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## **SHIRE OF BROOMEHILL-TAMBELLUP**

**ACTIVITIES IN THOROUGHFARES AND PUBLIC  
PLACES AND TRADING LOCAL LAW 2020**

**BUSH FIRE BRIGADES LOCAL LAW 2020**

**CEMETERIES LOCAL LAW 2020**

**DOGS LOCAL LAW 2020**

**EXTRACTIVE INDUSTRIES LOCAL LAW 2020**

**FENCING LOCAL LAW 2020**

**HEALTH LOCAL LAW 2020**

**LOCAL GOVERNMENT (COUNCIL MEETINGS)  
LOCAL LAW 2020**

**LOCAL GOVERNMENT PROPERTY LOCAL LAW 2020**

**REMOVAL OF REFUSE, RUBBISH AND DISUSED  
MATERIALS LOCAL LAW 2020**

**REPEAL LOCAL LAW 2020**

**WASTE LOCAL LAW 2020**



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## LOCAL GOVERNMENT ACT 1995

## SHIRE OF BROOMEHILL-TAMBELLUP

ACTIVITIES IN THOROUGHFARES AND PUBLIC PLACES AND  
TRADING LOCAL LAW 2020

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Broomehill-Tambellup resolved on 11 February 2021 to make the following local law.

## PART 1—PRELIMINARY

## 1.1 Citation

This local law may be cited as the *Shire of Broomehill-Tambellup Activities in Thoroughfares and Public Places and Trading Local Law 2020*.

## 1.2 Definitions

In this local law unless the context otherwise requires—

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

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

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

**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;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Schedule** means the 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 control of the local government;

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

**townsite** means the townsites of Broomehill and Tambellup which are—

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

**vehicle** includes—

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

but excludes—

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

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

**water channel** means an artificial or constructed waterway designed to convey water;

**water course** means a river, creek or other natural watercourse (whether modified or not) in which water is contained or flows (whether permanently or from time to time); and includes—

- (a) a dam or reservoir that collects water flowing in a watercourse;
- (b) a lake or wetland through which water flows;
- (c) a channel into which the water of a watercourse has been diverted;
- (d) part of a watercourse; and
- (e) an estuary through which water flows.

### 1.3 Application

This local law applies throughout the district.

### 1.4 Repeal

(1) This local law repeals the *Shire of Broomehill-Tambellup Activities in Thoroughfares and Public Places and Trading Local Law 2008* as published in the *Government Gazette* on 23 December 2008.

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

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

### 1.5 Commencement

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



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

A person shall not—

- (a) plant any plant (except grasses or a similar plant) within 10 metres of an intersection;
- (b) damage a lawn or a garden or remove any plant or part of a plant from a lawn or a garden unless—
  - (i) the person is the owner or the occupier of the lot abutting that portion of the thoroughfare and the lawn or the garden or the particular plant has not been installed or planted by the local government; or
  - (ii) the person is acting under the authority of a written law;
- (c) plant any plant (except grass or a similar plant) on a thoroughfare so that it is within 2m of a carriageway;
- (d) place on any footpath any fruit, fruit skins or other substance or fluid (whether vegetable or otherwise, but not water) which may create a hazard for any person using the footpath;
- (e) unless at the direction of the local government, damage, remove or interfere with any signpost, direction plate, guidepost, notice, shelter, shed, fence or any structure erected on a thoroughfare by the local government or a person acting under the authority of a written law;
- (f) play or participate in any game or sport so as to cause danger to any person or thing or impede the movement of vehicles or persons on a thoroughfare; or
- (g) within a mall, arcade or verandah of a shopping centre, ride any bicycle, skateboard, rollerblades or similar device.

**2.2 Activities allowed with a permit—general**

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

- (a) dig or otherwise create a trench through or under a kerb or footpath;
- (b) subject to Division 3 of this Part, throw, place or deposit any thing on a verge except for removal by the local government under a bulk rubbish collection, and then only in accordance with the terms and conditions and during the period of time advertised in connection with that collection by the local government;
- (c) cause any obstruction to a vehicle or a person using a thoroughfare as a thoroughfare;
- (d) cause any obstruction to a water channel or a water course in a thoroughfare;
- (e) throw, place or drain offensive, noxious or dangerous fluid onto a thoroughfare;
- (f) damage a thoroughfare;
- (g) light any fire or burn any thing on a thoroughfare other than in a stove or fireplace provided for that purpose or under a permit issued under clause 5.13;
- (h) fell any tree onto a thoroughfare;
- (i) unless installing, or in order to maintain, a permissible verge treatment—
  - (i) lay pipes under or provide taps on any verge; or
  - (ii) place or install any thing on any part of a thoroughfare, and without limiting the generality of the foregoing, any gravel, stone, flagstone, cement, concrete slabs, blocks, bricks, pebbles, plastic sheeting, kerbing, wood chips, bark or sawdust;
- (j) provide, erect, install or use in or on any building, structure or land abutting on a thoroughfare any hoist or other thing for use over the thoroughfare;
- (k) on a public place use anything or do anything so as to create a nuisance;
- (l) place or cause to be placed on a thoroughfare a bulk rubbish container; or
- (m) interfere with the soil of, or anything in a thoroughfare or take anything from a thoroughfare.

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

**2.3 No possession and consumption of liquor on thoroughfare**

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

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

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

*Division 2—Vehicle crossing**Subdivision 1—Temporary crossings***2.4 Permit not 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 not be required to 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 the registered proprietor of the lot.

(3) The registered proprietor of the lot 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 until such time that the temporary crossing is removed.

#### 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 service or is approved by the local government.

##### 2.7 Application

This Division only applies to the townsites.

#### Subdivision 2—Permissible verge treatments

##### 2.8 Permissible verge treatments

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

(2) The permissible verge treatments are—

- (a) the planting and maintenance of a lawn;
- (b) the planting and maintenance of a garden provided that—
  - (i) clear sight visibility is maintained at all times for a person using the abutting thoroughfare in the vicinity of an intersection or bend in the thoroughfare or using a driveway on land adjacent to the thoroughfare for access to or from the thoroughfare; and
  - (ii) where there is no footpath, a pedestrian has safe and clear access of a minimum width of 2m along that part of the verge immediately adjacent to the kerb;
- (c) the installation of an acceptable material being all forms of loose aggregate materials such as pebbles, stones, crushed brick and gravel are acceptable. The materials shall be no larger than 50mm and no smaller than 20mm in diameter. The material must be contained within the verge area at all times; or
- (d) the installation over no more than one third of the area of the verge (excluding any vehicle crossing) of an acceptable material in accordance with paragraph (c), and the planting and maintenance of either a lawn or a garden on the balance of the verge in accordance with paragraph (a) or (b).

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

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

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

##### 2.10 Obligations of owner or occupier

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

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

**2.11 Notice to owner or occupier**

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

*Subdivision 3—Existing verge treatments***2.12 Transitional provision**

(1) In this clause—

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

(2) A verge treatment which—

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

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

*Subdivision 4—Public works***2.13 Power to carry out public works on verge**

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

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

*Division 4—Property numbers**Subdivision 1—Preliminary***2.14 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—Item 4(1) of Division 1, Schedule 3.1 of Act**

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

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

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

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

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

(3) A condition of use specified on a sign erected under subclause (1) is to be for the purpose of giving notice of the effect of a provision of this local law.

**2.18 Transitional**

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

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

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

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

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

In this Part, unless the context otherwise requires—

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

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

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

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

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

*Division 2—Permit***3.2 Advertising signs and portable direction signs**

- (1) A person shall not, without a permit—
- (a) erect or place an advertising sign on a thoroughfare; or
  - (b) post any bill or paint, place or affix any advertisement on a thoroughfare.
- (2) Notwithstanding subclause (1), a permit is not required in respect of a portable direction sign which neither exceeds 500mm in height nor 0.5m<sup>2</sup> in area, provided that the sign is placed or erected on a thoroughfare on an infrequent or occasional basis only to direct attention to a place, activity or event during the hours of that activity or event.
- (3) Notwithstanding subclause (1), a person shall not erect or place an advertising sign—
- (a) on a footpath;
  - (b) over any footpath where the resulting vertical clearance between the sign and the footpath is less than 2.5m;
  - (c) on or within 3m of a carriageway;
  - (d) in any other location where, in the opinion of the local government, the sign is likely to obstruct lines of sight along a thoroughfare or cause danger to any person using the thoroughfare; or
  - (e) on any natural feature, including a rock or tree, on a thoroughfare, or on any bridge or the structural approaches to a bridge.

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

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

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

*Division 3—Conditions on permit***3.4 Conditions on portable sign**

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

- (a) the portable sign shall—
  - (i) not exceed 1m in height;
  - (ii) not exceed an area of 1m<sup>2</sup> on any side;
  - (iii) relate only to the business activity described on the permit;

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

### 3.5 Conditions on election sign

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

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

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

### *Division 1—Animals and vehicles*

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

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

#### 4.2 Prohibitions relating to animals

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

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

(2) An owner of an animal shall not—

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

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

### *Division 2—Shopping trolleys*

#### 4.3 Interpretation

In this Division—

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

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

#### 4.4 Shopping trolley to be marked

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

#### 4.5 Person not to leave trolley in public place

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

#### 4.6 Retailer to remove abandoned trolley

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

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

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

#### 4.7 Retailer taken to own trolley

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

### PART 5—ROADSIDE CONSERVATION

#### *Division 1—Preliminary*

#### 5.1 Interpretation

In this Part—

**MRWA** means Main Roads Western Australia;

**specially protected flora** has the meaning given to it in section 5 of the *Biodiversity Conservation Act 2016*.

**threatened flora** has the meaning given to it in section 5 of the *Biodiversity Conservation Act 2016*.

**Roadside Conservation Committee** means the Roadside Conservation Committee appointed by the responsible Minister; and

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

#### 5.2 Application

This Part does not apply to the townsites.

#### *Division 2—Flora roads*

#### 5.3 Declaration of flora road

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

#### 5.4 Construction works on flora roads

Construction and maintenance work carried out by the local government on a flora road is to be in accordance with the Handbook of Environmental Practice for Road Construction and Road Maintenance Works.

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

**5.8 Marking of special environmental areas**

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

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

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

**5.10 Relevant considerations in determining application**

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

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

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

A person shall not clear and maintain in a cleared state, the surface of a thoroughfare within 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 5.11 shall submit a sketch plan clearly showing the boundary of the person's land and the portions of the thoroughfare joining that person's land which are to be cleared.

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

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

**5.14 Application for permit**

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

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

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

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

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

**5.16 Prohibitions on burning**

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

- (a) for burning between 31 August and 1 May of the following year where the intensity of the burn could damage native flora and fauna; or
- (b) in any year to any person for any part of a thoroughfare which is on the opposite side of the carriageway to that portion of the thoroughfare for which a permit to burn has been approved in the same year—
  - (i) Where an immediate fire hazard exists in a thoroughfare, an application for a permit may be approved by the local government to facilitate the removal of that hazard.

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

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

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

(1) The local government is not to approve an application for a permit for the purpose of clause 5.17 where the thoroughfare is less than 20m wide.

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

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

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

**5.20 Permit for revegetation projects**

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

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

In this Division, unless the context otherwise requires—

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

**public place** includes—

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

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

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

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

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

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

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

**trading** includes—

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

but does not include—

- (d) the delivery of pre-ordered goods or services to the purchaser of those goods or services or to the person nominated by the purchaser of those goods or services whether or not payment for those goods or services is accepted on delivery; or  
the taking of further orders for goods or services from the purchaser of those pre-ordered goods or services or from the person nominated by the purchaser of those pre-ordered goods or services when those orders are taken at the same time as a previous order is being delivered, whether or not payment is made for those goods or services at the time of taking the order;
- (e) the setting up of a stall or the conducting of a business at a stall under the authority of a stallholder's permit;
- (f) the selling or the offering for sale of goods and services to, or the soliciting of orders for goods and services from a person who sells those goods or services;



- (g) the selling or the offering for sale or hire by a person of goods of her or his own manufacture or services which he or she provides; and
- (h) the selling or hiring or the offering for sale or hire of—
  - (i) goods by a person who represents a manufacturer of the goods; or
  - (ii) services by a person who represents a provider of the services,which are only sold directly to consumers and not through a shop.

#### *Subdivision 2—Permits*

##### **6.2 Stallholder's permit**

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

##### **6.3 Trader's permit**

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

##### **6.4 Relevant considerations in determining application for permit**

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

##### **6.5 Conditions of permit**

- (1) If the local government approves an application for a permit under this Division subject to conditions, those conditions may include—
  - (a) the place, the part of the district, or the thoroughfare to which the permit applies;
  - (b) the days and hours during which a permit holder may conduct a stall or trade;

- (c) the number, type, form and construction, as the case may be, of any stand, table, structure or vehicle which may be used in conducting a stall or in trading;
  - (d) the goods or services in respect of which a permit holder may conduct a stall or trade;
  - (e) the number of persons and the names of persons permitted to conduct a stall or trade;
  - (f) the requirement for personal attendance at the stall or the place of trading by the permit holder and the nomination of assistants, nominees or substitutes for the permit holder;
  - (g) whether and under what terms the permit is transferable;
  - (h) any prohibitions or restrictions concerning the—
    - (i) causing or making of any noise or disturbance which is likely to be a nuisance to persons in the vicinity of the permit holder;
    - (ii) the use of amplifiers, sound equipment and sound instruments;
    - (iii) the use of signs; and
    - (iv) the use of any lighting apparatus or device;
  - (i) the manner in which the permit holder's name and other details of a valid permit are to be displayed;
  - (j) the care, maintenance and cleansing of the stall or any structure used for trading and the place of the stall or any structure;
  - (k) the vacating of the place of a stall or trading when the stall is not being conducted or trading is not being carried on;
  - (l) the acquisition by the stallholder or trader of public risk insurance;
  - (m) the period for which the permit is valid; and
  - (n) the designation of any place or places where trading is wholly or from time to time prohibited by the local government.
- (2) Where a permit holder by reason of illness, accident or other sufficient cause is unable to comply with this local law, the local government may at the request of that permit holder authorize another person to be a nominee of the permit holder for a specified period, and this local law and the conditions of the permit shall apply to the nominee as if he or she was the permit holder.

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

(1) In this clause—

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

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

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

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

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

#### Subdivision 3—Conduct of stallholders and traders

#### 6.7 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

*Division 2—Outdoor eating facilities on public places***6.8 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.

**6.9 Permit required to conduct Facility**

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

**6.10 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 is registered in accordance with the *Food Act 2008* and whether the use of the business is permitted under the town planning scheme;
- (c) users of the Facility will have access to proper and sufficient sanitary and ablutionary conveniences;
- (d) 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
- (e) 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.

**6.11 Obligations of permit holder**

(1) The permit holder for a Facility shall—

- (a) ensure that the Facility is conducted at all times in accordance with the provisions of this local law;
- (b) ensure that the eating area is kept in a clean and tidy condition at all times;
- (c) maintain the chairs, tables and other structures in the eating area in a good, clean and serviceable condition at all times; and

(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.

**6.12 Removal of Facility unlawfully conducted**

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

**6.13 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.

**6.14 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; and
- (i) the provision of an indemnity from the permit holder indemnifying the local government in respect of any injury to any person or any damage to any property which may occur in connection with the use of the public place by the permit holder.

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

- (1) In this clause—

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

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

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

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

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

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

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

**7.7 Renewal of permit**

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

(2) The provisions of—

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

shall apply to an application for the renewal of a permit with all the necessary changes as required.

**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 if 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.

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

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

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

When the local government makes a decision—

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

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

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

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

**9.2 Hazardous plants**

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

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

### 9.3 Notice to repair damage to thoroughfare

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

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

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

## PART 10—ENFORCEMENT

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

#### 10.1 Offence to fail to comply with notice

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

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

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

### *Division 2—Offences and penalties*

#### Subdivision 1—General

#### 10.3 Offences

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

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

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

#### 10.4 Prescribed offences

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

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

#### 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)

Item	Clause	Nature of Offence	Modified Penalty \$
1	2.1(a)	Plant any plant (except grasses or similar plant) within 10m of intersection	125
2	2.1(b)	Damaging lawn or garden	125
3	2.1(c)	Plant (except grass) on thoroughfare within 2m of carriageway	125
4	2.1(d)	Placing hazardous substance on footpath	125
5	2.1(e)	Damaging or interfering with signpost or structure on thoroughfare	350
6	2.1(f)	Playing games so as to impede vehicles or persons on thoroughfare	125

Item	Clause	Nature of Offence	Modified Penalty \$
7	2.1(g)	Riding of skateboard or similar device on mall or verandah of shopping centre	125
8	2.2(1)(a)	Digging a trench through a kerb or footpath without a permit	125
9	2.2(1)(b)	Throwing or placing anything on a verge without a permit	125
10	2.2(1)(c)	Causing obstruction to vehicle or person on thoroughfare without a permit	125
11	2.2(1)(d)	Causing obstruction to water channel on thoroughfare without a permit	250
12	2.2(1)(e)	Placing or draining offensive fluid on thoroughfare without a permit	250
13	2.2(1)(g)	Lighting a fire on a thoroughfare without a permit	350
14	2.2(1)(h)	Felling tree onto thoroughfare without a permit	125
15	2.2(1)(i)	Installing pipes or stone on thoroughfare without a permit	125
16	2.2(1)(j)	Installing a hoist or other thing on a structure or land for use over a thoroughfare without a permit	350
17	2.2(1)(k)	Creating a nuisance on a thoroughfare without a permit	125
18	2.2(1)(l)	Placing a bulk rubbish container on a thoroughfare without a permit	125
19	2.2(1)(m)	Interfering with anything on a thoroughfare without a permit	125
20	2.3(1)	Consumption or possession of liquor on thoroughfare	125
21	2.5(2)	Failure to comply with notice to remove crossing and reinstate kerb	350
22	2.9(1)	Installation of verge treatment other than permissible verge treatment	250
23	2.10	Failure to maintain permissible verge treatment or placement of obstruction on verge	125
24	2.11	Failure to comply with notice to rectify a verge treatment	125
25	2.17(2)	Failure to comply with sign on public place	125
26	2.19(1)	Driving or taking a vehicle on a closed thoroughfare	350
27	3.2(1)	Placing advertising sign or affixing any advertisement on a thoroughfare without a permit	125
28	3.2(3)	Erecting or placing of advertising sign in a prohibited area	125
29	4.1(1)	Animal or vehicle obstructing a public place or local government property	125
30	4.2(2)(a)	Animal on thoroughfare when not led, ridden or driven	125
31	4.2(2)(b)	Animal on public place with infectious disease	125
32	4.2(2)(c)	Training or racing animal on thoroughfare in built-up area	125
33	4.2(3)	Horse led, ridden or driven on thoroughfare in built-up area	125
34	4.5	Person leaving shopping trolley in public place other than trolley bay	125
35	4.6(2)	Failure to remove shopping trolley upon being advised of location	125
36	5.6(1)	Driving a vehicle on other than the carriageway of a flora road	250
37	5.9	Planting in thoroughfare without a permit	250
38	5.11	Failure to obtain permit to clear a thoroughfare	500
39	5.13	Burning of thoroughfare without a permit	500
40	5.17	Construction of firebreak on thoroughfare without a permit	500
41	5.19	Commercial harvesting of native flora on thoroughfare	500
42	5.20(1)	Collecting seed from native flora on thoroughfare without a permit	350
43	6.2(1)	Conducting of stall in public place without a permit	350
44	6.3(1)	Trading without a permit	350
45	6.7(1)(a)	Failure of stallholder or trader to display or carry permit	125
46	6.7(1)(b)	Stallholder or trader not displaying valid permit	125
47	6.7(1)(c)	Stallholder or trader not carrying certified scales when selling goods by weight	125
48	6.7(2)	Stallholder or trader engaged in prohibited conduct	125

Item	Clause	Nature of Offence	Modified Penalty \$
49	6.9	Establishment or conduct of outdoor eating facility without a permit	350
50	6.11	Failure of permit holder of outdoor eating facility to comply with obligations	125
51	6.13(1)	Use of equipment of outdoor eating facility without purchase of food or drink from facility	60
52	6.13(2)	Failure to leave outdoor eating facility when requested to do so by permit holder	60
53	7.5	Failure to comply with a condition of a permit	125
54	7.9	Failure to produce permit on request of authorised person	125
55	10.1	Failure to comply with notice given under local law	125

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Dated 11th day of February 2021.

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

M. C. PAGANONI, Shire President.

K. B. WILLIAMS, Chief Executive Officer.

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**BUSH FIRES ACT 1954  
LOCAL GOVERNMENT ACT 1995**

SHIRE OF BROOMEHILL-TAMBELLUP

**BUSH FIRE BRIGADES LOCAL LAW 2020**

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**BUSH FIRES ACT 1954  
LOCAL GOVERNMENT ACT 1995**

SHIRE OF BROOMEHILL-TAMBELLUP

**BUSH FIRE BRIGADES LOCAL LAW 2020**

Under the powers conferred by the *Bush Fires Act 1954*, the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Broomehill-Tambellup resolved on 11 February 2021 to make the following local law.

**PART 1—PRELIMINARY**

**1.1. Citation**

This local law may be cited as the *Shire of Broomehill-Tambellup Bush Fire Brigades Local Law 2020*.

**1.2. Definitions**

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

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

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

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

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

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

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

*CEO* means the Chief Executive Officer of the Shire of Broomehill-Tambellup;

*Council* means the Council of the local government;

*Department* means the Department of Fire and Emergency Services of Western Australia;

*District* means the district of the local government

*fire fighting member* is defined in clause 4.2;

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

*Regulations* means Regulations made under the Act; and

*Rules* means the Rules Governing the Operation of Bush Fire Brigades set out in the Schedule 1.

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

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

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

**1.3. Commencement**

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

**1.4. Application**

This local law applies throughout the district.

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

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

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

**2.2. Name and officers of bush fire brigade**

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

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

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

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

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

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

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

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

(2) Where a bushfire control officer is in attendance at a fire which the members of the bush fire brigade have command of under the Act and the Bush Fire Operating Procedures, the most senior bushfire control officer has full control over other persons fighting the fire and is to issue instructions as to the methods to be adopted by the fire fighters.

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

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

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

*Division 4—Transitional***2.5. Existing Bush Fire Brigades**

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

- (a) the bush fire brigade is to be taken to be a bush fire brigade established under and in accordance with this local law;
- (b) the provisions of this local law apply to the bush fire brigade save for clause 2.2; and
- (c) any rules governing the operation of the bush fire brigade are to be taken to have been repealed and substituted with the Rules.

(2) In this clause—

**commencement day** means the day on which this local law comes into operation.

*Division 5—Dissolution of bush fire brigade***2.6. Dissolution of bush fire brigade**

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

**2.7. New arrangement after dissolution**

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

**PART 3—ORGANISATION AND MAINTENANCE OF BUSH FIRE BRIGADES***Division 1—Local government responsibility***3.1. Local government responsible for structure**

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

**3.2. Officers to be supplied with Act**

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

*Division 2—Chief Bush Fire Control Officer***3.3 Managerial role of Chief Bush Fire Control Officer**

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

**3.4 Chief Bush Fire Control Officer may attend meetings**

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

**3.5 Duties of Chief Bush Fire Control Officer**

The duties of the Chief Bush Fire Control Officer include—

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

*Division 3—Annual general meetings of bush fire brigades***3.6 Holding of annual general meeting**

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

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

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

**3.8 Nomination of bush fire control officer to the local government**

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

**3.9 Minutes to be tabled before the Bush Fire Advisory Committee**

(1) The Secretary is to forward a copy of the minutes of the annual general meeting of a bush fire brigade to the Chief Bush Fire Control Officer within one month after the meeting.

(2) The Chief Bush Fire Control Officer is to table the minutes of a bush fire brigade's annual general meeting at the next meeting of the—

- (a) Bush Fire Advisory Committee; or
- (b) Council, if there is no Bush Fire Advisory Committee,

following their receipt under subclause (1).

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

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

**3.11 Advisory Committee to nominate bush fire control officers**

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

**3.12 Local government to have regard to nominees**

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

**3.13 Advisory Committee to consider bush fire brigade motions**

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

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

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

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

**4.2 Fire fighting members**

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

**4.3 Associate members**

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

**4.4 Cadet members**

Cadet members are—

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

**4.5 Honorary life member**

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

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

**4.6 Notification of membership**

No later than 31 May in each year, the bush fire brigade is to report to the Chief Fire Control Officer the name, contact details and type of membership of each brigade member.

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

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

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

The local government may make policies under which it—

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



**6.2 Equipment in brigade area**

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

**6.3 Funding from local government budget**

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

**6.4 Consideration in the local government budget**

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

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**Schedule 1****RULES GOVERNING THE OPERATION OF BUSH FIRE BRIGADES**

[Clause 1.2]

**PART 1—PRELIMINARY****1.1 Interpretation**

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

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

**absolute majority** means a majority of more than 50% of the number of—

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

**Committee** means the Committee of the bush fire brigade referred to in clause 4.1 of the Rules;

**local law** means the *Shire of Broomehill-Tambellup Bush Fire Brigades Local Law 2020*; and

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

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

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

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

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

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

**2.2 Committee to determine applications**

Applications for membership are to be determined by the Committee.

**2.3 Conditions of membership**

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

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

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

**2.4 Applications for membership**

An application for membership is to be in writing and is to be submitted to the Secretary.

