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CITY OF ALBANY

LOCAL GOVERNMENT ACT 1995

LOCAL LAWS RELATING TO FENCING 2001

**ACTIVITIES IN THOROUGHFARES AND
PUBLIC PLACES AND TRADING LOCAL LAW
2001**

ANIMALS LOCAL LAW 2001

**LOCAL LAWS RELATING TO THE
REVOCATION OF EXISTING CITY OF ALBANY
LOCAL LAWS**

LOCAL GOVERNMENT ACT 1995

CITY OF ALBANY

LOCAL LAWS RELATING TO FENCING 2001

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LOCAL GOVERNMENT ACT 1995

CITY OF ALBANY

LOCAL LAWS RELATING TO FENCING 2001

Under the powers conferred by the Local Government Act 1995 and by all other powers the Council of the City of Albany resolved to make the following local laws on the 18th day of December 2001.

PART 1—PRELIMINARY

1. Citation

These Local Laws may be cited as the *City of Albany Local Laws Relating to Fencing 2001*.

2. Repeal

The following local laws are repealed—

- (a) The Local Laws of the Town of Albany described as “*Local Laws relating to Fencing*” and published in the *Government Gazette* on 25 January 1985 and amended from time to time, are repealed;
- (b) The Local Laws of the Shire of Albany described as “*Local Laws Relating to the Control of Fencing*” and published in the *Government Gazette* on 19 March 1993 and amended from time to time, are repealed.

3. Application of Local Laws

These Local Laws apply throughout the district.

4. Interpretation

In these Local Laws, unless the context requires otherwise—

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

“**AS**” means an Australian Standard published by the Standards Association of Australia;

“**boundary fence**” has the meaning given to it for the purposes of the Act;

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

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

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

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

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

- (a) an electrified fence other than a fence in respect of which a licence under Part 5 of these Local Laws has been issued and is current;
- (b) a fence containing barbed wire other than a fence erected and maintained in accordance with these Local Laws;
- (c) a fence containing exposed broken glass, asbestos fibre, razor wire or any other potentially harmful projection or material; or
- (d) a fence which is likely to collapse or fall, or part of which is likely to collapse or fall, from any cause;

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

“**dividing fence**” has the meaning given to it in and for the purposes of the Act;

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

“**fence**” means any structure, including a retaining wall, used or functioning as a barrier, irrespective of where it is located and includes any gate;

“**frontage**” means the boundary line between a lot and the thoroughfare upon which that lot abuts;

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

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

“Industrial Lot” means a lot where an industrial use—

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

“local government” means the City of Albany;

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

“notice of breach” means a notice referred to in clause 15(1);

“Residential Lot” means a lot where a residential use—

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

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

“Rural Lot” means a lot where a rural use—

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

“Schedule” means a Schedule to these Local Laws;

“setback area” has the meaning given to it for the purposes of the town planning scheme;

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

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

“sufficient fence” means a fence described in clause 6; and

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

5. Licence Fees and Charges

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

PART 2—SUFFICIENT FENCES

6. Sufficient Fences

(1) Unless by agreement between the owners of adjoining properties, a person shall not erect a dividing fence or a boundary fence that is not a sufficient fence.

(2) Subject to sub-clauses (3) and (4), a sufficient fence—

- (a) on a Residential Lot is a dividing fence or a boundary fence constructed and maintained in accordance with the specifications and requirements of the First Schedule;
- (b) on a Commercial Lot and on an Industrial Lot is a dividing fence or a boundary fence constructed and maintained in accordance with the specifications and requirements of the Second Schedule;
- (c) on a Rural Lot and on a Special Rural Lot is a dividing fence or a boundary fence constructed and maintained in accordance with the specifications and requirements of the Third Schedule.

(3) Where a fence is erected on or near the boundary between—

- (a) a Residential Lot and an Industrial Lot, a sufficient fence is a dividing fence constructed and maintained in accordance with the specifications and requirements of the First Schedule;
- (b) a Residential Lot and a Commercial Lot, a sufficient fence is a dividing fence constructed and maintained in accordance with the specifications and requirements of the Second Schedule;
- (c) a Residential Lot and a Rural Lot, a sufficient fence is a dividing fence constructed and maintained in accordance with the specifications and requirements of the Third Schedule;
- (d) a Residential Lot and a Special Rural Lot, a sufficient fence is a dividing fence constructed and maintained in accordance with the specifications and requirements of the First Schedule; and
- (e) a Special Rural Lot and a Rural Lot, a sufficient fence is a dividing fence constructed and maintained in accordance with the specifications and requirements of the Third Schedule.

(4) Unless the Building Surveyor specifies otherwise, a sufficient fence on a boundary between lots other than those specified in subclause (3) is a dividing fence constructed in accordance with the specifications and requirements of the Second Schedule.

(5) Notwithstanding any other provisions in these Local Laws, a fence constructed of stone or concrete shall be a sufficient fence only if it is designed by a structural engineer where—

- (a) it is greater than 1800mm in height; or
- (b) the Building Surveyor so requires.

PART 3—GENERAL**7. Fences Within Front Setback Areas**

(1) A person shall not, without the written consent of the Building Surveyor, erect a free-standing fence greater than 1200mm in height, within the front set-back area of a Residential Lot within the district.

(2) The Building Surveyor may approve the erection of a fence of a height greater than 1200mm in the front setback area of a Residential Lot only if the fence on each side of the driveway into the Lot across the front boundary is to be angled into the Lot for a distance of not less than 1500mm along the frontage to a distance of not less than 1500mm from the frontage in order to provide appropriate splayed lines of vision for a motorist using the driveway for access to a thoroughfare.

(3) The provision of sub-clause (2) shall not apply to a fence—

- (a) of open construction that does not obscure the lines of vision of a motorist using the driveway for access to a thoroughfare; or
- (b) that does not adjoin a footpath.

8. Fences on Rural Lots and Special Rural Lots

A person shall not without the written consent of the Building Surveyor, erect a fence on Rural Lots or Special Rural Lots, within 7.5m of a thoroughfare of a height exceeding 1500mm.

9. Maintenance of Fences

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

10. General Discretion of the Local Government

(1) Notwithstanding clause 6, the local government may consent to the erection or repair of a fence which does not comply with the requirements of these Local Laws.

(2) In determining whether to grant its consent to the erection or repair of any fence, the local government may consider, in addition to any other matter that it is authorized to consider, whether the erection or retention of the fence would have an adverse effect on—

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

PART 4—FENCING MATERIALS**11. Fencing Materials**

(1) A person shall construct a fence on a Residential Lot, a Commercial Lot or an Industrial Lot from only brick, stone, concrete, wrought iron, tubular steel framed, link mesh, timber, plastic coated or galvanised link mesh, corrugated fibre reinforced cement sheeting, pre-painted metal or a material approved by the Building Surveyor.

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

12. Barbed Wire and Broken Glass Fences

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

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

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

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

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

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

PART 5—ELECTRIFIED AND RAZOR WIRE FENCES**13. Requirements for a Licence**

(1) An owner or occupier of a lot, other than a Rural Lot or Special Rural Lot, shall not—

- (a) have and use an electrified fence on that lot without first obtaining a licence under subclause (2); or
- (b) construct a fence wholly or partly of razor wire on that lot without first obtaining a licence under subclause (3).

- (2) A licence to have and use an electrified fence shall not be issued—
- (a) in respect of a lot which is or which abuts a Residential Lot;
 - (b) unless the fence complies with AS/NZS 3016:1994; and
 - (c) unless provision is made so as to enable the fence to be rendered inoperable during the hours of business operations, if any, on the lot where it is erected.
- (3) A licence to have a fence constructed wholly or partly of razor wire shall not be issued—
- (a) if the fence is within 3m of the boundary of the lot;
 - (b) where any razor wire used in the construction of the fence is less than 2000mm or more than 2400mm above the ground level.
- (4) An application for a licence referred to in subclauses (2) or (3) shall be made by the owner of the lot on which the fence is or is to be erected, or by the occupier of the lot with the written consent of the owner.
- (5) An application for a licence referred to in subclauses (2) or (3) may be—
- (a) approved by the local government;
 - (b) approved by the local government subject to such conditions as it thinks fit; or
 - (c) refused by the local government.

14. Transfer of a Licence

A licence referred to in clause 13 shall transfer with the land to any new occupier or owner of the lot.

15. Cancellation of a Licence

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

- (a) the fence no longer satisfies the requirements specified in clause 13(2) or 13(3) as the case may be; or
- (b) the licence holder breaches any condition upon which the licence has been issued.

PART 6—NOTICES OF BREACH

16. Notices of Breach

- (1) Where a breach of any provision of these Local Laws has occurred in relation to a fence on a lot, the local government may give a notice in writing to the owner or occupier of that lot ("notice of breach").
- (2) A notice of breach shall—
- (a) specify the provision of these Local Laws which has been breached;
 - (b) specify the particulars of the breach; and
 - (c) state that the owner or occupier of the lot is required to remedy the breach within 28 days from the giving of the notice.
- (3) Should an owner or occupier fail to comply with a notice of breach, the local government may by its employees, agents or contractors enter upon the lot to which the notice relates and remedy the breach, and may recover the expenses of so doing from the owner or occupier of the lot, as the case may be, in a court of competent jurisdiction.

PART 7—OFFENCES

17. Offences and Penalties

- (1) An owner or occupier who fails to comply with a notice of breach commits an offence and is liable upon conviction to a maximum penalty of \$5000 and, if the offence is a continuing offence, a maximum daily penalty of \$500.
- (2) A person who fails to comply with or who contravenes any provision of these Local Laws commits an offence and is liable to a maximum penalty of \$5000 and, if the offence is a continuing offence, a maximum daily penalty of \$500.

18. Modified Penalties

- (1) An offence against any provision of these Local Laws is a prescribed offence for the purposes of section 9.16 (1) of the *Local Government Act 1995*.
- (2) Unless otherwise specified, the amount of the modified penalty for an offence against any provision of these Local Laws is \$100.

