may erect a sign on local government property to give notice of the effect of a determination which applies to that property.

2.4. Determination to be complied with

A person shall comply with a determination.

2.5. Register of determinations

- (1) The local government is to keep a register of determinations made under clause 2.1, and of any amendments to or revocations of determinations made under clause 2.6.
- (2) Sections 5.94 and 5.95 of the Act are to apply to the register referred to in subclause (1) and for that purpose the register is to be taken to be information within section 5.94(u)(i) of the Act.

2.6. Amendment or revocation of a determination

- (1) The Council may amend or revoke a determination.
- (2) The provisions of clause 2.2 are to apply to an amendment of a determination as if the amendment were a proposed determination.
- (3) If the Council revokes a determination it is to give local public notice of the revocation and the determination is to cease to have effect on the date of publication.

Division 2—Activities which may be pursued or prohibited under a determination

2.7. Activities which may be pursued on specified local government property

- (1) A determination may provide that specified local government property is set aside as an area on which a person may—
 - (a) bring, ride or drive an animal;
 - (b) take, ride or drive a vehicle, or a particular class of vehicle;
 - (c) fly or use a motorised model aircraft;
 - (d) use a children's playground provided that the person is under an age specified in the determination, but the determination is not to apply to a person having the charge of a person under the specified age;
 - (e) launch, beach or leave a boat;
 - (f) take or use a boat, or a particular class of boat;
 - (g) deposit refuse, rubbish or liquid waste, whether or not of particular classes, and whether or not in specified areas of that local government property;

- (h) play or practice—
 - (i) golf or archery;
 - (ii) pistol or rifle shooting, but subject to the compliance of that person with the *Firearms Act 1973*; or
 - (iii) a similar activity, specified in the determination, involving the use of a projectile which, in the opinion of the local government may cause injury or damage to a person or property;
- (i) ride a bicycle, a skateboard, rollerblades, a sandboard or a similar device; and
- (j) wear no clothing.

(2) A determination may specify the extent to which and the manner in which an activity referred to in subclause (1) may be pursued and in particular—

- (a) the days and times during which the activity may be pursued;
- (b) that an activity may be pursued on a class of local government property, specified local government property or all local government property;
- (c) that an activity is to be taken to be prohibited on all local government property other than that specified in the determination;
- (d) may limit the activity to a class of vehicles, boats, equipment or things, or may extend it to all vehicles, boats, equipment or things;
- (e) may specify that the activity can be pursued by a class of persons or all persons; and
- (f) may distinguish between different classes of the activity.

2.8. Activities which may be prohibited on specified local government property

(1) A determination may provide that a person is prohibited from pursuing all or any of the following activities on specified local government property—

- (a) smoking on premises;
- (b) riding a bicycle, a skateboard, rollerblades, a sandboard or a similar device;
- (c) taking, riding or driving a vehicle or a particular class of vehicle on the property;
- (d) riding or driving a vehicle of a particular class or any vehicle above a specified speed;
- (e) taking or using a boat, or a particular class of boat;
- (f) the playing or practice of—
 - (i) golf, archery, pistol shooting or rifle shooting; or
 - (ii) a similar activity, specified in the determination, involving the use of a projectile which, in the opinion of the local government may cause injury or damage to a person or property;
- (g) the playing or practice of any ball game which may cause detriment to the property or any fauna on the property; and
- (h) the traversing of sand dunes or land which in the opinion of the local government has environmental value warranting such protection, either absolutely or except by paths provided for that purpose.

(2) A determination may specify the extent to which and the manner in which a person is prohibited from pursuing an activity referred to in subclause (1) and, in particular—

- (a) the days and times during which the activity is prohibited;
- (b) that an activity is prohibited on a class of local government property, specified local government property or all local government property;
- (c) that an activity is prohibited in respect of a class of vehicles, boats, equipment or things, or all vehicles, boats, equipment or things;
- (d) that an activity is prohibited in respect of a class of persons or all persons; and
- (e) may distinguish between different classes of the activity.

(3) In this clause—

premises means a building, stadium or similar structure which is local government property, but not an open space such as a park or a playing field.

Division 3—Transitional

2.9. Signs taken to be determinations

(1) Where a sign erected on local government property has been erected under a local law of the local government repealed by this local law, then it is to be taken to be and have effect as a determination on and from the commencement day, except to the extent that the sign is inconsistent with any provision of this local law or any determination made under clause 2.1.

(2) Clause 2.5 does not apply to a sign referred to in subclause (1).

PART 3—PERMITS

Division 1—Preliminary

3.1. Application of Part

This Part does not apply to a person who uses or occupies local government property under a written agreement with the local government to do so.

Division 2—Applying for a permit

3.2. Application for permit

- (1) Where a person is required to obtain a permit under this local law, that person shall apply for the permit in accordance with subclause (2).
- (2) An application for a permit under this local law shall—
 - (a) be in the form determined by the local government;
 - (b) be signed by the applicant;
 - (c) provide the information required by the form; and
 - (d) be forwarded to the CEO together with any fee imposed and determined by the local government under and in accordance with sections 6.16 to 6.19 of the Act.
- (3) The local government may require an applicant to provide additional information reasonably related to an application before determining an application for a permit.
- (4) The local government may require an applicant to give local public notice of the application for a permit.
- (5) The local government may refuse to consider an application for a permit which is not in accordance with subclause (2).

3.3. Decision on application for permit

- (1) The local government may—
 - (a) approve an application for a permit unconditionally or subject to any conditions; or
 - (b) refuse to approve an application for a permit.
- (2) If the local government approves an application for a permit, it is to issue to the applicant, a permit in the form determined by the local government.
- (3) If the local government refuses to approve an application for a permit, it is to give written notice of that refusal to the applicant.

Division 3—Conditions

3.4. Conditions which may be imposed on a permit

- (1) Without limiting the generality of clause 3.3(1)(a), the local government may approve an application for a permit subject to conditions relating to—
 - (a) the payment of a fee;
 - (b) compliance with a standard or a policy of the local government adopted by the local government;
 - (c) the duration and commencement of the permit;
 - (d) the commencement of the permit being contingent on the happening of an event;
 - (e) the rectification, remedying or restoration of a situation or circumstance reasonably related to the application;
 - (f) the approval of another application for a permit which may be required by the local government under any written law;
 - (g) the area of the district to which the permit applies;
 - (h) where a permit is issued for an activity which will or may cause damage to local government property, the payment of a deposit or bond against such damage; and
 - (i) the obtaining of public risk insurance in an amount and on terms reasonably required by the local government.
- (2) Without limiting clause 3.3(1)(a) and subclause (1), the following paragraphs indicate the type and content of the conditions on which a permit to hire local government property may be issued—
 - (a) when fees and charges are to be paid;
 - (b) payment of a bond against possible damage or cleaning expenses or both;
 - (c) restrictions on the erection of material or external decorations;
 - (d) rules about the use of furniture, plant and effects;
 - (e) limitations on the number of persons who may attend any function in or on local government property;
 - (f) the duration of the hire;
 - (g) the right of the local government to cancel a booking during the course of an annual or seasonal booking, if the local government sees fit;

- (h) a prohibition on the sale, supply or consumption of liquor unless a liquor licence is first obtained for that purpose under the *Liquor Control Act 1988*;
- (i) whether or not the hire is for the exclusive use of the local government property;
- (j) the obtaining of a policy of insurance in the names of both the local government and the hirer, indemnifying the local government in respect of any injury to any person or any damage to any property which may occur in connection with the hire of the local government property by the hirer; and
- (k) the provision of an indemnity from the hirer, indemnifying the local government in respect of any injury to any person or any damage to any property which may occur in connection with the hire of the local government property by the hirer.

3.5. Imposing conditions under a policy

(1) In this clause—

policy means a policy of the local government adopted by the Council containing conditions subject to which an application for a permit may be approved under clause 3.3(1)(a).

(2) Under clause 3.3(1)(a) the local government may approve an application subject to conditions by reference to a policy.

(3) The local government shall give a copy of the policy, or the part of the policy which is relevant to the application for a permit, with the form of permit referred to in clause 3.3(2).

(4) An application for a permit shall be deemed not to have been approved subject to the conditions contained in a policy until the local government gives the permit holder a copy of the policy or the part of the policy which is relevant to the application.

(5) Sections 5.94 and 5.95 of the Act shall apply to a policy and for that purpose a policy shall be deemed to be information within section 5.94(u)(i) of the Act.

3.6. Compliance with and variation of conditions

(1) Where an application for a permit has been approved subject to conditions, the permit holder shall comply with each of those conditions.

(2) The local government may vary the conditions of a permit, and the permit holder shall comply with those conditions as varied.

Division 4—General

3.7. Agreement for building

Where a person applies for a permit to erect a building on local government property the local government may enter into an agreement with the permit holder in respect of the ownership of the materials in the building.

3.8. Duration of permit

A permit is valid for one year from the date on which it is issued, unless it is—

- (a) otherwise stated in this local law or in the permit; or
- (b) cancelled under clause 3.12.

3.9. Renewal of permit

(1) A permit holder may apply to the local government in writing prior to expiry of a permit for the renewal of the permit.

(2) The provisions of this Part shall apply to an application for the renewal of a permit as though it were an application for a permit.

3.10. Transfer of permit

(1) An application for the transfer of a valid permit is to—

- (a) be made in writing;
- (b) be signed by the permit holder and the proposed transferee of the permit;
- (c) provide such information as the local government may require to enable the application to be determined; and
- (d) be forwarded to the CEO together with any fee imposed and determined by the local government under and in accordance with sections 6.16 to 6.19 of the Act.

(2) The local government may approve an application for the transfer of a permit, refuse to approve it or approve it subject to any conditions.

(3) Where the local government approves an application for the transfer of a permit, the transfer may be effected by an endorsement on the permit signed by the CEO.

(4) Where the local government approves the transfer of a permit, it is not required to refund any part of any fee paid by the former permit holder.

3.11. Production of permit

A permit holder is to produce to an authorised person her or his permit immediately upon being required to do so by that authorised person.

3.1 2. Cancellation of permit

- (1) Subject to clause 7.1, a permit may be cancelled by the local government if the permit holder has not complied with a—
 - (a) condition of the permit; or
 - (b) determination or a provision of any written law which may relate to the activity regulated by the permit.
- (2) On the cancellation of a permit the permit holder—
 - (a) shall return the permit as soon as practicable to the CEO; and
 - (b) is to be taken to have forfeited any fees paid in respect of the permit.

Division 5—When a permit is required

3.13. Activities needing a permit

- (1) A person shall not without a permit—
 - (a) subject to subclause (3), hire local government property;
 - (b) advertise anything by any means on local government property;
 - (c) erect a structure for public amusement or for any performance, whether for gain or otherwise, on local government property;
 - (d) teach, coach or train, for profit, any person in a pool area or an indoor recreation facility which is local government property;
 - (e) plant any plant or sow any seeds on local government property;
 - (f) carry on any trading on local government property unless the trading is conducted—
 - (i) with the consent of a person who holds a permit to conduct a function, and where the trading is carried on under and in accordance with the permit; or
 - (ii) by a person who has a licence or permit to carry on trading on local government property under any written law;
 - (g) unless an employee of the local government in the course of her or his duties or on an area set aside for that purpose—
 - (i) drive or ride or take any vehicle on to local government property; or
 - (ii) park or stop any vehicle on local government property;
 - (h) conduct a function on local government property;
 - (i) charge any person for entry to local government property, unless the charge is for entry to land or a building hired by a voluntary non-profit organisation;
 - (j) light a fire on local government property except in a facility provided for that purpose;
 - (k) parachute, hang glide, abseil or base jump from or on to local government property;
 - (l) erect a building or a refuelling site on local government property;
 - (m) make any excavation on or erect or remove any fence on local government property;
 - (n) erect or install any structure above or below ground, which is local government property, for the purpose of supplying any water, power, sewer, communication, television or similar service to a person;
 - (o) depasture any horse, sheep, cattle, goat, camel, ass or mule on local government property; or
 - (p) conduct or take part in any gambling game or contest or bet, or offer to bet, publicly.
- (2) The local government may exempt a person from compliance with subclause (1) on the application of that person.
- (3) The local government may exempt specified local government property or a class of local government property from the application of subclause (1)(a).

3.14. Permit required to camp outside a facility

- (1) In this clause—

“facility” has the same meaning as is given to it in section 5(1) of the *Caravan Parks and Camping Grounds Act 1995*.
- (2) This clause does not apply to a facility operated by the local government.
- (3) A person shall not without a permit—
 - (a) camp on, lodge at or occupy any structure at night for the purpose of sleeping on local government property; or
 - (b) erect any tent, camp, hut or similar structure on local government property other than a beach shade or windbreak erected for use during the hours of daylight and which is dismantled during those hours on the same day.
- (4) The maximum period for which the local government may approve an application for a permit in respect of paragraph (a) or (b) of subclause (3) is that provided in regulation 11(2)(a) of the *Caravan Parks and Camping Grounds Regulations 1997*.

3.15. Permit required for possession and consumption of liquor

- (1) A person, on local government property, shall not consume any liquor or have in her or his possession or under her or his control any liquor, unless—
- (a) that is permitted under the *Liquor Control Act 1988*; and
 - (b) a permit has been obtained for that purpose.
- (2) Subclause (1) does not apply where the liquor is in a sealed container.

Division 6—Responsibilities of permit holder

3.16. Responsibilities of permit holder

A holder of a permit shall in respect of local government property to which the permit relates—

- (a) ensure that an authorised person has unobstructed access to the local government property for the purpose of inspecting the property or enforcing any provision of this local law;
- (b) leave the local government property in a clean and tidy condition after its use;
- (c) report any damage or defacement of the local government property to the local government; and
- (d) take all reasonable action to prevent the consumption of any liquor on the local government property unless the permit allows it and a licence has been obtained under the *Liquor Control Act 1988* for that purpose.

PART 4—BEHAVIOUR ON ALL LOCAL GOVERNMENT PROPERTY

Division 1—Behaviour on and interference with local government property

4.1. Behaviour which interferes with others

A person shall not in or on any local government property behave in a manner which—

- (a) is likely to interfere with the enjoyment of a person who might use the property; or
- (b) interferes with the enjoyment of a person using the property.

4.2. Behaviour detrimental to property

(1) A person shall not behave in or on local government property in a way which is or might be detrimental to the property.

(2) In subclause (1)—

‘detrimental to the property’ includes—

- (a) removing any thing from the local government property such as a rock, a plant or a seat provided for the use of any person; and
- (b) destroying, defacing or damaging any thing on the local government property, such as a plant, a seat provided for the use of any person or a building.

4.3. Taking or injuring any fauna

(1) A person shall not, take, injure or kill or attempt to take, injure or kill any fauna which is on or above any local government property, unless that person is authorised under a written law to do so.

(2) In this clause—

animal means any living thing that is not a human being or plant; and

fauna means any animal indigenous to or which periodically migrates to any State or Territory of the Commonwealth or the territorial waters of the Commonwealth and includes in relation to any such animal—

- (a) any class of animal or individual member;
- (b) the eggs or larvae; or
- (c) the carcass, skin, plumage or fur.

Division 2—Signs

4.4. Signs

(1) A local government may erect a sign on local government property specifying any conditions of use which apply to that property.

(2) A person shall comply with a sign erected under subclause (1).

(3) A condition of use specified on a sign erected under subclause (1) is—

- (a) not to be inconsistent with any provision of this local law or any determination; and
- (b) to be for the purpose of giving notice of the effect of a provision of this local law.

PART 5—MATTERS RELATING TO PARTICULAR LOCAL GOVERNMENT PROPERTY

Division 1—Fenced or closed property

5.1. No entry to fenced or closed local government property

A person must not enter local government property which has been fenced off or closed to the public by a sign or otherwise, unless that person is authorised to do so by the local government.

Division 2—Toilet blocks and change rooms

5. 2. Only specified gender to use entry of toilet block or change room

(1) Where a sign on a toilet block or change room specifies that a particular entry of the toilet block or change room is to be used by—

(a) females, then a person of the male gender shall not use that entry of the toilet block or change room; or

(b) males, then a person of the female gender shall not use that entry of the toilet block or change room.

(2) Paragraphs (a) and (b) of subclause (1) do not apply to a child, when accompanied by a parent, guardian or caregiver, where the child is—

(a) under the age of 8 years; or

(b) otherwise permitted by an authorised person to use the relevant entry.

PART 6—FEES FOR ENTRY ON TO LOCAL GOVERNMENT PROPERTY

6.1. No unauthorised entry to function

(1) A person shall not enter local government property on such days or during such times as the property may be set aside for a function for which a charge for admission is authorised, except—

(a) through the proper entrance for that purpose; and

(b) on payment of the fee chargeable for admission at the time.

(2) The local government may exempt a person from compliance with subclause (1)(b).

PART 7—OBJECTIONS AND APPEALS

7.1. Application of Division 1, Part 9 of the Act

When the local government makes a decision as to whether it will—

(a) grant a person a permit or consent under this local law; or

(b) renew, vary, or cancel a permit or consent that a person has under this local law,

the provisions of Division 1 of Part 9 of the Act and regulations 32A and 33 of the Regulations apply to that decision.

PART 8—MISCELLANEOUS

8.1. Authorised person to be obeyed

A person on local government property shall obey any lawful direction of an authorised person and shall not in any way obstruct or hinder an authorised person in the execution of her or his duties.

8.2. Persons may be directed to leave local government property

An authorised person may direct a person to leave local government property where she or he reasonably suspects that the person has contravened a provision of any written law.

8.3. Disposal of lost property

An article left on any local government property, and not claimed within a period of 3 months, may be disposed of by the local government in any manner it thinks fit.

8.4. Liability for damage to local government property

(1) Where a person unlawfully damages local government property, the local government may by notice in writing to that person require that person within the time required in the notice to, at the option of the local government, pay the costs of—

(a) reinstating the property to the state it was in prior to the occurrence of the damage; or

(b) replacing that property.

(2) On a failure to comply with a notice issued under subclause (1), the local government may recover the costs referred to in the notice as a debt due to it.

PART 9—ENFORCEMENT

Division 1—Notices given under this local law

9.1. Offence to fail to comply with notice

Whenever the local government gives a notice under this local law requiring a person to do anything, if a person fails to comply with the notice, that person commits an offence.

9.2. Local government may undertake requirements of notice

Where a person fails to comply with a notice referred to in clause 9.1, the local government may do the thing specified in the notice and recover from the person to whom the notice was given, as a debt, the costs incurred in so doing.

Division 2—Offences and penalties

Subdivision 1—General

9.3. Offences and general penalty

(1) Any person who fails to do anything required or directed to be done under this local law, or who does anything which under this local law that person is prohibited from doing, commits an offence.

(2) Any person who commits an offence under this local law is liable, upon conviction, to a penalty not exceeding \$5,000, and if the offence is of a continuing nature, to an additional penalty not exceeding \$500 for each day or part of a day during which the offence has continued.

Subdivision 2—Infringement notices and modified penalties

9.4. Prescribed offences

(1) An offence against a clause specified in Schedule 1 is a prescribed offence for the purposes of section 9.16(1) of the Act.

(2) The amount of the modified penalty for a prescribed offence is that specified adjacent to the clause in Schedule 1.

9.5. Form of notices

(1) For the purposes of this local law—

(a) where a vehicle is involved in the commission of an offence, the form of the notice referred to in section 9.13 of the Act is that of Form 1 in Schedule 1 of the Regulations;

(b) the form of the infringement notice given under section 9.16 of the Act is that of Form 2 in Schedule 1 of the Regulations; and

(a) the form of the notice referred to in section 9.20 of the Act is that of Form 3 in Schedule 1 of the Regulations.

(2) Where an infringement notice is given under section 9.16 of the Act in respect of an alleged offence against clause 2.4, the notice is to contain a description of the alleged offence.

Division 3—Evidence in legal proceedings

9.6. Evidence of a determination

(1) In any legal proceedings, evidence of a determination may be given by tendering the register referred to in clause 2.5 or a certified copy of an extract from the register.

(2) It is to be presumed, unless the contrary is proved, that the determination was properly made and that every requirement for it to be made and have effect has been satisfied.

(3) Subclause (2) does not make valid a determination that has not been properly made.

Schedule 1

PRESCRIBED OFFENCES

[Clause 9.4]

Item	Clause	Description	Modified Penalty \$
1	2.4	Failure to comply with determination	125
2	3.6	Failure to comply with conditions of permit	125
3	3.13(1)	Failure to obtain a permit	125
4	3.14(3)	Failure to obtain permit to camp outside a facility	125
5	3.15(1)	Failure to obtain permit for liquor	125
6	3.16	Failure of permit holder to comply with responsibilities	125
7	4.2(1)	Behaviour detrimental to property	125
8	4.4(1)	Failure to comply with sign on local government property	125
9	5.1	Unauthorised entry to fenced or closed local government property	125
10	5.2	Gender not specified using entry of toilet block or change room	125
11	6.1(1)	Unauthorised entry to function on local government property	125
12	9.1	Failure to comply with notice	250

Schedule 2

DETERMINATIONS

The following determinations are to be taken to have been made by the local government under clause 2.1.

PART 1—PRELIMINARY

Definitions

1.1 In these determinations unless the context otherwise requires—

“**local law**” means the *Local Government Property Local Law* made by the local government;

Interpretation

1.2 Unless the context otherwise requires, where a term is used but not defined in a determination and that term is defined in the local law then the term shall have the meaning given to it in the local law.

Dated 11th day of February, 2021.

The Common Seal of the Shire of Broomehill-Tambellup was affixed by authority of a resolution of the Council in the presence of—

M. C. PAGANONI, Shire President.

K. B. WILLIAMS, Chief Executive Officer.

LOCAL GOVERNMENT ACT 1995

SHIRE OF BROOMEHILL-TAMBELLUP

REMOVAL OF REFUSE, RUBBISH AND DISUSED MATERIALS LOCAL LAW 2020

Under the powers conferred by the *Local Government Act 1995* and all other powers enabling it, the Shire of Broomehill-Tambellup resolved on 11th February 2021 to make the following local law.

1. Citation

This local law may be cited as the *Shire of Broomehill-Tambellup Removal of Refuse, Rubbish and Disused Materials Local Law 2020*.

2. Commencement

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

3. Repeal

The following local laws are repealed—

Shire of Broomehill-Tambellup Removal of Refuse, Rubbish and Disused Material Local Law 2012 published in the *Government Gazette* on 8 March 2013

4. Interpretation

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

Act means the *Local Government Act 1995*;

district means the district of the Shire of Broomehill-Tambellup;

local government means the Shire of Broomehill-Tambellup;

refuse, rubbish or disused material includes—

- (a) any material which is abandoned or unwanted by its owner or the person in possession of it;
- (b) any material which is not being used for its original intended purpose and which has been deposited or stored upon any property for no current purpose other than the deposit storage;
- (c) any motor vehicle, motor vehicle part or machinery which has been deposited or stored upon any property for the purpose of dismantling or breaking up;
- (d) any wood, timber, lumber; or cuttings, logs or remnants of trees; or chopped, split or chipped wood, deposited, stored, located or placed on property;

and any material may be refuse, rubbish or disused material notwithstanding that it may have a commercial value to its owner or the person in possession of it or the owner or occupier of any property upon which it is deposited or stored;

servant has the same meaning as defined in section 75 and 76 of the *Interpretation Act 1984*;

vacant property means property on which no building exists or on which a building exists but any such building is no longer utilized for any business, commercial or residential purposes.

(2) Where in this local law a duty of liability is imposed on an owner or occupier of land, the duty or liability is imposed jointly and severally on each of the owners or occupiers.

