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SHIRE OF HARVEY

LOCAL LAWS

**ACTIVITIES IN THOROUGHFARES AND PUBLIC
PLACES AND TRADING LOCAL LAW 2017**

BUSH FIRE BRIGADES LOCAL LAW 2017

CEMETERIES LOCAL LAW 2017

DOGS LOCAL LAW 2017

EXTRACTIVE INDUSTRIES LOCAL LAW 2017

FENCING LOCAL LAW 2017

LOCAL GOVERNMENT PROPERTY LOCAL LAW 2017

PARKING AND PARKING FACILITIES LOCAL LAW 2017

STANDING ORDERS LOCAL LAW 2017

LOCAL GOVERNMENT ACT 1995

SHIRE OF HARVEY

**ACTIVITIES IN THOROUGHFARES AND PUBLIC PLACES AND
TRADING LOCAL LAW 2017**

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SCHEDULE 1**PRESCRIBED OFFENCES**

LOCAL GOVERNMENT ACT 1995

SHIRE OF HARVEY

ACTIVITIES IN THOROUGHFARES AND PUBLIC PLACES
AND TRADING LOCAL LAW 2016

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Harvey resolved on 31 January 2017 to make the following local law.

PART 1—PRELIMINARY

1.1 Citation

This local law may be cited as the *Shire of Harvey Activities in Thoroughfares and Public Places and Trading Local Law 2017*.

1.2 Commencement

By virtue of section 3.14 of the Act, this local law come into operation 14 days after the date of their publication in the *Government Gazette*.

1.3 Definitions

In this local law unless the context otherwise requires—

acceptable material means any material approved by the local government;

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;

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 Harvey;

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;

local planning scheme means a town 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*;

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 2.7(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*;

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 a townsite—

- (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—

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

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

1.4 Application

This local law applies throughout the district.

1.5 Repeal

(1) This local law repeals the *Shire of Harvey Activities on Thoroughfares and Trading in Thoroughfares and Public Places Local Law* as published in the *Government Gazette* on 23 June 2000.

(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—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 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 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—
- (a) The person named on the building permit issued under the *Building Act 2011*, if one has been issued in relation to the works; or
 - (b) the registered proprietor of the lot, if no building permit has been issued under the *Building Act 2011* in relation to the works.
- (3) If the local government approves an application for a permit for the purpose of subclause (1), the permit is taken to be issued on the condition that until such time as the temporary crossing is removed, the permit holder 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.

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—Application

2.6 Application

This Division only applies to a townsite.

Subdivision 2—Permissible verge treatments

2.7 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; 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).

2.8 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 2.9.

2.9 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.

2.10 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

2.11 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

2.12 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

2.13 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

2.14 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***2.15 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 1.3; and
- (b) local government property.

*Division 6—Signs erected by the local government***2.16 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.

2.17 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 2.16 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***2.18 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.

PART 5—ROADSIDE CONSERVATION

Division 1—Preliminary

5.1 Interpretation

In this Part—

MRWA means Main Roads Western Australia;

protected flora has the meaning given to it in section 6(1) of the *Wildlife Conservation Act 1950*;

rare flora has the meaning given to it in section 23F of the *Wildlife Conservation Act 1950*;

Roadside Conservation Committee means the Roadside Conservation Committee appointed by the Minister responsible for the administration of the *Wildlife Conservation Act 1950*; and

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

5.2 Application

This Part does not apply to the townsites.

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 protected flora or rare 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

Subject to any other written law and 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.

*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 No permit required to sell newspaper

Notwithstanding any other provision of this local law, a person who sells, or offers for sale, a newspaper only is not required to obtain a permit.

6.5 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.

6.6 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 acquisition by the stallholder or trader of public risk insurance;
- (l) the period for which the permit is valid; and
- (m) 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.

6.7 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

6.8 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
- (d) in the case of a trader, carry on trading from a public place, unless there is adequate parking for customers' vehicles reasonably close to the place of trading.

Division 2—Street entertainers

Subdivision 1—Preliminary

6.9 Interpretation

In this Division, unless the context otherwise requires—

perform includes to play a musical instrument, sing, mime, dance, give an acrobatic or aerobic display or entertain, but does not include public speaking;

permit means a permit issued for the purpose of clause 6.10;

permitted area means the area or areas, specified in a permit, in which the permit holder may perform; and

permitted time means the time or times, specified in a permit, during which the permit holder may perform.

Subdivision 2—Permits

6.10 Permit required to perform

A person shall not perform in a public place without a permit.

6.11 Variation of permitted area and permitted time

(1) The local government may by notice in writing to a permit holder vary—

- (a) the permitted area;
- (b) the permitted time; or
- (c) both the permitted area and the permitted time, shown on a permit.

(2) The local government may direct a permit holder to move from one permitted area to another permitted area, if more than one area is specified in a permit.

6.12 Duration of permit

A permit is valid for a period of 3 months after the date on which it is issued unless it is sooner cancelled under this local law.

6.13 Cancellation of permit

The CEO may cancel a permit if in her or his opinion the volume of sound caused by the permit holder in connection with the performance adversely affects the enjoyment, convenience or comfort of other persons in a public place, or if, in her or his opinion, or in the opinion of an authorised person, the performance otherwise constitutes a nuisance.

6.14 Obligations of permit holder

A permit holder shall not in a public place—

- (a) perform wearing dirty, torn or ragged clothing;
- (b) act in an offensive manner; or
- (c) place, install, erect, play or use any musical instrument or any device which emits music, including a loud speaker or an amplifier—
 - (i) other than in the permitted area; and
 - (ii) unless the musical instrument or device is specified in the permit.

Division 3—Outdoor eating facilities on public places

6.15 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.

6.16 Permit required to conduct Facility

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

6.17 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.

6.18 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.

6.19 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.

6.20 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.

6.21 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 from time to time;
 - (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—

- (a) condition of the permit; or
- (b) 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 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 any thing, if the person fails to comply with the notice, the person commits an offence.

10.2 Local government may undertake requirements of notice

(1) 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.

(2) 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 power of entry exercised by the local government under this local law is subject to Part 3, Division 3 of that Act.

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]

| | Clause | Description | Modified Penalty \$ |
|----|-----------|---|---------------------|
| 1 | 2.1(a) | plant any plant (except grasses or a similar plant) within 10 metres of an 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 |
| 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 |
| 21 | 2.4(1) | Failure to obtain permit for temporary crossing | 250 |

| | Clause | Description | Modified Penalty \$ |
|----|-----------|---|---------------------|
| 22 | 2.5(2) | Failure to comply with notice to remove crossing and reinstate kerb | 350 |
| 23 | 2.8(1) | Installation of verge treatment other than permissible verge treatment | 250 |
| 24 | 2.9 | Failure to maintain permissible verge treatment or placement of obstruction on verge | 125 |
| 25 | 2.10 | Failure to comply with notice to rectify a verge treatment | 125 |
| 26 | 2.16(2) | Failure to comply with sign on public place | 125 |
| 27 | 2.18(1) | Driving or taking a vehicle on a closed thoroughfare | 350 |
| 28 | 3.2(1) | Placing advertising sign or affixing any advertisement on a thoroughfare without a permit | 125 |
| 29 | 3.2(3) | Erecting or placing of advertising sign in a prohibited area | 125 |
| 30 | 4.1(1) | Animal or vehicle obstructing a public place or local government property | 125 |
| 31 | 4.2(2)(a) | Animal on thoroughfare when not led, ridden or driven | 125 |
| 32 | 4.2(2)(b) | Animal on public place with infectious disease | 125 |
| 33 | 4.2(2)(c) | Training or racing animal on thoroughfare in built-up area | 125 |
| 34 | 4.2(3) | Horse led, ridden or driven on thoroughfare in built-up area | 125 |
| 35 | 4.5 | Person leaving shopping trolley in public place other than trolley bay | 125 |
| 36 | 4.6(2) | Failure to remove shopping trolley upon being advised of location | 125 |
| 37 | 5.6(1) | Driving a vehicle on other than the carriageway of a flora road | 250 |
| 38 | 5.9 | Planting in thoroughfare without a permit | 250 |
| 39 | 5.11 | Failure to obtain permit to clear a thoroughfare | 500 |
| 40 | 5.13 | Burning of thoroughfare without a permit | 500 |
| 41 | 5.17 | Construction of firebreak on thoroughfare without a permit | 500 |
| 42 | 5.19 | Commercial harvesting of native flora on thoroughfare | 500 |
| 43 | 5.20(1) | Collecting seed from native flora on thoroughfare without a permit | 350 |
| 44 | 6.2(1) | Conducting of stall in public place without a permit | 350 |
| 45 | 6.3(1) | Trading without a permit | 350 |
| 46 | 6.8(1)(a) | Failure of stallholder or trader to display or carry permit | 125 |
| 47 | 6.8(1)(b) | Stallholder or trader not displaying valid permit | 125 |
| 48 | 6.8(1)(c) | Stallholder or trader not carrying certified scales when selling goods by weight | 125 |
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| 50 | 6.10 | Performing in a public place without a permit | 125 |
| 51 | 6.11(2) | Failure of performer to move onto another area when directed | 125 |
| 52 | 6.14 | Failure of performer to comply with obligations | 125 |
| 53 | 6.16 | Establishment or conduct of outdoor eating facility without a permit | 350 |
| 54 | 6.18 | Failure of permit holder of outdoor eating facility to comply with obligations | 125 |
| 55 | 6.20(1) | Use of equipment of outdoor eating facility without purchase of food or drink from facility | 60 |
| 56 | 6.20(2) | Failure to leave outdoor eating facility when requested to do so by permit holder | 60 |
| 57 | 7.5 | Failure to comply with a condition of a permit | 125 |
| 58 | 7.9 | Failure to produce permit on request of authorised person | 125 |
| 59 | 10.1 | Failure to comply with notice given under local law | 125 |

Dated: 13 March 2017.

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

T. G. JACKSON, Shire President.
M. A. PARKER, Chief Executive Officer.

**LOCAL GOVERNMENT ACT 1995
BUSH FIRES ACT 1954**

SHIRE OF HARVEY

BUSH FIRE BRIGADES LOCAL LAW 2017

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LOCAL GOVERNMENT ACT 1995
BUSH FIRES ACT 1954

SHIRE OF HARVEY

BUSH FIRE BRIGADES LOCAL LAW 2017

Under the powers conferred by the *Bush Fires Act 1954* and the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Harvey resolved on 29 November 2016 to make the following local law.

PART 1—PRELIMINARY

1.1 Citation

This local law may be cited as the *Shire of Harvey Bush Fire Brigades Local Law 2017*.

1.2 Commencement

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

1.3 Definitions

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

Act means the *Bush Fires Act 1954*;

brigade area is defined in clause 2.2(1)(b);

brigade member means a fire fighting member, associate member or a cadet member of a bush fire brigade;

brigade officer means a person holding a position referred to in clause 2.2(1)(c), whether or not he or she was appointed by the local government or elected at an annual general meeting of a bush fire brigade or otherwise appointed to the position;

bush fire brigade is defined in section 7 of the Act;

bush fire control officer means a person appointed to that office by the local government;

Bush Fire Operating Procedures means the Bush Fire Operating Procedures adopted by the local government as amended from time to time;

cadet means any adolescent member of the Brigade between 11 and 15 years of age;

Chief Bush Fire Control Officer means the Chief Bush Fire Control Officer appointed under the Act;

CEO means the chief executive officer of the Shire of Harvey;

Council means the Council of the local government;

Department means the Department of Fire and Emergency Services established by section 3 of the *Fire and Emergency Services Act 1998*;

district means the district of the local government;

fire fighting activities means all normal brigade activities relating to an live bush fire which is active in the district, and includes burning off, creating fire breaks and other methods for the control of bush fires;

fire fighting member is defined in clause 4.2;

local government means the Shire of Harvey;

Regulations means Regulations made under the Act;

Rules means the Rules Governing the Operation of Bush Fire Brigades set out in the First Schedule;

simple majority has the meaning given to it in the *Local Government Act 1995*; and

volunteer fire brigade has the meaning given in the *Fire Brigades Act 1942*.

(2) In this local law, unless the context otherwise requires, a reference to—

- (a) a Captain;
- (b) a First Lieutenant;
- (c) a Second Lieutenant;

- (d) any additional Lieutenants;
- (e) an Equipment Officer;
- (f) a Secretary;
- (g) a Treasurer; or
- (h) a Secretary / Treasurer combined;

means a person holding that position in a bush fire brigade.

1.4 Repeal

The *Shire of Harvey Bush Fire Brigades Local Law* as published in the *Government Gazette* on 11 June 2001 is repealed.

1.5 Application

This local law applies throughout the district.

PART 2—ESTABLISHMENT OF BUSH FIRE BRIGADES

Division 1—Establishment of a bush fire brigade

2.1 Establishment of a bush fire brigade

(1) The local government may establish a bush fire brigade for the purpose of carrying out normal brigade activities.

(2) A bush fire brigade is established on the date of the local government's decision under subclause (1).

2.2 Name and officers of bush fire brigade

(1) On establishing a bush fire brigade under clause 2.1(1) the local government is to—

- (a) give a name to the bush fire brigade;
- (b) specify the area in which the bush fire brigade is primarily responsible for carrying out the normal brigade activities; and
- (c) appoint—
 - (i) a Captain;
 - (ii) a First Lieutenant;
 - (iii) a Second Lieutenant;
 - (iv) additional Lieutenants if the local government considers it necessary;
 - (v) an Equipment Officer;
 - (vi) a Secretary;
 - (vii) a Treasurer; and
 - (viii) a Secretary/Treasurer combined;

(2) When considering the appointment of persons to the positions in subclause (1)(c), the local government is to have regard to the qualifications and experience which may be required to fill each position.

(3) A person appointed to a position in subclause (1)(c) is to be a registered brigade member.

(4) The appointments referred to in subclause (1)(c) expire at the completion of the first annual general meeting of the bush fire brigade.

(5) If a position referred to in subclause (1)(c) becomes vacant prior to the completion of the first annual general meeting, then the local government is to appoint a person to fill the vacancy in accordance with subclause (2).

Division 2—Command at a fire

2.3 Ranks within the bush fire brigade

(1) Where under the Act and Bush Fire Operating Procedures members of the bush fire brigade have command of a fire, unless a bush fire control officer is in attendance at the fire, the Captain has full control over other persons fighting the fire, and is to issue instructions as to the methods to be adopted by the fire fighters.

(2) In the absence of the Captain, the Fire Control Officer, in the order of seniority determined, is to exercise all the powers and duties of the Captain.

(3) Where a bush fire control officer is in attendance at a fire which the members of the bush fire brigade have command of under the Act and the Bush Fire Operating Procedures, the most senior bush fire control officer has full control over other persons fighting the fire and is to issue instructions as to the methods to be adopted by the fire fighters.

Division 3—Application of Rules to a bush fire brigade

2.4 Rules

(1) The Rules govern the operation of a bush fire brigade.

(2) A bush fire brigade and each brigade member is to comply with the Rules.

*Division 4—Transitional***2.5 Existing bush fire brigades**

(1) Where a local government has established a bush fire brigade prior to the commencement date, then on and from the commencement day—

- (a) the bush fire brigade is to be taken to be a bush fire brigade established under and in accordance with this local law;
- (b) the provisions of this local law apply to the bush fire brigade save for clause 2.2; and
- (c) any rules governing the operation of the bush fire brigade are to be taken to have been repealed and substituted with the Rules.

(2) In this clause—

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

*Division 5—Dissolution of bush fire brigade***2.6 Dissolution of bush fire brigade**

In accordance with section 41(3) of the Act, the local government may cancel the registration of a bush fire brigade if it is of the opinion that the bush fire brigade is not complying with the Act, this local law, the Bush Fire Operating Procedures or the Rules, or is not achieving the objectives for which it was established.

2.7 New arrangement after dissolution

If a local government cancels the registration of a bush fire brigade, alternative fire control arrangements are to be made in respect of the brigade area.

PART 3—ORGANISATION AND MAINTENANCE OF BUSH FIRE BRIGADES*Division 1—Local government responsibility***3.1 Local government responsible for structure**

The local government is to ensure that there is an appropriate structure through which the organisation of bush fire brigades is maintained.

3.2 Officers to be supplied with Act

The local government is to supply each brigade officer with a copy of the Act, the Regulations, the Bush Fire Operating Procedures, this local law and any other written laws which may be relevant to the performance of the brigade officers' functions, and any amendments which are made thereto from time to time.

*Division 2—Chief Bush Fire Control Officer***3.3 Managerial role of Chief Bush Fire Control Officer**

- (a) Subject to any directions by the local government the Chief Bush Fire Control Officer has primary managerial responsibility for the organisation and maintenance of bush fire brigades.
- (b) Where only one person is appointed as a bush fire control officer by the local government, that person is a Chief Bush Fire Control Officer for the purposes of this local law.

3.4 Chief Bush Fire Control Officer may attend meetings

The Chief Bush Fire Control Officer or her or his nominee (who is to be a bush fire control officer) may attend as a non-voting representative of the local government at any meeting of a bush fire brigade.

3.5 Duties of Chief Bush Fire Control Officer

The duties of the Chief Bush Fire Control Officer are to—

- (a) provide leadership to volunteer fire brigade;
- (b) monitor bush fire brigades' resourcing, equipment (including protective clothing) and training levels and report thereon with recommendations at least once a year to the local government;
- (c) liaise with the local government concerning fire prevention or fire suppression matters generally and directions to be issued by the local government to bush fire control officers (including those who issue permits to burn), bush fire brigades or brigade officers; and
- (d) ensure that bush fire brigades are registered with the local government and that lists of brigade members are maintained.

*Division 3—Annual general meetings of bush fire brigades***3.6 Holding of annual general meeting**

A bush fire brigade is to hold one annual general meeting every financial year.

3.7 Nomination of bush fire control officers to Bush Fire Advisory Committee

At the annual general meeting of a bush fire brigade, the brigade may nominate preferred candidates for the position of bush fire control officer to the Chief Bush Fire Control Officer and to the Bush Fire Advisory Committee for consideration and recommendation to Council.

3.8 Nomination of bush fire control officer to the local government

If the local government has not established a Bush Fire Advisory Committee, then at the annual general meeting of a bush fire brigade, the bush fire brigade is to nominate one brigade member to the local government to serve as the bush fire control officer for the brigade area until the next annual general meeting.

3.9 Minutes to be tabled before the Bush Fire Advisory Committee

(1) The Secretary is to forward a copy of the minutes of the annual general meeting of a bush fire brigade to the Chief Bush Fire Control Officer within one month after the meeting.

(2) The Chief Bush Fire Control Officer is to table the minutes of a bush fire brigade's annual general meeting at the next meeting of the—

- (a) Bush Fire Advisory Committee; or
- (b) Local government, if there is no Bush Fire Advisory Committee,

following their receipt under subclause (1).

*Division 4—Bush Fire Advisory Committee***3.10 Functions of Advisory Committee**

The Bush Fire Advisory Committee is to have the functions set out in section 67 of the Act and is to include such number of nominees of the bush fire brigades as is determined by the local government.