19. Form of Notices

For the purposes of these Local Laws—

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

Clause 6(2)(a)

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

Each of the following is a “sufficient fence” on a Residential Lot—

- A. A fully enclosed timber fence built to manufacturer’s specifications or in accordance with established construction techniques, the height of the fence to be 1800mm except with respect to the front setback area for which there is no minimum height but which is subject to clause 7.
- B. A fence constructed of corrugated fibre reinforced pressed cement or steel sheeting erected to manufacturer’s specifications or which satisfies the following specifications—
 - (a) a minimum in-ground length of 25 per cent of the total length of the sheet, but in any case shall have a minimum in-ground depth of 600mm;
 - (b) the total height and depth of the fence to consist of a single continuous fibre reinforced cement or steel sheet;
 - (c) the sheets to be lapped and capped with extruded “snap-fit” type capping in accordance with the manufacturers written instructions; and
 - (d) the height of the fence to be 1800mm except with respect to the front set back area for which there is no minimum height but which is subject to clause 7.
- C. A fence constructed of brick, stone or concrete on a Class A soil type, as defined by AS2870, which satisfies the following specifications—
 - (a) footings of minimum 225mm x 150mm concrete 15MPa or 300mm x 175mm brick laid in cement mortar;
 - (b) fences to be offset a minimum of 200mm at maximum 3000mm centres or 225mm x 100mm engaged piers to be provided at maximum 3000mm centres;
 - (c) expansion joints in accordance with the manufacturer’s written instructions; and
 - (d) the height of the fence to be 1800mm except with respect to the front set back area for which there is no minimum height but which is subject to clause 7.
- D. A composite fence constructed on a Class A soil type, as defined by AS 2870, having a minimum overall height of 1800mm except with respect to the front set back area for which there is no minimum height but which is subject to clause 7, which satisfies the following specifications for the brick construction—
 - (1) (a) brick piers of minimum 345mm x 345mm at 1800mm centres bonded to a minimum height base wall of 514mm;
 - (b) each pier shall be reinforced with one R10 galvanised starting rod 1500mm high with a 250mm horizontal leg bedded into a 500mm x 200mm concrete footing and set 65mm above the base of the footing. The top of the footing shall be 1 course (85mm) below ground level;
 - (c) the minimum ultimate strength of brickwork shall be 20MPa. Mortar shall be a mix of 1 part cement, 1 part lime and 6 parts sand;
 - (d) the ground under the footings is to be compacted to 6 blows per 300mm and checked with a standard falling weight penetrometer; and
 - (e) control joints in brickwork shall be provided with double piers at a maximum of 6 metre centres; or
 - (2) (a) brick piers of a minimum 345mm x 345mm x 2700mm centres bonded to the base; and
 - (b) each pier shall be reinforced with two R10 galvanised starting rods as previously specified;

Clause 6(2)(b)

*Second Schedule***SPECIFICATIONS FOR A SUFFICIENT FENCE ON A COMMERCIAL LOT
AND AN INDUSTRIAL LOT**

Each of the following is a “sufficient fence” on a Commercial Lot and an Industrial Lot—

- A. A fence constructed of galvanised or PVC coated rail-less link mesh, chain mesh or steel mesh which satisfies the following specifications—
 - (a) corner posts to be minimum 50mm nominal bore x 3.5mm and with footings of a 225mm diameter x 900mm;
 - (b) intermediate posts to be minimum 37mm nominal bore x 3.15mm at maximum 3.5m centres and with footings of a 225mm diameter x 600mm;
 - (c) struts to be minimum 30mm nominal bore x 3.15mm fitted at each gate and two at each corner post and with footings 225mm x 600mm;
 - (d) cables to be affixed to the top, centre and bottom of all posts and to consist of two or more 3.15mm wires twisted together or single 4mm wire;

- (e) rail-less link, chain or steel mesh is to be to a height of 2000mm on top of which are to be three strands of barbed wire carrying the fence to a height of 2400mm in accordance with clause 12(3) of these Local Laws; and
- (f) galvanised link mesh wire to be 2000mm in height and constructed of 50mm mesh 2.5mm galvanised iron wire and to be strained, neatly secured and laced to the posts and affixed to cables. Vehicle entry gates shall provide an opening of not less than 3.6m and shall be constructed of 25mm tubular framework with one horizontal and one vertical stay constructed of 20mm piping and shall be covered with 50mm x 2.5mm galvanised link mesh strained to framework. Gates shall be fixed with a drop bolt and locking attachment.
- B. A fence of fibre reinforced cement sheet or steel sheeting constructed to the minimum specifications referred to in Item B of the First Schedule.
- C. A fence constructed of aluminium sheeting when supported on posts and rails provided that it is used behind a building line and is of a minimum height of 1800mm but no greater than 2400mm.
- D. Fences of timber, brick, stone or concrete constructed to the minimum specifications referred to in the First Schedule.

Clause 6(2)(c)

Third Schedule

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

(1) In the case of a non-electrified fence, a sufficient fence on a Rural Lot and a Special Rural Lot is a fence of posts and wire construction, the minimum specifications for which are—

- (a) wire shall be high tensile wire and not less than 2.5mm. A minimum of five wires shall be used, generally with the lower wires spaced closer together than the higher wires so as to prevent smaller stock passing through, and connected to posts in all cases.
- (b) posts shall be of indigenous timber or other suitable material including –
 - timber impregnated with a termite and fungicidal preservative;
 - standard iron star pickets; or
 - concrete;
- (c) if timber posts are used, posts are to be cut not less than 1800mm long x 50mm diameter at small end if round or 125mm x 60mm if split or sawn. Posts to be placed at not more than 10 metre intervals, set minimum 600mm in the ground and 1200mm above the ground; and
- (d) strainer posts, if timber, shall be not less than 2250mm long and 150mm diameter at the small end (tubular steel to be 50mm in diameter) and shall be cut from indigenous timber or other suitable material. These shall be placed a minimum of 1000mm in the ground and set at all corners, gateways and fence line angles but not exceeding 200 metres apart.

(2) An electrified fence having four wires only is a sufficient fence if constructed generally in accordance with (1).

Dated this 7th day of January 2002.

The Common Seal of the City of Albany was affixed by authority of a resolution of the Council in the presence of—

ALISON GOODE, JP, Mayor.
ANDREW HAMMOND, Chief Executive Officer.

Form 1

CITY OF ALBANY

LICENCE TO HAVE AND USE AN ELECTRIFIED FENCE IN ACCORDANCE WITH AS/NZS 3016:1994

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

from 20 and until this licence is transferred or cancelled.

Dated this day of 20.....

.....
Chief Executive Officer
City of Albany

This licence is issued upon and subject to the following conditions, namely that the holder of the licence shall—

- (a) Display the licence in a prominent position on the land or premises on which the electrified fence has been erected;
- (b) Upon the request of a Building Surveyor produce to him or her the licence;
- (c) Obtain the written consent of the Local Government prior to the commencement of any alteration, addition or other work relating to or affecting the electrified fence;
- (d) Comply with AS/NZS 3016:1994; and
- (e) Following erection of the fence, lodge with Western Power a certificate of installation from a qualified electrician and comply with any requirements of Western Power regarding the erection of the fence.

.....
 Chief Executive Officer
 City of Albany

Form 2

CITY OF ALBANY
**LICENCE TO HAVE A FENCE CONSTRUCTED WHOLLY OR PARTIALLY
 OF RAZOR WIRE**

This is to certify that
 of
 is licensed, subject to the conditions set out below, to have a fence constructed wholly or partially of
 razor wire on

.....
 (address)

from 20 and until this licence is transferred or cancelled.

Dated this day of 20.....

.....
 Chief Executive Officer
 City of Albany

This licence is issued upon and subject to the following conditions, namely that the holder of the licence shall—

- (a) Display the licence in a prominent position on the land or premises on which the fence has been erected;
- (b) Upon the request of a Building Surveyor produce to him or her the licence; and
- (c) Obtain the written consent of the Local Government prior to the commencement of any alteration, addition or other work relating to or affecting the fence.

.....
 Chief Executive Officer
 City of Albany

LOCAL GOVERNMENT ACT 1995

CITY OF ALBANY

**ACTIVITIES IN THOROUGHFARES AND PUBLIC PLACES
AND TRADING LOCAL LAW 2001**

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SCHEDULE 1**PRESCRIBED OFFENCES**

LOCAL GOVERNMENT ACT 1995

CITY OF ALBANY

ACTIVITIES IN THOROUGHFARES AND PUBLIC PLACES
AND TRADING LOCAL LAW 2001

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the City of Albany resolved on 18th December 2001 to make the following local law.

PART 1—PRELIMINARY

1.1 Citation

This local law may be cited as the *City of Albany Activities in Thoroughfares and Public Places and Trading Local Law 2001*.

1.2 Definitions

In this local law unless the context otherwise requires—

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

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

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

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

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

“**carriageway**” has the meaning given to it in the *Road Traffic Code 2000* and means the paved or made portion of a thoroughfare, whether sealed or unsealed, 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**” has the meaning given to it in the *Road Traffic Code 2000*;

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

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

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

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

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

“**local government**” means the City of Albany;

“**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 of the treatments described in clause 2.9(2), and includes any reticulation pipes and sprinklers;

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

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

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

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

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

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

(b) local government property;

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

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

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

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

“**townsite**” means the townsites of Cuthbert, Elleker, Kalgan, Manypeaks, Redmond, South Stirling, Torbay, Youngs Siding and Wellstead 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

(1) The following local laws are repealed—

(a) The Local Laws of the Shire of Albany described as “*Local Laws relating to Removal and Disposal of Obstructing Animals or Vehicles (No 7)*” and published in the *Government Gazette* on 3 April 1963 and amended from time to time, are repealed;

(b) The Local Laws of the Shire of Albany described as “*Local Laws Relating to Street Lawns and Gardens*” and published in the *Government Gazette* on 16 May 1986 and amended from time to time, are repealed;

(c) The Local Laws of the Town of Albany described as “*Local Laws Relating to Removal and Disposal of Obstructing Animals and Vehicles*” and published in the *Government Gazette* on 7 August 1963 and amended from time to time, are repealed;

(d) The Local Laws of the Town of Albany described as “*Local Laws Relating to Street Lawns and Gardens*” and published in the *Government Gazette* on 16 September 1963 and amended from time to time, are repealed;

(e) The Local Laws of the Town of Albany described as “*Locals laws Relating to Street Trading/Entertainment (No 16)*” and published in the *Government Gazette* on 21 January 1994 and amended from time to time, are repealed.

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

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

PART 2—ACTIVITIES IN THOROUGHFARES AND PUBLIC PLACES

Division 1—General

2.1 General prohibitions

A person shall not—

(a) plant any plant which exceeds or which may exceed 0.75m in height on a thoroughfare so that the plant is within 10m of an intersection;

(b) plant any plant that is likely to be hazardous to any person using the thoroughfare;

- (c) install paving on a thoroughfare within 15 metres of an intersection;
- (d) on the verge abutting a corner lot at an intersection, position a crossing so that any portion of it is contained within the truncated corner of the lot;
- (e) water a lawn or a garden in such a manner as may cause inconvenience to any person using the thoroughfare;
- (f) drive a vehicle on 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;
- (g) dig or fill so as to vary the prevailing ground levels on a verge;
- (h) install in a thoroughfare any—
 - (i) impervious membrane;
 - (ii) loosely placed materials with a particle size exceeding 25 millimetres; or
 - (iii) steel stakes.
- (i) plant any plant (except grass or a similar plant), erect any temporary enclosure, place any rock or rocks, or install any retaining feature or structure on a thoroughfare so that it is within 2m of a carriageway;
- (j) place any thing on any footpath which may create a hazard for any person using the footpath;
- (k) 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;
- (l) play or participate in any game or sport so as to cause danger to any person or thing or impede the movement of vehicles or persons on a thoroughfare; or
- (m) within a mall, arcade or verandah of a shopping centre, ride any skateboard, rollerblades or similar device.

