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**SHIRE OF DONNYBROOK/
BALINGUP**

LOCAL GOVERNMENT ACT 1995

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

**LOCAL GOVERNMENT PROPERTY
LOCAL LAW**

**MISCELLANEOUS PROVISIONS
LOCAL LAW**

**PARKING AND PARKING FACILITIES
LOCAL LAW**

BUSH FIRES ACT 1954

BUSH FIRE BRIGADES LOCAL LAW

DOG ACT 1976

DOG LOCAL LAW

LOCAL GOVERNMENT ACT 1995

SHIRE OF DONNYBROOK/BALINGUP

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

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LOCAL GOVERNMENT ACT 1995

SHIRE OF DONNYBROOK/BALINGUP

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 Donnybrook/Balingup resolved on the 27th September 2000 to make the following local law.

PART 1 - PRELIMINARY**1.1 Citation**

This local law may be cited as the Shire of Donnybrook/Balingup 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;

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

“**bicycle**” has the same meaning given to it in the *Road Traffic Code 1975*;

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

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

“**carriageway**” 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;

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

(a) private land; or

(b) a private thoroughfare serving private land;

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

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

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

“**intersection**” has the meaning given to it in the *Road Traffic Code 1975*;

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

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

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

“**local government**” means the Shire of Donnybrook/Balingup;

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

(a) which belongs to the local government;

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

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

“**lot**” has the meaning given to it in the *Town Planning and Development Act 1928*;

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

“**permissible verge treatment**” means any one of the 4 treatments described in clause 3.3(2), and includes any reticulation pipes and sprinklers;

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

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

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

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

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

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

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

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

“**thoroughfare**” has the meaning given to it in the Act;

“**town planning scheme**” means a town planning scheme of the local government made under the *Town Planning and Development Act 1928*;

“**townsites**” means all the townsites within the district 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

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

1.3 Application

This local law applies throughout the district.

1.4 Repeal

The following local laws are repealed –

Hawkers published in the *Government Gazette* on 28 April 1960, *Street Lawns and Gardens* published in the *Government Gazette* on 30 December 1963 and *Removal and Disposal of Obstructing Animals and Vehicles* published in the *Government Gazette* on 3 October 1969.

PART 2 – ACTIVITIES ON THOROUGHFARES AND PUBLIC PLACES

Division 1 – General

2.1 General prohibitions

A person shall not –

- (a) plant any plant which exceeds or which may exceed 0.75m in height on a thoroughfare so that the plant is within 6m of an intersection;
- (b) damage a lawn or a garden or remove any plant or part of a plant from a lawn or a garden unless –
 - (i) the person is the owner or the occupier of the lot abutting that portion of the thoroughfare and the lawn or the garden or the particular plant has not been installed or planted by the local government; or
 - (ii) the person is acting under the authority of a written law;
- (c) plant any plant (except grass or a similar plant) on a thoroughfare so that it is within 2m of a carriageway;
- (d) place on any footpath any fruit, fruit skins or other substance or fluid (whether vegetable or otherwise, but not water) which may create a hazard for any person using the footpath;
- (e) unless at the direction of the local government, damage, remove or interfere with any signpost, direction plate, guidepost, notice, shelter, shed, fence or any structure erected on a thoroughfare by the local government or a person acting under the authority of a written law;
- (f) play or participate in any game or sport so as to cause danger to any person or thing or impede the movement of vehicles or persons on a thoroughfare;
- (g) within a mall, arcade or verandah of a shopping centre, ride any bicycle, skateboard, rollerblades or similar device; or
- (h) Erect an election sign on any public place or thoroughfare except those signs identifying a polling booth.

2.2 Activities allowed with a permit – general

- (1) A person shall not, without a permit –
- (a) dig or otherwise create a trench through or under a kerb or footpath;
 - (b) subject to Part 3 – Verge Treatments, throw, place or deposit any thing on a verge except for removal by the local government under a bulk rubbish collection, and then only during the period of time advertised in connection with that collection by the local government;
 - (c) cause any obstruction to a vehicle or a person using a thoroughfare as a thoroughfare;
 - (d) cause any obstruction to a water channel or a water course in a thoroughfare;
 - (e) throw, place or drain offensive, noxious or dangerous fluid onto a thoroughfare;
 - (f) damage a thoroughfare;
 - (g) light any fire or burn any thing on a thoroughfare other than in a stove or fireplace provided for that purpose;
 - (h) fell any tree onto a thoroughfare;
 - (i) unless installing a permissible verge treatment –
 - (i) lay pipes under or provide taps on any verge; or
 - (ii) place or install any thing on any part of a thoroughfare, and without limiting the generality of the foregoing, any gravel, stone, flagstone, cement, concrete slabs, blocks, bricks, pebbles, plastic sheeting, kerbing, wood chips, bark or sawdust;
 - (j) provide, erect, install or use in or on any building, structure or land abutting on a thoroughfare any hoist or other thing for use over the thoroughfare;
 - (k) on a public place use anything or do anything so as to create a nuisance;
 - (l) place or cause to be placed on a thoroughfare a bulk rubbish container; or
 - (m) interfere with the soil of, or anything in a thoroughfare or take anything from a thoroughfare.
- (2) The local government may exempt a person from compliance with sub-clause (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) Sub-clause (1) does not apply where the liquor is in a sealed container.

PART 3 – VERGE TREATMENTS

Division 1 – Preliminary

3.1 Interpretation

In this Part, unless the context otherwise requires –

“**acceptable material**” means any material which will create a hard surface, and which appears on a list of acceptable materials maintained by the local government.

3.2 Application

This Part only applies to the townsites.

Division 2 – Permissible verge treatments

3.3 Permissible verge treatments

- (1) An owner or occupier of land which abuts on a verge may on that part of the verge directly in front of her or his land install a permissible verge treatment.
- (2) The permissible verge treatments are –
- (a) the planting and maintenance of a lawn;
 - (b) the planting and maintenance of a garden provided that –
 - (i) clear sight visibility is maintained at all times for a person using the abutting thoroughfare in the vicinity of an intersection or bend in the thoroughfare; and
 - (ii) where there is no footpath, a pedestrian has safe and clear access of a minimum width of 2m along that part of the verge immediately adjacent to the kerb;
 - (c) the installation of an acceptable material; or
 - (d) the installation over no more than one third of the area of the verge (excluding any vehicle crossing) of an acceptable material in accordance with paragraph (c), and the planting and maintenance of either a lawn or a garden on the balance of the verge in accordance with paragraph (a) or (b).

3.4 Only permissible verge treatments to be installed

- (1) A person shall not install or maintain a verge treatment which is not a permissible verge treatment.
- (2) The owner and occupier of the lot abutting a verge treatment referred to in sub-clause (1) are each to be taken to have installed and maintained that verge treatment for the purposes of this clause and clause 3.5.

3.5 Obligations of owner or occupier

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

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

3.6 Notice to owner or occupier

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

Division 3 – Existing verge treatments

3.7 Transitional provision

(1) In this clause –

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

(2) A verge treatment which –

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

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

Division 4 – Public works

3.8 Power to carry out public works on verge

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

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

PART 4 – ADVERTISING SIGNS ON THOROUGHFARES

Division 1 – Preliminary

4.1 Interpretation

In this Part, unless the context otherwise requires –

“**advertising sign**” means a sign used for the purpose of advertisement but excludes an “election sign”;

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

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

“**portable direction sign**” means a portable free standing direction sign; and

“**portable sign**” means a portable free standing advertising sign.

Division 2 – Permit

4.2 Advertising signs and portable direction signs

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

- (a) erect or place an advertising sign on a thoroughfare, or
- (b) post any bill or paint, place or affix any advertisement on a thoroughfare.

(2) Notwithstanding sub-clause (1), a permit is not required in respect of a portable direction sign which neither exceeds 500mm in height nor 0.5m² in area, provided that the sign is placed or erected on a thoroughfare on an infrequent or occasional basis only to direct attention to a place, activity or event during the hours of that activity or event.

(3) Notwithstanding sub-clause (1), a person shall not erect or place an advertising sign –

- (a) on a footpath;
- (b) over any footpath where the resulting vertical clearance between the sign and the footpath is less than 2.5m;

- (c) on or within 3m of a carriageway;
- (d) in any other location where, in the opinion of the local government, the sign is likely to obstruct lines of sight along a thoroughfare or cause danger to any person using the thoroughfare; or
- (e) on any natural feature, including a rock or tree, on a thoroughfare, or on any bridge or the structural approaches to a bridge.

4.3 Matters to be considered in determining application for permit

In determining an application for a permit for the purpose of clause 4.2(1), the local government is to have regard to –

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

Division 3 – Conditions on permit

4.4 Conditions on portable sign

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

- (a) the portable sign shall –
 - (i) not exceed 1m in height;
 - (ii) not exceed an area of 1m² on any side;
 - (iii) relate only to the business activity described on the permit;
 - (iv) contain letters not less than 200mm in height;
 - (v) not be erected in any position other than immediately adjacent to the building or the business to which the sign relates;
 - (vi) be removed each day at the close of the business to which it relates and not be erected again until the business next opens for trading;
 - (vii) be secured in position in accordance with any requirements of the local government;
 - (viii) be placed so as not to obstruct or impede the reasonable use of a thoroughfare or access to a place by any person; and
 - (ix) be maintained in good condition; and
- (b) no more than one portable sign shall be erected in relation to the one building or business.

PART 5 – OBSTRUCTING ANIMALS, VEHICLES OR SHOPPING TROLLEYS

Division 1 – Animals and vehicles

5.1 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 sub-clause (1) where the animal is secured or tethered for a period not exceeding 1 hour.

