

LG302\*

**LOCAL GOVERNMENT ACT 1995**

*Shire of Brookton*

**LOCAL GOVERNMENT PROPERTY LOCAL LAW 2012**

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Brookton resolved on 16 February 2012 to make the following local law.

**PART 1 — PRELIMINARY**

**1.1 Citation**

This local law is cited as the *Shire of Brookton Local Government Property Local Law 2012*.

**1.2 Commencement**

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

**1.3 Definitions**

In this local law unless the context otherwise requires—

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

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

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

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

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

**Code** means the Code of Practice for the Design, Operation, Management and Maintenance of Aquatic Facilities as published by the Executive Director, Public Health, pursuant to the provisions of section 344A (2) of the *Health Act 1911*;

**CEO** means the chief executive officer or an acting chief executive officer of the local government;

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

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

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

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

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

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

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

**Health Act** means the Health Act 1911;

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

**local government** means the Shire of Brookton;

**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;

**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 local government to control and manage a pool area or other facility which is local government property and includes the person's assistant or deputy;

**nuisance** means—

- (a) any thing, condition, circumstance or state of affairs which is injurious or dangerous to the health of a reasonable person, or which has a disturbing effect on the state of reasonable physical, mental or social well-being of a person;
- (b) any thing a person does or permits or cause to be done which interferes with or is likely to interfere with the enjoyment or safe use by another person of any public place; and
- (c) any thing a person does on public or private land which detracts from or interferes with the enjoyment or value of lands owned by another person;

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

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

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

**pool area** means any swimming and wading pools and spas and all buildings, structures, fittings, fixtures, machinery, chattels, furniture and equipment forming part of or used in connection with such swimming and wading pools and spas which are local government property;

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

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

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

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

**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; and

**waste** includes matter—

- (a) whether liquid, solid, gaseous or radioactive and whether useful or useless, which is discharged into the environment; or
- (b) prescribed by regulations under the *Waste Avoidance and Resource Recovery Act 2007* to be waste.

#### **1.4 Interpretation**

In this local law, a reference to local government property includes a reference to any part of that local government property.

#### **1.5 Application**

This local law applies throughout the district.

#### **1.6 Overriding power to hire or agree**

Despite anything to the contrary in this local law, the local government may—

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

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

#### *Division 1—Determinations*

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

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

- (b) may be amended or revoked in accordance with clause 2.6; and
- (c) have effect on the commencement day.

## **2.2 Procedure for making a determination**

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

## **2.3 Discretion to erect sign**

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

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

A person shall comply with a determination.

## **2.5 Register of determinations**

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

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

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

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

## **2.7 Activities which may be pursued on specified local government property**

- (1) A determination may provide that specified local government property is set aside as an area on which a person may—
  - (a) bring, ride or drive an animal;
  - (b) take, ride or drive a vehicle, or a particular class of vehicle;
  - (c) fly or use a motorised model 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) deposit refuse, rubbish or liquid waste, whether or not of particular classes, and whether or not in specified areas of that local government property;
  - (f) play or practice—
    - (i) golf or archery;
    - (ii) pistol or rifle shooting, but subject to the compliance of that person with the *Firearms Act 1973*; or
    - (iii) a similar activity, specified in the determination, involving the use of a projectile which, in the opinion of the local government may cause injury or damage to a person or property; and
  - (g) ride a bicycle, a skateboard, rollerblades, a sandboard 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**

(1) 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.

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

- (a) smoking on premises;
- (b) riding a bicycle, a skateboard, rollerblades, a sandboard or a similar device;
- (c) taking, riding or driving a vehicle on the property or a particular class of vehicle;
- (d) riding or driving a vehicle of a particular class or any vehicle above a specified speed;
- (e) the playing or practice of—
  - (i) golf, archery, pistol shooting or rifle shooting; or
  - (ii) a similar activity, specified in the determination, involving the use of a projectile which, in the opinion of the local government may cause injury or damage to a person or property;
- (f) the playing or practice of any ball game which may cause detriment to the property or any fauna on the property; and
- (g) bring, ride or drive an animal.

(3) 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 (2) 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 local government repealed by this local law, then it is to be taken to be and have effect as a determination on and from the commencement day, except to

the extent that the sign is inconsistent with any provision of this local law or any determination made under clause 2.1.

(2) Clause 2.5 does not apply to a sign referred to in subclause (1).

### **PART 3—PERMITS**

#### *Division 1—Preliminary*

#### **3.1 Application of Part**

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

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

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

(1) Where a person is required to obtain a permit under this local law, that person shall apply for the permit in accordance with subclause (2).

(2) An application for a permit under this local law shall—

(a) be in the form determined by the local government;

(b) be signed by the applicant;

(c) provide the information required by the form; and

(d) be forwarded to the CEO together with any fee imposed and determined by the local government under and in accordance with sections 6.16 to 6.19 of the Act.

(3) The local government may require an applicant to provide additional information reasonably related to an application before determining an application for a permit.

(4) The local government may require an applicant to give local public notice of the application for a permit.

(5) The local government may refuse to consider an application for a permit which is not in accordance with subclause (2) or where the requirements of subclause (3) or (4) have not been satisfied.

#### **3.3 Decision on application for permit**

(1) The local government may—

(a) approve an application for a permit unconditionally or subject to any conditions; or

(b) refuse to approve an application for a permit.

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

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

(4) The local government 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 Conditions which may be imposed on a permit**

(1) Without limiting the generality of clause 3.3(1)(a), local government may approve an application for a permit subject to conditions relating to—

(a) the payment of a fee;

(b) compliance with a standard or a policy of the local government adopted by the local government;

(c) the duration and commencement of the permit;

(d) the commencement of the permit being contingent on the happening of an event;

(e) the rectification, remedying or restoration of a situation or circumstance reasonably related to the application;

(f) the approval of another application for a permit which may be required by the local government under any written law;

(g) the area of the district to which the permit applies;

(h) where a permit is issued for an activity which will or may cause damage to local government property, the payment of a deposit or bond against such damage; and

(i) the obtaining of public risk insurance in an amount and on terms reasonably required by the local government.

(2) Without limiting the generality of clause 3.3(1)(a) and subclause (1), the following paragraphs indicate the type and content of the conditions on which a permit to hire local government property may be issued—

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

### **3.5 Imposing conditions under a policy**

(1) In this clause—

**policy** means a policy of the local government adopted by the Council containing conditions subject to which an application for a permit may be approved under clause 3.3(1)(a).

(2) Under clause 3.3(1)(a) the local government may approve an application subject to conditions by reference to a policy.

(3) The local government 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).

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

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

### **3.6 Compliance with conditions**

Where an application for a permit has been approved subject to conditions, the permit holder shall 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 local government may enter into an agreement with the permit holder in respect of the ownership of the materials in the building.

### **3.8 Duration of permit**

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

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

### **3.9 Renewal of permit**

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

(2) The provisions of this Part apply to an application for the renewal of a permit as though it were an application for a permit.

### **3.10 Transfer of permit**

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

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

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

### **3.11 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 7.1, a permit may be cancelled by the local government if the permit holder has not complied with a—
  - (a) condition of the permit; or
  - (b) determination or a provision of any written law which may relate to the activity regulated by the permit.
- (2) On the cancellation of a permit the permit holder—
  - (a) shall return the permit as soon as practicable to the CEO; and
  - (b) is to be taken to have forfeited any fees paid in respect of the permit.

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

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

- (1) A person shall not without a permit—
  - (a) subject to subclause (3), hire local government property;
  - (b) advertise anything by any means on local government property;
  - (c) erect a structure for public amusement or for any performance, whether for gain or otherwise, on local government property;
  - (d) teach, coach or train, for profit, any person in a pool area or an indoor recreation facility which is local government property;
  - (e) plant any plant or sow any seeds on local government property;
  - (f) carry on any trading on local government property unless the trading is conducted—
    - (i) with the consent of a person who holds a permit to conduct a function, and where the trading is carried on under and in accordance with the permit; or
    - (ii) by a person who has a licence or permit to carry on trading on local government property under any written law;
  - (g) unless an employee of the local government in the course of her or his duties or on an area set aside for that purpose—
    - (i) drive or ride or take any vehicle on to local government property; or
    - (ii) park or stop any vehicle on local government property;
  - (h) conduct a function on local government property ;
  - (i) charge any person for entry to local government property, unless the charge is for entry to land or a building hired by a voluntary non-profit organisation;
  - (j) light a fire on local government property except in a facility provided for that purpose;
  - (k) parachute, hang glide, abseil or base jump from or on to local government property;
  - (l) erect a building or a refuelling site on local government property;
  - (m) make any excavation on or erect or remove any fence on local government property;
  - (n) erect or install any structure above or below ground, which is local government property, for the purpose of supplying any water, power, sewer, communication, television or similar service to a person;
  - (o) de-pasture any horse, sheep, cattle, goat, camel, ass or mule on local government property;
  - (p) deposit or store any thing 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 local government may exempt a person from compliance with subclause (1) on the application of that person.
- (3) The local government may exempt specified local government property or a class of local government property from the application of subclause (1)(a).

### **3.14 Permit required to camp outside a facility**

- (1) In this clause—
- facility** has the same meaning as is given to it in section 5(1) of the *Caravan Parks and Camping Grounds Act 1995*.
- (2) This clause does not apply to a facility operated by the local government.
- (3) 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.
- (4) The maximum period for which the local government may approve an application for a permit in respect to paragraph (a) or (b) of subclause (3) is that provided in regulation 11(2)(a) of the *Caravan Parks and Camping Grounds Regulations 1997*.

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

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

### **3.16 Responsibilities of permit holder**

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

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

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

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

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

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

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

### **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 shall not behave in or on local government property in a way which is or might be detrimental to the property.

### **4.3 Taking or injuring any fauna**



(1) In this clause—

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

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

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

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

#### **4.4 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.

#### **4.5 No prohibited drugs**

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

#### **4.6 Animals**

(1) A person must not—

- (a) tether any animal to a tree, shrub, tree guard, wall or fence; or
- (b) permit any animal to enter upon or into any local government property, unless authorised by a permit.

(2) The CEO or an authorised person may, by the placement of an approved sign, prohibit dogs from being in a children's playground or in the vicinity of a children's playground.

(3) This clause does not apply to a guide dog used for the assistance of visually impaired persons and is subject to the provisions of section 8 of the *Dog Act 1976* and section 66J of the *Equal Opportunity Act 1984*.

#### **4.7 Waste**

A person must not deposit or discard waste on local government property except—

- (a) in a place or receptacle set aside by the CEO or an authorised person for that purpose and subject to any conditions that may be specified on the receptacle or a sign, such as a condition in relation to the type of waste that may be deposited; or
- (b) at the Brookton Waste Facility, Brookton Highway, Brookton and subject to directions issued from time to time by the CEO or an authorised person for the orderly and proper use of that waste facility 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.

#### **4.8 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 who he or she believes has behaved or is likely to behave 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) applies.

### *Division 2—Signs*

#### **4.9 Signs**

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

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

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

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

## **PART 5—MATTERS RELATING TO PARTICULAR LOCAL GOVERNMENT PROPERTY**

*Division 1—Swimming pool areas*

**5.1 When entry must be refused**

(1) A Manager or an authorised person shall refuse admission to a pool area any person who—

- (a) in her or his opinion is—
  - (i) under the minimum age of that specified in the Code and who is unaccompanied by a responsible person over the age of that specified in the Code;
  - (ii) under the minimum age that specified in the Code and who is accompanied by a responsible person over the age of that specified in the Code where the responsible person is incapable of, or not providing, adequate supervision of, or care, for that person;
  - (iii) suffering from any contagious, infectious or cutaneous disease or complaint, or is in an unclean condition; or
  - (iv) under the influence of liquor or a prohibited drug; or
- (b) is to be refused admission under and in accordance with a decision of the local government 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 of 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.

*Division 2—Fenced or closed property*

**5.3 No entry to fenced or closed local government property**

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

*Division 3—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;
- (c) families—then, 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 care giver, where the child is—

- (a) under the age of 7 years; or
- (b) otherwise permitted by an authorised person to use the relevant entry.

**5.5 Use of shower facilities**

A person may use a shower facility in change rooms only on condition that—

- (a) the facilities must be used by the person only for the purposes of cleansing 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 purposes of laundering or washing any clothing or other articles.

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

**6.1 No unauthorised entry to function**

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

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

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

## **PART 7—OBJECTIONS AND REVIEW**

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

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

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

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

## **PART 8—MISCELLANEOUS**

### **8.1 Authorised person to be obeyed**

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

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

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

### **8.3 Disposal of lost property**

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

### **8.4 Liability for damage to local government property**

(1) In this clause—

*costs* of the local government includes its administrative costs.

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

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

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

## **PART 9—ENFORCEMENT**

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

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

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

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

Where a person fails to comply with a notice referred to in clause 11.1, the local government may do the thing specified in the notice and recover from the person to whom the notice was given, as a debt, the costs incurred in so doing.

### *Division 2—Offences and penalties*

#### *Subdivision 1—General*

#### **9.3 Offences and general penalty**

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

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

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

#### **9.4 Prescribed offences**

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

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

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

### 9.5 Form of notices

(1) For the purposes of this local law—

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

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

### *Division 3—Evidence in legal proceedings*

### 9.6 Evidence of a determination

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

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

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

### Schedule 1

#### PRESCRIBED OFFENCES

[cl. 9.4]

Clause	Description	Modified Penalty \$
2.4	Failure to comply with determination	125
3.6	Failure to comply with conditions of permit	125
3.13(1)	Failure to obtain a permit	125
3.14(3)	Failure to obtain permit to camp outside a facility	125
3.15(1)	Failure to obtain permit for liquor	125
3.16	Failure of permit holder to comply with responsibilities	125
4.2(1)	Behaviour detrimental to property	350
4.5	Under influence of liquor or prohibited drug	125
4.6	Tethering animal to tree, etcetera, or permitting animal to enter local government property	125
4.7	Depositing or discarding waste on local government property	125
4.9(2)	Failure to comply with sign on local government property	125
5.6	Unauthorised entry to fenced or closed local government property	125
5.7	Gender not specified using entry of toilet block or change room	125
6.1(1)	Unauthorised entry to function on local government property	125
9.1	Failure to comply with notice	250
	All other offences not specified	125

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**Schedule 2**  
**DETERMINATIONS**

[cl2.1(2)]

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

**PART 1 — PRELIMINARY**

**1.1 Definitions**

In these determinations unless the context otherwise requires—

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

**1.2 Interpretation**

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

**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 drive 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 local government employee, authorised person or contractor engaged by the local government, 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 motorised wheel chair, 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 must 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 of an authorised person

**2.2 Activities prohibited on local government property**

(1) A person must not play or practise archery, pistol or rifle shooting on local government property except on land which is reserved by the Local government for that purpose, or as otherwise provided by a determination or permit.

(2) A person must not, on any local government property, 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;

(3) Unless authorised by a permit or by an authorised person, a person must not take a glass container—

- (a) within 5m of the edge of a swimming pool on local government property;
- (b) on to a children’s playground; or
- (c) within any area of local government property where a sign prohibits glass containers.

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Dated: 22 February 2012

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

B. J. COOTE, Shire President  
G. A. CLARK, Chief Executive Officer



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LOCAL GOVERNMENT ACT 1995

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**TOWN OF BASSENDEAN**

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**DUST AND SAND  
LOCAL LAW 2011**





**LOCAL GOVERNMENT ACT 1995**

TOWN OF BASSENDEAN

**DUST AND SAND LOCAL LAW 2011**

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**LOCAL GOVERNMENT ACT 1995**

## TOWN OF BASSENDEAN

**DUST AND SAND LOCAL LAW 2011**

Under the powers conferred by the *Local Government Act 1995* and under all other powers, the Council of the Town of Bassendean resolved on 13th September 2011 to make the following local law.

**PART 1 — INTRODUCTORY AND ADMINISTRATIVE MATTERS****1.1 Citation**

This Local Law may be cited as the '*Town of Bassendean Dust and Sand Local Law 2011*'.

**1.2 Commencement**

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

**1.3 Interpretation**

(1) In these local laws, unless the context specifies otherwise—

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

**Air Quality Management Plan** means a written strategy for minimising the negative impact of dust and smoke upon local air quality, incorporating the principles within the latest version of the publication '*A guideline for managing the impacts of dust and associated contaminants from land development sites, contaminated sites, remediation and other related activities*', first published by the Western Australian Department of Environmental and Conservation in January 2011;

**AS** means an Australian Standard or Australian/New Zealand Standard published by Standards Australia;

**authorised person** means a person appointed by the Council, pursuant to the provisions of Section 9.10(1) of the Act, for purposes of administration and enforcement of this local law;

**builder** means the person or persons or firm or corporation who or which shall be the holder of any building licence issued in respect of building works on a building site, and shall also include any person or persons or firm or corporation who or which shall be in effective control of such building site whether or not such person or persons or firm or corporation shall be the holder of such licence;

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

**building Site** means any lot of land for which a building licence is current, but does not include a lot upon which there exists a commercial, industrial or residential building and—

- (a) the current building licence is issued in respect only of a pergola, patio, shed or other Class 10 building as classified by the Building Code; and
- (b) means of collection and removal of rubbish, satisfactory to the Council but other than that specified within these local laws, is in place;

**bush** has the same meaning as is given to it in the *Bush Fires Act 1954*;

**Chief Executive Officer** means the Chief Executive Officer of the Town;

**construction work** means any work involving the placement, fitting together, manufacture or erection of the components of a building, and includes pouring of footings and slabs and placement of stumps or other floor supports;

**Council** means the Council of the Town;

**development site** means and includes any lot or lots of land upon which there is currently a development or subdivision approval, and any lot or lots upon which construction work, earthworks, clearing of scrub, trees or overgrowth or any other site works are taking or have taken place, whether or not such works are subject to a development or subdivision approval;

**district** means the district of the Town;

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

**Erosion Management Plan** means a written strategy for minimising the likelihood of carriage by water or sand off any lot or lots of land, incorporating the principles within the latest version of the *Erosion and Sediment Control Policy and Guidelines for Local Government* prepared by the Eastern Metropolitan Regional Council;

**nuisance** means—

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

**occupier** means any person who, at the time the notice is served, is in control of any place or part of any place or authorised by the owner, lessee, licensee or any other person empowered to exercise control in relation to a place to perform any work in relation to any place and without limiting the generality of the foregoing and for the avoidance of doubt includes a builder or contractor;

**person** includes persons, businesses, companies, firms, corporations and other commercial entities;

**Town** means the Town of Bassendean, and includes its authorised person;

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

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

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

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

#### 1.4 Objections and appeals

When the Council makes a decision under this local law and/or gives a person notice, the affected person may lodge an objection under the provisions of Part 9 Division 1 of the Act and Regulation 33 of the *Local Government (Functions and General) Regulations 1996* shall apply.