**2.5 Decision on application for membership**

- (1) The Committee may—
  - (a) approve an application for membership unconditionally or subject to any conditions; or
  - (b) refuse to approve an application for membership.
- (2) If the Committee refuses to approve an application for membership, it is to give written reasons for the refusal, as soon as practicable after the decision is made, to the applicant and the advice that the applicant has the right to object to the local government.

**2.6 DFES to be notified of registrations**

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

**2.7 Termination of membership**

- (1) Membership of the bush fire brigade terminates if the member—
  - (a) dies;
  - (b) gives written notice of resignation to the Secretary;
  - (c) is, in the opinion of the Committee, permanently incapacitated by mental or physical ill-health;
  - (d) is dismissed by the Committee; or
  - (e) ceases to be a member or is taken to have resigned under subclause (2).
- (2) A brigade member whose membership fees are more than one year in arrears is to be taken to have resigned from the bush fire brigade.

**2.8 Suspension of membership**

- (1) Membership of the bush fire brigade may be suspended at any time if, in the opinion of the Committee, circumstances warrant suspending the member.
- (2) The period of suspension shall be at the discretion of the Committee.
- (3) Upon the expiry of the period of suspension the Committee may—
  - (a) extend the period of suspension;
  - (b) terminate the membership; or
  - (c) reinstate the membership.

**2.9 Existing liabilities to continue**

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

**2.10 Member has right of defence**

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

**2.11 Objection Rights**

1. A person whose—
  - (a) application for membership is refused under clause 2.5(1)(b);
  - (b) membership is terminated under clause 2.7(1)(c), clause 2.7(1)(d) or clause 2.8(3)(b); or
  - (c) membership is suspended under clause 2.8(1) or clause 2.8(3)(a),has the right of objection to the local government.
2. The local government may dispose of the objection by—
  - (a) dismissing the objection;
  - (b) varying the decision objected to; or
  - (c) revoking the decision objected to, with or without—
    - (i) substituting for it another decision; or
    - (ii) referring the matter, with or without directions, for another decision by the Committee.

**PART 3—FUNCTIONS OF BRIGADE OFFICERS****3.1 Chain of command during fire fighting activities**

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

**3.2 Duties of Captain**

- (1) Subject to subclause (2) below, the Captain is to preside at all meetings.
- (2) In the absence of the Captain, the meeting may elect another person to preside at the meeting.

**3.3 Secretary**

- (1) The Secretary is to—
  - (a) be in attendance at all meetings and keep a correct minute and account of the proceedings of the bush fire brigade in a book which shall be open for inspection by brigade members at any reasonable time;

- (b) answer all correspondence or direct it appropriately, and keep a record of the same;
  - (c) prepare and send out all necessary notices of meetings;
  - (d) receive membership fees, donations and other monies on behalf of the bush fire brigade, and remit them to the Treasurer upon receipt;
  - (e) complete and forward an incident report form in the form required by the Department to the Chief Bush Fire Control Officer and the Department within 14 days after attendance by the bush fire brigade at an incident.
  - (f) maintain a register of all current brigade members which includes each brigade member's contact details and type of membership; and
  - (g) provide no later than 31 May in each year, a report to the Chief Bush Fire Control Officer detailing the name, contact details and type of membership of each brigade member.
- (2) Where a bush fire brigade attends an incident on more than one day, the incident report form is to be completed and forwarded under subclause (1)(e) within 14 days after the last day of attendance.

### **3.4 Treasurer**

The Treasurer is to—

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

### **3.5 Equipment Officer**

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

### **3.6 Storage of equipment**

- (1) The Equipment Officer may store all of the equipment of the bush fire brigade at a place approved by the Captain (the "station").
- (2) If there is to be more than one station in the brigade area, the Equipment Officer is to appoint in respect of each station a person who is responsible for the custody and maintenance in good order and condition of all equipment and appliances at the station, subject to any direction of the Equipment Officer.

### **3.7 Equipment Officer to report**

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

## **PART 4—COMMITTEE**

### **4.1 Management of bush fire brigade**

- (1) Subject to the provisions of these Rules, the administration and management of the affairs of the bush fire brigade are vested in the Committee.
- (2) Without limiting the generality of subclause (1), the Committee is to have the following functions—
  - (a) to recommend to the local government amendments to these Rules;
  - (b) to draft the annual budget for the bush fire brigade and present it at the annual general meeting of the bush fire brigade;
  - (c) to propose a motion for consideration at any meeting of the bush fire brigade;
  - (d) to recommend to the local government equipment which needs to be supplied by the local government to the bush fire brigade;
  - (e) to invest or place on deposit any of the funds of the bush fire brigade not immediately required to perform the normal brigade activities;
  - (f) to delegate to a person, as from time to time thought fit, any functions (being less than the total functions of the Committee) on any conditions it thinks fit;
  - (g) to do all things necessary or convenient in order to perform any of its functions and to secure the performance of the normal brigade activities by the bush fire brigade; and
  - (h) deal with membership applications, grievances, disputes and disciplinary matters.

#### **4.2 Constitution of Committee**

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

### **PART 5—MEETINGS OF BUSH FIRE BRIGADE**

#### **5.1 Ordinary meetings**

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

#### **5.2 Special meetings**

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

#### **5.3 Annual general meeting**

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

#### **5.4 Quorum**

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

#### **5.5 Voting**

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

#### **5.6 Auditor**

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

**PART 6—MEETINGS OF COMMITTEE****6.1 Meetings of Committee**

- (1) The Committee is to meet for the despatch of business, adjourn and otherwise regulate its meeting as it thinks fit.
- (2) The Captain or Secretary may convene a meeting of the Committee at any time.

**6.2 Quorum**

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

**6.3 Voting**

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

**PART 7—GENERAL ADMINISTRATION MATTERS****7.1 Fees**

- (1) The membership fees, if any, for each type of member for the ensuing 12 months are to be determined by the bush fire brigade at the annual general meeting.
- (2) Subject to subclause (3), a member is to pay the membership fees for her or his type of membership on or before 1 May.
- (3) The bush fire brigade may exempt a brigade member, or a class of membership, from the payment of membership fees, for such period and on such conditions as the bush fire brigade may determine.

**7.2 Funds**

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

**7.3 Financial year**

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

**7.4 Banking**

- (1) The funds of the bush fire brigade are to be placed in a bank account and are to be drawn on only by cheques signed jointly by any 2 of the Captain, Secretary or Treasurer.
- (2) If the Secretary/Treasurer is a combined position, the Captain and Secretary/Treasurer are to sign the cheques referred to in subclause (1).

**7.5 Disclosure of interests**

- (1) A brigade member shall disclose to the bush fire brigade or Committee any financial interest (whether direct or indirect) he or she may have in any matter being considered by the bush fire brigade or Committee, as appropriate.
- (2) If a financial interest has been disclosed under subclause (1), then the bush fire brigade or Committee, as appropriate, is to decide, in the absence of the brigade member who disclosed that interest, whether or not the brigade member is to be permitted to vote on that matter.
- (3) Where the bush fire brigade or Committee, as appropriate, decides under subclause (2), that a brigade member is not to be permitted to vote on a matter, and the brigade member votes on the matter, then her or his vote is to be taken to have no effect and is not to be counted.

**7.6 Disagreements**

- (1) Any disagreement between brigade members may be referred to either the Captain or to the Committee.
- (2) Where a disagreement in subclause (1) is considered by the Captain or the Committee to be of importance to the interests of the bush fire brigade, then the Captain or the Committee, as the case may be, is to refer the disagreement to the annual general meeting, an ordinary meeting or a special meeting of the bush fire brigade.
- (3) The local government is the final authority on matters affecting the bush fire brigade, and may resolve any disagreement which is not resolved under subclause (1) or (2).

**PART 8—NOTICES AND PROXIES****8.1 Notices**

- (1) Notices of meetings of the bush fire brigade are to be in writing and sent by ordinary post to the registered address of each brigade member.
- (2) Notices of meetings of the Committee may be given in writing in accordance with subclause (1) or by such other means as the Committee may decide (by an absolute majority) at a meeting of the Committee.
- (3) Any accidental omission to give notice of a meeting to, or non-receipt by a person entitled to receive such notice, is not to invalidate the meeting the subject of the notice or any resolutions passed at the meeting.

(4) Where any notice other than a notice of meeting is to be given under these Rules, the notice is to be—

- (a) in writing;
- (b) unless otherwise specified, given to or by the Secretary;
- (c) given by—
  - (i) personal delivery;
  - (ii) post; or
  - (iii) facsimile transmission; and
- (d) taken to have been received, as the case may be—
  - (i) at the time of personal delivery;
  - (ii) 2 business days after posting; or
  - (iii) on the printing of the sender's transmission report.

## 8.2 Proxies

(1) Where under these Rules a brigade member may vote by proxy, in order for the proxy to so vote, the brigade member or the proxy shall give a notice in the form of that appearing in this clause, to the Secretary or the person presiding at the meeting before the start of the meeting at which the proxy is to be used.

(2) A proxy is to be valid for the meeting for which it is given and for any adjournments of that meeting.

(3) A proxy shall be valid for the number of votes to which the brigade member is entitled.

(4) If the donor of the proxy does not give any indication of the manner in which the proxy is to vote, the proxy shall be entitled to vote or not vote as he or she thinks fit.

(5) A proxy shall be entitled to speak on behalf of the donor of the proxy.

(6) All forms appointing proxies deposited under subclause (1) are to be retained by the Secretary for not less than 28 days after the conclusion of the meeting to which they relate but if there is any objection to the validity of any vote at the meeting, they are to be retained until the determination of that objection.

(7) The form appointing a proxy shall be in writing and signed by the brigade member appointing the proxy.

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Dated 11th day of February, 2021.

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

M. C. PAGANONI, Shire President.

K. B. WILLIAMS, Chief Executive Officer.

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**CEMETERIES ACT 1986  
LOCAL GOVERNMENT ACT 1995**

SHIRE OF BROOMEHILL-TAMBELLUP

**CEMETERIES LOCAL LAW 2020**

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**CEMETERIES ACT 1986  
LOCAL GOVERNMENT ACT 1995**

SHIRE OF BROOMEHILL-TAMBELLUP

**CEMETERIES LOCAL LAW 2020**

Under the powers conferred by the Cemeteries Act 1986 and the Local Government Act 1995 and under all other powers enabling it, the Council of the Shire of Broomehill-Tambellup resolved on 11 February 2021 to adopt the following local law.

**PART 1—PRELIMINARY**

**1.1 Citation**

This local law may be cited as the *Shire of Broomehill-Tambellup Cemeteries Local Law 2020*.

**1.2 Application**

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

This local law repeals the *Shire of Broomehill-Tambellup Cemeteries Local Law 2008* as published in the *Government Gazette* on 23 December 2008.

**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 authorised 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 Broomehill-Tambellup;

**CEO** means the Chief Executive Officer, for the time being, of the Board;

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

**funeral** has the meaning given in the Act;

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

**local government** means Shire of Broomehill-Tambellup;

**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;

**monumental mason** means a person holding a current monumental mason's licence;

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

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

**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.

## 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 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 clauses 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 48 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

### *Division 1—General*

### 5.1 Requirements for funerals and coffins

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

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

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

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

### 5.2 Funeral processions

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

**5.3 Vehicle entry restricted**

- (1) Subject to clause 5.3(2), every funeral procession shall enter by the principal entrance, and no vehicle except the hearse, and official mourning coaches, shall be permitted to enter the cemetery.
- (2) This clause shall not apply to persons using wheelchairs or motorised wheelchairs.

**5.4 Vehicle access and speed limitation**

- (1) A person shall only 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 the funeral congregation or ceremony or procession.

**5.6 Conduct of funeral by Board**

- (1) When conducting a funeral under section 22 of the Act the Board may—
- (a) require a written request for it to conduct a funeral to be lodged with it;
  - (b) in its absolute discretion, charge any person requesting it to conduct a funeral the set fee for the conduct of that funeral by it;
  - (c) where no fee or a reduced fee has been charged by it for the conduct of the funeral, determine the manner in which the funeral shall be conducted;
  - (d) bury that dead body;
  - (e) specify an area in the cemetery where the dead body is to be buried or the ashes placed;
  - (f) conduct the funeral notwithstanding the failure of a person to make any application or to obtain any consent required under this local law;
  - (g) do or require anything which it considers is necessary or convenient for the conduct of a funeral by it.

*Division 2—Placement of ashes***5.7 Disposal of ashes**

- (1) The personal representative of a deceased person whose body has been cremated may apply, in an application under clause 3.1 or otherwise, for permission to dispose of the ashes in the cemetery and upon payment of the set fee, the Board may grant permission for the ashes to be disposed of by one of the following methods—
- (a) Niche wall
  - (b) Memorial wall
  - (c) Garden of remembrance
  - (d) Ground niche
  - (e) Memorial rose, tree or shrub
  - (f) Family shrub
  - (g) Memorial desk
  - (h) Granite seat
  - (i) Family grave
  - (j) Book of remembrance
  - (k) Scattering to the winds
  - (l) Memorial gardens
  - (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 the Board approval, provided the person requesting the placement of the ashes has the written permission of the Board and the approval of the holder of the right of burial of the grave.

## PART 6—BURIALS

### 6.1 Depth of graves

(1) A person shall bury a coffin within the cemetery so that the distance between the top of the coffin and the original surface of the ground is—

- (a) not less than 750 mm

unless permission to vary the distance or depth of grave is granted by an authorised officer.

(2) The permission of the authorised officer will only be granted where, in the opinion of the authorised officer, exceptional circumstances require granting of that permission.

### 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;  
(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.

#### 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 work.

#### 7.4 Operation of work

All material required in the erection and completion of any work shall, as far as possible, be prepared before being taken to the cemetery, and all materials required by tradesmen shall be admitted at such entrance as the CEO or an authorised officer shall direct.

#### 7.5 Removal of sand, soil or loam

No sand, earth or other material shall be taken from any part of the cemetery for use in the erection of any memorial or work except with the written approval of the Board.

#### 7.6 Hours of work

Persons shall not be permitted to carry out memorial or other work on graves within the cemetery other than during the hours of 8.00am and 6.00pm on weekdays, and 8.00am and noon on Saturdays, without the written permission of the Board.

#### 7.7 Unfinished work

Should any work by masons or others be not completed before 6.00p.m. on weekdays and noon on Saturdays, they shall be required to leave the work in a neat and safe condition to the satisfaction of the CEO or an authorised officer.

#### 7.8 Use of wood

No wooden fence, railing, cross or other wooden erection shall be allowed on or around any grave, other than as a temporary marker and with the prior approval of the Board.

#### 7.9 Plants and trees

No trees or shrubs shall be planted on any grave or within the cemetery except such as shall be approved by the CEO.

#### 7.10 Supervision

All workers, whether employed by the Board or by any other person, shall at all times whilst within the boundaries of the cemetery be subject to the supervision of the CEO or an authorised officer and shall obey such directions as the CEO or an authorised officer may give.

**7.11 Australian War Graves**

Notwithstanding anything in this local law to the contrary, the Office of Australian War Graves—

- (a) may place a memorial on a military grave; and
- (b) is not required to pay the set fee for any memorial that is placed upon a military grave.

**7.12 Placing of glass domes and vases**

A person shall not place glass domes, vases or other grave ornaments outside the perimeter of a grave in the cemetery as defined in the plans kept and maintained under section 40(2) of the Act.

*Division 2—Licensing of Monumental Masons***7.13 Monumental mason's licence**

(1) The Board may upon receipt of an application in writing by any person and upon payment of the set fee issue to the applicant a monumental mason's licence.

(2) A licence issued under 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.

**7.14 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.

**7.15 Carrying out monumental work**

A person shall not carry out monumental work within the cemetery unless that person—

- (a) is the holder of a current monumental mason's licence issued pursuant to clause 7.13(1); or
- (b) is an employee of a person who holds such a licence; or
- (c) is authorised by the Board to do so.

**7.16 Responsibilities of the holder of a monumental mason's licence**

The holder of a monumental mason's licence shall be responsible for the compliance by every person purporting to be authorised to carry out monumental works within the cemetery pursuant to that licence with all the requirements and conditions of the licence, this local law, the Act and any other written law which may affect the carrying out of monumental works.

**7.17 Cancellation of a monumental mason's licence**

(1) The Board may by notice in writing to the holder of a monumental mason's licence terminate the licence on any of the following grounds—

- (a) that the holder of the licence has committed a breach of the requirements and conditions of the licence, this local law, the Act or any other written law which may affect the carrying out of monumental works;
- (b) that, in the opinion of the Board, the conduct of the holder of the licence or any person in the employ of that holder in carrying out or attempting to carry out any works within the cemetery, is inappropriate or unbecoming; or
- (c) that the holder of the licence has purported to transfer the licence issued to that holder.

(2) Upon the termination of a monumental mason's licence under this clause no part of any fee paid for the issue of that licence is refundable by the Board.

**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* (Cth) 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;
- (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 directed 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*

#### OFFENCES AND MODIFIED PENALTIES

[cl. 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 rubbish and surplus materials	\$50.00
4	7.5	Unauthorised use of sand, earth or other material taken from another part of 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**

[cl. 9.2(3)]

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  
Broomehill-Tambellup Cemeteries Local Law 2020.

.....  
(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 another part of 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

You may dispose of this matter by payment of the penalty as shown within 21 days of the date of this notice (or the date of the giving of this notice if that is a different date) to the Chief Executive Officer of the Shire of Broomehill-Tambellup at 46-48 Norrish Street, Tambellup between the hours of 9 a.m. to 4.30 p.m., Monday to Friday.

Please make cheques payable to Shire of Broomehill-Tambellup. Payments by mail should be addressed to—

The Chief Executive Officer  
Shire of Broomehill-Tambellup  
46-48 Norrish Street  
TAMBELLUP WA 6320

If the penalty is not paid within the time specified, then a complaint of the alleged offence may be made and heard and determined by a court.

**Schedule 3**  
**INFRINGEMENT WITHDRAWAL NOTICE**

[cl. 9.2(4)]

No. .... Date ..... / ..... / .....

To: <sup>[1]</sup> .....

Infringement Notice No. .... dated ..... / ..... / ..... for the alleged offence of—<sup>[2]</sup>

Penalty <sup>[3]</sup> \$ ..... 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)

<sup>[1]</sup> Insert name and address of alleged offender.

<sup>[2]</sup> Insert short particulars of offence alleged.

<sup>[3]</sup> Insert amount of penalty prescribed.

Dated 11th day of February, 2021.

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

M. C. PAGANONI, Shire President.  
K. B. WILLIAMS, Chief Executive Officer.





**DOG ACT 1976  
LOCAL GOVERNMENT ACT 1995**

SHIRE OF BROOMEHILL-TAMBELLUP

**DOGS LOCAL LAW 2020**

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**SCHEDULE 1**

APPLICATION FOR A LICENCE OF AN APPROVED KENNEL ESTABLISHMENT

**SCHEDULE 2**

CONDITIONS OF A LICENCE FOR AN APPROVED KENNEL ESTABLISHMENT

**SCHEDULE 3**

OFFENCES IN RESPECT OF WHICH MODIFIED PENALTY APPLIES

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

SHIRE OF BROOMEHILL-TAMBELLUP

**DOGS LOCAL LAW 2020**

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 Broomehill-Tambellup resolved on 11 February 2021 to make the following local law.

**PART 1—PRELIMINARY**

**1.1 Citation**

This local law may be cited as the *Shire of Broomehill-Tambellup Dogs Local Law 2020*.

**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 *Shire of Broomehill-Tambellup Dogs Local Law 2008* published in the *Government Gazette* on 23 December 2008 is repealed.

**1.5 Interpretation**

In this local law unless the context otherwise requires—

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

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

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

**dangerous dog** means a dog which is the subject of a declaration under section 33E of the Act declaring it to be a dangerous dog;

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

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

**pound** means any dog management facility, or any replacement facility established as a pound by the local government under section 11(1) 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;

**premises** has the meaning given to it in the Act;

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

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

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

**town planning scheme** means a town planning scheme made by the local government under the *Planning and Development Act 2005* which applies throughout the whole or a part of the district.

**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 occupier of premises on which a dog is kept must—
  - (a) cause a portion of the premises on which the dog is kept to be fenced in a manner capable of confining the dog;
  - (b) ensure the fence used to confine the dog and every gate or door in the fence is of a type, height and construction which having regard to the breed, age, size and physical condition of the dog is capable of preventing the dog at all times from passing over, under or through it;
  - (c) ensure that every gate or door in the fence is kept closed at all times when the dog is on the premises (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.
- (3) Notwithstanding subclause (1) and (2), the confinement of dangerous dogs is dealt with in the Act and Regulations.

*Penalty:* \$2,000.

## **3.2 Limitation on the number of dogs**

- (1) This clause does not apply to premises which have been—
  - (a) licensed under Part 4 as an approved kennel establishment; or
  - (b) granted an exemption under section 26(3) of the Act.
- (2) The limit on the number of dogs which may be kept on any premises is, for the purpose of section 26(4) of the Act—
  - (a) 2 dogs over the age of 3 months and the young of those dogs under that age if the premises are situated within a townsite; or
  - (b) 4 dogs over the age of 3 months and the young of those dogs under that age if the premises are situated outside a townsite.

# **PART 4—APPROVED KENNEL ESTABLISHMENTS**

## **4.1 Interpretation**

In this Part and in Schedule 2—

**licence** means a licence to keep an approved kennel establishment on premises;

**licensee** means the holder of a licence;

**premises**, in addition to the meaning given to it in section 3 of the Act, means the premises described in the application for a licence; and

**transferee** means a person who applies for the transfer of a licence to her or him under clause 4.14.

## **4.2 Application for licence for approved kennel establishment**

An application for a licence must be made in the form of that in Schedule 1, and must be lodged with the local government together with—

- (a) plans and specifications of the kennel establishment, including a site plan;
- (b) copies of the notices to be given under clause 4.3;
- (c) written evidence that either the applicant or another person who will have the charge of the dogs, will reside on the premises or, in the opinion of the local government, sufficiently close to the premises so as to control the dogs and so as to ensure their health and welfare;

- (d) a written acknowledgement that the applicant has read and agrees to comply with any code of practice relating to the keeping of dogs nominated by the local government; and
- (e) the fee for the application for a licence referred to in clause 4.10(1).

#### **4.3 Notice of proposed use**

(1) An applicant for a licence must give notice of the proposed use of the premises as an approved kennel establishment after the application for a licence has been lodged—

- (a) once in a newspaper circulating in the district; and
- (b) to the owners and occupiers of any premises adjoining the premises.

(2) The notices in subclause (1) must specify that—

- (a) any written submissions as to the proposed use are to be lodged with the CEO within 14 days of the date the notice is given; and
- (b) the application and plans and specifications may be inspected at the offices of the local government.

(3) Where—

- (a) the notices given under subclause (1) do not clearly identify the premises; or
- (b) a notice given under subclause (1)(a) is of a size or in a location in the newspaper which, in the opinion of the local government, would fail to serve the purpose of notifying persons of the proposed use of the premises,

then the local government may refuse to determine the application for a licence until the notices or notice, as the case may be, is given in accordance with its directions.

#### **4.4 Exemption from notice requirements**

Where an application for a licence is made in respect of premises on which an approved kennel establishment is either a—

- (a) permitted use; or
- (b) use which the local government may approve subject to compliance with specified notice requirements,

under a town planning scheme, then the requirements of clauses 4.2(b), 4.3 and 4.5(a) do not apply in respect of the application for a licence.

#### **4.5 When application can be determined**

An application for a licence is not to be determined by the local government until—

- (a) the applicant has complied with clause 4.2;
- (b) the applicant submits proof that the notices referred to in clause 4.3(1) have been given in accordance with that clause; and
- (c) the local government has considered any written submissions received within the time specified in clause 4.3(2)(a) on the proposed use of the premises.

#### **4.6 Determination of application**

In determining an application for a licence, the local government is to have regard to—

- (a) the matters referred to in clause 4.7;
- (b) any written submissions received within the time specified in clause 4.3(2)(a) on the proposed use of the premises;
- (c) any economic or social benefits which may be derived by any person in the district if the application for a licence is approved;
- (d) the effect which the kennel establishment may have on the environment or amenity of the neighbourhood;
- (e) whether the approved kennel establishment will create a nuisance for the owners and occupiers of adjoining premises; and
- (f) whether or not the imposition of and compliance with appropriate conditions of a licence will mitigate any adverse effects of the approved kennel establishment identified in the preceding paragraphs.

#### **4.7 Where application cannot be approved**

The local government cannot approve an application for a licence where—

- (a) an approved kennel establishment cannot be permitted by the local government on the premises under a town planning scheme; or
- (b) an applicant for a licence or another person who will have the charge of the dogs will not reside on the premises, or, in the opinion of the local government, sufficiently close to the premises so as to control the dogs and so as to ensure their health and welfare.

#### **4.8 Conditions of approval**

(1) The local government may approve an application for a licence subject to the conditions contained in Schedule 2 and to such other conditions as the local government considers appropriate.

(2) In respect of a particular application for a licence, the local government may vary any of the conditions contained in Schedule 2.

#### 4.9 Compliance with conditions of approval

A licensee who does not comply with the conditions of a licence commits an offence.