5.2 Prohibitions relating to animals

(1) In sub-clause (2), “owner” in relation to an animal includes –

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

(2) An owner of an animal shall not –

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

Division 2 – Shopping trolleys

5.3 Interpretation

In this Division –

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

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

5.4 Shopping trolley to be marked

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

5.5 Person not to leave trolley in public place

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

5.6 Retailer to remove abandoned trolley

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

(2) A retailer shall remove a shopping trolley within 24 hours of being so advised under sub-clause (1), unless the retailer –

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

5.7 Retailer taken to own trolley

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

PART 6 – TRADING IN THOROUGHFARES AND PUBLIC PLACES*Division 1 – Stallholders and traders*

Subdivision 1 – Preliminary

6.1 Interpretation

In this Division, unless the context otherwise requires –

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

“**public place**” includes –

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

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

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

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

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

“**trader**” means a person who carries on trading;

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

“**trading**” includes –

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

6.2 Stallholder's permit

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

6.3 Trader's permit

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

6.4 No permit required to sell newspaper

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

6.5 Relevant considerations in determining application for permit

- (1) In determining an application for a permit for the purposes of this Division, the local government is to have regard to –
 - (a) any relevant policies of the local government;
 - (b) the desirability of the proposed activity;
 - (c) the location of the proposed activity;
 - (d) the principles set out in the Competition Principles Agreement; and
 - (e) such other matters as the local government may consider to be relevant in the circumstances of the case.
- (2) The local government may refuse to approve an application for a permit under this Division on any one or more of the following grounds –
 - (a) that the applicant has committed a breach of any provision of this local law or of any written law relevant to the activity in respect of which the permit is sought;
 - (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) such other grounds as the local government may consider to be relevant in the circumstances of the case.

6.6 Conditions of permit

- (1) If the local government approves an application for a permit under this Division subject to conditions, those conditions may include –
 - (a) the place, the part of the district, or the thoroughfare to which the permit applies;

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

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

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

(1) In this clause –

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

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

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

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

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

Subdivision 3 – Conduct of stallholders and traders

6.8 Conduct of stallholders and traders

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

- (a) display her or his permit to do so in a conspicuous place on the stall, vehicle or temporary structure or if there is no stall, vehicle or temporary structure, carry the permit with her or him while conducting a stall or trading;
- (b) not display a permit unless it is a valid permit; and
- (c) when selling goods by weight, carry and use for that purpose, scales tested and certified in accordance with the provisions of the *Weights and Measures Act 1915*.

(1) A stallholder or trader shall not –

- (a) deposit or store any box or basket containing goods on any part of a thoroughfare so as to obstruct the movement of pedestrians or vehicles;
- (b) act in an offensive manner;
- (c) use or cause to be used any apparatus or device including any flap or shelf, whereby the dimensions of a stall, vehicle or structure are increased beyond those specified in the permit; or
- (d) in the case of a trader, carry on trading from a public place, unless there is adequate parking for customers' vehicles reasonably close to the place of trading.

*Division 2 – Outdoor eating facilities on public places***6.9 Interpretation**

In this Division –

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

“**permit holder**” means the person to whom a permit has been issued for the purpose of clause 6.10; and

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

6.10 Permit required to conduct Facility

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

6.11 Matters to be considered in determining application

In determining an application for a permit for the purpose of clause 6.10, the local government may consider in addition to any other matter it considers relevant, whether or not –

- (a) the Facility is conducted in conjunction with and as an extension of food premises which abut on the Facility, and whether the applicant is the person conducting such food premises;
- (b) any abutting food premises are registered in accordance with the *Health Act 1911* and whether the use of the premises is permitted under the town planning scheme;
- (c) the Facility will comply with any local law made under section 172 of the *Health Act 1911*;
- (d) users of the Facility will have access to proper and sufficient sanitary and ablutionary conveniences;
- (e) the Facility would –
 - (i) obstruct the visibility or clear sight lines at an intersection of thoroughfares of any person; or
 - (ii) impede pedestrian access; and
- (f) the tables, chairs and other equipment to be used may obstruct or impede the use of the public place for the purpose for which it was designed.

6.12 Obligations of permit holder

(1) The permit holder for a Facility shall –

- (a) ensure that the Facility is conducted at all times in accordance with the provisions of this local law and any local law made under section 172 of the *Health Act 1911*;
- (b) ensure that the eating area is kept in a clean and tidy condition at all times;
- (c) maintain the chairs, tables and other structures in the eating area in a good, clean and serviceable condition at all times;
- (d) be solely responsible for all and any costs associated with the removal, alteration, repair, reinstatement or reconstruction of any part of the public place arising from the conduct of the Facility; and
- (e) be solely responsible for all rates and taxes levied upon the land occupied by the Facility.

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

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

6.13 Removal of Facility unlawfully conducted

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

6.14 Use of Facility by public

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

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

6.15 Temporary removal of Facility may be requested

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

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

*Division 3 – Street Entertainers**Subdivision 1 – Preliminary***6.16 Interpretation**

In this Division, unless the context otherwise requires –

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

“**permit**” means a permit issued for the purpose of clause 6.17; and

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

Subdivision 2 – Permits

6.17 Permit required to perform

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

6.18 Variation of permitted area and permitted time

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

- (a) the permitted area;
- (b) the permitted time; or
- (c) both the permitted area and the permitted time,

shown on a permit.

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

6.19 Duration of permit

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

6.20 Cancellation of permit

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

6.21 Obligations of permit holder

A permit holder shall not in a public place –

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

PART 7 – PERMITS

Division 1 – Applying for a permit

7.1 Application for permit

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

7.2 Decision on application for permit

(1) The local government may –

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

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

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

(4) Where a clause of this local law refers to conditions which may be imposed on a permit or which are to be taken to be imposed on a permit, the clause does not limit the power of the local government to impose other conditions on the permit under sub-clause (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 sub-clause (1)(b).

Division 2 – Conditions

7.3 Conditions which may be imposed on a permit

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

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

7.4 Imposing conditions under a policy

(1) In this clause –

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

(2) Under clause 7.2(1)(a) the local government may approve an application subject to conditions by reference to a policy.

(3) The local government is to give a copy of the policy, or the part of the policy which is relevant to the application for a permit, with the form of permit referred to in clause 7.2(2).

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

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

7.5 Compliance with and variation of conditions

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

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

Division 3 – General

7.6 Duration of permit

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

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

7.7 Renewal of permit

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

(2) The provisions of –

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

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

7.8 Transfer of permit

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

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

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

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

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

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

7.9 Production of permit

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

7.10 Cancellation of permit

(1) Subject to clause 8.1, a permit may be cancelled by the local government 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 8 – OBJECTIONS AND APPEALS

8.1 Application of Part 9 Division 1 of Act

When the local government makes a decision –

- (a) under clause 7.2(1); or
- (b) as to whether it will renew, vary, or cancel a permit,

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

PART 9 – MISCELLANEOUS NOTICES

9.1 Notice to redirect or repair sprinkler

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

9.2 Hazardous plants

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

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

9.3 Notice to repair damage to thoroughfare

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

9.4 Notice to remove thing unlawfully placed on thoroughfare

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

PART 10 – ENFORCEMENT

Division 1 – Notices given under this local law

10.1 Offence to fail to comply with notice

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

10.2 Local government may undertake requirements of notice

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

Division 2 – Offences and penalties

Subdivision 1 – General

10.3 Offences

- (1) Any person who fails to do anything required or directed to be done under this local law, or who does anything which under this local law that person is prohibited from doing, commits an offence.
- (2) Any person who commits an offence under this local law is liable, upon conviction, to a penalty not exceeding \$5,000, and if the offence is of a continuing nature, to an additional penalty not exceeding \$500 for each day or part of a day during which the offence has continued.

Subdivision 2 – Infringement notices and modified penalties

10.4 Prescribed offences

- (1) An offence against a clause specified in Schedule 1 is a prescribed offence for the purposes of section 9.16(1) of the Act.
- (2) The amount of the modified penalty for a prescribed offence is that specified adjacent to the clause in Schedule 1.
- (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.

10.5 Forms

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

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

Schedule 1

PRESCRIBED OFFENCES

Clause	Description	Modified Penalty \$
2.1(a)	Plant of 0.75m in height on thoroughfare within 6m of intersection	100
2.1(b)	Damaging lawn or garden	100
2.1(c)	Plant (except grass) on thoroughfare within 2m of carriageway	100
2.1(d)	Placing hazardous substance on footpath	100
2.1(e)	Damaging or interfering with signpost or structure on thoroughfare	300
2.1(f)	Playing games so as to impede vehicles or persons on thoroughfare	100
2.1(g)	Riding of skateboard or similar device on mall or verandah of shopping centre ...	100
2.1(h)	Erecting election sign in a public place or thoroughfare	100
2.2(1)(a)	Digging a trench through a kerb or footpath without a permit	100
2.2(1)(b)	Throwing or placing anything on a verge without a permit	100
2.2(1)(c)	Causing obstruction to vehicle or person on thoroughfare without a permit	100
2.2(1)(d)	Causing obstruction to water channel on thoroughfare without a permit	200
2.2(1)(e)	Placing or draining offensive fluid on thoroughfare without a permit	200
2.2(1)(g)	Lighting a fire on a thoroughfare without a permit	300
2.2(1)(h)	Felling tree onto thoroughfare without a permit	100
2.2(1)(i)	Installing pipes or stone on thoroughfare without a permit	100
2.2(1)(j)	Installing a hoist or other thing on a structure or land for use over a thoroughfare without a permit	300
2.2(1)(k)	Creating a nuisance on a thoroughfare without a permit	100
2.2(1)(l)	Placing a bulk rubbish container on a thoroughfare without a permit	100
2.2(1)(m)	Interfering with anything on a thoroughfare without a permit	100
2.3(1)	Consumption or possession of liquor on thoroughfare	100

Clause	Description	Modified Penalty \$
3.4(1)	Installation of verge treatment other than permissible verge treatment	200
3.5	Failure to maintain permissible verge treatment or placement of obstruction on verge	100
3.6	Failure to comply with notice to rectify default	100
4.2(1)	Placing advertising sign or affixing any advertisement on a thoroughfare without a permit	100
4.2(3)	Erecting or placing of advertising sign in a prohibited area	100
5.1(1)	Animal or vehicle obstructing a public place or local government property	100
5.2(2)(a)	Animal on thoroughfare when not led, ridden or driven	100
5.2(2)(b)	Animal on public place with infectious disease	100
5.2(2)(c)	Training or racing animal on thoroughfare in built-up area	100
5.5	Person leaving shopping trolley in public place other than trolley bay	100
5.6(2)	Failure to remove shopping trolley upon being advised of location	100
6.2(1)	Conducting of stall in public place without a permit	300
6.3(1)	Trading without a permit	300
6.8(1)(a)	Failure of stallholder or trader to display or carry permit	100
6.8(1)(b)	Stallholder or trader not displaying valid permit	100
6.8(1)(c)	Stallholder or trader not carrying certified scales when selling goods by weight .	100
6.8(2)	Stallholder or trader engaged in prohibited conduct	100
6.10	Establishment or conduct of outdoor eating facility without a permit	300
6.12	Failure of permit holder of outdoor eating facility to comply with obligations	100
6.14(1)	Use of equipment of outdoor eating facility without purchase of food or drink from facility	50
6.14(2)	Failure to leave outdoor eating facility when requested to do so by permit holder	50
6.17	Performing in a public place without a permit	100
6.18(2)	Failure of performer to move onto another area when directed	100
6.21	Failure of performer to comply with obligations	100
7.5	Failure to comply with a condition of a permit	100
7.9	Failure to produce permit on request of authorized person	100
10.1	Failure to comply with notice given under local law	100
	All other offences not specified	100

Dated this 5th day of October 2000.

