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LOCAL GOVERNMENT ACT 1995

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**SHIRE OF HALLS CREEK**

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**PUBLIC PLACES AND LOCAL  
GOVERNMENT PROPERTY  
LOCAL LAW 2017**

**FENCING LOCAL LAW 2017**



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## LOCAL GOVERNMENT ACT 1995

## SHIRE OF HALLS CREEK

PUBLIC PLACES AND 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 Halls Creek resolved on 15 June 2017 to make the following local law.

## PART 1—PRELIMINARY

**1.1 Title**

This is the *Shire of Halls Creek Public Places and 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 Terms used in this local law**

In this local law, unless the contrary intention appears—

“**Act**” means the *Local Government Act 1995*;

“**applicant**” means a person who applies for a licence;

“**application**” means an application for a licence;

“**application fee**” means the fee payable upon lodgement of an application for a licence and which relates to the lodgement, assessment and determination of the application but does not include the licence fee;

“**authorised person**” means a person authorised by the local government under section 9.10 of the Act;

“**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;

“**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;

“**CEO**” means the Chief Executive Officer of the local government;

“**children’s playground**” means an area set aside for use by children and noted by the presence of dedicated children’s playground equipment and the presence of either sand or other form of soft fall surface;

“**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;

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

“**commercial activity**” means an activity referred to in clause 8.1, clause 9.1, clause 10.1 or clause 11.1;

“**Crossing**” means a crossing giving access from a public thoroughfare to—

(a) private land; or

(b) a private throughfare serving private land;

“**Council**” means the council of the local government;

- “**determination**” means a determination made under clause 2.1;
- “**district**” means the district of the local government.
- “**eating house**” means premises which are registered as an eating house under the Health Act or which are the subject of a hotel licence, a special facility licence or a restaurant licence under the Liquor Act;
- “**entertain**” means conduct any form of theatrical, artistic, musical, audio or visual performance and includes busk;
- “**entertainment licence**” means a licence of the kind referred to in clause 1.6(c);
- “**food**” has the meaning given by clause 1.5;
- “**food sales licence**” means a licence of the kind referred to in clause 1.6(d);
- “**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;
- “**garden**” means any part of a thoroughfare planted, developed or treated, otherwise than as a lawn, with one or more plants;
- “**Health Act**” means the *Public Health Act 2016*;
- “**hire**” includes offer to hire and expose for hire;
- “**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;
- “**licence**” means a licence under this local law;
- “**licence fee**” means the fee payable upon the issue of a licence;
- “**licence document**” means a licence document issued under this local law;
- “**licensee**” means a person who holds a licence;
- “**liquor**” has the same meaning as is given to it in section 3 of the *Liquor Control Act 1988*;
- “**Liquor Act**” means the *Liquor Control Act 1988* and includes any regulations made under that Act;
- “**local government**” means the “Shire of Halls Creek”;
- “**local government property**” means anything except a street—
- (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 public notice**” has the same meaning as in section 1.7 of the Act;
- “**lot**” has the meaning given to it in the *Planning and Development Act 2005*;
- “**Manager**” means the person for the time being employed by the local government to control and manage a facility which is local government property and includes the person’s assistant or deputy;
- “**market**” means a collection of stalls, stands or displays erected for the purpose of selling or hiring goods, wares, merchandise or services or carrying out any other transaction;
- “**market licence**” means a licence of the kind referred to in clause 1.6(b);
- “**nuisance**” means—
- (a) any activity, thing, condition, circumstance or state of affairs caused or contributed to by a person which is injurious or dangerous to the health of another person of normal susceptibility, or which has a disturbing effect on the state of reasonable physical, mental or social wellbeing of another person;
  - (b) anything a person does or permits or causes to be done which interferes with or is likely to interfere with the enjoyment or safe use by another person or any public place; or
  - (c) anything a person does in or on a public place which unreasonably detracts from or interferes with the enjoyment or value of nearby land owned by another person, provided that anything done in accordance with the law or a legal right or which is consistent with the standard of behaviour in the relevant locality shall not be unreasonable for the purpose
- “**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 6.5 (2), and includes any reticulation pipes and sprinklers;
- “**person**” does not include the local government;



“**place**” means anywhere at all, and includes anywhere in or on something that is moving or can move;

“**private property**” means any real property, parcel of land or lot that has a separate certificate of title, which is in private ownership or subject of a lease or agreement with a company or person enabling its use for private purposes and includes any building or structure thereon;

“**prohibited drug**” has the meaning given to it in the *Misuse of Dugs Act 1981*;

“**proprietor**”—

- (a) includes the owner, the occupier and any person having the management or control of any eating house; or
- (b) the holder of a licence granted under the Liquor Act where the premises in question is the subject of a hotel licence, a limited hotel licence, special facility licence or a restaurant licence granted under that Act;

“**public place**” has the meaning given by clause 1.4;

“**repealed local law**” means the local law repealed under clause 14.1;

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

“**Schedule**” means a schedule in this local law.

“**sell**” includes—

- (a) offer or attempt to sell;
- (b) display for sale;
- (c) send, forward or deliver for sale or on sale;
- (d) barter or exchange;
- (e) dispose, by lot or chance or by auction;
- (f) supply, or offer, agree or attempt to supply—
  - (i) in circumstances which the supplier derives or would be likely to derive a direct or indirect pecuniary benefit; or
  - (ii) gratuitously, but with a view to gaining or maintaining custom or other commercial advantage; or
- (g) authorise, direct, cause or permit to be done any act referred to in this definition;

“**shopping trolley**” means a wheeled container or receptacle supplied by a retailer to enable a person to transport goods;

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

“**stall**” means a movable or temporarily fixed structure, stand or table in, on or from which goods, wares, merchandise, produce or services are sold and includes a vehicle;

“**street**” means any highway, thoroughfare or land used for vehicular or pedestrian traffic, and includes all the land lying between property lines, including the verge and footpath;

“**street tree**” means any tree planted or self-sown in the street, of an appropriate species and in an appropriate location, for the purposes of contributing to the streetscape;

“**trading**” means selling or hiring goods, wares, merchandise or services and includes the setting up of a stall and conducting business at a stall;

“**trading licence**” means a licence of the kind referred to in clause 1.6(a);

“**vehicle**” includes—

- (a) every conveyance and every object capable of being propelled or drawn on wheels, tracks or otherwise; and
  - (b) an animal being ridden or driven,
- but excludes—
- (c) a wheel chair or any device designed for use, by a physically impaired person on a footpath; and
  - (d) a shopping trolley

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

“**water course**” has the meaning given to it in the *Rights in Water and Irrigation Act 1914*;

#### 1.4 Meaning of “public place”

For the purpose of this local law a public place is—

- (a) any street;
- (b) any local government property; or
- (c) any place to which the public have access.