3.11 Advisory Committee to nominate bush fire control officers

As soon as practicable after the annual general meeting of each bush fire brigade in the district, the Bush Fire Advisory Committee is to nominate to the local government from the persons nominated by each bush fire brigade a person for the position of a bush fire control officer for the brigade area.

3.12 Local government to have regard to nominees

When considering persons for the position of a bush fire control officer, the local government is to have regard to those persons nominated by the Bush Fire Advisory Committee, but is not bound to appoint the persons nominated.

3.13 Advisory Committee to consider bush fire brigade motions

The Bush Fire Advisory Committee is to make recommendations to the local government on all motions received by the Bush Fire Advisory Committee from bush fire brigades.

PART 4—TYPES OF BUSH FIRE BRIGADE MEMBERSHIP**4.1. Types of membership of bush fire brigade**

The membership of a bush fire brigade consists of the following—

- (a) fire fighting members;
- (b) associate members;
- (c) cadet members; and
- (d) honorary life members.

4.2 Fire fighting members

(1) Fire fighting members are those persons being at least 16 years of age who undertake all normal brigade activities.

(2) Notwithstanding subclause (1), a fire fighting member between the age of 16 and 18 must not attend a fire or other emergency incident unless the member has the consent of their parent or guardian and is accompanied by an appropriately trained fire fighting member over the age of 18.

4.3 Associate members

Associate members are those persons who are willing to supply free vehicular transport for fire fighting members or fire fighting equipment, or who are prepared to render other assistance required by the bush fire brigade.

4.4 Cadet members

Cadet members are—

- (a) to be aged 11 to 15 years;
- (b) to be admitted to membership only with the consent of their parent or guardian;
- (c) admitted for the purpose of training and are not to attend or be in attendance at an uncontrolled fire or other emergency incident;
- (d) to be supervised by a fire fighting member when undertaking normal brigade activities as defined by paragraphs (c), (d), (e), (f) and (g) of section 35A of the Act;
- (e) ineligible to vote at bush fire brigade meetings; and
- (f) not to be assigned ranks under the Department's rank structure.

4.5 Honorary life member

(1) The bush fire brigade may by a simple majority resolution appoint a person as an honorary life member in recognition of services by that person to the bush fire brigade.

(2) No membership fees are to be payable by an honorary life member.

4.6 Notification of membership

No later than 31 May in each year, the bush fire brigade is to report to the Chief Bush Fire Control Officer the name, contact details and type of membership of each brigade member.

PART 5—APPOINTMENT DISMISSAL AND MANAGEMENT OF MEMBERS

5.1 Rules to govern

The appointment, dismissal and management of brigade members by the bush fire brigade are governed by the Rules.

PART 6—EQUIPMENT OF BUSH FIRE BRIGADES

6.1 Policies of local government

The local government may make policies under which it—

- (a) provides funding to bush fire brigades for the purchase of protective clothing, equipment and appliances; and
- (b) keeps bush fire brigades informed of opportunities for funding from other bodies.

6.2 Equipment in brigade area

Not later than 31 May in each year, the bush fire brigade is to report to the local government the nature, quantity and quality of all protective clothing, equipment and appliances of the bush fire brigade which are generally available within the brigade area (or at a station of the bush fire brigade).

6.3 Funding from local government budget

A request to the local government from the bush fire brigade for funding of protective clothing, equipment or appliance needs is to be received by the local government by 31 March in order to be considered in the next following local government budget, and is to be accompanied by the last audited financial statement and a current statement of assets and liabilities of the bush fire brigade.

6.4 Consideration in the local government budget

The local government may approve or refuse an application for funding depending upon the assessment of budget priorities for the year in question.

Schedule 1—Rules governing the operation of bush fire brigades

[Clause 5.1]

PART 1—PRELIMINARY

1.1 Interpretation

(1) In these Rules, unless the context otherwise requires, where a term is used in these Rules and is defined in the local law, the Act or the Regulations, then the term is to be taken to have the meaning assigned to it in the local law, the Act or the Regulations, as the case may be.

(2) In these Rules, unless the context otherwise requires—

absolute majority means a majority of more than 50% of the number of—

- (a) brigade members of the bush fire brigade, whether in attendance at the meeting or not, if the majority is required at a meeting of the bush fire brigade; or
- (b) brigade officers of the bush fire brigade, whether in attendance at the meeting or not, if the majority is required at a meeting of the Committee.

Committee means the Committee of the bush fire brigade;

local law means the *Shire of Harvey Bush Fire Brigades Local Law 2017*; and

normal brigade activities is defined by section 35A of the Act.

(3) Subject to these Rules, where a decision is to be made by the bush fire brigade, then the decision may be made by a resolution passed by a simple majority of the brigade members who are present in person or by proxy at the meeting.

(4) Subject to these Rules, where a decision is to be made by the Committee, then the decision may be made by a resolution passed by a simple majority of the brigade officers who are present in person or by proxy at the meeting.

PART 2—OBJECTS AND MEMBERSHIP OF BUSH FIRE BRIGADE

2.1 Objects of bush fire brigade

The objects of the bush fire brigade are to carry out—

- (a) the normal brigade activities; and
- (b) the functions of the bush fire brigade which are specified in the Act, the Regulations and the local law.

2.2 Committee to determine applications

Applications for membership are to be determined by the Committee.

2.3 Conditions of membership

In relation to any type of membership, as described in Part 4 of the local law, the bush fire brigade may establish policies pertaining to—

- (a) the qualifications required;
- (b) fees payable, if any;
- (c) a requirement to serve a probationary period; and
- (d) procedures to be employed by the Committee prior to approval of an application for membership,

and the Committee is to act within the parameters of any such policy in determining applications for membership.

2.4 Applications for membership

An application for membership is to be in writing and is to be submitted to the Secretary and in the case of—

- (a) an application for firefighting membership is to be accompanied by a completed form in the form of that in Appendix I.
- (b) an application for associate membership is to be accompanied by a completed form in the form of that in Appendix II.
- (c) an application for cadet membership is to be accompanied by a completed form in the form of that in Appendix III.

2.5 Decision on application for membership

(1) The Committee may—

- (a) approve an application for membership unconditionally or subject to any conditions; or
- (b) refuse to approve an application for membership.

(2) If the Committee refuses to approve an application for membership, it is to give written reasons for the refusal, as soon as practicable after the decision is made, to the applicant and the advice that the applicant has the right to object to the local government.

2.6 Department to be notified of registrations

If any application for membership is approved, the Secretary of the bush fire brigade is to supply registration details to the Department of Fire and Emergency Services within 14 days of a person being admitted to membership in the form required by the Department from time to time.

2.7 Termination of membership

(1) Membership of the bush fire brigade terminates if the member—

- (a) dies;
- (b) gives written notice of resignation to the Secretary;
- (c) is, in the opinion of the Committee, permanently incapacitated by mental or physical ill-health;
- (d) is dismissed by the Committee; or
- (e) ceases to be a member or is taken to have resigned under subclause (2).

(2) A brigade member whose membership fees are more than one year in arrears is to be taken to have resigned from the bush fire brigade.

2.8 Suspension of membership

(1) Membership of the bush fire brigade may be suspended at any time if, in the opinion of the Committee, circumstances warrant suspending the member.

(2) The period of suspension shall be at the discretion of the Committee.

(3) Upon the expiry of the period of suspension the Committee may—

- (a) extend the period of suspension;
- (b) terminate the membership; or
- (c) reinstate the membership.

2.9 Existing liabilities to continue

The resignation or dismissal of a member under clause 2.7 does not affect any liability of the brigade member arising prior to the date of resignation or dismissal.

2.10 Member has right of defense

A brigade member is not to be dismissed under clause 2.7(1)(d) without being given the opportunity to meet with the Committee and answer any charges which might give grounds for dismissal.

2.11 Objection Rights

A person whose—

- (a) application for membership is refused under clause 2.5(1)(b);

- (b) membership is terminated under clause 2.7(1)(c), clause 2.7(1)(d) or clause 2.8(3)(b); or
 - (c) membership is suspended under clause 2.8(1) or clause 2.8(3)(a),
- has the right of objection to the local government which may dispose of the objection by—
- (a) dismissing the objection;
 - (b) varying the decision objected to; or
 - (c) revoking the decision objected to, with or without—
 - (i) substituting for it another decision; or
 - (ii) referring the matter, with or without directions, for another decision by the Committee.

PART 3—FUNCTIONS OF BRIGADE OFFICERS

3.1 Chain of command during fire fighting activities

Subject to the Act and the local law, the command procedures to apply during fire fighting activities are as detailed in the local government's Bush Fire Operating Procedures.

3.2 Captain

- (1) Subject to subclause (2), the Captain is to preside at all meetings.
- (2) In the absence of the Captain, the meeting may elect another person to preside at the meeting.

3.3 Secretary

- (1) The Secretary is to—
 - (a) be in attendance at all meetings and keep a correct minute and account of the proceedings of the bush fire brigade in a book which shall be open for inspection by brigade members at any reasonable time;
 - (b) answer all correspondence or direct it appropriately, and keep a record of the same;
 - (c) prepare and send out all necessary notices of meetings;
 - (d) receive membership fees, donations and other monies on behalf of the bush fire brigade, and remit them to the Treasurer upon receipt;
 - (e) complete and forward an incident report form in the form required by the Department to the Chief Bush Fire Control Officer and the Department within 14 days after attendance by the bush fire brigade at an incident; and
 - (f) maintain a register of all current brigade members which includes each brigade member's contact details and type of membership;
 - (g) provide no later than 31 May in each year, a report to the Chief Bush Fire Control Officer detailing the name, contact details and type of membership of each brigade member.
- (2) Where a bush fire brigade attends an incident on more than one day, the incident report form is to be completed and forwarded under subclause (1)(e) within 14 days after the last day of attendance.

3.4 Treasurer

The Treasurer is to—

- (a) receive donations and deposits from the Secretary, and deposit all monies to the credit of the bush fire brigade's bank account;
- (b) pay accounts as authorised by the Committee;
- (c) keep a record of all monies received and payments made, maintain the accounts and prepare the balance sheet for each financial year;
- (d) be the custodian of all monies of the bush fire brigade;
- (e) regularly inform the Secretary of the names of those brigade members who have paid their membership fees; and
- (f) report on the financial position at meetings of the bush fire brigade or Committee.

3.5 Equipment Officer

The Equipment Officer is responsible for the custody and maintenance in good order and condition of all protective clothing, equipment and appliances provided by the local government to the bush fire brigade (or of the bush fire brigade).

3.6 Storage of equipment

- (1) The Equipment Officer may store all of the equipment of the bush fire brigade at a place approved by the Captain (the *station*).
- (2) If there is to be more than one station in the brigade area, the Equipment Officer is to appoint in respect of each station a person who is responsible for the custody and maintenance in good order and condition of all equipment and appliances at the station, subject to any direction of the Equipment Officer.

3.7 Equipment Officer to report

The Equipment Officer is to provide, no later than 31 May of each year, a report to the local government and bush fire brigade Captain describing the nature, quantity and quality of all protective clothing, equipment and appliances of the bush fire brigade which are generally available within the bush fire brigade area (or at a station of the bush fire brigade).

PART 4—COMMITTEE**4.1 Management of bush fire brigade**

(1) Subject to the provisions of these Rules, the administration and management of the affairs of the bush fire brigade are vested in the Committee.

(2) Without limiting the generality of subclause (1), the Committee is to have the following functions—

- (a) to recommend to the local government amendments to these Rules;
- (b) to draft the annual budget for the bush fire brigade and present it at the annual general meeting of the bush fire brigade;
- (c) to propose a motion for consideration at any meeting of the bush fire brigade;
- (d) to recommend to the local government equipment which needs to be supplied by the local government to the bush fire brigade;
- (e) to invest or place on deposit any of the funds of the bush fire brigade not immediately required to perform the normal brigade activities;
- (f) to delegate to a person, as from time to time thought fit, any functions (being less than the total functions of the Committee) on any conditions it thinks fit;
- (g) to do all things necessary or convenient in order to perform any of its functions and to secure the performance of the normal brigade activities by the bush fire brigade; and
- (h) deal with membership applications, grievances, disputes and disciplinary matters.

4.2 Constitution of Committee

(1) The Committee of the bush fire brigade is to consist of the brigade officers being the Captain, Secretary, Treasurer, Equipment Officer and the Lieutenants of the bush fire brigade.

(2) The brigade officers are to—

- (a) be elected at the annual general meeting of the bush fire brigade;
- (b) hold office until the next annual general meeting; and
- (c) be eligible for re-election at the next annual general meeting.

(3) Any brigade officer may be removed from office by an absolute majority decision of the brigade members present in person or by proxy at a special meeting called for such a purpose.

(4) The Committee may appoint a brigade member to fill a vacancy in any office arising from a resolution under subclause (3) or which has arisen for any other reason.

PART 5—MEETINGS OF BUSH FIRE BRIGADE**5.1 Ordinary meetings**

(1) Ordinary meetings may be called at any time by the Secretary by giving at least 7 days notice to all brigade members and to the Chief Bush Fire Control Officer, for the purpose of—

- (a) organising and checking equipment;
- (b) requisitioning new or replacement equipment;
- (c) organising field excursions, training sessions, hazard reduction programs, and the preparation of fire-breaks;
- (d) establishing new procedures in respect of any of the normal brigade activities; and
- (e) dealing with any general business.

(2) In a notice given under subclause (1), the Secretary is to specify the business which is to be conducted at the meeting.

(3) Business may be conducted at an ordinary meeting of the bush fire brigade notwithstanding that it was not specified in a notice given under subclause (1) in relation to that meeting.

5.2 Special meetings

(1) The Secretary is to call a special meeting when 5 or more brigade members request one in writing.

(2) At least 2 days notice of a special meeting is to be given by the Secretary, to all brigade members and to the Chief Bush Fire Control Officer.

(3) In a notice given under subclause (2), the Secretary is to specify the business which is to be conducted at the meeting.

(4) No business is to be conducted at a special meeting beyond that specified in a notice given under subclause (2) in relation to that meeting.

5.3 Annual general meeting

(1) At least 7 days notice of the annual general meeting is to be given by the Secretary to all brigade members and to the Chief Bush Fire Control Officer.

(2) At the annual general meeting the bush fire brigade is to—

- (a) elect the brigade officers from among the brigade members;
- (b) consider the Captain's report on the year's activities;
- (c) adopt the annual financial statements;
- (d) appoint an Auditor for the ensuing financial year in accordance with clause 5.6; and
- (e) deal with any general business.

(3) In a notice given under subclause (1), the Secretary is to specify the business which is to be conducted at the meeting.

(4) Business may be conducted at an annual general meeting notwithstanding that it was not specified in a notice given under subclause (1) in relation to that meeting.

5.4 Quorum

(1) The quorum for a meeting of the bush fire brigade is at least 50% of the number of officers (whether vacant or not) or members of the bush fire brigade.

(2) No business is to be transacted at a meeting of the bush fire brigade unless a quorum of brigade members is present in person or by proxy.

5.5 Voting

Each brigade member is to have one vote, however in the event of an equality of votes, the Captain (or person presiding) may exercise a casting vote.

5.6 Auditor

(1) At the annual general meeting a person, not being a brigade member, is to be appointed as the Auditor of the bush fire brigade for the ensuing financial year.

(2) The Auditor is to audit the accounts of the bush fire brigade not less than 7 days before the annual general meeting and is to certify to their correctness or otherwise and present a report at the annual general meeting.

PART 6—MEETINGS OF COMMITTEE

6.1 Meetings of Committee

(1) The Committee is to meet for the despatch of business, adjourn and otherwise regulate its meeting as it thinks fit.

(2) The Captain or Secretary may convene a meeting of the Committee at any time.

6.2 Quorum

No business is to be transacted at a meeting of the Committee unless a quorum of 3 brigade officers are present in person.

6.3 Voting

Each brigade officer is to have one vote, however in the case of an equality of votes, the Captain (or person presiding) may exercise a casting vote.

PART 7—GENERAL ADMINISTRATION MATTERS

7.1 Fees

(1) The membership fees, if any, for each type of member for the ensuing 12 months are to be determined by the bush fire brigade at the annual general meeting.

(2) Subject to subclause (3), a member is to pay the membership fees for her or his type of membership on or before 1 May.

(3) The bush fire brigade may exempt a brigade member or a class of membership, from the payment of membership fees, for such period and on such conditions as the bush fire brigade may determine.

7.2 Funds

The funds of the bush fire brigade are to be used solely for the purpose of promoting the objects of the bush fire brigade.

7.3 Financial year

The financial year of the bush fire brigade is to commence on 1 July and is to end on 30 June of the following year.

7.4 Banking

(1) The brigade must have 3 Committee Members to act as signatories for the brigade accounts each Financial Year.

(2) A minimum of 2 signatures is required on any brigade account cheque or bank transaction form.

7.5 Disclosure of interests

(1) A brigade member shall disclose to the bush fire brigade or Committee any financial interest (whether direct or indirect) he or she may have in any matter being considered by the bush fire brigade or Committee, as appropriate.

(2) If a financial interest has been disclosed under subclause (1), then the bush fire brigade or Committee, as appropriate, is to decide, in the absence of the brigade member who disclosed that interest, whether or not the brigade member is to be permitted to vote on that matter.

(3) Where the bush fire brigade or Committee, as appropriate, decides under subclause (2), that a brigade member is not to be permitted to vote on a matter, and the brigade member votes on the matter, then her or his vote is to be taken to have no effect and is not to be counted.

7.6 Disagreements

(1) Any disagreement between brigade members may be referred to either the Captain or to the Committee.

(2) Where a disagreement in subclause (1) is considered by the Captain or the Committee to be of importance to the interests of the bush fire brigade, then the Captain or the Committee, as the case may be, is to refer the disagreement to the annual general meeting, an ordinary meeting or a special meeting of the bush fire brigade.

(3) The local government is the final authority on matters affecting the bush fire brigade, and may resolve any disagreement which is not resolved under subclause (1) or (2).

PART 8—NOTICES AND PROXIES

8.1 Notices

(1) Notices of meetings of the bush fire brigade are to be in writing and sent by ordinary post or by electronic communication to the registered address of each brigade member.

(2) Notices of meetings of the Committee may be given in writing in accordance with subclause (1) or by such other means as the Committee may decide (by an absolute majority) at a meeting of the Committee.

(3) Any accidental omission to give notice of a meeting to, or non-receipt by a person entitled to receive such notice, is not to invalidate the meeting the subject of the notice or any resolutions passed at the meeting.

(4) Where any notice other than a notice of meeting is to be given under these Rules, the notice is to be—

- (a) in writing;
- (b) unless otherwise specified, given to or by the Secretary;
- (c) given by—
 - (i) personal delivery;
 - (ii) post; or
 - (iii) an electronic communication;
- (d) taken to have been received, as the case may be—
 - (i) at the time of personal delivery;
 - (ii) 2 business days after posting;
 - (iii) on the printing of the sender’s transmission report; or
 - (iv) at the time when the electronic communication becomes capable of being retrieved by the addressee.