The Common Seal of the Shire of Donnybrook/Balingup was affixed in the presence of:

Cr F. S. DRAKE-BROCKMAN, Shire President.
J. R. ATTWOOD, Chief Executive Officer.

LOCAL GOVERNMENT ACT 1995

SHIRE OF DONNYBROOK/BALINGUP

LOCAL GOVERNMENT PROPERTY LOCAL LAW

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LOCAL GOVERNMENT ACT 1995

SHIRE OF DONNYBROOK/BALINGUP

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 Donnybrook/Balingup resolved on the 27th September 2000 to make the following local law.

PART 1 - PRELIMINARY**1.1 Citation**

This local law may be cited as the *Shire of Donnybrook/Balingup Local Government Property 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 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;

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

- (a) hall or room;
- (b) corridor, stairway or annex of any hall or room; and

“**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 Donnybrook/Balingup;

“**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 and any device designed for use, by a physically impaired person on a footpath;
- (d) a pram, a stroller or a similar device.

1.3 Interpretation

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

1.4 Application

- (1) This local law applies throughout the district.
- (2) Notwithstanding anything to the contrary in this local law, the local government may –
 - (a) hire local government property to any person; or
 - (b) enter into an agreement with any person regarding the use of any local government property.

1.5 Repeal

- (1) The following local laws are repealed –
 - Halls Donnybrook, published in Government Gazette 9/01/1953; 3/02/1933; 26/09/1930.*
- (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 sub-clause (2), specified policies continue, or are to be taken to have continued, to have effect on and from the commencement day.

PART 2 – DETERMINATIONS IN RESPECT OF LOCAL GOVERNMENT PROPERTY

Division 1 – Determinations

2.1 Determinations as to use of local government property

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

2.2 Procedure for making a determination

- (1) The local government is to give local public notice of its intention to make a determination.
- (2) The local public notice referred to in sub-clause (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 sub-clause (5) will apply; or
 - (c) not continue with the proposed determination.

- (4) If submissions are received in accordance with sub-clause (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 sub-clauses (3), (5) and (6).
- (8) A decision under sub-clause (3) or (4) is not to be delegated by the Council.

2.3 Discretion to erect sign

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

2.4 Determination to be complied with

A person shall comply with a determination.

2.5 Register of determinations

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

2.6 Amendment or revocation of a determination

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

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

2.7 Activities which may be pursued on specified local government property

- (1) A determination may provide that specified local government property is set aside as an area on which a person may –
- (a) bring, ride or drive an animal;
 - (b) take, ride or drive a vehicle, or a particular class of vehicle;
 - (c) fly or use a motorised model 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) deposit refuse, rubbish or liquid waste, whether or not of particular classes, and whether or not in specified areas of that local government property;
 - (f) 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;
 - (g) ride a bicycle, a skateboard, rollerblades, a sandboard or a similar device; and
- (2) A determination may specify the extent to which and the manner in which an activity referred to in sub-clause (1) may be pursued and in particular –
- (a) the days and times during which the activity may be pursued;
 - (b) that an activity may be pursued on a class of local government property, specified local government property or all local government property;
 - (c) that an activity is to be taken to be prohibited on all local government property other than that specified in the determination;
 - (d) may limit the activity to a class of vehicles, equipment or things, or may extend it to all vehicles, equipment or things;
 - (e) may specify that the activity can be pursued by a class of persons or all persons; and
 - (f) may distinguish between different classes of the activity.

2.8 Activities which may be prohibited on specified local government property

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

- (a) smoking on premises;
- (b) riding a bicycle, a skateboard, rollerblades, a 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) 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;
- (f) the playing or practice of any ball game which may cause detriment to the property or any fauna on the property; and
- (g) 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 sub-clause (1) and, in particular –

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

(3) In this clause –

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

*Division 3 – Transitional***2.9 Signs taken to be determinations**

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

(2) Clause 2.5 does not apply to a sign referred to in sub-clause (1).

PART 3 – PERMITS*Division 1 – Preliminary***3.1 Application of Part**

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

*Division 2 – Applying for a permit***3.2 Application for permit**

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

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

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

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

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

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

3.3 Decision on application for permit

(1) The local government may –

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

- (2) If the local government approves an application for a permit, it is to issue to the applicant, a permit in the form determined by the local government.
- (3) If the local government refuses to approve an application for a permit, it is to give written notice of that refusal to the applicant.

Division 3 – Conditions

3.4 Conditions which may be imposed on a permit

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

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

(2) Without limiting clause 3.3(1)(a) and sub-clause (1) above, 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.

3.5 Imposing conditions under a policy

(1) In this clause –

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

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

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

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

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

3.6 Compliance with and variation of conditions

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

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

*Division 4 – General***3.7 Agreement for building**

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

3.8 Duration of permit

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

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

3.9 Renewal of permit

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

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

3.10 Transfer of permit

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

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

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

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

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

3.11 Production of permit

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

3.12 Cancellation of permit

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

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

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

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

*Division 5 – When a permit is required***3.13 Activities needing a permit**

(1) A person shall not without a permit –

- (a) subject to sub-clause 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) de-pasture any horse, sheep, cattle, goat, camel, ass or mule on local government property.
- (2) The local government may exempt a person from compliance with sub-clause (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 sub-clause (1)(a).

3.14 Permit required to camp outside a facility

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

3.15 Permit required for possession and consumption of liquor

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

Division 6 – Responsibilities of permit holder

3.16 Responsibilities of permit holder

- A holder of a permit shall in respect of local government property to which the permit relates –
- (a) ensure that an 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

4.1 Behaviour which interferes with others

- A person shall not in or on any local government property behave in a manner which –
- (a) is likely to interfere with the enjoyment of a person who might use the property; or
 - (b) interferes with the enjoyment of a person using the property.

4.2 Behaviour detrimental to property

- (1) A person shall not behave in or on local government property in a way which is or might be detrimental to the property.
- (2) In sub-clause (1) –
“detrimental to the property” includes –
- (a) removing any thing from the local government property such as a rock, a plant or a seat provided for the use of any person; and
 - (b) destroying, defacing or damaging any thing on the local government property, such as a plant, a seat provided for the use of any person or a building.

4.3 Taking or injuring any fauna

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

4.4 Intoxicated persons not to enter local government property

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

4.5 No prohibited drugs

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

Division 2 – Signs

4.6 Signs

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

(2) A person shall comply with a sign erected under sub-clause (1).

(3) A condition of use specified on a sign erected under sub-clause (1) is –

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

PART 5 – MATTERS RELATING TO PARTICULAR LOCAL GOVERNMENT PROPERTY

Division 1 – Swimming pool areas

5.1 When entry must be refused

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

- (a) in her or his opinion is –
 - (i) under the age of 7 years and who is unaccompanied by a responsible person over the age of 17 years;
 - (ii) suffering from any contagious, infectious or cutaneous disease or complaint, or is in an unclean condition; or
 - (iii) under the influence of liquor or a prohibited drug; or
- (b) is to be refused admission under and in accordance with a decision of the local government, for breaching any clause of this local law.

Division 2 – Fenced or closed property

5.2 No entry to fenced or closed local government property

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

Division 3 – Toilet blocks and change rooms

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

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

- (a) females, then a person of the male gender 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

6.1 No unauthorised entry to function

(1) A person shall not enter local government property on such days or during such times as the property may be set aside for a function for which a charge for admission is 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 sub-clause (1)(b).

PART 7 - OBJECTIONS AND APPEALS

7.1 Application of Division 1, Part 9 of the Act

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

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

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

PART 8 - MISCELLANEOUS

8.1 Authorised person to be obeyed

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

8.2 Persons may be directed to leave local government property

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

8.3 Disposal of lost property

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

8.4 Liability for damage to local government property

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

- (a) reinstating the property to the state it was in prior to the occurrence of the damage; or
(b) replacing that property.

(2) Unless there is proof to the contrary, a person is to be taken to have damaged local government property within sub-clause (1) where –

- (a) a vehicle caused the damage, the person was the person responsible, at the time the damage occurred, for the control of the vehicle; 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 sub-clause (1), the local government may recover the costs referred to in the notice as a debt due to it.

PART 9 - ENFORCEMENT

Division 1 - Notices given under this local law

9.1 Offence to fail to comply with notice

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

9.2 Local government may undertake requirements of notice

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

Division 2 - Offences and penalties

Subdivision 1 - General

9.3 Offences and general penalty

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

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

Subdivision 2 - Infringement notices and modified penalties

9.4 Prescribed offences

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

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

(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 Form of notices

(1) For the purposes of this local law –

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

9.6 Evidence of a determination

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

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

(3) Sub-clause (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	200
4.4	Under influence of liquor or prohibited drug	100
4.6(2)	Failure to comply with sign on local government property	100
5.2	Unauthorized entry to fenced or closed local government property	100
5.3	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
	All other offences not specified	100

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 this 5th day of October 2000.

The Common Seal of the Shire of Donnybrook/Balingup was affixed in the presence of:

Cr F. S. DRAKE-BROCKMAN, Shire President.
J. R. ATTWOOD, Chief Executive Officer.