#### 1.5 Meaning of “food”

(1) In this local law, “**food**” includes—

- (a) any substance or thing of kind used, or represented as being used, for human consumption (whether it is live, raw, prepared or partly prepared);

- (b) any substance or thing of a kind used, or represented as being for use, as an ingredient or additive in a substance or thing referred to in paragraph (a);
- (c) any substance used in preparing a substance or thing referred to in paragraph (a) (other than a substance used in preparing a living thing) if it comes into direct contact with the substance or thing referred to in that paragraph, such as processing aid;
- (d) chewing gum or an ingredient or additive in chewing gum, or any substance used in preparing chewing gum; and
- (e) any substance or thing declared to be a food under a declaration in force under the Commonwealth *Food Standards Australia New Zealand Act 1991* section 3B,

whether or not the substance, thing or chewing gum is in a condition fit for human consumption.

(2) To avoid doubt, “**food**” may include live plants and animals.

### 1.6 Types of licences

For the purposes of this local law—

- (a) a licence which authorises trading on any street or local government property is to be referred to as a trading licence;
- (b) a licence which authorises the conduct or setting up of a market on any street or local government property is to be referred to as a market licence;
- (c) a licence which authorises entertainment on any street or local government property is to be referred to as an entertainment licence; and
- (d) a licence which authorises the sale of food on any street or local government property is to be referred to as a food sales licence.

## PART 2—DETERMINATIONS IN RESPECT OF LOCAL GOVERNMENT PROPERTY

### 2.1 Determinations as to use of local government property

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) is to 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.

**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 aeroplane;
- (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 sand board 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, equipment or things, or may extend it to all vehicles, 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 sand board or a similar device;
- (c) taking, riding or driving a vehicle on the property or a particular class of vehicle;
- (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 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, equipment or things, or all vehicles, 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.

### **2.9 Sign under repealed local law taken to be determination**

- (1) Where a sign erected on local government property has been erected under a repealed 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).

### **2.10 Assistance animals**

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

## **PART 3—ACTIVITIES ON LOCAL GOVERNMENT PROPERTY REQUIRING A LICENCE**

### **3.1 Activities requiring a licence**

- (1) A person must not without a licence—
- (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 any 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 CEO may exempt a person from compliance with subclause (1) on the application of that person.
- (3) The CEO may exempt specified local government property or a class of local government property from the application of subclause (1)(a).

### 3.2 Licence 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 must not without a licence—

(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 CEO may approve an application for a licence 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*.

### 3.3 Licence required for possession and consumption of liquor

(1) A person, on local government property, must 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 licence has been obtained for that purpose.

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

## PART 4—BEHAVIOUR ON ALL LOCAL GOVERNMENT PROPERTY

### 4.1 Behaviour which interferes with others

A person must 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 must 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 anything from the local government property including a rock, a plant or a seat provided for the use of any person; and

(b) destroying, defacing or damaging anything on the local government property, including a plant, a seat provided for the use of any person or a building.

### 4.3 Taking or injuring any fauna

(1) A person must 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 must 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 must not take a prohibited drug on to, or consume or use a prohibited drug on, local government property.

### 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 must 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.

**4.7 Authorised person to be obeyed**

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

**4.8 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.

**4.9 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.

**4.10 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 5—MATTERS RELATING TO PARTICULAR LOCAL GOVERNMENT PROPERTY****5.1 No entry to fenced or closed local government property**

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

**5.2 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—

- (1) in her or his opinion is—
  - (a) under the age of 12 years and who is unaccompanied by a responsible person over the age of 16 years;
  - (b) suffering from any contagious, infectious or cutaneous disease or complaint, or is in an unclean condition; or
  - (c) under the influence of liquor or a prohibited drug; or
- (2) is to be refused admission under and in accordance with a decision of the local government for breaching any clause of this local law.

**5.3 No school no pool**

(1) A Manager or an authorised person shall refuse admission to, may direct to leave or shall remove or cause to be removed from the pool area any person who in her or his opinion may be truant, or may have been truant on that day, from a primary or secondary school in the district.

(2) Where a person is refused admission to, directed to leave, or removed from the pool area under subclause (1), that person shall not be admitted to or enter the pool area during the whole of that day or for such longer period as shall be advised by the relevant school principal.

(3) Subclause (1) does not apply to children who are home schooled, tourists, stopped schooling or under the custody of an adult.

**5.4 Only specified gender to use entry of toilet block or change room**

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

**5.5 No unauthorised entry to function**

(1) A person must 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 6—ACTIVITIES IN STREETS****6.1 General prohibitions**

A person must not—

- (a) plant any plant which is not maintained at or below 0.50m in height in a street so that the plant does not create a sightline hazard;
- (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 street 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) damage a street tree or remove a street tree or part of a street tree irrespective of whether the street tree was planted by the owner or occupier of the lot abutting the street or by the local government, unless—
  - (i) the removal of the street tree is authorised by the local government in writing; or
  - (ii) the person is acting under authority of written law;
- (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 street 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 street; or
- (g) within a mall, arcade or verandah of a shopping centre, ride any bicycle, skateboard, roller-blades or similar device;
- (g) plant any plant (except grasses or a similar plant) within 6 metres of an intersection.

**6.2 Activities allowed with a licence**

(1) A person must not, without a licence—

- (a) dig or otherwise create a trench through or under a kerb or footpath;
- (b) throw, place or deposit anything 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 street as a street;
- (d) cause any obstruction to a water channel or a water course in a street;
- (e) throw, place or drain offensive, noxious or dangerous fluid onto a street;
- (f) damage a street;
- (g) fell or damage any street tree;
- (h) fell any tree onto a street;
- (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 anything 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 street any hoist or other thing for use over the street;
- (k) on a street use anything or do anything so as to create a nuisance;
- (l) place or cause to be placed on a street a bulk rubbish container; or
- (m) interfere with the soil of, or anything in a thoroughfare or take anything from a street.

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

**6.3 Temporary crossings**

(1) Where it is likely that works on a lot will involve vehicles leaving a street and entering the lot, the person responsible for the works must obtain a licence for the construction of a temporary crossing to protect the existing carriageway, kerb, drains, footpath, existing materials and street trees, 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 builder named on the building licence issued under the *Local Government (Miscellaneous Provisions) Act 1960*, if one has been issued in relation to the works; or
- (b) the registered proprietor of the lot, if no building licence has been issued under the *Local Government (Miscellaneous Provisions) Act 1960* in relation to the works.

(3) If the CEO approves an application for a licence for the purpose of subclause (1), the licence is taken to be issued on the condition that until such time as the temporary crossing is removed, the licensee must 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 street.

#### **6.4 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 CEO.

(2) The CEO 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 street, which may be affected by the removal, within the period of time stated in the notice, and the owner or occupier of the lot must comply with that notice.