2.2 Activities allowed with a permit—general

- (1) A person shall not, without a permit—
 - (a) dig or otherwise create a trench through or under a kerb or footpath;
 - (b) subject to Division 3 of this Part, throw, place or deposit any thing on a verge except—
 - (i) for removal by the local government under a bulk rubbish collection, and then only in accordance with the terms and conditions and during the period of time advertised in connection with that collection by the local government;
 - (ii) a bulk rubbish container, and then only for the period of time required to fill the container, but in any event, for a period not exceeding 1 week;
 - (iii) when permitted to do so under a current building licence issued under the *Building Regulations 1989*.
 - (c) plant a tree in a thoroughfare;
 - (d) cause any obstruction to a vehicle or a person using a thoroughfare as a thoroughfare;
 - (e) cause any obstruction to a water channel or a water course in a thoroughfare;
 - (f) throw, place or drain offensive, noxious or dangerous fluid onto a thoroughfare;
 - (g) interfere or damage a thoroughfare;
 - (h) light any fire or burn any thing on a thoroughfare other than in a stove or fireplace provided for that purpose or under a permit issued under clause 5.13;
 - (i) fell any tree onto a thoroughfare;
 - (j) make any alterations to the carriageway or any other thing in a thoroughfare, and then only if details of the work to be done are shown on a plan accompanying the application;
 - (k) create or construct more than two crossings to any one lot;
 - (l) unless installing, or in order to maintain, a permissible verge treatment—
 - (i) lay pipes under or provide taps on any verge; or
 - (ii) place or install any thing on any part of a thoroughfare, and without limiting the generality of the foregoing, any gravel, stone, flagstone, cement, concrete slabs, blocks, bricks, pebbles, plastic sheeting, kerbing, wood chips, bark or sawdust;
 - (m) 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;
 - (n) on a public place use anything or do anything so as to create a nuisance;
 - (o) make a connection to the stormwater drainage system;
 - (p) clear the vegetation or interfere with the soil in a thoroughfare or take anything from a thoroughfare.
- (2) The local government may exempt a person from compliance with subclause (1) on the application of that person.

2.3 No possession and consumption of liquor on thoroughfare

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

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

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

Division 2—Vehicle crossing

Subdivision 1—Temporary crossings

2.4 Construction of Crossings

A crossing is only to be constructed under regulation 12(1) of the *Local Government (Uniform Local Provisions) Regulations 1996*, if the work is undertaken by—

- (a) In the case of concrete and brick paved crossings—
 - (i) The local government using its own day labour; or
 - (ii) A contractor approved by the local government; or
- (b) In the case of asphalt or other types of crossings, a contractor experienced in the type of work being undertaken.

2.5 Permit required

(1) Where it is likely that works on a lot will involve vehicles leaving a thoroughfare and entering the lot, the person responsible for the works shall obtain a permit for the construction of a temporary crossing to protect the existing carriageway, kerb, drains and footpath, where—

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

(2) The “person responsible for the works” in subclause (1) is to be taken to be—

- (a) the builder named on the building licence issued under the *Local Government (Miscellaneous Provisions) Act 1960*, if one has been issued in relation to the works; or
- (b) the registered proprietor of the lot, if no building licence has been issued under the *Local Government (Miscellaneous Provisions) Act 1960* in relation to the works.

(3) If the local government approves an application for a permit for the purpose of subclause (1), the permit is taken to be issued on the condition that until such time as the temporary crossing is removed, the permit holder shall keep the temporary crossing in good repair and in such a condition so as not to create any danger or obstruction to persons using the thoroughfare.

Subdivision 2—Redundant vehicle crossings

2.6 Removal of redundant crossing

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

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

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

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

Division 3—Verge treatments

Subdivision 1—Preliminary

2.7 Interpretation

In this Division, 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.

2.8 Application

This Division only applies to townsites and areas zoned commercial, industrial or residential in a town planning scheme.

Subdivision 2—Permissible verge treatments

2.9 Permissible verge treatments

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

(2) The permissible verge treatments are—

- (a) the planting and maintenance of a lawn;
- (b) the planting and maintenance of a garden provided that—
 - (i) clear sight visibility is maintained at all times for a person using the abutting thoroughfare in the vicinity of an intersection or bend in the thoroughfare or using a driveway on land adjacent to the thoroughfare for access to or from the thoroughfare; and
 - (ii) where there is no footpath, a pedestrian has safe and clear access of a minimum width of 2m along that part of the verge immediately adjacent to the kerb;
- (c) the installation of an acceptable material; or
- (d) the installation over no more than one third of the area of the verge (excluding any vehicle crossing) of an acceptable material in accordance with paragraph (c), and the planting and maintenance of either a lawn or a garden on the balance of the verge in accordance with paragraph (a) or (b).

2.10 Only permissible verge treatments to be installed

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

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

2.11 Obligations of owner or occupier

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

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

2.12 Notice to owner or occupier

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

Subdivision 3—Existing verge treatments

2.13 Transitional provision

(1) In this clause—

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

(2) A verge treatment which—

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

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

Subdivision 4—Public works

2.14 Power to carry out public works on verge

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

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

Division 4—Property numbers

Subdivision 1—Preliminary

2.15 Interpretation

In this Division, unless the context requires otherwise—

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

*Subdivision 2—Assignment and marking of numbers***2.16 Assignment of numbers**

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

*Division 5—Fencing***2.17 Public place—Item 4(1) of Division 1, Schedule 3.1 of Act**

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

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

*Division 6—Signs erected by the local government***2.18 Signs**

- (1) A local government may erect a sign on a public place specifying any conditions of use which apply to that place.
- (2) A person shall comply with a sign erected under subclause (1).
- (3) A condition of use specified on a sign erected under subclause (1) is to be for the purpose of giving notice of the effect of a provision of this local law.

2.19 Transitional

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

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

*Division 7—Driving on a closed thoroughfare***2.20 No driving on closed thoroughfare**

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

PART 3—ADVERTISING SIGNS ON THOROUGHFARES*Division 1—Preliminary***3.1 Interpretation**

In this Part, unless the context otherwise requires—

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

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

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

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

*Division 2—Permit***3.2 Advertising signs**

- (1) A person shall not, without a permit—
 - (a) erect or place an advertising sign on a thoroughfare; or
 - (b) post any bill or paint, place or affix any advertisement on a thoroughfare.
- (2) Notwithstanding subclause (1), a person shall not erect or place an advertising sign—
 - (a) on a footpath;
 - (b) over any footpath where the resulting vertical clearance between the sign and the footpath is less than 2.5m;
 - (c) on or within 3m of a carriageway;

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

3.3 Matters to be considered in determining application for permit

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

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

Division 3—Conditions on permit

3.4 Conditions on portable sign

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

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

3.5 Conditions on election sign

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

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

PART 4—OBSTRUCTING ANIMALS, VEHICLES OR SHOPPING TROLLEYS

Division 1—Animals and vehicles

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

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

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

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

4.2 Prohibitions relating to animals

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

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

(2) An owner of an animal shall not—

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

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

Division 2—Shopping trolleys

4.3 Interpretation

In this Division—

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

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

4.4 Shopping trolley to be marked

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

4.5 Person not to leave trolley in public place

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

4.6 Retailer to remove abandoned trolley

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

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

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

(3) If a retailer, having received a notice under subclause (1), does not either—

- (a) remove the abandoned shopping trolley; or
- (b) make a request to the local government in accordance with subclause (2),

then the local government may remove and impound the abandoned shopping trolley in accordance with section 3.39 of the Act.

4.7 Retailer taken to own trolley

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

PART 5—ROADSIDE CONSERVATION

Division 1—Preliminary

5.1 Interpretation

In this Part—

“**MRWA**” means Main Roads Western Australia;

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

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

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

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

5.2 Application

This Part does not apply to the townsite.

*Division 2—Flora roads***5.3 Declaration of flora road**

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

5.4 Construction works on flora roads

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

5.5 Signposting of flora roads

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

5.6 Driving only on carriageway of flora roads

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

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

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

*Division 3—Special environmental areas***5.7 Designation of special environmental areas**

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

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

5.8 Marking of special environmental areas

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

*Division 4—Planting in thoroughfares***5.9 Permit to plant**

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

5.10 Relevant considerations in determining application

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

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

*Division 5—Clearance of vegetation***5.11 Permit to clear**

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

5.12 Application for permit

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

*Division 6—Fire management***5.13 Permit to burn thoroughfare**

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

5.14 Application for permit

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

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

5.15 When application for permit can be approved

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

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

5.16 Prohibitions on burning

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

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

*Division 7—Firebreaks***5.17 Permit for firebreaks on thoroughfares**

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

5.18 When application for permit cannot be approved

- (1) The local government is not to approve an application for a permit for the purpose of clause 4.17 where the thoroughfare is less than 20m wide.
- (2) Subclause (1) does not apply where the firebreak is, in the opinion of the local government, desirable for the protection of roadside vegetation.

*Division 8—Commercial wildflower harvesting on thoroughfares***5.19 General prohibition on commercial wildflower harvesting**

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

5.20 Permit for revegetation projects

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

PART 6—TRADING IN THOROUGHFARES AND PUBLIC PLACES*Division 1—Stallholders and traders**Subdivision 1—Preliminary***6.1 Interpretation**

In this Division, unless the context otherwise requires—

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

“**public place**” includes—

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

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

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

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

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

“trader” means a person who carries on trading;

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

“trading” includes—

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

but does not include—

- (d) the delivery of pre-ordered goods or services to the purchaser of those goods or services or to the person nominated by the purchaser of those goods or services whether or not payment for those goods or services is accepted on delivery; or
the taking of further orders for goods or services from the purchaser of those pre-ordered goods or services or from the person nominated by the purchaser of those pre-ordered goods or the taking of further orders for goods or services from the purchaser of those pre-ordered goods or services when those orders are taken at the same time as a previous order is being delivered, whether or not payment is made for those goods or services at the time of taking the order;
- (e) the setting up of a stall or the conducting of a business at a stall under the authority of a stallholder’s permit;
- (f) the selling or the offering for sale of goods and services to, or the soliciting of orders for goods and services from a person who sells those goods or services;
- (g) the selling or the offering for sale or hire by a person of goods of her or his own manufacture or services which he or she provides; and
- (h) the selling or hiring or the offering for sale or hire of—
 - (i) goods by a person who represents a manufacturer of the goods; or
 - (ii) services by a person who represents a provider of the services,which are 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 only is not required to obtain a permit.

6.5 Relevant considerations in determining application for permit

- (1) In determining an application for a permit for the purposes of this Division, the local government is to have regard to—
- (a) any relevant policies of the local government;
 - (b) the desirability of the proposed activity;
 - (c) the location of the proposed activity;
 - (d) the principles set out in the Competition Principles Agreement; and
 - (e) such other matters as the local government may consider to be relevant in the circumstances of the case.
- (2) The local government may refuse to approve an application for a permit under this Division on any one or more of the following grounds—
- (a) that the applicant has committed a breach of any provision of this local law or of any written law relevant to the activity in respect of which the permit is sought;
 - (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*.
- (2) A stallholder or trader shall not—
- (a) deposit or store any box or basket containing goods on any part of a thoroughfare so as to obstruct the movement of pedestrians or vehicles;
 - (b) act in an offensive manner;
 - (c) use or cause to be used any apparatus or device including any flap or shelf, whereby the dimensions of a stall, vehicle or structure are increased beyond those specified in the permit; or
 - (d) in the case of a trader, carry on trading from a public place, unless there is adequate parking for customers’ vehicles reasonably close to the place of trading.

