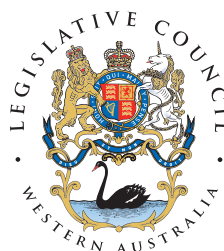


**40TH PARLIAMENT**



## **Report 14**

### **JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION**

*City of Kalgoorlie-Boulder Activities on Thoroughfares and  
Trading in Thoroughfares and Public Places Amendment Local  
Law 2018 and City of Kalgoorlie-Boulder Local Government  
Property Amendment Local Law 2018*

---

Presented by  
Ms Emily Hamilton MLA (Chair)

and

Hon Robin Chapple MLC (Deputy Chair)

October 2018

## **Joint Standing Committee on Delegated Legislation**

### **Members as at the time of this inquiry:**

Ms Emily Hamilton MLA (Chair)

Mr Ian Blayney MLA

Mrs Robyn Clarke MLA

Dr David Honey MLA

Hon Robin Chapple MLC (Deputy Chair)

Hon Kyle McGinn MLC

Hon Martin Pritchard MLC

Hon Charles Smith MLC

### **Staff as at the time of this inquiry:**

Ms Kimberley Ould (Advisory Officer)

Ms Clair Siva (Committee Clerk)

### **Address:**

Parliament House

4 Harvest Terrace, West Perth WA 6005

Telephone: 08 9222 7300

Email: [lcco@parliament.wa.gov.au](mailto:lcco@parliament.wa.gov.au)

Website: [www.parliament.wa.gov.au](http://www.parliament.wa.gov.au)

**ISBN 978-1-925578-52-2**



# CONTENTS

---

<b>Executive summary .....</b>	<b>i</b>
<b>1 Reference and procedure.....</b>	<b>1</b>
<b>2 Statutory procedure for making a local law.....</b>	<b>1</b>
<b>3 Scrutiny of the Amendment Local Laws.....</b>	<b>2</b>
<b>4 Was there substantial compliance with section 3.12 of the <i>Local Government Act 1995</i>? .....</b>	<b>2</b>
<b>5 Committee comment on Terms of Reference issues.....</b>	<b>3</b>
<b>6 Summary of the amendments .....</b>	<b>3</b>
<i>Amendments to the City of Kalgoorlie-Boulder Activities on Thoroughfares and Trading in Thoroughfares and Public Places Local Law 2000.....</i>	<i>3</i>
<i>Amendments to the City of Kalgoorlie-Boulder Local Government Property Local Law 2010..</i>	<i>5</i>
<b>7 Committee Terms of Reference .....</b>	<b>6</b>
Term of Reference 10.6(a) — within power .....	6
Term of Reference 10.6(d) — matter appropriate for subsidiary legislation.....	9
<b>8 Application of Committee terms of reference to specific clauses of the Amendment Local Laws.....</b>	<b>10</b>
‘Annoy, molest or obstruct’ any other person.....	10
‘Indecent act’ .....	11
‘Solicit money’ .....	12
Other drafting issues .....	13
<b>9 Conclusion.....</b>	<b>13</b>
<b>Appendix 1 Amendment Local Laws.....</b>	<b>14</b>
<b>Appendix 2 Thoroughfares and Public Places Principal Local Law .....</b>	<b>20</b>
<b>Appendix 3 Local Government Property Principal Local Law .....</b>	<b>42</b>
<b>Appendix 4 Extracts from the <i>Local Government Act 1995</i>.....</b>	<b>60</b>
<b>GLOSSARY .....</b>	<b>62</b>

## EXECUTIVE SUMMARY

---

- 1 This report outlines the consideration by the Joint Standing Committee on Delegated Legislation (Committee) of the:
  - *City of Kalgoorlie-Boulder Activities on Thoroughfares and Trading in Thoroughfares and Public Places Amendment Local Law 2018*
  - *City of Kalgoorlie-Boulder Local Government Property Amendment Local Law 2018*(together referred to as the Amendment Local Laws).
- 2 The Amendment Local Laws amend the *City of Kalgoorlie-Boulder Activities on Thoroughfares and Trading in Thoroughfares and Public Places Local Law 2000* and the *City of Kalgoorlie-Boulder Local Government Property Local Law 2010* to:
  - prohibit certain anti-social activities on thoroughfares, public places and local government property
  - require a permit for certain activities on thoroughfares, public places and local government property
  - increase the modified penalties applicable to breaches of the local laws.
- 3 The Committee found:
  - the City of Kalgoorlie-Boulder (City) did not comply, or substantially comply, with the local law-making procedure in section 3.12 of the *Local Government Act 1995* (LGA) in the making of the Amendment Local Laws
  - the Amendment Local Laws were therefore not within power of section 3.5 of the LGA.
- 4 The Amendment Local Laws are therefore invalid and offend the Committee's Term of Reference 10.6(a) because they are not within power of the enabling Act.
- 5 Accordingly, the Committee recommends that the Amendment Local Laws be disallowed.
- 6 The Committee has various concerns regarding the content of the Amendment Local Laws, which have been outlined in this report for the information of the Parliament and the City. This information will assist the City in the event that it chooses to re-make the Amendment Local Laws following the correct statutory procedure.
- 7 The Committee's concerns relate to the following prohibitions in the Amendment Local Laws:
  - 'annoy, molest or obstruct any other person' in a public place or on local government property
  - commit an 'indecent act' in a public place or on local government property
  - without a permit, 'solicit money from a member of the public'
  - destroy, damage, alter, mark, deface or remove any property or thing in or on a public place
  - without a permit, 'place or cause to be placed any furniture in or on local government property'.

## Recommendation

The recommendation appears in the text at the page number indicated:

### RECOMMENDATION 1

Page 2

The *City of Kalgoorlie-Boulder Activities on Thoroughfares and Trading in Thoroughfares and Public Places Amendment Local Law 2018* and the *City of Kalgoorlie-Boulder Local Government Property Amendment Local Law 2018* gazetted on 4 May 2018 be disallowed.

# 1 Reference and procedure

- 1.1 The *City of Kalgoorlie-Boulder Activities on Thoroughfares and Trading in Thoroughfares and Public Places Amendment Local Law 2018* (Thoroughfares and Public Places Amendment Local Law) and the *City of Kalgoorlie-Boulder Local Government Property Amendment Local Law 2018* (Local Government Property Amendment Local Law) (together referred to as the Amendment Local Laws) were made on 23 April 2018 and published in the Government Gazette on 4 May 2018 (Appendix 1).
- 1.2 The Amendment Local Laws amend the:
- *City of Kalgoorlie-Boulder Activities on Thoroughfares and Trading in Thoroughfares and Public Places Local Law 2000* (Thoroughfares and Public Places Principal Local Law) (Appendix 2)
  - and
  - *City of Kalgoorlie-Boulder Local Government Property Local Law 2010* (Local Government Property Principal Local Law). (Appendix 3)
- 1.3 Upon gazettal, the Amendment Local Laws stood referred to the Joint Standing Committee on Delegated Legislation (Committee).<sup>1</sup> On 8 May 2018, the Amendment Local Laws were tabled in the Parliament and became subject to disallowance.

# 2 Statutory procedure for making a local law

- 2.1 Local governments make local laws under delegated authority as set out in section 3.5(1) of the *Local Government Act 1995* (LGA) (see Appendix 4).
- 2.2 Section 3.12 of the LGA (see Appendix 4) sets out the mandatory procedural steps necessary for a local government to make a local law.
- 2.3 These steps include section 3.12(3)(b), which requires the local government to give a copy of the proposed local law and a copy of the Statewide public notice<sup>2</sup> to the Minister for Local Government (Minister), 'as soon as' the Statewide public notice is given.<sup>3</sup>
- 2.4 The Committee is of the view that:
- where a local government has failed to comply with the mandatory sequential procedure set out in section 3.12 of the LGA
  - and
  - the failure cannot be excused by reason of there having been 'substantial compliance' with the procedure for the purposes of section 3.12(2A) of the LGA,
- the local law is invalidly made and not within power.
- 2.5 The Committee's position is well established and documented in previous reports.<sup>4</sup>

---

<sup>1</sup> Committee Term of Reference 10.5: *Standing Orders of the Legislative Council*, Schedule 1, cl 10.5.

<sup>2</sup> 'Statewide public notice' is defined in section 1.8 of the LGA.

<sup>3</sup> As noted in paragraph 4.2, in the Committee's view the purpose of section 3.12(3)(b) is to enable the Minister and the Department of Local Government, Sport and Cultural Industries, as key stakeholders in the making of local laws, to have the opportunity to comment on local laws before they are made.

<sup>4</sup> Western Australia, Legislative Council, Joint Standing Committee on Delegated Legislation, Report 11, *Shire of Broome Parking and Parking Facilities Amendment Local Law (2) 2017*, May 2018, p 1, n 4.

### 3 Scrutiny of the Amendment Local Laws

- 3.1 The Committee first scrutinised the Amendment Local Laws on 27 June 2018. The information provided by the City of Kalgoorlie-Boulder (City) in the *Statutory Procedures Checklist* did not include the date upon which copies of the proposed Amendment Local Laws were provided to the Minister in accordance with section 3.12(3)(b) of the LGA.
- 3.2 On 25 July 2018, the City advised the Committee that it had no record of the Minister being provided with a copy of the proposed local laws until 26 April 2018, three days after the Amendment Local Laws were made.
- 3.3 The Department of Local Government, Sport and Cultural Industries (Department) confirmed that the Minister was not provided with copies of the proposed Amendment Local Laws until 26 April 2018.
- 3.4 The Department advised the Committee that, following receipt of the 'proposed' Amendment Local Laws, it provided comments to the City, raising minor formatting issues and a cross-referencing issue.

### 4 Was there substantial compliance with section 3.12 of the *Local Government Act 1995*?

- 4.1 Section 3.12(2A) of the LGA excuses deviations from the section 3.12 procedure where there has been 'substantial compliance' with the procedure.<sup>5</sup> The Committee considered whether the actions taken by the City constituted substantial compliance with the procedure. In the Committee's view, they did not.
- 4.2 As the Minister was not notified of the proposed Amendment Local Laws until after they were made, he and his department lost the opportunity to be consulted and to comment on the significant changes to the City's local laws before the changes were made. The Minister is a key stakeholder in the making of any local law and, in the Committee's view, must always be consulted.
- 4.3 The Committee concluded:
- consultation with the Minister is a vital step in the local law-making procedure
  - as a general rule, it is not possible to substantially comply with the procedure set out in section 3.12 of the LGA if the requirements of section 3.12(3)(b) are not satisfied before a local law is made.
- 4.4 This position was noted in a previous report of the Committee in May 2018.<sup>6</sup>
- 4.5 The Committee makes the following recommendation:

#### RECOMMENDATION 1

The *City of Kalgoorlie-Boulder Activities on Thoroughfares and Trading in Thoroughfares and Public Places Amendment Local Law 2018* and the *City of Kalgoorlie-Boulder Local Government Property Amendment Local Law 2018* gazetted on 4 May 2018 be disallowed.

<sup>5</sup> See Appendix 4.

<sup>6</sup> Western Australia, Legislative Council, Joint Standing Committee on Delegated Legislation, Report 11, *Shire of Broome Parking and Parking Facilities Amendment Local Law (2) 2017*, May 2018, p 2.



## 5 Committee comment on Terms of Reference issues

- 5.1 The Committee has concerns that various provisions of the Amendment Local Laws would, even if validly made, contravene its Terms of Reference.<sup>7</sup>
- 5.2 Given its conclusion that the Amendment Local Laws were not validly made, it has not been necessary for the Committee to make recommendations to disallow parts or all of the Amendment Local Laws based on those concerns.
- 5.3 Nevertheless, the Committee provides the following comments for the information of the Parliament and the City in the event that the City chooses to re-make the Amendment Local Laws following the correct statutory procedure.
- 5.4 The Committee's concerns relate to the following prohibitions in the Amendment Local Laws:
- 'annoy, molest or obstruct any other person' in a public place or on local government property<sup>8</sup>
  - commit an 'indecent act' in a public place or on local government property<sup>9</sup>
  - without a permit, 'solicit money from a member of the public'<sup>10</sup>
  - destroy, damage, alter, mark deface or remove any property or thing in or on a public place<sup>11</sup>
  - without a permit, 'place or cause to be placed any furniture in or on local government property'.<sup>12</sup>

## 6 Summary of the amendments

### ***Amendments to the City of Kalgoorlie-Boulder Activities on Thoroughfares and Trading in Thoroughfares and Public Places Local Law 2000***

- 6.1 The Thoroughfares and Public Places Principal Local Law regulates conduct in 'public places', which includes 'thoroughfares'.
- 6.2 'Public place' is defined as follows:
- '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.
- 6.3 'Thoroughfare' is not defined other than by reference in the following definitions:

---

<sup>7</sup> Committee Terms of Reference: *Standing Orders of the Legislative Council Schedule 1*, cl 10.1 to 10.8.

<sup>8</sup> Clause 2.1(1)(h) of the Thoroughfares and Public Places Principal Local Law and clause 4.1(2)(a) of the Local Government Property Principal Local Law.

<sup>9</sup> Clause 2.1(1)(j) of the Thoroughfares and Public Places Principal Local Law and clause 4.1(2)(c) of the Local Government Property Principal Local Law.

<sup>10</sup> Clause 2.2(1)(n) of the Thoroughfares and Public Places Principal Local Law and clause 3.13(s) of the Local Government Property Principal Local Law.

<sup>11</sup> Clause 2.1(1)(l) of the Thoroughfares and Public Places Principal Local Law.

<sup>12</sup> Clause 3.13(u) of the Local Government Property Principal Local Law.