#### 1.5 Notices

(1) Where a notice other than an infringement notice is given under this local law, the notice must be in writing and set out—

- (a) details of the offence committed;
- (b) measures required to be taken;
- (c) conditions which must be followed; and
- (d) a deadline, if any, for compliance.

(2) Where an authorised person serves a notice based on an opinion held by that person, the notice must also be accompanied by a written memorandum that—

- (a) is signed by the authorised person;
- (b) sets out the opinion reached by the authorised person; and
- (c) includes the reasons for why the opinion is held.

(3) Where an authorised person serves a notice based on an opinion or decision of the Council, the notice should also be accompanied by an extract of the minutes of the Council meeting at which the opinion or decision was formed.

(4) An extract provided under subclause (3) must show a sufficient record of the forming of the opinion or decision on which the notice is based.

(5) An extract provided under subclause (3) must be certified as a true and accurate copy by—

- (a) the CEO; or
- (b) another officer of Council who has been delegated or authorised to do so.

#### 1.6 Application of this local law

This local law applies throughout the district.

#### 1.7 Forms

For the purposes of this local law—

- (a) the form of the infringement notice given under Section 9.17 of the Act is that of Form 2 in Schedule 1 of the *Local Government (Functions and General) Regulations 1996*; and
- (b) the form of the notice sent under Section 9.20 of the Act withdrawing an infringement notice is that of Form 3 in Schedule 1 of the *Local Government (Functions and General) Regulations 1996*.

**PART 2 — SAND DRIFT AND DUST****2.1 Air Quality Management Plans**

(1) When on any land, any earthworks, clearing of scrub, trees or overgrowth or any other site works likely to generate dust are intended, whether or not that work or those works are subject to a development or subdivision approval, the owner or occupier shall submit to the Town for its approval an Air Quality Management Plan (AQMP).

(2) The Air Quality Management Plan shall be accompanied by a face sheet in the form of Schedule 1 so as to be aligned with relevant DEC guidelines for dust management. AQMP shall include information on the following areas—

- (a) introduction (program scope and objectives);
- (b) background (contextual information);
- (c) proposed work and potential impacts;
- (d) controls, triggers and contingencies;
- (e) monitoring program and design.

(3) When deemed appropriate by the Town, a bond, to be used for funding the cost of rectification by the Town if required and calculated on the basis of an assessment of the particular site, shall be lodged prior to approval of an Air Quality Management Plan.

(4) The Town may—

- (a) approve the Air Quality Management Plan;
- (b) approve the Air Quality Management Plan subject to such conditions as it considers appropriate; or,
- (c) if it appears that the Plan is not adequate to effectively manage air quality issues and cannot easily be made to do so, or the detail required by Schedule 1 is not provided, refuse to approve the Air Quality Management Plan.

(5) An owner or occupier shall not commence any earthworks, clearing of scrub, trees or overgrowth or any other site works likely to generate dust or sand without the Town having approved an Air Quality Management Plan.

(6) An owner or occupier who undertakes any earthworks, clearing of scrub, trees or overgrowth or any other site works when the Town has approved an Air Quality Management Plan shall comply with the provisions of that Plan and any conditions imposed thereon at all times.

**2.2 Prevention of erosion**

An owner or occupier of any land shall take all practicable measures to ensure that—

- (a) no sand or dust is carried by water—
  - (i) off the particular lot or lots of land; or
  - (ii) directly or indirectly into any creek, stream, river or any other natural water course; and
- (b) no sand or dust is released from or escapes from the particular lot or lots, whether by means of wind or any other cause.

**2.3 Escape of sand or dust**

(1) Where it appears to an authorised person that sand or dust is escaping, being released or being carried, or is likely to escape, be released or be carried, from any land, the authorised person may, by notice in writing, direct the owner or occupier to, within a time specified in the notice—

- (a) submit to the Town for its approval an Air Quality and/or Erosion Management Plan; or
- (b) take such other actions as the authorised person considers necessary to prevent or minimise the escape, release or carriage of sand or dust from the land.

(2) The Air Quality and/or Erosion Management Plans to which reference is made in subclause (1) (a) shall be accompanied by a face sheet in the form of Schedule 1.

(3) The Town may—

- (a) approve the Air Quality and/or Erosion Management Plan;
- (b) approve the Air Quality and/or Erosion Management Plan subject to such conditions as it considers appropriate; or,
- (c) if it appears that the Plan is not adequate to effectively manage air quality or erosion issues, whichever may be the case, and cannot easily be made to do so, or the detail required by Schedule 1 is not provided, refuse to approve the Air Quality and/or Erosion Management Plan.

(4) A person who has been required to submit to the Town an Air Quality and/or Erosion Management Plan pursuant to subclause(1)(a) shall not continue or commence any works on the land without the Town having approved the Air Quality and/or Erosion Management Plan.

**2.4 Sand or dust which has escaped to be cleaned up**

When any sand and dust has been released, escaped or been carried from any land onto or through another person's land, an authorised person may, by notice in writing, direct the owner or occupier of the land from which the sand or dust has been released, escaped or been carried, within a time specified in the notice, clean up the sand and dust and make good any damage resulting from that release or escape.

**PART 3 — OFFENCES AND PENALTIES****3.1 Offences**

Any person who—

- (a) fails to comply with a notice issued under this local law;
- (b) fails to do anything required or directed to be done under this local law;
- (c) does anything which under this local law is prohibited from doing; or
- (d) contravenes any provisions of this local law,

commits an offence.

**3.2 Penalties**

Any person who commits an offence under this local law shall be liable to—

- (a) a penalty not exceeding \$5,000.00 and not less than—
  - (i) in the case of first such offence, \$500.00
  - (ii) in the case of subsequent offences, \$3,000.00, and
- (b) If the offence continues, an additional penalty may be applied from the day of the first such offence not exceeding \$500.00 for each day or part of a day for the duration of which the offence continues.

\_\_\_\_\_

**Schedule 1**  
**AIR QUALITY/EROSION MANAGEMENT PLAN**  
**FACE SHEET**

(Clause 2.1 & 2.3)

AIR QUALITY/EROSION MANAGEMENT PLAN  
(Delete whichever is not applicable)

**DETAILS OF LAND**

Street		Lot No.	
Locality			

**OWNER DETAILS**

Name			
Address			
Telephone No.	Office/Home		Mobile

**CONTRACTORS/ DETAIL**

Contractor Name				
Address				
Office Telephone No.		Fax No.		Email

Supervisor Name

Mobile Telephone No.		Fax No.		Email
----------------------	--	---------	--	-------

**After Hours Contact Details (for rectification works if necessary)**

Name				
Telephone No.	Home		Mobile	

**Complaints Contact Details**

Name	Lot No.			
Mobile Telephone No.		Email		

***Schedule 2***  
**PRESCRIBED OFFENCES AND MODIFIED PENALTIES**

<b>Clause</b>	<b>Description</b>	<b>Modified Penalty (\$)</b>
2.1 (5)	Commencement of site works without the Town having approved an Air Quality Management Plan	250
2.1 (6)	Failure to comply with the approved Air Quality Management Plan and or related approval conditions	250
2.3 (1)	Failure to comply with a notice served by an authorised officer	250

\_\_\_\_\_

Dated: 7 December 2011.

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

Cr JOHN GANGELL, Mayor.  
Mr BOB JARVIS, Chief Executive Officer.

\_\_\_\_\_

**LOCAL GOVERNMENT ACT 1995**

CITY OF ALBANY

**ACTIVITIES ON THOROUGHFARES AND PUBLIC PLACES AND  
TRADING LOCAL LAW 2011**

ARRANGEMENT

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- 1.3 Application
- 1.4 Repeal
- 1.5 Interpretation

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3.3 Matters to be considered in determining application for permit

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**SCHEDULE 1 —PRESCRIBED OFFENCES**

## LOCAL GOVERNMENT ACT 1995

### CITY OF ALBANY

## ACTIVITIES ON THOROUGHFARES AND PUBLIC PLACES AND TRADING LOCAL LAW 2011

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the City of Albany resolved on 16 August 2011 to make the following local law.

### PART 1 — PRELIMINARY

#### 1.1 Citation

This local law may be cited as the *City of Albany Activities on Thoroughfares and Public Places and Trading Local Law 2011*.

#### 1.2 Commencement

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

#### 1.3 Application

This local law applies throughout the district.

#### 1.4 Repeal

(1) The *City of Albany Activities in Thoroughfares and Public Places and Trading Local Law 2001* as published in the *Government Gazette* on 15 January 2002 is repealed.

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

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

#### 1.5 Interpretation

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

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

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

“**carriageway**” has the meaning given to it in the *Road Traffic Code 2000* and means the paved or made portion of a thoroughfare, whether sealed or unsealed, 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;

“**crossover**” has the same meaning as “**crossing**”;

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

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

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

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

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

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

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

“**local government**” means the City of Albany;

“**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;

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

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

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

“**permissible verge treatment**” means any of the treatments described in clause 2.8(2);

“**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 is allowed to use, whether or not the thoroughfare or place is on private property, but does not include—

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

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

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

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

“**townsite**” means the townsites of Cuthbert, Elleker, Kalgan, Manypeaks, Redmond, South Stirling, Torbay, Youngs Siding and Wellstead 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.

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

### *Division 1—General*

#### **2.1 General prohibitions**

A person shall not—

- (a) plant any plant on a thoroughfare—
  - (i) except grass or a similar plant within 6 metres of an intersection; and
  - (ii) which exceeds, or may exceed, 0.75 metres in height so that the plant is within 6 metres to 10 metres of an intersection;
- (b) damage a lawn or a garden or remove any plant or part of a plant from a lawn or 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 1 metre of a carriageway;
- (d) remove or kill by felling, poison or any other means a tree on a verge area or thoroughfare or verge unless the person is—
  - (i) acting under authority of a permit issued by the local government; or
  - (ii) a local government employee or contractor engaged by the local government to undertake work in relation to a particular tree or trees on a thoroughfare in the district or on local government property; or
  - (iii) the person is acting under the authority of written law;
- (e) place, or allow to be placed or remain, on a thoroughfare or verge any thing (except water) that—
  - (i) obstructs the thoroughfare or verge; or
  - (ii) results in a hazard for any person using the thoroughfare or verge;
- (f) unless at the direction of the local government, damage, remove or interfere with any part of a thoroughfare, or any structure erected on a thoroughfare by the local government or a person acting under the authority of a written law;
- (g) play or participate in any game or sport so as to cause danger to any person or thing or impede the movement of vehicles or persons on a thoroughfare; or
- (h) within a mall, arcade or verandah of a shopping centre, ride any bicycle, skateboard, rollerblades or similar device.

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

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

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

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

### *Division 2—Vehicle crossing*

#### Subdivision 1—Temporary crossings

## **2.4 Permit required**

- (1) Where it is likely that works on a lot will involve vehicles leaving a thoroughfare and entering the lot, the person responsible for the works shall obtain a permit for the construction of a temporary crossing to protect the existing carriageway, kerb, drains and footpath, where—
  - (a) a crossing does not exist; or
  - (b) a crossing does exist, but the nature of the vehicles and their loads is such that they are likely to cause damage to the crossing.

- (2) The “**person responsible for the works**” in subclause (1) is to be taken to be—
- (a) the builder named on the building licence issued under the *Local Government (Miscellaneous Provisions) Act 1960*, if one has been issued in relation to the works; or
  - (b) the registered proprietor of the lot, if no building licence has been issued under the *Local Government (Miscellaneous Provisions) Act 1960* in relation to the works.
- (3) If the local government approves an application for a permit for the purpose of subclause (1), the permit is taken to be issued on the condition that until such time as the temporary crossing is removed, the permit holder shall keep the temporary crossing in good repair and in such a condition so as not to create any danger or obstruction to persons using the thoroughfare.

#### Subdivision 2—Redundant vehicle crossings

##### **2.5 Removal of redundant crossing**

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

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

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

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

#### *Division 3—Verge treatments*

##### Subdivision 1—Preliminary

##### **2.6 Interpretation**

In this Division, unless the context otherwise requires—

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

##### **2.7 Application**

This Division only applies to townsites and areas zoned commercial, industrial, special residential or residential in a local planning scheme.

#### Subdivision 2—Permissible verge treatments

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

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

(2) The permissible verge treatments are—

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

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

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

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

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

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

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

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

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

#### *Subdivision 3—Existing verge treatments*

### **2.12 Transitional provision**

(1) In this clause—

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

(2) A verge treatment which—

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

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

#### *Subdivision 4—Public works*

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

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

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

#### *Division 4—Property numbers*

##### *Subdivision 1—Preliminary*

### **2.14 Interpretation**

In this Division, unless the context requires otherwise—

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

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

### **2.15 Assignment of numbers**

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

#### *Division 5—Fencing*

### **2.16 Land adjoining public place**

(1) For the purposes of clause 4(1) of Division 1 of Schedule 3.1 of the Act, the local government may give notice to the owner of land that adjoins—

- (a) a public place, or
- (b) a thoroughfare;

to ensure that the owner’s land is—

- (a) suitably enclosed and separated from the public place or thoroughfare, or
- (b) enclosed with a closed fence where applicable;

to prevent sand or other matter from the land to fall onto or drift into the public place or thoroughfare.

(2) The enclosure or closed fence must be built, repaired and maintained to the satisfaction of the local government.

#### *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) In this clause—

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

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

- (a) 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.

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

### *Division 2—Permit*

#### **3.2 Advertising signs**

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

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

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

- (a) on a footpath;
- (b) over any footpath where the resulting vertical clearance between the sign and the footpath is less than 2.5 metres;
- (c) on or within 3 metres of a carriageway;
- (d) in any other location where, in the opinion of the local government, the sign is likely to obstruct lines of sight along a thoroughfare or cause danger to any person using the thoroughfare; or
- (e) on any natural feature, including a rock or tree, on a thoroughfare, or on any bridge or the structural approaches to a bridge.

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

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

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

### *Division 3—Conditions on permit*

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

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

- (a) the portable sign shall—
  - (i) not exceed 1 metre in height;

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

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

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

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

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

### *Division 1—Animals and vehicles*

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

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

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

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

#### **4.2 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 or on local government property, 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).

#### **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.

#### **4.8 Impounding of abandoned trolley**

An authorised person may impound a shopping trolley that is—

- (a) left on a thoroughfare, verge or local government property that is not marked in accordance with clause 4.4; or
- (b) not removed by a retailer after having been so advised under clause 4.6(2).

### **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 but now located in the Department of Environment and Conservation; and

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

#### **5.2 Application**

This Part does not apply to the townsites.

#### *Division 2—Flora roads*

#### **5.3 Declaration of flora roads**

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

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

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

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

The local government may signpost flora roads with the standard MRWA “flora road” sign.

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

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

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

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

#### *Division 3—Special environmental areas*

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

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

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

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

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

#### *Division 4—Planting in thoroughfares*

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

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

##### **5.10 Relevant considerations in determining application**

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

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

#### *Division 5—Clearance of vegetation*

##### **5.11 Permit to clear**

A person shall not clear and maintain in a cleared state, the surface of a thoroughfare 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 Prohibition 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 for burning between 31 August and 1 May of the following year where the intensity of the burn could damage native flora and fauna.

#### *Division 7—Firebreaks*

##### **5.17 Permit for firebreaks on thoroughfares**

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

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

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

#### *Division 8—Commercial wildflower harvesting on thoroughfares*

### 5.19 General prohibition on commercial wildflower harvesting

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

### 5.20 Permit for revegetation projects

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

## PART 6—TRADING ON 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 is allowed to use whether or not the thoroughfare or place is on private property; and
- (b) local government property,

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

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

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

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

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

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

**“trading”** includes—

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

*Subdivision 2—Permits*

**6.2 Stallholder's permit**

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

**6.3 Trader's permit**

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

**6.4 No permit required to sell newspaper**

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

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

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

**6.6 Conditions of permit**

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

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

(2) Where a permit holder by reason of illness, accident or other sufficient cause is unable to comply with this local law, the local government may at the request of that permit holder 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 *Trade Measurement Administration Act 2006*.