Division 2—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) ensure a minimum width of 1.8 metres is kept clear for pedestrian access between 8.00am and 6.00pm each day or 0.8 metres at all other times;
 - (e) define the eating area to the satisfaction of the local government;
 - (f) 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
 - (g) 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 subclause (2), “work” includes the removal, alteration, repair, reinstatement or reconstruction of any part of a public place arising from or in connection with the setting up or conduct of a Facility.

6.13 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.
- (2) The permit holder may replace the Facility removed under subclause (1) as soon as the person who directed her or him to remove it allows it to be replaced.

PART 7—PERMITS

Division 1—Applying for a permit

7.1 Application for permit

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

7.2 Decision on application for permit

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

*Division 2—Conditions***7.3 Conditions which may be imposed on a permit**

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

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

7.4 Imposing conditions under a policy

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

7.5 Compliance with and variation of conditions

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

*Division 3—General***7.6 Duration of permit**

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

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

7.7 Renewal of permit

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

- (2) The provisions of—
- (a) this Part; and
 - (b) any other provision of this local law relevant to the permit which is to be renewed,
- shall apply to an application for the renewal of a permit *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 authorized person her or his permit immediately upon being required to do so by that authorized person.

7.10 Cancellation of permit

- (1) Subject to clause 8.1, a permit may be cancelled by the local government if the permit holder has 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
- (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) Subclause (1) does not apply where the plant was planted by the local government.

9.3 Notice to repair damage to thoroughfare

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

9.4 Notice to remove thing unlawfully placed on thoroughfare

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

PART 10—ENFORCEMENT*Division 1—Notices given under this local law***10.1 Offence to fail to comply with notice**

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

10.2 Local government may undertake requirements of notice

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 10m of intersection	100
2.1(b)	Planting a plant that is likely to be hazardous to any person using the thoroughfare.	100
2.1(c)	Installing paving on a thoroughfare within 15 metres of an intersection	100
2.1(d)	Positioning a crossing within the truncated corner of a lot at an intersection	500
2.1(e)	Watering a lawn or garden so that it causes inconvenience to persons using the thoroughfare	100
2.1(f)	Driving a vehicle on, or otherwise, damaging lawn or garden	200
2.1(g)	Dig or fill so as to vary the prevailing ground levels on a verge	100
2.1(h)	Installing impervious membrane, loosely placed material or steel stakes in thoroughfare	100

Clause	Description	Modified Penalty \$
2.1(i)	Planting a plant (except a lawn), erecting temporary enclosure, placing rocks, or installing a retaining feature on thoroughfare within 2 metres of carriageway.	100
2.1(j)	Placing anything on any footpath which may create a hazard.	100
2.1(k)	Damaging or interfering with signpost or structure on thoroughfare	300
2.1(l)	Playing games so as to impede vehicles or persons on thoroughfare	100
2.1(m)	Riding of skateboard or similar device on mall or verandah of shopping centre	100
2.2(1)(a)	Digging a trench through or under 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)	Planting a tree in a thoroughfare without a permit.	100
2.2(1)(d)	Causing obstruction to vehicle or person on thoroughfare without a permit	100
2.2(1)(e)	Causing obstruction to water channel on thoroughfare without a permit	200
2.2(1)(f)	Placing or draining offensive fluid on thoroughfare without a permit	200
2.2(1)(g)	Interfere with or damage a thoroughfare.	200
2.2(1)(h)	Lighting a fire on a thoroughfare without a permit	300
2.2(1)(i)	Felling tree onto thoroughfare without a permit	100
2.2(1)(j)	Making alterations to a carriageway without a permit	200
2.2(1)(k)	Create or construct more than two crossings to any one lot without a permit	100
2.2(1)(l)	Installing pipes or stone on thoroughfare without a permit	100
2.2(1)(m)	Installing a hoist or other thing on a structure or land for use over a thoroughfare without a permit	300
2.2(1)(n)	Creating a nuisance on a thoroughfare without a permit	100
2.2(1)(o)	Installing a connection to stormwater drainage system without a permit	300
2.2(1)(p)	Interfering with anything on a thoroughfare without a permit	100
2.3(1)	Consumption or possession of liquor on thoroughfare	100
2.4(1)	Failure to obtain permit for temporary crossing	200
2.5(2)	Failure to comply with notice to remove crossing and reinstate kerb	300
2.10(1)	Installation of verge treatment other than permissible verge treatment	200
2.11	Failure to maintain permissible verge treatment or placement of obstruction on verge	100
2.12	Failure to comply with notice to rectify default	100
2.17(2)	Failure to comply with sign on public place	100
2.19(1)	Driving or taking a vehicle on a closed thoroughfare	300
4.1(1)	Animal or vehicle obstructing a public place or local government property	100
4.2(2)(a)	Animal on thoroughfare when not led, ridden or driven	100
4.2(2)(b)	Animal on public place with infectious disease	100
4.2(2)(c)	Training or racing animal on thoroughfare in built-up area	100
4.2(3)	Horse led, ridden or driven on thoroughfare in built-up area	100
4.5	Person leaving shopping trolley in public place other than trolley bay	100
4.6(2)	Failure to remove shopping trolley upon being advised of location	100
5.6(1)	Driving a vehicle on other than the carriageway of a flora road	200
5.9	Planting in thoroughfare without a permit	200
5.11	Failure to obtain permit to clear a thoroughfare	500
5.13	Burning of thoroughfare without a permit	500
5.17	Construction of firebreak on thoroughfare without a permit	500
5.19	Commercial harvesting of native flora on thoroughfare	500
5.20(1)	Collecting seed from native flora on thoroughfare without a permit	300
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

Clause	Description	Modified Penalty \$
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
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

Dated this 7th day of January 2002.

The Common Seal of the City of Albany was affixed by authority of a resolution of the Council in the presence of—

ALISON GOODE JP, Mayor.
ANDREW HAMMOND, Chief Executive Officer.

LOCAL GOVERNMENT ACT 1995

CITY OF ALBANY

ANIMALS LOCAL LAW 2001

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the City of Albany resolved on 18th December 2001 to make the following local law.

ARRANGEMENT

PART 1—PRELIMINARY	CLAUSES 1-5
PART 2—DOGS	CLAUSES 6-13
PART 3—APPROVED DOG KENNEL ESTABLISHMENT	CLAUSES 14-21
PART 4—LIVESTOCK	CLAUSES 22-26
PART 5—PIGEONS	CLAUSES 27-35
PART 6—BEES	CLAUSES 36
PART 7—ANIMALS, BIRDS & POULTRY	CLAUSES 37-49
PART 8—MISCELLANEOUS	CLAUSES 50-52
PART 9—PENALTIES	CLAUSES 53-57
SCHEDULES 1-4	

PART 1—PRELIMINARY

Citation

1. This local law may be cited as the *City of Albany Animals Local Law 2001*.

Commencement

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

Repeal

3. (1) The Local Laws of the Shire of Albany described as “*Local Laws Relating to Keeping of Bees*” and published in the *Government Gazette* on 4 August 1965 and amended from time to time, are repealed;
- (2) The Local Laws of the Shire of Albany described as “*Local Laws Relating to Dogs and Dog Kennels*” and published in the *Government Gazette* on 21 May 1982 and amended from time to time, are repealed;
- (3) The Local Laws of the Town of Albany described as “*Local Laws Relating to Dogs (No 25)*” and published in the *Government Gazette* on 28 July 1989 and amended from time to time, are repealed.

Application of Local Law

4. This local law applies throughout the district.

Definitions

5. In this local law unless the context otherwise requires—

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

“**animal**” includes cats dogs, rabbits and ferrets or the like;

“**application**” means the completed form lodged by an applicant as required by this local law;

“**applicant**” means a person who has lodged an application for an approval, certificate or licence required for an activity by this local law;

“**approved fees**” means the fees and charges determined by Council from time to time for putting into effect the provisions of this local law;

“**authorised person**” means a person authorised by Council under Section 9.10 of the Act, to carry into effect the provisions of this local law;

“**beehive**” means a moveable or fixed structure, container or object in which a colony of bees is kept;

“**bird**” includes galahs, parrots, budgerigars, finches, pigeons and doves or the like;

“**caravan park**” means an area of land on which caravans or caravans and camps are situated for habitation;

“**catteries**” are premises registered for the breeding or caring of cats;

- “**cattery keeper**” means a person registered to keep a cattery;
- “**certificate of registration**” means a certificate of registration to keep pigeons issued pursuant to this local law;
- “**CEO**” means the Chief Executive Officer of the local government;
- “**City**” means the City of Albany;
- “**Code of Practice**” means the Code of Practice—Pigeon Keeping and Pigeon Racing, International Standard Book Number (ISBN 0 958 6677 0 5), Part 1 (ISBN 0 958 6677 2 1), Part 2 (ISBN 0 958 6677 1 3) published May 1994 as amended from time to time and approved by the Pigeon Racing federation of WA (Incorporated) and the Independent Racing Pigeon Federation Inc;
- “**Council**” means the council of the City of Albany;
- “**cow**” includes an ox, calf or bull;
- “**district**” means the district of the City of Albany and includes any area placed under the jurisdiction of the City pursuant to any Act or Regulation;
- “**Dog Act**” means the *Dog Act 1976*;
- “**environmental health officer**” means an environmental health officer appointed by the City of Albany under the *Health Act 1911* and includes an acting or assistant environmental health officer;
- “**food premises**” means a premises where food is stored, kept, prepared, manufactured, processed, cooked or served or otherwise dealt with for subsequent sale to the public;
- “**grouped dwelling**” means a dwelling which is one of two or more dwellings on the same lot such that no dwelling is placed wholly or partly vertically above another, except where special conditions of landscape or topography dictate otherwise;
- “**horse**” includes an ass, mule, donkey, Shetland pony, pony or miniature horse;
- “**land**” means land in the district and includes houses, buildings, works and structures, in or upon the land;
- “**large animal**” includes a sheep, cow, goat, horse, deer, alpaca, pig (excluding a miniature pig) or any other animal so classified by the local government;
- “**livestock**” means any horse, cattle, sheep, goat, swine, buffalo, deer, camel, llama and alpaca;
- “**lot**” means a defined portion of land for which a separate certificate of title has been issued and includes a strata lot;
- “**multiple dwelling**” means a dwelling in a group of more than one where any part of a dwelling is vertically above part of any other;
- “**nuisance**” means—
- (a) Injurious or dangerous to the health of another person of normal susceptibility, or any activity, thing, condition, circumstances or state of affairs caused or contributed to by a person 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 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;
- “**pigeon**” includes homing pigeon and racing pigeon;
- “**poultry**” means any domestic fowl or chicken, bantam, duck, goose, guinea fowl, pheasant, turkey, peahen or peacock;
- “**pound**” means a building or yard established by Council or an authorised person for the impounding of dogs or animals for the purposes of this local law;
- “**public place**” means any place to which the public has access;
- “**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 1979*; or
 - (c) which is an “otherwise unvested facility” within section 3.53 of the Act.
- “**residential area**” means any land situated within a residential zone as classified by the town planning scheme and includes land predominantly used for residential purposes;
- “**rural area**” means any land situated within a rural zone as classified by the town planning scheme;
- “**special residential**” means any land situated within a special residential zone as classified by the town planning scheme;
- “**special rural zone**” means any land situated within a special rural zone as classified by the town planning scheme;

“**stablehand room**” means a room or rooms used for occasional overnight occupation to facilitate husbandry to pregnant or sick animals;

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

“**townsite**” means the townsite of Cuthbert, Elleker, Kalgan, Manypeaks, Redmond, South Stirling, Torbay, Wellstead and Youngs Siding 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

“**young birds**” means any pigeons under 24 days of age and, unless the contrary can be shown, a pigeon shall be deemed under this local law to be a young bird if it is without feathers on the flesh under the wings.

