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TOWN OF VINCENT

LOCAL GOVERNMENT ACT 1995

**LOCAL GOVERNMENT PROPERTY
LOCAL LAW 2008**

**TRADING IN PUBLIC PLACES
LOCAL LAW 2008**

DIVIDING FENCES ACT 1961

FENCING LOCAL LAW 2008

LOCAL GOVERNMENT ACT 1995

TOWN OF VINCENT

LOCAL GOVERNMENT PROPERTY LOCAL LAW 2007

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LOCAL GOVERNMENT ACT 1995

TOWN OF VINCENT

LOCAL GOVERNMENT PROPERTY LOCAL LAW 2007

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the Town of Vincent resolved on 26 February 2008 to make the following local law.

PART 1—PRELIMINARY**1.1 Citation**

This local law may be cited as the *Town of Vincent Local Government Property Local Law 2008*.

1.2 Objective

(1) The objective of this local law is to provide for the regulation, control and management of activities and facilities on local government property, thoroughfares and public places within the district.

(2) The effect of this local law is to establish the requirements with which any person using or being on local government property, thoroughfares and public places within the district must comply.

1.3 Commencement

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

1.4 Repeal

(1) The following local laws adopted by the Town of Vincent—

- (a) *Local Law Relating to Air-conditioning Units*, published in the *Government Gazette* on 4 November 1997;
- (b) *Local Law Relating to Beatty Park Leisure Centre*, published in the *Government Gazette* on 30 April 1998;
- (c) *Local Law Relating to Halls and Centres*, published in the *Government Gazette* on 30 April 1998;
- (d) *Local Law Relating to Parks and Public Reserves*, published in the *Government Gazette* on 22 December 1998 and as amended and published in the *Government Gazette* on 23 March 2004;
- (e) *Local Law Relating to Property Numbers*, published in the *Government Gazette* on 25 September 1998;
- (f) *Local Law Relating to the Removal and Disposal of Obstructing Animals or Shopping Trolleys*, published in the *Government Gazette* on 22 December 1998;
- (g) *Local Law Relating to the Removal of Refuse, Rubbish and Disused Materials*, published in the *Government Gazette* on 1 May 1998;
- (h) *Local Law Relating to Street Lawns and Gardens*, published in the *Government Gazette* on 30 April 1998;
- (i) *Local Law Relating to Streets and Footpaths*, published in the *Government Gazette* on 14 June 2000; and
- (j) *Local Law Relating to Verandahs and Awnings over Streets*, published in the *Government Gazette* on 16 January 1998;

are repealed on the day this local law comes into operation.

1.5 Application

(1) This local law applies throughout the district.

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

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

1.6 Definitions

In this local law unless the context requires otherwise—

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

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

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

“**bathing**” means the act of entering a swimming pool, or other water body, to swim or use a bathing appliance and includes the act of emerging therefrom;

“**bicycle**” means a vehicle with two or more wheels that is built to be propelled by human power through a belt, chain or gears (whether or not it has an auxiliary motor);

“**boat**” means any structure or vessel, capable of being used in navigation, whether motorised or not and made or used to travel or float on or through water or travel under water;

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

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

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

“**community facility**” means a facility being local government property operated for the benefit of the public, and includes a hall, public swimming pool, library, leisure centre, recreation centre, child care centre, infant welfare centre, aged persons centre and the like;

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

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

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

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

“**drip line**” in relation to a street tree means the area of land under the perimeter of a street tree canopy;

“**fence**” means any artificially created barrier whether temporary or permanent including post and rails, chain, metal, wire or pipe;

“**firework**” means a device such as a catherine wheel, a roman candle, a rocket or the like, in which combustible materials are ignited and produce coloured smoke, flames, and sometimes an explosion or loud noise;

“**fireworks display**” means a show of a number of fireworks, on occasion set off over a pre-arranged period, for the purpose of providing enjoyment or entertainment to those persons able to view them;

“**fishing**” means to use any line, lure, rod, pot or other method for the purpose of catching marine life;

“**footpath**” means a path set aside for use by pedestrians and cyclists that is on a thoroughfare, and includes all that part of a thoroughfare lying between the edge of the carriageway and the property boundary nearest to that edge on the same side of the thoroughfare;

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

- (a) formal organisation and preparation;
- (b) its occurrence is generally advertised or notified in writing to particular persons;
- (c) organisation by or on behalf of a club;
- (d) payment of a fee to attend it; and
- (e) systematic recurrence in relation to the day, time and place;

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

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

“**lawn**” means a verge 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 same meaning as is given to it in section 3 of the *Liquor Control Act 1988*;

“**local government**” means the Town of Vincent;

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

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

“**lot**” has the meaning given to it in the *Planning and Development Act 2005*;

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

“nuisance” means—

- (a) any activity, thing, condition, circumstance or state of affairs caused or contributed by a person which is injurious or dangerous to the health of another person of normal susceptibility, or which has a disturbing effect on the state of the physical, mental or social well-being of another person of normal susceptibility;
- (b) anything a person does or permits or causes to be done which interferes with or is likely to interfere with the enjoyment or safe use by another person of any public place; or
- (c) anything a person does in or on a public place which unreasonably detracts from or interferes with the enjoyment or value of nearby land owned by another person, provided that 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;

“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;

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

“public place” includes any thoroughfare or place which the public are allowed to use, whether the thoroughfare or place is or is not on private property and includes, parklands, squares, reserves, beaches, and other lands set apart for the use and enjoyment of the public, including local government property, but does not include premises on private property from which trading is lawfully conducted under a written law;

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

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

“street tree” means a tree in a thoroughfare;

“thoroughfare” has the meaning given it in section 1.4 of the Act;

“trading” includes—

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

“valid”, in relation to a permit issued under this local law means current, with all relevant conditions met and for which all the associated fees have been paid in full;

“vehicle” includes—

- (a) every conveyance and every object capable of being propelled or drawn on wheels, tracks or by any means;
- (b) an animal being ridden or driven; and
- (c) a vehicle described in the *Road Traffic Act 1974*;

but excludes—

- (d) a wheel-chair or any device designed for use by physically impaired persons;
- (e) a pram, a stroller or similar device; and
- (f) a train, boat or aircraft; and

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

1.7 Interpretation

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

1.8 Fees and charges

All fees and charges applicable under this local law shall be determined by the local government from time to time in accordance with sections 6.16 to 6.19 of the Act.

PART 2—DETERMINATIONS IN RESPECT OF LOCAL GOVERNMENT PROPERTY*Division 1—Determinations***2.1 Determinations as to use of local government property**

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

2.2 Procedure for making a determination

- (1) The local government is to give local public notice of its intention to make a determination.
- (2) The local public notice referred to in subclause (1) is to state that—
 - (a) the local government intends to make a determination, the purpose and effect of which is summarised in the notice;
 - (b) a copy of the proposed determination may be inspected and obtained from the offices of the local government; and
 - (c) submissions in writing about the proposed determination may be lodged with the local government within 21 days after the date of publication.
- (3) If no submissions are received in accordance with subclause (2)(c), the Council is to decide to—
 - (a) give local public notice that the proposed determination has effect as a determination on and from the date of publication;
 - (b) amend the proposed determination, in which case subclause (5) will apply; or
 - (c) not continue with the proposed determination.
- (4) If submissions are received in accordance with subclause (2)(c), the Council is to—
 - (a) consider those submissions; and
 - (b) decide—
 - (i) whether or not to amend the proposed determination; or
 - (ii) not to continue with the proposed determination.
- (5) If the Council decides to amend the proposed determination, it is to give local public notice—
 - (a) of the effect of the amendments; and
 - (b) that the proposed determination has effect as a determination on and from the date of publication.
- (6) If the Council decides not to amend the proposed determination, it is to give local public notice that the proposed determination has effect as a determination on and from the date of publication.
- (7) A proposed determination is to have effect as a determination on and from the date of publication of the local public notice referred to in subclauses (3), (5) and (6).
- (8) A decision under subclause (3) or (4) is not to be delegated by the Council.

2.3 Discretion to erect sign

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

2.4 Determination to be complied with

A person shall comply with a determination.

2.5 Register of determinations

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

2.6 Amendment or revocation of a determination

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

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

2.7 Activities which may be pursued on specified local government property

(1) A determination may provide that specified local government property is set aside as an area on which a person may—

- (a) bring, ride or drive an animal;
- (b) take, ride or drive a vehicle, or a particular class of vehicle;
- (c) fly or use a motorised model aeroplane;
- (d) use a children's playground provided that the person is under an age specified in the determination, but the determination is not to apply to a person having the charge of a person under the specified age;
- (e) launch, beach or leave a boat;
- (f) take or use a boat, or a particular class of boat;
- (g) deposit refuse, rubbish or liquid waste, whether or not of particular classes, and whether or not in specified areas of that local government property;
- (h) play or practice—
 - (i) golf or archery;
 - (ii) pistol or rifle shooting, but subject to the compliance of that person with the *Firearms Act 1973*; or
 - (iii) a similar activity, specified in the determination, involving the use of a projectile which, in the opinion of the local government may cause injury or damage to a person or property;
- (i) ride a bicycle, a skateboard, rollerblades, a sandboard or a similar device; and
- (j) wear no clothing.

(2) A determination may specify the extent to which and the manner in which an activity referred to in subclause (1) may be pursued and in particular—

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

2.8 Activities which may be prohibited on specified local government property

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

- (a) smoking on premises;
- (b) riding a bicycle, a skateboard, rollerblades, a sandboard or a similar device;
- (c) taking, riding or driving a vehicle on the property or a particular class of vehicle;
- (d) riding or driving a vehicle of a particular class or any vehicle above a specified speed;
- (e) taking or using a boat, or a particular class of boat;
- (f) the playing or practice of—
 - (i) golf, archery, pistol shooting or rifle shooting; or
 - (ii) a similar activity, specified in the determination, involving the use of a projectile which, in the opinion of the local government may cause injury or damage to a person or property;
- (g) the playing or practice of any ball game which may cause detriment to the property or any fauna on the property; and
- (h) the traversing of sand dunes or land which in the opinion of the local government has environmental value warranting such protection, either absolutely or except by paths provided for that purpose.

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

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

(3) In this clause—

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

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

- (1) Where a sign erected on local government property has been erected under a by law or local law of the local government repealed by this local law, then it is to be taken to be and have effect as a determination on and from the commencement day, except to the extent that the sign is inconsistent with any provision of this local law or any determination made under clause 2.1.
- (2) Clause 2.5 does not apply to a sign referred to in subclause (1).

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

- (1) This Part does not apply to a person who uses or occupies local government property under a written agreement with the local government.
- (2) This Part applies to any application for a permit and any permit required under this local law.

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

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

3.3 Decision on application for permit

- (1) The local government may—
 - (a) approve an application for a permit unconditionally or subject to any conditions; or
 - (b) refuse to approve an application for a permit.
- (2) If the local government approves an application for a permit, it is to issue to the applicant, a permit in the form determined by the local government.
- (3) If the local government refuses to approve an application for a permit, it is to give written notice of that refusal to the applicant.

*Division 3—Conditions***3.4 Conditions which may be imposed on a permit**

- (1) Without limiting the generality of clause 3.3 (1)(a), the local government may approve an application for a permit subject to conditions relating to—
 - (a) the payment of fees and charges;
 - (b) compliance with a standard or a policy of the local government adopted by the local government;
 - (c) the duration and commencement of the permit;
 - (d) the commencement of the permit being contingent on the happening of an event;
 - (e) the rectification, remedying or restoration of a situation or circumstance reasonably related to the application;
 - (f) the approval of another application for a permit which may be required by the local government under any written law;
 - (g) the area of the district to which the permit applies;
 - (h) where a permit is issued for an activity which will or may cause damage to local government property, the payment of a deposit, bond or secure sum against such damage; and
 - (i) the obtaining of public liability insurance in an amount and on terms reasonably required by the local government.
- (2) Without limiting clause 3.3(1)(a) and subclause (1), the following paragraphs indicate the type and content of the conditions on which a permit to hire local government property may be issued—
 - (a) when fees and charges are to be paid;
 - (b) payment of a deposit, bond or secure sum against possible damage or cleaning expenses or both;

- (c) restrictions on the erection of material or external decorations;
- (d) rules about the use of furniture, plant and effects;
- (e) limitations on the number of persons who may attend any function in or on local government property;
- (f) the duration of the hire;
- (g) the right of the local government to cancel a booking during the course of an annual or seasonal booking, if the local government sees fit;
- (h) a prohibition on the sale, supply or consumption of liquor unless a liquor licence is first obtained for that purpose under the *Liquor Control Act 1988*;
- (i) whether or not the hire is for the exclusive use of the local government property;
- (j) the obtaining of a policy of insurance in the names of the hirer and the local government, indemnifying the local government in accordance with clause 13.4 in respect of any injury to any person or any damage to any property which may occur in connection with the hire of the local government property by the hirer; and
- (k) the provision of an indemnity from the hirer, indemnifying the local government in respect of any injury to any person or any damage to any property which may occur in connection with the hire of the local government property by the hirer.

3.5 Compliance with and variation of conditions

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

Division 4—General

3.6 Agreement for building

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

3.7 Duration of permit

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

- (a) otherwise stated in this local law or in the permit; or
- (b) cancelled under clause 3.11.