5. Clearing of refuse, rubbish or disused material

(1) If there is—

- (a) on any vacant property within the district, any refuse, rubbish or disused material or any overgrown vegetation, trees, scrub or undergrowth; or
- (b) on any property within the district other than vacant property any refuse, rubbish or disused material or any overgrown vegetation, trees, scrub or undergrowth which, in the opinion of the local government—
 - (i) is likely to adversely affect the health, comfort or convenience of the inhabitants of that property or any adjoining property; or
 - (ii) results in that property having an appearance which does not conform with the general appearance of other property in the locality,

the local government may cause a notice under the hand of the Chief Executive Officer to be served on the owner or occupier of that property requiring that owner or occupier as the case may be to clear the

property of the overgrown vegetation, trees, scrub or undergrowth or refuse, rubbish or disused material specified in the notice within the time specified in the notice.

(2) Any owner or occupier who is served with a notice under clause (1) of this local law and who fails to comply with the terms of the notice commits an offence.

Penalty—

- (a) five thousand dollars (\$5,000); and
- (b) a daily penalty of five hundred dollars (\$500).

(3) Entry into private property—

(1) Where an owner or occupier who is served with a notice under clause (1) of this local law fails to comply with the terms of the notice, the local government is authorised—

(a) to clear or remove from the property the overgrown vegetation, trees, scrub or undergrowth or refuse, rubbish or disused material specified in the Notice, and dispose of the same, without payment of any compensation; and

(b) to recover in a court of competent jurisdiction the amount of the local government's expenses in doing so from the owner or occupier who was served the notice.

(2) Power of entry into private property

This local law is subject to sections 3.25, 3.27 and Schedules 3.1 and 3.2 of the *Local Government Act 1995* and any power of entry exercised by the local government under this local law is subject to Part 3, Division 3, Subdivision 3 of the Act.

Dated 11th day of February, 2021.

The Common Seal of the Shire of Broomehill-Tambellup was affixed by authority of a resolution of the Council in the presence of—

M. C. PAGANONI, Shire President.

K. B. WILLIAMS, Chief Executive Officer.

LOCAL GOVERNMENT ACT 1995

SHIRE OF BROOMEHILL-TAMBELLUP

REPEAL LOCAL LAW 2020

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Broomehill-Tambellup resolved on 11th February 2021 to make the Shire of Broomehill-Tambellup Repeal Local Law 2020.

1 Citation

This local law may be cited as the *Shire of Broomehill-Tambellup Repeal Local Law 2020*.

2 Commencement

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

3 Repeal

The *Shire of Broomehill-Tambellup Pest Plant Local Law 2008* as published in the *Government Gazette* on 23 December 2008 is repealed.

Dated 11th day of February, 2021.

The Common Seal of the Shire of Broomehill-Tambellup was affixed by authority of a resolution of the Council in the presence of—

M. C. PAGANONI, Shire President.

K. B. WILLIAMS, Chief Executive Officer.

**LOCAL GOVERNMENT ACT 1995
WASTE AVOIDANCE AND RECOVERY ACT 2007**

SHIRE OF BROOMEHILL-TAMBELLUP

WASTE LOCAL LAW 2020

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SCHEDULE 1—MEANING OF ‘NON-COLLECTABLE WASTE’

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**LOCAL GOVERNMENT ACT 1995
WASTE AVOIDANCE AND RECOVERY ACT 2007**

SHIRE OF BROOMEHILL-TAMBELLUP

WASTE LOCAL LAW 2020

Under the powers conferred on it by the *Waste Avoidance and Resource Recovery Act 2007*, the *Local Government Act 1995* and under all other enabling powers, the Council of the Shire of Broomehill-Tambellup resolved on 11th February 2021 to make the following local law.

PART 1—Preliminary

1.1 Short title

This is the Shire of Broomehill-Tambellup Waste Local 2020

1.2 Commencement

This local law commences 14 days after the day on which it is published in the *Government Gazette*.

1.3 Application

This local law applies throughout the district.

1.4 Repeal

This local law repeals the *Shire of Broomehill-Tambellup Waste Services Local Law 2009* as published in the *Government Gazette* on 7 July 2009 and as amended in the *Government Gazette* on 12 October 2010.

1.5 Meaning of terms used in this local law

(1) In this local law—

authorised person means a person appointed by the local government under section 9.10 of the LG Act to perform any of the functions of an authorised person under this local law;

collectable waste means local government waste that is not—

- (a) liquid refuse;
- (b) liquid waste; or
- (c) non-collectable waste;

collectable waste receptacle means a receptacle for the deposit and collection of collectable waste that is—

- (a) a recycling waste receptacle;
- (b) a general waste receptacle; or
- (c) an organic waste receptacle;

collection, when used in relation to a receptacle, means the collection and removal of collectable waste from the receptacle by the local government or its contractor;

collection day means the day determined by the local government for the collection of collectable waste in the district or a part of the district;

collection time means the time on the collection day determined by the local government for the collection of collectable waste in the district or a part of the district;

costs of the local government include administrative costs;

Council means the council of the local government;

district means the district of the local government;

general waste receptacle means a receptacle for the deposit and collection of collectable waste that is not recycling waste;

LG Act means the *Local Government Act 1995*;

LG Regulations means the *Local Government (Functions and General) Regulations 1996*;

local government means the Shire of Broomehill-Tambellup;

local government waste has the same meaning as in the WARR Act;

non-collectable waste has the meaning set out in Schedule 1;

occupier in relation to premises, means any or all of the following—

- (a) a person by whom or on whose behalf the premises are actually occupied; or
- (b) a person having the management or control of the premises;

organic waste means waste that decomposes readily, such as garden waste or food waste;

organic waste receptacle means a receptacle for the deposit and collection of organic waste;

owner has the same meaning as in the LG Act;

public place includes a place to which the public ordinarily have access, whether or not by payment of a fee;

receptacle, means a receptacle—

- (a) that has been supplied for the use of the premises by the local government or its contractor, or which has otherwise been approved by the local government; and
- (b) the waste from which is collected and removed from the premises by the local government or its contractor;

recycling waste receptacle means a receptacle for the deposit and collection of recycling waste;

recycling waste means—

- (a) paper and cardboard;
- (b) plastic containers comprised of polyethylene terephthalate or high density polyethylene;
- (c) glass containers;
- (d) steel containers;
- (e) aluminium containers;
- (f) liquid paper board; and
- (g) any other waste determined by the local government to be recycling waste;

specified means specified by the local government or an authorised person, as the case may be;

street alignment means the boundary between the land comprising a street and the land that abuts the street;

WARR Act means the *Waste Avoidance and Resource Recovery Act 2007*;

WARR Regulations means the *Waste Avoidance and Resource Recovery Regulations 2008*;

waste has the same meaning as in the WARR Act;

waste facility means a waste facility, as defined in the WARR Act, that is operated by the local government; and

waste service has the same meaning as in the WARR Act.

(2) Where, in this local law, a duty or liability is imposed on an owner or occupier, or on an owner and occupier, the duty or liability is taken to be imposed jointly and severally on each of the owners or occupiers.

1.6 Local public notice of determinations

Where, under this local law, the local government has a power to determine a matter—

- (a) local public notice, under section 1.7 of the LG Act, must be given of the matter determined;
- (b) the determination becomes effective only after local public notice has been given;
- (c) the determination remains in force for the period of one year after the date that local public notice has been given under subclause (a);
- (d) after the period referred to in subclause (c), the determination continues in force only if, and for so long as, it is the subject of local public notice, given annually, under section 1.7 of the LG Act; and
- (e) the determination must be recorded in a publicly accessible register of determinations that must be maintained by the local government.

1.7 Rates, fees and charges

The local government's powers to impose rates, fees and charges in relation to waste services are set out in sections 66 to 68 of the WARR Act and sections 6.16 and 6.17 of the LG Act.

1.8 Power to provide waste services

The local government's power to provide, or enter into a contract for the provision of, waste services is dealt with in section 50 of the WARR Act.

PART 2—LOCAL GOVERNMENT WASTE

2.1 Supply of receptacles

(1) The local government is to supply, for the use of each premises that are, or are capable of being, occupied or used for residential purposes, one or more receptacles for the collection and removal, from those premises, of collectable waste.

- (2) The owner of premises to which subclause (1) applies must—
- (a) ensure that the fee or charge (if any) imposed by the local government in relation to each receptacle is paid to the local government; and
 - (b) ensure that each receptacle is used, in respect of those premises, in accordance with this local law.

2.2 Deposit of waste in receptacles

- (1) An owner or occupier of premises must not deposit or permit to be deposited in a receptacle any non-collectable waste.
- (2) A person must not deposit waste in a receptacle that has been provided for the use of other premises without the consent of the owner or occupier of those premises.

2.3 General waste receptacles

- (1) An owner or occupier of premises must not deposit or permit to be deposited in a general waste receptacle—
- (a) where the receptacle has a capacity of 240 litres—more than 70 kilograms of collectable waste; or
 - (b) where the receptacle has any other capacity—more than the weight determined by the local government.
- (2) Where the local government supplies recycling waste receptacles, an owner or occupier of premises must not deposit or permit to be deposited in a general waste receptacle any recycling waste.
- (3) Where the local government supplies organic waste receptacles, an owner or occupier of premises must not deposit or permit to be deposited in a general waste receptacle any organic waste.

2.4 Recycling waste receptacles

An owner or occupier of premises must not deposit or permit to be deposited in a recycling waste receptacle—

- (a) anything other than the particular type of recycling waste for which that receptacle was provided by the local government for those premises;
- (b) where the receptacle has a capacity of 240 litres— more than 70 kilograms of recycling waste; or
- (c) where the receptacle has any other capacity—more than the weight determined by the local government.

2.5 Organic waste receptacles

An owner or occupier of premises must not deposit or permit to be deposited in an organic waste receptacle—

- (a) anything other than the particular type of organic waste for which that receptacle was provided by the local government for those premises;
- (b) where the receptacle has a capacity of 240 litres—more than 70 kilograms of organic waste; or
- (c) where the receptacle has any other capacity—more than the weight determined by the local government.

2.6 Direction to place or remove a receptacle

- (1) The local government or an authorised person may give a written direction to an owner or occupier of specified premises—
- (a) to place a receptacle in respect of those premises for collection; or
 - (b) to remove a receptacle in respect of those premises after collection.
- (2) The direction under subclause (1) may specify when the placement or removal is to occur, or where the receptacle is to be placed, or both.
- (3) An owner or occupier of premises must comply with a direction given under this clause.

2.7 Duties of owner or occupier

An owner or occupier of premises must—

- (a) except for a reasonable period before and after collection time, keep each receptacle in a storage space or area that is behind the street alignment;
- (b) take reasonable steps, if placing a receptacle for collection on the verge adjoining the premises, or other area as determined by the local government, ensure that, within a reasonable period before collection time, each receptacle is—
 - (i) within 1 metre of the carriageway;
 - (ii) placed so that it does not unduly obstruct any footpath, cycle way, right-of-way or carriageway; and
 - (iii) facing squarely to the edge of and opening towards the carriageway,or in such other position as is approved in writing by the local government or an authorised person;
- (c) take reasonable steps to ensure that the premises are provided with an adequate number of receptacles; and
- (d) if the receptacle is lost, stolen, damaged or defective, notify the local government, as soon as practicable, after the event.

2.8 Exemption

- (1) An owner or occupier of premises may apply in writing to the local government for an exemption from compliance with the requirements of clause 2.7(a) or (b).
- (2) The local government or an authorised person may grant, with or without conditions, or refuse an application for exemption from compliance under this clause.
- (3) An exemption granted under this clause must state—
 - (a) the premises to which the exemption applies;
 - (b) the period during which the exemption applies; and
 - (c) any conditions imposed by the local government or the authorised person.
- (4) An exemption granted under this clause ceases to apply—
 - (a) if the local government decides, on reasonable grounds, that there has been a failure to comply with a condition of the exemption; and
 - (b) from the date that the local government informs the owner or occupier of its decision under clause 2.8(4)(a).

2.9 Damaging or removing receptacles

A person, other than the local government or its contractor, must not—

- (a) damage, destroy or interfere with a receptacle; or
- (b) except as permitted by this local law or as authorised by the local government or an authorised person, remove a receptacle from any premises to which it was delivered by the local government or its contractor.

2.10 Verge collections

- (1) Where the local government has advertised a verge waste collection (such as a green waste, or a bulk waste, verge collection) a person, unless with and in accordance with the approval of the local government or an authorised person—
 - (a) must deposit waste only during the period of time, and in accordance with other terms and conditions, as advertised by the local government in relation to that verge waste collection; and
 - (b) must otherwise comply with those terms and conditions.
- (2) Where waste has been deposited on a verge for a verge waste collection, a person must not remove any of that waste for a commercial purpose but may remove it for any other purpose.
- (3) Except where waste is lawfully removed from a verge under this clause, a person must not disassemble or tamper with any waste deposited on a verge for a verge waste collection so as to increase the risk of harm to any person.
- (4) Clause 2.10(2) does not apply to the local government or a person engaged or contracted by the local government in relation to the verge waste collection.

PART 3—GENERAL DUTIES

3.1 Duties of an owner or occupier

An owner or occupier of premises must—

- (a) take reasonable steps to ensure that a sufficient number of receptacles are provided to contain all waste which accumulates or may accumulate in or from the premises;
- (b) ensure that each receptacle is kept in good condition and repair;
- (c) take all reasonable steps to—
 - (i) prevent fly breeding and keep each receptacle free of flies, maggots, cockroaches, rodents and other vectors of disease;
 - (ii) prevent the emission of offensive or noxious odours from each receptacle; and
 - (iii) ensure that each receptacle does not cause a nuisance to an occupier of adjoining premises; and
- (d) whenever directed to do so by the local government or an authorised person, thoroughly clean, disinfect, deodorise and apply a residual insecticide to each receptacle.

3.2 Removal of waste from premises

- (1) A person must not remove any waste from premises unless that person is—
 - (a) the owner or occupier of the premises;
 - (b) authorised to do so by the owner or occupier of the premises; or
 - (c) authorised in writing to do so by the local government or an authorised person.
- (2) A person must not remove any waste from a receptacle without the approval of—
 - (a) the local government or an authorised person; or
 - (b) the owner or occupier of the premises at which the receptacle is ordinarily kept.

3.3 Receptacles and containers for public use

A person must not, without the approval of the local government or an authorised person—

- (a) deposit household, commercial or other waste from any premises on or into; or
- (b) remove any waste from,

a receptacle provided for the use of the general public in a public place.

PART 4—OPERATION OF WASTE FACILITIES

4.1 Operation of this Part

This Part applies to a person who enters a waste facility.

4.2 Hours of operation

The local government may from time to time determine the hours of operation of a waste facility.

4.3 Signs and directions

(1) The local government or an authorised person may regulate the use of a waste facility—

- (a) by means of a sign; or
- (b) by giving a direction to a person within a waste facility.

(2) A person within a waste facility must comply with a sign or direction under subclause (1).

(3) The local government or an authorised person may direct a person who commits, or is reasonably suspected by the local government or the authorised person of having committed, an offence under this clause to leave the waste facility immediately.

(4) A person must comply with a direction under subclause (3).

4.4 Fees and charges

(1) Unless subclause (3) applies, a person must, on or before entering a waste facility or on demand by the local government or an authorised person, pay the fee or charge as assessed by an authorised person.

(2) An authorised person may assess the fee or charge in respect of a particular load of waste at a rate that applies to any part of that load, even if that rate is higher than the rate that would apply to any other part of the load.

(3) Subclause (1) does not apply—

- (a) to a person who disposes of waste in accordance with the terms of—
 - (i) a credit arrangement with the local government; or
 - (ii) any other arrangement with the local government to pay the fee or charge at a different time or in a different manner; and
- (b) to the deposit of waste owned by the local government, or in the possession of an employee on behalf of the local government.

4.5 Depositing waste

(1) A person must not deposit waste at a waste facility other than—

- (a) at a location determined by a sign and in accordance with the sign; and
- (b) in accordance with the direction of an authorised person.

(2) The local government may determine the classification of any waste that may be deposited at a waste facility.

4.6 Prohibited activities

(1) Unless authorised by the local government, a person must not—

- (a) remove any waste or any other thing from a waste facility;
- (b) deposit at a waste facility that is a landfill site any waste that is toxic, poisonous or hazardous, or the depositing of which is regulated or prohibited by any written law;
- (c) light a fire in a waste facility;
- (d) remove, damage or otherwise interfere with any flora in a waste facility;
- (e) remove, injure or otherwise interfere with any fauna in a waste facility; or
- (f) damage, deface or destroy any building, equipment, plant or property within a waste facility.

(2) A person must not act in an abusive or threatening manner towards any person using, or engaged in the management or operation of, a waste facility.

PART 5—ENFORCEMENT

5.1 Objection and appeal rights

Division 1 of Part 9 of the LG Act applies to a decision under this local law to grant, renew, vary or cancel—

- (a) an approval under clause 2.7(b);

- (b) an exemption under clause 2.8(2);
- (c) an approval under clause 2.9(b);
- (d) an approval under clause 2.10(1);
- (e) an authorisation under clause 3.2(1)(c);
- (f) an approval under clause 3.2(2); and
- (g) an approval under clause 3.3.

5.2 Offences and general penalty

- (1) A person who fails to do anything required or directed to be done under this local law, or who does anything which under this local law a person is prohibited from doing, commits an offence.
- (2) A person who commits an offence under this local law is liable, on conviction, to a penalty not exceeding \$5,000, and if the offence is of a continuing nature, to a further penalty not exceeding \$500 in respect of each day or part of a day during which the offence has continued.

5.3 Other costs and expenses

- (1) A person who is convicted of an offence under this local law is to be liable, in addition to any penalty imposed under clause 5.2, to pay to the local government the costs and expenses incurred by the local government in taking remedial action such as—
 - (a) removing and lawfully disposing of toxic, hazardous or poisonous waste; or
 - (b) making good any damage caused to a waste facility.
- (2) The costs and expenses incurred by the local government are to be recoverable, as a debt due to the local government, in a court of competent civil jurisdiction.

5.4 Prescribed offences

- (1) An offence against a clause specified in Schedule 2 is a prescribed offence for the purposes of section 9.16(1) of the LG Act.
- (2) The amount of the modified penalty for a prescribed offence is that specified adjacent to the clause in Schedule 2.

5.5 Form of notices

- (1) Where a vehicle is involved in the commission of an offence, the form of the notice referred to in section 9.13 of the LG Act is that of Form 1 in Schedule 1 of the LG Regulations.
- (2) The form of the infringement notice given under section 9.16 of the LG Act is that of Form 2 in Schedule 1 of the LG Regulations.
- (3) The form of the infringement withdrawal notice given under section 9.20 of the LG Act is that of Form 3 in Schedule 1 of the LG Regulations.

Schedule 1

MEANING OF 'NON-COLLECTABLE WASTE'

[Clause 1.5(1)]

non-collectable waste means—

- (a) hot or burning material;
 - (b) household hazardous waste, including paint, acids, alkalis, fire extinguishers, solvents, pesticides, oils, gas cylinders, batteries, chemicals and heavy metals;
 - (c) any other hazardous material, such as radioactive waste;
 - (d) any explosive material, such as flares or ammunition;
 - (e) electrical and electronic equipment;
 - (f) hospital, medical, veterinary, laboratory or pathological substances;
 - (g) construction or demolition waste;
 - (h) sewage;
 - (i) 'controlled waste' for the purposes of the *Environmental Protection (Controlled Waste) Regulations 2004*;
 - (j) any object that is greater in length, width, or breadth than the corresponding dimension of the receptacle or that will not allow the lid of the receptacle to be tightly closed;
 - (k) waste that is or is likely to become offensive or a nuisance, or give off an offensive or noxious odour, or to attract flies or cause fly breeding unless it is first wrapped in non-absorbent or impervious material or placed in a sealed impervious and leak-proof container; and
 - (l) any other waste determined by the local government to be non-collectable waste.
-

Schedule 2
PRESCRIBED OFFENCES

Item No.	Clause No.	Description	Modified Penalty \$
1	2.1(2)(a)	Failing to pay fee or charge	\$350
2	2.1(2)(b)	Failing to ensure lawful use of receptacle	\$350
3	2.2(1)	Depositing non-collectable waste in a receptacle	\$350
4	2.2(2)	Depositing waste in another receptacle without consent	\$350
5	2.3(1)	Exceeding weight capacity of a general waste receptacle	\$350
6	2.3(2) and (3)	Depositing unauthorised waste in a general waste receptacle	\$350
7	2.4(a)	Depositing unauthorised waste in a recycling waste receptacle	\$350
8	2.4(b) and (c)	Exceeding weight capacity of a recycling waste receptacle	\$250
9	2.5(a)	Depositing unauthorised waste in an organic waste receptacle	\$350
10	2.5(b) and (c)	Exceeding weight capacity of an organic waste receptacle	\$350
11	2.6(3)	Failing to comply with a direction concerning placement or removal of a receptacle	\$250
12	2.7(a)	Failing to keep a receptacle in the required location	\$250
13	2.7(b)	Failing to place a receptacle for collection in a lawful position	\$250
14	2.7(c)	Failing to provide a sufficient number of receptacles	\$250
15	2.7(d)	Failing to notify of a lost, stolen, damaged or defective receptacle	\$50
16	2.9(a)	Damaging, destroying or interfering with a receptacle	\$400
17	2.9(b)	Removing a receptacle from premises	\$400
18	2.10(1)	Failing to comply with a term or condition of verge waste collection	\$400
19	2.10(2)	Removing waste for commercial purposes	\$350
20	2.10(3)	Disassembling or leaving in disarray waste deposited for collection	\$250
21	3.1(a)	Failing to provide a sufficient number of receptacles	\$250
22	3.1(b)	Failing to keep a receptacle clean and in a good condition and repair	\$250
23	3.1(c)(i)	Failing to prevent fly breeding and vectors of disease in a receptacle	\$350
24	3.1(c)(ii)	Failing to prevent the emission of offensive odours from a receptacle	\$350
25	3.1(c)(iii)	Allowing a receptacle to cause a nuisance	\$350
26	3.1(d)	Failing to comply with a direction to clean, disinfect or deodorise receptacle	\$300
27	3.2(1)	Unauthorised removal of waste from premises	\$250
28	3.2(2)	Removing waste from a receptacle without approval	\$250
29	4.3(2)	Failing to comply with a sign or direction	\$500
30	4.3(4)	Failing to comply with a direction to leave	\$500
31	4.4(1)	Disposing waste without payment of fee or charge	\$500
32	4.5(1)	Depositing waste contrary to sign or direction	\$500
33	4.6(1)(a)	Removing waste without authority in a waste facility	\$250
34	4.6(1)(b)	Depositing toxic, poisonous or hazardous waste at a waste facility	\$500
35	4.6(1)(c)	Lighting a fire in a waste facility	\$300
36	4.6(1)(d)	Removing or interfering with any flora in a waste facility	\$300

Item No.	Clause No.	Description	Modified Penalty \$
37	4.6(1)(e)	Removing or interfering with any fauna without approval in a waste facility	\$300
38	4.6(1)(f)	Damaging, defacing or destroying any building, equipment, plant or property within a waste facility	\$500
39	4.6(2)	Acting in an abusive or threatening manner	\$300

Dated this 11th day of February, 2021.

The Common Seal of the Shire of Broomehill-Tambellup was affixed by authority of a resolution of the Council in the presence of—

M. C. PAGANONI, Shire President.

K. B. WILLIAMS, Chief Executive Officer.

Consented to—

M. ROWE, Chief Executive Officer
Department of Water and Environmental Regulation.

Dated this 28th day of July, 2020.

