



WESTERN
AUSTRALIAN
GOVERNMENT

Gazette

1983



PERTH, WEDNESDAY, 19 APRIL 2000 No. 74 SPECIAL

PUBLISHED BY AUTHORITY JOHN E. THOMPSON, ACTING GOVERNMENT PRINTER AT 3.30 PM

SHIRE OF WEST ARTHUR

LOCAL GOVERNMENT ACT 1995

LOCAL GOVERNMENT PROPERTY LOCAL LAW

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

FENCING LOCAL LAW

DOG ACT 1976

DOGS LOCAL LAW

LOCAL GOVERNMENT ACT 1995

SHIRE OF WEST ARTHUR

LOCAL GOVERNMENT PROPERTY LOCAL LAW

TABLE OF CONTENTS

PART 1—PRELIMINARY

- 1.1 Citation
- 1.2 Definitions
- 1.3 Interpretation
- 1.4 Application
- 1.5 Repeal

PART 2—DETERMINATIONS IN RESPECT OF LOCAL GOVERNMENT PROPERTY*Division 1—Determinations*

- 2.1 Determinations as to use of local government property
- 2.2 Procedure for making a determination
- 2.3 Discretion to erect sign
- 2.4 Determination to be complied with
- 2.5 Register of determinations
- 2.6 Amendment or revocation of a determination

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

- 2.7 Activities which may be pursued on specified local government property
- 2.8 Activities which may be prohibited on specified local government property

Division 3—Transitional

- 2.9 Signs taken to be determinations

PART 3—PERMITS*Division 1—Preliminary*

- 3.1 Application of Part

Division 2—Applying for a permit

- 3.2 Application for permit
- 3.3 Decision on application for permit

Division 3—Conditions

- 3.4 Conditions which may be imposed on a permit
- 3.5 Imposing conditions under a policy
- 3.6 Compliance with and variation of conditions

Division 4—General

- 3.7 Agreement for building
- 3.8 Duration of permit
- 3.9 Renewal of permit
- 3.10 Transfer of permit
- 3.11 Production of permit
- 3.12 Cancellation of permit

Division 5—When a permit is required

- 3.13 Activities needing a permit
- 3.14 Permit required to camp outside a facility
- 3.15 Permit required for possession and consumption of liquor

Division 6—Responsibilities of permit holder

- 3.16 Responsibilities of permit holder

PART 4—BEHAVIOUR ON ALL LOCAL GOVERNMENT PROPERTY*Division 1—Behaviour on and interference with local government property*

- 4.1 Behaviour which interferes with others
- 4.2 Behaviour detrimental to property
- 4.3 Taking or injuring any fauna
- 4.4 Intoxicated persons not to enter local government property
- 4.5 No prohibited drugs

Division 2—Signs

- 4.6 Signs

PART 5—MATTERS RELATING TO PARTICULAR LOCAL GOVERNMENT PROPERTY*Division 1—Fenced or closed property*

- 5.1 No entry to fenced or closed local government property

Division 2—Toilet blocks and change rooms

- 5.2 Only specified gender to use entry of toilet block or change room

PART 6—FEES FOR ENTRY ON TO LOCAL GOVERNMENT PROPERTY

- 6.1 No unauthorized entry to function

PART 7—OBJECTIONS AND APPEALS

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

PART 8—MISCELLANEOUS

- 8.1 Authorized person to be obeyed
- 8.2 Persons may be directed to leave local government property
- 8.3 Disposal of lost property
- 8.4 Liability for damage to local government property

PART 9—ENFORCEMENT*Division 1—Notices given under this local law*

- 9.1 Offence to fail to comply with notice
- 9.2 Local government may undertake requirements of notice

Division 2—Offences and penalties

Subdivision 1—General

- 9.3 Offences and general penalty

Subdivision 2—Infringement notices and modified penalties

- 9.4 Prescribed offences
- 9.5 Form of notices

Division 3—Evidence in legal proceedings

- 9.6 Evidence of a determination

SCHEDULE 1—PRESCRIBED OFFENCES**SCHEDULE 2—DETERMINATIONS**

LOCAL GOVERNMENT ACT 1995

SHIRE OF WEST ARTHUR

LOCAL GOVERNMENT PROPERTY LOCAL LAW

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of West Arthur resolved on [insert date] to make the following local law.

PART 1—PRELIMINARY**Citation**

1.1 This local law may be cited as the Shire of West Arthur Local Government Property Local Law.

Definitions

1.2 In this local law unless the context otherwise requires—

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

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

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

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

“**building**” means any building which is local government property and includes a –

(a) hall or room;

(b) corridor, stairway or annexe of any hall or room; and

(c) jetty;

“**CEO**” means the chief executive officer of the local government;

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

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

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

“**determination**” means a determination made under clause 2.1;

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

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

(a) formal organisation and preparation;

(b) its occurrence is generally advertised or notified in writing to particular persons;

(c) organisation by or on behalf of a club;

(d) payment of a fee to attend it; and

(e) systematic recurrence in relation to the day, time and place;

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

“**local government**” means the Shire of West Arthur;

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

(a) which belongs to the local government;

(b) of which the local government is the management body under the *Land Administration Act 1997*; or

(c) which is an ‘otherwise unvested facility’ within section 3.53 of the Act;

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

“**permit**” means a permit issued under this local law;

“**permit holder**” means a person who holds a valid permit;

“**person**” does not include the local government;

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

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

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

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

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

“**vehicle**” includes—

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

Interpretation

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

Application

1.4 (1) This local law applies throughout the district.

(2) Notwithstanding anything to the contrary in this local law, the local government may—

- (a) hire local government property to any person; or
- (b) enter into an agreement with any person regarding the use of any local government property.

Repeal

1.5 (1) The following local laws are repealed—

By-laws relating to –

Recreation Reserves, published in the Government Gazettes of 10 January 1986 and 8 May 1987; and

Control and Management of Darkan Shire Hall, Equipment and Property, published in the Government gazette of 4 October 1985.

(2) Where a policy was made or adopted by the local government under or in relation to a local law repealed by this local law, then the policy is to be taken to no longer have any effect on and from the commencement day.

(3) The Council may resolve that notwithstanding subclause (2), specified policies continue, or are to be taken to have continued, to have effect on and from the commencement day.

PART 2—DETERMINATIONS IN RESPECT OF LOCAL GOVERNMENT PROPERTY

Division 1—Determinations

Determinations as to use of local government property

2.1 (1) The local government may make a determination in accordance with clause 2.2—

- (a) setting aside specified local government property for the pursuit of all or any of the activities referred to in clause 2.7;
- (b) prohibiting a person from pursuing all or any of the activities referred to in clause 2.8 on specified local government property;
- (c) as to the matters in clauses 2.7(2) and 2.8(2); and
- (d) as to any matter ancillary or necessary to give effect to a determination.

(2) The determinations in Schedule 2—

- (a) are to be taken to have been made in accordance with clause 2.2;
- (b) may be amended or revoked in accordance with clause 2.6; and
- (c) have effect on the commencement day.

Procedure for making a determination

2.2 (1) The local government is to give local public notice of its intention to make a determination.

(2) The local public notice referred to in subclause (1) is to state that—

- (a) the local government intends to make a determination, the purpose and effect of which is summarised in the notice;
- (b) a copy of the proposed determination may be inspected and obtained from the offices of the local government; and
- (c) submissions in writing about the proposed determination may be lodged with the local government within 21 days after the date of publication.