(2) A stallholder or trader shall not—

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

*Division 2—Street entertainers*  
Subdivision 1—Preliminary

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

**6.14 Obligation 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 device which emits music, including a loud speaker or an amplifier—
  - (i) other than in the permitted area; and
  - (ii) 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 *Food Act 2008* and whether the use of the premises is permitted under the local planning scheme;



- (c) users of the facility will have access to proper and sufficient sanitary and ablutionary conveniences;
- (d) the facility would—
  - (i) obstruct the visibility or clear sight lines at an intersection of thoroughfares of any person; or
  - (ii) impede pedestrian access; and
- (e) the tables, chairs and other equipment to be used may obstruct or impede the use of the public place for the purpose for which it was designed.

#### **6.18 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;
  - (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) ensure a minimum width of 1.8 metres is kept clear for pedestrian access between 8.00 am and 6.00 pm each day or 0.8 metres at all other times;
  - (e) define the eating area to the satisfaction of the local government;
  - (f) 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
  - (g) 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.
- (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,
- apply, with appropriate modifications to an application for the renewal of a permit.

### **7.8 Transfer of permit**

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

### **7.9 Production of permit**

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

### **7.10 Cancellation of permit**

- (1) Subject to clause 8.1, a permit may be cancelled by the local government if the permit holder has not complied with a—
  - (a) condition of the permit; or
  - (b) provision of any written law which may relate to the activity regulated by the permit; or
- (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 REVIEW**

### **8.1 Review of decision**

When the local government makes a decision—

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

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

## **PART 9—MISCELLANEOUS NOTICES**

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

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

### **9.2 Hazardous plants**

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

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

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

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

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

## **PART 10—ENFORCEMENT**

*Division 1—Notices given under this local law*

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

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

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

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

*Division 2—Offences and penalties*

Subdivision 1—General

**10.3 Offences**

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

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

Subdivision 2—Infringement notices and modified penalties

**10.4 Prescribed offences**

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

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

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

[cl.10.4]

**Local Government Act 1995**

*City of Albany*

Activities on Thoroughfares and Public Places and Trading Local Law 2011

**OFFENCES AND MODIFIED PENALTIES**

<b>Item No.</b>	<b>Clause No.</b>	<b>Description</b>	<b>Modified Penalty \$</b>
1.	2.1(a)	Plant of 0.75 metres in height on thoroughfare within 10 metres of intersection	125
2.	2.1(b)	Damaging lawn or garden	125
3.	2.1(c)	Plant (except grass) on a thoroughfare within 1 metre of carriageway	125
4.	2.1(d)	Removal of tree on thoroughfare or verge	350
5.	2.1(e)	Obstructing or causing a hazard on thoroughfare or verge	125
6.	2.1(f)	Damaging, removing or interfering with a thoroughfare or structure	350
7.	2.1(g)	Playing games so as to impede vehicles or persons on thoroughfare	125
8.	2.1(h)	Riding of bicycle, skateboard, roller-blades or similar device within a mall, arcade or verandah of a shopping centre	125

<b>Item No.</b>	<b>Clause No.</b>	<b>Description</b>	<b>Modified Penalty \$</b>
9.	2.2(1)(a)	Dig or otherwise create a trench through or under a kerb, footpath or carriageway without a permit	125
10.	2.2(1)(b)	Throwing or placing anything on a verge without a permit	125
11.	2.2(1)(c)	Causing obstruction to vehicle or person on thoroughfare without a permit	125
12.	2.2(1)(d)	Causing obstruction to water channel on thoroughfare without a permit	250
13.	2.2(1)(e)	Placing or draining offensive fluid on thoroughfare without a permit.	250
14.	2.2(1)(g)	Lighting a fire on a thoroughfare without a permit	350
15.	2.2(1)(h)	Felling tree onto a thoroughfare without a permit	125
16.	2.2(1)(i)	Installing pipes or stones on thoroughfare without a permit	125
17.	2.2(1)(j)	Installing a hoist or other thing on a structure or land for use over a thoroughfare without a permit	350
18.	2.2(1)(k)	Creating a nuisance on a thoroughfare without a permit	125
19.	2.2(1)(l)	Placing a bulk rubbish container on a thoroughfare without a permit	125
20.	2.2(1)(m)	Interfering with anything on a thoroughfare without a permit	125
21.	2.3(1)	Consumption or possession of liquor on thoroughfare	125
22.	2.4(1)	Failure to obtain permit for temporary crossing	250
23.	2.5(2)	Failure to comply with notice to remove crossing and reinstate kerb	350
24.	2.9(1)	Installation of verge treatment other than permissible verge treatment	250
25.	2.10	Failure to maintain permissible verge treatment or placement of obstruction on verge	125
26.	2.11	Failure to comply with notice to rectify default	125
27.	2.17(2)	Failure to comply with sign on public place	125
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30.	4.1(1)	Animal or vehicle obstructing a public place or local government property	125
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34.	4.2(3)	Horse led, ridden or driven on thoroughfare in built-up area	125
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36.	4.6(2)	Failure to remove shopping trolley upon being advised of location	125
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39.	5.11	Failure to obtain permit to clear a thoroughfare	500
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45.	6.3(1)	Trading without a permit	350
46.	6.8(1)(a)	Failure of stallholder or trader to display or carry permit	125
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<b>Item No.</b>	<b>Clause No.</b>	<b>Description</b>	<b>Modified Penalty \$</b>
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50.	6.10	Performing in a public place without a permit	125
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Dated: 20 September 2011.

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

FAILEEN JAMES, Chief Executive Officer.  
MILTON EVANS JP, Mayor

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**LOCAL GOVERNMENT ACT 1995**

CITY OF ALBANY

**LOCAL GOVERNMENT PROPERTY LOCAL LAW 2011**

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# LOCAL GOVERNMENT ACT 1995

## CITY OF ALBANY

### LOCAL GOVERNMENT PROPERTY LOCAL LAW 2011

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the City of Albany resolved on 15 July 2011 to make the following local law.

#### PART 1 — PRELIMINARY

##### 1.1 Citation

This local law shall be cited as the *City of Albany Local Government Property Local Law 2011*.

##### 1.2 Repeal

(1) The *City of Albany Local Government Property Local Law 2001* published in the *Government Gazette* on 8 November 2001 is repealed.

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

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

##### 1.3 Commencement

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

##### 1.4 Application

This local law applies—

- (a) throughout the district; and
- (b) for a distance of 200 metres seaward from the southern district boundary, as approved by the Lieutenant-Governor and deputy of the Governor under section 3.6 of the Act per notice published in the *Government Gazette*, No. 217 on 2 November 2001, page 5800.

##### 1.5 Interpretation

In this local law unless the context otherwise requires—

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

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

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

“**boat**” means any ship, vessel or structure capable of being used in navigation by water, however propelled or moved, and includes a jet ski;

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

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

“**camera device**” means an apparatus for taking photographs or moving pictures, and includes a mobile phone when used for this purpose;

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

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

“**costs**” of the local government include administration costs;

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

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

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

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

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

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

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

**“local government”** means the City of Albany;

**“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;

**“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 local government to control and manage a pool area or other facility which is local government property and includes the person’s assistant or deputy;

**“nuisance”** means—

- (a) any thing, condition, circumstance or state of affairs which is injurious or dangerous to the health of a reasonable person, or which has a disturbing effect on the state of reasonable physical, mental or social well-being of a person;
- (b) any thing a person does or permits or cause to be done which interferes with or is likely to interfere with the enjoyment or safe use by another person of any public place; and
- (c) any thing a person does on public or private land which detracts from or interferes with the enjoyment or value of lands owned by another person.

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

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

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

**“pool area”** means any swimming and wading pools and spas and all buildings, structures, fittings, fixtures, machinery, chattels, furniture and equipment forming part of or used in connection with such swimming and wading pools and spas which are local government property;

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

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

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

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

**“vehicle”** includes—

- (a) every conveyance and every object capable of being propelled or drawn on wheels, tracks or otherwise; and
  - (b) an animal being ridden or driven,
- but excludes—
- (c) a wheel-chair or any device designed for use, by a physically impaired person on a footpath;
  - (d) a pram, a stroller or a similar device; and
  - (e) a boat.

## **1.6 Overriding power to hire and agree**

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

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

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

### *Division 1—Determinations*

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

(1) The local government may make a determination in accordance with clause 2.2—

- (a) setting aside specified local government property for the pursuit of all or any of the activities referred to in clause 2.7;

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

## **2.2 Procedure for making a determination**

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

## **2.3 Discretion to erect sign**

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

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

A person shall comply with a determination.

## **2.5 Register of determinations**

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

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

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

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

## **2.7 Activities which may be pursued on specified local government property**

- (1) A determination may provide that specified local government property is set aside as an area on which a person may—
- (a) bring, ride or drive an animal;
  - (b) take, ride or drive a vehicle, or a particular class of vehicle;
  - (c) use, launch or fly powered model aeroplanes, gliders or rockets that are propelled by mechanical, hydraulic, combustion or pyrotechnic means;

- (d) use a children's playground provided that the person is under an age specified in the determination, but the determination is not to apply to a person having the charge of a person under the specified age;
  - (e) launch, beach or leave a boat;
  - (f) take or use a boat, or a particular class of boat;
  - (g) deposit refuse, rubbish or liquid waste, whether or not of particular classes, and whether or not in specified areas of that local government property;
  - (h) play or practice—
    - (i) golf or archery;
    - (ii) pistol or rifle shooting, but subject to the compliance of that person with the *Firearms Act 1973*; or
    - (iii) a similar activity, specified in the determination, involving the use of a projectile which, in the opinion of the local government may cause injury or damage to a person or property;
  - (i) ride a bicycle, a skateboard, rollerblades, a sandboard or a similar device; and
  - (j) wear no clothing.
- (2) A determination may specify the extent to which and the manner in which an activity referred to in subclause (1) may be pursued and in particular—
- (a) the days and times during which the activity may be pursued;
  - (b) that an activity may be pursued on a class of local government property, specified local government property or all local government property;
  - (c) that an activity is to be taken to be prohibited on all local government property other than that specified in the determination;
  - (d) may limit the activity to a class of vehicles, boats, equipment or things, or may extend it to all vehicles, boats, equipment or things;
  - (e) may specify that the activity can be pursued by a class of persons or all persons; and
  - (f) may distinguish between different classes of the activity.

## **2.8 Activities which may be prohibited on specified local government property**

(1) 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.

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

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

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

### **PART 3—PERMITS**

#### ***Division 1—Preliminary***

#### **3.1 Application of Part**

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

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

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

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

#### **3.3 Decision on application for permit**

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

- (1) Without limiting the generality of clause 3.3(1)(a), the local government may approve an application for a permit subject to conditions relating to—
  - (a) the payment of a fee imposed and determined by the local government under and in accordance with sections 6.16 to 6.19 of the Act;
  - (b) compliance with a standard or a policy of the local government adopted by the local government;
  - (c) the duration and commencement of the permit;
  - (d) the commencement of the permit being contingent on the happening of an event;
  - (e) the rectification, remedying or restoration of a situation or circumstance reasonably related to the application;
  - (f) the approval of another application for a permit which may be required by the local government under any written law;
  - (g) the area of the district to which the permit applies;
  - (h) where a permit is issued for an activity which will or may cause damage to local government property, the payment of a deposit or bond against such damage; and
  - (i) the obtaining of public risk insurance in an amount and on terms reasonably required by the local government.

(2) Without limiting clause 3.3(1)(a) and subclause (1), the following paragraphs indicate the type and content of the conditions on which a permit to hire local government property may be issued—

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

### **3.5 Imposing conditions under a policy**

(1) In this clause—

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

(2) Under clause 3.3(1)(a) the local government may approve an application subject to conditions by reference to a policy.

(3) The local government shall give a copy of the policy, or the part of the policy which is relevant to the application for a permit, with the form of permit referred to in clause 3.3(2).

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

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

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

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

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

## *Division 4—General*

### **3.7 Agreement for building**

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

### **3.8 Duration of permit**

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

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

### **3.9 Renewal of permit**

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

(2) The provisions of this Part shall apply to an application for the renewal of a permit as though it were an application for a permit.

### **3.10 Transfer of permit**

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

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

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

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

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

### **3.11 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 8.1, a permit may be cancelled by the local government if the permit holder has not complied with a—

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

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

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

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

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

(1) A person shall not without a permit—

- (a) subject to subclause (3), hire local government property;
- (b) advertise anything by any means on local government property;
- (c) erect a structure for public amusement or for any performance, whether for gain or otherwise, on local government property;
- (d) teach, coach or train, for profit, any person in a pool area or an indoor recreation facility which is local government property;
- (e) plant any plant or sow any seeds on local government property;
- (f) carry on any trading on local government property unless the trading is conducted—
  - (i) with the consent of a person who holds a permit to conduct a function, and where the trading is carried on under and in accordance with the permit; or
  - (ii) by a person who has a licence or permit to carry on trading on local government property under any written law;
- (g) unless an employee of the local government in the course of her or his duties or on an area set aside for that purpose—
  - (i) drive or ride or take any vehicle on to local government property; or
  - (ii) park or stand any vehicle on local government property;
- (h) conduct a function on local government property;
- (i) charge any person for entry to local government property, unless the charge is for entry to land or a building hired by a voluntary non-profit organisation;
- (j) light a fire on local government property except in a facility provided for that purpose;
- (k) light or set alight any fireworks or conduct a fireworks display on local government property;
- (l) parachute, hang glide, paraglide, abseil, base jump or rock climb from or on to local government property;
- (m) erect a building or a refuelling site on local government property;
- (n) make any excavation on or erect or remove any fence on local government property;
- (o) erect or install any structure above or below ground, which is local government property, for the purpose of supplying any water, power, sewer, communication, television or similar service to a person;
- (p) depasture any horse, sheep, cattle, alpaca, goat, camel, ass or mule on local government property; or
- (q) carry out any activity in a determination that requires a permit to specify a particular local government property.

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

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

### **3.14 Permit required to camp outside a facility**

(1) In this clause—

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



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

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

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

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

### **3.16 Responsibilities of permit holder**

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

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

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

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

- A person shall not in or on any local government property behave in a manner which—
- (a) interferes with or is likely to interfere with the enjoyment of a person who might use the property;
  - (b) causes or is likely to cause a disturbance to nearby residents; or
  - (c) creates a nuisance.

#### **4.2 Behaviour detrimental to property**

- (1) In subclause (1)—
- “**detrimental to the property**” includes—
- (a) removing any thing from the local government property such as a rock, a plant or a seat provided for the use of any person; and
  - (b) destroying, defacing or damaging any thing on the local government property, such as a plant, a seat provided for the use of any person or a building.
- (2) A person shall not behave in or on local government property in a way which is or might be detrimental to the property.

#### **4.3 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 shall not cause harm, take, injure or kill or attempt to take, injure or kill any fauna which is on or above any local government property, unless that person is authorised under a written law or by an authorised person to do so.

#### **4.4 Removing or damaging any flora**

- (1) In this clause—
- “**flora**” means all vascular plants, seeds and other flora, whether living or dead.

(2) Unless authorised to do so under a written law or with the written approval of the CEO or an authorised person, a person must not—

- (a) Remove, damage or interfere with any flora that is on or above any local government property; or
- (b) Plant or deposit any flora on local government property.

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

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

#### **4.6 No prohibited drugs**

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

#### **4.7 Refusal of entry and removal**

(1) If the CEO or an authorised person considers that a person has behaved in a manner contrary to the provisions of this Part, the CEO or authorised person may—

- (a) refuse to allow that person to enter local government property; and
- (b) if the person is on local government property, direct the person to leave the local government property.

(2) A person who has been refused entry or who has been directed to leave under subclause (1) must immediately leave the local government property quickly and peaceably.

(3) If a person fails to comply with subclause (2), the CEO or an authorised person may remove the person, or arrange for the person to be removed, from the local government property.

### *Division 2—Signs*

#### **4.8 Signs**

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

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

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

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

## **PART 5—MATTERS RELATING TO PARTICULAR LOCAL GOVERNMENT PROPERTY**

### *Division 1—Aquatic Centre and Leisure Centre*

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

A Manager or an authorised person shall refuse admission to, may direct to leave or shall remove or cause to be removed from a pool area, a gymnasium area or sports area any person who—

- (a) in her or his opinion is—
  - (i) under the age of 10 years and who is unaccompanied by a responsible person over the age of 16 years;
  - (ii) suffering from any contagious, infectious or cutaneous disease or complaint, or is in an unclean condition;
  - (iii) under the influence of liquor or a prohibited drug; or
  - (iv) not wearing appropriate bathing and or workout attire or footwear so as to meet safety requirements when in or around any pool area, gymnasium area or using any fitness or sports equipment; or
- (b) to be refused admission under and in accordance with a decision of the local government for breaching any clause of this local law.

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

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

#### **5.3 No use of camera devices in change rooms**

No person shall operate a camera device in any portion of a change room at an aquatic or leisure centre to record or transmit an image.

### *Division 2—Beaches*

#### **5.4 Powers of authorised persons or surf life saving club members**

(1) An authorised person employed by the local government may perform all or any of the following functions in relation to a beach—

- (a) patrol any beach;
- (b) carry out any activity on any beach;
- (c) erect signs designating bathing areas and signs regulating, prohibiting or restricting specified activities on the whole or any part of a beach or in or on the water adjacent to the beach and to direct persons on the beach or in or on the water to comply with such signs;

- (d) temporarily enclose any area with rope, hessian, wire or any other means for the conduct of surf life saving club activities; and
  - (e) direct persons to leave the water adjacent to a beach during dangerous conditions or if a shark is suspected of being in the vicinity of a beach.
- (2) Subject to subclause (3), the local government may authorise, under section 9.10 of the Act, the members of a surf life saving club to perform all or any of the functions listed in subclause (1).
- (3) Members authorised by the local government under subclause (2) must have been recommended by the surf life saving club as competent to perform the functions referred to in that subclause in respect of which they are authorised.
- (4) Under subclause (1), the local government may authorise members generally, or in relation to particular times, days or months.