LOCAL GOVERNMENT ACT 1995

SHIRE OF DONNYBROOK/BALINGUP

MISCELLANEOUS PROVISIONS LOCAL LAW

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FIRST SCHEDULE

Prescribed Offences

LOCAL GOVERNMENT ACT 1995

SHIRE OF DONNYBROOK/BALINGUP

MISCELLANEOUS PROVISIONS LOCAL LAW

Under the powers of the *Local Government Act 1995* and by all other powers, the Council of the Shire of Donnybrook/Balingup resolved on the 27th September 2000 to make the following local law:

PART 1 - PRELIMINARY**1.1 Citation**

This local law may be cited as the *Shire of Donnybrook/Balingup Miscellaneous Provisions Local Law*.

1.2 Definitions

In this local law unless the context otherwise requires –

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

“**commercial wrecking**” means the activity of wrecking of vehicles or machinery for the purpose of conducting a business by offering vehicles, machinery or parts thereof for purchase, trade, sale or gain;

“**district**” means the district of the Shire of Donnybrook/Balingup;

“**land**” means land in the district and includes houses, buildings, works, and structures, in or upon the land;

“**local government**” means the Shire of Donnybrook/Balingup;

“**nuisance**” means –

- (a) any activity, thing, condition, circumstance or state of affairs caused or contributed to by one person which is injurious or dangerous to the health of another person of normal susceptibility, or which has a disturbing effect on the state of reasonable physical, mental or social well-being of another person;
- (b) any thing a person does or permits or causes to be done which interferes with or is likely to interfere with the enjoyment or safe use by another person of any public place; or
- (c) any thing a person does on public or private land which unreasonably detracts from or interferes with the enjoyment or value of land owned by another person, provided that any thing done in accordance with the law or a legal right or which is consistent with the standard of behaviour in the relevant locality shall not be unreasonable for the purpose of this local law;

“**person**” means any person, company, employer and includes the owner, occupier and licensee;

“**planning approval**” means an approval given under a relevant town planning scheme operating in the district from time to time;

“**public place**” means any place to which the public has access;

“**reserve**” includes parklands, reserves, foreshores and other lands included in the district and set apart for the use and enjoyment of the public and includes parks and other lands acquired for public purposes and vested in or under the care, control and management of the local government;

“**town planning scheme**” means any town planning scheme for the time being applying zoning or classification to land with the district;

“**vehicle**” means any motor vehicle, part of a motor vehicle or machinery in a state of disrepair or in the process of being wrecked, whether licenced or not; and

“**wreck**” includes the dismantling, breaking up, storage and disposal of vehicles and wrecking and wrecked have a corresponding meaning.

1.3 Application

This local law applies throughout the district.

PART 2 - REPEAL OF EXISTING LOCAL LAWS**2.1 Repeal**

The following local laws are repealed –

- (a) *Old Refrigerators and Cabinets* published in the *Government Gazette* on 19 June 1963.

- (b) *Vehicle Wrecking* published in the *Government Gazette* on 22 April 1968.
- (c) *Petrol Pumps* published in the *Government Gazette* on 20 September 1966.
- (d) *Animals and Vehicles* published in the *Government Gazette* on 19 June 1963.
- (e) *Inflammable Liquids* published in *Government Gazette* on 19th February 1964.

PART 3 – OLD REFRIGERATORS AND CABINETS

3.1 Old Refrigerators and Cabinets

A person shall not place in or about any reserve or public place, including a place set aside for the disposal of rubbish and refuse, any refrigerator, ice chest, ice box, furniture, trunk or other thing that has in it a compartment of a capacity of 0.04 cubic metres or more, unless, before so placing it, that person removes from the compartment every door, lid, lock or hinge or otherwise renders every such door or lid incapable of being fastened.

PART 4 – VEHICLE WRECKING

4.1 Commercial Wrecking of Vehicles

An owner or occupier of land in the district must not undertake, permit or suffer the commercial wrecking of vehicles on that land, without first having obtained planning approval from the local government.

4.2 Wrecking and Storage of Vehicles Generally

A person must not –

- (a) store any vehicle, part or body of a vehicle or machinery, in a state of disrepair;
- (b) allow to remain on any land, a vehicle, part or body of a vehicle or machinery, in a state of disrepair;
- (c) wreck, dismantle or break up any vehicle, part or body of a vehicle or machinery; unless –
 - (i) inside a building; or
 - (ii) within an area enclosed by a fence or wall of not less than 2 metres in height and of such a nature as to screen all vehicles, parts or bodies of vehicles or machinery from the street and from adjoining properties; or
- (d) wreck, dismantle or break up a vehicle so as to cause a nuisance.

4.3 Disposal of Vehicles, Parts and Machinery

- (1) A person must not dispose of a vehicle, parts or body of vehicles or machinery except at a place set aside or approved by the local government for the purpose.
- (2) A person shall not destroy any portion of a vehicle or machinery by fire so as to cause a nuisance to occupiers of adjacent land by smoke or odour.

PART 5 – ENFORCEMENT

5.1 Notices may be Given

Where a breach of any provision of this local law has occurred, the local government may give notice in writing –

- (a) advising details of the breach of the local law;
- (b) requiring that the breach is to be remedied within the time specified in the notice; and
- (c) advising that if the requirements of the notice are not complied with within the time specified, the local government may do things specified in the notice and recover from the person, as a debt, the costs incurred in so doing.

5.2 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) An offence against any provisions of this local law is a prescribed offence for the purposes of section 9.16(1) of the Act.
- (3) Any person who commits an offence under this local law shall be liable, upon conviction, to a penalty not exceeding \$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.

5.3 Infringement and Infringement Withdrawal Notices

For the purposes of this local law –

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

5.4 Offence Description and Modified Penalty

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

First Schedule
PRESCRIBED OFFENCES

Clause	Description	Modified Penalty \$
3.1	Failure to remove door, lid, lock, or hinge from refrigerator or cabinet.	\$500
4.1	Undertake or permit commercial wrecking of vehicles without planning approval.	\$100
4.2(a)	Store any vehicle, part or body of vehicle or machinery in state of disrepair.	\$100
4.2(b)	Allow to remain on land any vehicle, part or body of vehicle or machinery in state of disrepair.	\$100
4.2(c)(i)	Wreck, dismantle or break up any vehicle part or body or machinery not in a building.	\$100
4.2(c)(ii)	Wreck, dismantle or break up any vehicle, part or body or machinery not behind fence or screened from street.	\$100
4.2(d)	Wreck, dismantle or break up a vehicle so as to cause a nuisance.	\$100
4.3(1)	Dispose of vehicle, parts or body of vehicle or machinery at place not set aside or approved for the purpose.	\$500
4.3(2)	Destroy portion of vehicle or machinery by fire so as to cause nuisance by smoke or odour.	\$100
5.1	Failure to comply with requirements of notice.	\$100

Dated this 5th day of October 2000.

The Common Seal of the Shire of Donnybrook/Balingup was affixed in the presence of:

Cr F. S. DRAKE-BROCKMAN, Shire President.
J. R. ATTWOOD, Chief Executive Officer.

LOCAL GOVERNMENT ACT 1995

SHIRE OF DONNYBROOK/BALINGUP

PARKING AND PARKING FACILITIES LOCAL LAW

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FORM 3

FORM 4

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LOCAL GOVERNMENT ACT 1995

SHIRE OF DONNYBROOK/BALINGUP

PARKING AND PARKING FACILITIES LOCAL LAW

Under the powers conferred by the *Local Government Act 1995* and under all other powers, the Council of the Shire of Donnybrook/Balingup resolved to make the following Local Law on the 28th day of June 2000

PART 1 – DEFINITION AND OPERATION**1.1 Commencement**

This Local Law will come into operation on the fourteenth day after the day on which it is published in the *Government Gazette*.

1.2 Repeal

The Shire of Donnybrook/Balingup Local Law – Parking published in the *Government Gazette* on 20th August 1954 is repealed.

1.3 Interpretation

(1) In this Local Law unless the context otherwise requires –

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

“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;

“authorized vehicle” means a vehicle authorized by the local government, Chief Executive Officer, Authorized Person or by any written law to park on a thoroughfare or parking facility;

“bicycle” means any wheeled vehicle that is designed to be propelled solely by human power;

“bus” means an omnibus as defined by the Road Traffic Act;

“bus embayment” has the meaning given to it in the Code;

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

“carriageway” means a portion of thoroughfare that is improved, designed or ordinarily used for vehicles and includes the shoulders and areas including embayments at the side or centre of the carriageway, used for the parking of vehicles; and where a thoroughfare has two or more of those portions divided by a median strip, the expression means each of those portions, separately;

“centre” in relation to a carriageway, means a line or a series of lines, marks or other indications placed at, or near, the middle of the carriageway or, in the absence of any such lines, marks or other indications, the middle of the main travelled portion of the carriageway;

“children’s crossing” has the meaning given to it in the Code;

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

“Code” means the *Road Traffic Code 1975*;

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

“district” means the district of the local government;

“driver” means any person driving or in control of a vehicle;

“emergency vehicle” has the meaning given to it in the Code;

“footpath” includes every footpath, pedestrian access way or other place –

(a) intended for the use of pedestrians only, or in the case of a dual use path, for the use of pedestrians and bicyclists only; or

(b) habitually used by pedestrians and not by vehicles or, in the case of a dual use path, by pedestrians and bicyclists and not by vehicles other than bicycles;

“Loading Zone” means a parking stall which is set aside for use by commercial vehicles if there is a sign referable to that stall marked “Loading Zone”;

