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**SHIRE OF MOUNT MAGNET  
LOCAL LAWS**

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**LOCAL GOVERNMENT ACT 1995**

## SHIRE OF MOUNT MAGNET

**ACTIVITIES IN THOROUGHFARES AND PUBLIC PLACES AND  
TRADING LOCAL LAW 2018**

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## LOCAL GOVERNMENT ACT 1995

## SHIRE OF MOUNT MAGNET

ACTIVITIES IN THOROUGHFARES AND PUBLIC PLACES AND  
TRADING LOCAL LAW 2018

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Mount Magnet resolved on 27 June 2018 to make the following local law.

## PART 1—PRELIMINARY

## 1.1 Citation

This local law may be cited as the *Shire of Mount Magnet Activities in Thoroughfares and Public Places and Trading Local Law 2018*.

## 1.2 Definitions

In this local law unless the context otherwise requires—

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

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

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

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

**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;

**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; and
- (c) the carcass, skin, plumage or fur;

**flora** means all vascular plants, seeds and other flora, whether living or dead;

**food business** has the meaning given by the *Food Act 2008*;

**footpath** means an area that is open to the public that is designated for, or has as one of its main uses, use by pedestrians;

**garden** means any part of a thoroughfare planted, developed or treated, other 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 Mount Magnet;

**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*;

**nuisance** means—

- (a) anything, condition, circumstance or state of affairs which is injurious or dangerous to the health of a reasonable person, or which has a disturbing effect on the state of reasonable physical, mental or social wellbeing of a person; or
- (b) anything a person does or permits or causes to be done which interferes with or is likely to interfere with the enjoyment or safe use by another person of any public place;

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

**permissible verge treatment** means any one of the 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—

- (a) a street, way or place which the public are allowed to use, whether the street, way or place is or is not on private property;
- (b) parklands, squares, reserves and other lands set apart for the use and enjoyment of the public; and
- (c) all lands vested in or under the care, control or management of the Shire of Mount Magnet;

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

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

**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 or control of the local government;

**tree** means a woody perennial plant generally having a single stem or trunk which will grow to a height of approximately 2m or higher;

**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, shopping trolley or a similar device;

**vehicle crossing** means a defined area for vehicles to cross;

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

**water course** means where there is a defined area that water flows; and

**written law** has the same meaning given to it by section 5 of the *Interpretation Act 1984* and includes this local law.

### 1.3 Application

This local law applies throughout the district.

### 1.4 Repeal

The *Shire of Mount Magnet Activities in Thoroughfares and Public Place and Trading Local Law 2002* published in the *Government Gazette* on 24 September 2003 is repealed.

### 1.5 Commencement

This local law commences 14 days after the date on which it is published in the *Government Gazette*.



**PART 2—ACTIVITIES IN THOROUGHFARES AND PUBLIC PLACES***Division 1—General***2.1 General prohibitions**

- (1) A person shall not—
- (a) plant any plant (except grasses or similar plant) within 6m of an intersection;
  - (b) remove or damage a lawn, garden, plant or part of a plant that is not a tree from or on a thoroughfare unless—
    - (i) the person is the owner or occupier of the lot abutting that portion of the thoroughfare;
    - (ii) the lawn garden or plant was installed by that person or an earlier owner or occupier of the lot; and
    - (iii) the removal or damage to the lawn, garden or plant is done pursuant to Division 3 of this Part in order to install a permissible verge treatment;
  - (c) plant any plant (except grass or a similar plant) on a thoroughfare so that it is within 1.2m of a carriageway where there is no footpath;
  - (d) take, injure or kill any fauna that is on or above any thoroughfare;
  - (e) place, or allow to be placed or remain, on a thoroughfare anything (except water) that—
    - (i) obstructs the thoroughfare; or
    - (ii) results in a hazard for any person using the thoroughfare;
  - (f) 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;
  - (g) 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;
  - (h) within a mall, arcade or veranda of a shopping centre, ride any bicycle, skateboard, rollerblades or similar device;
  - (i) on a public place use anything or do anything so as to create a nuisance; or
  - (j) throw, place or drain offensive, noxious or dangerous fluid onto a thoroughfare.
- (2) Clause 2.1(1) does not apply to an activity being undertaken by a person who—
- (a) is an employee or contractor of the local government and is authorised or engaged to undertake that activity; or
  - (b) is otherwise lawfully authorised to undertake that activity.

**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 anything 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) deposit or discharge any material including dust, sand, wastewater, waste, mud, concrete, paint, oil or chemicals (but excluding water) in or on a thoroughfare whether by hand, vehicle or otherwise;
  - (f) damage a thoroughfare;
  - (g) light any fire or burn anything on a thoroughfare other than in a stove or fireplace provided for that purpose or under a permit issued under clause 5.12;
  - (h) fell any tree onto a thoroughfare;
  - (i) remove or damage a tree or part of a tree on a thoroughfare, irrespective of whether the tree was planted by the owner or occupier of the lot abutting that portion of the thoroughfare;
  - (j) unless installing a permissible verge treatment—
    - (i) lay pipes under or provide taps on any verge; or
    - (ii) place or install anything 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;
  - (k) 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;
  - (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 an unopened 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 person named on the building permit issued under the *Building Act 2011*, if one has been issued in relation to the works; or
  - (b) the registered proprietor of the lot, if no building permit has been issued under the *Building Act 2011* 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 Interpretation

In this Division, unless the context otherwise requires—

**acceptable material** means any material which will create a hard surface, and which appears in the Schedule.

### 2.7 Application

This Division does not apply to areas zoned ‘rural’ or ‘special rural’ under the planning scheme.

##### Subdivision 2—Permissible verge treatments

### 2.8 Permissible verge treatments

- (1) An owner or occupier of land which abuts a verge may on that part of the verge directly in front of her or his land install—
- (a) a permissible verge treatment; or
  - (b) irrigation pursuant to clause 2.10(f).
- (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;
    - (ii) where there is no footpath, a pedestrian has safe and clear access of a minimum width of 1.2m along that part of the verge immediately adjacent to the kerb;

- (iii) it does not include a wall or built structure;
  - (iv) it is not of a thorny, poisonous or hazardous nature; and
  - (v) no plant (except grasses or similar plant) is within 10m of an intersection or within 1.2m of a carriageway where there is no footpath;
- (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, except under the authority of a permit.

(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 or who installs or maintains a verge treatment under the authority of a permit 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) ensure that the verge treatment does not cause a sight distance obstruction to any person using a path on the verge or carriageway or crossing adjoining the verge or in proximity to it;
- (c) not place any obstruction on or around the verge treatment;
- (d) not disturb a footpath on the verge;
- (e) ensure that the verge treatment does not damage or obstruct a drain, manhole, gully, pit, pipe, channel, kerb, public utility service or tree planted by the local government; and
- (f) ensure that any sprinklers or pipes installed to irrigate a verge treatment—
  - (i) do not protrude above the level of lawn when not in use;
  - (ii) are not used at such times as to cause unreasonable inconvenience to pedestrians or other persons; and
  - (iii) do not otherwise present a hazard to pedestrians or other persons.

### 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 Interpretation**

In this Division, unless the context requires otherwise—

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

## Subdivision 2—Assignment and marking of numbers

**2.15 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**

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) The 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) In this clause—

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

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

- (a) it 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.

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

In this Part, unless the context otherwise requires—

**advertising sign** means a sign used for the purpose of advertisement or to draw attention to a product, business, person or event and includes a home open sign, display home sign, a garage sale sign and 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;

**display home sign** means a portable free standing sign used to direct people to a display home that is open for inspection by the public;

**garage sale sign** means a portable free standing sign used to direct persons to a garage sale at a residential premises;

**home open sign** means a portable free standing sign used to direct persons to a home for sale that is open for inspection by the public;

**portable direction sign** means a portable free standing directional 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, erect, place or maintain an advertising sign or portable direction sign—

- (a) on or above a thoroughfare;
- (b) on a footpath;
- (c) over any footpath where the resulting vertical clearance between the sign and the path is less than 2.5m;
- (d) on or within 1m of a carriageway;
- (e) on any roundabout or centre median strip of a thoroughfare;
- (f) 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 any danger to persons using the thoroughfare; or
- (g) on any natural feature, including a rock or tree, on a thoroughfare, or on any bridge or the structural approaches to a bridge.

(2) Notwithstanding subclause (1) a permit is not required in respect of a portable direction sign, provided that—

- (a) the sign neither exceeds 500mm in height nor 0.5m<sup>2</sup> in area;
- (b) the sign is placed or erected on a thoroughfare no more than 24 hours prior to the garage sale or home open and is removed within half an hour of the close of the garage sale or home open;
- (c) there is no more than one home open sign or garage sale sign at any road intersection and no more than six separate signs which delineate no more than 2 alternative routes to the home open or garage sale; and
- (d) in the case of a display home sign, the sign is placed or erected on the thoroughfare which forms the primary street frontage of the display home at a distance not greater than 100m from the display home.

**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) whether or not the sign will create a hazard to persons using a thoroughfare;
- (d) the amount of the public liability insurance cover, if any, to be obtained by the applicant; and
- (e) any other matters it considers relevant.

**3.4 Exemptions**

(1) The local government may exempt the holder of a valid stall holder's permit, trader's permit, facility permit, or any other event authorisation issued by the local government, from all or part of the prohibitions in clause 3.2 in relation to an advertisement that directly relates to the goods or services which are the subject of the permit or authorisation.

(2) Signs erected by the local government or an authority empowered to do so under a written law are exempted from the requirement to obtain a permit.

**3.5 Impounding of advertising signs**

Any sign which contravenes clause 3.2 may be removed, impounded, or disposed of in accordance with Subdivision 4 of Division 3 of Part 3 of the Act and regulation 29 of the Regulations.

*Division 3—Conditions on a permit***3.6 Conditions on portable sign**

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

- (a) the portable sign shall—
  - (i) not exceed 1m in height;
  - (ii) not exceed an area of 1m<sup>2</sup> on any side;
  - (iii) relate only to the business activity described on the permit;
  - (iv) not be erected in any position other than immediately adjacent to the building or business to which the sign relates;
  - (v) be removed each day at the close of the business to which it relates and not be erected again until the business next opens for trading;
  - (vi) be secured in position in accordance with any requirements of the local government;
  - (vii) be placed so as not to obstruct or impede the reasonable use of a thoroughfare or access to a place by any person;
  - (viii) be placed so as not to obstruct or impede the vision of a driver of a vehicle entering or leaving a thoroughfare or crossing; 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.

### 3.7 Condition on election sign

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

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

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

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

(4) Subclause (1) does not apply to a person with a disability where the animal is a guide dog or assistance animal as defined in the *Disability Discrimination Act 1992 (Cth)*.

#### 4.2 Prohibitions relating to animals

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

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

(2) An owner of an animal shall not—

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

#### 4.3 Fouling of public places in built-up areas

Any person liable for the control of a horse, who permits the horse to excrete in any public place or on any land within the district without the consent of the occupier commits an offence unless the excreta is removed as soon as is practicably possible within the same day and disposed of either on private land with the consent of the occupier or in such other manner as the local government may approve.

#### 4.4 Removal of vehicle or animal

Any animal or vehicle left in contravention of Clause 4.1 may be removed, impounded or disposed of in accordance with Subdivision 4 of Division 3 of Part 3 of the Act and regulation 29 of the Regulations.

### *Division 2—Shopping trolleys*

#### 4.5 Interpretation

In this Division—

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

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



#### 4.6 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.

#### 4.7 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.

#### 4.8 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.

#### 4.9 Impounding of abandoned trolley

Any shopping trolley that is—

- (a) left on a thoroughfare or public place that is not marked in accordance with clause 4.6; or
- (b) not removed by a retailer after having been so advised under clause 4.8(1), may be removed, impounded or disposed of in accordance with Subdivision 4 of Division 3 of Part 3 of the Act and regulation 29 of the Regulations.

### PART 5—ROADSIDE CONSERVATION

#### *Division 1—Preliminary*

##### 5.1 Interpretation

In this Part—

**MRWA** means Main Roads Western Australia;

**protected flora** has the meaning given to it in section 6(1) of the *Biodiversity Conservation Act 2016*;

**rare flora** has the meaning given to it in section 23F of the *Biodiversity Conservation Act 2016*;

**Roadside Conservation Committee** means the Roadside Conservation Committee reporting to the Minister for Environment and chaired by a Department of Parks and Wildlife nominee; and

**special environmental area** means an area designated as such under clause 5.6.

#### *Division 2—Flora roads*

##### 5.2 Application

This Part does not apply to townsites.

##### 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 Maintenance Works prepared by the Roadside Conservation Committee and MRWA.

##### 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 5.8, 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 or maintain in a cleared state, the surface of a thoroughfare within 1m of that person's land without first obtaining a permit and any other approvals which may be required under any written law.

**5.12 Application for permit**

In addition to the requirements of clause 7.1(2), a person making an application for a permit for the purpose of clause 5.10 shall submit a sketch plan clearly showing the boundary of the person's land and the portions of the thoroughfare joining that person's land which are to be cleared.

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

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

**5.14 Application for permit**

In addition to the requirements of clause 7.1(2), an application for a permit for the purposes of clause 5.12 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 5.12 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.

*Division 7—Firebreaks***5.16 Permit for firebreaks on thoroughfares**

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

**5.17 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 5.16 where the thoroughfare is less than 20m wide.

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



*Division 8—Commercial wildflower harvesting on thoroughfares***5.18 General prohibition on commercial wildflower harvesting**

Subject to clause 5.18, a person shall not commercially harvest native flora on a thoroughfare.

**5.19 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 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 term survival of the native flora on the thoroughfare; and
  - (b) any licence or approval which may be required under any other written law is to be obtained by the applicant.

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

## Subdivision 1—Preliminary

**6.1 Interpretation**

In this Division, unless the context otherwise requires—

**public place** includes—

- (a) a street, way or place which the public are allowed to use, whether the street, way or place is or is not on private property;
- (b) parklands, squares, reserves and other lands set apart for the use and enjoyment of the public; and
- (c) all lands vested in or under the care, control or management of the Shire of Mount Magnet;
- (d) but does not include premises on private property from which trading is lawfully conducted under a written law;

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

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

**stallholder's permit** means a permit issued to a stallholder;

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

**trader's permit** means a permit issued to a trader; and

**trading** includes—

- (a) the selling or hiring of, the offering for sale or hire of or the soliciting of orders for goods or services in a public place;
- (b) displaying goods in any public place for the purpose of—
  - (i) offering them for sale or hire;
  - (ii) inviting offers for their sale or hire;
  - (iii) soliciting orders for them; or
  - (iv) carrying out any other transaction in relation to them; and
- (c) the going from place to place, whether or not public places, and—
  - (i) offering goods or services for sale or hire;
  - (ii) inviting offers or soliciting orders for the sale or the hire of goods or services; or
  - (iii) carrying out any other transaction in relation to goods or services;
 but does not include—
- (d) the setting up of a stall or the conducting of a business at a stall under the authority of a stallholder's permit;
- (e) the selling or the offering for sale of goods and services to, or the soliciting of orders for goods and services from a person who sells those goods or services;
- (f) the selling or the offering for sale or hire by a person of goods of her or his own manufacture or services which he or she provides; and
- (g) the selling or hiring or the offering for sale or hire of—
  - (i) goods by a person who represents a manufacturer of the goods; or
  - (ii) services by a person who represents a provider of the services, which are sold directly to consumers and not through a shop.

## Subdivision 2—Permits

**6.2 Stallholder's permit**

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

**6.3 Trader's permit**

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

**6.4 No permit required to sell newspaper**

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

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

- (1) In determining an application for a permit for the purposes of this Division, the local government is to have regard to—
  - (a) any relevant policies of the local government;
  - (b) the desirability of the proposed activity;
  - (c) the location of the proposed activity; and
  - (d) 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—
    - (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;
  - (c) that the needs of the district, or the part for which the permit is sought, are adequately catered for by established shops or by persons who have valid permits to carry on trading or to conduct a stall; or
  - (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;
  - (n) the designation of any place or places where trading is wholly or from time to time prohibited by the local government; and
  - (o) any other conditions as the local government may apply.
- (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.
- (4) Notwithstanding any other provisions of this local law, a requirement to obtain a permit under this local law does not apply to—
- (a) a special event or trading authorised by the local government under another written law or agreement; or
  - (b) a person trading in a street market authorised by the local government.

#### 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 *National Measurement Act 1960 (Cth)*.
- (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 Interpretation

In this Division, unless the context otherwise requires—

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

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

**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; and

(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, and the permit holder must comply with this direction.

### 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 authorised person, the performance otherwise constitutes a nuisance.

### 6.14 Obligations of permit holder

A permit holder shall not in a public place—

- (a) act in an offensive manner or create a nuisance; or
- (b) 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 Interpretation

In this Division—

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

**permit holder** means the person to whom a permit has been issued for the purpose of clause 6.16; 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 a food business which abut on the facility, and whether the applicant is the person conducting such food business;

- (b) any abutting food business premises is registered in accordance with the *Food Act 2008* and whether the use of the business premises is permitted under the local planning scheme;
- (c) the facility will comply with any other local law made by the local government;
- (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) comply with the terms and conditions of the permit to establish and conduct the facility;
  - (b) ensure that the facility is conducted at all times in accordance with the provisions of this local law and any other local law made by the local government;
  - (c) ensure that the eating area is kept in a clean and tidy condition at all times;
  - (d) maintain the chairs, tables and other structures in the eating area in a good, clean and serviceable condition at all times; 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, impounded or disposed of in accordance with Subdivision 4 of Division 3 of Part 3 of the Act and regulation 29 of the Regulations.

#### **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 authorised 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;
- (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; and
- (j) any other matters it considers relevant.

### **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 by written notice and the variation will be effective from the point the written notice is issued to the permit holder, 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.



**7.8 Transfer of permit**

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

**7.9 Production of permit**

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

**7.10 Cancellation of permit**

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

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

When the local government makes a decision—

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

the provisions of Division 1 of Part 9 of the Act and 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 anything is placed on under, over or in 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 anything, and that 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.

##### 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 10.4)

Clause	Description	Modified Penalty \$
2.1(a)	Plant—any plant in height on thoroughfare within 6m of an intersection	200
2.1(b)	Remove or damage lawn, garden or plant	300
2.1(c)	Plant (except grass) on thoroughfare within 1.2m of carriageway	100
2.1(d)	Take, injure or kill fauna	300
2.1(e)	Place anything on a thoroughfare	200
2.1(f)	Damaging or interfering with signpost or structure on thoroughfare	300
2.1(g)	Play sport so as to cause danger	200
2.1(h)	Riding of skateboard or similar device on mall or veranda of shopping centre	200
2.1(i)	Create a nuisance on a thoroughfare	250
2.1(j)	Placing or draining offensive fluid on thoroughfare	300
2.2(1)(a)	Digging a trench through a kerb or footpath without a permit	300
2.2(1)(b)	Deposit or place anything on a verge without a permit	250



<b>Clause</b>	<b>Description</b>	<b>Modified Penalty \$</b>
2.2(1)(c)	Causing obstruction to vehicle or person on thoroughfare without a permit	250
2.2(1)(d)	Causing obstruction to water channel on thoroughfare without a permit	300
2.2(1)(e)	Allow material to be blown, conveyed, deposited etc	300
2.2(1)(f)	Damage a thoroughfare without a permit	300
2.2(1)(g)	Lighting a fire on a thoroughfare without a permit	400
2.2(1)(h)	Felling tree onto thoroughfare without a permit	300
2.2(1)(i)	Remove or damage tree or part of tree without a permit	300
2.2(1)(j)	Installing pipes or stone on thoroughfare without a permit	300
2.2(1)(k)	Installing a hoist or other thing on a structure or land for use over a thoroughfare without a permit	300
2.2(1)(l)	Placing a bulk rubbish container on a thoroughfare without a permit	250
2.2(1)(m)	Interfering with anything on a thoroughfare without a permit	300
2.3(1)	Consumption or possession of liquor on thoroughfare	200
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	Installation of verge treatment other than permissible verge treatment	300
2.10	Failure to comply with obligations regarding verge treatment	250
2.11	Failure to comply with notice to rectify fault	100
2.17(2)	Failure to comply with sign on public place	200
2.19	Driving or taking a vehicle on a closed thoroughfare	300
3.2 (1)	Placing advertising sign or affixing any advertisement on a thoroughfare without a permit	300
4.1	Animal or vehicle obstructing a public place or local government property	200
4.2(2)(a)	Animal on thoroughfare when not led, ridden or driven	200
4.2(2)(b)	Animal on public place with infectious disease	200
4.2(2)(c)	Training or racing animal on thoroughfare	200
4.3	Fouling of public places in built-up area	100
4.7	Person leaving shopping trolley in public place other than trolley bay	200
4.8(2)	Failure to remove shopping trolley upon being advised of location	200
5.6	Driving a vehicle on other than the carriageway of a flora road	200
5.9	Planting in thoroughfare without a permit	200
5.11	Failure to obtain permit to clear a thoroughfare	500
5.13	Burning of thoroughfare without a permit	500
5.16	Construction of firebreak on thoroughfare without a permit	500
5.18	Commercial harvesting of native flora on thoroughfare	500
5.19(1)	Collecting seed from native flora on thoroughfare without a permit	300
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	200
6.8(1)(b)	Stallholder or trader not displaying valid permit	200
6.8(1)(c)	Stallholder or trader not carrying certified scales when selling goods by weight	200
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6.11(2)	Failure of performer to move onto another area when directed	200
6.14	Failure of performer to comply with obligations	200
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	200
6.20(1)	Use of equipment of outdoor eating facility without purchase of food or drink from facility	80
6.20(2)	Failure to leave outdoor eating facility when requested to do so by permit holder	80
6.21(1)	Failure of permit holder to temporarily remove facility	150

Clause	Description	Modified Penalty \$
7.5	Failure to comply with a condition of a permit	200
7.9	Failure to produce permit on request of authorised person	200
10.1	Failure to comply with notice given under local law	300
	Any other offence not listed	150

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**SCHEDULE 2—ACCEPTABLE MATERIALS**

[Clause 2.8(2)(c)]

1. Pavers, asphalt or concrete professionally laid, non-slip with no trip points and bedded flush with surrounding infrastructure.
2. Materials that can be, and are, water bound and compacted.
3. Compacted crushed limestone, gravel or crushed aggregate with no individual stone greater than 20mm in diameter.

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

Cr JORGEN JENSEN, Shire President.  
Mr KELVIN MATTHEWS, Chief Executive Officer.

Dated: 27 June 2018.

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## LOCAL GOVERNMENT ACT 1995

## SHIRE OF MOUNT MAGNET

## ANIMALS, ENVIRONMENT AND NUISANCE LOCAL LAW 2018

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Mount Magnet resolved on 27 June 2018 to make the following local law.

## PART 1—PRELIMINARY

**1.1 Citation**

This local law may be cited as the *Shire of Mount Magnet Animals, Environment and Nuisance Local Law 2018*.

**1.2 Commencement**

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

**1.3 Application**

This local law applies throughout the district.

**1.4 Interpretation**

(1) In this local law, unless the context specifies otherwise—

**Act** means the *Local Government Act 1995*, or other subsidiary legislation where identified such as *the Public Health Act 2016*, *the Health (Miscellaneous Provisions) Act 1911*, *the Health Services Act 2016*, *the Dog Act 1976* and *the Cat Act 2011* where cited;

**affiliated person** means a person who is a member of a poultry or pigeon association incorporated under the *Associations Incorporation Act 2015*;

**amusement** means anything usually conducted for amusement at a fair, a carnival or a show, whether conducted at a fair, a carnival or a show or elsewhere;

**approval** means approved by the local government authority;

**approved animal** means any farm animal which is the subject of a permit;

**AS or AS/NZS** means an Australian Standard or Australian/New Zealand Standard published by Standards Australia as amended from time to time that is available at [www.standards.org.au](http://www.standards.org.au) for a prescribed fee. A free copy is available for viewing at the Shire of Mount Magnet library and should be used as the contextual reference;

**association** includes a society, club, institution or body;

**authorised person** means a person appointed by the local government, under section 9.10 of the Act to perform all or any of the functions conferred on an authorised person under this local law;

**aviary bird** means any bird, other than poultry or pigeons, kept, or usually kept in an aviary or cage;

**bee hives** has the meaning given to it in the *Biosecurity and Agriculture Management (Identification and Movement of Stock and Apiaries) Regulations 2013*;

**birds** includes all poultry;

**builder** means the holder of a building permit issued in respect of building works on a building site or a person in control of a building site;

**Building Code** means the latest edition of the Building Code of Australia published by, or on behalf of, the Australian Building Codes Board, as amended from time to time, but not including explanatory information published with the Building Code;

**building permit** has the meaning given to it by the *Building Act 2011*;

**building site** means any lot for which a building permit is current;

**Class 6 building** means any Class 6 building as defined by the Building Code;

**Class 9 building** means any Class 9 building as defined by the Building Code;

**Code of Practice** means the Code of Practice for Pigeon Keeping and Racing in Western Australia as prescribed by the *Animal Welfare (General) Regulations 2003* and amended from time to time;

**cow** includes an ox, steer, calf or bull;

**development** has the meaning given to it in the *Planning and Development Act 2005*;

**development approval** means a development approval under a local planning scheme;

**development site** includes any lot or lots for which there is currently a development or subdivision approval, and any lot or lots upon which construction work, earthworks, clearing of scrub, trees or overgrowth or any other site works are taking or have taken place;

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

**disused** means, in relation to anything whatsoever, that the thing—

- (a) is not in use for the purpose for which it was designed or appears to have been designed or intended; or
- (b) has been stored or left stationary on land in the district for more than 1 month;

**dust** means any visible granular or particulate material which has or has the potential to become airborne and includes organic and non-organic matter and sand, but does not include smoke;

**EHO** means an Environmental Health Officer appointed by the local government under the Act and includes any acting or Assistant Environmental Health Officer;

**equipment** means equipment, machinery or vehicles used for, or in connection with, the development of land;

**farm animal** includes sheep, cattle, goat, horse (excluding a miniature horse), deer, alpaca, pig (excluding a miniature pig) or any other animal so classified by the local government and where applicable to the district;

**food premises** means any premises used to conduct a “food business” as defined by the *Food Act 2008*;

**horse** means a stallion, mare, gelding, shetland pony, pony, colt or foal, and includes an ass, mule, donkey and any beast of whatever description used for burden or draught or for carrying persons;

**land** includes any building or structure on the land;

**liquid waste** means waste from any process or activity that is in liquid form and includes paint, fuel, grease, fat, oil, degreaser solvent, detergent, chemical, animal waste, food waste, effluent and all discharges of liquid to land, air or water that are not otherwise authorised by a written law but does not include uncontaminated stormwater;

**livestock** means any horse, cow, sheep, goat, swine, buffalo, deer, camel, llama or alpaca;

**livestock vehicle** means a vehicle that contains livestock or previously has been used for the carriage of livestock;

**local government** means the Shire of Mount Magnet;

**local planning scheme** has the meaning given to it under the *WA Planning and Development Act 2005*;

**lot** has the meaning given to it by the *WA Planning and Development Act 2005*;

**manure receptacle** means a receptacle of sufficient capacity to receive all manure produced in one week on premises upon which a farm animal or farm animals are kept, constructed of smooth, durable, impervious materials, fitted with a fly proof, hinged cover and with no part of the floor lower than the adjoining ground;

**miniature horse** means a horse which meets the standard and height for a miniature horse as described by the Miniature Horse Association of Australia;

**miniature pig** means a pig that does not exceed 650 millimetres in height as an adult and weighs less than 55 kilograms;

**nuisance** means—

- (a) an activity or condition which is harmful or annoying and which gives rise to legal liability in the tort of public or private nuisance at law;
- (b) an unreasonable interference with the use and enjoyment of a person of his or her ownership or occupation of land; or
- (c) interference which causes material damage to land or other property on the land affected by the interference;

**occupier** means any person who is in control of any land or part of any land or authorised by the owner, lessee, licensee or any other person empowered to exercise control in relation to land to perform any work in relation to any land and includes a builder or contractor;

**owner** has the meaning defined under section 1.4 of the Act;

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

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

**pigeon** includes homing pigeons and other domesticated breeds of the species *Columba livia*, but does not include native pigeons or doves whether or not the keeping of such birds is subject to the approval of the WA Department of Water and Environmental Regulation and/or the Department of Biodiversity, Conservation and Attractions;



**poultry** includes fowls, roosters, ducks, peafowls, turkeys, geese, guinea fowls, pheasants and other birds commonly kept for the production of eggs or meat for domestic consumption;

**refuse** means any waste material including bricks, lime, cement, concrete, rubble, stones, iron, timber, tiles, bags, plastics, ashes, vegetation, timber, wood or metal shavings, sawdust, and waste food, and includes any broken, used, derelict or discarded matter;

**Regulations** means the *Local Government (Functions and General) Regulations, the Cat Regulations 2012 and Cat (Uniform Local Provisions) Regulations 2013, and the Biosecurity and Agriculture Management (Identification and Movement of Stock and Apiaries) Regulations 2013*;

**residential building** has the meaning given to it in the Residential Design Codes of Western Australia as amended;

**residential zone** includes any area zoned “Residential” and “Urban Development” under a local planning scheme;

**rural zone** means any area zoned “Rural” or “Rural Residential” under a local planning scheme;

**sand** means granules or particles of rock, earth, clay, loam, silt and any other granular, particulate or like material including dust and gravel;

**sea container** means a shipping container ranging from large reusable steel boxes used for intermodal shipments to the ubiquitous corrugated boxes in dimensions of 2.43m wide and 2.59m high that usually come in two lengths; 6.06m and 12.2m;

**stormwater** means any naturally occurring water that results from rainfall on or around a site, or water flowing onto the site;

**street** means any highway or thoroughfare which the public is entitled to use, including the verge and other things including bridges and culverts appurtenant to it;

**subdivision approval** means a subdivision approval under the *Planning and Development Act 2005*;

**townsite** means the designated townsite area of Mount Magnet which is—

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

**truck** means a motor vehicle having a tare weight in excess of 3,000 kilograms;

**unreasonable noise** has the meaning given to it by the *Environmental Protection Act 1986*; and

**vermin** includes rats, mice, flies, fleas, mites, lice, cockroaches and any other animal, whether vertebrate or invertebrate, which is known to be a vector of disease or likely to cause damage to human food, habitation or possessions.

(2) Any other expression used in this local law and not defined herein shall have the meaning given to it in the Act.

(3) Where, in this local law, a duty, obligation or liability is imposed on an “owner or occupier” the duty shall be deemed to be imposed jointly and severally on each owner and occupier.

(4) Where, under this local law, the local government is authorised to carry out actions, or cause to be undertaken works, as a consequence of the failure of any person to comply with the terms of a notice or other conduct, the right to enter land is at all times subject to the provisions of Part 3, Division 3, subdivision 3 of the Act.

## PART 2—KEEPING OF ANIMALS

### *Division 1—Animals*

#### 2.1 Interpretation

In this Division, unless the context otherwise requires—

**animal** includes cats, dogs, rabbits, ferrets and livestock as prescribed in clause 1.4(1) above or the like; and

**manure bin** means a receptacle constructed of smooth, impervious material and in such a manner as to be easily cleaned, which has a tight fitting lid or cover to prevent the release of odours and prevent the entry of flies;

#### 2.2 Cleanliness

An owner or occupier of premises in or on which a dog, cat or other animal is kept shall—

- (a) keep the premises free from excrement, filth, food waste and all other matter;
- (b) when so directed by an EHO, clean and disinfect the premises; and
- (c) keep the premises, so far as possible, free from flies or other vermin, by spraying with a residual insecticide or other effective means.

#### 2.3 Animal enclosures

(1) A person shall not keep or cause, or permit to be kept, any animals on premises which are not effectively drained or of which the drainage flows to the walls or foundations of any building.

(2) The owner or occupier of premises where animals are kept shall, when directed by an EHO, pave, grade and drain the floors of all structures and the surface of the ground of all enclosures used for the keeping of animals.

*Division 2—Keeping of birds***2.4 Keeping of poultry and pigeons in a residential zone**

(1) An owner or occupier of premises in a residential zone shall not keep or permit to be kept on the premises any poultry or pigeons—

- (a) unless approved by the local government in accordance with clause 2.6; and
- (b) otherwise than in accordance with subclause (2).

(2) An owner or occupier of premises in a residential zone shall not keep or permit to be kept on the premises—

- (a) more than 12 poultry; and
- (b) more than 12 pigeons unless the owner or occupier is an affiliated person in which case the maximum number of pigeons may be increased to 100.