PART 2—DOGS

Pound

6. Council may establish and maintain a pound or pounds for the impounding of dogs seized pursuant to the provisions of the Dog Act or this local law.

Impounding Dogs

7. A dog seized by the Police or by a person authorised by Council may be placed in a pound.

Pound Fees

8. The following are to be imposed and determined by Council 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.

Prohibited Areas

9. (1) The owner or person liable for the control of a dog, other than a person with vision impairment or who is a trainer accompanied by a bona fide guide dog, shall prevent the dog from entering or being in or on any of the following places—

- (a) A public building;
- (b) A theatre, picture garden or recreation hall;
- (c) A house of worship;
- (d) A shop or other business premises (excluding a pet shop or veterinary clinic);
- (e) A construction, building or demolition site; or
- (f) The land specified in the Second Schedule to this local law.

Dog Exercise Areas

10. (1) Subject to clause 9, the land specified in the Third Schedule to this local law is designated as Dog Exercise Areas for the purposes of the Act.

(2) Any person bringing a dog on to a dog exercise area shall keep that dog under control so that it does not—

- (a) endanger any person or other dog; or
- (b) Unreasonably disturb or interrupt the reasonable use of the dog exercise area by any person or other dog.

(3) 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 Council, during the times of such use; or
- (c) A car park.

Fouling of Streets and Public Places

11. Any person liable for the control of a dog who permits that dog to excrete on any street or public place or on any land within the district without the consent of the occupier of that land commits an offence unless the excreta is removed forthwith and disposed of either on private land with the written consent of the occupier or in such other manner as Council may approve.

Fencing Requirements

12. The owner or occupier of premises within the district on which a dog is kept shall cause the portion of those premises on which the dog is kept to be fenced in a manner capable of confining the dog to that portion, and in particular shall ensure that—

- (1) Any fence or wall used to confine the dog shall be of the type, height and construction which, having regard to the species, age, size and physical condition of the dog prevents the dog from passing over, under or through the fence;

- (2) Any gate or door within the fence is kept closed at all times except when the dog is not on the premises, however nothing in this section shall prevent a person from opening the gate, in order to immediately enter or leave the premises; and
- (3) Every gate or door within a fence has been fitted with a self-closing/self-latching and/or permanently locking mechanism and the gate or door is maintained in good order and condition.

Sub-clauses (1), (2) and (3) shall not apply to any rural area.

Limitation on Number of Dogs

13. A person shall not, without the approval of an authorised person, keep or permit to be kept on any premises more than—

- (a) 2 dogs over the age of 3 months and the young of those dogs under that age; or
- (b) 6 dogs over the age of 3 months and the young of those dogs under that age if the premises are situated within a rural area

Unless the premises are licensed as an approved kennel establishment or have been granted an exemption pursuant to Section 26(3) of the Dog Act and have planning approval under the town planning scheme.

Footnote:

The provisions of Section 29 of the Dog Act will apply to dogs seized and placed in a pound in relation to—

- Notification of Owner;
- Release of dogs from the pound;
- Sale of dogs; and
- Destruction of dogs.

PART 3—APPROVED KENNEL ESTABLISHMENT

Approved Kennel Establishment Licence

14. A person shall not keep a kennel establishment without having first obtained a licence under this local law and a planning approval under the town planning scheme.

Notice of Application for Kennel Establishment Licence

15. An applicant for a licence to keep an approved kennel establishment shall—

- (a) Publish in a newspaper circulating in the district a notice of his or her intention to submit an application for a licence, in the form approved by Council from time to time, specifying that any interested person may within 21 days after the date of the publication object to or make representations in respect of the application in writing directly to the CEO; and
- (b) Forward notice as prescribed in paragraph (a) to the owners and occupiers of all land within a radius of 200 metres of the boundaries of the land upon which it is proposed to establish the kennel.

Application for Kennel Establishment Licence

16. An application for a licence to keep an approved kennel establishment shall be on the form approved by the Council from time to time and should be accompanied by—

- (a) Evidence that notice of the proposed use of the land has been given in accordance with clause 15;
- (b) Three (3) copies of a plan showing the details and specifications of all kennels, adjacent yards and the distances from the kennels to the boundaries of the land subject of the application and all buildings on the land together with such additional information as Council or an authorised person requires.

Determination of Application

17. (1) Council or an authorised person may refuse an application for a licence—

- (a) That does not comply with the requirements of clause 16;
- (b) For which the processes required by clause 15 have not been completed;
- (c) After considering any submissions or representations received within the specified period in accordance with clause 15 (a);
- (d) Where planning approval for use of the land as an approved dog kennel establishment has not been first obtained under any relevant town planning scheme.

(2) Council or an authorised person may, in respect of an application for a licence—

- (a) Refuse the application; or
- (b) Approve the application on such terms and conditions, if any, as it sees fit.

Licence and Fees

18. A licence to keep an approved kennel establishment shall be in the form approved by the Council from time to time and on issue thereof pay the approved fees and renewal of such licence shall be as approved by Council or an authorised person.

Duties of Licence Holder

19. The holder of a licence to keep an approved kennel establishment shall—

- (a) Maintain the establishment in a clean, sanitary and tidy condition;
- (b) Dispose of all refuse, faeces and food waste daily in a manner approved by Council; and
- (c) Take all practical measures for the destruction of fleas, flies and other vermin.

Limit on Number and Breed of Dogs

20. A person who conducts an approved kennel establishment shall not keep or permit to be kept thereon more than the number of dogs specified in the licence or dogs of a breed different to the breed or breeds (if any) specified in the licence without the written approval of Council or an authorised person.

Kennel Establishment Requirements

21. Dogs in an approved kennel establishment shall be kept in kennels and yards appropriate to the breed or kind in question, be sufficiently secured, sited and maintained to a standard not less than the following—

- (a) Each kennel shall have an adjacent yard;
- (b) Each kennel and each yard and every part thereof shall be at a distance not less than eighteen (18) metres from the boundaries of the land in the occupation of the occupier;
- (c) Each kennel and each yard and every part thereof shall be at a distance of not less than eighteen (18) metres from any road reserve boundary;
- (d) Each kennel and yard and every part thereof shall be at a distance of not less than ten (10) metres from any dwelling house, church, schoolroom, hall or factory and no less than fifteen (15) metres from any premises wherein food is manufactured, prepared, packed or stored for human consumption;
- (e) Each kennel shall have walls constructed of concrete, brick, stone or such other materials as the Council or an authorised person shall approve;
- (f) The roof shall be constructed of an impervious material;
- (g) All untreated external surfaces of kennels shall be painted and kept painted with good quality paint unless the local government grants an exemption from this clause;
- (h) Each yard shall be secured with a fence not less than 1.8 metres in height;
- (i) All gates shall be provided with proper catches or means of secure fastening;
- (j) The upper surface of the floor of each kennel shall be set at least 100mm above the surface of the surrounding ground and shall be constructed of granolithic cement finished to a smooth surface and shall have a fall of not less than 1 in 100. The entire yard shall be surrounded by a drain which shall be properly laid, ventilated and trapped. All floor washings shall pass through this drain and shall be disposed of in accordance with the health requirements of the local government;
- (k) The floor of any yard shall be constructed in the same manner as the floor of any kennel and as provided in paragraph (j);
- (l) For each dog kept therein every kennel shall have not less than 1.8m² of floor space and every yard not less than 2.5m²;
- (m) All kennels and yards and all feeding and drinking vessels shall be maintained in a clean condition and cleaned and disinfected when so ordered by an authorised person.

PART 4—LIVESTOCK**Livestock Not to Stray**

22. The owner or person in charge of livestock shall not permit that livestock to stray or be at large in a street, public place or upon private property without the consent of the property owner.

Property to be Fenced

23. (1) The owner or occupier of a property on which livestock is kept shall cause the property or a portion of the property to be fenced in a manner capable of confining the livestock, to that portion where the livestock is kept;

(2) The minimum fencing requirements to confine livestock in a rural or special rural area, shall be a fence of posts and wire construction.

Livestock may be Impounded

24. (1) An authorised person may impound livestock found straying in contravention of clause 22.

(2) Livestock being impounded shall be placed in—

- (a) A pound established and maintained by Council; or
- (b) A secured portion of private property with the consent of the property owner.

Horse Exercise area

25. (1) Council may set aside a reserve or foreshore or portion of a reserve or foreshore as an area upon which a person may ride or drive a horse or into which a person may bring a horse.

(2) A person shall not ride, drive or bring a horse onto a reserve or foreshore or any part thereof that has not been set aside for that purpose.

(3) A person shall not ride, drive, exercise or train a horse on any part of a reserve or foreshore set aside under subsection (1) faster than walking pace or in a manner so as to create a danger or become a nuisance to the public, to any person or to any animal.

(4) Subclause (3) does not apply to—

- (a) The training of horses between dawn and 9.00am
- (b) The wading or swimming of horses between—
 - (i) 9.00am and 11.00am; and
 - (ii) 1.00pm and 3.00pm.

(5) A person shall not ride, drive or bring a horse onto a reserve or foreshore or any part thereof that is set aside specifically for the exercise of dogs.

(6) A person may exercise a dog on an area of reserve or foreshore set aside as a horse exercise area provided the dog remains under full control on a leash at all times.

(7) All that section of Reserve No. 14789 (Middleton Beach) as shown delineated in black and stippled on the diagram in the Fourth Schedule is a designated horse exercise area.

Fouling of Public Places

26. Any person liable for the control of a horse who permits that horse to excrete on any public place or on any land within the district without the consent of the occupier of that land commits an offence unless the excreta is removed forthwith and disposed of either on private land with the written consent of the occupier or in such a manner as Council or an authorised person may approve.

PART 5—PIGEONS

Certificate of Registration

27. (1) A person shall not keep pigeons on any land in the district without having first obtained a certificate of registration from an authorised person.

(2) A certificate of registration shall be valid from its date of issue until the next 30th June.

Application for Certificate of Registration

28. An application for a certificate of registration shall be—

- (a) Lodged by the applicant on the form approved by Council from time to time;
- (b) Lodged with specifications, site and construction plans of proposed cages, enclosures or lofts; and
- (c) Lodged with the registration fees set by Council.