### **5.5 Authority of local government employee to prevail**

If the local government has authorised a person under clause 5.4(1) and a member of a surf life saving club under clause 5.4(2) in relation to the same beach, where they could perform a function referred to in clause 5.4(1) contemporaneously, the authority of an authorised person employed by the local government under clause 5.4(1) is to prevail.

### **5.6 Persons to comply with signs and directions**

A person shall—

- (a) not act in contravention of any sign erected on a beach under clause 5.4(1)(c);
- (b) not enter an area which has been temporarily closed with rope, hessian, wire or any other means for the conduct of surf life saving club activities, unless he or she is a member of the club or has obtained permission to enter from the club;
- (c) comply with any direction given under clause 5.4(1)(c) or 5.4(1)(e); and
- (d) not interfere with, obscure, obstruct, or hang any item of clothing or towel on a flag, sign, notice or item of life saving equipment.

#### *Division 3—Fenced or closed property*

### **5.7 No entry to fenced or closed local government property**

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

#### *Division 4—Toilet blocks and change rooms*

### **5.8 Only specified gender to use entry of toilet block or change room**

- (1) Where a sign on a toilet block or change room specifies that a particular entry of the toilet block or change room is to be used by—
- (a) females, then a person of the male gender shall not use that entry of the toilet block or change room;
  - (b) males, then a person of the female gender shall not use that entry of the toilet block or change room; or
  - (c) families, then, 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.

#### *Division 5—Aerodrome (airport)*

### **5.9 Access of animals restricted**

- (1) A person shall not bring an animal on to an aerodrome unless—
- (a) the person is a person referred to in section 8 of the *Dog Act 1976* acting in accordance with that provision;
  - (b) the animal is being air freighted from the aerodrome;
  - (c) the animal has been air freighted to the aerodrome; 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 aerodrome.
- (3) If an animal is at any time on an aerodrome 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).

## **PART 6—FEES FOR ENTRY ONTO LOCAL GOVERNMENT PROPERTY**

### **6.1 No unauthorised entry to function**

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

## **PART 7—PEDESTRIAN BRIDGES**

### *Division 1—Preliminary*

#### **7.1 Interpretation**

- (1) This Part only applies to pedestrian bridges on local government property.
- (2) In this Part—
- “pedestrian bridge” means any bridge intended for use by pedestrians only.

### *Division 2—Control and usage of pedestrian bridges*

#### **7.2 Vehicles on pedestrian bridge**

A person must not drive, ride or take a vehicle onto or allow the vehicle to remain on any pedestrian bridge without express permission of the local government.

#### **7.3 Obstruction of pedestrian bridge**

- (1) No person shall place or cause to be placed on any pedestrian bridge any obstruction without permission in writing of the local government.
- (2) No person shall obstruct any representative or employee of the local government in constructing, repairing, adding to or working on or in relation to any pedestrian bridge.

#### **7.4 Rubbish, etc**

A person must not throw or place or cause to be thrown or placed at or on any pedestrian bridge any glass, stone, missile, filth, dirt, rubbish or other matter of similar nature.

#### **7.5 Fires**

A person shall not under any pretext whatsoever light, place or keep a fire upon or against any pedestrian bridge.

## **PART 8—OBJECTIONS AND REVIEW**

### **8.1 Review of decision**

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

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

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

## **PART 9—MISCELLANEOUS**

### **9.1 Authorised person to be obeyed**

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

### **9.2 Persons may be directed to leave local government property**

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

### **9.3 Disposal of lost property**

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

### **9.4 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 local government, pay the costs of—
- (a) reinstating the property to the state it was in prior to the occurrence of the damage; or
  - (b) replacing that property.
- (3) On a failure to comply with a notice issued under subclause (1), the local government may recover the costs referred to in the notice as a debt due to it.

## **PART 10—ENFORCEMENT**

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

#### **10.1 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.

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

If 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 the person to whom the notice was given, as a debt, the costs incurred in so doing.

### *Division 2—Offences and penalties*

#### *Subdivision 1—General*

#### **10.3 Offences and general penalty**

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

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

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

#### **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 Form of notices**

(1) For the purposes of this local law—

(a) where a vehicle is involved in the commission of an offence, the form of the notice referred to in section 9.13 of the Act is that of Form 1 in Schedule 1 of the Regulations;

(b) the form of the infringement notice given under section 9.16 of the Act is that of Form 2 in Schedule 1 of the Regulations; and

(a) the form of the withdrawal of infringement notice referred to in section 9.20 of the Act is that of Form 3 in Schedule 1 of the Regulations.

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

### *Division 3—Evidence in legal proceedings*

#### **10.6 Evidence of a determination**

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

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

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

**Schedule 1**  
PRESCRIBED OFFENCES

[cl. 10.4]

*City of Albany*  
Local Government Property Local Law 2011  
**PRESCRIBED OFFENCES AND MODIFIED PENALTIES**

Item No.	Clause No.	Description	Modified Penalty \$
1	2.4	Failure to comply with determination	125
2	3.6	Failure to comply with conditions of permit	125
3	3.13(1)	Failure to obtain a permit	125
4	3.14(3)	Failure to obtain permit to camp outside a facility	125
5	3.15(1)	Failure to obtain permit for liquor	125
6	3.16	Failure of permit holder to comply with responsibilities	125
7	4.1	Behaviour which interferes with others	125
8	4.2(2)	Behaviour detrimental to property	125
9	4.3(2)	Taking or injuring any fauna	350
10	4.4(2)	Removing or damaging any flora	350
11	4.5	Under influence of liquor or prohibited drug	125
12	4.7(2)	Failure to leave local government property	125
13	4.8(2)	Failure to comply with sign on local government property	125
14	5.2	Consuming food or drink in prohibited area	125
15	5.3	Using a camera device in any portion of a change room at an aquatic or leisure centre	125
16	5.6	Failure to comply with sign or direction on beach	125
17	5.7	Unauthorised entry to fenced or closed local government property	125
18	5.8	Enter toilet block or change room facility of opposite gender	125
19	5.9(1)	Unauthorised presence of animal on aerodrome	350
20	5.9(2)	Animal wandering at large on aerodrome—person in charge	350
21	5.9(3)	Animal wandering at large on aerodrome—owner	350
22	6.1(1)	Unauthorised entry to function on local government property	125
23	7.2	Unauthorised vehicle on pedestrian bridge	125
24	7.3	Obstruction of a pedestrian bridge	125
25	7.4	Throwing or placing rubbish on a pedestrian bridge	125
26	7.5	Lighting or placing a fire on a pedestrian bridge	125
27	9.1	Failure to comply with order of an authorised person	250
28	9.2	Failure to obey direction of an authorised person to leave local government property	250
29	10.1	Failure to comply with notice	250

**Schedule 2**  
DETERMINATIONS

[cl.2.1(2)]

*City of Albany*  
Local Government Property Local Law 2011  
**DETERMINATIONS**

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

**PART 1 — PRELIMINARY**

**1.1 Definitions**

In these determinations unless the context otherwise requires—

“**local law**” means the *City of Albany Local Government Property Local Law 2011* made by the local government.

## **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 shall 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 local government employee, authorised person or contractor engaged by the local government 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 motorised wheelchair, and the driver of that vehicle is a person with a disability.

(2) 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 Activities prohibited on local government property**

- (a) A person shall not smoke on premises owned by the local government or under the care and control of the local government.
- (b) person shall not, on any local government property, use or ride a bicycle or wheeled device, skateboard, or similar device—
  - (i) inside, or on the curtilage to, a building; or
  - (ii) on a sand dune.
- (c) A person shall not—
  - (i) play or practise golf, pistol shooting or rifle shooting on local government property; or
  - (ii) aim, shoot or throw an arrow or similar projectile on any local government property; except on land which is reserved by the local government for that purpose, or which is set aside under subclause 2.7(1) for that purpose.
- (d) A person shall not use, launch or fly powered aeroplanes, gliders or rockets that are propelled by mechanical, hydraulic, combustion or pyrotechnic means except on land which is reserved by the local government for that purpose, or as otherwise provided by determination or permit.

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Dated: 20 September 2011.

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

FAILEEN JAMES, Chief Executive Officer.  
MILTON EVANS JP, Mayor

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LOCAL GOVERNMENT ACT 1995

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**CITY OF GOSNELLS**

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**THOROUGHFARES AND  
PUBLIC PLACES LOCAL LAW  
2012**





## LOCAL GOVERNMENT ACT 1995

### CITY OF GOSNELLS

## THOROUGHFARES AND PUBLIC PLACES LOCAL LAW 2012

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the City of Gosnells resolved on 28 February 2012 to make the following local law.

### PART 1 — PRELIMINARY

#### 1.1 Citation

This local law may be cited as the *City of Gosnells Thoroughfares and Public Places Local Law 2012*.

#### 1.2 Commencement

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

#### 1.3 Repeal

The following local laws are repealed—

The *City of Gosnells Activities on Thoroughfares and Trading in Thoroughfares and Public Places Local Law 2000* published in the *Government Gazette* on 7 March 2001.

The City of Gosnells By-laws relating to Signs, Hoardings and Bill Posting published in the *Government Gazette* on 10 June 1988.

#### 1.4 Interpretation

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

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

**bulk container** means a portable container designed or used for storage of materials and which is unlikely to be lifted without mechanical assistance and includes sea containers;

**bulk rubbish collection** means a collection service by the local government for green waste and general items that cannot be disposed off through a normal weekly rubbish collection service;

**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 governments regular domestic rubbish collection service;

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

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

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

**Council** means the Council of the City of Gosnells;

**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 City of Gosnells;

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

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

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

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

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

**local government** means the City of Gosnells;

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

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

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

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

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

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

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

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

**premises** means a building or similar structure, but does not include a carpark or a similar place;

**public place** includes any place to which the public has or is permitted to have access, but does not include—

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

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

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

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

**town planning scheme** means a town planning scheme of the local government made under the former *Town Planning and Development Act 1928* or a local planning scheme of the local government made under the *Planning and Development Act 2005*;

**vehicle** includes—

- (a) every conveyance and every object, or part of a conveyance or 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.

## 1.5 Application

This local law applies throughout the district.

## PART 2—ACTIVITIES ON THOROUGHFARES AND PUBLIC PLACES

### *Division 1—General*

#### 2.1 General prohibitions

A person shall not—

- (a) plant any plant (except grasses or a similar plant) within 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 on a thoroughfare unless—
  - (i) the person is the owner or the occupier of the lot abutting that portion of the thoroughfare and the lawn, garden or 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 anything on a footpath (except water) which may create a hazard for any person using the footpath;
- (e) unless at the direction of the local government or an authorised person, damage, remove or interfere with any signpost, direction plate, guidepost, notice, shelter, shed, fence or any structure erected on a thoroughfare by the local government or a person acting under the authority of a written law;
- (f) play or participate in any game or sport so as to cause danger to any person or thing or impede the movement of vehicles or persons on a thoroughfare; or
- (g) within a mall, arcade or verandah of a shopping centre, ride any bicycle, skateboard, rollerblades or similar device.

## **2.2 Activities allowed with a permit**

- (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 4 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 and manner prescribed in any advertising literature distributed 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) damage a thoroughfare;
  - (f) light any fire or cause anything to burn on a thoroughfare other than in a stove or fireplace provided for that purpose;
  - (g) fell any tree onto a thoroughfare;
  - (h) unless in order to maintain a permissible verge treatment—
    - (i) lay pipes under or provide taps on any verge; or
    - (ii) place or install any thing on any part of a thoroughfare, and without limiting the generality of the foregoing, any gravel, stone, flagstone, cement, concrete slabs, blocks, bricks, pebbles, plastic sheeting, kerbing, wood chips, bark or sawdust;
  - (i) 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;
  - (j) place or cause to be placed on a thoroughfare a bulk rubbish container;
  - (k) place or cause to be placed on a thoroughfare a bulk container for the temporary storage of materials;
  - (l) interfere with the soil of, or anything in a thoroughfare or take anything from a thoroughfare; and
  - (m) erect a building, fence or other structure on a thoroughfare.
- (2) The local government or an authorised person may exempt a person from compliance with subclause (1) on the application of that person.

### *Division 2—Vehicle crossings*

#### Subdivision 1—Temporary crossings

### **2.3 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 a building permit issued under the *Building Act 2011* in relation to the works; or
  - (b) the registered proprietor of the lot, if no building licence has been issued in relation to the works.
- (3) If the local government or an authorised person 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

### **2.4 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.
- (2) An authorised person 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.

### *Division 3— Driving on a closed thoroughfare*

### **2.5 No driving on closed thoroughfare**

- (1) In this clause—
- closed thoroughfare** means a thoroughfare wholly or partially closed under section 3.50 or 3.50A of the Act.

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

#### *Division 4—Verge treatments*

##### Subdivision 1— Preliminary

### **2.6 Interpretation**

In this Division, unless the context otherwise requires—

**acceptable material** means any of the following—

- (a) Organic mulch and woodchips; and
- (b) Artificial lawn;

##### Subdivision 2—Permissible verge treatments

### **2.7 Permissible verge treatments**

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

(2) The permissible verge treatments are—

- (a) the planting and maintenance of a lawn;
- (b) the planting and maintenance of a garden provided that—
  - (i) clear sight visibility is maintained at all times for a person using the abutting thoroughfare in the vicinity of an intersection or bend in the thoroughfare or using a driveway on land adjacent to the thoroughfare for access to or from the thoroughfare;
  - (ii) where there is no footpath, a pedestrian has safe and clear access of a minimum width of 2m along that part of the verge immediately adjacent to the kerb; and
  - (iii) plantings are maintained at a height no greater than 600mm; or
- (c) the installation of an acceptable material.

(3) Acceptable materials that prevent water penetration are not to be installed closer than 2m to an existing verge tree.

### **2.8 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 2.9.

### **2.9 Obligations of owner or occupier**

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

- (a) 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 disturb a footpath on the verge;
- (c) ensure the verge treatment does not damage or obstruct a drain, manhole, gully, inspection pit, channel, kerb or tree planted by the local government; and
- (d) ensure any sprinklers, pipes or other reticulation equipment does not protrude above the level of the lawn or the garden when not in use.

### **2.10 Notice to owner or occupier**

The local government or an authorised person 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

### **2.11 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

##### **2.12 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 5—Street numbers*

##### **2.13 Interpretation**

In this Division, unless the context requires otherwise—

**street number** means a number or numbers with or without an alphabetical suffix assigned to identify the street address of a lot.

##### **2.14 Assignment of street numbers**

- (1) The local government shall assign street numbers within the district.
- (2) The local government may assign a different street number to that previously assigned.
- (3) A person shall not adopt, use or display a street number other than that street number assigned by the local government.

##### **2.15 Street number to be displayed**

- (1) The owner or occupier may display the street number on a kerb.
- (2) The street number shall face the front of the street to which the street number was issued.

#### *Division 6—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 1.4; and
- (b) local government property.

### **PART 3 –SIGNS**

#### *Division 1—Preliminary*

##### **3.1 Interpretation**

In this Part, unless the context otherwise requires—

**sign** includes a signboard, portable sign, advertising sign, direction sign, election sign, bunting sign or flag.

#### *Division 2—Signs erected by the local government*

##### **3.2 Signs**

- (1) The City 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.

##### **3.3 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 3.2 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 3—Permits*

##### **3.4 Signs on thoroughfares**

- (1) A person shall not, without a permit—
  - (a) erect or place any sign on a thoroughfare; or
  - (b) post any bill or paint, place or affix any advertisement on a thoroughfare.

- (2) Notwithstanding subclause (1), a person shall not erect or place any sign—
- (a) on a footpath;
  - (b) over any footpath where the resulting vertical clearance between the sign and the footpath is less than 2.7m;
  - (c) on or within 2m of a carriageway;
  - (d) in any other location where, in the opinion of an authorised person, the sign is likely to obstruct lines of sight along a thoroughfare or cause danger to any person using the thoroughfare; or
  - (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) The local government or an authorised person may exempt a person from compliance with subclause (1) on the application of that person.

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

In determining an application for a permit for the purpose of clause 3.4(1), the local government or an authorised person 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 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.

### **3.6 Conditions on permits**

If the local government or an authorised person approves an application for a permit, the application is to be taken to be approved subject to the sign—

- (a) being maintained in good condition;
- (b) in the case of a portable sign, not exceeding 1m in height;
- (c) in the case of a portable sign, not exceeding an area of 0.25m<sup>2</sup> on any side;
- (d) relate only to the activity described on the permit;
- (e) being securely installed, free standing and not affixed to any existing sign, post, power or light pole, or similar structure;
- (f) not being placed within 100m of any works on the thoroughfare;
- (g) being placed so as not to obstruct or impede the reasonable use of a thoroughfare or access to a place by any person;
- (h) being placed so as not to obstruct or impede the vision of a driver of a vehicle entering or leaving a thoroughfare or crossing;
- (i) being erected at least 50m from any intersection;
- (j) not being an illuminated sign;
- (k) not incorporating reflective or fluorescent materials; and
- (l) not displaying only part of a message which is to be read with other separate signs in order to obtain the whole message.

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

### *Division 1—Animals and vehicles*

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

(1) A person shall not leave an animal 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.