- “local government” means the Shire of Donnybrook/Balingup;
- “median strip” has the meaning given to it in the Code;
- “motorcycle” means a motor vehicle that has two wheels or, where a sidecar is attached, three wheels;
- “motor vehicle” means a self-propelled vehicle that is not operated on rails; and the expression includes a trailer, semi-trailer or caravan while attached to a motor vehicle, but does not include a power assisted pedal cycle;
- “no parking area” means a portion of a carriageway that lie –
- (a) between two consecutive signs inscribed with the words “No Parking” or with an equivalent symbol depicting this purpose and each with an arrow pointing generally towards the other of them; or
 - (b) between a sign inscribed with the words “No Parking” or with an equivalent symbol depicting this purpose, and the end of the carriageway or an area in which parking is prohibited and that lies in the general direction indicated by an arrow inscribed on the sign;
- “occupier” has the meaning given to it in the Act;
- “owner” where used in relation to a vehicle, means a person who is the registered holder of the requisite vehicle licence under the Road Traffic Act in respect of that vehicle, or if the vehicle is not licensed under that Act, the person who owns the vehicle or is entitled to its possession; and where used in relation to land has the meaning given to it by the Act;
- “park”, in relation to a vehicle, means to permit a vehicle, whether occupied or not by any person, to remain stationary for any period of time except for the purpose of –
- (a) avoiding conflict with other traffic; or
 - (b) complying with the provisions of any law when the vehicle is being driven;
- “parking area” means a portion of a carriageway –
- (a) between two consecutive signs inscribed with the word “Parking” or with an equivalent symbol depicting this purpose and each with an arrow pointing generally towards the other of them; or
 - (b) extending from a sign inscribed with the word “Parking” or with an equivalent symbol depicting this purpose in the general direction indicated by the arrow inscribed on the sign, to any other sign inscribed with the words “No Parking” or with an equivalent symbol depicting this purpose, or to the end of the carriageway or an area in which the parking of vehicles is prohibited,
- and is on that side of the carriageway of the thoroughfare nearest the sign;
- “parking facilities” includes land, buildings, shelters, parking stalls and other facilities open to the public generally for the parking of vehicles, and signs, notices and facilities used in connection with the parking of vehicles;
- “parking region” means the area described in the First Schedule;
- “parking stall” means a section or part of a thoroughfare or of a parking station which is marked or defined by painted lines, metallic studs, coloured bricks or pavers or similar devices for the purpose of indicating where a vehicle may be parked;
- “parking station” means any land, or structure provided for the purpose of accommodating vehicles;
- “pedestrian crossing” has the meaning given to it in the Code;
- “public place” means any place to which the public has access whether or not that place is on private property;
- “reserve” means any land –
- (a) which belongs to the local government;
 - (b) of which the local government is the management body under the *Land Administration Act 1997*; or
 - (c) which is an “otherwise unvested facility” within section 3.53 of the Act;
- “Road Traffic Act” means the *Road Traffic Act 1974*;
- “Schedule” means a Schedule to this Local Law;
- “sign” includes a traffic sign, inscription, mark, structure or device approved by the local government on which may be shown words, numbers, expressions or symbols, and which is placed on or near a thoroughfare or within a parking station or reserve for the purpose of prohibiting, regulating, guiding, directing or restricting the parking of vehicles;
- “special purpose vehicle” means a public utility service truck, a tow truck, a vehicle being used for official duties by a member of the Police Service, a motor breakdown service vehicle or a vehicle being used by a government authority or a local government in connection with its functions, but does not include an emergency vehicle;
- “symbol” includes any symbol specified by Australian Standard 1742.11-1989 and any symbol specified from time to time by Standards Australia for use in the regulation of parking and any reference to the wording of any sign in this Local Law shall be also deemed to include a reference to the corresponding symbol;
- “taxi” has the same meaning as “taxi-car” in section 47Z of the *Transport Co-ordination Act 1966*;
- “thoroughfare” has the meaning given to it in the Act;
- “trailer” means any vehicle without motive power of its own, designed for attachment to a motor vehicle for the purpose of being towed, but does not include the rear portion of an articulated vehicle, or a side car;

“vehicle” includes every conveyance not being a train, vessel or aircraft, and every object capable of being propelled or drawn on wheels by any means; and

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

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

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

1.4 Application and pre-existing signs

(1) Subject to subclause (2), this Local Law applies to the parking region.

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

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

(4) Where a parking facility or a parking station is identified in the Fourth Schedule, then the facility or station shall be deemed to be a parking station to which this Local law applies and it shall not be necessary to prove that it is the subject of an agreement referred to in subclause (2).

(5) A sign that –

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

(b) relates to the parking of vehicles within the parking region,

shall be deemed for the purposes of this Local Law to have been erected by the local government under the authority of this Local Law.

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

1.5 Classes of vehicles

For the purpose of this Local Law, vehicles are divided into classes as follows –

(a) buses;

(b) commercial vehicles;

(c) motorcycles and bicycles;

(d) taxis; and

(e) all other vehicles.

1.6 Part of thoroughfare to which sign applies

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

(a) lies beyond the sign;

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

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

PART 2 - PARKING STALLS AND PARKING STATIONS

2.1 Determination of parking stalls and parking stations

The local government may by resolution constitute, determine and vary and also indicate by signs –

(a) parking stalls;

(b) parking stations;

(c) permitted time and conditions of parking in parking stalls and parking stations which may vary with the locality;

(d) permitted classes of vehicles which may park in parking stalls and parking stations;

(e) permitted classes of persons who may park in specified parking stalls or parking stations; and

(f) the manner of parking in parking stalls and parking stations.

2.2 Vehicles to be within parking stall on thoroughfare

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

(a) parallel to and as close to the kerb as is practicable;

(b) wholly within the stall; and

(c) headed in the direction of the movement of traffic on the side of the thoroughfare in which the stall is situated.

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

2.3 Vehicles to be within parking stall in parking station

Unless otherwise directed by an Authorized Person, a person shall not park a vehicle in a parking station otherwise than wholly within a parking stall.

2.4 Parking prohibitions and restrictions

(1) A person shall not –

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

(2) No person shall park any bicycle –

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

PART 3 – PARKING GENERALLY

3.1 Prohibition and regulation of parking by signs

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

3.2 Restrictions on parking in particular areas

(1) A person shall not park a vehicle in a thoroughfare or part of a thoroughfare, or part of a parking station –

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

(2) A person shall not park a vehicle –

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

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

(4) A person shall not, without the prior permission of the local government, the CEO, or an Authorized Person, park a vehicle in an area designated by a sign stating "Authorized Vehicles Only".

(5) In a Loading Zone, a person shall not –

- (a) park a vehicle other than a commercial vehicle which is being loaded or unloaded with goods; or
- (b) park a commercial vehicle which is being loaded or unloaded with goods for more than 30 minutes.

(6) In paragraph (b) of subclause (5) "goods" means an article or collection of articles weighing at least 13.6kg and of which the cubic measurement is not less than 0.17m³.

3.3 Parking vehicle on a carriageway

A person parking a vehicle on a carriageway shall park it –

- (a) in the case of a two-way carriageway, so that it is as near as practicable to and parallel with, the left boundary of the carriageway and headed in the direction of the movement of traffic on the side of the thoroughfare on which the vehicle is parked;
- (b) in the case of a one-way carriageway, so that it is as near as practicable to and parallel with either boundary of the carriageway and headed in the direction of the movement of traffic on the side of the thoroughfare on which the vehicle is parked;
- (c) so that at least 3 metres of the width of the carriageway lies between the vehicle and the farther boundary of the carriageway, or between the vehicle and a vehicle parked on the farther side of the carriageway;
- (d) so that it is not less than 1.2 metres from any other vehicle, except a motorcycle without a trailer, or a bicycle parked in accordance with this Local Law;
- (e) so that it does not obstruct any vehicle on the carriageway; and
- (f) so that it is entirely within the confines of any parking stall marked on the carriageway.

3.4 Vehicle to be wholly within parking area

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

3.5 When parallel and right-angled parking apply

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

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

3.6 When angle parking applies

(1) This clause does not apply to –

- (a) a passenger vehicle or a commercial vehicle with a mass including any load, of over three tonnes; or
- (b) a person parking either a motor cycle without a trailer or a bicycle.

(2) Where a sign associated with a parking area is inscribed with the words "angle parking" (or with an equivalent symbol depicting this purpose), a person parking a vehicle in the area shall park the vehicle at an angle of approximately 45 degrees to the centre of the carriageway unless otherwise indicated by the inscription on the parking sign or by marks on the carriageway.

3.7 General prohibitions on parking

(1) (a) This clause does not apply to a vehicle parked in a parking stall nor to a bicycle in a bicycle rack.

- (b) Paragraphs (c), (e) and (g) of subclause (2) do not apply to a vehicle which parks in a bus embayment.

(2) A person shall not park a vehicle so that any portion of the vehicle is –

- (a) between any other stationary vehicles and the centre of the carriageway;
- (b) on or adjacent to a median strip;
- (c) obstructing a right of way, private drive or carriageway or so close as to deny a vehicle reasonable access to or egress from the right of way, private drive or carriageway;
- (d) alongside or opposite any excavation, works, hoarding, scaffolding or obstruction on the carriageway, if the vehicle would obstruct traffic;
- (e) on or within 9 metres of any portion of a carriageway bounded by a traffic island;
- (f) on any footpath or pedestrian crossing;
- (g) on a bridge or other elevated structure or within a tunnel or underpass;
- (h) between the boundaries of a carriageway and any double longitudinal line consisting of two continuous lines or between a double longitudinal line consisting of a continuous line and a broken or dotted line and the boundary of a carriageway nearer to the continuous line, unless there is a distance of at least 3 metres clear between the vehicle and the double longitudinal line;
- (i) on an intersection, except adjacent to a carriageway boundary that is not broken by an intersecting carriageway;
- (j) within 1 metre of a fire hydrant or fire plug, or of any sign or mark indicating the existence of a fire hydrant or fire plug;
- (k) within 3 metres of a public letter pillar box, unless the vehicle is being used for the purposes of collecting postal articles from the pillar box; or
- (l) within 6 metres of the nearer property line of any thoroughfare intersecting the thoroughfare on the side on which the vehicle is parked.

(3) A person shall not park a vehicle so that any portion of the vehicle is within 9 metres of the departure side of –

- (a) a sign inscribed with the words "Bus Stop" or "Hail Bus Here" (or with equivalent symbols depicting these purposes) unless the vehicle is a bus stopped to take up or set down passengers;
- (b) a children's crossing established on a two-way carriageway; or
- (c) the nearest rail of a railway level crossing.

(4) A person shall not park a vehicle so that any portion of the vehicle is within 18 metres of the approach side of –

- (a) a sign inscribed with the words "Bus Stop" or "Hail Bus Here" (or with equivalent symbols depicting these purposes) unless the vehicle is a bus stopped to take up or set down passengers;
- (b) a pedestrian crossing or children's crossing; or
- (c) the nearest rail of a railway level crossing.