#### **6.5 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 may 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 street in the vicinity of an intersection or bend in the street or using a driveway on land adjacent to the street for access to or from the street; 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 30 per cent of the area of the verge (excluding any approved footpath and/or 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).

(3) In this clause “acceptable material” means any of the materials specified in Schedule 1.

#### **6.6 Only permissible verge treatments to be installed**

(1) A person must 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 6.7.

#### **6.7 Obligations of owner or occupier**

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

- (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.

#### **6.8 Notice to owner or occupier**

The CEO 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 Part.

#### **6.9 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.

#### **6.10 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.

#### **6.11 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.

#### **6.12 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 public place, as that term is defined in clause 1.4.

#### **6.13 Signs**

- (1) A local government may erect a sign in a street specifying any conditions of use which apply to that street.
- (2) A person must 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.

#### **6.14 Transitional**

Where a sign erected in a street 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 6.13 if—

- (a) the sign specifies a condition of use relating to the street 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.

#### **6.15 No driving on closed street**

- (1) A person must not drive or take a vehicle on a closed street unless—
  - (a) it 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 licence.
- (2) In this clause—

“closed street” means a thoroughfare wholly or partially closed under section 3.50 or 3.50A of the Act.

#### **6.16 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 street, the CEO 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.

#### **6.17 Hazardous plants**

- (1) Where a plant in a garden creates or may create a hazard for any person using a street, the CEO 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.

#### **6.18 Notice to repair damage to street**

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

#### **6.19 Notice to remove thing unlawfully placed on street**

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

### **PART 7—OBSTRUCTING ANIMALS, VEHICLES OR SHOPPING TROLLEYS**

#### **7.1 Leaving animal or vehicle in public place**

- (1) A person must not leave an animal or 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, unless that person has first obtained a licence or is authorised to do so under a written law.
- (2) A person does not contravene subclause (1) where the animal is secured or tethered for a period not exceeding 1 hour.
- (3) A person does not contravene subclause (1) where the vehicle is left for a period not exceeding 24 hours.

**7.2 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 must not—

- (a) allow the animal to enter or remain for any time on any public place except for the use of the public place 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 in a public place.

**7.3 Shopping trolley to be marked**

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

**7.4 Person not to leave trolley in public place**

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

**7.5 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 must 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.

**7.6 Retailer taken to own trolley**

(1) Where an Authorised Person or a member of the Western Australia Police finds a shopping trolley abandoned in a public place, the Authorised Person or a member of the Police Service may impound the shopping trolley and place it in an appointed place.

(2) Where a shopping trolley has been impounded and placed in an appointed place, the apparent owner must be advised verbally or in writing of its location by the local government and, the owner must recover the impounded shopping trolley from the appointed place as set out in the Act.

**PART 8—TRADING ON STREETS AND LOCAL GOVERNMENT PROPERTY****8.1 Offence to trade in certain places**

A person must not carry on trading in or on any thoroughfare or local government property except under and in accordance with the licence authorising the trading at that thoroughfare or local government property

**PART 9—MARKETS ON STREETS AND LOCAL GOVERNMENT PROPERTY****9.1 Offence to conduct a market in certain places**

A person must not conduct or set up a market in or on any thoroughfare or local government property except under and in accordance with a licence authorising the conduct of a market at that thoroughfare or local government property.

**PART 10—ENTERTAINMENT ON STREETS AND LOCAL GOVERNMENT PROPERTY****10.1 Offence to entertain in certain places**

A person must not entertain in or on any thoroughfare or local government property except under and in accordance with the licence authorising the entertainment at that thoroughfare or local government property.

**PART 11—FOOD SALES ON STREETS AND LOCAL GOVERNMENT PROPERTY****11.1 Offence to sell food in certain streets or local government property**

A person must not sell food in or on any thoroughfare or local government property except under and in accordance with a food sales licence authorising the sale of food at that thoroughfare or local government property

**PART 12—LICENSING****12.1 Who may apply for licence**

An application for a licence may only be made to the CEO by an individual or a Charitable Organisation.

**12.2 Application for licence**

An application must be—

- (a) in writing in a form approved by the CEO;
- (b) accompanied by any document or information that is required under this local law; and
- (c) accompanied by the application fee.

**12.3 Information required for application**

The following documents and information are required to accompany an application—

- (a) written statement of the details of the activity for which a licence is being requested;
- (b) written particulars of arrangements made in respect of public liability insurance; and
- (c) any other information the local government considers necessary in the circumstances of the case.

**12.4 Further information relevant to application**

(1) The CEO may ask an applicant for any additional document or information that the CEO considers is or could be relevant to making a decision on the application.

(2) Without limiting subclause (1), for the purpose of deciding whether or not an individual applicant is a fit and proper person to be granted a licence, and whether or not the application should be granted, the CEO—

- (a) must ask the applicant to provide a reference or report specified by the CEO; and
- (b) must ask the applicant to provide evidence that the person has the necessary experience in relation to the type of commercial activity to which the application relates.

(3) If the CEO makes a request under subclause (1) or (2) the CEO does not have to consider the application, or consider it further, until the request is complied with.

(4) Any costs incurred in complying with the request under subclause (1) or (2) are to be paid by the applicant unless the CEO determines otherwise.

**12.5 Additional information required for trading licence application**

The following additional information and documents are required to accompany an application for a trading licence—

- (a) the number of assistants to be employed in the trading at any one time;
- (b) a plan of the proposed location;
- (c) the proposed goods, wares, merchandise or services to be traded;
- (d) a detailed and accurate plan and description of any proposed stall, stand, table, structure or vehicle to be used for trading; and
- (e) the type of sign to be used to display the licence name and licence number.

**12.6 Additional information required for market licence application**

The following additional information and documents are required to accompany an application for a market licence—

- (a) a copy of the planning approval issued by the local government under a town planning scheme;
- (b) a plan or plans to a scale of 1:50 showing—
  - (i) the location and dimensions of the proposed area to be used for the market;
  - (ii) the dimensions of the public place including any footpath and the location and nature of any street furniture, trees, utilities, parking or service bays in the area; and
  - (iii) the position and dimensions of all proposed stalls;
- (c) a management plan outlining the operation of the market including—
  - (i) the proposed days and times of operation;
  - (ii) the proposed type and form of any advertising devices to be used; and
  - (iii) details of how the operational responsibilities of the licensee will be met; and
- (d) the nature and extent of any activity relating to entertainment.

**12.7 Additional information required for entertainment licence application**

The following additional information and documents are required to accompany an application for an entertainment licence—

- (a) the nature of the proposed entertainment;
- (b) any musical instrument or amplifier proposed to be used; and
- (c) the number of people involved in the proposed entertainment.