**2.5 Application for approval to keep poultry and pigeons in a residential zone**

(1) Subject to compliance with subclause 2.5(2), the local government may approve the keeping of poultry or pigeons in accordance with this local law by an owner or occupier of premises within a residential zone subject to the following—

- (a) the owner or occupier submitting an application to the local government, which application shall—
  - (i) specify the number of poultry or pigeons proposed to be kept; and
  - (ii) include a site plan showing lot size, location of enclosure, distance from boundaries and buildings and proximity to houses on adjoining land.

(2) The local government may, at its discretion, conduct public consultation with all owners/occupiers whose property abuts the applicant's property prior to the application being determined.

(3) The local government may approve, with or without conditions, or refuse to approve an application received under this clause.

(4) Where an approval for the keeping of poultry or pigeons is issued subject to conditions, the holder of the approval shall comply or cause compliance with those conditions.

**2.6 Conditions for keeping of poultry**

A person who keeps poultry or permits poultry to be kept shall ensure that—

- (a) no poultry shall be kept less than 6 metres from any residential building;
- (b) no poultry is able to approach within 10 metres of a public street, public building, commercial premises or food premises;
- (c) all poultry is kept in a properly constructed and securely fastened structure;
- (d) the structure has an impervious floor laid with a fall to the front of at least 1 in 50;
- (e) all structures or enclosures within which poultry are kept are maintained at all times in a clean condition; and
- (f) all poultry is kept continually confined.

**2.7 Roosters, geese, turkeys and peafowl**

Except on land in a rural or rural residential zone, or with the prior written permission of the local government, an owner or occupier of premises shall not keep any of the following—

- (a) roosters;
- (b) geese;
- (c) turkeys; or
- (d) peafowls.

**2.8 Conditions for keeping of pigeons**

(1) A person who keeps pigeons, or permits pigeons to be kept, shall ensure that—

- (a) all pigeons are kept in a properly constructed pigeon loft, except where registered homing pigeons are freed for exercise;
- (b) all structures or enclosures within which pigeons are kept are maintained at all times in a clean condition;
- (c) no opening to a pigeon loft, including openings for ventilation, is within 9 metres of any residential building; and
- (d) no opening to a pigeon loft, including openings for ventilation, is within 15 metres of a public street, public building, commercial premises or food premises.

(2) An affiliated person who keeps pigeons, or permits pigeons to be kept, shall do so in accordance with the Code of Practice—Pigeon Keeping, subject to the provisions of this local law.

**2.9 Termination of approval to keep poultry or pigeons**

If an owner or occupier of premises to whom an approval to keep poultry or pigeons has been granted by the local government pursuant to subclause 2.6(3)—

- (a) breaches a condition of the approval;
- (b) breaches clause 2.7 or clause 2.9 of this local law; or
- (c) fails to comply with a written notice served by the local government in relation to the keeping of poultry or pigeons,

then the local government may cancel its approval upon written notice of such cancellation being given to the owner or occupier within 60 days of the breach or failure to comply as the case may be.

**2.10 Restrictions on pigeon nesting and perching**

The local government may order an owner or occupier of a house on or in which pigeons are, or are in the habit of nesting or perching, to take adequate steps to prevent them from continuing to do so.

**2.11 Conditions of keeping aviary birds**

A person who keeps, or permits to be kept, aviary birds shall ensure that—

- (a) the aviary or cage in which the birds are kept is located at least 1 metre from any lot boundary and at least 5 metres from a residential building on any other lot;
- (b) there is a floor beneath the roofed area of the aviary or cage which is constructed of smooth, impervious material with a gradient of at least 1 in 50 to the front of the aviary or cage;
- (c) the aviary or cage is kept in clean condition and good repair at all times;
- (d) all feed for the birds other than that intended for immediate consumption is stored in vermin proof containers; and
- (e) effective measures are taken to prevent the attraction or harbourage of vermin.

**2.12 Nuisance caused by birds**

An owner or occupier of land shall not keep any bird or birds which—

- (a) are or create a nuisance; or
- (b) emit an unreasonable noise.

*Division 3—Keeping of bees***2.13 Permit required to keep bees**

(1) Subject to the provisions of this clause, a person shall not keep bees or allow bees to be kept on land except in accordance with a valid permit issued in relation to the land.

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

- (a) the land is outside the townsite; and
- (b) the bees are kept—
  - (i) at least 500 metres from a thoroughfare; or
  - (ii) less than 500 metres from a thoroughfare but the vegetation or a screen or other barrier on the land is such as to encourage the bees to fly at a height over the thoroughfare as will not create a nuisance to users of the thoroughfare.

(3) Subclause (1) does not apply where an occupier of land keeps bees on the land—

- (a) for a continuous period not exceeding 8 weeks; and
- (b) for the purpose of pollinating a crop on the land.

(4) An occupier referred to in subclause (3), in keeping bees under that subclause, shall provide a good and sufficient water supply on the land which is readily accessible by the bees.

(5) Subclause (1) does not apply where a person keeps bees on Crown land.

**2.14 Application for a permit**

An applicant for a permit to keep bees shall—

- (a) be a person registered as a beekeeper under the *Biosecurity and Agriculture Management (Identification and Movement of Stock and Apiaries) Regulations 2013*;
- (b) provide such details as may be required by the local government;
- (c) apply in the form approved by the local government; and
- (d) pay any application fee imposed and determined by the local government under sections 6.16 to 6.19 of the Act.

**2.15 Determination of application**

(1) The local government may—

- (a) refuse to determine an application for a permit which does not comply with clause 2.15;
- (b) approve an application for a permit subject to the conditions referred to in clause 2.15 and to such other conditions as it considers appropriate; or
- (c) refuse to approve an application for a permit.

(2) Where an application for a permit is approved subject to conditions, the permit holder is to comply with those conditions or is to cause those conditions to be complied with.

(3) Where the local government approves an application under subclause (1)(b), it is to issue to the applicant a permit in the form approved by the local government.

(4) A permit is valid from the date of issue unless, and until, it is cancelled under this local law.

**2.16 Conditions of approval**

(1) Without limiting the generality of paragraph 2.16(1)(b) an application for a permit may be approved by the local government subject to the following conditions—

- (a) the provision of a good and sufficient water supply on the land which is readily accessible by the bees on the land;

- (b) each bee hive shall be—
  - (i) kept at a distance specified by the local government from any thoroughfare, public place or boundary of the land; or
  - (ii) located near a screen or other barrier so as to prevent the bees flying low over a thoroughfare, public place or adjoining land;
  - (iii) no more than 2 bee hives are to be kept on land of less than 2,000 square metres in area; and
  - (iv) no more than 15 bee hives are to be kept on land between 2,000 square metres and 20,000 square metres in area.

(2) In respect of a particular application for a permit, the local government may vary any of the conditions referred to in subclause (1).

### **2.17 Variation or cancellation of permit and conditions**

- (1) The local government may vary the conditions of a permit after it has been issued.
- (2) The local government may cancel a permit on the request of a permit holder to do so.
- (3) Notwithstanding clause 2.22, a permit shall be cancelled on—
  - (a) the permit holder ceasing to be registered as a beekeeper under *the Biosecurity and Agriculture Management (Identification and Movement of Stock and Apiaries) Regulations 2013*; or
  - (b) the expiration of a continuous period of 12 months during which the permit holder has not kept any bees on the land to which the permit relates, without any action required on the part of the local government.

### **2.18 Permit holder to notify cessation of registration or keeping of bees**

- (1) In this clause a **permit holder** includes the holder of a permit cancelled by subclause 2.18(3).
- (2) A permit holder is to notify the local government in writing as soon as practicable after—
  - (a) the permit holder ceases to be registered as a beekeeper under the *Biosecurity and Agriculture Management (Identification and Movement of Stock and Apiaries) Regulations 2013*; or
  - (b) a continuous period of 12 months has passed during which the permit holder has not kept any bees on the land described in her or his permit.
- (3) A permit holder shall, within 7 days of the local government giving the permit holder a written notice to do so, provide to the local government—
  - (a) written proof of her or his registration as a beekeeper under the *Biosecurity and Agriculture Management (Identification and Movement of Stock and Apiaries) Regulations 2013*;
  - (b) in respect of land identified by the local government in its notice, a signed statement as to whether or not he or she has kept bees on the land within the 12 months preceding the date of the notice; or
  - (c) both.

### **2.19 Permit not transferable**

A permit is personal to the permit holder and applies only to the land described in the permit.

### **2.20 Nuisance**

A person shall not keep, or allow to be kept, bees or beehives, or both, on land so as to create a nuisance.

### **2.21 Notice to remove bees**

- (1) Whenever, in the opinion of the local government, a person has contravened any provision of the *Biosecurity and Agriculture Management (Identification and Movement of Stock and Apiaries) Regulations 2013* or of this local law which relates to the keeping of bees or bee hives, the local government may give the permit holder, in relation to that land, or if there is no valid permit in relation to that land, an owner or occupier of the land, a written notice requiring her or him to remove any bees or bee hives, or both, from the land within the time specified in the notice.
- (2) Subject to Division 1 of Part 9 of the Act, on the giving of a notice referred to in subclause (1), any valid permit given by the local government relating to the keeping of bees or bee hives on that land is cancelled from the time specified in the notice, being not less than 7 days from the date it is given.
- (3) Where a person fails to comply with a notice given under subclause (1), the local government may dispose of the bees or the bee hives or both, in such manner as it sees fit and recover the costs of so doing from the permit holder, or an owner or occupier, as the case may be, as a debt due to it.

## *Division 4—Keeping of farm animals*

### **2.22 Permit required to keep farm animals**

Subject to clause 2.28, an owner or occupier of townsite land shall not keep, or allow to be kept, any farm animal unless—

- (a) in accordance with a valid permit authorising the keeping of such a farm animal issued in relation to the land pursuant to clause 2.26; or
- (b) in a rural zone and in accordance with the provisions of any local planning scheme applicable to that zone.

**2.23 Application for a permit to keep farm animals**

An application for a permit required by clause 2.23 shall be in the form approved by the local government and shall include the following information—

- (a) a plan of the property, at a scale not less than 1:200, with dimensions clearly marked, showing where it is proposed that the animal is to be kept and the distance of that location from any residential building on another lot, Class 6 building or Class 9 building, business premises or food premises;
- (b) a sketch plan, at a scale of 1:100, indicating the nature of the shelter or housing to be provided for the animal;
- (c) a detailed written plan for the management of manure which addresses—
  - (i) control of flies and other vermin;
  - (ii) disease prevention; and
  - (iii) prevention of nuisance odours; and
- (d) the appropriate application and permit fees as determined from time to time by the local government in accordance with sections 6.16 to 6.19 of the Act.

**2.24 Determination of application to keep farm animals**

(1) Subject to clause 2.26, the local government may—

- (a) refuse to determine an application for a permit which does not comply with clause 2.24;
- (b) approve an application for a permit subject to such conditions as it considers appropriate; or
- (c) refuse to approve an application for a permit.

(2) Where an application for a permit is approved subject to conditions, the permit holder shall comply with those conditions or cause compliance with those conditions.

(3) Where the local government approves an application under paragraph (1) (b), it is to issue to the applicant a permit in the form approved by the local government.

(4) A permit is valid from the date of issue until 30 June the following year, unless it is cancelled prior to that date under this local law.

**2.25 Conditions of approval to keep farm animals**

(1) A permit shall not be granted pursuant to clause 2.25—

- (a) unless the land for which the approval is sought is of such dimensions and configuration as will permit the subject animal to be confined in a minimum cleared area of 150 square metres and prevented from approaching within 15 metres of any residential building, Class 6 building or Class 9 building, business premises or food premises;
- (b) in the case of a horse (other than a miniature horse) or cow, unless the land for which the approval is sought has a minimum area of 1 hectare; or
- (c) for the keeping of any pig (other than a miniature pig).

(2) The local government shall take into account the opinions of owners and occupiers of adjoining properties in determining whether to grant approval for the keeping of a farm animal.

(3) Approval to keep a farm animal may be issued subject to conditions, including—

- (a) that a stable or shelter is provided for housing the approved animal;
- (b) that a manure receptacle is provided in a position convenient to the shelter or place where the approved animal is kept, and that the receptacle is used for the receipt of all manure produced on the premises; or
- (c) any other conditions that the local government considers necessary for the protection of the health and amenity of the neighbourhood;

and such conditions may be imposed at any time subsequent to the initial approval.

**2.26 Variation or cancellation of permit to keep farm animals and conditions of permit**

(1) The local government may vary the conditions of a permit after it has been issued, and shall give notice of such variation to the permit holder.

(2) The local government may cancel a permit in the event the permit holder—

- (a) fails to comply with any condition set under paragraph 2.25(1)(b);
- (b) after being notified of a variation under subclause (1) fails to comply with the varied condition;
- (c) breaches clause 2.28, clause 2.29 or clause 2.31 of this local law;
- (d) fails to comply with a notice of breach issued under clause 6.1; or
- (e) fails to comply with any condition of the permit; or
- (f) breaches clause 2.28 or clause 2.29 of this local law;

**2.27 Conditions for keeping farm animals**

(1) An owner or occupier of premises upon which a farm animal or farm animals are approved to be kept, shall—

- (a) maintain the place or places where the animals are kept in a clean condition;
- (b) ensure that any farm animal or farm animals kept on the premises does not cause or constitute a nuisance;



- (c) maintain the premises free from flies or other vermin by spraying with residual insecticide or other effective means;
- (d) if a manure receptacle is required to be used—
  - (i) cause all manure produced on the premises to be collected daily and placed in the receptacle;
  - (ii) cause the receptacle to be emptied as often as is necessary to prevent it becoming offensive or a breeding place for flies or other vermin, but in any case at least once a week; and
  - (iii) cause the lid of the receptacle to be closed except for when manure is being deposited or removed; and
- (e) not permit any farm animal to approach within 15 metres of any residential building, food premises, Class 6 building or a Class 9 building, or a business or commercial premises.

(2) An owner or occupier of premises in a rural zone shall not keep more than 1 pig other than on premises registered as a piggery pursuant to the provisions of the *Public Health Act 2016*, except with the express written approval of the local government.

### 2.28 Keeping a miniature horse

(1) An owner or occupier of a premises may keep only a sterilised miniature horse on land of not less than 1,000 square metres in area provided it is registered with the local government and the annual registration fee approved from time to time by the local government in accordance with sections 6.16 to 6.19 of the Act is paid.

(2) An owner of occupier of premises shall—

- (a) not keep more than one miniature horse on land zoned residential or special rural without the written approval of the local government or an authorised person; and
- (b) not permit a miniature horse to come within 9 metres of any house.

(3) The local government or an authorised person may prohibit the keeping of a miniature horse on any land or may state the conditions under which a miniature horse may be kept.

### 2.29 Keeping a miniature pig

(1) Except for a miniature pig, and subject to subclause (2) no person shall keep a pig or pigs, in any residential area or on any land zoned commercial or industrial under the town planning scheme.

(2) Except for premises registered by the local government as an abattoir or a piggery under any law the provisions of the Acts as identified in clause 1.4 of this local law, the keeping of pigs is forbidden.

(3) The local government or an authorised person may prohibit the keeping of a miniature pig on any land, or state the conditions under which the miniature pig may be kept.

(4) A person may keep 1 miniature pig in any residential or rural or special rural area provided it is registered with the local government and the annual registration fee approved from time to time by the local government in accordance with sections 6.16 to 6.19 of the Act is paid.

(5) An owner or occupier of premises where a miniature pig is kept shall—

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

### 2.30 Requirements for farm animal shelters

(1) Any stable, enclosure or shelter provided for the keeping of farm animals, whether or not a permit is required for the keeping of such farm animals pursuant to clause 2.24, shall—

- (a) not be situated within 15 metres of any residential building, Class 6 building or Class 9 building, business premises or food premises;
- (b) not be situated within 1 metre of any lot boundary;
- (c) be constructed of materials approved by an authorised person;
- (d) have on each side of the building between the wall and roof a clear opening of at least 150 millimetres in height, and of sufficient length, to provide adequate ventilation to the stable, enclosure or shelter;
- (e) when required by the local government have a separate stall for each horse, cow or other approved animal, the shortest dimension of which shall be at least twice the length of the animal housed therein; and
- (f) subject to subclause (2), have a floor, the upper surface of which shall—
  - (i) be raised at least 75 millimetres above the surface of the surrounding ground;
  - (ii) be constructed of cement, concrete or other similar impervious material; and
  - (iii) have a fall of 1 in 100 to a drain which shall empty into a trapped gully situated outside the stable or shelter.

(2) A stable or shelter constructed with a sand floor may be approved by an authorised person subject to—

- (a) the site being well drained, with the sand floor being at least 1.5 metres above the highest known ground water level;
- (b) a 300 millimetre thick bed of crushed limestone being laid under the sand of the stable;
- (c) the sand, whether natural or imported, being clean, coarse and free from dust;
- (d) footings to the stable or shelter being a minimum of 450 millimetres below ground level; and
- (e) the design of the stable allowing for the access of small earthmoving machinery, such as a skid steer loader, into each stall to maintain the correct floor height.

(3) An owner or occupier of any land upon which a stable or shelter is located must ensure that the stable or shelter complies in all respects with the requirements of subclause (1), and, where the approval referred to in subclause (2) has been granted, with the requirements of subclause (2).

#### *Division 5—Livestock*

##### **2.31 Livestock not to stray**

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

##### **2.32 Impounding of livestock**

(1) An authorised person or a member of the police force may impound livestock found straying in contravention of clause 2.32.

(2) Livestock being impounded shall be placed in the pound or secured on private property with the consent of the owner.

##### **2.33 Property to be fenced**

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

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

### **PART 3—BUILDING, DEVELOPMENT AND LAND CARE**

#### *Division 1—Litter and refuse on building sites*

##### **3.1 Provision of refuse receptacles**

The owner or occupier of a building or development site shall at all times provide and maintain a refuse receptacle, available for use on the site, which includes a suitable cover, to the satisfaction of an authorised person, of such design as will—

- (a) contain any refuse likely to be produced on the site; and
- (b) prevent refuse being blown from the receptacle by wind.

##### **3.2 Control of refuse**

(1) From the time of commencement of works on a building site or development site until the time of completion of such work, the owner or occupier of the site shall—

- (a) ensure all refuse on the site is placed and contained in the refuse receptacle and prevented from being blown from the site by wind;
- (b) keep the site free from any refuse;
- (c) keep the street verge, and any other reserve, immediately adjacent to the site, free of refuse from the site; and
- (d) ensure the refuse receptacle is emptied when full.

(2) The owner or occupier of a building site or development site shall ensure that within 2 days of completion of works on the site, the site and the street verge immediately adjacent to it, is cleared of all refuse and all refuse receptacles are removed from the site.

##### **3.3 Unauthorised storage of materials**

(1) All construction materials must be located on the building site or development site under construction, unless written approval has been given by the local government to store materials on another property (including a road reserve).

(2) An application for approval under subclause (1) must be—

- (a) in writing; and
- (b) accompanied by the written approval of the landowner of the land on which materials are proposed to be stored.

*Division 2—Prevention of dust and liquid waste***3.4 Prohibited activities**

- (1) An owner and or occupier of land shall take reasonable steps to—
- (a) stabilise dust on the land;
  - (b) contain all liquid waste on the land; and
  - (c) ensure no dust or liquid waste is released or escapes from the land, whether by means of wind, water or any other cause.
- (2) Where the local government forms the opinion that—
- (a) an owner or occupier has not complied with paragraph (1)(a) or paragraph(1)(b); or
  - (b) the dust or liquid waste has been released or escaped from the owner’s or occupier’s land,
- the local government may serve on the owner and or occupier of the land, a notice requiring the owner and or occupier to do one or more of the following—
- (i) comply with subclause (1)(a) or (1)(b);
  - (ii) clean up and properly dispose of any released or escaped dust or liquid waste;
  - (iii) clean up and make good any damage resulting from the released or escaped dust or liquid waste; and
  - (iv) take effective measures to stop any further release or escape of dust or liquid waste;
- (3) The requirements set out in a notice issued under paragraph subclause (2)(a) must be complied with—
- (v) within 48 hours of service of the notice where no other time is specified;
  - (vi) within such other period as is specified in the notice; or
  - (vii) immediately, if the notice so specifies.
- (4) Where the local government forms the opinion that dust or liquid waste has escaped or has been released from an activity undertaken on land or as a consequence of the use of equipment on land, the local government may serve a notice on—
- (a) any owner or occupier of the land; or
  - (b) any operator of equipment on the land,
- requiring that the activity or use of equipment on the land be ceased immediately, for such period as is specified in the notice.
- (5) Where the local government is of the opinion that dust or liquid waste may be released or escape as a result of an activity which is likely to be carried out from any land, the local government may give to the owner and or occupier a notice providing that the activity may only be carried on subject to conditions specified in the notice.

**3.5 Dust management**

If an owner or occupier of land intends to undertake any work involving the clearing of land, from which any sand or dust is likely to be released whether by means of wind, water or any other cause, shall—

- (a) submit to an authorised person a Dust Management Plan in accordance with the Department of Water and Environmental Regulation document “A guideline for managing the impacts of dust and associated contaminants from land development sites, contaminated sites remediation and other related activities” (March 2011), or any updated version of this document;
- (b) obtain written approval of the Dust Management Plan from an authorised person before commencement of any work.

*Division 3—Smoke***3.6 Burning of cleared vegetation prohibited**

An owner or occupier of any building or development site shall ensure that no vegetation or other material cleared from the site is burnt on the site unless written authorization is provided by the local government.

*Division 4—Unsightly land and disused materials***3.7 Removal of refuse and disused materials**

- (1) The owner or occupier of a lot shall not keep, or permit to remain on the lot, any refuse, rubbish or disused material of whatever nature or kind which in the opinion of the local government or an authorised person is likely to give the lot an untidy appearance and does not conform with the general appearance of other land in that particular part of the district.
- (2) The local government or an authorised person may give notice in writing to the owner or occupier of a lot requiring the removal of refuse, rubbish or disused material from the lot within the time specified in the notice in accordance with the provisions of section 3.25 of the *Local Government Act 1995*.



**3.8 Removal of unsightly overgrowth of vegetation**

(1) The owner or occupier of a lot shall not permit to remain on a lot, any unsightly overgrowth of vegetation that gives the lot an untidy appearance and does not conform with the general appearance of other land in that particular part of the district or townsite.

(2) The local government or an authorised person may give notice in writing to the owner or occupier of a lot requiring the removal of the overgrowth of vegetation within the time specified in the notice.

**3.9 Storage of vehicles, vessels and machinery**

The owner or occupier of a lot shall not at the discretion of the local government—

- (a) store, or allow to remain in public view on any lot, more than 1 vehicle, vessel or machinery (whether licensed or not) in a state of disrepair;
- (b) store, or allow to remain in public view on any lot, any vehicle, vessel or machinery in a state of disrepair for a period in excess of 1 month;
- (c) store, or allow to remain in public view on any lot, any vehicle, vessel or machinery parts (including tyres);
- (d) wreck, dismantle or break up any vehicle, part or body of a vehicle, vessel or machinery except where performed—
  - (i) inside a building; or
  - (ii) within an area enclosed by a fence or wall of not less than 1.8 metres in height and of such a nature as to screen all vehicles, parts or bodies of vehicles, vessels or machinery from the street and from adjoining properties; or
- (e) wreck, dismantle or break up a vehicle, vessel or machinery so as to cause a nuisance.

**3.10 Disposing of disused refrigerators or similar containers**

(1) A person shall not place, leave or dispose of a disused refrigerator, ice chest, ice box, trunk, chest or other similar article having a compartment which has a capacity of 0.04 cubic metres or more on any land without first—

- (a) removing every door and lid and every lock, catch and hinge attached to a door or lid; or
- (b) rendering every door and lid incapable of being fastened; and
- (c) removing any refrigerants.

*Division 5—Hazardous materials***3.11 Hazardous trees**

(1) Where a tree on a lot endangers any person or thing on adjoining land, the local government may give a notice to the owner or the occupier of the lot to remove, cut, move or otherwise deal with that tree so as to make the tree safe.

(2) Where a tree on a lot presents a serious and immediate danger to any person or thing, the local government may take any remedial action it considers appropriate in order to make the tree safe without having given the owner or occupier notice pursuant to subclause (1).

(3) The local government reserves its right to recover any costs incurred by the local government for remedial action taken in terms of subclause (2).

*Division 6—Sea Containers***3.12 Sea containers in residential areas**

(1) The owner or occupier of a residential lot shall not without written approval of the local government—

- (a) allow sea containers to be used as sheds or storage units within a residential lot unless housing building construction is occurring on that specific lot,
- (b) place sea containers on local government or Commonwealth property without the written consent from the relevant government to do so.

(2) The owner or occupier of a residential lot placing a sea container as a shed or storage unit within a residential lot must register that sea container with the local government following the enactment of this local law in the form as determined by the local government from time to time.

(3) Failure by the owner or occupier to register the sea container in accordance with subclause (2) will result in the sea container being in violation of subclause (1) above and removed from the lot.

(4) Sea containers registered under subclause (2) above will be permitted to remain on residential lots under the following circumstances—

- (a) should the owner or occupier who registered the sea container on that lot vacate the premises, the sea container must be removed from the property;
- (b) the owner or occupier of the residential lot must not allow the sea container to deteriorate into an unsightly state. Rust, paint and overall condition of the sea container must be managed to a reasonably maintained standard;
- (c) the owner or occupier of the residential lot where the sea container is placed must ensure all surrounding vegetation is maintained at a reasonable level so as not to create any hazard;
- (d) the sea container must not pose any threat to public safety or the safety of the residential lot occupants. The owner or occupier must ensure that fire-fighting and emergency access to the property or adjoining properties is not impeded;

- (e) the owner or occupier of the residential lot shall move the sea container as needed to assist in utility providers and the local government accessing the residential lot as needed;
- (f) the local government or an authorised person may give a notice in writing to the owner or occupier of a residential lot in the form as determined by the local government from time to time requiring the removal of the sea container within the time specified in the notice for failure to comply with any of the subclauses in this Division; and
- (g) the local government may recover any costs incurred by the local government for remedial action taken in this Division.

### **3.13 Sea containers in commercial and mixed use areas**

(1) An owner or occupier of a commercial lot or mixed use lot shall be permitted to keep sea containers within their commercial or mixed use lot under the following circumstances—

- (a) the owner or occupier does not allow the sea container to deteriorate into an unsightly manner. Rust, paint and overall condition of the sea container must be managed to a reasonably maintained standard;
- (b) the owner or occupier of the lot where the sea container is placed must ensure all surrounding vegetation is maintained at a reasonable level so as not to create any hazard;
- (c) the sea container may not be kept in parking lots for reasons other than temporary packing or unpacking of goods;
- (d) the sea container must not pose any threat to public safety or the safety of the lot occupants at any time. The owner or occupier must ensure that fire-fighting and emergency access to the property or adjoining properties is not impeded;
- (e) the owner or occupier of the lot shall move the sea container as needed to assist in utility providers and the local government accessing the lot as required; and
- (f) the owner or occupier of the lot shall move the sea container as needed to assist in utility providers and the local government accessing the commercial or mixed use lot as needed.

(2) Sea Containers may not be placed or kept by the owner or occupier of a commercial lot on nearby local government or Commonwealth property adjacent or otherwise in the vicinity of their commercial lot without written permission from the relevant government authority.

(3) The local government or an authorised person may give notice in writing to the owner or occupier of a lot requiring the removal of the sea container within the time specified in the notice for failure to comply with any of the above subclauses in this Division.

(4) The local government reserves its right to recover any costs incurred by the local government for remedial action taken in this Division.

### **3.14 Sea containers in industrial areas**

(1) An owner or occupier of an industrial lot shall be permitted to keep sea containers within their industrial lots under the following circumstances—

- (a) the owner or occupier does not allow the sea container to deteriorate into an unsightly manner. Rust, paint and overall condition of the sea container must be managed to a reasonably maintained standard;
- (b) the owner or occupier of the lot where the sea container is placed must ensure all surrounding vegetation is maintained at a reasonable level so as not to create any hazard;
- (c) the sea container may not be kept in parking lots for reasons other than temporary packing or unpacking of goods;
- (d) the sea container must not pose any threat to public safety or the safety of the lot occupants at any time. The owner or occupier must ensure that fire-fighting and emergency access to the property or adjoining properties is not impeded;
- (e) the owner or occupier of the lot shall move the sea container as needed to assist in utility providers and the local government accessing the lot as required; and
- (f) the owner or occupier of the lot shall move the sea container as needed to assist in utility providers and the local government accessing the industrial lot as needed.

(2) The local government or an authorised person may give notice in writing to the owner or occupier of an industrial lot requiring the removal of the sea container within the time specified in the notice for failure to comply with any of the above subclauses in this Division.

(3) The local government reserves its right to recover any costs incurred by the local government for remedial action taken in this Division.

### **3.15 Sea containers in tourism areas**

(1) An owner or occupier of a tourism lot shall only be permitted to keep sea containers within their lot for any building or construction projects occurring on their lot.

(2) Sea containers are not permitted to be used as sheds or storage unit facilities within a defined Tourism Area of the current local government gazetted Town Planning Scheme and Local Planning Strategy.

(3) The local government or an authorised person may give notice in writing to the owner or occupier of a tourism lot requiring the removal of the sea container within the time specified in the notice for failure to comply with any of the above subclauses in this Division.

(4) The local government reserves its right to recover any costs incurred by the local government for remedial action taken in this Division.

**PART 4—NUISANCES AND DANGEROUS THINGS***Division 1—Lights***4.1 Use of exterior lights**

An owner or occupier of land on which floodlights or other exterior lights are erected or used, shall not allow the floodlights or other exterior lights to shine directly onto any other premises.

**4.2 Emission or reflection of light**

An owner or occupier of land shall ensure that—

- (a) artificial light is not emitted or reflected from anything on the land so as to illuminate premises outside that land to more than 50 lux; and
- (b) natural light is not reflected from anything on the land so as to create or cause a nuisance to the occupier of any other premises or to a person lawfully using a thoroughfare.

**4.3 Notice may require specified action to prevent emission or reflection of light**

(1) Where—

- (a) floodlights or other exterior lights shine directly onto any other premises;
- (b) artificial light is emitted or reflected from anything on the land so as to illuminate premises outside the land to more than 50 lux; or
- (c) natural light is reflected from anything on the land so as to create or cause a nuisance to the occupier of any other premises or to a person lawfully using a thoroughfare,

the local government may by notice in writing direct the owner or occupier to take such actions as an authorised person considers necessary within the time specified in the notice.

(2) The notice referred to in subclause (1) may direct that—

- (a) floodlights or other exterior lights are used only during the hours specified in the notice;
- (b) the direction in which the lights shine be altered as specified in the notice;
- (c) any reflective surfaces be painted or otherwise treated so as to abate the nuisance; or
- (d) any combination of these measures that the local government believes to be appropriate to the circumstances.

*Division 2—Smoke, fumes, odours and other emissions***4.4 Burning rubbish, refuse or other material**

(1) A person shall not set fire to rubbish, refuse or other materials.

(2) Subclause (1) does not apply to rural or rural residential zoned lots with the exception of subclause (3) below.

(3) A person shall not set fire to rubbish, refuse or other materials on rural residential zoned property being less than 2,000 square metres unless—

- (a) approval has first been obtained from the local government;
- (b) the person demonstrates to the satisfaction of the local government that reasonable alternatives for the disposal of the rubbish, refuse or other material do not exist and the potential for pollution is low;
- (c) the material does not include any plastic, rubber, food scraps or other material likely to cause the generation of smoke or odour in such quantity as to cause a nuisance to other persons;
- (d) a haze alert has not been issued by the Bureau of Meteorology for the period during which burning is to take place; and
- (e) the burning complies with the Bush Fires Act 1954, any annual fire hazard reduction notice issued by the local government under the Bush Fires Act 1954 and any conditions of approval as determined by the local government.

(4) Subclauses (1) and (3) shall not apply to any barbeque, solid fuel water heater, space heater or ovens fired with dry paper, dry wood, synthetic char or charcoal type fuel.

(5) Subclause (4) is subject to any fire danger rating as determined by the Bureau of Meteorology.

**4.5 Escape of smoke, fumes, odours and other emissions**

An owner or occupier of land or premises shall take reasonable steps not cause or permit the escape of smoke, fumes or odours from the land or premises in such quantity or of such a nature as to cause or to be a nuisance to any person.

*Division 3—Trucks***4.6 Livestock vehicles**

(1) A person shall not park a vehicle containing livestock in a townsite for a period in excess of 30 minutes.

(2) A person shall not park a vehicle which contains or has been used for the carriage of livestock so as to create or be a nuisance to any person, by reason of the odour emanating from the vehicle.