8.2 Proxies

(1) Where under these Rules a brigade member may vote by proxy, in order for the proxy to so vote, the brigade member or the proxy shall give a notice in the form of that appearing in this clause, to the Secretary or the person presiding at the meeting before the start of the meeting at which the proxy is to be used.

(2) A proxy is to be valid for the meeting for which it is given and for any adjournments of that meeting.

(3) A proxy shall be valid for the number of votes to which the brigade member is entitled.

(4) If the donor of the proxy does not give any indication of the manner in which the proxy is to vote, the proxy shall be entitled to vote or not vote as he or she thinks fit.

(5) A proxy shall be entitled to speak on behalf of the donor of the proxy.

(6) All forms appointing proxies deposited under subclause (1) are to be retained by the Secretary for not less than 28 days after the conclusion of the meeting to which they relate but if there is any objection to the validity of any vote at the meeting, they are to be retained until the determination of that objection.

(7) The form appointing a proxy shall be in writing and signed by the brigade member appointing the proxy and shall be in or substantially in the form set out below—

FORM 1
PROXY VOTE
SHIRE OF HARVEY BUSH FIRE BRIGADE
[ANNUAL] [EXTRAORDINARY] GENERAL MEETING
TO BE HELD ON [DATE]

I,

Being a brigade member appoint to be my proxy and vote on my behalf at the meeting of the bush fire brigade to be held on [insert date] and at any adjournment of it. The proxy shall vote as follows—

MOTION FOR AGAINST ABSTAIN

- 1.
- 2.

If there is no instruction to the proxy as to the way to vote, the proxy shall exercise her or his discretion as to how to vote or whether to vote at all. In respect of any vote taken at the meeting on a

matter which does not appear on the agenda, the proxy shall exercise her or his discretion as to the way he or she casts the vote or whether it is cast at all.

Date:

Signed:

NOTE: To be valid this proxy must be completed and returned to the Secretary of the bush fire brigade (or the presiding member) prior to the commencement of the meeting for which the proxy is valid.

Dated this day of, 20

APPENDIX I

APPLICATION FOR MEMBERSHIP—FIRE FIGHTING MEMBER

I make application to be a fire fighting member of the Bush Fire Brigade.

Applicant's Name.....

My private address is

My business address is

Usual Occupation.....

I can be contacted on—

Telephone No: (Home)..... (Work) Mobile

Fax No: (Home)..... (Work).....

CB Radio Channel..... Call Sign.....

If needed, I can provide my own transport to the scene of any outbreak. (This line to be struck out if not applicable)

I hold a current driver's licence No Classes

I declare that I am at least 16 years of age and in good health with no known medical conditions which might limit my capacity to fight fires.

I give these undertakings—

- (1) to promote the objects of the bush fire brigade as far as is in my power;
(2) to be governed by the provisions of the Bush Fires Act 1954 and the Regulations made under that Act, and the local law and policies of the Shire of Harvey relevant to fire control and bush fire brigades;
(3) to use my best endeavours to give assistance in fire fighting measures when called upon and on such occasions to obey all orders and instructions issued by duly authorised officers of the bush fire brigade or the local government;
(4) to comply with the Rules of the bush fire brigade.

Date

Applicant's signature

Please list here any fire fighting equipment owned by you.

- 1.
2.
3.
4.

BUSH FIRE BRIGADE USE ONLY:

APPROVED / DECLINED

Signed:

Brigade Captain.

APPENDIX II

APPLICATION FOR MEMBERSHIP—ASSOCIATE MEMBER

I make application to be an associate member of the..... Bush Fire Brigade.

(a) I am prepared to offer to transport fire fighting members and/or equipment to the scene of any outbreak when called upon. I have a motor vehicle of the following type available for such purpose.

MDL No: Classes:

(b) I am prepared to offer my services in the following capacity—

..... paragraph (a) or (b) above may be struck out if not applicable)

Applicant's Name.....

My private address is

My business address is

I can be contacted on—

Telephone No: (Home)..... (Work)..... Mobile.....

Fax No:(Home) (Work).....

CB Radio Channel Call Sign.....

I give these undertakings—

- (1) to promote the objects of the bush fire brigade as far as is in my power;
(2) to be governed by the provisions of the Bush Fires Act 1954 and any Regulations made under the Act and the local law and policies of the Shire of Harvey relevant to fire control and bush fire brigades;
(3) to use my best endeavours to assist in normal bush fire brigade activities as an associate member when called upon;
(4) to comply with the Rules of the bush fire brigade.

Date

..... Applicant's signature

BUSH FIRE BRIGADE USE ONLY:

APPROVED / DECLINED

Signed:

Brigade Captain.

APPENDIX III

APPLICATION FOR MEMBERSHIP—CADET MEMBER

I make application to be a cadet member of the..... Bush Fire Brigade.

Applicant's Name

My private address is.....

I can be contacted on—

Telephone No: (Home)..... (Work)..... Mobile.....

Fax No:(Home) (Work).....

CB Radio..... Channel Call Sign.....

I declare that I am years of age and in good health.

Date of Birth:.....

I give these undertakings—

- (1) to promote the objects of the bush fire brigade as far as is in my power;
(2) to be governed by the provisions of the Bush Fires Act 1954 and the Regulations made under that Act, and the local law and policies of the Shire of Harvey relevant to the activities of cadet members;

- (3) to obey all orders and instructions issued by duly authorised officers of the bush fire brigade or the local government;
- (4) to comply with the Rules of the bush fire brigade.

Date

.....

Applicant's signature

Parent / Guardian consent—

I being the parent/guardian of the above applicant, consent to him/her being a cadet member of the Bush Fire Brigade, in accordance with the rules applicable to cadet membership.

Signed.....

| |
|---|
| <p>BUSH FIRE BRIGADE USE ONLY:</p> <p>APPROVED / DECLINED</p> <p>Signed:</p> <p style="text-align: center;">Brigade Captain.</p> |
|---|

Dated: 13 March 2017.

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

M. A. PARKER, Chief Executive Officer.
T. G. JACKSON, Shire President.

**CEMETERIES ACT 1986
LOCAL GOVERNMENT ACT 1995**

SHIRE OF HARVEY

CEMETERIES LOCAL LAW 2017

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**CEMETERIES ACT 1986
LOCAL GOVERNMENT ACT 1995**

SHIRE OF HARVEY

CEMETERIES LOCAL LAW 2017

Under the powers conferred by the *Cemeteries Act 1986* and the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Harvey resolved on 29 November 2017 to adopt the following local law.

PART 1—PRELIMINARY

1.1 Citation

This local law may be cited as the *Shire of Harvey Cemeteries Local Law 2017*.

1.2 Application

This local law applies to the *Harvey (Reserve 13178)*, *Harvey Lawn (Lot 3 on diagram 37953 (No. 632) Forestry Road)*, *Australind (Reserve 7575)*, and *Cookernup (Reserve 3309) Cemeteries* located in the district.

1.3 Commencement

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

1.4 Repeal

The *Shire of Harvey Cemeteries Local Law* as published in the *Government Gazette* on 23 June 2000 is repealed.

1.5 Interpretation

In this local law, unless the context otherwise requires—

Act means the *Cemeteries Act 1986*;

ashes means so much of the remains of a dead body after the due processes of cremation as may be contained in a standard sized cremation urn;

authorised officer means an employee of the Board authorised by the Board for the purposes of performing any function or exercising any power conferred upon an authorised officer by this local law;

Board means the local government;

CEO means the chief executive officer, for the time being, of the Board;

coffin means a coffin or other receptacle used for the transportation of a dead body to the grave site, or the receptacle used for the burial of a dead body in a grave;

crypt has the same meaning as vault;

district means the district of the local government;

funeral director means a person holding a funeral directors licence.

local government means the Shire of Harvey;

mausoleum means a building or construction wholly above or partially above and below ground level, so constructed as to allow the deposition of dead bodies into a compartment in the wall or floor and being sealed from view;

memorial includes headstone, plaque, tombstone, monumental work, inscription, kerbing, enclosure and any other fixture or thing commemorating a grave or placement of ashes;

monument means a sculpture, statue, headstone, plaque, grave boundary marker, fence or cover, approved by the Board, commemorating a grave or placement of ashes;

monumental mason's licence means a licence issued under clause 7.16;

monumental work when the term is used as an abstract noun shall include the erection, alteration or removal of or other working upon a monument on a grave;

nuisance means—

- (a) an activity or condition which is harmful or annoying and which gives rise to legal liability in the tort of public or private nuisance at law;
- (b) an unreasonable interference with the use and enjoyment of a person of his or her ownership or occupation of land; or
- (c) interference which causes material damage to land or other property on the land affected by the interference;

personal representative means—

- (a) The administrator or executor of an estate of a deceased person;
- (b) The person who, by law of practice, has the right to apply for administration of the estate of the deceased person; or
- (c) A person having lawful custody of a dead body;

set fee refers to fees and charges set by a resolution of the Board and published in the *Government Gazette*, under section 53 of the Act;

single funeral permit means a permit issued by the Board under section 20 or 21 of the Act which entitles the holder to conduct at the cemetery a funeral of a person named in the permit; and

vault means a below ground lined grave with one or more sealed compartments constructed to specifications approved from time to time by the Board.

vehicle has the same meaning as is given to that word in the *Road Traffic (Administration) Act 2008* (as amended from time to time), and includes trail bikes, beach buggies and other recreational vehicles licenced or unlicensed, but excludes a wheelchair being used by a physically impaired person.

PART 2—ADMINISTRATION

2.1 Powers and functions of CEO

Subject to any directions given by the Board, the CEO shall exercise all the powers and functions of the Board in respect of the cemetery.

PART 3—APPLICATION FOR FUNERALS

3.1 Application for burial

- (1) A person may apply for approval to bury a dead body in the cemetery in the form determined by the Board from time to time.
- (2) An application under subclause (1) is to be accompanied by the set fee.

3.2 Applications to be accompanied by certificates etc

All applications referred to in clauses 3.1 shall be accompanied by either a medical certificate of death or a Coroner's order of burial, and a certificate issued under clause 3.3, in respect of the body.

3.3 Certificate of identification

- (1) After a dead body is placed in a coffin and prior to a dead body being removed to the cemetery, a person who personally knew the deceased shall identify the dead body and shall complete a certificate of identification in the form determined by the Board from time to time, unless—
 - (a) in the opinion of a funeral director, the dead body is not in a fit state to be viewed; or
 - (b) after reasonable effort the funeral director is unable to arrange for a person to identify the dead body.
- (2) A funeral director shall complete a certificate in the form determined by the Board from time to time, where—
 - (a) in the opinion of the funeral director, the dead body is not in a fit state to be viewed; or
 - (b) after reasonable effort the funeral director is unable to arrange for a person to identify the dead body.

3.4 Minimum notice required

All bookings to hold a funeral shall be made with the Board at least 48 hours prior to the time proposed for burial on the application, otherwise an extra charge may be made.

PART 4—FUNERAL DIRECTORS

4.1 Funeral director's licence expiry

A funeral director's licence shall expire on 30 June of each year.

4.2 Single funeral permits

Every application for a single funeral permit made under section 20 or 21 of the Act shall include coffin specifications and details of the vehicle transporting the dead body to the gravesite.

4.3 Application refusal

The Board may refuse an application for a single funeral permit if, in the opinion of the Board, either the coffin specifications or the details of the vehicle transporting the dead body to the gravesite are not structurally sound or are otherwise inadequate or inappropriate, or on any other grounds.

PART 5—FUNERALS

Division 1—General

5.1 Requirements for funerals and coffins

- (1) A person shall not bring a dead body into the cemetery unless—
- (a) the Board has approved an application for the burial of that dead body in accordance with Part 3 of this local law;
 - (b) it is enclosed in a coffin which in the opinion of the Board is structurally sound and bears the name of the deceased person indelibly inscribed in legible characters on a plate on the coffin's lid; and
 - (c) under the plate referred to in paragraph (b) there is a substantive lead strip bearing the surname of the deceased person stamped in legible characters, each character being not less than 10 mm in height.

5.2 Funeral processions

The time fixed by the Board for any burial shall be the time at which the funeral procession is to arrive at the cemetery gates, and, if not punctually observed, then the applicant who applied to hold the funeral under clause 3.1 shall pay the set fee for being late.

5.3 Vehicle entry restricted

- (1) Subject to clause 5.3(2), every funeral procession shall enter by the principal entrance, and no vehicle except the hearse, and official mourning coaches, shall be permitted to enter the cemetery unless prior approval is granted by the CEO or an authorised officer.
- (2) This clause shall not apply to persons using wheelchairs or motorised wheelchairs.

5.4 Vehicle access and speed limitation

- (1) A person shall drive a vehicle on a vehicular access way or the constructed roadway or other areas designated for the use of vehicles within the cemetery, unless otherwise authorised by the CEO.
- (2) A person driving a vehicle, within a cemetery, shall not exceed the speed limit of 25 km per hour, and shall comply with the signs and directions in the cemetery.

5.5 Offenders may be ordered to leave

- (1) A person committing an offence under clause 5.4 may be ordered to leave the cemetery by the CEO or an authorised officer.
- (2) A person who has been ordered to leave the cemetery by the CEO or an authorised officer is to leave immediately in a peaceful manner and not cause a disruption or be a nuisance to the funeral congregation or ceremony or procession.

5.6 Conduct of funeral by Board

When conducting a funeral under section 22 of the Act the Board may—

- (a) require a written request for it to conduct a funeral to be lodged with it;
- (b) in its absolute discretion, charge any person requesting it to conduct a funeral the set fee for the conduct of that funeral by it;
- (c) where no fee or a reduced fee has been charged by it for the conduct of the funeral, determine the manner in which the funeral shall be conducted;
- (d) specify an area in the cemetery where the dead body is to be buried;
- (e) conduct the funeral notwithstanding the failure of a person to make any application or to obtain any consent required under this local law;
- (f) do or require anything which it considers is necessary or convenient for the conduct of a funeral by it.

Division 2—Placement of ashes

5.7 Disposal of ashes

(1) The personal representative of a deceased person whose body has been cremated may apply, in an application under clause 3.1 or otherwise, for permission to dispose of the ashes in the cemetery and upon payment of the set fee, the Board may grant permission for the ashes to be disposed of by one of the following methods—

- (a) Niche wall
- (b) Memorial wall
- (c) Garden of remembrance
- (d) Ground niche
- (e) Memorial rose, tree or shrub
- (f) Family shrub

- (g) Memorial desk
 - (h) Granite seat
 - (i) Family grave
 - (j) Book of remembrance
 - (k) Scattering to the winds
 - (l) Memorial gardens
 - (m) Other memorials approved by the Board
- (2) Subject to subclauses (3) and (4), a person shall not place the ashes of a deceased person in the cemetery.
- (3) An authorised officer may place the ashes of a deceased person in a cemetery in accordance with the Board approval provided—
- (a) the person requesting the placement of the ashes has the permission of the Board; and
 - (b) the ashes are placed within an area set aside for that purpose by the Board.
- (4) An authorised officer may place the ashes of a deceased person within a grave in accordance with the Board approval, provided the person requesting the placement of the ashes has the written permission of the Board and the approval of the holder of the right of burial of the grave.

PART 6—BURIALS

6.1 Depth of graves

- (1) A person shall bury a coffin within the cemetery so that the distance between the top of the coffin and the original surface of the ground is—
- (a) not less than 750 mm, or
 - (b) not less than 600 mm,

unless permission to vary the distance or depth of grave is granted by an authorised officer.

- (2) The permission of the authorised officer will only be granted where, in the opinion of the authorised officer, exceptional circumstances require granting of that permission.

6.2 Mausoleum, etc

- (1) A person other than the Board shall not construct a brick grave, crypt, vault or mausoleum within the cemetery.
- (2) A person may request the Board to construct a vault or mausoleum within the cemetery which vault or mausoleum shall at all times remain the property of the Board.
- (3) An application under subclause (2) shall be in writing and shall be accompanied by payment of the set fee.
- (4) A person shall not place a dead body in a mausoleum except—
- (a) in a closed coffin; and
 - (b) in a soundly constructed chamber; and
 - (c) in accordance with subclause (5).
- (5) The number of burials in a chamber must not exceed the number for which the chamber was designed.

PART 7—MEMORIALS AND OTHER WORK

Division 1—General

7.1 Application for monumental work

A Board may require the written consent of the holder of the right of burial of the grave to accompany an application under section 30 of the Act.

7.2 Placement of monumental work

Every memorial shall be placed on proper and substantial foundations.

7.3 Removal of rubbish

All refuse, rubbish or surplus material remaining after memorial works are completed under a permit issued under section 30 of the Act shall be immediately removed from the cemetery by the person carrying out the same.

7.4 Operation of work

All material required in the erection and completion of any work shall, as far as possible, be prepared before being taken to the cemetery, and all materials required by tradesmen shall be admitted at such entrance as the CEO or an authorised officer shall direct.

7.5 Removal of sand, soil or loam

No sand, earth or other material shall be taken from any part of the cemetery for use in the erection of any memorial or work except with the written approval of the Board.

7.6 Hours of work

Persons shall not be permitted to carry out memorial or other work on graves within the cemetery other than during the hours of 8.00am and 6.00pm on weekdays, and 8.00am and noon on Saturdays, without the written permission of the Board.

7.7 Unfinished work

Should any work by masons or others be not completed before 6 p.m. on weekdays and noon on Saturdays, they shall be required to leave the work in a neat and safe condition to the satisfaction of the CEO or an authorised officer.

7.8 Use of wood

No wooden fence, railing, cross or other wooden erection shall be allowed on or around any grave, other than as a temporary marker and with the prior approval of the Board.

7.9 Plants and Trees

No trees or shrubs shall be planted on any grave or within the cemetery except such as shall be approved by the CEO.

7.10 Supervision

All workers, whether employed by the Board or by any other person, shall at all times whilst within the boundaries of the cemetery be subject to the supervision of the CEO or an authorised officer and shall obey such directions as the CEO or an authorised officer may give.

7.11 Australian War Graves

Notwithstanding anything in this local law to the contrary, the Office of Australian War Graves—

- (a) may place a memorial on a military grave; and
- (b) is not required to pay the set fee for any memorial that is placed upon a military grave.

7.12 Placing of glass domes and vases

A person shall not place glass domes, vases or other grave ornaments—

- (a) outside the perimeter of a grave in the cemetery as defined in the plans kept and maintained under section 40(2) of the Act; or
- (b) on the lawn in an area set aside by the Board as a lawn or a memorial plaque section.

*Division 2—Lawn section***7.13 Specification of monuments**

(1) All monuments in the lawn section of a cemetery shall—

- (a) be made of natural stone;
- (b) be placed upon a base of natural stone;
- (c) comply with the following specifications—
 - (i) the overall height of the monument above the original surface of the grave shall not exceed 1.05 m;
 - (ii) the height of the base of the monument above the original surface of the grave shall be 150 mm;
 - (iii) the width of the base of the monument shall not exceed 1.20 m;
 - (iv) the depth of the base of the monument shall not exceed 300 mm; and
- (d) have foundations placed on a reinforced concrete slab, set level to the natural ground of the following dimensions, length 1.2m, width 0.6m and depth 150mm.

