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# SHIRE OF BROOMEHILL-TAMBELLUP

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LOCAL GOVERNMENT ACT 1995  
**ACTIVITIES IN THOROUGHFARES AND PUBLIC  
PLACES AND TRADING LOCAL LAW 2008**  
**EXTRACTIVE INDUSTRIES LOCAL LAW 2008**  
**LOCAL GOVERNMENT PROPERTY LOCAL LAW 2008**  
**STANDING ORDERS LOCAL LAW 2008**  
**REPEAL LOCAL LAW 2008**

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CEMETERIES ACT 1986  
**CEMETERIES LOCAL LAW 2008**

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**FENCING LOCAL LAW 2008**

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AGRICULTURE AND RELATED RESOURCES PROTECTION ACT 1976  
**PEST PLANT LOCAL LAW 2008**



**LOCAL GOVERNMENT ACT 1995**

## SHIRE OF BROOMEHILL-TAMBELLUP

**ACTIVITIES IN THOROUGHFARES AND PUBLIC PLACES AND  
TRADING LOCAL LAW 2008**

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**LOCAL GOVERNMENT ACT 1995**

SHIRE OF BROOMEHILL-TAMBELLUP

**ACTIVITIES IN THOROUGHFARES AND PUBLIC PLACES AND  
TRADING LOCAL LAW 2008**

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Broomehill-Tambellup resolved on 20th November 2008 to make the following local law.

**PART 1—PRELIMINARY**

**1.1 Citation**

This local law may be cited as the *Shire of Broomehill-Tambellup Activities in Thoroughfares and Public Places and Trading Local Law 2008*.

**1.2 Definitions**

In this local law unless the context otherwise requires—

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

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

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

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

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

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

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

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

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

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

(a) private land; or

(b) a private thoroughfare serving private land;

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

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

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

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

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

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

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

“**local government**” means the Shire of Broomehill-Tambellup;

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

(a) which belongs to the local government;

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

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

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

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

“**park**” means to permit a vehicle, whether attended or not, to remain stationary, except for the purpose of—

- (a) avoiding conflict with other traffic;
- (b) complying with the provisions of any law; or
- (c) taking up or setting down persons or goods (maximum of 2 minutes);

“**permissible verge treatment**” means any one of the 4 treatments described in clause 2.8(2), and includes any reticulation pipes and sprinklers;

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

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

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

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

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

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

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

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

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

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

“**townsite**” means all townsites within the district which are—

- (a) constituted under section 26(2) of the *Land Administration Act 1997*;
- (b) referred to in clause 37 of Schedule 9.3 of the Act; or

“**vehicle**” includes—

- (a) every conveyance and every object capable of being propelled or drawn on wheels, tracks or otherwise; and
- (b) an animal being ridden or driven,

but excludes—

- (a) a wheel-chair or any device designed for use by a physically impaired person on a footpath; and
- (b) a pram, a stroller or a similar device; and

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

### 1.3 Application

This local law applies throughout the district.

## PART 2—ACTIVITIES IN THOROUGHFARES AND PUBLIC PLACES

### *Division 1—General*

#### 2.1 General prohibitions

A person shall not—

- (a) plant any plant on a thoroughfare—
  - (i) except grass or a similar plant within 6 metres of an intersection; and
  - (ii) which exceeds or which may exceed 75 centimetres in height so that the plant is within 6 metres to 10 metres of an intersection;
- (b) damage a lawn or a garden or remove any plant or part of a plant from a lawn or a garden unless—
  - (i) the person is the owner or the occupier of the lot abutting that portion of the thoroughfare and the lawn or the garden or the particular plant has not been installed or planted by the local government; or
  - (ii) the person is acting under the authority of a written law;
- (c) plant any plant (except grass or a similar plant) on a thoroughfare so that it is within 2 metres of a carriageway;
- (d) place on any footpath any fruit, fruit skins or other substance or fluid (whether vegetable or otherwise, but not water) which may create a hazard for any person using the footpath;
- (e) unless at the direction of the local government, damage, remove or interfere with any signpost, direction plate, guidepost, notice, shelter, shed, fence or any structure erected on a thoroughfare by the local government or a person acting under the authority of a written law;



- (f) play or participate in any game or sport so as to cause danger to any person or thing or impede the movement of vehicles or persons on a thoroughfare; or
- (g) within a mall, arcade or verandah of a shopping centre, ride any bicycle, skateboard, rollerblades or similar device.

## 2.2 Activities allowed with a permit—general

- (1) A person shall not, without a permit—
- (a) dig or otherwise create a trench through or under a kerb or footpath;
  - (b) subject to Division 3 of this Part, throw, place or deposit any thing on a verge except for removal by the local government under a bulk rubbish collection, and then only in accordance with the terms and conditions and during the period of time advertised in connection with that collection by the local government;
  - (c) cause any obstruction to a vehicle or a person using a thoroughfare as a thoroughfare;
  - (d) cause any obstruction to a water channel or a water course in a thoroughfare;
  - (e) throw, place or drain offensive, noxious or dangerous fluid onto a thoroughfare;
  - (f) damage a thoroughfare;
  - (g) light any fire or burn any thing on a thoroughfare other than in a stove or fireplace provided for that purpose or under a permit issued under clause 5.13;
  - (h) fell any tree onto a thoroughfare;
  - (i) unless installing, or in order to maintain, a permissible verge treatment—
    - (i) lay pipes under or provide taps on any verge; or
    - (ii) place or install any thing on any part of a thoroughfare, and without limiting the generality of the foregoing, any gravel, stone, flagstone, cement, concrete slabs, blocks, bricks, pebbles, plastic sheeting, kerbing, wood chips, bark or sawdust;
  - (j) provide, erect, install or use in or on any building, structure or land abutting on a thoroughfare any hoist or other thing for use over the thoroughfare;
  - (k) on a public place use anything or do anything so as to create a nuisance;
  - (l) place or cause to be placed on a thoroughfare a bulk rubbish container; or
  - (m) interfere with the soil of, or anything in a thoroughfare or take anything from a thoroughfare.
- (2) The local government may exempt a person from compliance with subclause (1) on the application of that person.

## 2.3 No possession and consumption of liquor on thoroughfare

- (1) A person shall not consume any liquor or have in her or his possession or under her or his control any liquor on a thoroughfare unless—
- (a) that is permitted under the *Liquor Control Act 1988* or under another written law; or
  - (b) the person is doing so in accordance with a permit.
- (2) Subclause (1) does not apply where the liquor is in a sealed container.

### *Division 2—Vehicle crossing*

#### Subdivision 1—Temporary crossings

## 2.4 Permit required

- (1) Where it is likely that works on a lot will involve vehicles leaving a thoroughfare and entering the lot, the person responsible for the works shall obtain a permit for the construction of a temporary crossing to protect the existing carriageway, kerb, drains and footpath, where—
- (a) a crossing does not exist; or
  - (b) a crossing does exist, but the nature of the vehicles and their loads is such that they are likely to cause damage to the crossing.
- (2) The “person responsible for the works” in subclause (1) is to be taken to be—
- (a) the builder named on the building licence issued under the *Local Government (Miscellaneous Provisions) Act 1960*, if one has been issued in relation to the works; or
  - (b) the registered proprietor of the lot, if no building licence has been issued under the *Local Government (Miscellaneous Provisions) Act 1960* in relation to the works.
- (3) If the local government approves an application for a permit for the purpose of subclause (1), the permit is taken to be issued on the condition that until such time as the temporary crossing is removed, the permit holder shall keep the temporary crossing in good repair and in such a condition so as not to create any danger or obstruction to persons using the thoroughfare.

#### Subdivision 2—Redundant vehicle crossings

## 2.5 Removal of redundant crossing

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

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

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

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

### *Division 3—Verge treatments*

#### Subdivision 1—Preliminary

#### **2.6 Definition**

In this Division, unless the context otherwise requires—

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

#### **2.7 Application**

This Division only applies to townsites.

#### Subdivision 2—Permissible verge treatments

#### **2.8 Permissible verge treatments**

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

(2) The permissible verge treatments are—

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

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

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

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

#### **2.10 Obligations of owner or occupier**

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

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

#### **2.11 Notice to owner or occupier**

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

#### Subdivision 3—Existing verge treatments

#### **2.12 Transitional provision**

(1) In this clause—

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

(2) A verge treatment which—

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

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

## Subdivision 4—Public works

**2.13 Power to carry out public works on verge**

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

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

*Division 4—Property numbers*

## Subdivision 1—Preliminary

**2.14 Definition**

In this Division, unless the context requires otherwise—

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

## Subdivision 2—Assignment and marking of numbers

**2.15 Assignment of numbers**

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

*Division 5—Fencing***2.16 Public place—Item 4(1) of Division 1, Schedule 3.1 of Act**

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

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

*Division 6—Signs erected by the local government***2.17 Signs**

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

**2.18 Transitional**

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

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

*Division 7—Driving on a closed thoroughfare***2.19 No driving on closed thoroughfare**

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

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

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

In this Part, unless the context otherwise requires—

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

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

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

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

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

#### *Division 2—Permit*

### **3.2 Advertising signs and portable direction signs**

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

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

(2) Notwithstanding subclause (1), a permit is not required in respect of a portable direction sign which neither exceeds 500 millimetres in height nor one half of a square metre 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) on a footpath;
- (b) over any footpath where the resulting vertical clearance between the sign and the footpath is less than 2.5 metres;
- (c) on or within 3 metres of a carriageway;
- (d) in any other location where, in the opinion of the local government, the sign is likely to obstruct lines of sight along a thoroughfare or cause danger to any person using the thoroughfare; or
- (e) on any natural feature, including a rock or tree, on a thoroughfare, or on any bridge or the structural approaches to a bridge.

### **3.3 Matters to be considered in determining application for permit**

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

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

#### *Division 3—Conditions on permit*

### **3.4 Conditions on portable sign**

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

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

### **3.5 Conditions on election sign**

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

- (a) being erected at least 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.

## PART 4—OBSTRUCTING ANIMALS, VEHICLES OR SHOPPING TROLLEYS

### *Division 1—Animals and vehicles*

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

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

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

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

#### **4.2 Prohibition on parking a vehicle near the Tambellup Soldiers' Memorial**

A person shall not park a vehicle on any portion of Norrish Street Tambellup so that any portion of the vehicle is within 8 metres of the Tambellup Soldiers' Memorial.

#### **4.3 Prohibitions relating to animals**

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

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

(2) An owner of an animal shall not—

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

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

### *Division 2—Shopping trolleys*

#### **4.4 Definition**

In this Division—

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

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

#### **4.5 Shopping trolley to be marked**

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

#### **4.6 Person not to leave trolley in public place**

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

#### **4.7 Retailer to remove abandoned trolley**

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

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

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

#### **4.8 Retailer taken to own trolley**

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

## **PART 5—ROADSIDE CONSERVATION**

### *Division 1—Preliminary*

#### **5.1 Definition**

In this Part—

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

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

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

“**Roadside Conservation Committee**” means the Roadside Conservation Committee established under the Land Resource Policy Council within the Office of Premier and Cabinet but now located in the Department of Environment and Conservation; and

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

#### **5.2 Application**

This Part does not apply to the townsite.

### *Division 2—Flora roads*

#### **5.3 Declaration of flora road**

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

#### **5.4 Construction works on flora roads**

Construction and maintenance work carried out by the local government on a flora road is to be in accordance with the “Handbook of Environmental Practice for Road Construction and Road Maintenance Works” (April 2005) prepared by the Roadside Conservation Committee.

#### **5.5 Signposting of flora roads**

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

#### **5.6 Driving only on carriageway of flora roads**

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

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

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

### *Division 3—Special environmental areas*

#### **5.7 Designation of special environmental areas**

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

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

#### **5.8 Marking of special environmental areas**

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

### *Division 4—Planting in thoroughfares*

#### **5.9 Permit to plant**

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

**5.10 Relevant considerations in determining application**

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

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

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

A person shall not clear and maintain in a cleared state, the surface of a thoroughfare within 1.5 metres of that person's land without first obtaining a permit and any other approvals which may be required under any written law.

**5.12 Application for permit**

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

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

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

**5.14 Application for permit**

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

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

**5.15 When application for permit can be approved**

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

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

**5.16 Prohibitions on burning**

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

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

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

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

**5.18 When application for permit cannot be approved**

- (1) The local government is not to approve an application for a permit for the purpose of clause 5.17 where the thoroughfare is less than 20 metres wide.
- (2) Subclause (1) does not apply where the firebreak is, in the opinion of the local government, desirable for the protection of roadside vegetation.

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

Subject to clause 5.20, a person shall not commercially harvest native flora on a thoroughfare.

**5.20 Permit for revegetation projects**

(1) A person shall not collect seed from native flora on a thoroughfare without first obtaining a permit.

- (2) The local government may approve an application for a permit under subclause (1) only where—
- (a) the seed is required for a revegetation project in any part of the district; and
  - (b) the thoroughfare, or the relevant part of it, is not a special environmental area.
- (3) Unless the local government specifically provides to the contrary on a permit, if the local government approves an application for a permit for the purpose of subclause (1) it is to be taken to be approved subject to the following conditions—
- (a) the collection of the seed is to be carried out so as not to endanger the long time survival of the native flora on the thoroughfare; and
  - (b) any licence or approval which may be required under any other written law is to be obtained by the applicant.

## PART 6—TRADING IN THOROUGHFARES AND PUBLIC PLACES

### *Division 1—Stallholders and traders*

#### Subdivision 1—Preliminary

#### 6.1 Definition

In this Division, unless the context otherwise requires—

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

“**public place**” includes—

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

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

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

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

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

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

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

“**trading**” includes—

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

but does not include—

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



## Subdivision 2—Permits

**6.2 Stallholder's permit**

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

**6.3 Trader's permit**

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

**6.4 No permit required to sell newspaper**

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

**6.5 Relevant considerations in determining application for permit**

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

### 6.6 Conditions of permit

(1) If the local government approves an application for a permit under this Division subject to conditions, those conditions may include—

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

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

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

(1) In this clause—

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

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

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

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

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

### Subdivision 3—Conduct of stallholders and traders

### 6.8 Conduct of stallholders and traders

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

- (a) display her or his permit to do so in a conspicuous place on the stall, vehicle or temporary structure or if there is no stall, vehicle or temporary structure, carry the permit with her or him while conducting a stall or trading;
- (b) not display a permit unless it is a valid permit; and
- (c) when selling goods by weight, carry and use for that purpose, scales tested and certified in accordance with the provisions of the *Trade Measurement Administration Act 2006*.

(2) A stallholder or trader shall not—

- (a) deposit or store any box or basket containing goods on any part of a thoroughfare so as to obstruct the movement of pedestrians or vehicles;

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

*Division 2—Street entertainers*

Subdivision 1—Preliminary

**6.9 Definition**

In this Division, unless the context otherwise requires—

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

“**permit**” means a permit issued for the purpose of clause 6.10;

“**permitted area**” means the area or areas, specified in a permit, in which the permit holder may perform; and

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

Subdivision 2—Permits

**6.10 Permit required to perform**

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

**6.11 Variation of permitted area and permitted time**

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

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

shown on a permit.

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

**6.12 Duration of permit**

A 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.

**6.13 Cancellation of permit**

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

**6.14 Obligations of permit holder**

A permit holder shall not in a public place—

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

*Division 3—Outdoor eating Facilities on public places*

**6.15 Definition**

In this Division—

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

“**permit holder**” means the person to whom a permit has been issued for the purpose of clause 6.16; and

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

**6.16 Permit required to conduct Facility**

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

### 6.17 Matters to be considered in determining application

In determining an application for a permit for the purpose of clause 6.16, the local government may consider in addition to any other matter it considers relevant, whether or not—

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

### 6.18 Obligations of permit holder

- (1) The permit holder for a Facility shall—
  - (a) ensure that the Facility is conducted at all times in accordance with the provisions of this local law and any local law made under section 172 of the *Health Act 1911*;
  - (b) ensure that the eating area is kept in a clean and tidy condition at all times;
  - (c) maintain the chairs, tables and other structures in the eating area in a good, clean and serviceable condition at all times;
  - (d) be solely responsible for all and any costs associated with the removal, alteration, repair, reinstatement or reconstruction of any part of the public place arising from the conduct of the Facility; and
  - (e) be solely responsible for all rates and taxes levied upon the land occupied by the Facility.
- (2) Whenever, in the opinion of the local government, any work is required to be carried out to a Facility, the local government may give a notice to the permit holder for the Facility to carry out that work within the time limited by the notice.
- (3) In subclause (2), “work” includes the removal, alteration, repair, reinstatement or reconstruction of any part of a public place arising from or in connection with the setting up or conduct of a Facility.

### 6.19 Removal of Facility unlawfully conducted

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

### 6.20 Use of Facility by public

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

### 6.21 Temporary removal of Facility may be requested

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

## PART 7—PERMITS

### *Division 1—Applying for a permit*

#### 7.1 Application for permit

- (1) Where a person is required to obtain a permit under this local law, that person shall apply for the permit in accordance with subclause (2).
- (2) An application for a permit under this local law shall—
  - (a) be in the form determined by the local government;
  - (b) be signed by the applicant;
  - (c) provide the information required by the form; and
  - (d) be forwarded to the CEO together with any fee imposed and determined by the local government under and in accordance with sections 6.16 to 6.19 of the Act.
- (3) The local government may require an applicant to provide additional information reasonably related to an application before determining an application for a permit.
- (4) The local government may require an applicant to give local public notice of the application for a permit.

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

### **7.2 Decision on application for permit**

(1) The local government may—

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

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

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

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

(5) Where a clause of this local law refers to the grounds on which an application for a permit may be or is to be refused, the clause does not limit the power of the local government to refuse the application for a permit on other grounds under subclause (1)(b).

### *Division 2—Conditions*

#### **7.3 Conditions which may be imposed on a permit**

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

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

#### **7.4 Imposing conditions under a policy**

(1) In this clause—

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

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

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

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

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

#### **7.5 Compliance with and variation of conditions**

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

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

### *Division 3—General*

#### **7.6 Duration of permit**

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

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

**7.7 Renewal of permit**

- (1) A permit holder may apply to the local government in writing prior to expiry of a permit for the renewal of the permit.
- (2) The provisions of—
- (a) this Part; and
  - (b) any other provision of this local law relevant to the permit which is to be renewed,
- shall apply to an application for the renewal of a permit mutatis mutandis.