(3) If a person parks a vehicle containing livestock in a townsite in accordance with subclause (1), then the person does not contravene subclause (2).

**4.7 Truck noise from residential land**

A person shall not start or drive a truck on land zoned, approved or used for residential purposes between the hours of 10.30 pm and 6.00 am on the following day without first obtaining the written consent of the local government.

*Division 4—Swimming pool backwash management***4.8 Disposal of swimming pool backwash**

(1) The owner or occupier of land on which a swimming pool is constructed shall ensure that all backwash is not permitted to discharge onto or run-off onto adjacent land so as to cause a nuisance, or cause damage to any structures situated on adjacent land.

(2) Subclause (1) shall not prevent the discharge of swimming pool backwash from a lot into a local government approved stormwater drain or road by a method approved by an authorised person.

*Division 5—Stormwater management***4.9 Containment of stormwater**

(1) Subject to subclause (2), the owner or occupier of a lot shall ensure that all stormwater received by any building, house, other structure or any paved or sealed or other surfaced areas including any vehicle access ways on the lot is contained within the lot and is not permitted to discharge onto or run-off onto adjacent land so as to cause a nuisance, or cause damage to any structures situated on adjacent land.

(2) Subclause (1) shall not prevent the discharge of stormwater from a lot into a local government approved stormwater drain or road.

*Division 6—Amusement activities***4.10 Nuisance**

A person shall not, without written authorisation from the local government, provide or conduct any amusement on land so as to create or be a nuisance to any owner or occupier of land in the district.

**4.11 Abatement by authorised person**

Subject to written authorization, and Division 2 of Part 2, Division 1 of Part 7, and Part 15 of the *WA Health (Miscellaneous Provisions) Act 1911* an authorised person may enter on any land where an amusement is provided or conducted and may do any act or thing reasonably required to abate a nuisance referred to in clause 4.10.

*Division 7—Advertising, bill posting and junk mail***4.12 Placement of advertisement, bill posting or junk mail**

A person shall not place in or on any letter box, gate, fence or generally leave or distribute to any property in the district, any handbill, poster, pamphlet, flyer or other form of advertising or promotional material, where there is clearly displayed a sign or notice which states “no junk mail” or words of similar effect.

**4.13 Exemptions**

Clause 4.12 does not apply to—

- (a) delivery of articles by Australia Post;
- (b) documents issued under or for the purposes of an Act of Parliament;
- (c) an authorised person or member of the Police Force acting in the course of their duties;
- (d) electoral materials; or
- (e) legal process.

*Division 8—Bird nuisance***4.14 Restrictions on feeding of birds**

(1) A person shall not feed a bird—

- (a) so as to cause a nuisance, or
- (b) with a food or substance that is not a natural food of a bird.

(2) Where an authorised person forms the opinion that a person has not complied with subclause (1) the authorised person may serve the person a notice requiring the person to clean up and properly dispose of any feed or waste products specified in the notice.

**PART 5—OBJECTIONS AND APPEALS****5.1 Objections and appeals**

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

- (a) grant a person a permit or authorisation;
- (b) vary or cancel a permit or authorisation; or
- (c) give a person a notice,

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

**PART 6—ENFORCEMENT***Division 1—Notice of breach***6.1 Notice of breach**

- (1) Where a breach of any provision of this local law has occurred, the local government may give a notice in writing to the person alleged to be responsible for such breach.
- (2) A notice issued pursuant to subclause (1) shall—
- (a) specify the provision of this local law which has been breached;
  - (b) specify the particulars of the breach; and
  - (c) state the manner in which the recipient is required to remedy the breach to the satisfaction of the local government within a time period stipulated in the notice which shall be not less than 28 days from the giving of the notice.
- (3) It is an offence to fail to comply with a notice issued by the local government pursuant to subclause (1).

**6.2 Form of notices**

Where this local law refers to the giving of a notice other than the giving of an infringement notice and no particular form is prescribed, it will be sufficient that the notice be in writing giving adequate details to enable the owner, occupier or other person to whom the notice is issued to know the offence committed and the measures required to be taken or conditions with which compliance is required, as the case may be.

**6.3 When local government may undertake work required by notice**

- (1) This clause applies only in respect of a notice issued under clauses 3.7(2), 3.8(2), 3.11(1) and 4.3(1) of this local law.
- (2) Where a person fails to comply with a notice referred to in clause 6.1 the local government may, subject to compliance with the requirements of subdivision 2 of Division 3 of Part 3 and subdivision 3 of Division 3 of Part 3 of the Act, do anything that it considers necessary to achieve, so far as is practicable, the purpose for which the notice was given.
- (3) The local government may recover the cost of anything it does under subclause (2) as a debt due from the person who failed to comply with the notice.

*Division 2—Offences and penalties*

## Subdivision 1—General

**6.4 Offences and penalties**

- (1) A person who—
- (a) fails to do anything required or directed to be done under this local law;
  - (b) fails to comply with the requirements of a notice issued under this local law by an authorised person; or
  - (c) does anything which under this local law that person is prohibited from doing;
- commits an offence.
- (2) Where, under this local law, an act is required to be done or forbidden to be done in relation to any land or premises, the owner or occupier of the land or premises has the duty of causing to be done the act so required to be done, or of preventing from being done the act forbidden to be done.
- (3) A person who commits an offence under this local law is liable to a maximum penalty of \$5,000 and a maximum daily penalty of \$500 in respect of each day or part of a day during which the offence has continued.

## Subdivision 2—Infringement notices and modified penalties

**6.5 Prescribed offences**

- (1) An offence against a clause specified in Schedule 1 is a prescribed offence for the purposes of the *Local Government Act 1995*.
- (2) The amount of the modified penalty for a prescribed offence is that specified adjacent to the clause in Schedule 1.
- (3) An authorised person should be satisfied that—
- (a) commission of the prescribed offence is a relatively minor matter; and
  - (b) only straightforward issues of law and fact are involved in determining whether the prescribed offence was committed, and the facts in issue are readily ascertainable;
- before giving an infringement notice to a person in respect of the commission of a prescribed offence.

**6.6 Form of infringement notices**

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 *Local Government Act 1995* is that of Form 2 in Schedule 1 of the Regulations; and
- (c) the form of the notice given under section 9.20 of the Act withdrawing an infringement notice is that of Form 3 in Schedule 1 of the Regulations.



## SCHEDULE 1—PRESCRIBED OFFENCES

[cl. 6.5]

Item No.	Clause	Nature of Offence	Modified Penalty
1	2.2(a)	Failure to keep premises free from excrement, filth, food waste and other matter likely to be offensive or injurious to health, or attracts vermin or insects	\$150
2	2.2(b)	Failure to clean and disinfect premises when directed by an EHO	\$150
3	2.2(c)	Failure to keep premises free of vermin or flies, or when directed by an EHO, spray premises with residual insecticide or use other means to kill or repel flies	\$150
4	2.3	Failure to comply with enclosure requirements	\$150
5	2.5	Keep, or permit to be kept, any poultry or pigeons, not in accordance with conditions of these local laws	\$150
6	2.8	Keep a rooster, turkey, goose or geese, or peafowl	\$150
7	2.9 (2)	Failing to keep cages, enclosures and lofts maintained to minimum standard specified in the Code of Practice	\$150
8	2.11	Failing to prevent pigeons nesting or perching	\$150
9	2.12	Failing to keep aviary birds in accordance with conditions of this local law	\$150
10	2.13	Keeping birds so as to create a nuisance or emit an unreasonable noise	\$150
11	2.14(1)	Failure to obtain a permit to keep bees	\$150
12	2.14(4)	Failure to comply with any obligation when temporarily keeping bees	\$150
13	2.16 (2)	Failure to comply with a condition of a permit to keep bees	\$150
14	2.21	Creation of a nuisance from keeping of bees or beehives	\$150
15	2.22	Failure to comply with notice of local government	\$150
16	2.23(a)	Keeping a farm animal without a valid permit	\$150
17	2.28	Failure to comply with the conditions for keeping farm animals	\$150
18	2.29	Keeping a miniature horse on land without approval	\$150
19	2.30	Keeping a miniature pig on land without approval	\$150
20	2.32	Permitting livestock to stray, or be at large in a street, public place or private property without consent	\$150
21	2.34	Failing to keep property fenced in a manner capable of confining livestock	\$150
22	3.1	Failure to provide or maintain a refuse receptacle on a building or development site	\$250
23	3.2	Failure to control refuse on a building or development site	\$250
24	3.3	Unauthorised storage of materials	\$250
25	3.4	Release or escape of dust or liquid waste from land	\$250
26	3.5	Commencing works involving clearing of land without an approved Dust Management Plan	\$250
27	3.6	Burning of cleared vegetation or other material from a building or development site	\$250
28	3.9(a)	Storing, or allow to remain on land, more than one vehicle, vessel or machinery in a state of disrepair	\$250
29	3.9(b)	Storing, or allow to remain on land, any vehicle, vessel or machinery in a state of disrepair for a period in excess of 1 month	\$250
30	3.9(c)	Storing, or allow to remain on land, any vehicle, vessel or machinery parts (including tyres)	\$250
31	3.9(d)(i)	Wreck, dismantle or break up any vehicle part or body, vessel or machinery not inside a building	\$250
32	3.9(d)(ii)	Wreck, dismantle or break up any vehicle part or body, vessel or machinery not behind a sufficient fence or wall	\$250
33	3.9(e)	Wreck, dismantle or break up a vehicle, vessel or machinery so as to cause a nuisance	\$250

Item No.	Clause	Nature of Offence	Modified Penalty
34	3.10	Disposing of disused refrigerator or similar container with door/lid that can be fastened without removing the refrigerant, door, lid, lock, catch, hinge and rendering the door/lid incapable of being fastened.	\$250
35	3.12 (3)	Failure to comply with the registration and removal of sea container on a residential lot.	\$250
36	3.13	Failure to comply with the requirements for keeping a sea container on a commercial or mixed use lot.	\$250
37	3.14	Failure to comply with the requirements for keeping a sea container on an industrial lot.	\$250
38	4.1	Erection or use of lighting installations other than in accordance with this local law	\$250
39	4.2 (b)	Emitting light so as to create or cause a nuisance	\$250
40	4.5	Permitting the escape of smoke, fumes, odours and other emissions so as to cause a nuisance	\$250
41	4.6(1)	Parking a livestock vehicle in an urban area or townsite in excess of 30 minutes	\$250
42	4.7	Starting or driving a truck on residential land, or adjoining residential land, without consent of the local government	\$250
43	4.8(1)	Discharging swimming pool backwash onto adjacent land so as to cause a nuisance or cause damage	\$250
44	4.9(1)	Failure to ensure that all rainwater or storm water received by a lot and any building, house or structure on the lot, is contained within the lot or discharged directly to a stormwater drain or road	\$250
45	4.10	Conducting an amusement so as to create a nuisance	\$250
46	4.12(1)	Unauthorised placement of advertisement, bill posting or junk mail	\$100
47	4.12(2)	Placement of advertisement, bill posting or junk mail where a "no junk mail", or equivalent, sign is displayed	\$100
48	4.14(1)(a)	Feeding a bird which causes a nuisance	\$250
49	4.14(1)(b)	Feeding a bird a food/substance that is not a natural food	\$250
50	6.4(1)(b)	Failure to comply with notice	\$250

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

Cr JORGEN JENSEN, Shire President.  
Mr KELVIN MATTHEWS, Chief Executive Officer.

Dated: 27 June 2018.





**CAT ACT 2011  
LOCAL GOVERNMENT ACT 1995**

SHIRE OF MOUNT MAGNET

**CATS LOCAL LAW 2018**

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**CAT ACT 2011**  
**LOCAL GOVERNMENT ACT 1995**

SHIRE OF MOUNT MAGNET

**CATS LOCAL LAW 2018**

Under the powers conferred by the *Cat Act 2011*, the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Mount Magnet resolved on 27 June 2018 to make the following local law.

**PART 1—PRELIMINARY**

**1.1 Citation**

This local law may be cited as the *Shire of Mount Magnet Cats Local Law 2018*.

**1.2 Commencement**

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

**1.3 Application**

This local law applies throughout the district.

**1.4 Definitions**

In this local law unless the context otherwise requires—

**Act** means the *Cat Act 2011*;

**AS** means an Australian Standard published by Standards Australia as amended from time to time that is available at [www.standards.org.au](http://www.standards.org.au) for a prescribed fee. A free copy is available for viewing at the Shire of Mount Magnet library and should be used as the contextual reference;

**applicant** means the occupier of the premises who makes an application for a permit under this local law;

**authorised person** means a person authorised by the local government to perform the functions conferred on an authorised person under this local law;

**cat** means an animal of the species *felis catus* or a hybrid of that species;

**cat management facility** means—

- (a) a facility operated by a local government that is, or may be, used for keeping cats;
- (b) a facility for keeping cats that is operated by a person or body prescribed; or
- (c) a facility for keeping cats that is operated by a person or body approved in writing by a local government;

**cattery** means any premises where more than 3 cats are kept, bred, boarded, housed or trained temporarily, whether for profit or otherwise, and where the occupier of the premises is not the ordinary owner of the cats;

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

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

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

**effective control** in relation to a cat means any of the following methods—

- (a) held by a person who is capable of controlling the cat;
- (b) securely tethered;
- (c) secured in a cage; or
- (d) any other means of preventing escape;

**grouped dwelling** (commonly referred to as a duplex, villa or townhouse) means a dwelling that is one of a group of two or more dwellings on the same lot such that no dwelling is placed wholly or partly vertically above the other, except where special conditions of landscape or topography dictate otherwise, and includes a dwelling on a survey strata with common property;

**local government** means the Shire of Mount Magnet;

**member of a cat organisation** means a person who is a member of an organisation or association prescribed under regulation 23(c) of the *Cat Regulations 2012*;

**multiple dwelling** (often called flats, apartments or units) means a dwelling in a group of more than one dwelling on a lot where any part of a dwelling is vertically above part of any other but—

- (a) does not include a grouped dwelling; and
- (b) includes any dwellings above the ground floor in a mixed use development;

**nuisance** means where a cat—

- (a) an activity or condition which is harmful or annoying and which gives rise to legal liability in the tort of public or private nuisance at law;
- (b) an unreasonable interference with the use and enjoyment of a person of his or her ownership or occupation of land; or
- (c) interference which causes material damage to land or other property on the land affected by the interference;

**owner** in relation to a cat, has the meaning given in section 4 of the *Cat Act 2011*;

**permit** means a permit issued by the local government under clause 3.6;

**permit holder** means a person who holds a valid permit under clause 3.6;

**premises** includes the following—

- (a) land (whether or not vacant);
- (b) the whole or part of a building or structure (whether of a permanent or temporary nature); and
- (c) a vehicle;

**RSPCA** means the Royal Society for the Prevention of Cruelty to Animals (Inc) of Western Australia;

**Schedule** means a schedule to this local law; and

**Scheme** means a planning scheme of the local government made by it under the *Planning and Development Act 2005* and its antecedents.

## PART 2—CAT CONTROL

### 2.1 Cat nuisance

The owner of a cat, or any other person in care or control of a cat, shall not allow a cat to create a nuisance.

## PART 3—PERMITS FOR KEEPING CATS

### 3.1 Interpretation

In this part, and for the purposes of applying the definition of ‘cattery’, **cat** does not include a cat less than 6 months old.

### 3.2 Cats for which a permit is required

- (1) Subject to subclause (2) a person is required to have a permit to—
  - (a) keep 3 or more cats on any premises; or
  - (b) use any premises as a cattery or as a cat management facility.
- (2) A permit is not required under subclause (1) if the premises concerned are—
  - (a) a refuge of the RSPCA or any other body prescribed in regulation 9 of the *Cat Regulations 2012*;
  - (b) a cat management facility which has been approved by the local government;
  - (c) a veterinary surgery; or
  - (d) a pet shop.
- (3) A permit is not required under subclause (1)(a) at premises where—
  - (a) a member of a cat organisation is ordinarily resident and the number of cats does not exceed three times the number of cats prescribed under subclause (1)(a); or
  - (b) the premises are used by an organisation prescribed under regulation 9 of the *Cat Regulations 2012*.

### 3.3 Application for permit

An application for a permit under clause 3.2 shall be—

- (a) made in writing by an occupier of the premises in relation to those premises;
- (b) in a form approved by the local government, describing and specifying the number of cats to be kept on the premises;
- (c) accompanied by a brief reason and justification for the request;
- (d) accompanied by the plans of the premises to which the application relates in the form determined by the local government from time to time;

- (e) accompanied by the consent in writing of the owner of the premises where the occupier is not the owner of the premises to which the application relates; and
- (f) accompanied by the application fee for the permit determined by the local government from time to time.

### 3.4 Refusal to determine application

The local government may refuse to determine an application for a permit if it is not made in accordance with clause 3.3.

### 3.5 Factors relevant to the determination of application

- (1) In determining an application for a permit the local government may have regard to—
- (a) the reasons and justification provided for the request;
  - (b) the physical suitability of the premises for the proposed use;
  - (c) the suitability of the zoning of the premises under any Scheme which applies to the premises for the proposed use;
  - (d) the environmental sensitivity and general nature of the location surrounding the premises for the proposed use;
  - (e) the structural suitability of any enclosure in which any cat is to be kept;
  - (f) the likelihood of a cat causing nuisance, inconvenience, or annoyance to the occupiers of adjoining land; (g) the likely effect on the amenity of the surrounding area of the proposed use;
  - (h) the likely effect on the local environment including any pollution or other environmental damage, which may be caused by the use;
  - (i) any submissions received under subclause (2) within the time specified in subclause (2); and
  - (j) such other factors which the local government may consider to be relevant in the circumstances of the particular case.
- (2) The local government may require an applicant to—
- (a) consult with nearby landowners; or
  - (b) advise nearby landowners that they may make submissions to the local government on the application for a permit within 14 days of receiving that advice, before determining the application for the permit.
- (3) The local government may specify the extent of consultation with nearby landowners, as specified in subclause 3.5(2)(a) and may specify which properties should be consulted.

### 3.6 Decision on application

- (1) The local government may—
- (a) approve an application for a permit as it was submitted, in which case it shall approve it subject to the conditions in clause 3.7 and may approve it subject to any other conditions it sees fit;
  - (b) approve an application but specify an alternative number of cats permitted to be housed at the address; or (c) refuse to approve an application for a permit.
- (2) If the local government approves an application under subclause (1), then it shall issue a permit to the applicant in the form determined by the CEO.
- (3) If the local government refuses to approve an application under subclause (1) then it shall advise the applicant accordingly in writing.

### 3.7 Conditions

- (1) Every permit is issued subject to the following conditions—
- (a) each cat kept on the premises to which the permit relates shall comply with the requirements of the Act;
  - (b) each cat shall be contained on the premises unless under the effective control of a person;
  - (c) the permit holder will provide adequate space for the exercise of the cats;
  - (d) the premises shall be maintained in good order and in a clean and sanitary condition; and
  - (e) the premises shall be maintained in accordance with—
    - (i) Clause A of Schedule 1, where the permit relates to the keeping of 3 or more cats; or
    - (ii) Clause B of Schedule 1, where the permit relates to the use of a premises as a Cattery of Cat Management Facility.
- (2) In addition to the conditions subject to which a permit is to be issued under this clause, a permit may be issued subject to other conditions, as the local government considers appropriate.

### 3.8 Compliance with conditions of permit

A permit holder shall comply with each condition of a permit.

### 3.9 Duration of a permit

Unless otherwise specified in a condition on a permit, a permit commences on the date of issue and expires—

- (a) if it is revoked; or
- (b) the permit holder ceases to reside at the premises to which the permit relates.

### 3.10 Revocation

The local government may revoke a permit if the permit holder fails to observe any provision of this local law or a condition of a permit.

### 3.11 Permit not transferable

A permit is not transferrable either in relation to the permit holder or the premises.

### 3.12 Permit to be kept at premises and available for view

(1) A permit issued by the local government shall be kept at the premises to which it applies and shall be provided to an authorised person on demand.

(2) In the case of a registered cattery or cat management facility, the permit shall be displayed in a prominent place within the premises.

## PART 4—MISCELLANEOUS

### 4.1 Giving of an infringement notice

A notice given under this local law may be given to a person—

- (a) personally;
- (b) by postal mail addressed to the person; or
- (c) by leaving it for the person at her or his address.

## PART 5—OBJECTIONS AND APPEALS

### 5.1 Objections and appeal rights

Any person who is aggrieved by the conditions imposed in relation to a permit, the revocation of a permit, or by the refusal of the local government to grant a permit may object or appeal against the decision under Division 1 of Part 9 of the *Local Government Act 1995*.

## PART 6—OFFENCES AND PENALTIES

### 6.1 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) Unless otherwise specified, any person who commits an offence under this local law is liable on conviction, to a penalty not exceeding \$5,000, and if the offence is of a continuing nature, to a further penalty not exceeding a fine of \$500 in respect of each day or part of a day during which the offence has continued.

### 6.2 Prescribed offences

(1) An offence against a clause specified in Schedule 2 is a prescribed offence for the purposes of section 63 of the Act.

(2) In Schedule 2 the amount appearing directly opposite each such offence is the modified penalty in relation to that offence.

### 6.3 Forms

(1) The issue of infringement notices, their withdrawal and the payment of modified penalties are dealt with in Division 4 of Part 4 of the Act.

(2) An infringement notice in respect of an offence against this local law may be given under section 62 of the Act and is to be in the form of Schedule 1, Form 6 of the *Cat Regulations 2012*.

(3) A notice sent under section 65 of the Act withdrawing an infringement notice is to be in the form of Schedule 1, Form 7 of the *Cat Regulations 2012*.

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## SCHEDULE 1—ADDITIONAL CONDITIONS APPLICABLE TO PARTICULAR PERMITS

[Clause 3.7]

### A. Permit to keep 3 or more cats

Additional conditions

(1) In the case of a grouped dwelling where there is no suitable dividing fence or multiple dwellings on the same level, the written consent to the application for a permit of the occupier of the adjoining dwellings has been obtained.

(2) Without the consent of the local government, the permit holder will not substitute or replace any cat that is the subject of a permit once that cat—

- (a) dies; or
- (b) is permanently removed from the premises.



**B. Permit to use premises as a Cattery or Cat Management Facility**

## Additional conditions

- (1) All building enclosures must be structurally sound, have impervious flooring, be well lit and ventilated and otherwise comply with all legislative requirements.
- (2) There is to be a feed room, wash area, isolation cages and maternity section.
- (3) Materials used in structures are to be approved by the local government.
- (4) The internal surfaces of walls are, where possible, to be smooth, free from cracks, crevices and other defects.
- (5) All fixtures, fittings and appliances are to be capable of being easily cleaned, resistant to corrosion and constructed to prevent the harbourage of vermin.
- (6) Washing basins with a minimum of running cold water are to be available to the satisfaction of the local government.
- (7) The maximum number of cats to be kept on the premises stated on the permit is not to be exceeded.
- (8) A register is to be kept recording in respect of each cat the—
  - (a) date of admission;
  - (b) date of departure;
  - (c) breed, age, colour and sex; and
  - (d) name and residential address of the owner.
- (9) The register is to be made available for inspection on the request of an authorised person.
- (10) Enclosures are to be thoroughly cleaned each day and disinfected at least once a week to minimise disease.
- (11) Any sick or ailing cat is to be removed from the premises or transferred to an isolation cage separated from other cats kept on the premises.
- (12) Any other matter which in the opinion of the local government is deemed necessary for the health and wellbeing of any cat, or person, or adjoining premises or the amenity of the area (or any part thereof).

**SCHEDULE 2—MODIFIED PENALTIES**

[Clause 6.2]

<b>Item No.</b>	<b>Clause No.</b>	<b>Nature of Offence</b>	<b>Penalty \$</b>
1	2.1	Cat causing a nuisance	200
2	3.2(1)	Failure of a person to hold a permit when required	200
3	3.8	Breach of a condition of a permit	200

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

Cr JORGEN JENSEN, Shire President.  
Mr KELVIN MATTHEWS, Chief Executive Officer.

Dated: 27 June 2018.



**CEMETERIES ACT 1986  
LOCAL GOVERNMENT ACT 1995**

SHIRE OF MOUNT MAGNET

**CEMETERIES LOCAL LAW 2018**

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**CEMETERIES ACT 1986  
LOCAL GOVERNMENT ACT 1995**

SHIRE OF MOUNT MAGNET

**CEMETERIES LOCAL LAW 2018**

Under the powers conferred by the *Cemeteries Act 1986*, the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Mount Magnet resolved on 27 June 2018 to make the following local law.

**PART 1—PRELIMINARY**

**1.1 Citation**

This local law may be cited as the *Shire of Mount Magnet Cemeteries Local Law 2018*.

**1.2 Application**

This local law applies to the Mount Magnet Townsite Cemetery and the closed cemeteries of Lennonville and Paynesville located in the district.

**1.3 Commencement**

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

**1.4 Repeal**

The *Mount Magnet Public Cemetery Local Law 2002* published in the *Government Gazette* on 24 September 2003 is repealed.

**1.5 Interpretation**

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 appointed by the Board for the purposes of performing any function or exercising any power conferred upon an authorised officer by this local law;

*Board* means the Shire of Mount Magnet;

*Cemetery* means the locations of the active cemetery located at Reserve 2944 on Road 54 Mount Magnet and the inactive closed cemeteries being the Lennonville cemetery located on Road 86 Lennonville Access Road and the Paynesville cemetery located on the Mount Magnet—Sandstone Road.

*CEO* means the Chief Executive Officer, for the time being, of the Board who is also Chief Executive Officer of the Shire of Mount Magnet;

*coffin* means a long narrow box typically made of wood in which a dead body is placed;

*crypt* means an underground room or vault used as a burial place;

*district* means the district of the Shire of Mount Magnet;

*funeral director* means a person holding a current funeral director's licence;

*mausoleum* means a building or construction wholly above or partially above and below ground level, so constructed as to allow the deposition of dead bodies into a compartment in the wall or floor and being sealed from view;

*memorial* means a statue or structure erected in commemoration or remembrance;

*monument* has the meaning similar to memorial that is a statue, building or structure erected in commemoration;

*monumental mason* means a licence issued under clause 7.16;

*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; and

**vault** means a below ground lined grave with one or more sealed compartments constructed to specifications approved from time to time by the Board;

**vehicle** means a machine used for transporting goods or people.

## PART 2—ADMINISTRATION

### 2.1 Powers and functions of CEO

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 or dispose of ashes 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 a 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) A funeral director shall complete a certificate in the form determined by the Board from time to time, 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.

### 3.4 Minimum notice required

All bookings to hold a funeral shall be made with the Board at least 24 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 30 June of 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

### 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 subclause (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

(1) A person shall drive a vehicle on a vehicular access way or the constructed roadway or other areas designated for the use of vehicles within the cemetery, unless otherwise authorised by the CEO.

(2) A person driving a vehicle, within a cemetery, shall not exceed the speed limit of 25 km per hour, and shall comply with the signs and directions in the cemetery.

## 5.5 Offenders may be ordered to leave

(1) A person committing an offence under clause 5.4 may be ordered to leave the cemetery by the CEO or an authorised officer.

(2) A person who has been ordered to leave the cemetery by the CEO or an authorised officer is to leave immediately in a peaceful manner and not cause a disruption or be a nuisance to any funeral congregation or ceremony or procession.

## 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) specify an area in the cemetery where the dead body is to be buried or the ashes placed;
- (e) conduct the funeral notwithstanding the failure of a person to make any application or to obtain any consent required under this local law; or
- (f) do or require anything which it considers is necessary or convenient for the conduct of a funeral by it.

## 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—

- (a) Book of remembrance;
- (b) Family grave;
- (c) Family shrub;
- (d) Garden of remembrance;
- (e) Granite seat;
- (f) Ground niche;
- (g) Memorial desk;
- (h) Memorial gardens;
- (i) Memorial wall;
- (j) Memorial rose, tree or shrub;
- (k) Niche wall;
- (l) Scattering of ashes to the winds; or
- (m) Other memorials approved by the Board.

(2) Subject to subclauses (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 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.



**5.8 Ashes held by the Board**

- (1) If at the expiration of 6 months from the date of cremation at a cemetery—
  - (a) the ashes of the deceased person have not been claimed; or
  - (b) no arrangements have been made for the placement of the ashes of a deceased person by the personal representative, then the Board may dispose of the ashes in the cemetery by any of the methods listed in clause 5.7.
- (2) If prior to the expiration of 6 months from the date of cremation the personal representative of the deceased person requests the Board to store the ashes of the deceased person, and pays to the Board the set fee monthly in advance for such storage, the Board shall store the ashes in safe custody.
- (3) Notwithstanding subclause (2), should the personal representative default in the payment of the fee referred to in subclause (2), the Board may dispose of the ashes in the cemetery by any of the methods listed in clause 5.7.

**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 subclause (1)(a) will only be granted where in the opinion of the authorised officer exceptional circumstances require granting of that permission.
- (3) Permission of the authorized person shall not be given for more than two (2) dead bodies to be buried per grave.

**6.2 Mausoleum, etc**

- (1) A person other than the Board shall not construct a brick grave, crypt, vault or mausoleum within the cemetery.
- (2) A person may request the Board to construct a vault or mausoleum within the cemetery which vault or mausoleum shall at all times remain the property of the Board.
- (3) An application under subclause (2) shall be in writing and shall be accompanied by payment of the set fee.
- (4) A person shall not place a dead body in a mausoleum except—
  - (a) in a closed coffin; and
  - (b) in a soundly constructed chamber; and
  - (c) in accordance with subclause (5).
- (5) The number of burials in a chamber must not exceed the number for which the chamber was designed.

**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 as approved by the local government.

**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 carry out memorial or other work on graves within the cemetery other than during the hours of 8.00 am and 6.00 pm on weekdays, and 8.00 am 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 6.00 pm 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—

- (a) outside the perimeter of a grave in the cemetery as defined in the plans kept and maintained under section 40(2) of the Act; or
- (b) on the lawn in an area set aside by the Board as a lawn or a memorial plaque section.

*Division 2—Lawn section***7.13 Specification of monuments**

(1) All monuments in the lawn section of a cemetery shall—

- (a) be made of natural stone; and
- (b) be placed upon a base of natural stone; and
- (c) comply with the following specifications—
  - (i) the overall height of the monument above the original surface of the grave shall not exceed 1.05 m;
  - (ii) the height of the base of the monument above the original surface of the grave shall not be less than 150 mm nor more than 450 mm;
  - (iii) the width of the base of the monument shall not exceed 1.20 m;
  - (iv) the depth of the base of the monument shall not exceed 300 mm; and
- (d) have foundations extending to the bottom of the grave unless concrete beam foundations are provided by the Board.

(2) An admiralty bronze memorial plaque may be attached to a monument erected or being erected in the lawn section of the cemetery.

(3) A person shall not display any trade names or marks upon any monument erected within the lawn section of the cemetery.

**7.14 Headstones**

In the lawn section of the cemetery, that part of a headstone above its base shall not extend horizontally beyond that base.

*Division 3—Memorial plaque section***7.15 Requirements of a memorial plaque**

(1) All memorial plaques placed in a memorial plaque section of the cemetery shall—

- (a) be made of admiralty bronze or any other material approved by the Board; and
- (b) not be less than the dimensions 380 mm x 280 mm, nor more than 560 mm x 305 mm.

(2) All memorial plaques made of admiralty bronze shall—

- (a) not exceed 20 mm in thickness; and
- (b) be placed upon a base mounting approved by the Board.

(3) All memorial plaques made of stone shall—

- (a) not exceed 50 mm in thickness placed upon a base mounting approved by the Board; or
- (b) not be less than 100 mm in thickness if it is not to be placed upon a base mounting.

*Division 4—Licensing of Monumental Masons***7.16 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 subclause (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.

**7.17 Expiry date, non-transferability**

A monumental mason's licence—

- (a) shall be valid from the date specified therein until 30 June next following; and
- (b) is not transferable.

**7.18 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 7.16; or
- (b) is an employee of a person who holds such a licence; or
- (c) is authorised by the Board to do so.

**7.19 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.

**7.20 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.

**PART 8—GENERAL****8.1 Animals**

A person shall not bring an animal into or permit an animal to enter or remain in the cemetery, other than an *assistance animal* as defined in section 9(2) of the *Disability Discrimination Act 1992* or with the approval of the CEO or an authorised officer.

**8.2 Damaging and removing of objects**

Subject to clause 8.3, 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.

**8.3 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.

**8.4 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; or
- (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.

**8.5 Advertising**

(1) A person shall not advertise or carry on any trade, business or profession within the cemetery without the prior written approval of the Board.

(2) The Board may consider and grant approval subject to such conditions as the Board thinks fit.