(2) An admiralty bronze memorial plaque may be attached to a monument erected or being erected in the lawn section of the cemetery.

(3) A person shall not display any trade names or marks upon any monument erected within the lawn section of the cemetery.

7.14 Headstones

In the lawn section of the cemetery, that part of a headstone above its base shall not extend horizontally beyond that base.

*Division 3—Memorial plaque section***7.15 Requirements of a memorial plaque**

(1) All memorial plaques placed in a memorial plaque section of the cemetery shall—

- (a) be made of admiralty bronze or any other material approved by the Board; and
- (b) not be less than the dimensions 143 mm x 117 mm, nor more than 560 mm x 305 mm.

(2) All memorial plaques made of admiralty bronze shall—

- (a) not exceed 20 mm in thickness; and
- (b) be placed upon a base mounting approved by the Board.

- (3) All memorial plaques made of stone shall—
- (a) not exceed 50 mm in thickness placed upon a base mounting approved by the Board; or
 - (b) not be less than 100 mm in thickness if it is not to be placed upon a base mounting.

Division 4—Licensing of Monumental Masons

7.16 Monumental mason's licence

(1) The Board may upon receipt of an application in writing by any person and upon payment of the set fee issue to the applicant a monumental mason's licence.

(2) A licence issued under subclause (1) authorises the holder to carry out monumental works within the cemetery subject to the provisions of this local law and such conditions as the Board shall specify upon the issue of that licence.

7.17 Expiry date, non-transferability

A monumental mason's licence—

- (a) shall be valid from the date specified therein until 30 June next following; and
- (b) is not transferable.

7.18 Carrying out monumental work

A person shall not carry out monumental work within the cemetery unless that person—

- (a) is the holder of a current monumental mason's licence issued pursuant to clause 7.16; or
- (b) is an employee of a person who holds such a licence; or
- (c) is authorised by the Board to do so.

7.19 Responsibilities of the holder of a monumental mason's licence

The holder of a monumental mason's licence shall be responsible for the compliance by every person purporting to be authorised to carry out monumental works within the cemetery pursuant to that licence with all the requirements and conditions of the licence, this local law, the Act and any other written law which may affect the carrying out of monumental works.

7.20 Cancellation of a monumental mason's licence

(1) The Board may by notice in writing to the holder of a monumental mason's licence terminate the licence on any of the following grounds—

- (a) that the holder of the licence has committed a breach of the requirements and conditions of the licence, this local law, the Act or any other written law which may affect the carrying out of monumental works;
- (b) that, in the opinion of the Board, the conduct of the holder of the licence or any person in the employ of that holder in carrying out or attempting to carry out any works within the cemetery, is inappropriate or unbecoming; or
- (c) that the holder of the licence has purported to transfer the licence issued to that holder.

(2) Upon the termination of a monumental mason's licence under this clause no part of any fee paid for the issue of that licence is refundable by the Board.

PART 8—GENERAL

8.1 Animals

A person shall not bring an animal into or permit an animal to enter or remain in the cemetery, other than an *assistance animal* as defined in section 9(2) of the *Disability Discrimination Act 1992* (Cth) or with the approval of the CEO or an authorised officer.

8.2 Damaging and removing of objects

Subject to clause 8.4, a person shall not damage, remove or pick any tree, plant, shrub or flower in the cemetery or any other object or thing on any grave or memorial or which is the property of the Board without the permission of the Board.

8.3 Withered flowers

A person may remove withered flowers from a grave or memorial and these are to be placed in a receptacle provided by the Board for that purpose.

8.4 Littering and vandalism

A person shall not—

- (a) break or cause to be broken any glass, ceramic or other material in or upon the cemetery;
- (b) discard, deposit, leave or cause to be discarded, deposited or left any refuse or litter in or upon the cemetery other than in a receptacle provided for that purpose.

8.5 Advertising

(1) A person shall not advertise or carry on any trade, business or profession within the cemetery without the prior written approval of the Board.

(2) The Board may consider and grant approval subject to such conditions as the Board thinks fit.

8.6 Obeying signs and directions

A person shall obey all signs displayed, marked, placed or erected by the Board within the cemetery and any other lawful direction by the CEO or an authorised officer.

8.7 Removal from the cemetery

Any person failing to comply with any provisions of this local law or behaving in a manner that in the opinion of the Board, the CEO or an authorised officer is inappropriate in the cemetery may in addition to any penalty provided by this local law be ordered to leave the cemetery by the Board, the CEO or an authorised officer.

PART 9—OFFENCES AND MODIFIED PENALTIES

9.1 General

A person who commits a breach of any provisions of this local law commits an offence and shall on conviction be liable to a penalty not exceeding \$500.00 and if the offence is a continuing one to a further penalty not exceeding \$20.00 for every day or part of a day during which the offence has continued.

9.2 Modified penalties

- (1) The offences specified in Schedule 1 are offences which may be dealt with under section 63 of the Act.
- (2) The modified penalty payable in respect of an offence specified in Schedule 1 is set out in the fourth column of Schedule 1.
- (3) The prescribed form of the infringement notice referred to in section 63(1) of the Act is set out in Schedule 2.
- (4) The prescribed form of the notice withdrawing an infringement notice referred to in section 63(3) of the Act is set out in Schedule 3.

—————

Schedule 1

MODIFIED PENALTIES

[cl. 9.2]

Offences and Modified Penalties

| Item No. | Clause | Nature of offence | Modified penalty |
|-----------------|---------------|--|-------------------------|
| 1 | 5.4(1) | Not driving vehicle on vehicular access way or constructed roadways or within designated areas | \$50 |
| 2 | 5.4(2) | Exceeding speed limit | \$50 |
| 3 | 7.3 | Not removing rubbish and surplus materials | \$50 |
| 4 | 7.5 | Unauthorised use of sand, earth or other material taken from another part of the cemetery | \$50 |
| 5 | 7.7 | Leaving uncompleted works in an untidy or unsafe condition | \$50 |
| 6 | 8.1 | Unauthorised bringing in of animal into cemetery or permitting animal to remain in cemetery | \$50 |
| 7 | 8.2 | Damaging and removing of objects | \$50 |
| 8 | 8.4 | Littering and vandalism | \$50 |
| 9 | 8.5 | Unauthorised advertising and/or trading | \$50 |
| 10 | 8.6 | Disobeying sign or lawful direction | \$50 |

—————

Schedule 2

INFRINGEMENT NOTICE

[cl. 9.2(3)]

Infringement Notice

To:
(Name)

.....
(Address)

It is alleged that at : hours on day of 20
at

you committed the offence indicated below by an (x) in breach of clause of the Shire of Harvey Cemeteries Local Law 2017.

.....
Applicant's signature

Offence—

- Not driving vehicle on vehicular access way or designated areas
- Exceeding speed limit
- Not removing rubbish and surplus materials
- Unauthorised use of materials taken from another part of the cemetery
- Leaving uncompleted works in an untidy or unsafe condition
- Unauthorised animal in cemetery
- Damaging and removing of objects
- Littering and vandalism
- Unauthorised advertising and/or trading
- Disobeying sign or lawful direction
- Other Offence: \$

You may dispose of this matter by payment of the penalty as shown within 21 days of the date of this notice (or the date of the giving of this notice if that is a different date) to the Chief Executive Officer of the Shire of Harvey at 102 Uduc Road Harvey WA 6220 between the hours of 9 a.m. to 4.30 p.m., Monday to Friday.

Please make cheques payable to Shire of Harvey. Payments by mail should be addressed to—

The Chief Executive Officer
Shire of Harvey
102 Uduc Road
HARVEY WA 6220

If the penalty is not paid within the time specified, then a complaint of the alleged offence may be made and heard and determined by a court.



Schedule 3
INFRINGEMENT WITHDRAWAL NOTICE

[cl. 9.2(4)]

Withdrawal of Infringement Notice

No. Date / /

To: ^[1]

Infringement Notice No dated ___/___/___ for the alleged offence of ^[2]

Penalty ^[3] \$ _____ is withdrawn.

(Delete whichever does not apply)

* No further action will be taken.

* It is proposed to institute court proceedings for the alleged offence.

.....
(Authorised Person)

^[1] Insert name and address of alleged offender.

^[2] Insert short particulars of offence alleged.

^[3] Insert amount of penalty prescribed.

Dated: 13 March 2017.

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

M. A. PARKER, Chief Executive Officer.
T. G. JACKSON, Shire President.



**DOG ACT 1976
LOCAL GOVERNMENT ACT 1995**

SHIRE OF HARVEY

DOGS LOCAL LAW 2017

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**DOG ACT 1976
LOCAL GOVERNMENT ACT 1995**

SHIRE OF HARVEY

DOGS LOCAL LAW 2017

Under the powers conferred by the *Dog Act 1976*, the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Harvey resolved on 29 November 2016 to make the following local law.

PART 1—PRELIMINARY

1.1 Citation

This local law may be cited as the *Shire of Harvey Dogs Local Law 2017*.

1.2 Commencement

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

1.3 Application

This local law applies throughout the district.

1.4 Repeal

The *Shire of Harvey Dogs Local Law* as published in the *Government Gazette* on 20 March 2001 is repealed.

1.5 Interpretation

In this local law unless the context otherwise requires—

Act means the *Dog Act 1976*;

authorised person means a person who is appointed under section 29 of the Act;

CEO means the Chief Executive Officer of the local government;

dangerous dog has the meaning given under the Act;

district means the district of the local government;

local government means the Shire of Harvey;

nuisance means—

- (a) an activity or condition which is harmful or annoying and which gives rise to legal liability in the tort of public or private nuisance at law;
- (b) an unreasonable interference with the use and enjoyment of a person of his or her ownership or occupation of land; or
- (c) interference which causes material damage to land or other property on the land affected by the interference;

owner has the meaning given to it under section 3 of the Act;

pound keeper means a person authorised by the local government to perform all or any of the functions conferred on a “pound keeper” under this local law;

premises has the meaning given under the Act;

Regulations means the *Dog Regulations 2013*;

Schedule means a schedule in this local law;

thoroughfare has the meaning given to it in section 1.4 of the *Local Government Act 1995*;

town planning scheme means a town planning scheme made by the local government under the *Planning and Development Act 2005* which applies throughout the whole or a part of the district; and

townsite means the townsites of *Australind, Benger, Binningup, Brunswick Junction, Cookernup, Harvey, Myalup, Roelands, Wokalup and Yarloop*, 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 *Local Government Act 1995*.

PART 2—IMPOUNDING OF DOGS

2.1 Charges and costs

The following are to be imposed and determined by the local government under sections 6.16 to 6.19 of the *Local Government Act 1995*—

- (a) the charges to be levied under section 29(4) of the Act relating to the seizure and impounding of a dog;
- (b) the additional fee payable under section 29(4) of the Act where a dog is released at a time or on a day other than those determined under clause 2.2; and
- (c) the costs of the destruction and the disposal of a dog referred to in section 29(15) of the Act.

2.2 Attendance of pound keeper at pound

The pound keeper is to be in attendance at the pound for the release of dogs at the times and on the days of the week as are determined by the CEO.

2.3 Release of impounded dog

- (1) A claim for the release of a dog seized and impounded is to be made to the pound keeper or in the absence of the pound keeper, to the CEO.
- (2) The pound keeper is not to release a dog seized and impounded to any person unless that person has produced, to the satisfaction of the pound keeper, satisfactory evidence—
 - (a) of her or his ownership of the dog or of her or his authority to take delivery of it; or
 - (b) that he or she is the person identified as the owner on a microchip implanted in the dog.

PART 3—REQUIREMENTS AND LIMITATIONS ON THE KEEPING OF DOGS

3.1 Dogs to be confined

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

3.2 Limitation on the number of dogs

- (1) This clause does not apply to premises which have been—
 - (a) licensed under Part 4 as an approved kennel establishment; or
 - (b) granted an exemption under section 26(3) of the Act.
- (2) The limit on the number of dogs which may be kept on any premises is, for the purpose of section 26(4) of the Act—
 - (a) 2 dogs over the age of 3 months and the young of those dogs under that age if the premises are situated other than within a General or Intensive Farming Zone as identified in the local government's town planning scheme; or
 - (b) 3 dogs over the age of 3 months and the young of those dogs under that age if the premises are situated within a General or Intensive Farming Zone as identified in the local government's town planning scheme.

PART 4—APPROVED KENNEL ESTABLISHMENTS

4.1 Interpretation

In this Part and in Schedule 2—

licence means a licence to keep an approved kennel establishment on premises;

licensee means the holder of a licence;

premises in addition to the meaning given to it in section 3 of the Act, means the premises described in the application for a licence; and

transferee means a person who applies for the transfer of a licence to her or him under clause 4.13.

4.2 Application for licence for approved kennel establishment

An application for a licence must be made in the form of that in Schedule 1, and must be lodged with the local government together with—

- (a) plans and specifications of the kennel establishment, including a site plan;
- (b) copies of the notices to be given under clause 4.3;
- (c) written evidence that either the applicant or another person who will have the charge of the dogs, will reside on the premises or, in the opinion of the local government, sufficiently close to the premises so as to control the dogs and so as to ensure their health and welfare;
- (d) a written acknowledgement that the applicant has read and agrees to comply with any code of practice relating to the keeping of dogs nominated by the local government; and
- (e) the fee for the application for a licence referred to in clause 4.9(1).

4.3 Notice of proposed use

(1) An applicant for a licence must give notice of the proposed use of the premises as an approved kennel establishment after the application for a licence has been lodged—

- (a) once in a newspaper circulating in the district; and
- (b) to the owners and occupiers of any premises adjoining the premises.

(2) The notices in subclause (1) must specify that—

- (a) any written submissions as to the proposed use are to be lodged with the CEO within 14 days of the date the notice is given; and
- (b) the application and plans and specifications may be inspected at the offices of the local government.

(3) Where—

- (a) the notices given under subclause (1) do not clearly identify the premises; or
- (b) a notice given under subclause (1)(a) is of a size or in a location in the newspaper which, in the opinion of the local government, would fail to serve the purpose of notifying persons of the proposed use of the premises,

then the local government may refuse to determine the application for a licence until the notices or notice, as the case may be, is given in accordance with its directions.

4.4 Exemption from notice requirements

Where an application for a licence is made in respect of premises on which an approved kennel establishment is either a—

- (a) permitted use; or
- (b) use which the local government may approve subject to compliance with specified notice requirements,

under a town planning scheme, then the requirements of clauses 4.2(b), 4.3 and 4.5(a) do not apply in respect of the application for a licence.

4.5 When application can be determined

An application for a licence is not to be determined by the local government until—

- (a) the applicant has complied with clause 4.2;
- (b) the applicant submits proof that the notices referred to in clause 4.3(1) have been given in accordance with that clause; and
- (c) the local government has considered any written submissions received within the time specified in clause 4.3(2)(a) on the proposed use of the premises.

4.6 Determination of application

In determining an application for a licence, the local government is to have regard to—

- (a) the matters referred to in clause 4.7;
- (b) any written submissions received within the time specified in clause 4.3(2)(a) on the proposed use of the premises;
- (c) any economic or social benefits which may be derived by any person in the district if the application for a licence is approved;
- (d) the effect which the kennel establishment may have on the environment or amenity of the neighbourhood;
- (e) whether the approved kennel establishment will create a nuisance for the owners and occupiers of adjoining premises; and
- (f) whether or not the imposition of and compliance with appropriate conditions of a licence will mitigate any adverse effects of the approved kennel establishment identified in the preceding paragraphs.

4.7 Where application cannot be approved

The local government cannot approve an application for a licence where—

- (a) an approved kennel establishment cannot be permitted by the local government on the premises under a town planning scheme; or

- (b) an applicant for a licence or another person who will have the charge of the dogs will not reside on the premises, or, in the opinion of the local government, sufficiently close to the premises so as to control the dogs and so as to ensure their health and welfare.

4.8 Conditions of approval

- (1) The local government may approve an application for a licence subject to the conditions contained in Schedule 2 and to such other conditions as the local government considers appropriate.
- (2) In respect of a particular application for a licence, the local government may vary any of the conditions contained in Schedule 2.

4.9 Fees

- (1) On lodging an application for a licence, the applicant is to pay a fee to the local government.
- (2) On the issue or renewal of a licence, the licensee is to pay a fee to the local government.
- (3) On lodging an application for the transfer of a valid licence, the transferee is to pay a fee to the local government.
- (4) The fees referred to in subclauses (1) to (3) are to be imposed and determined by the local government from time to time under sections 6.16 to 6.19 of the *Local Government Act 1995*.

4.10 Form of licence

The licence is to be in the form determined by the local government from time to time and is to be issued to the licensee.

4.11 Period of licence

- (1) The period of effect of a licence is set out in section 27(5) of the Act.
- (2) A licence is to be renewed if the fee referred to in clause 4.9(2) is paid to the local government prior to the expiry of the licence.
- (3) On the renewal of a licence, the conditions of the licence at the time of its renewal continue to have effect.

4.12 Variation or cancellation of licence

- (1) The local government may vary the conditions of a licence.
- (2) The local government may cancel a licence—
- (a) on the request of the licensee;
 - (b) following a breach of the Act, the Regulations or this local law; or
 - (c) if the licensee is not a fit and proper person.

fit and proper person—means a person who has been deemed to be not fit to care for animals by a reputable body such as the RSPCA, or a person who is deemed by an authorised officer, not to have the ability or adequate support to undertake obligations of the licence.

- (3) The date a licence is cancelled is to be, in the case of—
- (a) subclause (2)(a), the date requested by the licensee; or
 - (b) subclauses (2)(b) and (2)(c), the date determined under section 27(6) of the Act.
- (4) If a licence is cancelled, the fee paid for that licence is not refundable for the term of the licence that has not yet expired.

4.13 Transfer

- (1) An application for the transfer of a valid licence from the licensee to another person must be—
- (a) made in the form determined by the local government from time to time;
 - (b) made by the transferee;
 - (c) made with the written consent of the licensee; and
 - (d) lodged with the local government together with—
 - (i) written evidence that a person will reside at or within reasonably close proximity to the premises the subject of the licence; and
 - (ii) the fee for the application for the transfer of a licence referred to in clause 4.9(3).
- (2) The local government is not to determine an application for the transfer of a valid licence until the transferee has complied with subclause (1).
- (3) The local government may approve, whether or not subject to such conditions as it considers appropriate, or refuse to approve an application for the transfer of a valid licence.
- (4) Where the local government approves an application for the transfer of a valid licence, then on the date of approval, unless otherwise specified in the notice issued under clause 4.14(b), the transferee becomes the licensee of the licence for the purposes of this local law.