### 12.8 Additional information required for food sales licence application

The following additional information and documents are required to accompany an application for a food sales licence—

- (a) a plan and specification of the proposed area to be licenced on a scale of 1:50 showing—
  - (i) the location and dimensions of the proposed area and the means by which the area is to be separated from the balance of the public place; and
  - (ii) the position of all tables, chairs and other structures proposed to be provided in the area and which of the items, if any, are to be retained within the area at all times;
- (b) a plan and specification on a scale of 1:200 showing the area and all improvements within 30 metres of the boundaries of the area including any public facility and parking restrictions;
- (c) a colour photograph or photographs of the tables, chairs and other structures to be set up in the area;
- (d) a written statement of the manner in which foodstuffs and other dining accessories are to be conveyed to and protected from contamination within the area; and
- (e) written particulars of arrangements made in respect of public liability insurance.

### 12.9 Power of CEO to grant licence

- (1) The CEO may grant a licence to a person authorising the person to provide a specified type of trading at a specified public place.
- (2) In subsection (1)—

“**specified**” means specified in the licence document.
- (3) A licence cannot be granted in respect of more than one type of commercial activity or in respect of more than one public place.
- (4) A licence cannot be granted to 2 or more persons.
- (5) A person may be granted 2 or more licences whether for the same type of commercial activity or for different types of commercial activity or for different public places.

### 12.10 General restrictions on grant of licence

- (1) The CEO must not grant a licence if there are reasonable grounds for believing that the provision of the activity to which the application relates would constitute an unacceptable risk to the safety of the public.
- (2) The CEO must not grant a licence unless the CEO is satisfied that—
  - (a) the applicant is capable of carrying on the activity in accordance with this local law and the terms and conditions of the licence;
  - (b) the public place at which the activity is to be provided is suitable for that purpose;
  - (c) a licence or equivalent authority granted or issued to the applicant has not been cancelled in the period of 5 years before the application is made; and
  - (d) the applicant is a fit and proper person to carry on the activity.
- (3) The CEO must not grant a licence to an individual applicant if the applicant has been found guilty of an offence under this local law unless the CEO is satisfied that there are exceptional reasons for doing so.

### 12.11 Conditions applying to certain licence

It is a condition of every trading licence, market licence, entertainment licence and food sales licence that—

- (a) at all times during the period for which the licence is issued, the licensee must effect and maintain a public risk policy of insurance with a reputable insurer with respect to the commercial activity authorised by the licence.
- (b) the commercial activity can only be conducted at the public places specified in the licence; and
- (c) unless otherwise stated on the licence, the expiration date of the licence is midnight on 30 June of that year.

### 12.12 Other conditions

The CEO may grant a licence subject to any conditions that the CEO considers appropriate.

### 12.13 Condition of every trading licence

Every trading licence is taken to be subject to the conditions set out in Schedule 2.

### 12.14 Condition of every market licence

Every market licence is taken to be subject to the conditions set out in Schedule 3.

### 12.15 Condition of every entertainment licence

Every entertainment licence is taken to be subject to the conditions set out in Schedule 4.

### 12.16 Condition of every food sales licence

Every food sales licence is taken to be subject to the conditions set out in Schedule 5.

### 12.17 Contravention of conditions

A licensee who contravenes a condition of the licence commits an offence.

**12.18 Duration of licence**

- (1) A licence has effect for the period specified in the licence document unless—
- (a) it is suspended under clause 12.22; or
  - (b) it is cancelled under clause 12.26; or
  - (c) it is surrendered under clause 12.27.
- (2) The period specified in the licence document must not exceed one year from the day on which the licence is granted or renewed.

**12.19 Application for renewal of licence**

- (1) A licensee may apply to the CEO for the renewal of a licence.
- (2) An application for renewal must be—
- (a) in writing in the form approved by the CEO;
  - (b) lodged with the CEO no later than 28 days prior to the expiry of the licence or any further time that the CEO in a particular case allows;
  - (c) accompanied by any document or information that is required under this local law; and
  - (d) accompanied by the prescribed fee.
- (3) Clause 12.4 applies in relation to an application for renewal as if it were an application for a licence.

**12.20 Restrictions on renewal of licence**

The CEO must not renew a licence if—

- (a) the CEO is no longer satisfied as to any matter referred to in clause 12.10 or 12.11 that was relevant to the decision to grant the licence; or
- (b) the CEO is satisfied that the licensee has persistently or frequently contravened the provisions of this local law or a term or condition of the licence; or
- (c) there are reasonable grounds for believing that the continued provision of the trading to which the application relates will constitute an unacceptable risk to the safety of the public.

**12.21 Renewal of licence**

If the CEO renews a licence the CEO may—

- (a) renew it subject to any existing conditions; or
- (b) impose any new conditions; or
- (c) change or remove any existing condition (other than the conditions referred to in clauses 12.11, 12.12, 12.14, 12.15 and 12.16).

**12.22 Suspension of licence**

- (1) The CEO may, subject to clause 12.23, by written notice given to the licensee, suspend a licence if there are reasonable grounds for believing that—
- (a) the licensee has contravened a term or condition of a licence; or
  - (b) the licensee has contravened a provision of this local law; or
  - (c) the continued provision of the activity constitutes or will constitute an unacceptable risk to the safety of the public.
- (2) The suspension notice must—
- (a) state the day, or the day and time, on or at which the suspension takes effect;
  - (b) state the reasons for the CEO's decision to suspend the licence; and
  - (c) where appropriate, indicate what steps need to be taken to ensure that there is compliance with the relevant provision, term or condition or that there is no longer a risk as described in subclause (1)(c); and
  - (d) inform the licensee that the licensee has a right to apply under the Act for a review of the CEO's decision to suspend the licence.

**12.23 Proposed suspension**

- (1) If the CEO proposes to suspend a licence for the reason mentioned in clause 12.22 (1)(a)(b), the CEO must give written notice to the licensee of the proposed suspension.
- (2) The notice must—
- (a) state that the CEO proposes to suspend the licence;
  - (b) state the reasons for the proposed suspension; and
  - (c) inform the licensee that the licensee is entitled to make representation to the CEO in respect of the proposed suspension within 7 days after the day on which the licensee is given the notice.
- (3) In considering whether to suspend the licence the CEO must have regard to any representations made by the licensee within the period referred to in subclause (2)(c).

**12.24 Revocation of suspension**

- (1) The CEO must, by written notice given to the licensee revoke the suspension of a licence if the CEO is satisfied that the steps specified in the suspension notice have been taken.

(2) The CEO may, by written notice given to the licensee, revoke the suspension of the licence if it is appropriate to do so in the circumstances of a particular case.

#### **12.25 Suspension of licence**

The suspension of a licence has effect on the day or the day and time, specified in the suspension notice until one of the following happens—

- (a) the suspension is revoked under clause 12.24;
- (b) the licence is cancelled under clause 12.26 or expires;
- (c) the licence is surrendered in accordance with the provisions of this local law.