#### **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.

#### **4.3 Prohibitions relating to vehicles**

A person shall not paint, repair, alter or maintain a vehicle in a public place or on local government property except to effect minor repairs or services in an emergency for the purpose of enabling the vehicle to be put in motion.

#### *Division 2—Shopping trolleys*

##### **4.4 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.

##### **4.5 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).

(3) If the shopping trolley has not been removed by a retailer in accordance with subclause (2), the shopping trolley may be impounded.

##### **4.6 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 — TRADING IN THOROUGHFARES AND PUBLIC PLACES**

#### *Division 1—Stallholders and traders*

##### *Subdivision 1—Preliminary*

##### **5.1 Interpretation**

In this Division, unless the context otherwise requires—

**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;

(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 delivery of pre-ordered goods or services or the taking of further orders for goods or services.

(e) the setting up of a stall or the conducting of a business at a stall under the authority of a stallholder's permit;

(f) the selling or the offering for sale of goods and services to, or the soliciting of orders for goods and services from a person who sells those goods or services;



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

*Subdivision 2—Permits*

**5.2 Stallholder and trading permits**

- (1) A person shall not conduct a stall or carry on trading on a public place unless that person is—
  - (a) the holder of a valid stallholder or trading permit; or
  - (b) an assistant specified in a valid stallholder or trading permit.
- (2) Every application for a stallholder or trading 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 or trade, as well as their names and addresses if already engaged;
  - (c) specify the proposed location of the stall or location 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 operation;
  - (e) specify the proposed goods or services to be sold, hired, offered for sale or traded; and
  - (f) be accompanied by an accurate plan and description of the proposed stall, structure or vehicle which may be used by the applicant.

**5.3 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.

**5.4 Conditions of permit**

- (1) If the local government or an authorised person 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 trade;
  - (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, an authorised person 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.

**5.5 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 or trading 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 or an authorised person 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

#### 5.6 Conduct of stallholders and traders

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

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

(2) A stallholder or trader shall not—

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

### Division 2—Street entertainers

#### 5.7 Interpretation

In this Division, unless the context otherwise requires—

**Indecent exposure** means the revealing to view of those parts of the body, especially the genitals, which by law and convention should be covered by clothing under the given circumstances;

**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 5.8;

**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.

#### 5.8 Permit required to perform

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

#### 5.9 Variation of permitted area and permitted time

(1) An authorised person may by notice in writing to a permit holder vary—

- (a) the permitted area;
  - (b) the permitted time; or
  - (c) both the permitted area and the permitted time,
- shown on a permit.

(2) An authorised person may direct a permit holder to move from one permitted area to another permitted area, if more than one area is specified in a permit.

#### 5.10 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.

### 5.11 Cancellation of permit

An authorised person may cancel a permit if, in the opinion of the authorised person, 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 the performance otherwise constitutes a nuisance.

### 5.12 Obligations of permit holder

A permit holder shall not in a public place—

- (a) perform unless properly dressed in clothing which covers the body to prevent indecent exposure;
- (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*

### 5.13 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 5.14; and

**public place** has the meaning given to it in clause 5.1.

### 5.14 Permit required to conduct a Facility

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

### 5.15 Matters to be considered in determining application

In determining an application for a permit for the purpose of clause 5.14, the local government or an authorised person 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 *Food Act 2008* and whether the use of the premises is permitted under the town planning scheme;
- (c) users of the Facility will have access to proper and sufficient sanitary and ablutionary conveniences;
- (d) the Facility would—
  - (i) obstruct the visibility or clear sight lines at an intersection of thoroughfares of any person; or
  - (ii) impede pedestrian access; and
- (e) the tables, chairs and other equipment to be used may obstruct or impede the use of the public place for the purpose for which it was designed.

### 5.16 Obligations of permit holder

(1) The permit holder for a Facility shall—

- (a) maintain the chairs, tables and other structures in the eating area in a serviceable condition at all times;
- (b) 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
- (c) be solely responsible for all rates and taxes levied upon the land occupied by the Facility.

(2) Whenever, in the opinion of an authorised person, any work is required to be carried out to a Facility, an authorised person 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.

### 5.17 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.

### 5.18 Temporary removal of Facility

(1) The permit holder for a Facility is to temporarily remove the Facility when requested to do so on reasonable grounds by an authorised person or a member of the Police Service or an emergency service.

(2) The permit holder may replace the Facility removed under subclause (1) as soon as the person who directed the removal allows it to be replaced.

## **PART 6—PERMITS**

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

#### **6.1 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 or an authorised person may require an applicant to provide additional information reasonably related to an application before determining an application for a permit.
- (4) The local government or an authorised person may require an applicant to give local public notice of the application for a permit.
- (5) The local government or an authorised person may refuse to consider an application for a permit which is not in accordance with subclause (2).

#### **6.2 Decision on application for permit**

- (1) The local government or an authorised person 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 or an authorised person 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 or an authorised person 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 or an authorised person 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 or an authorised person to refuse the application for a permit on other grounds under subclause (1)(b).

### *Division 2—Conditions*

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

The local government or an authorised person 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) the payment of a deposit or bond against possible 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.

#### **6.4 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 6.2(1)(a).

- (2) Under clause 6.2(1)(a) the local government or an authorised person 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 6.2(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.

### **6.5 Compliance 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 or an authorised person may vary the conditions of a permit, and the permit holder shall comply with those conditions as varied.

### *Division 3—General*

### **6.6 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 6.10.

### **6.7 Renewal of permit**

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

(2) The provisions of—

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

### **6.8 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 or an authorised person 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 or an authorised person 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 or an authorised person 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 or an authorised person 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.

### **6.9 Production of permit**

A permit holder is to produce to an authorised person the permit issued by the local government immediately upon being required to do so by that authorised person.

### **6.10 Cancellation of permit**

(1) Subject to clause 7.1, a permit may be cancelled by the local government or an authorised person if—

- (a) the permit holder has not complied with a—
  - (i) condition of the permit; or
  - (ii) provision of any written law which may relate to the activity regulated by the permit;
- (b) it is relevant to the activity regulated by the permit that—
  - (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 is to be taken to have forfeited any fees paid in respect of the permit.

## **PART 7—OBJECTIONS AND APPEALS**

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

When the local government or an authorised person makes a decision—

- (a) under clause 6.2(1); or

(b) as to whether it will renew, vary, or cancel a permit,  
the provisions of Division 1 of Part 9 of the Act and regulation 33 of the Regulations apply to that decision.

## **PART 8—MISCELLANEOUS NOTICES**

### **8.1 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, an authorised person may give a notice to the owner or the occupier of the land abutting on the lawn or the garden, requiring the owner or the occupier or both to move or alter the direction of the sprinkler or other watering equipment.

### **8.2 Hazardous plants**

Where a plant in a garden that encroaches a thoroughfare creates or may create a hazard for any person using that thoroughfare, an authorised person may give a notice to the owner or the occupier of the land with the garden to remove, cut, move or otherwise deal with that plant so as to remove the hazard.

### **8.3 Notice to repair damage to thoroughfare**

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

### **8.4 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 or an authorised person 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 9—ENFORCEMENT**

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

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

Whenever the local government or an authorised person 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.

#### **9.2 The local government may undertake requirements of notice**

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

### *Division 2—Offences and penalties*

#### **9.3 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.

#### **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 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**  
*City of Gosnells*  
 Thoroughfares and Public Places Local Law 2012  
**PRESCRIBED OFFENCES**

[clause 9.4]

Clause	Description	Modified Penalty \$
2.1(a)	Plant any plant (except grasses or a similar plant) within 6m of intersection	150
2.1(b)	Damaging lawn or garden on a thoroughfare	150
2.1(c)	Plant (except grass) on thoroughfare within 2m of carriageway	150
2.1(d)	Place hazard on footpath	150
2.1(e)	Damaging or interfering with signpost or structure on thoroughfare	350
2.1(f)	Playing games so as to impede vehicles or persons on thoroughfare	150
2.1(g)	Riding of bicycle, skateboard or similar device on mall or verandah of shopping centre	150
2.2(1)(a)	Digging a trench through a kerb or footpath without a permit	150
2.2(1)(b)	Throwing or placing anything on a verge without a permit	150
2.2(1)(c)	Causing obstruction to vehicle or person on thoroughfare without a permit	150
2.2(1)(d)	Causing obstruction to water channel on thoroughfare without a permit	250
2.2(1)(e)	Damage a thoroughfare	350
2.2(1)(f)	Lighting a fire on a thoroughfare without a permit	350
2.2(1)(g)	Felling tree onto thoroughfare without a permit	150
2.2(1)(h)	Installing pipes or stone on thoroughfare without a permit	150
2.2(1)(i)	Installing a hoist or other thing on a structure or land for use over a thoroughfare without a permit	350
2.2(1)(j)	Placing a bulk rubbish container on a thoroughfare without a permit	150
2.2(1)(k)	Placing a bulk container on a thoroughfare without a permit	150
2.2(1)(l)	Interfering with anything on a thoroughfare without a permit	150
2.2(1)(m)	Erect a structure on a thoroughfare without a permit	150
2.3(1)	Failure to obtain permit for temporary crossing	250
2.5(2)	Driving or taking a vehicle on a closed thoroughfare	350
2.8(1)	Installation of verge treatment other than permissible verge treatment	250
2.9	Placement of obstruction on verge	150
2.10	Failure to comply with notice to rectify default	150
2.14(3)	Using a street number not assigned	150
2.15(2)	Incorrectly displaying a street number	150
3.2(2)	Failure to comply with sign on public place	150
3.4(1)	Placing sign or affixing any advertisement on a thoroughfare without a permit	150
3.4(2)	Erecting or placing of advertising sign in a prohibited area	150
4.1(1)	Animal obstructing a public place or local government property	150
4.2(2)(a)	Animal on thoroughfare when not led, ridden or driven	150
4.2(2)(b)	Animal on public place with infectious disease	150
4.2(2)(c)	Training or racing animal on thoroughfare in built-up area	150
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4.3	Repairing vehicle on thoroughfare when not an emergency	150
4.5(2)	Failure to remove shopping trolley upon being advised of location	150
5.2(1)	Conducting a stall or trading in public place without a permit	350
5.6(1)(a)	Failure of stallholder or trader to display or carry permit	150
5.6(1)(b)	Stallholder or trader not displaying valid permit	150
5.6(1)(c)	Stallholder or trader not carrying certified scales when selling goods by weight	150
5.6(2)	Stallholder or trader engaged in prohibited conduct	150

<b>Clause</b>	<b>Description</b>	<b>Modified Penalty \$</b>
5.8	Performing in a public place without a permit	150
5.9(2)	Failure of performer to move onto another area when directed	150
5.12	Failure of performer to comply with obligations	150
5.14	Establishment or conduct of outdoor eating facility without a permit	350
5.16	Failure of permit holder of outdoor eating facility to comply with obligations	150
6.5	Failure to comply with a condition of a permit	150
6.9	Failure to produce permit on request of authorised person	150
9.1	Failure to comply with notice given under local law	150

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Dated: 1 March 2012.

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

DAVID GRIFFITHS, Mayor.  
IAN COWIE, Chief Executive Officer.

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**LOCAL GOVERNMENT ACT 1995**

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**CITY OF SWAN**

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**STANDING ORDERS  
LOCAL LAW 2010**



**LOCAL GOVERNMENT ACT 1995**

CITY OF SWAN

**STANDING ORDERS LOCAL LAW 2010**

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**LOCAL GOVERNMENT ACT 1995**

## CITY OF SWAN

**STANDING ORDERS 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 Swan resolved on 2 March 2011 to adopt the following local law.

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

This Local Law may be cited as the *City of Swan Standing Orders Local Law 2010*.

**1.2 Commencement**

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

**Note:** *In order to assist the reader, and to provide a complete picture of relevant legislation, extracts from the Local Government Act and Local Government (Administration) Regulations are shown boxed and in italics. This note and those extracts are for explanatory purposes only and do not form part of this Local Law.*

**1.3 Repeal**

The City of Swan Local Law Relating to Standing Orders 1999 published in the *Government Gazette* of Western Australia on 5 January 2000, is repealed.

**1.4 Purpose and effect**

- (1) The purpose of this Local Law is to provide the rules for the conduct of meetings of the Council, Committees and electors.
- (2) The effect of this Local Law is intended to result in—
  - (a) the orderly and effective conduct of meetings;
  - (b) greater community understanding of the meeting process;
  - (c) better decision-making by the City; and
  - (d) better outcomes from decisions made.

**1.5 Application**

All meetings of the Council, Committees and the electors are to be conducted in accordance with the Act, the Regulations and this local law.

**1.6 Interpretation**

- (1) In this Local Law, unless the contrary intention appears—

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

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

“**City**” means the City of Swan;

“**committee**” means a committee established by council in accordance with the Act;

“**councillor**” means a person who holds the office of councillor on the council;

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

“**meeting**” means a meeting of the council or a committee;

“**member**” where used in reference to council means a councillor and where used in reference to a committee, means a member of that committee, and where used generally means a member of the council or a member of a committee as the context requires;

“**ordinary meeting**” means a meeting convened in accordance with the Act at such place and at such time as the council, from time to time, appoints for the transaction of ordinary business of the council or of any committee;

“**presiding person**” means the Mayor or other person presiding at a meeting of the council or a committee;

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

“**Mayor**” means the Mayor of the City and includes the Deputy Mayor when acting as the Mayor in accordance with the Act;

“**Rules of Conduct Regulations**” means the *Local Government (Rules of Conduct) Regulations 2007*;

“**section**” means a section of the Act and is “s.” in its abbreviated form;

“**special majority**” has the meaning given to it by the Act;

“**special meeting**” means a meeting convened in accordance with the Act to consider special business of the Council or of any committee, the nature of which is to be specified in the notice convening the meeting;

“**standing orders**” means the meeting procedures and/or rules on the conduct and behaviour of persons at a meeting of the Council, Committee or electors; and

“**this Local Law**” means the City of Swan Standing Orders Local Law 2010.

(2) In this Local Law, terms have the meanings given to them in the Act and Regulations. In the case of conflict between any provision of this Local Law and any provision of the Act or Regulations, the order of precedence is the Act, the Regulations, and lastly the interpretations in this Local Law.

(3) This Local Law shall apply to committees except the requirement limiting the number of times a member may speak (*see clause 7.8*) and the need to rise to address the person presiding (*see clause 6.4*).

## PART 2 — MEETINGS AND HOW CALLED

### 2.1 Meetings of the Council and Committees

(1) Meetings of council and committees of council shall be either ordinary meetings or special meetings.

(2) Subject to the provisions of the Act, the Regulations and this Local Law relating to the revocation of or change to a decision, no business is to be transacted at a special meeting, other than that for the purpose of which the special meeting has been called.

### 2.2 Calling of Council meetings

(1) The calling of a council meeting is to be in accordance with the Act.

(2) If a special meeting of the council is to be open to the public, and if local public notice in accordance with section 1.7 of the Act cannot practically be given, the CEO is to give public notice of the date, time, place and purpose of the meeting by the most effective means possible, including the City’s website, and if practicable, by posting notice of those details in the public area of the administrative offices of the City, and if possible in the City’s public libraries, as close as possible to the time at which notice of the meeting is given to members.

### 2.3 Calling of Committee meetings

An ordinary or special meeting of a committee is to be held—

(a) if called for by—

(i) the Mayor; or

(ii) the presiding person of the committee; or

(iii) if the committee is comprised of 3 members, any 2 members of that committee; or

(iv) if the committee is comprised of more than 3 members, then any 3 members of that committee,

in a notice to the CEO setting out the time, date, place and purpose of the proposed meeting;  
or

(b) if so decided by the council or the committee.

### 2.4 Convening ordinary and special meetings of Council

The convening of ordinary and special meetings of council is to be in accordance with the Act.

### 2.5 Convening ordinary and special meetings of Committees

(1) The CEO is to convene an ordinary meeting of a committee, by giving each member of the committee at least 72 hours notice of the date, time and place of the meeting and an agenda for the meeting by facsimile, letter or electronic mail.

(2) The CEO is to convene a special meeting of a committee by giving each member of the committee notice, before the meeting, of the date, time, place and purpose of the meeting.

(3) In convening a special meeting of a committee, there is no minimum period of notice to be given and notice can be given by telephone, facsimile, letter, electronic mail or orally in person.

### 2.6 Notice of meeting

Failure of any member to receive a notice convening a meeting shall not affect the validity of the meeting, so long as all reasonable steps have been taken to give the notice.

### 2.7 Notice of adjournment

(1) When a meeting is adjourned to a day and hour other than the next ordinary meeting date, notice of the adjourned meeting shall, if time permits, be given to each member.

(2) At the resumption of an adjourned meeting, no business shall be transacted other than such business as remains outstanding on the notice paper of the adjourned meeting.



**PART 3—QUORUM FOR MEETINGS AND ADJOURNMENT WHEN NO QUORUM****3.1 Quorum for meetings**

The requirements for a quorum at a meeting are as prescribed in the Act and Regulations.

**3.2 Quorum not present during meeting**

(1) If at any time during the course of a meeting a quorum is not present, the presiding person, upon becoming aware of that fact, shall adjourn the proceedings for a period not exceeding 30 minutes.

(2) If a quorum is not present at the expiration of the suspension period in subclause (1), the person presiding may—

- (a) adjourn the meeting to a time and date to be set by the presiding person, which may be the same day or another day, or
- (b) may cancel the meeting.

**3.3 Debate on motion to be resumed**

Where the debate on any motion is interrupted due to the adjournment of a meeting under subclauses 3.2(1) or (2), that debate is to be resumed at the next meeting at the point at which it was so interrupted.