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

**'footpath'** means the paved or made portion of a thoroughfare used or intended for use by pedestrians and cyclists;

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

6.4 The Thoroughfares and Public Places Amendment Local Law amends the Thoroughfares and Public Places Principal Local Law to:

- insert definitions of 'nuisance' and 'solicit' as follows:

**'nuisance'** includes any unreasonable interference with a person's use and enjoyment of a public place

**'solicit'** in relation to money, means actively seeking or calling for a gift or donation from another person, but does not include:

  - (a) a non verbal invitation to place a donation in a receptacle by a street entertainer performing in a public place in accordance with a permit issued under Part 6, Division 2 of this local law; or
  - (b) a request for pledges or commitments to provide donations by a charitable organisation registered with the Australian Charities and Not-for-profits Commission.
- add the following activities to the list of activities prohibited in public places in clause 2.1(1):
  - (h) annoy, molest or obstruct any other person in or on a public place;
  - (i) defecate or urinate in or on a public place except in a toilet or urinal (as the case may be) in a public convenience;
  - (j) commit an indecent or offensive act in or on a public place;
  - (k) use any threatening, abusive or insulting words in or on a public place; or
  - (l) destroy, damage, alter, mark, deface or remove any property or thing in or on a public place.
- add the following activities to the list of activities prohibited without a permit in clause 2.2(1):
  - (n) solicit money from a member of the public; or
  - (o) place or cause to be placed any furniture in or on a public place.
- increase the modified penalties for offences under the local law.

6.5 The Committee noted that, prior to the amendments, clause 2.2(1)(k) of the Thoroughfares and Public Places Principal Local Law already contained the following general prohibition against nuisances:

a person shall not, without a permit ... on a public place use anything or do anything so as to create a nuisance.<sup>13</sup>

This provision was unchanged by the amendments.

---

<sup>13</sup> 'Nuisance' was, until the Amendment Local Laws, not defined.

6.6 Clause 10.3(1) of the Thoroughfares and Public Places Principal Local Law provides:

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.<sup>14</sup>

6.7 Clause 10.4(1) creates modified penalties for the offences specified in Schedule 1. The modified penalty for breaches of clauses 2.1(1)(h) – (l) is \$300, except for clause 2.1(1)(k), which is \$250. The modified penalty for breaches of clauses 2.2(1)(n) and (o) is \$300.

## **Amendments to the *City of Kalgoorlie-Boulder Local Government Property Local Law 2010***

6.8 The Local Government Property Principal Local Law regulates conduct on 'local government property', which is defined as follows:

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

- (a) which belongs to the City;
- (b) of which the City 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.<sup>15</sup>

6.9 The Local Government Property Amendment Local Law amends the Local Government Property Principal Local Law to:

- insert the same definition of 'solicit' as in the Thoroughfares and Public Places Amendment Local Law.<sup>16</sup>
- add the following activities to the list of activities prohibited on local government property without a permit in clause 3.13(1):
  - (s) solicit money from a member of the public;
  - (t) unreasonably obstruct or interfere with the passage of pedestrian or vehicular traffic on local government property; or
  - (u) place or cause to be placed any furniture in or on local government property.
- extend the existing general prohibition against behaving in a manner which 'is likely to interfere with the enjoyment of a person who might use the property or interferes with the enjoyment of a person using the property',<sup>17</sup> to specifically provide in clause 4.1(2) that a person must not, in or on local government property:
  - (a) annoy, molest or obstruct any other person;
  - (b) defecate or urinate except in a toilet or urinal (as the case may be) in a public convenience;

---

<sup>14</sup> Giving rise to a penalty 'not exceeding \$5000': cl 10.3(2).

<sup>15</sup> 'otherwise unvested facility' means 'a thoroughfare, bridge, jetty, drain, or watercourse belonging to the Crown, the responsibility for controlling and managing which is not vested in any person other than by this section'. A local government is responsible for controlling and managing 'otherwise unvested facilities' within its district unless some limited exclusions apply.

<sup>16</sup> See paragraph 6.4.

<sup>17</sup> Previously cl 4.1, now cl 4.1(1).

- (c) commit an indecent or offensive act; or
- (d) use any threatening, abusive or insulting words.

6.10 Clause 9.3(1) of the Local Government Property Principal Local Law provides:

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.<sup>18</sup>

6.11 Clause 9.4(1) creates modified penalties for the offences specified in Schedule 1. The modified penalty for a breach of clause 3.13(1) is \$250. The modified penalty for a breach of clause 4.1(2) is \$300.

## 7 Committee Terms of Reference

7.1 The Committee's terms of reference require the Committee to inquire whether an instrument:

- is within power — 10.6(a)
- contains only matter that is appropriate for subsidiary legislation — 10.6(d).<sup>19</sup>

### Term of Reference 10.6(a) — within power

7.2 The Committee considered whether the Amendment Local Laws would be within power if they were validly made. In summary, this involved consideration of the following issues:

- whether the matters prescribed by the Amendment Local Laws are 'necessary or convenient' for the City to perform its general function under the LGA to provide for the 'good government of persons in its district'
- whether the Amendment Local Laws are a reasonable and proportionate exercise of that power.

### Empowering provisions

7.3 The empowering provision for local laws is contained in section 3.5 of the LGA. Subsection (1) provides:

A local government may make local laws under this Act prescribing all matters that are required or permitted to be prescribed by a local law, or are necessary or convenient to be so prescribed, for it to perform any of its functions under this Act.

7.4 The 'general function' of local government is set out in section 3.1:

- (1) The general function of a local government is to provide for the good government of persons in its district.
- (2) The scope of the general function of a local government is to be construed in the context of its other functions under this Act or any other written law and any constraints imposed by this Act or any other written law on the performance of its functions.
- (3) A liberal approach is to be taken to the construction of the scope of the general function of a local government.

<sup>18</sup> Giving rise to a penalty 'not exceeding \$5000': cl 9.3(2).

<sup>19</sup> Committee Terms of Reference: *Standing Orders of the Legislative Council*, Schedule 1, cl 10.6.

## Scope of the 'good government' law-making power

- 7.5 The scope of the law-making power arising from the 'good government' function of local governments has been considered by the courts and by the previous Joint Standing Committee on Delegated Legislation.
- 7.6 The previous committee, adopting the approach of the High Court in *Lynch v Brisbane City Council*,<sup>20</sup> stated in its Report 46:

The 'good government' criterion is also of a very broad ambit. In the High Court case of *Lynch v Brisbane City Council* [...] Dixon CJ stated in relation to a power to make ordinances for 'the general good government of its [the local government's] inhabitants' that:

*'They give a power to lay down matters in respect of municipal concern, matters that have been reasonably understood to be within the province of municipal government because they affect the welfare and good government of the city and its inhabitants. The words are not to be applied without caution nor read as if they were designed to confide to the city more than matters of local government. They express no exact limit of power but, directed as they are to the welfare and good government of a city and its inhabitants, they are not to be read as going beyond the accepted notions of local government.'*

What goes 'beyond the accepted notions of local government' is difficult to define and can change over time.<sup>21</sup>

- 7.7 The approach in *Lynch v Brisbane City Council* was followed by the High Court in *Attorney-General (SA) v Corporation of the City of Adelaide*<sup>22</sup> (*Corneloup's case*).<sup>23</sup> In that case, the High Court endorsed the following statement by Kourakis J in the Full Court of the Supreme Court of South Australia.<sup>24</sup>

The specific powers committed to local government by statute provide an important indication of the role and responsibilities of local government, but the convenience power is not limited to matters which are strictly analogous to the subject matters of the specific powers. The convenience power extends to regulating conduct which, having regard to the considerations I have mentioned, is properly a matter of municipal concern and which, if left uncontrolled, will materially interfere with the comfort, convenience and safety of the city's inhabitants.<sup>25</sup>

---

<sup>20</sup> (1961) 104 CLR 353.

<sup>21</sup> Western Australia, Legislative Council, Joint Standing Committee on Delegated Legislation, Report 46, *City Of Gosnells Waste Local Law 2011 and Shire Of Derby/West Kimberley Waste Services Local Law 2011*, November 2011, pp 12-13.

<sup>22</sup> (2013) 249 CLR 1.

<sup>23</sup> French J at [37] to [40].

<sup>24</sup> *Attorney-General (SA) v Corporation of the City of Adelaide* (2013) 249 CLR 1, French J at [38] and Hayne J at [106].

<sup>25</sup> *Corporation of the City of Adelaide v Corneloup* [2011] SASCFC 84; (2011) 110 SASR 334 at 361; per Kourakis J at [98]

- 7.8 The 'considerations' mentioned by Kourakis J for identifying 'matters of municipal concern' were as follows:

Identifying the municipal concerns for which the general power authorises by-laws is, therefore, a complex process requiring a consideration of the nature of contemporary urban communities, the legislative responsibilities of other levels of government and the nature of the specific powers expressly conferred on the organs of local government.<sup>26</sup>

- 7.9 The Committee also took note of section 3.2 of the LGA:

**Relationship to State Government**

The scope of the general function of a local government in relation to its district is not limited by reason only that the Government of the State performs or may perform functions of a like nature.

- 7.10 In the Committee's view, matters going beyond 'municipal concern', and 'accepted notions of local government', as well as being not within power of section 3.5 of the LGA, may in addition contravene the Committee's term of reference 10.6(d) (see paragraphs 7.19 to 7.21).

**Reasonableness and proportionality**

- 7.11 In order to be within power of section 3.5 of the LGA, a local law must also be a 'reasonable and proportionate' exercise of that power.

- 7.12 The previous Joint Standing Committee on Delegated Legislation, in its Report 46, stated:

In determining whether a local law has the necessary nexus with the good government of persons in the district and is authorised or contemplated by the empowering provisions consideration is given to whether those local laws are unreasonable or disproportionate to the purpose sought to be achieved. The express good government provision in section 3.1 of the LG Act reinforces the principle that unreasonable clauses in the Local Laws are unauthorised.<sup>27</sup>

- 7.13 The committee adopted the approach of the Federal Court in *Minister for Resources v Dover Fisheries*:<sup>28</sup>

The test of proportionality reflects an underlying assumption that the legislature did not intend that the power to enact delegated legislation would be exercised beyond what was reasonably proportional to achieve the relevant statutory object or purpose; the test of reasonableness assumes that the legislature did not intend to confer a power to enact delegated legislation which enactment no reasonable mind could justify as appropriate and adopted for the purpose in issue and the subject matter of the grant. Whether one describes that test as one of 'reasonable proportionality' or 'unreasonableness', the object is to find the limit set by the legislature for the proper exercise of the regulation or rule making power and then to measure the substantive operation of the delegated legislation by reference to that limit. In my view there is no substantive difference between the tests as stated.<sup>29</sup>

---

<sup>26</sup> *ibid.*

<sup>27</sup> Western Australia, Legislative Council, Joint Standing Committee on Delegated Legislation, Report 46, *City Of Gosnells Waste Local Law 2011 and Shire Of Derby/West Kimberley Waste Services Local Law 2011*, November 2011, pp 13–14.

<sup>28</sup> (1993) 116 ALR 54.

<sup>29</sup> *Minister for Resources v Dover Fisheries* (1993) 116 ALR 54 per Cooper J at 74.

- 7.14 In the High Court decision of *South Australia v Tanner*,<sup>30</sup> Brennan J noted that a regulation would not be rendered invalid:

merely because the impugned regulation applies in some instances which are immaterial to the fulfilment of the statutory object.<sup>31</sup>

### **Inconsistency with the *Criminal Code***

- 7.15 Given the nature of the Amendment Local Laws, the Committee considered whether any of the provisions were inconsistent with equivalent provisions of the *Criminal Code Act 1913* (Criminal Code).
- 7.16 A local law will not be within power if it is inconsistent with the provisions of the empowering Act or any other Act. Section 43(1) of the *Interpretation Act 1984* provides:
- Subsidiary legislation shall not be inconsistent with the provisions of the written law under which it was made, or of any Act, and the subsidiary legislation shall be void to the extent of any such inconsistency.
- 7.17 'Inconsistency' can refer to direct inconsistency, or to a situation where the subsidiary legislation 'would alter, impair or detract from the operation of an Act': See *Victoria v Commonwealth*<sup>32</sup> at 630 per Dixon J.
- 7.18 The Committee highlights its general concern that parts of the Amendment Local Laws deal with matters that are already dealt with in the Criminal Code, and cautions that, for local laws of this type to be within power, they must not (either directly or by 'altering, impairing or detracting from' the Act) be inconsistent with the equivalent provisions of the Criminal Code.<sup>33</sup>

### **Term of Reference 10.6(d) — matter appropriate for subsidiary legislation**

- 7.19 Under its term of reference 10.6(d), the Committee considered whether the Amendment Local Laws contain 'only matter that is appropriate for subsidiary legislation'.
- 7.20 In the Commonwealth jurisdiction, the Department of Prime Minister and Cabinet's *Legislation Handbook* provides the following examples (among others) of matters generally implemented only through Acts of Parliament:
- significant questions of policy including significant new policy or fundamental changes to existing policy
  - rules which have a significant impact on human rights and personal liberties
  - provisions creating offences or civil penalties which impose significant criminal penalties (imprisonment or fines equal to more than 50 penalty units [\$9000] for individuals or more than 250 penalty units for corporations).<sup>34</sup>
- 7.21 Similarly, the Senate Standing Committee on Regulations and Ordinances, in its 40<sup>th</sup> *Parliament Report*, noted that delegated legislation may be identified as dealing with matters 'more appropriately included in a Bill' where the delegated legislation:

---

<sup>30</sup> (1989) 166 CLR 161.

<sup>31</sup> *South Australia v Tanner* (1989) 166 CLR 161 per Brennan J at 173, 176.

<sup>32</sup> (1937) 58 CLR 618.

<sup>33</sup> As referred to in paragraph 7.9, the Committee notes that, where there is no inconsistency, some local government and State Government functions may coincide.

<sup>34</sup> Department of Prime Minister and Cabinet, *Legislation Handbook* (February 2017), available at <<https://pmc.gov.au/resource-centre/government/legislation-handbook>> (viewed 3 September 2018), p 2.

- manifests itself as a fundamental change in the law, intended to alter and redefine rights, obligations and liabilities;
- is a lengthy and complex document;
- introduces innovation of a major kind into the pre-existing legal, social or financial concepts;
- impinges in a major way on the community;
- is calculated to bring about radical changes in relationships or attitudes of people in a particular aspect of the life of the community; [...]
- takes away, reduces, circumscribes or qualifies fundamental rights and liberties traditionally enjoyed in a free and democratic society.<sup>35</sup>

## 8 Application of Committee terms of reference to specific clauses of the Amendment Local Laws

### 'Annoy, molest or obstruct' any other person

8.1 Clause 2.1(1)(h) of the Thoroughfares and Public Places Principal Local Law provides:

A person shall not ... annoy, molest or obstruct any other person in or on a public place.

8.2 Clause 4.1(2)(a) of the Local Government Property Principal Local Law provides:

A person must not, in or on any local government property ... annoy, molest or obstruct any other person.