#### **12.26 Cancellation of licence**

Grounds for the cancellation of the licence exists if—

- (a) the licence was obtained improperly; or
- (b) the CEO can no longer be satisfied as to a matter referred to in clause 12.10 that was relevant to the decision to grant the licence; or
- (c) the licensee has persistently or frequently contravened a term or condition of the licence or a provision of this local law, whether or not the licence is or has been suspended on the grounds of a contravention; or
- (d) there are reasonable grounds for believing that the continued provision of the commercial activity constitutes or would constitute an unacceptable risk to the safety of the public whether or not the licence has been suspended on the grounds of that risk.

#### **12.27 Surrender of licence**

A licensee may at any time by notice in writing to the CEO surrender the licence.

#### **12.28 Licence not transferable**

A licence is not transferable.

#### **12.29 Amendment of licence**

(1) In this clause—

“amend” includes—

- (a) to impose any new condition; and
- (b) to change or remove any existing condition (other than a condition referred to in clauses 12.11, 12.12, 12.14, 12.15 or 12.16).

(2) The CEO may, by written notice given to the licensee, amend a licence.

(3) An amendment may be made on application made by the licensee or on the CEO's initiative.

#### **12.30 Licence document**

If the CEO grants a licence to a person the CEO must issue to the person a licence document that contains the details required under this local law.

#### **12.31 Production of licence document for amendment**

If the CEO amends or renews a licence, the licensee must, if required by the CEO, produce the licence document to the CEO for amendment within the period specified by the CEO.

#### **12.32 Return of licence document if licence no longer in effect**

If a licence—

- (a) has expired or has not been renewed; or
- (b) has been suspended or cancelled; or
- (c) has been surrendered,

the person who was the licensee must, as soon as practicable after the expiry, suspension, cancellation or surrender, return the licence document to the CEO.

#### **12.33 Advertising**

A person must not advertise, or otherwise hold out in any way, that the person conducts a commercial activity in any public place unless that person holds a licence authorising that commercial activity.

### **PART 13—OFFENCES AND PENALTIES**

#### **13.1 Offences**

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

(2) An offence against a clause specified in Schedule 6 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 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.

**13.2 Infringement and infringement withdrawal notices**

For the purpose of this local law—

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

**13.3 Offence description and modified penalty**

The amount appearing in the final column of Schedule 6 directly opposite an offence described in that Schedule is the modified penalty for that offence.

**13.4 Prosecution for offences**

A penalty for an offence against this local law (not being a modified penalty) may be recovered by the local government by taking proceedings against the alleged offender in the Magistrates Court.

**13.5 Offence to fail to comply with notice**

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

**13.6 Local government may undertake requirements of notice**

Where a person fails to comply with a notice referred to in clause 8.1, 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.

**PART 14—REPEAL AND TRANSITIONAL PROVISIONS****14.1 Repeal**

The *Shire of Halls Creek Local Government Act Local Law 2002* as published in the *Government Gazette* on 2 October 2002 is repealed.

**14.2 Application for licence or renewal of licence**

An application for a licence or the renewal of a licence made under the repealed local law that has not been finally determined immediately before the commencement day is to be dealt with and determined as if it were an application for a licence or a renewal of licence under this local law.

**14.3 Licences**

A licence under the repealed local law that is in force immediately before the commencement day is to be regarded on and after that day as a licence under this local law and may be dealt with accordingly.

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**SCHEDULE 1—ACCEPTABLE MATERIAL**

[Clause 6.6]

**1. General**

All forms of compacted aggregate materials such as crushed stones, crushed brick and gravel are acceptable. The minimum depth of the material is to be no less than 100mm, and must be water bound and compacted to a smooth finish. The material must be contained within the verge area at all times.

**2. Hardstands**

The verge may be partly paved with brick paving, concrete or bitumen to form a hardstand. The maximum area that may be paved is 3 metres wide, measured from the back of the kerb and running parallel to the kerb in the verge abutting the owners or occupiers land.

**SCHEDULE 2—CONDITIONS OF EVERY TRADING LICENCE**

[Clause 12.13]

**1. The licensee must—**

- (a) display a sign with letters and numerals not less than 5cm in height in a conspicuous place in the licensed area indicating the name of the licensee and the licence number;
- (b) ensure that the licensed area is attended by either the licensee or an assistant at all times when trading is being undertaken;
- (c) keep any store, table, structure or vehicle specified in the licence in a clean and safe condition and in good repair;
- (d) ensure a minimum width of 2 metres is kept clear for pedestrian access;
- (e) keep the location specified in the licence free from refuse and rubbish;
- (f) have the licence available at operation times and produce the licence to any authorised person or any Police Officer when requested; and

- (g) remove any store, merchandise and signs from the location to which the licence applies and leave the location clean and vacant—
  - (i) at the conclusion of the permitted hours of operation specified in the licence; and
  - (ii) at the conclusion of the permitted hours of operation specified in the licence; and
  - (iii) whenever the trading is not taking place on the location to which the licence applies.

2. The licensee must not—

- (a) engage in or permit any trading in any goods, wears, merchandise or services other than those specified in the licence;
- (b) cause, permit or suffer any nuisance to exist, arise or continue on from the location to which the licence applies;
- (c) cause, permit or store any goods, wares, merchandise on any public place, other than on the location to which the licence applies;
- (d) obstruct the free passage of pedestrians on any footpath or pedestrian access way;
- (e) use or display or permit to be used or displayed any advertisement, placard, poster, sign or sign board on or about the location specified in the licence other than price tickets or labels on the permitted place not exceeding a total of 0.25m<sup>2</sup> of the licensed area;
- (f) erect and maintain signs in accordance with this paragraph (f) so as to obscure any other signage on or adjacent to the licensed area;
- (g) cry out, shout about or permit any other person to cry out or shout about any goods, wares, merchandise or services in any street or public place;
- (h) use or permit to be used any loud hailer, microphone, amplifier or other apparatus for making or transmitting sound, on or from the permitted place specified in the licence, unless approved by the CEO;
- (i) use or permit to be used any record, tape, radio, bell, musical instrument or other instrument or device capable of being heard beyond the boundaries of the permitted place specified in the licence unless approved by the CEO;
- (j) use or permit to be used any flashing or intermittent lighting apparatus or device on or from the permitted place specified in the licence; or
- (k) use or permit to be used apparatus or device including flap or shelf where the dimensions of the stall area are increased beyond that specified in the licence.