**8.6 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.

**8.7 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 Schedule 1 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 Schedule 1 is set out in the fourth column of Schedule 1.

(3) The prescribed form of the infringement notice referred to in section 63(1) of the Act is set out in the Schedule 2.

(4) The prescribed form of the notice withdrawing an infringement notice referred to in section 63(3) of the Act is set out in Schedule 3.

**SCHEDULE 1—MODIFIED PENALTIES**

[Clause 9.2]

Item No.	Clause	Nature of Offence	Modified Penalty
1	5.4(1)	Not driving vehicle on vehicular access way or constructed roadways or within designated areas	\$50.00
2	5.4(2)	Exceeding speed limit	\$50.00
3	7.3	Not removing of rubbish and surplus materials	\$50.00
4	7.5	Unauthorised use of sand, earth or other material taken from the cemetery	\$50.00
5	7.7	Leaving uncompleted works in an untidy or unsafe condition	\$50.00
6	8.1	Unauthorised bringing in of animal into cemetery or permitting animal to remain in cemetery	\$50.00
7	8.2	Damaging and removing of objects	\$50.00
8	8.4	Littering and vandalism	\$50.00
9	8.5	Unauthorised advertising, and/or trading	\$50.00
10	8.6	Disobeying sign or lawful direction	\$50.00

**SCHEDULE 2—INFRINGEMENT NOTICE**

[Clause 9.2(3)]

**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 *Shire of Mount Magnet Cemeteries Local Law 2018*.

.....  
(Authorised Person)

Offence

- Not driving vehicle on vehicular access way or designated areas  
 Exceeding speed limit

- Not removing rubbish and surplus materials
- Unauthorised use of materials taken from the cemetery
- Leaving uncompleted works in an untidy or unsafe condition
- Unauthorised animal in cemetery
- Damaging and removing of objects
- Littering and vandalism
- Unauthorised advertising and/or trading
- 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 Mount Magnet at 90 Hepburn Street, Mount Magnet WA 6638 between the hours of 9am to 4.30pm, Monday to Friday.

Please make cheques payable to Shire of Mount Magnet. Payments by mail should be addressed to—

The Chief Executive Officer  
 Shire of Mount Magnet  
 90 Hepburn Street (PO Box 62), Mount Magnet WA 6638

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.

**SCHEDULE 3—INFRINGEMENT WITHDRAWAL NOTICE**

[Clause 9.2(4)]

**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.

(Authorised Person)

- [1] Insert name and address of alleged offender.
- [2] Insert short particulars of offence alleged.
- [3] Insert amount of penalty prescribed.

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

Cr JORGEN JENSEN, Shire President.  
 Mr KELVIN MATTHEWS, Chief Executive Officer.

Dated: 27 June 2018.

**DOG ACT 1976  
LOCAL GOVERNMENT ACT 1995**

SHIRE OF MOUNT MAGNET

**DOGS LOCAL LAW 2018**

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**DOG ACT 1976**  
**LOCAL GOVERNMENT ACT 1995**

SHIRE OF MOUNT MAGNET

**DOGS LOCAL LAW 2018**

Under the powers conferred by the *Dog Act 1976*, the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Mount Magnet resolved on 27 June 2018 to make the following local law.

**PART 1—PRELIMINARY**

**1.1 Citation**

This local law may be cited as the *Shire of Mount Magnet Dogs Local Law 2018*.

**1.2 Commencement**

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

**1.3 Application**

This local law applies throughout the district.

**1.4 Repeal**

The *Mount Magnet Dogs Local Law 2002* published in the *Government Gazette* on 24 September 2003 is repealed.

**1.5 Interpretation**

In this local law unless the context otherwise requires—

**Act** means the *Dog Act 1976*;

**AS** means an Australian Standard published by Standards Australia as amended from time to time that is available at [www.standards.org.au](http://www.standards.org.au) for a prescribed fee. A free copy is available for viewing at the Shire of Mount Magnet library and should be used as the contextual reference;

**authorised person** means a person who is appointed under section 29 of the Act;

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

**dangerous dog** has the meaning given to it under the Act;

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

**local government** means the Shire of Mount Magnet;

**local planning scheme** means a 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;

**not a fit and proper person** means a person who has been deemed not fit to care for animals by a reputable body such as the RSPCA, or a person who is deemed by an authorised officer not to have the ability or adequate support to undertake the obligations of the licence;

**nuisance** means—

- (a) an activity or condition which is harmful or annoying and which gives rise to legal liability in the tort of public or private nuisance at law;
- (b) an unreasonable interference with the use and enjoyment of a person's ownership or occupation of land; or
- (c) interference which causes material damage to land or other property on the land affected by the interference;

**occupier** means a person or persons ordinarily residing in a premises;

**owner** has the meaning given to it under section 3 of the Act;

**person liable for control of the dog** has the meaning given to it under section 3 of the Act;

**pound keeper** means a person authorised by the local government to perform all or any of the functions conferred on a “pound keeper” under this local law and includes the local government’s Ranger;

**premises** has the same meaning as in the Act;

**Regulations** means the *Dog Regulations 2013*;

**Schedule** means a schedule in this local law; and

**thoroughfare** has the meaning given to it in section 1.4 of the *Local Government Act 1995*.

## 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 to 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.

## PART 3—REQUIREMENTS AND LIMITATIONS ON THE KEEPING OF DOGS

### 3.1 Dogs to be confined

- (1) An owner and/or occupier of premises on which a dog is kept or a person liable for control of the dog 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 (unless the gate is temporarily opened in a manner that ensures that the dog remains confined) 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: \$2,000.**

- (3) Notwithstanding subclauses (1) and (2), the confinement of dangerous dogs is dealt with in the Act and Regulations.

### 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 for the purpose of section 26(4) of the Act is 2 dogs over the age of 3 months and the youngest of those dogs under that age.

## PART 4—APPROVED KENNEL ESTABLISHMENTS

### 4.1 Interpretation

In this Part and in Schedule 2—

**adjoining** includes land or premises which have a portion of a common boundary with a lot or is separated from that lot by a public reserve, road, right-of-way, pedestrian access way, access leg of a battleaxe lot or the equivalent not more than 6m in width;

**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, 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 local planning scheme,

then the requirements of clauses 4.2(b), 4.3 and 4.5(b) 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 local 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 Fees

- (1) On lodging an application for a licence, the applicant is to pay a fee to the local government.
- (2) If a licensee wishes to renew 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 to 6.19 of the *Local Government Act 1995*.

#### 4.10 Form of licence

- (1) When an application for a licence is approved under this local law, the local government will issue a licence to the applicant.
- (2) The licence is to be in the form determined by the local government from time to time.

#### 4.11 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.

#### 4.12 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.

#### 4.13 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—
  - (a) approve, subject to conditions as it considers appropriate; or
  - (b) refuse to approve,

an application for the transfer of a licence under this clause.

- (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.

#### 4.14 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.

#### 4.15 Inspection of kennel

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

### PART 5—MISCELLANEOUS

#### 5.1 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: \$1,000.**

(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 6—ENFORCEMENT

#### 6.1 Interpretation

In this Part—

*infringement notice* means the notice referred to in clause 6.3; and

*notice of withdrawal* means the notice referred to in clause 6.6(1).

#### 6.2 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 fourth 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 fifth column directly opposite that offence.

(3) The amount appearing in the fifth 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.

#### 6.3 Issue of infringement notice

Where an authorised 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 determined by the local government from time to time.

#### 6.4 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.

#### 6.5 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.

#### 6.6 Withdrawal of infringement notice

(1) Whether or not the modified penalty has been paid, an authorised person may withdraw an infringement notice by sending a notice in the form determined by the local government from time to time.

(2) A person authorised to issue an infringement notice under clause 6.3 cannot sign or send a notice of withdrawal.

**6.7 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—APPLICATION FOR A LICENCE FOR AN APPROVED  
KENNEL ESTABLISHMENT**

[Clause 4.2]

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 1976*.

**OFFICE USE ONLY**

Application fee paid on: .....

**SCHEDULE 2—CONDITIONS OF A LICENCE FOR AN APPROVED  
KENNEL ESTABLISHMENT**

[Clause 4.8(1)]

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) 50m from any boundary of the premises;
  - (ii) 40m from any dwelling; and
  - (iii) 40m from any church, school room, hall, factory, dairy or premises where food is manufactured, prepared, packed or stored for human consumption;
- (c) each yard for a kennel must be kept securely fenced with a fence constructed of link mesh or netting or other materials approved by the local government;
- (d) the minimum floor area for each kennel must be calculated at 2.5 times the length of the breed of dog (when it is fully grown), squared, times the number of dogs to be housed in the kennel and the length of the dog is to be determined by measuring from the base of the tail to the front of its shoulder;



- (e) the floor area of the yard attached to any kennel or group of kennels must be at least twice the floor area of the kennel or group of kennels to which it is attached;
- (f) the upper surface of the kennel floor must be—
- (i) at least 100mm above the surface of the surrounding ground;
  - (ii) smooth so as to facilitate cleaning;
  - (iii) rigid;
  - (iv) durable;
  - (v) slip resistant;
  - (vi) resistant to corrosion;
  - (vii) non-toxic;
  - (viii) impervious;
  - (ix) free from cracks, crevices and other defects; and
  - (x) finished to a surface having a fall of not less than 1 in 100 to a spoon drain which in turn must lead to a suitably sized diameter sewerage pipe which must be properly laid, ventilated and trapped in accordance with the health requirements of the local government;
- (g) all kennel floor washings must pass through the drain in item (f)(x) and must be piped to approved apparatus for the treatment of sewage in accordance with the health requirements of the local government;
- (h) the kennel floor must have a durable upstand rising 75mm above the floor level from the junction of the floor and external and internal walls, or internal walls must be so constructed as to have a minimum clearance of 50mm from the underside of the bottom plate to the floor;
- (i) where a yard is to be floored, the floor must be constructed in the same manner as the floor of any kennel;
- (j) from the floor, the lowest internal height of a kennel must be, whichever is the lesser of—
- (i) 2m; or
  - (ii) 4 times the height of the breed of dog in the kennel, when it is fully grown, measured from the floor to the uppermost tip of its shoulders while in a stationary upright position;
- (k) the walls of each kennel must be constructed of concrete, brick, stone or framing sheeted internally and externally with good quality new zincalume or new pre-finished colour coated steel sheeting or new fibrous cement sheeting or other durable material approved by the local government;
- (l) all external surfaces of each kennel must be kept in good condition;
- (m) the roof of each kennel must be constructed of impervious material;
- (n) all kennels and yards and drinking vessels must be maintained in a clean condition and must be cleaned and disinfected when so ordered by an authorised 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—OFFENCES FOR WHICH MODIFIED PENALTY APPLIES

[Clause 6.2]

Item	Clause	Nature of Offence	Modified Penalty \$	Dangerous Dog Modified Penalty
1	3.1(2)	Failing to provide means for effectively confining a dog	50	
2	4.9	Failing to comply with the conditions of a licence	200	
3	5.1(2)	Dog excreting in prohibited place	100	

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

Cr JORGEN JENSEN, Shire President.  
Mr KELVIN MATTHEWS, Chief Executive Officer.

Dated: 27 June 2018.





**LOCAL GOVERNMENT ACT 1995**

**SHIRE OF MOUNT MAGNET**

**EXTRACTIVE INDUSTRIES LOCAL LAW 2018**

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## LOCAL GOVERNMENT ACT 1995

## SHIRE OF MOUNT MAGNET

## EXTRACTIVE INDUSTRIES LOCAL LAW 2018

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Mount Magnet resolved on 27 June 2018 to make the following local law.

## PART 1—PRELIMINARY

## 1.1 Citation

This local law may be cited as the *Shire of Mount Magnet Extractive Industries Local Law 2018*.

## 1.2 Commencement

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

## 1.3 Definitions

In this local law, unless the context otherwise requires—

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

**AS or AS/NZS** means an Australian Standard or Australian/New Zealand Standard published by Standards Australia as amended from time to time that is available at [www.standards.org.au](http://www.standards.org.au) for a prescribed fee. A free copy is available for viewing at the Shire of Mount Magnet library and should be used as the contextual reference;

**carry on an extractive industry** means quarrying and excavating for stone, gravel, sand, and other material and means premises, other than premises used for mining operations, that are used for the extraction of basic raw materials including by means of ripping, blasting or dredging and may include facilities for any of the following purposes—

- (a) the processing of raw materials including crushing, screening, washing, blending or grading;
- (b) activities associated with the extraction of basic raw materials including wastewater treatment, storage, rehabilitation, loading, transportation, maintenance and administration;

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

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

**excavation** includes quarry;

**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 Mount Magnet;

**nuisance** means—

- (a) An activity or condition which is harmful or annoying and which gives rise to legal liability in the tort of public or private nuisance at law;
- (b) An unreasonable interference with the use and enjoyment of a person of his or her ownership or occupation of land; or
- (c) Interference which causes material damage to land or other property on the land affected by the interference;

**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.

#### 1.4 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
- (e) do not affect the validity of any licence issued by the local government if that licence is currently in force at the date of gazettal of this local law.

(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—LICENCING 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 \$5,000 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 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 applicants, 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 plan 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 (b); and
  - (ii) the datum peg and related point referred to in paragraph (d);
- (f) copies of all land use planning approvals required under any planning legislation;
- (g) copies of any environmental approval required under any environmental legislation;
- (h) copies of any geotechnical information relating to the excavation site;
- (i) the consent in writing to the application from the owner of the excavation site;
- (j) the licence application fee specified by the local government from time to time; and
- (k) any other information that the local government may reasonably require.
- (2) All survey data supplied by an applicant for the purpose of sub clause (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 2,000 square metres; and
  - (b) the extracted material is not to exceed 2,000 cubic metres;
- the local government may exempt a person making an application for a licence under subclause (1) from supplying any of the data specified in paragraphs (c), (e) and (f) of sub clause (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 2.2, 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 will notify in writing, unless previously undertaken during the planning application process, all—
- (a) land owners and occupiers of all land adjoining 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; and
  - (b) referral authorities having control or jurisdiction within an area determined by the local government as likely to be affected by the granting of a licence; and
  - (c) the general public by notice in a newspaper circulating in the local area;
- advising of the application and specifying that they may, within twenty-one days from the date of the notice, object to or make representations in writing in respect of the issue of a licence by the local government.

- (3) 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.
- (4) Where the local government approves an application for a licence, it shall—
- (a) determine the licence period, not exceeding 21 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.
- (5) 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, as determined by the local government from time to time in accordance with section 6.16 to 6.19 of the Act;
  - (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.
- (6) Without limiting subclause (3), 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 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 the upgrade, repair or 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 each year, a licensee shall pay to the local government the annual licence fee determined by the local government from time to time in accordance with section 6.16 to 6.19 of the Act for the purpose of annual inspection and monitoring of conditions.

## 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) failed to comply with—
    - (i) any conditions of an excavation licence;
    - (ii) any provisions of this local law; or
    - (iii) any provisions of the Local Government's Local Planning Scheme; or
  - (c) transferred or assigned or attempted to transfer or assign the licence without the consent of the local government; or
  - (d) 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; or
  - (e) failed to pay the annual licence fee under clause 3.2; or
  - (f) 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 clauses 2.2(1)(c) and (d); and
  - (e) any other things referred to in clauses 2.2 and 3.1.
- (2) The local government may waive any of the requirements specified in clause 4.3 (1)(d) or (e) 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 2.2 and 3.1.
- (3) 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 sub clause (1) is to be paid into a fund established by the local government for the purposes of this clause.

**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—
  - (i) 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
  - (ii) 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) 50 metres of any thoroughfare;
- (d) 50 metres of any watercourse; or
- (e) 500m of any adjoining residence;

unless approved by Council and adjoining neighbours in writing.

**Penalty \$2,000.**

**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 Mines, Industry Regulation and Safety; 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) Except where approval is obtained under sub clause (2), the blasting takes place only between the hours of 8.00 am and 5.00 pm, 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 as amended from time to time, 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 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 month 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 Licences**

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 Schedule 1 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 Schedule 1.

#### **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—PRESCRIBED OFFENCES**

(clause 9.1)

<b>Item No.</b>	<b>Clause</b>	<b>Nature of Offence</b>	<b>Modified Penalty</b>
1	2.1 (a)	Carry on extractive industry without licence	\$350
2	2.1 (b)	Failure to comply with terms and conditions of licence imposed by the local government	\$350
3	6.1	Excavate without approval	\$200
4	6.2(a)	Failure to securely fence and/or keep gateways locked where required	\$350
5	6.2(b)	Warning signs not erected or maintained as required	\$350
6	6.2(c)	Excavation not drained as required	\$350
7	6.2(d)	Excavation site not restored and reinstated in accordance with terms and conditions	\$500
8	6.2(e)	All reasonable steps not taken to prevent the emission of dust, noise, vibration and other forms of nuisance	\$500
9	6.2(f)	Other conditions not complied with	\$500
10	6.3(a)	Remove trees or shrubs near boundary without approval	\$300
11	6.3(b)	Store without required approval explosives or explosive devices	\$350
12	6.3(c)	Fill or excavate in breach of licence	\$350
13	6.4 (1)(a)	Blasting without approval of the local government	\$200
14	6.4(1)(b)	Blasting outside times authorised	\$200
15	6.4(1)(d)	Blasting in breach of conditions imposed by the local government	\$200
16	6.4(2)	Blasting without approval on Saturday, Sunday or public holiday	\$200

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

Cr JORGEN JENSEN, Shire President.  
Mr KELVIN MATTHEWS, Chief Executive Officer.

Dated: 27 June 2018.



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## LOCAL GOVERNMENT ACT 1995

## SHIRE OF MOUNT MAGNET

## FENCING LOCAL LAW 2018

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Mount Magnet resolved on 27 June 2018 to make the following local law.

## PART 1—PRELIMINARY

**1. Citation**

This local law may be cited as the *Shire of Mount Magnet Fencing Local Law 2018*.

**2. Commencement**

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

**3. Application**

This local law applies throughout the district.

**4. Interpretation**

In this local law, unless the context requires otherwise—

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

*AS or AS/NZS* means an Australian Standard or Australian/New Zealand Standard published by Standards Australia as amended from time to time that is available at [www.standards.org.au](http://www.standards.org.au) for a prescribed fee. A free copy is available for viewing at the Shire of Mount Magnet library and should be used as the contextual reference;

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

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

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

*commercial lot* means a lot where a commercial use—

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

*Council* means the Council of the Shire of Mount Magnet;

*dangerous* in relation to any fence means—

- (a) an electrified fence other than a fence in respect of which a license 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 fiber, 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;

**license** means an electrified fence license or a razor wire fence license;

**local government** means the Shire of Mount Magnet;

**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 17(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 local governments town planning scheme;

**sufficient fence** means a fence described in part 2 of these local laws;

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

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

## 5. License 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 of the *Local Government Act 1995*.

## PART 2—SUFFICIENT FENCES

### 6. Sufficient fences

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

(2) Subject to 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 Schedule 1;
- (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 Schedule 2;
- (c) on a Rural Lot and on a Rural Residential Lot is a dividing fence or a boundary fence constructed and maintained in accordance with the specifications and requirements of the Schedule 3.

(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 Schedule 1;
- (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 Schedule 2;
- (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 Schedule 3;
- (d) a Residential Lot and a Rural Residential Lot, a sufficient fence is a dividing fence constructed and maintained in accordance with the specifications and requirements of the Schedule 1 or Schedule 3 respectively, and;
- (e) a Rural 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 Schedule 3;

(4) Unless the Building Surveyor specifies otherwise, a sufficient fence on a boundary between lots other than those specified in subclause (1) and (2) is a dividing fence constructed in accordance with the specifications and requirements of Schedule 2.

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

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

(6) The fencing specifications listed in Schedules 1, 2 and 3, are intended to be used in assisting in determining a sufficient fence for the purposes of the Act only.

(7) Conditions specific to a locality such as soil types, topography and wind loadings, should be considered when constructing a fence.

**PART 3—GENERAL****7. Fences within front setback areas**

(1) A person shall not, without the written consent of the Building Surveyor, erect a free standing fence greater than 1000mm in height, within the front set-back area of a Residential Lot within the district.

(2) The Building Surveyor may approve the erection of a fence of a height greater than 1000mm in the front setback area of a Residential Lot only if the fence on each side of the driveway into the Lot across the front boundary is to be angled into the Lot for a distance of not less than 1500mm. along the frontage to a distance of not less than 1500mm from the frontage in order to provide appropriate splayed lines of vision for a motorist using the driveway for access to a thoroughfare.

(3) The provision of sub-clause (2) shall not apply to a fence of open construction that does not obscure the lines of vision of a motorist using the driveway for access to a thoroughfare.

**8. Fences on a rural lot**

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

**9. Maintenance of fences**

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

**10. General discretion of the local government**

(1) Notwithstanding Part 2, the local government may consent to the erection or repair of a fence which does not comply with the requirements of these local laws. This sub clause requires any person, owner or occupier that is erecting or repairing a fence that will not comply with the local law, to apply to the local government for consent.

(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.

(3) Notwithstanding that these local laws specify a minimum standard for a sufficient fence for the purposes of the Act, Council may adopt guidelines for alternative standards that it will approve. In setting these guidelines, Council shall have regard to acceptable materials and heights.

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

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

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

**12. Barbed wire and broken glass fences**

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

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

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

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

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

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

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

(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 sub clause (2); or

- (b) construct a fence wholly or partly of razor wire on that lot without first obtaining a licence under sub clause (3).
- (2) A licence to have and use an electrified fence shall not be issued—
  - (a) in respect of a lot which is or which abuts a Residential Lot;
  - (b) unless the fence complies with AS/NZS 3016:1994; and
  - (c) unless provision is made so as to enable the fence to be rendered inoperable during the hours of business operations, if any, on the lot where it is erected.
- (3) A licence to have a fence constructed wholly or partly of razor wire shall not be issued—
  - (a) if the fence is within 3m of the boundary of the lot;
  - (b) where any razor wire used in the construction of the fence is less than 2000mm or more than 2400mm above the ground level.
- (4) An application for a licence referred to in sub clauses (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 sub clauses (2) or (3) may be—
  - (a) approved by the local government;
  - (b) approved by the local government subject to such conditions as it thinks fit; or
  - (c) refused by the local government.
- (6) An application for a license under this clause must also—
  - (a) be in the form determined by the local government;
  - (b) be accompanied by any fee imposed by the local government under Part 6 of the *Local Government Act 1995*; and
  - (c) include—
    - (i) a written consent signed by the owner of the land on which the fence is located or proposed to be located—unless the applicant is the owner of that land; and
    - (ii) any further information which may be required by the local government.
- (7) Where the local government approves an application for a license under this clause, it shall issue a license to the applicant in the form determined by the local government.

#### 14. Transfer of a license

A licence referred to in clause 14 shall transfer with the land to any new occupier or owner of the lot.

#### 15. Cancellation of a license

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

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

### PART 6—NOTICES OF BREACH

#### 16. Notices of breach

- (1) Where a breach of any provision of 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 or occupier of that lot ('notice of breach').
- (2) Any such notice of breach shall—
  - (a) specify the provision of these Local Laws which has been breached;
  - (b) specify the particulars of the breach; and
  - (c) state that the owner or occupier of the lot is required to remedy the breach within 28 days from the giving of the notice.
- (3) Should an owner or occupier fail to comply with a notice of breach, the local government may by its employees, agents or contractors enter upon the lot to which the notice relates and remedy the breach, and may recover the expenses of so doing from the owner or occupier of the lot, as the case may be, in a court of competent jurisdiction.
- (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 any power of entry exercised by the local government under this local law is subject to Part 3, Division 3 of the *Local Government Act 1995*.

### PART 7—OFFENCES

#### 17. Offences and penalties

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

**18. Modified penalties**

(1) An offence against any provision of these local laws is a prescribed offence for the purposes of section 9.16 (1) of the *Local Government Act 1995*.

(2) Unless otherwise specified, the amount of the modified penalty for an offence against any provision of this local law is \$100.

**19. Form of notices**

For the purposes of this local law—

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

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**SCHEDULE 1—SPECIFICATIONS FOR A SUFFICIENT FENCE ON  
A RESIDENTIAL LOT**

[Clause 6.2(a)]

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

- A.** A picket timber fence which satisfies the following specifications—
  - (a) corner posts to be 125mm x 125mm x 2400mm. and intermediate posts to be 125mm x 75mm x 2400mm spaced at 2400mm centres;
  - (b) corner posts to be strutted two ways with 100mm x 50mm x 450mm sole plates and 75mm x 50mm struts;
  - (c) intermediate posts to be doubled yankee strutted with 150mm x 25mm x 450mm struts;
  - (d) all posts to have tops with a 60mm weather cut and to be sunk at least 600mm into the ground;
  - (e) rails to be 75mm. x 50mm with each rail spanning two bays of fencing double railed or bolted to each post with joints staggered;
  - (f) the fence to be covered with 75mm x 20mm sawn pickets, 1800mm in height placed 75mm apart and affixed securely to each rail; and
  - (g) the height of the fence to be 1800mm except with respect to the front set back area for which there is no minimum height but which is subject to clause 7.
- 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 600mm (applicable to corrugated fibre reinforced pressed cement fencing only);
  - (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 (applicable to corrugated fibre reinforced pressed cement fencing only); and
  - (d) the height of the fence to be 1800mm except with respect to the front setback area for which there is no minimum height but which is subject to Clause 7.
- C.** A fence constructed of brick, stone or concrete, which satisfies the following specifications and AS/NZS 3700 where applicable—
  - (a) footings of minimum 225mm x 150mm concrete 15MPa or 300mm x 175mm brick laid in cement mortar;
  - (b) fences to be offset a minimum of 200mm at maximum 3000mm centres or 225mm x 100mm engaged piers to be provided at maximum 3000mm centres;
  - (c) expansion joints in accordance with the manufacturer’s written instructions; and
  - (d) the height of the fence to be 1800mm except with respect to the front set back area for which there is no minimum height but which is subject to clause 7.
- D.** A composite fence having a minimum overall height of 1800mm except with respect to the front set back area for which there is no minimum height but which is subject to clause 7, which satisfies the following specifications for the brick construction and complies with AS/NZS 3700 Standards—
  - (1)(a) brick piers of minimum 345mm x 345mm at 1800mm centres bonded to a minimum height base wall of 514mm;
  - (b) each pier shall be reinforced with one R10 galvanised starting rod 1500mm high with a 250mm horizontal leg bedded into a 500mm x 200mm concrete footing and set 65mm above the base of the footing. The top of the footing shall be 1 course (85mm) below ground level;



- (c) the minimum ultimate strength of brickwork shall be 20MPA. Mortar shall be a mix of 1 part cement, 1 part lime and 6 parts sand;
  - (d) the ground under the footings is to be compacted to 6 blows per 300mm and checked with a standard falling weight penetrometer; and
  - (e) control joints in brickwork shall be provided with double piers at a maximum of 6 metre centres; or
- (2)(a) brick piers of a minimum 345mm x 345mm x 2700mm centres bonded to the base wall; and
- (b) each pier shall be reinforced with two R10 galvanised starting rods as previously specified.

**SCHEDULE 2—SPECIFICATIONS FOR A SUFFICIENT FENCE ON A  
COMMERCIAL LOT AND AN INDUSTRIAL LOT**

[Clause 6.2(b)]

Each of the following is defined as 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 75 mm nominal bore x 3.5mm and with footings of a 225mm diameter x 900mm;
  - (b) intermediate posts to be minimum 37mm nominal bore x 3.15mm at maximum 3.5mm centres and with footings of a 225mm diameter x 600mm;
  - (c) struts to be minimum 30mm nominal bore x 3.15mm fitted at each gate and two at each corner post and with footings 225mm x 600mm;
  - (d) cables to be affixed to the top, centre and bottom of all posts and to consist of two or more 3.15mm wires twisted together or single 4mm wire;
  - (e) rail-less link, chain or steel mesh is to be to a height of 2000mm on top of which are to be three strands of barbed wire carrying the fence to a height of 2400mm in accordance with clause 12(3) of these Local Laws; and
  - (f) Galvanised link mesh wire to be 2000mm in height and constructed of 50mm mesh 2.5mm galvanised iron wire and to be strained, neatly secured and laced to the posts and affixed to cables. Vehicle entry gates shall provide an opening of not less than 3.6m and shall be constructed of 25mm tubular framework with one horizontal and one vertical stay constructed of 20mm piping and shall be covered with 50mm x 2.5mm galvanised link mesh strained to framework. Gates shall be fixed with a drop bolt and locking attachment.
- B. A fence of fibre reinforced cement sheet or steel sheeting constructed to the minimum specifications referred to in Item B of the First Schedule.
- C. A fence constructed of aluminium sheeting when supported on posts and rails provided that it is used behind a building line and is of a minimum height of 1800mm but no greater than 2400mm.
- D. Fences of timber, brick, stone or concrete constructed to the minimum specifications referred to in the First Schedule.

**SCHEDULE 3—SPECIFICATIONS FOR A SUFFICIENT FENCE ON A  
RURAL LOT AND A RURAL RESIDENTIAL LOT**

[Clause 6.2(c)]

In the case of a non-electrified fence, a “sufficient fence” on a Rural Lot and a Rural Residential Lot is a fence of posts and wire construction, the minimum specifications for the following purposes which are—

- A. A fence to contain cattle and horses, which satisfies the following specifications—
  - (a) wire shall not be of a standard less than 2.5mm high tensile wire. 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 or fungicidal preservative;
    - standard iron star pickets; or
    - concrete;
 cut not less than 1.8m long x 100mm diameter at small end if round or 125mm x 60mm if split or sawn. Posts to be set minimum of 600mm in the ground and 1.2m above the ground spaced at 10m maximum centres; and



- (c) strainer posts shall not be less than 2.25m long and 150mm diameter at the small end (tubular steel to be 90mm in diameter) and shall be cut from indigenous timber or other suitable material. These shall be placed a minimum of 1.0m in the ground and set at all corners, gateways and fence line angles.
- B.** A mesh fence to contain sheep and goats which satisfies the following specifications;
  - (a) wire shall be hinge joint or ringlock with two plain high tensile wires of not less than 2.5mm located above the mesh and connected to posts in all cases. The mesh wire shall be clipped to the lower of the two plain wires at 3m centres;
  - (b) posts shall be spaced at 6m maximum centres in accordance with the construction standards in A(b) above; and
  - (c) strainer posts shall be in accordance with the construction standards in A(c) above.
- C.** An electrified fence having four wires only is a sufficient fence if constructed generally in accordance with A.

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

Cr JORGEN JENSEN, Shire President.  
Mr KELVIN MATTHEWS, Chief Executive Officer.

Dated: 27 June 2018.

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**LOCAL GOVERNMENT ACT 1995**

## SHIRE OF MOUNT MAGNET

**HEALTH LOCAL LAW 2018**

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**LOCAL GOVERNMENT ACT 1995**

## SHIRE OF MOUNT MAGNET

**HEALTH LOCAL LAW 2018**

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Mount Magnet resolved on 27 June 2018 to make the following local law.

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

This local law may be cited as *the Shire of Mount Magnet Health Local Law 2018*.

**1.2 Commencement**

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

**1.3 Repeal**

The *Shire of Mount Magnet Health Local Law 2002* published in the *Government Gazette* on 24 September 2003 is repealed.