LG301

LOCAL GOVERNMENT ACT 1995

City of Gosnells

Standing Orders Amendment Local Law (Number 2) 2020

Under the powers conferred by the *Local Government Act 1995*, and under all other powers enabling it, the Council of the City of Gosnells resolved on 9 February 2021 to make the following local law.

PART 1—PRELIMINARY

1.1 Citation

This local law is the *City of Gosnells Standing Orders Amendment Local Law (Number 2) 2020*.

1.2 Commencement

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

1.3 Principal local law amended

This local law amends the *City of Gosnells Standing Orders Local Law 2016*.

PART 2—AMENDMENT

2.1 City of Gosnells Standing Orders Local Law 2016 amended.

This local law amends the *City of Gosnells Standing Orders Local Law 2016* as published in the *Government Gazette* on 1 December 2016.

2.2 Clause 4.6 amended

In clause 4.6(1) after the word “matter” delete the words “that appears” and insert the words “included under parts 12 through 16”.

Dated the 3rd of March, 2021.

The Common Seal of the City of Gosnells was affixed by authority of a resolution of the Council in the presence of—

DAVID GOODE, JP, Mayor.
IAN COWIE, PSM, Chief Executive Officer.

PERTH, TUESDAY, 9 MARCH 2021 No. 42

SPECIAL

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LOCAL GOVERNMENT ACT 1995

TOWN OF COTTESLOE

LOCAL GOVERNMENT (MEETINGS PROCEDURE) LOCAL LAW 2021

LOCAL GOVERNMENT ACT 1995

TOWN OF COTTESLOE

LOCAL GOVERNMENT (MEETINGS PROCEDURE)
LOCAL LAW 2021

Under the powers conferred by the *Local Government Act 1995* and under all other relevant powers, the Town of Cottesloe resolved on 23 February 2021 to make the following local law.

PART 1—PRELIMINARY

1.1 Citation

This local law may be cited as the *Town of Cottesloe Local Government (Meetings Procedure) Local Law 2021*.

1.2 Commencement

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

1.3 Application and intent

- (1) This local law provides rules and guidelines which apply to the conduct of meetings of the council and its committees and to meetings of electors.
- (2) All meetings are to be conducted in accordance with the Act, the Regulations and this local law.
- (3) This local law is intended to result in—
 - (a) better decision-making by the council and committees;
 - (b) the orderly conduct of meetings dealing with council business;
 - (c) better understanding of the process of conducting meetings; and
 - (d) the more efficient and effective use of time at meetings.

1.4 Interpretation

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

absolute majority has the same meaning as given to it in the Act;

Act means the *Local Government Act 1995*;

CEO means the Chief Executive Officer or, if relevant, the acting chief executive officer of the local government;

Code of Conduct Regulations means the *Local Government (Model Code of Conduct) Regulations 2021*;

committee means a committee of the council established under section 5.8 of the Act;

committee meeting means a meeting of a committee;

council means the council of the Town of Cottesloe;

Deputation means a verbal submission at a Council or committee meeting made by a person who has a direct interest in the agenda item;

district means the district of the local government;

local government means the Town of Cottesloe;

mayor means the mayor of the local government or other presiding member at a council meeting under section 5.6 of the Act;

meeting means a meeting of the council or a committee, as the context requires;

member has the meaning given to it in the Act;

officer is an employed member of the staff of the local government;

presiding member means—

- (a) in respect of the council, the person presiding under section 5.6 of the Act; and
- (b) in respect of a committee, the person presiding under sections 5.12, 5.13, and 5.14 of the Act;

quorum means a minimum of 50% of the total number of offices, whether vacant or not, of the council or the committee;

Regulations means the *Local Government (Administration) Regulations 1996*;

simple majority means more than 50% of the Members present and voting; and

substantive motion means an original motion or an original motion as amended, but does not include an amendment or a procedural motion.

(2) Unless otherwise defined in this local law, the terms and expressions used in this local law are to have the meaning given to them in the Act and Regulations.

1.5 Repeal

The *Town of Cottesloe Standing Orders Local Law 2012* published in the *Government Gazette* on 12 July 2012 is repealed.

PART 2—ESTABLISHMENT OF COMMITTEES

2.1 Establishment of committees

(1) The establishment of committees is dealt with in the Act.

(2) A council resolution to establish a committee under section 5.8 of the Act is to include—

- (a) the terms of reference of the committee;
- (b) the number of council Members, officers and other persons to be appointed to the committee;
- (c) the names or titles of the council members and officers to be appointed to the committee;
- (d) the names of other persons to be appointed to the committee or an explanation of the procedure to be followed to determine the appointments; and
- (e) details of the delegation of any powers or duties to the committee under section 5.16 of the Act.

(3) This local law is to apply to the conduct of committee meetings, except for—

- (a) clause 7.1 (relating to seating); and
- (b) clause 7.10 (relating to the limit on the number of speeches).

2.2 Types of committees

The types of committees are dealt with in the Act.

2.3 Delegation of some powers and duties to certain committees

The delegation of some powers and duties to certain committees is dealt with in the Act.

2.4 Limits on delegation of powers and duties to certain committees

The limits on the delegation of powers and duties to certain committees are dealt with in the Act.

2.5 Appointment of committee members

The appointment of committee members is dealt with in the Act.

2.6 Tenure of committee membership

Tenure of committee membership is dealt with in the Act.

2.7 Resignation of committee members

The resignation of committee members is dealt with in the Regulations.

2.8 Register of delegations to committees

The register of delegations to committees is dealt with in the Act.

2.9 Committees to report

A committee—

- (a) is answerable to the council; and
- (b) is to report on its activities when, and to the extent, required by the council.

2.10 Communications by Committees

A committee must not communicate with any person or authority except through the mayor.

PART 3—CALLING AND CONVENING MEETINGS

3.1 Ordinary and special council meetings

(1) Ordinary and special council meetings are dealt with in the Act.

(2) An ordinary meeting of the council, held on a monthly basis or otherwise as determined by the council, is for the purpose of considering and dealing with the ordinary business of the council.

(3) A special meeting of the council is held for the purpose of considering and dealing with council business that is urgent, complex in nature, for a particular purpose or confidential.

3.2 Calling council meetings

The calling of council meetings is dealt with in the Act.

3.3 Convening council meetings

The convening of a council meeting is dealt with in the Act.

3.4 Calling committee meetings

The CEO is to call a meeting of any committee when requested by the mayor, the presiding member of a committee or any two councillor members of that committee.

3.5 Public notice of meetings

Public notice of meetings is dealt with in the Regulations.

PART 4—PRESIDING MEMBER AND QUORUM*Division 1: Who presides***4.1 Who presides**

Who presides at a council meeting is dealt with in the Act.

4.2 When the deputy mayor can act

When the deputy mayor can act is dealt with in the Act.

4.3 Who acts if no mayor

Who acts if there is no mayor is dealt with in the Act.

4.4 Election of presiding members of committees

The election of presiding members of committees and their deputies is dealt with in the Act.

4.5 Election of deputy presiding members of committees

The election of deputy presiding members of committees is dealt with in the Act.

4.6 Functions of deputy presiding members

The functions of deputy presiding members are dealt with in the Act.

4.7 Who acts if no presiding member

Who acts if no presiding member is dealt with in the Act.

*Division 2—Quorum***4.8 Quorum for meetings**

The quorum for meetings is dealt with in the Act.

4.9 Reduction of quorum for council meetings

The power of the Minister to reduce the number for a quorum and certain majorities is dealt with in the Act.

4.10 Reduction of quorum for committee meetings

The reduction of a quorum for committee meetings is dealt with in the Act.

4.11 Procedure where no quorum to begin a meeting

The procedure where there is no quorum to begin a meeting is dealt with in the Regulations.

4.12 Procedure where quorum not present during a meeting

If at any time during a meeting a quorum is not present, the presiding member is—

- (a) immediately to suspend the proceedings of the meeting for a period of up to 15 minutes; and
- (b) if a quorum is not present at the expiry of that period, the presiding member is to adjourn the meeting to some future time or date.

4.13 Names to be recorded

At any meeting—

- (a) at which there is not a quorum present; or
- (b) which is adjourned for want of a quorum, the names of the members then present are to be recorded in the minutes.

PART 5—BUSINESS OF A MEETING**5.1 Business to be specified**

(1) No business is to be transacted at any ordinary meeting of the council or at any committee meeting other than that specified in the agenda, without the approval of the presiding member or the council or committee.

(2) If the presiding member at any meeting is of the opinion that any motion or business proposed is of an objectionable nature, the presiding member may, either before or after the matter is brought forward, declare that it shall not be considered.

(3) No business is to be transacted at a special meeting of the council other than that given in the notice as the purpose of the meeting.

(4) Subject to subclause (5), no business is to be transacted at an adjourned meeting of the council other than that—

- (a) specified in the notice of the meeting which had been adjourned; and
- (b) which remains unresolved.

(5) Where a meeting is adjourned to the next ordinary meeting of the council then, unless the council resolves otherwise, the business unresolved at the adjourned meeting is to be dealt with before considering Reports (Item 10) at that ordinary meeting.

5.2 Order of business

(1) Unless otherwise decided by the council the order of business at any ordinary meeting of the council is to be as follows—

1. Declaration of opening/announcement of visitors/acknowledgement of country;
2. Disclaimer;
3. Attendance;
 - 3.1 Apologies;
 - 3.2 Approved leave of absence;
 - 3.3 Applications for leave of absence;
4. Declarations of interests;
5. Announcements by presiding member without discussion;
6. Public question time;
 - 6.1 Response to previous public questions taken on notice;
 - 6.2 Public questions;
7. Public statement time;
8. Presentations;
 - 8.1 Petitions;
 - 8.2 Deputations;
9. Confirmation of minutes;
10. Reports;
 - 10.1 Reports of officers;
 - 10.2 Reports of committees;
11. Elected members' motions of which previous notice has been given;
12. New business of an urgent nature introduced by decision of meeting by—
 - 12.1 Elected members;
 - 12.2 Officers;
13. Meeting closed to public;
 - 13.1 Matters for which the meeting may be closed;
 - 13.2 Public reading of recommendations that may be made public;
14. Meeting closure.

(2) Unless otherwise decided by the council, the order of business at any special meeting of the council is to be the order in which that business stands in the agenda of the meeting.

(3) In determining the order of business for any meeting of the council, the provisions of the Act and Regulations relating to the time at which public question time is to be held are to be observed. *[See section 5.24 of the Act; and regulations 6 and 7 of the Regulations]*

5.3 Motions of which previous notice has been given

(1) Unless the Act, Regulations or this local law otherwise provide, a member may raise at a meeting such business as he or she considers appropriate, in the form of a motion, of which notice has been given in writing to the CEO and which has been included on the agenda.

(2) A notice of motion under subclause (1) is to be given at least 10 clear working days before the meeting at which the motion is moved.

(3) A notice of motion is to relate to the good governance of the district, but no notice shall be deemed invalid on the basis of the policy involved being considered objectionable, or because it relates to a matter not within the scope of the ordinary work of the local government so long as, in the opinion of the presiding member or the CEO, the matter is one of public interest, utility or importance.

(4) No member shall have more than three notices of motion on the agenda at the same time unless express approval of the presiding member has been obtained.

(5) Motions raised under this clause shall be limited to the text of the proposed motion and a succinct rationale.

(6) A notice of motion lodged under this section, may, at the CEO's discretion, be accompanied by a report produced or authorised by the CEO to be submitted to the meeting at which the notice of motion is to be dealt with, with any such report providing relevant and material facts and circumstances pertaining to the notice of motion, and an officer recommendation.

(7) All notices of motion shall be dated and numbered as received and shall be entered by the CEO upon the agenda in the order in which they are received.

(8) The CEO—

- (a) may, with the concurrence of the mayor, exclude from the notice paper any notice of motion deemed to be, or likely to involve, a breach of any of this local law or any other written law;
- (b) will inform members on each occasion that a notice of motion has been excluded and the reasons for that exclusion;
- (c) may, after consultation with the member where this is practicable, make such amendments to the form but not the substance as will bring the notice of motion into due form; and
- (d) shall provide to the council relevant and material facts and circumstances pertaining to the notice of motion on such matters as policy, budget and law.

(9) Unless determined by the presiding member or agreed by resolution of the council without debate, notices of motion shall be called in the order in which they are written in the agenda.

(10) After dealing with all unopposed motions on notice, the presiding member shall call on the movers of opposed motions on notice in their order on the agenda to speak. Where written notice of an amendment to a motion on notice is received by the CEO, it shall be dealt with prior to any other amendment motion being considered. Where more than one written notice of amendment is received, they shall be dealt with in the order in which they were received.

(11) A motion of which notice has been given is to lapse and be abandoned unless—

- (a) the member who gave notice of it, or some other member authorised by the originating member in writing, moves the motion when called on and another member seconds the motion; or
- (b) the council on a motion agrees to defer consideration of the motion to a later stage or date.

(12) If a notice of motion is given and lapses under subclause (11), notice of a motion in the same terms or to the same effect is not to be given again for at least 3 months from the date of such lapse.

(13) No motion which has the same specific intent as one which has been lost within the preceding three months shall be moved under this clause unless it is presented as a notice of motion and the notice is signed by one third of the offices of members of council, whether present or not.

5.4 New business of an urgent nature

(1) In cases of extreme urgency or other special circumstances, matters may, on a motion by the presiding member that is carried by the meeting, be raised without notice and decided by the meeting.

(2) In subclause (1), 'cases of extreme urgency or other special circumstances' means matters that have arisen after the preparation of the agenda that are considered by the presiding member to be of such importance and urgency that they are unable to be dealt with administratively by the local government and must be considered and dealt with by the council before the next meeting.

PART 6—PUBLIC PARTICIPATION

6.1 Meetings generally open to the public

Meetings being generally open to the public is dealt with in the Act.

6.2 Meetings not open to the public

(1) The CEO may, at any time, recommend that a meeting or part of a meeting be closed to members of the public.

(2) The council or a committee, in one or more of the circumstances dealt with in the Act, may at any time, by resolution, decide to close a meeting or part of a meeting.

(3) If a resolution under subclause (2) is carried—

- (a) the presiding member is to direct everyone to leave the meeting except—
 - (i) the members;
 - (ii) the CEO; and
 - (iii) any officer or individual specified by the presiding member; and
- (b) the meeting is to be closed to the public and the media until, at the conclusion of the matter justifying the closure of the meeting to the public, the council or the committee, by resolution, decides otherwise.

(4) A person who fails to comply with a direction under subclause (3)(a) may, by order of the presiding member, be removed from the meeting.

(5) A resolution under this clause may be made without notice.

(6) Unless the council resolves otherwise, once the meeting is reopened to members of the public, if any members of the public or the media are present, the presiding member is to ensure that any resolution of the council made while the meeting was closed is to be read out including the names of those members who voted for and those who voted against the resolution.

6.3 Question time for the public

Question time for the public is dealt with in the Act.

6.4 Question time for the public at certain meetings

Question time for the public at certain meetings is dealt with in the Regulations.

6.5 Minimum question time for the public

Minimum question time for the public is dealt with in the Regulations.

6.6 Procedures for question time for the public

Procedures for question time for the public are dealt with in the Regulations.

6.7 Other procedures for question time for the public

- (1) A member of the public who raises a question during question time, is to state his or her name and address and ask a question or questions in a clear and precise manner.
- (2) A question may be taken on notice by the council for later response.
- (3) When a question is taken on notice the CEO is to ensure that—
 - (a) a response is given to the member of the public in writing; and
 - (b) a summary of the response is included in the agenda of the next meeting of the council, unless the response relates to a confidential matter and the CEO determines that confidentiality may be compromised by providing a summary.
- (4) Where a question relating to a matter in which a relevant person has an interest is directed to the relevant person, the relevant person is to—
 - (a) declare that he or she has an interest in the matter; and
 - (b) allow another person to respond to the question.
- (5) Where a member of the public provides written questions then the presiding member will take these questions as a priority for response.
- (6) The presiding member may decide that a public question shall not be responded to where—
 - (a) the same or similar question was asked at a previous meeting, a response was provided and the member of the public is directed to the minutes of the meeting at which the response was provided;
 - (b) the member of the public uses public question time to make a statement, provided that the presiding member has taken all reasonable steps to assist the member of the public to phrase the statement as a question;
 - (c) the member of the public asks a question that is offensive or defamatory in nature, provided that the presiding member has taken all reasonable steps to assist the member of the public to phrase the question in a manner that is not offensive or defamatory; or
 - (d) the question does not relate to the business of the council.
- (7) A member of the public shall have three (3) minutes to submit a question(s) and question(s) are to be responded to if possible immediately through the presiding member without further discussion, or taken on notice if research or further information is needed in order to provide a response.
- (8) The presiding member may agree to extend public question time.
- (9) Where a response to a question is given at a meeting, a summary of the question and the answer is to be included in the minutes of that meeting.

6.8 Public statement time

- (1) At each meeting, members of public may request the opportunity to make a statement on any item of business on the agenda for that meeting.
- (2) The presiding member, at their discretion, shall determine the order in which statements are made.
- (3) Each statement shall be no longer than 3 minutes;
- (4) The presiding member may require a statement to cease immediately if—
 - (a) The statement is deemed offensive towards, or to reflect adversely upon the character and/or any actions, of any member of the council, an employee of the local government or any other party;
 - (b) The statement exceeds the 3 minutes allowed; or
 - (c) The presiding member deems that the statement does not relate to any item on the agenda.
- (5) A maximum of 15 minutes shall be allocated to public statement time. If at the completion of this time there are requests for further statements, the presiding member, at their discretion, may permit an extension of time.

6.9 Distinguished visitors

If a distinguished visitor is present at a meeting of the council, the presiding member may acknowledge the presence of the distinguished visitor at an appropriate time during the meeting, and the presence of that visitor shall be recorded in the minutes.

6.10 Deputations

- (1) Any person or group wishing to be received as a deputation by the council is to either—
 - (a) apply, before the meeting, to the CEO for approval; or
 - (b) with the approval of the presiding member, at the meeting, address the council.
- (2) If an application for a deputation is made to the CEO, s/he may either—
 - (a) approve the request and invite the deputation to attend a meeting; or
 - (b) deny the request and deal with the matter administratively.

- (3) A deputation invited to attend a council meeting—
- (a) is not to exceed 5 persons, only 2 of whom may address the council, unless the presiding member agrees to allow more to speak, although others may respond to specific questions from members; and
 - (b) is not to address the council for a period exceeding 10 minutes without the consent of the presiding member.
- (4) For the purpose of determining who may address the council on an issue, all those people either in favour of or opposed to an item for consideration are deemed to comprise a single deputation.
- (5) Any matter which is the subject of a deputation to the council is not to be decided by the council until the deputation has completed its presentation.

6.11 Petitions

- (1) A petition is to—
- (a) be addressed to the mayor;
 - (b) be made by electors of the district;
 - (c) state the request on each page of the petition;
 - (d) contain the name, address and signature of each elector making the request, and the date each elector signed;
 - (e) contain a summary of the reasons for the request;
 - (f) be respectful and temperate in its language; and
 - (g) state the name of the person to whom, and an address at which, notice to the petitioners can be given.
- (2) A member presenting a petition to a council meeting shall be limited to a statement of the parties from whom it comes, of the number of the signatures attached to it, the material issues contained in it, and to the reading of the petition statement.
- (3) The only question which shall be considered by the council on the presentation of any petition shall be—
- (a) that the petition shall be accepted;
 - (b) that the petition shall not be accepted;
 - (c) that the petition shall be accepted and referred to the CEO for consideration and report; or
 - (d) that the petition be accepted and be dealt with by the full council.

6.12 Presentations

- (1) In this clause, a “presentation” means the acceptance of a gift or an award by the council on behalf of the local government or the community.
- (2) A presentation may be made to the council at a meeting only with the approval of the presiding member or CEO.

6.13 Participation at committee meetings

- (1) In this clause a reference to a person is to a person who—
- (a) is entitled to attend a committee meeting;
 - (b) attends a committee meeting; and
 - (c) is not a member of that committee.
- (2) Without the consent of the presiding member, no person is to address a committee meeting.
- (3) The presiding member of a committee may allow a person to make an oral submission to the committee for up to 3 minutes.
- (4) A person addressing the committee with the consent of the presiding member is to cease that address immediately after being directed to do so by the presiding member.
- (5) A person who fails to comply with a direction of the presiding member under subclause (4) may, by order of the presiding member, be removed from the committee room.
- (6) Other than a committee to which the council has delegated a power or duty, there is to be no public question time at committee meetings, however the presiding member may consent to allowing a question time that is consistent with the Regulations and clause 6.7.

6.14 Public inspection of agenda materials

The right of the public to inspect the documents referred to, and in accordance with, regulation 14 of the Regulations may be exercised at the Town of Cottesloe Administration Centre and on the Town’s website.

6.15 Confidentiality of information withheld

- (1) Information withheld by the CEO from the public under regulation 14(2) of the Regulations or regulation 21 of the Local Government (Model Code of Conduct) Regulations 2021 is to be—
- (a) identified in the agenda of a council meeting under the item “Matters for which meeting may be closed”;
 - (b) marked “*Confidential*” in the agenda; and
 - (c) kept confidential by officers and members until the council resolves otherwise.

(2) A member, officer or committee member in receipt of confidential information under subclause (1) or information that is provided or disclosed during a meeting or part of a meeting that is closed to the public is not to disclose any of that information to any person other than another member or an officer to the extent necessary for the purpose of carrying out his or her duties.

(3) Subclause (2) does not apply where a member or officer discloses the information to his or her lawyer or government officer for the purpose of seeking advice in order to lawfully fulfil his or her role and responsibilities.

6.16 Recording of proceedings

(1) A person is not to use any electronic, visual or audio recording device or instrument to record the proceedings of the council without the permission of the presiding member, notwithstanding that the meeting procedures are recorded for the purposes of record keeping.

(2) If the council gives permission under subclause (1), the presiding member is to advise the meeting, immediately before the recording is commenced, that such permission has been given and the nature and extent of that permission.

6.17 Prevention of disturbance

(1) A reference in this clause to a person is to a person other than a member.

(2) A person addressing the council shall extend due courtesy and respect to the council and the processes under which it operates and shall comply with any direction by the presiding member.

(3) A person observing a meeting shall not create a disturbance at a meeting, by interrupting or interfering with the proceedings, whether by expressing approval or dissent, by conversing or by any other means.

(4) The presiding member may warn a person who fails to comply with this clause and if—

(a) after being warned, the person again acts contrary to this clause, or to the direction; or

(b) a person refuses or fails to comply with a direction by the presiding member,

the presiding member may expel the person from the meeting by ordering him or her to leave the meeting room.

(5) A person who is ordered to leave the meeting room and fails to do so may, by order of the presiding member be removed from the meeting room and, if the presiding member orders, from the premises.

(6) A person shall ensure that his or her mobile telephone or audible pager is not switched on or used during any meeting of the council or a committee.

(7) A person shall not behave in a manner that is contrary to section 75 of the Criminal Code.

6.18 Media

Media persons are to be permitted to attend meetings of the council or committees that are open to the public in such part of the Council Chamber or meeting room as may be set aside for their accommodation but must withdraw during any period when the meeting is closed to the public.

PART 7—CONDUCT OF MEMBERS

7.1 Members to be in their proper places

(1) At the first meeting after each Election Day, the CEO shall allot by random draw, a position at the council table to each member.

(2) Each member shall, until such time as there is a call by a majority of members for a re-allotment of positions, occupy that position when present at meetings of the council.

7.2 Respect to the presiding member

After the business of a council has been commenced, a member is not to enter or leave the meeting without first paying due respect to the presiding member.

7.3 Titles to be used

Members shall address each other during meetings by their respective titles of mayor or councillor. Members of the council, in speaking of or addressing officers, shall designate them by their respective official title or by their chosen title and surname.