### SCHEDULE 3—CONDITIONS OF EVERY MARKET LICENCE

[Clause 12.14]

1. Prior to commencing operations of the market, the licensee must—

- (a) obtain approval from the local government and the Western Australian Police Service for the closure of public streets to vehicular traffic, where the market is to be held and during the hours of operation of the market;
- (b) lodge a copy of the approved plans of the market with the Fire and Rescue Service of WA;
- (c) ensure adequate refuse collection arrangements have been made to the satisfaction of the local government;
- (d) where appropriate, have the necessary local government approval in accordance with the Health (Public Building) 1992 including a maximum occupation certificate and electrical compliance certificate; and
- (e) obtain approval from the local government in relation to entertainment aspects of the market.

2. During the operation of the market, including setting up and dismantling times, the licensee must—

- (a) maintain pedestrian access through and beyond the market area;
- (b) maintain access to adjacent building entries;
- (c) retain access to areas the subject of approved food service licences;
- (d) maintain adequate access for emergency vehicles through the streets of the licensed area;
- (e) stabilise all structures and furniture provided and used in the operation of the market at all times and removal of such structures and furniture when not in use;
- (f) maintain noise levels from any associated music announcements, and the like, in accordance with any licence condition, so as not to cause a nuisance;
- (g) maintain the area of the market clean and free from rubbish; and
- (h) provide separate sanitary facilities for food stall staff.

3. At the conclusion of each market, the licensee must ensure that all structures and equipment used in the operation of the market are removed and the area returned to the condition it was before the commencement of the market and to the satisfaction of the local government.

### SCHEDULE 4—CONDITIONS OF EVERY ENTERTAINMENT LICENCE

[Clause 12.15]

1. The licensee must not permit the entertainment to extend beyond the specified portion of the public place approved in the licence.



2. The licensee must ensure that the entertainment—
  - (a) does not prevent or impede pedestrian flow or access to and along footpaths, entries or exits to shops and other buildings;
  - (b) does not prevent or impede vehicular flow or access to and along any street, entry or exit to any service delivery area;
  - (c) does not cause a nuisance to any other entertainment or activity approved by the local government;
  - (d) unless otherwise approved, does not include any person under the age of 14 years—
    - (i) during school hours, on school days; or
    - (ii) between 7pm and 6am; and
  - (e) does not include, involve or permit—
    - (i) anything that is offensive or obscene;
    - (ii) the use of fire;
    - (iii) any weapon or object with sharp edges including knives and swords;
    - (iv) any motorised machinery that omits a loud noise in its operation or is not suitable in the location;
    - (v) any other activity, object or matter whatsoever that endangers the safety of the public or the performance; or
    - (vi) cruelty to any animal;
  - (f) does not include any amplification unless specifically approved and endorsed on the licence and in any event will not be permitted in any location between Monday to Saturday, 10pm to 7am and Sundays between 10pm and 9am;
  - (g) complies at all times with the *Environmental Protection (Noise) Regulations 1997*.
3. The licensee must—
  - (a) use the allocated space and location to perform during the days and times specified in the licence or vacate the location;
  - (b) produce the licence when requested to do so by an authorised person;
  - (c) ensure a valid licence number is visibly displayed during each performance;
  - (d) comply at all times with the direction of an authorised person; and
  - (e) move at least 50 metres from the performance location at the completion of the performance and not return to the same location within 2 hours.
4. A licensee must not—
  - (a) reserve or attempt to reserve a location or leave equipment at a location used for performances unless immediately before, during and immediately after a performance;
  - (b) sell any goods or services without written approval or licence issued for that purpose; or
  - (c) perform in any one location for more than 30 minutes unless specifically authorised by endorsement on the licence, or the performance is by a pavement or visual artist.
5. A licensee who is performing pavement or visual art—
  - (a) must not perform at the same site for longer than 2 hours and must not return to the same site unless 2 hours after the previous performance of that day;
  - (b) must not use chalk unless working on paper or card;
  - (c) must not use spray paint, crayons, textures or inedible materials; and
  - (d) must return the location, including the pavement surface, to its former condition.

#### SCHEDULE 5—CONDITIONS OF EVERY FOOD SALES LICENCE

[Clause 12.16]

1. The licensee must not permit the operation of the food sales area to extend beyond the specified portion of the public place detailed in the plans approved as part of the licence.
2. The licensee must—
  - (a) keep the area in a clean and tidy condition at all times;
  - (b) ensure a minimum width of 2 metres is kept clear for pedestrian access;
  - (c) maintain the chairs, tables and other structures set out on the area in good and serviceable condition at all times;
  - (d) be solely responsible for all and any costs associated with the removal, alteration, repair, reinstatement or reconstruction of the public place arising from the conduct of the area or the actions of persons in that area and the council may recover such costs from the proprietor in a court of competent jurisdiction as a debt owing to it;
  - (e) be solely responsible for payment of all rates and taxes levied upon the land occupied by the area; and
  - (f) display the licence in a conspicuous place in the adjoining eating house and whether requested by an environmental health officer to do so must produce the licence to that officer.

## SCHEDULE 6—MODIFIED PENALTIES

[Clause 13.1(2)]

Item	Clause	Description	Modified Penalty \$
1	2.4	Failure to comply with determination	100
2	3.2	Failure to obtain licence to camp outside a facility	100
3	3.3(1)	Failure to obtain licence for liquor	200
4	4.2	Behaviour detrimental to property	300
5	4.3	Taking or injuring any fauna	200
6	4.4	Under influence of liquor or prohibited drug	200
7	4.6(2)	Failure to comply with sign on local government property	100
8	4.8	Failure to comply with direction of authorised person	100
9	5.1	Unauthorised entry to fenced or closed local government property	200
10	5.4	Gender not specified using entry of toilet block or change room	100
11	5.5	Unauthorised entry to function on local government property	200
12	6.1(a)	Plant creating a sightline hazard	100
13	6.1(b)	Damaging lawn or garden or remove a plant	200
14	6.1(c)	Remove or damage a thoroughfare tree	300
15	6.1(d)	Placing hazardous substance on footpath	100
16	6.1(e)	Damaging or interfering with signpost or structure on a thoroughfare	300
17	6.1(f)	Riding a bicycle, skateboard, roller-blades or similar device, playing or participating 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.	100
18	6.2(1)(a)	Digging a trench through a kerb or footpath without a licence	100
19	6.2(1)(b)	Throw, place, store or deposit anything on a verge without a licence	200
20	6.2(1)(c)	Causing obstruction to vehicle or person on thoroughfare without a licence	100
21	6.2(1)(d)	Causing obstruction to water channel on thoroughfare or verge without a licence	200
22	6.2(1)(e)	Placing or draining offensive fluid on thoroughfare without a licence	200
23	6.2(1)(f)	Damage a thoroughfare without a licence	300
24	6.2(1)(g)	Felling or damaging any thoroughfare tree without a licence	200
25	6.2(1)(h)	Felling tree onto thoroughfare without a licence	200
26	6.2(1)(i)	Installing pipes or stone on thoroughfare without a licence	100
27	6.2(1)(j)	Installing a hoist or other thing on a structure or land for use over a thoroughfare without a licence	300
28	6.2(1)(k)	Creating a nuisance on a thoroughfare without a licence	200
29	6.2(1)(l)	Placing a bulk rubbish container on a thoroughfare without a licence	200
30	6.2(1)(m)	Interfering with anything on a thoroughfare without a licence	200
31	3.3(1)	Consumption of liquor on a thoroughfare without a licence	200
32	6.3	Failure to obtain licence for temporary crossing	200
33	6.4	Failure to comply with notice to remove crossing and reinstate kerb	300
34	6.6	Installation of verge treatment other than permissible verge treatment	200
35	6.7	Failure to maintain permissible verge treatment or placement of obstruction on verge	100
36	6.8	Failure to comply with notice to rectify default	300
37	6.13	Failure to comply with sign on public place	200
38	6.15	Driving or taking a vehicle on a closed thoroughfare	300