**3.4 Names to be recorded**

At any meeting—

- (a) at which there is not a quorum present; or
  - (b) which is adjourned or cancelled under subclause 3.2(2);
- the names of the members then present are to be recorded.

**PART 4—PUBLIC PARTICIPATION****4.1 Public participation**

(1) Members of the public are welcome to attend all meetings of council or a committee where there has been no resolution to close the meeting to the public. A copy of the agenda of an ordinary meeting and, where time permits, a special meeting, is to be made available in the local government's libraries and at the administration centre prior to the meeting.

(2) Parts of the agenda may be marked "Confidential". The public will not have access to this part of the agenda or related documents.

(3) Subclause 8.5(1) of this Local Law allows for a resolution to be passed that a meeting be closed to members of the public to discuss any matter identified in the Act that may allow the meeting to be closed to the public. If that occurs members of the public will be asked to leave the room as provided in subclause 8.5(2).

(4) Members of the public are not permitted to interrupt or enter into any conversation during a meeting except in accordance with subclause (5).

(5) (a) At the beginning of each meeting, members of the public will have the opportunity to place questions before the Council or committee in accordance the Regulations.

(b) A member of the public who raises a question during question time is to provide his or her name and address.

(c) A question may be taken on notice by the council or committee for later response.

(d) When a question is taken on notice under subclause (5)(c) the CEO is to ensure that a response is given to the member of the public in writing, a copy is provided to councillors and the response placed in the agenda of a subsequent meeting.

(6) A committee may resolve by simple majority, to invite a member of the public in attendance to make a brief comment in relation to a matter on the agenda of the meeting, either during question time held under subclause (5), or when the matter is discussed during the course of the meeting.

(7) When the committee resolves in the terms of subclause (6) the presiding person is to determine the person or number of persons who may comment and the duration of any comment and may extend the time allowed for any comment.

(8) A committee may resolve by simple majority to invite a member of the council who is not a member of the committee to participate in the debate on all or any part of the agenda of the meeting.

**4.2 Inspection entitlement**

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

**4.3 Confidentiality of information withheld**

(1) Information withheld by the CEO from members of the public under Regulation 14(2) of the Regulations, is to be—

(a) Identified in the agenda of a Council or committee meeting under the item "Confidential Items"; and

(b) Marked "confidential" in the agenda.

(2) A member of the Council or a committee or an employee of the Council in receipt of confidential information is not to disclose such information to any person other than a member of the Council or the committee or an employee of the Council to the extent necessary for the purpose of carrying out his or her duties.

**PART 5—BUSINESS AT MEETING****5.1 Business to be specified in notice**

(1) No business is to be transacted at any meeting other than for the purpose specified in the notice relating to the meeting, except—

- (a) matters that the Act permits to be dealt with without notice; and
- (b) matters that this Local Law expressly permits to be dealt with without notice.

(2) Without limiting the generality of subclause (1), no business is to be transacted—

- (a) at an ordinary meeting of the council other than that specified in the agenda, without the approval of the presiding member or a decision of the council;
- (b) at a special meeting of the council other than that given in the notice as the purpose of the meeting;
- (c) at a committee meeting other than that specified in the agenda or given in the notice as the purpose of the meeting, without the approval of the presiding member or a decision of the committee; and
- (d) at an adjourned meeting of the council or a committee other than that—
  - (i) specified in the notice of the meeting which had been adjourned; and
  - (ii) which remains unresolved,

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

**5.2 Order of business at an ordinary meeting**

(1) Disclosure of Interests Notified in Writing

If a member has disclosed an interest in a written notice given to the CEO before a meeting, then before the meeting—

- (a) the CEO is to cause the notice to be given to the presiding person; and
- (b) the presiding person is to bring the notice to the attention of the persons who attend the meeting.

(2) The Order of Business at any ordinary meeting of council or a committee shall be as decided by council or the committee from time to time and unless otherwise decided by Council or the committee at a meeting, shall be as near as practicable to the following—

1. Opening and Announcement of Visitors;
2. Disclaimer (read aloud by presiding member);
3. Attendance and Apologies;
4. Leave of Absence;
5. Answers to Questions from the Public Which Were Taken on Notice;
6. Councillors' and Employees' Disclosures of Financial Interest and Interests Affecting impartiality;
7. Public Question Time;
  - 7.1 Questions relating to reports contained in the agenda,
    - 7.1.1 Questions of Which Due Notice Has Been Given,
    - 7.1.2 Questions of Which Due Notice Has Not Been Given,
  - 7.2 Other questions
    - 7.2.1 Questions of Which Due Notice Has Been Given,
    - 7.2.2 Questions of Which Due Notice Has Not Been Given,
8. Public Statement Time;
9. Petitions, Presentations and Deputations;
  - 9.1 Petitions,
  - 9.2 Presentations,
  - 9.3 Deputations;
10. Receiving Minutes of Committee Meetings;
11. Confirmation of Minutes;
12. Announcements by the Presiding Person;
13. Declarations of Due Consideration;
14. Members' Questions of Which Due Notice Has Been Given;
15. Members' Questions of Which Due Notice Has Not Been Given;
16. Business Left Over From Previous Meeting;
17. Reports by the CEO and Executive Officers;
18. Adoption of Recommendations Contained in Items Not Withdrawn;
19. Urgent Business;
20. Motions of Which Previous Notice Has Been Given;

21. Notices of Motion Given For Consideration at The Following Meeting if Given During The Meeting;
22. Confidential Business;
23. Date, Time and Place of the Next Meeting;
24. Closure of the Meeting.

(3) Notwithstanding subclause (2), the CEO may include on the agenda of a council or committee meeting in an appropriate place within the order of business any matter which must be decided, or which he or she considers is appropriate to be decided, by that meeting.

### 5.3 Public question time

(1) A member of the public who raises a question during Public Question Time is to state his or her name and address before commencing the question.

(2) In putting any question, no argument or expression of opinion is to be used or offered nor any facts stated except those necessary to explain the question.

(3) A question may be taken on notice by the council or committee for later response if it seems to the presiding person appropriate to do so.

(4) When a question has taken on notice under subclause (3), a response is to be given to the member of the public in writing by the CEO, and a copy is to be included in the agenda of the next ordinary meeting of the council or committee, as the case requires.

### 5.4 Petitions

A petition in order to be effective, is to—

- (a) be addressed to the Mayor;
- (b) be made by electors of the district;
- (c) state the request on each page of the petition;
- (d) contain the names, addresses and signatures of the electors making the request, and the date each elector signed;
- (e) contain a summary of the reasons for the request;
- (f) state the name of the person upon whom, and an address at which, notice to the petitioners can be given;
- (g) be in the form prescribed by the Act and the *Local Government (Constitution) Regulations 1996* if it is—
  - (i) a proposal to change the method of filling the office of Mayor;
  - (ii) a proposal to create a new district or the boundaries of the City;
  - (ii) a request for a poll on a recommended amalgamation; or
  - (iv) a submission about changes to wards, the name of the district, or a ward, or the number of councillors for a district or a ward.

### 5.5 Presentations to Council

(1) Unless otherwise decided by a simple majority of the council, the council is not to receive an oral presentation at a council meeting.

(2) Any request for an oral presentation must be made in writing to the CEO in sufficient time before the meeting at which the matter is to be considered, to allow the presentation to be received at a council briefing session before the meeting.

### 5.6 Deputations

(1) A deputation purely for ceremonial or civic purposes can be received at a Council Meeting without complying with the other provisions of this clause.

(2) A deputation wishing to be received by the council or a committee is to apply in writing to the CEO who is to forward the written request to the Mayor, or the presiding member as the case may be, at least 48 hours prior to the commencement of the meeting.

(3) The Mayor, or the presiding member as the case may be, may either approve the request, in which event the CEO is to invite the deputation to attend the meeting of the council or committee as the case may be, or may instruct the CEO to refer the request to the council or committee to decide by simple majority whether or not to receive the deputation.

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

- (a) is not to exceed 5 persons, only 2 of whom subject to subclause (5) may address the council or committee;
- (b) is not to address the council or committee for a period exceeding 10 minutes in total without the agreement of the council or the committee as the case requires;
- (c) may by decision of the presiding member be restricted to a presentation time of less than 10 minutes if the pressure of business for that meeting so requires.

(5) Members of the council or committee may ask a questions or questions of members of the deputation and any member of the deputation may respond to any such question.

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

(7) The Mayor in the case of a request to attend a council meeting or the presiding person in the case of a request to attend a committee, may decide and direct the CEO that a deputation should be received at a council briefing session in any case where the request for the deputation is received prior to the briefing session.

#### **5.7 Confirmation of minutes**

(1) On considering the minutes of a previous meeting a question of accuracy of those minutes arising under subclause (2) is permitted.

(2) If a member identifies an inaccuracy in the minutes, then the member is to—

- (a) state the item or items with which the member is dissatisfied;
- (b) identify the inaccuracy with precision; and
- (c) propose a motion clearly outlining the alternative wording to amend the minutes

#### **5.8 Announcements by the Presiding Person**

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

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

#### **5.9 Declarations of due consideration**

Any member who is not familiar with the substance of any report or minute or other information provided for consideration at a council or committee meeting is to declare that fact at the time declarations of due consideration are called for in the order of business at the meeting, or otherwise before the meeting considers the matter. In the event that any member makes such a declaration, the relevant matter is to be stood down for later consideration at that meeting so as to allow an opportunity for the member making the declaration to become familiar with the relevant report or minutes or other information. If the delay in consideration of the matter has not allowed sufficient time for the member to give due consideration to the matter, unless the member satisfies the presiding person that he or she can pass an informed vote, the member should leave the chamber before the matter is put to the vote.

#### **5.10 Questions by Members of which due notice has been given**

(1) A question on notice is to be given by a member in writing to the CEO at least 4 clear working days before the meeting at which it is to be raised.

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

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

#### **5.11 Urgent business**

(1) A member may move a motion involving urgent business that is not included in the agenda for that meeting provided that—

- (a) the person who is the presiding person has first consented to the business being raised;
- (b) the urgency of the business is such that the business cannot await inclusion in the agenda for the next ordinary meeting; and
- (c) if the business was to be deferred to the next ordinary meeting, such delay could have legal or financial implications for the City.

(2) If at an ordinary meeting a member objects that a motion introduced as urgent business and moved without notice does not deal with urgent ordinary business within the scope of subclause (1) above, the motion shall be of no effect unless it is agreed to at the meeting by an absolute majority of the members.

#### **5.12 Motions of which previous notice has been given**

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

(2) A notice of motion under subclause (1) is to be given at least 4 clear working days before the meeting at which the notice of motion is to be moved.

(3) At the time of giving the notice of motion, the member must also provide a written commentary in the nature of a report that supports the purpose of the motion to assist the responsible employee in reporting the matter to council.

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

(5) The CEO—

- (a) with the concurrence of the presiding person, may exclude from the notice paper any notice of motion deemed to be out of order; or
- (b) may on his or her own initiative make such amendments to the form but not to the substance thereof as will bring the notice of motion into proper form; and
- (c) may under his or her name provide relevant and material facts and circumstances pertaining to the notice of motion on such matters as policy, budget and law.

- (6) A motion of which notice has been given is to lapse unless—
- (a) the member who gave notice thereof, or some other authorised by him or her in writing, moves the motion when called on; or
  - (b) the council on a motion agrees to defer consideration of the motion to a later stage or date.
- (7) If a notice of motion is given and lapses in the circumstances referred to in subclause (6), a notice of motion in the same terms or to the same effect is not to be given again for at least 3 months from the date of such lapse.

### **5.13 Notices of motion**

- (1) A member may bring forward at a meeting such business as that member wishes in the form of a motion, of which notice has been given either at the previous meeting, or at any time in writing to the CEO thereafter, being no less than 7 clear days before the meeting at which it is to be brought forward.
- (2) At the time of giving the notice of motion, the member must also provide a written commentary in the nature of a report that supports the purpose of the motion to assist the responsible employee in reporting the matter to council.
- (3) A notice of motion shall lapse unless the member who gave the notice thereof, or some other member authorised in writing by the member who gave the notice, is present to move the same when such motion is called on.

### **5.14 Confidential business**

- (1) Every matter dealt with by, or brought before a meeting closed to the public shall be treated as confidential and shall not, without the authority of the meeting, be disclosed to any person other than the members or employees of the council (and in the case of employees—only so far as may be necessary for the performance of their duties), prior to the discussion of that matter in connection with a motion at a meeting held with open doors.
- (2) Information relating to matters to be dealt with while a meeting is closed to the public is to be marked by the CEO as confidential in the agenda and—
- (i) is then to be treated as confidential by persons in receipt of this information; and
  - (ii) is not without the authority of the council to be disclosed to any person other than the Mayor, members or the employees of the City to the extent necessary for the purpose of carrying out their duties.

## **PART 6—RULES OF DEBATE**

### **6.1 Recording of proceedings prohibited**

No person other than the CEO or an employee acting under the authority of the CEO is to use any electronic visual or vocal recording or transmitting device or instrument to record or transmit the proceedings of a meeting unless the person has been given permission to do so by the Mayor in the case of a council meeting or the presiding person of a committee as appropriate.

### **6.2 Seating of Members**

- (1) Seating of members and layout of meeting rooms is as decided by the presiding person or a majority of member's present if the meeting so decides.
- (2) The Council at the first meeting held after election day may allot a position at the Council table to each member, and in that case members are to occupy those positions until such time as the order is changed under subclause (1) above.
- (3) If a distinguished visitor is present at a meeting of the council, the Mayor may invite the person to sit beside the Mayor, or at the council table.

### **6.3 Members to address the presiding person**

At a council or a committee meeting a member moving a motion or amendment, or taking part in the discussion thereon, shall at all times address the presiding person.

### **6.4 Official titles to be used**

At a meeting, a speaker when speaking or referring to the presiding person, a member or the chief executive officer, shall address them by their official titles of "Mayor", "Councillor", "Member" or "Chief Executive Officer", as the case may be. All other employees of the City shall be addressed by their position titles.

### **6.5 Order of speaking**

If 2 or more members rise to speak at the same time, the presiding person shall decide the order of speaking.

### **6.6 Crossing the meeting room or leaving meeting**

- (1) When the presiding person is putting a motion to the vote, no member shall walk out of or across the meeting room, nor shall any member, whilst any other member is speaking, pass between the speaker and the presiding person.
- (2) During the course of a meeting of the Council or a committee no member is to enter or leave the meeting without making the presiding person aware of the fact in order to facilitate the recording in the minutes the facts of the time of entry or departure.

**6.7 Continued irrelevance —unbecoming language— breach of order**

The presiding person may call the attention of the meeting to continued irrelevance, tedious repetition, unbecoming language, or any breach of order on the part of a member and may direct such member, if speaking, to discontinue their speech and thereupon such member shall cease speaking and resume their seat. A member failing to comply with such a direction may be declared by the presiding person to be out of order so as to attract the operation of clause 9.13 of this Local Law.

**6.8 Adverse reflection**

No member of the council or a committee is to reflect adversely upon a decision of the council or any committee except on a motion that the decision be revoked or changed.

**6.9 No adverse reflection on a Member or employee**

(1) A member present at a meeting shall not reflect adversely upon the character or action of another member or employee, nor impute any improper motive to a member or employee, unless the meeting resolves, without debate, that the motion then before the meeting cannot otherwise be adequately considered.

(2) A member who uses any expression which in the opinion of the presiding person reflects adversely on the council or any member or employee of the City, shall when required by the presiding person unreservedly withdraw such expression and make a satisfactory apology to the presiding person, and if that member declines, or neglects to do so, the presiding person may declare the member to be in Continued Breach of Order and the member may be dealt with in accordance with clause 9.13.

**6.10 Point of order**

(1) A member who is addressing the presiding person shall not be interrupted except upon a point of order, in which event the member shall resume their seat until the member raising the point of order has been heard thereon and the point of order has been either upheld or rejected by the presiding person, whereupon the member so interrupted may, if permitted, proceed.

(2) A member rising to express a difference of opinion, or to contradict a speaker, shall not be recognised as raising a point of order.

**6.11 Points of order —when valid**

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

- (a) that the discussion is of a matter not relevant to the matter then under consideration by the meeting;
- (b) that offensive or insulting language is being used;
- (c) that there has been an insinuation as to the character, morality, honesty, or motives of a member or employee;
- (d) drawing attention to a breach of this Local Law or of any other written law;
- (e) drawing attention to the breach of a Code of Conduct of the City.

(2) A member raising a point of order shall specify one of the grounds in subclause (1) and in the case of item (d) or (e) must state the provision of this Local Law, the other written law or the Code of Conduct believed to be breached.

**6.12 Rulings by Presiding Person**

The presiding person shall decide all questions of order and that decision shall be final unless a majority of members present at the meeting decide otherwise pursuant to clause 8.12.

**6.13 Suspension of standing orders**

(1) A member may, at any time, move that the operation of one or more of the standing orders or clauses be suspended.

(2) A member moving a motion under subclause (1) is to identify the clause or clauses containing the standing orders to be suspended, and state the reasons for the motion, but no other discussion is to take place.

(3) A motion under subclause (1) which is seconded and carried is to suspend the operation of the clauses to which the motion relates for the duration of the meeting, unless the meeting earlier resolves otherwise.

**PART 7 — ORDER OF DEBATE****7.1 Order of call and conduct of Members during debate**

(1) The presiding person will call speakers to a substantive motion in the following order—

- (a) The mover to state the motion;
- (b) A seconder to the motion;
- (c) The mover to speak to the motion;
- (d) The seconder to speak to the motion;
- (e) Speakers for and against the motion;
- (f) The mover takes right of reply, which closes debate.