*Penalty:* Where a dog involved in the contravention is a dangerous dog, \$4,000 and a daily penalty of \$400; otherwise \$2,000 and a daily penalty of \$200.

#### 4.10 Fees

- (1) On lodging an application for a licence, the applicant is to pay a fee to the local government.
- (2) On the issue or renewal of a licence, the licensee is to pay a fee to the local government.
- (3) On lodging an application for the transfer of a valid licence, the transferee is to pay a fee to the local government.
- (4) The fees referred to in subclauses (1) to (3) are to be imposed and determined by the local government under sections 6.16 to 6.19 of the *Local Government Act 1995*.

#### 4.11 Form of licence

The licence is to be in the form determined by the local government and is to be issued to the licensee.

#### 4.12 Period of licence

- (1) The period of effect of a licence is set out in section 27(5) of the Act.
- (2) A licence is to be renewed if the fee referred to in clause 4.10(2) is paid to the local government prior to the expiry of the licence.
- (3) On the renewal of a licence the conditions of the licence at the time of its renewal continue to have effect.

#### 4.13 Variation or cancellation of licence

- (1) The local government may vary the conditions of a licence.
- (2) The local government may cancel a licence—
  - (a) on the request of the licensee;
  - (b) following a breach of the Act, the Regulations or this local law; or
  - (c) if the licensee is not a fit and proper person.
- (3) The date a licence is cancelled is to be, in the case of—
  - (a) paragraph (a) of subclause (2), the date requested by the licensee; or
  - (b) paragraphs (b) and (c) of subclause (2), the date determined under section 27(6) of the Act.
- (4) If a licence is cancelled the fee paid for that licence is not refundable for the term of the licence that has not yet expired.

#### 4.14 Transfer

- (1) An application for the transfer of a valid licence from the licensee to another person must be—
  - (a) made in the form determined by the local government;
  - (b) made by the transferee;
  - (c) made with the written consent of the licensee; and
  - (d) lodged with the local government together with—
    - (i) written evidence that a person will reside at or within reasonably close proximity to the premises the subject of the licence; and
    - (ii) the fee for the application for the transfer of a licence referred to in clause 4.10(3).
- (2) The local government is not to determine an application for the transfer of a valid licence until the transferee has complied with subclause (1).
- (3) The local government may approve, whether or not subject to such conditions as it considers appropriate, or refuse to approve an application for the transfer of a valid licence.
- (4) Where the local government approves an application for the transfer of a valid licence, then on the date of approval, unless otherwise specified in the notice issued under clause 4.15(b), the transferee becomes the licensee of the licence for the purposes of this local law.

#### 4.15 Notification

The local government is to give written notice to—

- (a) an applicant for a licence of the local government's decision on her or his application;
- (b) a transferee of the local government's decision on her or his application for the transfer of a valid licence;
- (c) a licensee of any variation made under clause 4.13(1);
- (d) a licensee when her or his licence is due for renewal and the manner in which it may be renewed;
- (e) a licensee when her or his licence is renewed;
- (f) a licensee of the cancellation of a licence under clause 4.13(2)(a); and
- (g) a licensee of the cancellation of a licence under paragraphs (b) or (c) of clause 4.13(2), which notice is to be given in accordance with section 27(6) of the Act.

**4.16 Inspection of kennel**

With the consent of the occupier, an 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:* \$100

(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 third column of Schedule 3 directly opposite an offence is the modified penalty payable in respect of that offence if—

- (a) the dog is not a dangerous dog; or
- (b) the dog is a dangerous dog, but an amount does not appear in the fourth column directly opposite that offence.

(3) The amount appearing in the fourth column of Schedule 3 directly opposite an offence is the modified penalty payable in respect of that offence if the dog is a dangerous dog.

**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 of Form 8 of the First Schedule of the Regulations.

**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 of Form 9 of the First Schedule of the Regulations.

(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 .....[insert date].

**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) 25m from the front boundary of the premises and 5m from any other boundary of the premises;
  - (ii) 10m from any dwelling; and
  - (iii) 25m from any church, school room, hall, factory, dairy or premises where food is manufactured, prepared, packed or stored for human consumption;
- (c) each yard for a kennel must be kept securely fenced with a fence constructed of link mesh or netting or other materials approved by the local government;
- (d) the minimum floor area for each kennel must be calculated at 2.5 times the length of the breed of dog (when it is fully grown), squared, times the number of dogs to be housed in the kennel and the length of the dog is to be determined by measuring from the base of the tail to the front of its shoulder;
- (e) the floor area of the yard attached to any kennel or group of kennels must be at least twice the floor area of the kennel or group of kennels to which it is attached;



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

[Clause 6.2]

Item	Clause	Description	Modified penalty \$
1	3.1	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	10

Dated 11th day of February, 2021.

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

M. C. PAGANONI, Shire President.  
K. B. WILLIAMS, Chief Executive Officer.



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## LOCAL GOVERNMENT ACT 1995

## SHIRE OF BROOMEHILL-TAMBELLUP

## EXTRACTIVE INDUSTRIES LOCAL LAW 2020

Under the powers conferred by the *Local Government Act 1995* and by all other powers, the local government of the Shire of Broomehill-Tambellup resolved to make the following local laws on the 11th February 2021.

## PART 1—PRELIMINARY

## 1.1. Definitions

In this local law, unless the context otherwise requires—

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

**carry on an extractive industry** means quarrying and excavating for stone, gravel, sand, and other material;

**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 Broomehill-Tambellup;

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

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

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

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

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

## 1.2. 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 under the local law repealed by clause 1.3 of this local law if that licence is currently in force at the date of gazettal of this local law.

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

## 1.3. Repeal

This local law repeals the *Shire of Broomehill-Tambellup Extractive Industries Local Law* as published in the *Government Gazette* on 23 December 2008.

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

A person must not carry on an extractive industry—

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

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

**2.2. Applicant To Advertise Proposal**

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

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

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

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

**2.3. Application For Licence**

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

- (a) 3 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) 3 copies of a works and excavation programme containing—
  - (i) the nature and estimated duration of the proposed excavation for which the licence is applied;
  - (ii) the stages and the timing of the stages in which it is proposed to carry out the excavation;

- (iii) details of the methods to be employed in the proposed excavation and a description of any on-site processing works;
  - (iv) details of the depth and extent of the existing and proposed excavation of the site;
  - (v) an estimate of the depth of and description of the nature and quantity of the overburden to be removed;
  - (vi) a description of the methods by which existing vegetation is to be cleared and topsoil and overburden removed or stockpiled;
  - (vii) a description of the means of access to the excavation site and the types of thoroughfares to be constructed;
  - (viii) details of the proposed number and size of trucks entering and leaving the site each day and the route or routes to be taken by those vehicles;
  - (ix) a description of any proposed buildings, water supply, treatment plant, tanks and other improvements;
  - (x) details of drainage conditions applicable to the land and methods by which the excavation site is to be kept drained;
  - (xi) a description of the measures to be taken to minimise sand drift, dust nuisance, erosion, watercourse siltation and dangers to the general public;
  - (xii) a description of the measures to be taken to comply with the *Environmental Protection (Noise) Regulations 1997*;
  - (xiii) a description of the existing site environment and a report on the anticipated effect that the proposed excavation will have on the environment in the vicinity of the land;
  - (xiv) details of the nature of existing vegetation, shrubs and trees and a description of measures to be taken to minimise the destruction of existing vegetation; and
  - (xv) a description of the measures to be taken in screening the excavation site, or otherwise minimising adverse visual impacts, from nearby thoroughfares or other areas;
  - (c) 3 copies of a rehabilitation and decommissioning programme indicating—
    - (i) the objectives of the programme, having due regard to the nature of the surrounding area and the proposed end-use of the excavation site;
    - (ii) whether restoration and reinstatement of the excavation site is to be undertaken progressively or upon completion of excavation operations;
    - (iii) how any face is to be made safe and batters sloped;
    - (iv) the method by which topsoil is to be replaced and revegetated;
    - (v) the numbers and types of trees and shrubs to be planted and other landscaping features to be developed;
    - (vi) how rehabilitated areas are to be maintained; and
    - (vii) the programme for the removal of buildings, plant, waste and final site clean up;
  - (d) evidence that a datum peg has been established on the land related to a point approved by the local government on the surface of a constructed public thoroughfare or such other land in the vicinity;
  - (e) a certificate from a licensed surveyor certifying the correctness of—
    - (i) the plan referred to in paragraph (a); and
    - (ii) the datum peg and related point referred to in paragraph (d);
  - (f) Evidence that the applicant has complied with clause 2.2(1) and issued any notices required by the Shire under clause 2.2(2).
  - (g) copies of all land use planning approvals required under any planning legislation;
  - (h) copies of any environmental approval required under any environmental legislation;
  - (i) copies of any geotechnical information relating to the excavation site;
  - (j) the consent in writing to the application from the owner of the excavation site;
  - (k) the licence application fee specified by the local government from time to time; and
  - (l) any other information that the local government may reasonably require.
- (2) All survey data supplied by an applicant for the purpose of 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 5000 square metres; and
  - (b) the extracted material is not to exceed 5000 cubic metres;
- the local government may exempt a person making application for a licence under sub clause (1) from supplying any of the data specified in paragraphs (b), (d), (e) and (i) of sub clause (1).

### PART 3—DETERMINATION OF APPLICATION

#### 3.1. Determination Of Application

- (1) 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.
- (2) The local government may refuse to consider an application for a licence that does not comply with the requirements of clause 2.3, and in any event shall refuse an application for a licence where planning approval for an extractive industry use of the land has not first been obtained.
  - (a) Where the local government refuses the application for a licence under subclause (5), it shall notify the licensee in writing.
- (3) 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.
  - (c) notify the applicant in writing
- (4) Where the local government approves the issue of a licence, the CEO shall issue the licence to the applicant upon receipt by the local government of—
  - (a) payment of the annual licence fee, or the relevant proportion of the annual licence fee to 30th June, determined by the local government under and in accordance with sections 6.16 to 6.19 of the *Local Government Act 1995*;
  - (b) payment of the secured sum if any, imposed under clause 5.1;
  - (c) the documents, if any, executed to the satisfaction of the CEO, under clause 5.1; and
  - (d) a copy of the public liability insurance policy required under clause 7.1(1) shall issue the licence to the applicant.
- (5) Without limiting sub clause (2), the local government may impose conditions in respect of the following matters—
  - (a) the orientation of the excavation to reduce visibility from other land;
  - (b) the appropriate siting of access thoroughfares, buildings and plant;
  - (c) the stockpiling of material;
  - (d) the hours during which any excavation work may be carried out;
  - (e) the hours during which any processing plant associated with, or located on, the site may be operated;
  - (f) requiring all crushing and treatment plant to be enclosed within suitable buildings to minimise the emission of noise, dust, vapour and general nuisance to the satisfaction of the local government;
  - (g) the depths below which a person shall not excavate;
  - (h) distances from adjoining land or thoroughfares within which a person must not excavate;
  - (i) the safety of persons employed at or visiting the excavation site;
  - (j) the control of dust and wind-blown material;
  - (k) the planting, care and maintenance of trees, shrubs and other landscaping features during the time in which the extractive industry is carried out in order to effectively screen the area to be excavated and to provide for progressive rehabilitation;
  - (l) the prevention of the spread of dieback or other disease;
  - (m) the drainage of the excavation site and the disposal of water;
  - (n) the restoration and reinstatement of the excavation site, the staging of such works, and the minimising of the destruction of vegetation;
  - (o) the provision of retaining walls to prevent subsidence of any portion of the excavation or of land abutting the excavation;
  - (p) requiring the licensee to furnish to the local government a surveyor's certificate each year, prior to the renewal fee being payable, to certify the quantity of material extracted and that material has not been excavated below the final contour levels outlined within the approved excavation programme;
  - (q) requiring the licensee to enter into an agreement with the local government by which it agrees to pay any extraordinary expenses incurred by the local government in repairing damage caused to thoroughfares in the district by heavy or extraordinary traffic conducted by or on behalf of the licensee under the licence;
  - (r) requiring the licensee to enter into an agreement with the local government in respect of any condition or conditions imposed under this local law; and
  - (s) any other matter for properly regulating the carrying on of an extractive industry.

### 3.2. Payment Of Annual Licence Fee

On or before 30 June in each year, a licensee shall pay to the local government the annual licence fee determined by the local government under and in accordance with sections 6.16 to 6.19 of the *Local Government Act 1995*.



**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.
- (5) Where the local government approves the transfer of a licence under subclause (2), it shall notify the licensee in writing.

**4.2. Cancellation Of Licence**

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

**4.3. Renewal Of Licence**

- (1) A licensee who wishes to renew a licence must apply in writing to the local government at least 45 days before the date of expiry of the licence and shall submit with the application for renewal—
  - (a) the fee determined by the local government from time to time;
  - (b) a copy of the current licence;
  - (c) a plan showing the contours of the excavation carried out to the date of that application; 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 2.3(1)(b) and (c); and
  - (d) any other things referred to in clauses 2.3 and 3.1.
- (2) The local government may waive any of the requirements specified in clause 4.3 (1)(d).
- (3) If—
  - (a) an application to renew a licence is in relation to land in respect of which the current licence was issued less than 12 months prior to the date from which the new licence if granted would apply; and
  - (b) the methods to be employed in the proposed land excavation are identical to those being employed at the date of the application,then the applicant shall not be obliged, unless otherwise required by the local government to submit details of any of the things referred to in clauses 2.3 and 3.1.
- (4) Upon receipt of an application for the renewal of a licence, the local government may—
  - (a) refuse the application; or
  - (b) approve the application on such terms and conditions, if any, as it sees fit.
- (5) Where the local government renews a licence under subclause (5), it shall notify the licensee in writing.

**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) This local law is subject to sections 3.25, 3.27 and Schedules 3.1 and 3.2 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, Subdivision 3 of the Act.

(3) 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.

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

**PART 6—LIMITATIONS, OBLIGATIONS OF THE LICENSEE AND PROHIBITIONS****6.1. Limits On Excavation Near Boundary**

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

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

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

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

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

*Penalty:* \$2,000.

## PART 7—MISCELLANEOUS PROVISIONS

### 7.1. Public Liability

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

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

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

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

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

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

### 7.3. Notice Of Cessation Of Operations

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

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

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

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

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

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

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

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

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

### **PART 8—OBJECTIONS AND APPEALS**

#### **8.1 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, transfer 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. Modified Penalties**

(1) An offence against a clause specified in the Schedule 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 the Schedule.

#### **9.2. 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**

<b>Item</b>	<b>Clause</b>	<b>Description</b>	<b>Modified Penalty \$</b>
1	2.1	Carry on extractive industry without licence or in breach of terms and conditions	350
2	6.1	Excavate near boundary	200
3	6.2(a)	Gateways not kept locked where required	350
4	6.2(b)	Warning signs not erected or maintained as required	350
5	6.2(c)	Excavation not drained as required	350
6	6.3(a)	Remove trees or shrubs near boundary without approval	300
7	6.3(b)	Store without required approval explosives or explosive devices	350
8	6.3(c)	Fill or excavate in breach of licence	350
9	6.4(1)(a)	Blasting without approval of the local government	250
10	6.4(1)(b)	Blasting outside times authorised	350
11	6.4(1)(d)	Blasting in breach of conditions imposed by the local government	350
12	6.4(2)	Blasting without approval on Saturday, Sunday or public holiday	200

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Dated 11th day of February, 2021.

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

M. C. PAGANONI, Shire President.

K. B. WILLIAMS, Chief Executive Officer.

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## LOCAL GOVERNMENT ACT 1995

## SHIRE OF BROOMEHILL-TAMBELLUP

## FENCING LOCAL LAW 2020

Under the powers conferred by the *Local Government Act 1995* and all other powers enabling it, the Shire of Broomehill-Tambellup resolved on 11 February 2021 to make the following local law.

## PART 1—PRELIMINARY

## 1.1 Citation

This local law is the *Shire of Broomehill-Tambellup Fencing Local Law 2020*.

## 1.2 Commencement

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

## 1.3 Purpose and effect

(1) The purpose of this local law is to prescribe a sufficient fence and the standard for the construction of fences throughout the district.

(2) The effect of this local law is to establish the minimum requirements for fencing within the district.

## 1.4 Application

This local law applies throughout the district.

## 1.5 Repeal

This local law repeals the *Shire of Broomehill-Tambellup Fencing Local Law 2008* as published in the *Government Gazette* on 23 December 2008.

## 1.6 Definitions

In this local law—

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

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

**AS or AS/NZS** means an Australian or Australian/New Zealand Standard as published by Standards Australia and as amended from time to time.

**barbed wire fence** means a wire or strand of wires having small pieces of sharply pointed wire twisted around it at short intervals;

**boundary fence** has the meaning given to it by 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 district planning scheme; and
- (b) is or will be the predominant use of the lot;

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

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

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

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

**dividing fence** has the meaning given to it by the Act;

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

**fence** means any structure, not including a retaining wall, used or functioning as a barrier, irrespective of where it is located and includes any gate;

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

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

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

**gazetted townsite** means urban land declared to be a townsite under the relevant Land Administration legislation;

**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 district planning scheme; and
- (b) is or will be the predominant use of the lot;

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

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

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

- (a) which belongs to the local government;
- (b) of which the local government is the management body under the *Land Administration Act 1997*; or
- (c) which is an “otherwise unvested facility” under section 3.53 of the *Local Government Act 1995*;

**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 5.1;

**occupier** has the meaning given to it in the *Local Government Act 1995*;

**owner** has the meaning given to it in the *Local Government Act 1995*;

**razor wire fence** means a coiled strong wire with pieces of sharp cutting edges set across it at close intervals;

**Residential Lot** means a lot where a residential use—

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

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

**Special Rural Lot** means a lot where a special rural use—

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

**sufficient fence** means a fence described in clause 2.1

**thoroughfare** has the meaning given to it by the *Local Government Act 1995*, but does not include a private thoroughfare which is not under the management or control of the local government.

## 1.7 Licence fees and charges

All licence fees and charges applicable under this local law shall be determined by the local government from time to time in accordance with section 6.16 to section 6.19 of the *Local Government Act 1995*.

## PART 2—FENCES

### Division 1—Sufficient fences

#### 2.1 Sufficient fences

- (1) A person shall not erect a dividing fence or a boundary fence that is not a sufficient fence.



- (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 Schedule 2;
  - (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 Schedule 3; and
  - (c) on a Rural Lot and on a Special Rural Lot is a dividing fence or a boundary fence constructed and maintained in accordance with the specifications and requirements of Schedule 4.
- (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 Schedule 2;
  - (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 Schedule 3;
  - (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 Schedule 4;
  - (d) a Residential Lot and a Special Rural Lot, a sufficient fence is a dividing fence constructed and maintained in accordance with the specifications and requirements of Schedule 4; and
  - (e) a Special Rural Lot and a Rural Lot, a sufficient fence is a dividing fence constructed and maintained in accordance with the specifications and requirements of Schedule 4.
- (4) An application must be made to the local government for grant of consent to any variation to the specifications in Schedules 2, 3 and 4.
- (5) Unless an authorised person determines otherwise, a sufficient fence on a boundary between lots other than those specified in subclause (3) is a dividing fence constructed in accordance with the specifications and requirements of Schedule 2.
- (6) Notwithstanding any other provision in this local law, a dividing fence or boundary fence constructed of masonry, stone or concrete shall be a sufficient fence only if it is designed by a suitably qualified structural engineer and constructed in accordance with that design where—
- (a) it is greater than 1 800 millimetres in height; or
  - (b) the Building Surveyor so requires.
- (7) Notwithstanding any other provision in this local law, a dividing fence or boundary fence shall not exceed 1 800 millimetres in height unless the approval of the local government has been obtained for such a fence.

### *Division 2—General*

#### **2.2 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 1200 millimetres 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 1200 millimetres in the front setback area of a Residential Lot only if the fence on each side of the driveway into the lot across the front boundary is to be angled into the lot for a distance of not less than 1 500 millimetres along the frontage to a distance of not less than 1 500 millimetres from the frontage in order to provide appropriate splayed lines of vision for a motorist using the driveway for access to a thoroughfare.
- (3) The provision of subclause (2) shall not apply to a fence—
- (a) of open construction that does not obscure the lines of vision of a motorist using the driveway for access to a thoroughfare; or
  - (b) that does not adjoin a footpath.

#### **2.3 Gates in fences**

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

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

#### **2.4 Depositing fencing material on public place**

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

#### **2.5 Fences on a Rural Lot**

A person shall not, without the written consent of the Building Surveyor, erect a fence on a Rural Lot of a height exceeding 1500 millimetres.

#### **2.6 Fences for large animals**

A person shall not keep large animals within a Special Rural lot unless a fence constructed of a type that prevents large animals escaping and dogs entering is installed

**2.7 Maintenance of fences**

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

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

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

**2.9 General discretion of the local government**

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

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

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

*Division 3—Fencing materials*

**2.10** Where required by the Building Surveyor, fencing designs are to be certified by a practicing structural engineer as being suitable for wind loadings found in Region D Category 2 areas in accordance with the current edition of AS/NZS 1170.0:2002 Structural design actions—General principles.

**2.11 Pre-used fencing materials**

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

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

**2.12 Barbed wire fences and spiked or jagged materials**

(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, affix or allow to remain on any fence on such a lot any barbed wire or other material with spiked or jagged projections, unless the prior written approval of the local government has been obtained.

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

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

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

(6) An owner or occupier of a Rural Lot shall not erect, affix or allow to remain any 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.

**2.13 Electrified and razor wire fences**

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

- (a) construct or use an electrified fence on that lot without obtaining the approval of the local government in the form prescribed in Schedule 5; or
- (b) construct a fence wholly or partly of razor wire on that lot without obtaining the approval of the local government in the form prescribed in Schedule 6.

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

- (a) in respect of a lot which is or which abuts a Residential Lot;
- (b) unless the proposed fence will comply with “AS/NZS 3016:2002 Electrical installations—Electricity security fences”; and
- (c) unless provision is made so as to enable the fence to be rendered inoperable during the hours of business operations, if any, on the lot where it is erected.

(3) The local government shall not approve an application for the purpose of subclause (1)(b)—

- (a) if the fence is within 3000 millimetres of the boundary of the lot; or

- (b) where any razor wire used in the construction of the fence is less than 2 000 millimetres or more than 2400 millimetres above the ground level.
- (4) An application for approval for the purpose of subclauses (1)(a) or (1)(b) shall be made by the owner of the lot on which the fence is or is to be erected, or by the occupier of the lot with the written consent of the owner.

#### **2.14 Prohibited fencing materials**

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

### **PART 3—APPROVALS**

#### **3.1 Application for approval**

- (1) Where a person is required to obtain the approval of the local government under this local law, that person shall apply for approval in accordance with subclause (2).
- (2) An application for approval under this local law shall—
  - (a) be in the form determined by the local government;
  - (b) be signed by the applicant and the owner of the lot;
  - (c) provide the information required by the form; and
  - (d) be forwarded to the CEO together with any fee imposed and determined by the local government under and in accordance with sections 6.16 to 6.19 of the *Local Government Act 1995*.
- (3) The local government may require an applicant to provide additional information reasonably related to an application before determining an application for approval.
- (4) The local government may refuse to consider an application for approval which is not in accordance with subclauses (2) and (3).

#### **3.2 Decision on application for approval**

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

#### **3.3 Compliance with approval**

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

#### **3.4 Duration of approval**

Unless otherwise stated in the form of approval, an approval granted under this local law—

- (a) runs with the lot to which it relates;
- (b) may be relied upon by any subsequent occupier or owner of the lot; and
- (c) may be enforced by the local government against a subsequent occupier or owner of the lot.

### **PART 4—MISCELLANEOUS**

#### **4.1 False or misleading statement**

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

### **PART 5—NOTICES OF BREACH**

#### **5.1 Notices of breach**

- (1) Where a breach of any provision of this local law has occurred in relation to a fence on a lot, the local government may give a notice in writing to the owner of that lot.
- (2) A notice of breach shall—
  - (a) specify the provision of this local law which has been breached;
  - (b) specify the particulars of the breach; and
  - (c) state that the owner is required to remedy the breach within the time specified in the notice.
- (3) Should an owner fail to comply with a notice of breach, the local government may, by its employees, agents or contractors enter upon the lot to which the notice relates and remedy the breach, and may recover the expenses of so doing from the owner of the lot 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 entry on to land will be in accordance with Part 3, Division 3 of that Act.

## PART 6—OFFENCES

### 6.1 Offences and penalties

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

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

### 6.2 Modified penalties

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

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

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

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

### 6.3 Form of notices

For the purposes of this local law—

- (a) the form of the infringement notice referred to in sections 9.16 and 9.17 of the *Local Government Act 1995* is to be in the form of Form 2 of Schedule 1 of the *Local Government (Functions and General) Regulations 1996*; and
- (b) the form of the withdrawal of infringement notice referred to in section 9.20 of the *Local Government Act 1995* is to be in the form of Form 3 in Schedule 1 of the *Local Government (Functions and General) Regulations 1996*.

## PART 7—OBJECTIONS AND REVIEW

### 7.1 Objections and review

When the local government makes a decision under clause 3.2, the provision of Part 9 Division 1 of the *Local Government Act 1995*, and regulation 33 of the *Local Government (Functions and General) Regulations 1996*, apply to that decision.