Item	Clause	Description	Modified Penalty \$
39	7.1(1)	Animal or vehicle obstructing a public place or local government property	200
40	7.2(2)(a)	Animal on thoroughfare when not led, ridden or driven	200
41	7.2(2)(b)	Animal on public place with infectious disease	300
42	7.2(2)(c)	Training or racing animal on thoroughfare in built-up area	200
44	7.4	Person leaving shopping trolley in public place other than trolley bay	200
45	7.5(2)	Failure to remove shopping trolley upon being advised of location	200
46	8.1	Trading in a thoroughfare or local government property without a licence	100
47	9.1	Set up or conduct market without a licence	100
48	10.1	Set up or entertain without a licence	100
49	11.1	Set up or conduct food sales without a licence	100
50	12.17	Failing to comply with conditions of a licence	100
51		All other offences not specified	100

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Dated: 16 June 2017.

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

MALCOLM EDWARDS, Shire President.  
RODGER KERR-NEWELL, Chief Executive Officer.

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## LOCAL GOVERNMENT ACT 1995

## SHIRE OF HALLS CREEK

## FENCING LOCAL LAW 2017

Under the powers conferred by the *Local Government Act 1995* and all other powers enabling it, the Shire of Halls Creek resolved on 15 June 2017 to make the following local law.

## PART 1—PRELIMINARY

**1.1 Citation**

This local law is the *Shire of Halls Creek 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 Purpose and effect**

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

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

**1.4 Application**

This local law applies throughout the district.

**1.5 Repeal**

The *Shire of Halls Creek Local Government Act Local Law 2002* published in the *Government Gazette* on 2 October 2002 is repealed.

**1.6 Definitions**

In this local law—

**Act** means the *Dividing Fences Act 1961*;

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

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

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

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

**Building Surveyor** means a Building Surveyor of the local government;

**CEO** means the Chief Executive Officer of the local government;

**Commercial Lot** means a lot where a commercial use—

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

**dangerous** in relation to any fence means—

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

**district** means the district of the local government;

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

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

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

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

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

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

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

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

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

**Industrial Lot** means a lot where an industrial use—

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

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

**local government** means the Shire of Halls Creek;

**local government property** means anything except a thoroughfare—

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

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

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

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

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

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

**Residential Lot** means a lot where a residential use—

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

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

**Rural Lot** means a lot where a rural use—

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

**Schedule** means a Schedule to this local law;

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

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

**sufficient fence** means a fence described in clause 2.1

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

### 1.7 Licence fees and charges

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

## PART 2—FENCES

### Division 1—Sufficient fences

#### 2.1 Sufficient fences

- (1) A person shall not erect a dividing fence or a boundary fence that is not a sufficient fence.
- (2) Subject to subclauses (3) and (4), a sufficient fence—
  - (a) on a Residential Lot is a dividing fence or a boundary fence constructed and maintained in accordance with the specifications and requirements of Schedule 2;



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

#### *Division 2—General*

### **2.2 Fences within front setback areas**

- (1) A person shall not, without the written consent of the Building Surveyor, erect a free-standing fence greater than 1 200 millimetres in height, within the front set-back area of a Residential Lot within the district.
- (2) The Building Surveyor may approve the erection of a fence of a height greater than 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; or
- (b) open by sliding parallel and on the inside of the fence, which it forms part of, when closed.

### **2.4 Depositing fencing material on public place**

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

### **2.5 Fences on a Rural Lot**

A person shall not, without the written consent of the Building Surveyor, erect a fence on a Rural Lot of a height exceeding 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 150mm from the face of the fence and is not nearer than 2000mm from the ground level.
- (4) If the posts which carry the barbed wire or other materials referred to in subclause (3) are angled towards the outside of the lot bounded by the fence, the face of the fence must be set back from the lot boundary a sufficient distance to ensure that the angled posts, barbed wire or other materials do not encroach on adjoining land.
- (5) An owner or occupier of a lot shall not erect, affix or allow to remain as part of any fence or wall, whether internal or external, on that lot any broken glass.
- (6) An owner or occupier of a Rural Lot shall not erect, affix or allow to remain any barbed wire upon a fence on that lot where the fence is adjacent to a thoroughfare or other public place unless the barbed wire is fixed to the side of the fence posts furthest from the thoroughfare or other public place.

## 2.11 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 5; or
  - (b) construct a fence wholly or partly of razor wire on that lot without obtaining the approval of the local government in the form prescribed in Schedule 6.
- (2) The local government shall not approve an application for the purpose of subclause (1)(a)—
  - (a) in respect of a lot which is or which abuts a Residential Lot;
  - (b) unless the proposed fence will comply with “AS/NZS 3016:2002 Electrical installations—Electricity security fences”; and
  - (c) unless provision is made so as to enable the fence to be rendered inoperable during the hours of business operations, if any, on the lot where it is erected.
- (3) The local government shall not approve an application for the purpose of subclause (1)(b)—
  - (a) if the fence is within 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.

## 2.13 Certification of fencing designs

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

### 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 6.19 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—

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

### 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 *Local Government Act 1995* and any entry on to land will be in accordance with Part 3, Division 3 of that Act.