**1.4 Definitions**

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

**Act** means the *Public Health Act 2016* and other subsidiary legislation where identified;

**adequate supply of water** means a flow of water of not less than 0.076 litres per second;

**approved** means approved by the local government;

**AS or AS/NZS** means an Australian Standard or Australian/New Zealand Standard published by Standards Australia as amended from time to time that is available at [www.standards.org.au](http://www.standards.org.au) for a prescribed fee. A free copy is available for viewing at the Shire of Mount Magnet library and should be used as the contextual reference;

**Building Code** means the latest edition of the Building Code of Australia published from time to time by, or on behalf of, the Australian Building Codes Board, as amended from time to time, but not including explanatory information published with that Code that is available at [www.abcb.gov.au](http://www.abcb.gov.au) and should be used as the contextual reference;

**Chief Executive Officer** means the Chief Executive Officer of the Shire of Mount Magnet and includes the Acting Chief Executive Officer;

**Chief Health Officer** has the meaning prescribed under sections 4 and 6 of the *Public Health Act 2016*;

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

**dwelling house** means a place of residence or house containing at least one sleeping room and includes a room or outbuilding separate from, but ancillary to, the building in which the sleeping room is located;

**Energy Safety** means the Energy Safety Division of the WA Department of Commerce;

**EHO** means an Environmental Health Officer appointed by the local government under the Act and includes an Acting or Assistant Environmental Health Officer;

**habitable room** means a room used for normal domestic activities; and

(a) includes a bedroom, living room, lounge room, music room, television room, kitchen, dining room, sewing room, study, play-room, family room and sun-room; but

(b) excludes a bathroom, laundry, water closet, pantry, walk-in wardrobe, corridor, lobby, photographic dark room, clothes-drying room, and other spaces of a specialised nature occupied neither frequently nor for extended periods;

**hot water** means a water at a temperature of at least 75 degrees Celsius;

**local government** means the Shire of Mount Magnet;

**LG Act** means the *Local Government Act 1995*;



**manufacturers specifications** means the documented installation or maintenance instructions produced by a product manufacturer;

**Medical Officer** means a Medical Practitioner registered under the *Health Practitioner Regulation National Law (Western Australia)* in the medical profession;

**Principal Environmental Health Officer** means an Environmental Health Officer (EHO) appointed by the local government to the office of Principal Environmental Health Officer and includes an Acting Principal Environmental Health Officer;

**public place** includes every place to which the public ordinarily have access, whether by payment of a fee or not;

**sanitary convenience** includes urinals, water closets, earth-closets, privies, sinks, baths, wash troughs, apparatus for the treatment of sewage, ash-pits, ash-tubs, or other receptacle for the deposit of ashes, faecal matter, or refuse, and all similar conveniences;

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

**sewage** means any kind of sewage, nightsoil, faecal matter or urine, and any waste composed wholly or in part of liquid;

**sewer** includes sewers and drains of every description, except drains to which the word “drain” as defined in the Act applies, also water channels constructed of stone, brick, concrete, or any other material, including the property of the local government;

**street** includes any highway, any public bridge, and any road, lane, footway, square, court, alley or passage, whether a thoroughfare or not;

**toilet** means a water closet, earth closet, privy or urinal and includes a room or cubicle in which one or more of these is located;

**vectors of disease** means an arthropod or rodent that transmits, by biological or mechanical means, an infectious agent from a source or reservoir to a person, and includes fleas, bedbugs, crab lice, body lice and head lice;

**WC** is the abbreviation given for water closet;

**water** means drinking water within the meaning of the Australian Drinking Water Guidelines as published by the National Health and Medical Research Council in 2004 and as amended from time to time that is available at [www.nhmrc.gov.au](http://www.nhmrc.gov.au) and should be used as the contextual reference; and

**window** means a glass panel, roof light, glass brick, glass louvre, glazed sash, glazed door, or other device which transmits natural light directly from outside a building to the room concerned when in the closed position.

(2) Where in this local law, a duty or liability is imposed on an “owner or occupier”, the duty or liability shall be deemed to be imposed jointly and severally on each of the owner or occupier.

(3) Where under this local law an act is required to be done or forbidden to be done in relation to any premises, the owner or occupier of those premises has, unless the contrary intention appears, the duty of causing to be done the act so required to be done, or of preventing from being done the act so forbidden to be done, as the case may be.

### 1.5 Application

This local law applies throughout the district.

## PART 2—SANITATION

### Division 1—Sanitary Conveniences

#### 2.1.1 Interpretation

In this Part, unless the context otherwise requires—

**festival** includes a fair, function or event;

**organiser** means a person—

- (a) to whom approval has been granted by the local government to conduct the festival; or
- (b) responsible for the conduct of the festival;

**public sanitary convenience** means a sanitary convenience to which the public ordinarily have access, whether by payment of a fee or not;

**temporary sanitary convenience** means a sanitary convenience and temporarily placed for use by—

- (a) patrons in conjunction with a festival; or
- (b) employees at construction sites or the like; and

**urinal** may be—

- (a) an individual stall or wall-hung urinal; or
- (b) each 600mm length of a continuous urinal trough; or
- (c) a closet pan used in place of a urinal.

#### 2.1.2 Dwelling house

(1) A person shall not use or occupy, or permit to be used or occupied, a dwelling house unless it has at least one toilet.

(2) A room in which a toilet is located shall have adequate lighting.

### 2.1.3 Premises other than a dwelling house

(1) The owner of premises other than a dwelling house shall not use or occupy, or permit to be used or occupied, premises other than a dwelling house unless—

- (a) the premises have sanitary conveniences in accordance with the Building Code and this Part;
- (b) the toilets required by this section are situated within 90m and are easily accessible to the persons for whom they are provided; and
- (c) the premises have hand wash basins—
  - (i) in accordance with the Building Code;
  - (ii) for the use of persons employed or engaged on the premises;
  - (iii) provided with an adequate supply of water supplied by taps located over each basin;
  - (iv) separate from any trough, sink or basin used in connection with any process carried out on the premises; and
  - (v) situated with or adjacent to the sanitary conveniences and easily accessible to the person for whom they are provided.

(2) The occupier of premises other than a dwelling house shall ensure that—

- (a) clean toilet paper is available at all times in each cubicle;
- (b) a sanitary napkin disposal facility is provided in each toilet set aside for the use of females; and
- (c) each hand wash basin is provided with—
  - (i) an adequate supply of soap or other hand cleaning substances; and
  - (ii) hand drying facilities, situated adjacent to and visible from the hand wash basin.

### 2.1.4 Outdoor festivals

(1) The organiser of an outdoor festival at which not more than 5000 people are expected to attend shall provide sufficient sanitary conveniences in accordance with the following table—

Patrons	Males	Females
Up to 1 000	2 WC 3 Urinal 1 Hand Wash Basin	5 WC 1 Hand Wash Basin
1 000-2 000	3 WC 6 Urinals 2 Hand Wash Basins	10 WC 2 Hand Wash Basins
2 000-3 000	4 WC 9 Urinals 3 Hand Wash Basins	15 WC 3 Hand Wash Basins
3 000-4 000	5 WC 12 Urinals 4 Hand Wash Basins	20 WC 4 Hand Wash Basins
4 000-5 000	6 WC 15 Urinals 5 Hand Wash Basins	25 WC 5 Hand Wash Basins

- (a) where the duration of the event does not exceed 4 hours 70% of the table values is deemed sufficient (rounded to nearest whole facility);
- (b) where the duration of the event does not exceed 8 hours 80% of the table values is deemed sufficient (rounded to nearest whole facility);
- (c) where the duration of the event exceeds 8 hours 100% of the table value is to be used; and
- (d) where alcohol is not available at the event (where it is not sold, not provided or not brought onto premises by patrons) the facilities may be reduced by up to 50% at the discretion of the Principal Environmental Health Officer.

(2) Toilets must be serviced throughout the event. When portable chemical type units or effluent holding tanks are used for events longer than 4 hours, they must be located so that they can be pumped out during the event.

(3) At least 1 unisex toilet for use by the disabled is required for each venue.

(4) The organiser of an outdoor festival, at which more than 5000 people are expected to attend, shall provide temporary sanitary conveniences of a number as directed by the Principal Environmental Health Officer.

### 2.1.5 Toilets

(1) Toilets on a premises shall be maintained in accordance with the following requirements—

- (a) the door to a toilet, other than an internal door, shall be properly screened to a continuous height of 1.8 metres from the floor; and
- (b) a toilet or its entrance, which is visible from overlooking windows, shall be properly screened.

(2) Toilets on premises other than a dwelling house shall be maintained in accordance with the following additional requirements—

- (a) a toilet for the exclusive use of males shall not adjoin any toilet for the exclusive use of females unless the toilets are separated by a wall extending from the floor to the ceiling and of sufficient density to have a sound transmission class of not less than 50 as required by AS or AS/NZS; and
- (b) where more than one toilet is provided on the premises, the entrance to each toilet shall bear a suitable sign indicating for which sex its use is intended.

### 2.1.6 Temporary works

A person who undertakes temporary work at any place shall ensure every temporary sanitary convenience is installed and maintained in accordance with the requirements of the *Health (Temporary Sanitary Conveniences) Regulations 1997*.

### 2.1.7 Maintenance of sanitary conveniences and fittings

- (1) The occupier of premises shall—
  - (a) keep clean, in good condition and repair; and
  - (b) whenever required by an EHO, effectively disinfect and clean, all sanitary conveniences including sanitary fittings in or on the premises.
- (2) The owner of premises shall—
  - (a) keep or cause to be kept in good repair; and
  - (b) maintain an adequate supply of water to all sanitary conveniences including sanitary fittings in or on the premises.

### 2.1.8 Ventilation of toilets

- (1) A toilet in any premises shall be ventilated in accordance with the *Sewage (Lighting, Ventilation and Construction) Regulations 1971* and the Building Code and shall be—
  - (a) mechanically ventilated to the external air, through a fully enclosed duct at a minimum rate of 25 litres per second per fixture, but in no case less than 10 air changes per hour; or
  - (b) naturally ventilated to the external air by the provision of—
    - (i) fixed and permanently ventilated windows or skylights;
    - (ii) fixed glazed louvered windows; or
    - (iii) wall or ceiling vents, ducted as direct to the outside air as is practical and boxed throughout, situated in both the room in which the toilet is located and any adjacent airlock.
- (2) A mechanical ventilation system provided under subsection (1)(a) shall—
  - (a) be separate and distinct from any other system of mechanical ventilation in the building; be of an exhaust type;
  - (b) where it is provided for a building of more than 2 storeys, have a ventilating fan and power unit in duplicate; and
  - (c) be maintained in good working order and condition.
- (3) A natural ventilation system provided under subsection (1) (b) shall have—
  - (a) a clear ventilation area of not less than 0.015 square metres per fixture; and
  - (b) a window of light transmitting area equivalent to not less than ten percent of the floor area.
- (4) A toilet with an entrance opening from—
  - (a) a room used for the manufacture, storage or consumption of food;
  - (b) a room used for sleeping or other domestic activities; or
  - (c) a room used as a work place,

shall be mechanically ventilated as required by subsection (1) (a) and the entrance shall be fitted with a door having an efficient self-closing device.

### 2.1.9 Public sanitary conveniences

- (1) A person shall not—
  - (a) foul
  - (b) damage or vandalise; or
  - (c) write on or otherwise deface,a public convenience or sanitary fixtures or fittings or the premises in or on which the sanitary convenience is located.
- (2) A person shall not live or sleep in the premises in which a public sanitary convenience is located, or use it for a purpose other than that for which it was intended.

### 2.1.10 Lighting

The owner and occupier of a premises in which a sanitary convenience or a public sanitary convenience is located shall provide and maintain adequate electric lighting for persons using the convenience.

### 2.1.11 Installation

Every sanitary convenience shall be installed in accordance with the requirements of the *Water Services Act 2012* (or other applicable legislation) and shall have an adequate supply of water.

## Division 2—Bathroom, Laundries and Kitchens

### 2.2.1 Bathrooms

- (1) A person shall not use or occupy, or permit to be used or occupied, a dwelling house without a bathroom that—
  - (a) is adequately lined with an impervious material and has an adequate ceiling;

- (b) complies with the Health Act (Laundries and Bathrooms) Regulations; and
  - (c) is equipped with—
    - (i) a hand wash basin; and
    - (ii) either a shower in a shower recess or a bath.
- (2) All baths, showers, hand wash basins and similar fittings shall be provided with an adequate supply of hot and cold water.

### 2.2.2 Laundries

- (1) A laundry must conform to the provisions of the Building Code.
- (2) Where, in any building, a laundry is situated adjacent to a kitchen or a room where food is stored or consumed, the laundry shall be separated from the kitchen by a wall extending from the floor to the roof or ceiling.
- (3) Where there is an opening between a laundry and a kitchen or other room where food is stored or consumed, the opening shall—
- (a) not be more than 1220 millimetres wide; and
  - (b) have a door which when closed shall completely fill the opening.

### 2.2.3 Washing or keeping of clothes in kitchens

A person shall not in any kitchen or other place where food is kept—

- (a) wash or permit to be washed any clothing or bedding; or
- (b) keep or permit to be kept any soiled clothing or bedding.

### 2.2.4 Kitchens

(1) In this section—

**a cooking facility** includes a stove, oven, facility or appliance used for or in connection with the cooking of food.

- (2) A person shall not use or occupy, or permit to be used or occupied, a dwelling house without a kitchen equipped with—
- (a) an electric, gas, wood or other fuel burning stove;
  - (b) an oven with a capacity of not less than 0.005 cubic metres per person usually accommodated in the house with a minimum capacity of 0.03 cubic metres; and
  - (c) a sink which shall—
    - (i) be at least 380 millimetres long, 300 millimetres wide and 150 millimetres deep; and
    - (ii) have an adequate supply of hot and cold water.
- (3) The occupier of a dwelling house shall ensure that the stove, oven and sink are kept clean, in good order and repair and fit for use.
- (4) A cooking facility shall—
- (a) be installed in accordance with the requirements of the Energy Safety and the manufacturers' specifications; and
  - (b) not be installed or used in any room other than a kitchen.
- (5) Mechanical extraction shall be provided in a kitchen and the exhaust air shall be—
- (a) carried to the outside air as directly as practicable; and
  - (b) boxed throughout.
- (6) Mechanical ventilation shall be maintained in good working order and condition.

## PART 3—HOUSING AND GENERAL

### Division 1—Maintenance of Houses

#### 3.1.1 Dwelling house maintenance

The owner or occupier of a dwelling shall maintain the dwelling house and any appurtenant buildings in sound condition and fit for use where they have relevant care and control and, in particular, shall—

- (a) maintain all roofs, guttering and downpipes in sound weather proof condition;
- (b) maintain any footings, foundations and walls, either external or internal, in a sound condition;
- (c) replace any missing, broken, decayed or termite-eaten timber or other deteriorated material in any veranda, roof, walls, steps, handrails, floors or their supports with material of sound quality;
- (d) comply with the directions of an EHO to treat the premises for the purpose of destroying any termites;
- (e) maintain any brick, stone, mortar or cement work in a sound condition;
- (f) maintain, repair or replace any flashings or ant caps which are missing or defective;
- (g) maintain all ventilators in good order and repair;
- (h) maintain all floors even and level in surface and free from cracks and gaps;
- (i) maintain all ceilings, internal wall finishes, skirtings, architraves and other fixtures and fittings complete and with smooth unbroken surfaces;

- (j) maintain all doors and windows in good working order and weather proof condition;
- (k) retain all natural lighting free from any obstruction which would reduce the natural lighting, below the ratio of 10% of the floor area;
- (l) maintain all pipes, fittings and fixtures connected with water supply, drainage or sewage so that they comply in all respects with the provisions of the *Water Services Act 2012* (or other applicable legislation) and any other legal requirements to which they are subject; and
- (m) maintain all electric wiring, gas services and fittings to comply in all respects with the requirements of all relevant public authorities.

### 3.1.2 Guttering and downpipes

Unless approved by the local government the owner of a house shall not use or occupy, or permit to be used or occupied, a house unless—

- (a) the house is provided with adequate guttering, downpipes and drains sufficient to receive normal intensities of rainwater flowing into them and for the rain water to be effectively disposed of to the satisfaction of an EHO;
- (b) the guttering and downpipes are fixed to the eaves of the house so that all normal intensities of rain water flowing from the roof shall be received by such guttering and downpipes;
- (c) all downpipes from guttering are connected so as to discharge into drains, which shall empty into a soak well, or other suitable storm water system or rainwater tanks;
- (d) each soak well is located at least 1.8 metres from any building and at least 1.8 metres from the boundary of the block; and
- (e) any rainwater from any downpipe is not discharged onto any unpaved surface of land within 1.8 metres of any house.

### 3.1.3 Maintenance of guttering and downpipes and disposal of rainwater

The owner or occupier of a house shall—

- (a) maintain all guttering, downpipes and drains on the premises in a good state of repair, clean and free from obstructions; and
- (b) not permit any rainwater from the premises to discharge onto or over a footpath, street or other property.

## *Division 2—Ventilation of Houses*

### 3.2.1 Exemption for short term hostels and recreational campsites

This Division shall not apply to short term hostels and recreational campsites referred to in Division 2 of Part 8 of the *Public Health Act 2016* being *Registration of Registrable Activities*.

### 3.2.2 Overcrowding

The owner or occupier of a house shall not permit—

- (a) a room in the house that is not a habitable room to be used for sleeping purposes; or
- (b) a habitable room in the house to be used for sleeping purposes unless—
  - (i) for every person over the age of 10 years using the room there is at least 14 cubic metres of air space per person; and
  - (ii) for every person between the ages of 1 and 10 years there is at least 8 cubic metres of air space per person; or
  - (iii) any garage or shed to be used for sleeping purposes.

### 3.2.3 Calculated sufficient space

For the purpose of calculating the space required for each person—

- (a) each room shall be considered separately and sufficient space shall be allowed in each room for the number of persons present in the room at any one time; and
- (b) a deduction shall be made for the space occupied by furniture, fittings and projections of the walls into a room.

### 3.2.4 Ventilation

(1) A person shall not use or occupy, or permit to be used or occupied, a house unless the house is properly ventilated.

(2) For the purpose of subsection (1) a house shall be deemed to be properly ventilated if it complies with the Building Code, including the provision of—

- (a) natural ventilation; or
- (b) a mechanical ventilation or air-conditioning system complying with AS1668.2: 2002.

(3) The owner of a house provided with mechanical ventilation or an air-conditioning system shall ensure that the system is—

- (a) maintained in good working condition and in accordance with AS/NZS 3666.2: 2011; and
- (b) in use at all times the building is occupied, if it is a building without approved natural ventilation.

(4) If, in the opinion of an EHO, a house is not properly ventilated, the local government may by notice require the owner of the house to—

- (a) provide a different, or additional method of ventilation; or
- (b) cease using the house until it is properly ventilated.

(5) the owner shall comply with a notice under subsection (4).

### **3.2.5 Sub-Floor ventilation**

The owner or occupier of a house shall make provision for sub-floor ventilation by ensuring that air bricks and other openings are kept clean of refuse, vegetation, building materials, dirt and the like.

## *Division 3—Water Supply*

### **3.3.1 Water Supply**

(1) The owner of a house shall ensure that it is connected with a separate and independent water supply from the mains of a licensed water service operator or a water supply to the satisfaction of the local government.

(2) The water supply shall at all times deliver an adequate supply of drinking water to each tap in the house.

(3) The water supply to toilets or for garden use may be from an alternative source, not necessarily drinking water.

### **3.3.2 Rain water tanks**

The owner or occupier of a house where part of the water supply is drawn from a rain water tank shall—

- (a) maintain in a clean condition—
  - (i) the roof forming the catchment for the tank; and
  - (ii) the guttering and downpipes appurtenant to the roof;
- (b) ensure that each rain water tank is fitted with a tight-fitting mosquito proof cover which shall not be removed at any time except for the purpose of cleaning, repairing or maintaining the tank;
- (c) annually clean any tank which is used to store water for human consumption; and
- (d) when directed by an EHO, empty, clean and disinfect any tank upon the premises, used to store water for human consumption.

### **3.3.3 Wells**

The owner or occupier of any premises shall not use or permit for human consumption the use of the water from any bore or well unless the bore or well is—

- (a) at least 30 metres from any soak or other possible source of pollution unless otherwise approved by the Chief Health Officer; and
- (b) covered with a tight-fitting cover without openings of any sort other than those essential for the insertion of a pump.

### **3.3.4 Pollution**

A person shall not deposit on any land, any sewage, offensive matter or any other thing which may pollute or render unfit for human consumption, water from a well or other underground source.

## *Division 4—Second hand Furniture, Bedding and Clothing*

### **3.4.1 Prohibition of sale**

A person shall not offer for sale or sell any second hand furniture, bedding or clothing which is filthy or infested with vectors of disease.

### **3.4.2 Prohibition of possession**

A dealer in second hand furniture, bedding or clothing shall not have on any premises used for the operation of the business any second hand furniture, bedding or clothing which is filthy or infested with vectors of disease.

## *Division 5—Morgues*

### **3.5.1 Application and licensing of morgues**

(1) All morgues, other than those of any public hospital or any local government or police morgue, shall be licensed annually in accordance with the requirements of this Division where and if applicable in accordance with sub section.

(2) An application for a licence of a morgue shall be—

- (a) made by the applicant;
- (b) made in the form prescribed in Schedule 7; and
- (c) forwarded to the Chief Executive Officer with the fee as fixed by the local government from time to time under Section 344C of the *Health (Miscellaneous Provisions) Act 1911*.



(3) The annual fee for a licence of a place for the temporary reception and keeping of the bodies of the dead awaiting burial or cremation is as fixed by the local government from time to time under Section 344C of the above Act referred to in clause 3.5.1(2)(c) above.

(4) A licence shall—

- (a) be in the form prescribed in Schedule 8; and
- (b) expire on 30 June next and after the date of its issue.

(5) A licence shall not be granted in respect of any premises unless—

- (a) provision has been made for the keeping of the bodies of the dead at a temperature not exceeding zero degrees Celsius;
- (b) the walls are constructed of stone or brickwork or other approved material;
- (c) the interior surface of all walls is covered with glazed tiles or is rendered impervious so as to be non-absorbent and washable;
- (d) all floors are constructed of an approved impervious material, having a fall to an outlet discharging over a trapped gully; and
- (e) the premises are adequately ventilated by direct communication with the outside air.

## PART 4—WASTE FOOD AND REFUSE

### *Division 1—Liquid Refuse*

#### 4.1.1 Interpretation

In this division, unless the context otherwise requires—

**liquid refuse** includes swimming pool discharges, all washings from windows, vehicles and carpet cleaning, overflow, bleed off, condensate and drainage from air conditioning equipment including cooling towers and evaporative coolers and other liquid used for cooling purposes;

**liquid waste** means bathroom, kitchen, scullery and laundry wastes, the contents of septic tanks, all washings from animal and poultry pens and any other domestic or trade wastes that are discharged by means of a drain to a receptacle for drainage; and

**approved carrier** means a carrier approved by the local government.

#### 4.1.2 Deposit of liquid refuse

A person shall not deposit or cause or permit to be deposited liquid refuse or liquid waste—

- (a) on a street;
- (b) in a stormwater disposal system; or
- (c) on any land or place other than a place or depot duly authorised for that purpose.

#### 4.1.3 Disposal of liquid waste

(1) The owner or occupier of premises shall—

- (a) provide one of the methods prescribed in this section, for the disposal of all liquid waste produced on the premises; and
- (b) at all times maintain in good working order and condition any apparatus used for the disposal of liquid waste.

(2) Liquid waste shall be disposed of by one of the following methods—

- (a) discharging it into the sewerage system of a licensed water service operator in a manner approved by the licensed water service operator;
- (b) discharging it into an apparatus for the treatment of sewage and disposal of effluent and liquid waste approved by the Chief Health Officer or the local government; and
- (c) collection and disposal at an approved liquid waste disposal site in a manner approved by the Chief Health Officer.

#### 4.1.4 Approval for septic tank pump outs and removal of liquid waste

A person shall not—

- (a) unless he or she is an approved carrier;
- (b) without the written approval of the local government; and
- (c) except in accordance with any terms and conditions imposed by the local government or the Chief Health Officer in connection with the approval under paragraph (b), collect, remove or dispose of the contents of a septic tank, the pump outs from holding tanks or an apparatus for the treatment of sewage and other liquid wastes.

#### 4.1.5 Application for approval

(1) A carrier may apply in writing to the local government for approval to collect, remove or dispose of the contents of a septic tank, the pump outs from holding tanks or an apparatus for the treatment of sewage.

(2) The local government may grant or refuse an application under this section subject to conditions relating to—

- (a) the time and method of collection, removal or disposal of the contents; or
- (b) the route to be followed by a vehicle used in collection, removal or disposal of the contents; or
- (c) the type of liquid waste that can be collected.



- (3) Any conditions imposed by the local government under this section shall be—
- (a) specified in the written approval of the local government; and
  - (b) in addition to any conditions imposed by the Chief Health Officer or conditions applying under any other law.

(4) The local government may from time to time vary conditions imposed by it under this section by giving written notice of the variation to the person to whom approval was given.

#### 4.1.6 Provision of quarterly reports

The approved carrier may be required to provide quarterly reports to the local government containing accurate details of—

- (a) the date of servicing the liquid waste system;
- (b) the address or location of the involved property; and
- (c) the type of system serviced.

### *Division 2—Transport of Butchers' Waste*

#### 4.2.1 Interpretation

In this Division, unless the context otherwise requires—

**butchers' waste** includes animal skeletons and rib cages from a boning room and the inedible products of an abattoir.

#### 4.2.2 Restriction of vehicles

A person shall not use for the transport of butchers' waste—

- (a) a vehicle or container not approved by the local government;
- (b) a vehicle used for the transport of food or drugs; or
- (c) anything intended to be used for the packing or handling of food or drugs.

#### 4.2.3 Transport of butchers' waste

(1) A person shall not transport butchers' waste other than in—

- (a) a compartment complying with the following specifications—
  - (i) all internal surfaces to be constructed of an approved, smooth, impervious material not less than 910 millimetres high;
  - (ii) all joints to be sealed and made water-tight;
  - (iii) the loading doors, if any, to be water-tight and kept closed at all times except when loading, and
  - (iv) the top to be completely covered by a tarpaulin or other impervious material approved by the local government, carried over, and secured to the outside of the walls at least 300 millimetres from the top so as to keep the load out of sight of the public; or
- (b) a sealed container fitted with a lid which can be tightly closed.

(2) A person shall not transport any butchers' waste in a vehicle unless the vehicle and its fittings, including the compartment or container referred to in this Section, are—

- (a) maintained in good order and condition; and
- (b) thoroughly cleaned at the conclusion of each day's work.

(3) A person shall not load, transport, or unload butchers' waste in a manner that is or maybe offensive due to—

- (a) the sight of animal skeletons, bones, offal or waste matter;
- (b) the odour of putrefaction, offal or waste matter; or
- (c) the presence of blood and particles of flesh or fat dropping onto the surface of the street pavement or ground.

## PART 5—NUISANCES AND GENERAL

### *Division 1—Nuisances*

#### 5.1.1 Interpretation

In this Division, unless the context otherwise requires—

**fertiliser** includes manure.

#### 5.1.2 Footpaths etc. to be kept clean

An owner or occupier of premises shall take reasonable steps to keep any footpath, pavement, area or right of way immediately adjacent to the premises clear of any rubbish, matter or other things coming from or belonging to the premises.

#### 5.1.3 Public vehicles to be kept clean

The owner or person in control of a public vehicle shall take reasonable measures to maintain the vehicle at all times—

- (a) in a clean condition;
- (b) free from vectors of disease; and
- (c) whenever directed to do so by the Authorized Officer, thoroughly clean and disinfect the vehicle as directed.

#### 5.1.4 Transportation, use and storage of offal, blood, or other offensive matter

- (1) A person shall not transport or store offal or blood, for the purpose of being used as manure, unless it has been sterilised by steam and properly dried.
- (2) No person shall remove any offensive matter unless such offensive matter is carried in sealed containers to prevent the escape of any of the contents thereof, or the emission of any offensive odour there from.
- (3) Every person using any sealed containers or vehicle for the removal of offensive matter shall keep such container or vehicle in a thoroughly clean condition and in good repair.

#### 5.1.5 Use or storage of fertiliser

An owner or occupier of premises shall not use or keep for the purpose of use, as fertiliser any—

- (a) pig manure;
- (b) human faeces; or
- (c) urine.

#### 5.1.6 Storage and dispatch of artificial fertiliser

An owner or occupier of premises where fertiliser is stored in bulk for sale shall—

- (a) keep all artificial fertiliser in a building—
  - (i) of which all internal surfaces are constructed of durable and non-absorbent materials, finished internally with a smooth surface;
  - (ii) that protects it from the absorption of moisture; and
  - (iii) that is adequately ventilated;
- (b) take adequate measures to prevent the emission of dust or offensive effluvia from the building; and
- (c) ensure that all artificial fertiliser despatched from the premises is handled and loaded in such a manner as to prevent any nuisance arising during transit.

#### 5.1.7 Storage of fertiliser in a house

The owner or occupier of a house where fertiliser or compost is stored or used shall—

- (a) prevent the escape of odours, dust or particles of fertiliser or compost;
- (b) treat the fertiliser or compost in such a manner as to effectively prevent it attracting or being a breeding place for flies or other vectors of disease; and
- (c) store only such amounts of fertiliser or compost—
  - (i) as can be readily used within a reasonable period; or
  - (ii) as may be directed by an EHO.

#### 5.1.8 Vehicles used for transporting of animals and birds

Unless transporting a pet animal or bird no person having the control or management of any vehicle in which animals or birds are being or have been transported or confined shall allow such vehicle to stand within a town site until the vehicle has been thoroughly cleaned.

### *Division 2—Keeping of Animals*

#### 5.2.1 Slaughter of animals

- (1) Subject to subsection (2), a person shall not slaughter any animal within the district.
- (2) Subsection (1) does not apply to—
  - (a) euthanasia of animals by veterinarians or other duly authorised persons;
  - (b) slaughter of animals for the purposes of pet meat and game meat operations;
  - (c) slaughter of animals for human consumption in abattoirs approved by the local government; and
  - (d) farming or grazing property occupiers preparing meat for their own consumption.

#### 5.2.2 Disposal of dead animals

- (1) An owner or operator of a veterinary practice where dead animals are kept for more than 12 hours shall refrigerate the carcass prior to its removal and disposal, at an approved disposal site.
- (2) An owner or occupier of premises, other than a veterinary practice, on which there is a dead animal, shall immediately remove the carcass for its disposal at an approved disposal site.
- (3) An owner, or a person having the care, of any animal that dies or is killed in a public or private place shall as soon as possible remove the carcass and arrange for its disposal at an approved disposal site.

### *Division 3—Feedlots*

#### 5.3.1 Interpretation

For the purpose of this division—

**feedlot** means a confined area with watering and feeding facilities where animals or birds are held and fed for the purpose of weight gain;

**animal** includes sheep, lambs, goats, deer, cattle and buffalo;

**birds** includes roosters, hens, geese, turkeys, ducks, poultry, emus and ostriches.

**5.3.2 Premises to be approved**

- (1) No premises shall be used as a feedlot unless approved by the local government;
- (2) Subject to subsection (3), no premises shall be approved as a feedlot by the local government unless every portion of such feedlot complies with the minimum separation distances listed in Table 1; and
- (3) Sites unable to satisfy the separation requirements may be approved at the discretion of the local government, if the local government is satisfied that approving the feedlot will not give rise to a health nuisance.

**Table 1. Required Buffer Distances for Feedlots**

<b>Buffer</b>	<b>Distance</b>
Town site boundaries	5000m
Isolated rural dwellings, dairies and industries	1000m
Public roads and recreation areas	100m
Neighbouring rural property boundaries	50m
Major water course and water impoundments	300m
Bores, wells or soaks used for drinking, stock or irrigation	300m
Minor water courses	100m

**5.3.3 Site conditions**

- (1) The owner or occupier of the approved feedlot shall ensure the premises—
- is sited on gently sloping land, no greater than 1:20 but not less than 1:100;
  - is sited on soils composed of sandy loam soils with sufficient infiltration to avoid surface ponding and run-off;
  - has a minimum groundwater clearance of 3 metres;
  - drainage diverts all uncontaminated stormwater from the general waste stream; and
  - has solid and liquid waste disposal arrangements that are not offensive or injurious to health.
- (2) The owner or occupier of the approved feedlot shall take effective measures to prevent the discharge of dust which may involve—
- reducing the stocking rate immediately to a level that does not cause the discharge of dust; or
  - stabilisation of the soil surface to a level that does not cause the discharge of dust; or
  - provision of adequate windbreaks to effectively prevent the discharge of dust.

*Division 4—Piggeries***5.4.1 Interpretation**

For the purpose of this division—

**intensive piggery** means pigs are housed, fed and watered in breeding and growing pens in sheds; and

**piggery** in relation to premises shall include any portion of premises to which the pigs have access.

**5.4.2 Premises to be approved**

- (1) No premises shall be used as a piggery unless approved by the local government;
- (2) Subject to subsection (3), no premises shall be approved as a piggery by the local government unless every portion of such piggery complies with the minimum separation distances listed in Table 2; or if it is an intensive piggery, the minimum separation distances listed in Table 3; and
- (3) Sites unable to satisfy the separation requirements may be approved at the discretion of the local government, if the local government is satisfied that approving the piggery will not give rise to a health nuisance.

**Table 2. Required Buffer Distances for Piggeries**

<b>Buffer</b>	<b>Distances</b>
Town site boundaries	5,000m
Isolated rural dwellings, dairies and industries	1,000m
Public roads and recreation areas	100m
Neighbouring rural property boundaries	50m
Major water course and water impoundments	300m
Bores, wells or soaks used for drinking, stock or irrigation	300m
Minor water courses	100m

### 5.4.3 Site conditions

The owner or occupier of premises shall take effective measures to prevent the discharge of dust which may involve—

- (a) reducing the stocking rate immediately to a level that does not cause the discharge of dust; or
- (b) stabilisation of the soil surface to a level that does not cause the discharge of dust; or
- (c) provision of adequate windbreaks to effectively prevent the discharge of dust.