3.8 Parking on verges

(1) A person shall not –

- (a) park a vehicle;
- (b) park a commercial vehicle or bus, or a trailer or caravan unattached to a motor vehicle; or
- (c) park a vehicle during any period when the parking of vehicles on that verge is prohibited by a sign adjacent and referable to that verge,

so that any portion of it is on a verge.

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

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

3.9 Limitation on parking of vehicles with tare in excess of 2,000 kgs on carriageway

A person shall not park a vehicle having a tare in excess of 2,000 kgs on a carriageway for more than two hours consecutively.

3.10 Limitation on parking of over length vehicles on carriageway

A person shall not park a vehicle or any combination of vehicles that together with anything in or on that vehicle is more than 8 metres in length, on a carriageway for more than two hours consecutively.

3.11 Authorized person may order vehicle on thoroughfare to be moved

The driver of a vehicle shall not park that vehicle on any part of a thoroughfare in contravention of this Local Law after an Authorized Person has directed the driver to move it.

3.12 Authorized person may mark tyres

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

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

3.13 No movement of vehicles to avoid time limitation

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

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

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

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

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

3.15 Parking on private land

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

- (a) which belongs to the local government;
- (b) of which the local government is the management body under the *Land Administration Act 1997*;
- (c) which is an “otherwise unvested facility” within section 3.53 of the Act;
- (d) which is the subject of an agreement referred to in clause 1.4 (2); or
- (e) which is identified in the Fourth Schedule.

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

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

3.16 Parking on reserves

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

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

(1) Where by a sign the parking of vehicles is permitted for a limited time on a portion of a thoroughfare or parking facility, the local government, the CEO or an Authorized Person may, subject to the Code, permit a person to park a vehicle in that portion of the thoroughfare or parking facility for longer than the permitted time in order that the person may carry out urgent, essential or official duties.

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

PART 4 - MISCELLANEOUS

4.1 Removal of notices on vehicle

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

4.2 Unauthorized signs and defacing of signs

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

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

4.3 Signs must be complied with

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

4.4 General provisions about signs

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

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

4.5 Special purpose and emergency vehicles

Notwithstanding anything to the contrary in this Local Law, the driver of –

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

4.6 Vehicles not to obstruct a public place

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

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

PART 5 - PENALTIES

5.1 Offences and penalties

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

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

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

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

5.2 Averment on complaint as to clause 1.4 (2) agreement

An averment on a complaint that this Local Law applies to a parking facility or a parking station under an agreement referred to in clause 1.4 (2), shall be sufficient proof that this Local Law applies to that facility or station, unless there is proof to the contrary that such an agreement does not exist.

5.3 Form of notices

For the purposes of this Local Law –

- (a) the form of the notice referred to in section 9.13 of the Act is that of Form 1 in the Third Schedule;
- (b) the form of the infringement notice referred to in section 9.17 of the Act is that of Form 2 in the Third Schedule;
- (c) the form of the infringement notice referred to in section 9.17 of the Act which incorporates the notice referred to in section 9.13 of the Act, is that of Form 3 in the Third Schedule; and
- (d) the form of the notice referred to in section 9.20 of the Act is that of Form 4 in the Third Schedule.

First Schedule
PARKING REGION

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

- (a) the approach and departure prohibition areas of all existing and future traffic control signal installations as determined by the Commissioner of Main Roads;
- (b) prohibition areas applicable to all existing and future bridges and subways as determined by the Commissioner of Main Roads; and
- (c) any thoroughfare which comes under the control of the Commissioner of Main Roads unless the control of parking and parking facilities on that thoroughfare has been delegated by the Commissioner of Main Roads to the local government.

Second Schedule
Parking and Parking Facilities Local Law
PRESCRIBED OFFENCES

Item No.	Clause No.	Nature of Offence	Modified Penalty \$
1	2.4 (1) (a)	Causing obstruction in parking station	45
2	2.4 (1) (b)	Parking contrary to sign in parking station	45
3	2.4 (1) (c)	Parking contrary to directions of Authorized Person	45
4	3.2 (1) (a)	Parking wrong class of vehicle	35
5	3.2 (1) (b)	Parking by persons of a different class	40
6	3.2 (1) (c)	Parking during prohibited period	40
7	3.2 (2) (a)	Parking in no parking area	45
8	3.2 (2) (b)	Parking contrary to signs or limitations	35
9	3.2 (2) (c)	Parking vehicle in motor cycle only area	35
10	3.2(3)	Parking motor cycle in stall not marked "M/C"	35
11	3.2 (5) (a)	Parking in Loading Zone	40
12	3.3 (a)	Fail to park on the left of two-way carriageway	35
13	3.3 (b)	Fail to park on boundary of one-way carriageway	35
14	3.3 (a)+(b)	Parking against the flow of traffic	40
15	3.3 (c)	Parking when distance from farther boundary less than 3 metres	40
16	3.3 (e)	Causing obstruction	45
17	3.7 (2) (a)	Double parking	40
18	3.7 (2) (c)	Denying access to private drive or right of way	40
19	3.7 (2) (d)	Parking beside excavation or obstruction so as to obstruct traffic ...	45
20	3.7 (2) (e)	Parking within 9 metres of traffic island	40
21	3.7 (2) (f)	Parking on footpath/pedestrian crossing	45
22	3.7 (2) (g)	Parking on bridge or in tunnel	40
23	3.7 (2) (i)	Parking on intersection	40
24	3.7 (2) (l)	Parking within 6 metres of intersection	40
25	3.7 (3) (a)	Parking vehicle within 9 metres of departure side of bus stop	45
26	3.7 (4) (a)	Parking vehicle within 18 metres of approach side of bus stop	45
27	3.7 (4) (b)	Parking vehicle within 18 metres of approach side of pedestrian/ children's crossing	45
28	3.8 (1) (b)	Parking commercial vehicle, bus or caravan on verge	35
29	3.8 (1) (c)	Parking on verge contrary to sign	35
30	3.9	Parking vehicle with tare of over 2000kgs for over 2 hours	50
31	3.10	Parking over length vehicle in excess of 2 hours	50
32	3.11	Parking contrary to direction of Authorized Person	45
33	3.14 (c)	Parking a trailer/caravan on a thoroughfare	35
34	3.15 (2)	Parking on land that is not a parking facility without consent	50
35	3.15 (3)	Parking on land not in accordance with consent	35
36	3.16	Driving or parking on reserve	35
37	4.6 (1)	Leaving vehicle so as to obstruct a public place	45
38		All other offences not specified	30

Third Schedule

LOCAL GOVERNMENT ACT 1995
SHIRE OF DONNYBROOK/BALINGUP

Form 1

Parking and Parking Facilities Local Law

NOTICE TO OWNER OF VEHICLE INVOLVED IN OFFENCE

Date / /

To: (1)

of: (2)

It is alleged that on / / at (3)

at (4) your vehicle:

make: ;

model: ;

registration:,

was involved in the commission of the following offence -

.....

.....

contrary to clause of the **Parking and Parking Facilities Local Law**.

You are required under section 9.13 of the *Local Government Act 1995* to identify the person who was the driver or person in charge of the vehicle at the time when the offence is alleged to have been committed.

If you do not prove otherwise, you will be deemed to have committed the offence unless:

(a) within 28 days after being served with this notice;

(i) you inform the Chief Executive Officer or another authorized officer of the local government as to the identity and address of the person who was the driver or person in charge of the vehicle at the time the offence is alleged to have been committed; and

(ii) you satisfy the Chief Executive Officer that the vehicle had been stolen, or was being unlawfully used, at the time the offence is alleged to have been committed;

or

(b) you were given an infringement notice for the alleged offence and the modified penalty specified in it is paid within 28 days after the notice was given or such further time as is allowed.

(5)

(6)

Insert:

- (1) Name of owner or "the owner"
- (2) Address of owner (not required if owner not named)
- (3) Time of alleged offence
- (4) Location of alleged offence
- (5) Signature of authorized person
- (6) Name and title of authorized person giving notice

Third Schedule

LOCAL GOVERNMENT ACT 1995
SHIRE OF DONNYBROOK/BALINGUP

Form 2

PARKING AND PARKING FACILITIES LOCAL LAW

INFRINGEMENT NOTICE

Serial No

Date / /

To: (1)

of: (2)

It is alleged that on / / at (3)

at (4)

in respect of vehicle:

make: ;

model: ;
registration: ,
you committed the following offence -

.....
.....
.....

contrary to clause of the **Parking and Parking Facilities Local Law.**

The modified penalty for the offence is \$

If you do not wish to have a complaint of the alleged offence heard and determined by a court, the amount of the modified penalty may be paid to an authorized person at (5) within a period of 28 days after the giving of this notice.

If you take no action this infringement notice may be registered with the Fines Enforcement Registry after which your driver's licence or any vehicle licence held by you may be suspended. If the matter is registered with the Registry additional costs will also be payable.

If the above address is not your current address, or if you change your address, it is important that you advise us immediately. Failure to do so may result in your driver's licence or any vehicle licence you hold being suspended without your knowledge.

(6)

(7)

Insert:

- (1) Name of alleged offender or "the owner"
- (2) Address of alleged offender
- (3) Time of alleged offence
- (4) Location of alleged offence
- (5) Place where modified penalty may be paid
- (6) Signature of authorized person
- (7) Name and title of authorized person giving notice

Third Schedule

LOCAL GOVERNMENT ACT 1995

SHIRE OF DONNYBROOK/BALINGUP

FORM 3

PARKING AND PARKING FACILITIES LOCAL LAW

INFRINGEMENT NOTICE

Serial No

Date / /

To: (1)

of: (2)

It is alleged that on / / at (3)

at (4)

in respect of vehicle:

make: ;

model: ;

registration: ,

you committed the following offence -
.....
.....
.....

contrary to clause of the **Parking and Parking Facilities Local Law.**

The modified penalty for the offence is \$

If you do not wish to have a complaint of the alleged offence heard and determined by a court, the amount of the modified penalty may be paid to an authorized person at (5) within a period of 28 days after the giving of this notice.