### 'Annoy'

8.3 The Committee considers that, for the following reasons, the prohibition against 'annoying' behaviour is not within power of section 3.5 of the LGA and would therefore offend Committee term of reference 10.6(a).

8.4 The *Macquarie Dictionary* relevantly defines 'annoy' as follows:

1. to disturb in a way that is displeasing, troubling, or slightly irritating [...]
3. to be disagreeable or troublesome.

8.5 In the Committee's view, the term 'annoy' in clauses 2.1(1)(h) and 4.1(2)(a):

- encompasses very minimally disruptive behaviour, the prohibition of which is not a reasonable or proportionate exercise of the 'good government' function in section 3.1 of the LGA<sup>36</sup>
- is insufficiently defined and therefore dependent upon the subjective assessment of a local government officer,

and is therefore not within power of section 3.5 of the LGA.

<sup>35</sup> Senate Standing Committee on Regulations and Ordinances, *40<sup>th</sup> Parliament Report, 112<sup>th</sup> Report* (June 2015), <[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Regulations\\_and\\_Ordinances/Reports](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Regulations_and_Ordinances/Reports)> (viewed 3 September 2018), p 59.

<sup>36</sup> In the Committee's view, the use of 'annoy' creates offences that would arise in many unspecified circumstances, not only in 'some instances which are immaterial to the fulfilment of the statutory object': See *South Australia v Tanner* (1989) 166 CLR 161 at 176, discussed in paragraph 7.12.



## **‘Indecent act’**

- 8.6 Clause 2.1(1)(j) of the Thoroughfares and Public Places Principal Local Law provides:
- A person shall not ... commit an indecent or offensive act in or on a public place.
- 8.7 Clause 4.1(2)(c) of the Local Government Property Principal Local Law provides:
- A person must not, in or on any local government property ... commit an indecent or offensive act.
- 8.8 The Amendment Local Laws prescribe a modified penalty of \$300, and a maximum penalty on conviction of \$5000, for committing an ‘indecent act’ in a public place or on local government property.
- 8.9 The Committee noted Section 203(1) of the Criminal Code, which provides:

### **Indecent act in public**

(1) A person who does an indecent act —

- (a) in a public place or in the sight of any person who is in a public place; or
- (b) in a police station or lock-up,

is guilty of a crime and is liable to imprisonment for 2 years.

Summary conviction penalty: imprisonment for 9 months and a fine of \$9000.

- 8.10 Section 203 is not a prescribed offence under the *Criminal Code (Infringement Notices) Regulations 2015*, and an infringement notice or modified penalty under those regulations is therefore not available for commission of the offence.<sup>37</sup>
- 8.11 Having regard to the applicable penalties, the Committee considered that ‘indecent act’ in section 203 of the Criminal Code encompasses behaviour of such seriousness or consequence that it should properly be regulated by State authorities with the appropriate expertise, training and resources.
- 8.12 In the Committee’s view:
- the prohibition against ‘indecent acts’ in the Amendment Local Laws, in adopting the same terminology as section 203, purports to deal with serious criminal behaviour, the penalty for which under the Criminal Code includes a term of imprisonment
  - such behaviour is properly regulated by an Act of Parliament and not by subsidiary legislation.
- 8.13 The Committee therefore concludes that ‘indecent act’ in clauses 2.1(1)(j) and 4.2(2)(c) is not appropriate for subsidiary legislation and contravenes Committee term of reference 10.6(d).
- 8.14 In addition, in the Committee’s view the modified penalties in the Amendment Local Laws applying to an ‘indecent act’ in public may contravene section 9.16(2) of the LGA, which provides that a local government can only prescribe a modified penalty for an offence if it is satisfied that ‘commission of the offence would be a relatively minor matter’.<sup>38</sup>

---

<sup>37</sup> Unlike, by contrast, the offence of disorderly conduct under section 74A of the Criminal Code, which is a prescribed offence, with the result that an infringement notice and modified penalty of \$500 may be applied.

<sup>38</sup> See Appendix 4.

- 8.15 The Committee also noted that the prohibition against ‘indecent acts’:
- prohibits the same behaviour as section 203 of the Criminal Code, but applies substantially different penalties
  - is therefore arguably inconsistent with section 203 on the basis that it ‘alters, impairs or detracts from’ its operation.<sup>39</sup> If that is the case, the prohibition would not be within power of section 3.5 of the LGA as the power does not authorise the making of local laws that are inconsistent with any Act.

### ‘Solicit money’

- 8.16 Clause 2.2(1)(n) of the Thoroughfares and Public Places Principal Local Law provides that ‘a person shall not, without a permit ... solicit money from a member of the public’.
- 8.17 Clause 3.13(1)(s) of the Local Government Property Principal Local Law provides that ‘a person must not without a permit ... solicit money from a member of the public’.
- 8.18 The Committee noted that the definition of ‘solicit’<sup>40</sup> inserted by the Amendment Local Laws:
- appears to target street begging activities as it excludes non-verbal requests for money by buskers, and requests for charitable donations from registered charities
  - may not require any verbal or physical request for money, but could, for example, comprise a sign or receptacle for money.
- 8.19 Until 2004, public begging was an offence under section 65(3) of the *Police Act 1892*. Along with many other simple offences, section 65(3) was removed in 2004 following a 1992 report by the Law Reform Commission of Western Australia (LRC).<sup>41</sup> In its report, the LRC noted the following reason for recommending abolition of the offence of begging:
- If a particular instance of begging is sufficiently ill-mannered to annoy or insult persons faced with it sufficiently deeply to warrant the interference of the criminal law it can be dealt with under the offence of disorderly conduct.<sup>42</sup>
- 8.20 The modified penalties for soliciting money under the Amendment Local Laws are \$250 on a thoroughfare or public place and \$300 on local government property.
- 8.21 The Committee is of the view that:
- begging in streets and other public places is a matter of broad social significance.
  - prohibiting begging involves a ‘fundamental change to existing policy’ and a ‘fundamental change in the law, intended to alter and redefine rights, obligations and liabilities’.<sup>43</sup>
- 8.22 Clauses 2.2(1)(n) and 3.13(1)(s) therefore, in the Committee’s view:
- contain matter not appropriate for subsidiary legislation
  - go beyond ‘accepted notions of local government’, and are therefore not within power of section 3.5 of the LGA.

---

<sup>39</sup> See paragraph 7.17.

<sup>40</sup> See paragraph 6.4.

<sup>41</sup> *Criminal Law Amendment (Simple Offences) Act 2004*, s 57.

<sup>42</sup> Law Reform Commission of Western Australia, Project Number 85, *Police Act Offences*, August 1992, p 155.

<sup>43</sup> See paragraphs 7.20 and 7.21.

## Other drafting issues

### **‘Destroy, damage alter, mark, deface or remove any object or thing’**

- 8.23 Clause 2.1(1)(l) of the Thoroughfares and Public Places Principal Local Law purports to prohibit the destruction, damage, alteration, marking, defacing or removal of ‘any property or thing’ in or on a public place (which includes a thoroughfare). This would include, for example, roadworks and other necessary modifications to thoroughfares and their surrounds. The Committee suggests that any equivalent clause in a new local law be drafted so as to exclude necessary works from any such prohibition.

### **‘Place or caused to be placed any furniture’**

- 8.24 The new clause 3.13(1)(u) of the Local Government Property Principal Local Law purports to prohibit, without a permit, activities such as placing picnic chairs in public parks.<sup>44</sup> The City has confirmed that this was not the intended effect of the Amendment Local Laws and the Committee therefore suggests that any equivalent clause in a new local law be drafted to deal more specifically with the City’s concerns about the placing of furniture in public places and on local government property.

### **Charitable organisations excluded from the definition of ‘solicit’**

- 8.25 The *Charitable Collections Act 1946* requires an organisation collecting money from the public for specified charitable purposes to be licensed under that Act. Registration by the Australian Charities and Not-for-profits Commission (as referred to in the definition of ‘solicit’) on the other hand, is required for the application of charity tax concessions and various other benefits including the ability to make unsolicited phone calls.
- 8.26 The reference to a ‘charitable organisation registered with the Australian Charities and Not-for-profits Commission’ in the definition of ‘solicit’ should therefore be replaced with ‘charitable organisation licensed under the *Charitable Collections Act 1946*’.

## 9 Conclusion

- 9.1 The Amendment Local Laws were not validly made as the City did not comply, or substantially comply, with the provisions of section 3.12 of the LGA in the making of the Amendment Local Laws. The Committee therefore recommends that the Amendment Local Laws be disallowed.
- 9.2 Certain provisions of the Amendment Local Laws, even if validly made, would contravene the Committee’s Terms of Reference 10.6(a) and/or 10.6(d). Those provisions are identified in this report.



Ms Emily Hamilton MLA

### **Chair**

---

<sup>44</sup> The Local Government Property Principal Local Law requires that a permit be obtained to ‘conduct a function, or undertake any promotional activity, on local government property’. ‘Function’ is defined as ‘an event or activity characterised by formal organisation and preparation and/or general advertisement or written notification. Under the Amendment Local Laws, other, less formal, gatherings would require a permit to place furniture in a public park.

## APPENDIX 1

---

### AMENDMENT LOCAL LAWS

---

#### LOCAL GOVERNMENT

---

LG301

##### LOCAL GOVERNMENT ACT 1995

*City of Kalgoorlie-Boulder*

##### LOCAL GOVERNMENT PROPERTY AMENDMENT LOCAL LAW 2018

Under the powers conferred by the *Local Government Act 1995* and by all other powers, the Council of the City of Kalgoorlie-Boulder resolved on 23 April 2018 to make the following local law.

##### **1. Citation**

This local law may be cited as the *City of Kalgoorlie-Boulder Local Government Property Amendment Local Law 2018*.

##### **2. Commencement**

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

### 3. Principal Local Law

In this local law, the *City of Kalgoorlie-Boulder Local Government Property Local Law 2010* published in the *Government Gazette* on 15 August 2011 is referred to as the Principal Local Law.

### 4. Principal Local Law amended

The Principal Local Law is amended as set out in clause 5-8 of this local law.

### 5. Clause 1.6(1) amended

In clause 1.6(1) delete the definition of “surf riding equipment” and insert the following definition in its place—

“**“solicit”** in relation to money, means actively seeking or calling for a gift or donation from another person, but does not include—

- (a) a non verbal invitation to place a donation in a receptacle by a street entertainer performing in a public place in accordance with a permit issued under Part 6, Division 2 of the *City of Kalgoorlie-Boulder Activities on Thoroughfares and Trading in Thoroughfares and Public Places Local Law*; or
- (b) a request for pledges or commitments to provide donations by a charitable organisation registered with the Australian Charities and Not-for-profits Commission.”

### 6. Clause 3.13(1) amended

(1) In clause 3.13(1)(q) delete the word “or” at the end of the subclause.

(2) In clause 3.13(1)(r) delete the full stop at the end of the subclause and insert “; or”.

(3) In clause 3.13(1) insert the following additional subclauses after subclause (r)—

- “(s) solicit money from a member of the public;
- (t) unreasonably obstruct or interfere with the passage of pedestrian or vehicular traffic on local government property; or
- (u) place or cause to be placed any furniture in or on local government property.

### 7. Clause 4.1 amended

Delete clause 4.1 and insert the following clause in its place—

#### “4.1 Prohibited behaviour on local government property

(1) A person must 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.”

(2) A person must not, in or on any local government property—

- (a) annoy, molest or obstruct any other person;
- (b) defecate or urinate except in a toilet or urinal (as the case may be) in a public convenience;
- (c) commit an indecent or offensive act; or
- (d) use any threatening, abusive or insulting words.

### 8. Schedule 1 amended

Delete the Table contained in Schedule 1 and insert the following Table in its place—  
[cl.9.4]

**OFFENCES AND MODIFIED PENALTIES**

Item No.	Clause No.	Nature of offences	Modified penalties (\$)
1	2.4	Failure to comply with determination	250
2	3.6	Failure to comply with conditions of permit	250
3	3.13(1)	Failure to obtain a permit	250
4	3.14(2)	Failure to obtain permit to camp outside a facility	250
5	3.15(1)	Failure to obtain permit for liquor	300
6	3.16	Failure of permit holder to comply with responsibilities	250
7	4.1(1), (2)	Prohibited behaviour on local government property	300
8	4.2(1)	Behaviour detrimental to property	400
9	4.4(2)	Taking or injuring any fauna	400

Item No.	Clause No.	Nature of offences	Modified penalties (\$)
10	4.5(2)	Removing or damaging any flora	400
11	4.6	Under influence of liquor or prohibited drug	300
12	4.7	Taking, consuming or using a prohibited drug on local government property	300
13	4.10(2)	Failure to comply with sign on local government property	250
14	5.2	Consuming food or drink in prohibited area	250
15	5.4(1)(a)	Male using entry of toilet block and change room specified for female gender	250
16	5.4(1)(b)	Female using entry of toilet block and change room specified for male gender	250
17	5.16	Failure to comply with direction of controller or notice on golf course	250
18	5.18	Unauthorised entry to fenced or closed local government property	250
19	6.1(1)	Unauthorised entry to function on local government property	250
20	8.1	Failure to obey lawful direction of an authorised person	300
21	8.2	Failure to obey direction of authorised person to leave local government property	300
22	9.1	Failure to comply with notice	300

Dated this 26th day of April 2018.

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

JOHN JAMES MANSELL BOWLER, Mayor.  
JOHN HAROLD WALKER, Chief Executive Officer.

## LG302

### LOCAL GOVERNMENT ACT 1995

#### *City of Kalgoorlie-Boulder*

#### ACTIVITIES ON THOROUGHFARES AND TRADING IN THOROUGHFARES AND PUBLIC PLACES AMENDMENT LOCAL LAW 2018

Under the powers conferred by the *Local Government Act 1995* and by all other powers, the Council of the City of Kalgoorlie-Boulder resolved on 23 April 2018 to make the following local law.

#### 1. Citation

This local law may be cited as the *City of Kalgoorlie-Boulder Activities on Thoroughfares and Trading in Thoroughfares and Public Places Amendment Local Law 2018*.

#### 2. Commencement

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

#### 3. Principal Local Law

In this local law, the *City of Kalgoorlie-Boulder Activities on Thoroughfares and Trading in Thoroughfares and Public Places Local Law* published in the *Government Gazette* on 18 August 2000 is referred to as the Principal Local Law.