Clause 28(b) shall not apply to any person keeping pigeons before these local laws were made.

Adjoining Owners to be Consulted

29. Prior to granting any certificate of registration, the applicant shall seek the written opinion of all owners and occupiers whose land is adjacent to the land owned by the applicant.

Approval Limitations

30. (1) Pigeons shall not be kept within a caravan park or on any land on which is situated a group dwelling or multiple dwellings except for land on which 2 group dwellings are permitted; and

(2) Unless previously approved by Council prior to this local law coming into effect, pigeons shall not be kept on any land which has an area of less than 600m².

Duties of Certificate Holder

31. The holder of a certificate of registration to keep pigeons shall—

- (a) Keep all pigeons confined continuously in cages, enclosures and lofts approved by an authorised person except that homing pigeons and racing pigeons registered in accordance with this local law may be released in accordance with this local law;
- (b) Keep all cages, enclosures and lofts and their immediate surrounds clean and maintained in good order and condition at all times and the minimum standard to be adhered to shall be that which is specified in the Code of Practice; and
- (c) Dispose of all loft litter by immediate burial or by being bagged and deposited in a household bin to ensure no nuisance occurs.

Limit on the Number of Pigeons

32. (1) Subject to subclause (2), the maximum number of pigeons which shall be kept on land the subject of a certificate of registration pursuant to each certificate of registration shall not exceed 20, excluding young birds.

(2) A person who on or before 30 June each year produces to an authorised person, satisfactory proof that the person is a current financial member of a recognised incorporated racing pigeon body, or of a registered pigeon fancier, may be permitted by an authorised person to keep up to 150 pigeons, excluding young birds, in any residential, rural or special rural area.

Cage, Enclosure or Loft requirements

33. (1) An approved cage, enclosure or loft used to house pigeons shall aesthetically blend with its surrounds, be constructed of new materials and shall be constructed to the following minimum requirements—

- (a) The base floor of any loft shall be of 50mm thick concrete;
 - (b) In the case of an elevated loft the suspended floor shall be constructed and maintained in accordance with the requirements in the Code of Practice;
 - (c) Cladding of a loft, including the roof shall be of smooth fibro cement sheeting, sheet metal or other smooth material;
 - (d) Except as provided in paragraph (e), a loft height shall not exceed 2.4 metres at any point when measured from ground level; and
 - (e) Where a loft has a gable roof the loft height shall not exceed 3 metres at any point when measured from ground level.
- (2) A cage, enclosure or loft shall not be located nearer than—
- (a) 1.2 metres from the boundary of any land adjacent to the land, subject of an application;
 - (b) 9 metres from any dwelling house, church, school room, hall, factory, dairy or food premises; or
 - (c) 9 metres from any road reserve or street.

Exercise of Pigeons

34. (1) A person who is approved to keep registered homing pigeons or racing pigeons may only release such homing pigeons or racing pigeons for exercise between the hours set out in the Code of Practice, unless otherwise authorised by Council or an authorised person.

(2) A person shall not release more than 60 registered homing or racing pigeons for exercise or training at any one time.

Alteration, Cancellation or Refusal of Certificate of Registration

35. (1) At any time an authorised person may amend the conditions contained in or relating to a certificate of registration and without limiting the generality of the same, where any complaint of a nuisance is received, the authorised person may vary the hours for release of pigeons and impose any other conditions deemed necessary to minimise any nuisance from the keeping of pigeons or any associated activity

(2) An authorised person may cancel, refuse to approve or refuse to renew a certificate of registration for any one or more of the following reasons—

- (a) The land is not maintained in accordance with this local law;
- (b) The cages, enclosures or loft have fallen into disrepair, are unclean or infested with vectors of disease;
- (c) The pigeons are being released outside the times permitted in clause 34;
- (d) A condition imposed in accordance with this local law or a certificate of registration has not been complied with in the time limits set out for doing so;
- (e) The applicant or holder of the certificate of registration as the case may be, has two or more convictions under this local law; or
- (f) Non payment of registration fees.

PART 6—KEEPING OF BEES

36. (1) A person shall not keep a beehive—

- (a) In a townsite or residential area;
- (b) In a special rural area without the written approval of council or an authorised person

(2) If, in the opinion of an authorised person, the approved beehives are causing a nuisance, the authorised person may direct any bees or beehives to be removed.

PART 7—ANIMALS, BIRDS AND POULTRY**General**

37. The owner or occupier of a premises, in or on which an animal or bird is kept shall—

- (a) Keep the premises free from excrement, filth, food waste and all other matter which is or likely to become offensive or injurious to health or to attract rats, vermin or insects;
- (b) When so directed by an environmental health officer, clean and disinfect the premises;
- (c) Keep the premises, so far as possible, free of flies and when directed by an environmental health officer, spray the premises with a residual insecticide or use any other effective means to kill and repel flies;
- (d) Ensure the animal or bird kept is not causing a nuisance or is injurious, offensive or dangerous to health.

Keeping of Large Animals

38. An owner or occupier of a premises shall—

- (a) Not keep a large animal on any land less than 2020m² in area;
- (b) Not keep any large animal within 9 metres of a habitable room, shop, church or any premises where food is stored, manufactured or sold.

Keeping of Pigs

39. (1) Except for a miniature pig, no person shall keep a pig or pigs, in any residential area, special residential area, special rural area or on any land zoned commercial or industrial under the town planning scheme.

(2) Except on a licensed piggery, no person shall keep more than 2 pigs in any rural area without prior written approval of Council.

(3) Council or an authorised person may prohibit the keeping of pigs, including a miniature pig, on any land or state the conditions under which they may be kept.

(4) A person may keep 1 miniature pig in any residential area, special residential or special rural area provided it is registered with Council and the approved annual registration fee is paid.

(5) The occupier of any premises where a miniature pig is kept shall—

- (a) Only keep a sterilised animal and retain written proof of its sterilisation;
- (b) Confine the animal on the property at all times;
- (c) Ensure the animal does not cause a nuisance to any neighbour regarding noise, dust or odour; and
- (d) Maintain documentary evidence that the animal's veterinary treatment against roundworm and tape worm is current.

Stables

40. (1) The owner or occupier of any land where a stable is erected shall—

- (a) Not permit a stable within 9 metres of a house or other building;
- (b) Have a minimum floor area of 12m² per animal;
- (c) Ensure the stable has walls and a roof, constructed of impervious material;
- (d) Have on all sides of the building between the walls and the roof, a clear opening of at least 50 millimetres in height; and
- (e) Provide a floor, which shall have an upper surface at least 75 millimetres above ground level.

(2) The owner or occupier of a premises where a stable is located shall—

- (a) Maintain the stable in a clean condition and when directed by an Environmental Health Officer, clean, wash and disinfect it;
- (b) Keep all parts of the stable free from flies; and
- (c) When directed by an environmental health officer, spray the stable, or such parts as may be indicated, with a residual insecticide.

Stablehand Room

41. The owner or occupier of a premises shall not permit a habitable room, including a stablehand's room, to open directly into a stable area.

Manure Receptacle

42. An owner or occupier of a premises where a large animal or miniature pig is kept shall—

- (a) Provide in a convenient position, a receptacle for manure, which is constructed of smooth, impervious, durable, easily cleanable materials and, provided with a tight-fitting cover, and with no part of the receptacle base being lower than the surface of the adjoining ground;
- (b) Keep the lid of the receptacle closed except when manure is being deposited or removed;
- (c) Cause the receptacle to be emptied at least once a week and more often as necessary to prevent it becoming offensive or a breeding place for flies or other insects;
- (d) Keep the receptacle so far as possible free from flies or other insects by spraying with a residual insecticide or other effective means; and
- (e) Cause all manure produced on the premises to be collected, stored or removed as to not cause a nuisance or present a hazard.

This clause shall not apply to any rural or special rural area.

Keeping of Cats

43. (1) Subject to sub-clauses (2) and (3), a person shall not keep more than 3 cats over the age of 3 months.

(2) A person who breeds cats may, with the written approval of Council or an authorised person, keep up to 6 adult breeding cats on a property in the district, subject to—

- (a) Each cat being permanently confined in an effective cage system on the property; and
- (b) Under such terms and conditions that may be imposed by Council or an authorised person from time to time.

(3) A person may keep more than 3 cats over the age of 3 months in any rural area, commercial area or industrial area if the owner or occupier of such lot has—

- (a) Obtained written approval from Council or an authorised person to establish a cattery;
- (b) Paid to Council, the annual fee for registration and certification of the premises as a cattery;
(The annual registration and certification fee shall be due each June 30th, except for the first issue which may be paid on a pro-rata basis.)
- (c) Provided for each cat on the lot, a properly constructed shelter with an enclosure, which complies with the following specifications—
 - (i) A floor area of not less than 0.56m² for each cat;
 - (ii) The area of the enclosure adjacent to any shelter or group of shelters forming a cattery shall be at least 3 times the area of the shelter or group of shelters;
 - (iii) No shelter or enclosure shall be closer than 9 metres from the boundary of the lot of the keeper or any other building on the property of the keeper; and
 - (iv) All enclosures, yards, runs and shelters within a cattery shall be maintained in a clean condition and shall be cleaned, disinfected or otherwise dealt with as an environmental health officer may direct.

(4) A registration issued by Council or an authorised person shall lapse upon the keeper vacating the premises although a transfer of the registration may be effected if the cattery operation remains continuous and the approved transfer fee is paid to Council.

Burial of Animals

44. (1) An owner or operator of a veterinary practice where dead animals are kept for more than 12 hours, shall refrigerate the carcass prior to its removal and disposal, at an approved disposal site.

(2) The operators of commercial poultry farms, licensed piggeries and similar intensive animal or bird farming shall not dispose of any dead animals or birds on their premises without written approval from Council or an authorised person.

(3) Owners and occupiers of properties in any rural or special rural area who occasionally need to bury an animal on their property, shall cover the carcass with lime before burial.

(4) Owners and occupiers of properties in a residential or special residential area, other than a veterinary practice, on which there is a dead animal shall immediately remove the carcass for its disposal at an approved disposal site.

Keeping of Ostrich or Emu

45. (1) A person shall not keep an ostrich or emu on any land in any residential area, or any land zoned commercial or industrial under the town planning scheme.

(2) A person shall not keep an ostrich or emu in any special rural area without the written approval of Council or an authorised person.

(3) A person shall not keep more than 3 adult pairs of ostrich or emu for each 2 hectares of land and no single pair shall be confined in any area less than 0.1 hectares.

(4) Council or an authorised person may prohibit the keeping of any ostrich and emu on any land or state the conditions under which they may be kept.

Keeping Poultry in Residential Areas

46. (1) A person shall not keep or suffer to remain within a town site or in any residential area a rooster, turkey, goose or geese, peacock or peahen.