**7.8 Transfer of permit**

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

**7.9 Production of permit**

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

**7.10 Cancellation of permit**

- (1) Subject to clause 8.1, a permit may be cancelled by the local government if the permit holder has not complied with a—
- (a) condition of the permit; or
  - (b) 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 local government; and
  - (b) is to be taken to have forfeited any fees paid in respect of the permit.

**PART 8—OBJECTIONS AND APPEALS****8.1 Application of Part 9 Division 1 of Act**

When the local government makes a decision—

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

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

**PART 9—MISCELLANEOUS NOTICES****9.1 Notice to redirect or repair sprinkler**

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

**9.2 Hazardous plants**

- (1) Where a plant in a garden creates or may create a hazard for any person using a thoroughfare, the local government may give a notice to the owner or the occupier of the land abutting on the garden to remove, cut, move or otherwise deal with that plant so as to remove the hazard.
- (2) Subclause (1) does not apply where the plant was planted by the local government.

**9.3 Notice to repair damage to thoroughfare**

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

**9.4 Notice to remove thing unlawfully placed on thoroughfare**

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

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

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

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

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

*Division 2—Offences and penalties*

## Subdivision 1—General

**10.3 Offences**

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

## Subdivision 2—Infringement notices and modified penalties

**10.4 Prescribed offences**

- (1) An offence against a clause specified in Schedule 1 is a prescribed offence for the purposes of section 9.16(1) of the Act.
- (2) The amount of the modified penalty for a prescribed offence is that specified adjacent to the clause in Schedule 1.
- (3) For the purpose of guidance only, before giving an infringement notice to a person in respect of the commission of a prescribed offence, an authorized person should be satisfied that—
  - (a) commission of the prescribed offence is a relatively minor matter; and
  - (b) only straightforward issues of law and fact are involved in determining whether the prescribed offence was committed, and the facts in issue are readily ascertainable.

**10.5 Forms**

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

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

**Schedule 1****PRESCRIBED OFFENCES**

Clause	Description	Modified Penalty \$
2.1(a)	Plant in excess of 0.75m in height on thoroughfare within 6m to 10m of an intersection	125
2.1(b)	Damaging lawn or garden	125
2.1(c)	Plant (except grass) on thoroughfare within 2m of carriageway	125
2.1(d)	Placing hazardous substance on footpath	125
2.1(e)	Damaging or interfering with signpost or structure on thoroughfare	350
2.1(f)	Playing games so as to impede vehicles or persons on thoroughfare	125
2.1(g)	Riding of skateboard or similar device on mall or verandah of shopping centre	125

Clause	Description	Modified Penalty \$
2.2(1)(a)	Digging a trench through a kerb or footpath without a permit	125
2.2(1)(b)	Throwing or placing anything on a verge without a permit	125
2.2(1)(c)	Causing obstruction to vehicle or person on thoroughfare without a permit	125
2.2(1)(d)	Causing obstruction to water channel on thoroughfare without a permit	250
2.2(1)(e)	Placing or draining offensive fluid on thoroughfare without a permit	250
2.2(1)(g)	Lighting a fire on a thoroughfare without a permit	350
2.2(1)(h)	Felling tree onto thoroughfare without a permit	125
2.2(1)(i)	Installing pipes or stone on thoroughfare without a permit	125
2.2(1)(j)	Installing a hoist or other thing on a structure or land for use over a thoroughfare without a permit	350
2.2(1)(k)	Creating a nuisance on a thoroughfare without a permit	125
2.2(1)(l)	Placing a bulk rubbish container on a thoroughfare without a permit	125
2.2(1)(m)	Interfering with anything on a thoroughfare without a permit	125
2.3(1)	Consumption or possession of liquor on thoroughfare	125
2.4(1)	Failure to obtain permit for temporary crossing	250
2.5(2)	Failure to comply with notice to remove crossing and reinstate kerb	350
2.9(1)	Installation of verge treatment other than permissible verge treatment	250
2.10	Failure to maintain permissible verge treatment or placement of obstruction on verge	125
2.11	Failure to comply with notice to rectify default	125
2.17(2)	Failure to comply with sign on public place	125
2.19(1)	Driving or taking a vehicle on a closed thoroughfare	350
3.2(1)	Placing advertising sign or affixing any advertisement on a thoroughfare without a permit	125
3.2(3)	Erecting or placing of advertising sign in a prohibited area	125
4.1(1)	Animal or vehicle obstructing a public place or local government property	125
4.2	Parking a vehicle alongside Tambellup Soldiers' Memorial	125
4.3(2)(a)	Animal on thoroughfare when not led, ridden or driven	125
4.3(2)(b)	Animal on public place with infectious disease	125
4.3(2)(c)	Training or racing animal on thoroughfare in built-up area	125
4.3(3)	Horse led, ridden or driven on thoroughfare in built-up area	125
4.6	Person leaving shopping trolley in public place other than trolley bay	125
4.7(2)	Failure to remove shopping trolley upon being advised of location	125
5.6(1)	Driving a vehicle on other than the carriageway of a flora road	250
5.9	Planting in thoroughfare without a permit	250
5.11	Failure to obtain permit to clear a thoroughfare	600
5.13	Burning of thoroughfare without a permit	600
5.17	Construction of firebreak on thoroughfare without a permit	600
5.19	Commercial harvesting of native flora on thoroughfare	600
5.20(1)	Collecting seed from native flora on thoroughfare without a permit	350
6.2(1)	Conducting of stall in public place without a permit	350
6.3(1)	Trading without a permit	350
6.8(1)(a)	Failure of stallholder or trader to display or carry permit	125
6.8(1)(b)	Stallholder or trader not displaying valid permit	125
6.8(1)(c)	Stallholder or trader not carrying certified scales when selling goods by weight	125
6.8(2)	Stallholder or trader engaged in prohibited conduct	125
6.10	Performing in a public place without a permit	125
6.11(2)	Failure of performer to move onto another area when directed	125



<b>Clause</b>	<b>Description</b>	<b>Modified Penalty \$</b>
6.14	Failure of performer to comply with obligations	125
6.16	Establishment or conduct of outdoor eating Facility without a permit	350
6.18	Failure of permit holder of outdoor eating Facility to comply with obligations	125
6.20(1)	Use of equipment of outdoor eating Facility without purchase of food or drink from Facility	60
6.20(2)	Failure to leave outdoor eating Facility when requested to do so by permit holder	60
7.5	Failure to comply with a condition of a permit	125
7.9	Failure to produce permit on request of authorized person	125
10.1	Failure to comply with notice given under local law	125

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Dated: 20th November 2008.

The Common Seal of the Shire of Broomehill-Tambellup was affixed by authority of a resolution of the Council in the presence of—

B. G. WEBSTER, Shire President.  
J. M. TREZONA, Chief Executive Officer.

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**LOCAL GOVERNMENT ACT 1995****SHIRE OF BROOMEHILL-TAMBELLUP****EXTRACTIVE INDUSTRIES LOCAL LAW 2008**

Under the powers conferred by the *Local Government Act 1995* and by all other powers enabling it, the Council of the Shire of Broomehill-Tambellup resolved on the 20th November 2008 to make the following local law.

**PART 1—PRELIMINARY****1.1 Citation**

This local law may be cited as the *Shire of Broomehill-Tambellup Extractive Industries Local Law 2008*.

**1.2 Definitions**

In this local law, unless the context otherwise requires—

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

“**carry on an extractive industry**” means quarrying and excavating for stone, gravel, sand, clay, limestone, loam and other material;

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

“**Council**” means the Council of the Shire of Broomehill-Tambellup;

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

“**excavation**” includes quarry;

“**infrastructure**” means any building, treatment works, screening device, tank or structure;

“**land**”, unless the context otherwise requires, means the land on which the applicant proposes carrying on the extractive industry to which the licence application relates;

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

“**licensee**” means the person named in the licence as the licensee;

“**local government**” means the Shire of Broomehill-Tambellup;

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

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

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

“**secured sum**” means the sum required to be paid or the amount of a bond, guarantee or other security under clause 5.1;

“**site**” means the land specified by the local government in a licence.

**1.3 Application**

(1) The provisions of this local law—

(a) subject to paragraphs (b), (c), (d) and (e);

(i) apply and have force and effect throughout the whole of the district; and

(ii) apply to every excavation whether commenced prior to or following the coming into operation of this local law;

(b) do not apply to the extraction of minerals under the *Mining Act 1978*;

(c) do not apply to the carrying on of an extractive industry on Crown land;

(d) do not apply to the carrying on of an extractive industry on land by the owner or occupier of that land for use on that land; and

(2) In subclause (1)(d) land includes adjoining lots or locations in the same occupation or ownership of the owner or occupier referred to in subclause (1)(d).

**PART 2—LICENSING REQUIREMENTS FOR AN EXTRACTIVE INDUSTRY****2.1. Extractive Industries Prohibited Without Licence**

A person must not carry on an extractive industry—

- (a) unless the person is the holder of a valid and current licence; and
- (b) otherwise than in accordance with any terms and conditions set out in, or applying in respect of, the licence.

Penalty \$5000 and a daily penalty not exceeding a fine of \$500 in respect of each day or part of a day during which an offence has continued.

**2.2 Applicant To Advertise Proposal**

(1) Unless the local government first approves otherwise, a person seeking the issue of a licence shall, before applying to the local government for a licence—

- (a) forward by registered mail a notice in the form determined by the local government from time to time to—
  - (i) the owners and occupiers of all land adjoining the land upon which it is proposed to excavate, or within an area determined by the local government as likely to be affected by the granting of a licence, advising of the application and specifying that they may, within twenty-one days from the date of service of the letter, object to or make representations in writing in respect of the issue of a licence by the local government;
  - (ii) every authority or person having control or jurisdiction over any of the things referred to in clause 2.3(1)(a)(vii) and (viii) within 500 metres from the boundaries of the land, or within an area determined by the local government as likely to be affected by the granting of a licence; and
- (b) as soon as practicable after complying with the requirements of paragraph (a)—
  - (i) forward a copy of the notice to the CEO; and
  - (ii) publish the notice in a newspaper circulating in the area in which the proposed excavation is located.

(2) The local government may, within 14 days after receiving a copy of a notice referred to in subclause (1), cause to be displayed, or require the proposed applicant to display, in a prominent position on the land one or more notices—

- (a) in the form determined by the local government from time to time;
- (b) the content, size and construction of which have been approved by the CEO;
- (c) specifying particulars of the proposed excavation; and
- (d) inviting objections or comments within 21 days from the placement of the notice.

**2.3 Application For Licence**

(1) Subject to subclause (3), a person seeking the issue of a licence in respect of any land shall apply in the form determined by the local government from time to time and must forward the application duly completed and signed by each of the applicant, the owner of the land and any occupier of the land to the CEO together with—

- (a) three copies of a plan of the excavation site to a scale of between 1:500 and 1:2000 showing—
  - (i) the existing and proposed land contours based on the Australian Height Datum and plotted at 1 metre contour intervals;
  - (ii) the land on which the excavation site is to be located;
  - (iii) the external surface dimensions of the land;
  - (iv) the location and depth of the existing and proposed excavation of the land;
  - (v) the location of existing and proposed thoroughfares or other means of vehicle access to and egress from the land and to public thoroughfares in the vicinity of the land;
  - (vi) the location of buildings, treatment plant, tanks and other improvements and developments existing on, approved for or proposed in respect of the land;
  - (vii) the location of existing power lines, telephone cables and any associated poles or pylons, sewers, pipelines, reserves, bridges, railway lines and registered grants of easement or other encumbrances over, on, under or adjacent to or in the vicinity of the land;
  - (viii) the location of all existing dams, watercourses, drains or sumps on or adjacent to the land;
  - (ix) the location and description of existing and proposed fences, gates and warning signs around the land; and
  - (x) the location of the areas proposed to be used for stockpiling excavated material, treated material, overburden and soil storage on the land and elsewhere;
- (b) three copies of a works and excavation programme containing—
  - (i) the nature and estimated duration of the proposed excavation for which the licence is applied;
  - (ii) the stages and the timing of the stages in which it is proposed to carry out the excavation;

- (iii) details of the methods to be employed in the proposed excavation and a description of any on-site processing works;
  - (iv) details of the depth and extent of the existing and proposed excavation of the site;
  - (v) an estimate of the depth of and description of the nature and quantity of the overburden to be removed;
  - (vi) a description of the methods by which existing vegetation is to be cleared and topsoil and overburden removed or stockpiled;
  - (vii) a description of the means of access to the excavation site and the types of thoroughfares to be constructed;
  - (viii) details of the proposed number and size of trucks entering and leaving the site each day and the route or routes to be taken by those vehicles;
  - (ix) a description of any proposed buildings, water supply, treatment plant, tanks and other improvements;
  - (x) details of drainage conditions applicable to the land and methods by which the excavation site is to be kept drained;
  - (xi) a description of the measures to be taken to minimise sand drift, dust nuisance, erosion, watercourse siltation and dangers to the general public;
  - (xii) a description of the measures to be taken to comply with the *Environmental Protection (Noise) Regulations 1997*;
  - (xiii) a description of the existing site environment and a report on the anticipated effect that the proposed excavation will have on the environment in the vicinity of the land;
  - (xiv) details of the nature of existing vegetation, shrubs and trees and a description of measures to be taken to minimise the destruction of existing vegetation; and
  - (xv) a description of the measures to be taken in screening the excavation site, or otherwise minimising adverse visual impacts, from nearby thoroughfares or other areas;
- (c) three copies of a rehabilitation and decommissioning programme indicating—
- (i) the objectives of the programme, having due regard to the nature of the surrounding area and the proposed end-use of the excavation site;
  - (ii) whether restoration and reinstatement of the excavation site is to be undertaken progressively or upon completion of excavation operations;
  - (iii) how any face is to be made safe and batters sloped;
  - (iv) the method by which topsoil is to be replaced and revegetated;
  - (v) the numbers and types of trees and shrubs to be planted and other landscaping features to be developed;
  - (vi) how rehabilitated areas are to be maintained; and
  - (vii) the programme for the removal of buildings, plant, waste and final site clean up;
- (d) evidence that a datum peg has been established on the land related to a point approved by the local government on the surface of a constructed public thoroughfare or such other land in the vicinity;
- (e) a certificate from a licensed surveyor certifying the correctness of—
- (i) the plan referred to in paragraph (a); and
  - (ii) the datum peg and related point referred to in paragraph (d);
- (f) evidence that the requirements of clauses 2.2(1) and (2) have been carried out;
- (g) copies of all land use planning approvals required under any planning legislation;
- (h) copies of any environmental approval required under any environmental legislation;
- (i) copies of any geotechnical information relating to the excavation site;
- (j) the consent in writing to the application from the owner of the excavation site;
- (k) the licence application fee specified by the local government from time to time; and
- (l) any other information that the local government may reasonably require.
- (2) All survey data supplied by an applicant for the purpose of subclause (1) shall comply with Australian Height Datum and Australian Map Grid standards.
- (3) Where in relation to a proposed excavation—
- (a) the surface area is not to exceed 2000m<sup>2</sup>; and
  - (b) the extracted material is not to exceed 2000m<sup>3</sup>;

the local government may exempt a person making application for a licence under subclause (1) from supplying any of the data specified in paragraphs (b), (d), (e) and (i) of subclause (1).

### PART 3—DETERMINATION OF APPLICATION

#### 3.1 Determination Of Application

(1) The local government may refuse to consider an application for a licence that does not comply with the requirements of clause 2.3, and in any event shall refuse an application for a licence where planning approval for an extractive industry use of the land has not first been obtained.

- (2) The local government may, in respect of an application for a licence—
- (a) refuse the application; or
  - (b) approve the application—
    - (i) over the whole or part of the land in respect of which the application is made; and
    - (ii) on such terms and conditions, if any, as it sees fit.
- (3) Where the local government approves an application for a licence, it shall—
- (a) determine the licence period, not exceeding 10 years from the date of issue; and
  - (b) approve the issue of a licence in the form determined by the local government from time to time.
- (4) Where the local government approves the issue of a licence, the CEO upon receipt by the local government of—
- (a) payment of the annual licence fee, or the relevant proportion of the annual licence fee to 30 June, determined by the local government from time to time;
  - (b) payment of the secured sum, if any, imposed under clause 5.1;
  - (c) the documents, if any, executed to the satisfaction of the CEO, under clause 5.1; and
  - (d) a copy of the public liability insurance policy required under clause 7.1(1) shall issue the licence to the applicant.
- (5) Without limiting subclause (2), the local government may impose conditions in respect of the following matters—
- (a) the orientation of the excavation to reduce visibility from other land;
  - (b) the appropriate siting of access thoroughfares, buildings and plant;
  - (c) the stockpiling of material;
  - (d) the hours during which any excavation work may be carried out;
  - (e) the hours during which any processing plant associated with, or located on, the site may be operated;
  - (f) requiring all crushing and treatment plant to be enclosed within suitable buildings to minimise the emission of noise, dust, vapour and general nuisance to the satisfaction of the local government;
  - (g) the depths below which a person shall not excavate;
  - (h) distances from adjoining land or thoroughfares within which a person must not excavate;
  - (i) the safety of persons employed at or visiting the excavation site;
  - (j) the control of dust and wind-blown material;
  - (k) the planting, care and maintenance of trees, shrubs and other landscaping features during the time in which the extractive industry is carried out in order to effectively screen the area to be excavated and to provide for progressive rehabilitation;
  - (l) the prevention of the spread of dieback, declared plants or other disease;
  - (m) the drainage of the excavation site and the disposal of water;
  - (n) the restoration and reinstatement of the excavation site, the staging of such works, and the minimising of the destruction of vegetation;
  - (o) the provision of retaining walls to prevent subsidence of any portion of the excavation or of land abutting the excavation;
  - (p) requiring the licensee to furnish to the local government a surveyor's certificate each year, prior to the renewal fee being payable, to certify the quantity of material extracted and that material has not been excavated below the final contour levels outlined within the approved excavation programme;
  - (q) requiring the licensee to enter into an agreement with the local government by which it agrees to pay any extraordinary expenses incurred by the local government in repairing damage caused to thoroughfares in the district by heavy or extraordinary traffic conducted by or on behalf of the licensee under the licence;
  - (r) requiring the licensee to enter into an agreement with the local government in respect of any condition or conditions imposed under this local law; and
  - (s) any other matter for properly regulating the carrying on of an extractive industry.