3.8 Renewal of permit

- (1) A permit holder may apply to the local government in writing prior to the expiry of a permit for the renewal of the permit.
- (2) The provisions of this Part shall apply to an application for the renewal of a permit *mutatis mutandis*.

3.9 Transfer of permit

- (1) An application for the transfer of a valid permit is to—
 - (a) be made in writing;
 - (b) be signed by the permit holder and the proposed transferee of the permit;
 - (c) provide such information as the local government may require to enable the application to be determined; and
 - (d) be forwarded to the CEO together with any fee imposed and determined by the local government under and in accordance with sections 6.16 to 6.19 of the Act.
- (2) The local government may approve an application for the transfer of a permit, refuse to approve it or approve it subject to any conditions.
- (3) Where the local government approves an application for the transfer of a permit, the transfer may be effected by an endorsement on the permit signed by the Chief Executive Officer.
- (4) Where the local government approves the transfer of a permit, it is not required to refund any part of any fee paid by the former permit holder.

3.10 Production of permit

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

3.11 Cancellation of permit

- (1) Subject to clause 12.1, a permit may be cancelled by the local government if the permit holder has not complied with a—
 - (a) condition of the permit; or
 - (b) determination or a provision of any written law which may relate to the activity regulated by the permit.

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

Division 5—When a permit is required

3.12 Activities needing a permit

- (1) A person shall not without a permit—
- (a) subject to subclause (3), hire local government property;
 - (b) advertise anything by any means on local government property;
 - (c) erect a structure for public amusement or for any performance, whether for gain or otherwise, on local government property;
 - (d) teach, coach or train, for profit, any person in a pool area or an indoor recreation facility which is local government property;
 - (e) plant any plant or sow any seeds on local government property;
 - (f) carry on any trading on local government property unless the trading is conducted—
 - (i) with the consent of a person who holds a permit to conduct a function, and where the trading is carried on under and in accordance with the permit; or
 - (ii) by a person who has a licence or permit to carry on trading on local government property under any written law;
 - (g) unless an employee of the local government in the course of their duties or on an area set aside for that purpose—
 - (i) drive or ride or take any vehicle on to local government property;
 - (ii) park or stop any vehicle on local government property; or
 - (h) conduct a function or public gathering on local government property;
 - (i) charge any person for entry to local government property, unless the charge is for entry to land or a building hired by a voluntary non-profit organisation;
 - (j) light a fire on local government property except in a facility provided by the local government for that purpose;
 - (k) parachute, hang glide, abseil or base jump from or on to local government property;
 - (l) erect a building or a refuelling site on local government property;
 - (m) make any excavation on or erect or remove any fence on local government property;
 - (n) erect or install any structure above or below ground, which is local government property, for the purpose of supplying any water, power, sewer, communication, television or similar service to a person;
 - (o) depasture any horse, sheep, cattle, goat, camel, ass or mule on local government property;
 - (p) light or set off any fireworks or conduct a fireworks display on local government property;
 - (q) operate any broadcasting or public address system or sound amplification equipment or apparatus on local government property;
 - (r) carry out any works in a thoroughfare or on local government property, including but not limited to—
 - (i) verge treatments;
 - (ii) vehicle cross overs;
 - (iii) crossing a footpath with a vehicle which is likely to cause, or causes damage to the footpath;
 - (s) erect, display, post, stick, stamp, stencil, paint or otherwise affix or cause to be erected, displayed, posted, stuck, stamped, stencilled, painted or otherwise affixed any sign, banner, placard, handbill, notice, advertisement, writing or picture whatsoever upon any tree, plant, building, structure, fitting or soil being local government property or on any other local government property; and
 - (t) carry out filming or shoot or take a recording on local government property where—
 - (i) any part of that film or recording may be broadcast or distributed or sold; and
 - (ii) it involves the substantial setting up of associated equipment on local government property;

for reward or for the purpose of sale, without the prior approval of the Chief Executive Officer.

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

(3) The local government may exempt specified local government property or a class of local government property from the application of subclause (1)(a).

3.13 Permit required to camp outside a facility

(1) In this clause—

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

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

3.14 Permit required for possession and consumption of liquor

- (1) A person, on local government property, shall not consume any liquor or have in their possession or under their control any liquor, unless—
- (a) that is permitted under the *Liquor Control Act 1988*; and
 - (b) a permit has been obtained for that purpose.
- (2) Subclause (1) does not apply where—
- (a) the liquor is in a sealed container; or
 - (b) the liquor is in small quantities, as determined by the CEO and is being brought to or consumed in the course of a bona fide picnic or gathering.

Division 6—Responsibilities of permit holder

3.15 Responsibilities of permit holder

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

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

PART 4—BEHAVIOUR ON LOCAL GOVERNMENT PROPERTY

Division 1—Behaviour on and interference with local government property

4.1 Personal behaviour

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

- (a) is likely to cause injury to, or to interrupt, disturb or interfere with the enjoyment of, a person who might use the property;
- (b) causes injury to, or interrupts, disturbs or interferes with the enjoyment of, a person using the property; or
- (c) may be considered disorderly or offensive by a person on the property.

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

- (1) Where a sign on a toilet block or change room specifies that a particular toilet block or change room is to be used by—
- (a) females, then a person of the male gender over the age of 6 years shall not use that toilet block or change room; or
 - (b) males, then a person of the female gender over the age of 6 years shall not use that toilet block or change room.
- (2) A person over the age of 6 years shall not on any local government property or public place—
- (a) loiter outside or act in an unacceptable manner, in any portion of a toilet block or change room; or
 - (b) enter, or attempt to enter a cubicle or compartment of a toilet block or change room which is already occupied or in use.

4.3 Proper and adequate clothing

- (1) A person over the age of 6 years shall not on any local government property or public place appear in public unless decently clothed.
- (2) Where an authorised person considers that a person on any local government property or public place appearing in public is not decently clothed, the authorised person may direct that person to put on clothing so as to be decently clothed, and that person shall comply with the direction immediately.
- (3) In this clause, “*decently clothed*” means the wearing of proper and adequate clothing for the occasion, so as to prevent indecent exposure.

4.4 Behaviour detrimental to property

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

(2) In subclause (1)—

“detrimental to the property” includes—

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

4.5 Taking or injuring any fauna

(1) A person shall not, on or above any local government property, unless that person is authorised under a written law to do so—

- (a) take, injure or kill or attempt to take, injure or kill any fauna; or
- (b) take on to, set or use or attempt to take on to, set or use any animal trap, bird trap, fish trap, net or similar device.

(2) In this clause—

“animal” means any living thing that is not a human being or plant; and

“fauna” means any animal indigenous to or which periodically migrates to any State or Territory of the Commonwealth or the territorial waters of the Commonwealth and includes in relation to any such animal—

- (a) any class of animal or individual member;
- (b) the eggs or larvae; or
- (c) the carcass, skin, plumage or fur.

4.6 Intoxicated persons not to enter local government property

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

4.7 No prohibited drugs or substances

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

Division 2—Signs

4.8 Signs

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

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

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

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

PART 5—MATTERS RELATING TO PARTICULAR LOCAL GOVERNMENT PROPERTY

Division 1—Community facilities

5.1 Definitions

In this Division—

“pool premises” means the place or premises provided for the purpose of swimming or bathing and known as Beatty Park Leisure Centre constructed on part of the land being Perth Location 1618, Reserve Number 884, Vesting Order Number 10803/99 and having an address of 220 Vincent Street, North Perth, and includes all buildings, fences, gardens, car parks, structures, fittings, fixtures, machinery, chattels, furniture and equipment forming part of the place or premises or used in connection with it.

5.2 Direction of manager or authorised person to be observed

(1) The manager or an authorised person may refuse admission to, may direct to leave or may remove or cause to be removed from the pool premises or a community facility, any person who—

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

- (c) the manager or an authorised person reasonably suspects has—
 - (i) contravened a provision of this local law;
 - (ii) behaved in a disorderly manner;
 - (iii) used indecent, offensive, profane or insulting language;
 - (iv) created or taken part in any disturbance whereby a crowd has gathered; or
 - (v) committed an act of indecency; or
 - (d) been deemed undesirable by the local government, the manager or an authorised person, by reason of his or her past conduct.
- (2) A person shall, on being requested by the manager or an authorised person to leave the pool premises or a community facility, do so immediately, quietly and peaceably.
- (3) A person who fails to comply with a request under subclause (2) may be removed from the pool premises or community facility by the manager, an authorised person or a Police Officer.
- (4) The manager or an authorised person may temporarily suspend admission to, or remove from the pool premises or a community facility, or any part of them, all or any person or persons, if in her or his opinion such action is necessary or desirable.
- (5) The pool premises or a community facility, or any part of them, may at any time be set aside by the manager or an authorised person for the use of certain persons to the exclusion of others.

5.3 Responsibilities of users of a community facility

A person while in the pool premises or a community facility shall not—

- (a) smoke, consume foodstuffs or drinks in any specific area in which smoking or food consumption is prohibited;
- (b) climb up or upon any roof, fence, wall or partition on the pool premises or a community facility; or
- (c) whilst suffering from a contagious, infectious or cutaneous disease or whilst in an unclean condition, enter or use or attempt to enter or use the pool premises or a community facility;
- (d) use soap or shampoo in any part of the pool premises other than in a change-room;
- (e) use any detergent or any substance or oil in any pool or spa on the pool premises whereby the water may be discoloured or contaminated or rendered turbid or, in the opinion of the Manager or authorised person, in anyway unfit;
- (f) foul or pollute the water in any shower, pool or spa in the pool premises;
- (g) bring into any part of the pool premises or place thereon any chemical substance, liquid or powder;
- (h) bring into any part of the pool premises any glass containers;
- (i) smoke tobacco or any other substance in or about a community facility;
- (j) deliberately waste or wastefully use fresh or potable water in a community facility;
- (k) spit or expectorate in any part of a community facility, other than in a water closet; and
- (l) enter a pool or spa on the pool premises in a dirty or unclean condition.

Division 2—Fishing and boat launching

5.4 Definition

In this Division—

“*river*” means the Swan River as referred to in the *Swan and Canning Rivers Management Act 2006*.

5.5 Boat launching

- (1) A person shall not launch a boat into the river other than at a boat launching ramp designed, constructed and approved for that purpose, or from the river where this activity is permitted and designated by signs.
- (2) A person shall not launch a personal water craft into the river other than at a boat launching ramp designed, constructed and approved for the purpose.

5.6 Fishing

- (1) A person shall not fish on or from any local government property where fishing is prohibited or restricted and the prohibition or restriction is designated by signs.
- (2) A person shall not on any local government property whether fishing is permitted or not—
 - (a) clean fish or cut bait such that it may cause a nuisance to river users; or
 - (b) leave or deposit fish offal or bait on land or in the river.

Division 3—Fenced or closed property

5.7 No entry to fenced or closed local government property

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

*Division 4—Air conditioning units over thoroughfares***5.8 Definition**

In this Division—

“air conditioning unit” means any machine, device, equipment, plant or part thereof which constitutes or is part of any mechanical system of ventilation or air conditioning; and

“thoroughfare” includes a pedestrian way that is local government property.

5.9 Siting and design of air conditioning units

(1) A person shall not install an air conditioning unit on or over a thoroughfare without the approval of the local government.

(2) No air conditioning unit shall—

- (a) project over any part of a thoroughfare unless provision is made, to the satisfaction of the CEO or an authorised person, for the collection of water discharged from such unit and for its disposal into the stormwater drainage system provided that where such unit is installed above a verandah, balcony or awning no such provision shall be necessary;
- (b) project over any part of a thoroughfare unless the bottom of such unit is not less than 2,750 millimetres above such thoroughfare;
- (c) project more than 300 millimetres over any part of a thoroughfare not more than 10 metres in width;
- (d) project more than 450 millimetres over any part of a thoroughfare more than 10 metres in width.

(3) No air conditioning unit which exhausts foul or vitiated air over or into a thoroughfare shall be installed under a verandah, balcony or awning which projects over any part of a thoroughfare.

*Division 5—Awnings, balconies and verandahs over thoroughfares***5.10 Definitions**

In this Division—

“awning” means a roof-like covering to shelter persons or protect parts of a building from the effects of sun or rain, which extends or can be made to extend over any part of a thoroughfare;

“balcony” means an open or covered platform attached to an upper part of a building, projecting from or recessed into the face of a wall and protected by a railing or balustrade and accessible from an adjacent room;

“thoroughfare” includes a pedestrian way that is local government property; and

“verandah” means a roofed structure attached to a building with the outer edge supported on posts, and covered either by the main roof or a separate, lower roof, of which any part extends over any part of a thoroughfare.

5.11 Approval to erect or maintain

A person shall not erect or maintain an awning, balcony or verandah over a thoroughfare without the approval of the local government.

5.12 Dimensions of awnings, balconies and verandahs

A person shall not erect an awning, balcony or verandah over a thoroughfare unless it complies with the following dimension requirements—

- (a) a minimum clearance of 2,750 millimetres above the thoroughfare;
- (b) a maximum fascia depth of 300 millimetres; and
- (c) a minimum distance of 500 millimetres from the kerb.