4.14 Notification

The local government is to give written notice to—

- (a) an applicant for a licence of the local government's decision on her or his application;
- (b) a transferee of the local government's decision on her or his application for the transfer of a valid licence;

- (c) a licensee of any variation made under clause 4.12(1);
- (d) a licensee when her or his licence is due for renewal and the manner in which it may be renewed;
- (e) a licensee when her or his licence is renewed;
- (f) a licensee of the cancellation of a licence under clause 4.12(2)(a); and
- (g) a licensee of the cancellation of a licence under clause 4.12(2)(b) and 4.12(2)(c), which notice is to be given in accordance with section 27(6) of the Act.

4.15 Inspection of kennel

With the consent of the occupier, an authorised person may inspect an approved kennel establishment at any time.

PART 5—OFFENCES

5.1 Offence to excrete

(1) A dog must not excrete on—

- (a) any thoroughfare or other public place; or
- (b) any land which is not a public place without the consent of the occupier.

(2) Subject to subclause (3), if a dog excretes contrary to subclause (1), every person liable for the control of the dog at that time commits an offence.

Penalty: \$1000

(3) The person liable for the control of the dog does not commit an offence against subclause (2) if any excreta is removed immediately by that person.

PART 6—ENFORCEMENT

6.1 Interpretation

In this Part—

infringement notice means the notice referred to in clause 6.3; and

notice of withdrawal means the notice referred to in clause 6.6(1).

6.2 Modified penalties

(1) The offences contained in Schedule 3 are offences in relation to which a modified penalty may be imposed.

(2) The amount appearing in the fourth column of Schedule 3 directly opposite an offence is the modified penalty payable in respect of that offence if—

- (a) the dog is not a dangerous dog; or
- (b) the dog is a dangerous dog, but an amount does not appear in the fifth column directly opposite that offence.

(3) The amount appearing in the fifth column of Schedule 3 directly opposite an offence is the modified penalty payable in respect of that offence if the dog is a dangerous dog.

6.3 Issue of infringement notice

Where an authorised person has reason to believe that a person has committed an offence in respect of which a modified penalty may be imposed, he or she may issue to that person a notice in the form determined by the local government from time to time.

6.4 Failure to pay modified penalty

Where a person who has received an infringement notice fails to pay the modified penalty within the time specified in the notice, or within such further time as may in any particular case be allowed by the CEO, he or she is deemed to have declined to have the offence dealt with by way of a modified penalty.

6.5 Payment of modified penalty

A person who has received an infringement notice may, within the time specified in that notice or within such further time as may in any particular case be allowed by the CEO, send or deliver to the local government the amount of the penalty, with or without a reply as to the circumstances giving rise to the offence, and the local government may appropriate that amount in satisfaction of the penalty and issue an acknowledgment.

6.6 Withdrawal of infringement notice

(1) Whether or not the modified penalty has been paid, an authorised person may withdraw an infringement notice by sending a notice in the form determined by the local government from time to time.

(2) A person authorised to issue an infringement notice under clause 6.3 cannot sign or send a notice of withdrawal.

6.7 Service

An infringement notice or a notice of withdrawal may be served on a person personally, or by leaving it at, or posting it to, her or his address as ascertained from her or him, or as recorded by the local government under the Act, or as ascertained from inquiries made by the local government.

Schedule 1

APPLICATION FOR A LICENCE FOR AN APPROVED KENNEL ESTABLISHMENT

(clause 4.2)

I/we (full name)

of (postal address)

(telephone number)

(facsimile number)

(E-mail address)

Apply for a licence for an approved kennel establishment at (address of premises)

.....

For (number and breed of dogs).....

* (insert name of person) will be residing at the premises on and from (insert date)

* (insert name of person) will be residing (sufficiently close to the premises so as to control the dogs and so as to ensure their health and welfare) at (insert address of residence) on and from (insert date).

Attached are—

- (a) a site plan of the premises showing the location of the kennels and yards and all other buildings and structures and fences;
- (b) plans and specifications of the kennel establishment;
- (c) copy of notice of proposed use to appear in newspaper;
- (d) copy of notice of proposed use to be given to adjoining premises;
- (e) written evidence that a person will reside—
 - (i) at the premises; or
 - (ii) sufficiently close to the premises so as to control the dogs and so as to ensure their health and welfare; and
- (f) if the person in item (e) is not the applicant, written evidence that the person is a person in charge of the dogs.

I confirm that I have read and agree to comply with the Code of Practice known as, in the keeping of dogs at the proposed kennel establishment.

Signature of applicant.....

Date

* delete where inapplicable.

Note: a licence if issued will have effect for a period of 12 months—section 27(5) of the *Dog Act 1976*.

OFFICE USE ONLY

Application fee paid on [insert date].

Schedule 2

CONDITIONS OF A LICENCE FOR AN APPROVED KENNEL ESTABLISHMENT

(clause 4.8(1))

An application for a licence for an approved kennel establishment may be approved subject to the following conditions—

- (a) each kennel, unless it is fully enclosed, must have a yard attached to it;
- (b) each kennel and each yard must be at a distance of not less than—
 - (i) 25m from the front boundary of the premises and 5m from any other boundary of the premises;
 - (ii) 10m from any dwelling; and
 - (iii) 25m from any church, school room, hall, factory, dairy or premises where food is manufactured, prepared, packed or stored for human consumption;
- (c) each yard for a kennel must be kept securely fenced with a fence constructed of link mesh or netting or other materials approved by the local government;
- (d) the minimum floor area for each kennel must be calculated at 2.5 times the length of the breed of dog (when it is fully grown), squared, times the number of dogs to be housed in the kennel and the length of the dog is to be determined by measuring from the base of the tail to the front of its shoulder;

- (e) the floor area of the yard attached to any kennel or group of kennels must be at least twice the floor area of the kennel or group of kennels to which it is attached;
- (f) the upper surface of the kennel floor must be—
- (i) at least 100mm above the surface of the surrounding ground;
 - (ii) smooth so as to facilitate cleaning;
 - (iii) rigid;
 - (iv) durable;
 - (v) slip resistant;
 - (vi) resistant to corrosion;
 - (vii) non-toxic;
 - (viii) impervious;
 - (ix) free from cracks, crevices and other defects; and
 - (x) finished to a surface having a fall of not less than 1 in 100 to a spoon drain which in turn must lead to a suitably sized diameter sewerage pipe which must be properly laid, ventilated and trapped in accordance with the health requirements of the local government;
- (g) all kennel floor washings must pass through the drain in item (f)(x) and must be piped to approved apparatus for the treatment of sewage in accordance with the health requirements of the local government;
- (h) the kennel floor must have a durable upstand rising 75mm above the floor level from the junction of the floor and external and internal walls, or internal walls must be so constructed as to have a minimum clearance of 50mm from the underside of the bottom plate to the floor;
- (i) where a yard is to be floored, the floor must be constructed in the same manner as the floor of any kennel;
- (j) from the floor, the lowest internal height of a kennel must be, whichever is the lesser of—
- (i) 2m; or
 - (ii) 4 times the height of the breed of dog in the kennel, when it is fully grown, measured from the floor to the uppermost tip of its shoulders while in a stationary upright position;
- (k) the walls of each kennel must be constructed of concrete, brick, stone or framing sheeted internally and externally with good quality new zincalume or new pre-finished colour coated steel sheeting or new fibrous cement sheeting or other durable material approved by the local government;
- (l) all external surfaces of each kennel must be kept in good condition;
- (m) the roof of each kennel must be constructed of impervious material;
- (n) all kennels and yards and drinking vessels must be maintained in a clean condition and must be cleaned and disinfected when so ordered by an authorised person;
- (o) all refuse, faeces and food waste must be disposed of daily into the approved apparatus for the treatment of sewage;
- (p) noise, odours, fleas, flies and other vectors of disease must be effectively controlled;
- (q) suitable water must be available at the kennel via a properly supported standpipe and tap; and
- (r) the licensee or the person nominated in the application for a licence, must, in accordance with the application for the licence, continue to reside—
- (i) at the premises; or
 - (ii) in the opinion of the local government, sufficiently close to the premises so as to control the dogs, and to ensure their health and welfare.

Schedule 3

OFFENCES IN RESPECT OF WHICH MODIFIED PENALTY APPLIES

(clause 6.2)

| Item | Offence | Nature of offence | Modified penalty \$ | Dangerous Dog Modified Penalty \$ |
|------|---------|-----------------------------------|------------------------|--|
| 1 | 5.1(2) | Dog excreting in prohibited place | 100 | |

Dated: 13 March 2017.

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

M. A. PARKER, Chief Executive Officer.
T. G. JACKSON, Shire President.

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LOCAL GOVERNMENT ACT 1995

SHIRE OF HARVEY

EXTRACTIVE INDUSTRIES LOCAL LAW 2017

Under the powers conferred by the *Local Government Act 1995* and by all other powers, the local government of the Shire of Harvey resolved on 31 January 2017 to make the following local law.

PART 1—PRELIMINARY

1.1 Citation

This local law may be cited as the *Shire of Harvey Extractive Industries Local Law 2017*.

1.2. Commencement

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

1.3 Definitions

In this local law, unless the context otherwise requires—

Act means the *Local Government Act 1995*;

AS means an Australian Standard published by Standards Australia and available for viewing free of charge at the Shire of Harvey Administration offices;

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 Harvey;

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;

planning approval means an approval for a development and/or a land use that is issued under a local planning scheme administered by 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;

Schedule means a schedule to this local law; and

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

1.4 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 1.5 of this local law if that licence is currently in force at the date of gazettal of this local law.

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

1.5 Repeal

The *Shire of Harvey Extractive Industries Local Law 2007* as published in the *Government Gazette* on 9 November 2007 is repealed.

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 where the offence is of a continuing nature.

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 21 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 subclause (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 subclause (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 requirements of clause 2.2(1) and (2) have been carried out;
 - (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 subclause (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 subclause (1) from supplying any of the data specified in paragraphs (b), (d), (e) and (i) of subclause (1).

PART 3—DETERMINATION OF APPLICATION**3.1 Determination of Application**

- (1) 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.
- (2) 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.
- (3) Where the local government approves an application for a licence, it shall—
- (a) determine the licence period, not exceeding 5 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.
- (4) Where the local government approves the issue of a licence, the CEO upon receipt by the local government of—
- (a) payment of the annual licence fee, or the relevant proportion of the annual licence fee to 30 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 subclause (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 Act.

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.

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;
 - (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;
 - (d) 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
 - (e) 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) or (e).
- (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.

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 subclause (1) is to be paid into a fund established by the local government for the purposes of this clause.

(3) Subject to clause 5.2, any interest accrued in respect of the bond paid into the fund under subclause (2) is to be returned to the licensee at the completion of the restoration and reinstatement works required by the licence conditions or otherwise under this local law.

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—

- (c) 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
- (d) 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) 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 in respect of each day or part of a day where the offence is of a continuing nature.

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 and Petroleum; 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 in respect of each day or part of a day where the offence is of a continuing nature.

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 subclause (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 as amended from time to time, 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 for each offence, and if the offence is of a continuing nature, to a daily penalty not exceeding a fine of \$500 in respect of each day or part of a day where the offence is of a continuing nature.

(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 \$20,000,000 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 subclause (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 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 in respect of each day or part of a day where the offence is of a continuing nature.

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

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

9.3 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

(clause 9.1)

| 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 | 250 |

| Item | Clause | Description | Modified Penalty \$ |
|-------------|---------------|--|------------------------------------|
| 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 | 250 |

Dated: 13 March 2017.

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

M. A. PARKER, Chief Executive Officer.
T. G. JACKSON, Shire President.

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LOCAL GOVERNMENT ACT 1995

SHIRE OF HARVEY

FENCING LOCAL LAW 2017

Under the powers conferred by the *Local Government Act 1995* and all other powers enabling it, the Shire of Harvey resolved on 31 January 2017 to make the following local law.

PART 1—PRELIMINARY

1.1 Citation

This local law is the *Shire of Harvey Fencing Local Law 2017*.

1.2 Commencement

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

1.3 Application

This local law applies throughout the district.

1.4 Repeal

The *Shire of Harvey Fencing Local Law* as published in the *Government Gazette* on 23 June 2000 is repealed.

1.5 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 Standard or an Australian/New Zealand Standard published by Standards Australia and available for viewing free of charge at the Shire of Harvey Administration offices;

AS 2870 means the *Australian/New Zealand Standard 2870:2011 Residential slabs and footing*, published by Standards Australia as amended from time to time;

AS/NZS 3016 means *Australian/New Zealand Standard 3016:2002—Electrical Installations—Electricity security fences*, published by Standards Australia as amended from time to time;

authorised officer means a person appointed by the local government 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 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;

composite fence means a fence constructed of brick piers and with infill panels between the piers of materials other than brick or a fence where the supporting posts and infill panels are of different materials.

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, 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;

frontage means the boundary line between a lot and the thoroughfare which that lot adjoins;

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

hours of business operations means the hours of the day during which business is usually conducted;

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 Harvey;

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 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*;

open construction means a visually permeable fence comprising of—

- (a) continuous gaps at least 50 millimetres wide which in aggregate occupy at least one third of the length of the fence; or
- (b) continuous gaps less than 50 millimetres wide which in aggregate occupy at least half of the length of the fence;

provided that the gaps are evenly distributed along the length of the fence.

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

public access way means a portion of public land used as a means of pedestrian access between thoroughfares or other public places and for providing a corridor for public utility services;

public place means any place to which the public has access whether or not that place is on private property;

razor wire 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 residential lot means a lot where a special 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;

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; and

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.

1.6 Relationship with other laws

- (1) Anything allowed under any Act, Regulation or district planning scheme, is not affected by any prohibition, requirement or restriction under this local law.
- (2) In the event of any inconsistency with any Act, Regulation or district planning scheme, the provisions of those Acts, Regulations or district planning scheme are to prevail.

1.7 Approval fees and charges

All approval 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 and 6.19 of the *Local Government Act 1995*.

PART 2—SUFFICIENT 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 or 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 or 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; and
 - (d) on a special residential lot is a dividing fence or a boundary fence constructed and maintained in accordance with the specifications and requirements of Schedule 5.
- (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; rural lot and special residential 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, 4 and 5.
- (5) Unless an authorised officer 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 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 1 200 millimetres in height, within the front setback area of a residential lot within the district.
- (2) The Building Surveyor may approve the erection of a fence of a height greater than 1 200 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, if the gate is providing access to a thoroughfare; 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 without the approval of the local government.

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 1 500 millimetres.

2.6 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.

2.7 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.

2.8 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

2.9 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.

2.10 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 150 millimetres from the face of the fence and is not nearer than 2 000 millimetres 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 setback 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, a special rural lot or a special residential 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.

2.11 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 6; or
 - (b) construct a fence wholly or partly of razor wire on that lot, without obtaining the approval of the local government.
- (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 prohibited fence complies with *AS/NZS 3016:2002 Electrical installations—Electricity security fences* as amended from time to time; 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 3 000 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 2 400 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.

2.12 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—
- (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 imposed and determined by the local government under and in accordance with sections 6.16 and 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—
- (a) approve an application for approval unconditionally or subject to any conditions; or
 - (b) 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 and for the avoidance of doubt, it may be relied upon by any subsequent occupier or owner of the lot, and may be enforced against them by the local government.

3.5 Cancellation of an approval

Subject to Division 1 Part 9 of the *Local Government Act 1995*, the local government may cancel an approval issued under this Part if—

- (a) the fence no longer satisfies the required specifications; or
- (b) the owner or occupier breaches any condition upon which the approval has been issued.

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—

- (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 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 Act and any power of entry exercised by the local government under this local law is subject to Part 3, Division 3 of the 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.

6.3 Forms 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 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**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 | Erect a fence greater than 1 200 millimetres in height within a front setback area of a residential lot without the written consent of the local government | 250 |

| Item No | Clause No. | Nature of offence | Modified penalties \$ |
|---------|------------|---|-----------------------|
| 3 | 2.3(a) | Erect a gate in a fence not opening into the lot, if the gate is providing access to a thoroughfare | 200 |
| 4 | 2.3(b) | Erect a gate in a fence not sliding parallel and inside a fence | 200 |
| 5 | 2.5 | Erect a fence on a rural lot of a height exceeding 1 500 millimetres without the written consent of the local government | 200 |
| 6 | 2.6 | Failure to maintain a fence in good condition to prevent the fence becoming dangerous, dilapidated or unsightly | 250 |
| 7 | 2.7 | 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 |
| 8 | 2.9(1) | Construct a fence on a residential, commercial or industrial lot from pre-used materials without written approval | 250 |
| 9 | 2.10(2) | Erect a fence using barbed wire or material with spiked or jagged projections in the fence construction without written approval | 250 |
| 10 | 2.11(1) | Construct, erect or use razor wire in a fence or electrify a fence without approval | 250 |
| 11 | 2.12 | Affix, or use, any broken glass in a fence | 250 |
| 12 | 3.3 | Failure to comply with terms or conditions of approval | 250 |
| 13 | 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—

1. Timber fence

- (a) corner posts to be 125 millimetres x 125 millimetres x 2 400 millimetres and intermediate posts to be 125 millimetres x 75 millimetres x 2 400 millimetres spaced at 2 400 millimetres centres;
- (b) corner posts to be strutted 2 ways with 100 millimetres x 50 millimetres x 450 millimetres sole plates and 75 millimetres x 50 millimetres struts;
- (c) intermediate posts to be doubled wailing strutted with 150 millimetres x 25 millimetres x 450 millimetres struts;
- (d) all posts to have tops with a 60 millimetres weather cut and to be sunk at least 600 millimetres into the ground;
- (e) rails to be 75 millimetres x 50 millimetres with each rail spanning 2 bays of fencing double nailed or bolted to each post with joints staggered;
- (f) the fence to be covered with 75 millimetres x 20 millimetres sawn pickets, 1 800 millimetres in height and affixed securely to each rail; and
- (g) the height of the fence to be 1 800 millimetres except with respect to the front setback area for which there is no minimum height but which is subject to clause 2.2.

2. 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 600 millimetres;
- (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 manufacturer's specifications; and
- (d) the height of the fence to be 1 800 millimetres except with respect to the front setback area for which there is no minimum height but which is subject to clause 2.2.

3. 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 suitably qualified engineer in accordance with *AS 2870:2011 Residential slabs and footings* as amended from time to time;

- (b) the footing is to be designed in accordance with *AS 2870:2011 Residential slabs and footings* as amended from time to time;
- (c) footings having a minimum of 225 millimetres x 150 millimetres concrete 15MPa or 300 millimetres x 175 millimetres brick laid in cement mortar;
- (d) fences to be offset a minimum of 200 millimetres at maximum 3 000 millimetres centres or 225 millimetres x 100 millimetres engaged piers to be provided at maximum 3 000 millimetres centres;
- (e) expansion joints in accordance with the manufacturer's specifications; and
- (f) the height of the fence to be 1 800 millimetres except with respect to the front setback area for which there is no minimum height but which is subject to clause 2.2.