### Schedule 1

#### OFFENCES AND MODIFIED PENALTIES

[clause 6.2(2)]

Item No	Clause No.	Nature of Offence	Modified penalties \$
1	2.1(1)	Erect a fence which is not a sufficient fence	250
2	2.2(1)	Erect a fence greater than 1200mm in height within a front setback area without the written consent of the Building Surveyor	250
3	2.3(a)	Erect a gate in a fence not opening into the lot	200
4	2.3(b)	Erect a gate in a fence not sliding parallel and inside a fence	200
5	2.7	Failure to maintain a fence in good condition to prevent the fence becoming dangerous, dilapidated or unsightly	250
6	2.8	Erect or maintain a fence or obstruction of temporary or permanent nature across a right-of way, public access way or thoroughfare without approval	250
7	2.10(1)	Construct a dividing fence on a Residential, Commercial or Industrial Lot from pre-used materials without written approval	250
8	2.11(2)	Erect a fence using barbed wire or material with spiked or jagged projections in the fence construction without approval	250
9	2.12(1)	Construct, erect or use razor wire in a fence or electrify a fence without approval	250

Item No	Clause No.	Nature of Offence	Modified penalties \$
10	2.13	Affix, or use, any broken glass in a fence	250
11	3.3	Failure to comply with terms or conditions of approval	250
12	6.1	Failure to comply with notice of breach	250

### ***Schedule 2***

#### **SPECIFICATIONS FOR A SUFFICIENT FENCE ON A RESIDENTIAL LOT**

[clause 2.1(2)(a)]

Each of the identified categories in this Schedule is a sufficient fence on a Residential Lot and the fence design being certified by a practicing structural engineer as being suitable for wind loadings found in Region D Category 2 areas in accordance with AS/NZS 1170.0:2002 Structural design actions—General principles.

#### **Timber fence**

- (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;
- (d) rails to be 75mm x 50mm with each rail spanning 2 bays of fencing double railed or bolted to each post with joints staggered;
- (e) the fence to be covered with 75mm x 20mm sawn pickets, 1 800mm in height placed 75mm apart and affixed securely to each rail; and
- (f) 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.

#### **Corrugated fence**

A fence constructed of corrugated fibre reinforced pressed cement or steel sheeting constructed to manufacturer's specifications or which satisfies the following specifications—

- (a) a minimum in-ground length of 25 per cent of the total length of the sheet, but in any case shall have a minimum in-ground depth of 600mm;
- (b) the total height and depth of the fence to consist of a single continuous fibre reinforced cement or steel sheet;
- (c) the sheets to be lapped and capped with extruded “snap-fit” type capping in accordance with the manufacturers written instructions; and
- (d) the height of the fence to be 1 800mm except with respect to the front set back area for which there is no minimum height but which is subject to clause 7.

#### **Brick, stone or concrete fence**

A fence constructed of brick, stone or concrete, which satisfies the following requirements and specifications—

- (a) a site classification is to be provided by a professional engineer in accordance with AS 2870-2011 Residential slabs and footings as amended;
- (b) the footing is to be designed in accordance with AS 2870-2011 Residential slabs and footings as amended;
- (c) footings of minimum 225mm x 150mm concrete 15MPa or 300mm x 175mm brick laid in cement mortar;
- (d) 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;
- (e) expansion joints in accordance with the manufacturer's written instructions; and
- (f) 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 2.2.

#### **Composite fence**

A composite fence which satisfies the following specifications for the brick construction—

- (1) (a) brick piers of minimum 345mm x 345mm at 1 800mm 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 2 700mm centres bonded to the base wall; and
  - (b) each pier shall be reinforced with two R10 galvanised starting rods as previously specified.

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### ***Schedule 3***

#### **SPECIFICATIONS FOR A SUFFICIENT FENCE ON A COMMERCIAL LOT OR AN INDUSTRIAL LOT**

[clause 2.1(2)(b)]

Each of the identified categories in this Schedule, with minimum and maximum specifications where stated, is a sufficient fence on a Commercial Lot or an Industrial Lot and the fence design being certified by a practicing structural engineer as being suitable for wind loadings found in Region D Category 2 areas in accordance with the current edition of AS/NZS 1170.0:2002 Structural design actions—General principles.

#### **Galvanised or PVC fence and gate**

A fence constructed of galvanised or PVC coated non-rail link mesh, chain mesh or steel mesh which satisfies the following specifications—

- (a) corner posts to be minimum 50mm nominal bore x 3.5mm and with footings of a 225mm diameter x 900mm;
- (b) intermediate posts to be minimum 37mm nominal bore x 3.15mm at maximum 3.5m centres and with footings of a 225mm diameter x 600mm;
- (c) struts to be minimum 30mm nominal bore x 3.15mm fitted at each gate and 2 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 2 or more 3.15mm wires twisted together or single 4mm wire;
- (e) non-rail link, chain or steel mesh is to be to a height of 2000mm on top of which are to be 3 strands of barbed wire carrying the fence to a height of 2400mm in accordance with the requirements and standards of the local planning schemes; and
- (f) galvanised link mesh wire to be 2 000mm 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 1 horizontal and 1 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.

#### **Other fences**

- (a) a fence of cement sheet or steel sheeting constructed to the minimum specifications referred to in Schedule 2;
- (b) a fence constructed of aluminium sheeting when supported on posts and rails provided that it is used behind a building line and is of a minimum height of 1 800mm but no greater than 2 400mm; or
- (c) a fence of timber, brick, stone or concrete constructed to the minimum specifications referred to in Schedule 2.

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### ***Schedule 4***

#### **SPECIFICATIONS FOR A SUFFICIENT FENCE ON A RURAL LOT OR SPECIAL RURAL LOT**

[clause 2.1(2)(c)]

Each of the identified categories in this Schedule, with minimum and maximum specifications where stated is a sufficient fence on a Rural Lot or a Special Rural Lot and the fence design being certified by a practicing structural engineer as being suitable for wind loadings found in Region D Category 2 areas in accordance with the current edition of AS/NZS 1170.0:2002 Structural design actions—General principles.

**Non-electrified fence**

- (a) wire shall be high tensile wire and not less than 2.5mm. A minimum of 5 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—
  - (i) timber impregnated with a termite and fungicidal preservative;
  - (ii) standard steel star pickets; or
  - (iii) concrete;
- (c) cut not less than 1800mm long x 50mm diameter at small end if round or 125mm x 60mm if split or sawn.
- (d) posts to be set minimum 600mm in the ground and minimum 900mm above the ground; and
- (e) strainer posts shall be not less than 2250mm long and 150mm diameter at the small end (tubular steel to be 50mm in diameter) and shall be cut from indigenous timber or other suitable material. These shall be placed a minimum of 1000mm in the ground.
- (f) Fences on Special Rural lots shall be constructed of a type that prevents large animals escaping and dogs entering.

**Electrified fence**

An electrified fence having 4 wires is a sufficient fence if constructed generally in accordance with a non-electrified fence.

**Schedule 5****LICENCE FOR APPROVED ELECTRIFIED FENCE**

[clause 2.12(1)(a)]

This is to certify that <sup>(1)</sup> .....  
 of <sup>(2)</sup> .....  
 is licensed, subject to the conditions set out below, to have and use an electrified fence on  
 .....  
 .....  
 (address)  
 from ..... 20 ..... and until this licence is transferred or cancelled.  
 Dated this ..... day of ..... 20 .....

.....  
 Chief Executive Officer  
 Shire of Broomehill-Tambellup

**Conditions of Licence—**

The holder of the licence must—

- (a) display the licence in a prominent position on the land or premises on which the electrified fence has been erected;
- (b) upon the request of a Building Surveyor produce to him or her the licence;
- (c) within 14 days of a change in the ownership or occupation of the land or premises in respect of which the licence has been granted, notify the Chief Executive Officer in writing of the details of that change or those changes;
- (d) obtain the written consent of the local government prior to the commencement of any alteration, addition or other work relating to or affecting the electrified fence; and
- (e) comply with AS/NZS 3016:2002 Electrical installations—Electric security fences.

**Transfer by Endorsement**

This licence is transferred to <sup>(3)</sup> .....  
 of <sup>(4)</sup> .....  
 .....  
 from and including the date of this endorsement.  
 Dated this ..... day of ..... 20 .....

.....  
 Chief Executive Officer  
 Shire of Broomehill-Tambellup

<sup>(1)</sup> Name<sup>(2)</sup> Address<sup>(3)</sup> Name<sup>(4)</sup> Address

**Schedule 6**  
**LICENCE FOR APPROVED RAZOR WIRE FENCE**

[clause 2.11(1)(b)]

This is to certify that <sup>(1)</sup>.....  
of <sup>(2)</sup>.....  
is licensed, subject to the conditions set out below, to have a fence constructed wholly or partially of  
razor wire at .....  
(address)

From ..... 20 ..... and until this licence is transferred or cancelled.

Dated this ..... day of ..... 20 .....

.....  
Chief Executive Officer  
Shire of Broomehill-Tambellup

**Conditions of licence—**

- (a) display the licence in a prominent position on the land or premises on which the fence has been erected;
- (b) upon the request of a Building Surveyor produce to him or her the licence;
- (c) within 14 days of a change in the ownership or occupation of the land or premises in respect of which the licence has been granted, notify the Chief Executive Officer in writing of the details of that change or those changes; and
- (d) obtain the written consent of the local government prior to the commencement of any alteration, addition or other work relating to or affecting the fence.

**Transfer by Endorsement**

This licence is transferred to <sup>(3)</sup> .....  
of <sup>(4)</sup> .....  
.....

from and including the date of this endorsement.

Dated this ..... day of ..... 20 .....

.....  
Chief Executive Officer  
Shire of Broomehill-Tambellup

<sup>(1)</sup> Name

<sup>(2)</sup> Address

<sup>(3)</sup> Name

<sup>(4)</sup> Address

\_\_\_\_\_

Dated 11th day of February 2021.

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

M. C. PAGANONI, Shire President.

K. B. WILLIAMS, Chief Executive Officer.

\_\_\_\_\_



**HEALTH (MISCELLANEOUS PROVISIONS) ACT 1911  
LOCAL GOVERNMENT ACT 1995**

SHIRE OF BROOMEHILL-TAMBELLUP

**HEALTH LOCAL LAW 2020**

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**HEALTH (MISCELLANEOUS PROVISIONS) ACT 1911  
LOCAL GOVERNMENT ACT 1995**

SHIRE OF BROOMEHILL-TAMBELLUP

**HEALTH LOCAL LAW 2020**

Made by the Council of the Shire of Broomehill-Tambellup on 11th February 2021 under clause 342 of the *Health (Miscellaneous Provisions) Act 1911* in accordance with subdivision 2 of Division 2 of Part 3 of the *Local Government Act 1995*.

**PART 1—PRELIMINARY**

**1.1. Citation**

This local law may be cited as the “*Shire of Broomehill-Tambellup Health Local Law 2020*”.

**1.2. Interpretation**

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

**Act** means *Health (Miscellaneous Provisions) Act 1911*;

**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** means the Australian Standard published by Standards Australia as amended from time to time;

**AS/NZS** means the Australian/New Zealand Standard published by Standards Australia as amended from time to time;

**AS 1530.2: 1993** means the standard published by Standards Australia as AS 1530.2:1993 as amended from time to time and called “*Methods for fire tests on building materials, components and structures—Tests for flammability of materials*”;

**AS 1668.2:2002** means the standard published by Standards Australia as AS 1668.2:2002 as amended from time to time and called “*The use of ventilation and air-conditioning in buildings—Ventilation design for indoor-air contaminant control*.”;

**AS/NZS 3666.2:2002** means the standard published by Standards Australia as AS/NZS 3666.2:2002 as amended from time to time and called “*Air-handling and water systems of buildings Microbial Control—Operation and maintenance*.”

**AS/NZS 1530.3:1999** means the standard published by Standards Australia as AS/NZS 1530.3:1999 as amended from time to time and called “*Methods for fire tests on building materials, components and structures—Simultaneous determination of ignitability, flame propagation, heat release and smoke release*.”

**AS 2001.5.4-1987** means the standard published by Standards Australia as AS 2001.5.4-1987 titled ‘Methods of Test for Textiles—Dimensional Change—Determination of Dimensional Change in Laundering of Textile Fabrics and Garments—Automatic Machine Method’;

**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;

**Chief Executive Officer** means the Chief Executive Officer of the Shire of Broomehill-Tambellup and includes an Acting Chief Executive Officer;

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

**district** means the district of the Shire of Broomehill-Tambellup and includes any area placed under the jurisdiction of the local government pursuant to clause 22 of the Act;

**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;

**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—

- (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 water at a temperature of at least 75 degrees Celsius;

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

**Medical Officer** means the Medical Officer appointed by the local government under the Act and includes an Acting Medical Officer so appointed;

**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;

**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;

**townsite** means all townsites in the district which are—

- (a) Constituted under Section 26 (2) of the *Land Administration Act 1997*; or
- (b) Referred to in clause 37 of Schedule 9.3 of the *Local Government Act 1995*

**vectors of disease** includes fleas (*Siphonaptera*), bedbugs (*Cimex lectularius*), crab lice (*Phthirus pubis*), body lice (*Pediculus humanus var. corporis*) and head lice (*Pediculus humanus var. capitis*);

**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; 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.

### 1.3 Repeal

This local law repeals the *Shire of Broomehill-Tambellup Health Local Law 2008* as published in the *Government Gazette* on 20 March 2009.

### 1.4. Commencement

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

### 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—

**Energy Safety** means the Building and Energy Division of the Department of Mines, Industry Regulation and Safety.

**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; and

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

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

**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 clause 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 20,000 people are expected to attend shall provide sanitary conveniences in accordance with the following scale—

- (a) for the first 250 males—
  - (i) one water closet for each 150;
  - (ii) one urinal stall for each 50; and
  - (iii) one hand wash basin for each 50;
- (b) for additional males—
  - (i) one water closet for each 200;
  - (ii) one urinal stall for each 100; and
  - (iii) one hand wash basin for each 200;
- (c) for the first 250 females—
  - (i) one water closet for each 40; and
  - (ii) one hand wash basin for each 50;
- (d) for additional females—
  - (i) one water closet for each 100; and
  - (ii) one hand wash basin for each 200.

(2) Where, under subclause (1), the number of a particular sanitary convenience to be provided is not a whole number, that number shall be rounded up to the next higher whole number.

(3) The organiser of an outdoor festival at which more than 20,000 people are expected to attend shall provide sanitary conveniences of a number as directed by the local government.

### 2.1.5 Toilets

Toilets on premises other than a dwelling house shall, where more than one toilet is provided on the premises, bear, on the entrance to each toilet, 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

A toilet in any premises shall be ventilated in accordance with the *Sewerage (Lighting, Ventilation and Construction) Regulations 1971* and the Building Code.

### 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 *Metropolitan Water Supply Sewage and Drainage Act 1909 and the Health (Treatment of Sewage and Disposal of Effluent and Liquid Waste) Regulations 1974* 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 clause, “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) adequate cooking facilities as determined by an EHO; and
  - (b) 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 Energy Safety; and
  - (b) not be installed or used in any room other than a kitchen.
- (5) Where mechanical extraction is provided in a kitchen, 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 house shall maintain the dwelling house and any appurtenant buildings in sound condition and fit for use and, in particular, shall—

- (a) maintain all roofs, guttering and downpipes in sound weatherproof 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 weatherproof 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 sewerage so that they comply in all respects with the provisions of the *Metropolitan Water Supply, Sewerage and Drainage Act 1909* 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 Energy Safety.

**3.1.2 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 1 of Part 8.

**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
- (c) any garage or shed to be used for sleeping purposes.

### 3.2.3 Calculated Sufficient Space

For the purpose of clause 3.2.2, in 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 subclause (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 3666.2:2002; 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 made under subclause (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 Rainwater Tanks

The owner or occupier of a house where part of the water supply is drawn from a rainwater 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 rainwater 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;
- (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 Executive Director of Public Health; 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—Secondhand Furniture, Bedding and Clothing*

### 3.4.1 Prohibition of Sale

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

### 3.4.2 Prohibition of Possession

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

## PART 4—LIQUID WASTE

### 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 evaporative coolers and other liquid used for cooling purposes; and

**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.

### 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.

## PART 5—NUISANCES AND GENERAL

#### *Division 1—Nuisances*

### 5.1.1 Interpretation

In this Division, unless the context otherwise requires—

**fertiliser** includes manure;

**public vehicle** means any vehicle to which the public ordinarily has access, whether by payment of a fee or not and includes a taxi or bus.

### 5.1.2 Footpaths etc. to be kept clean

An owner or occupier of premises shall keep any footpath, pavement, area or right of way immediately adjacent to the premises clear of rubbish, matter or things coming from or belonging to the premises.

### 5.1.3 Escape of Smoke etc.

An owner or occupier shall not cause or permit the escape of smoke, dust, sand, fumes, offensive or foul odours, liquid waste or liquid refuse from the premises in such quantity or of such nature as to cause or to be a nuisance.

### 5.1.4 Public Vehicles to be kept clean

The owner or person in control of a public vehicle shall—

- (a) maintain the vehicle at all times—
  - (i) in a clean condition; and
  - (ii) free from vectors of disease; and
- (b) whenever directed to do so by an EHO, thoroughly clean and disinfect the vehicle as directed.

### 5.1.5 Prohibition against Spitting

A person shall not spit—

- (a) on a footpath, street or public place; or
- (b) in a train, bus or other public transport.

### 5.1.6 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.

### 5.1.7 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.

### 5.1.8 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.

### 5.1.9 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.

### 5.1.10 Vehicles Used for Transporting of Animals and Birds

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 townsite until the vehicle has been thoroughly cleaned, unless transporting a pet animal or bird.

## *Division 2—Keeping of Animals and Birds*

### 5.2.1 Interpretation

In this Division, unless the context otherwise requires—

**animal** includes cats, dogs, rabbits and ferrets; and

**bird** includes galahs, parrots, budgerigars, finches, pigeons and doves.

### 5.2.2 Cleanliness

An owner or occupier of premises, excluding an extensive farming premises, in or on which an animal or bird is kept shall—

- (a) keep the premises free from excrement, filth, food waste and all other matter which is or likely to become offensive or injurious to health or to attract rats or other vectors of disease;
- (b) when so directed by an EHO, clean and disinfect the premises;
- (c) keep the premises, so far as possible, free from flies or other vectors of disease by spraying with a residual insecticide or other effective means; and
- (d) ensure the animal or bird kept is not causing a nuisance or is injurious, offensive or dangerous to health.

### 5.2.3 Animal Enclosures

(1) A person shall not keep or cause or permit to be kept any animals or birds on premises, which are not effectively drained.

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

### 5.2.4 Cats

(1) Subject to subclause (6), a person shall not, without an exemption in writing from the local government, keep more than 2 cats over the ages of 6 months on premises on any land within the district.

(2) An owner or occupier of premises may apply in writing to the local government for exemption from the requirements of subclause (1).

(3) The local government shall not grant an exemption under this Clause unless it is satisfied that the number of cats to be kept will not be a nuisance or injurious or dangerous to health.

(4) An exemption granted under this clause shall specify—

- (a) the owner or occupier to whom the exemption applies;

- (b) the premises to which the exemption applies; and
  - (c) the maximum number of cats which may be kept on the premises.
- (5) A person who is granted an exemption under subclause (3) may be required by the local government to—
- (a) provide for each cat kept at or on the premises, a properly constructed shelter with an enclosure complying with the following—
    - (i) each shelter shall have a floor area of not less than 0.5 square metres for each cat over the age of 6 months kept or to be kept therein; and
    - (ii) the area of the enclosure appurtenant to each shelter shall be not less than 3 times the area of the shelter;
  - (b) ensure every shelter and enclosure is situated at a distance of not less than—
    - (i) 2 metres from the boundary of any lot not owned or occupied by the person by whom the cats are kept;
    - (ii) 10 metres from any dwelling, church, schoolroom, hall or premises in which food is manufactured, packed or prepared for human consumption;
  - (c) keep all shelters, enclosures, yards and grounds in which cats are kept in a clean condition and free from vectors of disease at all times and clean, disinfect or otherwise deal with them as directed by an EHO from time to time.
- (6) A person may keep more the 2 cats on premises used for veterinary purposes or as a pet shop.

### 5.2.5 Slaughter of Animals

- (1) Subject to subclause (2), a person shall not slaughter any animal within the district. (2) Subclause (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.

### 5.2.6 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 as soon as possible 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—Keeping of Large Animals

### 5.3.1 Interpretation

In this Division, unless the context otherwise requires—

**approved animal** includes a horse, cow or large animal the subject of an approval by the local government under clause 5.3.2;

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

**horse** includes an ass, mule, donkey or pony; and

**large animal** includes a pig, sheep, goat, deer or camel.

### 5.3.2 Conditions for keeping of an animal

- (1) An owner or occupier of premises, within a townsite shall not keep a horse, cow or large animal on those premises without approval of the local government.
- (2) An owner or occupier of premises who has an approved animal shall ensure—
- (a) the premises has an area of not less than 0.2 hectares for the exclusive use of the approved animal; and
  - (b) the approved animal does not approach within 30 metres of a dwelling.

### 5.3.3 Stables

- (1) The owner or occupier of premises within a townsite, who has an approved animal shall provide for its use a stable which shall—
- (a) not be situated within 30 metres of a house or other premises;
  - (b) have a proper separate stall—
    - (i) for each horse or cow; and
    - (ii) with walls measuring not less than 3 metres, both horizontally and vertically, unless it has a sand floor provided in accordance with subclause (2);
    - (iii) with a floor area of not less than 11 square metres, unless it has a sand floor provided in accordance with subclause (2);

- (c) have each wall and roof constructed of an approved impervious material;
  - (d) have a roof that covers the entire floor area of the stall;
  - (e) have on all sides of the building between the wall and the roof a clear opening of at least 150 millimetres in height;
  - (f) subject to subclause (2), have a floor, the upper surface of which shall—
    - (i) be at least 75 millimetres above the surface of the ground;
    - (ii) be constructed of cement, concrete or other similar impervious materials;
    - (iii) have a fall of 1 in 100 to a drain, which shall empty, into a trapped gully situated outside the stable and shall discharge in a manner approved by the local government.
- (2) A stable constructed with a sand floor may be permitted by the local government, subject to the following—
- (i) the site must be well drained with the highest known water table at least 1.5 metres below the sand floor level, which may be achieved artificially;
  - (ii) a 300mm thick bed of crushed limestone shall be laid under the sand of the stable
  - (iii) sand, whether natural or imported, must be clean, coarse and free from dust;
  - (iv) footings to each stable shall be a minimum of 450mm below ground level;
  - (v) the stable design must allow for the access of small earth moving machinery, such as a skid steer loader, into each individual stall, to maintain the correct floor height;
  - (vi) the minimum floor area of each stall shall be not less than 28 square metres and walls shall not be less than 3 metres vertically or 4 metres horizontally;
  - (vii) the roofed area of each stall shall not be less than 50 percent of the floor area of the stall.
- (3) The owner or occupier of any premises on which a stable is located shall—
- (a) maintain the stable in a clean condition and when so directed by an EHO, clean, wash and disinfect it;
  - (b) keep all parts of the stable so far as possible, free from flies or other vectors of disease by spraying with a residual insecticide or other effective means; and
  - (c) when so ordered by an EHO, spray the stable or such parts as may be directed, with a residual insecticide.

#### 5.3.4 Manure Receptacle

An owner or occupier of premises on which an approved animal is kept shall—

- (a) provide in a position convenient to the stable a receptacle for manure, which is constructed of smooth, impervious, durable, easily cleanable materials and, provided with a tight-fitting cover, and with no part of the receptacle base being lower than the surface of the adjoining ground;
- (b) keep the lid of the receptacle closed except when manure is being deposited or removed;
- (c) cause the receptacle to be emptied at least once a week and as often as may be necessary to prevent it becoming offensive or a breeding place for flies or other vectors of disease;
- (d) keep the receptacle so far as possible free from flies or other vectors of disease by spraying with a residual insecticide or other effective means; and
- (e) cause all manure produced on the premises to be collected daily and placed in the receptacle.

### *Division 4—Keeping of Poultry and Pigeons*

#### 5.4.1 Interpretation

In this Division, unless the context otherwise requires—

**poultry** includes bantams, ducks and other domestic fowls;

#### 5.4.2 Limitation on Numbers of Poultry and Pigeons

An owner or occupier of premises within a townsite shall not keep a combined total of more than 12 poultry and pigeons without the approval of the local government, on any one lot of land.

#### 5.4.3 Conditions for Keeping Poultry in Limited Numbers

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

- (a) no poultry is able to approach within 9 metres of a dwelling house, public building or premises where people are employed or where food is stored, prepared, manufactured or sold;
- (b) all poultry is kept in a properly constructed and securely fastened structure or enclosure;
- (c) the structure is in a yard having an otherwise unobstructed area of at least 30 square metres;
- (d) no poultry is able to approach within 9 metres of a street other than a right of way unless, in the case of land at the junction of two or more streets, the local government has approved a lesser distance;
- (e) no poultry is able to approach within 1.2 metres of any side or rear boundary of the premises; and
- (f) all enclosures or cages within which poultry are kept shall be maintained at all times in a clean condition and shall be disinfected or otherwise dealt with in a way as directed by an EHO.