(2) Notwithstanding sub-clause (1), the owner or occupier of premises situated within a townsite or any residential area shall not keep or permit to be kept any poultry otherwise than under the following conditions—

- (a) the maximum number of poultry permitted to be kept on a town site or residential property is twelve (including a maximum of 2 ducks);
- (b) no poultry is able to approach within 15 metres of a dwelling house, public building or premises where people are employed or 12 metres from where food for sale is stored, prepared, or manufactured, or within 1.2 metres from the boundary of land in another occupation;
- (c) all poultry is kept in a properly constructed and securely fastened structure or enclosure which is provided with a concrete floor trowelled to a smooth finish;
- (d) the structure or enclosure is in a yard having an otherwise unobstructed area of at least 30 square metres;
- (e) no poultry is able to approach within 15 metres of a street other than a right of way unless, in the case of land at the junction of two or more streets, an authorised person has approved a lesser distance; and
- (f) all enclosures or cages within which poultry are kept shall be maintained at all times in a clean condition and shall be disinfected or otherwise dealt with in a way directed by an authorised person.

Keeping of Poultry in Special Rural Areas

47. The occupier of premises situated in any special rural area, shall not keep or permit to be kept thereon, poultry other than under the following conditions—

- (a) in a shed designed to permit the use of a deep litter system or in open yards with a shed that has a concrete floor at least 50 millimetres thick;

- (b) The shed shall be of sound construction and its yard shall be maintained in a clean condition at all times;
- (c) The shed must be between 1.5m to 1.8m in height to allow easy entry for cleaning;
- (d) The shed shall not be nearer than 1 metre from the boundary of land in other occupation or 15 metres from any dwelling house or 15 metres from a street; and
- (e) No more than 25 head of poultry without the written approval of an authorised person.

Keeping of Poultry in Rural Areas

48. The occupier of premises in any rural area, shall not keep or permit to be kept thereon, more than 50 head of poultry, without the written approval of an authorised person.

PART 8—MISCELLANEOUS

False or Misleading Statement

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

Licence Fees and Charges

50. All licence fees and charges applicable under this local law shall be as determined by Council from time to time in accordance with sections 6.16 of the Act.

Limit on Liability

51. A person, owner, occupier or licensee is not entitled to make a claim by way of damages or otherwise, against an authorised person, Council employee, Council appointed subcontractor or other person authorised by Council; to enter the land and carry out all or part of the works and do all things necessary that the owner, occupier or licensee was required to do to comply with this local law.

PART 9—PENALTIES

Offences

52. (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 a clause specified in the First Schedule 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.

Infringement and Infringement Withdrawal Notices

53. 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*.

Offence Description and Modified Penalty

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

Prosecution for Offences

55. A penalty for an offence against this local law (not being the modified penalty) may be recovered by Council by taking proceedings against the alleged offender in a Court of Petty Sessions.

Records to be Kept

56. Council shall cause adequate records to be kept of all infringement notices served and modified penalties received.

Footnote:

Right of Appeal

(1) When Council or an authorised person makes a decision as to whether it will—

- (a) Grant a person a licence or certificate of registration under this local law; or
- (b) Renew, vary, or cancel a licence or certificate of registration 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 *Local Government (Functions and General) Regulations 1996* apply to that decision.

First Schedule
CITY OF ALBANY
ANIMALS LOCAL LAW 2001
OFFENCES AND MODIFIED PENALTIES

Clause	Description	Modified Penalty \$
Part 2—Dogs		
9	Permitting a dog to be in a public building, shop, business premises or other prohibited area	100
10	Failing to keep a dog under control in a dog exercise area	100
11	Permitting a dog to excrete on a street, public place or other land and failing to remove excreta in an approved manner	100
12(1)	Fence not adequate to confine a dog of the species, age, size and physical condition of the dog	100
12(2)	Failing to keep gate or door closed when the dog is at the premises	100
12(3)	Failing to have a gate fitted with self-closing/self-latching and/or permanently locking mechanism	100
13	Keeping more than permitted number of dogs without approval	100
Part 3—Approved Kennel Establishments		
14	Keeping a kennel establishment without a licence	100
19(a)	Failing to maintain a kennel establishment in a clean, sanitary and tidy condition	100
19(b)	Failing to dispose of all refuse, faeces and food waste daily in an approved manner	100
19(c)	Failing to take practical measures to destroy fleas, flies and other vermin	100
20	Keeping a greater number or breed of dogs than specified in the licence	100
Part 4—Livestock		
22	Permitting livestock to stray or be at large in a street, public place or private property without consent	100
23	Failing to keep property fenced in a manner capable of confining livestock	100
25(2)	Ride, drive or bring a horse onto a reserve or foreshore not set aside for the purpose	100
25(3)	Ride, drive, exercise or train a horse on a reserve or foreshore so as to create a danger or nuisance	100
25(5)	Ride, drive or bring a horse on to a reserve or foreshore set aside for the exercise of dogs	100
26	Permitting a horse to excrete on a street, public place or other land and failing to remove excreta in an approved manner	100
Part 5—Pigeons		
27	Keeping pigeons without Council approval	100
30(1)	Keeping of pigeons within -	
	A caravan park;	100
	A group dwelling (not being one or two grouped dwelling)	100
	A premises classified as part of a "multiple dwelling"	100
31(b)	Failing to keep cages, enclosures and lofts maintained to minimum standards specified in Code of Practice	100
31(c)	Failing to dispose of loft litter in approved manner to ensure no nuisance occurs	100
32(1)	Keeping more than 20 pigeons for each Certificate of Registration	100
32(2)	Keeping more than maximum number of birds approved	100
34(1)	Releasing registered pigeons outside hours permitted	100
34(2)	Releasing more than 60 pigeons for exercise or training at any one time	100
Part 6—Keeping of Bees		
36(1)(a)	Keeping a beehive in a townsite or residential area	100
36(1)(b)	Keeping a beehive in a special rural area without approval	100
36(2)	Failing to remove bees or a beehive when directed	100

Clause	Description	Modified Penalty \$
Part 7—Animals, Birds and Poultry		
37(a)	Fail to keep premises free from excrement, filth, food waste and other matter likely to be offensive or injurious to health, attract rats, vermin or insects	100
37(b)	Fail to clean and disinfect premises when directed by an environmental health officer	100
37(c)	Fail to keep premises free of flies or when directed, spray premises with residual insecticide or use other means to kill or repel flies	100
38(a)	Keeping a large animal on land less than 2020m ² in area	100
38(b)	Permit large animal to approach within 9m of habitable room, shop, church, or any premises where food is stored, manufactured or sold	100
39(1)	Keep a pig on land zoned residential, special residential, special rural, commercial or industrial area	100
39(2)	Keep more than two pigs in rural area without written approval of the local government	100
39(4)	Keep an unregistered miniature pig in a residential area, special residential or special rural area and/or not pay the registration fee	100
39(5)(a)	Keep an unsterilised miniature pig or fail to retain written proof of its registration	100
39(5)(b)	Fail to confine animal on the property at all times	100
39(5)(c)	Fail to ensure animal does not cause a nuisance to any neighbour through noise, dust or odour.	100
39(5)(d)	Fail to maintain documentary evidence that an animal's veterinary treatment for roundworm and tapeworm is current	100
40(1)(a)	Permit a stable within 9m of a house or other building	100
40(1)(b)	Fail to have a stable floor area of 12m ² per animal	100
40(1)(c)	Fail to have stable walls and or roof constructed of impervious material	100
40(1)(d)	Fail to have on all sides of stable building a clear opening of 50mm in height between the walls and roof	100
40(1)(e)(i)	Fail to have upper surface of stable floor at least 75mm above the ground	100
40(2)(a)	Fail to maintain the stables in a clean condition	100
40(2)(b)	Fail to keep the stable free from flies	100
40(2)(c)	Fail to spray the stable with residual insecticide when directed by an environmental health surveyor	100
41	Permit a habitable room including a stablehand's room to open directly into a stable	100
42(a)	Fail to provide, in a convenient position, a receptacle for manure that is smooth, impervious, durable, easily cleanable with a tight fitting lid	100
42(b)	Fail to keep the lid of manure receptacle closed except when manure being deposited or removed	100
42(c)	Fail to empty manure receptacle to prevent it becoming offensive or a breeding place for flies	100
42(d)	Fail to keep the receptacle free from flies other insects	100
42(e)	Fail to collect all manure produced on the premises and place in receptacle	100
43(1)	Keep more than 3 cats over three months	100
43(2)	Keep more than 3 adult cats for breeding without written approval of the local government	100
43(2)(a)	Fail to confine cats in effective cage system on the property	100
43(2)(b)	Fail to comply with conditions imposed by the local government	100
43(3)(a)	Keep more than 3 cats over the age of 3 months in a rural area, commercial area or industrial area without approval to establish a cattery	100
43(3)(b)	Fail to pay the annual registration and certification fee for a cattery	100
43(3)(c)	Fail to provide for each cat a properly constructed shelter/enclosure to comply with the specifications	100
44(1)	Fail to refrigerate animal carcass	100
44(2)	Dispose of dead animals or birds without written approval of the local government	100

Clause	Description	Modified Penalty \$
Part 7—Animals, Birds and Poultry—<i>continued</i>		
44(3)	Fail to cover the carcass of dead animal with lime before burial on any rural or special rural area	100
44(4)	Fail to dispose of dead animal at an approved disposal site	100
45(1)	Keep an ostrich or emu on any land in residential area or land zoned commercial or industrial	100
45(2)	Keep an ostrich or emu on any special rural area without written approval of the local government	100
45(3)	Keep more than 3 adult pairs of ostrich or emu for each 2 hectares or single pair in less than 0.1 hectares	100
46(1)	Keep or suffer to remain in a residential area a rooster, turkey, goose or geese, peacock or a peahen	100
46(2)	Keep or permit to be kept in any residential area any poultry, not in accordance with conditions of this local law	100
47	Keep or permit to be kept in any special rural area any poultry, not in accordance with conditions	100
48	Keep or permit to be kept in any rural area more than 50 head of poultry without the written approval of the local government	100
Miscellaneous		
	Other offences not specified	100