#### 4. Principal Local Law amended

The Principal Local Law is amended as set out in clause 5-8 of this local law.

#### 5. Clause 1.2 amended

(1) In clause 1.2 insert the following definition in the correct alphabetical order—

“**nuisance**” includes any unreasonable interference with a person's use and enjoyment of a public place”

(2) In clause 1.2 insert the following definition in the correct alphabetical order—

- “**solicit**” in relation to money, means actively seeking or calling for a gift or donation from another person, but does not include—
- (a) a non verbal invitation to place a donation in a receptacle by a street entertainer performing in a public place in accordance with a permit issued under Part 6, Division 2 of this local law; or
  - (b) a request for pledges or commitments to provide donations by a charitable organisation registered with the Australian Charities and Not-for-profits Commission.”

#### 6. Clause 2.1 amended

- (1) In clause 2.1(f) delete the word “or” at the end of the subclause.
- (2) In clause 2.1(g) delete the full stop at the end of the subclause and insert “; or”.
- (3) In clause 2.1 insert the following additional subclauses after subclause (1)(g)—
  - “(h) annoy, molest or obstruct any other person in or on a public place;
  - (i) defecate or urinate in or on a public place except in a toilet or urinal (as the case may be) in a public convenience;
  - (j) commit an indecent or offensive act in or on a public place;
  - (k) use any threatening, abusive or insulting words in or on a public place; or
  - (l) destroy, damage, alter, mark, deface or remove any property or thing in or on a public place.”

#### 7. Clause 2.2 amended

- (1) In clause 2.2(1)(l) delete the word “or” at the end of the subclause.
- (2) In clause 2.2(1)(m) insert the word “or” at the end of the subclause after the semi-colon;
- (3) In clause 2.2(1) insert after subclause (1)(m) and the Advisory note in parentheses the following additional subclauses—
  - “(n) solicit money from a member of the public; or
  - (o) place or cause to be placed any furniture in or on a public place.”

#### 8. Schedule 1 amended

Delete the Table contained in Schedule 1 and insert the following Table in its place—

**SCHEDULE 1  
PRESCRIBED OFFENCES**

Clause	Description	Modified penalties \$
2.1(a)	Plant of 0.75m in height on thoroughfare within 6m of intersection	200
2.1(b)	Damaging lawn or garden	200
2.1(c)	Plant (except grass) on thoroughfare within 3m of carriageway	200
2.1(d)	Placing hazardous substance on footpath	200
2.1(e)	Damaging or interfering with signpost or structure on thoroughfare	300
2.1(f)	Playing games so as to impede vehicles or persons on thoroughfare	200
2.1(g)	Riding of skateboard or similar device on mall or verandah of shopping centre	200
2.1(h)	Annoy, molest or obstruct any other person in or on a public place	300
2.1(i)	Defecate or urinate in or on a public place except in a toilet or urinal (as the case may be) in a public convenience	300
2.1(j)	Commit an indecent or offensive act in or on a public place	300
2.1(k)	Use any threatening, abusive or insulting words in or on a public place	250
2.1(l)	Destroy, damage, alter, mark, deface or remove any property or thing in or on a public place	300
2.2(1)(a)	Digging a trench through a kerb or footpath without a permit	200



Clause	Description	Modified penalties \$
2.2(1)(b)	Throwing or placing anything on a verge without a permit	200
2.2(1)(c)	Causing obstruction to vehicle or person on thoroughfare without a permit	200
2.2(1)(d)	Causing obstruction to water channel on thoroughfare without a permit	200
2.2(1)(e)	Placing or draining offensive fluid on thoroughfare without a permit	200
2.2(1)(f)	Damaging a thoroughfare	300
2.2(1)(g)	Lighting a fire on a thoroughfare without a permit	300
2.2(1)(h)	Felling tree onto thoroughfare without a permit	300
2.2(1)(i)	Installing pipes or stone on thoroughfare without a permit	300
2.2(1)(j)	Installing a hoist or other thing on a structure or land for use over a thoroughfare without a permit	300
2.2(1)(k)	Creating a nuisance on a thoroughfare without a permit	300
2.2(1)(l)	Placing a bulk rubbish container on a thoroughfare without a permit	300
2.2(1)(m)	Interfering with anything on a thoroughfare without a permit	300
2.2(1)(n)	Solicit money from member of the public	300
2.2(1)(o)	Place furniture in or on a public place	300
2.3(1)	Consumption or possession of liquor on a thoroughfare	300
2.4(1)	Failure to obtain permit for temporary crossing	300
2.5(2)	Failure to comply with notice to remove crossing and reinstate kerb	300
2.9(1)	Installation of verge treatment other than permissible verge treatment	300
2.10	Failure to maintain permissible verge treatment or placement of obstruction on verge	200
2.11	Failure to comply with notice to rectify default	200
2.17(2)	Failure to comply with sign on public place	200
2.19(1)	Driving or taking a vehicle on a closed thoroughfare	200
3.2(1)	Placing advertising sign or affixing any advertisement on a thoroughfare without a permit	200
3.2(5)	Erecting or placing of advertising sign in a prohibited area	200
4.1(1)	Animal or vehicle obstructing a public place or local government property	200
4.2(2)(a)	Animal on thoroughfare when not led, ridden or driven	200
4.2(2)(b)	Animal on public place with infectious disease	200
4.2(2)(c)	Training or racing animal on thoroughfare in built-up area	200
4.2(3)	Horse led, ridden or driven on thoroughfare in built-up area	200
4.5	Person leaving shopping trolley in public place other than trolley bay	200
4.6(2)	Failure to remove shopping trolley upon being advised of location	200
5.6(1)	Driving a vehicle on other than the carriageway of a flora road	300
5.9	Planting in thoroughfare without a permit	300
5.11	Failure to obtain permit to clear a thoroughfare	500
5.13	Burning of thoroughfare without a permit	500
5.17	Construction of firebreak on thoroughfare without a permit	500

Clause	Description	Modified penalties \$
5.19	Commercial harvesting of native flora on thoroughfare	500
5.20(1)	Collecting seed from native flora on thoroughfare without a permit	300
6.2(1)	Conducting of stall in public place without a permit	300
6.3(1)	Trading without a permit	300
6.8(1)(a)	Failure of stallholder or trader to display or carry permit	200
6.8(1)(b)	Stallholder or trader not displaying valid permit	100
6.8(1)(c)	Stallholder or trader not carrying certified scales when selling goods by weight	100
6.8(2)	Stallholder or trader engaged in prohibited conduct	200
6.10	Performing in a public place without a permit	200
6.11(2)	Failure of performer to move onto another area when directed	200
6.14	Failure of performer to comply with obligations	200
6.16	Establishment or conduct of outdoor eating facility without a permit	300
6.18	Failure of permit holder of outdoor eating facility to comply with obligations	200
6.20(1)	Use of equipment of outdoor eating facility without purchase of food or drink from facility	100
6.20(2)	Failure to leave outdoor eating facility when requested to do so by permit holder	100
7.5	Failure to comply with condition of a permit	200
7.9	Failure to produce permit on request of authorised person	200
10.1	Failure to comply with notice given under local law	200

Dated this 26th day of April 2018.

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

JOHN JAMES MANSELL BOWLER, Mayor.  
JOHN HAROLD WALKER, Chief Executive Officer.

## APPENDIX 2

---

### THOROUGHFARES AND PUBLIC PLACES PRINCIPAL LOCAL LAW

18 August 2000]

GOVERNMENT GAZETTE, WA

4805

#### LOCAL GOVERNMENT ACT 1995

CITY OF KALGOORLIE-BOULDER

### ACTIVITIES ON THOROUGHFARES AND TRADING IN THOROUGHFARES AND PUBLIC PLACES LOCAL LAW

#### TABLE OF CONTENTS

#### PART 1—PRELIMINARY

- 1.1 Citation
- 1.2 Definitions
- 1.3 Application
- 1.4 Repeal

#### PART 2—ACTIVITIES ON THOROUGHFARES AND PUBLIC PLACES

##### *Division 1—General*

- 2.1 General prohibitions
- 2.2 Activities allowed with a permit—general
- 2.3 No possession and consumption of liquor on thoroughfare

##### *Division 2—Vehicle crossing*

##### Subdivision 1—Temporary crossings

- 2.4 Permit required

##### Subdivision 2—Redundant vehicle crossings

- 2.5 Removal of redundant crossing.

##### *Division 3—Verge treatments*

##### Subdivision 1—Preliminary

- 2.6 Interpretation
- 2.7 Application

##### Subdivision 2—Permissible verge treatments

- 2.8 Permissible verge treatments
- 2.9 Only permissible verge treatments to be installed
- 2.10 Obligations of owner or occupier
- 2.11 Notice to owner or occupier

##### Subdivision 3—Existing verge treatments

- 2.12 Transitional provision

##### Subdivision 4—Public works

- 2.13 Power to carry out public works on verge

##### *Division 4—Property numbers*

##### Subdivision 1—Preliminary

- 2.14 Interpretation

##### Subdivision 2—Assignment and marking of numbers

- 2.15 Assignment of numbers

##### *Division 5—Fencing*

- 2.16 Public place—Item 4(1) of Division 1, Schedule 3.1 of Act

*Division 6—Signs erected by the local government*

- 2.17 Signs
- 2.18 Transitional

*Division 7—Driving on a closed thoroughfare*

- 2.19 No driving on closed thoroughfare

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

- 3.1 Interpretation

*Division 2—Permit*

- 3.2 Advertising signs and portable direction signs
- 3.3 Matters to be considered in determining application for permit

*Division 3—Conditions on permit*

- 3.4 Conditions on portable sign
- 3.5 Conditions on election sign

**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
- 4.2 Prohibitions relating to animals

*Division 2—Shopping trolleys*

- 4.3 Interpretation
- 4.4 Shopping trolley to be marked
- 4.5 Person not to leave trolley in public place
- 4.6 Retailer to remove abandoned trolley
- 4.7 Retailer taken to own trolley

**PART 5—ROADSIDE CONSERVATION***Division 1—Preliminary*

- 5.1 Interpretation
- 5.2 Application

*Division 2—Flora roads*

- 5.3 Declaration of flora road
- 5.4 Construction works on flora roads
- 5.5 Signposting of flora roads
- 5.6 Driving only on carriageway of flora roads

*Division 3—Special environmental areas*

- 5.7 Designation of special environmental areas
- 5.8 Marking of special environmental areas

*Division 4—Planting in thoroughfares*

- 5.9 Permit to plant
- 5.10 Relevant considerations in determining application

*Division 5—Clearance of vegetation*

- 5.11 Permit to clear
- 5.12 Application for permit

*Division 6—Fire management*

- 5.13 Permit to burn thoroughfare
- 5.14 Application for permit
- 5.15 When application for permit can be approved
- 5.16 Prohibitions on burning

*Division 7—Firebreaks*

- 5.17 Permit for firebreaks on thoroughfares
- 5.18 Application for permit cannot be approved

*Division 8—Commercial wildflower harvesting on thoroughfares*

- 5.19 General prohibition on commercial wildflower harvesting
- 5.20 Permit for revegetation projects

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

## Subdivision 1—Preliminary

- 6.1 Interpretation

## Subdivision 2—Permits

- 6.2 Stallholder's permit
- 6.3 Trader's permit
- 6.4 No permit required to sell newspaper
- 6.5 Relevant considerations in determining application for permit
- 6.6 Conditions of permit
- 6.7 Exemptions from requirement to pay fee or to obtain a permit

## Subdivision 3—Conduct of stallholders and traders

- 6.8 Conduct of stallholders and traders

*Division 2—Street entertainers*

## Subdivision 1—Preliminary

- 6.9 Interpretation

## Subdivision 2—Permits

- 6.10 Permit required to perform
- 6.11 Variation of permitted area and permitted time
- 6.12 Duration of permit
- 6.13 Cancellation of permit
- 6.14 Obligations of permit holder

*Division 3—Outdoor eating facilities on public places*

- 6.15 Interpretation
- 6.16 Permit required to conduct Facility
- 6.17 Matters to be considered in determining application
- 6.18 Obligations of permit holder
- 6.19 Removal of Facility unlawfully conducted
- 6.20 Use of Facility by public
- 6.21 Temporary removal of Facility may be requested

**PART 7—PERMITS***Division 1—Applying for a permit*

- 7.1 Application for permit
- 7.2 Decision on application for permit

*Division 2—Conditions*

- 7.3 Conditions which may be imposed on a permit
- 7.4 Imposing conditions under a policy
- 7.5 Compliance with and variation of conditions

*Division 3—General*

- 7.6 Duration of permit
- 7.6 Renewal of permit
- 7.8 Transfer of permit
- 7.9 Production of permit
- 7.10 Cancellation of permit

**PART 8—OBJECTIONS AND APPEALS**

- 8.1 Application of Part 9 Division 1 of Act

**PART 9—MISCELLANEOUS NOTICES**

- 9.1 Notice to redirect or repair sprinkler
- 9.2 Hazardous plants
- 9.3 Notice to repair damage to thoroughfare
- 9.4 Notice to remove thing unlawfully placed on thoroughfare

**PART 10—ENFORCEMENT***Division 1—Notices given under this local law*

- 10.1 Offence to fail to comply with notice
- 10.2 Local government may undertake requirements of notice

*Division 2—Offences and penalties*

## Subdivision 1—General

- 10.3 Offences

## Subdivision 2—Infringement notices and modified penalties

- 10.4 Prescribed offences
- 10.5 Forms

**SCHEDULE 1**

## PRESCRIBED OFFENCES

## LOCAL GOVERNMENT ACT 1995

## CITY OF KALGOORLIE-BOULDER

ACTIVITIES ON THOROUGHFARES AND TRADING IN  
THOROUGHFARES AND PUBLIC PLACES LOCAL LAW

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the City of Kalgoorlie-Boulder resolved on 22 May 2000 to make the following local law.

## PART 1—PRELIMINARY

## 1.1 Citation

This local law may be cited as the *City of Kalgoorlie-Boulder Activities on Thoroughfares and Trading in Thoroughfares and Public Places Local Law*.