#### 5.4.4 Roosters, Geese, Turkeys, Peafowls and Gamebirds

(1) An occupier of premises within a townsite, shall not without the written approval of the local government, keep or permit to be kept on those premises, any one or more of the following fowl—

- (a) a rooster;
- (b) a goose or gander;
- (c) a turkey;
- (d) a peacock or peahen;
- (e) a gamebird (includes emus and ostriches)

(2) The local government may upon written application, grant approval with or without conditions to the owner or occupier of premises to keep any one or more birds as specified in subclause (1).

(3) A person who has been granted approval under this clause to keep a bird may keep the bird on the premises only while he is the occupier thereof.

(4) The local government may revoke an approval granted under this clause if it is of the opinion that the keeping of the birds specified in the approval is causing a nuisance or is injurious, offensive or dangerous to health.

#### 5.4.5 Pigeons or Doves

A person who keeps, or permits to be kept, pigeons or doves shall ensure that—

- (a) none is able to approach within 9 metres of a dwelling, public building or premises where people are employed or where food is stored, prepared, manufactured or sold; and
- (b) except where registered homing pigeons are freed for exercise, the pigeons or doves are kept in a properly constructed pigeon loft or dove cote that—
  - (i) is in a yard having an otherwise unobstructed area of at least 30 square metres; and
  - (ii) does not allow them to approach within 1.2 metres of any side or rear boundary of the premises; and
  - (iii) is maintained in such a manner so as not to create a nuisance by the emission of dust, effluvia or odours.

#### 5.4.6 Removal of Non-Conforming Structure or Enclosure

(1) If a structure or enclosure is used for the keeping of poultry or pigeons or doves contrary to the provisions of clause 5.4.3 and 5.4.5, the local government may direct the owner or occupier to remove it.

(2) An owner or occupier shall comply with a direction from the local government made under this clause.

#### 5.4.7 Restrictions on Pigeon Nesting or Perching

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

(2) An owner or occupier shall comply with a local government order made under this clause.

### Division 5—Feedlots

#### 5.5.1 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.

#### 5.5.2 Premises to be approved

(1) No premises shall be used as a feedlot unless approved by the local government.

(2) Subject to subclause (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.

(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**

#### Buffer

Townsite 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

### 5.5.3 Site Conditions

- (1) The owner or occupier of the approved feedlot shall ensure the premises—
- (a) is sited on gently sloping land, no greater than 1:20 but not less than 1:100;
  - (b) is sited on soils composed of sandy loam soils with sufficient infiltration to avoid surface ponding and run-off;
  - (c) has a minimum groundwater clearance of 3 metres;
  - (d) drainage diverts all uncontaminated stormwater from the general waste stream;
  - (e) 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—
- (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.

## Division 6—Piggeries

### 5.6.1 Interpretation

For the purpose of this Division—

**intensive piggery** means pigs are housed, fed and watered in breeding and growing pens in sheds;

**piggery** in relation to premises shall include any portion of premises to which the pigs have access.

### 5.6.2 Premises to be Approved

- (1) No premises shall be used as a piggery unless approved by the local government;
- (2) Subject to subclause (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**

#### Buffer

Townsite 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

### 5.6.3 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.

### 5.6.4 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**

Required Buffer Distances for Intensive Piggeries

	Townsite 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	5000m	1000m	200m	50m	Not permitted	300m	300m	100m
500-5000 pigs	3500m	1000m	150m	50m	Not permitted	300m	300m	100m
50-499 pigs	2000m	1000m	100m	50m	Not permitted	300m	300m	100m
Less than 50 pigs	500m	1000m	50m	50m	Not permitted	200m	300m	100m



	Townsite 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
Land used to dispose of raw or partly treated wastes	1000m	1000m	100m	300m	Not permitted	300m	300m	300m
Land used to dispose of effectively treated wastes	200m	1000m	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 that—

- rubbish receptacles are kept clean and tightly sealed at all times except when refuse is being deposited or emptied;
- food scraps and uneaten pet food are wrapped tightly and deposited in a rubbish receptacle without delay;
- lawn clippings used on gardens as mulch are raked out thinly;
- fertilisers are dug well into the soil;
- compost heaps are kept well covered;
- barbecues are kept clean and free from food scraps;
- anything that is buried and may attract or be a breeding place for flies is covered with at least 100 millimetres of soil; and
- 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—

- control the prevalence;
- effect the eradication; or
- effectively prevent the breeding;

of flies.

#### 6.1.5 Local government may Execute Work and Recover Costs

(1) Where—

- a person is required under this Division or directed by a notice given under clause 6.1.4, to execute any work; and
- 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 this local law.

(2) The costs and expenses incurred by the local government in the execution of a power under subclause (1) may be recovered in a court of competent jurisdiction from the person referred to in subclause (1).

(3) The local government is not liable to pay compensation or damages of any kind to the person referred to in subclause (1) in relation to any action taken by the local government under this clause, other than compensation or damages for loss or damage suffered because the local government acted negligently or in breach of 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.
- (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 sound condition at all times, and mesh having openings no larger than 1.2mm covers any educt vent to the system.

(4) 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 Local government may Execute and Recover Costs**

(1) Where—

- (a) a person is required under this Division or directed by a notice given under clause 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 subclause (1) may be recovered in a court of competent jurisdiction from that person.

(3) The local government is not liable to pay compensation or damages of any kind to the person referred to in subclause (1) in relation to any action taken by the local government under this clause, other than compensation or damages for loss or damage suffered because the local government acted negligently or in breach of 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 (other than rats) 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 clause.

**6.3.3 Food and Wastes to be kept in rodent proof Receptacles**

A person must not store, or allow to be stored, on any premises, any food, refuse or other waste matter unless it is contained in a rodent proof receptacle or compartment.

**6.3.4 Restrictions on the Sale or Keeping of Rats**

(1) Subject to subclause (2) an owner or occupier of premises shall not, on or from those premises

- (a) keep or permit to be kept a rat; or
- (b) sell or offer for sale or permit to be sold or offered for sale a rat.

(2) Subclause (1) shall not prevent the keeping of rats for the purpose of scientific or medical research on premises owned or occupied by—

- (a) a university or school;

- (b) a person approved by the local government; or
  - (c) a public hospital or a private hospital within the meaning of those expressions in the *Hospitals and Health Services Act 1927*.
- (3) A person or body specified in subclause (2), which keeps rats, shall—
- (a) at all times ensure that all live rats are kept in the effective control of a person or in locked cages; and
  - (b) if a rat escapes, forthwith comply with the requirements of clause 6.3.2 and ensure that all reasonable steps are taken to destroy or recapture the rat.

#### **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.

#### **6.3.6 Restrictions on materials affording harbourage for Rodents**

(1) An owner or occupier of premises shall cause—

- (a) any part of the premise; or
- (b) any material, sewer, pipe or other thing in or on the premises,

that might afford access or harbourage to rodents to be altered, repaired, protected, removed or otherwise dealt with so as to prevent it being used as access for, or harbourage of, rodents.

(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 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 clause.

### *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 clause.

### *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 *Vespula 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 beehives are causing a nuisance, the local government may direct any bees or approved beehives 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 (*Phthirius 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 disinfest**

(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 disinfest—

- (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 subclause (1).

**7.1.2 EHO 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 subclause (1).

(3) The local government may recover, in a court of competent jurisdiction, the cost of carrying out the work under this clause from the owner or occupier of the premises in or on which the work was carried out.

(4) The local government is not liable to pay compensation or damages of any kind to the person referred to in subclause (1) in relation to any action taken by the local government under this clause, other than compensation or damages for loss or damage suffered because the local government acted negligently or in breach of 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) any thing is insanitary,

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 subclauses (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 clause.

#### **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) The 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 that is the subject of a notice under subclause (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 subclause (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 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 clause may be recovered in a court of competent jurisdiction from the person referred to in subclause (1)(a).

(3) The local government is not liable to pay compensation or damages of any kind to the person referred to in subclause (1) in relation to any action taken by the local government under this clause, other than compensation or damages for loss or damage suffered because the local government acted negligently or in breach of 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 subclause (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—

**bed** means a single sleeping berth only. A double bed provided for the use of couples, shall have the same floor space requirements as two single beds;

**bunk** means a sleeping berth comprising one of two arranged vertically;

**dormitory** means a building or room utilised for sleeping purposes at a short term hostel or recreational campsite;

**Food Standards Code** means the Australian 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;

**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 and a short-term hostel.

**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) situated on a campsite principally used for—

(i) recreational, sporting, religious, ethnic or educational pursuits; or

(ii) conferences or conventions.

and

(b) 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;

**register of lodgers** means the register kept in accordance with clause 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 shall include youth hostels and backpacker hostels; and

**vector 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.

(2) 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 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.

#### 8.1.2 Lodging House Not to be Kept Unless Registered

A person shall not keep or cause, suffer or permit 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) 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 prescribed in Schedule 1;

(b) duly completed and signed by the proposed keeper; and

(c) accompanied by—

(i) the fee as fixed from time to time by the local government under clause 344C of the Act; and

(ii) detailed plans and specification of the lodging house.

**8.1.4 Approval of Application**

The local government may approve, with or without conditions, an application under clause 8.1.3 by issuing to the applicant a certificate in the form prescribed in Schedule 2.

**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; and
- (b) pay the fee as fixed from time to time by the local government under 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 agreement, give to the local government written notice in the form prescribed in Schedule 3 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 in a clean, wholesome 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 Service, 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 an EHO, unfit to remain registered;

(3) Before revoking the registration of a lodging house under this clause, 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 general construction requirements of a lodging house shall comply with the Building Code and the Act.

**8.2.2 Kitchen**

A keeper of a lodging house shall provide in that lodging house a kitchen which—

- (a) 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;
- (b) may be required by the local government to comply with any of the requirements of Standard 3.2.3 of the Food Standards Code.

**8.2.3 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.

**8.2.4 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.

### 8.2.5 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.

(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 subclause (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 subclause (5) do not apply to a serviced apartment.

### 8.2.6 Laundry

(1) A keeper shall—

- (a) subject to subclause (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 in a proper sanitary condition and in good repair;
- (c) provide an adequate supply of hot and cold water to each wash trough, sink and washing machine; and
- (d) ensure that the floor area of each laundry 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.

(3) In this clause—

**laundry unit** means a group of facilities consisting of—

- (a) a washing machine with a capacity of not less than 4 kilograms of dry clothing;
- (b) one wash trough of not less than 36 litres capacity, connected to both hot and cold water; and
- (c) either an electric drying cabinet or not less than 30 metres of clothes line, and for which a hot water system is provided that—
  - (i) is capable of delivering 136 litres of water per hour at a temperature of at least 75°C for each washing machine provided with the communal facilities; and
  - (ii) has a delivery rate of not less than 18 litres per minute to each washing machine.

### 8.2.7 Fire Prevention and Control

(1) A keeper shall—

- (a) in each passage of the lodging house provide an emergency light—
  - (i) in such a position and of such a pattern, as shall be approved by an EHO; and
  - (ii) which shall 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;
- (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) A keeper shall ensure that all buildings comprising the lodging house are fitted with fire protection equipment as required by the Building Code.



**8.2.8 Obstruction of Passages and Stairways**

A keeper shall not cause, suffer or permit 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, store room, dining room, general sitting room, 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 metre 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 metre 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 purpose of this clause, two children under the age of 10 years shall be counted as one lodger.

(3) Paragraphs (a), (b) and (c) of subclause (1) shall 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;
- (b) 2.5 square metres per person in dormitories 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 practicable;
- (b) mechanical ventilation in lieu of fixed ventilation, subject to the local government's approval.

(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.
- (b) storage space for personal effects, including backpacks, so that cleaning operations are not hindered and access spaces are not obstructed.

(7) The keeper of any short term hostel or recreational campsite shall—

- (a) maintain at all times a minimum distance of 750 millimetres between beds, and a minimum 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 any short term hostel or recreational campsite shall ensure that—
- (a) materials used in dormitory areas comply with AS 1530.2:1993 and AS/NZS 1530.3:1999 as follows—

Drapes, curtains, blinds and bed covers	- a maximum Flammability Index of 6;
Upholstery and bedding	- a maximum Spread of Flame Index of 6 - a maximum Smoke Developed Index of 5
Floor coverings	- a maximum Spread of Flame Index of 7 - a maximum Smoke Developed Index of 5

Fire retardant coatings used to make a material comply with these indices must be—

- (i) certified by the manufacturer as approved for use with the fabric to achieve the required indices; and
  - (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 2001.5.4:1987, Procedure 7A, using ECE reference detergent; and
  - (iii) certified by the applicator as having been carried out in accordance with the manufacturer's specification;
- (b) emergency lighting is provided in accordance with the Building Code;
  - (c) 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;
  - (d) all mattresses in a short term hostel or recreational campsite are fitted with a mattress protector.

#### 8.2.12 Furnishing etc. of Sleeping Apartments

- (1) The keeper shall—
- (a) furnish each sleeping apartment 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, two blankets or equivalent; and
  - (c) furnish each bedroom so that there are adequate storage facilities for belongings within the room.
- (2) The keeper shall not cause, suffer or permit any tiered beds or bunks to be used in a sleeping apartment other than in a lodging house used exclusively as a short term hostel or recreational campsite.
- (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)(c) may be located in a separate secure storage room or locker room.

#### 8.2.13 Ventilation

- (1) 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.
- (2) The keeper shall comply with any direction given under subclause (1) within such time as directed.

#### 8.2.14 Numbers to be Placed on Doors

- (1) A keeper shall, place or cause to be placed on the outside of the doors of all rooms available to lodgers in the lodging house, serial numbers so that—
- (a) the number "1" is placed on the outside of the door of the room nearest to the front or main entry door of the lodging house; and
  - (b) the numbers continue in sequence throughout each floor (if there is more than one) of the lodging house.
- (2) The numbers to be placed on the doors under subclause (1) shall be—
- (a) not less than 40 millimetres in height;
  - (b) 1.5 metres from the floor; and
  - (c) permanently fixed either by being painted on the doors or by other legible means.

*Division 3—Management and Care***8.3.1 Keeper or Manager to Reside in the Lodging House**

Whenever there is one or more lodgers in a lodging house, a keeper or manager shall—

- (a) reside continuously in the lodging house; and
- (b) not be absent from the lodging house unless he or she arranges for a reputable person to have the care and management of the lodging house.

**8.3.2 Register of Lodgers**

(1) A keeper shall keep a register of lodgers in the form prescribed in Schedule 4.

(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 Service 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 prescribed in Schedule 5, 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 prescribed in Schedule 6.

(2) The certificate issued under subclause (1) shall specify the maximum number of persons who shall be permitted to occupy each room as 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.

(4) A person shall not cause, suffer or permit 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 purpose of inspection by the Officer.

**8.3.6 Room Occupancy**

(1) A keeper shall not—

(a) cause, suffer or permit 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, suffer or permit to be placed or kept in any sleeping apartments—

- (i) a larger number of beds; or
- (ii) a 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, suffer or permit to be used for sleeping purposes a room that—

- (i) has not been certified for that purpose; and
- (ii) the local government or Medical Officer has forbidden to be used as a sleeping apartment.

(2) For the purpose of this clause, two children under 10 years of age shall be counted as one 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 and sanitary 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 and sanitary condition.

**8.3.8 Cleaning and Maintenance Requirements**

(1) In this clause—

**bed linen** includes sheets, pillowcases, mattress protectors 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 furniture;
- (c) ensure that the internal walls of each bathroom and toilet have a smooth impervious washable surface;
- (d) whenever there are one or more lodgers in a lodging house, ensure that the laundry floor is cleaned daily;
- (e) ensure that—
  - (i) all bed linen, towels, and house linen in use is washed at least once a week;
  - (ii) within a reasonable time of a bed having been vacated by a lodger or resident, 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, bedheads, 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 which are inflammable or offensive;
- (c) use a bath or hand wash basin other than for ablutionary purposes;
- (d) use a bathroom facility or fixture 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 items other than personal effects—
  - (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; and
- (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—

**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 trade as defined by clause 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 clause 187 of the Act to establish an offensive trade shall make application in the form prescribed in Schedule 7 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 clause 9.1.2 shall be guilty of an offence.

#### 9.1.4 Registration of Premises

An application for the registration of premises pursuant to clause 191 of the Act shall be—

- (a) in the form prescribed in Schedule 8;
- (b) accompanied by the fee prescribed in the *Health (Offensive Trades Fees) Regulations 1976*; 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 9.

#### 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.

### *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) maintain 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 Basins

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 airtight 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 clause, “specified offensive trade” means any trade as defined by clause 186 of the Act.

(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 clause.

#### 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.

### PART 10—OFFENCES AND PENALTIES

#### *Division 1—General*

##### 10.1.1 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 \$1,000 and not less than—
  - (i) in the case of a first such offence, \$100;

- (ii) in the case of a second such offence, \$200; and
- (iii) in the case of a third and subsequent such offence, \$500; and
- (b) if the offence is a continuing offence, a daily penalty that is not more than \$100 and not less than \$50 for each day during which, the offence continues.

***Schedule 1***

HEALTH MISCELLANEOUS PROVISIONS) ACT 1911

Shire of Broomehill-Tambellup

**APPLICATION FOR REGISTRATION OF A LODGING HOUSE**

(cl. 8.1.3)

To: Chief Executive Officer  
Shire of Broomehill-Tambellup

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—

- lodging house;
  - a recreational campsite;
  - a short term hostel; or
  - serviced apartments,
- (Specify which is to apply)

and for my name to be entered in the Register as a keeper of the lodging house.

**DESCRIPTION OF LODGING HOUSE**

Number of storeys.....

<b>Rooms for private use</b>	<b>Number</b>	<b>Area</b>
Laundries/toilets/bathrooms	.....	.....
Bedrooms	.....	.....
Dining rooms	.....	.....
Kitchens	.....	.....
Sitting rooms	.....	.....
Other (specify)	.....	.....

<b>Rooms for lodgers</b>	<b>Number</b>	<b>Area</b>
Bedrooms	.....	.....
Dining rooms	.....	.....
Kitchens	.....	.....
Sitting rooms	.....	.....
Other (specify)	.....	.....

**Sanitary conveniences for female lodgers**

Toilets	.....
Baths	.....
Showers	.....
Hand wash basins	.....

**Sanitary conveniences for male lodgers**

Toilets	.....
Urinals	.....
Baths	.....
Showers	.....
Hand wash basins	.....

**Laundry facilities**

Wash troughs	.....
Washing machines.	.....
Drying cabinets or clothes lines.	.....

**Additional details**

- (a) Lodger's 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 the proposed manager if the 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****HEALTH (MISCELLANEOUS PROVISIONS) ACT 1911****Shire of Broomehill-Tambellup****CERTIFICATE OF REGISTRATION OF A LODGING HOUSE**

(cl 8.1.4)

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
- recreational campsite, 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 Broomehill-Tambellup, 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 on the premises shall not exceed.....

This certificate of registration is issued subject to the Health Act and the Shire of Broomehill-Tambellup Health Local Law and is not transferable.

Dated .....

Fee Received: \$ .....

.....  
 Environmental Health Officer.

**Schedule 3****HEALTH (MISCELLANEOUS PROVISIONS) ACT 1911****Shire of Broomehill-Tambellup****NOTICE OF CHANGE OF OWNER OF A LODGING HOUSE**

(cl 8.1.6)

To: Chief Executive Officer  
 Shire of Broomehill-Tambellup

I/We, .....  
 (Full name of Applicant/s)

of .....  
 (Residential address of Applicant/s)

am/are the new owners 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***  
**HEALTH (MISCELLANEOUS PROVISIONS) ACT 1911**  
**Shire of Broomehill-Tambellup**  
**REGISTER OF LODGERS**

(cl 8.3.2)

Location of Lodging House .....

Date of Arrival	Name	Previous address	Signature	Room Number	Date of Departure
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....

***Schedule 5***  
**HEALTH (MISCELLANEOUS PROVISIONS) ACT 1911**  
**Shire of Broomehill-Tambellup**  
**LIST OF LODGERS**

(cl 8.3.3)

To: Chief Executive Officer  
 Shire of Broomehill-Tambellup

The following is the name of every person who resided in the lodging house at .....

on the ..... day of .....

(Signed) ..... (Keeper)

Date: .....

***Schedule 6***  
**HEALTH (MISCELLANEOUS PROVISIONS) ACT 1911**  
**Shire of Broomehill-Tambellup**

**CERTIFICATE OF SLEEPING ACCOMMODATION FOR A LODGING HOUSE**

(cl 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.

**Schedule 7****HEALTH (MISCELLANEOUS PROVISIONS) ACT 1911**

Shire of Broomehill-Tambellup

**APPLICATION FOR CONSENT TO ESTABLISH AN OFFENSIVE TRADE**

(cl 9.1.2)

To: Chief Executive Officer  
Shire of Broomehill-Tambellup

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)

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 8****HEALTH (MISCELLANEOUS PROVISIONS) ACT 1911**

Shire of Broomehill-Tambellup

**APPLICATION FOR REGISTRATION OF PREMISES FOR OFFENSIVE TRADE**

(cl 9.1.4)

To: Chief Executive Officer  
Shire of Broomehill-Tambellup

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 9*

HEALTH (MISCELLANEOUS PROVISIONS) ACT 1911

Shire of Broomehill-Tambellup

**CERTIFICATE OF REGISTRATION OF PREMISES FOR OFFENSIVE TRADE**

(cl 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 .....  
Dated this ..... day of .....

.....  
Environmental Health Officer,  
Shire of Broomehill-Tambellup.

.....  
Dated 11th day of February, 2021.

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

M. C. PAGANONI, Shire President.

K. B. WILLIAMS, Chief Executive Officer.



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## LOCAL GOVERNMENT ACT 1995

## SHIRE OF BROOMEHILL-TAMBELLUP

## LOCAL GOVERNMENT (COUNCIL MEETINGS) LOCAL LAW 2020

Under the powers conferred by the *Local Government Act 1995* and under all other relevant powers, the Shire of Broomehill-Tambellup resolved on 11th February 2021 to make the following local law.

## PART 1—PRELIMINARY

## 1.1 Citation

This local law may be cited as the *Shire of Broomehill-Tambellup Local Government (Council Meetings) Local Law 2020*.

## 1.2 Commencement

By virtue of section 3.14 of the Act, this Local Law comes into operation 14 days after the date of their publication in the *Government Gazette*.

## 1.3 Application and intent

- (1) This local law provide rules and guidelines which apply to the conduct of meetings of the Council and its committees and to meetings of electors.
- (2) All meetings are to be conducted in accordance with the Act, the Regulations and this local law.
- (3) This local law are intended to result in—
  - (a) better decision-making by the Council and committees;
  - (b) the orderly conduct of meetings dealing with Council business;
  - (c) better understanding of the process of conducting meetings; and
  - (d) the more efficient and effective use of time at meetings.

## 1.4 Interpretation

- (1) In this local law unless the context otherwise requires—
  - absolute majority** has the meaning given to it in the Act;
  - Act** means the *Local Government Act 1995*;
  - CEO** means the Chief Executive Officer of the local government;
  - committee** means a committee of the Council established under section 5.8 of the Act;
  - committee meeting** means a meeting of a committee;
  - Council** means the Council of the Shire of Broomehill-Tambellup;
  - local government** means the Shire of Broomehill-Tambellup;
  - President** means the President of the local government or other presiding member at a Council meeting under section 5.6 of the Act;
  - meeting** means a meeting of the Council or a committee, as the context requires;
  - member** has the meaning given to it in the Act;
  - presiding member** means—
    - (a) in respect of the Council, the person presiding under section 5.6 of the Act; and
    - (b) in respect of a committee, the person presiding under sections 5.12, 5.13, and 5.14 of the Act;
  - Regulations** means the *Local Government (Administration) Regulations 1996*;
  - simple majority** means 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 in this local law, the terms and expressions used in this local law are to have the meaning given to them in the Act and Regulations.

### 1.5 Repeal

This local law repeals the *Shire of Broomehill-Tambellup Standing Orders Local Law 2008* published in the *Government Gazette* on 23 December 2008.

### 1.6 Provisions of the Act, Regulations and other legislation

- (1) Throughout this local law, provisions of the Act and Regulations, and provisions of other legislation, are reproduced in a boxed format.
- (2) The purpose of reproducing these provisions is to assist the reader by giving a fuller picture of related legislative provisions that also apply to meetings of the Council, committees and electors.
- (3) The reproduced provisions of the Act and Regulations and other legislation—
  - (a) are to be treated as footnotes and are not part of this local law (see section 32(2) of the *Interpretation Act 1984*); and
  - (b) reproduce only the provisions that were in force at the time that the Council resolved to adopt this local law and therefore may not necessarily be correct at a future date.

## PART 2—ESTABLISHMENT AND MEMBERSHIP OF COMMITTEES

### 2.1 Establishment of committees

- (1) The establishment of committees is dealt with in the Act.
- (2) A Council resolution to establish a committee under section 5.8 of the Act is to include—
  - (a) the terms of reference of the committee;
  - (b) the number of council members, officers and other persons to be appointed to the committee;
  - (c) the names or titles of the council members and officers to be appointed to the committee;
  - (d) the names of other persons to be appointed to the committee or an explanation of the procedure to be followed to determine the appointments; and
  - (e) details of the delegation of any powers or duties to the committee under section 5.16 of the Act.
- (3) This local law are to apply to the conduct of committee meetings.