### 3.2 Payment Of Annual Licence Fee

On or before 30 June in each year, a licensee shall pay to the local government the annual licence fee determined by the local government from time to time.

## PART 4—TRANSFER, CANCELLATION AND RENEWAL OF LICENCE

### 4.1 Transfer Of Licence

- (1) An application for the transfer of a licence shall—
- (a) be made in writing;
  - (b) be signed by the licensee and the proposed transferee of the licence;
  - (c) be accompanied by the current licence;



- (d) be accompanied by the consent in writing to the transfer from the owner of the excavation site;
  - (e) include any information that the local government may reasonably require; and
  - (f) be forwarded to the CEO together with the fee determined by the local government from time to time.
- (2) Upon receipt of any application for the transfer of a licence, the local government may;
- (a) refuse the application; or
  - (b) approve the application on such terms and conditions, if any, as it sees fit.
- (3) Where the local government approves an application for the transfer of a licence, the local government shall transfer the licence by an endorsement on the licence in the form determined by the local government from time to time, signed by the CEO.
- (4) Where the local government approves the transfer of a licence it shall not be required to refund any part of the fees paid by the former licensee in respect of the transferred licence.

#### **4.2 Cancellation Of Licence**

- (1) The local government may cancel a licence where the licensee has—
- (a) been convicted of an offence against—
    - (i) this local law; or
    - (ii) any other law relating to carrying on an extractive industry; or
  - (b) transferred or assigned or attempted to transfer or assign the licence without the consent of the local government;
  - (c) permitted another person to carry on an extractive industry otherwise than in accordance with the terms and conditions of the licence and of the provisions of this local law;
  - (d) failed to pay the annual licence fee under clause 3.2; or
  - (e) failed to have a current public liability insurance policy under clause 7.1(1) or failed to provide a copy of the policy or evidence of its renewal as the case may be, under clause 7.1(2).
- (2) Where the local government cancels a licence under this clause—
- (a) the local government shall advise the licensee in writing of the cancellation;
  - (b) the cancellation takes effect on and from the day on which the licensee is served with the cancellation advice; and
  - (c) the local government shall not be required to refund any part of the fees paid by the licensee in respect of the cancelled licence.

#### **4.3 Renewal Of Licence**

- (1) A licensee who wishes to renew a licence must apply in writing to the local government at least 45 days before the date of expiry of the licence and shall submit with the application for renewal—
- (a) the fee determined by the local government from time to time;
  - (b) a copy of the current licence;
  - (c) a plan showing the contours of the excavation carried out to the date of that application;
  - (d) details of the works, excavation and rehabilitation stages reached and of any changes or proposed changes with respect to any of the things referred to in subclauses 2.3(1) (b) and (c); and
  - (e) any other things referred to in clauses 2.3 and 3.1.
- (2) The local government may waive any of the requirements specified in clause 4.3(1)(d) or (e).
- (3) If—
- (a) an application to renew a licence is in relation to land in respect of which the current licence was issued less than 12 months prior to the date from which the new licence if granted would apply; and
  - (b) the methods to be employed in the proposed land excavation are identical to those being employed at the date of the application,

then the applicant shall not be obliged, unless otherwise required by the local government to submit details of any of the things referred to in clauses 2.3 and 3.1.

- (4) Upon receipt of an application for the renewal of a licence, the local government may;
- (a) refuse the application; or
  - (b) approve the application on such terms and conditions, if any, as it sees fit.

### **PART 5—SECURED SUM AND APPLICATION THEREOF**

#### **5.1 Security For Restoration And Reinstatement**

- (1) For the purpose of ensuring that an excavation site is properly restored or reinstated, the local government may require that—
- (a) as a condition of a licence; or
  - (b) before the issue of a licence,
- the licensee shall 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 from time to time.

(2) A bond required under subclause (1) is to be paid into the local government's Trust Fund.

### **5.2 Use By The Local Government Of Secured Sum**

(1) If a licensee fails to carry out or complete the restoration and reinstatement works required by the licence conditions either—

- (a) within the time specified in those conditions; or
- (b) where no such time has been specified, within 60 days of the completion of the excavation or portion of the excavation specified in the licence conditions, then; subject to the local government giving the licensee 14 days notice of its intention to do so—
- (c) the local government may carry out or cause to be carried out the required restoration and reinstatement work or so much of that work as remains undone; and
- (d) the licensee shall pay to the local government on demand all costs incurred by the local government or which the local government may be required to pay under this clause.

(2) The local government may apply the proceeds of any bond, bank guarantee or other security provided by the licensee under clause 5.1 towards its costs under this clause.

(3) The liability of a licensee to pay the local government's costs under this clause is not limited to the amount, if any, secured under clause 5.1.

## **PART 6—LIMITATIONS, OBLIGATIONS OF THE LICENSEE AND PROHIBITIONS**

### **6.1 Limits On Excavation Near Boundary**

Subject to any licence conditions imposed by the local government, a person shall not, without the written approval of the local government, excavate within—

- (a) 20 metres of the boundary of any land on which the excavation site is located;
- (b) 20 metres of any land affected by a registered grant of easement;
- (c) 40 metres of any thoroughfare; or
- (d) 40 metres of any watercourse.

Penalty \$5000 and a daily penalty not exceeding a fine of \$500 in respect of each day or part of a day during which an offence has continued.

### **6.2 Obligations Of The Licensee**

A licensee shall—

- (a) where the local government so requires, securely fence the excavation to a standard determined by the local government and keep the gateways locked when not actually in use in order to prevent unauthorised entry;
- (b) erect and maintain warning signs along each of the boundaries of the area excavated under the licence so that each sign—
  - (i) is not more than 200 metres apart;
  - (ii) is not less than 1.8 metres high and not less than 1 metre wide; and
  - (iii) bears the words "DANGER EXCAVATIONS KEEP OUT";
- (c) except where the local government approves otherwise, drain and keep drained to the local government's satisfaction any excavation to which the licence applies so as to prevent the accumulation of water;
- (d) restore and reinstate the excavation site in accordance with the terms and conditions of the licence, the site plans and the works and excavation programme approved by the local government;
- (e) take all reasonable steps to prevent the emission of dust, noise, vibration and other forms of nuisance from the excavation site; and
- (f) otherwise comply with the conditions imposed by the local government in accordance with clause 3.1.

Penalty \$5,000 for each offence, and if an offence is of a continuing nature, to a daily penalty not exceeding a fine of \$500.00 in respect of each day or part of a day during which the offence has continued.

### **6.3 Prohibitions**

A licensee shall not—

- (a) remove any trees or shrubs within 40 metres (or such lesser distance as may be allowed, in writing, by the local government) of the boundary of any thoroughfare on land in respect of which a licence has been granted, except for the purpose of constructing access thoroughfares, erecting buildings or installing plant for use in connection with the excavation and then only with the express approval of the local government and subject to any conditions which the local government may impose in accordance with clause 3.1;
- (b) store, or permit to be stored, any explosives or explosive devices on the site to which the licence applies other than with the approval of the local government and the Department of Consumer and Employment Protection; or

- (c) fill or excavate, other than in accordance with the terms and conditions of the licence, the site plans and the works and excavation programme approved by the local government.

Penalty \$5,000 for each offence, and if an offence is of a continuing nature, to a daily penalty not exceeding a fine of \$500.00 in respect of each day or part of a day during which the offence has continued.

#### **6.4 Blasting**

(1) A person shall not carry out or permit to be carried out any blasting in the course of excavating unless—

- (a) the local government has otherwise given approval in respect of blasting generally or in the case of each blast;
- (b) subject to subclause (2), the blasting takes place only between the hours of 8.00am and 5.00pm, or as determined by the local government, on Mondays to Fridays inclusive;
- (c) the blasting is carried out in strict accordance with the AS2187 SAA Explosives Code, the *Mines Safety and Inspection Act 1994*, the *Environmental Protection Act 1986*, and all relevant local laws of the local government; and
- (d) in compliance with any other conditions imposed by the local government concerning—
  - (i) the time and duration of blasting;
  - (ii) the purposes for which the blasting may be used; and
  - (iii) such other matters as the local government may reasonably require in the interests of the safety and protection of members of the public and of property within the district.

Penalty \$5,000.00 for each offence, and if the offence is of a continuing nature, to a daily penalty not exceeding a fine of \$500.00 in respect of each day or part of a day during which the offence has continued.

(2) A person shall not carry out or permit to be carried out any blasting on a Saturday, Sunday or Public Holiday except with the prior approval of the local government.

Penalty \$2,000

### **PART 7—MISCELLANEOUS PROVISIONS**

#### **7.1 Public Liability**

(1) A licensee shall have at all times a current public liability insurance policy taken out in the joint names of the licensee and the local government indemnifying the licensee and the local government for a sum of not less than \$10,000,000 in respect of any one claim relating to any of the excavation operations.

(2) The licensee shall provide to the local government a copy of the policy taken out under subclause (1), within 14 days after the issue of that policy and shall provide to the local government evidence of renewal within 14 days of each renewal date.

#### **7.2 Mines Safety and Inspection Act and Environmental Protection Act**

(1) In any case where the *Mines Safety and Inspection Act 1994* or the *Environmental Protection Act 1986* applies to any excavation carried on or proposed to be carried on at a site, the licensee in respect of that site shall—

- (a) comply with all applicable provisions of that Act or those Acts; and
- (b) provide to the local government within 14 days full particulars of any inspection or report made under that Act or those Acts.

(2) In this clause, the *Mines Safety and Inspection Act 1994* and the *Environmental Protection Act 1986* include all subsidiary legislation made under those Acts.

#### **7.3 Notice Of Cessation Of Operations**

(1) Where a licensee intends to cease carrying on an extractive industry—

- (a) temporarily for a period in excess of 12 months; or
- (b) permanently,

the licensee shall, as well as complying with clause 7.4, give the local government written notice of the cessation not later than 1 week after those operations have ceased.

(2) Where a licensee has given written notice to the local government of the intention to permanently cease carrying on an extractive industry on the site to which the licence applies the licence is deemed to have expired on the date such cessation is so notified.

(3) The temporary or permanent cessation of the carrying on of an extractive industry on a site or the deemed expiration or cancellation of a licence does not entitle the licensee to any refund of any licence fee.

#### **7.4 Works To Be Carried Out On Cessation Of Operations**

Where the carrying on of an extractive industry on the site permanently ceases or on the expiration or cancellation of the licence applicable to the site, whichever first occurs, the licensee shall, as well as complying with the provisions of clause 7.3—

- (a) restore and reinstate the excavated site in accordance with the proposals approved by the local government or in such other manner as the local government may subsequently agree in writing with the licensee;

- (b) ensure that any face permitted to remain upon the excavation site is left safe with all loose materials removed and where the excavation site is—
- (i) sand, the sides are sloped to a batter of not more than 1:3 (vertical:horizontal); and
  - (ii) limestone or material other than sand, the sides are sloped to a batter which, in the opinion of the local government, would enable the site to be left in a stable condition;
- (c) ensure that the agreed floor level of the excavation is graded to an even surface or is otherwise in accordance with the rehabilitation and decommissioning programme approved by the local government;
- (d) ensure that all stockpiles or dumps of stone, sand or other materials are left so that no portion of that material can escape onto land not owned or occupied by the licensee nor into any stream, watercourse or drain that is not wholly situated within the land owned or occupied by the licensee;
- (e) erect retaining walls where necessary to prevent subsidence of land in the vicinity of any excavation;
- (f) remove from the site all buildings, plant and equipment erected, installed or used for or in relation to the carrying on of an extractive industry on the site and fill all holes remaining after such removal to the level of the surrounding ground and compact such filled holes sufficiently to prevent settling; and
- (g) break up, scarify, cover with topsoil and plant with grass, trees and shrubs all parts of the site where buildings, plant and equipment were erected or installed and all areas which were used for stockpiling unless otherwise specified under this local law.

Penalty \$5,000 for each offence, and if the offence is of a continuing nature, to a daily penalty not exceeding a fine of \$500.00 in respect of each day or part of a day during which the offence has continued.

## PART 8—OBJECTIONS AND APPEALS

### 8.1 Objections and Appeals

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

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

the provisions of Division 1 of Part 9 of the Act and regulation 33 of the *Local Government (Functions and General) Regulations 1996* shall apply to that decision.

## PART 9—MODIFIED PENALTIES

### 9.1 Prescribed Offence

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

### 9.2 Modified Penalty

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

### 9.3 Forms

For the purposes of this local law—

- (a) the form of the infringement notice given under section 9.16 of the Act is that of Form 2 in Schedule 1 of the *Local Government (Functions and General) Regulations 1996*; and
- (b) the form of the notice sent under section 9.20 of the Act withdrawing an infringement notice is that of Form 3 in Schedule 1 of the *Local Government (Functions and General) Regulations 1996*.

### Schedule 1

*Shire of Broomehill-Tambellup*

EXTRACTIVE INDUSTRIES LOCAL LAW 2008

### PRESCRIBED OFFENCES

Clause	Description	Modified Penalty \$
2.1	Carry on extractive industry without licence or in breach of terms and conditions	350
6.2(a)	Gateways not kept locked where required	350
6.2(b)	Warning signs not erected or maintained as required	350
6.2(c)	Excavation not drained as required	350
6.3(a)	Remove trees or shrubs near boundary without approval	300

<b>Clause</b>	<b>Description</b>	<b>Modified Penalty \$</b>
6.3(b)	Store without required approval explosives or explosive devices	350
6.3(c)	Fill or excavate in breach of licence	350
6.4(1)(a)	Blasting without approval of the local government	500
6.4(1)(b)	Blasting outside times authorised	500
6.4(1)(d)	Blasting in breach of conditions imposed by the local government	500
6.4(2)	Blasting without approval on Saturday, Sunday or public holiday	500

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Dated: 20th November 2008.

The Common Seal of the Shire of Broomehill-Tambellup was affixed by authority of a resolution of the Council in the presence of—

B. G. WEBSTER, Shire President.  
J. M. TREZONA, Chief Executive Officer.

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**LOCAL GOVERNMENT ACT 1995**

## SHIRE OF BROOMEHILL-TAMBELLUP

**LOCAL GOVERNMENT PROPERTY LOCAL LAW 2008**

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## LOCAL GOVERNMENT ACT 1995

## SHIRE OF BROOMEHILL-TAMBELLUP

## LOCAL GOVERNMENT PROPERTY LOCAL LAW 2008

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Broomehill-Tambellup resolved on the 20th November 2008 to make the following local law.

## PART 1—PRELIMINARY

## 1.1 Citation

This local law may be cited as the *Shire of Broomehill-Tambellup Local Government Property Local Law 2008*.

## 1.2 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.

## 1.3 Definitions

In this local law unless the context otherwise requires—

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

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

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

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

- (a) hall or room;
- (b) corridor, stairway or annexe of any hall or room; and
- (c) jetty;

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

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

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

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

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

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

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

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

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

“**local government**” means the Shire of Broomehill-Tambellup;

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

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

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

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

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

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

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

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

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

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

“**vehicle**” includes—

- (a) every conveyance and every object capable of being propelled or drawn on wheels, tracks or otherwise; and
- (b) an animal being ridden or driven,

but excludes—

- (c) a wheel-chair or any device designed for use, by a physically impaired person on a footpath;
- (d) a pram, a stroller or a similar device; and
- (e) a boat.

#### 1.4 Interpretation

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

#### 1.5 Repeal

(1) The following former Shire of Broomehill local laws are repealed—

Local Government Property Local Law as published in the *Government Gazette* on 5 September 2000; and

Local Government Property Local Law as published in the *Government Gazette* on 3 April 2001.

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

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

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

### *Division 1—Determinations*

#### 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—
- give local public notice that the proposed determination has effect as a determination on and from the date of publication;
  - amend the proposed determination, in which case subclause (5) will apply; or
  - not continue with the proposed determination.
- (4) If submissions are received in accordance with subclause (2)(c) the Council is to—
- consider those submissions; and
  - decide—
    - whether or not to amend the proposed determination; or
    - not to continue with the proposed determination.
- (5) If the Council decides to amend the proposed determination, it is to give local public notice—
- of the effect of the amendments; and
  - that the proposed determination has effect as a determination on and from the date of publication.
- (6) If the Council decides not to amend the proposed determination, it is to give local public notice that the proposed determination has effect as a determination on and from the date of publication.
- (7) A proposed determination is to have effect as a determination on and from the date of publication of the local public notice referred to in subclauses (3), (5) and (6).
- (8) A decision under subclause (3) or (4) is not to be delegated by the Council.

### **2.3 Discretion to erect sign**

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

### **2.4 Determination to be complied with**

A person shall comply with a determination.

### **2.5 Register of determinations**

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

### **2.6 Amendment or revocation of a determination**

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

#### *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—
- bring, ride or drive an animal;
  - take, ride or drive a vehicle, or a particular class of vehicle;
  - fly or use a motorised model aeroplane;
  - 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;
  - deposit refuse, rubbish or liquid waste, whether or not of particular classes, and whether or not in specified areas of that local government property;
  - play or practice—
    - golf or archery;
    - pistol or rifle shooting, but subject to the compliance of that person with the *Firearms Act 1973*; or
    - 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;
  - ride a bicycle, a skateboard, rollerblades, a sandboard or a similar device; and
  - 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—
- 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) the playing or practice of—
  - (i) golf, archery, pistol shooting or rifle shooting; or
  - (ii) a similar activity, specified in the determination, involving the use of a projectile which, in the opinion of the local government may cause injury or damage to a person or property;
- (f) the playing or practice of any ball game which may cause detriment to the property or any fauna on the property; and
- (g) the traversing of 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 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**

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

### *Division 2—Applying for a permit*

#### **3.2 Application for permit**

(1) Where a person is required to obtain a permit under this local law, that person shall apply for the permit in accordance with 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 a fee;
  - (b) compliance with a standard or a policy of the local government adopted by the local government;
  - (c) the duration and commencement of the permit;
  - (d) the commencement of the permit being contingent on the happening of an event;
  - (e) the rectification, remedying or restoration of a situation or circumstance reasonably related to the application;
  - (f) the approval of another application for a permit which may be required by the local government under any written law;
  - (g) the area of the district to which the permit applies;
  - (h) where a permit is issued for an activity which will or may cause damage to local government property, the payment of a deposit or bond against such damage; and
  - (i) the obtaining of public risk insurance in an amount and on terms reasonably required by the local government.
- (2) Without limiting clause 3.3(1)(a) and subclause (1), the following paragraphs indicate the type and content of the conditions on which a permit to hire local government property may be issued—
  - (a) when fees and charges are to be paid;
  - (b) payment of a bond against possible damage or cleaning expenses or both;
  - (c) restrictions on the erection of material or external decorations;
  - (d) rules about the use of furniture, plant and effects;
  - (e) limitations on the number of persons who may attend any function in or on local government property;
  - (f) the duration of the hire;
  - (g) the right of the local government to cancel a booking during the course of an annual or seasonal booking, if the local government sees fit;
  - (h) a prohibition on the sale, supply or consumption of liquor unless a liquor licence is first obtained for that purpose under the *Liquor 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 both the local government and the hirer, indemnifying the local government in respect of any injury to any person or any damage to any property which may occur in connection with the hire of the local government property by the hirer; and
  - (k) the provision of an indemnity from the hirer, indemnifying the local government in respect of any injury to any person or any damage to any property which may occur in connection with the hire of the local government property by the hirer.