4. Composite fence

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

- (1) (a) brick piers shall have a minimum of 345 millimetres x 345 millimetres at 1 800 millimetres centres bonded to a minimum height base wall of 514 millimetres;
- (b) each brick pier shall be reinforced with one R10 galvanised starting rod 1 500 millimetres high with a 250 millimetres horizontal leg bedded into a 500 millimetres x 200 millimetres concrete footing and set 65 millimetres above the base of the footing. The top of the footing shall be 1 course (85 millimetres) 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 300 millimetres 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 345 millimetres x 345 millimetres x 2 700 millimetres centres bonded to the base wall; and
- (b) each pier shall be reinforced with 2 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)]

1. 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 a minimum of 50 millimetres nominal bore x 3.5 millimetres and with footings of a 225 millimetres diameter x 900 millimetres;
- (b) intermediate posts to be minimum 37 millimetres nominal bore x 3.15 millimetres at maximum 3.5 metre centres and with footings of a 225 millimetres diameter x 600 millimetres;
- (c) struts to be minimum 30 millimetres nominal bore x 3.15 millimetres fitted at each gate and 2 at each corner post and with footings 225 millimetres x 600 millimetres;
- (d) cables to be affixed to the top, centre and bottom of all posts and to consist of 2 or more 3.15 millimetres wires twisted together or single 4 millimetres wire;
- (e) non-rail link, chain or steel mesh is to be to a height of 2 000 millimetres on top of which are to be 3 strands of barbed wire carrying the fence to a height of 2 400 millimetres in accordance with the requirements and standards of the district planning schemes; and
- (f) galvanised link mesh wire to be 2 000 millimetres in height and constructed of 50 millimetres mesh 2.5 millimetres 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 3.6 metres and shall be constructed of 25 millimetres tubular framework with 1 horizontal and 1 vertical stay constructed of 20 millimetres piping and shall be covered with 50 millimetres x 2.5 millimetres galvanised link mesh strained to framework. Gates shall be fixed with a drop bolt and locking attachment.

2. 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 1 800 millimetres but no greater than 2 400 millimetres; 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)]

1. Non-electrified fence

- (a) wire shall be high tensile wire and not less than 2.5 millimetres. 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 iron star pickets; or
 - (iii) concrete;
- (c) cut not less than 1 800 millimetres long x 50 millimetres diameter at small end if round or 125 millimetres x 60 millimetres if split or sawn;
- (d) posts to be set minimum 600 millimetres in the ground and 1 200 millimetres above the ground; and
- (e) strainer posts shall be not less than 2 250 millimetres long and 150 millimetres diameter at the small end (tubular steel to be 50 millimetres in diameter) and shall be cut from indigenous timber or other suitable material. These shall be placed a minimum of 1 000 millimetres in the ground.

2. Electrified fence

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

Schedule 5

SPECIFICATIONS FOR A SUFFICIENT FENCE ON A SPECIAL RESIDENTIAL LOT

[clause 2.1(2)(d)]

A sufficient fence on a special residential lot is a fence of posts and wire construction, shall satisfy the following minimum specifications—

- (a) wire shall be high tensile wire and not less than 2.5 millimetres. A minimum of 5 wires shall be used, these to be spaced equally and threaded through 6 millimetres holes in posts to all fences;
- (b) posts shall be of indigenous timber or other suitable material including timber impregnated with a termite and fungicidal preservative cut not less than 1800 millimetres long x 100 millimetres diameter at small end if round or 125 millimetres x 60 millimetres if split or sawn. Posts to be set minimum 600 millimetres in the ground and 1200 millimetres above the ground spaced at 4000 millimetres maximum centres; and
- (c) strainer posts shall be not less than 2250 millimetres long and 150 millimetres diameter at the small end and shall be cut from indigenous timber or other suitable material. These shall be placed a minimum of 1000 millimetres in the ground and set at all corners, gateways and fence line angles but not exceeding 200 metres apart.
- (d) No boundary fence shall be constructed of the following materials—
 - (i) fibro cement;
 - (ii) metal sheeting; or
 - (iii) wooden pickets.

Schedule 6

LICENCE FOR APPROVED ELECTRIFIED FENCE

[clause 2.11(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 Harvey

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 CEO in writing of the details of that change or those changes;
- (d) obtain the written consent of the authorised person 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* as amended from time to time.

Transfer by Endorsement

This licence is transferred to ⁽³⁾

of ⁽⁴⁾

from and including the date of this endorsement.

Dated this day of20.....

.....
 Chief Executive Officer
 Shire of Harvey

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



Schedule 7

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 of20.....

.....
 Chief Executive Officer
 Shire of Harvey

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 of20.....

.....
Chief Executive Officer
Shire of Harvey

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

Dated: 13 March 2017.

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

M. A. PARKER, Chief Executive Officer.
T. G. JACKSON, Shire President.

LOCAL GOVERNMENT ACT 1995

SHIRE OF HARVEY

LOCAL GOVERNMENT PROPERTY LOCAL LAW 2017

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LOCAL GOVERNMENT ACT 1995

SHIRE OF HARVEY

LOCAL GOVERNMENT PROPERTY LOCAL LAW 2017

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Harvey resolved on 29 November 2016 to make the following local law.

PART 1—PRELIMINARY

1.1 Citation

This local law may be cited as the *Shire of Harvey Local Government Property Local Law 2017*.

1.2 Commencement

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

1.3 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 under clause 3.2;

assistance animal means an animal who is being used as an assistance animal as defined in the *Disability Discrimination Act 1992 (Commonwealth)*;

authorised person means a person appointed 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 Harvey;

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;

prohibited drug is given its meaning under section 4 of the *Misuse of Drugs Act 1981*;

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

Schedule means a schedule in this local law;

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, shopping trolley or a similar device; and
- (e) a boat.

1.4 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.

1.5 Application

- (1) This local law applies throughout the district.
- (2) 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.

1.6 Repeal

- (1) The following local law is repealed—

Shire of Harvey Local Government Property Local Law as published in the *Government Gazette* on 23 June 2000.
- (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.

1.7 Application as to assistance animals

This local law is subject to any written law and any law of the Commonwealth about assistance animals as defined in the *Disability Discrimination Act 1992 (Commonwealth) section 9(2)*.

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.

2.2 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 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 3.11.

3.8 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.

3.9 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.

3.10 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.

3.11 Cancellation of permit

(1) Subject to clause 9.1, 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

3.12 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).

3.13 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*.

3.14 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

3.15 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) 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.

4.4 Intoxicated persons not to enter local government property

A person shall not enter or remain on local government property while under the influence of liquor or a prohibited drug.

4.5 No prohibited drugs

A person shall not take a prohibited drug on to, or consume or use a prohibited drug on, local government property.

Division 2—Signs

4.6 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—Swimming pool areas

5.1 When entry must be refused

A Manager or an authorised person shall refuse admission to, may direct to leave or shall remove or cause to be removed from a pool area any person who—

- (a) is—
 - (i) under the age of 10 years and who is unaccompanied by a responsible person over the age of 16 years;
 - (ii) suffering from any gastrointestinal disease, skin infection or other disease that is communicable in an aquatic environment; or
 - (iii) in an unclean condition; or
 - (iv) wearing unclean clothes; or
 - (v) under the apparent influence of alcohol, drugs or alcohol and drugs.
- (b) is to be refused admission under and in accordance with a decision of the local government for breaching any clause of this local law.

5.2 Consumption of food or drink may be prohibited

A person shall not consume any food or drink in an area where consumption is prohibited by a sign.

*Division 2—Beaches***5.3 Powers of surf lifesaving club members**

(1) Subject to subclause (2), the local government may authorise under section 9.10 of the Act the members of a surf lifesaving club to perform all or any of the following functions in relation to a beach—

- (a) patrol any beach;
- (b) carry out any activity on any beach;
- (c) erect signs designating bathing areas and signs regulating, prohibiting or restricting specified activities on the whole or any part of a beach or in or on the water adjacent to the beach and to direct persons on the beach or in or on the water to comply with such signs;
- (d) temporarily enclose any area with rope, hessian, wire or any other means for the conduct of surf lifesaving club activities; and
- (e) direct persons to leave the water adjacent to a beach during dangerous conditions or if a shark is suspected of being in the vicinity of a beach.

(2) Under subclause (1), the local government shall authorise only those members who have been recommended by the surf lifesaving club as competent to perform the functions referred to in that subclause in respect of which they are authorised.

(3) Under subclause (1), the local government may authorise members generally, or in relation to particular times, days or months.

5.4 Authorising other persons

(1) A local government may authorise, under section 9.10 of the Act, a person to perform all or any of the functions referred to in clause 5.3(1) in relation to a beach.

(2) Under subclause (1), the local government shall authorise only those persons who, in the reasonable opinion of the local government, are competent to perform the functions referred to in clause 5.3(1) in respect of which they are authorised.

(3) Under subclause (1), the local government may authorise a person generally, or in relation to particular times, days or months.

(4) Where the local government has authorised members of a surf lifesaving club under clause 5.3(1) and a person under subclause (1) in relation to the same beach, so that they can perform all or any of the functions referred to in clause 5.3(1) contemporaneously, the local government is to specify which authorisation is rendered ineffective when both are exercised.

5.5 Persons to comply with signs and directions

A person shall—

- (a) not act in contravention of any sign erected on a beach under clause 5.3(1)(c);
- (b) not enter an area which has been temporarily closed with rope, hessian, wire or any other means for the conduct of surf lifesaving club activities, unless he or she is a member of the club or has obtained permission to enter from the club; and
- (c) comply with any direction given under clause 5.3(1)(c) or 5.3(1)(e),

notwithstanding that the sign or the direction was erected or given, as the case may be, by a person referred to in clause 5.4(1).

*Division 3—Fenced or closed property***5.6 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 4—Toilet blocks and change rooms***5.7 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—JETTIES AND BRIDGES*Division 1—Preliminary***7.1 Interpretation**

- (1) This Part only applies to bridges and jetties which are local government property.
- (2) In this Part—
- jetty* means any jetty, pier, wharf or landing place which is local government property; and
 - bulk cargo* means bulk produce, such as grain, coal, oil or mineral ore, which is not packaged.

*Division 2—Consents and fees***7.2 Application for consent and application fee**

- (1) Where a person is required to obtain the consent of the local government under this Part, the person is to apply for that consent in the manner required by the local government.
- (2) The local government may require an application for consent made under subclause (1) to be accompanied by a fee.
- (3) If an application for consent is not made in the manner required by the local government or the fee which is to accompany that application is not paid, the local government may refuse to consider the application for consent.
- (4) The local government shall give its decision on an application for consent, in writing to the person who applied for that consent.
- (5) Where a fee is referred to in this Part, the fee must be imposed and determined by the local government under and in accordance with sections 6.16 to 6.19 of the Act.

*Division 3—Prohibitions on use of jetty***7.3 When use of jetty is prohibited**

- A person shall not land at, use or go on any part of a jetty which is—
- (a) under construction or repair; or
 - (b) closed,
- unless that person has first obtained the consent of the local government.

*Division 4—Mooring boats to jetties***7.4 Method of mooring boat**

A person in control of a boat shall not moor or make fast the boat to a jetty, or to any part of the jetty, except to such mooring piles, ring bolts or other fastenings as are provided.

*Division 5—When boats may remain at jetty***7.5 When boat may remain moored**

- A person in control of a boat shall not moor or make fast the boat to a jetty unless—
- (a) the boat is in distress and then only to effect the minimum repairs necessary to enable the boat to be moved elsewhere;
 - (b) the embarking or disembarking of passengers is in progress, and then not for a consecutive period exceeding 2 hours without the prior consent of the local government;
 - (c) the loading or discharging of cargo or other goods is in progress in accordance with Division 7; or
 - (d) where the boat is used at that time for commercial purposes, the person has first paid the fee (if any) for such mooring or making fast to the local government.

7.6 Authorised person may order removal of boat

Notwithstanding anything to the contrary in this Part, a person in control of a boat moored or fastened to or alongside a jetty shall remove it immediately upon being directed to do so by an authorised person.

*Division 6—Launching of boats***7.7 Restrictions on launching**

A person shall not launch a boat from or over any jetty (other than a boat ramp) unless she or he has first obtained the consent of the local government.

*Division 7—Cargo or other goods***7.8 Loading and discharging**

A person in control of a boat shall not allow the boat to come alongside or be moored or made fast to a jetty for the purpose of loading or discharging cargo or other goods—

- (a) until the cargo or other goods are ready to be loaded or discharged; or
- (b) without the consent of the local government—
 - (i) between the hours of 6.00pm to 6.00am on the next day; or
 - (ii) for longer than 2 consecutive hours.

7.9 Outgoing cargo not to be stored on jetty

A person in control of cargo or other goods intended for loading on to a boat shall—

- (a) not allow them to be stored or placed on a jetty unless and until the boat is moored or fastened to or alongside the jetty; and
- (b) load them on to the boat as soon as practicable after the boat is moored or fastened to or alongside the jetty.

7.10 Removal of incoming cargo from jetty

Any person unloading cargo or other goods from a boat on to a jetty shall remove them, or cause them to be removed from the jetty as soon as practicable, but not later than 6.00pm on the day on which they were placed there.

7.11 Authorised person may direct removal

An authorised person may direct a person who, in the opinion of the authorised person, is in charge of cargo or other goods which remain on a jetty contrary to any provision of this Part to remove them from the jetty.

7.12 Handling of bulk cargo

Except with the prior consent of the local government, a person shall not place or deposit bulk cargo from a vehicle, boat or container on to a jetty.

*Division 8—Polluting surrounding area***7.13 Polluting surrounding area**

A person shall not tip or deposit anything on to a jetty so as to pollute the surrounding area.

*Division 9—Fishing from jetties and bridges***7.14 Limitations on fishing**

A person shall not—

- (a) fish from a jetty or a bridge so as to obstruct or interfere with the free movement of a boat approaching or leaving the jetty or the bridge or so as to unreasonably interfere with the use of the jetty or the bridge by any other person; or
- (b) hang or spread a fishing net from, on or over any part of a jetty or a bridge.

PART 8—SALEYARDS*Division 1—Preliminary***8.1 Interpretation**

In this Part—

auction has the meaning given to it in the *Auction Sales Act 1973*;

sale means a sale by way of auction;

saleyard means local government property which is used for the sale of stock;

stock has the meaning given to *livestock* in the *Auction Sales Act 1973*; and

stock agent means any person appointed by the owner of stock to sell that stock at a saleyard.

*Division 2—Sale of stock***8.2 Requirements of auctioneer's licence**

A person shall not sell by way of auction any stock at a saleyard unless that person is the holder of an auctioneer's licence to sell stock under the *Auction Sales Act 1973*.

8.3 Sale times to be approved

Sales are to be conducted at a saleyard only on such days and at such times as may be appointed by a stock agent with the prior approval of the CEO.

8.4 Order of sales

The order in which stock agents conduct sales on any day under clause 8.3 is to be the order agreed to by those stock agents, and in default of agreement, as directed by the CEO or an authorised person.

*Division 3—Care of and responsibility for stock***8.5 Diseased and injured stock**

(1) A person shall not—

- (a) offer for sale any stock which is diseased, emaciated, injured or suffering from ill health for sale at a saleyard; or
- (b) deliver to any saleyard any stock which is diseased, emaciated, injured or suffering from ill health.

(2) Where in the opinion of an authorised person stock at a saleyard is diseased, emaciated, injured or suffering from ill health, the authorised person may direct the stock agent of the stock, or if there is no stock agent, the owner or the person apparently in control of that stock, to remove that stock immediately from the saleyard.

8.6 Care of stock

Where the stock is yarded in any saleyard the stock agent (or if there is no stock agent, the owner) shall—

- (a) ensure that the stock is properly cared for; and
- (b) if the stock is kept yarded for more than 24 hours, provide the stock with adequate food and water.

8.7 When purchaser becomes responsible for stock

The purchaser of any stock yarded in a saleyard is responsible for such stock from the time the contract of sale is entered into.

8.8 Time limit for removal of stock

The purchaser of any stock at a saleyard is to remove such stock from the saleyard by 5.00pm on the day after the day of sale, or by such later time as may be allowed by an authorised person.

8.9 Removal of unsold stock

Where stock yarded in a saleyard remain unsold, the stock agent or, if there is no stock agent, the owner of the stock is responsible for the care and removal of such stock from the saleyard.

8.10 Removal of dead or maimed stock

Stock which have died or which have been maimed shall be immediately removed from the saleyard where the stock—

- (a) are unsold, by the stock agent, or if there is no stock agent, the owner; or
- (b) have been sold, by the purchaser.

*Division 4—Payment of fees***8.11 Payment of yard fees**

Where stock is brought into a saleyard for a sale or any other purpose by a stock agent or owner, that stock agent or owner shall—

- (a) within 7 days of bringing the stock into a saleyard, give the local government a written statement signed by the stock agent or owner advising—
 - (i) the total number of stock by class brought into the saleyard; and
 - (ii) the date on which the stock was brought into the saleyard; and
- (b) within 28 days of bringing the stock into a saleyard, pay the local government the applicable yard fees set by the local government.

8.12 Documents may be inspected

The stock agent or owner shall, on demand by the CEO, make available to the CEO for inspection such documents as may be necessary to enable the CEO to verify a statement given under clause 8.11.

*Division 5—Control of dogs***8.13 Only working dogs allowed**

A person shall not bring into a saleyard any dog which will not be used for working with stock in that saleyard on the day which it is brought in.

8.14 Diseased dogs prohibited

A person shall not bring or permit to be brought into a saleyard a dog which is diseased.

PART 9—OBJECTIONS AND APPEALS**9.1 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 10—MISCELLANEOUS**10.1 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.

10.2 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.

10.3 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.

10.4 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 11—ENFORCEMENT*Division 1—Notices given under this local law***11.1 Offence to fail to comply with notice**

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

11.2 Local government may undertake requirements of notice

Where a person fails to comply with a notice referred to in clause 11.1, 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***11.3 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***11.4 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.

(3) 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.

11.5 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***11.6 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 11.4)

| | 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 | 3.12(1) | Failure to obtain a permit | 125 |
| 4 | 3.13(3) | Failure to obtain permit to camp outside a facility | 125 |
| 5 | 3.14(1) | Failure to obtain permit for liquor | 125 |
| 6 | 3.15 | Failure of permit holder to comply with responsibilities | 125 |
| 7 | 4.2(1) | Behaviour detrimental to property | 125 |
| 8 | 4.4 | Under influence of liquor or prohibited drug | 125 |
| 9 | 4.6(2) | Failure to comply with sign on local government property | 125 |
| 10 | 5.2 | Consuming food or drink in prohibited area | 125 |
| 11 | 5.5 | Failure to comply with sign or direction on beach | 125 |
| 12 | 5.6 | Unauthorised entry to fenced or closed local government property | 125 |
| 13 | 5.7 | Gender not specified using entry of toilet block or change room | 125 |
| 14 | 6.1(1) | Unauthorised entry to function on local government property | 125 |
| 15 | 7.3 | Unauthorised use of any part of jetty which is closed or under repair or construction | 125 |
| 16 | 7.4 | Mooring of boats in unauthorised manner | 125 |
| 17 | 7.5 | Unauthorised mooring of a boat to jetty | 125 |
| 18 | 7.6 | Failure to remove moored boat on direction of authorised person | 125 |
| 19 | 7.7 | Launching of boat from jetty without consent | 125 |
| 20 | 7.8 | Mooring when not ready to load or discharge cargo, at times not permitted or for longer than permitted | 125 |
| 21 | 7.9 | Unlawful storing of goods on jetty | 125 |
| 22 | 7.10 | Removing goods from jetty during other than permitted hours | 125 |
| 23 | 7.11 | Failure to remove cargo on jetty on direction of authorised person | 125 |
| 24 | 7.12 | Unauthorised deposit of bulk cargo on jetty | 125 |
| 25 | 7.14 | Fishing from jetty or bridge so as to obstruct a boat or another person | 125 |

| | Clause | Description | Modified Penalty \$ |
|----|---------------|---|------------------------------------|
| 26 | 8.2 | Selling by way of auction without licence | 125 |
| 27 | 8.8 | Failure to remove stock | 250 |
| 28 | 8.10 | Failure to immediately remove dead or maimed stock | 250 |
| 29 | 8.11 | Failure to give statement or pay fees to local government | 250 |
| 30 | 8.12 | Failure to produce documents for inspection by local government | 250 |
| 31 | 8.13 | Unauthorised entry of dog into saleyard | 125 |
| 32 | 11.1 | Failure to comply with notice | 250 |

Dated: 13 March 2017.