- (3) If no submissions are received in accordance with subclause (2)(c), the Council is to decide to—
 - (a) give local public notice that the proposed determination has effect as a determination on and from the date of publication;
 - (b) amend the proposed determination, in which case subclause (5) will apply; or
 - (c) not continue with the proposed determination.
- (4) If submissions are received in accordance with subclause (2)(c) the Council is to—
 - (a) consider those submissions; and
 - (b) decide—
 - (i) whether or not to amend the proposed determination; or
 - (ii) not to continue with the proposed determination.
- (5) If the Council decides to amend the proposed determination, it is to give local public notice—
 - (a) of the effect of the amendments; and
 - (b) that the proposed determination has effect as a determination on and from the date of publication.
- (6) If the Council decides not to amend the proposed determination, it is to give local public notice that the proposed determination has effect as a determination on and from the date of publication.
- (7) A proposed determination is to have effect as a determination on and from the date of publication of the local public notice referred to in subclauses (3), (5) and (6).
- (8) A decision under subclause (3) or (4) is not to be delegated by the Council.

Discretion to erect sign

2.3 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.

Determination to be complied with

2.4 A person shall comply with a determination.

Register of determinations

2.5 (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.

Amendment or revocation of a determination

2.6 (1) The Council may amend or revoke a determination.

(2) The provisions of clause 2.2 are to apply to an amendment of a determination as if the amendment were a proposed determination.

(3) If the Council revokes a determination it is to give local public notice of the revocation and the determination is to cease to have effect on the date of publication.

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

Activities which may be pursued on specified local government property

2.7 (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 sandboard or a similar device; and
 - (j) wear no clothing.
- (2) A determination may specify the extent to which and the manner in which an activity referred to in subclause (1) may be pursued and in particular—
- (a) the days and times during which the activity may be pursued;

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

Activities which may be prohibited on specified local government property

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

- (a) smoking on premises;
- (b) riding a bicycle, a skateboard, rollerblades, a sandboard or a similar device;
- (c) taking, riding or driving a vehicle 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 sand dunes or land which in the opinion of the local government has environmental value warranting such protection, either absolutely or except by paths provided for that purpose.

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

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

(3) In this clause—

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

Division 3—Transitional

Signs taken to be determinations

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

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

PART 3—PERMITS

Division 1—Preliminary

Application of Part

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

Division 2—Applying for a permit

Application for permit

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

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

- (a) be in the form determined by the local government;
- (b) be signed by the applicant;
- (c) provide the information required by the form; and
- (d) be forwarded to the CEO together with any fee imposed and determined by the local government under and in accordance with sections 6.16 to 6.19 of the Act.

(3) The local government may require an applicant to provide additional information reasonably related to an application before determining an application for a permit.

(4) The local government may require an applicant to give local public notice of the application for a permit.

(5) The local government may refuse to consider an application for a permit which is not in accordance with subclause (2).

Decision on application for permit

3.3 (1) The local government may—

(a) approve an application for a permit unconditionally or subject to any conditions; or

(b) refuse to approve an application for a permit.

(2) If the local government approves an application for a permit, it is to issue to the applicant, a permit in the form determined by the local government.

(3) If the local government refuses to approve an application for a permit, it is to give written notice of that refusal to the applicant.

Division 3—Conditions

Conditions which may be imposed on a permit

3.4 (1) Without limiting the generality of clause 3.3(1)(a), the local government may approve an application for a permit subject to conditions relating to—

(a) the payment of a fee;

(b) compliance with a standard or a policy of the local government adopted by the local government;

(c) the duration and commencement of the permit;

(d) the commencement of the permit being contingent on the happening of an event;

(e) the rectification, remedying or restoration of a situation or circumstance reasonably related to the application;

(f) the approval of another application for a permit which may be required by the local government under any written law;

(g) the area of the district to which the permit applies;

(h) where a permit is issued for an activity which will or may cause damage to local government property, the payment of a deposit or bond against such damage; and

(i) the obtaining of public risk insurance in an amount and on terms reasonably required by the local government.

(2) Without limiting clause 3.3(1)(a) and subclause (1), the following paragraphs indicate the type and content of the conditions on which a permit to hire local government property may be issued –

(a) when fees and charges are to be paid;

(b) payment of a bond against possible damage or cleaning expenses or both;

(c) restrictions on the erection of material or external decorations;

(d) rules about the use of furniture, plant and effects;

(e) limitations on the number of persons who may attend any function in or on local government property;

(f) the duration of the hire;

(g) the right of the local government to cancel a booking during the course of an annual or seasonal booking, if the local government sees fit;

(h) a prohibition on the sale, supply or consumption of liquor unless a liquor licence is first obtained for that purpose under the *Liquor Licensing Act 1988*;

(i) whether or not the hire is for the exclusive use of the local government property;

(j) the obtaining of a policy of insurance in the names of both the local government and the hirer, indemnifying the local government in respect of any injury to any person or any damage to any property which may occur in connection with the hire of the local government property by the hirer; and

(k) the provision of an indemnity from the hirer, indemnifying the local government in respect of any injury to any person or any damage to any property which may occur in connection with the hire of the local government property by the hirer.

Imposing conditions under a policy

3.5 (1) In this clause—

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

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

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

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

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

Compliance with and variation of conditions

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

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

Division 4—General

Agreement for building

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

Duration of permit

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

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

Renewal of permit

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

(2) The provisions of this Part shall apply to an application for the renewal of a permit *mutatis mutandis*.

Transfer of permit

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

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

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

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

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

Production of permit

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

Cancellation of permit

3.12 (1) Subject to clause 7.1, a permit may be cancelled by the local government if the permit holder has not complied with a—

- (a) condition of the permit; or
- (b) determination or a provision of any written law which may relate to the activity regulated by the permit.

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

- (a) shall return the permit as soon as practicable to the CEO; and
- (b) is to be taken to have forfeited any fees paid in respect of the permit.

Division 5—When a permit is required

Activities needing a permit

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

- (a) subject to subclause 3, hire local government property;
- (b) advertise anything by any means on local government property;
- (c) erect a structure for public amusement or for any performance, whether for gain or otherwise, on local government property;
- (d) teach, coach or train, for profit, any person in a pool area or an indoor recreation facility which is local government property;
- (e) plant any plant or sow any seeds on local government property;
- (f) carry on any trading on local government property unless the trading is conducted—
 - (i) with the consent of a person who holds a permit to conduct a function, and where the trading is carried on under and in accordance with the permit; or

- (ii) by a person who has a licence or permit to carry on trading on local government property under any written law;
 - (g) unless an employee of the local government in the course of her or his duties or on an area set aside for that purpose—
 - (i) drive or ride or take any vehicle on to local government property; or
 - (ii) park or stand 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; or
 - (o) depasture any horse, sheep, cattle, goat, camel, ass or mule on local government property.
- (2) The local government may exempt a person from compliance with subclause (1) on the application of that person.
- (3) The local government may exempt specified local government property or a class of local government property from the application of subclause (1)(a).

Permit required to camp outside a facility

3.14 (1) In this clause—

“**facility**” has the same meaning as is given to it in section 5(1) of the *Caravan Parks and Camping Grounds Act 1995*.

(2) This clause does not apply to a facility operated by the local government.

(3) A person shall not without a permit—

- (a) camp on, lodge at or occupy any structure at night for the purpose of sleeping on local government property; or
- (b) erect any tent, camp, hut or similar structure on local government property other than a beach shade or windbreak erected for use during the hours of daylight and which is dismantled during those hours on the same day.

(4) The maximum period for which the local government may approve an application for a permit in respect of paragraph (a) or (b) of subclause (3) is that provided in regulation 11(2)(a) of the *Caravan Parks and Camping Grounds Regulations 1997*.

Permit required for possession and consumption of liquor

3.15 (1) A person, on local government property, shall not consume any liquor or have in her or his possession or under her or his control any liquor, unless—

- (a) that is permitted under the *Liquor Licensing Act 1988*; and
- (b) a permit has been obtained for that purpose.

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

Division 6—Responsibilities of permit holder

Responsibilities of permit holder

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

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

PART 4—BEHAVIOUR ON ALL LOCAL GOVERNMENT PROPERTY

Division 1—Behaviour on and interference with local government property

Behaviour which interferes with others

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

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

Behaviour detrimental to property

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

(2) In subclause (1)—

‘detrimental to the property’ includes—

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

Taking or injuring any fauna

4.3 (1) A person shall not, take, injure or kill or attempt to take, injure or kill any fauna which is on or above any local government property, unless that person is authorized 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.