5.13 Design of awnings, balconies and verandahs

A person shall not erect an awning, balcony or verandah over a thoroughfare unless it complies with the following design requirements—

- (a) the design, colour and materials shall be compatible with the aesthetics and character of the thoroughfare, in the opinion of the local government;
- (b) the height and width shall be uniform with other verandahs and awnings over the thoroughfare;
- (c) the form shall be cantilevered or suspended, unless otherwise approved by the local government; and
- (d) the design shall not allow water to be retained on the structure or allow water to fall onto the thoroughfare.

5.14 Maintenance and public safety

The owner and occupier for the time being of any building to which any awning, balcony or verandah is attached shall keep the awning, balcony or verandah clean, painted, watertight and in a sound and safe structural condition and in good and substantial repair.

PART 6—ADVERTISING SIGNS ON THOROUGHFARES*Division 1—Preliminary***6.1 Definitions**

In this Part, unless the context otherwise requires—

“advertisement” means the use or intention of use for the purpose of advertising any premises, services, business, function, event, product or thing;

“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 which advertises any aspect of a forthcoming Federal, State or Local Government election;

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

“portable sign” means a portable free standing advertising sign; and

“sign” includes a notice, poster, flag, mark, word, letter, model, placard, board, structure, device or representation.

*Division 2—Permit***6.2 Permit required for advertising signs and portable direction signs**

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

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

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

(3) Notwithstanding subclause (1), a person shall not erect or place an advertising sign—

- (a) over any footpath where the resulting vertical clearance between the sign and the footpath is less than 2,700 millimetres;
- (b) on or within 500 millimetres from the kerb;
- (c) in any other location where, in the opinion of the local government or an authorised person, the sign is likely to obstruct lines of sight along a thoroughfare or cause danger to any person using the thoroughfare; or
- (d) on any natural feature, including a rock or tree, on a thoroughfare, or on any bridge or the structural approaches to a bridge.

6.3 Matters to be considered in determining application for permit

In determining an application for a permit for the purpose of clauses 3.3 and 6.2(1), the local government is to have regard to—

- (a) any other written law regulating the erection or placement of advertising signs or advertisements within the district;
- (b) the dimensions of the advertising signs or advertisements;
- (c) other advertising signs already approved or erected in the vicinity of the proposed location of the advertising signs or advertisements;
- (d) whether or not the advertising signs or advertisements 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***6.4 Conditions on portable sign**

(1) 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 1,000 millimetres in height;
 - (ii) not exceed an area of 0.8 square metres on any side;
 - (iii) relate only to the business activity described on the permit;
 - (iv) not be placed in any position other than immediately in front of the building or the business to which the sign relates and be located not closer than 500 millimetres to the kerb or further than 1,200 millimetres from the kerb so as to ensure the free passage of persons using the footpath;
 - (v) 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;
 - (vi) be secured in position in accordance with any requirements of the local government;

- (vii) be placed so as not to obstruct or impede the reasonable use of a thoroughfare or access to a place by any person or the sight line of any vehicle drivers; and
 - (viii) be maintained in good condition; and
 - (b) no more than one portable sign shall be erected in relation to the one building or business.
- (2) The permit holder of a permit for a portable sign shall comply with each of the conditions in subclause (1) in addition to any other conditions imposed on the permit by the local government.

6.5 Conditions on election sign

- (1) 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 30 metres 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 100 metres 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.
- (2) The permit holder of a permit for the erection or placement of an election sign shall comply with each of the conditions in subclause (1) in addition to any other conditions imposed on the permit by the local government.

PART 7—OBSTRUCTING ANIMALS OR SHOPPING TROLLEYS

Division 1—Animals

7.1 Leaving animal in a public place

- (1) A person shall not leave an animal on a public place so that it obstructs the use of any part of that public place, unless that person has first obtained a permit or is authorised to do so under a written law.
- (2) A person will not contravene subclause (1) where the animal is secured or tethered for a period not exceeding 1 hour.

7.2 Prohibitions relating to animals

- (1) In subclause (2), “owner” in relation to an animal includes—
- (a) an owner of it;
 - (b) a person in possession of it;
 - (c) a person who has control of it; and
 - (d) a person who ordinarily occupies the premises where the animal is permitted to stay.
- (2) An owner of an animal 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

7.3 Definitions

In this Part—

“**retailer**” means a proprietor of a shop which provides shopping trolleys for the use of customers of the shop;

“**shopping trolley**” means a container or receptacle on wheels provided by a retailer for the transport of goods.

7.4 Name of owner of shopping trolley

A retailer shall clearly mark its name or trading name on any shopping trolley made available for the use of customers and which may be left in a public place by the customer.

7.5 Shopping trolleys in public places

- (1) A person shall not leave a shopping trolley in a public place or on local government property, other than in an area set aside for the storage of shopping trolleys.
- (2) A shopping trolley left in a public place or on local government property is not obstructing unless it is left for a period exceeding 3 hours.

PART 8—BOND OR SECURITY

8.1 Security for restoration and reinstatement

(1) The local government may require an applicant to pay a bond, bank guarantee or security of a kind and to a value determined by the local government as a condition of an approval or permit and payable before the issue of an approval or permit, or where a land owner proposes to develop, amalgamate or subdivide the land for the purpose of ensuring that—

- (a) hired local government property, including fixtures and fittings can be cleaned, replaced or repaired;
- (b) a footpath or local government property damaged, removed or destroyed during the construction of any building on an adjacent lot, can be repaired or reinstated;
- (c) a footpath or local government property damaged, removed or destroyed during the amalgamation or subdivision of adjacent land, can be repaired or reinstated;
- (d) conditions of an approval or permit insofar as they relate to local government property or a thoroughfare, are complied with.

(2) A bond or security required under subclause (1) is to be paid into an account established by the local government for the purposes of this clause.

8.2 Use by local government of bond or security

(1) If a permit or approval holder or adjacent owner or occupier fails to carry out or complete the reinstatement works required by the permit or approval conditions, or by a notice served by the local government, either—

- (a) within the time specified in those conditions; or
- (b) where no such time has been specified, a reasonable time from the expiration of the permit or approval; or
- (c) within 14 days or such time as specified in the notice given by the local government,

then, the local government may carry out or cause to be carried out, the required restoration and reinstatement works or as much work as remains undone.

(2) The permit or approval holder, owner or occupier shall pay to the local government on demand all administrative, legal, contractor and other costs including, but not limited to loss of income, estimated or incurred by the local government to restore and reinstate the site or which the local government may be required to pay under this clause.

(3) The local government may apply the proceeds of any bond, bank guarantee or security obtained under clause 8.1 to meet any costs incurred under this clause.

(4) The liability of the applicant, permit or approval holder, adjacent owner or occupier to pay the local government's costs under this clause is not limited to the amount, if any, secured under clause 8.1.

PART 9—WORKS ON OR AFFECTING A THOROUGHFARE

Division 1—Works affecting a thoroughfare

9.1 No damage to thoroughfare

A person shall not damage, without lawful authority, a thoroughfare or anything belonging to or under the care, control or management of the local government that is on a thoroughfare, including but not limited to a footpath, verge or street tree.

9.2 Footpath, verge and street tree protection

(1) The owner, occupier, licensee or contractor who undertakes works on a private property adjacent to a footpath, verge or street tree, shall—

- (a) take all necessary precautions to ensure that the footpath, verge or street tree is not damaged during the course of the works;
- (b) take all necessary action to ensure that the footpath remains in a safe functional state suitable for use by the public; and
- (c) notify the local government of any existing damage to the footpath, verge or street tree prior to the commencement of the works.

(2) A person who carries out any building or other operations or works on private property necessitating the crossing of a footpath with vehicles that may cause damage to the footpath, verge or a street tree, shall ensure that—

- (a) all reasonable precautions are taken to prevent damage to the footpath, verge or street tree during the course of the works; and
- (b) heavy vehicles that access the private property, are to cross the footpath at the designated area for the proposed vehicle crossing for that private property.

(3) If a person fails to comply with subclause (1) or (2) and a footpath, verge or street tree is thereby damaged, the local government may by notice in writing to that person require that person within the time stated in the notice to pay the costs of reinstating or repairing the footpath, verge or street tree.

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

9.3 Liability for damage to thoroughfare

(1) Where a person unlawfully damages a thoroughfare or any thing belonging to or under the care, control or management of the local government that is on a thoroughfare, the local government may by notice in writing to that person require that person within the time stated in the notice to, at the option of the local government, pay the costs of—

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

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

Division 2—Verge treatments

9.4 Transitional provision

(1) In this Division—

“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.

9.5 Interpretation

In this Division—

“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;

“permissible verge treatment” means any one of the 4 treatments described in clause 9.7(2), and includes any reticulation pipes and sprinklers.

9.6 Verge treatment

The owner or occupier of land adjacent to any thoroughfare may only treat the verge in front of such land with a permissible treatment and in any event shall not—

- (a) alter the finished level of the verge;
- (b) excavate the verge within the drip line of any street tree; or
- (c) cover or obstruct any manholes, gullies or inspection pits which are serviced from time to time by the local government.

9.7 Permissible verge treatments

(1) The owner or occupier of land adjacent to a thoroughfare may on the verge in front of such land, install a permissible verge treatment.

(2) The permissible verge treatments are for the purpose of subclause (1)—

- (a) the planting and maintenance of a lawn;
- (b) the planting and maintenance of a garden provided that—
 - (i) it is in accordance with the local government’s “Verge Treatments, Plantings and Beautification” specifications;
 - (ii) 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;
 - (iii) clear sight visibility is maintained at all times for a person using the driveway on the land adjacent to permissible verge treatment for access to or from the abutting thoroughfare; and
 - (iv) where there is no footpath, a pedestrian has safe and clear access of a minimum width of 1,500 millimetres along that part of the verge immediately adjacent to the kerb;
- (c) the installation of an acceptable material;
- (d) the installation over no more than one third of the area of the verge (excluding any vehicle crossing) to a maximum 7.5 metres of the frontage of the property 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); or

9.8 Only permissible verge treatments to be installed

The owner or occupier of land adjacent to a thoroughfare shall not install or maintain on the verge in front of such land a verge treatment other than a permissible verge treatment.

9.9 Owner's or occupier's responsibility for verge treatments

An owner or occupier of land adjacent to a thoroughfare who installs or maintains a permissible verge treatment on the verge in front of such land shall—

- (a) repair and make good any damage to the verge treatment at such owner's or occupier's expense;
- (b) keep the verge treatment in good and tidy condition and ensure, where the verge treatment is a garden or lawn, that no obstruction of any sort (physical, sight or other) is caused to any accessway, footpath or thoroughfare;
- (c) not place any obstruction on or around any verge treatment;
- (d) not water or maintain a verge treatment in such a manner as to cause a nuisance or hazard to any person using a footpath, accessway or thoroughfare;
- (e) not extend the verge treatment beyond the verge immediately adjacent to the land owned or occupied, without the written approval of the owner of the adjoining property, immediately adjacent to the verge to be treated.

9.10 Enforcement

The local government may give a notice in writing to the owner or occupier of land adjacent to a thoroughfare who has installed or maintained a treatment on the verge in front of such land, requiring that owner or occupier, within the time specified in the notice, to make good any breach of this Division, or to remove all or any part of a verge treatment that does not comply with this Division.

Division 3—Public works

9.11 Public works on verges

(1) For the purpose of carrying out any works the local government or any authority empowered by law to dig up a thoroughfare or carry out any other works on a thoroughfare, may without notice and without being liable to compensate any person, dig up all or part of a thoroughfare and disturb any verge treatment placed there by an owner or occupier of adjacent land.

(2) Where the local government digs up or carries out any works in a verge which has a verge treatment which complies with Division 2, then the local government shall use its best endeavours to—

- (a) replace and restore any reticulation pipes and sprinklers; and
- (b) back fill with sand any garden or lawn,

but otherwise shall not be liable to replace or restore any verge treatment and in particular any plant, or other vegetation or any surface or in any event, shall not be liable to any person for any damage or disturbance caused.

9.12 Contribution towards construction of standard vehicle crossings

For the purpose of determining the local government's contribution towards the construction of a standard vehicle crossing as stipulated in regulation 15 of the *Local Government (Uniform Local Provisions) Regulations 1996*, a "standard crossing" is a standard vehicle crossing for a residential area.

9.13 Temporary vehicle crossings

(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.

9.14 Removal of redundant vehicle crossings

(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 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.

PART 10—ACTIVITIES ON THOROUGHFARES AND LOCAL GOVERNMENT PROPERTY**10.1 General prohibitions**

A person shall not—

- (a) plant any tree or plant which exceeds or which may exceed 500 millimetres in height on a thoroughfare so that the plant is within 10 metres from the truncation point of an intersection;
- (b) damage a lawn or a garden or remove a plant or part of a plant from a lawn or a garden unless—
 - (i) the person is the owner or the occupier of the land abutting that portion of the thoroughfare and the lawn or the garden or the particular plant has not been installed or planted by the local government; or
 - (ii) the person is acting under the authority of a written law;
- (c) place on any footpath any fruit, fruit skins or other substance or fluid (whether vegetable or otherwise, but not water) which may create a hazard for any person using the footpath;
- (d) 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;
- (e) 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;
- (f) within a mall, arcade or verandah of a shopping centre, ride any wheeled recreational device or similar device; or
- (g) damage or remove any street tree or part thereof without the approval of the local government.