### 2.2 Types of committees

The types of committees are dealt with in the Act.

### 2.3 Delegation of some powers and duties to certain committees

The delegation of some powers and duties to certain committees is dealt with in the Act.

### 2.4 Limits on delegation of powers and duties to certain committees

The limits on the delegation of powers and duties to certain committees are dealt with in the Act.

### 2.5 Appointment of committee members

The appointment of committee members is dealt with in the Act.

### 2.6 Tenure of committee membership

Tenure of committee membership is dealt with in the Act.

### 2.7 Resignation of committee members

The resignation of committee members is dealt with in the Regulations.

### 2.8 Register of delegations to committees

The register of delegations to committees is dealt with in the Act.

### 2.9 Committees to report

A committee—

- (a) is answerable to the Council; and
- (b) is to report on its activities when, and to the extent, required by the Council.

## PART 3—CALLING AND CONVENING MEETINGS

### 3.1 Ordinary and special Council meetings

- (1) Ordinary and special Council meetings are dealt with in the Act.
- (2) An ordinary meeting of the Council, held on a monthly basis or otherwise as determined by the Council, is for the purpose of considering and dealing with the ordinary business of the Council.
- (3) A special meeting of the Council is held for the purpose of considering and dealing with Council business that is urgent, complex in nature, for a particular purpose or confidential.

### 3.2 Calling Council meetings

The calling of Council meetings is dealt with in the Act.

### 3.3 Convening Council meetings

- (1) The convening of a Council meeting is dealt with in the Act.

(2) Subject to subclause (3), the CEO is to give at least 72 hours' notice, for the purposes of section 5.5 of the Act, in convening a special meeting of the Council.

(3) Where, in the opinion of the President or at least one-third of the Members, there is a need to meet urgently, the CEO may give a lesser period of notice of a special Council meeting.

### **3.4 Calling committee meetings**

The CEO is to call a meeting of any committee when requested by the President, the Presiding Member of a committee or any two members of that committee.

### **3.5 Public notice of meetings**

Public notice of meetings is dealt with in the Regulations.

## **PART 4—PRESIDING MEMBER AND QUORUM**

### *Division 1: Who presides*

#### **4.1 Who presides**

Who presides at a Council meeting is dealt with in the Act.

#### **4.2 When the Deputy President can act**

When the Deputy President can act is dealt with in the Act.

#### **4.3 Who acts if no President**

Who acts if there is no President is dealt with in the Act.

#### **4.4 Election of Presiding Members of committees**

The election of Presiding Members of committees and their deputies is dealt with in the Act.

#### **4.5 Election of Deputy Presiding Members of committees**

The election of Deputy Presiding Members of committees is dealt with in the Act.

#### **4.6 Functions of Deputy Presiding Members**

The functions of Deputy Presiding Members are dealt with in the Act.

#### **4.7 Who acts if no Presiding Member**

Who acts if no Presiding Member is dealt with in the Act.

### *Division 2—Quorum*

#### **4.8 Quorum for meetings**

The quorum for meetings is dealt with in the Act.

#### **4.9 Reduction of quorum for Council meetings**

The power of the Minister to reduce the number for a quorum and certain majorities is dealt with in the Act.

#### **4.10 Reduction of quorum for committee meetings**

The reduction of a quorum for committee meetings is dealt with in the Act.

#### **4.11 Procedure where no quorum to begin a meeting**

The procedure where there is no quorum to begin a meeting is dealt with in the Regulations.

#### **4.12 Procedure where quorum not present during a meeting**

If at any time during a meeting a quorum is not present, the Presiding Member is—

- (a) immediately to suspend the proceedings of the meeting for a period of up to 15 minutes; and
- (b) if a quorum is not present at the expiry of that period, the Presiding Member is to adjourn the meeting to some future time or date.

#### **4.13 Names to be recorded**

At any meeting—

- (a) at which there is not a quorum present; or
- (b) which is adjourned for want of a quorum,

the names of the Members then present are to be recorded in the minutes.

## **PART 5—BUSINESS OF A MEETING**

### **5.1 Business to be specified**

(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 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) Subject to subclause (4), no business is to be transacted at an adjourned meeting of the Council other than that—

- (a) specified in the notice of the meeting which had been adjourned; and
- (b) which remains unresolved.

(4) Where a meeting is adjourned to the next ordinary meeting of the Council then, unless the Council resolves otherwise, the business unresolved at the adjourned meeting is to be dealt with before considering Reports (Item 9) at that ordinary meeting.

## **5.2 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—

1. Declaration of Opening/Announcement of Visitors
2. Announcements from the Presiding Member
3. Attendance
  - 3.1 Apologies
  - 3.2 Approved leave of absence
4. Declaration of interest
5. Public Question Time
  - 5.1 Response to previous public questions taken on notice
  - 5.2 Public question time
6. Confirmation of minutes
7. Presentations
  - 7.1 Petitions
  - 7.2 Presentations
  - 7.3 Deputations
  - 7.4 Delegates' reports
8. Method of dealing with agenda business
9. Reports
10. Applications for leave of absence
11. Motions of which previous notice has been given
12. Questions from Members without notice
13. New business of an urgent nature introduced by decision of the meeting
14. Meeting closed to public
  - 14.1 Matters for which the meeting may be closed
  - 14.2 Public reading of resolutions that may be made public
15. Closure

(2) Unless otherwise decided by the Council, the order of business at any special meeting of the Council is to be the order in which that business stands in the agenda of the meeting.

(3) In determining the order of business for any meeting of the Council, the provisions of the Act and Regulations relating to the time at which public question time is to be held are to be observed. *[See section 5.24 of the Act; and regulations 6 and 7 of the Regulations]*

## **5.3 Motions of which previous notice has been given**

(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 and which has been included on the agenda.

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

(3) A notice of motion is to relate to the good governance of the district.

(4) The CEO—

- (a) may, with the concurrence of the President, may exclude from the notice paper any notice of motion deemed to be, or likely to involve, a breach of any of this local law or any other written law;
- (b) will inform Members on each occasion that a notice has been excluded and the reasons for that exclusion;
- (c) may, after consultation with the Member where this is practicable, make such amendments to the form but not the substance as will bring the notice of motion into due form; and
- (d) may provide to the Council 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 Member who gave notice of it, or some other Member authorised by the originating Member 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 under subclause (5), notice of a motion in the same terms or to the same effect is not to be given again for at least 3 months from the date of such lapse.

#### **5.4 New business of an urgent nature**

(1) In cases of extreme urgency or other special circumstances, matters may, on a motion by the Presiding Member that is carried by the meeting, be raised without notice and decided by the meeting.

(2) In subclause (1), 'cases of extreme urgency or other special circumstances' means matters that have arisen after the preparation of the agenda that are considered by the Presiding Member to be of such importance and urgency that they are unable to be dealt with administratively by the Local Government and must be considered and dealt with by the Council before the next meeting.

#### **5.5 Adoption by exception resolution**

(1) In this clause 'adoption by exception resolution' means a resolution of the Council that has the effect of adopting, for a number of specifically identified reports, the officer recommendation as the Council resolution.

(2) Subject to subclause (3), the Local Government may pass an adoption by exception resolution.

(3) An adoption by exception resolution may not be used for a matter—

- (a) in which an interest has been disclosed;
- (b) that has been the subject of a petition or deputation;
- (c) that is a matter on which a Member wishes to make a statement; or
- (d) that is a matter on which a Member wishes to move a motion that is different to the recommendation.

### **PART 6—PUBLIC PARTICIPATION**

#### **6.1 Meetings generally open to the public**

Meetings being generally open to the public is dealt with in the Act.

#### **6.2 Meetings not open to the public**

(1) The CEO may, at any time, recommend that a meeting or part of a meeting be closed to members of the public.

(2) The Council or a committee, in one or more of the circumstances dealt with in the Act, may at any time, by resolution, decide to close a meeting or part of a meeting.

(3) If a resolution under subclause (2) is carried—

- (a) the Presiding Member is to direct everyone to leave the meeting except—
  - (i) the Members;
  - (ii) the CEO; and
  - (iii) any Officer specified by the Presiding Member; and
- (b) the meeting is to be closed to the public until, at the conclusion of the matter justifying the closure of the meeting to the public, the Council or the committee, by resolution, decides otherwise.

(4) A person who fails to comply with a direction under subclause (3)(a) may, by order of the Presiding Member, be removed from the meeting.

(5) While the resolution under subclause (2) remains in force, the operation of clause 8.9 is to be suspended until the Council or the committee, by resolution, decides otherwise.

(6) A resolution under this clause may be made without notice.

(7) Unless the Council resolves otherwise, once the meeting is reopened to members of the public, the Presiding Member is to ensure that any resolution of the Council made while the meeting was closed is to be read out including a vote of a Member to be included in the minutes.

#### **6.3 Question time for the public**

Question time for the public is dealt with in the Act.

#### **6.4 Question time for the public at certain meetings**

Question time for the public at certain meetings is dealt with in the Regulations.

#### **6.5 Minimum question time for the public**

Minimum question time for the public is dealt with in the Regulations.

#### **6.6 Procedures for question time for the public**

Procedures for question time for the public are dealt with in the Regulations.

#### **6.7 Other procedures for question time for the public**

(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 for later response.

(3) When a question is taken on notice the CEO is to ensure that—

- (a) a response is given to the member of the public in writing; and
- (b) a summary of the response is included in the agenda of the next meeting of the Council.

(4) Where a question relating to a matter in which a relevant person has an interest is directed to the relevant person, the relevant person is to—

- (a) declare that he or she has an interest in the matter; and
- (b) allow another person to respond to the question.

(5) Each member of the public with a question is entitled to ask up to 2 questions before other members of the public will be invited to ask their questions.

(6) Where a member of the public provides written questions then the Presiding Member may elect for the questions to be responded to as normal business correspondence.

(7) The Presiding Member may decide that a public question shall not be responded to where—

- (a) the same or similar question was asked at a previous meeting, a response was provided and the member of the public is directed to the minutes of the meeting at which the response was provided;
- (b) the member of the public uses public question time to make a statement, provided that the Presiding Member has taken all reasonable steps to assist the member of the public to phrase the statement as a question; or
- (c) the member of the public asks a question that is offensive or defamatory in nature, provided that the Presiding Member has taken all reasonable steps to assist the member of the public to phrase the question in a manner that is not offensive or defamatory.

(8) A member of the public shall have two minutes to submit a question.

(9) The Council, by resolution, may agree to extend public question time.

(10) Where an answer to a question is given at a meeting, a summary of the question and the answer is to be included in the minutes.

### **6.8 Distinguished visitors**

If a distinguished visitor is present at a meeting of the Council, the Presiding Member may acknowledge the presence of the distinguished visitor at an appropriate time during the meeting, and the presence of that visitor shall be recorded in the minutes.

### **6.9 Deputations**

(1) Any person or group wishing to be received as a deputation by the Council is to either—

- (a) apply, before the meeting, to the CEO for approval; or
- (b) with the approval of the Presiding Member, at the meeting, address the Council.

(2) The CEO may either—

- (a) approve the request and invite the deputation to attend a meeting of the Council; or
- (b) refer the request to the Council to decide by simple majority whether or not to receive the deputation.

(3) Unless the council resolves otherwise, a deputation invited to attend a Council meeting—

- (a) is not to exceed 5 persons, only 2 of whom may address the Council, although others may respond to specific questions from Members;
- (b) is not to address the Council for a period exceeding 10 minutes without the agreement of the Council; and,
- (c) additional members of the deputation may be allowed to speak with the leave of the Presiding Member.

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

### **6.10 Petitions**

(1) A petition is to—

- (a) be addressed to the President;
- (b) be made by electors of the district;
- (c) state the request on each page of the petition;
- (d) contain the name, address and signature of each elector making the request, and the date each elector signed;
- (e) contain a summary of the reasons for the request; and
- (f) state the name of the person to whom, and an address at which, notice to the petitioners can be given.

(2) Upon receiving a petition, the Local Government is to submit the petition to the relevant officer to be included in his or her deliberations and report on the matter that is the subject of the petition, subject to subclause(3).

(3) At any meeting, the Council is not to vote on any matter that is the subject of a petition presented to that meeting, unless—

- (a) the matter is the subject of a report included in the agenda; and
- (b) the Council has considered the issues raised in the petition.

**6.11 Presentations**

- (1) In this clause, a “presentation” means the acceptance of a gift or an award by the Council on behalf of the Local Government or the community.
- (2) A presentation may be made to the Council at a meeting only with the prior approval of the CEO.

**6.12 Participation at committee meetings**

- (1) In this clause a reference to a person is to a person who—
  - (a) is entitled to attend a committee meeting;
  - (b) attends a committee meeting; and
  - (c) is not a member of that committee.

A member of the public is entitled to attend a committee meeting only where a local government power or duty has been delegated to that committee: see section 5.23(1)(b) of the Act.

- (2) Without the consent of the Presiding Member, no person is to address a committee meeting.
- (3) The Presiding Member of a committee may allow a person to make an oral submission to the committee for up to 3 minutes.
- (4) A person addressing the committee with the consent of the Presiding Member is to cease that address immediately after being directed to do so by the Presiding Member.
- (5) A person who fails to comply with a direction of the Presiding Member under subclause (4) may, by order of the Presiding Member, be removed from the committee room.
- (6) The Council may make a policy dealing with the circumstances in which a person may be given consent to address a committee meeting.

**6.13 Council may meet to hear public submissions**

- (1) Where an item on the agenda at a Council meeting is contentious and is likely to be the subject of a number of deputations, the Council may resolve to meet at another time to provide a greater opportunity to be heard.
- (2) The CEO and the President shall set the time and date of the meeting to provide the opportunity to be heard.
- (3) Where the Council resolves to meet to provide the opportunity to be heard under subclause (1), the Presiding Member shall—
  - (a) instruct the CEO to provide local public notice of the time and date when the Council will meet to provide an opportunity to be heard;
  - (b) provide a written invitation to attend the meeting to provide the opportunity to be heard to all members of the public who have applied under clause 6.9 to make a deputation on the issue; and
  - (c) cause minutes to be kept of the meeting to provide the opportunity to be heard.
- (4) A meeting held under subclause (1) shall be conducted only to hear submissions. The council shall not make resolutions at a meeting to provide the opportunity to be heard.
- (5) At a meeting held under subclause (1), each person making a submission shall be provided with the opportunity to fully state his or her case.
- (6) A member of the public shall be limited to 10 minutes in making an oral submission, but this period may be extended at the discretion of the Presiding Member.
- (7) Once every member of the public has had the opportunity to make a submission the Presiding Member is to close the meeting.
- (8) The CEO is to ensure that a report is included on the agenda of the next Council meeting summarising each submission made at the meeting.
- (9) The Council must not resolve on the matter that is the subject of a meeting to provide the opportunity to be heard until it has received the CEO's report under subclause (8).

**6.14 Public Inspection of agenda materials**

The right of the public to inspect the documents referred to, and in accordance with, regulation 14 of the Regulations may be exercised at the Shire of Broomehill-Tambellup, 46-48 Norrish Street, Tambellup and on the Local Government's website.

**6.15 Confidentiality of information withheld**

- (1) Information withheld by the CEO from the public under regulation 14(2) of the Regulations is to be—
  - (a) identified in the agenda of a Council meeting under the item “Matters for which meeting may be closed”;
  - (b) marked “*Confidential*” in the agenda; and
  - (c) kept confidential by Officers and Members until the Council resolves otherwise.
- (2) A member or an officer in receipt of confidential information under subclause (1) or information that is provided or disclosed during a meeting or part of a meeting that is closed to the public is not to disclose any of that information to any person other than another member or an officer to the extent necessary for the purpose of carrying out his or her duties.
- (3) Subclause (2) does not apply where a member or officer discloses the information to his or her lawyer or government officer for the purpose of seeking advice in order to lawfully fulfil his or her role and responsibilities.

**6.16 Recording of proceedings**

A person is not to use any electronic, visual or audio recording device or instrument to record the proceedings of the Council without the permission of the presiding member.

**6.17 Prevention of disturbance**

- (1) A reference in this clause to a person is to a person other than a member.
- (2) A person addressing the Council shall extend due courtesy and respect to the Council and the processes under which it operates and shall comply with any direction by the Presiding Member.
- (3) A person observing a meeting shall not create a disturbance at a meeting, by interrupting or interfering with the proceedings, whether by expressing approval or dissent, by conversing or by any other means.
- (4) A person shall ensure that his or her mobile telephone or audible pager is not switched on or used during any meeting of the Council.
- (5) A person shall not behave in a manner that is contrary to section 75 of the Criminal Code.

**PART 7—QUESTIONS BY MEMBERS****7.1 Questions by members**

- (1) Members may ask questions relating to an item on the notice paper or on matters related to the good government of persons in the district.
- (2) A member requesting general information from an Officer at a Council meeting may ask a question without notice and with the consent of the presiding member, may ask one or more further questions of that Officer or another Officer present at the meeting.
- (3) Where possible the Officer shall endeavour to answer the question to the best of his or her knowledge and ability, however, if the information is unavailable or the answer requires research or investigation, the Officer may ask that—
  - (i) the question be placed on notice for the next meeting of Council; and
  - (ii) the answer to the question be given to the member who asked it within 14 days.
- (4) Every question and answer—
  - (i) is to be brief and concise; and
  - (ii) is not to be accompanied by argument, expression of opinion or statement of facts, except to the extent necessary to explain the question or answer.
- (5) In answering any question, an Officer may qualify his or her answer and may at a later time in the meeting or at a subsequent meeting alter, correct, add to or otherwise amend the original answer.

**PART 8—CONDUCT OF MEMBERS****8.1 Members to be in their proper places**

- (1) At the first meeting held after each election day, the CEO is to allot, alphabetically by ward, a position at the Council table to each Member.
- (2) Each Member is to occupy his or her allotted position at each Council meeting.

**8.2 Respect to the Presiding Member**

After the business of a Council has been commenced, a Member is not to enter or leave the meeting without first paying due respect to the Presiding Member.

**8.3 Titles to be used**

A speaker, when referring to the President, Deputy President or Presiding Member, or a Member or Officer, is to use the title of that person's office.

**8.4 Advice of entry or departure**

During the course of a meeting of the Council, a Member is not to enter or leave the meeting without first advising the Presiding Member, in order to facilitate the recording in the minutes of the time or entry or departure.

**8.5 Members to indicate their intention to speak**

A Member of the Council who wishes to speak is to indicate his or her intention to speak by raising his or her hand or by another method agreed by the Council.

**8.6 Priority of speaking**

- (1) Where two or more Members indicate, at the same time, their intention to speak, the Presiding Member is to decide which Member is entitled to be heard first.
- (2) A decision of the Presiding Member under subclause (1) is not open to discussion or dissent.
- (3) A Member is to cease speaking immediately after being asked to do so by the Presiding Member.

**8.7 Presiding Member may take part in debates**

The Presiding Member may take part in a discussion of any matter before the Council, subject to compliance with this local law.



**8.8 Relevance**

- (1) A member is to restrict his or her remarks to the motion or amendment under discussion, or to a personal explanation or point of order.
- (2) 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.
- (3) A member is to comply with the direction of the Presiding Member under subclause (2) by immediately ceasing to speak.

**8.9 Speaking twice**

A Member is not to address the Council more than once on any motion or amendment except—

- (a) as the mover of a substantive motion, to exercise a right of reply;
- (b) to raise a point of order; or
- (c) to make a personal explanation.

**8.10 Duration of speeches**

- (1) A Member is not to speak on any matter for more than 5 minutes without the consent of the Council which, if given, is to be given without debate.
- (2) An extension under this clause cannot be given to allow a Member's total speaking time to exceed 10 minutes.

**8.11 No speaking after conclusion of debate**

A Member is not to speak on any motion or amendment—

- (a) after the mover has replied; or
- (b) after the question has been put.

**8.12 No interruption**

A Member is not to interrupt another Member who is speaking unless—

- (a) to raise a point of order;
- (b) to call attention to the absence of a quorum;
- (c) to make a personal explanation under clause 8.13; or
- (d) to move a procedural motion that the Member be no longer heard (see clause 11.1(e)).

**8.13 Personal explanations**

- (1) A Member who wishes to make a personal explanation relating to a matter referred to by another Member who is then speaking is to indicate to the Presiding Member his or her intention to make a personal explanation.
- (2) The Presiding Member is to determine whether the personal explanation is to be heard immediately or at the conclusion of the speech by the other Member.
- (3) A Member making a personal explanation is to confine his or her observations to a succinct statement relating to a specific part of the speech at which he or she may have been misunderstood.

**8.14 No reopening of discussion**

A Member is not to reopen discussion on any Council decision, except to move that the decision be revoked or changed (see Part 16).

**8.15 Adverse reflection**

- (1) A Member is not to reflect adversely on a decision of the Council except on a motion that the decision be revoked or changed (see Part 16).
- (2) A Member is not—
  - (a) to reflect adversely on the character or actions of another Member or Officer; or
  - (b) to impute any motive to a Member or Officer,unless the meeting resolves, without debate, that the question then before the meeting cannot otherwise be adequately considered.
- (3) A Member is not to use offensive or objectionable expressions in reference to any Member, Officer or other person.
- (4) If a Member specifically requests, immediately after their use, that any particular words used by a Member be recorded in the minutes—
  - (a) the Presiding Member is to cause the words used to be taken down and read to the meeting for verification; and
  - (b) the Council may, by resolution, decide to record those words in the minutes.

**8.16 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 8.15—
  - (i) reflects adversely on the character or actions of another Member or Officer; or
  - (ii) imputes any motive to a Member or Officer; 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 subclause (1), the Presiding Member may refuse to hear the Member further on the matter then under discussion and call on the next speaker.

**PART 9—PRESERVING ORDER****9.1 Presiding Member to preserve order**

(1) The Presiding Member is to preserve order, and, whenever he or she considers necessary, may call any Member to order.

(2) When the Presiding Member speaks during a debate, any Member then speaking, or indicating that he or she wishes to speak, is immediately to sit down and every Member present is to preserve strict silence so that the Presiding Member may be heard without interruption.

(3) Subclause (2) is not to be used by the Presiding Member to exercise the right provided in clause 8.7, but to preserve order.

**9.2 Point of order**

(1) A Member may object, by way of a point of order, only to a breach of—

- (a) any of this local law; or
- (b) any other written law.

(2) Despite anything in this local law to the contrary, a point of order—

- (a) takes precedence over any discussion; and
- (b) until determined, suspends the consideration or discussion of any other matter.

**9.3 Procedures on a point of order**

(1) A Member who is addressing the Presiding Member is not to be interrupted except on a point of order.

(2) A Member interrupted on a point of order is to resume his or her seat until—

- (a) the Member raising the point of order has been heard; and
- (b) the Presiding Member has ruled on the point of order,

and, if permitted, the Member who has been interrupted may then proceed.

**9.4 Calling attention to breach**

A Member may, at any time, draw the attention of the Presiding Member to any breach of this local law.

**9.5 Ruling by the Presiding Member**

(1) The Presiding Member is to rule on any point of order which is raised by either upholding or rejecting the point of order.

(2) A ruling by the Presiding Member on a point of order—

- (a) is not to be the subject of debate or comment; and
- (b) is to be final unless the majority of Members then present and voting, on a motion moved immediately after the ruling, dissent from the ruling.

(3) Subject to a motion of dissent being carried under subclause (2), if the Presiding Member rules that—

- (a) any motion, amendment or other matter before the meeting is out of order, it is not to be considered further; and
- (b) a statement made or act done by a Member is out of order, the Presiding Member may require the Member to make an explanation, retraction or apology.

**9.6 Continued breach of order**

If a Member—

- (a) persists in any conduct that the Presiding Member had ruled is out of order; or
- (b) refuses to make an explanation, retraction or apology required by the Presiding Member under clause 9.5(3),

the Presiding Member may direct the Member to refrain from taking any further part in the matter under discussion, other than by voting, and the Member is to comply with that direction.

**9.7 Right of Presiding Member to adjourn**

- (1) For the purpose of preserving or regaining order, the Presiding Member may adjourn the meeting for a period of up to 15 minutes.
- (2) On resumption, the debate is to continue at the point at which the meeting was adjourned.
- (3) If, at any one meeting, the Presiding Member adjourns the meeting more than once for the purpose of preserving or regaining order, the second or subsequent adjournment may be to a later time on the same day or to another day.

**PART 10—DEBATE OF SUBSTANTIVE MOTIONS****10.1 Motions to be stated and in writing**

Any Member who wishes to move a substantive motion or an amendment to a substantive motion—

- (a) is to state the substance of the motion before speaking to it; and
- (b) if required by the Presiding Member, is to put the motion or amendment in writing.

**10.2 Motions to be supported**

- (1) A substantive motion or an amendment to a substantive motion is not open to debate until it has been seconded.
- (2) A motion to revoke or change a decision made at a Council meeting is not open to debate unless the motion has the support required under regulation 10 of the Regulations.

**10.3 Unopposed business**

- (1) Immediately after a substantive motion has been moved and seconded, the Presiding Member may ask the meeting if any Member opposes it.
- (2) If no Member opposes the motion, the Presiding Member may declare it carried without debate and without taking a vote.
- (3) A motion declared carried under this clause is to be recorded in the minutes as a unanimous decision of the Council.
- (4) If a Member opposes a motion, the motion is to be dealt with under this Part.
- (5) This clause does not apply to a motion to revoke or change a decision which has been made at a Council meeting (see Part 16).