Intoxicated persons not to enter local government property

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

No prohibited drugs

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

Division 2—Signs

Signs

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

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

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

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

PART 5—MATTERS RELATING TO PARTICULAR LOCAL GOVERNMENT PROPERTY

Division 1—Fenced or closed property

No entry to fenced or closed local government property

5.1 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 authorized to do so by the local government.

Division 2—Toilet blocks and change rooms

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

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

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

PART 6—FEES FOR ENTRY ON TO LOCAL GOVERNMENT PROPERTY

No unauthorized entry to function

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

- (a) through the proper entrance for that purpose; and
- (b) on payment of the fee chargeable for admission at the time.

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

PART 7—OBJECTIONS AND APPEALS

Application of Division 1, Part 9 of the Act

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

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

the provisions of Division 1 of Part 9 of the Act and regulations 33 and 34 of the Regulations apply to that decision.

PART 8—MISCELLANEOUS

Authorized person to be obeyed

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

Persons may be directed to leave local government property

8.2 An authorized 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.

Disposal of lost property

8.3 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.

Liability for damage to local government property

8.4 (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) Unless there is proof to the contrary, a person is to be taken to have damaged local government property within subclause (1) where—

- (a) a vehicle or a boat caused the damage, the person was the person responsible, at the time the damage occurred, for the control of the vehicle or the boat; or
- (b) the damage occurred under a permit, the person is the permit holder in relation to that permit.

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

PART 9—ENFORCEMENT

Division 1—Notices given under this local law

Offence to fail to comply with notice

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

Local government may undertake requirements of notice

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

Division 2—Offences and penalties

Subdivision 1—General

Offences and general penalty

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

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

Subdivision 2—Infringement notices and modified penalties

Prescribed offences

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

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

(3) For the purpose of guidance only, before giving an infringement notice to a person in respect of the commission of a prescribed offence, an authorized 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.

Form of notices

9.5 (1) For the purposes of this local law—

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

- (b) the form of the infringement notice given under section 9.16 of the Act is that of Form 2 in Schedule 1 of the Regulations; and
- (c) the form of the notice referred to in section 9.20 of the Act is that of Form 3 in Schedule 1 of the Regulations.

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

Division 3—Evidence in legal proceedings

Evidence of a determination

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

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

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

Schedule 1

PRESCRIBED OFFENCES

Clause	Description	Modified Penalty \$
2.4	Failure to comply with determination	100
3.6	Failure to comply with conditions of permit	100
3.13(1)	Failure to obtain a permit	100
3.14(3)	Failure to obtain permit to camp outside a facility	100
3.15(1)	Failure to obtain permit for liquor	100
3.16	Failure of permit holder to comply with responsibilities	100
4.2(1)	Behaviour detrimental to property	100
4.4	Under influence of liquor or prohibited drug	100
4.6(2)	Failure to comply with sign on local government property	100
5.1	Unauthorized entry to fenced or closed local government property	100
5.2	Gender not specified using entry of toilet block or change room	100
6.1(1)	Unauthorized entry to function on local government property	100
9.1	Failure to comply with notice	200

Schedule 2

DETERMINATIONS

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

PART 1—PRELIMINARY

Definitions

1.1 In these determinations unless the context otherwise requires—

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

Interpretation

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

Dated 25th of November 1999.

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

R. K. SAUNDERS, President.
N. C. WASMANN, Chief Executive Officer.

LOCAL GOVERNMENT ACT 1995

SHIRE OF WEST ARTHUR

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

TABLE OF CONTENTS

PART 1—PRELIMINARY

- 1.1 Citation
- 1.2 Definitions
- 1.3 Application
- 1.4 Repeal

PART 2—ACTIVITIES ON THOROUGHFARES AND PUBLIC PLACES*Division 1—General*

- 2.1 General prohibitions
- 2.2 Activities allowed with a permit—general
- 2.3 No possession and consumption of liquor on thoroughfare

Division 2—Driving on a closed thoroughfare

- 2.4 No driving on closed thoroughfare

PART 3—OBSTRUCTING ANIMALS or VEHICLES*Division 1—Animals and vehicles*

- 3.1 Leaving animal or vehicle in public place or on local government property
- 3.2 Prohibitions relating to animals

PART 4—ROADSIDE CONSERVATION*Division 1—Preliminary*

- 4.1 Interpretation
- 4.2 Application

Division 2—Flora roads

- 4.3 Declaration of flora road
- 4.4 Construction works on flora roads
- 4.5 Signposting of flora roads
- 4.6 Driving only on carriageway of flora roads

Division 3—Special environmental areas

- 4.7 Designation of special environmental areas
- 4.8 Marking of special environmental areas

Division 4—Planting in thoroughfares

- 4.9 Permit to plant
- 4.10 Relevant considerations in determining application

Division 5—Clearance of vegetation

- 4.11 Permit to clear
- 4.12 Application for permit

Division 6—Fire management

- 4.13 Permit to burn thoroughfare
- 4.14 Application for permit

- 4.15 When application for permit can be approved
- 4.16 Prohibitions on burning

Division 7—Firebreaks

- 4.17 Permit for firebreaks on thoroughfares
- 4.18 application for permit cannot be approved

Division 8—Commercial wildflower harvesting on thoroughfares

- 4.19 General prohibition on commercial wildflower harvesting
- 4.20 Permit for revegetation projects

PART 5—TRADING IN THOROUGHFARES AND PUBLIC PLACES

Division 1—Stallholders and traders

Subdivision 1—Preliminary

- 5.1 Interpretation

Subdivision 2—Permits

- 5.2 Stallholder's permit
- 5.3 Trader's permit
- 5.4 No permit required to sell newspaper
- 5.5 Relevant considerations in determining application for permit
- 5.6 Conditions of permit
- 5.7 Exemptions from requirement to pay fee or to obtain a permit

Subdivision 3—Conduct of stallholders and traders

- 5.8 Conduct of stallholders and traders

PART 6—PERMITS

Division 1—Applying for a permit

- 6.1 Application for permit
- 6.2 Decision on application for permit

Division 2—Conditions

- 6.3 Conditions which may be imposed on a permit
- 6.4 Imposing conditions under a policy
- 6.5 Compliance with and variation of conditions

Division 3—General

- 6.6 Duration of permit
- 6.6 Renewal of permit
- 6.8 Transfer of permit
- 6.9 Production of permit
- 6.10 Cancellation of permit

PART 7—OBJECTIONS AND APPEALS

- 7.1 Application of Part 9 Division 1 of Act

PART 8—MISCELLANEOUS NOTICES

- 8.1 Notice to repair damage to thoroughfare

PART 9—ENFORCEMENT

Division 1—Notices given under this local law

- 9.1 Offence to fail to comply with notice
- 9.2 Local government may undertake requirements of notice

Division 2—Offences and penalties

Subdivision 1—General

- 9.3 Offences

Subdivision 2—Infringement notices and modified penalties

- 9.4 Prescribed offences
- 9.5 Forms

SCHEDULE 1

PRESCRIBED OFFENCES

LOCAL GOVERNMENT ACT 1995

SHIRE OF WEST ARTHUR

ACTIVITIES ON THOROUGHFARES AND TRADING IN
THOROUGHFARES AND PUBLIC PLACES LOCAL LAW

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of West Arthur resolved on 23rd August 1999 to make the following local law.

PART 1—PRELIMINARY

1.1 Citation

This local law may be cited as the Shire of West Arthur Activities on Thoroughfares and Trading in Thoroughfares and Public Places Local Law.