10.2 Activities allowed with a permit

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

- (a) dig or otherwise create a trench through or under a kerb or footpath;
- (b) subject to Part 9 of this local law, throw, place or deposit any thing on a verge except for removal by the local government under a bulk rubbish collection, and then only during the period of time advertised in connection with that collection by the local government;
- (c) cause any obstruction to a vehicle or a person using a thoroughfare as a thoroughfare;
- (d) cause any obstruction to a water channel or a water course in a thoroughfare;
- (e) throw, place or drain offensive, noxious or dangerous fluid onto a thoroughfare;
- (f) damage a thoroughfare;
- (g) light any fire or burn any thing on a thoroughfare;
- (h) fell any tree onto a thoroughfare;
- (i) unless installing a permissible verge treatment—
 - (i) lay pipes under or provide taps on any verge; or
 - (ii) place or install any thing on any part of a thoroughfare, and without limiting the generality of the foregoing, any gravel, stone, flagstone, cement, concrete slabs, blocks, bricks, pebbles, plastic sheeting, kerbing, wood chips, bark or sawdust;
- (j) provide, erect, install or use in or on any building, structure or land abutting on a thoroughfare any hoist or other thing for use over the thoroughfare;
- (k) on a public place use anything or do anything so as to create a nuisance;
- (l) place or cause to be placed on a thoroughfare a bulk rubbish container;
- (m) interfere with the soil of, or anything in a thoroughfare or take anything from a thoroughfare; or
- (n) place or cause to be placed on a footpath or thoroughfare, a planter box or pots.

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

PART 11—NOTICES OF BREACH**11.1 Offence to fail to comply with notice**

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

11.2 Local government may undertake requirements of notice

Where a person fails to comply with a notice referred to in clause 11.1, the local government may by its employees, agents or contractors carry out the works and do all things specified in the notice and may recover from that person, as a debt, the costs incurred in so doing.

11.3 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 or an authorised person 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.

11.4 Hazardous plants

Where a plant or tree in a garden creates or may create a hazard for any person using a thoroughfare, the local government or an authorised person 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.

11.5 Notice to repair damage to thoroughfare

Where any portion of a thoroughfare, verge or footpath has been damaged, or is in the opinion of an authorised person, dangerous to the public, the local government or an authorised person may by notice to the person who caused the damage or dangerous condition, order the person to repair or replace that portion of the thoroughfare, verge or footpath to the satisfaction of the local government.

11.6 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 land abutting 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, requiring that person or the owner or occupier, as the case may be, to remove the thing within the time specified in the notice.

PART 12—OBJECTIONS AND REVIEW

12.1 Application of Division 1, Part 9 of the Act

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

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

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

PART 13—MISCELLANEOUS

13.1 Authorised person to be obeyed

A person on local government property shall obey any lawful direction of a manager or an authorised person.

13.2 Persons may be refused admission or directed to leave local government property

(1) An authorised person may refuse admission or direct a person to leave local government property where—

- (a) the authorised person reasonably suspects that the person has—
 - (i) contravened a provision of this local law;
 - (ii) behaved in a disorderly manner;
 - (iii) used indecent, offensive, profane or insulting language;
 - (iv) created or taken part in any disturbance whereby a crowd has gathered;
 - (v) committed an act of indecency; or
- (b) the person has been deemed undesirable by the local government or the authorised person by reason of his or her past conduct.

(2) A person shall, on being requested by the authorised person to do leave the local government property, do so immediately, quietly and peaceably.

(3) A person who fails to comply with a request under subclause (2) may be removed from the local government property by an authorised person or a Police Officer.

13.3 Liability for damage to local government property

(1) Where a person unlawfully damages or causes damage to or detrimentally affects the appearance or nature of any local government property, the local government may by notice in writing to that person require that person within the time required in the notice to, at the option of the local government, pay the costs of—

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

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

13.4 Public liability insurance and indemnity

(1) Where, as a condition of a permit or approval, the permit or approval holder or the property owner is required to provide a public liability insurance policy, indemnifying the local government against all actions, suits, claims, damages, losses and expenses made against or incurred by the local government arising from any activity, action or thing performed or erected in accordance with the permit and keep that insurance policy current for the duration of the permit or at all times, the permit or approval holder or the property owner shall—

- (a) enter into an agreement with the local government to provide and maintain the required public liability insurance protection;

- (b) take out a public liability insurance policy in the name of the permit or approval holder for a minimum value of 10 million dollars or such other amount as the local government considers appropriate to the risk and liability involved;
 - (c) include a clause in the policy which prevents the policy from being cancelled without the written consent of the local government;
 - (d) include a clause in the policy which requires the insurance company to advise the local government if the policy lapses, is cancelled or is no longer in operation;
 - (e) on the request of an authorised person, provide for inspection, a certificate of currency for the required insurance policy.
- (2) A permit or approval holder who refuses to or cannot provide a current certificate of insurance 14 days prior to the commencement of any activity, action or thing performed or erected in accordance with the permit, as required in accordance with subclause (1) commits an offence.

13.5 Payment of applicable fees

Where a fee or charge applies to the entry to, use of or participation in an activity on or in any local government property, a person shall not enter that property without first paying the applicable fee or charge, unless that person has been exempted by the local government from paying that fee or charge.

13.6 No unauthorised entry to function

- (1) A person shall not enter local government property on such days or during such times as the property may be set aside for a function for which a charge for admission is authorised, except—
- (a) through the proper entrance for that purpose; and
 - (b) on payment of the fee chargeable for admission at the time.
- (2) The local government may exempt a person from compliance with subclause (1)(b).

PART 14—OFFENCES

Division 1—Offences and penalties

14.1 Offences and general penalties

- (1) Any person who fails to do anything required or directed to be done under this local law, or who does anything which under this local law that person is prohibited from doing, commits an offence.
- (2) Any person who commits an offence under this local law is liable, upon conviction, to a penalty not less than \$300 and 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.

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

14.3 Infringement and infringement withdrawal notices

- (1) For the purposes of this local law—
- (a) where a vehicle is involved in the commission of an offence, the form of the infringement 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 referred to in sections 9.16 and 9.17 of the Act is that of Form 2 in Schedule 1 of the Regulations; and
 - (c) the form of the withdrawal notice referred to in section 9.20 of the Act is that of Form 3 in Schedule 1 of the Regulations.
- (2) Where an infringement notice is given under section 9.16 of the Act in respect of an alleged offence against clause 2.4, the notice is to contain a description of the alleged offence.

Division 2—Evidence in legal proceedings

14.4 Evidence of a determination

- (1) In any legal proceedings, evidence of a determination may be given by tendering the register referred to in clause 2.5 or a copy of an extract from the register certified as a true copy by the Chief Executive Officer.
- (2) It is to be presumed, unless the contrary is proved, that the determination was properly made and that every requirement for it to be made and have effect has been satisfied.
- (3) Subclause (2) does not make valid a determination that has not been properly made.

Schedule 1
PRESCRIBED OFFENCES

Clause	Description	Modified Penalty \$
1.8	Failure to pay the fees and charges fixed by the local government from time to time	100
2.4	Failure to comply with determination	100
3.5 (1)	Failure to comply with conditions of a permit	100
3.5 (2)	Failure to comply with conditions of a permit as varied	100
3.10	Failure to produce Permit when required by an authorised person	100
3.12 (1)	Failure to obtain a permit	250
3.13 (2)	Failure to obtain a permit to camp outside a facility or erect structure	100
3.14 (1)	Consumption or possession of liquor without a permit	100
3.15	Failure of permit holder to comply with responsibilities	100
4.1 (c)	Disorderly or offensive conduct, or use of indecent or improper language	100
4.2 (1)	Gender not specified using toilet block or change room	100
4.2 (2) (a)	Loiter outside or act in an unacceptable manner in any toilet block or change room	100
4.2 (2) (b)	Enter or attempt to enter an occupied cubicle or compartment	100
4.3 (1)	Failure to wear adequate clothing to secure decency	100
4.3(2)	Failure to comply with direction of authorised person, to wear adequate clothing	250
4.4 (1)	Behaviour detrimental to property	100
4.5 (1) (a)	Take, injure or kill, or attempt to take, injure or kill any fauna	250
4.5 (1) (b)	Take onto, set or use any animal, bird or fish trap while on any local government property	250
4.6	Under influence of liquor or prohibited drug or substance	100
4.7	Take, consume or use a prohibited drug or substance on local government property	250
4.8 (2)	Failure to comply with sign on local government property	100
5.3 (a)	Smoke or consume food or drink in a prohibited area	100
5.3 (b)	Climbing up or upon a community facility	100
5.3 (c)	Enter or use, or attempt to enter or use a community facility whilst unclean or suffering from a contagious, infectious or cutaneous disease	100
5.3 (d)	Using soap or shampoo in any part of the pool area other than in the changerooms	100
5.3 (e)	Using any detergent or any substance or oil in any pool or spa whereby the water may be discoloured or contaminated or rendered turbid or, in the opinion of the Manager or authorised person, in anyway unfit;	100
5.3 (f)	Fouling or polluting the water in any shower, pool or spa in the pool area;	100
5.3 (g)	Bringing into any part of the pool area or place thereon any chemical substance, liquid or powder	100
5.3 (h)	Bringing into any part of the pool area any glass containers;	100
5.3 (i)	Smoking tobacco or any other substance in or about the community facility;	100
5.3 (j)	Deliberately waste or wastefully use fresh or potable water in the pool area;	100
5.3 (k)	Spitting or expectorating in any part of the community facility, other than in a water closet	100
5.3 (l)	Entering a pool or spa in a dirty or unclean condition.	100
5.5 (1)	Launch a boat into river other than from an approved boat launching ramp or area permitted by signs	100
5.5 (2)	Launch personal water craft into river other than from a boat launching ramp	100
5.6 (1)	Fishing in an area where fishing is prohibited or restricted by signs	100
5.6(2) (a)	Clean fish or cut bait that causes a nuisance to river users	100
5.6(2) (b)	Leave or deposit fish offal on land or in river	100

Clause	Description	Modified Penalty \$
5.7	Unauthorised entry to and area fenced off or closed to the public	250
5.9 (1)	Installing an air conditioning unit without approval	250
5.11	Erecting or maintaining an awning, balcony or verandah without a permit	250
5.12	Erecting an awning, balcony or verandah with incorrect dimensions	250
5.13	Erecting an awning, balcony or verandah with incorrect design	250
6.2 (1)	Placing advertising sign or affixing any advertisement on a thoroughfare without a permit	250
6.2 (3)	Erecting or placing of advertising sign in a prohibited area	250
6.4(2)	Failure to comply with conditions for portable sign	250
6.5(2)	Failure to comply with conditions for election sign	250
7.1(1)	Leaving an animal on a public place without permit	100
7.1(2)	Leaving an animal secured or tethered for in excess of 1 hour	100
7.2(2)(a)	Allowing an animal enter or remain on a thoroughfare or public place without authority, unless it is led, ridden or driven	100
7.2(2)(b)	Allowing an animal which has a contagious or infectious disease to be on a thoroughfare	250
7.2(2)(c)	Training or racing an animal on a thoroughfare	
7.2(3)	Leading driving or riding a horse on a thoroughfare in a built-up area without a permit	100
7.5(1)	Leaving shopping trolley in public place other than trolley bay	100
7.5(2)	Leaving a shopping trolley for a period in excess of 3 hours	100
9.1	Damaging a thoroughfare or anything belonging to or under the care control and management of the local government that is on a thoroughfare	200
9.2 (1) (a)	Failing to take necessary precautions to ensure footpath, verge or tree is not damaged during works	200
9.2 (1) (b)	Failing to ensure footpath remains in a safe function state suitable for use by the public	200
9.2 (1) (c)	Failing to notify local government of existing footpath damage prior to commencement of works	50
9.2 (2) a)	Failing to take reasonable precautions to prevent damage to footpath, verge or street tree	200
9.6 (a)	Altering finished level of a verge	100
9.6 (b)	Excavating verge within the drip line of street tree	100
9.6 (c)	Covering or obstructing any manholes, gullies or inspection pits	100
9.8	Installing verge treatment other than permissible verge treatment	200
9.9 (a)	Failing to repair and make good any damage to the verge treatment	100
9.9 (b)	Failing to keep verge treatment in good or tidy condition and avoid obstruction of any sort	100
9.9 (c)	Placing any obstruction on or around any verge treatment	100
9.9 (d)	Not to water or maintain a verge treatment so as to cause a nuisance or a hazard to any person using footpath, accessway or thoroughfare	100
9.9 (e)	Extending the verge treatment without written approval	200
9.13(1)	Failing to obtain permit for temporary crossing	200
9.14 (2)	Failing to comply with notice to remove crossing and reinstate kerb	250
10.1 (a)	Planting of tree or plant which exceeds 0.75metres in height on local government property within 10metres from the truncation of an intersection	100
10.1 (b)	Damaging lawn or garden, or remove any plant without authority	100
10.1 (c)	Placing any fruit, substance or fluid on footpath which may create a hazard	100
10.1 (d)	Damaging or interfering with signpost or structure on thoroughfare	200
10.1 (e)	Playing games so as to endanger any person or thing or impede vehicles or persons on thoroughfare	200
10.1 (f)	Riding any wheeled recreational device in a mall, arcade or verandah of a shopping centre	100
10.1 (g)	Damaging or removing a tree or part thereof without the approval of the local government	300

Clause	Description	Modified Penalty \$
10.2(1)(a)	Digging a trench through a kerb or footpath without a permit	200
10.2(1)(b)	Throwing or placing anything on a verge without a permit	200
10.2(1)(c)	Causing obstruction to vehicle or person on thoroughfare without a permit	200
10.2 (1)(d)	Causing obstruction to water channel on thoroughfare without a permit	200
10.2 (1)(e)	Placing or draining offensive fluid on thoroughfare without a permit	200
10.2 (1)(f)	Damaging a thoroughfare	200
10.2 (1)(g)	Lighting a fire on a thoroughfare without a permit	200
10.2 (1)(h)	Felling tree onto thoroughfare without a permit	200
10.2 (1)(i)	Installing pipes or stone on thoroughfare without a permit	200
10.2 (1)(j)	Installing a hoist or other thing on a structure or land for use over a thoroughfare without a permit	200
10.2 (1)(k)	Creating a nuisance on a public place without a permit	200
10.2 (1)(l)	Placing a bulk rubbish container on a thoroughfare without a permit	100
10.2 (1)(m)	Interfering with anything on a thoroughfare without a permit	200
10.2 (1)(n)	Placing a planter box or pot on a footpath or thoroughfare	100
11.1	Failing to comply with notice given under local law where not specified in Schedule 1	250
13.5	Failing to pay the applicable fee to enter, use or participate in an activity on local government property	100
13.6 (1)	Entering local government property or building other than through the proper entrance or without payment of the admission fee	100
14.1 (1)	Other offences not specified	100

Schedule 2

DETERMINATIONS

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

PART 1—PRELIMINARY

1.1 Definitions

In these determinations unless the context requires otherwise—

“local law” means the *Town of Vincent Local Government Property Local Law 2007*.