7.4 Advice of entry or departure

During the course of a meeting of the council, a member is not to enter or leave the meeting without first advising the presiding member in order to facilitate the recording in the minutes of the time or entry or departure. The presiding member will cause to have recorded in the minutes, any member entering, leaving or returning to the meeting.

7.5 Use of mobile phones and other communication devices

Mobile phones and other communication devices are to be used by members at meetings only as required for the purpose of considering matters then before council and are not to be used, without the consent of the presiding member, for the purposes of sending or receiving communications to or from any person.

7.6 Members to indicate their intention to speak

A member of the council who wishes to speak is to indicate his or her intention to speak by raising his or her hand or by another method agreed by the council.

7.7 Priority of speaking

- (1) When invited by the presiding member to speak, members shall address the meeting through the presiding member.
- (2) Where two or more members indicate, at the same time, their intention to speak, the presiding member is to decide which member is entitled to be heard first.
- (3) A decision of the presiding member under subclause (2) is not open to discussion or dissent.
- (4) A Member is to cease speaking immediately after being asked to do so by the presiding member.

7.8 Presiding Member may take part in debates

The presiding member may take part in a discussion of any matter before the council, subject to compliance with this local law.

7.9 Relevance

- (1) A member is to restrict his or her remarks to the motion or amendment under discussion, or to a personal explanation or point of order.
- (2) The presiding member, at any time, may—
 - (a) call the attention of the meeting to—
 - (i) any irrelevant, repetitious, offensive or insulting language by a member; or
 - (ii) any breach of order by a member; and
 - (b) direct that member, if speaking, to discontinue his or her speech.
- (3) A member may call the attention of the presiding member to continued irrelevance, repetition, offensive or insulting language, or any breach of order on the part of a member and may call upon the presiding member to direct the member to cease speaking.
- (4) A member is to comply with the direction of the presiding member under subclause (2) or (3) by immediately ceasing to speak.

7.10 Limitation of number of speeches

A member is not to address the council more than once on any motion or amendment except—

- (a) as the mover of a substantive motion, to exercise a right of reply;
- (b) to raise a point of order; or
- (c) to make a personal explanation.

7.11 Limitation of duration of speeches

- (1) A member is not to speak on any matter for more than 3 minutes without the consent of the presiding member or resolution of council without debate.
- (2) An extension under this clause cannot be given to allow a member's total speaking time to exceed 10 minutes.

7.12 No speaking after conclusion of debate

A member is not to speak on any motion or amendment—

- (a) after the mover has replied; or
- (b) after the motion has been put.

7.13 No interruption

A member is not to interrupt another member who is speaking unless—

- (a) to raise a point of order;
- (b) to call attention to the absence of a quorum;
- (c) to make a personal explanation under clause 7.14; or
- (d) to move a procedural motion that the member be no longer heard.

7.14 Personal explanation

- (1) The presiding member may allow a member to make a personal explanation if the member claims that something he or she has said at the meeting has been misunderstood in a material respect. A member making a personal explanation shall confine that explanation to a brief and concise explanation of that part of his or her statement which may have been misunderstood.
- (2) A member wishing to make a personal explanation of matters referred to by any other member then speaking, is entitled to be heard immediately, if the member then speaking consents at the time, but if the member who is speaking declines to give way, the explanation is to be offered at the conclusion of that speech.
- (3) A personal explanation is not open to debate or amendment.

7.15 No reopening of discussion

A member is not to reopen discussion on any council decision, except to move that the decision be revoked or changed.

7.16 Adverse reflection

- (1) A member is not to reflect adversely on a decision of the council except on a motion that the decision be revoked or changed unless the meeting resolves, without debate, that the matter before the meeting cannot otherwise be adequately considered.

(2) A member is not—

- (a) to reflect adversely on the character or actions of another member, officer or any other person unless the meeting resolves, without debate, that the matter before the meeting cannot otherwise be adequately considered; or
- (b) to impute any motive to a member, officer or any other person, unless the meeting resolves, without debate, that the matter before the meeting cannot otherwise be adequately considered.

(3) A member is not to use offensive or insulting expressions in reference to any member, officer or any other person.

7.17 Withdrawal of offensive language

(1) A member who, in the opinion of the presiding member, uses an expression which in the absence of a resolution under clause 7.16—

- (a) reflects adversely on the character or actions of another member or officer;
- (b) imputes any motive to a member or officer; or
- (c) is offensive or insulting,

when directed by the presiding member, must withdraw the expression and make an apology satisfactory to the presiding member.

(2) If a member fails to comply with a direction of the presiding member under subclause (1), the presiding member may refuse to hear the member further on the matter then under discussion and call on the next speaker.

PART 8—PRESERVING ORDER

8.1 Presiding member to preserve order

(1) The presiding member is to preserve order, and, whenever he or she considers necessary, may call any member to order.

(2) When the presiding member speaks during a debate, any member then speaking, or indicating that he or she wishes to speak, and every member present is to preserve strict silence so that the presiding member may be heard without interruption.

(3) Subclause (2) is not to be used by the presiding member to exercise the right provided in clause 7.8, but to preserve order.

8.2 Point of order

(1) The following shall be recognised as valid points of order—

- (a) drawing attention to the violation of any written law, local law or standing order of the council, providing that the member raising to the point of order shall state the written law, local law or standing order believed to be breached;
- (b) that the discussion is of a question not before the council;
- (c) that offensive or insulting language is being used; and
- (d) irrelevance.

(2) Despite anything in this local law to the contrary, a point of order—

- (a) takes precedence over any discussion; and
- (b) until determined, suspends the consideration or discussion of any other matter.

(3) Raising a difference of opinion or contradicting a speaker shall not be recognised as raising a point of order.

8.3 Procedures on a point of order

A member interrupted on a point of order is to cease speaking until—

- (1) the member raising the point of order has been heard; and
- (2) the presiding member has ruled on the point of order, and, if permitted, the member who has been interrupted may then proceed.

8.4 Ruling by the presiding member

(1) The presiding member is to rule on any point of order which is raised by either upholding or rejecting the point of order.

(2) A ruling by the presiding member on a point of order is to be final unless the majority of members then present and voting, on a motion moved immediately after the ruling, dissent from the ruling.

(3) Subject to a motion of dissent being carried under subclause (2), if the presiding member rules that—

- (a) any motion, amendment or other matter before the meeting is out of order, it is not to be considered further; and
- (b) a statement made or act done by a member is out of order, the presiding member may require the member to make an explanation, retraction or apology.

8.5 Continued breach of order

If a member—

- (1) persists in any conduct that the presiding member had ruled is out of order; or
- (2) refuses to make an explanation, retraction or apology required by the presiding member under clause 8.4(3),

the presiding member may direct the member to refrain from taking any further part in the matter under discussion, other than by voting, and the member is to comply with that direction.

8.6 Right of presiding member to adjourn

- (1) If a meeting ceases to operate in an orderly manner, the presiding member may use discretion to adjourn the meeting for a period of up to 15 minutes without explanation, for the purpose of regaining order.
- (2) The adjourning of a meeting to regain order cannot be challenged by any member of council.
- (3) On resumption, the debate is to continue at the point at which the meeting was adjourned.
- (4) If, at any one meeting, the presiding member adjourns the meeting more than once for the purpose of preserving or regaining order, the second or subsequent adjournment may be to adjourn the meeting for a period of no longer than 7 days.

PART 9—DEBATE OF SUBSTANTIVE MOTIONS**9.1 Motions to be stated and in writing**

Every substantive motion or amendment, but not procedural motions, shall be written and shall be provided to the presiding member and the CEO immediately upon being seconded.

9.2 Complex motions to be broken down

The presiding member or council by resolution without debate may order that any complex motion or amendment shall be broken down into several motions which shall be dealt with in sequence.

9.3 Motions to be supported

- (1) A substantive motion or an amendment to a substantive motion is not open to debate until it has been seconded.
- (2) A motion to revoke or change a decision made at a council meeting is not open to debate unless the motion has the support required under regulation 10 of the Regulations.
- (3) No motion which has the same specific intent to one which has been lost within the preceding 3 months shall be moved unless it is presented as a notice of motion and the notice is signed by one third of the members, whether present or not.
- (4) No motion or amendment shall be proposed which is the same in substance as a motion or amendment which has been resolved during the same meeting, except by agreement of the majority of members present.
- (5) A motion that is not carried by the majority required for that motion (a “lost” motion) does not form a decision of council or a committee for the purposes of subclause (2).

9.4 Unopposed business and adoptions “en-bloc”

- (1) Immediately after a substantive motion or amendment has been moved and seconded, the presiding member may ask the meeting if any member opposes it.
- (2) If no member opposes the motion, the presiding member may declare it carried without debate and without taking a vote.
- (3) A motion declared carried under this clause is to be recorded in the minutes as a unanimous decision of the council.
- (4) If a member opposes a motion, the motion is to be dealt with under this Part.
- (5) This clause does not apply to a motion to revoke or change a decision which has been made at a council meeting.
- (6) A member may move a motion to adopt by one resolution, all the recommendations or a group of recommendations from a committee, or all or a group of reports, without amendment or qualification after having first identified those recommendations, if any—
 - (a) which require adoption by an absolute majority vote;
 - (b) in which an interest has been disclosed;
 - (c) which any member has indicated the wish to debate; and

each of those recommendations referred to in paragraphs (a), (b) and (c) must be considered separately.

9.5 Only one substantive motion at a time

When a substantive motion is under debate at a meeting of the council, no further substantive motion is to be accepted. The council is not to consider more than one substantive motion at any time.

9.6 Order of call in debate

- (1) The presiding member is to call speakers to a substantive motion in the following order—
 - (a) the mover to state the motion;

- (b) a seconder to the motion;
- (c) the mover to speak to the motion;
- (d) the seconder to speak to the motion;
- (e) a speaker against the motion;
- (f) a speaker for the motion;
- (g) other speakers against and for the motion, alternating where possible; and
- (h) mover takes right of reply which closes debate.

(2) The seconder may request the right to speak at a later time in debate, however the moving of any procedural motion which will close debate, will automatically deny the seconder the right to speak to the substantive motion.

9.7 Limit of debate

The presiding member may offer the right of reply and put a substantive motion to the vote if he or she believes that sufficient discussion has taken place even though all members may not have spoken and provided no member has previously indicated an intention to speak against the motion.

9.8 Member may require motion to be read

A Member may require the motion or matter under discussion to be read at any time during a debate, but not so as to interrupt any other member who is speaking.

9.9 Consent of seconder required for alteration

The mover of a substantive motion may not alter the wording of the motion without the consent of the seconder and may not do so after any member other than the mover and seconder has spoken to the motion.

9.9 Moving amendment to substantive motion

Any member other than the mover of a substantive motion may move an amendment to the substantive motion.

9.10 Order of amendments

Any number of amendments may be proposed to a substantive motion, but when an amendment is moved to a substantive motion, no second or subsequent amendment is to be moved or considered until the first amendment has been withdrawn, carried or lost.

9.11 Form of an amendment

Every amendment shall be relevant to the motion upon which it is moved, and be framed to show precisely which words need to be deleted, added or altered.

9.12 Amendment must not negate original motion

An amendment to a substantive motion cannot negate the original motion or the intent of the original motion.

9.13 Speaking to amendment

Any member may speak to a motion to amend a substantive motion.

9.14 Effect of an amendment

If an amendment to a substantive motion is carried, the motion as amended then becomes the substantive motion, on which any member who has not previously spoken on the substantive motion may speak and any further amendment may be moved.

9.15 Withdrawal of motion or amendment

(1) Subject to subclause (2), the presiding member may grant leave to withdraw a motion or amendment on the request of the mover of the motion or amendment and with the approval of the seconder, provided there is no voice expressed to the contrary by any member, in which case debate on the motion or amendment is to continue.

(2) Where an amendment has been proposed to a substantive motion, the substantive motion is not to be withdrawn, except by resolution of council, until the amendment proposed has been withdrawn or lost.

9.16 Right of reply

- (1) The mover of a substantive motion has the right of reply.
- (2) The mover of any amendment to a substantive motion has no right of reply.
- (3) The right of reply may only be exercised—
 - (a) where no amendment is moved to the substantive motion—at the conclusion of the discussion on the motion; or
 - (b) where one or more amendments have been moved to the substantive motion—at the conclusion of the discussion on the substantive motion and any amendments.
- (4) After the mover of the substantive motion has commenced the reply—
 - (a) no other member is to speak on the motion;
 - (b) there is to be no further discussion on, or any further amendment to, the motion.

(5) The right of the reply is to be confined to rebutting arguments raised by previous speakers and no new matter is to be introduced.

(6) At the conclusion of the right of reply, the substantive motion, or the substantive motion as amended, is immediately to be put to the vote.

9.17 Questions during debate

(1) At any time during the debate on a motion before the motion is put, but not when another member is speaking, a member may ask a question.

(2) Questions asked by a member and responses are to be brief and concise and are not to be accompanied by—

- (a) expression of opinion, statement of fact or other comment, except where necessary to explain the question or response; or
- (b) any discussion or further question, except with the consent of the presiding member.

PART 10—PROCEDURAL MOTIONS

10.1 Permissible procedural motions

(1) In addition to the right to move an amendment to a substantive motion (under Part 9), a member may move the following procedural motions—

- (a) that council proceed to the next business;
- (b) that the debate be adjourned;
- (c) that the meeting now adjourn;
- (d) that the motion be now put;
- (e) that the member be no longer heard;
- (f) that the ruling of the presiding member be disagreed with;
- (g) that the meeting be closed to the public;
- (h) that council move into a committee of the whole.

(2) Procedural motions are not required to be presented in writing.

(3) The mover, seconder and result of all procedural motions shall be recorded in the minutes of the meeting. Any procedural motion shall be carried upon the majority of members present voting in the affirmative.

(4) No procedural motion can be moved which would cause the election of the Deputy Mayor to be unresolved.

10.2 No debate

(1) Save as provided in subparagraph 10.1 (2), the mover of a procedural motion may speak to the motion for not more than 3 minutes, the seconder is not to speak other than to formally second the motion and there is to be no debate on the motion.

(2) There is to be no debate in respect of a motion under subparagraph 10.1 (1) (d) or (e).

(3) There shall be no right of reply on any procedural motion.

10.3 Who may move motion closing down debate

No person who has moved, seconded, or spoken for or against the substantive motion, or any amendment to the substantive motion, may move any procedural motion which, if carried, would close the debate on the substantive motion or amendment.

10.4 Procedural motions—right of reply on substantive motion

The carrying of a procedural motion which closes debate on the substantive motion or amendment and forces a decision on the substantive motion or amendment does not deny the right of reply to the mover of the substantive motion.

10.5 Meeting to proceed to the next item of business

The motion “that the meeting proceed to the next item of business”, if carried, has the effect that—

- (a) the debate on the substantive motion or amendment ceases immediately;
- (b) no decision is made on the substantive motion;
- (c) the council moves to the next item of business; and
- (d) there is no requirement for the matter to be raised again for consideration.

10.6 Debate to be adjourned

A motion “that the debate be adjourned”—

- (a) is to state the time to which the debate is to be adjourned; and
- (b) if carried, has the effect that all debate on the substantive motion or amendment ceases immediately, but continues at the time stated in the motion.

10.7 Meeting now adjourn

(1) A member is not to move or second more than one motion of adjournment of the meeting during the same sitting of the council.

(2) Before putting the motion for the adjournment of the meeting, the presiding member may seek leave of the council to deal first with matters that may be the subject of an en bloc resolution.

(3) A motion “that the meeting now adjourn”—

- (a) is to state the time and date to which the meeting is to be adjourned; and
- (b) if carried, has the effect that the meeting is adjourned to the time and date specified in the motion.

(4) A meeting adjourned under subclause (3) is to continue from the point at which it was adjourned, unless the presiding member or the council determines otherwise.

10.8 Motion to be put

- (1) The motion “that the motion be now put” can be raised at any time after a motion is seconded;
- (2) If the motion “that the motion be now put”, is carried during debate on a substantive motion, the presiding member is to offer the right of reply and then put the motion to the vote without further debate.
- (3) If the motion “that the motion be now put” is carried during discussion of an amendment, the presiding member is to put the amendment to the vote without further debate.
- (4) This motion, if lost, causes debate to continue.

10.9 Member to be no longer heard

If the motion “that the member be no longer heard”, is carried, the speaker against whom the motion has been moved cannot speak further on the current substantive motion, or any amendment relating to it, except to exercise the right of reply if he or she is the mover of the substantive motion.

10.10 Ruling of the presiding member to be disagreed with

- (1) If the motion “that the ruling of the presiding member be disagreed with”, is carried, that ruling is to have no effect and the meeting is to proceed accordingly.
- (2) This motion may not be moved—
 - (a) where the presiding member has made a decision under clause 7.7 (Priority of speaking) or clause 8.5 (Refrain from taking part in the matter under discussion);
 - (b) where the presiding member has adjourned the meeting in accordance with clause 8.6 (Adjournment to regain order);
 - (c) where this local law provides that the ruling of the presiding member shall not be open to dissent.

10.11 Council to move into a committee of the whole

This motion, having been carried, will suspend the standing orders which restrict the number of times, and length of time for which, each member may speak provided that normal courtesy and order is maintained.

PART 11—DISCLOSURE OF INTERESTS

11.1 Disclosure of interests

Disclosure of interests is dealt with in the Act.

PART 12—VOTING

12.1 Motion—when put

- (1) Immediately after the debate on any motion is concluded and the right of reply has been exercised, the presiding member—
 - (a) is to put the motion to the council; and
 - (b) if requested by any member, is to again state the terms of the motion.
- (2) A member is not to leave the meeting when the presiding member is putting any motion.

12.2 Voting

Voting is dealt with in the Act and the Regulations.

12.3 Majorities required for decisions

The majorities required for decisions of the council and committees are dealt with in the Act.

12.4 Method of taking vote

- (1) In taking the vote on any motion or amendment the presiding member—
 - (a) is to put the motion, first in the affirmative, and then in the negative;
 - (b) may put the motion in this way as often as may be necessary to enable him or her to determine whether the affirmative or the negative has the majority of votes;
 - (c) may accept a vote by a show of hands; and,
 - (d) is, subject to this clause, to declare the result.
- (2) If a member calls for a show of hands, the result of the vote is to be determined on the count of raised hands. Where a member is unable to raise his or her hand to vote, the presiding member may accept that member’s vote by another means.

(3) Unless the vote is unanimous the CEO is to record in the minutes of the meeting which members voted and whether they voted for or against.

PART 13—MINUTES OF MEETINGS

13.1 Keeping of minutes

The keeping and confirmation of minutes are dealt with in the Act.

13.2 Content of minutes

(1) The content of minutes is dealt with in the Regulations.

(2) In addition to the matters required by regulation 11, the minutes of a council meeting is to include, where an application for approval is refused or the authorisation of a licence, permit or certificate is withheld or cancelled, the reasons for the decision.

13.3 Public inspection of unconfirmed minutes

The public inspection of unconfirmed minutes is dealt with in the Regulations.

13.4 Confirmation of minutes

(1) When minutes of an ordinary meeting of the council are distributed for consideration prior to their confirmation at the next meeting, if a member is dissatisfied with the accuracy of the minutes, the member may provide the local government with a written copy of the alternative wording to amend the minutes no later than 10 clear working days before the next ordinary meeting of the council.

(2) At the next ordinary meeting of the council, the member who provided the alternative wording shall, at the time for confirmation of minutes—

(a) state the item or items with which he or she is dissatisfied; and

(b) propose a motion clearly outlining the alternative wording to amend the minutes.

(3) Members must not discuss items of business contained in the minutes, other than discussion as to their accuracy as a record of the proceedings.

PART 14—ADJOURNMENT OF MEETING

14.1 Meeting may be adjourned

The council may adjourn any meeting—

(a) to a later time on the same day; or

(b) to any other time on any other day, including a time which coincides with the conclusion of another meeting or event;

When a meeting is adjourned, if time permits, notice of the adjourned meeting shall be forwarded to each member in the manner provided in Part 3.

14.2 Effect of adjournment

Where any matter, motion, debate or meeting is adjourned under this local law—

(a) the names of members who have spoken on the matter prior to the adjournment are to be recorded in the minutes;

(b) debate is to be resumed at the next meeting at the point where it was interrupted and no additional business shall be discussed at an adjourned meeting except that which was on the original agenda for that meeting; and

(c) the provisions of clause 7.10 (speaking twice) apply when the debate is resumed.

PART 15—REVOKING OR CHANGING DECISIONS

15.1 Requirements to revoke or change decisions

The requirements to revoke or change a decision made at a meeting are dealt with in regulation 10 of the Regulations.

15.2 Limitations on powers to revoke or change decisions

(1) Subject to subclause (2), the council or a committee is not to consider a motion to revoke or change a decision—

(a) where, at the time the motion is moved or notice is given, any action has been taken under clause 15.3 to implement the decision; or

(b) where the decision is procedural in its form or effect.

(2) The council or a committee may consider a motion to revoke or change a decision of the kind described in subclause (1)(a) if the motion is accompanied by a written statement of the legal and financial consequences of carrying the motion.

15.3 Implementing a decision

(1) In this clause—

(a) “authorisation” means a licence, permit, approval or other means of authorising a person to do anything;

- (b) “implement”, in relation to a decision, includes—
 - (i) communicate notice of the decision to a person affected by, or with an interest in, the decision; and
 - (ii) take any other action to give effect to the decision; and
 - (c) “valid notice of revocation motion” means a notice of motion to revoke or change a decision that complies with the requirements of the Act, Regulations and this local law and may be considered, but has not yet been considered, by the council or a committee as the case may be.
- (2) Subject to subclause (4), and unless a resolution is made under subclause (3), a decision made at a meeting is not to be implemented by the CEO or any other person until the afternoon of the first business day after the commencement of the meeting at which the decision was made.
- (3) The council or a committee may, by resolution carried at the same meeting at which a decision was made, direct the CEO or another person to take immediate action to implement the decision.
- (4) A decision made at a meeting is not to be implemented by the CEO or any other person—
- (a) if, before commencing any implementation action, the CEO or that person is given a valid notice of revocation motion; and
 - (b) unless and until the valid notice of revocation motion has been determined by the council or the committee as the case may be.
- (5) The CEO is to ensure that members of the public attending the meeting are informed by an appropriate notice that a decision to grant an authorisation—
- (a) is to take effect only in accordance with this clause; and
 - (b) cannot be acted upon by the person who has been granted the authorisation unless and until the decision has been implemented in accordance with this clause.

PART 16—SUSPENSION OF LOCAL LAW

16.1 Suspension of local law

- (1) A member may at any time move that the operation of one or more of the provisions of this local law be suspended. A suspension of local law motion is not required to be presented in writing.
- (2) A member moving a motion under subclause (1) is to state the reasons for the motion but no other discussion is to take place.
- (3) A motion under subclause (1) which is—
- (a) seconded; and
 - (b) carried by an absolute majority,

is to suspend the operation of the clause or clauses to which the motion relates for the duration of the meeting, unless the meeting earlier resolves otherwise.

16.2 Where local law does not apply

- (1) In situations where—
- (a) one or more provisions of this local law have been suspended; or
 - (b) a matter is not regulated by the Act, the Regulations or this local law, the presiding member is to decide questions relating to the conduct of the meeting.
- (2) The decision of the presiding member under subclause (1) is final, except where a motion is moved and carried under clause 10.10.

PART 17—MEETINGS OF ELECTORS

17.1 Electors’ general meetings

Electors’ general meetings are dealt with in the Act.

17.2 Matters for discussion at electors’ general meetings

The matters to be discussed at electors’ general meetings are dealt with in the Regulations.