1.2 Definitions

In this local law unless the context otherwise requires—

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

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

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

“**built-up area**” has the meaning given to it in the *Road Traffic Code 1975*;

“**carriageway**” means the paved or made portion of a thoroughfare used or intended for use by vehicles;

“**CEO**” means the chief executive officer of the local government;

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

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

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

“**footpath**” means the paved or made portion of a thoroughfare used or intended for use by pedestrians and cyclists;

“**kerb**” includes the edge of a carriageway;

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

“**local government**” means the Shire of West Arthur;

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

(a) which belongs to the local government;

(b) of which the local government is the management body under the *Land Administration Act 1997*; or

(c) which is an ‘otherwise unvested facility’ within section 3.53 of the Act;

“**permit**” means a permit issued under this local law;

“**permit holder**” means a person who holds a valid permit;

“**person**” does not include the local government;

“**premises**” for the purpose of the definition of “public place” in both this clause and clause 5.1, means a building or similar structure, but does not include a carpark or a similar place;

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

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

(b) local government property;

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

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

“**townsite**” means the townsite of [*insert names of townsites*] which are—

(a) constituted under section 26(2) of the *Land Administration Act 1997*; or

(b) referred to in clause 37 of Schedule 9.3 of the Act;

“**vehicle**” includes—

(a) every conveyance and every object capable of being propelled or drawn on wheels, tracks or otherwise; and

- (b) an animal being ridden or driven,
but excludes—
- (a) a wheel-chair or any device designed for use by a physically impaired person on a footpath;
and
- (b) a pram, a stroller or a similar device; and

1.3 Application

This local law applies throughout the district.

1.4 Repeal

(1) The following local laws are repealed—

Local Laws Relating to—

Control of Hawkers, published in the Government Gazette of 5 July 1967;

Prevention of Damage to Streets, published in the Government Gazette of 7 December 1967.

(2) Where a policy was made or adopted by the local government under or in relation to a local law repealed by this local law, then the policy is to be taken to no longer have any effect on and from the commencement day.

(3) The Council may resolve that notwithstanding subclause (2) specified policies continue, or are to be taken to have continued, to have effect on and from the commencement day.

PART 2—ACTIVITIES ON THOROUGHFARES AND PUBLIC PLACES

Division 1—General

2.1 General prohibitions

A person shall not—

- (a) unless at the direction of the local government, damage, remove or interfere with any signpost, direction plate, guidepost, notice, shelter, shed, fence or any structure erected on a thoroughfare by the local government or a person acting under the authority of a written law;
- (b) play or participate in any game or sport so as to cause danger to any person or thing or impede the movement of vehicles or persons on a thoroughfare.

2.2 Activities allowed with a permit—general

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

- (a) dig or otherwise create a trench through or under a kerb or footpath;
- (b) damage a thoroughfare;
- (c) light any fire or burn any thing on a thoroughfare other than in a stove or fireplace provided for that purpose or under a permit issued under clause 4.13;
- (d) fell any tree onto a thoroughfare; or
- (e) interfere with the soil of, or anything in a thoroughfare or take anything from a thoroughfare.

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

2.3 No possession and consumption of liquor on thoroughfare

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

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

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

Division 2—Driving on a closed thoroughfare

2.4 No driving on closed thoroughfare

(1) A person shall not drive or take a vehicle on a closed thoroughfare unless—

- (a) that is in accordance with any limits or exceptions specified in the order made under section 3.50 of the Act; or
- (b) the person has first obtained a permit.

(2) In this clause—

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

PART 3—OBSTRUCTING ANIMALS OR VEHICLES

Division 1—Animals and vehicles

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

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

- (2) A person will not contravene subclause (1) where the animal is secured or tethered for a period not exceeding 1 hour.
- (3) A person will not contravene subclause (1) where the vehicle is left for a period not exceeding 24 hours.

3.2 Prohibitions relating to animals

- (1) In subclause (2), "owner" in relation to an animal includes—
- an owner of it;
 - a person in possession of it;
 - a person who has control of it; and
 - a person who ordinarily occupies the premises where the animal is permitted to stay.
- (2) An owner of an animal shall not—
- allow the animal to enter or remain for any time on any thoroughfare except for the use of the thoroughfare as a thoroughfare and unless it is led, ridden or driven;
 - allow an animal which has a contagious or infectious disease to be led, ridden or driven in a public place; or
 - train or race the animal on a thoroughfare.
- (3) An owner of a horse shall not lead, ride or drive a horse on a thoroughfare in a built-up area, unless that person does so under a permit or under the authority of a written law.

PART 4—ROADSIDE CONSERVATION

Division 1—Preliminary

4.1 Interpretation

In this Part—

"MRWA" means Main Roads Western Australia;

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

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

"Roadside Conservation Committee" means the Roadside Conservation Committee established under the Land Resource Policy Council within the Office of Premier and Cabinet; and

"special environmental area" means an area designated as such under clause 4.7.

4.2 Application

This Part does not apply to the townsite.

Division 2—Flora roads

4.3 Declaration of flora road

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

4.4 Construction works on flora roads

Construction and maintenance work carried out by the local government on a flora road is to be in accordance with the 'Code of Practice for Roadside Conservation and Road Maintenance' prepared by the Roadside Conservation Committee.

4.5 Signposting of flora roads

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

4.6 Driving only on carriageway of flora roads

- (1) A person driving or riding a vehicle on a flora road shall only drive or ride the vehicle on the carriageway.
- (2) Subclause (1) does not apply where—
- conditions on the thoroughfare do not reasonably permit a vehicle to remain on the carriageway;
 - there is no carriageway; or
 - an exemption from the application of subclause (1) has been obtained from the local government.

Division 3—Special environmental areas

4.7 Designation of special environmental areas

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

- as protected flora or rare flora; or
- in the opinion of the local government, has environmental, aesthetic or cultural significance.

4.8 Marking of special environmental areas

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

*Division 4—Planting in thoroughfares***4.9 Permit to plant**

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

4.10 Relevant considerations in determining application

In determining an application for a permit for the purpose of clause 4.9, the local government is to have regard to—

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

*Division 5—Clearance of vegetation***4.11 Permit to clear**

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

4.12 Application for permit

In addition to the requirements of clause 6.1(2), a person making an application for a permit for the purpose of clause 4.11 shall submit a sketch plan clearly showing the boundary of the person's land and the portions of the thoroughfare joining that person's land which are to be cleared.

*Division 6—Fire management***4.13 Permit to burn thoroughfare**

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

4.14 Application for permit

In addition to the requirements of clause 6.1(2), an application for a permit for the purposes of clause 4.13 shall—

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

4.15 When application for permit can be approved

The local government may approve an application for a permit for the purpose of clause 4.13 only if the burning of the particular part of the thoroughfare will—

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

4.16 Prohibitions on burning

Notwithstanding anything to the contrary in this local law, an application for a permit for the purpose of clause 4.13 is not to be approved by the local government—

- (a) for burning between 31 August and 1 May of the following year where the intensity of the burn could damage native flora and fauna; or
- (b) in any year to any person for any part of a thoroughfare which is on the opposite side of the carriageway to that portion of the thoroughfare for which a permit to burn has been approved in the same year.

*Division 7—Firebreaks***4.17 Permit for firebreaks on thoroughfares**

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

4.18 When application for permit cannot be approved

(1) The local government is not to approve an application for a permit for the purpose of clause 4.17 where the thoroughfare is less than 20m wide.

(2) Subclause (1) does not apply where the firebreak is, in the opinion of the local government, desirable for the protection of roadside vegetation.

*Division 8—Commercial wildflower harvesting on thoroughfares***4.19 General prohibition on commercial wildflower harvesting**

Subject to clause 4.20, a person shall not commercially harvest native flora on a thoroughfare.

4.20 Permit for revegetation projects

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

PART 5—TRADING IN THOROUGHFARES AND PUBLIC PLACES*Division 1—Stallholders and traders*

Subdivision 1—Preliminary

5.1 Interpretation

In this Division, unless the context otherwise requires—

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

“public place” includes—

- (a) any thoroughfare or place which the public are allowed to use whether or not the thoroughfare or place is on private property; and
- (b) local government property,
but does not include premises on private property from which trading is lawfully conducted under a written law.