1.2 Interpretation

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

1.3 Determinations

As at the date of gazettal of this local law, the local government has not made any determinations.

Dated this 26th day of February 2008.

The Common Seal of the Town of Vincent was affixed by authority of a resolution of the Council in the presence of—

NICK CATANIA, JP, Mayor.

JOHN GIORGI, JP, Chief Executive Officer.

LOCAL GOVERNMENT ACT 1995

TOWN OF VINCENT

TRADING IN PUBLIC PLACES LOCAL LAW 2008

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SCHEDULE 1

LOCAL GOVERNMENT ACT 1995

TOWN OF VINCENT

TRADING IN PUBLIC PLACES LOCAL LAW 2008

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the Town of Vincent resolved on 26 February 2008 to make the following local law.

PART 1—PRELIMINARY

1.1 Citation

This local law may be cited as the *Town of Vincent Trading in Public Places Local Law 2008*.

1.2 Objective

(1) The objective of this local law is to provide for the regulation, control and management of trading activities, outdoor eating facilities, stalls, displays of goods and items and traders and entertainers in any street or public place within the district by establishing the requirements with which persons must comply in order to undertake those activities.

(2) The effect of this local law is to control trading activities and street entertainment in any street or public place within the district.

1.3 Commencement

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

1.4 Repeal

(1) The following local laws adopted by the Town of Vincent—

- (a) *Local Law Relating to Alfresco Dining*, published in the *Government Gazette* on 30 April 1998;
- (b) *Local Law Relating to Display of Items on a Footpath*, published in the *Government Gazette* on 14 June 2000 and as amended and published in the *Government Gazette* on 2 March 2001 and 4 January 2002;
- (c) *Local Law Relating to Street Trading*, published in the *Government Gazette* on 22 December 1998;

are repealed on the day this local law comes into operation.

1.5 Application

This local law applies throughout the district.

1.6 Interpretation

In this local law unless the context requires otherwise—

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

“**applicant**” means a person who applies for a permit under this local law;

“**application fee**” means the fee payable upon lodgement of an application for a permit and which relates to the lodgement, assessment and determination of the application, but does not include any fee which may be imposed as a condition of approval of an application;

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

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

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

“**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;

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

“**footpath**” means a path set aside for use by pedestrians and cyclists that is on a thoroughfare, and includes all that part of a thoroughfare lying between the edge of the carriageway and the property boundary nearest to that edge on the same side of the thoroughfare;

“goods” shall have the same meaning given to it in section 3.38 of the Act;

“hire” includes offer to hire or expose for hire;

“kerb” includes the edge of a carriageway;

“local government” means the Town of Vincent;

“local government property” means anything except a thoroughfare—

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

“nuisance” means—

- (a) any activity, thing, condition, circumstance or state of affairs caused or contributed to by a person which is injurious or dangerous to the health of another person of normal susceptibility, or which has a disturbing effect on the state of the physical, mental or social well-being of another person of normal susceptibility;
- (b) any thing a person does or permits or causes to be done which interferes with or is likely to interfere with the enjoyment or safe use by another person of any public place; or
- (c) any thing a person does in or on a public place which unreasonably detracts from or interferes with the enjoyment or value of nearby land owned by another person, provided that 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;

“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;

“planning approval” means an approval issued under a town planning scheme;

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

“public facility” includes any light, power or telephone pole, fire hydrant, drain, sump, tree, sign, traffic light, parking device or meter, shelter, seat, telephone box, letter boxes, public toilet or any work provided by a statutory body or authority, in any street or public place;

“public place” includes any thoroughfare or place which the public are allowed to use, whether the thoroughfare or place is or is not on private property and includes, parklands, squares, reserves, beaches, and other lands set apart for the use and enjoyment of the public, including local government property, but does not include premises on private property from which trading is lawfully conducted under a written law;

“street” means a thoroughfare;

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

“trading” includes—

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

“valid”, in relation to a permit issued under this local law means current and for which all the associated fees have been paid in full;

“vehicle” includes—

- (a) every conveyance, not being a train, boat, aircraft or wheelchair, and every object capable of being propelled or drawn on wheels, tracks or by any means;
- (b) an animal being driven or ridden; and
- (c) a vehicle described in the *Road Traffic Act 1974*;

“verge” means that part of a thoroughfare between the carriageway and the land which abuts the thoroughfare.

1.7 Fees and charges

All fees and charges under this Local Law shall be determined by the local government from time to time in accordance with sections 6.16 to 6.19 of the Act.

PART 2—TRADING IN THOROUGHFARES AND PUBLIC PLACES*Division 1—Stallholders and Traders***2.1 Definitions**

In this Division, unless the context requires otherwise—

“Assistant” means a person who carries out trading on behalf of the permit holder in accordance with the permit issued to the permit holder;

“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;

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

“newspaper” means any paper containing public news, intelligence or occurrences, or any remarks or observations therein printed for sale and published periodically, or in parts or numbers, at intervals not exceeding seven days between the publication of any two such papers, parts or numbers;

“stall” means a moveable or temporary fixed structure, stand or table in, on or from which goods, wares, merchandise or services are displayed or sold or 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; and

“trader’s permit” means a permit issued to a trader.

2.2 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—
 - (i) the proposed stall; and
 - (ii) the proposed location of the proposed stall and the area in a radius of approximately 10 metres around that location, showing on a scale of approximately 1:100 the location of all carriageways, footpaths, verges, street furniture, bins, light poles, parking signs, traffic lights, other impediments to pedestrian traffic and premises abutting any verge or footpath.

2.3 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.

2.4 No permit required to sell newspapers

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

2.5 Matters to be considered in determining application

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

- (a) the stall or trading would—
 - (i) obstruct the visibility or clear sightlines of any person at an intersection on a thoroughfare; or
 - (ii) impede pedestrian access; and
- (b) the stall or any proposed structure or vehicle which may be used by a trader may obstruct or impede the use of the public place for the purpose for which it was designed.

2.6 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 liability insurance;
- (m) the lodgement of a sum or bond of a value determined by the local government to secure compliance with the terms and conditions of the permit and the forfeiture of that sum or bond on non compliance;
- (n) the period for which the permit is valid; and
- (o) 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 or the conditions of the permit, the local government may at the request of that permit holder authorise 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.

2.7 Exemptions from requirement to pay fee

(1) 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.

(2) 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.

2.8 Conduct of stallholders and traders

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

- (a) comply with the terms and conditions of her or his permit;
- (b) 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;

- (c) not display a permit unless it is a valid permit;
 - (d) when selling goods by weight, carry and use for that purpose, scales tested and certified in accordance with the provisions of the *Trade Measurement Act 2006*; and
 - (e) in the case of a stallholder—
 - (i) maintain the stall, vehicle or structure in a safe and serviceable condition; and
 - (ii) ensure that the area of the stall, vehicle or structure is kept in a clean and tidy condition.
- (2) A stallholder or trader shall be solely responsible for all and any costs associated with the removal, alteration, repair, reinstatement or reconstruction of the thoroughfare or public place arising from the conduct of the stall or the carrying on of the trading and the local government may recover such costs from the permit holder in a Court of competent jurisdiction as a debt owing to it.
- (3) 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 or cause a nuisance;
 - (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;
 - (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;
 - (e) sell or provide goods or services other than those specified in the permit;
 - (f) cry out or shout about, or permit any other person to cry out or shout about, any goods or services in any public place; or
 - (g) use, or permit to be used, any loud hailer, microphone, amplifier or other apparatus for making or transmitting sound in any public place, unless approved by the local government.

Division 2—Street Entertainers

2.9 Definitions

In this Division, unless the context requires otherwise—

“entertainer’s permit” means a permit issued to a person who wishes to perform in a public place;

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

“permit holder” means the holder of a valid entertainer’s permit;

“permitted area” means the area or areas, specified in an entertainer’s permit, in which the permit holder may perform;

“permitted time” means the time or times, specified in an entertainer’s permit, during which the permit holder may perform; and

“solicit” in relation to money, means actively seeking or calling for a donation from another person, but does not include a non verbal invitation by a permit holder to place a donation in a receptacle within the permitted area.

2.10 Entertainer’s permit required to perform

- (1) A person shall not perform in a public place without a valid entertainer’s permit.
- (2) Every application for an entertainer’s permit shall—
 - (a) state the full name and address of the applicant;
 - (b) specify the nature of the proposed performance;
 - (c) specify whether any amplifiers, sound equipment or sound instruments are to be used in the proposed performance; and
 - (d) specify the number of people involved in the proposed performance, including the name and date of birth of anyone proposed to be involved in the performance who is under 14 years of age.
- (3) A person under the age of 14 years is not to perform, unless authorised by the local government;
 - (a) during school hours on school days; or
 - (b) between 7.00pm one day and 6.00am the following day.

2.11 Variation of permitted area and permitted time

- (1) The local government or an authorised person may by notice in writing to a permit holder vary—
 - (a) the permitted area;
 - (b) the permitted time; or
 - (c) both the permitted area and the permitted time,
 shown on an entertainer’s permit.
- (2) The local government or an authorised person may direct a permit holder to move from one permitted area to another permitted area, if more than one area is specified in a permit.

2.12 Duration of permit

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

2.13 Cancellation of permit

The local government may cancel an entertainer's permit if in the opinion of an authorised person—

- (a) the volume of sound caused by the permit holder in connection with the performance adversely affects the enjoyment, convenience or comfort of other persons in a public place; or
- (b) the performance otherwise constitutes a nuisance.

2.14 Obligations of permit holder

(1) A permit holder shall not perform in a public place otherwise than in accordance with the terms and conditions of her or his entertainer's permit.

(2) A permit holder shall not in a public place—

- (a) perform wearing dirty, torn or ragged clothing or clothing with offensive words, symbols or motifs;
- (b) act in an offensive, lewd or obscene manner;
- (c) place, install, erect, play or use any musical instrument or any device which emits music, including a loud speaker or an amplifier—
 - (i) other than in the permitted area; and
 - (ii) unless the musical instrument or device is specified in the permit.
- (d) use fire or any weapon or object with sharp edges;
- (e) perform any act that endangers the safety of the public;
- (f) perform any act of cruelty to an animal;
- (g) sell or permit the sale of any music tapes, recordings, compact discs or merchandise unless authorised by the local government;
- (h) solicit money from members of the public, unless authorised by the local government; or
- (i) allow any person under the age of 14 years to perform during school hours on school days or between 7pm one day and 6am the following day, unless authorised by the local government.

Division 3—Outdoor Eating Areas

2.15 Definitions

In this Division, unless the context requires otherwise—

“eating-house” has the meaning given to it in section 160 of the *Health Act 1911*;

“food premises” has the meaning given to it in section 246G(1) of the *Health Act 1911* and for the avoidance of doubt includes eating-houses;

“furniture” means chairs, tables, waiters' stations, planter boxes, umbrellas, screens, barriers, awnings and any other similar structure or equipment;

“Health Act” means the *Health Act 1911*;

“licensed premises” has the meaning given to it in section 3(1) of the *Liquor Control Act 1988*;

“outdoor eating area” means an outdoor eating facility or establishment on any part of a public place in which furniture is provided for the purpose of the supply of food or drink to the public or the consumption of food or drink by the public, but does not include such a facility or establishment on private land; and

“permit holder” means the person to whom a permit has been issued to establish or conduct an outdoor eating area.

2.16 Permit required to conduct an outdoor eating area

A person shall not establish or conduct an outdoor eating area without a valid permit.