17.3 Electors’ special meetings

Electors’ special meetings are dealt with in the Act.

17.4 Requests for electors’ special meetings

Requests for electors’ special meetings are dealt with in the Regulations.

17.5 Convening electors’ meetings

Convening electors’ meetings is dealt with in the Act.

17.6 Who presides at electors’ meetings

Who presides at electors’ meetings is dealt with in the Act.

17.7 Procedure for electors’ meetings

- (1) The procedure for electors’ meetings is dealt with in the Act and the Regulations.
- (2) In exercising his or her discretion to determine the procedure to be followed at an electors’ meeting, the presiding member is to have regard to this local law.

17.8 Participation of non-electors

A person who is not an elector of the local government shall not take part in any discussion at an electors' meeting unless the meeting, by resolution, permits the person do so.

17.9 Voting at electors' meetings

Voting at electors' meetings is dealt with in the Regulations.

17.10 Minutes of electors' meetings

Minutes of electors' meetings are dealt with in the Act.

17.11 Decisions made at electors' meetings

Decisions made at electors' meetings are dealt with in the Act.

PART 18—ENFORCEMENT**18.1 Penalty for breach**

A person who breaches a provision of this local law commits an offence.

Penalty: \$1,000.00 and a daily penalty of \$100.00.

18.2 Who can prosecute

Who can prosecute is dealt with in the Act.

PART 19—ADMINISTRATIVE MATTERS**19.1 Duty of CEO**

It is the duty of the CEO to draw the attention of the meeting to any breach or likely breach of this local law even if it requires interrupting any person speaking, including the presiding member.

19.2 Custody and use of Common Seal

The use and custody of the Common Seal is dealt by the Act and Regulations.

Dated: 25 February 2021

The Common Seal of the Town of Cottesloe was affixed by the authority of a resolution of council in the presence of—

PHILIP ANGERS, Mayor.

MATTHEW SCOTT, Chief Executive Officer.

SHIRE OF GNOWANGERUP

STANDING ORDERS LOCAL LAW 2021

LOCAL GOVERNMENT ACT 1995

SHIRE OF GNOWANGERUP

STANDING ORDERS LOCAL LAW 2021

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LOCAL GOVERNMENT ACT 1995

SHIRE OF GNOWANGERUP

STANDING ORDERS LOCAL LAW 2021

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Gnowangerup resolved on 17th February 2021 to make the following local law.

PART 1—PRELIMINARY

1.1 Citation

This local law is the *Shire of Gnowangerup Standing Orders Local Law 2021*.

1.2 Commencement

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

1.3 Application

All meetings of the Council, Committees and electors are to be conducted in accordance with the Act, the Regulations and this local law.

1.4 Repeal

The *Shire of Gnowangerup Standing Orders Local Law 2016* published in the *Government Gazette* on 15th November 2016 is repealed.

1.5 Interpretation

(1) In these this local law, unless the contrary intention appears—

Act means the *Local Government Act 1995*;

absolute majority has the same meaning as given to it in the Act;

CEO means the Chief Executive Officer of the local government;

Committee means a Committee of the Council established under the Act;

Council means the Council of the local government;

Councillor has the same meaning as is given to it in the Act;

deputation means a verbal submission at a Council or Committee meeting on an agenda item made by a person who has a direct interest in the agenda item;

employee means an employee of the local government;

implement in relation to a decision, includes—

(a) communicate notice of the decision to a person affected by, or with an interest in, the decision; and

(b) take other action to give effect to the decision;

local government means the Shire of Gnowangerup;

member—

(a) in relation to the Council means the President or a Councillor; and

(b) in relation to a Committee, means a member of the Committee;

Minister means the Minister responsible for administering the Act;

motion means a proposition presented to the Council for its deliberation;

President means the President of the local government;

Presiding Member means—

(a) in respect of the Council, the Presiding Member in accordance with the Act; and

(b) in respect of a Committee, the Presiding Member in accordance with the Act;

Regulations means the *Local Government (Administration) Regulations 1996*;

simple majority means more than 50% of members present and voting;

substantive motion means an original motion or an original motion as amended, but does not include an amendment or a procedural motion; and

urgent business means business dealt with in accordance with clause 3.10.

(2) Unless otherwise defined, the terms used in this local law have the meaning given to them in the Act and the Regulations.

PART 2—CALLING MEETINGS

2.1 Ordinary and special Council meetings

(1) Ordinary and special Council meetings are dealt with in the Act.

(2) An ordinary meeting of the Council held on a monthly basis or otherwise as determined by the Council, is for the purpose of considering and dealing with the ordinary business of the Council.

(3) A special meeting of the Council is held for the purpose of considering and dealing with Council business that is urgent, complex in nature, for a particular purpose or confidential.

2.2 Calling Council meetings

The calling of Council meetings is dealt with in the Act.

2.3 Convening Council meetings

The convening of Council meetings is dealt with in the Act.

2.4 Calling Committee meetings

The CEO is to call a meeting of any Committee when requested to do so verbally or in writing by—

- (a) the President or the Presiding Member of a Committee; or
- (b) any two members of the Committee; or
- (c) if so decided by the Council.

2.5 Public notice of meeting

Public notice of meetings is dealt with in the Regulations.

2.6 Production of documents

(1) In this clause the term **document** means a deed, book, report, paper or any other written material whatsoever or any other recorded or stored information.

(2) Upon the request of a member, made at least 8 hours before a meeting, the CEO is to make available by the commencement of the meeting, any document of the local government that relates to an item on the agenda for the meeting.

(3) Any document requested may be made available in the Council Chamber or in a place to which members have reasonable access within the Council's administration building.

(4) Notwithstanding subclause (1), (2) and (3), if the CEO considers that any document requested is confidential, the CEO may make it available in any circumstances necessary to protect the integrity of that document.

2.7 Conference of Committees

Any two or more Committees may confer together by mutual agreement on any matter of joint interest.

PART 3—BUSINESS OF THE MEETING

3.1 Business to be specified in the agenda

(1) No business is to be transacted at any ordinary meeting of the Council other than that specified in the agenda, without the approval of the Presiding Member or a decision of the Council or Committee.

(2) No business is to be transacted at a special meeting of the Council other than that given in the notice as the purpose of the meeting.

(3) No business is to be transacted at a Committee meeting other than that specified in the agenda of the meeting, without the approval of the Presiding Member or a decision of the Committee.

(4) No business is to be transacted at an adjourned meeting of the Council or a Committee other than that—

- (a) specified in the agenda of the meeting which had been adjourned; and
- (b) which remains unresolved,

except in the case of an adjournment to the next ordinary meeting of the Council or the Committee, when the business unresolved at the adjourned meeting is to have precedence at that ordinary meeting.

3.2 Order of business

(1) Unless otherwise decided by the Council the order of business at any ordinary meeting of the Council is to be as follows—

1. Opening and announcement of visitors
2. Acknowledgement of Country
3. Attendance/apologies/approved leave of absence

4. Application for leave of absence
5. Response to questions taken on notice
6. Public question time
7. Declarations of financial interests and interests affecting impartiality
8. Petitions/deputations/presentations
9. Confirmation of previous meeting minutes
10. Announcements by Elected Members without discussion
11. Reports for Decision
12. Reports for Decision—Confidential Items
13. Urgent business introduced by decision of Council
14. Motions of which previous notice has been given
15. Date of next meeting
16. Closure.

(2) Unless otherwise decided by the members present, the order of business at any special meeting of the Council or at a Committee meeting is to be the order in which that business stands in the agenda of the meeting.

(3) Notwithstanding subclauses (1) and (2) in the order of business for any meeting of the Council or a Committee, the provisions of the Act and Regulations relating to the time at which public question time is to be held are to be observed.

(4) Notwithstanding subclause (1), the CEO may include on the agenda of a Council or Committee meeting in an appropriate place within the order of business any matter which must be decided, or which he or she considers is appropriately decided, by that meeting.

3.3 Public question time

(1) Procedures for public question time are dealt with in the Act and Regulations.

(2) A member of the public who raises a question during question time is to state his or her name and address.

(3) Questions asked by members of the public are not to be accompanied by any statement reflecting adversely upon any member or employee.

3.4 Questions by members of which due notice has been given

(1) A question on notice is to be given by a member in writing to the CEO at least 2 clear working days before the meeting at which it is raised.

(2) If the question referred to in subclause (1) is in order, the answer is, so far as is practicable, to be included in written form in the agenda of the meeting, or otherwise tabled at that meeting.

(3) Every question and answer is to be submitted as briefly and concisely as possible and no discussion is to be allowed thereon, unless with the consent of the Presiding Member.

3.5 Petitions

(1) A petition, in order to be effective, is to—

- (a) be addressed to the President;
- (b) be made by electors of the district;
- (c) state the request on each page of the petition;
- (d) contain the names, addresses and signatures of the electors making the request, and the date each elector signed;
- (e) contain a summary of the reasons for the request;
- (f) state the name of the person upon whom, and an address at which, notice to the petitioners can be given;
- (g) be in the form prescribed by the Act and *Local Government (Constitution) Regulations 1998* if it is—
 - (i) a proposal to change the method of filling the office of President; or
 - (ii) a submission about changes to wards, the name of a district or ward or the number of Councillors for a district or ward.

(2) Following the presentation of a petition a member may move that the Council receive the petition and refer it to an appropriate Committee for consideration.

3.6 Deputations

(1) A deputation wishing to be received by the Council or a Committee is to apply in writing to the CEO who is to forward the written request to the President, or the Presiding Member as the case may be.

(2) The President, if the request is to attend a Council meeting, or the Presiding Member of the Committee, if the request is to attend a meeting of a Committee, may either approve the request, in which event the CEO is to invite the deputation to attend a meeting of the Council or Committee as the case may be, or may instruct the CEO to refer the request to the Council or Committee to decide by simple majority whether or not to receive the deputation.

- (3) A deputation invited to attend a Council or Committee meeting—
- (a) is not to exceed 3 persons, all of whom may address or respond to specific questions from the members of the Council or Committee; and
 - (b) is not to address the Council or Committee for a period exceeding 15 minutes without the agreement of the Council or the Committee as the case requires.
- (4) Any matter which is the subject of a deputation to the Council or a Committee is not to be decided by the Council or that Committee until the deputation has completed its presentation.

3.7 Confirmation of minutes

- (1) When minutes of a meeting are submitted to an ordinary meeting of the Council or Committee for confirmation, if a member is dissatisfied with the accuracy of the minutes, then he or she is to—
- (a) state the item or items with which he or she is dissatisfied; and
 - (b) propose a motion clearly outlining the alternative wording to amend the minutes.
- (2) Discussion of any minutes, other than discussion as to their accuracy as a record of the proceedings, is not permitted.

3.8 Announcements by the Presiding Member

- (1) At any meeting of the Council or a Committee the Presiding Member may announce or raise any matter of interest or relevance to the business of the Council or Committee, or propose a change to the order of business.
- (2) Any member may move that a change in order of business proposed by the Presiding Member not be accepted and if carried by a majority of members present, the proposed change in order is not to take place.

3.9 Matters for which meeting may be closed to members of the public

For the convenience of members of the public, the Council or Committee may identify by decision any matter on the agenda of the meeting requiring confidential consideration and that matter is to be deferred for consideration as the last item of the meeting.

3.10 Motions of which previous notice has been given

- (1) Unless the Act, Regulations or this local law otherwise provide, a member may raise at a meeting such business as he or she considers appropriate, in the form of a motion, of which notice has been given in writing to the CEO and which has been included in the agenda.
- (2) A notice of motion under subclause (1) is to be given at least 7 clear working days before the meeting at which the motion is moved.
- (3) A notice of motion is to relate to the good government of persons in the district.
- (4) The CEO—
- (a) with the concurrence of the President, may exclude from the agenda any notice of motion deemed to be out of order or likely to involve a breach of this local law or any other written law; or
 - (b) may after consultation with the member who gave notice of the motion make such amendments to the form but not the substance thereof as will bring the notice of motion into due form; and
 - (c) may under his or her name provide relevant and material facts and circumstances pertaining to the notice of motion on such matters as policy, budget and law.
- (5) A motion of which notice has been given is to lapse unless—
- (a) the member who gave notice thereof, or some other member authorised by him or her in writing moves the motion when called on; or
 - (b) the Council on a motion agrees to defer consideration of the motion to a later stage or date.
- (6) If a notice of motion is given and lapses in the circumstances referred to in subclause (5)(a), notice of motion in the same terms or the same effect is not to be given again for at least 3 months from the date of such lapse.

3.11 Urgent business approved by the Presiding Member or by decision

- (1) Subject to subclauses (2) and (3), in cases of extreme urgency or other special circumstance, matters may, with the consent of the Presiding Member, or by decision of the members present, be raised without notice and decided by the meeting.
- (2) Before a matter may be raised under subclause (1) the Presiding Member or a member otherwise seeking to raise the matter is to state why the matter is considered to be of extreme urgency or other special circumstance.
- (3) If a member of the Council or Committee as the case requires, objects to a matter being raised without notice, any decision of the Council or Committee in regard to that matter does not have effect unless it has been made by an absolute majority.

3.12 Attending Committee meetings as an observer

- (1) The President or a Councillor may attend any meeting of a Committee as an observer, even if the President or Councillor is not a member of that Committee.
- (2) A deputy to a member of a Committee appointed under clause 17.2 may attend a meeting of that Committee as an observer, even if the deputy is not acting in the capacity of the member.

(3) The President or Councillor in the case of subclause (1), or deputy to a member attending a Committee meeting as an observer in the case of subclause (2) may, with the consent of the Presiding Member, speak, but cannot vote on any motion before the Committee.

PART 4—PUBLIC ACCESS TO AGENDA MATERIAL

4.1 Inspection entitlement

Members of the public have access to agenda material in the terms set out in the Regulations.

4.2 Confidentiality of information withheld

- (1) Information withheld by the CEO from members of the public under the Regulations, is to be—
- (a) identified in the agenda of a Council or Committee meeting under the item “Matters for which meeting may be closed to members of the public”; and
 - (b) marked “confidential” in the agenda; and
 - (c) kept confidential by members and employees until the Council or Committee resolves otherwise.
- (2) A member or an employee who has—
- (a) confidential information under subclause (1); or
 - (b) information that is provided or disclosed for the purposes of or during a meeting, or part of a meeting, that is closed to the public,

is not to disclose such information to any person other than a member or an employee to the extent necessary for the purpose of carrying out his or her duties.

- (3) Subclause (2) does not prevent a member or employee from disclosing information—
- (a) at a closed meeting;
 - (b) to the extent specified by the Council and subject to such other conditions as the Council determines;
 - (c) that is already in the public domain;
 - (d) to an officer of the Department;
 - (e) to the Minister;
 - (f) to a legal practitioner for the purpose of obtaining legal advice; or
 - (g) if the disclosure is required or permitted by law.

4.3 Media attendance

Media persons are to be permitted to attend meetings of the Council or Committees that are open to the public, in such part of the Council Chamber or meeting room as may be set aside for their accommodation, but must withdraw during any period when the meeting is closed to the public.

4.4 Distinguished visitors

If a distinguished visitor is present at a meeting of the Council or a Committee, the Presiding Member may—

- (a) invite the person to sit beside the Presiding Member or at the meeting table;
- (b) acknowledge the presence of the distinguished visitor at an appropriate time during the meeting; and
- (c) direct that the presence of the distinguished visitor be recorded in the minutes.

PART 5—DISCLOSURE OF INTERESTS

5.1 Disclosure of interests

Disclosure of interests is dealt with in the Act.

PART 6—QUORUM

6.1 Quorum for meetings

The quorum for meetings is dealt with in the Act.

6.2 Loss of quorum during a meeting

- (1) If at any time during the course of a meeting of the Council or a Committee a quorum is not present—
- (a) in relation to a particular matter because of a member or members leaving the meeting after disclosing a financial interest, the matter is adjourned until either—
 - (i) a quorum is present to decide the matter; or
 - (ii) the Minister allows a disclosing member or members to preside at the meeting or to participate in discussions or the decision making procedures relating to the matter under the Act; or
 - (b) because of a member or members leaving the meeting for reasons other than disclosure of a financial interest, the Presiding Member is to suspend the proceedings of the meeting for a period of ten minutes, and if a quorum is not present at the end of that time, the meeting is

deemed to have been adjourned and the Presiding Member is to reschedule it to some future time or date having regard to the period of notice which needs to be given under the Act, Regulations, or this local law when calling a meeting of that type.

- (2) Where debate on a motion is interrupted by an adjournment under subclause (1)(b)—
- (a) the debate is to be resumed at the next meeting at the point where it was so interrupted; and
 - (b) in the case of a Council meeting—
 - (i) the names of members who have spoken on the matter prior to the adjournment are to be recorded in the minutes; and
 - (ii) the provisions of clause 9.5 of this local law apply when the debate is resumed.

PART 7—KEEPING OF MINUTES

7.1 Content of minutes

The content of minutes is dealt with in the Regulations.

7.2 Preservation of minutes

The preservation of minutes is dealt with in the Act.

PART 8—CONDUCT OF PERSONS AT COUNCIL AND COMMITTEE MEETINGS

8.1 Official titles to be used

Members of the Council are to speak of each other in the Council or Committee by their respective titles of President or Councillor. Members of the Council, in speaking of or addressing employees, are to designate them by their respective official titles.

8.2 Members to occupy own seats

- (1) At the first meeting held after each election day, the President is to allocate a position at the Council table to each Member.
- (2) Each Member is to occupy his or her allotted position at each Council meeting.

8.3 Leaving meetings

During the course of a meeting of the Council or a Committee no member is to enter or leave the meeting without first advising the Presiding Member, in order to facilitate the recording in the minutes of the time of entry or departure.

8.4 Adverse reflection

No member of the Council or a Committee is to use offensive or objectionable expressions in reference to any member, employee of the Council, or any other person.

8.5 Recording of proceedings

- (1) No person is to use any electronic, visual or audio recording device or instrument to record the proceedings of the Council or a Committee without the written permission of the Council.
- (2) If the Council gives permission under subclause (1), the Presiding Member is to advise the meeting, immediately before the recording is commenced, that such permission has been given and the nature and extent of that permission.
- (3) If a member of the Council or Committee specifically requests, immediately after their use, that any particular words used by a member be recorded in the minutes, the Presiding Member is to cause the words used to be taken down and read to the meeting for verification and to then be recorded in the minutes.

8.6 Prevention of disturbance

- (1) Any member of the public addressing the Council or a Committee is to extend due courtesy and respect to the Council or Committee and the processes under which they operate and must take direction from the Presiding Member whenever called upon to do so.
- (2) No person observing a meeting, is to create a disturbance at a meeting, by interrupting or interfering with the proceedings, whether by expressing approval or dissent, by conversing or by any other means.

PART 9—CONDUCT OF MEMBERS DURING DEBATE

9.1 Members to rise

Every member of the Council wishing to speak is to indicate by show of hands or other method agreed upon by the Council. When invited by the Presiding Member to speak, members may rise and address the Council through the presiding Member.

9.2 Priority

In the event of two or more members of the Council or a Committee wishing to speak at the same time, the Presiding Member is to decide which member is entitled to be heard first. The decision is not open to discussion or dissent.

9.3 The Presiding Member to take part in debates

Unless otherwise prohibited by the Act, and subject to compliance with procedures for the debate of motions contained in this local law, the Presiding Member may take part in a discussion of any matter before the Council or Committee as the case may be.

9.4 Relevance

Every member of the Council or a Committee is to restrict his or her remarks to the motion or amendment under discussion, or to a personal explanation or point of order.

9.5 Limitation of number of speeches

No member of the Council is to address the Council more than once on any motion or amendment before the Council unless they are the mover of a substantive motion in reply, raising a point of order or making a personal explanation.

9.6 Duration of speeches

All addresses are to be limited to a maximum of 5 minutes. Extension of time is permissible only with the agreement of a simple majority of members present, which is to be given without debate.

9.7 Members not to speak after conclusion of debate

No member of the Council or a Committee is to speak to any question after it has been put by the Presiding Member.

9.8 Members not to interrupt

No member of the Council or a Committee is to interrupt another member of the Council or Committee whilst speaking unless—

- (a) to raise a point of order;
- (b) to call attention to the absence of a quorum;
- (c) to make a personal explanation under clause 10.17; or
- (d) to move a motion under clause 11.1(e).

9.9 Re-opening discussion on decisions

No member of the Council or a Committee is to re-open discussion on any decision of the Council or Committee, except for the purpose of moving that the decision be revoked or changed.

PART 10—PROCEDURES FOR DEBATE OF MOTIONS**10.1 Permissible motions on report recommendations**

A recommendation contained in a report to Council may be adopted without amendment or modification, failing which, it may be—

- (a) rejected by the Council and replaced by an alternative decision; or
- (b) amended or modified and adopted with such amendment or modification; or
- (c) referred back to a Committee or Council for further consideration.

10.2 Motions to be stated

Any member of the Council or a Committee who moves a substantive motion or amendment to a substantive motion is to state the substance of the motion before speaking to it.

10.3 Motions to be supported

No motion or amendment to a substantive motion is open to debate until it has been seconded, or, in the case of a motion to revoke or change the decision made at a Council or a Committee meeting, unless the motion has the support required under the Regulations.

10.4 Unopposed business

- (1) Upon a motion being moved and seconded, the Presiding Member may ask the meeting if any member opposes it.
- (2) If no member signifies opposition to the motion the Presiding Member may declare the motion in subclause (1) carried without debate and without taking a vote on it.
- (3) A motion carried under subclause (2) is to be recorded in the minutes as a unanimous decision of the Council or Committee.
- (4) If a member signifies opposition to a motion the motion is to be dealt with according to this Part.
- (5) This clause does not apply to any motion or decision to revoke or change a decision which has been made at a Council or Committee meeting.

10.5 Only one substantive motion considered

When a substantive motion is under debate at any meeting of the Council or a Committee, no further substantive motion is to be accepted.

10.6 Breaking down of complex questions

The Presiding Member may order a complex question to be broken down and put in the form of several motions, which are to be put in sequence.

10.7 Order of call in debate

The Presiding Member is to call speakers to a substantive motion in the following order—

- (a) the mover to state the motion;
- (b) a seconder to the motion;
- (c) the mover to speak to the motion;

- (d) the seconder to speak to the motion;
- (e) a speaker against the motion;
- (f) a speaker for the motion;
- (g) other speakers against and for the motion, alternating in view, if any; and
- (h) mover takes right of reply which closes debate.

10.8 Limit of debate

The Presiding Member may offer the right of reply and put the motion to the vote if he or she believes sufficient discussion has taken place even though all members may not have spoken.

10.9 Member may require questions to be read

Any member may require the question or matter under discussion to be read at any time during a debate, but not so as to interrupt any other member whilst speaking.

10.10 Consent of seconder required to accept alteration of wording

The mover of a substantive motion may not alter the wording of the motion without the consent of the seconder.

10.11 Order of amendments

Any number of amendments may be proposed to a motion, but when an amendment is moved to a substantive motion, no second or subsequent amendment is to be moved or considered until the first amendment has been withdrawn or lost.

10.12 Amendments must not negate original motion

No amendment to a motion can be moved which negates the original motion or the intent of the original motion.

10.13 Mover of motion may speak on amendment

Any member may speak during debate on an amendment.

10.14 Substantive motion

If an amendment to a substantive motion is carried, the motion as amended then becomes the substantive motion, on which any member may speak and any further amendment may be moved (subject to clause 10.12).

10.15 Withdrawal of motion or amendments

Council or a Committee may, without debate, grant leave to withdraw a motion or amendment upon request of the mover of the motion or amendment and with the approval of the seconder provided that there is no voice expressed to the contrary view by any member, in which case discussion on the motion or amendment is to continue.