### 3.5 Imposing conditions under a policy

- (1) In this clause—

“**policy**” means a policy of the local government adopted by the Council containing conditions subject to which an application for a permit may be approved under clause 3.3(1)(a).
- (2) Under clause 3.3(1)(a) the local government may approve an application subject to conditions by reference to a policy.
- (3) The local government shall give a copy of the policy, or the part of the policy which is relevant to the application for a permit, with the form of permit referred to in clause 3.3(2).

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

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

### **3.6 Compliance with and variation of conditions**

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

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

#### *Division 4—General*

### **3.7 Agreement for building**

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

### **3.8 Duration of permit**

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

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

### **3.9 Renewal of permit**

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

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

### **3.10 Transfer of permit**

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

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

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

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

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

### **3.11 Production of permit**

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

### **3.12 Cancellation of permit**

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

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

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

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

#### *Division 5—When a permit is required*

### **3.13 Activities needing a permit**

(1) A person shall not without a permit—

- (a) subject to 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 an indoor recreation facility which is local government property;
  - (e) plant any plant or sow any seeds on local government property;
  - (f) carry on any trading on local government property unless the trading is conducted—
    - (i) with the consent of a person who holds a permit to conduct a function, and where the trading is carried on under and in accordance with the permit; or
    - (ii) by a person who has a licence or permit to carry on trading on local government property under any written law;
  - (g) unless an employee of the local government in the course of her or his duties or on an area set aside for that purpose—
    - (i) drive or ride or take any vehicle on to local government property; or
    - (ii) park or stop any vehicle on local government property;
  - (h) conduct a function on local government property;
  - (i) charge any person for entry to local government property, unless the charge is for entry to land or a building hired by a voluntary non-profit organisation;
  - (j) light a fire on local government property except in a facility provided for that purpose;
  - (k) parachute, hang glide, abseil or base jump from or on to local government property;
  - (l) erect a building or a refuelling site on local government property;
  - (m) make any excavation on or erect or remove any fence on local government property;
  - (n) erect or install any structure above or below ground, which is local government property, for the purpose of supplying any water, power, sewer, communication, television or similar service to a person;
  - (o) depasture any horse, sheep, cattle, goat, camel, ass or mule on local government property; or
  - (p) conduct or take part in any gambling game or contest or bet, or offer to bet, publicly.
- (2) The 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).

### 3.14 Permit required to camp outside a facility

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

### 3.15 Permit required for possession and consumption of liquor

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

#### *Division 6—Responsibilities of permit holder*

### 3.16 Responsibilities of permit holder

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

**PART 4—BEHAVIOUR ON ALL LOCAL GOVERNMENT PROPERTY***Division 1—Behaviour on and interference with local government property***4.1 Behaviour which interferes with others**

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

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

**4.2 Behaviour detrimental to property**

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

(2) In subclause (1)—

“**detrimental to the property**” includes—

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

**4.3 Taking or injuring any fauna**

(1) A person shall not, take, injure or kill or attempt to take, injure or kill any fauna which is on or above any local government property, unless that person is authorized under a written law to do so.

(2) In this clause—

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

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

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

*Division 2—Signs***4.4 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—Fenced or closed property***5.1 No entry to fenced or closed local government property**

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

*Division 2—Toilet blocks and change rooms***5.2 Only specified gender to use entry of toilet block or change room**

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

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

**PART 6—FEES FOR ENTRY ON TO LOCAL GOVERNMENT PROPERTY****6.1 No unauthorized entry to function**

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

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

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



## PART 7—OBJECTIONS AND APPEALS

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

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

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

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

## PART 8—MISCELLANEOUS

### 8.1 Authorized person to be obeyed

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

### 8.2 Persons may be directed to leave local government property

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

### 8.3 Disposal of lost property

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

### 8.4 Liability for damage to local government property

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

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

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

## PART 9—ENFORCEMENT

### *Division 1—Notices given under this local law*

#### 9.1 Offence to fail to comply with notice

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

#### 9.2 Local government may undertake requirements of notice

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

### *Division 2—Offences and penalties*

#### Subdivision 1—General

#### 9.3 Offences and general penalty

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

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

#### Subdivision 2—Infringement notices and modified penalties

#### 9.4 Prescribed offences

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

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

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

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

**9.5 Form of notices**

(1) For the purposes of this local law—

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

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

*Division 3—Evidence in legal proceedings***9.6 Evidence of a determination**

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

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

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

*Schedule 1***Local Government Act 1995***Shire of Broomehill-Tambellup***LOCAL GOVERNMENT PROPERTY LOCAL LAW 2008****PRESCRIBED OFFENCES**

<b>Clause</b>	<b>Description</b>	<b>Modified Penalty \$</b>
2.4	Failure to comply with determination	125
3.6	Failure to comply with conditions of permit	125
3.13(1)	Failure to obtain a permit	125
3.14(3)	Failure to obtain permit to camp outside a facility	125
3.15(1)	Failure to obtain permit for liquor	125
3.16	Failure of permit holder to comply with responsibilities	125
4.2(1)	Behaviour detrimental to property	125
4.4(2)	Failure to comply with sign on local government property	125
5.1	Unauthorized entry to fenced or closed local government property	125
5.2	Gender not specified using entry of toilet block or change room	125
6.1(1)	Unauthorized entry to function on local government property	125
9.1	Failure to comply with notice	250

*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 otherwise requires—

“**local law**” means the *Local Government Property Local Law 2008* made by the local government;

**1.2 Interpretation**

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

Dated: 20th November 2008.

The Common Seal of the Shire of Broomehill-Tambellup was affixed by authority of a resolution of the Council in the presence of—

B. G. WEBSTER, Shire President.  
J. M. TREZONA, Chief Executive Officer.

**LOCAL GOVERNMENT ACT 1995**

**SHIRE OF BROOMEHILL-TAMBELLUP**

**STANDING ORDERS LOCAL LAW 2008**

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**LOCAL GOVERNMENT ACT 1995**

## SHIRE OF BROOMEHILL-TAMBELLUP

**STANDING ORDERS LOCAL LAW 2008**

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Broomehill-Tambellup resolved on the 20th November 2008 to make the following local law.

**PART 1—PRELIMINARY****1.1 Citation**

- (1) This local law may be cited as the *Shire of Broomehill-Tambellup Standing Orders Local Law 2008*.
- (2) In the clauses to follow, this local law is referred to as “the Standing Orders”.

**1.2 Application**

All meetings of the Council or a committee and other matters as prescribed are to be conducted in accordance with the Act, the Regulations and these Standing Orders, except that the following Standing Orders do not apply to the meeting of a committee—

- (a) Clause 8.2, in regard to seating;
- (b) Clause 9.5, limitation on the number of speeches.

**1.3 Definitions**

- (1) In these Standing Orders unless the context otherwise requires—

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

“**CEO**” means the Chief Executive Officer or Acting Chief Executive Officer for the time being of the Shire of Broomehill-Tambellup;

“**committee**” means a committee of the Council;

“**Council**” means the Council of the Shire of Broomehill-Tambellup;

“**local government**” means the Shire of Broomehill-Tambellup;

“**member**” means a councillor on the Council as well as the councillors who hold the office of President and Deputy President;

“**person presiding**” means the person presiding at a meeting of the council or a meeting of the electors whether it be the President, Deputy President, a councillor chosen by the Council at a Council meeting or a councillor or elector chosen by the electors at an electors meeting;

“**presiding member**” means the presiding member of a committee or the deputy presiding member, or a member of the committee when performing a function of the presiding member in accordance with the Act;

“**Regulations**” means the *Local Government (Administration) Regulations 1996*;

“**simple majority**” is more than 50% of the members present and voting; and

“**substantive motion**” means an original motion or an original motion as amended, but does not include an amendment or a procedural motion.

- (2) Unless otherwise defined herein the terms and expressions used in the Standing Orders are to have the meaning given to them in the Act and Regulations.

**1.4 Repeal**

The following local laws are repealed—

The former *Shire of Broomehill Standing Orders Local Law* as published in the *Government Gazette* on 5 September 2000; and

The former *Shire of Tambellup Standing Orders Local Law 1998* as published in the *Government Gazette* on 5 March 1999.

**PART 2—CALLING MEETINGS****2.1 Calling Committee Meetings**

A meeting of a committee is to be held—

- (a) if called for in a verbal or written request to the CEO by the presiding member of the committee, setting out the date and purpose of the proposed meeting;
- (b) if called for by at least 1/3 of the members of the committee in a notice to the CEO, setting out the date and purpose of the proposed meeting; or
- (c) if so decided by the committee.

**2.2 Notice of Special Council Meetings**

- (1) Subject to subclause (2), the CEO is to convene a special meeting of the Council by giving each Council member at least 72 hours' notice of the date, time, place and purpose of the meeting.
- (2) Where there is a need to meet urgently, in the opinion of the President, the CEO may give a lesser period of notice of a special meeting than mentioned in subclause (1).

**PART 3—BUSINESS OF THE MEETING****3.1 Business to be Specified on Notice Paper**

- (1) No business is to be transacted at any ordinary meeting of the Council other than that specified in the agenda, without the approval of the person presiding or a decision of the Council.
- (2) No business is to be transacted at a special meeting of the Council other than that given in the notice as the purpose of the meeting.
- (3) No business is to be transacted at a committee meeting other than that specified in the agenda or given in the notice as the purpose of the meeting, without the approval of the presiding member or a decision of the committee.
- (4) No business is to be transacted at an adjourned meeting of the Council or a committee other than that—
  - (a) specified in the notice of the meeting which had been adjourned; and
  - (b) which remains unresolved;

except in the case of an adjournment to the next ordinary meeting of the Council or the committee, when the business unresolved at the adjourned meeting is to have precedence at that ordinary meeting.

**3.2 Order of Business**

- (1) The order of business at any ordinary meeting of the Council shall be as decided by the President and the CEO unless the Council resolves what the order of business shall be.
- (2) Unless otherwise decided by the members present, the order of business at any special meeting of the Council or at a committee meeting is to be the order in which that business stands in the agenda of the meeting.
- (3) Notwithstanding subclauses (1) and (2) in the order of business for any meeting of the Council or a committee, the provisions of the Act and Regulations relating to the time at which public question time is to be held are to be observed.

**3.3 Petitions**

A petition, in order to be effective, is to—

- (a) be addressed to the President;
- (b) be made by electors of the district;
- (c) state the request on each page of the petition;
- (d) contain the names, addresses and signatures of the electors making the request, and the date each elector signed;
- (e) contain a summary of the reasons for the request;
- (f) state the name of the person upon whom, and an address at which, notice to the petitioners can be given;
- (g) be in the form prescribed by the Act and *Local Government (Constitution) Regulations 1998* if it is—
  - (i) a proposal to change the method of filling the office of President;
  - (ii) a proposal to create a new district or the boundaries of the local government;
  - (iii) a request for a poll on a recommended amalgamation;
  - (iv) a submission about changes to wards, the name of a district or ward or the number of councillors for a district or ward.

**3.4 Confirmation of Minutes**

- (1) When minutes of a meeting are submitted to an ordinary meeting of the Council or committee for confirmation, if a member is dissatisfied with the accuracy of the minutes, then he or she is to—
  - (a) state the item or items with which he or she is dissatisfied; and
  - (b) propose a motion clearly outlining the alternative wording to amend the minutes.



(2) Discussion of any minutes, other than discussion as to their accuracy as a record of the proceedings, is not permitted.

### **3.5 Announcements by the Person Presiding Without Discussion**

(1) At any meeting of the Council or a committee the person presiding may announce or raise any matter of interest or relevance to the business of the Council or committee, or propose a change to the order of business.

(2) Any member may move that a change in order of business proposed by the person presiding not be accepted and if carried by a majority of members present, the proposed change in order is not to take place.

### **3.6 Matters for which Meeting May be Closed**

For the convenience of members of the public, the Council or committee may identify by decision, early in the meeting, any matter on the agenda of the meeting to be discussed behind closed doors, and that matter is to be deferred for consideration as the last item of the meeting.

### **3.7 Motions of which Previous Notice has been Given**

(1) Unless the Act, Regulations or these Standing Orders otherwise provide, a member may raise at a meeting such business as he or she considers appropriate, in the form of a motion, of which notice has been given in writing to the CEO.

(2) A notice of motion under subclause (1) is to be given at least 7 clear working days before the meeting at which the motion is moved.

(3) A notice of motion is to relate to the good government of persons in the district.

(4) The CEO—

(a) with the concurrence of the President, may exclude from the notice paper any notice of motion deemed to be out of order; or

(b) may on his or her own initiative make such amendments to the form but not the substance thereof as will bring the notice of motion into due form; and

(c) may under his or her name provide relevant and material facts and circumstances pertaining to the notice of motion on such matters as policy, budget and law.

(5) No notice of motion is to be out of order because the policy involved is considered to be objectionable.

(6) A motion of which notice has been given is to lapse unless—

(a) the member who gave notice thereof, or some other member authorised by him or her in writing moves the motion when called on; or

(b) the Council on a motion agrees to defer consideration of the motion to a later stage or date.

(7) If a notice of motion is given and lapses in the circumstances referred to in subclause (6)(a), notice of motion in the same terms or the same effect is not to be given again for at least 3 months from the date of such lapse.

### **3.8 Questions by Members of which Due Notice has been given.**

(1) A question on notice is to be given by a member in writing to the CEO at least 7 clear working days before the meeting at which it is raised.

(2) If the question referred to in subclause (1) is in order, the answer is, so far as is practicable, to be included in written form in the agenda of the meeting, or otherwise tabled at that meeting.

(3) Every question and answer is to be submitted as briefly and concisely as possible and no discussion is to be allowed thereon, unless with the consent of the person presiding.

### **3.9 Urgent Business Approved By the Person Presiding or by Decision**

In cases of extreme urgency or other special circumstance, matters may, with the consent of the person presiding, or by decision of the members present, be raised without notice and decided by the meeting.

### **3.10 Deputations**

(1) A deputation wishing to be received by the Council or a committee is to apply in writing to the CEO who is to forward the written request to the President, or the Presiding Member as the case may be.

(2) The President if the request is to attend a Council meeting, or the Presiding Member of the committee, if the request is to attend a meeting of a committee, may either approve the request, in which event the CEO is to invite the deputation to attend a meeting of the Council or committee as the case may be, or may instruct the CEO to refer the request to the Council or committee to decide by simple majority whether or not to receive the deputation.

(3) A deputation invited to attend a Council or committee meeting—

(a) is not to exceed 5 persons, only 2 of whom may address the Council or committee, although others may respond to specific questions from the members; and

(b) is not to address the Council or committee for a period exceeding 15 minutes without the agreement of the Council or the committee as the case requires.

(4) Any matter which is the subject of a deputation to the Council or a committee is not to be decided by the Council or that committee until the deputation has completed its presentation.

**PART 4—PUBLIC ACCESS TO AGENDA MATERIAL****4.1 Inspection Entitlement**

Members of the public have access to agenda material in the terms set out in Regulation 14 of the Regulations.

**4.2 Confidentiality of Information Withheld**

Information withheld by the CEO from members of the public under Regulation 14.2, of the Regulations, is to be—

- (a) identified in the agenda of a Council or committee meeting under the item “Matters for which meeting may be closed”; and
- (b) marked “confidential” in the agenda.

**PART 5—DISCLOSURE OF FINANCIAL INTERESTS****5.1 Separation of Committee Recommendations**

Where a member of the Council has disclosed an interest in a matter, at a committee meeting, and the matter is contained in the recommendations of the committee to an ordinary meeting of Council or to another committee meeting that will be attended by the member, the recommendation concerned is to be separated on the agenda of that ordinary meeting or other committee meeting, from other recommendations of the committee, to enable the member concerned to declare the interest and leave the room prior to consideration of that matter only.

**5.2 Member with an Interest may ask to be Present**

(1) Where a member has disclosed the nature of his or her interest in a matter, immediately before the matter is considered by the meeting, he or she may, without disclosing the extent of the interest, request that he or she be allowed to be present during any discussion or decision making procedure related to the matter.

(2) If such a request is made, the member is to leave the room while the request is considered. If the request is allowed by the members, the member may return to the meeting and be present during the discussion or decision making procedure related to that matter, but is not permitted to participate in any way.

**5.3 Member with an Interest may ask Permission to Participate**

(1) A member who discloses both the nature and extent of an interest, may request permission to take part in the consideration or discussion of the matter, or to vote on the matter.

(2) If such a request is made, the member is to leave the room while the request is considered. If it is decided at a meeting that a member who has disclosed both the nature and extent of an interest in a matter, be permitted to participate in the consideration and discussion of the matter or to vote on the matter, or both, then the member may return to participate to the extent permitted.

**5.4 Disclosures by Employees**

(1) If an employee within the meaning of section 5.70 of the Act, presents a written report to a meeting, on a matter in which the employee has an interest, the nature of the interest is to be disclosed at the commencement of the report.

(2) If such an employee makes a verbal report to a meeting on a matter in which the employee has an interest, the employee is to preface his or her advice to the meeting by verbally disclosing the nature of the interest.