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

M. A. PARKER, Chief Executive Officer.
T. G. JACKSON, Shire President.

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LOCAL GOVERNMENT ACT 1995

SHIRE OF HARVEY

PARKING AND PARKING FACILITIES LOCAL LAW 2017

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Harvey resolved on 29 November 2016 to make the following local law.

PART 1—PRELIMINARY

1.1 Citation

This local law may be cited as the *Shire of Harvey Parking and Parking Facilities Local Law 2017*.

1.2 Commencement

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

1.3 Repeal

The *Shire of Harvey Parking and Parking Facilities Local Law* as published in the *Government Gazette* on 23 June 2000 is repealed.

1.4 Interpretation

In this local law unless the context otherwise requires—

Act means the *Local Government Act 1995*;

authorised person means a person appointed 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;

authorised vehicle means a vehicle authorised by the local government, CEO, authorised person or by any written law to park on a thoroughfare or parking facility;

bicycle has the meaning given to it by the Code;

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

bus has the meaning given to it by the Code;

bus embayment has the meaning given to it by the Code;

bus stop has the meaning given to it by the Code;

bus zone has the meaning given to it by the Code;

caravan means a vehicle that is fitted or designed to allow human habitation and which is drawn by another vehicle, or which is capable of self-propulsion;

carriageway has the meaning given to it by the Code;

centre in relation to a carriageway, means a line or a series of lines, marks or other indications—

- (a) for a two-way carriageway—placed so as to delineate vehicular traffic travelling in different directions; or
- (b) in the absence of any such lines, marks or other indications—the middle of the main, travelled portion of the carriageway;

children's crossing has the meaning given to it by the Code;

CEO means the Chief Executive Officer of the local government;

Code means the *Road Traffic Code 2000*;

commercial vehicle means a motor vehicle constructed for the conveyance of goods or merchandise, or for the conveyance of materials used in any trade, business, industry or work whatsoever, other than a motor vehicle for the conveyance of passengers, and includes any motor vehicle that is designed primarily for the carriage of persons, but which has been fitted or adapted for the conveyance of the goods, merchandise or materials referred to, and is in fact used for that purpose;

disability parking permit means a current document issued by the National Disability Service (ACN 008 445 485), consisting of—

- (a) an Australian Disability Parking Permit; and
- (b) an ACROD Parking Program Card;

- district** means the district of the local government;
- driver** means any person driving or in control of a vehicle;
- edge line** for a carriageway means a line marked along the carriageway at or near the far left or the far right of the carriageway;
- emergency vehicle** has the meaning given to it by the Code;
- footpath** has the meaning given to it by the Code;
- GVM** (which stands for gross vehicle mass) has the meaning given to it by the Code;
- kerb** means any structure, mark, marking or device to delineate or indicate the edge of a carriageway;
- loading zone** has the meaning given to it by the Code;
- local government** means the Shire of Harvey;
- mail zone** has the meaning given to it by the Code;
- median strip** has the meaning given to it by the Code;
- motorcycle** has the meaning given to it by the Code;
- motor vehicle** means a self-propelled vehicle that is not operated on rails; and the expression includes a trailer, semi-trailer or caravan while attached to a motor vehicle, but does not include a power assisted pedal cycle;
- no parking area** has the meaning given to it by the Code;
- no parking sign** means a sign with the words “no parking” in red letters on a white background, or the letter “P” within a red annulus and a red diagonal line across it on a white background;
- no stopping area** has the meaning given to it by the Code;
- no stopping sign** means a sign with the words “no stopping” or “no standing” in red letters on a white background or the letter “S” within a red annulus and a red diagonal line across it on a white background;
- occupier** has the meaning given to it by the Act;
- owner—**
- (a) where used in relation to a vehicle licensed under the Road Traffic Act, means the person in whose name the vehicle has been registered under that Road Traffic Act;
 - (b) where used in relation to any other vehicle, means the person who owns, or is entitled to possession of, that vehicle; and
 - (c) where used in relation to land, has the meaning given to it by the Act;
- park**, in relation to a vehicle, means to permit a vehicle, whether attended or not by any person, to remain stationary except for the purpose of—
- (a) avoiding conflict with other traffic;
 - (b) complying with the provisions of any law; or
 - (c) taking up or setting down persons or goods for a period not exceeding 2 minutes;
- parking area** has the meaning given to it by the Code;
- parking facilities** includes land, buildings, shelters, parking stalls and other facilities open to the public generally for the parking of vehicles and signs, notices and facilities used in connection with the parking of vehicles;
- parking region** means the area described in Schedule 1;
- parking stall** means a section or part of a thoroughfare or of a parking station which is marked or defined by painted lines, metallic studs, coloured bricks or pavers or similar devices for the purpose of indicating where a vehicle may be parked;
- parking station** means any land or structure provided for the purpose of accommodating vehicles;
- pedestrian crossing** has the meaning given to it by the Code;
- public place** means any place to which the public has access, whether or not that place is on private property;
- reserve** means any land—
- (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;
- Road Traffic Act** means the *Road Traffic Act 1974*;
- Schedule** means a Schedule to this local law;
- shared zone** has the meaning given to it by the Code;
- sign** includes a traffic sign, inscription, road marking, mark, structure or device approved by the local government on which may be shown words, numbers, expressions or symbols, and which is placed on or near a thoroughfare or within a parking station or reserve for the purpose of prohibiting, regulating, guiding, directing or restricting the parking of vehicles;
- special purpose vehicle** has the meaning given to it by the Code;

stop in relation to a vehicle means to stop a vehicle and permit it to remain stationary, except for the purposes of avoiding conflict with other traffic or of complying with the provisions of any law;

symbol includes any symbol specified from time to time by the Code;

taxi means a taxi within the meaning of the *Taxi Act 1994* or a taxi-car in section 47Z of the *Transport Co-ordination Act 1966*;

taxi zone has the meaning given to it by the Code;

thoroughfare has the meaning given to it by the Act;

traffic island has the meaning given to it by the Code;

trailer means any vehicle without motive power of its own, designed for attachment to a motor vehicle for the purpose of being towed, but does not include the rear portion of an articulated vehicle, or a side car;

vehicle has the meaning given to it by the Code; and

verge means the portion of a thoroughfare which lies between the boundary of a carriageway and the adjacent property line but does not include a footpath.

1.5 Application of particular definitions

(1) For the purposes of the application of the definitions **no parking area** and **parking area** an arrow inscribed on a traffic sign erected at an angle to the boundary of the carriageway is deemed to be pointing in the direction in which it would point, if the signs were turned at an angle of less than 90 degrees until parallel with the boundary.

(2) Unless the context otherwise requires, where a term is used, but not defined, in this local law, and that term is defined in the Road Traffic Act or in the Code, then the term shall have the meaning given to it in that Act or the Code.

1.6 Application and pre-existing signs

(1) Subject to subclause (2), this local law applies to the parking region.

(2) This local law does not apply to a parking facility or a parking station that is not occupied by the local government, unless the local government and the owner or occupier of that facility or station have agreed in writing that this local law will apply to that facility or station.

(3) The agreement referred to in subclause (2) may be made on such terms and conditions as the parties may agree.

(4) A sign that—

(a) was erected by the local government or the Commissioner of Main Roads prior to the coming into operation of this local law; and

(b) relates to the parking of vehicles within the parking region, shall be deemed for the purposes of this local law to have been erected by the local government under the authority of this local law.

(5) An inscription or symbol on a sign referred to in subclause (5) operates and has effect according to its tenor, and where the inscription or symbol relates to the stopping of vehicles, it shall be deemed for the purposes of this local law to operate and have effect as if it related to the parking of vehicles.

(6) The provisions of Parts 2, 3, and 4 do not apply to a bicycle parked at a bicycle rail or bicycle rack.

1.7 Classes of vehicles

For the purpose of this local law, vehicles are divided into classes as follows—

(a) buses;

(b) commercial vehicles;

(c) motorcycles and bicycles;

(d) taxis; and

(e) all other vehicles.

1.8 Part of thoroughfare to which sign applies

Where under this local law the parking of vehicles in a thoroughfare is controlled by a sign, the sign shall be read as applying to that part of the thoroughfare which—

(a) lies beyond the sign;

(b) lies between the sign and the next sign beyond that sign; and

(c) is on that side of the thoroughfare nearest to the sign.

1.9 Powers of the local government

The local government may, by resolution, prohibit or regulate by signs or otherwise, the stopping or parking of any vehicle or any class of vehicles in any part of the parking region but must do so consistently with the provisions of this local law.

PART 2—PARKING STALLS

2.1 Determination of parking stalls

(1) The local government may by resolution constitute, determine and vary—

(a) parking stalls;

- (b) permitted time and conditions of parking in parking stalls which may vary with the locality;
- (c) permitted classes of vehicles which may park in parking stalls;
- (d) permitted classes of persons who may park in specified parking stalls; and
- (e) the manner of parking in parking stalls.

(2) Where the local government makes a determination under subclause (1) it shall erect signs to give effect to the determination.

2.2 Vehicles to be within parking stall on thoroughfare

(1) Subject to subclause (2), (3) and (4), a person shall not park a vehicle in a parking stall in a thoroughfare otherwise than—

- (a) parallel to and as close to the kerb as is practicable;
- (b) wholly within the stall; and
- (c) headed in the direction of the movement of traffic on the side of the thoroughfare in which the stall is situated.

(2) Subject to subclause (3), where a parking stall in a thoroughfare is set out otherwise than parallel to the kerb, then a person must park a vehicle in that stall wholly within it.

(3) If a vehicle is too long or too wide to fit completely within a single parking stall then the person parking the vehicle shall do so within the minimum number of parking stalls needed to park that vehicle.

(4) A person shall not park a vehicle partly within and partly outside a parking area.

2.3 Parking prohibitions and restrictions

(1) A person shall not—

- (a) park a vehicle so as to obstruct an entrance to, or an exit from a parking station, or an access way within a parking station;
- (b) except with the permission of the local government or an authorised person park a vehicle on any part of a parking station contrary to a sign referable to that part;
- (c) permit a vehicle to park on any part of a parking station, if an authorised person directs the driver of such vehicle to move the vehicle; or
- (d) park or attempt to park a vehicle in a parking stall in which another vehicle is parked, but this paragraph does not prevent the parking of a motorcycle and a bicycle together in a stall marked “M/C”, if the bicycle is parked in accordance with subclause (2).

(2) No person shall park any bicycle—

- (a) in a parking stall other than in a stall marked “M/C”; and
- (b) in such stall other than against the kerb.

(3) Notwithstanding the provisions of subclause (1)(b) a driver may park a vehicle in a permissive parking stall or station (except in a permit parking area) for twice the length of time allowed, provided that—

- (a) the driver’s vehicle displays a disability parking permit; and
- (b) a person with a disability to which that disability parking permit relates is either the driver of or a passenger in the vehicle.

PART 3—PARKING GENERALLY

3.1 Restrictions on parking in particular areas

(1) Subject to subclause (2), a person shall not park a vehicle in a thoroughfare or part of a thoroughfare, or part of a parking station—

- (a) if by a sign it is set apart for the parking of vehicles of a different class;
- (b) if by a sign it is set apart for the parking of vehicles by persons of a different class; or
- (c) during any period when the parking of vehicles is prohibited by a sign.

(2) (a) This subclause applies to a driver if—

- (i) the driver’s vehicle displays a disability parking permit; and
- (ii) a person with a disability to which the disability parking permit relates is either the driver of the vehicle or a passenger in the vehicle.

(b) The driver may park a vehicle in a thoroughfare or a part of a thoroughfare or part of a parking station, except in a thoroughfare or a part of a thoroughfare or part of a parking station to which a disabled parking sign relates for twice the period indicated on the sign.

(3) A person shall not park a vehicle—

- (a) in a no parking area;
- (b) in a parking area, except in accordance with both the signs associated with the parking area and with this local law; or
- (c) in a stall marked “M/C” unless it is a motorcycle without a sidecar or a trailer, or it is a bicycle.

(4) A person shall not park a motorcycle without a sidecar or a trailer, or a bicycle in a parking stall unless the stall is marked “M/C”.

(5) A person shall not, without the prior permission of the local government, the CEO, or an authorised person, park a vehicle in an area designated by a sign stating “Authorised Vehicles Only”.

3.2 Parking vehicle on a carriageway

- (1) A person parking a vehicle on a carriageway other than in a parking stall shall park it—
- (a) in the case of a two-way carriageway, so that it is as near as practicable to and parallel with, the left boundary of the carriageway and headed in the direction of the movement of traffic on the side of the thoroughfare on which the vehicle is parked;
 - (b) in the case of a one-way carriageway, so that it is as near as practicable to and parallel with either boundary of the carriageway and headed in the direction of the movement of traffic on the side of the thoroughfare on which the vehicle is parked;
 - (c) so that at least 3 metres of the width of the carriageway lies between the vehicle and the farther boundary of the carriageway, or any continuous line or median strip, or between the vehicle and a vehicle parked on the farther side of the carriageway;
 - (d) so that the front and the rear of the vehicle respectively is not less than 1 metre from any other vehicle, except a motorcycle without a trailer, or a bicycle parked in accordance with this local law; and
 - (e) so that it does not obstruct any vehicle on the carriageway, unless otherwise indicated on a parking regulation sign or markings on the roadway.
- (2) In this clause, **continuous dividing line** means—
- (a) a single continuous dividing line only;
 - (b) a single continuous dividing line to the left or right of a broken dividing line; or
 - (c) 2 parallel continuous dividing lines.

3.3 When parallel and right-angled parking apply

Where a traffic sign associated with a parking area is not inscribed with the words “angle parking”, or with an equivalent symbol depicting this purpose, then unless a sign associated with the parking area indicates, or marks on the carriageway indicate, that vehicles have to park in a different position, where the parking area is—

- (a) adjacent to the boundary of a carriageway, a person parking a vehicle in the parking area shall park it as near as practicable to and parallel with that boundary; and
- (b) at or near the centre of the carriageway, a person parking a vehicle in that parking area shall park it at approximately right angles to the centre of the carriageway.

3.4 When angle parking applies

- (1) This clause does not apply to—
- (a) a passenger vehicle or a commercial vehicle with a mass including any load, of over 3 tonnes; or
 - (b) a person parking either a motorcycle without a trailer or a bicycle.
- (2) Where a sign associated with a parking area is inscribed with the words “angle parking” (or with an equivalent symbol depicting this purpose), a person parking a vehicle in the area shall park the vehicle at an angle of approximately 45 degrees to the centre of the carriageway unless otherwise indicated by the inscription on the parking sign or by marks on the carriageway.

3.5 General prohibitions on parking

- (1) This clause does not apply to a vehicle parked in a parking stall nor to a bicycle in a bicycle rack; or
- (2) Subclauses (2)(c), (e) and (g) do not apply to a vehicle which parks in a bus embayment.
- (3) Subject to any law relating to intersections with traffic control signals a person shall not park a vehicle so that any portion of the vehicle is—
- (a) between any other stationary vehicles and the centre of the carriageway;
 - (b) on or adjacent to a median strip;
 - (c) obstructing a right of way, private drive or carriageway or so close as to deny a vehicle reasonable access to or egress from the right of way, private drive or carriageway;
 - (d) alongside or opposite any excavation, works, hoarding, scaffolding or obstruction on the carriageway, if the vehicle would obstruct traffic;
 - (e) on or within 10 metres of any portion of a carriageway bounded by a traffic island;
 - (f) on any footpath or pedestrian crossing;
 - (g) between the boundaries of a carriageway and any double longitudinal line consisting of 2 continuous lines or between a double longitudinal line consisting of a continuous line and a broken or dotted line and the boundary of a carriageway nearer to the continuous line, unless there is a distance of at least 3 metres clear between the vehicle and the double longitudinal line;
 - (h) on an intersection, except adjacent to a carriageway boundary that is not broken by an intersecting carriageway;
 - (i) within 1 metre of a fire hydrant or fire plug, or of any sign or mark indicating the existence of a fire hydrant or fire plug;

- (j) within 3 metres of a public letter box, unless the vehicle is being used for the purposes of collecting postal articles from the letter box; or
- (k) within 10 metres of the nearer property line of any thoroughfare intersecting the thoroughfare on the side on which the vehicle is parked,

unless a sign or markings on the carriageway indicate otherwise.

(4) A person shall not park a vehicle so that any portion of the vehicle is within 10 metres of the departure side of—

- (a) a sign inscribed with the words “Bus Stop” or “Hail Bus Here” (or with equivalent symbols depicting these purposes) unless the vehicle is a bus stopped to take up or set down passengers; or
- (b) a children’s crossing or pedestrian crossing.

(5) A person shall not park a vehicle so that any portion of the vehicle is within 20 metres of the approach side of—

- (a) a sign inscribed with the words “Bus Stop” or “Hail Bus Here” (or with equivalent symbols depicting these purposes) unless the vehicle is a bus stopped to take up or set down passengers; or
- (b) a children’s crossing or pedestrian crossing.

(6) A person shall not park a vehicle so that any portion of the vehicle is within 20 metres of either the approach side or the departure side of the nearest rail of a railway level crossing.

3.6 Authorised person may order vehicle on thoroughfare to be moved

The driver of a vehicle shall not park that vehicle on any part of a thoroughfare in contravention of this local law after an authorised person has directed the driver to move it.

3.7 Authorised person may mark tyres

(1) An authorised person may mark the tyres of a vehicle parked in a parking facility with chalk or any other non-indelible substance for a purpose connected with or arising out of his or her duties or powers.

(2) A person shall not remove a mark made by an authorised person so that the purpose of the affixing of such a mark is defeated or likely to be defeated.

3.8 No movement of vehicles to avoid time limitation

(1) Where the parking of vehicles in a parking facility is permitted for a limited time, a person shall not move a vehicle within the parking facility so that the total time of parking exceeds the maximum time allowed for parking in the parking facility.