10.16 Limitation of withdrawal

Where an amendment has been proposed to a substantive motion, the substantive motion is not to be withdrawn, except by consent of the majority of members present, until the amendment proposed has been withdrawn or lost.

10.17 Personal explanation

No member is to speak at any meeting of the Council or a Committee, except upon the matter before the Council or Committee, unless it is to make a personal explanation. Any member of the Council or Committee who is permitted to speak under these circumstances is to confine the observations to a succinct statement relating to a specific part of the former speech which may have been misunderstood. When a member of the Council or Committee rises to explain, no reference is to be made to matters unnecessary for that purpose.

10.18 Personal explanation—when heard

A member of the Council or a Committee wishing to make a personal explanation of matters referred to by any member of the Council or Committee then speaking, is entitled to be heard immediately, if the member of the Council or Committee then speaking consents at the time, but if the member of the Council or Committee who is speaking declines to give way, the explanation is to be offered at the conclusion of that speech.

10.19 Ruling on questions of personal explanation

The ruling of the Presiding Member on the admissibility of a personal explanation is final unless a motion of dissent with the ruling is moved before any other business proceeds.

10.20 Right of reply

- (1) The mover of a substantive motion has the right of reply. After the mover of the substantive motion has commenced the reply, no other member is to speak on the question.
- (2) The right of reply is to be confined to rebutting arguments raised by previous speakers and no new matter is to be introduced.

10.21 Right of reply provisions

The right of reply is governed by the following provisions—

- (a) if no amendment is moved to the substantive motion, the mover may reply at the conclusion of the discussion on the motion;

- (b) if an amendment is moved to the substantive motion, the mover of the substantive motion is to take the right of reply subject to clause 10.12, at the conclusion of the vote on any amendments;
- (c) the mover of any amendment does not have a right of reply; and,
- (d) once the right of reply has been taken, there can be no further discussion, nor any other amendment and the original motion or the original motion as amended is immediately put to the vote.

PART 11—PROCEDURAL MOTIONS

11.1 Permissible procedural motions

In addition to proposing a properly worded amendment to a substantive motion, it is permissible for a member to move the following procedural motions—

- (a) that the Council or Committee proceed to the next business;
- (b) that the question be adjourned;
- (c) that the Council or Committee now adjourn;
- (d) that the question be now put;
- (e) that the member be no longer heard;
- (f) that the ruling of the Presiding Member be disagreed with; and
- (g) that the Council or Committee meet behind closed doors, if the meeting or part of the meeting to which the motion relates is a matter in respect of which the meeting may be closed to members of the public under the Act.

11.2 No debate on procedural motions

(1) The mover of a motion stated in each of paragraphs (a), (b), (c), (f) and (g) of clause 11.1 may speak to the motion for not more than five minutes, the seconder is not to speak other than to formally second the motion, and there is to be no debate on the motion.

(2) The mover of a motion stated in each of paragraphs (d) and (e) of clause 11.1 may not speak to the motion, the seconder is not to speak other than to formally second the motion, and there is to be no debate on the motion.

11.3 Procedural motions—closing debate—who may move

No person who has moved, seconded, or spoken for or against the substantive motion, or any amendment may move any procedural motion which, if carried, would close the debate on the substantive motion or amendment.

11.4 Procedural motions—right of reply on substantive motion

The carrying of a procedural motion which closes debate on the substantive motion or amendment and forces a decision on the substantive motion or amendment does not deny the right of reply to the mover of the substantive motion.

PART 12—EFFECT OF PROCEDURAL MOTIONS

12.1 Council or Committee to proceed to the next business—effect of motion

The motion in clause 11.1(a), if carried, causes the debate to cease immediately and for the Council or Committee to move to the next business of the meeting. No decision will be made on the substantive motion being discussed, nor is there any requirement for the matter to be again raised for consideration.

12.2 Question to be adjourned—effect of motion

(1) The motion in clause 11.1(b), if carried, causes all debate on the substantive motion or amendment to cease but to continue at a time stated in the motion.

(2) If the motion is carried at a meeting of the Council—

- (a) the names of members who have spoken on the matter are to be recorded in the minutes; and
- (b) the provisions of clause 9.5 apply when the debate is resumed.

12.3 Council or Committee to now adjourn—effect of motion

(1) The motion in clause 11.1(c), if carried, causes the meeting to stand adjourned until it is re-opened at which time the meeting continues from the point at which it was adjourned, unless the Presiding Member or a simple majority of members upon vote, determine otherwise.

(2) Where debate on a motion is interrupted by an adjournment under subclause (1)—

- (a) the debate is to be resumed at the next meeting at the point where it was so interrupted; and
- (b) in the case of a Council meeting—
 - (i) the names of members who have spoken on the matter prior to the adjournment are to be recorded in the minutes; and
 - (ii) the provisions of clause 9.5 apply when the debate is resumed.

12.4 Question to be put—effect of motion

(1) The motion in clause 11.1(d), if carried during discussion of a substantive motion without amendment, causes the Presiding Member to offer the right of reply and then immediately put the matter under consideration without further debate.

(2) The motion in clause 11.1(d), if carried during discussion of an amendment, causes the Presiding Member to put the amendment to the vote without further debate.

(3) The motion in clause 11.1(d), if lost, causes debate to continue.

12.5 Member to be no longer heard—effect of motion

The motion in clause 11.1(e), if carried, causes the Presiding Member to not allow the speaker against whom the motion has been moved to speak to the current substantive motion or any amendment relating to it, except to exercise the right of reply if the person is the mover of the substantive motion.

12.6 Ruling of the Presiding Member disagreed with—effect of motion

The motion in clause 11.1(f), if carried, causes the ruling of the Presiding Member about which this motion was moved, to have no effect and for the meeting to proceed accordingly.

12.7 Council or Committee to meet behind closed doors—effect of motion

(1) Subject to any deferral under clause 3.9 or 3.10 or other decision of the Council or Committee, this motion, if carried, causes the general public and any officer or employee the Council or Committee determines, to leave the room.

(2) While a decision made under this clause is in force the operation of clause 9.5 limiting the number of speeches a member of the Council may make, is suspended unless the Council decides otherwise.

(3) Upon the public again being admitted to the meeting, the Presiding Member, unless the Council or Committee decides otherwise, is to cause the motions passed by the Council or Committee whilst it was proceeding behind closed doors to be read out including the vote of a member or members to be recorded in the minutes in accordance with the Act.

(4) A person who is a Council member, a Committee member, or an employee is not to publish, or make public any of the discussion taking place on a matter discussed behind closed doors, but this prohibition does not extend to the actual decision made as a result of such discussion and other information properly recorded in the minutes.

PART 13—MAKING DECISIONS**13.1 Question—when put**

When the debate upon any question is concluded and the right of reply has been exercised the Presiding Member shall immediately put the question to the Council or the Committee, and, if so desired by any member of the Council or Committee, shall again state it.

13.2 Question—method of putting

If a decision of the Council or a Committee is unclear or in doubt, the Presiding Member shall put the motion or amendment as often as necessary to determine the decision from a show of hands or other method agreed upon so that no voter's vote is secret, before declaring the decision.

PART 14—IMPLEMENTING DECISIONS**14.1 Implementation of a decision**

(1) If a notice of motion to revoke or change a decision of the Council or a Committee is received before any action has been taken to implement that decision, then no steps are to be taken to implement or give effect to that decision until such time as the motion of revocation or change has been dealt with, except that—

(a) if a notice of motion to revoke or change a decision of the Council or a Committee is given during the same meeting at which the decision was made, the notice of motion is of no effect unless the number of members required to support the motion under the Regulations indicate their support for the notice of motion at that meeting; and

(b) if a notice of motion to revoke or change a decision of the Council or a Committee is received after the closure of the meeting at which the decision was made, implementation of the decision is not to be withheld unless the notice of motion has the support in writing, of the number of members required to support the motion under the Regulations.

(2) Implementation of a decision is only to be withheld under subclause (1) if the effect of the change proposed in a notice of motion would be that the decision would be revoked or would become substantially different.

(3) The Council or a Committee shall not vote on a motion to revoke or change a decision of the Council or Committee whether the motion of revocation or change is moved with or without notice, if at the time the motion is moved or notice is given—

(a) action has been taken to implement the decision; or

(b) where the decision concerns the issue of an approval or the authorisation of a licence, permit or certificate, and where that approval or authorisation of a licence, permit or certificate has been put into effect by the Council in writing to the applicant or the applicant's agent by an employee of the Council authorised to do so; without having considered a statement of impact prepared by or at the direction of the CEO of the legal and financial consequences of the proposed revocation or change.

PART 15—PRESERVING ORDER**15.1 The Presiding Member to preserve order**

The Presiding Member is to preserve order, and may call any member or other person in attendance to order, whenever, in his or her opinion, there is cause for so doing.

15.2 Demand for withdrawal

A member at a meeting of the Council or a Committee may be required by the Presiding Member, or by a decision of the Council or Committee, to apologise and unreservedly withdraw any expression which is considered to reflect offensively on another member or an employee, and if the member declines or neglects to do so, the Presiding Member may refuse to hear the member further upon the matter then under discussion and call upon the next speaker.

15.3 Points of order—when to raise—procedure

- (1) Upon a matter of order arising during the progress of a debate, any member may raise a point of order including interrupting the speaker.
- (2) Any member, who is speaking when a point of order is raised, is to immediately stop speaking and be seated while the Presiding Member listens to the point of order.
- (3) A member raising a point of order is to specify one of the grounds of the breach of order before speaking further on the matter.
- (4) A member who is expressing a difference of opinion or contradicting a speaker is not to be taken as raising a point of order.

15.4 Points of order—when valid

The following are to be recognised as valid points of order—

- (a) that the discussion is of a matter not before the Council or Committee;
- (b) that offensive or insulting language is being used; and
- (c) drawing attention to the violation of any written law, or policy of the local government, provided that the member making the point of order states the written law or policy believed to be breached.

15.5 Points of order—ruling

- (1) The Presiding Member is to give a decision on any point of order which is raised by either upholding or rejecting the point of order.
- (2) If a member persists in any conduct that the Presiding Member had ruled out of order under this clause, the Presiding Member may direct the member to refrain from taking part in the debate of that item, other than by voting and the member must comply with that direction.

15.6 Points of order—ruling conclusive, unless dissent motion is moved

The ruling of the Presiding Member upon any question of order is final, unless a majority of the members support a motion of dissent with the ruling.

15.7 Points of order take precedence

Notwithstanding anything contained in this local law to the contrary, all points of order take precedence over any other discussion and until decided, suspend the consideration and decision of every other matter.

15.8 Precedence of Presiding Member

- (1) When the Presiding Member rises during the progress of a debate, any member of the Council or Committee then speaking, or offering to speak, is to immediately sit down and every member of the Council or Committee present shall preserve strict silence so that the Presiding Member may be heard without interruption.
- (2) Subclause (1) is not to be used by the Presiding Member to exercise the right provided in clause 9.3, but to preserve order.

15.9 Right of the Presiding Member to adjourn without explanation to regain order

- (a) If a meeting ceases to operate in an orderly manner, the Presiding Member may use discretion to adjourn the meeting for a period of up to 15 minutes without explanation, for the purpose of regaining order.
- (b) Upon resumption, debate is to continue at the point at which the meeting was adjourned.
- (c) If, at any one meeting, the Presiding Member has cause to further adjourn the meeting, such adjournment may be to a later time on the same day or to any other day.
- (d) Where debate of a motion is interrupted by an adjournment under subclause (a), in the case of a Council meeting—
 - (i) the names of members who have spoken in the matter prior to the adjournment are to be recorded; and
 - (ii) the provisions of clause 9.5 apply when the debate is resumed.

PART 16—ADJOURNMENT OF MEETING**16.1 Meeting may be adjourned**

The Council or a Committee may decide to adjourn any meeting to a later time on the same day, or to any other day.

16.2 Limit to moving adjournment

No member is to move or second more than one motion of adjournment during the same sitting of the Council or Committee.

16.3 Unopposed business—motion for adjournment

On a motion for the adjournment of the Council or Committee, the Presiding Member, before putting the motion, may seek leave of the Council or Committee to proceed to the transaction of unopposed business.

16.4 Withdrawal of motion for adjournment

A motion or an amendment relating to the adjournment of the Council or a Committee may be withdrawn by the mover, with the consent of the seconder, except that if any member objects to the withdrawal, debate of the motion is to continue.

16.5 Time to which adjourned

The time to which a meeting is adjourned for want of a quorum, by the Presiding Member to regain order, or by decision of the Council, may be to a specified hour on a particular day or to a time which coincides with the conclusion of another meeting or event on a particular day.

PART 17—COMMITTEES OF THE COUNCIL**17.1 Establishment and appointment of Committees**

A Committee is not to be established except on a motion setting out the proposed functions of the Committee and either—

- (a) the names of the Council members, employees and other persons to be appointed to the Committee; or
- (b) the number of Council members, employees and other persons to be appointed to the Committee and a provision that they be appointed by a separate motion.

17.2 Appointment of deputy Committee members

(1) The Council may appoint one or more persons to be the deputy or deputies, as the case may be, to act on behalf of a member of a Committee whenever that member is unable to be present at a meeting thereof and where two or more deputies are so appointed they are to have seniority in the order determined by the Council.

(2) Where a member of a Committee does not attend a meeting thereof a deputy of that member, selected according to seniority, is entitled to attend that meeting in place of the member and act for the member, and while so acting has all the powers of that member.

17.3 Presentation of Committee reports

When the report or recommendations of a Committee are placed before the Council, the adoption of recommendations of the Committee is to be moved by—

- (a) the Presiding Member of the Committee if the Presiding Member is a Council Member and is in attendance; or
- (b) a Council member who is a member of the Committee, if the Presiding Member of the Committee is not a Council member, or is absent; or
- (c) otherwise, by a Council member who is not a member of the Committee.

17.4 Reports of Committees—questions

Subject to clause 10.1, when a recommendation of any Committee is submitted for adoption by the Council, any member of the Council may direct questions directly relating to the recommendations through the Presiding Member to the Presiding Member or to any member of the Committee in attendance.

17.5 This local law applies to Committees

Where not otherwise specifically provided, this local law applies generally to the proceedings of Committees, except that the following do not apply to the meeting of a Committee—

- (a) clause 8.2, in regard to seating;
- (b) clause 9.1, in respect of the requirement to rise; and
- (c) clause 9.5, limitation on the number of speeches.

PART 18—ADMINISTRATIVE MATTERS**18.1 Suspension of this local law**

(1) The Council or a Committee may decide, by simple majority vote, to suspend temporarily one or more clauses of this local law.

(2) The mover of a motion to suspend temporarily any one or more clauses of this local law is to state the clause or clauses to be suspended, and the purpose of the suspension.

18.2 Cases not provided for in this local law

The Presiding Member is to decide questions of order, procedure, debate, or otherwise in cases where this local law and the Act and Regulations are silent. The decision of the Presiding Member in these cases is final, except where a motion is moved and carried under clause 11.1(f).

PART 19—ENFORCEMENT**19.1 Penalty for breach**

A person who breaches a provision of this local law commits an offence.

Penalty: \$1,000 and where the offence is of a continuing nature, a daily penalty of \$100.

19.2 Who can prosecute

Who can prosecute is dealt with in the Act.

Dated this 17th day of February, 2021.

The Common Seal of the Shire of Gnowangerup was affixed by authority of a resolution of the Council in the presence of—

Cr. FIONA GAZE, President.

IAN GRAHAM, Acting Chief Executive Officer.

LG302

LOCAL GOVERNMENT ACT 1995

Shire of Narembeen

FENCING AMENDMENT LOCAL LAW 2021

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Narembeen resolved on 1 February 2021 to make the following local law.

PART 1—PRELIMINARY

1. Citation

This local law may be cited as the *Shire of Narembeen Fencing Amendment Local Law 2021*.

2. Commencement

The local law comes into operation on the day it is published in the *Government Gazette*.

3. Principal local law

This local law amends the *Shire of Narembeen Fencing Local Law 2020* as published in the *Government Gazette* on 16 June 2020.

4. Clause 1.5 amended

Clause 1.5 is amended as follows—

- (a) in the definition for **AS** or **AS/NZS** replace ‘the Shire of Morawa’ with ‘Shire of Narembeen’, and
- (b) insert in alphabetical order—
secondary setback area means the area between the building line of a lot and a side boundary of that lot which adjoins a thoroughfare.

5. Clause 4.4 amended

In clause 4.4 delete subclause (2) and replace it with—

- (2) Screening is not to be affixed to a fence so that the maximum combined height of the fence and screening exceeds 2100mm.

6. Clause 5.2(3)(b) amended

In clause 5.2(3)(b) delete ‘3m’ and replace it with ‘3000mm’.

7. Clause 7.1 amended

In clause 7.1 replace the words ‘Where an authorised person exercises a discretion pursuant to this local law, an affected person has a right of objection and appeal under Division 1 of Part 9 of the *Local Government Act 1995*’ with ‘Where the local government or an authorised person makes a decision whether to grant, renew, vary or cancel any licence, permit, approval or other means of authorisation under this local law, the provisions of Part 9 Division 1 of the *Local Government Act 1995*, and regulation 33 of the *Local Government (Functions and General) Regulations 1996*, apply to that decision.’

8. Clause 8.3 amended

Clause 8.3 is amended as follows—

- (a) number the current clause as ‘(1)’, and
- (b) after subclause (1) insert—
 - (2) An offence against a clause specified in Schedule 4 is a prescribed offence for the purposes of section 9.16(1) of the Act.

9. Schedule 4 amended

In Item 12 of schedule 4 replace ‘2.1m’ in column 3 with ‘2100mm’.

Dated 17 day of February 2021.

The Common Seal of the Shire of Narembeen was affixed by authority of a resolution of Council in the presence of—

RHONDA COLE, Shire President.
DAVID BLURTON, Acting Chief Executive Officer.

PERTH, FRIDAY, 26 MARCH 2021 No. 55

SPECIAL

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LOCAL GOVERNMENT ACT 1995

CITY OF ROCKINGHAM

FENCING LOCAL LAW 2020

LOCAL GOVERNMENT ACT 1995

CITY OF ROCKINGHAM

FENCING LOCAL LAW 2020

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LOCAL GOVERNMENT ACT 1995

CITY OF ROCKINGHAM

FENCING LOCAL LAW 2020

Under the powers conferred by the *Local Government Act 1995* and the *Dividing Fences Act 1961* and under all other enabling powers, the Council of the City of Rockingham resolved on 23 February 2021 to make the following local law.

PART 1—PRELIMINARY

1.1 Title

This is the *City of Rockingham Fencing Local Law 2020*.

1.2 Commencement

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

1.3 Repeal

The *City of Rockingham Fencing Local Law 2000* published in the *Government Gazette* on 21 March 2001 is repealed.

1.4 Application of local law

This local law applies throughout the district.

1.5 Terms used

In this local law unless the context requires otherwise—

Act means the *Local Government Act 1995*;

adversely affect land has the meaning given to it in the *Building Act 2011*;

AS/NZS means an Australian Standard published by the Standards Association of Australia and as amended from time to time;

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

commercial lot means a lot where a commercial use—

- (a) is or may be permitted under a local planning scheme; and
- (b) is or will be the predominant use of the lot;

dangerous, in relation to any fence, means—

- (a) an electrified fence, or one containing barbed or razor wire, other than a fence—
 - (i) in respect of which a permit has been issued and is current; or
 - (ii) that is constructed and maintained in accordance with this local law;
- (b) a fence containing exposed broken glass, or any other potentially harmful projection or material; or
- (c) a fence which is likely to collapse or fall, or part of which is likely to collapse or fall, from any cause;

district means the district of the local government;

dividing fence has the meaning given to it in the *Dividing Fences Act 1961*;

electrified fence means a fence carrying or designed to carry an electric charge;

estate boundary fence means a fence around the external boundary of a subdivision of land to indicate the extent of that subdivision and includes any special works or construction that identifies the entrance to that land;

fence means any structure that is used or functions as a barrier, irrespective of where it is located, and includes a gate that separates the road reserve and a lot adjacent to the road reserve;

front boundary means the boundary that separates a thoroughfare and the front of a lot;

front fence means a fence in the front setback area of a lot;

front setback means the horizontal distance between the front boundary and a wall of a building, measured at a right angle to the front boundary;

height in relation to a fence, means the vertical distance between—

- (a) the top of the fence at any point; and
- (b) the ground level or, where the ground levels on each side of the fence are not the same, the higher ground level immediately below that point;

industrial lot means a lot where an industrial use—

- (a) is or may be permitted under a local planning scheme; and
- (b) is or will be the predominant use of the lot;

land includes a house, building, work or structure, in or on the land;

local government means the City of Rockingham;

local planning scheme means a local planning scheme of the local government;

lot means a defined portion of land for which a separate certificate of title has been issued and includes a strata lot;

natural ground level, in relation to a development, means—

- (a) the level approved, for the purposes of the development, by the local government, under a local planning scheme; or
- (b) in any other case, the level which existed immediately before the commencement of the development (including any site works);

open fence means a fence—

- (a) that has continuous vertical gaps with a minimum gap width of 50mm with the area of gaps being not less than one third of the area of the fence face; and
- (b) the lower portion of which may be closed up to a height of 1.2m above the natural ground level immediately in front of the fence but, where the natural ground level slopes, the height of the closed portion is to be no more than 1.2m from the base of the fence;

permit means a permit under Part 5;

person has the meaning given to it in the *Interpretation Act 1984*;

planning permit means a permit given under a local planning scheme;

public place means a place to which the public has access;

reserve means land (including a parkland or foreshore) in or adjoining the district that is—

- (a) set apart for the use and enjoyment of the public; or
- (b) acquired for public purposes and vested in or under the care, control and management of the local government;

residential lot means a lot where a residential use—

- (a) is or may be permitted under a local planning scheme; and
- (b) is or will be the predominant use of the lot;

RMD zoned lot means single house standards for medium density housing;

rural lot means a lot where a rural use—

- (a) is or may be permitted under a local planning scheme; and
- (b) is or will be the predominant use of the lot;

secondary frontage, in the case of a lot that has a frontage and access to more than one road, means the longer or longest of the boundaries that separates the lot from a road reserve;

special residential lot means a lot within a special residential zone under a local planning scheme;

special rural lot means a lot within a special rural zone under a local planning scheme; and

sufficient fence means a fence described in clause 2.2.

1.6 Interpretation

(1) Nothing in this local law affects a provision in any other written law in respect of a building licence, or other approval or authorisation that might be required for a fence.

(2) In the event of a conflict between this local law and the local planning scheme, the provisions of the local planning scheme prevail.

PART 2—FENCING—GENERAL

2.1 Dividing fences

(1) Unless by agreement between the owners of adjoining properties, a person—

- (a) must not construct or alter a dividing fence on a lot that does not satisfy the requirements of a sufficient fence;
- (b) must maintain a dividing fence in a condition which satisfies the requirements of a sufficient fence; or

(c) must not alter the level of the ground adjoining the boundary so as to—

- (i) adversely affect land on either side of the boundary; or
- (ii) change the height of a dividing fence,

unless the dividing fence is altered, reconstructed, supported or relocated so as to satisfy the requirements of a sufficient fence.

(2) An agreement in respect of a dangerous fence is taken not to be an agreement between owners of adjoining properties for the purposes of clause 2.1(1).

2.2 Sufficient fence

(1) Subject to subclauses (2) and (3), a sufficient fence—

- (a) on a residential lot or a special residential lot is a dividing fence constructed and maintained in accordance with the requirements of Schedule 1.
- (b) on a commercial lot or an industrial lot is a dividing fence constructed and maintained in accordance with the requirements of Schedule 2; and
- (c) on a rural lot or a special rural lot is a dividing fence constructed and maintained in accordance with the requirements of Schedule 3.