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

“stallholder” means a person in charge of a stall;

“stallholder’s permit” means a permit issued to a stallholder;

“trader” means a person who carries on trading;

“trader’s permit” means a permit issued to a trader; and

“trading” includes—

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

but does not include—

- (d) the setting up of a stall or the conducting of a business at a stall under the authority of a stallholder’s permit;
- (e) the selling or the offering for sale of goods and services to, or the soliciting of orders for goods and services from a person who sells those goods or services;
- (f) the selling or the offering for sale or hire by a person of goods of her or his own manufacture or services which he or she provides; and
- (g) the selling or hiring or the offering for sale or hire of—
 - (i) goods by a person who represents a manufacturer of the goods; or
 - (ii) services by a person who represents a provider of the services,
which are sold directly to consumers and not through a shop.

Subdivision 2—Permits

5.2 Stallholder’s permit

- (1) A person shall not conduct a stall on a public place unless that person is—
- (a) the holder of a valid stallholder’s permit; or
 - (b) an assistant specified in a valid stallholder’s permit.

- (2) Every application for a stallholder's permit shall—
- (a) state the full name and address of the applicant;
 - (b) specify the proposed number of assistants to be engaged by the applicant in conducting the stall, as well as their names and addresses if already engaged;
 - (c) specify the proposed location of the stall;
 - (d) specify the period of time for which the permit is sought, together with the proposed days and hours of operation;
 - (e) specify the proposed goods or services to be sold or hired or offered for sale or hire from the stall; and
 - (f) be accompanied by an accurate plan and description of the proposed stall.

5.3 Trader's permit

- (1) A person shall not carry on trading unless that person is—
- (a) the holder of a valid trader's permit; or
 - (b) an assistant specified in a valid trader's permit.
- (2) Every application for a trader's permit shall—
- (a) state the full name and address of the applicant;
 - (b) specify the proposed number of assistants, if any, to be engaged by the applicant in trading, as well as their names and addresses if already engaged;
 - (c) specify the location or locations in which the applicant proposes to trade;
 - (d) specify the period of time for which the permit is sought, together with the proposed days and hours of trading;
 - (e) specify the proposed goods or services which will be traded; and
 - (f) be accompanied by an accurate plan and description of any proposed structure or vehicle which may be used by the applicant in trading.
- (3) The conditions subject to which the local government may approve an application for a trader's permit include that the permit holder is permitted to remain at a particular location for as long as there is a customer making a purchase, but if there is no customer making a purchase the permit holder must move on from that location within a reasonable time of the last purchase having been made.

5.4 No permit required to sell newspaper

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

5.5 Relevant considerations in determining application for permit

- (1) In determining an application for a permit for the purposes of this Division, the local government is to have regard to—
- (a) any relevant policies of the local government;
 - (b) the desirability of the proposed activity;
 - (c) the location of the proposed activity;
 - (d) the principles set out in the Competition Principles Agreement; and
 - (e) such other matters as the local government may consider to be relevant in the circumstances of the case.
- (2) The local government may refuse to approve an application for a permit under this Division on any one or more of the following grounds—
- (a) that the applicant has committed a breach of any provision of this local law or of any written law relevant to the activity in respect of which the permit is sought;
 - (b) that the applicant is not a desirable or suitable person to hold a permit;
 - (c) that—
 - (i) the applicant is an undischarged bankrupt or is in liquidation;
 - (ii) the applicant has entered into any composition or arrangement with creditors; or
 - (iii) a manager, an administrator, a trustee, a receiver, or a receiver and manager has been appointed in relation to any part of the applicant's undertakings or property; or
 - (d) that the needs of the district, or the part for which the permit is sought, are adequately catered for by established shops or by persons who have valid permits to carry on trading or to conduct a stall; or
 - (e) such other grounds as the local government may consider to be relevant in the circumstances of the case.

5.6 Conditions of permit

- (1) If the local government approves an application for a permit under this Division subject to conditions, those conditions may include—
- (a) the place, the part of the district, or the thoroughfare to which the permit applies;
 - (b) the days and hours during which a permit holder may conduct a stall or trade;
 - (c) the number, type, form and construction, as the case may be, of any stand, table, structure or vehicle which may be used in conducting a stall or in trading;

- (d) the goods or services in respect of which a permit holder may conduct a stall or trade;
 - (e) the number of persons and the names of persons permitted to conduct a stall or trade;
 - (f) the requirement for personal attendance at the stall or the place of trading by the permit holder and the nomination of assistants, nominees or substitutes for the permit holder;
 - (g) whether and under what terms the permit is transferable;
 - (h) any prohibitions or restrictions concerning the—
 - (i) causing or making of any noise or disturbance which is likely to be a nuisance to persons in the vicinity of the permit holder;
 - (ii) the use of amplifiers, sound equipment and sound instruments;
 - (iii) the use of signs; and
 - (iv) the use of any lighting apparatus or device;
 - (i) the manner in which the permit holder's name and other details of a valid permit are to be displayed;
 - (j) the care, maintenance and cleansing of the stall or any structure used for trading and the place of the stall or any structure;
 - (k) the vacating of the place of a stall or trading when the stall is not being conducted or trading is not being carried on;
 - (l) the acquisition by the stallholder or trader of public risk insurance;
 - (m) the period for which the permit is valid; and
 - (n) the designation of any place or places where trading is wholly or from time to time prohibited by the local government.
- (2) Where a permit holder by reason of illness, accident or other sufficient cause is unable to comply with this local law, the local government may at the request of that permit holder authorize another person to be a nominee of the permit holder for a specified period, and this local law and the conditions of the permit shall apply to the nominee as if he or she was the permit holder.

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

- (1) In this clause—

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

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

- (2) The local government may waive any fee required to be paid by an applicant for a stallholder's permit or a trader's permit on making an application for or on the issue of a permit, or may return any such fee which has been paid, if the stall is conducted or the trading is carried on—
- (a) on a portion of a public place adjoining the normal place of business of the applicant; or
 - (b) by a charitable organisation that does not sublet space to, or involve commercial participants in the conduct of a stall or trading, and any assistants that may be specified in the permit are members of that charitable organisation.
- (3) The local government may exempt a person or a class of persons, whether or not in relation to a specified public place, from the requirements of this Division.

Subdivision 3—Conduct of stallholders and traders

5.8 Conduct of stallholders and traders

- (1) A stallholder while conducting a stall or a trader while trading shall—
- (a) display her or his permit to do so in a conspicuous place on the stall, vehicle or temporary structure or if there is no stall, vehicle or temporary structure, carry the permit with her or him while conducting a stall or trading;
 - (b) not display a permit unless it is a valid permit; and
 - (c) when selling goods by weight, carry and use for that purpose, scales tested and certified in accordance with the provisions of the *Weights and Measures Act 1915*.
- (2) A stallholder or trader shall not—
- (a) attempt to conduct a business within a distance of 300m of any shop or permanent place of business that is open for business and has for sale any goods or services of the kind being offered for sale by the stall holder or trader.
 - (b) deposit or store any box or basket containing goods on any part of a thoroughfare so as to obstruct the movement of pedestrians or vehicles;
 - (c) act in an offensive manner;
 - (d) use or cause to be used any apparatus or device including any flap or shelf, whereby the dimensions of a stall, vehicle or structure are increased beyond those specified in the permit; or
 - (e) in the case of a trader, carry on trading from a public place, unless there is adequate parking for customers' vehicles reasonably close to the place of trading.