## 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 1975*;

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

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

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

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

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

(a) private land; or

(b) a private thoroughfare serving private land;

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

“**footpath**” means the paved or made portion of a thoroughfare used or intended for use by pedestrians and cyclists;

“**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 1975*;

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

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

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

“**local government**” means the City of Kalgoorlie-Boulder;

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

(a) which belongs to the local government;

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

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

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

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

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

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

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



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

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

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

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

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

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

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

“**townsite**” means the townsite of [*insert names of townsites*] which are—

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

“**vehicle**” includes—

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

but excludes—

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

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

### 1.3 Application

This local law applies throughout the district.

### 1.4 Repeal

(1) The following local laws are repealed—

All local laws relating to the subject matters listed below made by the local governments shown and having application within the district of the City of Kalgoorlie-Boulder are repealed, namely—

- Numbering of Houses, made by the Kalgoorlie Road Board and published in the *Government Gazette* of 11 October 1918, as amended by publication in the *Government Gazette* of 27 June 1975, and Numbering of Houses and Buildings made by the Shire of Boulder and published in the *Government Gazette* of 10 September 1976;
- Signs, Hoardings and Billposting made by the City of Kalgoorlie-Boulder and published in the *Government Gazette* of 19 March 1994 as amended by publication in the *Government Gazette* of 5 January 1996;
- Prevention of Damage to Streets made by the Shire of Kalgoorlie and published in the *Government Gazette* of 6 July 1965;
- Use of and Activities in Streets, made by the City of Kalgoorlie-Boulder and published in the *Government Gazette* of 15 December 1992.

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

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

## PART 2—ACTIVITIES ON THOROUGHFARES AND PUBLIC PLACES

### *Division 1—General*

#### 2.1 General prohibitions

A person shall not—

- (a) plant any plant which exceeds or which may exceed 0.75m in height on a thoroughfare so that the plant is within 6m 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 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 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 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, bollards, 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;

(Advisory note: Pruning or otherwise interfering with a tree in a thoroughfare is captured by this paragraph)

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

## 2.3 No possession and consumption of liquor on thoroughfare

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

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

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

### *Division 2—Vehicle crossing* Subdivision 1—Temporary crossings

## 2.4 Permit required

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

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

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

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

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

## Subdivision 2—Redundant vehicle crossings

**2.5 Removal of redundant crossing**

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

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

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

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

*Division 3—Verge treatments*

## Subdivision 1—Preliminary

**2.6 Interpretation**

In this Division, unless the context otherwise requires—

“**acceptable material**” means any material which appears on a list of acceptable materials maintained 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, subject to obtaining a permit if the verge treatment is a garden or an acceptable material

(2) The permissible verge treatments are—

- (a) the planting and maintenance of a lawn and reticulation (excluding taps);
- (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; 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 designated as footpath alignment by the local government;
- (c) the installation of an acceptable material.

**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; and

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

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

#### *Division 2—Permit*

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

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

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

(2) Erection or placement of a direction sign under subclause (1) may only be approved if, in the opinion of the local government, the place, activity or event to which the sign is giving direction, is of special interest and importance to members of the travelling public.

(3) The local government may approve an application for a permit under subclause (1) from a person engaged in the sale of real estate in respect of a specified number and type of ‘Home Open’ signs.

(4) 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.

(5) 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 2.4m;
- (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;
- (f) the size, type and content of font.

#### *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 (excluding home open signs) shall—
  - (i) not exceed 1m in height;
  - (ii) not exceed an area of 1m<sup>2</sup> on any side;
  - (iii) relate only to the business activity described on the permit;
  - (iv) not be erected in any position other than immediately adjacent to the building or the business to which the sign relates;
  - (v) be removed each day at the close of the business to which it relates and not be erected again until the business next opens for trading;
  - (vi) be secured in position in accordance with any requirements of the local government;
  - (vii) be placed so as not to obstruct or impede the reasonable use of a thoroughfare or access to a place by any person; and
  - (viii) be maintained in good condition; and
- (b) no more than one portable sign (excluding home open signs) shall be erected in relation to the one building or business.
- (c) the home open signs shall—
  - (ix) not exceed 500mm in height;
  - (x) not exceed an area of 0.5m<sup>2</sup> on any side;

- (xi) relate only to the business activity described on the permit;
- (xii) be removed each day at the close of the business to which it relates;
- (xiii) be secured in position in accordance with any requirements of the local government;
- (xiv) be placed so as not to obstruct or impede the reasonable use of a thoroughfare or access to a place by any person; and be maintained in good condition

### 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.

### 3.6 Transitional

Where under a previous local law or otherwise a portable direction sign or other portable sign is used on a thoroughfare, if the sign does not comply with any requirement of this Part, the sign must either be removed, no longer used on a thoroughfare if portable, or modified so as to comply with this local law, within three (3) months from the commencement day.

## 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;

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

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

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

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

**5.2 Application**

This Part does not apply to the 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 ‘Code of Practice for Roadside Conservation and Road Maintenance’ prepared by the Roadside Conservation Committee.

**5.5 Signposting of flora roads**

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

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

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

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

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

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

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

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

**5.8 Marking of special environmental areas**

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



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

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

**5.10 Relevant considerations in determining application**

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

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

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

A person shall not clear and maintain in a cleared state, the surface of a thoroughfare within 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.

*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;
  - (ii) inviting offers or soliciting orders for the sale or the hire of goods or services; or
  - (iii) carrying out any other transaction in relation to goods or services,

but does not include—

- (d) the setting up of a stall or the conducting of a business at a stall under the authority of a stallholder’s permit;
- (e) the selling or the offering for sale of goods and services to, or the soliciting of orders for goods and services from a person who sells those goods or services;
- (f) the selling or the offering for sale or hire by a person of goods of her or his own manufacture or services which he or she provides; and
- (g) the selling or hiring or the offering for sale or hire of—
  - (i) goods by a person who represents a manufacturer of the goods; or
  - (ii) services by a person who represents a provider of the services,

which are sold directly to consumers and not through a shop.

*Subdivision 2—Permits***6.2 Stallholder’s permit**

- (1) A person shall not conduct a stall on a public place unless that person is—
- (a) the holder of a valid stallholder’s permit; or
  - (b) an assistant specified in a valid stallholder’s permit.

- (2) Every application for a stallholder's permit shall—
- (a) state the full name and address of the applicant;
  - (b) specify the proposed number of assistants to be engaged by the applicant in conducting the stall, as well as their names and addresses if already engaged;
  - (c) specify the proposed location of the stall;
  - (d) specify the period of time for which the permit is sought, together with the proposed days and hours of operation;
  - (e) specify the proposed goods or services to be sold or hired or offered for sale or hire from the stall; and
  - (f) be accompanied by an accurate plan and description of the proposed stall.

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

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

### **6.4 No permit required to sell newspaper**

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

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

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

### **6.6 Conditions of permit**

- (1) If the local government approves an application for a permit under this Division subject to conditions, those conditions may include—
- (a) the place, the part of the district, or the thoroughfare to which the permit applies;
  - (b) the days and hours during which a permit holder may conduct a stall or trade;
  - (c) the number, type, form and construction, as the case may be, of any stand, table, structure or vehicle which may be used in conducting a stall or in trading;
  - (d) the goods or services in respect of which a permit holder may conduct a stall or trade;
  - (e) the number of persons and the names of persons permitted to conduct a stall or trade;

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

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

- (1) In this clause—
- “charitable organisation”** means an institution, association, club, society or body whether incorporated or not, the objects of which are of a charitable, benevolent, religious, cultural, educational, recreational, sporting or other like nature and from which any member does not receive any pecuniary profit except where the member is an employee or the profit is an honorarium; and
- “commercial participant”** means any person who is involved in operating a stall or in conducting any trading activity for personal gain or profit.
- (2) The local government may waive any fee required to be paid by an applicant for a stallholder's permit or a trader's permit on making an application for or on the issue of a permit, or may return any such fee which has been paid, if the stall is conducted or the trading is carried on—
- (a) on a portion of a public place adjoining the normal place of business of the applicant; or
  - (b) by a charitable organisation that does not sublet space to, or involve commercial participants in the conduct of a stall or trading, and any assistants that may be specified in the permit are members of that charitable organisation.
- (3) The local government may exempt a person or a class of persons, whether or not in relation to a specified public place, from the requirements of this Division.

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

#### 6.8 Conduct of stallholders and traders

- (1) A stallholder while conducting a stall or a trader while trading shall—
- (a) display her or his permit to do so in a conspicuous place on the stall, vehicle or temporary structure or if there is no stall, vehicle or temporary structure, carry the permit with her or him while conducting a stall or trading;
  - (b) not display a permit unless it is a valid permit; and
  - (c) when selling goods by weight, carry and use for that purpose, scales tested and certified in accordance with the provisions of the *Weights and Measures Act 1915*.
- (2) A stallholder or trader shall not—
- (a) deposit or store any box or basket containing goods on any part of a thoroughfare so as to obstruct the movement of pedestrians or vehicles;
  - (b) act in an offensive manner;
  - (c) use or cause to be used any apparatus or device including any flap or shelf, whereby the dimensions of a stall, vehicle or structure are increased beyond those specified in the permit; or
  - (d) in the case of a trader, carry on trading from a public place, unless there is adequate parking for customers' vehicles reasonably close to the place of trading.

*Division 2—Street entertainers*  
Subdivision 1—Preliminary

**6.9 Interpretation**

In this Division, unless the context otherwise requires—

- “**perform**” includes to play a musical instrument, sing, mime, dance, give an acrobatic or aerobic display or entertain, but does not include public speaking;
- “**permit**” means a permit issued for the purpose of clause 6.10;
- “**permitted area**” means the area or areas, specified in a permit, in which the permit holder may perform; and
- “**permitted time**” means the time or times, specified in a permit, during which the permit holder may perform.

Subdivision 2—Permits

**6.10 Permit required to perform**

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

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

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

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

shown on a permit.

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

**6.12 Duration of permit**

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

**6.13 Cancellation of permit**

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

**6.14 Obligations of permit holder**

A permit holder shall not in a public place—

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

*Division 3—Outdoor eating facilities on public places*

**6.15 Interpretation**

In this Division—

- “**Facility**” means an outdoor eating facility or establishment on any part of a public place, but does not include such a facility or establishment on private land;
- “**permit holder**” means the person to whom a permit has been issued for the purpose of clause 6.16; and
- “**public place**” has the meaning given to it in clause 6.1.

**6.16 Permit required to conduct Facility**

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

**6.17 Matters to be considered in determining application**

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

- (a) the Facility is conducted in conjunction with and as an extension of food premises which abut on the Facility, and whether the applicant is the person conducting such food premises;
- (b) any abutting food premises are registered in accordance with the *Health Act 1911* and whether the use of the premises is permitted under the town planning scheme;
- (c) the Facility will comply with any local law made under section 172 of the *Health Act 1911*;
- (d) users of the Facility will have access to proper and sufficient sanitary and ablutionary conveniences;

- (e) the Facility would—
  - (i) obstruct the visibility or clear sight lines at an intersection of thoroughfares of any person; or
  - (ii) impede pedestrian access; and
- (f) the tables, chairs and other equipment to be used may obstruct or impede the use of the public place for the purpose for which it was designed.

#### **6.18 Obligations of permit holder**

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

#### **6.19 Removal of Facility unlawfully conducted**

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

#### **6.20 Use of Facility by public**

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

#### **6.21 Temporary removal of Facility may be requested**

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

### **PART 7—PERMITS**

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

##### **7.1 Application for permit**

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

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

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



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

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

#### *Division 2—Conditions*

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

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

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

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

(1) In this clause—

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

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

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

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

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

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

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

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

#### *Division 3—General*

### **7.6 Duration of permit**

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

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

### **7.7 Renewal of permit**

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

(2) The provisions of—

- (a) this Part; and
  - (b) any other provision of this local law relevant to the permit which is to be renewed,
- shall apply to an application for the renewal of a permit *mutatis mutandis*.

### **7.8 Transfer of permit**

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

- (a) be made in writing;
- (b) be signed by the permit holder and the proposed transferee of the permit;
- (c) provide such information as the local government may require to enable the application to be determined; and

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

### **7.9 Production of permit**

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

### **7.10 Cancellation of permit**

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

## **PART 8—OBJECTIONS AND APPEALS**

### **8.1 Application of Part 9 Division 1 of Act**

When the local government makes a decision—

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

the provisions of Division 1 of Part 9 of the Act and regulations 33 and 34 of the Regulations apply to that decision.

## **PART 9—MISCELLANEOUS NOTICES**

### **9.1 Notice to redirect or repair sprinkler**

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

### **9.2 Hazardous plants**

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

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

### **9.3 Notice to repair damage to thoroughfare**

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

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

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

## **PART 10—ENFORCEMENT**

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

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

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



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

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

*Division 2—Offences and penalties**Subdivision 1—General***10.3 Offences**

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

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

*Subdivision 2—Infringement notices and modified penalties***10.4 Prescribed offences**

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

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

(3) For the purpose of guidance only, before giving an infringement notice to a person in respect of the commission of a prescribed offence, an 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.