### PART 6—OFFENCES

#### 6.1 Offences and penalties

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

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

### 6.2 Modified penalties

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

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

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

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

### 6.3 Form of notices

For the purposes of this local law—

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

## PART 7—OBJECTIONS AND REVIEW

### 7.1 Objections and review

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

### Schedule 1

#### OFFENCES AND MODIFIED PENALTIES

[clause 6.2(2)]

Item No.	Clause No.	Nature of offence	Modified penalties \$
1	2.1(1)	Erect a fence which is not a sufficient fence	250
2	2.2	Erect a fence greater than 1 200mm in height within a front setback area without the written consent of the Building Surveyor	250
3	2.3(a)	Erect a gate in a fence not opening into the lot	200
4	2.3(b)	Erect a gate in a fence not sliding parallel and inside a fence	200
5	2.6	Failure to maintain a fence in good condition to prevent the fence becoming dangerous, dilapidated or unsightly	250
6	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
7	2.9(1)	Construct a dividing fence on a Residential, Commercial or Industrial Lot from pre-used materials without written approval	250
8	2.10(2)	Erect a fence using barbed wire or material with spiked or jagged projections in the fence construction without approval	250
9	2.11(1)	Construct, erect or use razor wire in a fence or electrify a fence without approval	250
10	2.12	Affix, or use, any broken glass in a fence	250
11	3.3	Failure to comply with terms or conditions of approval	250
12	6.1(1)	Failure to comply with notice of breach	250

**Schedule 2****SPECIFICATIONS FOR A SUFFICIENT FENCE ON A RESIDENTIAL LOT**

[clause 2.1(2)(a)]

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

**Timber fence**

- (a) corner posts to be 125mm x 125mm x 2 400mm and intermediate posts to be 125mm x 75mm x 2 400mm spaced at 2 400mm centres;
- (b) corner posts to be strutted two ways with 100mm x 50mm x 450mm sole plates and 75mm x 50mm struts;
- (c) intermediate posts to be doubled yankee strutted with 150mm x 25mm x 450mm struts; (d) all posts to have tops with a 60mm weather cut and to be sunk at least 600mm into the ground;
- (d) rails to be 75mm x 50mm with each rail spanning 2 bays of fencing double railed or bolted to each post with joints staggered;
- (e) the fence to be covered with 75mm x 20mm sawn pickets, 1 800mm in height placed 75mm apart and affixed securely to each rail; and
- (f) the height of the fence to be 1 800mm except with respect to the front set back area for which there is no minimum height but which is subject to clause 7.

**Corrugated fence**

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

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

**Brick, stone or concrete fence**

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

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

**Composite fence**

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

- (1)(a) brick piers of minimum 345mm x 345mm at 1 800mm centres bonded to a minimum height base wall of 514mm;
- (b) each pier shall be reinforced with one R10 galvanised starting rod 1 500mm high with a 250mm horizontal leg bedded into a 500mm x 200mm concrete footing and set 65mm above the base of the footing. The top of the footing shall be 1 course (85mm) below ground level;
- (c) the minimum ultimate strength of brickwork shall be 20MPa. Mortar shall be a mix of 1 part cement, 1 part lime and 6 parts sand;
- (d) the ground under the footings is to be compacted to 6 blows per 300mm and checked with a standard falling weight penetrometer; and
- (e) control joints in brickwork shall be provided with double piers at a maximum of 6-metre centres;
- or
- (2)(a) brick piers of a minimum 345mm x 345mm x 2 700mm centres bonded to the base wall; and
- (b) each pier shall be reinforced with two R10 galvanised starting rods as previously specified.

**Schedule 3**  
**SPECIFICATIONS FOR A SUFFICIENT FENCE ON A COMMERCIAL LOT OR**  
**AN INDUSTRIAL LOT**

[clause 2.1(2)(b)]

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

**Galvanised or PVC fence and gate**

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

- (a) corner posts to be minimum 50mm nominal bore x 3.5mm and with footings of a 225mm diameter x 900mm;
- (b) intermediate posts to be minimum 37mm nominal bore x 3.15mm at maximum 3.5m centres and with footings of a 225mm diameter x 600mm;
- (c) struts to be minimum 30mm nominal bore x 3.15mm fitted at each gate and 2 at each corner post and with footings 225mm x 600mm;
- (d) cables to be affixed to the top, centre and bottom of all posts and to consist of 2 or more 3.15mm wires twisted together or single 4mm wire;
- (e) non-rail link, chain or steel mesh is to be to a height of 2 000mm on top of which are to be 3 strands of barbed wire carrying the fence to a height of 2 400mm in accordance with the requirements and standards of the local planning schemes; and
- (f) galvanised link mesh wire to be 2 000mm in height and constructed of 50mm mesh 2.5mm galvanised iron wire and to be strained, neatly secured and laced to the posts and affixed to cables. Vehicle entry gates shall provide an opening of not less than 3.6m and shall be constructed of 25mm tubular framework with 1 horizontal and 1 vertical stay constructed of 20mm piping and shall be covered with 50mm x 2.5mm galvanised link mesh strained to framework. Gates shall be fixed with a drop bolt and locking attachment.

**Other fences—**

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

**Schedule 4**  
**SPECIFICATIONS FOR A SUFFICIENT FENCE ON A RURAL LOT OR**  
**SPECIAL RURAL LOT**

[clause 2.1(2)(c)]

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

**Non-electrified fence—**

- (a) wire shall be high tensile wire and not less than 2.5mm. A minimum of 5 wires shall be used, generally with the lower wires spaced closer together than the higher wires so as to prevent smaller stock passing through, and connected to posts in all cases.
- (b) posts shall be of indigenous timber or other suitable material including—
  - (i) timber impregnated with a termite and fungicidal preservative;
  - (ii) standard iron star pickets; or
  - (iii) concrete;
- (c) cut not less than 1 800mm long x 50mm diameter at small end if round or 125mm x 60mm if split or sawn.
- (d) posts to be set minimum 600mm in the ground and 1 200mm above the ground; and
- (e) strainer posts shall be not less than 2 250mm long and 150mm diameter at the small end (tubular steel to be 50mm in diameter) and shall be cut from indigenous timber or other suitable material. These shall be placed a minimum of 1 000mm in the ground.

**Electrified fence**

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

**Schedule 5  
LICENCE FOR APPROVED ELECTRIFIED FENCE**

[clause 2.11(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 Halls Creek.

**Conditions of Licence**

The holder of the licence must—

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

**Transfer by Endorsement**

This licence is transferred to (3) .....  
of (4) .....  
.....  
from and including the date of this endorsement.  
Dated this ..... day of ..... 20.....

.....  
Chief Executive Officer,  
Shire of Halls Creek.

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

**Schedule 6  
LICENCE FOR APPROVED RAZOR/BARBED WIRE FENCE**

[clause 2.11(1)(b)]  
[clause 2.10(2)]

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/barbed (delete inapplicable) wire at  
.....  
.....  
(address)  
from ..... 20..... and until this licence is transferred or cancelled.  
Dated this ..... day of ..... 20.....

.....  
Chief Executive Officer,  
Shire of Halls Creek.

**Conditions of licence—**

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

**Transfer by Endorsement**

This licence is transferred to (3) .....  
of (4) .....  
from and including the date of this endorsement.

Dated this ..... day of ..... 20.....

.....  
Chief Executive Officer,  
Shire of Halls Creek.

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

\_\_\_\_\_

Dated: 16 June 2017.

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

MALCOLM EDWARDS, Shire President.  
RODGER KERR-NEWELL, Chief Executive Officer.

\_\_\_\_\_