(2) In the event of two or more members wishing to speak at the same time, the presiding person is to decide which member is entitled to be heard first. Notwithstanding any other provisions of the Local Law, that decision is not open to discussion or dissent.

(3) Unless otherwise prohibited by the Act, and subject to compliance with procedures for the debate of motions contained in this Local Law, the presiding person may take part in a discussion of any matter before the council or committee as the case may be.

(4) Any member moving a motion or amendment, or taking part in the discussion thereon, shall address the presiding person and may rise if the member so desires, or shall do so when requested by the presiding person except when prevented from so doing by sickness or physical disability. The council at any time may decide that all persons at meetings are as a general rule, to rise when speaking unless prevented by disability from doing so, and any such rule should continue to apply until the council decides otherwise.

(5) Every member is to restrict his or her remarks to the motion or amendment under discussion, or to a personal explanation or point of order, and is to avoid irrelevancy.

#### **7.2 Motions or amendments**

A member who wishes to propose an original motion or amendment shall state its substance before the member addresses the meeting thereon, and if so required by the presiding person, shall put the motion or amendment in writing.

#### **7.3 Division of complicated motions**

The presiding person may, or the meeting may on a motion carried without debate, order a complicated motion to be divided and put in the form of 2 or more motions.

#### **7.4 Withdrawal of motion**

A motion or amendment may be withdrawn by the mover and it shall not be competent for any member to speak upon that member's motion after the mover has withdrawn it.

#### **7.5 Motions and amendments to be seconded**

Unless otherwise required by other legislation, no motion or amendment shall be discussed or put to the vote of the meeting, unless it has been seconded.

#### **7.6 Unopposed business**

(1) Upon a motion being moved and seconded, the presiding person may ask the meeting if any member opposes it.

(2) If no member signifies opposition to the motion, the presiding person may declare the motion carried without debate and without taking a vote thereon.

(3) A motion carried under subclause (2) may be recorded in the minutes as a unanimous decision of the meeting.

(4) If a member signifies opposition to a motion, the motion is to be dealt with in accordance with clause 7.7.

(5) This clause does not apply to any motion or decision to revoke or change a decision that has been made at a Council or committee meeting. Any motion or decision is subject to the Regulations.

#### **7.7 Determining a vote**

(1) Subject to Clause 7.6—(Unopposed Business), the method of determining a vote shall be in accordance with the Act and every member of council or a committee who is present at a meeting of the council or a committee is to vote. The procedure is as set out below—

(a) The presiding person, in taking the vote on any motion, is to—

(i) put the motion first in the affirmative and then the negative;

(ii) determine whether the affirmative or the negative has the majority of votes; and

(iii) declare the result of the vote.

(b) The motion put under subclause (1) paragraph (a) may be put as often as is necessary to enable the presiding person to determine that the affirmative or the negative has the majority of votes.

(c) The result of voting is to be determined on the show of raised hands.

(d) Voting at a meeting is to be conducted so that no member's vote is secret except in the case of the filling of the office of Mayor or Deputy Mayor of the council, or the election of the presiding persons or deputy presiding persons for committees.

(2) The voting on a motion is to be taken only by the presiding person calling for a show of hands for the affirmative and then calling for a show of hands for the negative and no member may express a view or attempt to vote on the motion in any other way.

#### **7.8 Member not to speak twice**

(1) No member is to speak twice on the same motion, except by way of personal explanation, or in reply upon an original motion of which the member was the mover or an amendment last debated of which the member was the mover, or through the chair to ask a question concerning and relevant to the subject matter of the motion or amendment, of another member or employee present at the meeting.

(2) The council may, by resolution, suspend the operation of this clause during the debate of any motion.

(3) The presiding person shall, without waiting for the intervention from members of the meeting, call to order any member proceeding to speak a second time on the same motion, except where the member is otherwise authorised to do so.

**7.9 Time limit of speeches**

(1) A member shall not speak upon any motion or amendment or in reply for a period longer than 5 minutes without the consent of the meeting, which shall be signified without debate by a simple majority of members present.

(2) No extension under subclause (1) is to be for a period greater than 5 minutes.

**7.10 No digression**

A member shall not speak otherwise than upon, or digress from, the motion then before the meeting, except to make a personal explanation.

**7.11 Personal explanation — when heard and ruling by Presiding Person**

(1) A member wishing to make a personal explanation of matters referred to by any member then speaking, shall be entitled to be heard immediately, if the member then speaking consents at the time, but if the member who is speaking declines to give way, the explanation must be offered at the conclusion of that speech. Any member of the council or committee who is permitted to speak under these circumstances is to confine the observations to a succinct statement relating to a specific part of the former speech that may have been misunderstood and shall not refer to matters not strictly necessary.

(2) The presiding person is to decide on the admissibility of a personal explanation in accordance with clause 11.1. The decision of the presiding person shall be final.

(3) The presiding person is to decide on the duration of a personal explanation provided the time is not to be longer than 5 minutes.

**7.12 Speaking in reply**

A member speaking in reply shall not introduce any new matter, but shall strictly confine the reply to answering previous speakers and shall speak in reply for no more than 3 minutes.

**7.13 Members not to interrupt**

No member is to interrupt another member whilst speaking unless —

- (a) to raise a point of order;
- (b) to call attention to the absence of a quorum; or
- (c) to make a personal explanation under clause 7.11.

**7.14 No speech after certain events**

(1) No member is to re-open discussion on any decision of the council or committee, except for the purpose of moving that the decision be revoked or altered.

(2) Without limiting the generality of subclause (1), no member is to speak on any motion or amendment —

- (a) after the mover has replied; or
- (b) after the motion has been put if the mover declines to reply.

**PART 8 — PROCEDURAL MOTIONS****8.1 Motions and amendments to be determined without digression**

When a motion is under debate at a meeting, another motion shall not be received unless it be a motion authorised by the Act or this Local Law or one of a nature necessary for the proper observance of the Act or this Local Law.

**8.2 Permissible formal motions during debate**

(1) Whilst a motion is under debate, a member may move a procedural motion which, provided it is seconded, shall be dealt with immediately.

(2) Each of the following is a procedural motion for the purpose of this clause —

- (a) that the matter be referred back to committee;
- (b) that the motion be amended;
- (c) that the meeting proceed behind closed doors;
- (d) that the meeting be adjourned;
- (e) that the debate be adjourned;
- (f) that the matter be deferred;
- (g) that the motion be now put;
- (h) that the meeting proceed with the next business;
- (i) that the motion lie on the table;
- (j) that the ruling of the person presiding be disagreed with;
- (k) that the meeting be now closed.

(3) A member who has moved, seconded or spoken on the matter then before the meeting shall not move a procedural motion on that matter other than the motions referred to in subclause (2) paragraphs (a), (c) and (i).



**8.3 That the matter be referred to Committee — when moved and how dealt with**

(1) Where the matter before council is a recommendation from a committee of the council, any member may at the conclusion of the speech of any other member, move without notice that the matter be referred back to the committee and, on any such motion, the mover may speak for not more than 3 minutes, the seconder shall not speak other than to formally second and the presiding person of the Committee or in the absence of the presiding person, a member thereof, may speak for not more than 3 minutes, but no other debate shall be allowed.

(2) In the case of a committee of which no member of council present at the meeting is a member of the committee whose recommendation is the matter before council, the motion shall be put to the vote after the mover has spoken.

**8.4 That the motion be amended — when valid, how dealt with and effect**

(1) Every amendment is to be relevant to the motion, and is not to have the effect of negating the motion.

(2) As often as an amendment is lost, another amendment may be moved before the original motion is put to the vote. Where an amendment is carried, one further amendment to the original motion, as amended, and no more may be carried.

(3) In speaking to an amendment, a member may give notice of intention to move another amendment, subject to the constraint in subclause (2).

(4) Where an amendment is carried, the original motion, as now amended, shall for all purposes of subsequent debate be treated as the original motion.

**8.5 That the meeting be closed to the public — when moved, how dealt with and effect**

(1) A member may at the conclusion of a speech of any other member move without notice, for the purpose of dealing with any matter referred to in s.5.23(2) of the Act, that the meeting be closed to the public and on any such motion, the mover may speak for not more than 3 minutes, the seconder shall not speak other than to formally second and no other debate shall be allowed.

(2) Where a meeting resolves that the meeting or part of it be closed to members of the public, the following is to occur—

(a) the presiding person is to direct all persons other than the members and those persons who they require to assist them with the business, to leave the meeting room and every person is to comply with that direction immediately; and

(b) the meeting is closed to other members of the public until the meeting resolves to open the meeting to members of the public.

(3) A person who fails to leave the meeting room when so directed, under subclause (2) may, by order of the presiding person, be removed from the meeting room.

**8.6 That the meeting be adjourned — when moved, how dealt with and effect**

(1) A member may, at the conclusion of the speech of any other member or on the conclusion of any business, move without notice that the meeting be adjourned and that motion shall state a time and date to which the adjournment is to be made.

(2) On a motion to adjourn, the mover may speak for not more than 3 minutes, the seconder shall not speak other than to formally second and the mover of a motion (if any) which is then under debate, may speak for not more than 3 minutes, but no other debate shall be allowed.

(3) If any motion for adjournment of the meeting is negated, the subject then under consideration or the next matter on the notice paper shall be discussed before any subsequent motion for adjournment shall be entertained.

(4) If any motion for adjournment of the meeting is carried, the matter (if any) under debate when the decision for adjournment was made, will stand adjourned until the next meeting.

(5) On resuming debate on any matter from an adjourned meeting, the member who moved its adjournment shall be entitled to speak first.

(6) At the same sitting, no member may move or second more than one motion for the adjournment of the meeting.

(7) On a motion for adjournment of the meeting being carried, a record shall be taken of all those who have spoken on the matter under consideration at the time of the adjournment and they shall not be permitted to speak on any subsequent consideration of the same matter when the meeting is resumed, but this clause does not deprive a mover of the right of reply.

**8.7 That the debate be adjourned — when moved, how dealt with and effect**

(1) A member may, at the conclusion of a speech of any other member move, without notice, that the debate be adjourned to a later hour on the same day or to any other day.

(2) On a motion that a debate be adjourned, the mover may speak for not more than 5 minutes, the seconder shall not speak other than to formally second and no other debate shall be allowed, but if the matter then before the meeting is a recommendation from a standing committee, the presiding person of the committee concerned, or in the absence of the presiding member a member thereof, may speak for not more than 3 minutes.

(3) On resuming an adjourned debate, the member who moved its adjournment shall be entitled to speak first.

(4) At the same meeting no member shall move or second more than one motion for adjournment of the same debate.

(5) On a motion for the adjournment of a debate being carried, a record shall be taken of all those who have spoken on the matter under debate and they shall not be permitted to speak on any resumption of the debate on that subject, but this clause does not deprive a mover of the right of reply.

**8.8 That the matter be deferred—when moved, how dealt with and effect**

(1) A member may—

(a) at the conclusion of the mover's opening speech to the motion; or

(b) if the mover elects not to speak on moving the motion, prior to any debate on the motion,

move a motion without notice, that the matter be deferred to a later hour on the same day or to a subsequent meeting.

(2) Should the motion to defer be carried there shall be no further debate on the motion until the time to which it is deferred.

**8.9 That the motion be now put—when moved, how dealt with and effect**

(1) A member may, at the conclusion of the speech of any other member, move without notice, that the question under consideration be now put and upon the motion being seconded, it shall immediately be voted upon without debate.

(2) A motion that the question be now put shall not be decided in the affirmative unless supported by a 75% majority (rounded up to the nearest whole number) of the members present.

(3) Should the motion be carried, any amendment before the meeting shall be put at once, or, if there is no amendment before the meeting, then the original motion or original motion as amended, shall be put at once, subject to subclause (4).

(4) Whenever it is decided by the meeting that the motion under consideration shall be put, the mover of the motion under consideration shall, if debate has occurred, and if otherwise entitled to do so, be permitted to speak in reply for no more than 3 minutes before the motion is put.

**8.10 That the meeting proceed with the next business—when moved, how dealt with and effect**

(1) A member may at the conclusion of the speech of any other member, move without notice, that the meeting proceed to the next business and if the motion be seconded, it shall be put forthwith without debate.

(2) If a motion "that the meeting proceed to the next business" is carried, then the substantive motion and any amendment being debated shall be considered as lapsed and no further debate is permitted.

**8.11 That the motion lie on the table—when moved, how dealt with and effect**

(1) A member may at the conclusion of the speech of any other member, move without notice that the motion or amendment under consideration lie on the table and upon that motion being seconded, it shall immediately be put without debate.

(2) Whenever it is decided by the meeting that a motion under consideration shall lie on the table, if it is passed in respect of an amendment, then the amendment and the substantive motion to which it relates must lie on the table.

(3) The meeting may at any time resolve to take the motion from the table.

(4) On a motion that the question lie on the table being carried, a record shall be taken of all those who have spoken on the subject under consideration up to the closing of the meeting and they shall not be permitted to speak on any subsequent consideration of the same matter when the debate is resumed, but this clause does not deprive a mover of the right of reply.

**8.12 That the ruling of the Presiding Person be disagreed with—when moved, how dealt with and effect**

(1) Subject to clauses 9.8 and 13.2, when the presiding person gives a ruling under clause 6.13 of this Local Law, a member may, provided it is done immediately, move that the ruling of the presiding person be disagreed with.

(2) On a motion that the ruling of the presiding person be disagreed with, the mover may speak for not more than 3 minutes and the seconder shall not speak other than to formally second the motion.

(3) If a motion under subclause (1) is carried, the ruling of the presiding person is reversed and the meeting shall proceed accordingly.

**8.13 That the meeting be now closed—when moved, how dealt with and effect**

(1) A member may at the conclusion of a speech of any other member, or on the conclusion of any business, move without notice that the meeting be now closed and upon that motion being seconded, the motion shall, subject to subclause (2) be immediately put without debate.

(2) On a motion that the meeting be now closed, the mover may speak for not more than 3 minutes and the seconder shall not speak other than to formally second the motion.

(3) If a motion that the meeting be closed is negated, a similar motion shall not be moved until after the matter under discussion has been disposed of, or if the closure was moved on the completion of a matter, a similar motion shall not be moved until the next matter on the agenda has been disposed of.

(4) On a motion that the meeting be now closed being carried, the debate on any matter under debate when the motion was moved will stand adjourned to its place on the agenda for the next meeting.

(5) On a motion that the meeting be now closed being carried, a record shall be taken of all those who have spoken on the subject under consideration up to the closing of the meeting and they shall not be permitted to speak on any subsequent consideration of the same matter when the debate is resumed, but this clause does not deprive a mover of the right of reply.

**PART 9—PRESERVING ORDER****9.1 Presiding Person to preserve order**

The presiding person shall be responsible for preserving order and may call any member to order whenever in the opinion of the presiding person there is cause for doing so.

**9.2 Presiding Person to be heard**

Whenever the presiding person rises during a debate, any member then speaking or offering to speak is to sit down and the meeting is to be silent so that the presiding person may be heard without interruption.

**9.3 Definition of order**

Any member who does anything or behaves in a manner which is forbidden by any of this Local Law shall be deemed to be out of order.

**9.4 Breaches of order**

Notwithstanding the generality of the preceding clause the following shall be recognized as breaches of order—

- (a) the use of offensive or insulting language;
- (b) insinuations as to the character, morality, honesty or motives of a member or employee;
- (c) the violation of any part of this Local Law or any other written law of the City;
- (d) any other breach of a Code of Conduct of the council at a meeting.

**9.5 Member drawing attention to breach of order**

(1) Any member may direct the attention of the presiding person to any breach of order by any member at the meeting. A member directing attention to a breach of order under this clause is not to be taken to be raising a point of order within the meaning of clause 6.1 unless the alleged breach of order is by a member speaking in the course of debate in which case the matter is to be dealt with as a point of order under clauses 6.11, 6.12 and 6.13. Otherwise the provisions of this clause apply.

(2) A ruling by a presiding person on allegation of breach of order under this clause shall be final and not open to debate under clause 6.13 or otherwise.

(3) A member directing attention to a breach of order shall specify one of the grounds in subclause 11.4(1) and in the case of item (c) or (d) shall state the provision of this Local Law, or the written law or Code of Conduct believed to be breached.

**9.6 Prevention of disturbance**

(1) No interruption

A person, not being a member, shall not at any meeting interrupt the proceedings of the meeting.

(2) Person not a Member interrupting

Any person, not being a member, interrupting the proceedings of the meeting shall when so directed by the presiding person, forthwith leave the room in which the meeting is being held.

(3) Removal by order

Any person, not being a member, who, being directed to leave the meeting fails to do so may, by order of the presiding person, be removed from the meeting room.

(4) Enforced removal

If a person, not being a member, ordered by the presiding person to be removed from the meeting room cannot be removed without the application of physical force then a member or members of the Western Australian Police shall be called to the meeting to effect the removal of the person and the meeting may be adjourned until the person has been removed.

**9.7 Precedence of questions of order**

Notwithstanding anything contained in this Local Law to the contrary, the raising of a point under clause 1.11 or the allegation of a breach of order under clause 9.5 shall, until the question is decided, suspend the consideration of and decision on every other question.

**9.8 Rulings by Presiding Person**

Notwithstanding clauses 6.12 and 8.12, there shall be no dissent from a ruling of the presiding person allowing or disallowing a question on a matter required to be dealt with.