PART 6—PERMITS*Division 1—Applying for a permit***6.1 Application for permit**

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

6.2 Decision on application for permit

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

*Division 2—Conditions***6.3 Conditions which may be imposed on a permit**

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

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

6.4 Imposing conditions under a policy

- (1) In this clause—

“**policy**” means a policy of the local government adopted by the Council containing conditions subject to which an application for a permit may be approved under clause 6.2(1)(a).
- (2) Under clause 6.2(1)(a) the local government may approve an application subject to conditions by reference to a policy.
- (3) The local government is to give a copy of the policy, or the part of the policy which is relevant to the application for a permit, with the form of permit referred to in clause 6.2(2).
- (4) An application for a permit is to be taken not to have been approved subject to the conditions contained in a policy until the local government gives the permit holder a copy of the policy or the part of the policy which is relevant to the application.
- (5) Sections 5.94 and 5.95 of the Act shall apply to a policy and for that purpose a policy is to be taken to be information within section 5.94(u)(i) of the Act.

6.5 Compliance with and variation of conditions

(1) Where an application for a permit has been approved subject to conditions, or where a permit is to be taken to be subject to conditions under this local law, the permit holder shall comply with each of those conditions.

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

*Division 3—General***6.6 Duration of permit**

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

- (a) otherwise stated in this local law or in the permit; or
- (b) cancelled under clause 6.10.

6.7 Renewal of permit

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

(2) The provisions of—

- (a) this Part; and
- (b) any other provision of this local law relevant to the permit which is to be renewed,

shall apply to an application for the renewal of a permit *mutatis mutandis*.

6.8 Transfer of permit

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

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

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

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

- (a) an endorsement on the permit signed by the CEO; or
- (b) issuing to the transferee a permit in the form determined by the local government.

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

6.9 Production of permit

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

6.10 Cancellation of permit

(1) Subject to clause 7.1, a permit may be cancelled by the local government on any one or more of the following grounds—

- (a) the permit holder has not complied with a—
 - (i) condition of the permit; or
 - (ii) provision of any written law which may relate to the activity regulated by the permit; or
- (b) if it is relevant to the activity regulated by the permit—
 - (i) the permit holder has become bankrupt, or gone into liquidation;
 - (ii) the permit holder has entered into any composition or arrangement with creditors; or
 - (iii) a manager, an administrator, a trustee, a receiver, or a receiver and manager is appointed in relation to any part of the permit holder's undertakings or property.

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

- (a) shall return the permit as soon as practicable to the local government; and
- (b) is to be taken to have forfeited any fees paid in respect of the permit.

PART 7—OBJECTIONS AND APPEALS**7.1 Application of Part 9 Division 1 of Act**

When the local government makes a decision—

- (a) under clause 6.2(1); or
- (b) as to whether it will renew, vary, or cancel a permit,

the provisions of Division 1 of Part 9 of the Act and regulations 33 and 34 of the Regulations apply to that decision.

PART 8—MISCELLANEOUS NOTICES**8.1 Notice to repair damage to thoroughfare**

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

PART 9—ENFORCEMENT*Division 1—Notices given under this local law***9.1 Offence to fail to comply with notice**

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

9.2 Local government may undertake requirements of notice

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

Division 2—Offences and penalties

Subdivision 1—General

9.3 Offences

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

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

Subdivision 2—Infringement notices and modified penalties

9.4 Prescribed offences

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

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

(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 authorized 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.

9.5 Forms

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

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

*Schedule 1***PRESCRIBED OFFENCES**

Clause	Description	Modified Penalty \$
2.1(a)	Damaging or interfering with signpost or structure on thoroughfare	300
2.1(b)	Playing games so as to impede vehicles or persons on thoroughfare	100
2.2(1)(a)	Digging a trench through a kerb or footpath without a permit	100
2.2(1)(c)	Lighting a fire on a thoroughfare without a permit	300
2.2(1)(d)	Felling tree onto thoroughfare without a permit	100
2.2(1)(e)	Interfering with anything on a thoroughfare without a permit	100
2.3(1)	Consumption or possession of liquor on thoroughfare	100
2.4(1)	Driving or taking a vehicle on a closed thoroughfare	300

Clause	Description	Modified Penalty \$
3.1(1)	Animal or vehicle obstructing a public place or local government property	100
3.2(2)(a)	Animal on thoroughfare when not led, ridden or driven	100
3.2(2)(b)	Animal on public place with infectious disease	100
3.2(2)(c)	Training or racing animal on thoroughfare in built-up area	100
3.2(3)	Horse led, ridden or driven on thoroughfare in built-up area	100
4.6(1)	Driving a vehicle on other than the carriageway of a flora road	200
4.9	Planting in thoroughfare without a permit	200
4.11	Failure to obtain permit to clear a thoroughfare	500
4.13	Burning of thoroughfare without a permit	500
4.17	Construction of firebreak on thoroughfare without a permit	500
4.19	Commercial harvesting of native flora on thoroughfare	500
4.20(1)	Collecting seed from native flora on thoroughfare without a permit	300
5.2(1)	Conducting of stall in public place without a permit	300
5.3(1)	Trading without a permit	300
5.8(1)(a)	Failure of stallholder or trader to display or carry permit	100
5.8(1)(b)	Stallholder or trader not displaying valid permit	100
5.8(1)(c)	Stallholder or trader not carrying certified scales when selling goods by weight	100
5.8(2)	Stallholder or trader engaged in prohibited conduct	100
6.5	Failure to comply with a condition of a permit	100
6.9	Failure to produce permit on request of authorized person	100
9.1	Failure to comply with notice given under local law	100

Dated this 25th day of November 1999.

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

R. K. SAUNDERS, President.
N. C. WASMANN, Chief Executive Officer.

LOCAL GOVERNMENT ACT 1995

SHIRE OF WEST ARTHUR

FENCING LOCAL LAW

Under the powers conferred upon it by the above mentioned Act and all other powers enabling it, the Council of the Shire of West Arthur records having resolved to make the following Local Law on 26th August 1999.

The Fencing Local Law of the Shire of West Arthur published in the *Government Gazette* of 8 February 1991 is amended in the following manner—

1. Delete “by-law” wherever it appears and substitute “local Law”.
2. In local law 2.1, delete the definition of “Council”.
3. Delete “Council” wherever it appears and substitute “local government” or “the local government” as appropriate.
4. Delete “road” and “street” wherever they appear and substitute “thoroughfare”.
5. In local law 9.1, delete “\$500” and “\$20” and substitute “\$5000” and “\$500” respectively.
6. Add the following local laws—
 - 10 Modified Penalties
 - 10.1 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*.
 - 10.2 Unless otherwise specified, the amount of the modified penalty for an offence against any provision of this Local Law is \$100.
 - 11 Form of Notices
 - For the purposes of this Local Law—
 - (a) the form of the infringement notice referred to in section 9.17 of the *Local Government Act 1995* is to be in or substantially in the form of Form 2 of Schedule 1 of the Local Government (Functions and General) Regulations 1996;
 - (b) the form of the notice referred to in section 9.20 of the *Local Government Act 1995* is to be in or substantially in the form of Form 3 in Schedule 1 of the Local Government (Functions and General) Regulations 1996.
7. In the First Schedule—
 - (a) insert a new paragraph in clause 2 as follows—

“(k) minimum above ground height to be 1.5m.”
 - (b) in paragraph (e) of clause 3, delete “1.8m” and substitute “1.5m”.

Dated 25th of November 1999.