2.17 Matters to be considered in determining application

In determining an application for a permit for the purpose of clause 3.5, the local government may consider in addition to any other matter it considers relevant, whether or not—

- (a) the outdoor eating area is conducted in conjunction with and as an extension of food premises or licensed premises which abut the outdoor eating area, and whether the applicant is the person conducting such food premises or licensed premises;
- (b) any abutting food premises are registered as an eating-house in accordance with the Health Act;
- (c) the use of the abutting food premises or licensed premises as such is permitted under the town planning scheme;
- (d) the outdoor eating area will comply with any local law made under section 172 of the Health Act;
- (e) users of the outdoor eating area will have access to proper and sufficient sanitary and ablutionary conveniences;

- (f) the outdoor eating area would—
 - (i) obstruct the visibility or clear sight lines of any person at an intersection of thoroughfares; or
 - (ii) impede pedestrian access;
- (g) the furniture to be used may obstruct or impede the use of the public place for the purpose for which it was designed; and
- (h) the abutting food premises or licensed premises provide sufficient car parking bays for customers of the outdoor eating area, and in this respect the car parking requirements of the town planning scheme may be used as a guide.

2.18 Obligations of permit holder

- (1) The permit holder for an outdoor eating area shall—
- (a) comply with the terms and conditions of the permit to establish and conduct the outdoor eating area;
 - (b) ensure that the outdoor eating area 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;
 - (c) ensure that the eating area is kept in a clean and tidy condition at all times;
 - (d) maintain the furniture in the eating area in a good, clean and serviceable condition at all times;
 - (e) 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 outdoor eating area;
 - (f) on the expiration of or cancellation of a permit to establish or conduct an outdoor eating area, the permit holder shall at his or her cost, reinstate or restore the public place on which the outdoor eating area is established or conducted, to a condition consistent with its condition prior to the commencement of the outdoor eating area and which is to the reasonable satisfaction of the local government; and
 - (g) be solely responsible for all rates and taxes levied upon the land occupied by the outdoor eating area.
- (2) Whenever, in the opinion of the local government or an authorised person, any work is required to be carried out to an outdoor eating area, the local government or authorised person may give a notice to the permit holder for the outdoor eating area 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 an outdoor eating area.

2.19 Removal of an outdoor eating area unlawfully conducted

Where an outdoor eating area is conducted without a permit, or in contravention of a condition of a permit, any furniture may be removed by an authorised person and impounded in accordance with the Act.

2.20 Use of an outdoor eating area by public

- (1) A person shall not occupy a chair or otherwise use the furniture in an outdoor eating area the subject of a permit unless the person uses them for the purpose of consuming food or drinks provided by the permit holder of the outdoor eating area.
- (2) A person shall leave an outdoor eating area when requested to do so by the permit holder or an authorised person.

2.21 Temporary removal of an outdoor eating area may be requested

- (1) The permit holder for an outdoor eating area is to temporarily remove the outdoor eating area when requested to do so on reasonable grounds by an authorised person, a member of the Police Service or an emergency service agency in the event of an emergency.
- (2) The permit holder may replace the outdoor eating area removed under subclause (1) as soon as the person who directed her or him to remove it allows it to be replaced.

Division 4—Display of Items on a Footpath

2.22 Definitions

In this Division, unless the context otherwise requires—

“**advertising sign**” means a free-standing sign which may or may not be permanently attached to a structure or fixed to the ground, and includes a ground based sign, a sandwich board sign and an “A” frame sign, that is used or intended to be used for the purpose of advertising any premises, services, business, function, event, product or thing;

“**“A” frame sign**” means a folding sign which is hinged at the top to provide a stable structure when open;

“**permit holder**” means the person to whom a sign permit has been issued;

“**sign permit**” means a permit to display an advertising sign.

2.23 Permit period

The local government may grant approval for the erection or display of an advertising sign for 1 year or 3 years, whichever the applicant chooses on the application for a sign permit.

2.24 Sign permit

(1) A person shall not display an advertising sign on a footpath unless that person is the holder of a valid sign permit.

(2) Every application for a sign permit shall—

- (a) state the full name and address of the applicant;
- (b) specify the proposed permitted area of the advertising sign;
- (c) be accompanied by an accurate plan and description of—
 - (i) the proposed advertising sign; and
 - (ii) the proposed location of the proposed advertising sign and the area in a radius of approximately 10 metres around that location showing on a scale of approximately 1:100 the location of all carriageways, footpaths, verges, street furniture, bins, light poles, parking signs, traffic lights, other impediments to pedestrian traffic and premises abutting any verge or footpath.
- (d) a colour photograph or similar representation of the advertising sign.

2.25 Matters to be considered in determining application

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

- (a) the advertising sign would—
 - (i) obstruct the visibility or clear sight lines of any person at an intersection of thoroughfares; or
 - (ii) impede pedestrian access; and
- (b) the advertising sign, may obstruct or impede the use of the footpath for the purpose for which it was designed.

2.26 Obligations of permit holder

The permit holder shall—

- (a) maintain the advertising sign in a safe and serviceable condition at all times;
- (b) display the permit number provided by the local government in a conspicuous place on the advertising sign and whenever requested by an authorised person to do so, produce the sign permit to that person;
- (c) ensure that the sign is of a stable design and is not readily moved by the wind, and does not by the nature of its design or anything else cause any hazard or danger to any person using a thoroughfare;
- (d) not display an advertising sign on a footpath within 500 millimetres of the kerb or more than 1,200 millimetres from the kerb, so as to ensure the free passage of persons using a footpath; and
- (e) ensure the free passage of persons using the footpath.

2.27 Safety of persons

A person shall not cause or permit an advertising sign to be erected or displayed in such a condition, which in the opinion of an authorised person, causes or is likely to cause injury or danger to any person or damage to the clothing or possessions of any person.

2.28 Removal of sign for works

A permit holder shall ensure that an advertising sign, is removed from any footpath to permit the footpath to be swept or to permit any other authorised work to be carried out when directed to do so by an authorised person.

2.29 Removal of sign or item

A person shall remove any advertising sign or item which does not comply with the requirements of this local law, from any footpath when directed to do so by an authorised person;

2.30 Unlawful placement of signs or items

(1) A person who places, causes or permits to be placed on any footpath any advertising sign or item which does not comply with the requirements of this local law, commits an offence.

(2) A person who places, causes or permits to be placed on any footpath any item which obstructs or may obstruct the use of the footpath commits an offence, unless the person proves they had lawful authority to so place the item.

PART 3—PERMITS

3.1 Application of part

This Part applies to an application for a permit under this local law and to permits issued under this local law.

3.2 Application for permit

- (1) Where a person is required to obtain a permit under this local law, that person shall apply for the permit in accordance with subclause (2).
- (2) An application for a permit under this local law shall—
 - (a) be in the form determined by the local government;
 - (b) be signed by the applicant;
 - (c) provide the information required by the form, and
 - (d) be forwarded to the CEO together with any fee imposed and determined by the local government under and in accordance with sections 6.16 to 6.19 of the Act.
- (3) The local government may require an applicant to provide additional information reasonably related to an application before determining an application for a permit.
- (4) The local government may require an applicant to give local public notice of the application for a permit.
- (5) The local government may refuse to consider an application for a permit—
 - (a) which is not in accordance with subclause (2).
 - (b) which, in the case of—
 - (i) an application for a stallholder's permit, is not in accordance with clause 2.2(2);
 - (ii) an application for a trader's permit, is not in accordance with clause 2.3(2); or
 - (iii) an application for an entertainer's permit, is not in accordance with 2.10(2); or
 - (iv) an application for a sign permit, is not in accordance with clause 2.24(2);
 - (c) which is not accompanied by the plans and specification and the application fee;
 - (d) which is not properly completed; or
 - (e) where any required plan, specification or photograph does not in the opinion of the CEO or an authorised person, contain sufficient information or is not sufficiently clear to enable the local government to properly consider the application.

3.3 Relevant considerations in determining application for permit

- (1) Where a clause of this local law refers to matters which the local government is to have regard to in determining an application for a permit, the local government shall have regard to those matters prior to making a decision on an application for a permit under clause 3.5 and, in addition, may have regard to the following matters—
 - (a) the desirability of the proposed activity;
 - (b) the location of the proposed activity;
 - (c) the principles set out in the Competition Principles Agreement; and
 - (d) such other matters as the local government may consider to be relevant in the circumstances of the case.

3.4 Grounds on which an application may be refused

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 within the preceding 5 years the applicant has committed a breach of any provision of this local law, or of any other written law relevant to the activity in respect of which the permit is sought;
- (b) that the applicant is not a fit and proper 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.

3.5 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).

3.6 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 liability insurance in an amount and on terms reasonably required by the local government;
- (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;
- (j) the safe storage, handling, preparation, display and sale of food; and
- (k) the safe display or erection of furniture, goods or other things related to an activity.

3.7 Compliance with 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) If the local government varies the terms or conditions of a permit, the permit holder shall comply with those terms or conditions as varied.

3.8 Amendment of permit conditions

(1) A permit holder may apply in writing to the local government to amend any of the terms or conditions of the permit.

(2) The local government may, in respect of an application under sub-clause (1)—

- (a) amend the permit, either in accordance with the application or otherwise as it sees fit; or
- (b) refuse to amend the permit.

(3) The local government may, at any time, amend any of the terms or conditions of a permit.

(4) If the local government amends a permit under this clause, it is to notify the permit holder in writing of the amendment as soon as practicable after the amendment is made and, unless otherwise specified in the amendment, the amended term or condition, or both, of the permit apply from the date of notification.

(5) If the local government amends a permit otherwise than in accordance with an application from the permit holder, it is, as soon as practicable after the decision to amend is made—

- (a) to give to the permit holder written notice of, and written reasons for, its decision to amend; and
- (b) inform the permit holder of his or her rights, under Part 9, Division 1 of the Act, to object to, and apply for a review of, the decision.

(6) In this clause, “amend” has the meaning given to it in section 5 of the *Interpretation Act 1984*.

3.9 Duration of permit

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

- (a) otherwise stated in this local law or in the permit; or
- (b) cancelled under clause 3.13.

3.10 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*.

3.11 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 an authorised person; 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.

3.12 Production of permit

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

3.13 Cancellation of permit

- (1) Subject to clause 8.1, a permit may be cancelled by the local government on any one or more of the following grounds—
- (a) the permit holder has not complied with a—
 - (i) condition of the permit; or
 - (ii) provision of any written law which may relate to the activity regulated by the permit;
 - (b) the permit holder is convicted of an offence against this local law;
 - (c) the permit holder fails to maintain any required public liability insurance or ceases to indemnify the local government against damages; or
 - (d) if it is relevant to the activity regulated by the permit—
 - (i) the permit holder has become bankrupt, or gone into liquidation;
 - (ii) the permit holder has entered into any composition or arrangement with creditors; or
 - (iii) a manager, an administrator, a trustee, a receiver, or a receiver and manager is appointed in relation to any part of the permit holder's undertakings or property.
- (2) On the cancellation of a permit the permit holder—
- (a) shall return the permit as soon as practicable to the local government; and
 - (b) is to be taken to have forfeited any fees paid in respect of the permit.

3.14 Suspension of permit holder rights and privileges

- (1) The rights and privileges granted to a permit holder on the issue of a permit, shall be automatically suspended, where the public liability insurance required as a condition of a permit, lapses, is cancelled or is no longer current.
- (2) The rights and privileges granted to a permit holder on the issue of a permit, may be suspended by the local government for the purpose of and during the carrying out of any works by or on behalf of the State, or an agency or instrumentality of the Crown, or the local government, in or adjacent to the area the subject of the permit.

3.15 Planning approval

The requirement for a permit under this local law, is additional to the requirement if any, for a planning approval.

PART 4—BOND OR SECURITY

4.1 Security for restoration and reinstatement

- (1) For the purpose of ensuring that an outdoor eating area is properly restored or reinstated under clause 2.18(1)(f), on the expiry or cancellation of a permit, the local government may require that the applicant or permit holder—
- (a) as a condition of a permit; or
 - (b) before the issue of a permit; or
 - (c) before the renewal of a permit,

give to the local government a bond, bank guarantee or other security, of a kind and in a form acceptable to the local government, in or for a sum determined by the local government.

- (2) A bond required under sub-clause (1) is to be paid into an account established by the local government for the purposes of this clause.

4.2 Use by the local government of bond or security

- (1) If a permit holder fails to carry out or complete the restoration or reinstatement works required by clause 2.18(1)(f), the permit conditions or by a notice served by the local government—
- (a) within the time specified in those conditions;
 - (b) where no such time has been specified, a reasonable period of time from the expiration or cancellation of the permit to establish or conduct the outdoor eating area; or

- (c) within 14 days or such other time as specified in the notice given by the local government to the permit holder,

then the local government may carry out or cause to be carried out the required restoration or reinstatement work or so much of that work as remains undone.

(2) The permit holder shall pay to the local government on demand all administrative, legal, contractor and other costs, estimated or incurred by the local government, to restore or reinstate the public place or which the local government may be required to pay under this clause.

(3) The local government may apply the proceeds of any bond or call upon any bank guarantee or other security provided by the permit holder under clause 4.1 to meet costs under this clause.

(4) The liability of a permit holder to pay the local government's costs under this clause is not limited to the amount, if any, secured under clause 4.1.