### 5.4.4 Prevention of nuisances

In order to prevent dust, offensive fumes and effluent becoming a nuisance to the health of the inhabitants of the district, an intensive piggery shall comply with the minimum separation distances listed in Table 3.

**Table 3. Required Buffer Distances for Intensive Piggeries**

	Town site Boundaries	Isolated rural dwellings, dairies, industries	Public roads, recreation areas	Neighbouring rural property boundaries	Surface water supply catchments	Water-courses/rural water impoundments	Bores/wells/soaks Drinking water supply	Stock irrigation supply
Piggeries and facilities catering for more than 5000 pigs	5,000m	1,000m	200m	50m	Not permitted	300m	300m	100m
500-5000 pigs	3,500m	1,000m	150m	50m	Not permitted	300m	300m	100m
50-499 pigs	2,000m	1,000m	100m	50m	Not permitted	300m	300m	100m
Less than 50 pigs	500m	1,000m	50m	30m	Not permitted	200m	300m	100m
Land used to dispose of raw or partly treated wastes	1,000m	1,000m	100m	50m	Not Permitted	300m	300m	300m
Land used to dispose of effectively treated wastes	200m	1,000m	20m	20m	Not permitted	100m	100m	100m

## PART 6—PEST CONTROL

### Division 1—Flies

#### 6.1.1 Interpretation

In this Division, unless the context otherwise requires—

*flies* means any of the two-winged insects constituting the order Diptera commonly known as flies.

#### 6.1.2 Fly breeding matter not to be left on premises unless covered or treated

An owner or occupier of premises shall not place, throw or leave, or permit or cause to be placed, thrown or left in, on or about the premises any matter or thing which is liable to attract or be a breeding place for flies, unless that matter or thing is covered, protected, treated or dealt with in such a manner as to effectively prevent it from attracting or being a breeding place for flies.

#### 6.1.3 Measures to be taken by an occupier

An owner or occupier of premises shall ensure where possible and practical that—

- (a) rubbish receptacles are kept clean and tightly sealed at all times except when refuse is being deposited or emptied;
- (b) food scraps and uneaten pet food are wrapped tightly and deposited in a rubbish receptacle without delay;
- (c) lawn clippings used on gardens as mulch are raked out thinly;
- (d) fertilisers are dug well into the soil;
- (e) compost heaps are kept well covered;
- (f) barbecues are kept clean and free from food scraps;
- (g) anything that is buried and may attract or be a breeding place for flies is covered with at least 100 millimetres of soil; and
- (h) excrement from pets is collected and properly disposed of without delay.

**6.1.4 Officer may give notice directing measures to be taken**

Where in the opinion of an EHO, flies are prevalent or are breeding on any premises, the EHO may give to the owner or occupier of the premises notice in writing directing him or her to take, within the time specified in the notice, such measures as in the opinion of the EHO are necessary to—

- (a) control the prevalence;
- (b) effect the eradication; or
- (c) effectively prevent the breeding of flies.

**6.1.5 Local government may execute work and recover costs**

(1) Where—

- (a) a person is required under this Division or directed by a notice given under section 6.1.4, to execute any work; and
- (b) that person fails or neglects to comply with the requirement, the local government may execute the work and may recover from that person the cost of executing the work, in addition to any penalty for which that person may be liable under these local laws.

(2) The costs and expenses incurred by the local government in the execution of a power under subsection (1) may be recovered in a court of competent jurisdiction from the person referred to in subsection (1).

(3) The local government shall not be liable to pay compensation or damages of any kind to the owner or occupier of premises in relation to any action taken by the local government under this Section, except to the extent the person has suffered unreasonable loss or damage because the action taken by the local government was negligent or in breach of its duty.

*Division 2—Mosquitoes***6.2.1 Interpretation**

In this Division, unless the context otherwise requires—

**mosquitoes** means any of the two-winged insects constituting the family Diptera Culicidae commonly known as mosquitoes.

**6.2.2 Measures to be taken to prevent mosquitoes breeding**

(1) An owner or occupier of premises shall ensure that the premises are kept free from possible mosquito breeding sites and shall—

- (a) follow any direction of an EHO for the purpose of—
  - (i) controlling the prevalence of mosquitoes;
  - (ii) eradication; or
  - (iii) effectively preventing the breeding of mosquitoes; and
- (b) assist the EHO to locate any possible mosquito breeding sites that may be present in or about the premises.

(2) An owner or occupier of premises where water is kept in a horse trough, poultry drinking vessel or other receptacle shall—

- (a) frequently change the water; and
- (b) keep the water clean and free from vegetable matter and slime.

(3) An owner or occupier of premises, where a septic tank is installed, shall ensure the fixture is in a sound condition at all times, with the inclusion of mesh covering any educt vent to the system, with openings no larger than 1.2 millimetres. Where there is a swimming pool on any premises where the circulation system does not function, or has not been used such that the pool water is green or stagnant and suitable for breeding mosquitoes, the owner or occupier shall, when required by a notice issued by an EHO—

- (a) reactivate the pool circulation system within a time specified and operate it so that the water is filtered for as many hours as may be specified; and/or
- (b) chlorinate and adjust the pH of the pool to—
  - (i) 4 milligrams per litre free chlorine; and
  - (ii) pH within the range 7.2-7.6; or
    - 1. empty or drain the pool; or
    - 2. add a larvicide to the pool at the specified rate; or
    - 3. pour up to 1 litre of paraffin oil or kerosene onto the water surface of the pool; and
    - 4. maintain the pool water free of mosquito breeding.

(4) Where there is a swimming pool on any premises where the circulation system does not function, or has not been used such that the pool water is green or stagnant and suitable for breeding mosquitoes, the owner or occupier shall, when required by a notice issued by an EHO—

- (a) reactivate the pool circulation system within a time specified and operate it so that the water is filtered for as many hours as may be specified;
- (b) chlorinate and adjust the pH of the pool to 4 milligrams per litre free chlorine and pH within the range 7.2-7.6; or
- (c) empty or drain the pool; or

- (d) add a larvicide to the pool at the specified rate; or
  - (e) pour up to 1 litre of paraffin oil or kerosene onto the water surface of the pool; and
  - (f) maintain the pool water free of mosquito breeding.
- (5) An owner or occupier of land shall cause all drains and channels in or on the land to be kept in good order and free from obstruction.

### 6.2.3 The local government may execute and recover costs

(1) Where—

- (a) a person is required under this division or directed by a notice given under Section 6.2.2 to execute any work; and
- (b) that person fails or neglects to comply with the requirement,

the local government may execute the work and recover from that person the cost of executing the work, in addition to any penalty for which that person may be liable.

(2) The costs and expenses incurred by the local government in the execution of a power under subsection (1) may be recovered in a court of competent jurisdiction from that person.

(3) The local government shall not be liable to pay compensation or damages of any kind to the owner or occupier of premises in relation to any action taken by the local government under subsection (1), except to the extent the person has suffered unreasonable loss or damage because the action taken by the local government was negligent or in breach of its duty.

## Division 3—Rodents

### 6.3.1 Interpretation

In this Division, unless the context otherwise requires—

**rodents** means those animals belonging to the order Rodentia and includes rats, mice and rabbits but does not include animals kept as pets in an enclosure designed for the purpose of keeping as pets animals of that kind.

### 6.3.2 Measures to be taken to eradicate rodents

- (1) An owner or occupier of premises shall at all times take effective measures to eradicate any rodents in or on the premises.
- (2) An EHO may direct, orally or in writing, an owner or occupier of premises to take whatever action, in the opinion of the EHO, is necessary or desirable to prevent or deter the presence of rodents in or on the premises.
- (3) An owner or occupier shall within the time specified comply with any direction given by an EHO under this Section.

### 6.3.3 Food and wastes to be kept in rodent proof receptacles

A person shall not place or cause to be placed in or on any premises, and an owner or occupier of premises shall not permit to remain in or on the premises—

- (a) any stored food, refuse or other waste matter which might attract rodents to the premises or which might afford harbourage for rodents; or
- (b) any stored food intended for birds or other animals, unless it is contained in a rodent proof receptacle or a compartment which is kept effectively protected against access by rodents.

### 6.3.4 Restrictions on the keeping of rodents

A person or body which keeps rodents shall—

- (a) at all times ensure that all live rodents are kept in the effective control of a person or in locked cages; and
- (b) if a rodent escapes, forthwith comply with the requirements of clause 6.3.2 and ensure that all reasonable steps are taken to destroy or recapture the rodent.

### 6.3.5 Food premises etc. to be cleaned after Use

An owner or occupier of a food premises, theatre or place of entertainment, whether indoor or outdoor, shall cause the premises to be cleaned immediately after the last occasion on which the premises has been used on that day or, if the use extends after midnight, then immediately after that use.

## Division 4—Cockroaches

### 6.4.1 Interpretation

In this Division, unless the context otherwise requires—

**cockroach** means any of the various orthopterous insects commonly known as cockroaches.

### 6.4.2 Measures to be taken to eradicate cockroaches

- (1) An owner or occupier of premises shall take effective measures to eradicate any cockroaches in or on the premises.
- (2) An EHO may direct, orally or in writing, an owner or occupier of premises to take whatever action that, in the opinion of the EHO, is necessary or desirable to prevent or deter the presence of cockroaches in or on the premises.
- (3) An owner or occupier shall within the time specified comply with any direction given by an EHO under this Section.



*Division 5—Argentine Ants***6.5.1 Interpretation**

In this Division, unless the context otherwise requires—

**Argentine Ant** means an ant belonging to the species *Irdomyrmex humilis*.

**6.5.2 Measures to be taken to keep premises free from Argentine Ants**

An owner or occupier of premises shall ensure that the premises are kept free from Argentine Ant colonies and shall—

- (a) take all steps to locate any nests, if Argentine Ants are noticed in, on or about the premises;
- (b) properly treat all nests of Argentine Ants with an approved residual based insecticide; and
- (c) whenever required by an EHO—
  - (i) treat any area or infestation with an insecticide referred to in paragraph (b); and
  - (ii) remove any objects, including timber, firewood, compost or pot plants in accordance with a direction from the EHO.

*Division 6—European Wasps***6.6.1 Interpretation**

In this Division, unless the context otherwise requires—

**European Wasp** means a wasp *Vespa Germanica*.

**6.6.2 Measures to be taken to keep premises free from European Wasp nests**

An owner or occupier of premises shall ensure that the premises are kept free from European Wasp nests and shall—

- (a) follow any direction of an EHO for the purpose of destroying the wasps and their nest; and
- (b) assist an EHO to trace any nest that may be present in, on or about the premises.

*Division 7—Bee keeping***6.7.1 Interpretation**

In this Division, unless the context otherwise requires—

**bees** means an insect belonging to any of the various hymenopterous insects of the super family Apoidea and commonly known as a bee.

**6.7.2 Restrictions on keeping of bees in hives**

- (1) A person shall not keep or permit the keeping of bees anywhere within the district unless approval to do so has been given by the local government.
- (2) If, in the opinion of an EHO, the approved bee hives are causing a nuisance, the local government may direct any bees or approved bee hives to be removed.
- (3) A person shall comply with a direction within the time specified.

*Division 8—Arthropod Vectors of Disease***6.8.1 Interpretation**

In this Division, unless the context otherwise requires;

**Arthropod vectors of disease** includes—

- (a) fleas (Siphonaptera);
- (b) bedbugs (Cimex lectularius);
- (c) crab lice (Phthirus pubis);
- (d) body lice (Pediculus humanus var. corporis); and
- (e) head lice (Pediculus humanus var. capitis).

**6.8.2 Responsibility of the owner or occupier**

The owner or occupier of premises shall—

- (a) keep the premises and any person residing in or on the premises, free from any arthropod vectors of disease; and
- (b) comply with the direction of an EHO to treat the premises, or anything on the premises, for the purpose of destroying any arthropod vectors of disease.

**PART 7—INFECTIOUS DISEASES***Division 1—General Provisions***7.1.1 Requirements for an owner or occupier to clean, disinfect and disinfect**

(1) The local government or an EHO may, by notice in writing, direct an owner or occupier of premises, within the time and in the manner specified in the notice, to clean, disinfect and disinfect—

- (a) the premises; or
- (b) such things in or on the premises as are specified in the notice, or both, to the satisfaction of an EHO.

(2) An owner or occupier shall comply with a notice given under subsection (1).



**7.1.2 Environmental Health Officer may disinfect or disinfest premises**

(1) Where the local government or the Medical Officer is satisfied that any case of infectious disease has occurred on any premises, the local government or the Medical Officer may direct an EHO, other local government officer or other person to disinfect and disinfest the premises or any part of the premises and anything in or on the premises.

(2) An owner or occupier of premises shall permit, and provide access to enable, an EHO, other local government officer or other person to carry out the direction given under subsection (1).

(3) The local government may recover, in a court of competent jurisdiction, the cost of carrying out the work under this Section from the owner or occupier of the premises in or on which the work was carried out.

(4) The local government shall not be liable to pay compensation or damages of any kind to the owner or occupier of premises in relation to any action taken by the local government under this section, except to the extent the person has suffered unreasonable loss or damage because the action taken by the local government was negligent or in breach of its duty.

**7.1.3 Insanitary houses, premises and things**

(1) An owner or occupier of any house or premises shall maintain the house or premises free from any insanitary condition or thing.

(2) Where an EHO considers that a house is insanitary, the officer may, by notice in writing, direct an owner of the house, within the time and in the manner specified in the notice, to amend the house.

(3) Where an EHO considers that—

(a) a house or premises is not being maintained in a sanitary condition; or

(b) anything is in sanitary, the officer may, by notice in writing, direct, as the case may be—

(i) the owner or occupier of the house or premises to amend any insanitary condition; or

(ii) the owner or occupier of the thing to destroy or amend it, within the time and in the manner specified in the notice.

(4) A person to whom a notice has been given under subsections (2) or (3) shall comply with the terms of the notice.

**7.1.4 Medical Officer may authorise disinfecting**

(1) Where the Medical Officer believes that a person is or may be infected by an infectious disease, the Officer may direct the person to have his or her body, clothing and effects disinfected at a place and in a manner directed by the Medical Officer.

(2) A person shall comply with any direction of the Medical Officer under this Section.

**7.1.5 Persons in contact with an infectious disease sufferer**

If a person in any house is, or is suspected of, suffering from an infectious disease, any occupant of the house or any person who enters or leaves the house—

(a) shall obey such instructions or directions as the local government or the Medical Officer may issue;

(b) may be removed, at the direction of the local government or the Medical Officer to isolation in an appropriate place to prevent or minimise the risk of the infection spreading and if so removed, shall remain in that place until the Medical Officer otherwise directs.

**7.1.6 Declaration of infected house or premises**

(1) To prevent or check the spread of infectious disease, the local government or the Medical Officer may from time to time declare any house or premises to be infected.

(2) A person shall not enter or leave any house or premises declared to be infected without the written consent of the Medical Officer or an EHO.

**7.1.7 Destruction of infected animals**

(1) An EHO, upon being satisfied that an animal is or may be infected or is liable to be infected or to convey infection may, by notice in writing, direct that the animal be examined by a registered veterinary officer and that all steps be taken to enable the condition to be controlled or eradicated or the animal destroyed and disposed of—

(a) in the manner and within the time specified in the notice; and

(b) by the person in whose possession, or upon whose premises, the animal is located.

(2) A person who has in his or her possession or upon premises occupied by him or her, an animal which is the subject of a notice under subsection (1) shall comply with the terms of the notice.

**7.1.8 Disposal of a body**

(1) An occupier of premises in or on which is located the body of a person who has died of any infectious disease shall, subject to subsection (2), cause the body to be buried or disposed of in such manner, within such time and with such precautions as may be directed by the Medical Officer.

(2) A body shall not be removed from premises where death occurred except to a morgue.

**7.1.9 The local government may carry out work and recover costs**

(1) Where—

(a) a person is required under this Division or by a notice given under this Division, to carry out any work; and

- (b) that person fails or neglects to comply with the requirement, that person commits an offence and the local government may carry out the work or arrange for the work to be carried out by another.
- (2) The costs and expenses incurred by the local government in the execution of a power under this Section may be recovered in a court of competent jurisdiction from the person referred to in subsection (1)(a).
- (3) The local government shall not be liable to pay compensation or damages of any kind to the owner or occupier of premises in relation to any action taken by the local government under this section, except to the extent the person has suffered unreasonable loss or damage because the action taken by the local government was negligent or in breach of its duty.

*Division 2—Disposal of used Condoms and Needles*

**7.2.1 Disposal of used condoms**

- (1) An occupier of premises on or from which used condoms are produced shall ensure that the condoms are—
- (a) placed in a sealed impervious container and disposed of in a sanitary manner; or
  - (b) disposed of in such a manner as may be directed by the local government.
- (2) A person shall not dispose of a used condom in a public place except in accordance with subsection (1).

**7.2.2 Disposal of used needles**

A person shall not dispose of a used hypodermic syringe or needle in a public place unless it is placed in an impenetrable, leak-proof container and deposited in a refuse receptacle.

**PART 8—LODGING HOUSES**

*Division 1—Registration*

**8.1.1 Interpretation**

- (1) In this Part, unless the context otherwise requires—

**Act** in this Part shall only mean the *Health (Miscellaneous Provisions) Act 1911* as specified in this Part;

**bed** means a single sleeping berth only, and a double bed provided for the use of couples has the same floor space requirements as two single beds;

**bunk** means a sleeping berth comprising one of two beds arranged vertically;

**dormitory** means a building or room utilised for sleeping purposes at a short term hostel or a recreational campsite;

**Food Standards Code** means the Australia New Zealand Food Standards Code as defined in the Commonwealth *Food Standards Australia New Zealand Act 1991*;

**keeper** means a person whose name appears on the register of keepers, in respect of a lodging house, as the keeper of that lodging house;

**laundry unit** means a group of facilities consisting of—

- (a) a washing machine with a capacity of not less than 4 kilograms weight of dry clothing;
- (b) one wash trough of not less than 36 litres capacity, connected to both hot and cold water;
- (c) either an electric drying cabinet or not less than 30 metres of clothes line; and
- (d) a hot water system that is capable of delivering an adequate supply of water at a temperature of at least 75 degrees Celsius for each washing machine provided with the communal facilities; and has a delivery rate of not less than 0.076 litres per second to each washing machine;

**lodger** means a person who obtains, for hire or reward, board or lodging in a lodging house;

**lodging house** includes a recreational campsite, a serviced apartment, a short term hostel and any premises used for transient workforce accommodation;

**manager** means a person duly appointed by the keeper in accordance with this Division to reside in, and have the care and management of, a lodging house;

**recreational campsite** means a lodging house—

- (a) recreational, sporting, religious, ethnic or educational pursuits; or
- (b) conferences or conventions; and
- (c) where the period of occupancy of any lodger is not more than 14 consecutive days, and includes youth camps, youth education camps, church camps and riding schools but does not include a camp or caravan within the meaning of the *Caravan Parks and Camping Grounds Act 1995*;

**register of lodgers** means the register kept in accordance with section 157 of the Act and this Part;

**resident** means a person other than a lodger, who resides in a lodging house;

**serviced apartment** means a lodging house in which each sleeping apartment, or group of sleeping apartments in common occupancy, is provided with its own sanitary conveniences and may have its own cooking facilities;

**short term hostel** means a lodging house where the period of occupancy of any lodger is not more than 14 consecutive days and includes a youth hostel or a backpacker hostel; and

**vectors of disease** means an arthropod or rodent that transmits, by biological or mechanical means, an infectious agent from a source or reservoir to a person, and includes fleas, bedbugs, crab lice, body lice and head lice.

Where in this Part an act is required to be done or forbidden to be done in relation to any lodging house, the keeper of the lodging house has, unless the contrary intention appears, the duty of causing the act to be done, or of preventing the act so forbidden from being done, as the case may be.

### 8.1.2 Lodging house not to be kept unless registered

(1) In this division—

**Certificate of Registration** means a certificate issued under clause 8.1.4.

(2) A person shall not keep or cause or allow to be kept a lodging house unless—

- (a) the lodging house is constructed in accordance with the requirements of this Part;
- (b) the lodging house is registered by the local government under clause 8.1.4;
- (c) the name of the person keeping or proposing to keep the lodging house is entered in the register of keepers; and
- (d) when required by the local government either—
  - (i) the keeper; or
  - (ii) a manager who, with the written approval of an EHO, has been appointed by the keeper to have the care and management of the lodging house, resides or intends to reside continuously in the lodging house whenever there is one or more lodgers in the lodging house.

### 8.1.3 Application for registration

An application for registration of a lodging house shall be—

- (a) in the form approved by the local government from time to time;
- (b) duly completed and signed by the proposed keeper; and
- (c) accompanied by—
  - (i) the approved fee as fixed from time to time by the local government under section 344C of the Act; and
  - (ii) detailed plans and specifications of the lodging house.

### 8.1.4 Approval of application

The local government may approve, with or without conditions, an application by issuing to the applicant a certificate of registration in the form approved by the local government from time to time.

### 8.1.5 Renewal of registration

A person who keeps a lodging house which is registered under this Part shall—

- (a) during the month of June in each year apply to the local government for the renewal of the registration of the lodging house in the form approved by the local government from time to time; and
- (b) pay the approved fee as fixed from time to time by the local government under section 344C of the Act at the time of making each application for renewal.

### 8.1.6 Notification upon sale or transfer

If the owner of a lodging house sells or transfers, or agrees to sell or transfer, the lodging house to another person, he or she shall, within 14 days of the date of sale, transfer or agree to give to the local government, in the form approved by the local government from time to time, written notice of the full name, address and occupation of the person to whom the lodging house has been, or is to be, sold or transferred.

### 8.1.7 Revocation of registration

(1) Subject to subclause (3), the local government may, at any time, revoke the registration of a lodging house for any reason which, in the opinion of the local government, justifies the revocation.

(2) Without limiting the generality of subclause (1), the local government may revoke a registration upon any one or more of the following grounds—

- (a) that the lodging house has not, to the satisfaction of the local government, been kept free from vectors of disease or remained in a clean and sanitary condition;
- (b) that the keeper has—
  - (i) been convicted of an offence against this local law in respect of the lodging house;
  - (ii) not complied with a requirement of this Part; or
  - (iii) not complied with a condition of registration;
- (c) that the local government, having regard to a report from the Police, is satisfied that the keeper or manager is not a fit and proper person; and
- (d) that by reason of alterations or additions or neglect to repair and renovate, the condition of the lodging house is such as to render it, in the opinion of the local government, unfit to remain registered.

(3) Before revoking the registration of a lodging house under this local law, the local government shall give notice to the keeper requiring him or her, within a time specified in the notice, to show cause, why the registration should not be revoked.

(4) Whenever the local government revokes the registration of a lodging house, it shall give the keeper notice of the revocation and the registration shall be revoked as from the date on which the notice is served on the keeper.

#### *Division 2—Construction and use requirements*

##### **8.2.1 General construction requirements**

The construction of a lodging house shall comply with the Building Code and the Act.

##### **8.2.2 Sanitary conveniences**

(1) A keeper shall maintain in good working order and condition and in convenient positions on the premises—

- (a) toilets; and
- (b) bathrooms, each fitted with a hand wash basin and either a shower or a bath,

in accordance with the requirements of the Building Code.

(2) A bathroom or toilet which is used as a private bathroom or toilet to the exclusion of other lodgers or residents shall not be counted for the purposes of subsection (1).

(3) Each bath, shower and hand wash basin shall be provided with an adequate supply of hot and cold water.

(4) The walls of each shower and bath shall be of an impervious material to a minimum height of 1.8 metres above the floor level.

(5) Each toilet and bathroom shall—

- (a) be situated, separated and screened as to ensure privacy;
- (b) be apportioned to each sex;
- (c) have a distinct sign displayed in a prominent position denoting the sex for which the toilet or bathroom is provided; and
- (d) be provided with adequate electric lighting.

(6) Paragraphs (b) and (c) of subsection (5) do not apply to a serviced apartment.

##### **8.2.3 Laundry**

(1) A keeper shall—

- (a) subject to subsection (2)—
  - (i) in the case of a recreational campsite, provide on the premises a laundry consisting of at least one 45 litre stainless steel trough; and
  - (ii) in any other case, provide on the premises a laundry unit for each 15 lodgers;
- (b) at all times maintain each laundry or laundry unit in a proper sanitary condition and in good repair;
- (c) provide an adequate supply of hot and cold water to each wash trough, sink, or washing machine; and
- (d) ensure that the floor area of each laundry or laundry unit is properly surfaced with an even fall to a floor waste.

(2) An EHO may approve the provision of a reduced number of laundry units if suitable equipment of a commercial type is installed.

##### **8.2.4 Kitchen**

A keeper of a lodging house shall provide in that lodging house a kitchen—

- (a) which has a minimum floor area of—
  - (i) where lodgers prepare their own meals—0.65 square metres per person;
  - (ii) where meals are provided by the keeper or manager—0.35 square metres per person; or
  - (iii) where a kitchen and dining room are combined—1 square metre per person, but in any case not less than 16 square metres;
- (b) which has adequate—
  - (i) food storage facilities and cupboards to prevent contamination of food, or cooking or eating utensils, by dirt, dust, flies or other vectors of disease of any kind; and
  - (ii) refrigerator space for storage of perishable goods; and
- (c) complies with the requirements of Chapter 3 of the Australia New Zealand Food Standards Code.

##### **8.2.5 Dining room**

The keeper of a lodging house shall provide in that lodging house a dining room—

- (a) located in close proximity to, or combined with, the kitchen;
- (b) the floor area of which shall be 0.5 square metres per person or not less than 10 square metres whichever is the greater; and

- (c) which shall be—
  - (i) adequately furnished to accommodate, at any one time, half of the number of lodgers; and
  - (ii) provided with a suitable floor covering.

### 8.2.6 Lounge room

The keeper of a lodging house shall provide in that lodging house, a lounge room—

- (a) with a floor area of—
  - (i) where the lounge is not combined with the dining room, not less than 0.6 square metres per person; or
  - (ii) where the lounge room is combined with a dining room, not less than 1.2 square metres per person;but in either case having a minimum of 13 square metres; and
- (b) which shall be—
  - (i) adequately furnished to accommodate, at any one time, half of the number of lodgers; and
  - (ii) provided with a suitable floor covering.

### 8.2.7 Fire prevention and control

- (1) The keeper of a lodging house must—
  - (a) in each passage in the lodging house provide an emergency light—
    - (i) in the position and pattern approved by an EHO; and
    - (ii) which must be kept separate from the general lighting system and kept illuminated during the hours of darkness;
  - (b) provide an approved fire blanket positioned within 2 metres of the cooking area in each kitchen;
  - (c) ensure that each exit sign and fire-fighting appliance is clearly visible, accessible and maintained in good working order at all times; and
  - (d) ensure all fire-fighting equipment and fire detection and alarm systems are adequately maintained at all times in such a condition as will enable their proper performance.
- (2) The keeper of a lodging house must ensure that all buildings comprising the lodging house are fitted with fire protection equipment in accordance with the Building Code.
- (3) No Smoking signs are to be displayed in all rooms for sleeping unless otherwise agreed with an EHO.

### 8.2.8 Obstruction of passages and stairways

A keeper shall not cause or allow furniture, fittings or other things to be placed either temporarily or permanently in or on—

- (a) a stairway, stair landing, fire-escape, window or common passageway; or
- (b) part of the lodging house in common use or intended or adapted for common use,

in such a manner as to form an obstruction to the free passage of lodgers, residents or persons in or occupying the lodging house.

### 8.2.9 Fitting of locks

A person shall not fit, or cause or permit to be fitted, to an exit door a lock or other device which prevents the door being opened from within a lodging house.

### 8.2.10 Restriction on use of rooms for sleeping

- (1) Subject to subclause (3) and clause 8.3.10, a keeper shall not use or permit to be used as a sleeping apartment, a room in a lodging house—
  - (a) which contains food;
  - (b) which contains or is fitted with a cooking appliance or kitchen sink;
  - (c) which is used as a kitchen, scullery, storeroom, dining room, general sitting room or lounge room, or for the preparation or storage of food;
  - (d) which is not reasonably accessible without passing through a sleeping or other room in the private occupation of another person;
  - (e) which, except in the case of a short term hostel or a recreational campsite, contains less than 5.5 square metres of clear space for each lodger occupying the room;
  - (f) which is naturally illuminated by windows having a ratio of less than 0.1 square metres of unobstructed glass to every 1.0 square metre of floor area;
  - (g) which is ventilated at a ratio of less than 0.5 square metres of unobstructed ventilating area to every 10 square metres of floor area;
  - (h) in which the lighting or ventilation referred to in paragraphs (f) and (g) is obstructed or is not in good and efficient order;
  - (i) which is not free from internal dampness;
  - (j) of which any part of the floor is below the level of the adjoining ground; or
  - (k) the floor of which is not fitted with an approved carpet or vinyl floor covering or other floor treatment approved by an EHO.



- (2) For the purposes of this clause, 2 children under the age of 10 years are counted as 1 lodger.
- (3) Paragraphs (a), (b) and (c) of subclause (1) do not apply to a serviced apartment.

#### **8.2.11 Sleeping accommodation—short term hostels and recreational campsites**

- (1) A keeper of a short term hostel or recreational campsite shall provide clear floor space of not less than—
- (a) 4 square metres per person in each dormitory utilising beds; and
  - (b) 2.5 square metres per person in each dormitory utilising bunks.
- (2) The calculation of floor space in subclause (1) shall exclude the area occupied by any large items of furniture, such as wardrobes, but may include the area occupied by beds.
- (3) The minimum height of any ceiling in a short term hostel or recreational campsite shall be 2.4 metres in any dormitory utilising beds, and 2.7 metres in any dormitory utilising bunks.
- (4) The minimum floor area requirements in subclause (1) will only apply if there is ventilation, separation distances, fire egress and other safety requirements in accordance with the Building Code.
- (5) The keeper of any short term hostel or recreational campsite shall provide—
- (a) fixed outlet ventilation at a ratio of 0.15 square metres to each 10 square metres of floor area of the dormitories, and shall ensure that dormitories are provided with direct ventilation to the open air from a point within 230 millimetres of the ceiling level through a fixed open window or vents, carried as direct to the open air as is practicable; and
  - (b) mechanical ventilation in lieu of fixed ventilation, subject to the approval of the local government.
- (6) The keeper of any short term hostel or recreational campsite shall provide—
- (a) beds with a minimum size of—
    - (i) in short term hostels—800 millimetres x 1.9 metres; and
    - (ii) in recreational campsites—750 millimetres x 1.85 metres; and
  - (b) storage space for personal effects, including backpacks, so that cleaning operations
  - (c) are not hindered and access spaces are not obstructed.
- (7) The keeper of any short term hostel or recreational campsite shall—
- (a) arrange at all times a distance of 750 millimetres between beds, and a distance of 900 millimetres between bunks;
  - (b) ensure that, where bed or bunk heads are placed against the wall on either side of a dormitory, there is a passageway of at least 1.35 metres between each row of beds and a passageway of at least 2 metres between each row of bunks, and shall ensure that the passageway is kept clear of obstruction at all times; and
  - (c) ensure all doors, windows and ventilators are kept free of obstruction.
- (8) The keeper of a short term hostel or recreational campsite shall ensure that—
- (a) materials used in dormitory areas comply with AS or AS/NZS standards as follows—
    - (i) Drapes, curtains, blinds and bedcovers—a maximum Flammability Index of 6;
    - (ii) Upholstery and bedding—
      - a maximum Spread of Flame Index of 6; and
      - a maximum Smoke Developed Index of 5;
    - (iii) Floor coverings—
      - a maximum Spread of Flame Index of 7; and
      - a maximum Smoke Developed Index of 5;
  - (b) Fire retardant coatings used to make a material comply with the indices set out in subclause (8)(a) must be—
    - (i) certified by the manufacturer as approved for use with the fabric to achieve the required indices;
    - (ii) certified by the manufacturer to retain its fire retardative effect after a minimum of 5 commercial dry cleaning or laundering operations carried out in accordance with AS 2001.5.4—2005, Procedure 7A, using ECE reference detergent; and
    - (iii) certified by the applicator as having been carried out in accordance with the manufacturer's specification;
  - (c) emergency lighting is provided in accordance with the Building Code;
  - (d) a lodger or other person does not smoke in any dormitory, kitchen, dining room or other enclosed public place within a short term hostel or recreational campsite; and
  - (e) all mattresses in a short term hostel or recreational campsite are fitted with a mattress protector.