**9.9 Ruling out of order**

Whenever the presiding person has decided that any motion, amendment or other matter before the meeting is out of order, it shall be rejected and whenever anything said or done by any member is similarly decided to be out of order by reason of use of offensive or insulting language or insinuation as to the character, morality, honesty or motives of a member or employee, that member ruled out of order shall be called upon by the presiding person to make such explanation, retraction or apology, as the case may require. The provisions of this clause apply to a member who is out of order under clause 6.12 or clause 9.4.

**9.10 Withdrawal of offensive expression**

(1) Notwithstanding the provisions of subclause 6.12(2) or clause 9.5, together with clause 9.9, any member who uses an expression which, in the opinion of the presiding person, is offensive to any member or employee is, when required by the presiding person, to unreservedly withdraw the expression and make a satisfactory apology.

(2) If the member declines to do so, the presiding person may refuse to hear the member any further upon the matter then under discussion and may call upon the next speaker.

#### **9.11 No disturbance by member**

A member shall not create a disturbance in the meeting room, nor converse aloud while any other person is addressing the meeting, unless—

- (a) to raise a point of order;
- (b) to call attention to the absence of a quorum;
- (c) to make a personal explanation under clause 9.15.

#### **9.12 Continued breach of order**

Where the presiding person declares that a member is out of order, the presiding person may direct that member to refrain from taking any further part in the debate of the item, other than by recording the member's vote, and the member shall comply with that direction.

#### **9.13 Serious disorder**

(1) If at a meeting the presiding person is of the opinion that by reason of serious disorder or otherwise, the business of the meeting cannot effectively be continued, the presiding person may adjourn the meeting for a period not exceeding 30 minutes, after the expiration of which the meeting shall reconvene and decide by majority of members present whether business is to be proceeded with, which question shall be decided forthwith and without debate.

(2) Where, upon the resumption of the meeting adjourned pursuant to subclause (1), the presiding person is again of the opinion that the business of the meeting cannot effectively be continued, the presiding person shall adjourn the meeting to a time and date to be set by the presiding person which may be the same day or another day.

#### **9.14 No effect on presentation**

The fact that a withdrawal or apology may be sought or given under any provision of this Local Law shall not limit the operation of the enforcement and offence provisions of this Local Law.

#### **9.15 The Presiding Person may take part in debate**

Unless otherwise prohibited by the Act, and subject to compliance with procedures for the debate of motions contained in this Local Law, the presiding person may take part in a discussion of any matter before the council or committee as the case may be. Upon indicating that he or she would like to take part in the debate, the presiding person is to vacate the chair, and that part of the meeting is to be presided over by the Deputy Mayor in the case of council or electors meetings, deputy presiding person in the case of a committee meeting, or another member of the council or committee if the Deputy Mayor or deputy presiding person is unavailable or unwilling to act.

### **PART 10 — COMMITTEES**

#### **10.1 Committees and their meetings**

The Act deals with committees and their meetings. See in particular —

- Types of committees
- Appointment of committee members
- Tenure of committee members
- Election of presiding members, deputy presiding members
- Function of deputy presiding members
- Who acts if presiding member not present
- Reduction of quorum for committees.

#### **10.2 Classes of Committee**

The council shall appoint an Audit Committee in accordance with the Act and Regulations and may from time to time appoint other committees in the categories of Standing Committee, Occasional Committee, Management Committee or Advisory Committee, or such other categories as council from time to time considers appropriate. The general term "committee" when used in this Local Law refers to a committee in any of those categories.

#### **10.3 Committee functions**

Upon resolving to form a committee or a category of committees, the council shall determine the functions of the committee or category of committee. The function of the Audit Committee shall be in accordance with the provisions of the Act and Local *Government (Audit) Regulations 1996*.

#### **10.4 Powers delegated to Committees**

Upon forming a committee or a category of committees, the council may delegate powers to the committee consistent with the Act and Regulations.

#### **10.5 Committees to keep minutes**

Minutes of Meetings will be kept in accordance with the provisions of the Act

#### **10.6 Open doors**

As provided in clause 4.1, the business of any committee shall be conducted with open doors unless the committee resolves to close the meeting to the public as allowed by the Act.

**PART 11 — MISCELLANEOUS****11.1 Protection of employees****(1) Complaint**

If a member has any complaint concerning the ability, character or integrity of an employee or of any act or omission of such employee and desires to bring such complaint forward, the member shall submit the complaint to the CEO. Where a complaint is about the CEO, such complaint shall be submitted to the Mayor.

**(2) Employee to have right of reply**

If a complaint or criticism is made concerning an employee, whether by a member or by any other person, that employee may reply to the complaint or criticism either orally or in writing to the council, or to a relevant committee if the employee so prefers.

**11.2 Implementing decisions**

Neither the CEO nor any member, nor any employee of the City, is to take any step to implement or otherwise give effect to a resolution until close of business on the next working day after the close of the meeting at which the resolution was passed.

**11.3 Revocation or change of resolution**

(1) The procedure in regard to the revoking or changing of a decision made at a council or committee meeting shall be as set out in regulation 10 of the Regulations.

(2) If a notice of motion to revoke or change a decision of the council or a committee is received before any action has been taken to implement that decision, then no step is to be taken to implement or give effect to that decision until such time as the motion of revocation or change has been dealt with, except that—

- (a) if a notice of motion to revoke or change a decision of the council or a committee is given during the same meeting at which the decision was made, the notice of motion is of no effect unless the number of members required to support the motion under regulation 10 of the Regulations indicate their support for the notice of motion at that meeting; and
- (b) if a notice of motion to revoke or change a decision of the council or a committee is received after the closure of the meeting at which the decision was made, implementation of the decision is not to be withheld unless the notice of motion has the support in writing of the number of members required to support the motion under regulation 10 of the Regulations.

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

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

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

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

**11.4 Production of documents to members**

Access to information by members is as provided in the Act.

**11.5 Meetings of electors**

This Local Law shall so far as practicable apply to meetings of electors except for the following—

(1) The Mayor or such other person determined in accordance with section 5.30 of the Act shall preside at any meeting.

(2) The Mayor or other person presiding, pursuant to the power in regulation 18 of the Regulations to determine the procedure at a general or special electors' meeting—

- (a) may require questions to be submitted in writing;
- (b) may determine that all questions if answered at the meeting shall be answered by the person presiding or with the permission of the person presiding, by a councillor or employee;
- (c) may require that if any question cannot readily be answered at the meeting, the answer shall be given in writing as soon as reasonably practicable thereafter;
- (d) may require that the mover of a motion submit the motion in writing; and
- (e) may close the meeting when the person presiding determines that the business of the meeting has been concluded.

(3) All questions if answered at the meeting shall be answered by the Mayor or with the permission of the Mayor, by a councillor or employee.

(4) If any question cannot readily be answered at the meeting the answer shall be given in writing as soon as reasonably practicable thereafter.

(5) If required by the Mayor the mover of a motion shall submit any motion in writing.

(6) The Mayor may close the meeting when the Mayor determines that the business of the meeting has been concluded.

(7) Subject to the Act and to this Local Law, the conduct of a meeting of ratepayers and electors shall be at the sole discretion of the Mayor.

## **PART 12 — DISCLOSURE OF FINANCIAL INTERESTS**

### **12.1 Separation of Committee recommendations**

If a member has disclosed a financial interest in a matter at a committee meeting, and the matter is contained in the recommendations of the committee to an ordinary meeting of Council or another committee, which meeting is likely to be attended by the member, the recommendation relating to the matter is to be separated on the agenda of the relevant meeting of the Council or the other committee, from other recommendations of the committee so as to enable the member concerned to disclose the interest at the subsequent Council or committee meeting, and to leave the meeting room prior to consideration of that matter only.

### **12.2 Member with a financial interest may ask to be present**

(1) If a member has disclosed the nature of a financial interest the member has in a matter, the member may, immediately before the matter is considered by the meeting, without disclosing the extent of the interest, request that the member be allowed to be present during any discussion or decision-making procedure relating to the matter.

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

### **12.3 Member with a financial interest may ask to be allowed to participate**

(1) A member who discloses both the nature and extent of a financial interest the member has in a matter, may request permission of the meeting to preside at the meeting (if otherwise qualified to preside) or to participate in discussions and the decision-making procedures relating to the matter. If such a request is made, the member is to leave the meeting room while the request is considered.

(2) Those matters may be considered at a meeting if raised otherwise than by the request of the member who has disclosed a financial interest, but in that event the other members should not consider the question unless the member who has disclosed the financial interest consents to the matter being considered and discloses the extent of his or her financial interest in the matter.

(3) If it is decided at a meeting that a member who has disclosed both the nature and extent of the member's financial interest in a matter, is allowed to preside at the meeting, or to participate in the discussions and/or the decision-making procedures relating to the matter, then the member may return to the meeting room to participate to the extent allowed.

### **12.4 Invitation to return to provide information**

If a member has disclosed a financial interest in a matter and has left the meeting room, the other members may resolve to invite the disclosing member to return to provide information in respect of the matter or in respect of the disclosing member's interest in the matter and in such case the member is to withdraw after providing the information and before there is any discussion or vote on the matter.

### **12.5 Disclosure of financial interests by employees**

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

(2) If such an employee makes an oral report to a meeting on a matter in which the employee has a financial interest, the employee is to preface the employee's report or advice to the meeting by orally disclosing the nature of the interest.

## **PART 13 — DISCLOSURE OF INTEREST AFFECTING IMPARTIALITY**

### *Division 1 — Disclosure by members*

#### **13.1 Introduction**

In order to address the problem of apparent bias, particularly in regard to matters where the Council is required to perform a quasi judicial function (e.g. in deciding on applications for the grant of an approval, licence or consent), the City wishes to give guidance in this Part as to the way in which members may act to protect the reputation of themselves, the City, and local government generally.

#### **13.2 Legislative requirements**

The provisions in this Part are made with the knowledge that—

- (a) no written law requires a member who discloses an interest affecting impartiality, to leave the meeting room; and
- (a) section 5.21(2) of the Act, requires each member who is present at a meeting (and who has not disclosed a financial interest) to vote.

**13.3 Disclosing member continuing to be present**

Where a member has disclosed in regard to a matter, an interest affecting impartiality, the member should consider whether the interest is—

- (a) so trivial or insignificant; or
- (b) shared in common with such a significant number of electors, ratepayers, or residents of the district,

that the interest would not affect the members impartiality, and would not be likely to be perceived as affecting the members impartiality.

If the interest is in one of the categories (a) or (b) above, the member may see fit to continue to participate in the meeting and in that case should signify the intention to do so, to the presiding person, either—

- (c) in the written notice of disclosure if there is one; or
- (d) at the meeting immediately after the disclosure of the interest.

In signifying that intention, the member should disclose the extent of the interest and the reason why the member considers the interest is trivial or insignificant or shared in common so as not to affect or appear to affect the member's impartiality.

**13.4 Disclosing member leaving the room**

If a member considering the matters mentioned in clauses 13.3(a) and (b) above is not satisfied that the interest disclosed is either trivial or insignificant or shared in common in the necessary sense, and may affect or be perceived to affect the members impartiality in the matter, the member should leave the meeting room before any discussion or voting on the matter occurs.

**13.5 Separation of Committee recommendations—impartiality interest**

If a member has disclosed an interest affecting impartiality in a matter at a committee meeting, and the matter is contained in the recommendations of the committee to an ordinary meeting of the Council or of another committee that is likely to be attended by the disclosing member, the recommendation concerned is to be separated on the agenda of the relevant meeting from other recommendations of the committee, to enable the disclosing member to—

- (a) disclose the nature of the interest and if the member sees fit, to leave the meeting room prior to consideration of that matter only; or
- (b) disclose the nature and extent of the interest and remain present in which case the member must vote on the matter.

**13.6 Member with an impartiality interest may decide to be present**

(1) Where a member has disclosed the nature of the member's interest affecting impartiality in a matter, the member may, immediately before the matter is considered by the meeting, without disclosing the extent of the interest, indicate that the member intends to be present during any discussion or decision-making procedure relating to the matter.

(2) If such an indication is given, the member is to remain in the meeting room and in that event is to participate in the discussion and decision-making processes in relation to the matter.

**13.7 Member with an interest may ask for the meeting's views on participation**

(1) A member who discloses an interest affecting impartiality may indicate a desire to take part in the discussion and decision-making processes in relation to the matter, but may seek a view of the other members as to the appropriateness of the member doing so.

(2) If the disclosing member discloses not only the nature but also the extent of the interest, the other members at the meeting may, but are not obligated to express a view as to whether the interest concerned is of such a nature as to be perceived to affect the member's impartiality.

(3) The disclosing member should remain absent from the meeting room while the question in subclause (2) is being considered.

(4) If it is decided at the meeting that the member who has disclosed the impartiality interest ought to participate in the discussion and decision-making processes in relation to the matter, that view should be communicated to the disclosing member and an opportunity should be given to the member to return to the meeting room in the event that the member is prepared to participate in the discussion and decision-making processes in regard to the matter.

(5) The decision on departing from or remaining present in the meeting room is a decision ultimately for the disclosing member, and a decision by the other members under subclause (2) above has no greater force than a view of the majority of other members.

**13.8 Invitation to return to provide information**

If a member has disclosed an interest affecting impartiality in a matter and has left the meeting room, the other members may resolve to invite the member to return to provide information in respect of the matter or in respect of the disclosing member's interest in the matter, and in that event the disclosing member should be allowed an opportunity to depart the meeting room again in the event that the member does not wish to remain to participate in the discussion and decision-making process in regard to the matter.

*Division 2—Disclosure by employees***13.9 Impartiality interests of employees**

The obligations of an employee in regard to the disclosure of an interest affecting impartiality are set out in regulation 34C of the Regulations and in any Code of Conduct of the City relating to employees.

### 13.10 Employee departing the meeting room

When an employee discloses an interest affecting impartiality, the employee should depart the meeting room unless the employee is confident on reasonable grounds that the interest in question is fully understood as to the nature and extent, would not be perceived as capable of affecting the employee's impartiality in relation to the matter the subject of the disclosure.

## PART 14 — ENFORCEMENT OF THIS LOCAL LAW

### 14.1 Enforcement of this local law

- (1) The presiding person at a meeting shall be responsible for ensuring that this Local Law is complied with during the course of the meeting and generally.
- (2) The provisions of this Local Law may be enforced by proceedings in accordance with the Act but only following the specific direction of the council or committee by resolution carried by a simple majority. Unless the council directs otherwise a prosecution for an offence against this Local Law is to be commenced by the Chief Executive Officer.
- (3) The taking of prosecution proceedings for an offence under this local law, or the possibility of prosecution proceedings being taken does not in any way preclude or limit the making of a complaint under section 5.107 of the Act of a minor breach of the *Rules of Conduct Regulations*, or a recurrent breach.
- (4) Notwithstanding subclause (3), neither the presiding person nor the CEO should undertake prosecution proceedings for an offence under this local law if the presiding person or CEO has made a complaint in respect of the same matter under section 5.107 of the Act and that complaint has not been determined by the Standards Panel, or if the complaint has been determined and the member complained about has been dealt with by the imposition of any of the sanctions in section 5.110(6)(b) or (c) of the Act.

### 14.2 Rulings of the Presiding Person

- (1) In cases of procedure where this Local Law and the Act are silent, the presiding person shall decide all questions of order, procedure, debate or otherwise.
- (2) Where the presiding person decides any question under this Local Law, save for a question of order decided under clause 6.12, there shall be no dissent from or debate on the decision of the presiding person.
- (3) Notwithstanding the provisions of subclause (2), a presiding person in his/her sole discretion, may call for a vote on a ruling open to him/her under subclause (1). The vote is to be taken without a motion and without debate and the presiding person shall be bound by the outcome of the vote.

### 14.3 Penalty for offence when not otherwise specified

- (1) Contravention of a provision of this Local Law is an offence.
- (2) If the penalty for which a person is liable for committing an offence under this Local Law is not otherwise specified, the penalty is a fine of \$1,000.

### 14.4 Custody and affixing of Common Seal

- (1) The form of the sealing clause of the City of Swan if required is —

“The Common Seal of the **City of Swan** was hereunto affixed

\_\_\_\_\_”

- (2) The CEO or an employee of the City authorised by the CEO, is responsible for the care of the Common Seal and shall keep it in safe custody.
- (3) If the Act or any other law requires that the Common Seal be affixed to any document, then the Common Seal shall be affixed in accordance with the provisions of the Act or any other law and if the Common Seal is required to be affixed to a document in respect of which no direction is given in the Act or any other law as to the circumstances and manner of its affixing, the council may, from time to time, direct either generally in respect of all documents not otherwise provided for, or in respect of a class of documents or a specific document, not otherwise provided for, that the Common Seal shall be affixed to any such document without any further resolution of the council being required.
- (4) Where a document is not required by any Act or other law to have the Common Seal of the City affixed to it, then it may be executed by the signature of the CEO, or an employee of the City of executive status, authorised by the CEO to so sign.
- (5) Notwithstanding the provisions of subclause (4), any document is validly executed by the City when the Common Seal is affixed to it by the CEO or an employee of the City authorised in that behalf by the CEO, and the CEO attests that the Common Seal has been properly affixed in accordance with the provisions of subclause (1).
- (6) The CEO may authorise an employee of the City of executive status to execute documents under seal as provided in subclause (5).



(7) The CEO shall cause to be kept a register of all documents to which the Common Seal of the City has been affixed.

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Dated the 2nd day of March 2011.

The Common Seal of the City of Swan was hereunto affixed by authority of Council—

MICHAEL JAMES FOLEY, Chief Executive Officer.  
COLIN CAMERON, Executive Manager.

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