PART 5—MISCELLANEOUS

5.1 Notice requiring works to be done

(1) Where a permit holder has breached any term or condition of her or his permit or a provision of this local law, the local government may require works to be done by the permit holder to rectify that breach and for that purpose may give a notice to the permit holder—

- (a) identifying the breach;
- (b) requiring the permit holder to rectify the breach or do specified works within a specified time so as to remedy the breach; and
- (c) advising that where the permit holder fails to comply with the requirements of the notice within the time specified, the local government may do the required work at the expense of the permit holder.

(2) Where, in the opinion of an authorised person, it is necessary to change the location, arrangement or operation of an outdoor eating area so as to maintain public safety, facilitate public works to the footpath or public place, or to protect the amenity of adjacent premises, the authorised person may give a notice to the permit holder—

- (a) notifying the permit holder of the details of the change in location, arrangement or operation of the outdoor eating area;
- (b) requiring the permit holder to effect, whether by works or otherwise, the change in location, arrangement or operation of the outdoor eating area; and
- (c) advising that where the permit holder fails to comply with the requirements of the notice within the time specified, the local government may do the required work at the expense of the permit holder.

(3) Where the permit holder fails to comply with the requirements of a notice issued under subclause (1) or (2), the local government may, by its employees, agents or contractors, carry out all works and do all things necessary to comply with the requirements of the notice.

(4) The local government may recover the expenses incurred in carrying out the works in accordance with subclause (3)—

- (a) where a bond, bank guarantee or other security has been given under clause 4.1, by applying the proceeds of any bond or calling upon any bank guarantee or other security to meet those expenses; or
- (b) from the permit holder as a debt due to the local government, in a court of competent jurisdiction.

5.2 Notice to advise permit holder of planned or emergency works

(1) The local government shall give 14 days notice of any planned works to be undertaken by the local government, that will require closure, part closure or access to an outdoor eating area which is the subject of a valid permit.

(2) Where the local government is to carry out emergency works in a public place where there is an outdoor eating area, advertising sign or stall which is the subject of a valid permit, there is no requirement to give notice of the works to the permit holder, other than that which is considered reasonable under the circumstances.

(3) A notice referred to in sub-clauses (1) and (2) shall be given in accordance with the Act.

5.3 Works on public property

A person shall not carry out any works of a structural nature, within a thoroughfare or public place without first obtaining written permission from the local government, in accordance with regulation 17 of the *Local Government (Uniform Local Provisions) Regulations 1996*.

5.4 Public liability insurance and indemnity

(1) Where, as a condition of a permit, the permit holder is required to obtain and maintain a public liability insurance policy, indemnifying the local government against all actions, suits, claims, damages, losses and expenses which may be made against or incurred by the local government arising from any activity, action or thing performed or erected in accordance with the permit, the permit holder shall—

- (a) enter into an agreement with the local government to provide and maintain the required public liability insurance protection;

- (b) take out a public liability insurance policy in the name of the permit holder, which identifies the local government as an interested party for a minimum value of 5 million dollars or such other amount as the local government considers appropriate for the risk and liability involved;
 - (c) include a clause in the policy which prevents the policy from being cancelled without the written consent of the local government;
 - (d) include a clause in the policy which requires the insurance company to advise the local government if the policy lapses, is cancelled or is no longer in operation;
 - (e) provide to local government a certificate of currency for the required insurance policy prior to commencing any activity, action or thing under a permit; and
 - (f) on the request of an authorised person, provide for inspection, a certificate of currency and the policy wording for the required insurance policy.
- (2) A permit holder who refuses to or does not comply with subclause (1)(e) or (1)(f) commits an offence.

PART 6—GENERAL

6.1 Authorised person to be obeyed

A permit holder who is given a lawful direction by an authorised person or a member of the WA Police Service, shall comply with that direction.

6.2 Persons may be directed to leave local government property

An authorised person may direct a person to leave local government property where the authorised person reasonably suspects that the person has contravened a provision of any written law.

6.3 Lost goods

No local government employee or any authorised person shall in any way be responsible for any goods or money lost, stolen, damaged or destroyed whilst on any local government property or thoroughfare.

6.4 Liability for damage to local government property or thoroughfare

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

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

(2) On a failure to comply with a notice issued under sub-clause (1), the local government may recover the costs referred to in the notice as a debt due to it in a court of competent jurisdiction.

PART 7—OFFENCES AND PENALTIES

7.1 Offences

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

(2) 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.

(3) Any person who commits an offence under this local law shall be liable, upon conviction, to a penalty not less than \$250 and 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.

7.2 Prescribed offences and modified penalties

(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 appearing in the final column of Schedule 1 directly opposite an offence described in that Schedule is the modified penalty for that offence.

7.3 Forms of Infringement and withdrawal notices

For the purposes of this local law—

- (a) where a vehicle is involved in the commission of an offence, the form of the infringement notice referred to in section 9.13 of the Act is that of Form 1 in Schedule 1 of the *Local Government (Functions and General) Regulations 1996*;
- (b) the form of the infringement notice referred to in sections 9.16 and 9.17 of the Act is that of Form 2 in Schedule 1 of the *Local Government (Functions and General) Regulations 1996*; and
- (c) the form of the withdrawal notice referred to in section 9.20 of the Act is that of Form 3 in Schedule 1 of the *Local Government (Functions and General) Regulations 1996*.

PART 8—OBJECTIONS AND APPEALS

8.1 Objections and Appeals

When the local government makes a decision—

- (a) under clause 3.5(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 regulation 33 of the *Local Government (Functions and General) Regulations 1996* apply to that decision.

Schedule 1
PRESCRIBED OFFENCES

Clause No.	Description of Offence	Modified Penalty \$
2.2 (1)	Conducting stall in public place without a permit	250
2.3 (1)	Trading without a permit	250
2.8(1)(a)	Failure of stallholder or trader to comply with terms or conditions of permit	250
2.8 (1)(b)	Failure of stallholder or trader to display or carry permit	100
2.8 (1)(c)	Stallholder or trader not displaying valid permit	100
2.8 (1)(d)	Stallholder or trader not carrying certified scales when selling goods by weight	100
2.8 (3)	Stallholder or trader engaged in prohibited conduct	250
2.10(1)	Performing in a public place without a permit	250
2.11 (2)	Failure of performer to move onto another area when directed	100
2.14	Failure of performer to comply with obligations	100
2.16	Establishment or conduct of outdoor eating area without a permit	250
2.18	Failure of permit holder of outdoor eating area to comply with obligations	250
2.20 (1)	Use of furniture of outdoor eating area without purchase of food or drink from permit holder	100
2.20 (2)	Failure to leave outdoor eating area when requested to do so by permit holder	100
2.24(1)	Displaying advertising sign on a footpath without a permit	250
2.26 (a)	Failing to maintain an advertising sign in a safe and serviceable condition at all times	100
2.26 (b)	Refusing to conspicuously display the permit number on an advertising sign	50
2.26 (c)	Failure to display a sign in accordance with conditions of permit	100
2.26 (d)	Failing to display the advertising sign more than 500 millimetres and 1200 millimetres from the kerb	100
2.26 (e)	Failing to ensure the free passage of persons using the footpath	100
2.27	Permitting an advertising sign to be displayed in an unsafe or dangerous manner	250
2.28	Refusing or failing to remove an advertising sign to allow sweeping or cleaning	100
2.29	Refusing or failure to remove an advertising sign or item when requested to do so	250
2.30 (1)	Placing or permitting an advertising sign contrary to the requirements of the local law	250
2.30 (2)	Placing or permitting an item so as to obstruct a footpath without lawful authority	250
3.7 (1) & (2)	Failure to comply with a condition of a permit	250
3.12	Failure to produce a permit when requested to do so	100
5.3	Carrying out works in thoroughfare without permission	250
6.1 (1)	Failure to obey a lawful direction of an authorised person	250
6.2	Failing to leave local government property when directed to do so	250
7.1(2)	Failure to comply with notice	250
7.1	All other offences not described above	100

Dated this 26th day of February 2008.

The Common Seal of the Town of Vincent was affixed by authority of a resolution of the Council in the presence of—

NICK CATANIA, JP, Mayor.
JOHN GIORGI, JP, Chief Executive Officer.

**LOCAL GOVERNMENT ACT 1995
DIVIDING FENCES ACT 1961**

TOWN OF VINCENT

FENCING LOCAL LAW 2008

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**LOCAL GOVERNMENT ACT 1995
DIVIDING FENCES ACT 1961**

TOWN OF VINCENT

FENCING LOCAL LAW 2008

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the Town of Vincent resolved on 12 February 2008 to make the following local law.

PART 1—PRELIMINARY

1.1 Citation

This local law may be cited as the *Town of Vincent Fencing Local Law 2008*.

1.2 Objective

- (1) The objective of this local law is to provide for the regulation, control and management of fences within the district.
- (2) The effect of this local law is to—
 - (a) regulate, manage and control fences; and
 - (b) establish the standard of a “*sufficient fence*” according to land use.

1.3 Commencement

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

1.4 Repeal

The *Town of Vincent Local Law Relating to Fences, Floodlights and Other External Lights* published in the *Government Gazette* on 27 July 1999 and as amended and published in the *Government Gazette* on 11 February 2000 is repealed on the day this local law comes into operation.

1.5 Application

This local law applies throughout the district.

1.6 Interpretation

In this local law, unless the context requires otherwise—

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

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

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

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

“**boundary fence**” means a fence constructed on the boundary of a lot which abuts a thoroughfare;

“**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 is or may be permitted under the town planning scheme, and is or will be the predominant use of the lot;

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

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

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

“*dividing fence*” has the meaning given to it in and for the purposes of the *Dividing Fences Act 1961*;

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

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

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

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

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

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

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

“*Industrial lot*” means a lot where an industrial use is or may be permitted under the town planning scheme and is or will be the predominant use of the lot;

“*local government*” means the Town of Vincent;

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

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

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

“*notice of breach*” is defined in clause 5.1;

“*non-sacrificial graffiti protection*” means a coating applied to a fence which is not removed in the process of removing graffiti;

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

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

“*Residential lot*” means a lot where a residential use is or may be permitted under the town planning scheme, and is or will be the predominant use of the lot;

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

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

“*sufficient fence*” means a fence that satisfies clause 2.1 and includes a fence of the description and quality agreed upon by the owners of adjoining lots which does not fail to satisfy clause 2.1;

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

“*town planning scheme*” means a town planning scheme of the local government made under the *Planning and Development Act 2005*.

1.7 Fees and charges

All fees and charges applicable under this local law shall be determined by the local government from time to time under and in accordance with sections 6.16 to 6.19 of the Act.

PART 2—FENCES

Division 1—Sufficient Fences

2.1 Sufficient fence

- (1) A person shall not erect a dividing fence or a boundary fence that is not a sufficient fence.
- (2) Pursuant to section 24 of the *Dividing Fences Act 1961* and 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 Schedule 2; and
 - (b) on a Commercial lot or Industrial lot is a dividing fence or a boundary fence constructed and maintained in accordance with the specifications and requirements of Schedule 3.
- (3) Where a fence is erected on or near the boundary between a Residential lot and a Commercial lot or Industrial lot, a sufficient fence is a dividing fence constructed and maintained in accordance with the specifications and requirements of Schedule 2.
- (4) Unless an authorised person determines otherwise, a sufficient fence on a boundary between lots other than those specified in sub-clauses (2) and (3) is a dividing fence constructed in accordance with the specifications and requirements of Schedule 2.

(5) Notwithstanding any other provisions in this local law, a dividing fence or boundary fence constructed of masonry, stone or concrete shall be a sufficient fence only if it is designed by a suitably qualified structural engineer and constructed in accordance with that design where—

- (a) it is greater than 1,800 millimetres in height; or
- (b) the Building Surveyor so requires.

(6) Notwithstanding any other provision in this local law, a dividing fence or boundary fence shall not exceed 1,800 millimetres in height unless the approval of the local government has been obtained to such a fence.

Division 2—General

2.2 Fences within front setback areas

(1) A person shall not erect a fence within the front setback area, including along the side boundaries, unless the fence complies with the provisions of the town planning scheme.

(2) Where there is inconsistency between the standards and requirements of this local law and those specified in the town planning scheme, the standards and requirements of the town planning scheme shall prevail.

2.3 Gates in fences

A person shall not erect or maintain a gate in a fence which does not—

- (a) open into the lot; or
- (b) open by sliding parallel and on the inside of the fence, of which it forms part, when closed.

2.4 Depositing fencing material on public place

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

2.5 Alteration of ground levels

(1) A fence constructed of corrugated fibre reinforced pressed cement shall not have more than 150 millimetres difference in the ground levels on each side of the fence.

(2) Where land has been filled or retained to a height of more than 500 millimetres above natural ground level at or within 1,000 millimetres of a boundary of a lot, a person shall only erect a dividing fence that is a sufficient fence on the said fill or retaining wall if the person produces to the local government the written agreement of the owners of the adjoining lot.

(3) A person shall not alter (whether by removing soil or bringing in fill of any kind) the natural ground level of land on or within 1,000 millimetres of the boundary of a lot, by more than 500 millimetres without the approval of the local government.