Unless within 28 days after being served with this notice -

- (a) you pay the modified penalty; or
- (b) you:
 - (i) inform the Chief Executive Officer or another authorized officer of the local government as to the identity and address of the person who was the driver or person in charge of the above vehicle at the time the offence is alleged to have been committed; or

(ii) satisfy the Chief Executive Officer that the above vehicle had been stolen or was being unlawfully used at the time the offence is alleged to have been committed,

you will, in the absence of proof to the contrary, be deemed to have committed the above offence and court proceedings may be instituted against you.

If you take no action this infringement notice may be registered with the Fines Enforcement Registry after which your driver's licence or any vehicle licence held by you may be suspended. If the matter is registered with the Registry additional costs will also be payable.

If the above address is not your current address, or if you change your address, it is important that you advise us immediately. Failure to do so may result in your driver's licence or any vehicle licence you hold being suspended without your knowledge.

(6)

(7)

Insert:

- (1) Name of owner or "the owner"
- (2) Address of owner (not required if owner not named)
- (3) Time of alleged offence
- (4) Location of alleged offence
- (5) Place where modified penalty may be paid
- (6) Signature of authorized person
- (7) Name and title of authorized person giving notice

Third Schedule

LOCAL GOVERNMENT ACT 1995

SHIRE OF DONNYBROOK/BALINGUP

Form 4

PARKING AND PARKING FACILITIES LOCAL LAW

WITHDRAWAL OF INFRINGEMENT NOTICE

Serial No

Date / /

To: (1)

of: (2)

Infringement Notice No. dated / /

in respect of vehicle:

make:

model:

registration:

for the alleged offence of

.....

.....

.....

has been withdrawn.

The modified penalty of \$

* has been paid and a refund is enclosed.

* has not been paid and should not be paid.

* *delete as appropriate.*

(3)

(4)

Insert:

- (1) Name of alleged offender to whom infringement notice was given or "the owner".
- (2) Address of alleged offender.
- (3) Signature of authorized person
- (4) Name and title of authorized person giving notice

Fourth Schedule
PARKING AND PARKING FACILITIES LOCAL LAW
DEEMED PARKING STATIONS

Dated this 5th day of October 2000.

The Common Seal of the Shire of Donnybrook/Balingup was affixed in the presence of:

Cr F. S. DRAKE-BROCKMAN, Shire President.
J. R. ATTWOOD, Chief Executive Officer.

BUSH FIRES ACT 1954

SHIRE OF DONNYBROOK/BALINGUP

BUSH FIRE BRIGADES LOCAL LAW

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BUSH FIRES ACT 1954

SHIRE OF DONNYBROOK/BALINGUP

BUSH FIRE BRIGADES LOCAL LAW

Under the powers conferred by the *Bush Fires Act 1954* and under all other powers enabling it, the Council of the Shire of Donnybrook/Balingup resolved on 27th September 2000 to make the following local law.

PART 1 - PRELIMINARY**1.1 Citation**

This local law may be cited as the *Shire of Donnybrook/Balingup Bush Fire Brigades Local Law*.

1.2 Definitions

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

“**Act**” means the *Bush Fires Act 1954*;

“**Authority**” means the Fire and Emergency Services Authority of Western Australia established by section 4 of the Fire and Emergency Services Authority of Western Australia Act 1998;

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

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

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

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

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

“**CEO**” means the chief executive officer of the Shire of Donnybrook/Balingup;

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

“**fire fighting member**” is defined in clause 4.2;

“**local government**” means the Shire of Donnybrook/Balingup;

“**Regulations**” means Regulations made under the Act; and

“**Rules**” means the Rules Governing the Operation of Bush Fire Brigades set out in the First Schedule as varied from time to time under clause 2.5 .

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

- (a) a Captain;
- (b) a First Lieutenant;
- (c) a Second Lieutenant;
- (d) any additional Lieutenants;
- (e) an Equipment Officer;
- (f) a Secretary;
- (g) a Treasurer; or
- (h) a Secretary / Treasurer combined,

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

1.3 Repeal

The following Local Laws are repealed;

Shire of Donnybrook/Balingup relating to Bush Fire Brigades published in the *Government Gazette* on 3rd February 1972.

1.4 Application

This local law applies throughout the district.

PART 2 – ESTABLISHMENT OF BUSH FIRE BRIGADES*Division 1 – Establishment of a bush fire brigade***2.1 Establishment of a bush fire brigade**

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

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

2.2 Name and officers of bush fire brigade

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

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

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

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

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

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

*Division 2 – Command at a fire***2.3 Ranks within the bush fire brigade**

(1) Where under the Act and Bush Fire Operating Procedures members of the bush fire brigade have command of a fire, the Bush Fire Control Officer has full control over other persons fighting the fire, and is to issue instructions as to the methods to be adopted by the firefighters. In the absence of the Bush Fire Control Officer, the Captain, and in the absence of the Captain, the first Lieutenant, the second Lieutenant and so on, in the order of seniority determined, is to exercise all the powers and duties of the Bush Fire Control Officer.

(2) Where more than one bushfire control officer is in attendance at a fire which the members of the bush fire brigade have command of under the Act and the Bush Fire Operating Procedures, the bushfire control officer in whose bush fire brigade area the fire is situated has full control over the other persons fighting the fire and is to issue instructions as to the methods to be adopted by the fire fighters. By mutual agreement, command of a fire may be transferred.

*Division 3 – Application of Rules to a bush fire brigade***2.4 Rules**

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

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

2.5 Variation of Rules

(1) The local government may vary the Rules in their application to all bush fire brigades or in respect of a particular bush fire brigade.

(2) The Rules, as varied, have effect on and from the date of a decision under subclause (1).

(3) The local government is to notify a bush fire brigade of any variation to the Rules as soon as practicable after making a decision under subclause (1).

*Division 4 – Transitional***2.6 Existing Bush Fire Brigades**

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

- (a) the bush fire brigade is to be taken to be a bush fire brigade established under and in accordance with this local law;

- (b) the provisions of this local law apply to the bush fire brigade save for clause 2.2; and
 - (c) any rules governing the operation of the bush fire brigade are to be taken to have been repealed and substituted with the Rules.
- (2) In this clause –
“**commencement day**” means the day on which this local law comes into operation.

Division 5 – Dissolution of bush fire brigade

2.7 Dissolution of bush fire brigade

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

2.8 New arrangement after dissolution

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

PART 3 – ORGANISATION AND MAINTENANCE OF BUSH FIRE BRIGADES

Division 1 – Local government responsibility

3.1 Local government responsible for structure

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

3.2 Brigades to be supplied with Act

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

Division 2 – Chief Bush Fire Control Officer

3.3 Managerial role of Chief Bush Fire Control Officer

Subject to any directions by the local government the Chief Bush Fire Control Officer has primary managerial responsibility for the organisation and maintenance of bush fire brigades.

3.4 Chief Bush Fire Control Officer may attend meetings

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

3.5 Duties of Chief Bush Fire Control Officer

The duties of the Chief Bush Fire Control Officer include –

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

Division 3 – Annual general meetings of bush fire brigades

3.6 Holding of annual general meeting

A bush fire brigade is to hold its annual general meeting during the month of March each year.

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

At the annual general meeting of a bush fire brigade, one brigade member is to be nominated to the Bush Fire Advisory Committee to serve as the bush fire control officer for the brigade area until the next general meeting.

3.8 Nomination of bush fire control officer to the local government

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

3.9 Minutes to be tabled before the Bush Fire Advisory Committee

(1) The Secretary is to forward a copy of the minutes of the annual general meeting of a bush fire brigade to the Local Government within one month after the meeting.

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

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

3.11 Advisory Committee to nominate bush fire control officers

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

3.12 Local government to have regard to nominees

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

3.13 Advisory Committee to consider bush fire brigade motions

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

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

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

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

4.2 Fire fighting members

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

4.3 Associate members

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

4.4 Cadet members

Cadet members are –

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

4.5 Honorary life member

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

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

4.6 Notification of membership

The Local Government to be notified of brigade membership details on an annual basis.

PART 5 – APPOINTMENT DISMISSAL AND MANAGEMENT OF MEMBERS**5.1 Rules to govern**

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

PART 6 – EQUIPMENT OF BUSH FIRES BRIGADES**6.1 Policies of local government**

The local government may make policies under which it –

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

6.2 Equipment in brigade area

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

6.3 Funding from local government budget

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

6.4 Consideration in the local government budget

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

First Schedule**RULES GOVERNING THE OPERATION OF BUSH FIRE BRIGADES****PART 1 – PRELIMINARY****1.1 Interpretation**

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

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

“**absolute majority**” means a majority of more than 50% of the number of –

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

“**Committee**” means the Committee of the bush fire brigade;

“**local law**” means the Shire of Donnybrook/Balingup Bush Fire Brigades Local Law; and

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

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

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

PART 2 – OBJECTS AND MEMBERSHIP OF BUSH FIRE BRIGADE**2.1 Objects of bush fire brigade**

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

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

2.1 Committee to determine applications

Applications for membership are to be determined by the Committee.

2.2 Conditions of membership

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

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

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

2.3 Applications for membership

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

- (a) an application for firefighting membership is to be accompanied by a completed form in the form of that in Appendix I.

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

2.4 Decision on application for membership

(1) The Committee may –

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

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

2.5 FESA to be notified of registrations

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

2.6 Termination of membership

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

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

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

2.7 Suspension of membership

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

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

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

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

2.8 Existing liabilities to continue

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

2.9 Member has right of defence

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

2.10 Objection Rights

A person whose –

- (a) application for membership is refused under clause 2.5(1)(b);
- (b) membership is terminated under clause 2.7(1)(c), clause 2.7(1)(d) or clause 2.8(3)(b); or
- (c) membership is suspended under clause 2.8(1) or clause 2.8(3)(a),

has the right of objection to the local government which may dispose of the objection by –

- (a) dismissing the objection;
- (b) varying the decision objected to; or
- (c) revoking the decision objected to, with or without –
 - (i) substituting for it another decision; or
 - (ii) referring the matter, with or without directions, for another decision by the Committee.