**10.5 Forms**

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

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

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

Clause	Description	Modified Penalty \$
2.1(a)	Plant of 0.75m in height on thoroughfare within 6m of intersection .....	100
2.1(b)	Damaging lawn or garden .....	100
2.1(c)	Plant (except grass) on thoroughfare within 3m of carriageway .....	100
2.1(d)	Placing hazardous substance on footpath .....	100
2.1(e)	Damaging or interfering with signpost or structure on thoroughfare .....	300
2.1(f)	Playing games so as to impede vehicles or persons on thoroughfare .....	100
2.1(g)	Riding of skateboard or similar device on mall or verandah of shopping centre .....	100
2.2(a)	Digging a trench through a kerb or footpath without a permit .....	100
2.2(b)	Throwing or placing anything on a verge without a permit .....	100
2.2(c)	Causing obstruction to vehicle or person on thoroughfare without a permit .....	100
2.2(d)	Causing obstruction to water channel on thoroughfare without a permit .....	200
2.2(e)	Placing or draining offensive fluid on thoroughfare without a permit .....	200
2.2(g)	Lighting a fire on a thoroughfare without a permit .....	300
2.2(h)	Felling tree onto thoroughfare without a permit .....	100
2.2(i)	Installing pipes or stone on thoroughfare without a permit .....	100
2.2(j)	Installing a hoist or other thing on a structure or land for use over a thoroughfare without a permit .....	300
2.2(k)	Creating a nuisance on a thoroughfare without a permit .....	100
2.2(l)	Placing a bulk rubbish container on a thoroughfare without a permit .....	100
2.2(m)	Interfering with anything on a thoroughfare without a permit .....	100
2.3(1)	Consumption or possession of liquor on a thoroughfare .....	100
2.4(1)	Failure to obtain permit for temporary crossing .....	200

Clause	Description	Modified Penalty \$
2.5(2)	Failure to comply with notice to remove crossing and reinstate kerb .....	300
2.9(1)	Installation of verge treatment other than permissible verge treatment .....	200
2.10	Failure to maintain permissible verge treatment or placement of obstruction on verge .....	100
2.11	Failure to comply with notice to rectify default .....	100
2.17(2)	Failure to comply with sign on public place .....	100
2.19(1)	Driving or taking a vehicle on a closed thoroughfare .....	300
3.2(1)	Placing advertising sign or affixing any advertisement on a thoroughfare without a permit .....	100
3.2(5)	Erecting or placing of advertising sign in a prohibited area .....	100
4.1(1)	Animal or vehicle obstructing a public place or local government property .....	100
4.2(2)(a)	Animal on thoroughfare when not led, ridden or driven .....	100
4.2(2)(b)	Animal on public place with infectious disease .....	100
4.2(2)(c)	Training or racing animal on thoroughfare in built-up area .....	100
4.2(3)	Horse led, ridden or driven on thoroughfare in built-up area .....	100
4.5	Person leaving shopping trolley in public place other than trolley bay .....	100
4.6(2)	Failure to remove shopping trolley upon being advised of location .....	100
5.6(1)	Driving a vehicle on other than the carriageway of a flora road .....	200
5.9	Planting in thoroughfare without a permit .....	200
5.11	Failure to obtain permit to clear a thoroughfare .....	500
5.13	Burning of thoroughfare without a permit .....	500
5.17	Construction of firebreak on thoroughfare without a permit .....	500
5.19	Commercial harvesting of native flora on thoroughfare .....	500
5.20(1)	Collecting seed from native flora on thoroughfare without a permit .....	300
6.2(1)	Conducting of stall in public place without a permit .....	300
6.3(1)	Trading without a permit .....	300
6.8(1)(a)	Failure of stallholder or trader to display or carry permit .....	100
6.8(1)(b)	Stallholder or trader not displaying valid permit .....	100
6.8(1)(c)	Stallholder or trader not carrying certified scales when selling goods by weight ....	100
6.8(2)	Stallholder or trader engaged in prohibited conduct .....	100
6.10	Performing in a public place without a permit .....	100
6.11(2)	Failure of performer to move onto another area when directed .....	100
6.14	Failure of performer to comply with obligations .....	100
6.16	Establishment or conduct of outdoor eating facility without a permit .....	300
6.18	Failure of permit holder of outdoor eating facility to comply with obligations .....	100
6.20(1)	Use of equipment of outdoor eating facility without purchase of food or drink from facility .....	50
6.20(2)	Failure to leave outdoor eating facility when requested to do so by permit holder .	50
7.5	Failure to comply with a condition of a permit .....	100
7.9	Failure to produce permit on request of authorised person .....	100
10.1	Failure to comply with notice given under local law .....	100

Dated 1st of August 2000.

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

P. ROBSON, Mayor.  
P. A. ROB, Chief Executive Officer.

## APPENDIX 3

---

### LOCAL GOVERNMENT PROPERTY PRINCIPAL LOCAL LAW

15 August 2011

GOVERNMENT GAZETTE, WA

3297

#### LOCAL GOVERNMENT ACT 1995

CITY OF KALGOORLIE-BOULDER

#### LOCAL GOVERNMENT PROPERTY LOCAL LAW 2010

##### ARRANGEMENT

##### PART 1—PRELIMINARY

- 1.1 Citation
- 1.2 Purpose and effect
- 1.3 Commencement
- 1.4 Application
- 1.5 Repeal
- 1.6 Interpretation
- 1.7 Over-riding power to hire and agree

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

###### *Division 1—Determinations*

- 2.1 Determinations as to use of local government property
- 2.2 Procedure for making a determination
- 2.3 Discretion to erect sign
- 2.4 Determination to be complied with
- 2.5 Register of determinations
- 2.6 Amendment or revocation of a determination

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

- 2.7 Activities which may be pursued on specified local government property
- 2.8 Activities which may be prohibited on specified local government property

###### *Division 3—Transitional*

- 2.9 Signs taken to be determinations

##### PART 3—PERMITS

###### *Division 1—Preliminary*

- 3.1 Application of Part

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

- 3.2 Application for permit
- 3.3 Decision on application for permit

###### *Division 3—Conditions*

- 3.4 Examples of conditions
- 3.5 Imposing conditions under a policy
- 3.6 Compliance with conditions

###### *Division 4—General*

- 3.7 Agreement for building
- 3.8 Duration of permit
- 3.9 Renewal of permit
- 3.10 Transfer of permit
- 3.11 Production of permit
- 3.12 Cancellation of permit

*Division 5—When a permit is required*

- 3.13 Activities needing a permit
- 3.14 Permit required to camp outside a facility
- 3.15 Permit required for possession and consumption of liquor

*Division 6—Responsibilities of permit holder*

- 3.16 Responsibilities of permit holder

**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
- 4.2 Behaviour detrimental to property
- 4.3 Animals on local government property
- 4.4 Taking or injuring any fauna
- 4.5 Removing or damaging any flora
- 4.6 Intoxicated persons not to enter local government property
- 4.7 No prohibited drugs
- 4.8 Deposit of refuse, rubbish or liquid waste
- 4.9 Refusal of entry to local government property

*Division 2—Signs*

- 4.10 Signs

**PART 5—MATTERS RELATING TO PARTICULAR LOCAL GOVERNMENT PROPERTY***Division 1—Swimming pool areas*

- 5.1 When entry must be refused
- 5.2 Consumption of food or drink may be prohibited
- 5.3 Glass containers prohibited

*Division 2—Toilet blocks and change rooms*

- 5.4 Only specified gender to use entry of toilet block or change room
- 5.5 Hire of lockers
- 5.6 Unclaimed property in locker
- 5.7 Use of shower or bath facilities

*Division 3—Children's playground*

- 5.8 Public reserve may be set aside
- 5.9 Limit to ages of persons permitted to use children's playground equipment
- 5.10 Age limit on sign
- 5.11 Smoking prohibited near children's playground equipment

*Division 4—Airport*

- 5.12 Use by aircraft
- 5.13 Right of entry to airport
- 5.14 Access of animals restricted

*Division 5—Golf course*

- 5.15 Interpretation
- 5.16 Observance of special conditions of play
- 5.17 Children under the age of 10 years

*Division 6—Fenced or closed property*

- 5.18 No entry to fenced or closed local government property

**PART 6—FEES FOR ENTRY ON TO LOCAL GOVERNMENT PROPERTY**

- 6.1 No unauthorised entry to function

**PART 7—OBJECTIONS AND APPEALS**

- 7.1 Objection and appeal rights

**PART 8—MISCELLANEOUS**

- 8.1 Authorised person to be obeyed
- 8.2 Persons may be directed to leave local government property

- 8.3 Disposal of lost property
- 8.4 Liability for damage to local government property
- 8.5 Glass containers prohibited on local government property

#### **PART 9—ENFORCEMENT**

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

- 9.1 Offence to fail to comply with notice
- 9.2 City may undertake requirements of notice

##### ***Division 2—Offences and penalties***

- 9.3 Offences and general penalty
- 9.4 Prescribed offences
- 9.5 Form of notices
- 9.6 Impounding of goods
- 9.7 Evidence of a determination

#### **Schedule 1—Prescribed offences**

#### **Schedule 2—Determinations**

#### **Schedule 3—Golf Course Reserve**

**LOCAL GOVERNMENT ACT 1995**

## CITY OF KALGOORLIE-BOULDER

**LOCAL GOVERNMENT PROPERTY LOCAL LAW 2010**

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the City of Kalgoorlie-Boulder resolved on 25 July 2011 to adopt the following local law.

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

This local law may be cited as the *City of Kalgoorlie-Boulder Local Government Property Local Law 2010*.

**1.2 Purpose and effect**

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

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

**1.3 Commencement**

This local law comes into operation 14 days after the day on which it is published in the *Government Gazette*.

**1.4 Application**

This local law applies throughout the district.

**1.5 Repeal**

The *City of Kalgoorlie-Boulder Local Government Property Local Law* published in the *Government Gazette* on 18 August 2000 is repealed.

**1.6 Interpretation**

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

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

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

“**authorised person**” means a person appointed by the City 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 on any local government property and includes a—

(a) hall or room;

(b) corridor, stairway or annexe of any hall or room;

“**CEO**” means the Chief Executive Officer of the City;

“**City**” means the City of Kalgoorlie-Boulder;

“**commencement day**” means the day on which this local law commences under clause 1.3;

“**costs**” of the City include its administrative costs;

“**Council**” means the council of the City;

“**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 City;

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

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

- (a) which belongs to the City;
- (b) of which the City 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;

“**local public notice**” has the same meaning as in section 1.7 of the Act;

“**Manager**” means the person for the time being employed by the City 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 City;

“**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 City on which may be shown words, numbers, expressions or symbols;

“**surf riding equipment**” means any device or toy used to assist a rider in moving in or across waves or the water surface, and includes surfboard, boogie board, windsurfer, wave ski, canoe, kite surfer, inflatable toy or similar device but not a boat;

“**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;

“**Unclaimed Property Register**” means the register kept by an attendant of any unclaimed belongings under Division 2 of Part 5.6 of this local law; 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;
- (d) a pram, a stroller or a similar device; and
- (e) a boat.

### 1.7 Over-riding power to hire and agree

- (1) Despite anything to the contrary in this local law, the City 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.
- (2) In this local law, a reference to local government property includes a reference to any part of that local government property.

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

### Division 1—Determinations

#### 2.1 Determinations as to use of local government property

- (1) The City 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 City 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 City 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 City's offices; and
  - (c) submissions in writing about the proposed determination may be lodged with the City 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—
  - (a) to give local public notice that the proposed determination has effect as a determination on and from the date of publication;
  - (b) to amend the proposed determination, in which case subclause (5) will apply; or
  - (c) not to continue with the proposed determination.
- (4) If submissions are received in accordance with subclause (2)(c), the Council—
  - (a) is to consider those submissions; and
  - (b) is to 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 City 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 must comply with a determination.

## **2.5 Register of determinations**

- (1) The City 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 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, the CEO is to give local public notice of the revocation and the determination is to cease to have effect on the date of publication of the notice.

### ***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 powered model aeroplane;
  - (d) use a children's playground provided that the person is under an age specified in the determination, but the determination is not to apply to a person having the charge of a person under the specified age;
  - (e) launch, beach or leave a boat;
  - (f) take or use a boat, or a particular class of boat;
  - (g) deposit refuse, rubbish or liquid waste, whether or not of particular classes, and whether or not in specified areas of that local government property;



- (h) play or practise—
    - (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 City may cause injury or damage to a person or property;
  - (i) ride a bicycle, a skateboard, rollerblades or a similar device.
- (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**

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.

- (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 or a similar device;
  - (c) taking, riding or driving a vehicle on the property, or a particular class of vehicle;
  - (d) riding or driving a vehicle of a particular class or any vehicle above a specified speed;
  - (e) taking or using a boat, or a particular class of boat;
  - (f) the playing or practise 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 City may cause injury or damage to a person or property;
  - (g) the playing or practise of any ball game which may cause detriment to the property or any fauna on the property; and
  - (h) the traversing of land which in the opinion of the City 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.

## ***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 City that is 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 City 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 must apply for the permit in accordance with subclause (2).
- (2) An application for a permit under this local law must—
  - (a) be in the form determined by the City;
  - (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 by the City under sections 6.16 to 6.19 of the Act.
- (3) The City may require an applicant to provide additional information reasonably related to an application before determining an application for a permit.
- (4) The City may require an applicant to give local public notice of the application for a permit.
- (5) The City may refuse to consider an application for a permit which is not in accordance with subclause (2) or where the requirements of subclause (3) or (4) have not been satisfied.

**3.3 Decision on application for permit**

- (1) The City 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 City approves an application for a permit, it is to issue to the applicant, a permit in the form determined by the City.
- (3) If the City refuses to approve an application for a permit, it is to give written notice of that refusal to the applicant.
- (4) The City may, at any time, amend a condition of approval and the amended condition takes effect when written notice of it is given to the permit holder.

*Division 3—Conditions***3.4 Examples of conditions**

- (1) Examples of the conditions that the City may impose on a permit are conditions relating to but not limited to—
  - (a) the payment of a fee;
  - (b) compliance with a standard or a policy adopted by the City;
  - (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 City 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 City.
- (2) Examples of the type and content of the conditions on which a permit to hire local government property may be issued include but not limited to—
  - (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 City to cancel a booking during the course of an annual or seasonal booking, if the City 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 City and the hirer, indemnifying the City 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 City 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**

In this clause—

“**policy**” means a policy of the City adopted by the Council under section 2.7 of the Act containing conditions subject to which an application for a permit may be approved under clause 3.3(1)(a).

- (1) Under clause 3.3(1)(a) the City may approve an application subject to conditions by reference to a policy.
- (2) The City must 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).
- (3) An application for a permit is not to be taken to have been approved subject to the conditions contained in a policy until the City gives the permit holder a copy of the policy or the part of the policy which is relevant to the application.
- (4) Sections 5.94 and 5.95 of the Act apply to a policy, and for that purpose a policy is taken to be information within section 5.94(u)(i) of the Act.

### **3.6 Compliance with conditions**

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

## *Division 4—General*

### **3.7 Agreement for building**

Where a person applies for a permit to erect a building on local government property the City 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**

- (1) 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 City in writing prior to expiry of a permit for the renewal of the permit.
- (2) The provisions of this Part must 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 must—
  - (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 City may require to enable the application to be determined; and
  - (d) be forwarded to the City together with any fee imposed by the City under sections 6.16 to 6.19 of the Act.
- (2) The City may approve an application for the transfer of a permit, refuse to approve it or approve it subject to any conditions.
- (3) Where the City approves an application for the transfer of a permit, the transfer may be effected by an endorsement on the permit signed by the CEO or authorised person.
- (4) Where the City 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.