**10.4 Only one substantive motion at a time**

When a substantive motion is under debate at a meeting of the Council, no further substantive motion is to be accepted. The Council is not to consider more than one substantive motion at any time.

**10.5 Order of call in debate**

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, alternating where possible; and
- (h) mover takes right of reply which closes debate.

**10.6 Limit of debate**

The Presiding Member may offer the right of reply and put a substantive motion to the vote if he or she believes that sufficient discussion has taken place even though all Members may not have spoken.

**10.7 Member may require question to be read**

A Member may require the question or matter under discussion to be read at any time during a debate, but not so as to interrupt any other Member who is speaking.

**10.8 Consent of seconder required for alteration**

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

**10.9 Order of amendments**

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

**10.10 Form of an amendment**

An amendment must add, delete, or substitute words to the substantive motion.

**10.11 Amendment must not negate original motion**

An amendment to a substantive motion cannot negate the original motion or the intent of the original motion.

**10.12 Relevance of amendments**

Each amendment is to be relevant to the motion in respect of which it is moved.

**10.13 Mover of motion may speak on amendment**

Any Member may speak during debate on an amendment.

**10.14 Effect of an amendment**

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

**10.15 Withdrawal of motion or amendment**

(1) Subject to subclause (2), the Council may, without debate, grant leave to withdraw a motion or amendment on the request of the mover of the motion or amendment and with the approval of the seconder.

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

**10.16 Right of reply**

(1) The mover of a substantive motion has the right of reply.

(2) The mover of any amendment to a substantive motion has a right of reply.

(3) The right of the reply may only be exercised—

(a) where no amendment is moved to the substantive motion—at the conclusion of the discussion on the motion; or

(b) where one or more amendments have been moved to the substantive motion—at the conclusion of the discussion on the substantive motion and any amendments.

(4) After the mover of the substantive motion has commenced the reply—

(a) no other Member is to speak on the question;

(b) there is to be no further discussion on, or any further amendment to, the motion.

(5) The right of the reply is to be confined to rebutting arguments raised by previous speakers and no new matter is to be introduced.

(6) At the conclusion of the right of reply, the substantive motion, or the substantive motion as amended, is immediately to be put to the vote.

**PART 11—PROCEDURAL MOTIONS****11.1 Permissible procedural motions**

In addition to the right to move an amendment to a substantive motion (under Part 10), a Member may move the following procedural motions—

(a) that the meeting proceed to the next item of business;

(b) that the debate be adjourned;

(c) that the meeting now adjourn;

(d) that the question be now put;

(e) that the Member be no longer heard;

(f) that the ruling of the Presiding Member be disagreed with;

(g) that the meeting be closed to the public (see clause 6.2).

**11.2 No debate**

(1) The mover of a motion specified in paragraph (a), (b), (c), (f) or (g) of clause 11.1 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 specified in paragraph (d) or (e) of clause 11.1 may not speak to the motion, the seconder is not to speak other than to formally second the motion, and there is to be no debate on the motion.

**11.3 Who may move**

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

**11.4 Procedural motions—right of reply on substantive motion**

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

**11.5 Meeting to proceed to the next business**

The motion “that the meeting proceed to the next business”, if carried, has the effect that—

(a) the debate on the substantive motion or amendment ceases immediately;

(b) no decision is made on the substantive motion;

- (c) the Council moves to the next item of business; and
- (d) there is no requirement for the matter to be raised again for consideration.

#### **11.6 Debate to be adjourned**

A motion “that the debate be adjourned”—

- (a) is to state the time to which the debate is to be adjourned; and
- (b) if carried, has the effect that all debate on the substantive motion or amendment ceases immediately, but continues at the time stated in the motion.

#### **11.7 Meeting now adjourn**

(1) A Member is not to move or second more than one motion of adjournment during the same sitting of the Council.

(2) Before putting the motion for the adjournment of the Council, the Presiding Member may seek leave of the Council to deal first with matters that may be the subject of an adoption by exception resolution (see clause 5.5).

(3) A motion “that the meeting now adjourn”—

- (a) is to state the time and date to which the meeting is to be adjourned; and
- (b) if carried, has the effect that the meeting is adjourned to the time and date specified in the motion.

(4) A meeting adjourned under subclause (3) is to continue from the point at which it was adjourned, unless the Presiding Member or the Council determines otherwise.

#### **11.8 Question to be put**

(1) If the motion “that the question be now put”, is carried during debate on a substantive motion without amendment, the Presiding Member is to offer the right of reply and then put the motion to the vote without further debate.

(2) If the motion “that the question be now put” is carried during discussion of an amendment, the Presiding Member is to put the amendment to the vote without further debate.

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

#### **11.9 Member to be no longer heard**

If the motion “that the member be no longer heard”, is carried, the speaker against whom the motion has been moved cannot speak further on the current substantive motion, or any amendment relating to it, except to exercise the right of reply if he or she is the mover of the substantive motion.

#### **11.10 Ruling of the Presiding Member to be disagreed with**

If the motion “that the ruling of the Presiding Member be disagreed with”, is carried, that ruling is to have no effect and the meeting is to proceed accordingly.

### **PART 12—DISCLOSURE OF INTERESTS**

#### **12.1 Disclosure of interests**

Disclosure of interests is dealt with in the Act.

### **PART 13—VOTING**

#### **13.1 Question—when put**

(1) Immediately after the debate on any question is concluded and the right of reply has been exercised, the Presiding Member—

- (a) is to put the question to the Council; and
- (b) if requested by any Member, is to again state the terms of the question.

(2) A Member is not to leave the meeting when the Presiding Member is putting any question.

#### **13.2 Voting**

Voting is dealt with in the Act and the Regulations.

#### **13.3 Majorities required for decisions**

The majorities required for decisions of the Council and committees are dealt with in the Act.

#### **13.4 Method of taking vote**

(1) In taking the vote on any motion or amendment the Presiding Member—

- (a) is to put the question, first in the affirmative, and then in the negative;
- (b) may put the question in this way as often as may be necessary to enable him or her to determine whether the affirmative or the negative has the majority of votes;
- (c) may accept a vote on the voices or may require a show of hands; and,
- (d) is, subject to this clause, to declare the result.

(2) If a Member calls for a show of hands, the result of the vote is to be determined on the count of raised hands.

(3) If a member of council or a committee specifically requests that there be recorded—

- (a) his or her vote; or,
- (b) the vote of all members present,

on a matter voted on at a meeting of the council or committee, the person presiding is to cause the vote or votes, as the case may be, to be recorded in the minutes.

(4) If a Member calls for a division—

- (a) those voting in the affirmative are to pass to the right of the Chair; and
- (b) those voting in the negative are to pass to the left of the Chair.

(5) For every division, the CEO is to record—

- (a) the name of each member who voted; and
- (b) whether he or she voted in the affirmative or negative.

## **PART 14—MINUTES OF MEETINGS**

### **14.1 Keeping of minutes**

The keeping and confirmation of minutes are dealt with in the Act.

### **14.2 Content of minutes**

(1) The content of minutes is dealt with in the Regulations.

(2) In addition to the matters required by regulation 11 of the Regulations, the minutes of a Council meeting is to include, where an application for approval is refused or the authorisation of a licence, permit or certificate is withheld or cancelled, the reasons for the decision.

### **14.3 Public inspection of unconfirmed minutes**

The public inspection of unconfirmed minutes is dealt with in the Regulations.

### **14.4 Confirmation of minutes**

(1) When minutes of an ordinary meeting of the Council are distributed for consideration prior to their confirmation at the next meeting, if a Member is dissatisfied with the accuracy of the minutes, the Member may provide the Local Government with a written copy of the alternative wording to amend the minutes no later than 7 clear working days before the next ordinary meeting of the Council.

(2) At the next ordinary meeting of the Council, the Member who provided the alternative wording shall, at the time for confirmation of minutes—

- (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.

(3) Members must not discuss items of business contained in the minutes, other than discussion as to their accuracy as a record of the proceedings.

## **PART 15—ADJOURNMENT OF MEETING**

### **15.1 Meeting may be adjourned**

The Council may adjourn any meeting—

- (a) to a later time on the same day; or
- (b) to any other time on any other day, including a time which coincides with the conclusion of another meeting or event.

### **15.2 Effect of adjournment**

Where any matter, motion, debate or meeting is adjourned under this local law—

- (a) the names of Members who have spoken on the matter prior to the adjournment are to be recorded in the minutes;
- (b) debate is to be resumed at the next meeting at the point where it was interrupted; and
- (c) the provisions of clause 8.9 [speaking twice] apply when the debate is resumed.

## **PART 16—REVOKING OR CHANGING DECISIONS**

### **16.1 Requirements to revoke or change decisions**

The requirements to revoke or change a decision made at a meeting are dealt with in regulation 10 of the Regulations.

### **16.2 Limitations on powers to revoke or change decisions**

(1) Subject to subclause (2), the Council or a committee is not to consider a motion to revoke or change a decision—

- (a) where, at the time the motion is moved or notice is given, any action has been taken under clause 16.3 to implement the decision; or
- (b) where the decision is procedural in its form or effect.

(2) The Council or a committee may consider a motion to revoke or change a decision of the kind described in subclause (1)(a) if the motion is accompanied by a written statement of the legal and financial consequences of carrying the motion.

**16.3 Implementing a decision**

(1) In this clause—

- (a) “authorisation” means a licence, permit, approval or other means of authorising a person to do anything;
- (b) “implement”, in relation to a decision, includes—
  - (i) communicate notice of the decision to a person affected by, or with an interest in, the decision; and
  - (ii) take any other action to give effect to the decision; and
- (c) “valid notice of revocation motion” means a notice of motion to revoke or change a decision that complies with the requirements of the Act, Regulations and the Local Laws and may be considered, but has not yet been considered, by the Council or a committee as the case may be.

(2) Subject to subclause (4), and unless a resolution is made under subclause (3), a decision made at a meeting is not to be implemented by the CEO or any other person until the afternoon of the first business day after the commencement of the meeting at which the decision was made.

(3) The Council or a committee may, by resolution carried at the same meeting at which a decision was made, direct the CEO or another person to take immediate action to implement the decision.

(4) A decision made at a meeting is not to be implemented by the CEO or any other person—

- (a) if, before commencing any implementation action, the CEO or that person is given a valid notice of revocation motion; and
- (b) unless and until the valid notice of revocation motion has been determined by the Council or the committee as the case may be.

(5) The CEO is to ensure that members of the public attending the meeting are informed by an appropriate notice that a decision to grant an authorisation—

- (a) is to take effect only in accordance with this clause; and
- (b) cannot be acted upon by the person who has been granted the authorisation unless and until the decision has been implemented in accordance with this clause.

**PART 17—SUSPENSION OF LOCAL LAWS****17.1 Suspension of Local Laws**

(1) A Member may at any time move that the operation of one or more of the provisions of this local law be suspended.

(2) A Member moving a motion under subclause (1) is to state the reasons for the motion but no other discussion is to take place.

(3) A motion under subclause (1) which is—

- (a) seconded; and
- (b) carried by an absolute majority,

is to suspend the operation of the clause or clauses to which the motion relates for the duration of the meeting, unless the meeting earlier resolves otherwise.

**17.2 Where Local Laws do not apply**

(1) In situations where—

- (a) one or more provisions of this local law have been suspended; or
- (b) a matter is not regulated by the Act, the Regulations or this local law,

the Presiding Member is to decide questions relating to the conduct of the meeting.

(2) The decision of the Presiding Member under subclause (1) is final, except where a motion is moved and carried under clause 11.10.

**17.3 Cases not provided for in Local Laws**

The Presiding Member is to decide questions of order, procedure, debate, or otherwise in cases where this local law, the Act or the Regulations are silent. The decision of the Presiding Member in these cases is final, except where a motion is moved and carried under clause 11.10.

**PART 18—MEETINGS OF ELECTORS****18.1 Electors’ general meetings**

Electors’ general meetings are dealt with in the Act.

**18.2 Matters for discussion at electors’ general meetings**

The matters to be discussed at electors’ general meetings are dealt with in the Regulations.

**18.3 Electors’ special meetings**

Electors’ special meetings are dealt with in the Act.

**18.4 Requests for electors’ special meetings**

Requests for electors’ special meetings are dealt with in the Regulations.

**18.5 Convening electors' meetings**

Convening electors' meetings is dealt with in the Act.

**18.6 Who presides at electors' meetings**

Who presides at electors' meetings is dealt with in the Act.

**18.7 Procedure for electors' meetings**

(1) The procedure for electors' meetings is dealt with in the Act and the Regulations.

(2) In exercising his or her discretion to determine the procedure to be followed at an electors' meeting, the Presiding Member is to have regard to this local law.

**18.8 Participation of non-electors**

A person who is not an elector of the Local Government shall not take part in any discussion at an electors' meeting unless the meeting, by resolution, permits the person do so.

**18.9 Voting at electors' meetings**

Voting at electors' meetings is dealt with in the Regulations.

**18.10 Minutes of electors' meetings**

Minutes of electors' meetings are dealt with in the Act.

**18.11 Decisions made at electors' meetings**

Decisions made at electors' meetings are dealt with in the Act.

**PART 19—ENFORCEMENT****19.1 Penalty for breach**

A person who breaches a provision of this local law commits an offence.

*Penalty:* \$1,000.00 and a daily penalty of \$100.00.

**19.2 Who can prosecute**

Who can prosecute is dealt with in the Act.

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Dated 11th day of February, 2021.

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

M. C. PAGANONI, Shire President.

K. B. WILLIAMS, Chief Executive Officer.

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## LOCAL GOVERNMENT ACT 1995

## SHIRE OF BROOMEHILL-TAMBELLUP

## LOCAL GOVERNMENT PROPERTY LOCAL LAW 2020

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Broomehill-Tambellup resolved on 11th February 2021 to make the following local law.

## PART 1—PRELIMINARY

## 1.1 Citation

This local law may be cited as the *Shire of Broomehill-Tambellup Local Government Property Local Law 2020*.

## 1.2 Definitions

In this local law unless the context otherwise requires—

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

**aircraft** has the meaning given to it in the Civil Aviation Act 1988 (Cth);

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

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

**boat** means any ship, vessel or structure capable of being used in navigation by water, however propelled or moved, and includes a jet ski;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Manager** means the person for the time being employed by the local government to control and manage a pool area or other facility which is local government property and includes the person's assistant or deputy;

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

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

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

**pool area** means any swimming and wading pools and spas and all buildings, structures, fittings, fixtures, machinery, chattels, furniture and equipment forming part of or used in connection with such swimming and wading pools and spas which are local government property;

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

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

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

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

**vehicle** includes—

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

but excludes—

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

### 1.3 Interpretation

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

### 1.4 Application

- (1) This local law applies throughout the district.
- (2) This local law is subject to any written law and law of the Commonwealth about assistance animals as defined in the *Disability Discrimination Act 1992* (Commonwealth) section 9(2).
- (3) Notwithstanding anything to the contrary in this local law, the local government may—
  - (a) hire local government property to any person; or
  - (b) enter into an agreement with any person regarding the use of any local government property.

### 1.5 Repeal

- (1) This local law repeals the *Shire of Broomehill-Tambellup Local Government Property Local Law 2008* as published in the *Government Gazette* on 23 December 2008.
- (2) Where a policy was made or adopted by the local government under or in relation to a local law repealed by this local law, then the policy is to be taken to no longer have any effect on and from the commencement day.
- (3) The Council may resolve that notwithstanding subclause (2), specified policies continue, or are to be taken to have continued, to have effect on and from the commencement day.

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

### Division 1—Determinations

#### 2.1. Determinations as to use of local government property

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

**2.2. Procedure for making a determination**

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

**2.3. Discretion to erect sign**

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

**2.4. Determination to be complied with**

A person shall comply with a determination.

**2.5. Register of determinations**

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

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

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

*Division 2—Activities which may be pursued or prohibited under a determination***2.7. Activities which may be pursued on specified local government property**

- (1) A determination may provide that specified local government property is set aside as an area on which a person may—
  - (a) bring, ride or drive an animal;
  - (b) take, ride or drive a vehicle, or a particular class of vehicle;
  - (c) fly or use a motorised model aircraft;
  - (d) use a children's playground provided that the person is under an age specified in the determination, but the determination is not to apply to a person having the charge of a person under the specified age;
  - (e) launch, beach or leave a boat;
  - (f) take or use a boat, or a particular class of boat;
  - (g) deposit refuse, rubbish or liquid waste, whether or not of particular classes, and whether or not in specified areas of that local government property;

- (h) play or practice—
  - (i) golf or archery;
  - (ii) pistol or rifle shooting, but subject to the compliance of that person with the *Firearms Act 1973*; or
  - (iii) a similar activity, specified in the determination, involving the use of a projectile which, in the opinion of the local government may cause injury or damage to a person or property;
- (i) ride a bicycle, a skateboard, rollerblades, a sandboard or a similar device; and
- (j) wear no clothing.

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

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

## **2.8. Activities which may be prohibited on specified local government property**

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

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

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

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

(3) In this clause—

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

### *Division 3—Transitional*

## **2.9. Signs taken to be determinations**

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

(2) Clause 2.5 does not apply to a sign referred to in subclause (1).

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

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

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

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

**3.3. Decision on application for permit**

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

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

- (1) Without limiting the generality of clause 3.3(1)(a), the local government may approve an application for a permit subject to conditions relating to—
  - (a) the payment of a fee;
  - (b) compliance with a standard or a policy of the local government adopted by the local government;
  - (c) the duration and commencement of the permit;
  - (d) the commencement of the permit being contingent on the happening of an event;
  - (e) the rectification, remedying or restoration of a situation or circumstance reasonably related to the application;
  - (f) the approval of another application for a permit which may be required by the local government under any written law;
  - (g) the area of the district to which the permit applies;
  - (h) where a permit is issued for an activity which will or may cause damage to local government property, the payment of a deposit or bond against such damage; and
  - (i) the obtaining of public risk insurance in an amount and on terms reasonably required by the local government.
- (2) Without limiting clause 3.3(1)(a) and subclause (1), the following paragraphs indicate the type and content of the conditions on which a permit to hire local government property may be issued—
  - (a) when fees and charges are to be paid;
  - (b) payment of a bond against possible damage or cleaning expenses or both;
  - (c) restrictions on the erection of material or external decorations;
  - (d) rules about the use of furniture, plant and effects;
  - (e) limitations on the number of persons who may attend any function in or on local government property;
  - (f) the duration of the hire;
  - (g) the right of the local government to cancel a booking during the course of an annual or seasonal booking, if the local government sees fit;

- (h) a prohibition on the sale, supply or consumption of liquor unless a liquor licence is first obtained for that purpose under the *Liquor Control Act 1988*;
- (i) whether or not the hire is for the exclusive use of the local government property;
- (j) the obtaining of a policy of insurance in the names of both the local government and the hirer, indemnifying the local government in respect of any injury to any person or any damage to any property which may occur in connection with the hire of the local government property by the hirer; and
- (k) the provision of an indemnity from the hirer, indemnifying the local government in respect of any injury to any person or any damage to any property which may occur in connection with the hire of the local government property by the hirer.

### 3.5. Imposing conditions under a policy

(1) In this clause—

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

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

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

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

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

### 3.6. Compliance with and variation of conditions

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

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

## Division 4—General

### 3.7. Agreement for building

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

### 3.8. Duration of permit

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

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

### 3.9. Renewal of permit

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

(2) The provisions of this Part shall apply to an application for the renewal of a permit as though it were an application for a permit.

### 3.10. Transfer of permit

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

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

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

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

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

### 3.11. Production of permit

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



**3.1 2. Cancellation of permit**

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

- (a) condition of the permit; or
  - (b) determination or a provision of any written law which may relate to the activity regulated by the permit.
- (2) On the cancellation of a permit the permit holder—
- (a) shall return the permit as soon as practicable to the CEO; and
  - (b) is to be taken to have forfeited any fees paid in respect of the permit.

*Division 5—When a permit is required*

**3.13. Activities needing a permit**

(1) A person shall not without a permit—

- (a) subject to subclause (3), hire local government property;
  - (b) advertise anything by any means on local government property;
  - (c) erect a structure for public amusement or for any performance, whether for gain or otherwise, on local government property;
  - (d) teach, coach or train, for profit, any person in a pool area or an indoor recreation facility which is local government property;
  - (e) plant any plant or sow any seeds on local government property;
  - (f) carry on any trading on local government property unless the trading is conducted—
    - (i) with the consent of a person who holds a permit to conduct a function, and where the trading is carried on under and in accordance with the permit; or
    - (ii) by a person who has a licence or permit to carry on trading on local government property under any written law;
  - (g) unless an employee of the local government in the course of her or his duties or on an area set aside for that purpose—
    - (i) drive or ride or take any vehicle on to local government property; or
    - (ii) park or stop any vehicle on local government property;
  - (h) conduct a function on local government property;
  - (i) charge any person for entry to local government property, unless the charge is for entry to land or a building hired by a voluntary non-profit organisation;
  - (j) light a fire on local government property except in a facility provided for that purpose;
  - (k) parachute, hang glide, abseil or base jump from or on to local government property;
  - (l) erect a building or a refuelling site on local government property;
  - (m) make any excavation on or erect or remove any fence on local government property;
  - (n) erect or install any structure above or below ground, which is local government property, for the purpose of supplying any water, power, sewer, communication, television or similar service to a person;
  - (o) depasture any horse, sheep, cattle, goat, camel, ass or mule on local government property; or
  - (p) conduct or take part in any gambling game or contest or bet, or offer to bet, publicly.
- (2) The local government may exempt a person from compliance with subclause (1) on the application of that person.
- (3) The local government may exempt specified local government property or a class of local government property from the application of subclause (1)(a).

**3.14. Permit required to camp outside a facility**

(1) In this clause—

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

(2) This clause does not apply to a facility operated by the local government.

(3) A person shall not without a permit—

- (a) camp on, lodge at or occupy any structure at night for the purpose of sleeping on local government property; or
  - (b) erect any tent, camp, hut or similar structure on local government property other than a beach shade or windbreak erected for use during the hours of daylight and which is dismantled during those hours on the same day.
- (4) The maximum period for which the local government may approve an application for a permit in respect of paragraph (a) or (b) of subclause (3) is that provided in regulation 11(2)(a) of the *Caravan Parks and Camping Grounds Regulations 1997*.

**3.15. Permit required for possession and consumption of liquor**

(1) A person, on local government property, shall not consume any liquor or have in her or his possession or under her or his control any liquor, unless—

- (a) that is permitted under the *Liquor Control Act 1988*; and
- (b) a permit has been obtained for that purpose.

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

*Division 6—Responsibilities of permit holder***3.16. Responsibilities of permit holder**

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

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

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

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

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

**4.2. Behaviour detrimental to property**

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

(2) In subclause (1)—

**‘detrimental to the property’** includes—

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

**4.3. Taking or injuring any fauna**

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

(2) In this clause—

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

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

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

*Division 2—Signs***4.4. Signs**

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

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

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

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

**PART 5—MATTERS RELATING TO PARTICULAR LOCAL GOVERNMENT PROPERTY***Division 1—Fenced or closed property***5. 1. No entry to fenced or closed local government property**

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

*Division 2—Toilet blocks and change rooms***5. 2. Only specified gender to use entry of toilet block or change room**

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

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

(2) Paragraphs (a) and (b) of subclause (1) do not apply to a child, when accompanied by a parent, guardian or caregiver, where the child is—

- (a) under the age of 8 years; or
- (b) otherwise permitted by an authorised person to use the relevant entry.

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

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

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

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

**PART 7—OBJECTIONS AND APPEALS****7.1. Application of Division 1, Part 9 of the Act**

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

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

the provisions of Division 1 of Part 9 of the Act and regulations 32A and 33 of the Regulations apply to that decision.

**PART 8—MISCELLANEOUS****8.1. Authorised person to be obeyed**

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

**8.2. Persons may be directed to leave local government property**

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

**8.3. Disposal of lost property**

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

**8.4. Liability for damage to local government property**

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

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

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

**PART 9—ENFORCEMENT***Division 1—Notices given under this local law***9.1. Offence to fail to comply with notice**

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

**9.2. Local government may undertake requirements of notice**

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

*Division 2—Offences and penalties**Subdivision 1—General***9.3. Offences and general penalty**

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

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

*Subdivision 2—Infringement notices and modified penalties***9.4. Prescribed offences**

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

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

**9.5. Form of notices**

(1) For the purposes of this local law—

(a) where a vehicle is involved in the commission of an offence, the form of the notice referred to in section 9.13 of the Act is that of Form 1 in Schedule 1 of the Regulations;

(b) the form of the infringement notice given under section 9.16 of the Act is that of Form 2 in Schedule 1 of the Regulations; and

(a) the form of the notice referred to in section 9.20 of the Act is that of Form 3 in Schedule 1 of the Regulations.