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

R. K. SAUNDERS, President.
N. C. WASMANN, Chief Executive Officer.

DOG ACT 1976

SHIRE OF WEST ARTHUR

DOGS LOCAL LAW

TABLE OF CONTENTS

PART 1—PRELIMINARY

- 1.1 Citation
- 1.2 Repeal
- 1.3 Definitions
- 1.4 Application

PART 2—IMPOUNDING OF DOGS

- 2.1 Charges and costs
- 2.2 Attendance of pound keeper at pound
- 2.3 Release of impounded dog
- 2.4 No breaking into or destruction of pound

PART 3—REQUIREMENTS AND LIMITATIONS ON THE KEEPING OF DOGS

- 3.1 Dogs to be confined
- 3.2 Limitation on the number of dogs

PART 4—APPROVED KENNEL ESTABLISHMENTS

- 4.1 Interpretation
- 4.2 Application for licence for approved kennel establishment
- 4.3 Notice of proposed use
- 4.4 Exemption from notice requirements
- 4.5 When application can be determined
- 4.6 Determination of application
- 4.7 Where application cannot be approved
- 4.8 Conditions of approval
- 4.9 Compliance with conditions of approval
- 4.10 Fees
- 4.11 Form of licence
- 4.12 Period of licence
- 4.13 Variation or cancellation of licence
- 4.14 Transfer
- 4.15 Notification
- 4.16 Inspection of kennel

PART 5—DOGS IN PUBLIC PLACES

- 5.1 Places where dogs are prohibited absolutely
- 5.2 Places which are dog exercise areas

PART 6—MISCELLANEOUS

- 6.1 Offence to excrete

PART 7—ENFORCEMENT

- 7.1 Interpretation
- 7.2 Modified penalties
- 7.3 Issue of infringement notice
- 7.4 Failure to pay modified penalty
- 7.5 Payment of modified penalty
- 7.6 Withdrawal of infringement notice
- 7.7 Service

SCHEDULE 1**SCHEDULE****SCHEDULE 3**

DOG ACT 1976

SHIRE OF WEST ARTHUR

DOGS LOCAL LAW

Under the powers conferred by the *Dog Act 1976* and under all other powers enabling it, the Council of the Shire of West Arthur resolved on 23rd August 1999 to make the following local law.

PART 1—PRELIMINARY**1.1 Citation**

This local law may be cited as the Shire of West Arthur Dogs Local Law.

1.2 Repeal

The By-laws Relating to Dogs published in the *Government Gazette* on 8 February 1991, are repealed.

1.3 Definitions

In this local law unless the context otherwise requires—

“Act” means the *Dog Act 1976*;

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

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

“local government” means the Shire of West Arthur;

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

“Regulations” means the *Dog Regulations 1976*;

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

“town planning scheme” means a town planning scheme made by the local government under the *Town Planning and Development Act 1928* which applies throughout the whole or a part of the district.

1.4 Application

This local law applies throughout the district.

PART 2—IMPOUNDING OF DOGS**2.1 Charges and costs**

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

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

2.2 Attendance of pound keeper at pound

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

2.3 Release of impounded dog

(1) A claim for the release of a dog seized and impounded is to be made to the pound keeper or in the absence of the pound keeper, to the CEO.

(2) The pound keeper is not to release a dog seized and impounded to any person unless that person has produced, to the satisfaction of the pound keeper, satisfactory evidence—

- (a) of her or his ownership of the dog or of her or his authority to take delivery of it; or
- (b) that he or she is the person identified as the owner on a microchip implanted in the dog.

2.4 No breaking into or destruction of pound

A person who—

- (a) unless he or she is the pound keeper or a person authorized to do so, releases or attempts to release a dog from a pound; or

- (b) destroys, breaks into, damages or in any way interferes with or renders not dog-proof—
 - (i) any pound; or
 - (ii) any vehicle or container used for the purpose of catching, holding or conveying a seized dog, commits an offence.

Penalty: Where the dog is a dangerous dog, \$2,000; otherwise \$1,000.

PART 3—REQUIREMENTS AND LIMITATIONS ON THE KEEPING OF DOGS

3.1 Dogs to be confined

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

Penalty: Where the dog kept is a dangerous dog, \$2,000; otherwise \$1,000.

3.2 Limitation on the number of dogs

- (1) This clause does not apply to premises which have been—
 - (a) licensed under Part 4 as an approved kennel establishment; or
 - (b) granted an exemption under section 26(3) of the Act.
- (2) The limit on the number of dogs which may be kept on any premises is, for the purpose of section 26(4) of the Act—
 - (a) 2 dogs over the age of 3 months and the young of those dogs under that age if the premises are situated within a townsite; or
 - (b) 4 dogs over the age of 3 months and the young of those dogs under that age if the premises are situated outside a townsite.

PART 4—APPROVED KENNEL ESTABLISHMENTS

4.1 Interpretation

In this Part and in Schedule 2—

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

“licensee” means the holder of a licence;

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

“transferee” means a person who applies for the transfer of a licence to her or him under clause 4.14.

4.2 Application for licence for approved kennel establishment

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

- (a) plans and specifications of the kennel establishment, including a site plan;
- (b) copies of the notices to be given under clause 4.3;
- (c) written evidence that either the applicant or another person who will have the charge of the dogs, will reside on the premises or, in the opinion of the local government, sufficiently close to the premises so as to control the dogs and so as to ensure their health and welfare;
- (d) a written acknowledgment that the applicant has read and agrees to comply with any code of practice relating to the keeping of dogs nominated by the local government; and
- (e) the fee for the application for a licence referred to in clause 4.10(1).

4.3 Notice of proposed use

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

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

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

- (a) any written submissions as to the proposed use are to be lodged with the CEO within 14 days of the date the notice is given; and

- (b) the application and plans and specifications may be inspected at the offices of the local government.

(3) Where—

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

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

4.4 Exemption from notice requirements

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

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

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

4.5 When application can be determined

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

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

4.6 Determination of application

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

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

4.7 Where application cannot be approved

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

- (a) an approved kennel establishment cannot be permitted by the local government on the premises under a town planning scheme; or
- (b) an applicant for a licence or another person who will have the charge of the dogs will not reside on the premises, or, in the opinion of the local government, sufficiently close to the premises so as to control the dogs and so as to ensure their health and welfare.

4.8 Conditions of approval

(1) The local government may approve an application for a licence subject to the conditions contained in Schedule 2 and to such other conditions as the local government considers appropriate.

(2) In respect of a particular application for a licence, the local government may vary any of the conditions contained in Schedule 2.

4.9 Compliance with conditions of approval

A licensee who does not comply with the conditions of a licence commits an offence.

Penalty: Where a dog involved in the contravention is a dangerous dog, \$2,000 and a daily penalty of \$200; otherwise \$1,000 and a daily penalty of \$100.

4.10 Fees

(1) On lodging an application for a licence, the applicant is to pay a fee to the local government.

(2) On the issue or renewal of a licence, the licensee is to pay a fee to the local government.

(3) On lodging an application for the transfer of a valid licence, the transferee is to pay a fee to the local government.

(4) The fees referred to in subclauses (1) to (3) are to be imposed and determined by the local government under sections 6.16 - 6.19 of the *Local Government Act 1995*.

4.11 Form of licence

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

4.12 Period of licence

(1) The period of effect of a licence is set out in section 27(5) of the Act.

(2) A licence is to be renewed if the fee referred to in clause 4.10(2) is paid to the local government prior to the expiry of the licence.

(3) On the renewal of a licence the conditions of the licence at the time of its renewal continue to have effect.

4.13 Variation or cancellation of licence

(1) The local government may vary the conditions of a licence.

(2) The local government may cancel a licence—

- (a) on the request of the licensee;
- (b) following a breach of the Act, the Regulations or this local law; or
- (c) if the licensee is not a fit and proper person.

(3) The date a licence is cancelled is to be, in the case of—

- (a) paragraph (a) of subclause (2), the date requested by the licensee; or
- (b) paragraphs (b) and (c) of subclause (2), the date determined under section 27(6) of the Act.

(4) If a licence is cancelled the fee paid for that licence is not refundable for the term of the licence that has not yet expired.

4.14 Transfer

(1) An application for the transfer of a valid licence from the licensee to another person must be—

- (a) made in the form determined by the local government;
- (b) made by the transferee;
- (c) made with the written consent of the licensee; and
- (d) lodged with the local government together with—
 - (i) written evidence that a person will reside at or within reasonably close proximity to the premises the subject of the licence; and
 - (ii) the fee for the application for the transfer of a licence referred to in clause 4.10(3).

(2) The local government is not to determine an application for the transfer of a valid licence until the transferee has complied with subclause (1).