### **3.12 Cancellation of permit**

- (1) Subject to clause 9.1, a permit may be cancelled by the City if the permit holder has not complied with—
  - (a) a condition of the permit;
  - (b) a direction under clause 3.16(b); or
  - (c) a 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) must 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 must 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, on local government property, a structure for public amusement or for any performance, whether for gain or otherwise;
  - (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 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 City in the course of his or her 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, or undertake any promotional activity, 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 on local government property, for the purpose of supplying any water, power, sewer, communication, television or similar service to a person;
  - (o) deposit or store any thing on local government property;
  - (p) depasture, tether, drive or ride any horse, sheep, cattle, goat, camel, ass, mule, pig or other similar animal on local government property;
  - (q) conduct or take part in any gambling game or contest or bet, or offer to bet, publicly; or
  - (r) erect, install, operate or use any broadcasting, public address system, loudspeaker or other device for the amplification of sound on local government property.
- (2) The City may exempt a person from compliance with subclause (1) on the application of that person.
- (3) The City 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**

In this clause—

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

- (1) This clause does not apply to a facility operated by the City.
- (2) Except in accordance with a determination or a permit, a person must not—
- (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.
- (3) The maximum period for which the local government may approve an application for a permit in respect of paragraph (a) or (b) of subclause (2) is that provided in regulation 11(2)(a) of the *Caravan Parks and Camping Grounds Regulations 1997*.

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

- (1) A person must not, on local government property, 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**

- (1) A holder of a permit must, 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) comply with a direction from the City to take the action specified in the direction for the purpose of maintaining public safety;
- (c) leave the local government property in a clean and tidy condition after its use;
- (d) report any damage or defacement of the local government property to the City; and
- (e) prevent the consumption of any liquor on the local government property unless the permit allows it and a licence has been obtained under the *Liquor Control Act 1988* for that purpose.

#### **PART 4—BEHAVIOUR ON ALL LOCAL GOVERNMENT PROPERTY**

##### ***Division 1—Behaviour on and interference with local government property***

###### **4.1 Behaviour which interferes with others**

- (1) A person must 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) In this clause—
  - “**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.
- (2) A person must not, in or on local government property, behave in a way which is or might be detrimental to the property.

###### **4.3 Animals on local government property**

- (1) In this clause—
  - “**animal**” means any living thing that is not a human being or plant.
- (2) A person must not tether any animal to a tree, shrub, tree guard, wall or fence or permit any animal to enter on or into any local government property unless authorised by a written law, or by a permit, or a sign erected in accordance with a written law.
- (3) A person shall not bring an animal onto local government property unless the person is—
  - (a) a person referred to in section 8 of the *Dog Act 1976*; or
  - (b) a person referred to in section 66J of the *Equal Opportunity Act 1984* acting in accordance with that provision.

###### **4.4 Taking or injuring any fauna**

- (1) In this clause—
  - “**animal**” means any living thing that is not a human being or plant.
  - “**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.
- (2) A person must not take, injure or kill any fauna that is on or above any local government property, unless that person is authorised under a written law to do so.

###### **4.5 Removing or damaging any flora**

- (1) In this clause—
  - “**flora**” means all vascular plants other than plants recognised as weeds.
- (2) A person must not remove or damage any flora which is on or above any local government property, unless that person is authorised to do so under a written law or with the written approval of the City.

###### **4.6 Intoxicated persons not to enter local government property**

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

###### **4.7 No prohibited drugs**

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

###### **4.8 Deposit of refuse, rubbish or liquid waste**

- (1) A person must not, on local government property, deposit or discard refuse, rubbish or liquid waste except—
  - (a) in a place or receptacle set aside by the City for that purpose and subject to any conditions that may be specified on the receptacle or a sign in relation to the type of waste that may be deposited or other conditions; or

- (b) at the recycling centre and subject to directions issued from time to time by the City or an authorised person for the orderly and proper use of the recycling centre in relation to hours of business, separation of waste into designated receptacles, prohibition of the deposit of certain types of refuse or waste, and conduct of persons or persons in charge of vehicles while on the site.

#### **4.9 Refusal of entry to local government property**

- (1) An authorised person may refuse to allow entry, or suspend admission, to any local government property by any person whom he or she believes has behaved in a manner contrary to the provisions of this Part.
- (2) This refusal or suspension can be for any period of up to 12 months as decided by that authorised person.
- (3) A decision made under this clause is a decision to which clause 8.2 applies.

### ***Division 2—Signs***

#### **4.10 Signs**

- (1) The City may erect a sign on local government property specifying any conditions of use which apply to that property.
- (2) A person must comply with a sign erected under subclause (1).
- (3) A condition of use specified on a sign erected under subclause (1)—
  - (a) is not to be inconsistent with any provision of this local law or any determination; and
  - (b) is 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—Swimming pool areas***

#### **5.1 When entry must be refused**

- (1) A Manager or an authorised person must refuse admission to a pool area to any person who—
  - (a) in her or his opinion—
    - (i) is under the age of 12 years and who is unaccompanied by a responsible person over the age of 18 years;
    - (ii) is under the age of 12 years and who is accompanied by a responsible person over the age of 18 years where the responsible person is incapable of, or not providing, adequate supervision of or care for that person;
    - (iii) is suffering from any contagious, infectious or cutaneous disease or complaint, or is in an unclean condition; or
    - (iv) is under the influence of liquor or a prohibited drug; or
  - (b) is to be refused admission by the City for breaching a clause of this local law.
- (2) If a person referred to in paragraph (a) or (b) of subclause (1) is in a pool area, a Manager or an authorised person must—
  - (a) direct the person to leave; and
  - (b) if the person refuses or fails to leave, remove the person or arrange for the person to be removed, from the pool area.

#### **5.2 Consumption of food or drink may be prohibited**

A person must not consume any food or drink in an area where consumption is prohibited by a sign.

#### **5.3 Glass containers prohibited**

Unless authorised by a permit or by an authorised person, a person must not take any glass containers into swimming pool areas on any local government property as indicated by a sign.

### ***Division 2—Toilet blocks and change rooms***

#### **5.4 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 must not use that entry of the toilet block or change room;
  - (b) males, then a person of the female gender must not use that entry of the toilet block or change room; or
  - (c) families, where the toilet block or change room is being used by a family, only an immediate member of that family may 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.



**5.5 Hire of lockers**

(1) A person may hire a locker in or near a change room for the purpose of safekeeping articles on the conditions that—

- (a) it is the responsibility of the person hiring the locker to lock the locker once the articles to be stored are placed in the locker and to return the key to the attendant; and
- (b) on receiving a receipt given in respect of the hire of the locker, an attendant is to hand to that person the key for the locker described in the receipt in order to remove the articles from the locker.

(2) A person must not store in any locker a firearm or offensive weapon or any article or substance that has been unlawfully acquired or which is a substance or article within the meaning of “dangerous goods” under the *Dangerous Goods Safety Act 2004*.

(3) An attendant or authorised person may open and inspect the contents of a locker at any time, where the attendant or authorised person reasonably suspects that a breach of this local law has occurred.

**5.6 Unclaimed property in locker**

(1) If an article in a locker is not claimed or collected within 48 hours after the date of hire, the article may be removed by an attendant or authorised person.

(2) An attendant or authorised person must record in the Unclaimed Property Register, with respect to each article removed from a locker—

- (a) a description of the article removed;
- (b) the time and date the article was removed; and
- (c) the time and date recorded on the original receipt.

(3) An attendant or authorised person must ensure that an article removed from the locker is stored at the place determined by the City.

(4) An attendant or authorised person may deliver to a person an article recorded in the Unclaimed Property Register on receiving—

- (a) satisfactory evidence of the person’s right to obtain the article;
- (b) an accurate description of the article being claimed; and
- (c) payment of any outstanding fees or storage charges.

(5) A person who receives delivery of an article from the Unclaimed Property Register must, by way of acknowledging receipt of the article, write his or her name and address and sign his or her name in the Unclaimed Property Register.

(6) Subject to clause 8.3, the City may dispose of any article left in a locker or on local government property that is not claimed within a period of 3 months.

**5.7 Use of shower or bath facilities**

(1) A person may use a shower or bath facility in change rooms only on conditions that—

- (a) the facilities must be used by the person only for the purpose of cleansing, bathing and washing themselves;
- (b) use of the facilities must be restricted to a maximum period of 15 minutes or such lesser time as required by an attendant; or
- (c) the facilities must not be used for the purpose of laundering or washing any clothing or other articles.

***Division 3—Children’s playgrounds*****5.8 Public reserve may be set aside**

(1) The City may set aside a public reserve or any portion of a public reserve for use as a children’s playground.

**5.9 Limit to ages of persons permitted to use children’s playground equipment**

(1) The City may limit the ages of persons to the use of children’s playground equipment built for young and small children, and may erect a sign under clause 2.3 of this local law to that effect on or in the immediate vicinity of the playground.

**5.10 Age limit on sign**

(1) A person over the age specified on that sign, other than a person having the charge of a child or children in the playground, must not use playground equipment built for young and small children, or interfere with the use by children in the playground.

**5.11 Smoking prohibited near children’s playground equipment**

(1) Smoking within 10 metres of a children’s playground equipment is prohibited and implemented under section 107C of the *Tobacco Products Control Act 2006*.

Penalty: a fine of \$1,000.

***Division 4—Airport*****5.12 Use by aircraft**

(1) The owner of every aircraft, upon payment of the set fee and compliance with this local law and other written law, shall be entitled to use the airport for the landing, servicing and departure of their aircraft and the disembarkment of passengers and freight.

(2) The local government may close the airport to aircraft movements for any reason, including but not limited to, if it considers the surface of the airport to be unsafe.

#### **5.13 Right of entry to airport**

(1) Except as herein provided, a person other than—

- (a) a person lawfully employed upon duties in or about the supervision and control of the airport, or acting under a permit or other agreement of or with, the local government, in or about the arrival, departure and servicing of or other attention upon aircraft lawfully using the airport;
- (b) a passenger or intending passengers by aircraft lawfully using the airport; or
- (c) person greeting or seeing off a passenger or intending passenger by aircraft lawfully using the airport, shall not enter or remain upon the airport or any part thereof without first obtaining the approval of the local government.

(2) The local government may from time to time designate or set apart any specified part or parts of the airport—

- (a) to which only persons from time to time designated by the local government shall be admitted;
- (b) to which persons other than those mentioned in subclause (1) shall not be admitted;
- (c) to which the general public, or any limited classes of the general public, may be admitted, either at all times or at specified times, or for limited periods and generally upon such terms and conditions as the Council may resolve;
- (d) to which no vehicle may be admitted or to which a limited class of vehicles may be admitted or to which vehicles may be admitted only on such terms and conditions as the Council may resolve; and
- (e) to which no aircraft may be admitted or to which a limited class of aircraft may be admitted or to which aircraft may be admitted only on such terms and conditions as the Council resolves.

(3) Signs, markings or notices may be placed by the local government at the airport indicating the limits of any part of the airport set apart for any special or limited use under subclause (2).

(4) Notwithstanding the provisions of this clause the local government may on special occasions, for instance, an aerial pageant or other event of public interest, make such arrangements for the control of the airport as it may by resolution impose.

#### **5.14 Access of animals restricted**

(1) A person shall not bring an animal onto an airport unless—

- (a) the person is a person referred to in section 8 of the *Dog Act 1976* and section 66J of the *Equal Opportunity Act 1984* acting in accordance with that provision;
- (b) the animal is being air freighted from the airport;
- (c) the animal has been air freighted to the airport; or
- (d) the person is authorised to do so by the local government.

(2) A person in charge of an animal shall keep the animal under control and shall not allow it to wander at large on the airport.

(3) If an animal is at any time on an airport in contravention of subclause (2), in addition to the person specified in that subclause, the owner of the animal at that time commits an offence against subclause (2).

### *Division 5—Golf course*

#### **5.15 Interpretation**

In this Division—

“**controller**” means the person appointed by the City to direct, control and manage a golf course;

“**golf course**” means that portion of a golf course reserve which is laid out as a golf course and includes all tees, fairways, greens, practise tees, practise fairways, practise greens and any driving range; and

“**golf course reserve**” means the local government property described in Schedule 3 and includes all buildings, structures, fittings, fixtures and equipment on that land.

#### **5.16 Observance of special conditions of play**

(1) While on a golf course, a player must—

- (a) observe and comply with a direction of the controller in respect of any special conditions of play;
- (b) observe and comply with a requirement of any notice erected to direct or control play; and
- (c) not be accompanied by a non-playing person without the permission of the controller or an authorised person.

#### **5.17 Children under the age of 10 years**

A person under the age of 10 years must not enter, play or practise on a golf course unless accompanied by a person of 18 years or older.



*Division 6—Fenced or closed property***5.18 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 City.

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

(1) A person must not enter local government property on a day or during a time when the property is set aside for a function, or when an admission charge is authorised, except—

- (a) through the proper entrance for that purpose; and
- (b) on payment of the applicable admission charge.

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

**PART 7—OBJECTIONS AND APPEALS****7.1 Objection and appeal rights**

(1) Division 1 of Part 9 of the Act applies to a decision under this local law—

- (a) to grant, renew, amend or cancel a permit or consent; and
- (b) to refuse to allow entry, or to suspend admission, to any local government property.

**PART 8—MISCELLANEOUS****8.1 Authorised person to be obeyed**

A person on local government property must obey any lawful direction of an authorised person and must not in any way obstruct or hinder an authorised person in the execution of his or her 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 he or she 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 City 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 specified in the notice to, at the option of the City, pay the costs of—

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

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

**8.5 Glass containers prohibited on local government property**

Unless authorised by a permit or by an authorised person, a person must not take any glass containers onto any local government property as indicated by a sign.

**PART 9—ENFORCEMENT***Division 1—Notices given under this local law***9.1 Offence to fail to comply with notice**

A person who fails to comply with a notice given to him or her under this local law commits an offence.

**9.2 City may undertake requirements of notice**

If a person fails to comply with a notice given to him or her under this local law the City 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***9.3 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 that 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, an additional penalty not exceeding \$500 for each day or part of a day during which the offence has continued.