**PART 6—QUORUM****6.1 Quorum to be Present**

The Council or a committee is not to transact business at a meeting unless a quorum is present.

**6.2 Loss of Quorum During a Meeting**

(1) If at any time during the course of a meeting of the Council or a committee a quorum is not present—

- (a) in relation to a particular matter because of a member or members leaving the meeting after disclosing a financial interest,

the matter is adjourned until either—

- (i) a quorum is present to decide the matter; or
  - (ii) the Minister allows a disclosing member or members to preside at the meeting or to participate in discussions or the decision making procedures relating to the matter under section 5.69 of the Act; or
- (b) because of a member or members leaving the meeting for reasons other than disclosure of a financial interest, the person presiding is to suspend the proceedings of the meeting for a period of five minutes, and if a quorum is not present at the end of that time, the meeting is deemed to have been adjourned and the person presiding is to reschedule it to some future time or date having regard to the period of notice which needs to be given under the Act, Regulations, or the Standing Orders when calling a meeting of that type.

- (2) Where debate on a motion is interrupted by an adjournment under subclause (1)(b)—
- (a) the debate is to be resumed at the next meeting at the point where it was so interrupted; and
  - (b) in the case of a Council meeting
    - (i) the names of members who have spoken on the matter prior to the adjournment are to be recorded in the minutes; and
    - (ii) the provisions of clause 9.5 apply when the debate is resumed.

## PART 7—KEEPING OF MINUTES

### 7.1 Content of Minutes

In addition to the matters contained in Regulation 11 of the Regulations, the content of minutes of a meeting of the Council or a committee is to include, where an application for approval is declined or the authorisation of a licence, permit, or certificate is otherwise withheld or cancelled, the reasons for the decision.

### 7.2 Preservation of Minutes

Minutes including the agenda of each Council and committee meeting are to be kept as a permanent record of the activities of the local government in accordance with the requirements of the *State Records Act 2000*.

## PART 8—CONDUCT OF PERSONS AT COUNCIL AND COMMITTEE MEETINGS

### 8.1 Official Titles to be Used

Members of the Council are to speak of each other in the Council or committee by their respective titles of President or councillor. Members of the Council, in speaking of or addressing employees, are to designate them by their respective official titles.

### 8.2 Members to Occupy Own Seats

At the first meeting held after each ordinary elections day, the President is to allot a position at the Council table to each councillor and the councillor is to occupy that position when present at meetings of the Council until such time as there is a call by a majority of councillors for a re-allotment of positions.

### 8.3 Leaving Meetings

During the course of a meeting of the Council or a committee no member is to enter or leave the meeting without first advising the person presiding, in order to facilitate the recording in the minutes of the time of entry or departure.

### 8.4 Adverse Reflection

- (1) No member of the Council or a committee is to reflect adversely upon a decision of the Council or committee except on a motion that the decision be revoked or changed.
- (2) No member of the Council or a committee is to use offensive or objectionable expressions in reference to any member of the local government, or any other person.

### 8.5 Recording of Proceedings

- (1) No person is to use any electronic, visual or vocal recording device or instrument to record the proceedings of the Council or a committee without the written permission of the Council.
- (2) Subclause (1) does not apply if the record is taken by or at the direction of the CEO, with the permission of the Council or committee.

### 8.6 Prevention of Disturbance

- (1) Any member of the public addressing the Council or a committee is to extend due courtesy and respect to the Council or committee and the processes under which they operate and must take direction from the person presiding whenever called upon to do so.

Penalty \$1,000

- (2) No person observing a meeting, is to create a disturbance at a meeting, by interrupting or interfering with the proceedings, whether by expressing approval or dissent, by conversing or by any other means.

Penalty \$1,000

### 8.7 Distinguished Visitors

If a distinguished visitor is present at a meeting of the Council or a committee, the person presiding may invite such person to sit beside the person presiding or at the Council table.

## PART 9—CONDUCT OF MEMBERS DURING DEBATE

### 9.1 Members wishing to Speak

Every member of the Council wishing to speak is to indicate by show of hands or other method agreed upon by the Council. When invited by the person presiding to speak, members shall address the Council through the person presiding.

**9.2 Priority**

In the event of two or more members of the Council or a committee wishing to speak at the same time, the person presiding is to decide which member is entitled to be heard first. The decision is not open to discussion or dissent.

**9.3 The Person Presiding to Take Part in Debates**

Unless otherwise prohibited by the Act, and subject to compliance with procedures for the debate of motions contained in these Standing Orders, the person presiding may take part in a discussion of any matter before the Council or committee as the case may be.

**9.4 Relevance**

Every member of the Council or a committee is to restrict his or her remarks to the motion or amendment under discussion, or to a personal explanation or point of order.

**9.5 Limitation of Number of Speeches**

No member of the Council is to address the Council more than once on any motion or amendment before the Council except the mover of a substantive motion, in reply, or to a point of order, or in explanation.

**9.6 Limitation of Duration of Speeches**

All addresses are to be limited to a maximum of 5 minutes. Extension of time is permissible only with the agreement of a simple majority of members present.

**9.7 Members Not to Speak After Conclusion of Debate**

No member of the Council or a committee is to speak to any question after it has been put by the person presiding.

**9.8 Members Not to Interrupt**

No member of the Council or a committee is to interrupt another member of the Council or committee whilst speaking unless—

- (a) to raise a point of order;
- (b) to call attention to the absence of a quorum;
- (c) to make a personal explanation under clause 10.16; or
- (d) to move a motion under clause 11(e).

**9.9 Re-Opening Discussion on Decisions**

No member of the Council or a committee is to re-open discussion on any decision of the Council or committee, except for the purpose of moving that the decision be revoked or changed.

**PART 10—PROCEDURES FOR DEBATE OF MOTIONS****10.1 Motions To be Stated**

Any member of the Council or a committee who moves a substantive motion or amendment to a substantive motion is to state the substance of the motion before speaking to it.

**10.2 Motions to be Supported**

No motion or amendment to a substantive motion is open to debate until it has been seconded, or, in the case of a motion to revoke or change the decision made at a Council or a committee meeting, unless the motion has the support required under Regulation 10 of the Regulations.

**10.3 Unopposed Business**

- (1) Upon a motion being moved and seconded, the person presiding may ask the meeting if any member opposes it.
- (2) If no member signifies opposition to the motion the person presiding may declare the motion in subclause (1) carried without debate and without taking a vote on it.
- (3) A motion carried under subclause (2) is to be recorded in the minutes as a unanimous decision of the Council or committee.
- (4) If a member signifies opposition to a motion the motion is to be dealt with according to this Part.
- (5) This clause does not apply to any motion or decision to revoke or change a decision which has been made at a Council or committee meeting.

**10.4 Only One Substantive Motion Considered**

When a substantive motion is under debate at any meeting of the Council or a committee, no further substantive motion is to be accepted.

**10.5 Breaking Down of Complex Questions**

The person presiding may order a complex question to be broken down and put in the form of several motions, which are to be put in sequence.

**10.6 Order of Call in Debate**

The person presiding is to call speakers to a substantive motion in the following order—

- (a) The mover to state the motion;
- (b) A seconder to the motion;

- (c) The mover to speak to the motion;
- (d) The seconder to speak to the motion;
- (e) A speaker against the motion;
- (f) A speaker for the motion;
- (g) Other speakers against and for the motion, alternating in view, if any;
- (h) Mover takes right of reply which closes debate.

#### **10.7 Limit of Debate**

The person presiding may offer the right of reply and put the motion to the vote if he or she believes sufficient discussion has taken place even though all members may not have spoken.

#### **10.8 Member May Require Questions to be Read**

Any member may require the question or matter under discussion to be read at any time during a debate, but not so as to interrupt any other member whilst speaking.

#### **10.9 Consent of Secunder Required to Accept Alteration of Wording**

The mover of a substantive motion may not alter the wording of the motion without the consent of the seconder.

#### **10.10 Order of Amendments**

Any number of amendments may be proposed to a motion, but when an amendment is moved to a substantive motion, no second or subsequent amendment is to be moved or considered until the first amendment has been withdrawn or lost.

#### **10.11 Amendments Must Not Negate Original Motion**

No amendment to a motion can be moved which negates the original motion or the intent of the original motion.

#### **10.12 Mover of Motion Not to Speak on Amendment**

On an amendment being moved, any member may speak to the amendment, provided that if the person who moved the substantive motion does choose to speak to the amendment, the right of reply is forfeited by that person.

#### **10.13 Substantive Motion**

If an amendment to a substantive motion is carried, the motion as amended then becomes the substantive motion, on which any member may speak and any further amendment may be moved.

#### **10.14 Withdrawal of Motion and Amendments**

Council or a committee may, without debate, grant leave to withdraw a motion or amendment upon request of the mover of the motion or amendment and with the approval of the seconder provided that there is no voice expressed to the contrary view by any member, in which case discussion on the motion or amendment is to continue.

#### **10.15 Limitation of Withdrawal**

Where an amendment has been proposed to a substantive motion, the substantive motion is not to be withdrawn, except by consent of the majority of members present, until the amendment proposed has been withdrawn or lost.

#### **10.16 Personal Explanation**

No member is to speak at any meeting of the Council or a committee, except upon the matter before the Council or committee, unless it is to make a personal explanation. Any member of the Council or committee who is permitted to speak under these circumstances is to confine the observations to a succinct statement relating to a specific part of the former speech which may have been misunderstood. When a member of the Council or committee provides an explanation, no reference is to be made to matters unnecessary for that purpose.

#### **10.17 Personal Explanation—When Heard**

A member of the Council or a committee wishing to make a personal explanation of matters referred to by any member of the Council or committee then speaking, is entitled to be heard immediately, if the member of the Council or committee then speaking consents at the time, but if the member of the Council or committee who is speaking declines to give way, the explanation is to be offered at the conclusion of that speech.

#### **10.18 Ruling on Questions of Personal Explanation**

The ruling of the person presiding on the admissibility of a personal explanation is final unless a motion of dissent with the ruling is moved before any other business proceeds.

#### **10.19 Right of Reply**

- (1) The mover of a substantive motion has the right of reply. After the mover of the substantive motion has commenced the reply, no other member is to speak on the question.
- (2) The right of reply is to be confined to rebutting arguments raised by previous speakers and no new matter is to be introduced.

### **10.20 Right of Reply Provisions**

The right of reply is governed by the following provisions—

- (a) if no amendment is moved to the substantive motion, the mover may reply at the conclusion of the discussion on the motion;
- (b) if an amendment is moved to the substantive motion the mover of the substantive motion is to take the right of reply at the conclusion of the vote on any amendments;
- (c) the mover of any amendment does not have a right of reply;
- (d) once the right of reply has been taken, there can be no further discussion, nor any other amendment and the original motion or the original motion as amended is immediately put to the vote.

## **PART 11—PROCEDURAL MOTIONS**

### **11.1 Permissible Procedural Motions**

In addition to proposing a properly worded amendment to a substantive motion, it is permissible for a member to move the following procedural motions—

- (a) that the Council (or committee) proceed to the next business;
- (b) that the question be adjourned;
- (c) that the Council (or committee) now adjourn;
- (d) that the question be now put;
- (e) that the member be no longer heard;
- (f) that the ruling of the person presiding be disagreed with;
- (g) that the Council (or committee) meet behind closed doors, if the meeting or part of the meeting to which the motion relates is a matter in respect of which the meeting may be closed to members of the public under section 5.23 of the Act.

### **11.2 No Debate on Procedural Motions**

(1) The mover of a motion stated in each of paragraphs (a), (b), (c), (f) and (g) of clause 11.1 may speak to the motion for not more than two minutes, the seconder is not to speak other than to formally second the motion, and there is to be no debate on the motion.

(2) The mover of a motion stated in each of paragraphs (d) and (e) of Clause 11.1 may not speak to the motion, the seconder is not to speak other than to formally second the motion, and there is to be no debate on the motion.

### **11.3 Procedural Motions—Closing Debate—Who May Move**

No person who has moved, seconded, or spoken for or against the substantive motion, or any amendment may move any procedural motion which, if carried, would close the debate on the substantive motion or amendment.

### **11.4 Procedural Motions—Right of Reply on Substantive Motion**

The carrying of a procedural motion which closes debate on the substantive motion or amendment and forces a decision on the substantive motion or amendment does not deny the right of reply to the mover of the substantive motion.

## **PART 12—EFFECT OF PROCEDURAL MOTIONS**

### **12.1 Council (or Committee) to Proceed to the Next Business—Effect of Motion**

The motion “that the Council (or committee) proceed to the next business”, if carried, causes the debate to cease immediately and for the Council (or committee) to move to the next business of the meeting. No decision will be made on the substantive motion being discussed, nor is there any requirement for the matter to be again raised for consideration.

### **12.2 Question to be Adjourned—Effect of Motion**

(1) The motion “that the question be adjourned”, if carried, causes all debate on the substantive motion or amendment to cease but to continue at a time stated in the motion.

(2) If the motion is carried at a meeting of the Council—

- (a) the names of members who have spoken on the matter are to be recorded in the minutes; and
- (b) the provisions of clause 9.5 apply when the debate is resumed.

### **12.3 Council (or Committee) to Now Adjourn—Effect of Motion**

(1) The motion “that the Council (or committee) now adjourn”, if carried, causes the meeting to stand adjourned until it is re-opened at which time the meeting continues from the point at which it was adjourned, unless the person presiding or a simple majority of members upon vote, determine otherwise.

(2) Where debate on a motion is interrupted by an adjournment under subclause (1)—

- (a) the debate is to be resumed at the next meeting at the point where it was so interrupted; and

(b) in the case of a Council meeting—

- (i) the names of members who have spoken on the matter prior to the adjournment are to be recorded in the minutes; and
- (ii) the provisions of clause 9.5 apply when the debate is resumed.

#### **12.4 Question to be Put—Effect of Motion**

(1) The motion “that the question be now put”, if carried during discussion of a substantive motion without amendment, causes the person presiding to offer the right of reply and then immediately put the matter under consideration without further debate.

(2) This motion, if carried during discussion of an amendment, causes the person presiding to put the amendment to the vote without further debate.

(3) This motion, if lost, causes debate to continue.

#### **12.5 Member to be No Longer Heard—Effect of Motion**

The motion “that the member be no longer heard”, if carried, causes the person presiding to not allow the speaker against whom the motion has been moved to speak to the current substantive motion or any amendment relating to it, except to exercise the right of reply if the person is the mover of the substantive motion.

#### **12.6 Ruling of the Person Presiding Disagreed With—Effect of Motion**

The motion “that the ruling of the person presiding be disagreed with”, if carried, causes the ruling of the person presiding about which this motion was moved, to have no effect and for the meeting to proceed accordingly.

#### **12.7 Council (or Committee) to Meet Behind Closed Doors—Effect of Motion**

(1) Subject to any deferral under clause 3.6 or other decision of the Council or committee, this motion, if carried, causes the general public and any officer or employee the Council or committee determines, to leave the room.

(2) While a decision made under this clause is in force the operation of clause 9.5 limiting the number of speeches a member of the Council may make, is suspended unless the Council decides otherwise.

(3) Upon the public again being admitted to the meeting the person presiding, unless the Council or committee decides otherwise, is to cause the motions passed by the Council or committee whilst it was proceeding behind closed doors to be read out including the vote of a member or members to be recorded in the minutes under section 5.21 of the Act.

### **PART 13—MAKING DECISIONS**

#### **13.1 Question—When Put**

When the debate upon any question is concluded and the right of reply has been exercised the person presiding shall immediately put the question to the Council or the committee, and, if so desired by any member of the Council or committee, shall again state it.

#### **13.2 Question—Method of Putting**

If a decision of the Council or a committee is unclear or in doubt, the person presiding shall put the motion or amendment as often as necessary to determine the decision from a show of hands or other method agreed upon so that no voter’s vote is secret, before declaring the decision.

### **PART 14—IMPLEMENTING DECISIONS**

#### **14.1 Implementation of a Decision**

(1) If a notice of motion to revoke or change a decision of the Council or a committee that complies with Regulation 10 of the Regulations is received by the CEO before any action has been taken to implement that decision, then no steps are to be taken to implement or give effect to that decision until such time as the motion of revocation or change has been dealt with.

(2) Implementation of a decision is only to be withheld under sub-clause (1) if the effect of the change proposed in a notice of motion would be that the decision would be revoked or would become substantially different.

(3) The Council or a committee shall not vote on a motion to revoke or change a decision of the Council or committee whether the motion of revocation or change is moved with or without notice, if at the time the motion is moved or notice is given:—

- (a) action has been taken to implement the decision; or
- (b) where the decision concerns the issue of an approval or the authorisation of a licence, permit or certificate, and where that approval or authorisation of a licence, permit or certificate has been put into effect by the Council in writing to the applicant or the applicant’s agent by an employee of the local government authorised to do so;

without having considered a statement of impact prepared by or at the direction of the CEO of the legal and financial consequences of the proposed revocation or change.

**PART 15—PRESERVING ORDER****15.1 The Person Presiding to Preserve Order**

The person presiding is to preserve order, and may call any member or other person in attendance to order, whenever, in his or her opinion, there is cause for so doing.

**15.2 Demand for Withdrawal**

A member at a meeting of the Council or a committee may be required by the person presiding, or by a decision of the Council or committee, to apologise and unreservedly withdraw any expression which is considered to reflect offensively on another member or an employee, and if the member declines or neglects to do so, the person presiding may refuse to hear the member further upon the matter then under discussion and call upon the next speaker.

**15.3 Points of Order—When to Raise—Procedure**

Upon a matter of order arising during the progress of a debate, any member may raise a point of order including interrupting the speaker. Any member who is speaking when a point of order is raised, is to immediately stop speaking while the person presiding listens to the point of order.

**15.4 Points of Order—When Valid**

The following are to be recognised as valid points of order—

- (a) that the discussion is of a matter not before the Council or committee;
- (b) that offensive or insulting language is being used;
- (c) drawing attention to the violation of any written law, or policy of the local government, provided that the member making the point of order states the written law or policy believed to be breached.

**15.5 Points Of Order—Ruling**

The person presiding is to give a decision on any point of order which is raised by either upholding or rejecting the point of order.

**15.6 Points of Order—Ruling Conclusive, Unless Dissent Motion is Moved**

The ruling of the person presiding upon any question of order is final, unless a majority of the members support a motion of dissent with the ruling.