PART 3 – FUNCTIONS OF BRIGADE OFFICERS

3.1 Chain of command during fire fighting activities

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

3.2 Duties of Captain

(1) Subject to subclause (2) below, the Captain is to preside at all meetings, if a President has not been elected.

(2) In the absence of the Captain, the meeting may elect another person to preside at the meeting.

3.3 Secretary

(1) The Secretary is to –

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

(2) Where a bush fire brigade attends an incident on more than one day, the incident report form is to be completed and forwarded under subclause (1)(e) within 14 days after the last day of attendance.

3.4 Treasurer

The Treasurer is to –

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

3.5 Equipment Officer

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

3.6 Storage of equipment

(1) The Equipment Officer may store all of the equipment of the bush fire brigade at a place approved by the Captain (the "station").

(2) If there is to be more than one station in the brigade area, the Equipment Officer is to appoint in respect of each station a person who is responsible for the custody and maintenance in good order and condition of all equipment and appliances at the station, subject to any direction of the Equipment Officer.

3.7 Equipment Officer to report

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

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

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

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

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

4.2 Constitution of Committee

- (1) The Committee of the bush fire brigade is to consist of the brigade officers being the Captain, Secretary, Treasurer, Equipment Officer and the Lieutenants of the bush fire brigade.
- (2) The brigade officers are to –
 - (a) be elected at the annual general meeting of the bush fire brigade;
 - (b) hold office until the next annual general meeting; and
 - (c) be eligible for re-election at the next annual general meeting.
- (3) Any brigade officer may be removed from office by an absolute majority decision of the brigade members present in person or by proxy at a special meeting called for such a purpose.
- (4) The Committee may appoint a brigade member to fill a vacancy in any office arising from a resolution under subclause (3) or which has arisen for any other reason.

PART 5 – MEETINGS OF BUSH FIRE BRIGADE

5.1 Ordinary meetings

- (1) Ordinary meetings may be called at any time by the Secretary by giving at least 7 days notice to all brigade members and to the Chief Fire Control Officer, for the purpose of –
 - (a) organising and checking equipment;
 - (b) requisitioning new or replacement equipment;
 - (c) organising field excursions, training sessions, hazard reduction programs, and the preparation of fire-breaks;
 - (d) establishing new procedures in respect of any of the normal brigade activities; and
 - (e) dealing with any general business.
- (2) In a notice given under subclause (1), the Secretary is to specify the business which is to be conducted at the meeting.
- (3) Business may be conducted at an ordinary meeting of the bush fire brigade notwithstanding that it was not specified in a notice given under subclause (1) in relation to that meeting.

5.2 Special meetings

- (1) The Secretary is to call a special meeting when 5 or more brigade members request one in writing.
- (2) At least 2 days notice of a special meeting is to be given by the Secretary, to all brigade members and to the Chief Bush Fire Control Officer.
- (3) In a notice given under subclause (2) the Secretary is to specify the business which is to be conducted at the meeting.
- (4) No business is to be conducted at a special meeting beyond that specified in a notice given under subclause (2) in relation to that meeting.

5.3 Annual general meeting

- (1) At least 7 days notice of the annual general meeting is to be given by the Secretary to all brigade members and to the Chief Bush Fire Control Officer.
- (2) At the annual general meeting the bush fire brigade is to –
 - (a) elect the brigade officers from among the brigade members;
 - (b) consider the Captain's report on the year's activities;
 - (c) adopt the annual financial statements;
 - (d) appoint an Auditor for the ensuing financial year in accordance with clause 5.6; and
 - (e) deal with any general business.
- (3) In a notice given under subclause (1), the Secretary is to specify the business which is to be conducted at the meeting.
- (4) Business may be conducted at an annual general meeting notwithstanding that it was not specified in a notice given under subclause (1) in relation to that meeting.

5.4 Quorum

- (1) The quorum for a meeting of the bush fire brigade is at least 50% of the number of offices (whether vacant or not) of member of the bush fire brigade.
- (2) No business is to be transacted at a meeting of the bush fire brigade unless a quorum of brigade members is present in person or by proxy.

5.5 Voting

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

5.6 Auditor

- (1) At the annual general meeting a person, not being a brigade member, is to be appointed as the Auditor of the bush fire brigade for the ensuing financial year.
- (2) The Auditor is to audit the accounts of the bush fire brigade not less than 7 days before the annual general meeting and is to certify to their correctness or otherwise and present a report at the annual general meeting.

PART 6 – MEETINGS OF COMMITTEE

6.1 Meetings Of Committee

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

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

6.2 Quorum

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

6.3 Voting

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

PART 7 – GENERAL ADMINISTRATION MATTERS

7.1 Fees

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

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

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

7.2 Funds

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

7.3 Financial year

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

7.4 Banking

(1) The funds of the bush fire brigade are to be placed in a bank account and are to be drawn on only by cheques signed jointly by any 2 of the President, Captain, Secretary or Treasurer.

(2) If the Secretary/Treasurer is a combined position, the Captain and Secretary/Treasurer are to sign the cheques referred to in subclause (1).

7.5 Disclosure of interests

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

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

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

7.6 Disagreements

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

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

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

PART 8 – NOTICES AND PROXIES

8.1 Notices

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

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

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

- (4) Where any notice other than a notice of meeting is to be given under these Rules, the notice is to be—
 - (a) in writing;
 - (b) unless otherwise specified, given to or by the Secretary;
 - (c) given by —
 - (i) personal delivery;
 - (ii) post; or
 - (iii) facsimile transmission;
 - (d) taken to have been received, as the case may be —
 - (i) at the time of personal delivery;
 - (ii) 2 business days after posting; or
 - (iii) on the printing of the sender’s transmission report.

8.2 Proxies

- (1) Where under these Rules a brigade member may vote by proxy, in order for the proxy to so vote, the brigade member or the proxy shall give a notice in the form of that appearing in this clause, to the Secretary or the person presiding at the meeting before the start of the meeting at which the proxy is to be used.
- (2) A proxy is to be valid for the meeting for which it is given and for any adjournments of that meeting.
- (3) A proxy shall be valid for the number of votes to which the brigade member is entitled.
- (4) If the donor of the proxy does not give any indication of the manner in which the proxy is to vote, the proxy shall be entitled to vote or not vote as he or she thinks fit.
- (5) A proxy shall be entitled to speak on behalf of the donor of the proxy.
- (6) All forms appointing proxies deposited under subclause (1) are to be retained by the Secretary for not less than 28 days after the conclusion of the meeting to which they relate but if there is any objection to the validity of any vote at the meeting, they are to be retained until the determination of that objection.
- (7) The form appointing a proxy shall be in writing and signed by the brigade member appointing the proxy and shall be in or substantially in the form set out below —

PROXY
 [INSERT NAME] BUSH FIRE BRIGADE
 [ANNUAL] [EXTRAORDINARY] GENERAL MEETING
 TO BE HELD ON [DATE]

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

MOTION FOR AGAINST ABSTAIN

- 1.
- 2.

If there is no instruction to the proxy as to the way to vote, the proxy shall exercise her or his discretion as to how to vote or whether to vote at all. In respect of any vote taken at the meeting on a matter which does not appear on the agenda, the proxy shall exercise her or his discretion as to the way he or she casts the vote or whether it is cast at all.

Date: _____

Signed: _____

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

Dated this day of 200

Appendix I

APPLICATION FOR MEMBERSHIP - FIRE FIGHTING MEMBER

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

Applicant’s Name

My private address is

.....

My business address is

.....

Usual Occupation

I can be contacted on:

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

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

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

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

I hold a current driver's licence No Classes

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

I give these undertakings –

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

Date

Applicant's signature

Please list here any fire fighting equipment owned by you.

- 1.
- 2.
- 3.

Appendix II

APPLICATION FOR MEMBERSHIP - ASSOCIATE MEMBER

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

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

MDL No: Classes:

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

.....
.....

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

Applicant's Name

.....
My private address is

.....
My business address is

.....
I can be contacted on:

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

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

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

I give these undertakings –

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

Date

Applicant's signature

Appendix III

APPLICATION FOR MEMBERSHIP - CADET MEMBER

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

Applicant's Name

My private address is

.....

I can be contacted on:

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

Fax No:.....(Home)

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

I declare that I amyears of age and in good health.

Date of Birth:.....

I give these undertakings –

- (1) to promote the objects of the bush fire brigade as far as is in my power;
- (2) to be governed by the provisions of the *Bush Fires Act 1954* and the Regulations made under that Act, and the local law and policies of the Shire of Donnybrook/Balingup relevant to the activities of cadet members;
- (3) to obey all orders and instructions issued by duly authorized officers of the bush fire brigade or the local government;
- (4) to comply with the Rules of the bush fire brigade.

Date

.....
Applicant's signature

PARENT / GUARDIAN CONSENT:

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

Signed

Dated this 5th day of October 2000.

The Common Seal of the Shire of Donnybrook/Balingup was affixed in the presence of:

Cr F. S. DRAKE-BROCKMAN, Shire President.
J. R. ATTWOOD, Chief Executive Officer.

DOG ACT 1976

SHIRE OF DONNYBROOK/BALINGUP

DOGS LOCAL LAW

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SCHEDULE 1**SCHEDULE 2****SCHEDULE 3**

DOG ACT 1976

SHIRE OF DONNYBROOK/BALINGUP

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 Donnybrook/Balingup resolved on 27th September 2000 to make the following local law.

PART 1 - PRELIMINARY**1.1 Citation**

This local law may be cited as the *Shire of Donnybrook/Balingup Dogs Local Law*.

1.2 Repeal

The Shire of Donnybrook/Balingup published in the *Government Gazette* on 24th June 1988 is 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 Donnybrook/Balingup;

“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; and

(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 –

- (a) Donnybrook townsite:
Reserve 30546 Bentley Street, Donnybrook.
- (b) Balingup townsite:
Railway Reserve Forrest Street, Balingup between public toilets and Balingup Bush Fire Brigade station.

(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 _____.

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 Modified \$	Dangerous Dog 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 27th day of September 2000

The Common Seal of the Shire of Donnybrook/Balingup was affixed in the presence of:

Cr F. S. DRAKE-BROCKMAN, Shire President.
J. R. ATTWOOD, Chief Executive Officer.



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