**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 the First Schedule of the *Local Government (Functions and General) Regulations 1996*;
- (b) the form of the infringement notice given under section 9.17 of the Act is Form 2 in the First Schedule of the *Local Government (Functions and General) Regulations 1996*; and
- (c) the form of the infringement withdrawal notice referred to in section 9.20 of the Act is Form 3 in the First Schedule of the *Local Government (Functions and General) Regulations 1996*.

(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.

### 9.6 Impounding of goods

Provisions dealing with the power to impound goods that are involved in a contravention, including a contravention of this local law, are contained in the Act and Regulations.

### 9.7 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

[cl. 9.4]

#### OFFENCES AND MODIFIED PENALTIES

Item No.	Clause No.	Nature of offences	Modified penalties (\$)
1	2.4	Failure to comply with determination	140
2	3.6	Failure to comply with conditions of permit	140
3	3.13(1)	Failure to obtain a permit	140
4	3.14(2)	Failure to obtain permit to camp outside a facility	140
5	3.15(1)	Failure to obtain permit for liquor	140
6	3.16	Failure of permit holder to comply with responsibilities	140
7	4.1	Behaviour which interferes with others	140
8	4.2(1)	Behaviour detrimental to property	400
9	4.4(2)	Taking or injuring any fauna	400
10	4.5(2)	Removing or damaging any flora	400
11	4.6	Under influence of liquor or prohibited drug	140
12	4.10(2)	Failure to comply with sign on local government property	140
13	5.2	Consuming food or drink in prohibited area	140
14	5.4(1)(a)	Male using entry of toilet block and change room specified for female gender	140
15	5.4(1)(b)	Female using entry of toilet block and change room specified for male gender	140
16	5.16	Failure to comply with direction of controller or notice on golf course	140
17	5.18	Unauthorised entry to fenced or closed local government property	140
18	6.1(1)	Unauthorised entry to function on local government property	140
19	8.1	Failure to obey lawful direction of an authorised person	280
20	8.2	Failure to obey direction of authorised person to leave local government property	280
21	9.1	Failure to comply with notice	280

**Schedule 2**  
**Determinations**

[cl 2.1(2)]

**APPLICATION OF DETERMINATIONS**

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

**PART 1—PRELIMINARY**

**1.1 Definition**

In these determinations—

“**local law**” means the *City of Kalgoorlie-Boulder Local Government Property Local Law 2010*.

**1.2 Interpretation**

Where a term is used but not defined in a determination and that term is defined in the local law then the term is to have the meaning given to it in the local law.

**PART 2—APPLICATION**

**2.1 Vehicles on local government property**

(1) Unless authorised by a permit or determination, a person must not take or cause a vehicle to be taken onto or driven on local government property unless—

- (a) subject to subclause (3), the local government property is clearly designated as a road, access way or car park;
- (b) the vehicle is driven by a City employee, authorised person or contractor engaged by the City, who is engaged in—
  - (i) providing a service or making a delivery in connection with the local government property; or
  - (ii) maintaining the local government property;
- (c) the person is driving an emergency vehicle in the course of his or her duties; or
- (d) the vehicle is a powered wheelchair, and the driver of that vehicle is a disabled person.

(2) A person must not drive a vehicle or allow a vehicle to be driven on local government property at a speed exceeding 10 kilometres per hour, or in such a manner as to cause danger, inconvenience or annoyance to any person.

(3) Other than in accordance with paragraphs (b), (c) or (d) of subclause (1), a person shall not drive a vehicle on local government property or part of it that is being used for a function for which a permit has been obtained unless permitted to do so by the permit holder or an authorised person.

**2.2 Powered model aeroplanes, toys or ships**

A person must not use, launch or fly a powered model aeroplane, toy, ship, glider or rocket that is propelled by mechanical, hydraulic, combustion or pyrotechnic means on or from local government property except where a permit or a determination specifies a particular local government property.

**2.3 Activities prohibited on local government property**

(1) A person is prohibited from playing or practicing archery, pistol or rifle shooting on local government property except on land which is reserved by the City for that purpose, or as otherwise provided by a determination or permit.

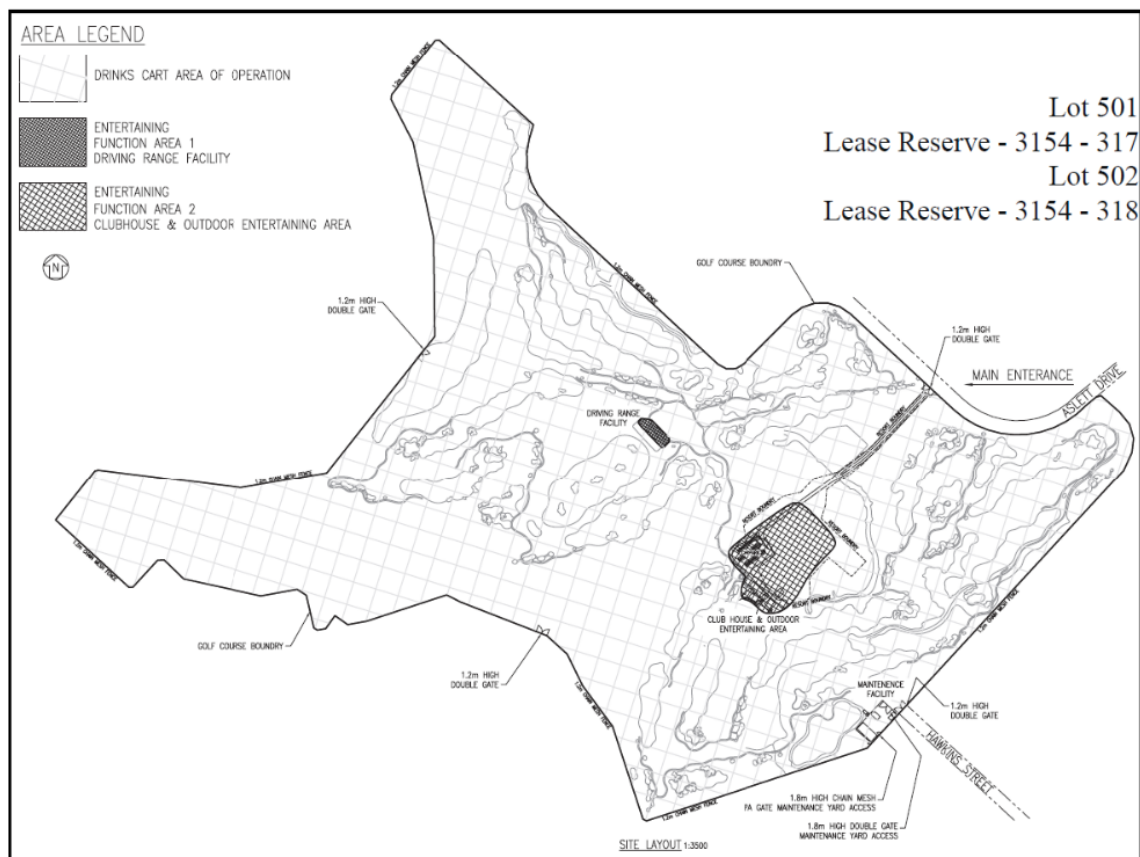
(2) A person must not use or ride a bicycle or wheeled recreational device, or skateboard—

- (a) inside or on the curtilage to, a building;
- (b) in a pool area;
- (c) on a golf course;
- (d) in the recycling centre; or
- (e) in or on dams, waterways, lagoons and lakes.

(3) A person must not take on to any local government property, a spear gun, hand spear, gidgie or similar device.

*Schedule 3*  
**Golf Course Reserve**

[cl. 5.15]

**Diagram 1—Kalgoorlie Golf Course**

Dated: 4 August 2011.

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

R. S. YURYEVICH, RFD, AM, Mayor.  
D. S. BURNETT, Chief Executive Officer.

## APPENDIX 4

---

### EXTRACTS FROM THE *LOCAL GOVERNMENT ACT 1995*

#### **3.1. General function**

- (1) The general function of a local government is to provide for the good government of persons in its district.
- (2) The scope of the general function of a local government is to be construed in the context of its other functions under this Act or any other written law and any constraints imposed by this Act or any other written law on the performance of its functions.
- (3) A liberal approach is to be taken to the construction of the scope of the general function of a local government.

#### **3.2. Relationship to State Government**

The scope of the general function of a local government in relation to its district is not limited by reason only that the Government of the State performs or may perform functions of a like nature.

#### **3.5. Legislative power of local governments**

- (1) A local government may make local laws under this Act prescribing all matters that are required or permitted to be prescribed by a local law, or are necessary or convenient to be so prescribed, for it to perform any of its functions under this Act.

#### **3.7. Inconsistency with written laws**

A local law made under this Act is inoperative to the extent that it is inconsistent with this Act or any other written law.

#### **3.12. Procedure for making local laws**

- (1) In making a local law a local government is to follow the procedure described in this section, in the sequence in which it is described.
- (2A) Despite subsection (1), a failure to follow the procedure described in this section does not invalidate a local law if there has been substantial compliance with the procedure.
- (2) At a council meeting the person presiding is to give notice to the meeting of the purpose and effect of the proposed local law in the prescribed manner.
- (3) The local government is to —
  - (a) give Statewide public notice stating that —
    - (i) the local government proposes to make a local law the purpose and effect of which is summarized in the notice; and
    - (ii) a copy of the proposed local law may be inspected or obtained at any place specified in the notice; and

- (iii) submissions about the proposed local law may be made to the local government before a day to be specified in the notice, being a day that is not less than 6 weeks after the notice is given;

and

- (b) as soon as the notice is given, give a copy of the proposed local law and a copy of the notice to the Minister and, if another Minister administers the Act under which the local law is proposed to be made, to that other Minister; and
  - (c) provide a copy of the proposed local law, in accordance with the notice, to any person requesting it.
- (3a) A notice under subsection (3) is also to be published and exhibited as if it were a local public notice.
- (4) After the last day for submissions, the local government is to consider any submissions made and may make the local law\* as proposed or make a local law\* that is not significantly different from what was proposed.

*\* Absolute majority required.*

- (5) After making the local law, the local government is to publish it in the Gazette and give a copy of it to the Minister and, if another Minister administers the Act under which the local law is proposed to be made, to that other Minister.
- (6) After the local law has been published in the Gazette the local government is to give local public notice —
- (a) stating the title of the local law; and
  - (b) summarizing the purpose and effect of the local law (specifying the day on which it comes into operation); and
  - (c) advising that copies of the local law may be inspected or obtained from the local government's office.
- (7) The Minister may give directions to local governments requiring them to provide to the Parliament copies of local laws they have made and any explanatory or other material relating to them.
- (8) In this section —

**making** in relation to a local law, includes making a local law to amend the text of, or repeal, a local law.

## GLOSSARY

Term	Definition
<b>Thoroughfares and Public Places Amendment Local Law</b>	<i>City of Kalgoorlie-Boulder Activities on Thoroughfares and Trading in Thoroughfares and Public Places Amendment Local Law 2018</i>
<b>Local Government Property Amendment Local Law</b>	<i>City of Kalgoorlie-Boulder Local Government Property Amendment Local Law 2018</i>
<b>Amendment Local Laws</b>	<i>City of Kalgoorlie-Boulder Activities on Thoroughfares and Trading in Thoroughfares and Public Places Amendment Local Law 2018 and City of Kalgoorlie-Boulder Local Government Property Amendment Local Law 2018</i>
<b>Thoroughfares and Public Places Principal Local Law</b>	<i>City of Kalgoorlie-Boulder Activities on Thoroughfares and Trading in Thoroughfares and Public Places Local Law 2000</i>
<b>Local Government Property Principal Local Law</b>	<i>City of Kalgoorlie-Boulder Local Government Property Local Law 2010</i>
<b>Committee</b>	Joint Standing Committee on Delegated Legislation
<b>LGA</b>	<i>Local Government Act 1995</i>
<b>Minister</b>	Minister for Local Government
<b>City</b>	City of Kalgoorlie-Boulder
<b>Department</b>	Department of Local Government, Sport and Cultural Industries
<b>Criminal Code</b>	<i>Criminal Code Act 1913</i>
<b>LRC</b>	Law Reform Commission of Western Australia

# Joint Standing Committee on Delegated Legislation

## Date first appointed:

15 June 2017

## Terms of Reference:

The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

### '10. Joint Standing Committee on Delegated Legislation

- 10.1 A Joint Standing Committee on Delegated Legislation is established.
- 10.2 The Committee consists of 8 Members, 4 of whom are appointed from each House. The Chair must be a Member of the Committee who supports the Government.
- 10.3 A quorum is 4 Members of whom at least one is a Member of the Council and one a Member of the Assembly.
- 10.4 (a) A report of the Committee is to be presented to each House by a member of each House appointed for the purpose by the Committee.
- (b) Where a notice of motion to disallow an instrument has been given in either House pursuant to recommendation of the Committee, the Committee shall present a report to both Houses in relation to that instrument prior to the House's consideration of that notice of motion. If the Committee is unable to report a majority position in regards to the instrument, the Committee shall report the contrary arguments.
- 10.5 Upon its publication, whether under section 41(1)(a) of the *Interpretation Act 1984* or another written law, an instrument stands referred to the Committee for consideration.
- 10.6 In its consideration of an instrument, the Committee is to inquire whether the instrument -
- (a) is within power;
  - (b) has no unintended effect on any person's existing rights or interests;
  - (c) provides an effective mechanism for the review of administrative decisions; and
  - (d) contains only matter that is appropriate for subsidiary legislation.
- 10.7 It is also a function of the Committee to inquire into and report on -
- (a) any proposed or existing template, *pro forma* or model local law;
  - (b) any systemic issue identified in 2 or more instruments of subsidiary legislation; and
  - (c) the statutory and administrative procedures for the making of subsidiary legislation generally, but not so as to inquire into any specific proposed instrument of subsidiary legislation that has yet to be published.
- 10.8 In this order-
- "instrument" means -
- (a) subsidiary legislation in the form in which, and with the content it has, when it is published;
  - (b) an instrument, not being subsidiary legislation, that is made subject to disallowance by either House under a written law;
- "subsidiary legislation" has the meaning given to it by section 5 of the *Interpretation Act 1984*.





---

Parliament House,  
4 Harvest Terrace, West Perth WA 6005  
Telephone: +61 8 9222 7222  
Email: [lcco@parliament.wa.gov.au](mailto:lcco@parliament.wa.gov.au)  
Website: <http://www.parliament.wa.gov.au>