**15.7 Points of Order Take Precedence**

Notwithstanding anything contained in these Standing Orders to the contrary, all points of order take precedence over any other discussion and until decided, suspend the consideration and decision of every other matter.

**15.8 Precedence of Person Presiding**

(1) When the person presiding indicates a wish to speak during the progress of a debate, any member of the Council or committee then speaking, or offering to speak, is to immediately cease speaking and every member of the Council or committee present shall preserve strict silence so that the person presiding may be heard without interruption.

(2) Subclause (1) is not to be used by the person presiding to exercise the right provided in clause 9.3, but to preserve order.

**15.9 Right of the Person Presiding to Adjourn Without Explanation to Regain Order**

(1) If a meeting ceases to operate in an orderly manner, the person presiding may use discretion to adjourn the meeting for a period of up to 15 minutes without explanation, for the purpose of regaining order. Upon resumption, debate is to continue at the point at which the meeting was adjourned. If, at any one meeting, the person presiding has cause to further adjourn the meeting, such adjournment may be to a later time on the same day or to any other day.

(2) Where debate of a motion is interrupted by an adjournment under sub-clause (1), in the case of a Council meeting—

- (a) the names of members who have spoken in the matter prior to the adjournment are to be recorded; and
- (b) the provisions of clause 9.5 apply when the debate is resumed.

**PART 16—ADJOURNMENT OF MEETING****16.1 Meeting May be Adjourned**

The Council or a committee may decide to adjourn any meeting to a later time on the same day, or to any other day.

**16.2 Limit to Moving Adjournment**

No member is to move or second more than one motion of adjournment during the same sitting of the Council or committee.

**16.3 Unopposed Business—Motion for Adjournment**

On a motion for the adjournment of the Council or committee, the person presiding, before putting the motion, may seek leave of the Council or committee to proceed to the transaction of unopposed business.



**16.4 Withdrawal of Motion for Adjournment**

A motion or an amendment relating to the adjournment of the Council or a committee may be withdrawn by the mover, with the consent of the seconder, except that if any member objects to the withdrawal, debate of the motion is to continue.

**16.5 Time To Which Adjourned**

The time to which a meeting is adjourned for want of a quorum, by the person presiding to regain order, or by decision of the Council, may be to a specified hour on a particular day or to a time which coincides with the conclusion of another meeting or event on a particular day.

**PART 17—COMMITTEES OF THE COUNCIL****17.1 Establishment and Appointment of Committees**

A committee is not to be established except on a motion setting out the proposed functions of the committee and either—

- (a) the names of the Council members, employees and other persons to be appointed to the committee; or
- (b) the number of Council members, employees and other persons to be appointed to the committee and a provision that they be appointed by a separate motion.

**17.2 Appointment of Deputy Committee Members**

(1) The Council may appoint one or more persons to be the deputy or deputies, as the case may be, to act on behalf of a member of a committee whenever that member is unable to be present at a meeting thereof and where two or more deputies are so appointed they are to have seniority in the order determined by the Council.

(2) Where a member of a committee does not attend a meeting thereof a deputy of that member, selected according to seniority, is entitled to attend that meeting in place of the member and act for the member, and while so acting has all the powers of that member.

**17.3 Presentation of Committee Reports**

When the report or recommendations of a committee are placed before the Council, the adoption of recommendations of the committee is to be moved by—

- (a) the Presiding Member of the Committee if the Presiding Member is a Council member and is in attendance; or
- (b) a Council member who is a member of the committee, if the Presiding Member of the Committee is not a Council member, or is absent; or
- (c) otherwise, by a Council member who is not a member of the committee.

**17.4 Reports of Committees—Questions**

When a recommendation of any committee is submitted for adoption by the Council, any member of the Council may direct questions directly relating to the recommendation through the person presiding to the Presiding Member or to any member of the committee in attendance.

**17.5 Permissible Motions on Recommendation From Committee**

A recommendation made by or contained in the minutes of a committee may be adopted by the Council without amendment or modification, failing which, it may be—

- (a) rejected by the Council and replaced by an alternative decision; or
- (b) amended or modified and adopted with such amendment or modification; or
- (c) referred back to the committee for further consideration.

**PART 18—ADMINISTRATIVE MATTERS****18.1 Suspension of Standing Orders**

(1) The Council or a committee may decide, by simple majority vote, to suspend temporarily one or more of the Standing Orders.

(2) The mover of a motion to suspend temporarily any one or more of the Standing Orders is to state the clause or clauses to be suspended, and the purpose of the suspension.

**18.2 Cases not Provided for in Standing Orders**

The person presiding is to decide questions of order, procedure, debate, or otherwise in cases where these Standing Orders and the Act and Regulations are silent. The decision of the person presiding in these cases is final, except where a motion is moved and carried under clause 11.1(f).

**PART 19—COMMON SEAL****19.1 The Council's Common Seal**

(1) The CEO is to have charge of the common seal of the local government, and is responsible for the safe custody and proper use of it.

(2) The common seal of the local government may only be used on the authority of the Council given either generally or specifically and every document to which the seal is affixed must be signed by the President and the CEO or a senior employee authorised by him or her.

(3) The common seal of the local government is to be affixed to any local law which is made by the local government.

(4) Any person who uses the common seal of the local government or a replica thereof without authority commits an offence.

Penalty \$1,000

\_\_\_\_\_

Dated: 20th November 2008.

The Common Seal of the Shire of Broomehill-Tambellup was affixed by authority of a resolution of the Council in the presence of—

B. G. WEBSTER, Shire President.  
J. M. TREZONA, Chief Executive Officer.

\_\_\_\_\_

**LOCAL GOVERNMENT ACT 1995**

## SHIRE OF BROOMEHILL-TAMBELLUP

**REPEAL LOCAL LAW 2008**

Under the powers conferred by the *Local Government Act 1995* and by all other powers enabling it, the Council of the Shire of Broomehill-Tambellup resolved on the 20th November 2008 to repeal old and obsolete by-laws and local laws of the former districts of the Shire of Broomehill and Shire of Tambellup as follows.

**1 Citation**

This local law may be cited as the *Shire of Broomehill-Tambellup Repeal Local Law 2008*.

**2 Operation**

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

**3 Repeal**

3.1 The local laws of the former district of the Shire of Broomehill as listed below are hereby repealed—

- By-laws Relating to the Removal and Disposal of Obstructing Animals or Vehicles as published in the *Government Gazette* on 14 September 1973; and

The local laws of the former district of the Shire of Tambellup as listed below are hereby repealed—

- Management and use of the Road Board Hall as published in the *Government Gazette* on 19 February 1926;
- Traffic By-laws as published in the *Government Gazette* on 28 December 1945;
- Draft (Removal and Disposal of Obstructing Animals or Vehicles) No 7 as published in the *Government Gazette* on 23 December 1971; and
- By-law Relating to Noxious Weeds as published in the *Government Gazette* on 13 April 1972.

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Dated: 20th November 2008

The Common Seal of the Shire of Broomehill-Tambellup was hereunto affixed by the authority of a resolution of the Council in the presence of—

B. G. WEBSTER, Shire President.  
J. M. TREZONA, Chief Executive Officer.

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**CEMETERIES ACT 1986  
LOCAL GOVERNMENT ACT 1995**

SHIRE OF BROOMEHILL-TAMBELLUP

**CEMETERIES LOCAL LAW 2008**

ARRANGEMENT

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- 1.2 Application
- 1.3 Definitions
- 1.4 Repeal

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- 2.1 Powers and Functions of Chief Executive Officer.

**PART 3—APPLICATION FOR FUNERALS**

- 3.1 Application for Burial
- 3.2 Applications to be Accompanied by Certificates etc
- 3.3 Certificate of Identification
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- 4.1 Funeral Director's Licence Expiry
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- 5.1 Requirements for Funerals and Coffins
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*Division 2—Placement of Ashes*

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- 7.2 Placement of Monumental Work
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- 7.11 Australian War Graves
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*Division 2—Licensing of Monumental Masons*

- 7.13 Monumental Mason's Licence
- 7.14 Expiry Date, Non-Transferability
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**PART 9—OFFENCES AND MODIFIED PENALTY**

- 9.1 General
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**CEMETERIES ACT 1986  
LOCAL GOVERNMENT ACT 1995**

SHIRE OF BROOMEHILL-TAMBELLUP

**CEMETERIES LOCAL LAW 2008**

Under the powers conferred by the *Cemeteries Act 1986* and the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Broomehill-Tambellup resolved on the 20th November 2008 to make the following local law.

**PART 1—PRELIMINARY**

**1.1 Citation**

This local law may be cited as the *Shire of Broomehill-Tambellup Cemeteries Local Law 2008*.

**1.2 Application**

This local law applies to the Broomehill, Tambellup and Pindellup public cemeteries.

**1.3 Definitions**

In this local law unless the context otherwise requires—

“**Act**” means the *Cemeteries Act 1986*;

“**ashes**” means so much of the remains of a dead body after the due processes of cremation as may be contained in a standard sized cremation urn;

“**authorised officer**” means an employee of the Board authorised by the Board for the purposes of performing any function or exercising any power conferred upon an authorised officer by this local law;

“**CEO**” means the chief executive officer for the time being, of the Board;

“**Funeral Director**” means a person holding a current funeral director’s licence;

“**Board**” means the Shire of Broomehill-Tambellup;

“**monumental mason**” means a person holding a current monumental mason’s licence;

“**personal representative**” means the administrator or executor of an estate of a deceased person;

“**set fee**” refers to fees and charges set by a resolution of the Board and published in the *Government Gazette*, under section 53 of the Act;

“**single funeral permit**” means a permit issued by the Board under section 20 or 21 of the Act which entitles the holder to conduct at the cemetery a funeral of a person named in the permit.

**1.4 Repeal**

The following local laws are repealed:—

The former Shire of Broomehill Cemeteries Local Law 2000 as published in the *Government Gazette* on 5 September 2000.

The former Shire of Tambellup Local Law Relating to the Tambellup and Pindellup Public Cemeteries 1998 as published in the *Government Gazette* on 5 March 1999.

**PART 2—ADMINISTRATION**

**2.1 Powers and Functions of Chief Executive Officer.**

Subject to any directions given by the Board, the CEO shall exercise all the powers and functions of the Board in respect of the cemetery.

**PART 3—APPLICATION FOR FUNERALS****3.1 Application for Burial**

(1) A person may apply for approval to bury a dead body in the cemetery in the form determined by the Board from time to time.

(2) An application under subclause (1) is to be accompanied by the set fee.

**3.2 Applications to be Accompanied by Certificates etc**

All applications referred to in clause 3.1 shall be accompanied by either a medical certificate of death or a Coroner's order of burial, and a certificate issued under clause 3.3, in respect of the body.

**3.3 Certificate of Identification**

(1) After a dead body is placed in a coffin and prior to a dead body being removed to the cemetery a person who personally knew the deceased shall identify the dead body and shall complete a certificate of identification in the form determined by the Board from time to time, unless—

(a) in the opinion of the Funeral Director, the dead body is not in a fit state to be viewed;

or

(b) after reasonable effort the Funeral Director is unable to arrange for a person to identify the dead body.

(2) Where—

(a) in the opinion of the Funeral Director, the dead body is not in a fit state to be viewed;

or

(b) after reasonable effort the Funeral Director is unable to arrange for a person to identify the dead body,

then the Funeral Director shall complete a certificate in the form determined by the Board from time to time.

**3.4 Minimum Notice Required**

All bookings to hold a funeral shall be made with the Board at least twenty four hours prior to the time proposed for burial on the application, otherwise an extra charge may be made.

**PART 4—FUNERAL DIRECTORS****4.1 Funeral Director's Licence Expiry**

A funeral director's licence shall expire on the 30th day of June in each year.

**4.2 Single Funeral Permits**

Every application for a single funeral permit made under section 20 or 21 of the Act shall include coffin specifications and details of the vehicle transporting the dead body to the gravesite.

**4.3 Application Refusal**

The Board may refuse an application for a single funeral permit if, in the opinion of the Board, either the coffin specifications or the details of the vehicle transporting the dead body to the gravesite, are not structurally sound or are otherwise inadequate or inappropriate, or on any other grounds.

**PART 5—FUNERALS***Division 1—General***5.1 Requirements for Funerals and Coffins**

A person shall not bring a dead body into the cemetery unless—

(a) the Board has approved an application for the burial of that dead body in accordance with Part 3 of this local law;

(b) it is enclosed in a coffin which in the opinion of the Board is structurally sound and bears the name of the deceased person indelibly inscribed in legible characters on a plate on the coffin's lid; and

(c) under the plate referred to in paragraph (b) there is a substantive lead strip bearing the surname of the deceased person stamped in legible characters, each character being not less than 10 mm in height.

**5.2 Funeral Processions**

The time fixed by the Board for any burial shall be the time at which the funeral procession is to arrive at the cemetery gates, and, if not punctually observed, then the applicant who applied to hold the funeral under clause 3.1 shall pay the set fee for being late.

**5.3 Vehicle Entry Restricted**

(1) Subject to clause 5.3(2), every funeral procession shall enter by the principal entrance, and no vehicle except the hearse, and official mourning coaches, shall be permitted to enter the cemetery.

(2) This clause shall not apply to persons using wheelchairs or motorised wheelchairs.



#### 5.4 Vehicle Access and Speed Limitations

Vehicles shall proceed within the cemetery by the constructed roadway or other areas designated for the use of vehicles and shall not exceed the speed of 25km per hour.

#### 5.5 Offenders may be Expelled

A person committing an offence under clause 5.4 may be expelled from the cemetery by the CEO or an authorised officer.

#### 5.6 Conduct of Funeral by Board

When conducting a funeral under section 22 of the Act the Board may—

- (a) require a written request for it to conduct a funeral to be lodged with it;
- (b) in its absolute discretion, charge any person requesting it to conduct a funeral the set fee for the conduct of that funeral by it;
- (c) where no fee or a reduced fee has been charged by it for the conduct of the funeral, determine the manner in which the funeral shall be conducted;
- (d) bury that dead body;
- (e) specify an area in the cemetery where the dead body is to be buried or the ashes placed;
- (f) conduct the funeral notwithstanding the failure of a person to make any application or to obtain any consent required under this local law;
- (g) do or require anything which it considers is necessary or convenient for the conduct of a funeral by it.

#### *Division 2—Placement of Ashes*

#### 5.7 Disposal of Ashes

(1) The personal representative of a deceased person whose body has been cremated may apply, in an application under clause 3.1 or otherwise, for permission to dispose of the ashes in the cemetery and upon payment of the set fee the Board may grant permission for the ashes to be disposed of by one of the following methods—

- Niche Wall
- Family Shrub
- Scattering to the Winds
- Other memorials approved by the Board

(2) Subject to sub-clauses (3) and (4), a person shall not place the ashes of a deceased person in the cemetery.

(3) An authorised officer may place the ashes of a deceased person in a cemetery in accordance with the Board approval provided—

- (a) the person requesting the placement of the ashes has the permission of the Board; and
- (b) the ashes are placed within an area set aside for that purpose by the Board.

(4) An authorised officer may place the ashes of a deceased person within a grave in accordance with the Board approval, provided the person requesting the placement of the ashes has the written permission of the Board and the approval of the holder of the right of burial of the grave.

### PART 6—BURIALS

#### 6.1 Depth of Graves

(1) A person shall not bury a coffin within the cemetery so that the distance from the top of the coffin to the original surface of the ground is—

- (a) subject to paragraph (b), less than 750mm, unless that person has the permission of an authorised officer; or
- (b) in any circumstances less than 600mm.

(2) The permission of the authorised officer in sub-clause (1) (a) will only be granted where in the opinion of the authorised officer exceptional circumstances require granting of that permission.

### PART 7—MEMORIALS AND OTHER WORK

#### *Division 1—General*

#### 7.1 Application for Monumental Work

A Board may require the written consent of the holder of the right of burial of the grave to accompany an application under section 30 of the Act.

#### 7.2 Placement of Monumental Work

Every memorial shall be placed on proper and substantial foundations.

#### 7.3 Removal of Rubbish

All refuse, rubbish or surplus material remaining after memorial works are completed under a permit issued under section 30 of the Act shall be immediately removed from the cemetery by the person carrying out the same.

**7.4 Operation of Work**

All material required in the erection and completion of any work shall, as far as possible, be prepared before being taken to the cemetery, and all materials required by tradesmen shall be admitted at such entrance as the CEO or an authorised officer shall direct.

**7.5 Removal of Sand, Soil or Loam**

No sand, earth or other material shall be taken from any part of the cemetery for use in the erection of any memorial or work except with the written approval of the Board.

**7.6 Hours of Work**

Persons shall not be permitted to carry out memorial or other work on graves within the cemetery other than during the hours of 8.00am and 6.00pm on weekdays, and 8.00am and noon on Saturdays, without the written permission of the Board.

**7.7 Unfinished Work**

Should any work by masons or others be not completed before 6pm on weekdays and noon on Saturdays, they shall be required to leave the work in a neat and safe condition to the satisfaction of the CEO or an authorised officer.

**7.8 Use of Wood**

No wooden fence, railing, cross or other wooden erection shall be allowed on or around any grave, other than as a temporary marker and with the prior approval of the Board.

**7.9 Plants and Trees**

No trees or shrubs shall be planted on any grave or within the cemetery except such as shall be approved by the CEO.

**7.10 Supervision**

All workers, whether employed by the Board or by any other person, shall at all times whilst within the boundaries of the cemetery be subject to the supervision of the CEO or an authorised officer and shall obey such directions as the CEO or an authorised officer may give.

**7.11 Australian War Graves**

Notwithstanding anything in this local law to the contrary, the Office of Australian War Graves—

- (a) may place a memorial on a military grave; and
- (b) is not required to pay the set fee for any memorial that is placed upon a military grave.

**7.12 Placing of Glass Domes and Vases**

A person shall not place glass domes, vases or other grave ornaments outside the perimeter of a grave in the cemetery as defined in the plans kept and maintained under section 40(2) of the Act.

*Division 2—Licensing of Monumental Masons*

**7.13 Monumental Mason's Licence**

(1) The Board may upon receipt of an application in writing by any person and upon payment of the set fee issue to the applicant a monumental mason's licence.

(2) A licence issued under sub-clause (1) authorises the holder to carry out monumental works within the cemetery subject to the provisions of this local law and such conditions as the Board shall specify upon the issue of that licence.