(2) Where a fence is constructed on or near the boundary between the residential lot, or a special residential lot, and any of the following—

- (a) an industrial lot;
- (b) a commercial lot;
- (c) a rural lot; or
- (d) a special rural lot,

a sufficient fence is a dividing fence constructed and maintained in accordance with the requirements of Schedule 1.

(3) Where—

- (a) the zoning of a lot is changed from Rural to Residential under a local planning scheme; and
- (b) immediately before that zoning change a dividing fence on that lot is a sufficient fence,

the requirements of Schedule 1 are not to apply to that dividing fence until a residential use becomes the predominant use for that lot.

2.3 Fences within front setback—permit requirement

(1) A person must not, without a permit, construct a fence greater than 1.2m in height within the front setback area of a residential lot unless—

- (a) the fence is constructed and maintained in accordance with the requirements of Schedule 1; or
- (b) the fence is a side boundary fence which uniformly slopes down from no more than 1.8m to no more than 1.2m in height over a maximum distance of 1.5m from the start of the front setback area from the building to the front of the lot.

(2) A person must not, without a permit construct a fence greater than 0.9m in height within the front setback area of RMD zoned lot unless—

- (a) the fence is constructed and maintained in accordance with the requirements of Schedule 1; or
- (b) the fence is a side boundary fence which uniformly sloped down from no more than 1.8m to no more than 0.9m in height over a maximum distance of 1.5m from the start of the front setback area from the building to the front of the lot.

2.4 Fences on secondary frontages

Subject to clauses 2.3 and 2.5, a person must not, without a permit, construct a fence on any secondary frontage of a residential lot unless the fence is a sufficient fence.

2.5 Sightlines at vehicle access point

Fences are to be truncated or reduced to no higher than 0.75m, within 1.5m where walls, fences and other structures adjoin vehicle access points where a driveway meets a public street and where two streets intersect.

2.6 Maintenance of fences

(1) This clause applies to a fence that is—

- (a) a front fence; or
- (b) a dividing fence that separates a lot and a thoroughfare.

(2) An owner or occupier of a lot on which a fence is constructed must maintain the fence in good condition so as to prevent it from becoming dangerous, dilapidated, unsightly, or prejudicial to the amenity of the locality.

(3) Repairs to estate boundary fence—

- (1) An owners or occupier of a lot adjacent to an estate boundary fence must, where that fence is damaged, dilapidated or in need of repair, ensure that—
 - (a) it is repaired or replaced with the same or similar materials with which it was first constructed; and

- (b) it is repaired or replaced with materials of the same colour as the remainder of the estate boundary fence; and
- (c) so far as practicable the repaired or replaced section is the same as the original fence.

2.7 Prohibited fencing materials

- (1) A person must not use broken glass in the construction of a fence.
- (2) Except in accordance with a permit, a person must not use razor wire or other material with spiked or jagged projections in the construction of a fence unless the fence is a sufficient fence.

2.8 Gates in fences

A person must not construct or maintain on a lot a gate—

- (a) in a dividing fence that abuts a thoroughfare, road reserve, pedestrian access way, right of way, reserve, local government property or public property—without a permit or unless the local government has otherwise approved the access; or
- (b) in any other dividing fence—unless the gate opens into the lot or unless it slides parallel to, and on the inside of, the dividing fence.

PART 3—TENNIS COURT FENCING

3.1 Tennis court fencing

- (1) This clause does not apply to a rural lot.
- (2) A person shall not erect a fence around or partly around a tennis court on a lot unless—
 - (a) the fence is less than 3.6m in height;
 - (b) the whole of the fence is at least 900mm from the boundary between the lot on which the tennis court is located and the adjoining lot or if it is less than 900mm, the owner of the adjoining lot has first been given the opportunity to make submissions to the local government on the location of the fence; and
 - (c) the fence is constructed of chain link fabric mesh and is 50mm x 2.5mm poly-vinyl chloride coated or galvanised, and is erected in accordance with the manufacturer's specification and any applicable Australian Standard, or if there is no applicable specification or Australian Standard, in accordance with industry best practice for that type of fence.

PART 4—ELECTRIFIED, BARBED AND RAZOR WIRE FENCES

4.1 Requirement for a permit

- (1) An owner or occupier of a lot must not—
 - (a) have or use an electrified fence on that lot—
 - (i) without first obtaining a permit; and
 - (ii) except in accordance with that permit; or
 - (b) have a fence constructed wholly or partly of barbed or razor wire on that lot (unless it is a sufficient fence)—
 - (i) without first obtaining a permit; and
 - (ii) except in accordance with that permit.
- (2) Clause 4.1(1) does not apply to a fence on a rural lot or a special rural lot where the keeping of stock is permitted and the fence is necessary for stock control.
- (3) A permit to have and use an electrified fence on a lot cannot be issued—
 - (a) if the lot is, or abuts, a residential lot;
 - (b) unless the fence will comply with AS/NZS 3014:2003 Electrical installations—Electric Fences as amended from time to time; and
 - (c) unless the fence is rendered inoperable during the hours of business operations, if any, on the lot.
- (4) A permit to have on a lot a fence constructed wholly or partly of barbed or razor wire cannot be issued unless—
 - (a) the fence is proposed to be within 3m of the boundary of the lot; or
 - (b) the barbed or razor wire used in the construction of the fence is to be higher than 2m but not more than 2.4m above the natural ground level.

PART 5—PERMITS

5.1 Application for a permit

- (1) An owner or occupier of land may apply to the local government for a permit under this Part.
- (2) An application for a permit must—
 - (a) be in the form (if any) determined by the local government;
 - (b) include—
 - (i) a written consent signed by the owner of the land on which the proposed fence is to be located—unless the applicant is the owner of that land; and
 - (ii) any further information that may be required by the local government; and

- (c) be accompanied by any fee imposed by the local government under sections 6.16 to 6.19 of the Act.

5.2 Determining an application

- (1) The local government may refuse to consider an application that does not comply with clause 5.1.
- (2) The local government may—
- (a) approve an application, subject to any conditions that it considers to be appropriate; or
 - (b) refuse an application.
- (3) In determining whether to grant the consent referred to in subclause (1), the local government may consider, in addition to any other matter that it is authorised to consider, whether the erection or retention of the fence would have an adverse effect on—
- (a) the safe or convenient use of any land; or
 - (b) the safety or convenience of any person; or
 - (c) the orderly and proper planning of the district.
- (4) If the local government approves an application, it is to issue its permit in writing to the applicant.
- (5) The local government may vary a condition to which a permit is subject by giving written notice to the applicant and the varied condition takes effect 7 days after that notice is given.

5.3 Revocation of a permit

The local government may revoke a permit if—

- (a) the owner (or the occupier with the owner's written consent) requests the local government to do so;
- (b) the fence to which the permit relates is being, or has been, demolished and is not proposed to be, or has not been, rebuilt for a period of at least 6 months;
- (c) the circumstances are such that the permit could not be issued under this local law; or
- (d) the owner or occupier fails to comply with a condition of the permit or breaches a provision of this local law in respect of the fence that is the subject of the permit.

PART 6—OBJECTIONS AND REVIEW

6.1 Objection and review rights

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

- (a) to refuse an application for a permit;
- (b) to impose or vary a condition of a permit; or
- (c) to revoke a permit.

PART 7—ENFORCEMENT

7.1 Offences and general penalty

(1) A person who fails to do anything required or directed to be done under this local law, or who does anything which under this local law that person is prohibited from doing commits an offence.

(2) A person who commits an offence under this local law is liable, on conviction, to a penalty not less than \$500 and not exceeding \$5,000 and, if the offence is of a continuing nature, to an additional penalty not exceeding \$500 for each day or part of a day during which the offence has continued.

7.2 Prescribed offences

(1) An offence against a clause specified in Schedule 4 is a prescribed offence for the purposes of section 9.16(1) of the Act.

(2) The amount of the modified penalty for a prescribed offence is that specified adjacent to the clause in Schedule 4.

7.3 Form of notices

For the purposes of this local law—

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

SCHEDULE 1—A SUFFICIENT FENCE ON A RESIDENTIAL OR SPECIAL RESIDENTIAL LOT

[Clause 2.2(1)(a)]

1. On a residential or special residential lot, a sufficient fence is a dividing fence that—

- (a) is constructed of—
 - (i) corrugated fibre-reinforced pressed cement sheeting;
 - (ii) timber pickets;

- (iii) brick, stone or concrete;
 - (iv) factory coloured sheet metal post and panelled fence; or
 - (v) any combination of the materials described in paragraphs (i)-(iv); and
- (b) in the case of a front fence—
- (i) is 1.2m or less in height; or
 - (ii) is between 1.2m and 1.8m in height; and is an open fence above 1.2m; and
 - (iii) if the fence is a side boundary fence that uniformly slopes down from no more than 1.8m to no more than 1.2 m in height over a maximum distance of 1.5m from the start of the front set back area from the building to the front of the lot;
- (c) in the case of a front fence for a RMD zoned lot, it is as per clause 2.3;
- (d) in the case of any other dividing fence—is between 1.75m and 1.85m in height, and to which an extension of lattice or other permeable material as agreed between the owner or occupiers of adjoining properties parties may be added so that the total height of the fence is a maximum of 2.1m; and
- (e) in the case of a dividing fence that is not constructed on the level of the ground adjoining the boundary, is supported by a retaining wall for which a building permit has been granted under section 20 of the *Building Act 2011*.

SCHEDULE 2—A SUFFICIENT FENCE ON A COMMERCIAL OR INDUSTRIAL LOT

[Clause 2.2(1)(b)]

1. This Schedule does not apply to a front fence.
2. On a commercial or industrial lot, a sufficient fence is a dividing fence that—
 - (a) is constructed of—
 - (i) at a minimum black PVC coated galvanised link mesh, and is no higher than 2.0m unless it is topped with up to 3 strands of barbed wire to a total height of no more than 2.4m;
 - (ii) fibre reinforced cement sheets; or
 - (iii) painted or galvanized steel or aluminium sheeting; or
 - (iv) colourbond; or
 - (v) timber, brick, stone or concrete; and
 - (b) is no more than 2.4m in height; and
 - (c) in the case of a dividing fence that is not constructed on the level of the ground adjoining the boundary, is supported by a retaining wall for which a building permit has been granted under section 20 of the *Building Act 2011*.

SCHEDULE 3—A SUFFICIENT FENCE ON A RURAL OR SPECIAL RURAL LOT

[Clause 2.2(1)(c)]

1. On a rural or special rural lot, a sufficient fence is—
 - (a) in all cases is at least 1.2m in height so as to prevent stock passing through and meets the following specifications—
 - (i) post and wire construction with at least five wires, with the lower wires spaced closer together than the higher wires and each wire connected to posts in all cases; or
 - (ii) post and rail construction, with at least three rails connected to posts in all cases; and
 - (b) in the case of a dividing fence that is not constructed on the level of the ground adjoining the boundary, is supported by a retaining wall for which a building permit has been granted under section 20 of the *Building Act 2011*.

SCHEDULE 4—PRESCRIBED OFFENCES AND MODIFIED PENALTIES

[Clause 7.2]

Item No.	Clause No.	Nature of Offence	Modified Penalty (\$)
Part 2—Fencing—general			
1	2.1(1)(a)	Constructing or altering a dividing fence which is not a sufficient fence	250
2	2.1(1)(b)	Failing to maintain a fence in a condition to satisfy requirements of a sufficient fence	250
3	2.1(1)(c)	Altering ground level of a fence without satisfying the requirements of a sufficient fence	250

Item No.	Clause No.	Nature of Offence	Modified Penalty (\$)
4	2.3	Constructing without a permit a fence higher than 1.2m within the front setback which is not an open fence	250
5	2.4	Constructing without permit a fence which is not a sufficient fence on a secondary frontage	250
6	2.5	Constructing a fence adjacent to an access point without a truncation	250
7	2.6(2)	Failure to maintain a fence in good condition to prevent fence becoming dangerous, dilapidated, unsightly	250
8	2.7(1)	Using broken glass in construction of a fence	250
9	2.7(2)	Using barbed or razor wire, spiked or jagged projections in fence construction without permit	250
10	2.8(a)	Constructing or maintaining a gate in a fence opening on to local government property or a thoroughfare without approval or permit	250
11	2.8(b)	Constructing or maintaining a gate in a fence not opening into the lot or by sliding parallel and on inside of fence	250
Part 3—Tennis court fencing			
12	3.1(2)	Constructing tennis court fencing in contravention of local law	250
Part 4—Electrified, barbed and razor wire fences			
13	4.1(1)(a)	Having and using an electrified fence without a permit	250
14	4.1(1)(b)	Having and using a barbed or razor wire fence without a permit	250
15		Other offences not specified	250

Dated 3 March 2021.

The Common Seal of the City of Rockingham was affixed by authority of a resolution of the Council in the presence of—

BARRY SAMMELS, Mayor.
MICHAEL PARKER, Chief Executive Officer.

LOCAL GOVERNMENT ACT 1995

CITY OF CANNING

PARKING AMENDMENT LOCAL LAW 2021

Under the powers conferred by the *Local Government Act 1995*, and all other powers enabling it, the Council of the City of Canning resolved on 16 March 2021 to make the following local law.

1. Citation

This local law is cited as the *City of Canning Parking Amendment Local Law 2021*.

2. Commencement

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

3. Principal local law

This local law amends the *City of Canning Parking Local Law 2010*, published in the *Government Gazette* on 17 December 2010.

4. Clause 1.5 amended

In clause 1.5—

- (a) delete the definition of “**ACROD sticker**”;
- (b) in the appropriate alphabetical position, insert—
“**disability parking permit**” has the meaning given in the *Local Government (Parking for People with Disabilities) Regulations 2014*; and
- (c) in the definition of “**sign**”, add the words ‘yellow or white line,’ after ‘mark,’.

5. Clause 5.9(3) replaced

Clause 5.9(3) is replaced with—

- (3) A driver may park a vehicle in a parking bay (except in a parking area for people with disabilities) for twice the length of time allowed, provided that—
 - (a) the driver’s vehicle displays a disability parking permit; and
 - (b) a person with disabilities to which that disability parking permit relates is either the driver or a passenger in the vehicle.

6. Clause 6.2(1) replaced

Clause 6.2(1) is replaced with—

- (1) This clause applies to a driver if—
 - (a) the driver’s vehicle displays a disability parking permit; and
 - (b) a person with a disability is either the driver or a passenger in the vehicle.

7. Clause 6.11(1) amended

In clause 6.11(1) replace ‘form’ with ‘from’.

8. Clause 9.2(3) replaced

Clause 9.2(3) is replaced with—

- (3) Any person who commits an offence under this local law shall be liable, upon conviction, to a penalty not less than \$500 and not exceeding \$5,000, and if the offence is of a continuing nature, to an additional penalty not exceeding \$500 for each day or part of a day during which the offence has continued.

9. Schedule 2 amended

In the fourth column of the table in Schedule 2—

- (a) replace all instances of ‘60’ with ‘100’ and
- (b) replace all instances of ‘80’ with ‘120’.

10. Schedule 3 amended

In Forms 1, 2 and 3 of Schedule 3, replace ‘*Local Government (Parking for Disabled Persons) Regulations 1988*’ with ‘*Local Government (Parking for People with Disabilities) Regulations 2014*’.

Dated this 19th of March 2021.

The Common Seal of the City of Canning was affixed by authority of a resolution of the Council in the presence of—

PATRICK HALL, Mayor.
ATHANASIOS KYRON, Chief Executive Officer.

LG302

LOCAL GOVERNMENT ACT 1995

Town of Victoria Park

PENALTY UNITS LOCAL LAW 2021

Under the powers conferred by the *Local Government Act 1995* and by all other powers the Council of the Town of Victoria Park resolved to make the following local law on the 16th February 2021.

PART 1—PRELIMINARY

1. Citation

This local law may be cited as the *Town of Victoria Park Penalty Units Local Law 2021*.

2. Commencement

This local law commences on—

(a) 1 July 2021; or

(b) the fourteenth day following its publication in the *Government Gazette*,

whichever is the later.

3. Purpose and Effect

(1) The purpose of this local law is to prescribe the value of a penalty unit for the purposes of modified penalties expressed in penalty units under other local laws.

(2) The effect of this local law is to set the value of a penalty unit for the purposes of other local laws within the district.

4. Application

This local law applies throughout the district.

5. Interpretation

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

Act means the *Local Government Act 1995*;

district means the district of the local government;

local government means the Town of Victoria Park; and

local law means a local law made by the local government.

(2) Any other term or expression used in this local law and not defined has the meaning given to it in the Act.

PART 2—PENALTY UNIT

6. Calculation of modified penalty

If a local law expresses a modified penalty as a number of penalty units, the monetary value of the modified penalty is the number of dollars obtained by multiplying the value of the penalty unit by the number of penalty units.

7. Value of penalty unit

The value of a penalty unit is \$10.00.

Dated the 12th day of March, 2021.

Under the powers conferred by the *Local Government Act 1995* and by all other powers, the Council of the Town of Victoria Park resolved to make the following local law on the 16th February 2021.

The Common Seal of the Town of Victoria Park was affixed by the authority of a resolution of the Council in the presence of—

KAREN VERNON, Mayor.
ANTHONY VULETA, Chief Executive Officer.

LG301

LOCAL GOVERNMENT ACT 1995

DOG ACT 1976

City of Greater Geraldton

DOGS AMENDMENT LOCAL LAW 2021

Under the powers conferred by the *Local Government Act 1995*, the *Dog Act 1976* and all other powers enabling it, the Council of the City of Greater Geraldton resolved on 23 March 2021 to make the following local law—

1. Citation

This local law is cited as the *City of Greater Geraldton Dogs Amendment Local Law 2021*.

2. Commencement

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

3. Principal local law

This local law amends the *City of Greater Geraldton Dogs Local Law 2020* as published in the *Government Gazette* on 11 September 2020.

4. Clause 2.1(1)(e) deleted

Clause 2.1(1)(e) is deleted.

5. Clause 3.13(2)(c) amended

In clause 3.13(2)(c) the words “in the opinion of the local government” are deleted.

Dated 24 March 2021.

The Common Seal of the City of Greater Geraldton was affixed by authority of a resolution of the Council in the presence of—

SHANE VAN STYN, Mayor.
ROSS McKIM, Chief Executive Officer.

PERTH, TUESDAY, 30 MARCH 2021 No. 59

SPECIAL

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LOCAL GOVERNMENT ACT 1995

TOWN OF VICTORIA PARK

FENCING LOCAL LAW 2021

LOCAL GOVERNMENT ACT 1995

TOWN OF VICTORIA PARK

FENCING LOCAL LAW 2021

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UNDER CLAUSE 14**

LOCAL GOVERNMENT ACT 1995

TOWN OF VICTORIA PARK

FENCING LOCAL LAW 2021

Under the powers conferred by the *Local Government Act 1995* and by all other powers the Council of the Town of Victoria Park resolved to make the following local law on the 16 February 2021.

PART 1—PRELIMINARY**1. Citation**

This local law may be cited as the *Town of Victoria Park Fencing Local Law 2010*.

2. Commencement

This local law commences on—

- (a) 1 July 2021; or
- (b) fourteen days following its publication in the *Government Gazette*;

whichever is the latest.

3. Purpose and effect

(1) The purpose of this local law is to prescribe what constitutes a sufficient fence and the standard for the construction of fences throughout the district.

(2) The effect of this local law is to establish the minimum requirements for fencing within the district.

4. Repeal and transitional provisions

The local law cited as the *Town of Victoria Park Local Laws Relating to Fencing* published in the *Government Gazette* on 22 September 2000 is repealed.

5. Application

This local law applies throughout the district.

6. Definitions and interpretation

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

applicant means a person who makes an application for approval under this local law;

approval or approval by the local government means an approval granted under Part 5 of this local law.

AS/NZS 1170.0:2002 Structural design actions—general principles means the Australian Standard for structural design actions—general principles.

AS/NZS 3016-2002 Electrical installations—Electricity security fences means the Australian Standard for Electrical installations—Electric security fences.

Australian Standard means an Australian Standard published by Standards Australia as amended from time to time;

authorised person means a person appointed under section 9.10 of the *Local Government Act 1995* to perform any of the functions of an authorised person under this local law;

barbed wire means a wire or strand of wires having small pieces on sharply pointed wire twisted around it at short intervals and includes other materials with spiked or jagged projections;

boundary fence means a fence, other than a dividing fence, that separates private land from land that is local government property or a thoroughfare whether it is on the common boundary of the adjoining private land and local government property or thoroughfare or on a line other than the common boundary;

building permit has the meaning given to it in the *Building Act 2011*;

CEO means the Chief Executive Officer of the local government;

dangerous in relation to any fence means—

- (a) an electrified fence other than a fence approved by the local government under this local law or erected and maintained in accordance with this local law;
- (b) a fence containing barbed wire other than a fence erected and maintained in accordance with this local law;
- (c) a fence containing exposed broken glass, asbestos fibre, razor wire or any other potentially harmful projection or material;
- (d) a fence which is likely to collapse or fall, or part of which is likely to collapse or fall, from any cause; or
- (e) a fence that has become dangerous through lack of maintenance or repair;

district means the district of the local government;

dividing fence has the meaning given to it in the *Dividing Fences Act 1961*;

electrified fence means a fence carrying or designed to carry an electric charge;

fence means any structure, including a retaining wall, used or functioning as a barrier, irrespective of where it is located and includes any gate;

front boundary means the boundary line between a lot and the thoroughfare upon which that lot abuts, or in the case of a lot abutting on more than one thoroughfare, the boundary line between the lot and the primary thoroughfare;

front fence means a fence erected on the front boundary of a lot or a line adjacent to the front boundary;

front setback area, in relation to a lot, means the area between the building line of the lot and the front boundary of the lot;

height in relation to a fence means the vertical distance between—

- (a) the top of the fence at any point; and
- (b) the ground level or, where the ground levels on each side of the fence are not the same, the higher ground level, immediately below that point;

local government means the Town of Victoria Park;

local government property means anything except a thoroughfare—

- (a) which belongs to the local government;
- (b) of which the local government is the management body under the *Land Administration Act 1997*; or
- (c) which is an “otherwise unvested facility” under section 3.53 of the *Local Government Act 1995*.

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

lot has the meaning given to it in the *Planning and Development Act 2005*;

non-residential lot means a lot that is not a residential lot;

notice of breach means a notice referred to in clause 25;

residential lot means a lot where a residential use—

- (a) is or may be permitted under the local planning scheme; and
- (b) is or will be the predominant use of the lot;

occupier has the meaning given to it in the *Local Government Act 1995*;

owner means—

- (a) for the purposes of the definition of dividing fence, has the meaning in the *Dividing Fences Act 1961*; and
- (b) for all other purposes, has the meaning in the *Local Government Act 1995*;

penalty unit has the meaning given to it in the *Town of Victoria Park Penalty Units Local Law 2020*.

retaining wall means any structure which prevents the movement of soil in order to allow ground levels of different elevations to exist adjacent to one another;

Professional engineer has the meaning given to it in the Building Code of Australia as amended from time to time.

Schedule means a Schedule to this local law;

sufficient fence means a fence described as a sufficient fence in clause 9(2) but does not include a retaining wall;

thoroughfare has the meaning given to it in the *Local Government Act 1995*, but does not include a private thoroughfare which is not under the management or control of the local government; and

visually permeable has the meaning given to it in State Planning Policy 7.3 Residential Design Codes Volume 1 as amended from time to time;

(2) A term that is used in this local law and is not defined in subclause (1) has the meaning given to it in the *Local Government Act 1995* or, if not defined in the *Local Government Act 1995*, the meaning given to it in the *Dividing Fences Act 1961*.