(2) Where the parking of vehicles in a thoroughfare is permitted for a limited time, a person shall not move a vehicle along that thoroughfare so that the total time of parking exceeds the maximum time permitted, unless the vehicle has first been removed from the thoroughfare for at least 2 hours.

3.9 No parking of vehicles exposed for sale and in other circumstances

A person shall not park a vehicle on any portion of a thoroughfare—

- (a) for the purpose of exposing it for sale;
- (b) if that vehicle is not licensed under the Road Traffic Act;
- (c) if that vehicle is a trailer or a caravan unattached to a motor vehicle; or
- (d) for the purpose of effecting repairs to it, other than the minimum repairs necessary to enable the vehicle to be moved to a place other than a thoroughfare.

3.10 Parking on private land

(1) In this clause a reference to “land” does not include land—

- (a) which belongs to the local government;
- (b) of which the local government is the management body under the *Land Administration Act 1997*;
- (c) which is an “otherwise unvested facility” within section 3.53 of the Act;
- (d) which is the subject of an agreement referred to in clause 1.5(2); or
- (e) which is identified in Schedule 4.

(2) A person shall not park a vehicle on land without the consent of the owner or occupier of the land on which the vehicle is parked.

(3) Where the owner or occupier of the land, by a sign referable to that land or otherwise, consents to the parking of vehicles of a specified class or classes on the land for a limited period, a person shall not park a vehicle on the land otherwise than in accordance with the consent.

3.11 Parking on reserves

No person other than an employee of the local government in the course of his or her duties or a person authorised by the local government shall drive or park a vehicle upon or over any portion of a reserve other than upon an area specifically set aside for that purpose.

3.12 Suspension of parking limitations for urgent, essential or official duties

(1) Where by a sign the parking of vehicles is permitted for a limited time on a portion of a thoroughfare or parking facility, the local government, the CEO or an authorised person may, subject

to the Code, permit a person to park a vehicle in that portion of the thoroughfare or parking facility for longer than the permitted time in order that the person may carry out urgent, essential or official duties.

(2) Where permission is granted under subclause (1), the local government, the CEO or an authorised person may prohibit the use by any other vehicle of that portion of the thoroughfare or parking facility to which the permission relates, for the duration of that permission.

PART 4—PARKING AND STOPPING GENERALLY

4.1 No stopping and no parking signs, and yellow edge lines

(1) A driver shall not stop on a length of carriageway, or in an area, to which a “no stopping” sign applies.

(2) A driver shall not stop on a length of carriageway or in an area to which a “no parking” sign applies, unless the driver is—

- (a) dropping off, or picking up, passengers or goods;
- (b) does not leave the vehicle unattended; and
- (c) completes the dropping off, or picking up, of the passengers or goods within 2 minutes of stopping and drives on.

unattended, in relation to a vehicle, means that the driver has left the vehicle so that the driver is more than 3 metres from the closest point of the vehicle.

(3) A driver shall not stop at the side of a carriageway marked with a continuous yellow edge line.

PART 5—STOPPING IN ZONES FOR PARTICULAR VEHICLES

5.1 Stopping in a loading zone

A person shall not stop a vehicle in a loading zone unless it is—

- (a) a motor vehicle used for commercial or trade purposes engaged in the picking up or setting down of goods; or
- (b) a motor vehicle taking up or setting down passengers,

but, in any event, shall not remain in that loading zone—

- (c) for longer than a time indicated on the “loading zone” sign; or
- (d) longer than 30 minutes, if no time is indicated on the sign.

5.2 Stopping in a taxi zone or a bus zone

(1) A driver shall not stop in a taxi zone, unless the driver is driving a taxi.

(2) A driver shall not stop in a bus zone unless the driver is driving a public bus, or a bus of a type that is permitted to stop at the bus zone by information on or with the “bus zone” sign applying to the bus zone.

5.3 Stopping in a mail zone

A person shall not stop a vehicle in a mail zone.

5.4 Other limitations in zones

A person shall not stop a vehicle in a zone to which a traffic sign applies if stopping the vehicle would be contrary to any limitation in respect to classes of persons or vehicles, or specific activities allowed, as indicated by additional words on a traffic sign that applies to the zone.

PART 6—OTHER PLACES WHERE STOPPING IS RESTRICTED

6.1 Stopping in a shared zone

A driver shall not stop in a shared zone unless—

- (a) the driver stops at a place on a length of carriageway, or in an area, to which a parking control sign applies and the driver is permitted to stop at that place under this local law;
- (b) the driver stops in a parking bay and the driver is permitted to stop in the parking bay under this local law;
- (c) the driver is dropping off, or picking up, passengers or goods; or
- (d) the driver is engaged in door-to-door delivery or collection of goods, or in the collection of waste or garbage.

6.2 Double parking

(1) A driver shall not stop a vehicle so that any portion of the vehicle is between any other stopped vehicle and the centre of the carriageway.

(2) This clause does not apply to—

- (a) a driver stopped in traffic; or
- (b) a driver angle parking on the side of the carriageway or in a median strip parking area, in accordance with this local law.

6.3 Stopping near an obstruction

A driver shall not stop on a carriageway near an obstruction on the carriageway in a position that further obstructs traffic on the carriageway.

6.4 Stopping on a bridge or in a tunnel, etc.

- (1) A driver shall not stop a vehicle on a bridge, causeway, ramp or similar structure unless—
 - (a) the carriageway is at least as wide on the structure as it is on each of the approaches and a traffic sign does not prohibit stopping or parking; or
 - (b) the driver stops at a place on a length of carriageway, or in an area, to which a parking control sign applies and the driver is permitted to stop at that place under this local law.
- (2) A driver shall not stop a vehicle in a tunnel or underpass unless—
 - (a) the carriageway is at least as wide in the tunnel or underpass as it is on each of the approaches and a traffic sign does not prohibit stopping or parking; or
 - (b) the driver of a motor vehicle stops at a bus stop, or in a bus zone or parking area marked on the carriageway, for the purpose of setting down or taking up passengers.

6.5 Stopping on crests, curves, etc.

- (1) Subject to subclause (2), a driver shall not stop a vehicle on, or partly on, a carriageway, in any position where it is not visible to the driver of an overtaking vehicle, from a distance of 50 metres within a built-up area, and from a distance of 150 metres outside a built-up area.
- (2) A driver may stop on a crest or curve on a carriageway that is not in a built-up area if the driver stops at a place on the carriageway, or in an area, to which a parking control sign applies and the driver is permitted to stop at that place under this local law.

6.6 Stopping near a fire hydrant etc.

- (1) A driver shall not stop a vehicle so that any portion of the vehicle is within 1 metre of a fire hydrant or fire plug, or of any sign or mark indicating the existence of a fire hydrant or fire plug, unless—
 - (a) the driver is driving a public bus, and the driver stops in a bus zone or at a bus stop and does not leave the bus unattended; or
 - (b) the driver is driving a taxi, and the driver stops in a taxi zone and does not leave the taxi unattended.

unattended, in relation to a vehicle, means that the driver has left the vehicle so that the driver is over 3 metres from the closest point of the vehicle.

6.7 Stopping at or near a bus stop

- (1) A driver shall not stop a vehicle so that any portion of the vehicle is within 20 metres of the approach side of a bus stop, or within 10 metres of the departure side of a bus stop, unless—
 - (a) the vehicle is a public bus stopped to take up or set down passengers; or
 - (b) the driver stops at a place on a length of carriageway, or in an area, to which a parking control sign applies and the driver is permitted to stop at that place under this local law.
- (2) In this clause—
 - (a) distances are measured in the direction in which the driver is driving; and
 - (b) a trailer attached to a public bus is deemed to be a part of the public bus.

6.8 Stopping on a path, median strip, or traffic island

The driver of a vehicle (other than a bicycle or an animal) shall not stop so that any portion of the vehicle is on a path, traffic island or median strip, unless the driver stops in an area, to which a parking control sign applies and the driver is permitted to stop at that place under this local law.

6.9 Stopping on verge

- (1) A person shall not—
 - (a) stop a vehicle, other than a bicycle;
 - (b) stop a commercial vehicle or bus, or a trailer or caravan unattached to a motor vehicle; or
 - (c) stop a vehicle during any period when the stopping of vehicles on that verge is prohibited by a sign adjacent and referable to that verge,

so that any portion of it is on a verge.

(2) Subclause (1)(a) does not apply to the person if he or she is the owner or occupier of the premises adjacent to that verge, or is a person authorised by the occupier of those premises to stop the vehicle so that any portion of it is on the verge.

(3) Subclause (1)(b) does not apply to a commercial vehicle when it is being loaded or unloaded with reasonable expedition with goods, merchandise or materials collected from or delivered to the premises adjacent to the portion of the verge on which the commercial vehicle is parked, provided no obstruction is caused to the passage of any vehicle or person using a carriageway or a path.

6.10 Obstructing access to and from a path, driveway, etc.

- (1) A driver shall not stop a vehicle so that any portion of the vehicle is in front of a path, in a position that obstructs access by vehicles or pedestrians to or from that path, unless—
 - (a) the driver is dropping off, or picking up, passengers; or
 - (b) the driver stops in a parking stall and the driver is permitted to stop in the parking stall under this local law.

(2) A driver shall not stop a vehicle on or across a driveway or other way of access for vehicles travelling to or from adjacent land, unless—

- (a) the driver is dropping off, or picking up, passengers; or
- (b) the driver stops in a parking stall and the driver is permitted to stop in the parking stall under this local law.

6.11 Stopping near a letter box

A driver shall not stop a vehicle so that any portion of the vehicle is within 3 metres of a public letter box, unless the driver—

- (a) is dropping off, or picking up, passengers or mail; or
- (b) stops at a place on a length of carriageway, or in an area, to which a parking control sign applies and the driver is permitted to stop at that place under this local law.

6.12 Stopping on a carriageway—heavy and long vehicles

(1) A person shall not park a vehicle or any combination of vehicles that, together with any projection on, or load carried by, the vehicle or combination of vehicles, is 7.5 metres or more in length or exceeds a GVM of 4.5 tonnes—

- (a) on a carriageway in a built-up area, for any period exceeding 1 hour, unless engaged in the picking up or setting down of goods; or
- (b) on a carriageway outside a built-up area, except on the shoulder of the carriageway, or in a truck bay or other area set aside for the parking of goods vehicles.

(2) Nothing in this clause mitigates the limitations or condition imposed by any other clause or by any local law or traffic sign relating to the parking or stopping of vehicles.

6.13 Stopping on a carriageway with a bicycle parking sign

The driver of a vehicle, other than a bicycle, shall not stop on a length of carriageway to which a “bicycle parking” sign applies, unless the driver is dropping off, or picking up, passengers.

6.14 Stopping on a carriageway with motorcycle parking sign

The driver of a vehicle shall not stop on a length of carriageway, or in an area, to which a “motorcycle parking” sign applies, or an area marked “M/C” unless—

- (a) the vehicle is a motorcycle; or
- (b) the driver is dropping off, or picking up, passengers.

PART 7—MISCELLANEOUS

7.1 Removal of notices on vehicle

A person, other than the driver of the vehicle or a person acting under the direction of the driver of the vehicle, shall not remove from the vehicle any notice put on the vehicle by an authorised person.

7.2 Unauthorised signs and defacing of signs

A person shall not without the authority of the local government—

- (a) mark, set up or exhibit a sign purporting to be or resembling a sign marked, set up or exhibited by the local government under this local law;
- (b) remove, deface or misuse a sign or property, set up or exhibited by the local government under this local law or attempt to do any such act; or
- (c) affix a board, sign, placard, notice or other thing to or paint or write upon any part of a sign set up or exhibited by the local government under this local law.

7.3 Signs must be complied with

An inscription or symbol on a sign operates and has effect according to its tenor and a person contravening the direction on a sign commits an offence under this local law.

7.4 General provisions about signs

(1) A sign marked, erected, set up, established or displayed on or near a thoroughfare is, in the absence of evidence to the contrary, presumed to be a sign marked, erected, set up, established or displayed under the authority of this local law.

(2) The first 3 letters of any day of the week when used on a sign indicate that day of the week.

7.5 Special purpose and emergency vehicles

Notwithstanding anything to the contrary in this local law, the driver of—

- (a) a special purpose vehicle may, only in the course of his or her duties and when it is expedient and safe to do so, stop, or park the vehicle in any place, at any time; and
- (b) an emergency vehicle may, in the course of his or her duties and when it is expedient and safe to do so or where he or she honestly and reasonably believes that it is expedient and safe to do so, stop, or park the vehicle at any place, at any time.

7.6 Vehicles not to obstruct a public place

(1) A person shall not leave a vehicle, or any part of a vehicle, in a public place so that it obstructs the use of any part of that public place without the permission of the local government or unless authorised under any written law.

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

PART 8—PENALTIES

8.1 Offences and penalties

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

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

(3) Any person who commits an offence under this local law shall be liable, upon conviction, to a penalty not exceeding \$1,000, and if the offence is of a continuing nature, to an additional penalty not exceeding \$100 for each day or part of a day during which the offence has continued.

(4) The amount appearing in the final column of Schedule 2 directly opposite a clause specified in that Schedule is the modified penalty for an offence against that clause.

8.2 Form of notices

For the purposes of this local law—

- (a) the form of the notice referred to in section 9.13 of the Act is that of Form 1 in Schedule 1 of the *Local Government (Functions and General) Regulations 1996*;
- (b) the form of the infringement notice referred to in section 9.17 of the Act is that of Form 2 in Schedule 1 of the *Local Government (Functions and General) Regulations 1996*; and
- (c) the form of the infringement withdrawal notice referred to in section 9.20 of the Act is that of Form 3 in Schedule 1 of the *Local Government (Functions and General) Regulations 1996*.

Schedule 1

PARKING REGION

[Cl 1.6]

The parking region is the whole of the district, but excludes the following portions of the district—

1. the approach and departure prohibition areas of all existing and future traffic control signal installations as determined by the Commissioner of Main Roads;
2. prohibition areas applicable to all existing and future bridges and subways as determined by the Commissioner of Main Roads; and
3. any road which comes under the control of the Commissioner of Main Roads unless the control of parking and parking facilities on that road is carried out subject to the control and direction of the Commissioner of Main Roads or has been delegated by the Commissioner to the local government.

Schedule 2

PRESCRIBED OFFENCES

[Cl 8.1]

| Item No. | Clause No. | Nature of Offence | Modified Penalty \$ |
|----------|------------|--|---------------------|
| 1 | 2.2 | Failure to park wholly within parking stall | 40 |
| 2 | 2.2(4) | Failure to park wholly within parking area | 40 |
| 3 | 2.3(1)(a) | Causing obstruction in parking station | 50 |
| 4 | 2.3(1)(b) | Parking contrary to sign in parking station | 50 |
| 5 | 2.3(1)(c) | Parking contrary to directions of authorised person | 50 |
| 6 | 2.3(1)(d) | Parking or attempting to park a vehicle in a parking stall occupied by another vehicle | 40 |
| 7 | 3.1(1)(a) | Parking wrong class of vehicle | 40 |
| 8 | 3.1(1)(b) | Parking by persons of a different class | 45 |
| 9 | 3.1(1)(c) | Parking during prohibited period | 45 |
| 10 | 3.1(3)(a) | Parking in no parking area | 50 |

| Item No. | Clause No. | Nature of Offence | Modified Penalty \$ |
|----------|------------------------|--|---------------------|
| 11 | 3.1(3)(b) | Parking contrary to signs or limitations | 40 |
| 12 | 3.1(3)(c) | Parking vehicle in motorcycle only area | 40 |
| 13 | 3.1(4) | Parking motorcycle in stall not marked "M/C" | 40 |
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| 16 | 3.2(1)(b) | Failure to park on boundary of one-way carriageway | 40 |
| 17 | 3.2(1)(a) or 3.2(1)(b) | Parking against the flow of traffic | 45 |
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| 19 | 3.2(1)(d) | Parking closer than 1 metre from another vehicle | 40 |
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Dated: 13 March 2017.

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

M. A. PARKER, Chief Executive Officer.
T. G. JACKSON, Shire President.

LOCAL GOVERNMENT ACT 1995

SHIRE OF HARVEY

STANDING ORDERS LOCAL LAW 2017

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LOCAL GOVERNMENT ACT 1995

SHIRE OF HARVEY

STANDING ORDERS LOCAL LAW 2017

Under the powers conferred by the *Local Government Act 1995* and under all other relevant powers, the Shire of Harvey resolved on 31 January 2017 to make the following local law.

PART 1—PRELIMINARY

1.1 Citation

This local law may be cited as the *Shire of Harvey Standing Orders Local Law 2017*.

1.2 Commencement

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

1.3 Application and intent

- (1) This local law provides rules 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—
 - 75% majority** has the meaning given to it in the Act;
 - 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 Harvey;
 - local government** means the Shire of Harvey;
 - 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;
 - original motion** means the motion that first introduces a proposal to be considered at a meeting;
 - 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;
 - procedural motion** means a motion employed to control the conduct of a meeting;
 - Regulations** means the *Local Government (Administration) Regulations 1996*;
 - simple majority** means more than 50% of the members present and voting;
 - special majority** is dealt with in the Act; 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 *Shire of Harvey Standing Orders Local Law* as published in the *Government Gazette* on 2 November 2001 is repealed.

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 is 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, 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 2 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 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 determined by the Council from time to time.

(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.

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, 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) that requires a 75% majority or a special majority;

(b) in which an interest has been disclosed;

(c) that has been the subject of a petition or deputation;

(d) that is a matter on which a Member wishes to make a statement; or

(e) 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 2 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.
- (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 office of the local government in Harvey and Australind 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

(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.

(2) If the Presiding Member 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) 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 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 7 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 person

PART 8—CONDUCT OF MEMBERS

8.1 Members to occupy own seats

At the first meeting held after each ordinary elections day, the CEO is to allot by random draw, a position at the Council table to each councillor and the councillor is to occupy that position when present at meetings of the Council until such time as there is a call by a majority of councillors for a re-allotment of positions.

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 of entry or departure.

8.5 Members to indicate their intention to speak and to rise when speaking

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 person presiding to speak, members are to rise and address the Council through the person presiding, provided that where any member of the Council is unable to stand by reason of sickness or disability he or she may sit while speaking.

8.6 Priority of speaking

- (1) Where 2 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 under 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 under 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 under 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; and

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

11.2 No debate

(1) The mover of a motion specified in subclause (a), (b), (c), (f) or (g) of clause 11.1 may speak to the motion for not more than 5 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 subclause (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 under 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.

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 are 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 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 are 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) to communicate notice of the decision to a person affected by, or with an interest in, the decision; and
 - (ii) to 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 law and may be considered, but has not yet been considered, by the Council or a committee as the case may be.

(2) 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.

(3) 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.

PART 17—SUSPENSION OF LOCAL LAW

17.1 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.

(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 law

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: 13 March 2017.

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

M. A. PARKER, Chief Executive Officer.
T. G. JACKSON, Shire President.