**7.14 Expiry Date, Non-Transferability**

A monumental mason's licence—

- (a) shall, subject to clause 7.17, be valid from the date specified therein until the 30th day of June next following; and
- (b) is not transferable.

**7.15 Carrying out Monumental Work**

A person shall not carry out monumental work within the cemetery unless that person—

- (a) is the holder of a current monumental mason's licence issued pursuant to clause 7.13 or does so as the employee of a person who holds such a licence; or
- (b) is authorised by the Board to do so.

**7.16 Responsibilities of the Holder of a Monumental Mason's Licence**

The holder of a monumental mason's licence shall be responsible for the compliance by every person purporting to be authorised to carry out monumental works within the cemetery pursuant to that licence with all the requirements and conditions of the licence, this local law, the Act and any other written law which may affect the carrying out of monumental works.

**7.17 Cancellation of a Monumental Mason's Licence**

(1) The Board may by notice in writing to the holder of a monumental mason's licence terminate the licence on any of the following grounds—

- (a) that the holder of the licence has committed a breach of the requirements and conditions of the licence, this local law, the Act or any other written law which may affect the carrying out of monumental works;

- (b) that, in the opinion of the Board, the conduct of the holder of the licence or any person in the employ of that holder in carrying out or attempting to carry out any works within the cemetery, is inappropriate or unbecoming; or
- (c) that the holder of the licence has purported to transfer the licence issued to that holder.
- (2) Upon the termination of a monumental mason's licence under this clause no part of any fee paid for the issue of that licence is refundable by the Board.
- (3) An aggrieved person whose licence has been terminated under subclause (1) may apply to the State Administrative Tribunal for a review of the decision of the Board under this clause in the manner stated in section 19(2) of the Act.

## **PART 8—GENERAL**

### **8.1 Animals**

Subject to clause 8.2, a person shall not bring an animal into or permit an animal to enter or remain in the cemetery, other than with the approval of the CEO or an authorised officer.

### **8.2 Guide Dogs**

Clause 8.1 shall not apply to a hearing impaired person or a person who is blind or partially blind and is accompanied by a hearing or guide dog.

### **8.3 Damaging and Removing of Objects**

Subject to clause 8.4, a person shall not damage, remove or pick any tree, plant, shrub or flower in the cemetery or any other object or thing on any grave or memorial or which is the property of the Board without the permission of the Board.

### **8.4 Withered Flowers**

A person may remove withered flowers from a grave or memorial and these are to be placed in a receptacle provided by the Board for that purpose.

### **8.5 Littering and Vandalism**

A person shall not—

- (a) break or cause to be broken any glass, ceramic or other material in or upon the cemetery;
- (b) discard, deposit, leave or cause to be discarded, deposited or left any refuse or litter in or upon the cemetery other than in a receptacle provided for that purpose.

### **8.6 Advertising**

A person shall not carry on or advertise any trade, business or profession within the cemetery without the prior written approval of the Board which consent may be granted subject to such conditions as the Board thinks fit.

### **8.7 Obeying Signs and Directions**

A person shall obey all signs displayed, marked, placed or erected by the Board within the cemetery and any other lawful direction by the CEO or an authorised officer.

### **8.8 Removal from the Cemetery**

Any person failing to comply with any provisions of this local law or behaving in a manner that in the opinion of the Board, the CEO or an authorised officer is inappropriate in the cemetery may in addition to any penalty provided by this local law be ordered to leave the cemetery by the Board, the CEO or an authorised officer.

## **PART 9—OFFENCES AND MODIFIED PENALTIES**

### **9.1 General**

A person who commits a breach of any provisions of this local law commits an offence and shall on conviction be liable to a penalty not exceeding \$500.00 and if the offence is a continuing one to a further penalty not exceeding \$20.00 for every day or part of a day during which the offence has continued.

### **9.2 Modified Penalties**

- (1) The offences specified in the First Schedule are offences which may be dealt with under section 63 of the Act.
- (2) The modified penalty payable in respect of an offence specified in the First Schedule is set out in the fourth column of the First Schedule.
- (3) The prescribed form of the infringement notice referred to in section 63(1) of the Act is set out in the Second Schedule.
- (4) The prescribed form of the notice withdrawing an infringement notice referred to in section 63(3) of the Act is set out in the Third Schedule.

**First Schedule**  
**Cemeteries Act 1986**  
*Shire of Broomehill-Tambellup*  
**CEMETERIES LOCAL LAW 2008**  
**MODIFIED PENALTIES**

Item No.	Clause	Nature of Offence	Modified Penalty
1	5.4	Excessive speed	\$50.00
2	5.4	Unauthorised use—driving of vehicles	\$50.00
3	7.3	Placing and removal of rubbish and surplus materials	\$50.00
4	7.7	Leaving uncompleted works in an untidy or unsafe condition	\$50.00
5	8.1	Animal at large	\$50.00
6	8.5	Dumping of Rubbish	\$50.00
7	8.6	Unauthorised advertising, and/or trading	\$50.00
8	8.7	Disobeying sign or lawful direction	\$50.00

**Second Schedule**  
**Cemeteries Act 1986**  
*Shire of Broomehill-Tambellup*  
**CEMETERIES LOCAL LAW 2008**  
**INFRINGEMENT NOTICE**

TO: \_\_\_\_\_

(Name)

\_\_\_\_\_

(Address)

\_\_\_\_\_

It is alleged that at \_\_\_\_\_:\_\_\_\_\_ hours on \_\_\_\_\_ day  
of \_\_\_\_\_ 20\_\_\_\_\_ at \_\_\_\_\_

you committed the offence indicated below by an (x) in breach of clause . \_\_\_\_\_  
of the *Cemeteries Local Law 2008*.

\_\_\_\_\_  
(Authorised Person)

Offence

Animal at large  
Dumping rubbish  
Excessive speed in vehicle  
Leaving uncompleted works in an untidy or unsafe condition  
Non removal of rubbish  
Unauthorised advertising or trading  
Unauthorised vehicle use  
Disobeying sign or lawful direction  
Other Offence \_\_\_\_\_

\$ \_\_\_\_\_

you may dispose of this matter—

By payment of the penalty as shown within 21 days of the date of this notice (or the date of the giving of this notice if that is a different date) to the Chief Executive Officer of the Shire of Broomehill-Tambellup at 46-48 Norrish Street Tambellup between the hours of 9am to 4.30pm Monday to Friday.

Please make cheques payable to Shire of Broomehill-Tambellup. Payments by mail should be addressed to—

The Chief Executive Officer  
Shire of Broomehill-Tambellup  
46-48 Norrish Street Tambellup WA 6320

If the penalty is not paid within the time specified, then a complaint of the alleged offence may be made and heard and determined by a court.

***Third Schedule***  
**Cemeteries Act 1986**  
*Shire of Broomehill-Tambellup*  
 CEMETERIES LOCAL LAW 2008  
**WITHDRAWAL OF INFRINGEMENT NOTICE**

No. \_\_\_\_\_

\_\_\_\_\_ Date \_\_\_\_/\_\_\_\_/\_\_\_\_

To (1) \_\_\_\_\_

Infringement Notice No, \_\_\_\_\_ dated \_\_\_\_/\_\_\_\_/\_\_\_\_ for the alleged offence of (2)

Penalty (3) \$ \_\_\_\_\_ is withdrawn.

(Delete whichever does not apply)

- \* No further action will be taken.
- \* It is proposed to institute court proceedings for the alleged offence.

- (1) Insert name and address of alleged offender.
- (2) Insert short particulars of offence alleged.
- (3) Insert amount of penalty prescribed.

\_\_\_\_\_  
 (Authorised Person)

\_\_\_\_\_

Dated: 20th November 2008.

The Common Seal of the Shire of Broomehill-Tambellup was affixed by authority of a resolution of the Council in the presence of—

B. G. WEBSTER, Shire President.  
 J. M. TREZONA, Chief Executive Officer.

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**DOG ACT 1976  
LOCAL GOVERNMENT ACT 1995**

SHIRE OF BROOMEHILL-TAMBELLUP

**DOGS LOCAL LAW 2008**

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**DOG ACT 1976  
LOCAL GOVERNMENT ACT 1995**

SHIRE OF BROOMEHILL-TAMBELLUP

**DOGS LOCAL LAW 2008**

Under the powers conferred by the *Dog Act 1976* and the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Broomehill-Tambellup resolved on the 20th November 2008 to make the following local law.

**PART 1—PRELIMINARY**

**1.1 Citation**

This local law may be cited as the *Shire of Broomehill-Tambellup Dogs Local Law 2008*.

**1.2 Application**

This local law applies throughout the district.

**1.3 Definitions**

In this local law unless the context otherwise requires—

“**Act**” means the *Dog Act 1976*;

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

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

“**local government**” means the Shire of Broomehill-Tambellup;

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

“**Regulations**” means the *Dog Regulations 1976*;

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

“**town planning scheme**” means a town planning scheme made by the local government under the *Planning and Development Act 2005* which applies throughout the whole or a part of the district.

**1.4 Repeal**

The following local laws are repealed—

The former Shire of Broomehill—

*By-laws Relating to Dogs* as published in the *Government Gazette* on 14 July 1989;

*Dogs Local Law 2000* as published in the *Government Gazette* on 5 September 2000;

*Dogs Local Law* as published in the *Government Gazette* on 3 April 2001.

The former Shire of Tambellup—

*By-law Relating to Dogs* as published in the *Government Gazette* on 24 March 1972;

*Dogs Local Law* as published in the *Government Gazette* on 2 December 2003.

**PART 2—IMPOUNDING OF DOGS**

**2.1 Charges and costs**

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

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

## 2.2 Attendance of pound keeper at pound

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

## 2.3 Release of impounded dog

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

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

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

## 2.4 No breaking into or destruction of pound

A person who—

- (a) unless he or she is the pound keeper or a person authorized to do so, releases or attempts to release a dog from a pound; or
- (b) destroys, breaks into, damages or in any way interferes with or renders not dog-proof—
  - (i) any pound; or
  - (ii) any vehicle or container used for the purpose of catching, holding or conveying a seized dog,commits an offence.

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

# PART 3—REQUIREMENTS AND LIMITATIONS ON THE KEEPING OF DOGS

## 3.1 Dogs to be confined

(1) An occupier of premises on which a dog is kept must—

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

(2) Where an occupier fails to comply with subclause (1), he or she commits an offence.

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

## 3.2 Limitation on the number of dogs

(1) This clause does not apply to premises which have been—

- (a) licensed under Part 4 as an approved kennel establishment; or
- (b) granted an exemption under section 26(3) of the Act.

(2) The limit on the number of dogs which may be kept on any premises is, for the purpose of section 26(4) of the Act—

- (a) 2 dogs over the age of 3 months and the young of those dogs under that age if the premises are situated within a townsite; or
- (b) 4 dogs over the age of 3 months and the young of those dogs under that age if the premises are situated outside a townsite.

# PART 4—APPROVED KENNEL ESTABLISHMENTS

## 4.1 Interpretation

In this Part and in Schedule 2—

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

“**licensee**” means the holder of a licence;

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

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

#### **4.2 Application for licence for approved kennel establishment**

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

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

#### **4.3 Notice of proposed use**

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

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

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

- (a) any written submissions as to the proposed use are to be lodged with the CEO within 14 days of the date the notice is given; and
- (b) the application and plans and specifications may be inspected at the offices of the local government.

(3) Where—

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

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

#### **4.4 Exemption from notice requirements**

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

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

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

#### **4.5 When application can be determined**

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

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

#### **4.6 Determination of application**

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

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

#### **4.7 Where application cannot be approved**

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

- (a) an approved kennel establishment cannot be permitted by the local government on the premises under a town planning scheme; or

- (b) an applicant for a licence or another person who will have the charge of the dogs will not reside on the premises, or, in the opinion of the local government, sufficiently close to the premises so as to control the dogs and so as to ensure their health and welfare.

#### 4.8 Conditions of approval

- (1) The local government may approve an application for a licence subject to the conditions contained in Schedule 2 and to such other conditions as the local government considers appropriate.
- (2) In respect of a particular application for a licence, the local government may vary any of the conditions contained in Schedule 2.

#### 4.9 Compliance with conditions of approval

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

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

#### 4.10 Fees

- (1) On lodging an application for a licence, the applicant is to pay a fee to the local government.
- (2) On the issue or renewal of a licence, the licensee is to pay a fee to the local government.
- (3) On lodging an application for the transfer of a valid licence, the transferee is to pay a fee to the local government.
- (4) The fees referred to in subclauses (1) to (3) are to be imposed and determined by the local government under sections 6.16—6.19 of the *Local Government Act 1995*.

#### 4.11 Form of licence

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

#### 4.12 Period of licence

- (1) The period of effect of a licence is set out in section 27(5) of the Act.
- (2) A licence is to be renewed if the fee referred to in clause 4.10(2) is paid to the local government prior to the expiry of the licence.
- (3) On the renewal of a licence the conditions of the licence at the time of its renewal continue to have effect.

#### 4.13 Variation or cancellation of licence

- (1) The local government may vary the conditions of a licence.
- (2) The local government may cancel a licence—
- (a) on the request of the licensee;
  - (b) following a breach of the Act, the Regulations or this local law; or
  - (c) if the licensee is not a fit and proper person.
- (3) The date a licence is cancelled is to be, in the case of—
- (a) paragraph (a) of subclause (2), the date requested by the licensee; or
  - (b) paragraphs (b) and (c) of subclause (2), the date determined under section 27(6) of the Act.
- (4) If a licence is cancelled the fee paid for that licence is not refundable for the term of the licence that has not yet expired.

#### 4.14 Transfer

- (1) An application for the transfer of a valid licence from the licensee to another person must be—
- (a) made in the form determined by the local government;
  - (b) made by the transferee;
  - (c) made with the written consent of the licensee; and
  - (d) lodged with the local government together with—
    - (i) written evidence that a person will reside at or within reasonably close proximity to the premises the subject of the licence; and
    - (ii) the fee for the application for the transfer of a licence referred to in clause 4.10(3).
- (2) The local government is not to determine an application for the transfer of a valid licence until the transferee has complied with subclause (1).
- (3) The local government may approve, whether or not subject to such conditions as it considers appropriate, or refuse to approve an application for the transfer of a valid licence.
- (4) Where the local government approves an application for the transfer of a valid licence, then on the date of approval, unless otherwise specified in the notice issued under clause 4.15(b), the transferee becomes the licensee of the licence for the purposes of this local law.

#### 4.15 Notification

The local government is to give written notice to—

- (a) an applicant for a licence of the local government's decision on her or his application;
- (b) a transferee of the local government's decision on her or his application for the transfer of a valid licence;
- (c) a licensee of any variation made under clause 4.13(1);

- (d) a licensee when her or his licence is due for renewal and the manner in which it may be renewed;
- (e) a licensee when her or his licence is renewed;
- (f) a licensee of the cancellation of a licence under clause 4.13(2)(a); and
- (g) a licensee of the cancellation of a licence under paragraphs (b) or (c) of clause 4.13(2), which notice is to be given in accordance with section 27(6) of the Act.

#### 4.16 Inspection of kennel

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

### PART 5—DOGS IN PUBLIC PLACES

#### 5.1 Places where dogs are prohibited absolutely

(1) Subject to section 8 of the Act and section 66J of the *Equal Opportunity Act 1984* dogs are prohibited absolutely from entering or being in any of the following places—

- (a) a public building, unless permitted by a sign;
- (b) all premises or vehicles classified as food premises or food vehicles under the *Health (Food Hygiene) Regulations 1993*;
- (c) Playgroup Centre Lot 4 India/Journal Streets, Broomehill;
- (d) Recreation Complex—Reserve 22820, Broomehill;
- (e) Primary School—Reserve 1697, Broomehill; and
- (f) Part Reserve 19757 East Terrace, Tambellup, easterly from East Terrace to the eastern boundary of Reserve 19757 and south of Howard Street to the southern boundary of Reserve 19757.

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

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

#### 5.2 Places which are dog exercise areas

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

- (a) Reserve 634 Javelin Street, Broomehill;
- (b) Reserve 1698 Spencer Road, Broomehill;
- (c) Lot 24 Broomehill/Kojonup Road, Broomehill;
- (d) Part of Reserve 19757 East Terrace, Tambellup, not including those areas stated in clause 5.1(1)(f); and
- (e) Reserve 22607 Garrity Street Tambellup.

(2) Subclause (1) does not apply to—

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

### PART 6—MISCELLANEOUS

#### 6.1 Offence to excrete

(1) A dog must not excrete on—

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

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

Penalty: \$200.

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

### PART 7—ENFORCEMENT

#### 7.1 Interpretation

In this Part—

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

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

#### 7.2 Modified penalties

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

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

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

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

**7.3 Issue of infringement notice**

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

**7.4 Failure to pay modified penalty**

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

**7.5 Payment of modified penalty**

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

**7.6 Withdrawal of infringement notice**

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

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

**7.7 Service**

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

*Schedule 1*

**Dog Act 1976**

*Shire of Broomehill-Tambellup*

DOGS LOCAL LAW 2008

**APPLICATION FOR A LICENCE FOR AN APPROVED KENNEL ESTABLISHMENT**

I/we (full name) .....  
of (postal address) .....

(telephone number) .....

(facsimile number) .....

(E-mail address) .....

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

For (number and breed of dogs) .....

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

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

on and from ..... (insert date).

Attached are—

- (a) a site plan of the premises showing the location of the kennels and yards and all other buildings and structures and fences;
- (b) plans and specifications of the kennel establishment;
- (c) copy of notice of proposed use to appear in newspaper;
- (d) copy of notice of proposed use to be given to adjoining premises;

- (e) written evidence that a person will reside—
  - (i) at the premises; or
  - (ii) sufficiently close to the premises so as to control the dogs and so as to ensure their health and welfare; and
- (f) if the person in item (e) is not the applicant, written evidence that the person is a person in charge of the dogs.

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

Signature of applicant .....

Date .....

\* delete where inapplicable.

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

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OFFICE USE ONLY

Application fee paid on [insert date].