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

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

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

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

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

*Schedule 1*

## PRESCRIBED OFFENCES

[Clause 9.4]

Item	Clause	Description	Modified Penalty \$
1	2.4	Failure to comply with determination	125
2	3.6	Failure to comply with conditions of permit	125
3	3.13(1)	Failure to obtain a permit	125
4	3.14(3)	Failure to obtain permit to camp outside a facility	125
5	3.15(1)	Failure to obtain permit for liquor	125
6	3.16	Failure of permit holder to comply with responsibilities	125
7	4.2(1)	Behaviour detrimental to property	125
8	4.4(1)	Failure to comply with sign on local government property	125
9	5.1	Unauthorised entry to fenced or closed local government property	125
10	5.2	Gender not specified using entry of toilet block or change room	125
11	6.1(1)	Unauthorised entry to function on local government property	125
12	9.1	Failure to comply with notice	250

***Schedule 2*****DETERMINATIONS**

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

**PART 1—PRELIMINARY****Definitions**

1.1 In these determinations unless the context otherwise requires—

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

**Interpretation**

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

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Dated 11th day of February, 2021.

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

M. C. PAGANONI, Shire President.

K. B. WILLIAMS, Chief Executive Officer.

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## LOCAL GOVERNMENT ACT 1995

## SHIRE OF BROOMEHILL-TAMBELLUP

REMOVAL OF REFUSE, RUBBISH AND DISUSED MATERIALS  
LOCAL LAW 2020

Under the powers conferred by the *Local Government Act 1995* and all other powers enabling it, the Shire of Broomehill-Tambellup resolved on 11th February 2021 to make the following local law.

**1. Citation**

This local law may be cited as the *Shire of Broomehill-Tambellup Removal of Refuse, Rubbish and Disused Materials Local Law 2020*.

**2. Commencement**

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

**3. Repeal**

The following local laws are repealed—

*Shire of Broomehill-Tambellup Removal of Refuse, Rubbish and Disused Material Local Law 2012* published in the *Government Gazette* on 8 March 2013

**4. Interpretation**

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

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

**district** means the district of the Shire of Broomehill-Tambellup;

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

**refuse, rubbish or disused material** includes—

- (a) any material which is abandoned or unwanted by its owner or the person in possession of it;
- (b) any material which is not being used for its original intended purpose and which has been deposited or stored upon any property for no current purpose other than the deposit storage;
- (c) any motor vehicle, motor vehicle part or machinery which has been deposited or stored upon any property for the purpose of dismantling or breaking up;
- (d) any wood, timber, lumber; or cuttings, logs or remnants of trees; or chopped, split or chipped wood, deposited, stored, located or placed on property;

and any material may be refuse, rubbish or disused material notwithstanding that it may have a commercial value to its owner or the person in possession of it or the owner or occupier of any property upon which it is deposited or stored;

**served** has the same meaning as defined in section 75 and 76 of the *Interpretation Act 1984*;

**vacant property** means property on which no building exists or on which a building exists but any such building is no longer utilized for any business, commercial or residential purposes.

(2) Where in this local law a duty of liability is imposed on an owner or occupier of land, the duty or liability is imposed jointly and severally on each of the owners or occupiers.

**5. Clearing of refuse, rubbish or disused material**

(1) If there is—

- (a) on any vacant property within the district, any refuse, rubbish or disused material or any overgrown vegetation, trees, scrub or undergrowth; or
- (b) on any property within the district other than vacant property any refuse, rubbish or disused material or any overgrown vegetation, trees, scrub or undergrowth which, in the opinion of the local government—
  - (i) is likely to adversely affect the health, comfort or convenience of the inhabitants of that property or any adjoining property; or

- (ii) results in that property having an appearance which does not conform with the general appearance of other property in the locality,

the local government may cause a notice under the hand of the Chief Executive Officer to be served on the owner or occupier of that property requiring that owner or occupier as the case may be to clear the property of the overgrown vegetation, trees, scrub or undergrowth or refuse, rubbish or disused material specified in the notice within the time specified in the notice.

(2) Any owner or occupier who is served with a notice under clause (1) of this local law and who fails to comply with the terms of the notice commits an offence.

*Penalty—*

- (a) five thousand dollars (\$5,000); and
- (b) a daily penalty of five hundred dollars (\$500).

(3) Entry into private property—

- (1) Where an owner or occupier who is served with a notice under clause (1) of this local law fails to comply with the terms of the notice, the local government is authorised—
  - (a) to clear or remove from the property the overgrown vegetation, trees, scrub or undergrowth or refuse, rubbish or disused material specified in the Notice, and dispose of the same, without payment of any compensation; and
  - (b) to recover in a court of competent jurisdiction the amount of the local government's expenses in doing so from the owner or occupier who was served the notice.

(2) Power of entry into private property

This local law is subject to sections 3.25, 3.27 and Schedules 3.1 and 3.2 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, Subdivision 3 of the Act.

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Dated 11th day of February, 2021.

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

M. C. PAGANONI, Shire President.

K. B. WILLIAMS, Chief Executive Officer.

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**LOCAL GOVERNMENT ACT 1995****SHIRE OF BROOMEHILL-TAMBELLUP****REPEAL LOCAL LAW 2020**

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Broomehill-Tambellup resolved on 11th February 2021 to make the Shire of Broomehill-Tambellup Repeal Local Law 2020.

**1 Citation**

This local law may be cited as the *Shire of Broomehill-Tambellup Repeal Local Law 2020*.

**2 Commencement**

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

**3 Repeal**

The *Shire of Broomehill-Tambellup Pest Plant Local Law 2008* as published in the *Government Gazette* on 23 December 2008 is repealed.

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Dated 11th day of February, 2021.

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

M. C. PAGANONI, Shire President.

K. B. WILLIAMS, Chief Executive Officer.

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**LOCAL GOVERNMENT ACT 1995  
WASTE AVOIDANCE AND RECOVERY ACT 2007**

SHIRE OF BROOMEHILL-TAMBELLUP

**WASTE LOCAL LAW 2020**

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**LOCAL GOVERNMENT ACT 1995**  
**WASTE AVOIDANCE AND RECOVERY ACT 2007**

SHIRE OF BROOMEHILL-TAMBELLUP

**WASTE LOCAL LAW 2020**

Under the powers conferred on it by the *Waste Avoidance and Resource Recovery Act 2007*, the *Local Government Act 1995* and under all other enabling powers, the Council of the Shire of Broomehill-Tambellup resolved on 11th February 2021 to make the following local law.

**PART 1—Preliminary**

**1.1 Short title**

This is the Shire of Broomehill-Tambellup Waste Local 2020

**1.2 Commencement**

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

**1.3 Application**

This local law applies throughout the district.

**1.4 Repeal**

This local law repeals the *Shire of Broomehill-Tambellup Waste Services Local Law 2009* as published in the *Government Gazette* on 7 July 2009 and as amended in the *Government Gazette* on 12 October 2010.

**1.5 Meaning of terms used in this local law**

(1) In this local law—

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

**collectable waste** means local government waste that is not—

- (a) liquid refuse;
- (b) liquid waste; or
- (c) non-collectable waste;

**collectable waste receptacle** means a receptacle for the deposit and collection of collectable waste that is—

- (a) a recycling waste receptacle;
- (b) a general waste receptacle; or
- (c) an organic waste receptacle;

**collection**, when used in relation to a receptacle, means the collection and removal of collectable waste from the receptacle by the local government or its contractor;

**collection day** means the day determined by the local government for the collection of collectable waste in the district or a part of the district;

**collection time** means the time on the collection day determined by the local government for the collection of collectable waste in the district or a part of the district;

**costs** of the local government include administrative costs;

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

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

**general waste receptacle** means a receptacle for the deposit and collection of collectable waste that is not recycling waste;

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

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

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

**local government waste** has the same meaning as in the WARR Act;

**non-collectable waste** has the meaning set out in Schedule 1;

**occupier** in relation to premises, means any or all of the following—

- (a) a person by whom or on whose behalf the premises are actually occupied; or
- (b) a person having the management or control of the premises;

**organic waste** means waste that decomposes readily, such as garden waste or food waste;

**organic waste receptacle** means a receptacle for the deposit and collection of organic waste;

**owner** has the same meaning as in the LG Act;

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

**receptacle**, means a receptacle—

- (a) that has been supplied for the use of the premises by the local government or its contractor, or which has otherwise been approved by the local government; and
- (b) the waste from which is collected and removed from the premises by the local government or its contractor;

**recycling waste receptacle** means a receptacle for the deposit and collection of recycling waste;

**recycling waste** means—

- (a) paper and cardboard;
- (b) plastic containers comprised of polyethylene terephthalate or high density polyethylene;
- (c) glass containers;
- (d) steel containers;
- (e) aluminium containers;
- (f) liquid paper board; and
- (g) any other waste determined by the local government to be recycling waste;

**specified** means specified by the local government or an authorised person, as the case may be;

**street alignment** means the boundary between the land comprising a street and the land that abuts the street;

**WARR Act** means the *Waste Avoidance and Resource Recovery Act 2007*;

**WARR Regulations** means the *Waste Avoidance and Resource Recovery Regulations 2008*;

**waste** has the same meaning as in the WARR Act;

**waste facility** means a waste facility, as defined in the WARR Act, that is operated by the local government; and

**waste service** has the same meaning as in the WARR Act.

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

### 1.6 Local public notice of determinations

Where, under this local law, the local government has a power to determine a matter—

- (a) local public notice, under section 1.7 of the LG Act, must be given of the matter determined;
- (b) the determination becomes effective only after local public notice has been given;
- (c) the determination remains in force for the period of one year after the date that local public notice has been given under subclause (a);
- (d) after the period referred to in subclause (c), the determination continues in force only if, and for so long as, it is the subject of local public notice, given annually, under section 1.7 of the LG Act; and
- (e) the determination must be recorded in a publicly accessible register of determinations that must be maintained by the local government.

### 1.7 Rates, fees and charges

The local government's powers to impose rates, fees and charges in relation to waste services are set out in sections 66 to 68 of the WARR Act and sections 6.16 and 6.17 of the LG Act.

### 1.8 Power to provide waste services

The local government's power to provide, or enter into a contract for the provision of, waste services is dealt with in section 50 of the WARR Act.

## PART 2—LOCAL GOVERNMENT WASTE

### 2.1 Supply of receptacles

(1) The local government is to supply, for the use of each premises that are, or are capable of being, occupied or used for residential purposes, one or more receptacles for the collection and removal, from those premises, of collectable waste.

- (2) The owner of premises to which subclause (1) applies must—
- (a) ensure that the fee or charge (if any) imposed by the local government in relation to each receptacle is paid to the local government; and
  - (b) ensure that each receptacle is used, in respect of those premises, in accordance with this local law.

## **2.2 Deposit of waste in receptacles**

- (1) An owner or occupier of premises must not deposit or permit to be deposited in a receptacle any non-collectable waste.
- (2) A person must not deposit waste in a receptacle that has been provided for the use of other premises without the consent of the owner or occupier of those premises.

## **2.3 General waste receptacles**

- (1) An owner or occupier of premises must not deposit or permit to be deposited in a general waste receptacle—
- (a) where the receptacle has a capacity of 240 litres—more than 70 kilograms of collectable waste; or
  - (b) where the receptacle has any other capacity—more than the weight determined by the local government.
- (2) Where the local government supplies recycling waste receptacles, an owner or occupier of premises must not deposit or permit to be deposited in a general waste receptacle any recycling waste.
- (3) Where the local government supplies organic waste receptacles, an owner or occupier of premises must not deposit or permit to be deposited in a general waste receptacle any organic waste.

## **2.4 Recycling waste receptacles**

An owner or occupier of premises must not deposit or permit to be deposited in a recycling waste receptacle—

- (a) anything other than the particular type of recycling waste for which that receptacle was provided by the local government for those premises;
- (b) where the receptacle has a capacity of 240 litres— more than 70 kilograms of recycling waste; or
- (c) where the receptacle has any other capacity—more than the weight determined by the local government.

## **2.5 Organic waste receptacles**

An owner or occupier of premises must not deposit or permit to be deposited in an organic waste receptacle—

- (a) anything other than the particular type of organic waste for which that receptacle was provided by the local government for those premises;
- (b) where the receptacle has a capacity of 240 litres—more than 70 kilograms of organic waste; or
- (c) where the receptacle has any other capacity—more than the weight determined by the local government.

## **2.6 Direction to place or remove a receptacle**

- (1) The local government or an authorised person may give a written direction to an owner or occupier of specified premises—
- (a) to place a receptacle in respect of those premises for collection; or
  - (b) to remove a receptacle in respect of those premises after collection.
- (2) The direction under subclause (1) may specify when the placement or removal is to occur, or where the receptacle is to be placed, or both.
- (3) An owner or occupier of premises must comply with a direction given under this clause.

## **2.7 Duties of owner or occupier**

An owner or occupier of premises must—

- (a) except for a reasonable period before and after collection time, keep each receptacle in a storage space or area that is behind the street alignment;
- (b) take reasonable steps, if placing a receptacle for collection on the verge adjoining the premises, or other area as determined by the local government, ensure that, within a reasonable period before collection time, each receptacle is—
  - (i) within 1 metre of the carriageway;
  - (ii) placed so that it does not unduly obstruct any footpath, cycle way, right-of-way or carriageway; and
  - (iii) facing squarely to the edge of and opening towards the carriageway,or in such other position as is approved in writing by the local government or an authorised person;
- (c) take reasonable steps to ensure that the premises are provided with an adequate number of receptacles; and
- (d) if the receptacle is lost, stolen, damaged or defective, notify the local government, as soon as practicable, after the event.

**2.8 Exemption**

- (1) An owner or occupier of premises may apply in writing to the local government for an exemption from compliance with the requirements of clause 2.7(a) or (b).
- (2) The local government or an authorised person may grant, with or without conditions, or refuse an application for exemption from compliance under this clause.
- (3) An exemption granted under this clause must state—
  - (a) the premises to which the exemption applies;
  - (b) the period during which the exemption applies; and
  - (c) any conditions imposed by the local government or the authorised person.
- (4) An exemption granted under this clause ceases to apply—
  - (a) if the local government decides, on reasonable grounds, that there has been a failure to comply with a condition of the exemption; and
  - (b) from the date that the local government informs the owner or occupier of its decision under clause 2.8(4)(a).

**2.9 Damaging or removing receptacles**

A person, other than the local government or its contractor, must not—

- (a) damage, destroy or interfere with a receptacle; or
- (b) except as permitted by this local law or as authorised by the local government or an authorised person, remove a receptacle from any premises to which it was delivered by the local government or its contractor.

**2.10 Verge collections**

- (1) Where the local government has advertised a verge waste collection (such as a green waste, or a bulk waste, verge collection) a person, unless with and in accordance with the approval of the local government or an authorised person—
  - (a) must deposit waste only during the period of time, and in accordance with other terms and conditions, as advertised by the local government in relation to that verge waste collection; and
  - (b) must otherwise comply with those terms and conditions.
- (2) Where waste has been deposited on a verge for a verge waste collection, a person must not remove any of that waste for a commercial purpose but may remove it for any other purpose.
- (3) Except where waste is lawfully removed from a verge under this clause, a person must not disassemble or tamper with any waste deposited on a verge for a verge waste collection so as to increase the risk of harm to any person.
- (4) Clause 2.10(2) does not apply to the local government or a person engaged or contracted by the local government in relation to the verge waste collection.

**PART 3—GENERAL DUTIES****3.1 Duties of an owner or occupier**

An owner or occupier of premises must—

- (a) take reasonable steps to ensure that a sufficient number of receptacles are provided to contain all waste which accumulates or may accumulate in or from the premises;
- (b) ensure that each receptacle is kept in good condition and repair;
- (c) take all reasonable steps to—
  - (i) prevent fly breeding and keep each receptacle free of flies, maggots, cockroaches, rodents and other vectors of disease;
  - (ii) prevent the emission of offensive or noxious odours from each receptacle; and
  - (iii) ensure that each receptacle does not cause a nuisance to an occupier of adjoining premises; and
- (d) whenever directed to do so by the local government or an authorised person, thoroughly clean, disinfect, deodorise and apply a residual insecticide to each receptacle.

**3.2 Removal of waste from premises**

- (1) A person must not remove any waste from premises unless that person is—
  - (a) the owner or occupier of the premises;
  - (b) authorised to do so by the owner or occupier of the premises; or
  - (c) authorised in writing to do so by the local government or an authorised person.
- (2) A person must not remove any waste from a receptacle without the approval of—
  - (a) the local government or an authorised person; or
  - (b) the owner or occupier of the premises at which the receptacle is ordinarily kept.



**3.3 Receptacles and containers for public use**

A person must not, without the approval of the local government or an authorised person—

- (a) deposit household, commercial or other waste from any premises on or into; or
- (b) remove any waste from,

a receptacle provided for the use of the general public in a public place.

**PART 4—OPERATION OF WASTE FACILITIES****4.1 Operation of this Part**

This Part applies to a person who enters a waste facility.

**4.2 Hours of operation**

The local government may from time to time determine the hours of operation of a waste facility.

**4.3 Signs and directions**

(1) The local government or an authorised person may regulate the use of a waste facility—

- (a) by means of a sign; or
- (b) by giving a direction to a person within a waste facility.

(2) A person within a waste facility must comply with a sign or direction under subclause (1).

(3) The local government or an authorised person may direct a person who commits, or is reasonably suspected by the local government or the authorised person of having committed, an offence under this clause to leave the waste facility immediately.

(4) A person must comply with a direction under subclause (3).

**4.4 Fees and charges**

(1) Unless subclause (3) applies, a person must, on or before entering a waste facility or on demand by the local government or an authorised person, pay the fee or charge as assessed by an authorised person.

(2) An authorised person may assess the fee or charge in respect of a particular load of waste at a rate that applies to any part of that load, even if that rate is higher than the rate that would apply to any other part of the load.

(3) Subclause (1) does not apply—

- (a) to a person who disposes of waste in accordance with the terms of—
  - (i) a credit arrangement with the local government; or
  - (ii) any other arrangement with the local government to pay the fee or charge at a different time or in a different manner; and
- (b) to the deposit of waste owned by the local government, or in the possession of an employee on behalf of the local government.

**4.5 Depositing waste**

(1) A person must not deposit waste at a waste facility other than—

- (a) at a location determined by a sign and in accordance with the sign; and
- (b) in accordance with the direction of an authorised person.

(2) The local government may determine the classification of any waste that may be deposited at a waste facility.

**4.6 Prohibited activities**

(1) Unless authorised by the local government, a person must not—

- (a) remove any waste or any other thing from a waste facility;
- (b) deposit at a waste facility that is a landfill site any waste that is toxic, poisonous or hazardous, or the depositing of which is regulated or prohibited by any written law;
- (c) light a fire in a waste facility;
- (d) remove, damage or otherwise interfere with any flora in a waste facility;
- (e) remove, injure or otherwise interfere with any fauna in a waste facility; or
- (f) damage, deface or destroy any building, equipment, plant or property within a waste facility.

(2) A person must not act in an abusive or threatening manner towards any person using, or engaged in the management or operation of, a waste facility.

**PART 5—ENFORCEMENT****5.1 Objection and appeal rights**

Division 1 of Part 9 of the LG Act applies to a decision under this local law to grant, renew, vary or cancel—

- (a) an approval under clause 2.7(b);

- (b) an exemption under clause 2.8(2);
- (c) an approval under clause 2.9(b);
- (d) an approval under clause 2.10(1);
- (e) an authorisation under clause 3.2(1)(c);
- (f) an approval under clause 3.2(2); and
- (g) an approval under clause 3.3.

### 5.2 Offences and general penalty

- (1) A person who fails to do anything required or directed to be done under this local law, or who does anything which under this local law a person is prohibited from doing, commits an offence.
- (2) A 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 \$500 in respect of each day or part of a day during which the offence has continued.

### 5.3 Other costs and expenses

- (1) A person who is convicted of an offence under this local law is to be liable, in addition to any penalty imposed under clause 5.2, to pay to the local government the costs and expenses incurred by the local government in taking remedial action such as—
  - (a) removing and lawfully disposing of toxic, hazardous or poisonous waste; or
  - (b) making good any damage caused to a waste facility.
- (2) The costs and expenses incurred by the local government are to be recoverable, as a debt due to the local government, in a court of competent civil jurisdiction.

### 5.4 Prescribed offences

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

### 5.5 Form of notices

- (1) Where a vehicle is involved in the commission of an offence, the form of the notice referred to in section 9.13 of the LG Act is that of Form 1 in Schedule 1 of the LG Regulations.
- (2) The form of the infringement notice given under section 9.16 of the LG Act is that of Form 2 in Schedule 1 of the LG Regulations.
- (3) The form of the infringement withdrawal notice given under section 9.20 of the LG Act is that of Form 3 in Schedule 1 of the LG Regulations.

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## Schedule 1

### MEANING OF 'NON-COLLECTABLE WASTE'

[Clause 1.5(1)]

**non-collectable waste** means—

- (a) hot or burning material;
  - (b) household hazardous waste, including paint, acids, alkalis, fire extinguishers, solvents, pesticides, oils, gas cylinders, batteries, chemicals and heavy metals;
  - (c) any other hazardous material, such as radioactive waste;
  - (d) any explosive material, such as flares or ammunition;
  - (e) electrical and electronic equipment;
  - (f) hospital, medical, veterinary, laboratory or pathological substances;
  - (g) construction or demolition waste;
  - (h) sewage;
  - (i) 'controlled waste' for the purposes of the *Environmental Protection (Controlled Waste) Regulations 2004*;
  - (j) any object that is greater in length, width, or breadth than the corresponding dimension of the receptacle or that will not allow the lid of the receptacle to be tightly closed;
  - (k) waste that is or is likely to become offensive or a nuisance, or give off an offensive or noxious odour, or to attract flies or cause fly breeding unless it is first wrapped in non-absorbent or impervious material or placed in a sealed impervious and leak-proof container; and
  - (l) any other waste determined by the local government to be non-collectable waste.
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**Schedule 2**  
**PRESCRIBED OFFENCES**

<b>Item No.</b>	<b>Clause No.</b>	<b>Description</b>	<b>Modified Penalty \$</b>
1	2.1(2)(a)	Failing to pay fee or charge	\$350
2	2.1(2)(b)	Failing to ensure lawful use of receptacle	\$350
3	2.2(1)	Depositing non-collectable waste in a receptacle	\$350
4	2.2(2)	Depositing waste in another receptacle without consent	\$350
5	2.3(1)	Exceeding weight capacity of a general waste receptacle	\$350
6	2.3(2) and (3)	Depositing unauthorised waste in a general waste receptacle	\$350
7	2.4(a)	Depositing unauthorised waste in a recycling waste receptacle	\$350
8	2.4(b) and (c)	Exceeding weight capacity of a recycling waste receptacle	\$250
9	2.5(a)	Depositing unauthorised waste in an organic waste receptacle	\$350
10	2.5(b) and (c)	Exceeding weight capacity of an organic waste receptacle	\$350
11	2.6(3)	Failing to comply with a direction concerning placement or removal of a receptacle	\$250
12	2.7(a)	Failing to keep a receptacle in the required location	\$250
13	2.7(b)	Failing to place a receptacle for collection in a lawful position	\$250
14	2.7(c)	Failing to provide a sufficient number of receptacles	\$250
15	2.7(d)	Failing to notify of a lost, stolen, damaged or defective receptacle	\$50
16	2.9(a)	Damaging, destroying or interfering with a receptacle	\$400
17	2.9(b)	Removing a receptacle from premises	\$400
18	2.10(1)	Failing to comply with a term or condition of verge waste collection	\$400
19	2.10(2)	Removing waste for commercial purposes	\$350
20	2.10(3)	Disassembling or leaving in disarray waste deposited for collection	\$250
21	3.1(a)	Failing to provide a sufficient number of receptacles	\$250
22	3.1(b)	Failing to keep a receptacle clean and in a good condition and repair	\$250
23	3.1(c)(i)	Failing to prevent fly breeding and vectors of disease in a receptacle	\$350
24	3.1(c)(ii)	Failing to prevent the emission of offensive odours from a receptacle	\$350
25	3.1(c)(iii)	Allowing a receptacle to cause a nuisance	\$350
26	3.1(d)	Failing to comply with a direction to clean, disinfect or deodorise receptacle	\$300
27	3.2(1)	Unauthorised removal of waste from premises	\$250
28	3.2(2)	Removing waste from a receptacle without approval	\$250
29	4.3(2)	Failing to comply with a sign or direction	\$500
30	4.3(4)	Failing to comply with a direction to leave	\$500
31	4.4(1)	Disposing waste without payment of fee or charge	\$500
32	4.5(1)	Depositing waste contrary to sign or direction	\$500
33	4.6(1)(a)	Removing waste without authority in a waste facility	\$250
34	4.6(1)(b)	Depositing toxic, poisonous or hazardous waste at a waste facility	\$500
35	4.6(1)(c)	Lighting a fire in a waste facility	\$300
36	4.6(1)(d)	Removing or interfering with any flora in a waste facility	\$300

Item No.	Clause No.	Description	Modified Penalty \$
37	4.6(1)(e)	Removing or interfering with any fauna without approval in a waste facility	\$300
38	4.6(1)(f)	Damaging, defacing or destroying any building, equipment, plant or property within a waste facility	\$500
39	4.6(2)	Acting in an abusive or threatening manner	\$300

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Dated this 11th day of February, 2021.

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

M. C. PAGANONI, Shire President.

K. B. WILLIAMS, Chief Executive Officer.

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Consented to—

M. ROWE, Chief Executive Officer  
Department of Water and Environmental Regulation.

Dated this 28th day of July, 2020.

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