(3) The local government may approve, whether or not subject to such conditions as it considers appropriate, or refuse to approve an application for the transfer of a valid licence.

(4) Where the local government approves an application for the transfer of a valid licence, then on the date of approval, unless otherwise specified in the notice issued under clause 4.15(b), the transferee becomes the licensee of the licence for the purposes of this local law.

4.15 Notification

The local government is to give written notice to—

- (a) an applicant for a licence of the local government's decision on her or his application;
- (b) a transferee of the local government's decision on her or his application for the transfer of a valid licence;
- (c) a licensee of any variation made under clause 4.13(1);
- (d) a licensee when her or his licence is due for renewal and the manner in which it may be renewed;
- (e) a licensee when her or his licence is renewed;
- (f) a licensee of the cancellation of a licence under clause 4.13(2)(a); and
- (g) a licensee of the cancellation of a licence under paragraphs (b) or (c) of clause 4.13(2), which notice is to be given in accordance with section 27(6) of the Act.

4.16 Inspection of kennel

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

PART 5—DOGS IN PUBLIC PLACES**5.1 Places where dogs are prohibited absolutely**

(1) Dogs are prohibited absolutely from entering or being in any of the following places—

- (a) where so indicated by a sign, a public building;
- (b) a theatre or picture gardens;
- (c) all premises or vehicles classified as food premises or food vehicles under the *Health (Food Hygiene) Regulations 1993*;
- (d) a public swimming pool.

(2) If a dog enters or is in a place specified in subclause (1), every person liable for the control of the dog at that time commits an offence.

Penalty: Where the dog is a dangerous dog, \$2,000; otherwise \$1,000.

5.2 Places which are dog exercise areas

(1) Subject to clause 5.1 and subclause (2) of this clause, for the purposes of sections 31 and 32 of the Act, the following are dog exercise areas—

Darkan Townsite

Reserve No. 19034

Duranillin Townsite

Reserve No. 22725

(2) Subclause (1) does not apply to—

- (a) land which has been set apart as a children's playground;
- (b) an area being used for sporting or other activities, as permitted by the local government, during the times of such use; or
- (c) a car park.

PART 6—MISCELLANEOUS

6.1 Offence to excrete

(1) A dog must not excrete on—

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

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

Penalty: \$200.

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

PART 7—ENFORCEMENT

7.1 Interpretation

In this Part—

“infringement notice” means the notice referred to in clause 7.3; and

“notice of withdrawal” means the notice referred to in clause 7.6(1).

7.2 Modified penalties

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

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

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

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

7.3 Issue of infringement notice

Where an authorized person has reason to believe that a person has committed an offence in respect of which a modified penalty may be imposed, he or she may issue to that person a notice in the form of Form 7 of the First Schedule of the Regulations.

7.4 Failure to pay modified penalty

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

7.5 Payment of modified penalty

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

7.6 Withdrawal of infringement notice

(1) Whether or not the modified penalty has been paid, an authorized person may withdraw an infringement notice by sending a notice in the form of Form 8 of the First Schedule of the Regulations.

(2) A person authorized to issue an infringement notice under clause 7.3 cannot sign or send a notice of withdrawal.

7.7 Service

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

Schedule 1

(clause 4.2)

Local laws relating to dogs

APPLICATION FOR A LICENCE FOR AN APPROVED KENNEL ESTABLISHMENT

I/we (full name)

of (postal address)

(telephone number)

(facsimile number)

(E-mail address)

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

For (number and breed of dogs)

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

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

Attached are—

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

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

Signature of applicant

Date

*delete where inapplicable.

Note: a licence if issued will have effect for a period of 12 months—section 27.5 of the Dog Act.

OFFICE USE ONLY

Application fee paid on *[insert date]*.

Schedule 2

(clause 4.8(1))

CONDITIONS OF A LICENCE FOR AN APPROVED KENNEL ESTABLISHMENT

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

- (a) each kennel, unless it is fully enclosed, must have a yard attached to it;

- (b) each kennel and each yard must be at a distance of not less than—
 - (i) 25m from the front boundary of the premises and 5m from any other boundary of the premises;
 - (ii) 10m from any dwelling; and
 - (iii) 25m from any church, school room, hall, factory, dairy or premises where food is manufactured, prepared, packed or stored for human consumption;
- (c) each yard for a kennel must be kept securely fenced with a fence constructed of link mesh or netting or other materials approved by the local government;
- (d) the minimum floor area for each kennel must be calculated at 2.5 times the length of the breed of dog (when it is fully grown), squared, times the number of dogs to be housed in the kennel and the length of the dog is to be determined by measuring from the base of the tail to the front of its shoulder;
- (e) the floor area of the yard attached to any kennel or group of kennels must be at least twice the floor area of the kennel or group of kennels to which it is attached;
- (f) the upper surface of the kennel floor must be—
 - (i) at least 100mm above the surface of the surrounding ground;
 - (ii) smooth so as to facilitate cleaning;
 - (iii) rigid;
 - (iv) durable;
 - (v) slip resistant;
 - (vi) resistant to corrosion;
 - (vii) non-toxic;
 - (viii) impervious;
 - (ix) free from cracks, crevices and other defects; and
 - (x) finished to a surface having a fall of not less than 1 in 100 to a spoon drain which in turn must lead to a suitably sized diameter sewerage pipe which must be properly laid, ventilated and trapped in accordance with the health requirements of the local government;
- (g) all kennel floor washings must pass through the drain in item (f)(x) and must be piped to approved apparatus for the treatment of sewage in accordance with the health requirements of the local government;
- (h) the kennel floor must have a durable upstand rising 75mm above the floor level from the junction of the floor and external and internal walls, or internal walls must be so constructed as to have a minimum clearance of 50mm from the underside of the bottom plate to the floor;
- (i) where a yard is to be floored, the floor must be constructed in the same manner as the floor of any kennel;
- (j) from the floor, the lowest internal height of a kennel must be, whichever is the lesser of—
 - (i) 2m; or
 - (ii) 4 times the height of the breed of dog in the kennel, when it is fully grown, measured from the floor to the uppermost tip of its shoulders while in a stationary upright position;
- (k) the walls of each kennel must be constructed of concrete, brick, stone or framing sheeted internally and externally with good quality new zincalume or new pre-finished colour coated steel sheeting or new fibrous cement sheeting or other durable material approved by the local government;
- (l) all external surfaces of each kennel must be kept in good condition;
- (m) the roof of each kennel must be constructed of impervious material;
- (n) all kennels and yards and drinking vessels must be maintained in a clean condition and must be cleaned and disinfected when so ordered by an authorized person;
- (o) all refuse, faeces and food waste must be disposed of daily into the approved apparatus for the treatment of sewage;
- (p) noise, odours, fleas, flies and other vectors of disease must be effectively controlled;
- (q) suitable water must be available at the kennel via a properly supported standpipe and tap; and
- (r) the licensee or the person nominated in the application for a licence, must, in accordance with the application for the licence, continue to reside—
 - (i) at the premises; or
 - (ii) in the opinion of the local government, sufficiently close to the premises so as to control the dogs, and to ensure their health and welfare.

Schedule 3

(clause 7.2)

OFFENCES IN RESPECT OF WHICH MODIFIED PENALTY APPLIES

Offence	Nature of offence	Modified penalty \$	Dangerous Dog Modified Penalty \$
2.4(a)	Attempting to or causing the unauthorized release of a dog from a pound	200	400
2.4(b)&(c)	Interfering with any pound or vehicle used for the purpose of catching, holding or conveying dogs	200	
3.1	Failing to provide means for effectively confining a dog	50	200
4.9	Failing to comply with the conditions of a licence	100	200
5.1(2)	Dog in place from which prohibited absolutely	200	400
6.1(2)	Dog excreting in prohibited place	40	

Dated this 25th day of November 1999.

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

R. K. SAUNDERS, President.

N. C. WASMANN, Chief Executive Officer.



2 0 0 0 0 0 0 7 4 6 6