**Schedule 2**

**Dog Act 1976**

*Shire of Broomehill-Tambellup*

DOGS LOCAL LAW 2008

**CONDITIONS OF A LICENCE FOR AN APPROVED  
KENNEL ESTABLISHMENT**

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

- (a) each kennel, unless it is fully enclosed, must have a yard attached to it;
- (b) each kennel and each yard must be at a distance of not less than—
  - (i) 25 metres from the front boundary of the premises and 5 metres from any other boundary of the premises;
  - (ii) 10 metres from any dwelling; and
  - (iii) 25 metres from any church, school room, hall, factory, dairy or premises where food is manufactured, prepared, packed or stored for human consumption;
- (c) each yard for a kennel must be kept securely fenced with a fence constructed of link mesh or netting or other materials approved by the local government;
- (d) the minimum floor area for each kennel must be calculated at 2.5 times the length of the breed of dog (when it is fully grown), squared, times the number of dogs to be housed in the kennel and the length of the dog is to be determined by measuring from the base of the tail to the front of its shoulder;
- (e) the floor area of the yard attached to any kennel or group of kennels must be at least twice the floor area of the kennel or group of kennels to which it is attached;
- (f) the upper surface of the kennel floor must be—
  - (i) at least 100 millimetres above the surface of the surrounding ground;
  - (ii) smooth so as to facilitate cleaning;
  - (iii) rigid;
  - (iv) durable;
  - (v) slip resistant;
  - (vi) resistant to corrosion;
  - (vii) non-toxic;
  - (viii) impervious;
  - (ix) free from cracks, crevices and other defects; and
  - (x) finished to a surface having a fall of not less than 1 in 100 to a spoon drain which in turn must lead to a suitably sized diameter sewerage pipe which must be properly laid, ventilated and trapped in accordance with the health requirements of the local government;
- (g) all kennel floor washings must pass through the drain in item (f)(x) and must be piped to approved apparatus for the treatment of sewage in accordance with the health requirements of the local government;
- (h) the kennel floor must have a durable upstand rising 75 millimetres above the floor level from the junction of the floor and external and internal walls, or internal walls must be so constructed as to have a minimum clearance of 50 millimetres from the underside of the bottom plate to the floor;
- (i) where a yard is to be floored, the floor must be constructed in the same manner as the floor of any kennel;

- (j) from the floor, the lowest internal height of a kennel must be, whichever is the lesser of—
- (i) 2 metres; or
  - (ii) 4 times the height of the breed of dog in the kennel, when it is fully grown, measured from the floor to the uppermost tip of its shoulders while in a stationary upright position;
- (k) the walls of each kennel must be constructed of concrete, brick, stone or framing sheeted internally and externally with good quality new zincalume or new pre-finished colour coated steel sheeting or new fibrous cement sheeting or other durable material approved by the local government;
- (l) all external surfaces of each kennel must be kept in good condition;
- (m) the roof of each kennel must be constructed of impervious material;
- (n) all kennels and yards and drinking vessels must be maintained in a clean condition and must be cleaned and disinfected when so ordered by an authorized person;
- (o) all refuse, faeces and food waste must be disposed of daily into the approved apparatus for the treatment of sewage;
- (p) noise, odours, fleas, flies and other vectors of disease must be effectively controlled;
- (q) suitable water must be available at the kennel via a properly supported standpipe and tap; and
- (r) the licensee or the person nominated in the application for a licence, must, in accordance with the application for the licence, continue to reside—
- (i) at the premises; or
  - (ii) in the opinion of the local government, sufficiently close to the premises so as to control the dogs, and to ensure their health and welfare.

**Schedule 3**

**Dog Act 1976**

*Shire of Broomehill-Tambellup*

DOGS LOCAL LAWS 2008

**OFFENCES IN RESPECT OF WHICH MODIFIED PENALTY APPLIES**

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

Dated: 20th November 2008.

The Common Seal of the Shire of Broomehill-Tambellup was affixed by authority of a resolution of the Council in the presence of—

B. G. WEBSTER, Shire President.  
J. M. TREZONA, Chief Executive Officer.



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

SHIRE OF BROOMEHILL-TAMBELLUP

**FENCING LOCAL LAW 2008**

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**FIRST SCHEDULE**

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

SHIRE OF BROOMEHILL-TAMBELLUP

**FENCING LOCAL LAW 2008**

Under the powers conferred by the *Local Government Act 1995* and by all other powers enabling it the Council of the Shire of Broomehill-Tambellup resolved on the 20th November 2008 to make the following local law.

**PART 1—PRELIMINARY**

**1.1 Citation**

This local law may be cited as the *Shire of Broomehill-Tambellup Fencing Local Law 2008*.

**1.2 Application**

This local law applies throughout the district.

**1.3 Definitions**

In this local law, unless the context requires otherwise—

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

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

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

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

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

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

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

- (a) an electrified fence other than a fence in respect of which a licence under Part 5 of this local law has been issued and is current;
- (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 Act;

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

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

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

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

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

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

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

“**local government**” means the Shire of Broomehill-Tambellup;

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

“**notice of breach**” means a notice referred to in clause 6.1(1);

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

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

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

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

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

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

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

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

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

“**sufficient fence**” means a fence described in clause 2.1; and

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

#### 1.4 Repeal

The following local laws are repealed—

The former *Shire of Broomehill Local Laws Relating to Fencing 2000* as published in the *Government Gazette* on 5 September 2000; and

The former *Shire of Tambellup Fencing By-laws* as published in the *Government Gazette* on 9 November 1979.

#### 1.5 Licence Fees and Charges

All licence fees and charges applicable under this local law shall be as determined by the local government from time to time in accordance with section 6.16 and 6.19 of the *Local Government Act 1995*.

### PART 2—SUFFICIENT FENCES

#### 2.1 Sufficient Fences

(1) A person shall not erect a dividing fence or a boundary fence that is not a sufficient fence unless all owners of land which adjoins the relevant boundary agree to erect a fence which though different does not fail to comply with the requirements of a sufficient fence.

(2) Subject to subclauses (3) and (4), a sufficient fence—

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

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

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

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

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

- (a) it is greater than 1800 millimetres in height; or
- (b) the local government so requires.

**PART 3—GENERAL****3.1 Fences Within Front Setback Areas**

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

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

(3) The provision of subclause (2) shall not apply to a fence—

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

**3.2 Fences on a Rural Lot**

A person shall not without the written consent of the local government, erect a fence on a Rural Lot, within 7.5 metres of a thoroughfare of a height exceeding 1500 millimetres.

**3.3 Maintenance of Fences**

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

**3.4 General Discretion of the Local Government**

(1) Notwithstanding clause 2.1, the local government may consent to the erection or repair of a fence which does not comply with the requirements of this local law.

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

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

**PART 4—FENCING MATERIALS****4.1 Fencing Materials**

(1) A person shall construct any fence on a Residential Lot, a Commercial Lot or an Industrial Lot from only those materials specified for a sufficient fence in respect of such lot in the First or Second Schedule or some other material approved by the local government.

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

**4.2 Barbed Wire and Broken Glass Fences**

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

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

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

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

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

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

**PART 5—ELECTRIFIED AND RAZOR WIRE FENCES****5.1 Requirements for a Licence**

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

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

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

### 5.2 Transfer of a Licence

A licence referred to in clause 5.1 shall transfer with the land to any new occupier or owner of the lot.

### 5.3 Cancellation of a Licence

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

- the fence no longer satisfies the requirements specified in clause 5.1(2) or 5.1(3) as the case may be; or
- the licence holder breaches any condition upon which the licence has been issued.

## PART 6—NOTICES OF BREACH

### 6.1 Notices of Breach

- (1) Where a breach of any provision of this local law has occurred in relation to a fence on a lot, the local government may give a notice in writing to the owner of that lot ('notice of breach').
- (2) A notice of breach shall—
- specify the provision of this local law which has been breached;
  - specify the particulars of the breach; and
  - state that the owner of the lot is required to remedy the breach within 28 days from the giving of the notice.
- (3) Should an owner fail to comply with a notice of breach, the local government may by its employees, agents or contractors enter upon the lot to which the notice relates and remedy the breach, and may recover the expenses of so doing from the owner of the lot, as the case may be, in a court of competent jurisdiction.
- (4) The provisions of this clause are subject to section 3.25 and Item 12 of Division 1 of Schedule 3.1 of the *Local Government Act 1995*, and entry onto land will be in accordance with Part 3 Division 3 Subdivision 3 of that Act.

## PART 7—OFFENCES

### 7.1 Offences and Penalties

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

### 7.2 Modified Penalties

- (1) An offence against any provision of this local law is a prescribed offence for the purposes of section 9.16 (1) of the *Local Government Act 1995*.
- (2) Unless otherwise specified, the amount of the modified penalty for an offence against any provision of this local law is \$125.

### 7.3 Form of Notices

For the purposes of this local law—

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

Clause 2.1(2)(a)

**First Schedule****Local Government Act 1995***Shire of Broomehill-Tambellup***FENCING LOCAL LAW 2008****SPECIFICATIONS FOR A SUFFICIENT FENCE ON A RESIDENTIAL LOT**

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

- A. A fully enclosed timber fence built to manufacturer's specifications or in accordance with established construction techniques, the height of the fence to be 1800 millimetres except with respect to the front setback area for which there is no minimum height but which is subject to clause 3.1.
- B. A fence constructed of corrugated fibre reinforced pressed cement or steel sheeting erected to manufacturer's specifications or which otherwise 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 manufacturers written instructions; and
  - (d) the height of the fence to be 1800 millimetres except with respect to the front set back area for which there is no minimum height but which is subject to clause 3.1.
- C. A fence constructed of brick, stone or concrete, which satisfies the following specifications—
  - (a) footings of minimum 225 millimetres x 150 millimetres concrete 15MPA or 300 millimetres x 175 millimetres brick laid in cement mortar;
  - (b) fences to be offset a minimum of 200 millimetres at maximum 3000 millimetres centres or 225 millimetres x 100 millimetres engaged piers to be provided at maximum 3000 millimetres centres;
  - (c) expansion joints in accordance with the manufacturer's written instructions; and
  - (d) the height of the fence to be 1800 millimetres except with respect to the front set back area for which there is no minimum height but which is subject to clause 3.1.
- D. A composite fence having a minimum overall height of 1800 millimetres except with respect to the front set back area for which there is no minimum height but which is subject to clause 3.1, which satisfies the following specifications for the brick construction—
  - (1)(a) brick piers of minimum 345 millimetres x 345 millimetres at 1800 millimetres centres bonded to a minimum height base wall of 514 millimetres;
  - (b) each pier shall be reinforced with one R10 galvanised starting rod 1500 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 20MPA. Mortar shall be a mix of 1 part cement, 1 part lime and 6 parts sand;
  - (d) the ground under the footings is to be compacted to 6 blows per 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 metre centres; or
  - (2)(a) brick piers of a minimum 345 millimetres x 345 millimetres x 2700 millimetres centres bonded to the base wall; and
  - (b) each pier shall be reinforced with two R10 galvanised starting rods as previously specified;

Clause 2.1(2)(b)

**Second Schedule****Local Government Act 1995***Shire of Broomehill-Tambellup***FENCING LOCAL LAW 2008****SPECIFICATIONS FOR A SUFFICIENT FENCE ON A COMMERCIAL LOT AND AN INDUSTRIAL LOT**

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

- A. A fence constructed of galvanised or PVC coated rail-less link mesh, chain mesh or steel mesh which satisfies the following specifications—
  - (a) corner posts to be minimum 50 millimetres normal bore x 3.5 millimetres and with footings of a 225 millimetres diameter x 900 millimetres;

- (b) intermediate posts to be minimum 37 millimetres nominal bore x 3.15 millimetres at maximum 3.5m centres and with footings of a 225 millimetres diameter x 600 millimetres;
  - (c) struts to be minimum 30millimetres nominal bore x 3.15 millimetres fitted at each gate and two at each corner post and with footings 225 millimetres x 600 millimetres;
  - (d) cables to be affixed to the top, centre and bottom of all posts and to consist of two or more 3.15millimetres wires twisted together or single 4 millimetres wire;
  - (e) rail-less link, chain or steel mesh is to be to a height of 2000 millimetres on top of which are to be three strands of barbed wire carrying the fence to a height of 2400 millimetres in accordance with clause 4.2(3) of this local law; and
  - (f) galvanised link mesh wire to be 2000 millimetres in height and constructed of 50 millimetres mesh 2.5 millimetres galvanised iron wire and to be strained, neatly secured and laced to the posts and affixed to cables. Vehicle entry gates shall provide an opening of not less than 3.6 metres and shall be constructed of 25 millimetres tubular framework with one horizontal and one vertical stay constructed of 20 millimetres piping and shall be covered with 50 millimetres x 2.5 millimetres galvanised link mesh strained to framework. Gates shall be fixed with a drop bolt and locking attachment.
- B. A fence of fibre reinforced cement sheet or steel sheeting constructed to the minimum specifications referred to in Item B of the First Schedule.
- C. A fence constructed of aluminium sheeting when supported on posts and rails provided that it is used behind a building line and is of a minimum height of 1800 millimetres but no greater than 2400 millimetres.
- D. Fences of timber, brick, stone or concrete constructed to the minimum specifications referred to in the First Schedule.

Clause 2.1(2)(c)

*Third Schedule*

**Local Government Act 1995**

*Shire of Broomehill-Tambellup*

**FENCING LOCAL LAW 2008**

**SPECIFICATIONS FOR A SUFFICIENT FENCE ON A RURAL LOT**

- (1) In the case of a non-electrified fence, a sufficient fence on a Rural Lot is a fence of posts and wire construction, the minimum specifications for which are—
- (a) wire shall be high tensile wire and not less than 2.5 millimetres. A minimum of five wires shall be used, generally with the lower wires spaced closer together than the higher wires so as to prevent smaller stock passing through, and connected to posts in all cases.
  - (b) posts shall be of indigenous timber or other suitable material including—
    - timber impregnated with a termite and fungicidal preservative;
    - standard iron star pickets; or
    - concrete;
  - (c) if timber posts are used, posts are to be cut not less than 1800 millimetres long x 50 millimetres diameter at small end if round or 125 millimetres x 60 millimetres if split or sawn. Posts to be placed at not more than 10 metre intervals, set minimum 600 millimetres in the ground and 1200 millimetres above the ground; and
  - (d) strainer posts, if timber, shall be not less than 2250 millimetres long and 150 millimetres diameter at the small end (tubular steel to be 50 millimetres in diameter) and shall be cut from indigenous timber or other suitable material. These shall be placed a minimum of 1000 millimetres in the ground and set at all corners, gateways and fence line angles but not exceeding 200 metres apart.
- (2) An electrified fence having four wires only is a sufficient fence if constructed generally in accordance with (1).

Dated: 20th November 2008.

The Common Seal of the Shire of Broomehill-Tambellup was affixed by authority of a resolution of the Council in the presence of—

B. G. WEBSTER, Shire President.  
J. M. TREZONA, Chief Executive Officer.



**AGRICULTURE AND RELATED RESOURCES PROTECTION ACT 1976  
LOCAL GOVERNMENT ACT 1995**

SHIRE OF BROOMEHILL-TAMBELLUP

**PEST PLANT LOCAL LAW 2008**

Under the powers conferred by the *Agriculture and Related Resources Protection Act 1976* and the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Broomehill-Tambellup resolved on 20th November 2008 to make the following local law.

**1. Citation**

This local law may be cited as the *Shire of Broomehill-Tambellup Pest Plant Local Law 2008*.

**2. Application**

This local law applies throughout the district.

**3. Definition**

In this local law, unless the contrary intention appears—

“**district**” means the district of the Shire of Broomehill-Tambellup;

“**local government**” means the Shire of Broomehill-Tambellup;

“**pest plants**” means a plant described as a pest plant by clause 5.

**4. Repeal**

(1) The former *Shire of Broomehill Pest Plant Local Laws* published in the *Government Gazette* on 5 September 2000 are repealed.

(2) The former *Shire of Tambellup By-laws Relating to Pest Plants* published in the *Government Gazette* on 9 March 1984 and as amended and published in the *Government Gazette* on 15 August 1986 are repealed.

**5. Pest Plants**

Every plant described in the First Schedule is a pest plant.

**6. Serving of a Notice**

(1) The local government may serve on the owner or occupier of private land within the district a duly completed notice in the form of the Second Schedule requiring him to destroy, eradicate or otherwise control any pest plant on that land.

(2) A person served with a notice under subclause (1) of this clause shall comply with that notice within the time and in the manner specified therein.

**7. Failure to comply with a Notice**

Where a person fails to comply with a notice under clause 6 served upon him, the local government may—

- (a) without payment of any compensation in respect thereof, destroy, eradicate or control, as the case may be any pest plant the destruction, eradication or control of which was required by the notice; and
- (b) recover in a court of competent jurisdiction from the person to whom the notice is directed, the amount of the expense of such destruction, eradication or control.

**First Schedule**  
**Agriculture and Related Resources Protection Act 1976**  
*Shire of Broomehill-Tambellup*  
 PEST PLANT LOCAL LAW 2008  
**PEST PLANTS**

<i>Common Name</i>	<i>Scientific Name</i>
Caltrop	<i>Tribulus Terrestris</i>
Afghan Thistle	<i>Solanum Hystrix or Solanum Hoplopetalum</i>

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**Second Schedule**  
**Agriculture and Related Resources Protection Act 1976**  
*Shire of Broomehill-Tambellup*  
 PEST PLANT LOCAL LAW 2008  
**PEST PLANT NOTICE**

No. ....

To .....

(Full name)

of .....

(Address)

You are hereby given notice under the above local law that you are required to .....

(here specify whether required to destroy, eradicate or otherwise control) the pest plant—

(Common Name)	(Scientific Name)

on .....

(here specify the land)

of which you are the .....

(owner or occupier)

This notice may be complied with by .....

(here specify manner of achieving destruction, eradication or control)

Such measures shall be commenced not later than .....

(date)

and shall be completed by .....

(date)

Upon failure to comply with this notice within the times specified, the local government may destroy, eradicate or control, as the case may be, any specified pest plant at your expense, and if necessary recover the same in a court of competent jurisdiction.

Date of service of notice .....

.....

Signature of person authorised by the Shire of Broomehill-Tambellup.

Dated: 20th November 2008

The Common Seal of the Shire of Broomehill-Tambellup was affixed by authority of a resolution of the Council in the presence of—

B. G. WEBSTER, Shire President.  
J. M. TREZONA, Chief Executive Officer.