Second Schedule

CITY OF ALBANY

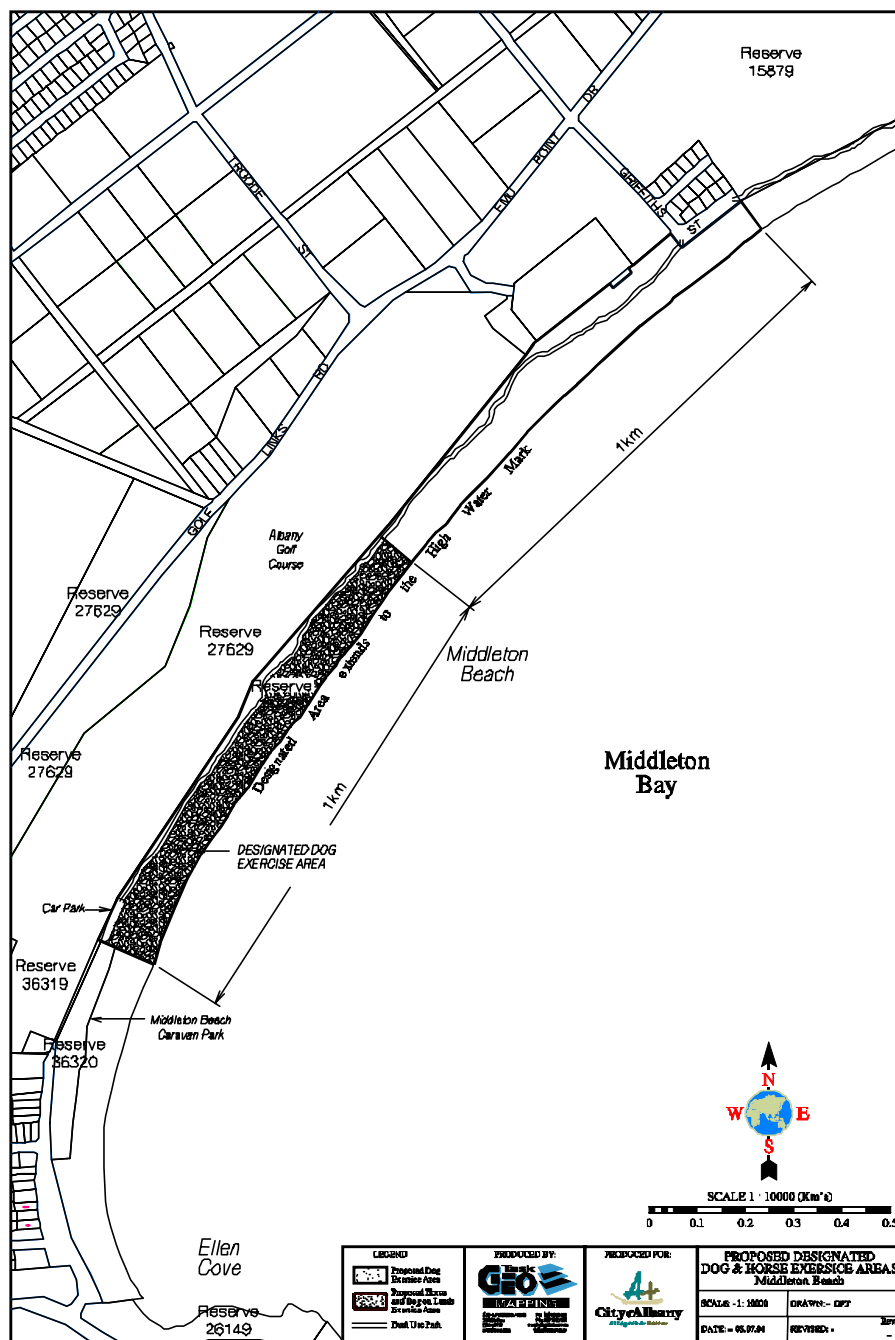
ANIMALS LOCAL LAW 2001

PROHIBITED DOG EXERCISE AREAS

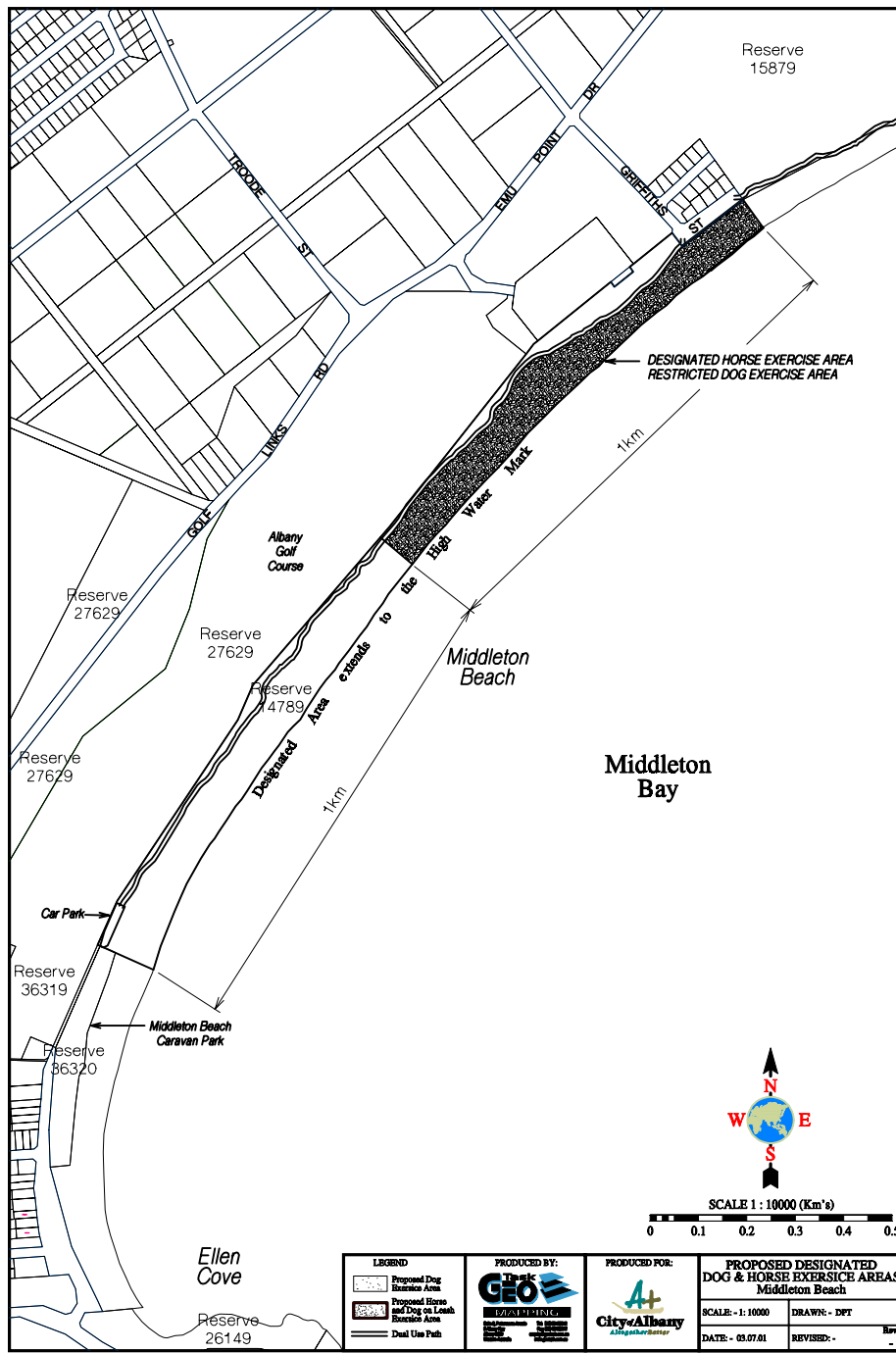
1. Emu Beach and that area known as Emu Point being portions of Reserve 14789 east of the prolongation of Griffith Street and Reserve 22698 south of the prolongation of Bedwell Street and for a distance of fifty (50) metres inland from the high water mark.
2. Middleton Beach and Ellen Cove being all that area of Reserve 14789 and Reserve 26149 bordered by the prolongation of the Ellen Cove Jetty to the South, the prolongation of the northern boundary of Lot 1340 Reserve 36320 (Middleton Beach Caravan Park) to the north.
3. Cosy Corner being that portion of Reserve 26221 from the low water mark in a foreshore corridor one hundred and ten (110) metres wide extending from the most northern point of Reserve 24547 to a westerly prolongation of the most northerly point of Migro Island.
4. Frenchman Bay being that portion of Reserve 26221 from the low water mark in a foreshore corridor seventy (70) metres wide extending from a parallel alignment twenty metres south of the prolongation of the most southern side boundary of Plantagenet Location 2104/2471, Lot 233 La Perouse Road to the prolongation of the eastern boundary of Plantagenet Location 2471, Lot 13 St Georges Crescent, Frenchman Bay.
5. Cheyne Beach being that portion of Reserve 878 from the low water mark in a foreshore corridor fifty (50) metres wide extending from the prolongation of the eastern boundary of Lot 12 Kybra Road of Reserve 878, Cheyne Beach to the most easterly boundary of Reserve 878.
6. Cape Riche being the whole of Reserves 1010 and 33850 together with the beach foreshore location defined by the low water mark and the northern boundary of Reserve 1010 and by the northern prolongations of the west and east boundaries of Reserve 1010.
7. Nanarup Beach being that portion of the beach foreshore defined by the low water mark and the southern boundary of Plantagenet Location 416, Lot 6 fronting Nanarup Road and by the prolongation south easterly of the southernmost southwestern boundary of Plantagenet Location 406, Lot A88 fronting Nanarup Road and the prolongation south easterly of the southernmost southwestern boundary of Plantagenet Location 416, Lot 6 fronting Nanarup Road.
8. Whalers Beach being that portion of Reserve 21337 from the low water mark in a foreshore corridor one hundred and ten (110) metres wide extending from the prolongation of the north eastern boundary of Plantagenet Location 7584, Lot 1 fronting Frenchman Bay Road, Frenchman Bay to the prolongation of the most western boundary of the same lot.

Third Schedule
CITY OF ALBANY
ANIMALS LOCAL LAW 2001
DOG EXERCISE AREAS

1. Reserve 36617, Lot 7457, Orana.
2. Reserve 25356, Clifton Street, Lockyer.
3. Reserve 25382, Apex Park (Place of Heritage Value), Lockyer.
4. Reserve 35088, Lot 7380 bordered by Barnesby Drive and Yakamia Creek, Yakamia.
5. Foundation Park, Parade Street.
6. Drain Reserve 7229 on Lots 312 and 315 Cockburn Road, Mira Mar.
7. All that section of Reserve 14789 (Middleton Beach) as shown delineated in black and stippled on the diagram in the following diagram—



Fourth Schedule
CITY OF ALBANY
ANIMALS LOCAL LAW 2001
HORSE EXERCISE AREA
Restricted Dog Exercise Area
 (Refer to clause 25(6) of this local law)



Dated this 7th day of January 2002.

The Common Seal of the City of Albany was affixed by authority of a resolution of the Council in the presence of—

ALISON GOODE JP, Mayor.
 ANDREW HAMMOND, Chief Executive Officer.

LOCAL GOVERNMENT ACT 1995

MUNICIPALITY OF THE CITY OF ALBANY

LOCAL LAWS RELATING TO THE REVOCATION OF EXISTING
CITY OF ALBANY LOCAL LAWS

In pursuance of the powers conferred upon it by the abovementioned Act and of all other powers enabling it, the Council of the abovementioned Municipality hereby records having resolved on the 18th day of December 2001 to make and submit for confirmation by the Governor the following Local Laws.

Town of Albany**Date of Gazettal***Control of Old and Disused Vehicles & Machinery**05.08.83**Pest Plants**13.11.87***Shire of Albany***Aerodromes**07.06.85**Pest Plants**13.11.92**Vehicle Wrecking**22.07.83**Unkempt Land**15.05.92*

Dated at Albany on this 7th day of January 2002.

The Common Seal of the City of Albany was affixed by the authority of a resolution of the Council in the presence of—

ALISON GOODE JP, Mayor.
ANDREW HAMMOND, Chief Executive Officer.



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