7. Relationship with other laws

- (1) In the event of any inconsistency between the provisions of a local planning scheme and the provisions of this local law, the provisions of the local planning scheme are to prevail.
- (2) Nothing in this local law affects the need for compliance, in respect of a fence, with—
 - (a) any relevant provisions of a local planning scheme or a local planning policy adopted under the local planning scheme; and
 - (b) any relevant provisions that apply if a building permit is required for that fence under the *Building Act 2011* or *Building Regulations 2012*.

8. Fees and charges

All fees and charges applicable under this local law shall be as determined by the local government from time to time in accordance with section 6.16 to 6.19 of the *Local Government Act 1995*.

PART 2—SUFFICIENT FENCES

9. Sufficient fences

- (1) A person must not erect a fence that is not a sufficient fence.
- (2) A sufficient fence means—
 - (a) a fence constructed and maintained on a residential lot in accordance with the specifications and requirements of Schedule 1;
 - (b) a fence constructed and maintained on a non-residential lot in accordance with the specifications and requirements of Schedule 2;
 - (c) a dividing fence erected on or near the boundary between a residential lot and a non-residential lot constructed and maintained in accordance with the specifications and requirements of Schedule 1;
 - (d) a fence lawfully erected prior to this local law commencing; or
 - (e) a fence approved by the local government under Part 5 of this local law; or
 - (f) a fence approved by the local government under a local planning scheme, other than a fence constructed of masonry exceeding 1200mm in height, which requires separate approval under Part 5 of this local law.

PART 3—GENERAL

10. Fences in front setback areas

A person shall not erect a free-standing fence greater than 1,200mm in height, within the front setback area of a residential lot within the district unless approved by the local government—

- (a) under Part 5 of this local law; or
- (b) by the grant of a development approval under a local planning scheme.

11. Gates

A person shall not erect a gate in a fence which does not—

- (a) open into the lot; or
- (b) open by sliding parallel and on the inside of the fence, which it forms part of, when closed,

without the approval of the local government.

12. Fences across rights-of-ways, public access ways or thoroughfares

A person must not, without the approval of the local government, erect or maintain a fence or obstruction of a temporary or permanent nature across any right-of-way, public access way or thoroughfare so as to impede or prevent use of those facilities in the manner for which they are intended and constructed.

13. Maintenance of fences

An owner of a lot on which a fence is erected shall maintain the fence in good condition and so as to prevent it from becoming dangerous, dilapidated, or unsightly to the amenity of the locality.

14. Fences and sightlines

- (1) Unless otherwise approved by the local government, a front fence or boundary fence must comply with the following sightline requirements—
 - (a) a fence in the front setback area must provide a 1500mm x 1500mm truncation distance adjacent to any driveway, measured from the point where the driveway intersects with the front boundary, unless—
 - (i) the fence is visually permeable; or
 - (ii) the fence is no higher than 750mm within the area referred to in (a).
 - (b) where a lot has two or more street frontages the fence is truncated at the corner to provide a truncation equal to 6000mm by 6000mm, unless the lot is adjacent to a street that has been classified as an access road under the Western Australian Road Hierarchy, in which case a truncation equal to 3000mm by 3000mm can be provided;

- (c) where two right of ways or laneways intersect, a boundary fence must provide a 3,000 mm by 3,000 mm truncation distance, unless—
 - (i) the fence is a visually permeable fence that does not obscure the lines of vision of a motorist using the right of way or laneway; or
 - (ii) the fence is no higher than 750mm within the area referred to in (c).
- (2) Schedule 4 contains diagrams setting out examples of the truncation requirements.

PART 4—MATERIALS, DESIGN AND CONSTRUCTION

15. Masonry fences

A fence constructed of masonry (including brick, stone or concrete) is to satisfy the following specifications—

- (a) the height of the fence within the front setback area is not to exceed 1200mm in height without the written approval of the local government;
- (b) the fence must be constructed in accordance with the Australian Standard for masonry construction as referenced in the Building Code of Australia at the time of construction; and
- (c) where the fence comprises—
 - (i) a solid masonry fence greater than 1200mm in height; or
 - (ii) a masonry fence with open infill panels greater than 1800mm in height,

the fence is to be certified by a structural engineer as being appropriate for the particular site and wind terrain category.

16. Fencing designs

Where required by an authorised person, fencing design is to be certified by a practicing structural engineer as being suitable for wind loadings found in Region D Category 2 areas in accordance with the current edition of AS/NZS 1170.0:2002 Structural design actions—general principles.

17. Pre-used fencing materials

- (1) A person shall not construct a fence on a residential lot or a non-residential lot from pre-used materials without the approval of the local government.
- (2) Where the local government approves the use of pre-used materials in the construction of a fence under subclause (1), that approval shall be conditional on the applicant painting or treating the pre-used material as directed by an authorised person.

18. Prohibited fencing materials

In constructing, repairing or maintaining a fence a person must not use—

- (a) broken glass or any potentially harmful projections or material;
- (b) asbestos fibre;
- (c) material that is likely to collapse or fall, or part of which is likely to collapse or fall, from any cause; or
- (d) pre-used materials unless approved and painted or treated to the satisfaction of an authorised person in accordance with clause 18.

19. Barbed wire fences and spiked or jagged materials

- (1) A person shall not erect a fence with barbed wire or other material with spiked or jagged projections on a residential lot.
- (2) An owner or occupier of a non-residential lot shall not erect, affix or allow to remain on any fence on such a lot any barbed wire or other material with spiked or jagged projections, unless the approval of the local government has been obtained.
- (3) Any fence bounding a lot that has barbed wire or other materials with spiked or jagged projections affixed to it may only be approved if the wire or other materials are carried on posts at an angle of 45 degrees, with the bottom row being a minimum of 2,000mm from the ground level.
- (4) If the posts which carry the barbed wire or other materials referred to in subclause (2) are angled towards the outside of the lot bounded by the fence, the face of the fence must be set back from the lot boundary a sufficient distance to ensure that the angled posts, barbed wire or other materials do not encroach on adjoining land.

20. Electrified and razor wire fences

- (1) An owner or occupier of a lot shall not—
 - (a) construct or use an electrified or razor wire fence on a residential lot;
 - (b) construct or use an electrified fence on a non-residential lot without obtaining the approval of the local government; or
 - (c) construct a fence with any razor wire on a non-residential lot without obtaining the approval of the local government.
- (2) The local government shall not approve an application for the purpose of subclause (1)(b)—
 - (a) in respect of a lot which is or which abuts a residential lot;
 - (b) unless the fence complies with AS/NZS 3016:2002 Electrical installations—Electricity security fences; and

- (c) unless provision is made so as to enable the fence to be rendered inoperable during the hours of business operations, if any, on the lot where it is erected.
- (3) The local government shall not approve an application for the purpose of subclause (1)(c)—
 - (a) if the fence is within 3,000mm of the boundary of the lot; or
 - (b) where any razor wire used in the construction of the fence is less than 2,000 millimetres or more than 2,400mm above the ground level.
- (4) An application for approval for the purpose of subclauses (1)(b) or (1)(c) shall be made by the owner of the lot on which the fence is or is to be erected, or by the occupier of the lot with the written consent of the owner.

PART 5—APPROVALS

21. Application for approval under this local law

- (1) Where a person is required to obtain the approval of the local government under this local law, that person must apply for approval in accordance with subclause (2).
- (2) An application for approval under this local law must—
 - (a) be in the form determined by the local government;
 - (b) be signed by the applicant and the owner of the lot;
 - (c) provide the information required by the form; and
 - (d) be forwarded to the CEO together with any fee determined by the local government under sections 6.16 to 6.19 of the *Local Government Act 1995*.
- (3) An application for approval of a variation to the specifications in Schedules A or B in respect of a dividing fence shall be made by—
 - (a) both owners of land adjoining the dividing fence; or
 - (b) one owner of land adjoining the dividing fence and include written consent of the other owner of land adjoining the dividing fence.
- (4) Before determining an application for approval, the local government may require the applicant to provide additional information reasonably related to the application.
- (5) The local government may refuse to consider an application for approval which is not in accordance with subclauses (2)-(4).

Note—

- (1) Development approval for a fence may be required in addition to or in lieu of approval under this local law, where the fence constitutes development and is not exempt from the requirement for approval under clause 61 of the deemed provisions contained in Schedule 2 of the Planning and Development (Local Planning Schemes) Regulations 2015.
- (2) A building permit is not required for a fence in accordance with Schedule 4 of the Building Regulations 2012.

22. Decision on application for approval

- (1) The local government may, in respect of an application for approval—
 - (a) grant the application, unconditionally or subject to any conditions it considers appropriate; or
 - (b) refuse to grant the application.
- (2) In determining whether to grant its approval under subclause (1), the local government may consider whether the erection or retention of the fence would have an adverse effect on—
 - (a) the safe or convenient use of any land;
 - (b) the safety or convenience of any person; or
 - (c) the visual amenity of the locality.
- (3) If the local government grants the application subject to conditions, those conditions may relate to matters including—
 - (a) the location, type and construction of a fence;
 - (b) the height of a fence;
 - (c) in the case of an electric fence, the operating time and duration; and
 - (d) any other matter considered relevant by the local government.
- (4) If the local government grants an application for approval, it is to issue to the applicant an approval in the form determined by the CEO.
- (5) If the local government refuses to grant an application for approval, it must give written notice of that refusal and reasons for the refusal to the applicant.

23. Compliance with approval

Where an application for approval has been granted, the applicant and the owner or occupier of the lot to which the approval relates, must comply with the terms and any conditions of that approval.

24. Duration of approval

Unless otherwise stated in the conditions of approval, an approval granted under this local law—

- (a) runs with the lot to which it relates;
- (b) may be relied on by any subsequent occupier or owner of the lot; and
- (c) may be enforced by the local government against a subsequent occupier or owner of the lot.

25. Expiry of approval

(1) Where—

- (a) an approval is granted under clause 22(1); and
- (b) any works the subject of the approval are not completed within two (2) years of the date of issuance of the approval,

the approval shall lapse.

(2) Where an approval lapses under subclause (1), the applicant must apply for and obtain a further approval prior to any undertaking any further works.

26. Variation or cancellation of approval

(1) The local government may, by written notice to owner of the lot to which the approval relates, vary the conditions of an approval after it has been issued.

(2) The local government may cancel an approval granted under clause 22(1) by written notice to the owner of the lot to which the approval relates where—

- (a) the owner or occupier of the lot fails to do anything required or directed to be done under this local law in relation to the fence the subject of the approval;
- (b) the owner or occupier of the lot fails to comply with a notice of breach issued under clause 27(1) in relation to the fence the subject of the approval;
- (c) the approval is for a fence with barbed wire or other materials with spiked or jagged projections and the lot to which the approval relates is rezoned under a local planning scheme so as to become a residential lot;
- (d) the approval is for an electrified or razor wire fence and the lot to which the approval relates is rezoned under a local planning scheme so as to become a residential lot; or
- (e) the approval has been issued to an incorrect lot or otherwise contains a manifest error.

(3) Where an approval is cancelled pursuant to subclause (1) the approval shall cease to be of any force and effect.

PART 6—NOTICES OF BREACH**27. Notices of breach**

(1) Where a breach of any provision of this local law has occurred in relation to a fence on a lot, an authorised person may give a notice in writing to the owner of that lot ('notice of breach').

(2) A notice of breach shall—

- (a) specify the provision of this local law which has been breached;
- (b) specify the particulars of the breach; and
- (c) state that the owner of the lot is required to remedy the breach within twenty eight (28) days from the giving of the notice.

(3) Should an owner fail to comply with a notice of breach, the local government may by its employees, agents or contractors enter upon the lot to which the notice relates and remedy the breach, and may recover the expenses of so doing from the owner or occupier of the lot, as the case may be, in a court of competent jurisdiction.

(4) The provisions of this clause are subject to section 3.25 and item 12 of Division 1 of Schedule 3.1 of the *Local Government Act 1995* and any entry on to land will be in accordance with Part 3, Division 3 of that Act.

PART 7—OFFENCES**28. Offences and penalties**

(1) A person who—

- (a) fails to do anything required or directed to be done under this local law;
- (b) fails to comply with the requirements of a notice of breach; or
- (c) does anything which under this local law that person is prohibited from doing,

commits an offence.

(2) A person who commits an offence under this local law is liable to a maximum penalty of \$5,000 and a maximum daily penalty of \$500 in respect of each day or part of a day during which the offence has continued.

29. Modified penalties

(1) An offence against any provision of this local law is a prescribed offence for the purposes of section 9.16(1) of the *Local Government Act 1995*.

(2) The amount appearing in the third column of Schedule 3 directly opposite the offence is the modified penalty payable in respect of that offence.

(3) Where this local law expresses the modified penalty as a number of penalty units, the monetary value of the modified penalty is the number of dollars obtained by multiplying the value of the penalty unit by the number of penalty units.

30. Form of notices

For the purposes of these Local Laws—

- (a) the form of the infringement notice referred to in section 9.17 of the Local Government Act 1995 is to be in or substantially in the form of Form 2 of Schedule 1 of the *Local Government (Functions and General) Regulations 1996*;
- (b) the form of the notice referred to in section 9.20 of the *Local Government Act 1995* is to be in or substantially in the form of Form 3 in Schedule 1 of the *Local Government (Functions and General) Regulations 1996*.

PART 8—OBJECTIONS AND REVIEW**31. Objections and review**

Where the local government makes a decision under Part 5 of this local law, the provisions of Part 9 Division 1 of the *Local Government Act 1995* and Regulation 33 of the *Local Government (Functions and General) Regulations 1996*, apply to that decision.

Schedule 1**SPECIFICATIONS FOR A SUFFICIENT FENCE ON A RESIDENTIAL LOT**

Clause 9(3)(a)

Each of the following is a “sufficient fence” on a residential lot—

- (a) a fence that is not located in the front setback area, constructed of timber, corrugated fibre reinforced pressed cement or steel sheeting or other non-permeable materials designed specifically for use as a fence, which satisfies the following specifications—
 - (i) the height of the fence to be a minimum 1800mm and a maximum of 2400mm; and
 - (ii) construction to be in accordance with Australian Standards and the manufacturer’s specifications or best practice construction technique;
- (b) a front or boundary fence located in the front setback area, constructed of timber or steel that—
 - (i) is visually permeable;
 - (ii) complies with clause 10; and
 - (iii) is constructed in accordance with Australian Standards and the manufacturer’s specifications or best practice construction technique;
- (c) a dividing fence located in the front setback area, constructed of timber, corrugated fibre reinforced pressed cement or steel sheeting or other non-permeable materials designed specifically for use as a fence that—
 - (i) complies with clause 10; and
 - (ii) is constructed in accordance with Australian Standards and the manufacturer’s specifications or best practice construction technique;
- (d) a fence constructed of masonry (including brick, stone or concrete) which meets the specifications of clause 15.

Schedule 2**SPECIFICATIONS FOR A SUFFICIENT FENCE ON A NON-RESIDENTIAL LOT**

Clause 6(2)(b)

Each of the following is a “sufficient fence” on a non-residential lot—

- (a) a fence that meets the specifications in Schedule A;
 - (b) a galvanised steel frame and galvanised link or chain mesh fence with poly vinyl chloride coat or galvanised wire—
 - (i) at a minimum height of 1800mm and a maximum height of 2400mm; and
 - (ii) constructed in accordance with Australian Standards and the manufacturer’s specifications.
-

Schedule 3
MODIFIED PENALTIES

Clause 30(2)

Item	Clause	Nature of Offence	Penalty units
1	9(1)	Erecting a fence that is not a sufficient fence	25
2	10	Erecting a fence exceeding 1200mm in height in a front setback area without the approval of the local government	25
3	11	Erecting a gate in a fence contrary to clause 12 without the approval of the local government	25
4	12	Erecting a fence across a right of way, public access way or thoroughfare without the approval of the local government	25
5	13	Failing to maintain a fence in good condition	25
6	14	Erecting a fence contrary to sightline requirements without the approval of the local government	25
7	15	Constructing a masonry fence contrary to clause 15	25
8	16	Failing to certify fencing design where required by an authorised person	25
9	17	Constructing a fence with pre-used fencing materials without the approval of the local government.	25
10	18	Constructing, repairing or maintaining a fence with prohibited fencing materials	50
11	19(1)	Erecting a barbed wire fence on a residential lot	50
12	19(2)	Erecting a barbed wire fence on a non-residential lot without the approval of a local government	50
13	20(1)(a)	Erecting or maintaining an electrified or razor wire fence on a residential lot	50
14	20(1)(b) and 20(1)(c)	Erecting or maintaining an electrified fence or razor wire fence without the approval of local government on a non-residential lot.	50
15	23	Failing to comply with the conditions of an approval	50
16	26(1)(b)	Failing to comply with a notice of breach	50

—————

Schedule 4

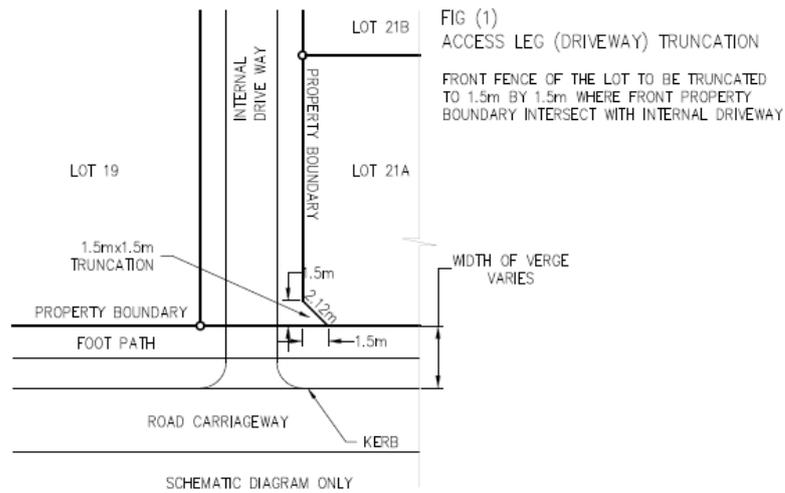
EXAMPLE DIAGRAMS FOR TRUNCATION REQUIRED UNDER CLAUSE 14

Clause 14(2)

For the purpose of this schedule and clause 14—

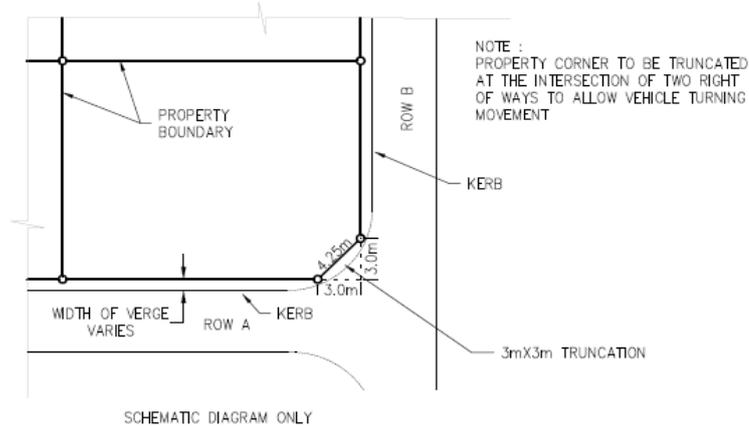
- (1) The first diagram relates to the driveway truncation required under clause 14(a);
- (2) The second diagram relates to the corner truncation required where two rights of ways meet under clause 14(c);
- (3) The third diagram relates to the corner truncation required where two access roads meet under clause 14(b);
- (4) The fourth diagram relates to the corner truncation required where a distributor road or greater meets an access road under clause 14(b).

First diagram—



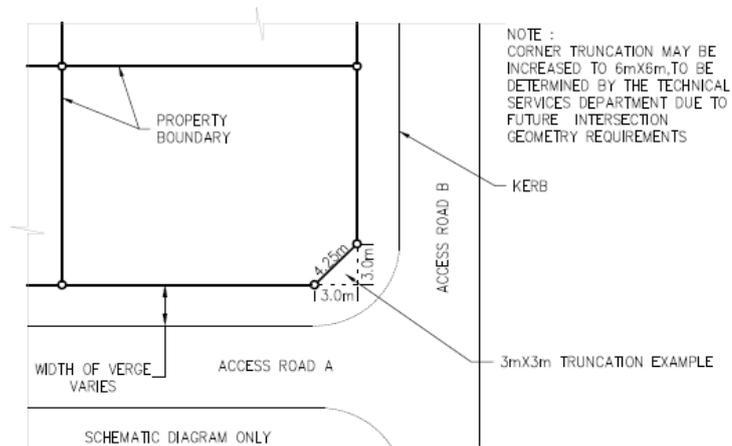
Second diagram—

FIG (2)
T-JUNCTION ARRANGEMENT—2 INTERSECTING RIGHT OF WAYS
BOUNDARY FENCE OF THE LOT AT THE STREET CORNER TO BE TRUNCATED 3.0m BY 3.0m AT THE INTERSECTION OF TWO RIGHT OF WAYS



Third diagram

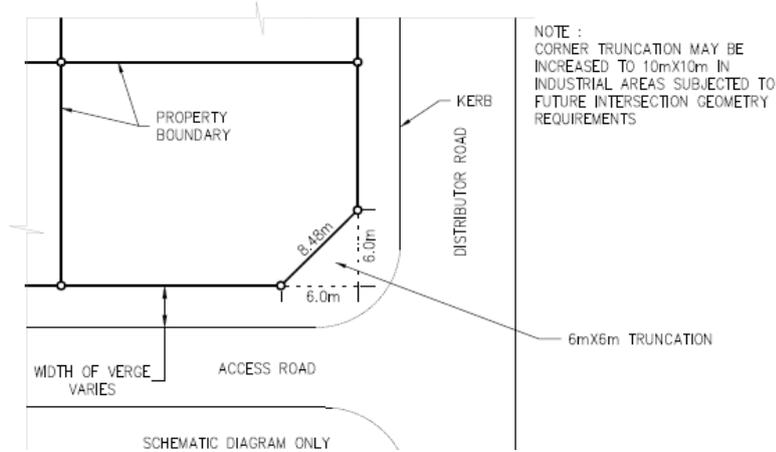
FIG (3) T-JUNCTION ARRANGEMENT—ACCESS ROAD INTERSECTS WITH ANOTHER ACCESS ROAD
BOUNDARY FENCE OF THE LOT AT THE STREET CORNER TO BE TRUNCATED 3.0m BY 3.0m AT THE INTERSECTION OF TWO ACCESS ROADS



Fourth diagram

FIG (3) T-JUNCTION ARRANGEMENT-ACCESS ROAD INTERSECTS WITH DISTRIBUTOR ROAD

BOUNDARY FENCE OF THE LOT AT THE STREET CORNER TO BE TRUNCATED 6.0m BY 6.0m AT THE INTERSECTION OF AN ACCESS ROAD AND A DISTRIBUTOR ROAD



Under the powers conferred by the *Local Government Act 1995* and by all other powers, the Council of the Town of Victoria Park resolved to make the following local law on the 16 February 2021.

The Common Seal of the Town of Victoria Park was affixed by the authority of a resolution of the Council in the presence of—

KAREN VERNON, Mayor.

ANTHONY VULETA, Chief Executive Officer.

On the 5th day of March, 2021.

Revision History—

Version	Made, Amended, Revoked	Date	Council Resolution Number	Effective	Key Changes/Notes
1	Made	05/01/2021		16/02/2021	Compliance with the Building Act and Australian Standards, revised fencing specifications, barbed wire fencing requirements, new offenses