#### **8.2.12 Furnishing of rooms**

- (1) A keeper shall—
- (a) furnish each sleeping room with a sufficient number of beds and sufficient bedding of good quality;

- (b) ensure that each bed—
  - (i) has a bed head, mattress and pillow; and
  - (ii) is provided with a pillow case, mattress cover, two sheets, a blanket or rug and, from 1 May to 30 September, not less than one additional blanket or rug; and
- (c) furnish each bedroom so that there are adequate storage facilities for belongings within the room.

(2) A keeper shall not cause or allow any tiered beds or bunks to be used in a sleeping apartment.

(3) The sheets and blankets required to be provided by subclause (1) (b) (ii), shall be deemed to have been provided by the keeper, where the keeper offers them for hire to the lodgers. In such circumstances, each lodger must either provide his own clean sheets or hire them from the keeper.

(4) In a short-term hostel or recreational campsite, the storage facilities required by subclause (1) may be located in a separate secure storage room or locker room.

### **8.2.13 Ventilation**

If, in the opinion of an EHO, a kitchen, bathroom, toilet, laundry or habitable room is not adequately or properly ventilated, he or she may direct the keeper to provide a different or additional method of ventilation.

### **8.2.14 Numbers to be placed on doors**

(1) A keeper shall number each room available to a lodger or provide an alternative means of identification approved by an EHO.

(2) The number or alternate means of identification is to be legible and easily identified.

## *Division 3—Management and Care*

### **8.3.1 Keeper or manager to reside in the lodging house**

No keeper of a lodging house shall absent himself from such house, unless he leaves some reputable person in charge thereof.

### **8.3.2 Register of lodgers**

(1) A keeper shall keep a register of lodgers in the form approved by the local government from time to time.

(2) The register of lodgers shall be—

- (a) kept in the lodging house; and
- (b) open to inspection at any time on demand by any member of the police force or by an EHO.

### **8.3.3 Keeper report**

A keeper shall, whenever required by the local government, report to the local government, in the form approved by the local government from time to time, the name of each lodger who lodged in the lodging house during the preceding day or night.

### **8.3.4 Certificate in respect of sleeping accommodation**

(1) An EHO may issue to a keeper, a certificate, in respect of each room, which shall be in the form approved by the local government from time to time.

(2) The certificate issued under subclause (1) shall specify the maximum number of persons permitted to occupy each room of a sleeping apartment at any one time.

(3) When required by an EHO, a keeper shall exhibit the certificate issued under this clause in a conspicuous place in the room to which it refers.

(4) A person shall not cause or allow a greater number of persons than is specified on a certificate issued under this clause to occupy the room to which it refers.

### **8.3.5 Duplicate keys and inspection**

Each keeper and manager of a lodging house shall—

- (a) retain possession of a duplicate key to the door of each room; and
- (b) when required by an EHO, open the door of any room for the purposes of inspection by the EHO.

### **8.3.6 Room occupancy**

(1) A keeper shall not—

- (a) cause or allow more than the maximum number of persons permitted by the certificate of registration of the lodging house to be lodged at any one time in the lodging house;
- (b) cause or allow to be placed or kept in any sleeping apartment—
  - (i) a larger number of beds; or
  - (ii) larger quantity of bedding, than is required to accommodate and provide for the maximum number of persons permitted to occupy the sleeping apartment at any one time; and
- (c) use, or cause, or allow to be used, for sleeping purposes, a room that—
  - (i) has not been certified for that purpose; and
  - (ii) the local government has forbidden to be used as a sleeping apartment.
- (d) for the purpose of this clause, 2 children under 10 years of age shall be counted as 1 lodger.

**8.3.7 Maintenance of a room by a lodger or resident**

- (1) A keeper may permit, or contract with, a lodger or resident to service, clean or maintain the room or rooms occupied by the lodger or resident.
- (2) Where permission is given or a contract entered into under subclause (1), the keeper shall—
  - (a) inspect each room the subject of the permission or agreement at least once a week; and
  - (b) ensure that each room is being maintained in a clean condition.
- (3) A lodger or resident who contracts with a keeper to service, clean or maintain a room occupied by him or her, shall maintain the room in a clean condition.

**8.3.8 Cleaning and maintenance requirements**

- (1) In this clause—

**bed linen** includes sheets, pillow cases and mattress covers.
- (2) A keeper of a lodging house shall—
  - (a) maintain in a clean, sound and undamaged condition—
    - (i) the floor, walls, ceilings, woodwork and painted surfaces;
    - (ii) the floor coverings and window treatments; and
    - (iii) the toilet seats;
  - (b) maintain in a clean condition and in good working order—
    - (i) all fixtures and fittings; and
    - (ii) windows, doors and door furniture;
  - (c) ensure that the internal walls of each bathroom and toilet are painted so as to maintain a smooth impervious washable surface;
  - (d) ensure that all floors are kept clean at all times;
  - (e) ensure that—
    - (i) all bed linen, towels, and house linen in use are washed at least once a week;
    - (ii) within a reasonable time of a bed having been vacated by a lodger or resident, or prior to the room being re-let, the bed linen is removed and washed;
    - (iii) a person does not occupy a bed which has been used by another person unless the bed has been provided with clean bed linen;
    - (iv) all beds, bedsteads, blankets, rugs, covers, bed linen, towels and house linen are kept clean, in good repair and free from vectors of disease;
    - (v) when any vectors of disease are found in a bed, furniture, room or sleeping apartment, immediate effective action is taken to eradicate the vectors of disease; and
    - (vi) a room which is not free from vectors of disease is not used as a sleeping apartment;
  - (f) when so directed by an EHO, ensure that—
    - (i) a room, together with its contents, and any other part of the lodging house, is cleaned and disinfected; and
    - (ii) a bed or other article of furniture is removed from the lodging house and properly disposed of;
  - (g) ensure that the yard is kept clean at all times;
  - (h) provide all bedrooms, passages, common areas, toilets, bathrooms and laundries with adequate lighting; and
  - (i) comply with any direction, whether orally or in writing, given by an EHO.

**8.3.9 Responsibilities of lodgers and residents**

A lodger or resident shall not—

- (a) use any room available to lodgers—
  - (i) as a shop, store or factory; or
  - (ii) for manufacturing or trading services;
- (b) keep or store in or on the lodging house any goods or materials that are inflammable or offensive;
- (c) use a bath or hand wash basin other than for ablutionary purposes;
- (d) use a bathroom facility or fitting for laundry purposes;
- (e) use a sink installed in a kitchen or scullery for any purpose other than the washing and cleaning of cooking and eating utensils, other kitchenware and culinary purposes;
- (f) deposit rubbish or waste food other than into a proper rubbish receptacle;
- (g) in a kitchen or other place where food is kept—
  - (i) wash or permit the washing of clothing or bedding; or
  - (ii) keep or permit to be kept any soiled clothing or bedding;
- (h) subject to clause 8.3.10—
  - (i) keep, store, prepare or cook food in any sleeping apartment; or
  - (ii) unless sick or invalid and unable to leave a sleeping apartment for that reason, use a sleeping apartment for dining purposes;



- (i) place or keep, in any part of a lodging house, any luggage, clothing, bedding, or furniture that is infested with vectors of disease;
- (j) store or keep such a quantity of furniture, material or goods within the lodging house—
  - (i) in any kitchen, living or sleeping apartment so as to prevent the cleaning of the floors, walls, fittings or fixtures; or
  - (ii) in a sleeping apartment so as to decrease the air space to less than the minimum required by this Part;
- (k) obstruct or prevent the keeper or manager from inspecting or examining the room or rooms occupied by the lodger or resident; or
- (l) fix any fastener or change any lock to a door or room without the written approval of the keeper.

### 8.3.10 Approval for storage of food

- (1) An EHO may—
  - (a) upon written application from a keeper, approve the storage of food within a refrigerator or sealed container in a sleeping apartment; and
  - (b) withdraw the approval if a nuisance or vector of disease infestation is found to exist in the lodging house.
- (2) The keeper of a serviced apartment may permit the storage and consumption of food within that apartment if suitable storage and dining facilities are provided.

## PART 9—OFFENSIVE TRADES

### *Division 1—General*

#### 9.1.1 Interpretation

In this Part, unless the context otherwise requires—

**Act** in this Part shall only mean the *Health (Miscellaneous Provisions) Act 1911* as specified in this Part;

**occupier** in relation to premises includes the person registered as the occupier of the premises specified in the Certificate of Registration;

**offensive trade** means any one or more of the trades, businesses or occupations usually carried on, in or connected with, the following works or establishments—

- (a) fish processing premises, fish curing premises and shellfish and crustacean processing establishments;
- (b) laundries, dry cleaning premises and dye works; and
- (c) any trade as defined by Section 186 of the Act;

**premises** includes houses.

#### 9.1.2 Consent to establish an offensive trade

A person seeking the consent of the local government under Section 187 of the Act to establish an offensive trade shall make application in the form prescribed in Schedule 9 and in accordance with the local government's Town Planning Scheme.

#### 9.1.3 False statement

A person who makes a false statement in an application under Section 9.1.2 shall be guilty of an offence.

#### 9.1.4 Registration of premises

An application for the registration of premises pursuant to Section 191 of the Act shall be—

- (a) in the form prescribed in Schedule 10;
- (b) accompanied by the fee prescribed in the *Health (Offensive Trades Fees) Regulations 1976* as amended from time to time; and
- (c) lodged with the Chief Executive Officer.

#### 9.1.5 Certificate of registration

Upon the registration of premises for the carrying on of an offensive trade, the local government shall issue to the applicant a certificate in the form prescribed in Schedule 11.

#### 9.1.6 Change of occupier

Where there is a change of occupier of the premises registered pursuant to this Division, the new occupier shall forthwith notify the Chief Executive Officer in writing of such change.

#### 9.1.7 Alterations to premises

While any premises remain registered under this Division a person shall not, without the written permission of the local government, make or permit any change or alteration whatever to the premises unless these alterations or repairs are minor in nature as determined by the local government EHO.

*Division 2—General Duties of an Occupier***9.2.1 Interpretation**

In this Division, unless the context otherwise requires—

**occupier** means the occupier, or where there is more than one occupier, each of the occupiers of the premises in or upon which an offensive trade is carried on; and

**the premises** means those premises in or upon which an offensive trade is carried on.

**9.2.2 Cleanliness**

The occupier shall—

- (a) keep or cause to be kept in a clean and sanitary condition and in a state of good repair the floors, walls and ceilings and all other portions of the premises;
- (b) keep or cause to be kept in a clean and sanitary condition and in a state of good repair all fittings, fixtures, appliances, machinery, implements, shelves, counters, tables, benches, bins, cabinets, sinks, drain boards, drains, grease traps, tubs, vessels and other things used on or in connection with the premises;
- (c) keep the premises free from any unwholesome or offensive odour arising from the premises;
- (d) keep in a clean and tidy condition all yards, footpaths, passage ways, paved areas, stores or outbuildings used in connection with the premises; and
- (e) clean daily and at all times keep and maintain all sanitary conveniences and all sanitary fittings and grease traps on the premises in a clean and sanitary condition.

**9.2.3 Rats and other vectors of disease**

The occupier shall—

- (a) ensure that the premises are kept free from rodents, cockroaches, flies and other vectors of disease; and
- (b) provide in and on the premises all effective means and methods for the eradication and prevention of rodents, cockroaches, flies and other vectors of disease.

**9.2.4 Sanitary conveniences and hand wash basin**

The occupier shall provide on the premises in an approved position sufficient sanitary conveniences and hand wash basins, each with an adequate supply of hot and cold water for use by employees and by all other persons lawfully upon the premises.

**9.2.5 Painting of walls etc.**

The occupier shall cause the internal surface of every wall, the underside of every ceiling or roof and all fittings as may be directed in and on the premises to be cleaned and painted when instructed by an EHO.

**9.2.6 Effluvia, vapours, gases or dust**

The occupier shall provide, use and maintain in a state of good repair and working order, appliances and preventive measures capable of effectively destroying or of rendering harmless all offensive effluvia, vapours, dust or gases arising in any process of his business or from any material, residue or other substance which may be kept or stored upon the premises.

**9.2.7 Offensive material**

The occupier shall—

- (a) provide on the premises impervious receptacles of sufficient capacity to receive all offensive material and trade refuse produced upon the premises in any one day;
- (b) keep air-tight covers on the receptacles, except when it is necessary to place something in or remove something from them;
- (c) cause all offensive material and trade refuse to be placed immediately in the receptacles;
- (d) cause the contents of the receptacles to be removed from the premises at least once in every working day or at such other intervals as may be approved or directed by an EHO; and
- (e) cause all receptacles after being emptied to be cleaned immediately with an efficient disinfectant.

**9.2.8 Storage of materials**

The occupier shall cause all material on the premises to be stored so as not to be offensive or injurious to health whether by smell or otherwise and so as to prevent the creation of a nuisance.

**9.2.9 Specified offensive trade**

(1) For the purposes of this Section, “specified offensive trade” means one or more of the offensive trades carried on, in or connected with the following works or premises—

- (a) fish processing premises, fish curing premises, and shellfish and crustacean processing establishments; and
- (b) laundries, dry cleaning premises and dye works.

- (2) Where premises are used for or in relation to a specified offensive trade, the occupier shall—
- (a) cause the floor of the premises to—
    - (i) be properly paved and drained with impervious material;
    - (ii) have a smooth surface; and
    - (iii) have a fall to a bucket trap or spoon drain in such a way that all liquids falling on the floor shall be conducted by the trap or drain to a drain inlet situated inside the building where the floor is situated;
  - (b) cause the angles formed by the walls with any other wall, and by the wall with the floor, to be coved to a radius of not less than 25 millimetres; and
  - (c) cause all liquid refuse to be—
    - (i) cooled to a temperature not exceeding 26 degrees Celsius and be in accordance with the *Metropolitan Water Supply, Sewerage and Drainage Board By-Laws 1981* before being discharged into any drain outlet from any part of the premises; and
    - (ii) directed through such screening or purifying treatment as an EHO may from time to time direct.

### 9.2.10 Directions

- (1) An EHO may give to the occupier directions to prevent or diminish the offensiveness of a trade or to safeguard the public health.
- (2) The occupier shall comply with any directions given under this Section.

### 9.2.11 Other duties of occupier

In addition to the requirements of this Division, the occupier shall comply with all other requirements of this Part that apply to the particular offensive trade or trades conducted on the premises.

## *Division 3—Fish Premises*

### 9.3.1 Interpretation

In this Division, unless the context otherwise requires—

**fish premises** may include a fish processing establishment, fish curing establishment and a shellfish and crustacean processing establishment;

### 9.3.2 Duties of an occupier

The occupier of a fish premises shall—

- (a) not suffer or permit any decomposing fish to be kept on the premises where his trade is carried on for a longer period than is reasonably necessary to dispose of them;
- (b) cause all decomposing fish, to be immediately deposited in an impervious receptacle furnished with an airtight cover; and
- (c) cause the brine of pickle to be removed as often as is necessary to prevent it from becoming offensive.

### 9.3.3 Disposal of waste

The occupier of a fish premises shall cause all offal and wastes, all rejected and unsaleable fish and any rubbish or refuse which is likely to be offensive or a nuisance to be—

- (a) placed in the receptacles referred to in 9.2.7 and disposed of in accordance with that Section; or
- (b) kept in a frozen state in an approved enclosure before its removal from the premises.

### 9.3.4 Fish containers

The occupier of a fish premises shall not allow any container used for the transport of fish to—

- (a) remain on the premises longer than is necessary for it to be emptied; or
- (b) be kept so as to cause a nuisance or to attract flies.

## *Division 4—Laundries, Dry Cleaning Establishments and Dye Works*

### 9.4.1 Interpretation

In this Division, unless the context otherwise requires—

**dry cleaning establishment** means premises where clothes or other articles are cleaned by use of solvents without using water; but does not include premises in which perchlorethylene or arklone is used as dry cleaning fluid in a fully enclosed machine operating on a full cycle;

**dye works** means a place where articles are commercially dyed, but does not include dye works in which provision is made for the discharge of all liquid waste there from, into a public sewer;

**exempt laundromat** means a premises in which—

- (a) laundering is carried out by members of the public using, machines or equipment provided by the owners or occupiers of those establishments;
- (b) laundering is not carried out by those owners or occupiers for or on behalf of other persons;
- (c) provision is made for the discharge of all liquid waste there from into a public sewer;

**laundromat** means a public place with coin operated washing machines, spin dryers or dry cleaning machines; and

**laundry** means any places where articles are laundered for the purpose of trade but does not include an exempt laundromat.

#### **9.4.2 Receiving depot**

An owner or occupier of premises shall not use or permit the premises to be used as a receiving depot for a laundry, dry cleaning establishment or dye works except with the written permission of the local government who may at any time by written notice withdraw such permission.

#### **9.4.3 Reception room**

(1) The occupier of a laundry or dry cleaning establishment or dye works shall—

- (a) provide a reception room in which all articles brought to the premises for treatment shall be received and shall not receive or permit to be received any such articles except in that room; and
- (b) cause such articles as may be directed by an EHO to be thoroughly disinfected to the satisfaction of the officer.

(2) A person shall not bring or permit food to be brought into the reception room referred to in this section.

#### **9.4.4 Walls and floors**

The occupier of a laundry, dry cleaning establishment or dye works shall cause—

- (a) the internal surfaces of all walls to be rendered with a cement plaster with a steel float finish or other approved material to a height of 2 metres with a smooth impervious surface;
- (b) the floor to be constructed of concrete and finished with a smooth impervious surface; and
- (c) every floor and wall of any building on the premises to be kept at all times in good order and repair, so as to prevent the absorption of any liquid which may be splashed or spilled or may fall or be deposited on it.

#### **9.4.5 Laundry floor**

The occupier of a laundry shall provide in front of each washing machine a non-corrosive grating, at least 910 millimetres in width and so constructed as to prevent any person from standing in water on the floor.

#### **9.4.6 Escape of dust**

The occupier of a dry cleaning establishment shall provide effective means to prevent the escape into the open air of all dust or other material from the premises.

#### **9.4.7 Precautions against combustion**

The occupier of a dry cleaning establishment where volatile liquids are used shall take all proper precautions against combustion and shall comply with all directions given by an EHO for that purpose.

#### **9.4.8 Trolleys**

The occupier of a dry cleaning establishment shall—

- (a) provide trolleys for the use of transporting dirty and clean linen; and
- (b) ensure that each trolley is—
  - (i) clearly designated to indicate the use for which it is intended;
  - (ii) lined internally with a smooth impervious non-absorbent material that is easily cleaned; and
  - (iii) thoroughly cleaned and disinfected on a regular basis.

#### **9.4.9 Sleeping on premises**

A person shall not use or permit any room in a laundry, dry cleaning establishment or dye works to be used for sleeping purposes.

## **PART 10—OFFENCES AND PENALTIES**

### *Division 1—General*

#### **10.1.1 Offences and penalties**

(1) A person who contravenes a provision of this local law commits an offence.

(2) A person who commits an offence under subclause (1) is liable to—

- (a) a penalty which is not more than \$2,500 and not less than;
- (b) in the case of a first such offence, \$250;
- (c) in the case of a second such offence, \$500; and
- (d) in the case of a third and subsequent such offence, \$1250; and

(3) If the offence is a continuing offence, a daily penalty, which is not more than \$250 and not less than \$125 for each day during which, the offence continues.

**Schedule 1**  
*Shire of Mount Magnet*  
**Public Health Act 2016**  
**APPLICATION FOR REGISTRATION OF A LODGING HOUSE**

[Clause 8.1.4]

To: Chief Executive Officer, Shire of Mount Magnet.

I/We, .....  
(Full name of Applicant/s)of .....  
.....  
(Residential Address of Applicant/s)

apply for the registration of premises situated (or to be situated) at .....

as a lodging house to be classified as—

- \* a lodging house;
- \* a short term hostel;
- \* recreational campsite;
- \* transient workforce accommodation; or
- \* serviced apartments

(\* Specify which is to apply)

and for my name to be entered in the Register as the keeper of the lodging house.

**DESCRIPTION OF LODGING HOUSE**

Number of storeys .....

**Rooms for private use**

	Number	Area
Laundries/toilets/bathrooms .....	.....	.....
Bedrooms .....	.....	.....
Dining Rooms .....	.....	.....
Kitchens .....	.....	.....
Sitting Rooms .....	.....	.....
Other Rooms (specify) .....	.....	.....

**Rooms for lodgers**

	Number	Area
Bedrooms .....	.....	.....
Dining Rooms .....	.....	.....
Kitchens .....	.....	.....
Sitting Rooms .....	.....	.....
Other (specify) .....	.....	.....

**Sanitary Conveniences for male lodgers**

	Number
Toilets .....	.....
Urinals .....	.....
Baths .....	.....
Showers .....	.....
Hand wash basins .....	.....

**Sanitary Conveniences for female lodgers**

	Number
Toilets .....	.....
Baths .....	.....
Showers .....	.....
Hand wash basins .....	.....

**Laundry Facilities**

	Number
Wash troughs .....	.....
Washing machines .....	.....
Drying cabinets or clothes lines .....	.....

**Additional Details**

- (a) Lodgers' meals will be provided by the manager/keeper/lodgers.
- (b) The keeper will / will not reside continuously on the premises.
- (c) Name and occupation of proposed manager if keeper resides elsewhere  
.....
- (d) There will be ..... family members residing on the premises with the keeper /manager.  
Application fee of \$..... is attached.

.....  
 (Signature of Applicant/s) (Date)

**Schedule 2**  
*Shire of Mount Magnet*  
**Public Health Act 2016**  
**CERTIFICATE OF REGISTRATION OF A LODGING HOUSE**

[Clause 8.1.2]

This is to certify that the premises situated at .....  
 ..... are registered as a Lodging House and classified as—

- \* a lodging house;
- \* a short term hostel;
- \* a recreational campsite;
- \* transient workforce accommodation; or
- \* serviced apartments.

until 30 June ....., on the following conditions—

1. That ....., whose name is entered on the register of keepers of the Shire of Mount Magnet, continues to be the keeper of the lodging house;
2. That ....., appointed by the keeper to be the manager of the lodging house continues to be the manager of the lodging house;
3. That the Certificate of Registration is not cancelled or revoked;
4. That the maximum number of rooms to be used as sleeping apartments for lodgers is .....; and
5. That the maximum number of lodgers accommodated on the premises shall not exceed .....

This certificate of registration is issued subject to the *Public Health Act 2016* and the *Shire of Mount Magnet Health Local Law 2018* and is not transferable.

Dated .....  
 Fee Received: \$.....

.....  
 Environmental Health Officer,  
 Shire of Mount Magnet

**Schedule 3**  
*Shire of Mount Magnet*  
**Public Health Act 2016**  
**NOTICE OF CHANGE OF OWNER OF A LODGING HOUSE**

[Clause 8.1.6]

To: Chief Executive Officer, Shire of Mount Magnet.

I/We, .....  
 (Full Name of Applicant/s)

of .....  
 .....  
 (Residential Address of Applicant/s)

Am / are the new owner/s of premises situated at

.....  
 which are registered in the name of

.....  
 for the carrying on of the lodging house business.

.....  
 (Signature of Applicant/s)  
 .....  
 (Date)

**Schedule 4**  
*Shire of Mount Magnet*  
**Public Health Act 2016**  
**REGISTER OF LODGERS**

[Clause 8.3.2]

Location of Lodging House

.....  
.....

Date of Arrival	Name	Previous Address	Signature	Room No.	Date of Departure
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....

**Schedule 5**  
*Shire of Mount Magnet*  
**Public Health Act 2016**  
**LIST OF LODGERS**

[Clause 8.3.3]

To: The Chief Executive Officer, Shire of Mount Magnet.  
The following is the name of every person who resided in the lodging house at

.....  
.....

on the ..... day of .....

(Signed) .....  
(Keeper)

Date: .....

**Schedule 6**  
*Shire of Mount Magnet*  
**Public Health Act 2016**  
**CERTIFICATE OF SLEEPING ACCOMMODATION FOR A LODGING HOUSE**

[Clause 8.3.4]

To: .....  
(Name of Keeper)

of .....  
(Address of Keeper)

For the registered lodging house situated at

.....  
.....

The rooms listed below are not to be occupied by more than the number of lodgers or residents indicated below.

ROOM NUMBER:	MAXIMUM OCCUPANCY
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....

Date: .....

.....  
Environmental Health Officer,  
Shire of Mount Magnet



**Schedule 7**

*Shire of Mount Magnet*

**Public Health Act 2016**

**APPLICATION FOR LICENCE OF A MORGUE**

[Clause 3.5.1 (2)(b)]

To: Chief Executive Officer, Shire of Mount Magnet.

I .....  
(Full name in block letters)

of .....  
(Residential Address)

apply to licence the premises listed below as a Morgue.

Address of premises  
.....  
.....

Name of premises  
.....  
.....

Dated this ..... day of .....

.....  
(Signature of Applicant)

**Schedule 8**

*Shire of Mount Magnet*

**Public Health Act 2016**

**CERTIFICATE OF LICENCE OF A MORGUE**

[Clause 3.5.1 (4)(a)]

This is to certify the following premises is licensed as a Morgue from the  
..... day of ..... until 30th day of June .....

Address of premises  
.....  
.....

Name of premises  
.....  
.....

Dated this ..... day of .....

.....  
Environmental Health Officer,  
Shire of Mount Magnet

**Schedule 9**

*Shire of Mount Magnet*

**Public Health Act 2016**

**APPLICATION FOR CONSENT TO ESTABLISH AN OFFENSIVE TRADE**

[Clause 9.1.2]

To: Chief Executive Officer, Shire of Mount Magnet.

I/We, .....  
(Full Name of Applicant/s)

of .....  
(Residential Address of Applicant/s)

apply for consent to establish an offensive trade being  
.....  
(Description of Offensive Trade)

in or upon .....  
(Location of the House or Premises)

Notice of my / our intention to make this application was advertised in  
.....  
(Name of Newspaper)

on .....  
(Date of Advertisement)

Plans and specifications of the buildings proposed to be used or erected in connection with the proposed offensive trade are attached.

.....  
(Signature of Applicant/s) (Date)

**Schedule 10**  
*Shire of Mount Magnet*  
**Public Health Act 2016**  
**APPLICATION FOR REGISTRATION OF PREMISES FOR OFFENSIVE TRADE**

[Clause 9.1.4(a)]

To: Chief Executive Officer, Shire of Mount Magnet.

I/We, .....  
(Full Name of Applicant/s)

of .....  
.....  
(Residential Address of Applicant/s)

apply for registration, for the year ended .....  
of .....  
(Location of Premises)

being premises in or upon which there is (or is to be) carried on an offensive trade, namely  
.....  
.....  
(Description of Offensive Trade)

under the business name of .....

The prescribed registration fee \$..... is attached.

.....  
(Signature of Applicant/s) (Date)

**Schedule 11**  
*Shire of Mount Magnet*  
**Public Health Act 2016**  
**CERTIFICATE OF REGISTRATION OF PREMISES FOR OFFENSIVE TRADE**

[Clause 9.1.5]

This is to certify that the premises situated at

.....  
of which ..... is the occupier;  
are registered for the carrying on of the trade of

.....  
Trade Name  
.....

This registration expires on ..... day of .....

Dated this ..... day of .....

.....  
Environmental Health Officer,  
Shire of Mount Magnet

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

Cr JORGEN JENSEN, Shire President.  
Mr KELVIN MATTHEWS, Chief Executive Officer.

Dated: 27 June 2018.

**LOCAL GOVERNMENT ACT 1995**

## SHIRE OF MOUNT MAGNET

**REPEAL LOCAL LAW 2018**

Under the powers conferred by the *Local Government Act 1995*, and under all other powers enabling it, the Council of the Shire of Mount Magnet resolved on 27 June 2018 to make the following local law.

**1.1 Title**

This local law may be cited as the *Shire of Mount Magnet Repeal Local Law 2018*.

**1.2 Commencement**

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

**1.3 Repeal**

The following local laws and all subsequent amendments are hereby repealed—

- (a) *Shire of Mount Magnet Standing Orders Local Law 2002* published in the *Government Gazette* on 24 September 2003;
- (b) *Mount Magnet Public Cemetery Local Law 2002* published in the *Government Gazette* on 24 September 2003;
- (c) *Shire of Mount Magnet Bush Fire Brigades Local Law* published in the *Government Gazette* on 24 September 2003;
- (d) *Shire of Mount Magnet Dogs Local Law 2002* published in the *Government Gazette* on 24 September 2003; and
- (e) *Shire of Mount Magnet Health Local Laws 2002* published in the *Government Gazette* on 24 September 2003.

\_\_\_\_\_

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

Cr JORGEN JENSEN, Shire President.  
Mr KELVIN MATTHEWS, Chief Executive Officer.

Dated: 27 June 2018.

\_\_\_\_\_



**LOCAL GOVERNMENT ACT 1995****SHIRE OF MOUNT MAGNET****STANDING ORDERS LOCAL LAW 2018****CONTENTS****PART 1—PRELIMINARY**

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**LOCAL GOVERNMENT ACT 1995****SHIRE OF MOUNT MAGNET****STANDING ORDERS LOCAL LAW 2018**

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Mount Magnet resolved on 27 June 2018 to make the following local law.

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

This local law may be cited as the *Shire of Mount Magnet Standing Orders Local Law 2018*.

**1.2 Commencement**

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

**1.3 Definitions**

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

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

**absolute majority** means a majority comprising enough of the members for the time being of the council for their number to be more than 50% of the number of offices (whether vacant or not) of member of the council;

**CEO** means the Chief Executive Officer or Acting Chief Executive Officer for the time being of the Shire of Mount Magnet;

**committee** means any Committee or Subcommittee appointed in accordance with the Act;

**committee member** means an Elected Member and/or any other person serving on a Committee;

**Council** means the Council of the Shire of Mount Magnet;

**Criminal Code** means the Western Australian *Criminal Code Act Compilation Act 1913* as amended from time to time;

**district** means the district of the Shire of Mount Magnet;

**Elected Member** means a person who holds the office of Shire President or Councillor on the Council;

**meeting room** means the room in which a Committee or Council meeting is being conducted;

**officer** means an employed member of the staff of the Shire of Mount Magnet;

**Presiding Member** means the person presiding at the meeting of the Council or a Committee, as prescribed by the Act;

**quorum** for a meeting of a council or committee means at least 50% of the number of offices (whether vacant or not) of member of the council or the committee.

**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 this local law are to have the meaning given to them in the Act and Regulations.

**1.4 Repeal**

The *Shire of Mount Magnet Standing Orders Local Law 2002* published in the *Government Gazette* on 24 September 2003 is repealed.

**1.5 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 this local law.

### 1.6 Intent

This local law is intended to result in—

- (a) better decision making by the Council;
- (b) orderly conduct of meetings dealing with Council business;
- (c) better community understanding of the process of conducting meetings dealing with Council business; and
- (d) more efficient and effective use of time at meetings.

### 1.7 Local Government (Rules of Conduct) Regulations 2007

To the extent that this local law is inconsistent with the *Local Government (Rules of Conduct) Regulations 2007*, those Regulations will prevail to the extent of that inconsistency.

### 1.8 Reference to time

Any reference to time in this local law means western standard time or western daylight time if western daylight time is enforced on that day in the State of Western Australia.

## 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 (one third) of the committee members in a notice to the CEO, setting out the date and purpose of the proposed meeting; or
- (c) if so decided by the Committee or the Council.

### 2.2 Notice of special council meetings

- (1) Subject to clause 2.2(2), the CEO is to convene a special meeting of the Council by giving each Elected 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 Shire President, the CEO may give a lesser period of notice of a special meeting than mentioned in clause 2.2(1).

### 2.3 Notice of ordinary and special committee meetings

- (1) The CEO is to convene an ordinary meeting of a Committee pursuant to clause 2.1 by giving each committee member at least 72 hours' notice of the date, time and place of the meeting and an agenda for the meeting.
- (2) The CEO is to convene a special meeting of a Committee by giving each committee member at least 72 hours' notice of the date, time, place and purpose of the meeting.
- (3) The CEO is to give notice of meetings referred to in clauses 2.3(1) and 2.3(2) to every Elected Member.