2.6 Maintenance of fences

(1) An owner of a lot on which a fence is erected shall maintain the fence in good condition so as to prevent it from becoming dangerous, dilapidated, unsightly or prejudicial to the amenity of the locality.

(2) Where in the opinion of the local government or an authorised person, a fence is in a state of disrepair or is dangerous or is otherwise in breach of a provision of this local law, the local government or an authorised person may give a notice of breach under clause 5.1 to the owner of the lot on which the fence is erected.

2.7 Fences and sightlines

(1) Where a front fence or a boundary fence is adjacent to a vehicle access point or a thoroughfare, the front fence or boundary fence is to have a sight line truncation or a reduction in height shall be provided at the property line to ensure adequate visibility, as follows—

- (a) at an intersection of a driveway with a road or right-of-way a minimum sight line truncation of 1.5 metres x 1.5 metres, where achievable, or as a minimum a sight line truncation of 1.0 metre x 1.0 metre for low and medium peak vehicle movements, and a sight line truncation of 3.0 metres x 3.0 metres where achievable, for high peak vehicle movements;
- (b) at an intersection of 2 roads a minimum sight line truncation of 3.0 metres x 3.0 metres.

A sight line truncation is not required on the entry side of a driveway where it is clearly defined as "ENTRY ONLY" or where a driveway is not less than 6.0 metres wide, and where appropriate signage and line marking is provided.

(2) Sub-clause (1) does not apply to a fence of open construction that does not obscure the lines of vision of a motorist using a vehicle access point or thoroughfare.

(3) A person shall not erect or maintain a fence without the sightline or height reduction required under sub-clause (2).

2.8 Fences across rights-of-way, public access ways or thoroughfares

A person must not, without the approval of the local government, erect or maintain a fence or obstruction of a temporary or permanent nature across any right-of-way, public access way or thoroughfare so as to impede or prevent use of those facilities in the manner for which they are intended and constructed.

2.9 General discretion of the local government

(1) Notwithstanding the provisions of clause 2.1, the local government may approve the erection or repair of a dividing fence which is not a sufficient fence where all of the owners of the lots to be separated by the dividing fence make an application for approval for that purpose.

(2) In determining whether to grant its approval under sub-clause (1), the local government may consider whether the erection or retention of the fence would have an adverse effect on—

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

Division 3—Fencing Materials

2.10 Pre-used fencing materials

(1) Notwithstanding clause 2.1, a person shall not construct a fence on a Residential lot, a Commercial lot or an Industrial lot from pre-used materials without the approval of the local government.

(2) Where the local government approves the use of pre-used materials in the construction of a fence under sub-clause (1), that approval shall be conditional on the applicant painting or treating the pre-used material as stated in or attached to the form of approval issued by the local government under clause 3.2.

2.11 Barbed wire fences and spiked or jagged materials

(1) An owner or occupier of a Residential lot, a Commercial lot or an Industrial lot shall not erect, affix to or allow to remain on any fence on such a lot any barbed wire or other material with spiked or jagged projections, unless the approval of the local government has been obtained.

(2) Where an approval has been obtained in accordance with sub-clause (1), that approval shall be taken to have been issued subject to a condition that the owner or occupier shall not erect, affix or allow to remain on any fence bounding that lot any barbed wire or other materials with spiked or jagged projections unless such wire or materials are carried on posts set at an angle of 45 degrees into the lot, and unless the bottom row of wire or other materials is set back 150 millimetres from the face of the fence, is at least 2,000 millimetres above ground level and the total height shall not exceed 2,400 millimetres.

2.12 Electrified and razor wire fences

(1) An owner or occupier of a lot shall not—

- (a) construct or use an electrified fence on that lot without obtaining the approval of the local government; or
- (b) construct a fence wholly or partly of razor wire on that lot without obtaining the approval of the local government.

(2) The local government shall not approve an application for the purpose of sub-clause (1)(a)—

- (a) in respect of a lot which is or which abuts a Residential lot;
- (b) unless the fence complies with AS/NZS3016:1994; 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) The local government shall not approve an application for the purpose of sub-clause (1)(b)—

- (a) if the fence is within 3,000 millimetres of the boundary of the lot; or
- (b) where any razor wire used in the construction of the fence is less than 2,000 millimetres or more than 2,400 millimetres above the ground level.

(4) An application for approval for the purpose of sub-clauses (1)(a) or (1)(b) shall be made by the owner of the lot on which the fence is or is to be erected, or by the occupier of the lot with the written consent of the owner.

2.13 Prohibited fencing materials

A person shall not affix or use broken glass in the construction of any fence.

Division 4—Tennis Court Fencing

2.14 Tennis court fencing

(1) A person shall not erect a fence around or partly around a tennis court on a lot unless—

- (a) the fence is not more than 3,600 millimetres in height;
- (b) the whole of the fence is at least 900 millimetres from the boundary between the lot on which the tennis court is located and the adjoining lot; and
- (c) the fence is fabricated from 2.5 millimetre poly-vinyl chloride coated or galvanised wire 50 millimetre link mesh not more than 3,600 millimetres in height, and is erected in accordance with the manufacturer's specifications.

(2) A person shall not erect a fence around or partly around any tennis court other than in accordance with sub-clause (1) without the approval of the local government.

(3) In determining any application for approval for the purpose of sub-clause (2), where the fence will be less than 900 millimetres from the boundary between the lot on which the tennis court is located and the adjoining lot, the local government shall invite the owner of the adjoining lot to make submissions on the proposal, and the local government shall have regard to any such submissions in making its decision under clause 3.2.

PART 3—APPROVALS

3.1 Application for approval

- (1) Where a person is required to obtain the approval of the local government under this local law, that person shall apply for approval in accordance with sub-clause (2).
- (2) An application for approval under this local law shall—
 - (a) be in the form determined by the local government;
 - (b) be signed by the applicant and the owner of the lot;
 - (c) provide the information required by the form; and
 - (d) be forwarded to the CEO together with any fee imposed and determined by the local government under and in accordance with sections 6.16 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 approval.
- (4) The local government may refuse to consider an application for approval which is not in accordance with sub-clauses (2) and (3).

3.2 Decision on application for approval

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

3.3 Compliance with approval

Where an application for approval has been approved, the applicant and the owner and occupier of the lot to which the approval relates, shall comply with the terms and any conditions of that approval.

3.4 Duration of approval

Unless otherwise stated in the form of approval, an approval granted under this local law runs with the lot to which it relates and for the avoidance of doubt, it may be relied upon by any subsequent occupier or owner of the lot, and may be enforced against them by the local government.

PART 4—MISCELLANEOUS

4.1 False or misleading statement

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

PART 5—NOTICES OF BREACH

5.1 Notices of breach

- (1) Where a breach of any provision of this local law has occurred in relation to a fence on a lot, the local government may give a notice in writing to that owner of that lot ('notice of breach').
- (2) The notice of breach shall—
 - (a) specify the provision of this local law which has been breached;
 - (b) specify the particulars of the breach; and
 - (c) state that the owner is required to remedy the breach within the time specified in the notice.
- (3) An owner given a notice of breach shall comply with the terms of the notice and remedy the breach within the time specified in the notice.

5.2 Limit on liability

An owner to whom a notice of breach has been given is not entitled to make any claim by way of damages or otherwise, against an authorised person, local government employee, local government appointed sub-contractor or other person authorised by the local government arising from anything done while they are acting under clause 5.1(3).

PART 6—OFFENCES

6.1 Offences and penalties

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

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

6.2 Modified penalties

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

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

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

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

6.3 Form of notices

For the purposes of this local law—

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

PART 7—OBJECTIONS AND REVIEW

7.1 Objections and review

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

Schedule 1

PRESCRIBED OFFENCES

Clause	Description	Modified Penalty \$
2.1 (1)	Erect a fence which is not a sufficient fence	250
2.2	Erect a fence within the front setback area which does not comply with the Town Planning Scheme.	250
2.3(a)	Erect or maintain a gate in a fence not opening into the lot	200
2.3(b)	Erect or maintain a gate in a fence not sliding parallel and inside of fence	200
2.6 (1)	Failure to maintain a fence in good condition/prevent fence becoming dangerous, dilapidated, unsightly	250
2.7 (3)	Erect a fence without the required sight line truncation or height reduction	250
2.8	Erect or maintain a fence/obstruction temporary or permanent across a right-of-way, public access way or thoroughfare without approval	250
2.10(1)	Construct a dividing fence on a Residential, Commercial or Industrial lot from pre-used materials without written approval	250
2.11 (1)	Erect a fence using barbed wire or material with spiked or jagged projections in fence construction without approval	250
2.12 (1)	Construct, erect or use razor wire in a fence or electrify a fence without approval	250
2.13	Affix, or use, any broken glass in a fence	250
2.14 (1) (a)	Erect a tennis court fence higher than 3600 millimetres without approval	200
2.14 (1) (b)	Erect tennis court fence less than 900 millimetres from boundary of adjoining lot without approval	200

Clause	Description	Modified Penalty \$
2.14 (1) (c)	Erect a link mesh fence higher than 3600 millimetres or not in accordance with manufacturer's specification without approval	200
3.3	Failure to comply with terms or conditions of approval	250
5.1 (3)	Failure to comply with notice of breach	250

Clause 2.1 (2)(a)

Schedule 2

**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 in accordance with established construction techniques. The height of the fence shall not exceed 1,800 millimetres except with respect to the front setback area for which there is no minimum height but which is subject to clause 2.2.
- B. A fence constructed of corrugated fibre reinforced pressed cement or steel sheeting erected in accordance with the manufacturer's specifications or which satisfies the following specifications—
 - (a) a minimum in-ground length of 25 per cent of the total length of the sheet, but in any case shall have a minimum in-ground depth of 600 millimetres;
 - (b) the total height and depth of the fence to consist of a single continuous fibre reinforced cement or steel sheet;
 - (c) the sheets to be lapped and capped with extruded "snap-fit" type capping in accordance with the manufacturer's instructions or established construction techniques; and
 - (d) the height of the fence shall not exceed 1,800 millimetres except with respect to the front setback area for which there is no minimum height but which is subject to clause 2.2.
- C. A fence constructed of brick, masonry, stone or concrete, which satisfies the following specifications—
 - (a) footings of minimum 225 millimetres x 150 millimetres concrete 15 Megapascals or 300 millimetres x 175 millimetres brick laid in cement mortar;
 - (b) fences to be offset a minimum of 200 millimetres at maximum 3,000 millimetres centres or 225 millimetres x 100 millimetres engaged piers to be provided at maximum 3,000 millimetres centres;
 - (c) expansion joints in accordance with the manufacturer's written instructions; and
 - (d) the height of the fence shall not exceed 1,800 millimetres except with respect to the front setback area for which there is no minimum height but which is subject to clause 2.2.
- D. A composite fence having an overall height of not exceeding 1,800 millimetres, except with respect to the front setback area for which there is no minimum height but which is subject to clause 2.2, which satisfies the following specifications for the brick component of the construction—
 - (1)
 - (a) brick piers of minimum 345 millimetres x 345 millimetres at 1,800 millimetres centres bonded to a minimum height base wall of 514 millimetres;
 - (b) each pier shall be reinforced with one 10 millimetre diameter galvanised reinforced starting rod 1,500 millimetres high with a 250 millimetres horizontal leg bedded into a 500 millimetres x 200 millimetres concrete footing and set 65 millimetres above the base of the footing. The top of the footing shall be 1 course (85 millimetres) below ground level;
 - (c) the minimum ultimate strength of brickwork shall be 20 Megapascals. Mortar shall be a mix of 1 part cement, 1 part lime and 6 parts sand;
 - (d) the ground under the footings is to be compacted to 6 blows per 300 millimetres and checked with a standard falling weight penetrometer; and
 - (e) control joints in brickwork shall be provided with double piers at a maximum of 6,000 millimetre centres; or
 - (2)
 - (a) brick piers of a minimum 345 millimetres x 345 millimetres x 2,700 millimetres centres bonded to the base; and
 - (b) each pier shall be reinforced with two 10 millimetre diameter galvanised reinforced starting rods 1,500 millimetres high with a 250 millimetres horizontal leg bedded into a 500 millimetres x 200 millimetres concrete footing and set 65 millimetres above the base of the footing. The top of the footing shall be 1 course (85 millimetres) below ground level.

Clause 2.1 (2) (b)

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

Each of the following is a “*sufficient fence*” on a Commercial lot or Industrial lot—

- A. A fence constructed of galvanised or PVC coated rail-less link mesh, chain mesh or steel mesh to a height of no greater than 2,400 millimetres all supported by galvanised iron posts of a minimum diameter of 30 millimetres spaced at no more than 3,000 millimetres centres and sunk in the ground a minimum of 600 millimetres encased in concrete with a minimum diameter of 150 millimetres, except with respect to the front setback area.
- B. A fence of fibre reinforced cement sheet constructed to the specifications referred to in Schedule 2, except with respect to the front setback area.
- 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 1,800 millimetres but no greater than 2,400 millimetres.
- D. Fences of timber, brick, stone or concrete constructed to the specifications referred to in Schedule 2, except with respect to the front setback area.

Dated this 12th day of February 2008.

The Common Seal of the Town of Vincent was affixed by authority of a resolution of the Council in the presence of—

NICK CATANIA, JP, Mayor.
JOHN GIORGI, JP, Chief Executive Officer.