## 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 Presiding Member 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) Unless otherwise decided by the Council the order of business at any ordinary meeting of the Council is to be as follows—
  - (a) Opening and announcement of visitors;
  - (b) Attendance and apologies;
  - (c) Answers to questions which were taken on notice;
  - (d) Public question and statement time;
  - (e) Leave of absence;

- (f) Petitions, Presentations and Deputations—
    - (i) Petitions;
    - (ii) Presentations;
    - (iii) Deputations.
  - (g) Confirmation of minutes;
  - (h) Announcements by the Presiding Member without discussion;
  - (i) Declarations of Interest (Financial, Proximity, Impartiality—both real and perceived);
  - (k) Elected Members' questions and reports;
  - (l) Any business left over from previous meeting;
  - (m) Recommendations of committees;
  - (n) Adoption of recommendations contained in items withdrawn;
  - (o) Reports;
  - (p) Motions of which previous notice has been given;
  - (q) Notice of motions for consideration at the following meeting if given during the meeting;
  - (r) Late and urgent business;
  - (s) Confidential items; and
  - (t) Close of meeting.
- (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 subclause (1), the CEO may include on the agenda of a Council or Committee meeting in an appropriate place within the order of business any matter which must be decided, or which the CEO considers is appropriately decided, by that meeting.

### 3.3 Public question time

- (1) A member of the public who raises a question during question time is to state his or her name and address.
- (2) A question may be taken on notice by the Council or Committee for later response.
- (3) When a question is taken on notice under subclause (2) a response is to be given to the member of the public in writing by the CEO, and a copy is to be included in the agenda of the next meeting of the Council or Committee as the case requires.
- (4) Questions asked by members of the public and answers—
  - (a) are to be brief and concise; and
  - (b) are not to be accompanied by—
    - (i) any argument, expression of opinion or statement of facts, except so far as may be necessary to explain the question or answer;
    - (ii) any statement reflecting adversely on the integrity of any member, officer or other party; or
    - (iii) any discussion.
- (5) Public Question Time will be conducted in accordance with the Act and Regulations.

### 3.4 Public statement time

- (1) Any person or group wishing to be received as a public statement by the Council at an ordinary meeting of the Council shall send to the CEO an application setting out the subject matter, which must be a matter concerning local government, for their statement in sufficient detail to enable a general understanding of the purpose of the statement.
- (2) Where the CEO receives the request in terms of the preceding clause the CEO shall refer it to the Presiding Member.
- (3) Public statements shall not—
  - (a) involve any language considered offensive by the Presiding Member;
  - (b) contain any statement reflecting adversely on the integrity of any elected member, officer or other; or
  - (c) exceed 2 minutes.
- (4) The Presiding Member may determine that a statement is out of order where the Statement—
  - (a) is the same or similar in content to a statement made at a previous meeting;
  - (b) a response was provided or council action was taken; and
  - (c) the person is directed to the minutes of the meeting at which the response was provided or the action was determined.

### 3.5 Petitions

- (1) A petition in the form prescribed by the Act and *Local Government (Constitution) Regulations (CI) 1998* for—
  - (a) a proposal to change the method of filling the office of Shire President;

- (b) a submission about changes to wards, the name of a district or ward or the number of councillors for a district or ward, in order to be effective, is to—
- (i) be a formal written request;
  - (ii) be signed by not less than three people;
  - (iii) be addressed to the Shire President;
  - (iv) be made by electors of the district;
  - (v) state the request on each page of the petition;
  - (vi) contain the names, addresses and signatures of the electors of the Shire of Mount Magnet making the request, and the date each elector signed;
  - (vii) contain a summary of the reasons for the request; and
  - (viii) state the name of the person upon whom, and an address at which, notice to the petitioners can be given.
- (2) Any other petition, in order to be effective, is to—
- (a) be a formal written request;
  - (b) be signed by not less than three people;
  - (c) state the request on each page of the petition;
  - (d) contain the names, addresses and signatures of persons making the request, and the date each person signed;
  - (e) contain a summary of the reasons for the request; and
  - (f) state the name of the person upon whom, and an address at which, notice to the petitioners can be given.
- (3) The only question which shall be considered by the Council on the presentation of any petition shall be (a motion to the effect) that the petition be received and forwarded to officers for further action.

### 3.6 Presentations and announcements

- (1) At any meeting of Council or Committee the Presiding Member may announce or raise any matter of interest or relevance to the Council or the Committee as the case may be.
- (2) The Presiding Member may allow in his or her absolute discretion a presentation or announcement to the Council or Committee by an Elected Member.
- (3) Any external organisation wishing to make a presentation to the Council or a Committee meeting shall send to the CEO a written request, setting out the subject matter (which must be a matter concerning local government) in sufficient detail to enable a general understanding of the purpose and benefits of the presentation.
- (4) Where the CEO receives the request in terms of the preceding clause, the CEO may refer it to the Presiding Member.
- (5) Any presentation from an external organisation shall not exceed 15 minutes.

### 3.7 Deputations

- (1) Any person or group wishing to be received as a deputation by the Council or a Committee shall send to the CEO an application—
- (a) setting out the agenda item to which the deputation relates;
  - (b) whether the deputation is supporting or opposing the officer's or Committee's recommendation; and
  - (c) include sufficient detail to enable a general understanding of the purpose of the deputation.
- (2) Where the CEO receives a request in terms of the preceding clause the CEO shall refer it to the presiding member of the Council or appropriate Committee who shall determine whether the deputation should be received.
- (3) A deputation approved to attend a Council or Committee meeting is not to—
- (a) exceed five persons, only two of whom may address the Council or Committee, although others may respond to questions from members; and
  - (b) address the Council or Committee for a period exceeding five minutes without the agreement of the Council or the Committee as the case requires.
- (4) Where a deputation has been made at a Committee meeting, a further deputation will not be permitted at a successive Council meeting by the same person or persons, or a directly related party, on the same matter unless it is demonstrated there is new, relevant material which may impact upon the Council's understanding of the facts of the matter.
- (5) The Presiding Member shall ensure that—
- (a) deputations are to be presented in the order of which the item they relate to sits on the agenda.
  - (b) where there are deputations both for and against an agenda item the person wishing to make a deputation against the matter is to present first, followed by a deputation in favour.
  - (c) deputations will then continue in alternating order until there are no persons wishing to speak to the opposite view of the last preceding speaker.

(6) Members of a Committee (or other Elected Members) to which the deputation is presented may ask a question or questions of persons of the deputation group and any person of the deputation group may respond to such questions.

(7) Deputations—

- (a) shall not involve any language considered offensive by the Presiding Member; and
- (b) shall not contain any statement knowingly incorrect, knowingly misleading or reflecting adversely on the integrity of any member, officer or other party.

### **3.8 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.

### **3.9 Questions from members**

(1) An Elected Member who wishes to ask a question with notice at a Committee meeting of the Council is to—

- (a) give reasonable written notice of the question wherever possible to the CEO before the scheduled commencement of the meeting; and
- (b) direct the question through the presiding member.

(2) An Elected Member may ask a question without notice at a Committee meeting provided that any such question is relevant to the purpose of the meeting.

(3) If the question referred to in clause 3.9(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.

(4) An Elected Member who wishes to ask a question with notice at a Council meeting is to—

- (a) give reasonable written notice of the question wherever possible to the CEO before the scheduled commencement of the meeting; and
- (b) direct the question through the Presiding Member.

(5) An Elected Member may ask a question without notice at a Council Meeting.

(6) If the question referred to in subclause (4) 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.

(7) Questions asked by Elected Members and answers—

- (a) are to be brief and concise; and
- (b) are not to be accompanied by—
  - (i) any argument, expression of opinion or statement of facts, except so far as may be necessary to explain the question or answer;
  - (ii) any statement reflecting adversely on the integrity of any Elected Member; or
  - (iii) any discussion.

### **3.10 Notices of motion**

(1) Unless the Act, Regulations or this local law 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 to the CEO at least 5 clear business 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 Shire 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) A motion of which notice has been given is to lapse unless—

- (a) the Elected Member who gave notice thereof, or some other Elected 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.

(6) If a notice of motion is given and lapses in the circumstances referred to in subclause (5)(a) above or is defeated, 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 or defeat.

(7) Motions are to be dealt with in the order they are received.

**3.11 Distribution of reports to the members**

- (1) Subject to clause 3.12 the CEO is to provide each member of the Council or Committee as the case may be with a copy of any report, which is to be presented to any Council or Committee meeting.
- (2) The report is to be provided to each member at least 24 hours before the commencement of the meeting.

**3.12 Late reports**

In cases of urgency or other special circumstances a report by the CEO may, with the consent of the Presiding Member, be read or otherwise given to members at the meeting if it has not previously been sent to members in accordance with clause 3.11.

**3.13 Urgent business approved by the presiding member or by decision**

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

**3.14 Reports or advice by the CEO**

- (1) The CEO may prepare for presentation to any meeting a report dealing with any matter which in the opinion of the CEO should be drawn to the attention of the meeting.
- (2) The CEO may advise the Council or Committee on any matter which he or she considers appropriate.

**PART 4—PUBLIC ACCESS TO AGENDA MATERIAL****4.1 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 “Confidential Items”; and
- (b) marked “Confidential” in the agenda.

**PART 5—DISCLOSURE OF INTERESTS****5.1 Disclosure of interest**

Disclosure of interests is dealt with in the Act.

**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 the Act; or
  - (b) because of a member or members leaving the meeting for reasons other than disclosure of a financial interest, the presiding member is to suspend the proceedings of the meeting for a period of 5 minutes, and if a quorum is not present at the end of that time, the meeting is deemed to have been adjourned and the presiding member 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 this local law 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 8.5 apply when the debate is resumed.



**PART 7—CONDUCT OF PERSONS AT COUNCIL AND COMMITTEE MEETINGS****7.1 Official titles to be used**

Elected Members are to speak of each other in the Council or Committee by their respective titles of Shire President or Councillor. Members, in speaking of or addressing officers, are to designate them by their respective official titles.

**7.2 Members to occupy own seats**

When present in the meeting room, a member will occupy the seating position allocated to him or her for each specific Council or Committee meeting.

**7.3 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 presiding member, in order to facilitate the recording in the minutes of the time of entry or departure.

**7.4 Adverse reflection**

(1) No member is to reflect adversely upon a decision of the Council or Committee except on a motion that the decision be revoked or amended.

(2) No member is to—

- (a) reflect adversely on the character or actions of another member or any other person; or
- (b) impute any motive to another member or any other person;

unless the Council resolves, without debate, that the question then before the meeting cannot otherwise be adequately considered.

(3) No member is to use offensive or insulting expressions in reference to any member or any other person.

**7.5 Withdrawal of offensive language**

(1) A member who, in the opinion of the Presiding Member, uses an expression which—

- (a) in the absence of a resolution under clause 7.4(2)—
  - (i) reflects adversely on the character or actions of another member; or
  - (ii) imputes any motive to a member; or
- (b) is offensive or insulting;

must, when directed by the Presiding Member, withdraw the expression and make a satisfactory apology.

(2) If a member fails to comply with a direction of the Presiding Member under the above subclause (1), the Presiding Member may refuse to hear the member further on the matter then under discussion and call on the next speaker.

**7.6 Disturbance by members**

While another person is addressing the Council or a Committee, a member is not—

- (a) to make any noise or disturbance; or
- (b) to converse aloud;

except where the member wishes to make an interruption under clause 8.9.

**7.7 Continued irrelevance**

(1) The Presiding Member, at any time, may—

- (a) call the attention of the meeting to—
  - (i) any irrelevant, repetitious, offensive or insulting language by a member; or
  - (ii) any breach of order by a member; and
- (b) direct that member, if speaking, to discontinue his or her speech.

(2) Should a member fail to comply with a direction of the Presiding Member under subclause (1), the Presiding Member may direct the member to refrain from taking any further part in the matter under discussion, other than voting, and the member is to comply with that direction.

**7.8 Recording of proceedings**

(1) A person must not use any electronic, visual or audio recording device or instrument to record the proceedings of the Council without the permission of the Council.

(2) If the Council gives permission under subclause (1), the Presiding Member must advise the meeting, immediately before the recording is commenced, that such permission has been given and the nature and extent of that permission.

**7.9 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 Presiding Member whenever called upon to do so.

(2) Members of the public are admitted to Council and Committee meetings upon the understanding that no expression of dissent or approval, conversational or interruption to the proceedings shall take place.

(3) For the purpose of this clause any expression of dissent or interruption to proceedings shall include a person who interrupts the proceedings of a meeting, whether by expressing approval or dissent, by conversing or by other means—

- (a) enters or remains in any part of the room where the meeting is taking place reserved for members and officers;
- (b) misconducts himself or herself;
- (c) fails to withdraw when members of the public are directed to withdraw;
- (d) obstructs the approaches to the room where the meeting is taking place; or
- (e) creates a disturbance within the precincts of the room where the meeting is taking place.

(4) In the event of any such interruption, the Presiding Member may exercise his or her discretion and require those interrupting to withdraw. The Presiding Member's ruling in this regard is final and cannot be challenged by moving dissent with the ruling or otherwise.

(5) Any person who does not withdraw when called upon by the Presiding Member to do so may by order of the Presiding Member be removed from the room.

(6) If an Elected Member or the CEO specifically requests, immediately after their use, that any particular words used by a person be recorded, the Presiding Member is to cause the words used to be taken down and read to the meeting for verification and to then be recorded in a file note of the meeting, unless the presiding member in any case decides otherwise.

(7) If a person or persons have been ordered by the Presiding Member to desist from such behaviour, but fails to do so, the Presiding Member can immediately adjourn the meeting in accordance with clause 14.9.

(8) The CEO shall be the designated person in charge of the premises for the purposes of section 5.41(d) of the Act and is the "person in authority" in relation to section 70A of the Criminal Code and shall advise such person or persons during the period that the meeting is adjourned to behave in an appropriate manner or to immediately leave the premises.

(9) Where a person or persons have been required to leave the room where the meeting is taking place and have been advised in accordance with subclause 7.9(3) but continue to remain in the room where the meeting is taking place, the CEO may instigate legal action against such person or persons.

(10) If a person ordered by the CEO to leave the premises cannot be removed without the application of physical force then a member or members of the police force shall be called to the room where the meeting is taking place to effect the removal of the person and the meeting may be adjourned until the person has been removed.

#### **7.10 Prevention of disturbance generally**

No electronic or other device shall be used in a manner that creates a disturbance or leads to a disturbance at the meeting.

#### **7.11 Distinguished visitors**

If a distinguished visitor is present at a meeting of the Council or a Committee, the Presiding Member may make special arrangement for the seating of the person.

### **PART 8—CONDUCT OF MEMBERS DURING DEBATE**

#### **8.1 Speaking at council or committee meetings**

(1) Every member wishing to speak is to indicate by show of hands or other method agreed upon by the Council or Committee.

(2) When a member or officer has been chosen to speak by the presiding member the member or officer must address the Council or Committee through the Presiding Member.

(3) Any member moving a motion or amendment, or taking part in the discussion thereon, shall address the presiding member and may rise if the member so desires, or shall do so when requested by the presiding member except when prevented from doing so by sickness or physical disability.

(4) When invited by the Presiding Member to speak, such member or officer may remain seated whilst speaking unless the Presiding Member rises, upon which such member or officer will cease speaking immediately so the Presiding Member can be heard.

#### **8.2 Priority**

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

#### **8.3 The presiding member may take part in debates**

Unless otherwise prohibited by the Act, and subject to compliance with procedures for the debate of motions contained in this local law, the Presiding Member may take part in a discussion of any matter before the Council or Committee as the case may be.

#### **8.4 Relevance**

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

**8.5 Limitation of number of speeches**

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

**8.6 Limitation of duration of speeches**

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

**8.7 Questions during debate or points of clarification**

With the approval of the Presiding Member, a member may ask a question or seek clarification of any matter relevant to a motion at any time during the debate on the motion before it is put, but no discussion thereon is permitted.

**8.8 Members not to speak after conclusion of debate**

No member is to speak to any motion after the mover has concluded his or her right of reply and/or after it has been put by the Presiding Member.

**8.9 Members not to interrupt**

No member is to interrupt another member or an officer whilst speaking unless—

- (a) to raise a point of order;
- (b) to call attention to the absence of a quorum; or
- (c) to move a motion under clause 10.1(1)(c).

**8.10 Re-Opening discussion on decisions**

No member 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 amended.

**PART 9—GENERAL CONDUCT OF DEBATE****9.1 Motions to be stated**

Any member who moves a substantive motion or amendment to a substantive motion is to state the substance of the motion and obtain a seconder before speaking to it.

**9.2 Motions to be supported**

(1) 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 amend the decision made at a Council or a Committee meeting, unless the motion has the support required under Regulation 10 of the Regulations.

(2) Subject to clause 9.13 the seconder cannot subsequently withdraw his or her seconding of the motion.

**9.3 Unopposed business**

(1) Upon a motion being moved and seconded, the Presiding Member may ask the meeting if any member opposes it.

(2) If no member signifies opposition to the motion the Presiding Member 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 amend a decision which has been made at a Council or Committee meeting.

**9.4 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.

**9.5 Breaking down of complex motions**

The Presiding Member may order a complex motion to be broken down and put in the form of several motions, which are to be put in sequence.

**9.6 Order of call in debate**

Unless dealt with in accordance with clause 9.3, the Presiding Member 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 in alternating order until there is no member (excluding the mover) wishing to speak who is of the opposite view than the last preceding speaker; and
- (h) the mover has the right of reply which closes debate.

### **9.7 Limit of debate**

The Presiding Member 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.

### **9.8 Member may require motion to be read**

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

### **9.9 Consent of seconder 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.

### **9.10 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 carried, withdrawn or lost.

### **9.11 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.

### **9.12 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.

### **9.13 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.

### **9.14 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.

### **9.15 Foreshadowed motion**

- (1) In speaking upon a motion a member—
  - (a) may give notice to the meeting of the member's intention to move a different motion on the same subject matter, being a motion which cannot practically be moved by an amendment to the motion under consideration; and
  - (b) shall provide to the Presiding Member the terms of the foreshadowed motion.
- (2) If two or more members pursuant to subclause (1) foreshadow motions on the same subject, then the Presiding Member shall take note of the order in which the foreshadowed motions are raised and the terms of each foreshadowed motion.
- (3) If the motion under consideration is lost, then the foreshadowed motions may be brought forward without delay.
- (4) The foreshadowed motions shall be considered by the Council in succession, until one of the motions is passed, whereupon there shall be no further consideration of any other foreshadowed motion on that subject.

### **9.16 Personal explanation**

- (1) 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.
- (2) A member wishing to make a personal explanation may do so at the conclusion of that speech.
- (3) Any member or an officer 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.
- (4) When a member or an officer proceeds to explain, no reference is to be made to matters unnecessary for that purpose.

### **9.17 Ruling on questions of personal explanation**

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

**9.18 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 motion.
- (2) The right of reply is to be confined to matters raised by previous speakers and no new matter is to be introduced or expansion on the substantive motion is to take place.

**9.19 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; and
- (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 10—PROCEDURAL MOTIONS****10.1 Permissible procedural motions**

(1) In addition to proposing a properly worded amendment to a substantive motion, it is permissible for a member (at any time) to move the following procedural motions—

- (a) the Council (or Committee) meeting now adjourn;
- (b) the debate be adjourned;
- (c) the motion now be put;
- (d) the motion not now be put;
- (e) the motion (or communication) lie on the table;
- (f) the meeting proceed to the next item of business;
- (g) that the ruling of the Presiding Member be disagreed by a motion of dissent; or
- (h) the Council (or Committee) meet behind closed doors as the matter to be discussed is of a confidential nature in respect of which the meeting may be closed to members of the public under the Act.

(2) Subject to subclause (1), when a recommendation of a Committee is being debated by the Council, the only motions which may be considered by the Council are that—

- (a) the recommendation be adopted;
- (b) the recommendation not be adopted;
- (c) the recommendation be referred back to the responsible Committee for further consideration; or
- (d) the recommendation be amended.

(3) A permissible procedural motion pursuant to subclause (1) can only be brought forward by a person who has not already spoken on the matter.

(4) A member may request that the names of some or all of those who voted in the negative be recorded in the minutes.

**10.2 No debate on procedural motions**

(1) The mover of a motion stated in each of paragraphs (a), (b), (e), (g) and (h) of clause 10.1(1) may speak to the motion for not more than five 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 (c), (d) and (f) of clause 10.1(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.

**10.3 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.

**10.4 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 11—EFFECT OF PROCEDURAL MOTIONS****11.1 Motion be amended—Effect of motion**

- (1) An amendment to a motion must be relevant to that motion.
- (2) An amendment to a motion must be read or stated before being moved.

- (3) Only one amendment is to be discussed at a time, but as often as an amendment is lost, another amendment may be moved, before the original motion is put to the vote.
- (4) In speaking to an amendment, a member may give notice of his or her intention to move a further amendment or another motion.
- (5) Where an amendment is carried—
  - (a) the original motion as amended becomes the substantive motion;
  - (b) it must be relevant to the motion and not be of such a nature that the original motion loses its identity; and
  - (c) for all purposes subsequent debate, is only to be on the substantive motion.

#### **11.2 Council (or committee) meeting to now adjourn—Effect of motion**

- (1) The motion “that the Council (or Committee) now adjourn”, if carried, shall result in the meeting being adjourned until it is re-opened at which time the meeting will continue from the point at which it was adjourned, unless the Presiding Member or a simple majority or members determine otherwise, by vote.
- (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 the Council meeting—
    - (i) The names of Elected Member(s) who have spoken on the matter prior to the adjournment are to be recorded in the minutes; and
    - (ii) The provisions of clause 8.5 apply when the debate is resumed.

#### **11.3 The motion be adjourned—effect of motion**

- (1) The motion “that the motion be adjourned”, if carried, shall result in 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 Elected Member(s) who have spoken on the matter are to be recorded in the minutes; and
  - (b) the provisions of clause 8.5 apply when the debate is resumed.

#### **11.4 The motion be now put—Effect of motion**

- (1) The motion “that the motion be now put”, if carried during discussion of a substantive motion without amendment, shall result in the Presiding Member offering 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, shall result in the Presiding Member putting the amendment to the vote without further debate.
- (3) This motion, if lost, shall result in the continuation of the debate.

#### **11.5 Ruling of the presiding member disagreed with—Effect of motion**

The motion “that the ruling of the Presiding Member be disagreed with”, if carried, shall result in the ruling of the presiding member about which this motion was moved, to have no effect and for the meeting to proceed accordingly.

#### **11.6 The motion (or communication) lie on the table—Effect of motion**

- (1) If moved in respect of a motion or an amendment to a motion, this motion takes the form “that the motion lie on the table”.
- (2) If moved in respect of a letter, report or other document, its form is “that the communication lie on the table”.
- (3) A motion that “the motion lie on the table” or that “a communication lie on the table”—
  - (a) may be moved by a member to adjourn the debate if further information is needed from the Council’s records;
  - (b) cannot be moved by a member who has moved, seconded or spoken to the question then before the meeting;
  - (c) cannot be amended; and
  - (d) does not give the mover a right of reply.
- (4) If a motion that “the motion lie on the table” or “the communication lie on the table” is carried then—
  - (a) in respect of a document or a motion, further debate on the matter is adjourned until the meeting resolves to take the document or motion from the table; and
  - (b) in respect of an amendment, both the amendment and the substantive motion to which it relates are adjourned until the meeting resolves to take the motion from the table.
- (5) If a motion that “the motion be taken from the table” or “the communication be taken from the table” is carried then—
  - (a) in respect to a document or a motion, debate resumes until the matter is determined;
  - (b) in respect to an amendment, debate resumes on the amendment until the matter is determined.



**11.7 The meeting proceed to the next item of business—Effect of motion**

The motion “that the Council (or Committee) proceed to the next item of business”, if carried, shall cause 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.

**11.8 The council (or committee) to meet behind closed doors—Effect of motion**

- (1) Subject to any decision of the Council or Committee, this motion, if carried, shall result in the general public and any officer the Council or Committee determines, to leave the room.
- (2) While a decision made under this clause is in force the operation of clause 8.5 limiting the number of speeches continues to apply unless the Council decides otherwise.
- (3) Upon the public again being admitted to the meeting the Presiding Member, unless the Council or Committee decides otherwise, is to cause the resolution of 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 12—REVOKING OR CHANGING DECISIONS****12.1 Motion—When put**

When the debate upon any motion is concluded and the right of reply has been exercised the Presiding Member shall immediately put the motion to the Council or the Committee, and, if so desired by any member, shall again state it.

**12.2 Motion—Method of putting**

If a decision of the Council or a Committee is unclear or in doubt, the presiding member 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.

**12.3 Revocation motion at the same meeting—Procedures**

- (1) If the CEO receives a notice of motion, which complies with the requirements of this local law, to revoke a decision made at a meeting before the close of that meeting, then the CEO is to immediately advise the Presiding Member of the notice of motion.
- (2) Where the Presiding Member is advised of a notice of motion under subclause (1), he or she at the first available opportunity and before the end of the meeting is to—
  - (a) advise the meeting of the notice;
  - (b) bring on the revocation motion;
  - (c) determine whether there is sufficient support (under Regulation 10 of the Regulations) for the motion; and
  - (d) deal with the motion, if there is sufficient support.

**PART 13—IMPLEMENTING DECISIONS****13.1 Implementation of a decision**

- (1) Neither the CEO nor an officer or an Elected Member shall take any step to implement or otherwise give effect to a resolution until 2pm on the following Council office working day after the close of the meeting at which the resolution was passed.
- (2) If a notice of motion to revoke or change a decision of the Council or a Committee is received 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, except that—
  - (a) If a notice of motion to revoke or change a decision of the Council or a Committee is given during the same meeting at which the decision was made, the notice of motion is of no effect unless the number of members required to support the motion under the Regulations indicate their support for the notice of motion at that meeting; and
  - (b) If a notice of motion to revoke or change a decision of the Council or Committee is received after the closure of the meeting at which the decision was made implementation of the decision is not to be withheld unless the notice of motion has the support in writing, of the number of members required to support the motion under the Regulations.
- (3) Implementation of a decision is only to be withheld under subclause (2) 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.
- (4) 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 in to effect by the Council in writing to the applicant or the applicant’s agent by an officer of the Council 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 14—PRESERVING ORDER****14.1 The Presiding Member to preserve order**

The Presiding Member 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 doing so.

**14.2 Demand for withdrawal**

A member may be required by the Presiding Member, 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 officer, and if the member declines or neglects to do so, the Presiding Member may refuse to hear the member further upon the matter then under discussion and call upon the next speaker.

**14.3 Points of order—When to raise—Procedure**

- (1) Upon a matter of order arising during the progress of a debate, any member may raise a point of order including interrupting the speaker.
- (2) Any member, who is speaking when a point of order is raised, is to immediately stop speaking and be seated while the presiding member listens to the point of order.

**14.4 Points of order—When valid**

- (1) Expressing a difference of opinion or the contradiction of a speaker shall not be recognised as a valid point of order.
- (2) The following will be recognised as the only 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, the relevant provisions of this local law or policy of the Council, provided that the member making the point of order states the written law or policy believed to be breached; and
  - (d) that insinuations have been made as to the character, morality, honesty or motives of a member or an officer.

**14.5 Points of order—Ruling**

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

**14.6 Points of order—Ruling conclusive, unless dissent motion is moved**

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

**14.7 Points of order take precedence**

Notwithstanding anything contained in this local law 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.

**14.8 Precedence of presiding member**

- (1) When the Presiding Member rises during the progress of a debate, any member then speaking, or offering to speak, is to immediately sit down and every member of the Council or Committee present shall be silent so that the Presiding Member may be heard without interruption.
- (2) Subclause (1) is not to be used by the presiding member to exercise the right provided in clause 8.3, but to preserve order.

**14.9 Right of the presiding member to adjourn without explanation to regain order**

- (1) If a meeting ceases to operate in an orderly manner, the Presiding Member may use discretion to adjourn the meeting for a period of up to fifteen minutes without explanation, for the purpose of regaining order.
- (2) Upon resumption, debate is to continue at the point at which the meeting was adjourned.
- (3) If, at any one meeting, the Presiding Member has cause to further adjourn the meeting, such adjournment may be to a later time on the same day or to any other day.
- (4) Where debate of a motion is interrupted by an adjournment under subclause (1), in the case of a Council meeting—
  - (a) the names of Elected Member(s) who have spoken in the matter prior to the adjournment are to be recorded; and
  - (b) the provisions of clause 8.5 apply when the debate is resumed.

**PART 15—ADJOURNMENT OF MEETING****15.1 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.

**15.2 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.

**15.3 Unopposed business—Motion for adjournment**

On a motion for the adjournment of the Council or Committee, the Presiding Member, before putting the motion, may seek leave of the Council or Committee to proceed to the transaction of unopposed business.

**15.4 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.

**15.5 Time to which adjourned**

The time to which a meeting is adjourned for want of a quorum, by the Presiding Member 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 16—COMMITTEES OF THE COUNCIL****16.1 Establishment and appointment of committees**

A Committee is to be established on a motion setting out the proposed purpose and functions of the Committee and either—

- (a) the names of the Elected Members, officers and other persons to be appointed to the Committee; or
- (b) the number of Elected Members, officers and other persons to be appointed to the Committee and a provision that they be appointed by a separate motion.

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

(3) If a deputy has commenced to act in place of a committee member at a Committee meeting and the committee member attends the meeting, the committee member will not assume the seat and the deputy will continue to act as the committee member for the duration of that meeting.

(4) Once a committee meeting has commenced a deputy member cannot assume the seat of a committee member who leaves the meeting.

(5) A deputy who is one of two or more deputies of a committee member is not entitled to attend a meeting of the Committee in place of that committee member if the meeting is attended by another deputy of that committee member who has precedence over that deputy in the order of seniority determined under subclause (1).

(6) A person who is a committee member is not eligible to be appointed a deputy for another committee member.

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

**16.4 Reports of committees—Questions**

When a recommendation of any Committee is submitted for adoption by the Council, any Elected Member may direct questions specifically relating to the recommendation through the Presiding Member to the Presiding Member, any committee member or the CEO.

**16.5 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.

**16.6 Standing Orders apply to committees**

Where not otherwise specifically provided, this local law applies generally to the proceedings of Committees, except clause 8.1, in respect of the requirement to rise.

**16.7 Observers at committee meetings**

(1) For the purposes of this part an observer is an Elected Member attending a committee meeting of which they are not a member and choosing to sit in their allocated seat in the meeting room.

(2) Observers may occupy their allocated seat in the meeting room. Should an observer choose to sit in their allocated seat in the meeting room they are subject to the obligations on all Elected Members under the Act and all associated regulations including the *Local Government (Rules of Conduct) Regulations 2007*.

(3) Observers choosing to sit in their allocated seat in the meeting room may not participate in debate. Questions and discussion of committee members take priority over questions from observers.

**PART 17—GENERAL ADMINISTRATIVE MATTERS****17.1 Suspension of Standing Orders**

(1) The Council or a Committee may decide, by simple majority vote, to suspend temporarily one or more clause(s) of this local law.

(2) The mover of a motion to suspend temporarily any one or more clause(s) of this local law shall either—

- (a) state the specific clause or clauses of this local law to be suspended; or
- (b) state clearly and concisely the reason for or purpose of the proposed suspension in a motion prefaced by the words “I move that such clause(s) of the Shire of Mount Magnet Standing Orders be suspended as will allow...”.

(3) Only the operation of the clauses so nominated or otherwise affected by any resolution to suspend this local law shall be suspended.

**17.2 Cases not provided for in Standing Orders**

The Presiding Member is to decide questions of order, procedure, debate, or otherwise in cases where this local law and the Act and Regulations are silent. The decision of the Presiding Member in these cases is final, except where a motion referred to in clause 14.6 is moved and carried.

**17.3 Enforcement**

(1) The provisions of this local law shall be enforced by the Presiding Member of any Council or Committee but only following the specific direction of the Council or Committee by resolution by a simple majority.

(2) A breach of a provision of this local law by an Elected Member is dealt with in the Act and *Local Government (Rules of Conduct) Regulations 2007*.

(3) A person who contravenes a provision of this local law commits an offence and is liable to a penalty of \$1000 and where the offence is of a continuing nature, to a daily penalty of \$100 in respect of each day or part of day during which the offence has continued.

**PART 18—COMMON SEAL****18.1 The Council's Common Seal**

(1) The CEO is to have charge of the Common Seal of the Council, and is responsible for the safe custody and proper use of it.

(2) The Common Seal of the Council 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 Shire President and the CEO or a senior officer authorised by him or her.

(3) The Common Seal of the Council is to be affixed to any local law which is made by the Council.

(4) The CEO is to record in a register each date on which the Common Seal of the Council was affixed to a document, the nature of the document, and the parties to any agreement to which the common seal was affixed.

(5) Any person who uses the Common Seal of the Council or a replica thereof without authority commits an offence.

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

Cr JORGEN JENSEN, Shire President.  
Mr KELVIN MATTHEWS, Chief Executive Officer.

Dated: 27 June 2018.